

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2020-25**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY TO ENTER INTO CONTINUING SERVICE AGREEMENTS WITH 3RD GENERATION PLUMBING; CORAL CONSTRUCTION COMPANY; KEYS CONTRACTING SERVICES, INC; NEARSHORE ELECTRIC INC.; QUEEN CONCH CONSTRUCTION COMPANY; ADEVTURE ENVIRONMENTAL; AFFORDABLE ASPHALT; FLORIDA KEYS ELECTRIC; GRADER MIKE; LPS CONTRACTING; MARATHON ELECTRIC AND SIGN; MIKE HAACK EXCAVATING; NATIONWIDE PLUMBING; REYNOLDS CONSTRUCTION; TENACIOUS FABRICATING, FOR GENERAL TRADE SERVICES ON AN AS NEEDED BASIS**

**WHEREAS**, the City published a Request For Qualifications (RFQ-2020-01-28-LF-0-2020/LF) for the purpose to have under contract various tradesmen for assorted projects within the City on January 27, 2020 and review was performed on February 28, 2020. The respondents: 3rd Generation Plumbing; Coral Construction Company; Adventure Environmental; Keys Contracting Services, Inc.; Nearshore Electric Inc.; Affordable Asphalt; Florida Keys Electric; Grader Mike; LPS Contracting; Marathon Electric and Sign; Mike Haack Excavating; Nationwide Plumbing; Queen Conch Construction; Reynolds Construction; Tenacious Fabricating, all met the requirements of the RFQ.

**WHEREAS**, by entering into these various continuing service agreements for general trade services will save time and speed the process while still following policies and procedures of the City's procurement policy.

**WHEREAS**, the City's adopted Purchasing Policies and Procedures allow the City Council to waive, by majority vote, the procurement procedures requiring competitive bidding if they are determined impractical and are not otherwise required by law.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, that:**

**Section 1.** The above recitals are true and correct and incorporated herein.

**Section 2.** Council authorizes the City Manager to negotiate and enter into Continuing Service Agreements with : 3rd Generation Plumbing; Coral Construction Company; Adventure Environmental; Keys Contracting Services, Inc.; Nearshore Electric Inc.; Affordable Asphalt; Florida Keys Electric; Grader Mike; LPS Contracting; Marathon Electric and Sign; Mike Haack Excavating;

Nationwide Plumbing; Queen Conch Construction; Reynolds Construction; Tenacious Fabricating for General Trade Services in substantially the form attached as Exhibit "1".

**Section 3.** The City Council hereby waives the requirement for the City to obtain competitive bids from vendors other than those referenced in Section 2 for the types of work to be performed under these continuing services agreements, unless such competitive bids are otherwise required by law.

**Section 4.** Jobs contracted under the authority of this resolution may not exceed the City of Marathon purchasing policy limits. Work orders in excess of \$35,000 will require City Council approval.

**Section 5.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 12TH DAY OF MAY, 2020.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Steve Cook, Mayor**

AYES: Bartus, Gonzalez, Senmartin, Zieg, Cook  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

  
\_\_\_\_\_  
Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

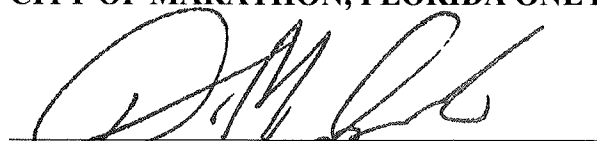
  
\_\_\_\_\_  
City Attorney

Exhibit A – Contract

**CITY OF MARATHON**  
**CONTINUING GENERAL CONTRACTING SERVICES AGREEMENT**

THIS CONTINUING GENERAL CONTRACTING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 14 day of April, 2020, by and between **The City of Marathon, Florida**, a Florida municipal corporation, ("City") and «Company\_Name» whose address is «Address» «City\_», «State» «Zip» ("Contractor").

WHEREAS, following a Request for Qualifications process, the City has identified General Contractor as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with the Contractor under which the Contractor may be assigned specific tasks or projects to be performed by the City under the terms and conditions herein.

NOW THEREFORE in consideration of the mutual covenants, terms and conditions herein, City and Contractor, agree and bind themselves, their successors and assigns as follows:

**1. Scope of Services/Deliverables.**

(a) The Contractor shall provide the Work at the unit price [ ] or lump sum price [ ] specified in Exhibit "A," attached to this Agreement, and made a part hereof by this reference.

