

**CITY OF MARATHON, FLORIDA
RESOLUTION 2022-58**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA ACCEPTING THE RESPONSIBLE PROPOSAL AND APPROVING A CONTRACT BETWEEN THE CITY AND DISCOUNT ROCK AND SAND IN AN AMOUNT NOT TO EXCEED \$57,340.00 FOR SITE CLEARING AND IMPROVEMENTS AT THE SEVEN MILE MARINA PROPERTY; WAIVING THE CITY'S PROCUREMENT POLICY; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND APPROPRIATE FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Marathon (the "City") has recently acquired the Seven Mile Marina property and proposal to use lease the property to the Pigeon Key Foundation for use as their staging area to transfer visitor to Pigeon Key via a Train Trolley, and future leases to Charter Captains once the existing docks are repaired; and

WHEREAS, demolition of the remnants of the old Salty's Restaurant and other existing features will be removed from the site, and the site improved to provide water quality for the site runoff and grading of the site (the "Project"), because of the time sensitivity to complete this Project, the waiver of the procurement policy is warranted, as the formal bidding process would add two to three months to the process

WHEREAS, three proposals were received, and after review and consideration, we recommend award of the contract to the lowest bid in the amount of 57,340.00 to Discount Rock and Sand (the "Contractor"); and

WHEREAS, the City finds that accepting the low bid and entering into a contract with the Contractor is in the best interest of the City.

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. The Contract between the City and the Contractor for the construction of the Project in an amount not to exceed 57,340.00, a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form by the City Attorney, is hereby approved. The City Manager is authorized to execute the Contract and expend appropriated funds on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 14th DAY OF JUNE, 2022.

THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

AYES: Cook, Gonzalez, Still, Zieg, Bartus
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:



Steve Williams, City Attorney

**AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
Discount Rock & Sand, Inc.**

THIS AGREEMENT is made between the City of Marathon, Florida, a Florida municipal corporation whose address and principal place of business is 9805 Overseas Highway, Marathon, Florida 33050, (hereinafter the "City") and **Discount Rock & Sand, Inc.** whose address and principal place of business is: 10500 Aviation Blvd. Marathon FL 30050, (hereinafter the "Contractor"), and

WHEREAS, the City desires to engage the Contractor to provide as specified in Exhibit A (the "Work").

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Contractor and the City agree as follows.

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

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

2. **Term/Commencement Date.**

- (a) This Agreement shall become effective upon the City issuing Contractor a written Notice to Proceed, and the Work shall be completed to the City's satisfaction no later than 30 days from the Notice to Proceed. The City Manager may extend the term of this Agreement up to an additional Forty Five (45) at his sole discretion.
- (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. The total amount invoiced shall not exceed **\$57,340.00**. All invoices shall provide a detailed statement of the Work performed by Contractor for the period of time covered by the invoice.
- (b) 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.
- (d) **CHANGES AND EXTRAS:** The Work may be changed by "Field Order," Change Order," "Extra Work Order," or otherwise authorized by the City or his agents. Such changes may include changes in scope, method, scheduling or other performance requirements. In such event, the contract price and the completion date will be equitably adjusted. Birdair, Inc. will notify the City of such changes within a reasonable time after discovery.

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 materialmen.
- (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.
- (d) **DIFFERING SITE CONDITIONS:** If Contractor encounters sub-surface or latent physical conditions at the site differing materially from those indicated in the bid documents, or unknown physical conditions at the site of an unusual nature differing materially from those ordinarily encountered, Contractor will promptly notify the the City. If such conditions cause an increase or decrease in the cost of, or the time required for, performance of any part of the Work, an equitable adjustment in price will be made and the contract time modified accordingly.

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 Contractor's sole expense, immediately correct the work.
- (b) CLEANUP: Contractor will remove refuse and debris caused by its operations.

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 for 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) Comprehensive General Liability with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability with respect to CONTRACTOR, and One Million Dollars (\$1,000,000) with per occurrence respect to Subcontractors, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include
- (d) 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 following documents (if applicable) shall, by this reference, be considered part of this Agreement:

Agreement;
Plans Titled "Site Construction Plans for Seven Mile Marina
Scope of Work/Specifications;
Insurance Certificates; and

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

- (a) In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- (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: City Manager
 City of Marathon, Florida
 9805 Overseas Highway
 Marathon, Florida 33050

With a Copy to: City Attorney
 9805 Overseas Hwy

Marathon, Florida 33050

For The Contractor: Ediberto Lopez
Discount Rock & Sand, Inc.
10500 Aviation Blvd.
Marathon, FL 33050

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 Southern District of Florida.
- (b) Contractor shall abide by the additional Federal Regulations as depicted in Attachment A.

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.

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

- (a) Access to Public Records. The CONTRACTOR shall comply with the applicable provisions of Chapter 119, Florida Statutes.
- (b) All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City. The Records are not intended or represented to be suitable for use, partial use, or reuse by the City or others on extensions of this project or on any other project. Any such use, reuse, or modifications made by the City to any of Consultant's Records will be at City's sole risk and without liability to Consultant, and City shall, to the extent allowable by Florida law, and subject to Section 768.28, Florida Statute, and all monetary limits listed therein, indemnify, defend and hold Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom.

