

COUNCIL AGENDA STATEMENT



Meeting Date: December 10, 2019
To: Honorable Mayor & Members of the City Council
From: David Migut, City Attorney
Copy: Charles Lindsey, City Manager

Agenda Item: **Resolution 2019-119** Approving a Third Amendment to the contract between the City of Marathon and Seamar Divers, LLC for cleaning and inspection of the moorings installed in Boot Key Harbor; authorizing the City Manager to execute the contract; expending budgeted funds on behalf of the City; and providing for an effective date.

BACKGROUND & JUSTIFICATION:

In 2015, the City published an Invitation to Bid for the cleaning and inspection of the 226 moorings installed in the Boot Key Harbor Mooring Field. The City subsequently entered into a contract with Seamar Divers, LLC, the lowest responsive and responsible bidder. The contract has been extended twice, and Seamar Divers continues to do the work at the original annual price of \$27,648.00. This third amendment will extend the contract until December 31, 2020 and increases the total contract amount to \$138,240.00, allowing the parties to continue the contract at the annual rate of \$27,648.00.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	<u>X</u>	___
2. Other _____	<u>X</u>	___
3. Not applicable	<u>X</u>	___

FISCAL NOTE:

The adopted FY20 Marina Budget includes appropriations of \$27,648 for this service.

RECOMMENDATION:

Approval of Resolution

Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-119**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A THIRD AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF MARATHON AND SEAMAR DIVERS, LLC FOR CLEANING AND INSPECTION OF THE MOORINGS INSTALLED IN BOOT KEY HARBOR; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; EXPENDING BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in 2015, the City of Marathon (the “City”) published an Invitation to Bid for the cleaning and inspection of the 226 moorings installed in the Boot Key Harbor Mooring Field (the “Project”); and

WHEREAS, the moorings are managed by the City and require cleaning and inspections to insure their functional integrity and safety; and

WHEREAS, it was determined that the bid received from Seamar Divers, LLC (the “Contractor”), in the amount of \$55,296.00, was the lowest responsive and responsible bid for the Project; and

WHEREAS, on the 9th day of July, 2015, the parties executed a Contract (the “Contract”) with a term of two (2) years at an annual rate of \$27,648.00; and

WHEREAS, in November, 2017, the parties executed the First Amendment to the Contract, extending the Term until December 31, 2018; and

WHEREAS, on the 8th day of January, 2019, the parties executed the Second Amendment to the Contract, extending the Term until December, 31, 2019 and deleting Section 1.15 of the Contract and adding a new Section 1.15 in its place; and

WHEREAS, the Third Amendment to the Contract extends the contract to December 31, 2020, and increases the total contract amount to \$138,240.00, allowing the Parties to continue the contract at the annual rate of \$27,648.00; and

WHEREAS, the City Council finds that approving the Third Amendment to the Contract 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 Third 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 10th DAY OF DECEMBER, 2019.

THE CITY OF MARATHON, FLORIDA

Steven Cook, 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

**FIRST AMENDMENT
TO CONTRACT BETWEEN THE CITY OF MARATHON, FLORIDA
AND SEAMAR DIVERS, LLC**

This First Amendment to the Contract is made and entered into this ____ day of November, 2017, by and between the City of Marathon, Florida, a municipal corporation of the State of Florida ("City") and Seamar Divers, LLC, (The Contractor).

In consideration of the mutual covenants set forth in this First Amendment, the parties agree as follows:¹

Section 1. Amendment to Section 1.3 of the Contract. The parties hereby amend Section 1.3 of the Contract to read as follows:

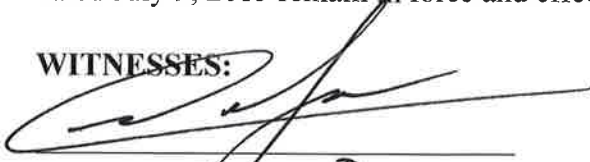
1.3 Term — This agreement shall be effective January 1, 2016 and shall continue until December 31, ~~2017~~ 2018.

