



COUNCIL AGENDA STATEMENT

Meeting Date: September 10, 2019
To: Honorable Mayor & Members of the City Council
From: Chief John Johnson
Through: Chuck Lindsey, City Manager

Agenda Item: Resolution 2019-90, Approving A Service Contract with Transpondr, LLC, Authorizing the City Manager to Expend Budgeted Funds; Authorizing The City Manager To Execute All Necessary Documents On Behalf Of The City; And Providing An Effective Date.

BACKGROUND & JUSTIFICATION:

The City of Marathon in the aftermath of Hurricane Irma experienced a loss of communications for over 48 hr. with the outside world. Even though we did have satellite phones they only worked sometimes. We had loss full contact with our computer services and back up due to a full communications black out with the mainland.

The proposed contract will insure that we are able to recover with full intergraded phone lines and computer access to our servers and the outside world. This contract will provide the city with the most advanced hard ware and software on an annual based with keeping all the firmware and band with needed to perform the tasks.

One proposal was received. Staff has reviewed the proposal and recommends a 60 month subscription term at \$1,437 per month, plus a one time set up and activation fee of \$999. If deployed, a one time deployment fee, depending on notice (not more than \$5,000) and a \$2,100 per day fee upon service activation request.

CONSISTENCY CHECKLIST:

Table with 2 columns: Yes, No. Rows: 1. Comprehensive Plan, 2. Other -Sewer Mandate.

FISCAL NOTE:

If approved, funding for this contract will be included in the revised FY20 IT budget for approval at the September 12, 2019 first public hearing.

RECOMMENDATION:

Approval of Resolution

Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-90**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A SERVICE CONTRACT WITH TRANSPONDR, LLC, AUTHORIZING THE CITY MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS ON BEHALF OF THE CITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on July 18th, the City of Marathon (the “City”) published A Request for Proposals for Emergency Communication Equipment and Services (the “Project”); and

**WHEREAS**, on August 20<sup>th</sup>, one bid was received by Transpondr LLC, (the “Contractor”) and City staff subsequently reviewed and determined the bid was complete and the bidder was responsive and responsible; and

**WHEREAS**, staff recommends the 60 month subscription term at \$1,437 per month, plus a onetime set up and activation fee of \$999. If deployed, a onetime deployment fee, depending on notice (not more than \$5,000) and a \$2,100 per day fee upon service activation request.

**WHEREAS**, the City finds that accepting the bid and entering into a service 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 service, 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 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 10<sup>TH</sup> DAY OF SEPTEMBER, 2019.**

**THE CITY OF MARATHON, FLORIDA**

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**Mayor John Bartus**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

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Diane Clavier, City Clerk

(City Seal)

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

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David Migut, City Attorney

**AGREEMENT BETWEEN  
THE CITY OF MARATHON  
AND  
TRANSPONDR LLC  
FOR DISASTER RECOVERY SERVICES**

**THIS AGREEMENT** is made as of this \_\_\_\_ day of \_\_\_\_\_, by and between **TRANSPONDR, LLC** (hereinafter the “Contractor”), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

**WHEREAS**, the City issued a Request for Proposals for Emergency Communication Equipment; and

**WHEREAS**, one proposal was received and evaluated; and

**WHEREAS**, on September 10, 2019 the City Council approved the proposal for Emergency Communication Equipment Services and authorized the City to execute an agreement with Transpondr LLC; and

**WHEREAS**, the City and the Contractor desire to enter into this Agreement whereby the duties and obligation each to the other are set forth.

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

1. **Scope of Services**

- 1.1 The Contractor must meet the requirements and perform the services identified in the Request for Proposal Term Contract for Emergency Communication Equipment Services published on July 18, 2019, (the “RFP”), attached hereto and made a part hereof, as Exhibit “A” and the Contractor’s Proposal, (the “Proposal”) attached hereto and made a part hereof, as Exhibit “B”.
- 1.2 Contractor agrees and acknowledges that Contractor is prohibited from exempting provisions of the RFP, Proposal, or in this Agreement in any of Contractor’s services pursuant to the Agreement.

2. **Term**

- 2.1 This Agreement shall begin on the date it is fully executed by both parties (the “Effective Date”) and shall extend for a period of five (5) years (the “Term”).