- (c) The "CONTRACTOR" as defined by Section 119.0701(1)(a), Florida Statutes, and shall comply with the public records provisions of Chapter 119, Florida Statutes, including the following:
1. Keep and maintain public records required by the City to perform the service.
 2. Upon request from the City Clerk, 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 Chapter 119, Florida Statutes or as otherwise provided by law.
 3. 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.
 4. 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 Clerk, in a format that is compatible with the information technology systems of the City.
- (d) "Public Records" is defined in Section 119.011(12), Florida Statutes, and includes all documents, papers, letters, photographs, data processing software, or other material, regardless of physical form, made or received in connection with this Agreement.
- (e) Should the CONTRACTOR assert any exemption to the requirements of Chapter 119 and related law, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the CONTRACTOR.

- (f) The CONTRACTOR consents to the City's enforcement of the CONTRACTOR's Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the CONTRACTOR shall pay all court costs and reasonable attorney's fees incurred by the City.
- (g) The CONTRACTOR's failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by the CONTRACTOR shall be grounds for immediate unilateral cancellation of this Agreement by the City.
- (h) **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 AT 305-743-0033, CITYCLERK@CI.MARATHON.FL.US, OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.**

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 applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the 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 counterparts 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.

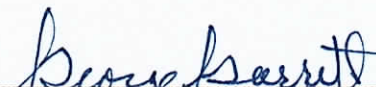
26. **E-Verify.** The Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term.

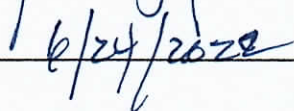
IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature. The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same; and by Contractor by and through its President, who has been duly authorized to execute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

ATTEST:

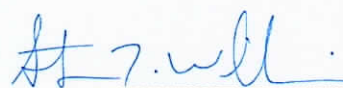
CITY OF MARATHON


Diane Clavier, City Clerk

By: 
City Manager

Date: 

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


City Attorney

CONTRACTOR

By: 

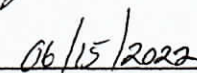
Date: 

EXHIBIT "A"



Estimate # 4898

Date 5/26/2022

"Serving The Florida Keys for More Than 17 Years"

Phone 305-743-5680, Fax 305-289-4200
 Email: sales@discountrocksand.com

Florida Certified Contractor No.: CGC1523252
 Specialty Hauler License No.: CD/SL 025
 Landscaping Specialty Contractor No.: SP3782

Name / Address
CITY OF MARATHON ATTN: FINANCE DEPARTMENT 9805 OVERSEAS HWY MARATHON, FL 33050

Job Site Address	Prepared By:	SR
1090 OVERSEAS HWY MARATHON, FL 33050		

Qty	Description	Rate	Total
2	EXCAVATE AND HAUL OUT TREES, ASPHALT AND CONCRETE	7,500.00	15,000.00
1	20 YARD DUMPSTER FOR C&D	690.00	690.00
1	LABOR TO DIG UP FILL MATERIAL FROM SITE AND DISPOSE	2,500.00	2,500.00
18	BALLAST ROCK	500.00	9,000.00
16	3/4" GRAVEL #57 ROCK, BY THE LOAD	775.00	12,400.00
2	FILTER CLOTH, INCLUDING LABOR TO INSTALL FOR SWAILS	450.00	900.00
15	FILTER CLOTH, INCLUDING LABOR TO INSTALL FOR ALL OTHER AREAS IN THE PARKING AREA	450.00	6,750.00
1	LABOR TO SPREAD BY BOBCAT BALLAST ROCK	4,500.00	4,500.00
1	LABOR TO SPREAD BY BOBCAT #57 ROCK	5,600.00	5,600.00
1		0.00	0.00
	PAYMENT: 50% UPON SIGNING OF ESTIMATE 50% UPON COMPLETION (IF PAID WITH CREDIT CARD WILL ADD 3% TOTAL OF ESTIMATE FOR CREDIT CARD MERCHANT FEE)		
	ESTIMATE DOES NOT INCLUDE: 1. PERMITS IF REQUIRED 2. PROTECTIVE BARRIERS TO BE PROVIDED BY THIRD PARTY. 3. WE ARE NOT RESPONSIBLE FOR ANY DAMAGED CAUSED BY TRENCHING IN ANY AREA THAT WE ARE TRENCHING.		

I FIND THE ABOVE SATISFACTORY AND AGREE TO PAY FOR SAME ON PRESENTATION OF STATEMENT AND FURTHER AGREE TO PAY REASONABLE CHARGES FOR COLLECTION INCLUDING ATTORNEYS FEES IN THE EVENT OF MY DEFAULT. YOU ARE AUTHORIZED TO DO THE WORK SPECIFIED. PAYMENT WILL BE MADE AS OUTLINED ABOVE.	Subtotal	\$57,340.00
	Sales Tax (7.5%)	\$0.00
	Total	\$57,340.00

ACCEPTANCE SIGNATURE: _____ DATE: _____