[SIGNATURES ON FOLLOWING PAGE]


¹ / Additions to existing text are shown by underline, and deletions are shown as ~~strikethrough~~.

EXCEPT AS PROVIDED HEREIN, all other terms and conditions of the Contract dated July 9, 2015 remain in force and effect.

WITNESSES:



Print Name: Danys Romero



Print Name: Michael Fernandez

SEAMAR DIVERS, LLC.

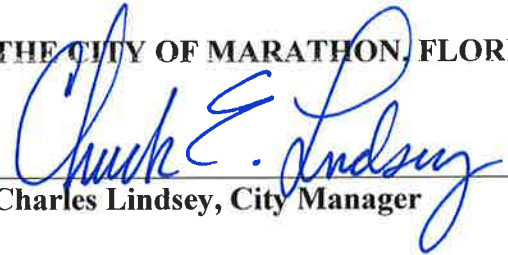
By:  Seamar Divers, LLC

Print Name: E. W. P. Hayes Box 940835

Title: President Miami, FL 33194

Ph: 305-805-6896

THE CITY OF MARATHON, FLORIDA



Charles 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

**SECOND AMENDMENT
TO CONTRACT BETWEEN THE CITY OF MARATHON, FLORIDA
AND SEAMAR DIVERS, LLC**

This Second Amendment to the Contract is made and entered into this ____ day of November, 2018, by and between the City of Marathon, a municipal corporation of the State of Florida (“City”) and Seamar Divers, LLC, (the “Contractor”).

In consideration of the mutual covenants set forth in this Second Amendment, the parties agree as follows:¹

Section 1. Amendment to Section 1.3 of the Contract. The parties hereby amend Section 1.3 of the Contract to read as follows:

1.3 Term – This agreement shall be effective January 1, 2016 and shall continue until December 31, ~~2018~~ 2019.

Section 2. Amendment to Section 1.15 of the Contract. The parties hereby delete Section 1.15 of the Contract in its entirety and amend it to read as follows:

1.15. Ownership and Access to Public Records.

1.15.1 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.

1.15.2 The Contractor is a “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

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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.

- 1.15.3 "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.
- 1.15.4 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.
- 1.15.5 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.
- 1.15.6 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.
- 1.15.7 **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.**

[SIGNATURES ON FOLLOWING PAGE]

EXCEPT AS PROVIDED HEREIN, all other terms and conditions of the Contract dated July 9, 2015 remain in force and effect.

WITNESSES:

SEAMAR DIVERS, LLC.

By: _____

Print Name: _____

Print Name: _____

Print Name: _____

THE CITY OF MARATHON, FLORIDA

Charles 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

EXHIBIT “A”
THIRD AMENDMENT
TO CONTRACT BETWEEN THE CITY OF MARATHON, FLORIDA
AND SEAMAR DIVERS, LLC

This Third Amendment to the Contract is made and entered into this ____ day of December, 2019, by and between the City of Marathon, Florida, a municipal corporation of the State of Florida (“City”) and Seamar Divers, LLC (“Contractor”).

In consideration of the mutual covenants set forth in this Third Amendment, the parties agree as follows:¹

Section 1. The contract between the City and Contractor shall remain at an annual amount not to exceed \$27,648.00. The total contract amount is amended to an amount not to exceed \$138,240.00.

Section 2. **Amendment to Section 1.3 of the Contract.** The parties hereby amend Section 1.3 of the Contract to read as follows:

1.3 Term – This agreement shall be effective January 1, 2016 and shall continue until December 31, ~~2019~~ 2020.

[SIGNATURES ON FOLLOWING PAGE]

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EXCEPT AS PROVIDED HEREIN, all other terms and conditions of the Contract dated July 9, 2015 remain in full force and effect.

WITNESSES:

Print Name: _____

Print Name: _____

SEAMAR DIVERS, LLC.

By: _____

Print Name: _____

THE CITY OF MARATHON, FLORIDA

Charles 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

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