- 2.2 Execution of this contract does not guarantee the City will assign any work to the contractor. Any work assigned to the Contractor shall be at the City's own discretion. The city may assign limited scope of work and responsibility to the Contractor, and may choose to have more than one contractor perform services as determined to be in the best interest of the City.
- 2.3 After the initial five (5) year term, the City shall have the option to renew for an additional term of three (3) years, The parties hereto may extend this Agreement by mutual consent, in writing, prior to the expiration of the current term. This provision in no way limits either party's right to terminate this Agreement at any time during the initial term or any extension thereof, pursuant to Section 4 of the Agreement.
- 2.4 Contractor shall complete all services directed under this Agreement as soon as feasibly possible, and in the time necessary to accomplish the services, with the knowledge that time is of the essence. The scope and nature of the services to be performed will be directed by the City once the extent of damage has been determined. The City may impose liquidated damages of \$100.00 per day for breach of this paragraph. Liquidated damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by the City as a consequence of such delay, and both parties desiring to obviate any questions or dispute concerning the amount of said damages and the cost and effect of the failure of the Contractor to complete the services on time.

### 3. **Compensation**

- 3.1 The amount of compensation payable by the City to Contractor shall be based upon the rates and fees schedules as set forth in Exhibit "C", attached hereto and made a part hereof, which amount shall be accepted by Contractor as full compensation for all such work performed under this Agreement. It is acknowledged and agreed by Contractor that these amounts are the maximum payable and constitute a limitation upon City's obligation to compensate Contractor for its services related to this Agreement. This maximum amount, however, does not constitute a limitation of any sort, upon Contractor's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services as defined in Section 4 of the Proposal.
- 3.2 Contractor may submit an invoice for compensation, developed and agreed upon by the City Manager and Contractor, no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. Invoices shall designate the nature of the

services performed and shall also show a summary of rates and fees with accrual of the total and credits for portions paid previously, and shall allocate the billing costs to the appropriate fund or combination of funds. Each statement shall show the proportion of the guaranteed maximum payment that has been expended through previous billings.

- 3.3 The City shall pay Contractor in accordance with the Florida Prompt Payment Act. Additionally, payment may be withheld by the City Manager for failure of Contractor to comply with a term, condition, or requirement of this Agreement.
- 3.4 Notwithstanding any provision of this Agreement to the contrary, the City Manager may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work of Contractor, which has not been remedied or resolved in a manner satisfactory to the City Manager. The amount withheld shall not be subject to payment of interest by the City.
- 3.5 Contractor agrees to keep such records and accounts as may be necessary, for such time period as required by Florida Statutes, in order to record complete and correct entries as to personnel hours charged for which Contractor receives reimbursement. Such books and records shall be available at all reasonable times for examination and audit by the City.
- 3.6 If it should become necessary for the City to request the Contractor to render any additional services to either supplement the services described in the RFP or to perform additional work, such additional work shall be performed only as authorized by the City Manager or designee. Any such additional work agreed to by both parties shall be performed at the same rate in the schedules included in Exhibit "C".

#### 4. **Termination**

- 4.1 This Agreement may be terminated for cause by the City Manager if the Contractor is in breach and has not corrected the breach within sixty (60) days after written notice from the City identifying the breach, or for convenience by action of the City Council upon not less than sixty (60) days' written notice by the City Manager. This Agreement may also be terminated by the City Manager upon such notice as the City Manager deems appropriate under the circumstances in the event City Manager determines that termination is necessary to protect the public health, safety, or welfare.
- 4.2 This Agreement may be terminated for cause by the Contractor if the City is in breach and has not corrected the breach within sixty (60) days after the written notice from the Contractor identifying the breach.

- 4.3 Termination of this Agreement for cause shall include but not be limited to, failure to suitably perform the services, failure to continuously perform the services in a manner calculated to meet or accomplish the objectives of the City as set forth in this Agreement or multiple breaches of the provisions of this Agreement notwithstanding whether any such breach was previously waived or cured.
- 4.4 Notice of termination shall be provided in accordance with the “NOTICES” section of this Agreement except that notice of termination by the City Manager which City Manager deems necessary to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the “NOTICES” section of this Agreement.
- 4.5 In the event this Agreement is terminated for convenience, Contractor shall be paid for any services performed to the date the Agreement is terminated; however, upon being notified of City’s election to terminate, Contractor shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Contractor acknowledges and agrees that Ten Dollars (\$10.00) of the compensation to be paid by the City, the adequacy of which is hereby acknowledged by Contractor, is given as specific consideration to Contractor for the City’s right to terminate this Agreement for convenience.
- 4.6 In the event this Agreement is terminated, any compensation payable by the City shall be withheld until all documents are provided to the City pursuant to Section 7.1 of this Agreement. In no event shall the City be liable to the Contractor for any additional compensation, other than that provided herein, or for any consequential or incidental damages.

5. **Indemnification**

- 5.1 Contractor shall indemnify, hold harmless and, at the City’s option, pay for an attorney selected by the City, to defend the City and any of its elected officials, officers, agents, servants, and employees from and against any and all liability, suits, actions, damages, costs, losses, and expenses, including attorneys’ fees, demands and claims for personal injury, bodily injury, sickness, diseases or death or damage or destruction of tangible property, arising out of any errors, omissions, misconduct or negligent acts, errors or omissions of the Contractor, its officials, agents, employees or subcontractors in the performance of the services of the Contractor under this Agreement, whether direct or indirect and from and against any orders, judgments, or decrees which may be entered thereon and from and against all costs, damages of every kind and nature,

attorneys' fees, expenses and liabilities incurred in and about the defense of any such claim and investigation thereof.