**2. Term/Commencement Date.**

(a) This continuing contract shall be for a term of three (3) years with two (2) one (1) year renewal at the discretion of the City. Actual completion of projects may extend beyond such term.

(b) Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Work within the timeframes set forth in the Work Schedule, unless extended by the City Manager.

**3. Compensation and Payment.**

(a) The Contractor shall invoice the City on a monthly basis. All invoices shall provide a detailed statement of the Work performed by Contractor for the period of time covered by the invoice. Contractor shall use an approved form as may be provided by City from time to time, which may be used by Contractor in requesting progress or final payments and which is to include such supporting documentation as is required by the Agreement Documents.

(b) Each application for partial payment shall include an affidavit or partial release of lien by Contractor and its subcontractors and suppliers that partial payments received from City for the Work have been applied by Contractor to discharge in full all of Contractor's obligations, including payments to subcontractors and suppliers, stated in prior applications for payment.

(c) The final application for payment shall be accompanied by all documentation called for in the Agreement Documents, together with complete and legally effective releases or waivers (satisfactory to City) of all liens arising out of or filed in connection with the Work. In lieu thereof and as approved by the City, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which City might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any subcontractor or supplier fails to furnish a release or receipt in full, Contractor shall provide the City with a certified written explanation for why the subcontractor or supplier has not been paid.

(d) The City shall pay Contractor in accordance with the Florida Prompt Payment Act.

(c) If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the Contractor the undisputed portion of the invoice. Upon written request of the Finance Director, the Contractor shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

#### **4. Subcontractors.**

(a) The Contractor shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Work. Prior to any payments to Contractor under this Agreement, Contractor shall provide City with partial and final releases (as may be the case for partial or final payment for the Work) of claims by all subcontractors and suppliers.

(b) Any subcontractors used on the Work must have the prior written approval of the City Manager.

#### **5. City's Responsibilities.**

(a) Furnish to Contractor, at the Contractor's written request, all available maps, plans, existing studies, reports and other data pertinent to the Work, in possession of the City.

(b) Arrange for access to and make all provisions for Contractor to enter upon real property as required for Contractor to perform the Work as may be requested in writing by the Contractor.

## **6. Contractor's Responsibilities.**

(a) The Contractor shall exercise the same degree of care, skill and diligence in the performance of the Work as is ordinarily provided by a professional under similar circumstances. If at any time during the term of this Agreement or within one year from the completion of the Work, it is determined that the Contractor's deliverables are incorrect, defective or fail to conform to the Scope of Work, upon written notification from the City Manager, the Contractor shall at Contractors sole expense, immediately correct the work.

## **7. Termination.**

(a) The City Manager without cause may terminate this Agreement upon thirty (30) days written notice to the Contractor, or immediately with cause.

(b) Upon receipt of the City's written notice of termination, Contractor shall stop the Work unless directed otherwise by the City Manager.

(c) In the event of termination by the City, the Contractor shall be paid for all work accepted by the City Manager up to the date of termination.

(d) The Contractor shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Work to the City, in a hard copy and/or electronic format (as specified by the City) within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

## **8. Insurance.**

The Contractor shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by the City Manager. The underwriter of such insurance shall be qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida. If requested by the City Manager, the insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers. The insurance coverage shall include a minimum of:

(a) Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law. Contractors with Worker's Compensation exemption shall not hold City liable for employee injury or claims.

(b) Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$1,000,000 per occurrence, combined single limit h)r Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles. Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence combined single limit for

Bodily Injury Liability and Property Damage Liability.

(c) Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Certificates of Insurance shall include the City as additional insured or certificate holder. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

**9. Nondiscrimination.**

(a) During the term of this Agreement, Contractor shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination.

**10. Agreement Documents.**

The Agreement Documents listed below, which are listed in their order of precedence for the purpose of resolving conflicts, errors and discrepancies, by this reference shall become a part of the Agreement as though physically attached as a part thereof:

Change Orders

Agreement

Exhibits to the Agreement

Bid Documents (Addendum, Invitation to Bid/RFQ, Instructions to

Bidders/Proposers, Proposal Form provided by Contractor, Notice of Award and Notice to Proceed);

**11. Attorneys' Fees and Waiver of Jury Trial.**

(a) If either the City or Contractor is required to enforce the terms of the Agreement by court proceedings or otherwise, whether or not formal legal action is required, the parties shall bear their own attorney fees, costs and expenses, at the trial and appellate level.

