

COUNCIL AGENDA STATEMENT



Meeting Date: March 12, 2019
To: Honorable Mayor and Councilmembers
From: George Garrett, Planning Director
Through: Chuck Lindsey, City Manager

Agenda Item: **Resolution 2019-24** Of The City Council Of The City Of Marathon, Florida, Approving An Amendment To The Agreement Between The City Of Marathon, Florida And Adventure Environmental, Inc For Mangrove Trimming Services To Extend The Agreement For An Additional Five Years; Authorizing The City Manager To Execute The Amendment On Behalf Of The City And Appropriate Funds; And Providing For An Effective Date

The Planning Department obtained FDEP permit No. 44-0322154-001 for mangrove trimming at 91 project sites (parcels) throughout the City. The trimming shall be limited to those portions of branches or trunks of mangroves which extend into the navigation channel beyond a vertical plane of the most waterward prop root or root system.

Thereafter, the City entered into a contract with the firm of Adventure Environmental Inc. to complete the required trimming at a rate of \$12.50 a linear foot trimmed pursuant to the conditions of the FDEP permit.

Then contract allows for a contract extension of a period of five (5) years. The Contractor and the City find of mutual benefit to extend the contract.

Attachments: Agreement

CONSISTENCY CHECKLIST:	Yes	No
Marathon Code Of Ordinances 36-88	X	

FISCAL NOTE:

RECOMMENDATION: Council approve Resolution 2019-24

Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-24**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF MARATHON, FLORIDA AND ADVENTURE ENVIRONMENTAL, INC FOR MANGROVE TRIMMING SERVICES TO EXTEND THE AGREEMENT FOR AN ADDITIONAL FIVE YEARS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT ON BEHALF OF THE CITY AND APPROPRIATE FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, pursuant to Resolution 2014-38, the City and Adventure Environmental Inc. (the “Contractor”) entered into a contract agreement for mangrove trimming services with a five year renewal option; and

WHEREAS, the City Council finds that entering into an amendment to extend the agreement for mangrove trimming services 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. An amendment to the contract agreement between the City and the Contractor, attached hereto as Exhibit “A,” together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is hereby approved. The City Manager is authorized to sign the amendment and expend budgeted 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 12th DAY OF MARCH, 2018.

THE CITY OF MARATHON, FLORIDA

John Bartus Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

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:**

David Migut, City Attorney

AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
ADVENTURE ENVIRONMENTAL, 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 Adventure Environmental, Inc., a Florida corporation whose address and principal place of business is: 12895 SW 87th Avenue, Miami, FL 33176, (hereinafter the "Contractor"), and

WHEREAS, the City desires to engage the Contractor to provide Mangrove Trimming Services as specified below (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 \$12.50 per linear foot specified in the Bid Document and attached to this Agreement, and made a part hereof by this reference.

2) Term/Commencement Date.

- a. The City intends to enter into project-specific work orders with Contractor. The contract award will be for a term of five (5) years and may be renewed for an additional five (5) years, with proof of current qualifications and at the discretion of the City Council.
- 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 agreed upon 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 the form attached hereto as Exhibit "B", or such other form as may be provided by the City from time to time, which is to 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, as defined in paragraph 10 herein.

- 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 the 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 as defined in paragraph 10 herein, 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.
- e. 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 City's 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 the 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 Contractor's 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.

- a. The Contractor selected to provide services to the City shall procure and maintain during the term of the contract, insurance of the types and in the minimum amounts stated below.