- 5.2 Contractor shall indemnify, hold harmless and, at the City's option, pay for an attorney selected by the City, to defend the City and any of its elected officials, officers, agents, servants, and employees from and against any and all liability, suits, actions, damages, costs, losses, and expenses, including attorneys' fees, demands and claims sought by third parties related to any alleged breach of any non-competition of similar provisions.
- 5.3 Contractor shall indemnify the City and any of its elected officials, officers, agents, servants and employees, for all loss, damage, expense, or liability including, without limitation, court costs and attorneys' fees that may result by reason of any infringement or claim of infringement by Contractor of any patent, trademark, copyright, trade secret or other proprietary right relation to services furnished pursuant to this Agreement. Contractor will defend and/or settle at its own expense any action brought against the City and any of its elected officials, officers, agents, servants, and employees, to the extent that it is based on a claim that products or services furnished to the City by the Contractor pursuant to this Agreement, or if any portion of the services or goods related to the performance of the service become unusable as a result of any such infringement or claim.
- 5.4 Contractor acknowledges that specific consideration has been paid or will be paid under this Agreement for this hold harmless and indemnification provision, and further agrees with the foregoing provisions of indemnity and with the collateral obligation of insuring and indemnity.
- 5.5 The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the City Manager and the City Attorney, any sums due Contractor under the Agreement may be retained by the City until all of the City's claims for indemnification pursuant to the Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by the City.

6. **Insurance**

In order to insure the indemnification obligation contained above, Contractor shall, as a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement, the insurance coverages as set forth in the RFP, Exhibit "A".



7. **Miscellaneous**

7.1 **Ownership of Documents.** Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the City. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Contractor, whether finished or unfinished, shall become the property of the City and shall be delivered by the Contractor to the City Manager within seven (7) days of termination of this Agreement by either party. Any compensation due to Contractor shall be withheld until all documents are received as provided herein.

7.2 **Audit and Inspection Rights and Retention of Records.** The City shall have the right to audit the books, records, and accounts of the Contractor that are related to this Agreement. The Contractor shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement.

Contractor shall preserve and make available, at reasonable times for examination and audit by the City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement, unless Contractor is notified in writing by the City of the need to extend the retention period. Such retention of such records and documents shall be at Contractor's expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by the City to be applicable to Contractor's records, Contractor shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Contractor. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for the City's disallowance and recovery of any payment upon such entry.

In addition, Contractor shall respond to the reasonable inquiries of successor Contractors and allow successor Contractors to receive working papers relating to matters of continuing significance.

In addition, Contractor shall provide a complete copy of all working papers to the City prior to final payment by the City, in accordance with the RFP.

- 7.3 **Policy of Non Discrimination.** Contractor shall not discriminate against any person in its operations, activities, or delivery of services under this Agreement.

Contractor shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.

- 7.4 **Public Entity Crime Act.** Contractor represents that the execution of this Agreement will not violate the Public Entity Crime Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 289.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from City's competitive procurement activities. In addition to the foregoing, Contractor further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Contractor has been placed on the convicted vendor list.

- 7.5 **Independent Contractor.** Contractor is an independent contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of Contractor. In providing such services, neither Contractor nor its agents shall act as officers, employees or agents of City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services

rendered under this Agreement shall be those of Contractor. This Agreement shall not constitute or make the parties a partnership or joint venture.

7.6 **Third Party Beneficiaries.** Neither Contractor nor City intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them. Based upon this Agreement the parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

7.7 **Notices.** Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail postage prepaid return receipt requested or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

CITY:  
Chuck Lindsey  
City Manager  
City of Marathon  
9805 Overseas Highway  
Marathon, FL 33050

With a copy to:  
David Migut  
City Attorney  
9805 Overseas Highway  
Marathon, FL 33050

CONTRACTOR:  
Milton Flanders or Brandon Heidmann  
Co-Owners  
4175 Regency Park Ct.  
Atlanta, GA 30341

7.8 **Assignment and Performance.** Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by Contractor, except with the prior written approval of the City Manager, which shall be in his or her sole and absolute discretion. In addition, Contractor shall not subcontract any portion of the work required by this Agreement, except

with the prior written approval of the City Manager, which shall be in his or her sole and absolute discretion. A list of all such subcontractors shall be included in the Bid. If additional subcontractors are to be used during the term of this Agreement, other than those submitted in the Bid, a list of such subcontractors shall be provided to the City Manager, subject to his or her approval.