(b) In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily, and intentionally waives its right to trial by Jury.

**12. Indemnification.**

(a) Contractor shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of related to, or any way connected with Contractor's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the City for all its expenses including

reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of: related to, or in any way connected with Contractor's performance or non-performance of this Agreement.

(b) The provisions of this section shall survive termination of this Agreement.

**13. Notices/ Authorized Representatives.**

(a) Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

**For the City:**                    **Charles Lindsey, City Manager**  
   **9805 Overseas Highway**  
   **City of Marathon, Florida**

**With a Copy to:**            **City Attorney**  
   **9805 Overseas Highway**  
   **Marathon, Florida 33050**

**For the Contractor:**    **«Company\_Name»**  
  
   **«Address»**  
   **«City\_», «State» «Zip»**

**14. Governing Law.**

(a) This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court or the Federal Southern District of Florida.

**15. Entire Agreement/Modification/Amendment.**

(a) This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

(b) No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document. This Agreement may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof via a written Change Order, in the form attached hereto as Exhibit "C", or such other form as may be provided by City from time to time,

**16. Ownership and Access to Records and Audits.**



(a) All records, books, documents, maps, data, deliverables, papers, and financial information (the "Records") that result from the Contractor providing services to the City under this Agreement shall be the property of the City.

(b) The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Contractor involving transactions related to this Agreement.

(c) The City may cancel this Agreement for refusal by the Contractor to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

**17. Nonassignability.**

(a) This Agreement shall not be assignable by Contractor unless such assignment is first approved by the City Manager. The City is relying upon the apparent qualifications and personal expertise of the Contractor, and such firm's familiarity with the City's area, circumstances, and desires.

**18. Severability.**

(a) If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

**19. Independent Contractor.**

(a) The Contractor and its employees, volunteers and agents shall be and remain independent contractor and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

**20. Compliance with Laws.**

(a) The Contractor shall comply with all federal, state and local applicable laws, ordinances, rules, regulations, and [awful orders of public authorities relating to he Work.

**21. Waiver.**

(a) The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

**22. Survival of Provisions.**

(a) Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

**23. Prohibition of Contingency Fees.**

(a) The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

**24. Counterparts.**

(a) This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart shall constitute one and the same instrument.

**25. Authorization to Sign Agreement.**

(a) The execution and delivery of this Agreement by Contractor is within Contractor's capacity and all requisite action has been taken to make this Agreement valid and binding on Contractor in accordance with its terms.

**26. Non-Exclusive Agreement.**

(a) The services to be provided by the Contractor pursuant to this Agreement shall be non-exclusive and nothing herein shall preclude the City from engaging other firms to perform the same or similar services for the benefit of the City as determined in its sole and absolute discretion.

**27. Performance and Payment Bonds.**

(a) Prior to commencing the Work identified in Exhibit "A" the Contractor shall deliver to the City Performance and Payment Bonds in the form attached hereto as Exhibit "D" securing its obligations to be performed for the Work. Each Bond shall be in an amount equal to the contract price for the Work. The Performance and Payment Bonds will cease to be effective on the date of the City's acceptance of the Work. Effective immediately thereafter, a Maintenance Bond will be provided for the one year period commencing on the date of the City's acceptance of the Work in the amount of twenty five percent (25%) of the Work price.

## **28. Contract Records Retention**

Pursuant to Florida Statute 119.0701, contractor agrees to:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
- (b) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City.
- (d) Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the contractor or keep and maintain public records required by the City to perform the service. If the contractor transfers all public records to the City upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

Failure of Contractor to comply with this section and F.S. §119.0701 may include, but not be limited to, the City holding the contractor in default, termination of the contract or legal action.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, DIANE CLAVIER, AT: CLAVIERD@CI.MARATHON.FL.US OR MAIL TO: 9805 OVERSEAS HIGHWAY, MARATHON, FL 33050 OR CALL 305-289-5020**

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the respective dates under each signature. The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same; and by Contractor by and through its President, who has been duly authorized to execute same.

**ATTEST:**

**CITY OF MARATHON:**

\_\_\_\_\_  
**Diane Clavier, City Clerk**

\_\_\_\_\_  
**Charles Lindsey, City Manager**

**APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

\_\_\_\_\_  
**City Attorney**

**CONTRACTOR**

**By:** \_\_\_\_\_

\_\_\_\_\_, **President**

**Date:** \_\_\_\_\_