Coverage Minimums

A. Workers' Compensation Florida Statutory Coverage

B. Employer's Liability

\$100,000 — each accident

\$100,000 — each employee (a \$500,000 policy limit for injury by disease)

C. Comprehensive General Liability

\$1,000,000 — bodily injury each occurrence

\$1,000,000 — bodily injury aggregate

\$1,000,000 — property damage of each occurrence

\$1,000,000— property damage aggregate

D. Products — Completed Operations \$1,000,000 — each occurrence

E. Business Auto Liability \$1,000,000 (All autos — owned, hired or used)

F. Professional Liability \$1,000,000

G. Longshoreman’s Insurance. in the amount not less than 1,000,000

Insurance coverage as required to comply with the United States Longshore and Harborworkers’ Act (USL&H) for all employees covered by USL&H. All sub-contractors shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Contractor.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. Prior to commencing any work on the contract, certificate(s) of insurance approved by the City evidencing the maintenance of said insurance shall be furnished to the City. The certificate(s) shall provide that no material alteration or cancellation, including expiration and non-renewal, shall be effective until fifteen (15) days after receipt of written notice by the City. Notices of cancellation/non-renewal/material changes must be sent directly to the City by the insurance company. **All policies and the insurance certificate shall name the City as an “additional named insured” on a primary and non-contributory basis and provide for waiver of subrogation endorsement by which the insurer agrees to waive all rights of subrogation against City, its officers, officials, employees and volunteers for losses arising from Work performed by Contractor for the City.**

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 shall 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:

Work 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: Michael H. Puto, Acting City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050

With a Copy to: John Herin or designee
City Attorney
GrayRobinson, P.A.
401 E. Las Olas Blvd., Suite 1850
Ft. Lauderdale, Florida 33301

For The Contractor: Adventure Environmental, Inc.
12895 SW 87th Ave.
Miami, FL 33176

14) Governing Law.

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 an amendment to or additional written Work Order, in the form attached hereto as **Exhibit "B,"** 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 Contractor'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 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 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.

[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

By:

Diane Clavier, City Clerk

Michael H. Puto, Acting City Manager

Date:

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

City Attorney

CONTRACTOR -Adventure Environmental, Inc.

By:



Christopher Colarusso, President

Date: April 15, 2014

EXHIBIT "A"
SCOPE OF WORK

The exact scope of any work order will be determined on a case-by-case, as needed basis. Individual tasks will be identified through work orders at that time. These work tasks may involve, but are not limited to, one or more of the following projects or locations:

- FDEP permit No. 44-0322154-001;
- 91 project sites (parcels);
- All project sites must be accessed exclusively from the water via a watercraft provided by the Contractor;
- Total shoreline lengths: approximately 15,863 linear feet;
- Majority of individual lots have shoreline lengths of 100';
- 2 of 91 projects are located in BKH, west of BK bridge, representing approximately 640 linear feet;
- 6 of 91 projects are located in KCB vicinity (east of Vaca cut, Oceanside), representing approximately 562 linear feet;
- 9 of 91 projects are on Bayside, representing approximately 1500 linear feet;
- 19 of 91 projects are located Oceanside between Vaca Cut and Sombrero Beach Rd, representing approximately 2,840 linear feet; and
- 49 of 91 are located South of US-1, east of Boot Key in Sombrero Beach area neighborhoods and canals, representing approximately 9,216 linear feet.

All conditions of the general permit as well as Best Management Practices for the Arboriculture industry must be accepted and followed by the Contractor, including but not limited to:

- All trimming/ pruning shall be conducted exclusively by professional mangrove trimmers. Proof of credentials is required to be submitted as part of this RFP and must meet the criteria in 403.9329 F.S.;
- The trimming shall be limited to those portions of branches or trunks of mangroves which extend into the navigation channel beyond a vertical plane of the most waterward prop root or root system (see diagram in permit);
- Professional mangrove trimmer(s) is responsible for strict application of ANSI A300 (Part1) Pruning Standards and the corresponding Best Management Practices (BMP) companion publication;
- Contractor is responsible for removal and safe disposal of all pruned material from navigable waters and mangrove canopies pursuant to the terms of the FDEP permit;
- No herbicide or other chemical will be used for the purpose of removing leaves of a mangrove;
- The general permit may be used only once on any parcel of property to achieve a mangrove height of no less than 6 feet;

- In some instances, trimming may be required to be conducted in stages so that no more than 25 percent of the foliage is removed annually; and the height and configuration of the mangroves trimmed may be maintained under Section 403.9326(1)(d), F.S.;
- Trimming activities shall not defoliate, remove or destroy mangroves;
- Contractor is responsible for maintenance and safe operation of all necessary equipment at all times.
- Contractor is responsible for avoiding adverse impacts to benthic resources, including but not limited to seagrass and mangrove root systems.

The award of a work order pursuant to this contract does not guarantee any particular volume, level, or amount of work, nor shall any Respondent who is granted a work order pursuant to this contract have an exclusive or sole right to perform the work in the case of non-responsiveness.

EXHIBIT "B"
WORK ORDER
Mangrove Trimming

DATE:

TO: City of Marathon

CONTRACT: Mangrove Trimming Services Continuing Contract

LOCATION OR PROJECT NUMBER:

CONTRACTOR: Adventure Environmental Inc.

TOTAL WORK ORDER AMOUNT:

Number of linear feet _____ multiplied by rate of \$12.50 equals Total Work Order Amount of \$ _____

CALENDAR DAYS TO FINAL COMPLETION:

This Work Order will authorize the following:

This Work Order constitutes full, final, and complete compensation to _____ for all costs, expenses, overhead, and profit, and any damages of every kind that _____ may incur in connection with the above referenced mangrove trimming services.

_____ acknowledges and agrees to (a) the Guaranteed Maximum Price of \$ _____ under this Work Order, and (b) the schedule for performance of Mangrove Trimming Services will be _____ days after Notice to Proceed. Payment will be made in _____ installments.

_____ expressly waives any claims for any additional compensation, damages or time extensions in connection with the above-referenced work. Except as herein or heretofore expressly modified, all terms of the Agreement shall remain in full force and effect and shall cover the performance of, and payment for, any work authorized hereunder.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

By signing below the parties indicate acceptance of this Work Order as set forth herein.

CITY OF MARATHON
a Florida municipal corporation

Adventure Environmental Inc.
a Florida corporation

By: _____

By: _____

Name: _____

Name: Christopher Colarusso

Title: _____

Title: President

**AMENDMENT TO CONTRACT
BETWEEN THE CITY OF MARATHON, FLORIDA
AND ADVENTURE ENVIRONMENTAL, INC.
FOR MANGROVE TRIMMING SERVICES**

This Amendment to the Contract for beach raking services (“Amendment”) made and entered into this _____ day of _____, 2019, between the City of Marathon, Florida, a municipal corporation of the State of Florida (“City”) and Adventure Environmental, Inc., a Florida corporation whose address and principal place of business is: 12895 SW 87th Avenue, Miami, FL 33176, (hereinafter the “Contractor”).

WHEREAS, pursuant to Resolution 2014-38, the City and the contractor entered into a contract agreement for mangrove trimming services (the “Contract”); and

WHEREAS, the City and contractor desire to amend the Contract as set forth herein.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Amendment, the parties agree as follows:

Section 1. Term/Commencement Date.

- a. The City intends to renew the contract for an additional five (5) years, with proof of current qualifications and at the discretion of the City Council.
- 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 agreed upon Work Schedule, unless extended by the City Manager.

Section 2. Amendment to Section 1.20 of the Contract. The parties hereby amend Section 1.20 on Notices to update same as follows:

1.20. NOTICES Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to:

City of Marathon
Attention: Chuck Lindsey, City Manager
9805 Overseas Highway
Marathon, Florida 33050
Telephone: (305) 743-0033

With a copy to:

City of Marathon.
Attention: David Migut, City Attorney
9805 Overseas Highway
Marathon, Florida 33050
Telephone: (305) 743-0033
Facsimile: (305) 743-3667

EXCEPT AS PROVIDED HEREIN, all other terms and conditions of the Contract dated April 15, 2014 shall remain in full force and effect.

DATED this ____ day of _____, 2016.

WITNESSES:

ADVENTURE ENVIRONMENTAL, INC.

Print Name: _____

By: _____
Print Name: Christopher Colarusso
Title: President

Print Name: _____

THE CITY OF MARATHON, FLORIDA

Chuck Lindsey, City Manager

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:**

David Migut, City Attorney