Contractor represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the RFP and to provide and perform such services to City's satisfaction for the agreed compensation.

Contractor shall perform its duties, obligations and services under this Agreement in a skillful and respectable manner.

- 7.9 **Conflicts.** Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment related to its performance under this Agreement.

Contractor agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, Contractor agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude Contractor or any other person from representing themselves in any action or in any administrative or legal proceeding.

In the event Contractor is permitted to utilize subcontractors to perform any services required by this Agreement, Contractor agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this section.

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

violation of this provision, City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

- 7.11 **Materiality and Waiver of Breach.** City and Contractor agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of the Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 7.12 **Compliance with Laws.** Contractor shall comply with all federal, state and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement, including, but not limited to:
- a. **Equal Employment Opportunity:** Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).
  - b. **Copeland "Anti-Kickback" Act:** Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).
  - c. **Davis-Bacon Act:** Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).
  - d. **Contract Work Hours and Safety Standards Act:** Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
  - e. **CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT:** The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Any violations thereof must and will be reported to FEMA and the Regional Office of the Environmental Protection Agency.

(1) Clean Air Act:

- a. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- b. The contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

(2) Federal Water Pollution Control Act:

- a. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- b. The contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

- 7.13 **Severance.** In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or Contractor elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.
- 7.14 **Joint Preparation.** The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 7.15 **Priority of Provisions.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or

provision contained in Articles 1 through 7 of this Agreement shall prevail and be given effect.

- 7.16 **Applicable Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of, or relating to, this Agreement. Venue of any action to enforce this Agreement shall be in Monroe County, Florida. The parties expressly waive all rights to trial by jury for any disputes arising from or in any way connected with this Agreement. The parties understand and agree that this waiver is a material contract term. This Agreement is not subject to arbitration.
- 7.17 **Amendments.** No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement.
- 7.18 **Prior Agreements.** This Agreement and its attachments constitute the entire agreement between Contractor and City, and this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreement or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained here shall be effective unless set forth in writing in accordance with Section 7.17 above.
- 7.19 **Drug-Free Workplace.** Contractor shall maintain a drug-free workplace.
- 7.20 **Incorporation by Reference.** The truth and accuracy of each “Whereas” clause set forth above is acknowledged by the parties. The attached Exhibits are incorporated hereto and made a part of this Agreement.
- 7.21 **Multiple Originals.** This Agreement may be fully executed in two (2) copies by all parties each of which, bearing original signatures, shall have the force and effect of an original document.
- 7.22 **Headings.** Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.
- 7.23 **Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is

signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

7.24 **Survival of Provisions.** Any terms or conditions of this Agreement that require acts beyond the date of its termination shall survive the termination of this Agreement, shall remain in full force and effect unless and until the terms of conditions are completed, and shall be fully enforceable by either party.

7.25 **Truth-in-Negotiation Certificate.** Signature of this Agreement by Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.

7.26 **DEBARMENT AND SUSPENSION:** The contractor is subject to the debarment and suspension regulations implementing Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension). A contract will not and cannot be made to parties listed in the SAM (System for Award Management) exclusions. SAM exclusions is the list maintained by the General Services Administration that contains the names of parties, debarred, suspended or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov). See 2 C.F.R. § 180.530.

(1) The bidder/contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The bidder/contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by City. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.



(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

7.27 **BYRD ANTI-LOBBYING AMENDMENTS** (31 U.S.C. 1352): Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor Transpondr LLC certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

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Signature of Contractor's Authorized Official

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Name and Title of Contractor's Authorized Official

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Date

7.28 **PUBLIC RECORDS:** Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (1) Keep and maintain public records required by the City to perform the service.
- (2) Upon request from the City's custodian of public records or designee, 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 this Agreement and following completion of this Agreement if the Contractor does not transfer the records to the City.
- (4) Upon completion of this Agreement, 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 the completion of

this agreement, 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 Agreement, 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 Town's custodian of public records or designee, in a format that is compatible with the information technology of the City.

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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT 305-743-0033, [cityofmarathon@ci.marathon.fl.us](mailto:cityofmarathon@ci.marathon.fl.us), OR BY MAIL AT 9805 OVERSEAS HIGHWAY, MARATHON, FLORIDA 33050

7.29 **SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS:** The contractor agrees to ensure that it takes all necessary six (6) steps identified in 2 CFR 200.321 to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime [contractor](#), if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

**IN WITNESS WHEREOF**, City and Contractor have set their hands and seals, as of the day and year first above written.

ATTEST:

CITY OF MARATHON, FLORIDA

\_\_\_\_\_  
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:

\_\_\_\_\_  
David Migut, City Attorney

TRANSPONDR LLC

\_\_\_\_\_  
Printed Name:  
Title: