



COUNCIL AGENDA STATEMENT

Meeting Date: June 14, 2022
To: Honorable Mayor and Councilmembers
From: Carlos A. Solis, P.E. Director of Public Works & Engineering
Through: George Garrett, City Manager

Agenda Item: **Resolution 2022-57** Accepting The Responsible Proposal And Approving A Contract Between The City And 3rd Generation Plumbing, Inc. In An Amount Not To Exceed \$53,980.00 For Utilities Installation 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

BACKGROUND & JUSTIFICATION:

The City has recently acquired the Seven Mile Marina property and proposal to lease the property to the Pigeon Key Foundation for use as their staging area to transfer visitors to Pigeon Key via a Train Trolley, and future leases to Charter Captains once the existing docks are repaired. As part of this effort, new site utilities are required for services to the marina area and restroom building, and we plan to install these now so as not to disturb the proposed site improvements being performed under a separate contract. The City requested proposals from local contractors under our Continuous Service Contracts for this work and found all bids to be over the \$35,000 threshold, which typically warrants a full Invitation to Bid. Staff reviewed the submitted proposals and determined it unlikely that additional bid would be lower, especially considering the use of local preference, which would be used in these types of projects that are fully funded by the City without grants. Because of the time sensitivity to complete this for Pigeon Key, the waiver of the procurement policy is warranted, as the formal bidding process would add two to three months to the process. Two proposals were received, and after review and consideration, we recommend award of the contract to the lowest bid in the amount of \$53,980.00 to 3rd Generation Plumbing, Inc. The submitted proposals are as follows:

- 1. 3rd Generation Plumbing, Inc. - \$53,980.00
- 2. LPS Contracting - \$169,600.00

ATTACHMENTS

Proposed Contract

CONSISTENCY CHECKLIST:

| | Yes | No |
|-----------------------------------|--------------|-------|
| 1. Comprehensive Plan – Chapter 8 | <u> X </u> | _____ |
| 2. Other: MCTDC grant requirement | <u> X </u> | _____ |

FISCAL NOTE:

Approval will appropriate funds in the City’s FY22 Adopted Marina Fund for this project.

RECOMMENDATION: Approval of Resolution

**CITY OF MARATHON, FLORIDA
RESOLUTION 2022-57**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA ACCEPTING THE RESPONSIBLE PROPOSAL AND APPROVING A CONTRACT BETWEEN THE CITY AND 3RD GENERATION PLUMBING, INC. IN AN AMOUNT NOT TO EXCEED \$53,980.00 FOR UTILITIES INSTALLATION 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, new site utilities are required for services to the marina area and restroom building (the "Project"), because of the time sensitivity to complete this for Pigeon Key, the waiver of the procurement policy is warranted, as the formal bidding process would add two to three months to the process

WHEREAS, two proposals were received, and after review and consideration, we recommend award of the contract to the lowest bid in the amount of \$53,980.00 to 3rd Generation Plumbing, Inc. (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 \$53,980.00, 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:
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:**

Steve Williams, City Attorney

EXHIBIT "A"
PROJECT SPECIFIC AGREEMENT

PROJECT SPECIFIC AGREEMENT
Between
THE CITY OF MARATHON, FLORIDA
And
3rd Generation Plumbing, Inc.
For
Utility installation at Seven Mile Marina

Pursuant to the provisions contained in the “Continuing Services Agreement” between the City of Marathon, Florida (the “City”) and 3rd Generation Plumbing, Inc., (the “Contractor”) dated March 10, 2020 this Project Specific Agreement authorizes the Contractor to provide the services as set forth below:

SECTION 1. SCOPE OF SERVICES

1.1 The CONTRACTOR shall provide services to the CITY for the Project as described in the “Project Description” included in Exhibit “1.”

1.2 The “Scope of Services and Project Schedule” and tasks to be provided by the CONTRACTOR for this Project are those services and tasks as included in Exhibit “1”.

1.3 The CITY may request changes that would increase, decrease, or otherwise modify the Scope of Services. Such changes must be contained in a written change order executed by the parties in accordance with the provisions of the Continuing Services Agreement, prior to any deviation from the terms of the Project Agreement, including the initiation of any extra work.

days

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SECTION 3. TERM/TIME OF PERFORMANCE/DAMAGE

3.1 **Term.** This Project Agreement shall commence on the date this instrument is fully executed by all parties. The work shall be substantially completed within **Fifteen (15)** Days, and Final Completion within **Twenty (20)** Days from the Notice To Proceed.

3.2 **Commencement.** The CONTRACTOR’S services under this Project Agreement and the time frames applicable to this Project Agreement shall commence upon the date provided in a written Notification To Proceed (NTP) provided to the CONTRACTOR from the CITY. The CONTRACTOR shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notice To Proceed. CONTRACTOR must receive written notice from the City prior to the beginning the performance of services.

3.3 **Contract Time.** Upon receipt of the Notification of Commencement, the CONTRACTOR shall commence services to the CITY on the Commencement Date, and shall continuously perform services to the CITY, without interruption, in accordance with Section 3.1 above. The number of calendar days from the NTP Date, through the date set forth in the Project Schedule for completion of the Project or the date of actual completion of the Project, whichever shall last occur, shall constitute the Contract Time.

3.4 **Liquidated Damages.** Unless otherwise excused by the CITY in writing, in the event that the CONTRACTOR fails to meet to the contract time for completion of services as determined by the Project Schedule, the CONTRACTOR shall pay to the CITY the sum of dollars identified below per day for each and every calendar day unexcused delay beyond the completion date, plus approved time extensions, until completion of the project: \$ N/A per day. The CONTRACTOR may claim extension if the factors involved are not under their direct control.

Any sums due and payable hereunder by the CONTRACTOR shall be payable, not as a penalty, but as liquidated damages representing and estimate at or before the time of executing this Agreement. When the CITY reasonably believes that completion will be inexcusably delayed, the CITY shall be entitled, but not required, to withhold from any amounts otherwise due the CONTRACTOR an amount then believed by the CITY to be adequate to recover liquidated damages applicable to such delays. If and when the CONTRACTOR overcomes the delay in achieving completion, or any part thereof, for which the CITY has withheld payment, the CITY shall promptly release to the CONTRACTOR those funds withheld, but no longer applicable, as liquidated damages.

3.5 All limitations of time set forth in this Agreement are of the essence.

SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION

4.1 **Compensation.** CITY agrees to pay CONTRACTOR as compensation for performance of all services described in Exhibit "1". Total not to exceed amount for this Work Authorization is **\$53,640.00** .[No additional payment shall be made to the Contractor without an approved written Change Order issued by the City.

SECTION 5. BILLING AND PAYMENTS TO THE CONTRACTOR

Invoices

5.1.1 CONTRACTOR shall submit invoices which are identified by the specific project number on a monthly basis in a timely manner for work completed during that period. These invoices shall identify the nature of the work performed. Invoices will show the percentage of amount billed against this work authorization and shall not exceed the not-to-exceed amount without authorization from the City. The CITY shall pay CONTRACTOR within thirty (30) calendar

days of approval by the City's Project Manager of any invoices submitted by CONTRACTOR to the CITY.

5.2 **Disputed Invoices.** In the event that all or a portion of an invoice submitted to the CITY for payment to the CONTRACTOR is disputed, or additional backup documentation is required, the CITY shall notify the CONTRACTOR within fifteen (15) working days of receipt of the invoice of such objection, modification or additional documentation request. The CONTRACTOR shall provide the CITY with additional backup documentation within five (5) working days of the date of the CITY'S notice. The CITY may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CONTRACTOR. The CITY, at its sole discretion, may pay to the CONTRACTOR the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

5.3 **Suspension of Payment.** In the event that the CITY becomes credibly informed that any representations of the CONTRACTOR, provided pursuant to Subparagraph 5.1, are wholly or partially inaccurate, or in the event that the CONTRACTOR is not in compliance with any term or condition of this Project Agreement, the CITY may withhold payment of sums then or in the future otherwise due to the CONTRACTOR until the inaccuracy, or other breach of Project Agreement, and the cause thereof, is corrected to the CITY's reasonable satisfaction.

5.4 **Retainage.** The CITY reserves the right to withhold retainage in the amount of five percent (5%) of any payment due to the CONTRACTOR for work performed until the work is completed. Said retainage may be withheld at the sole discretion of the City Manager or his/her designee and as security for the successful completion of the CONTRACTOR'S duties and responsibilities under the Project Agreement.

5.5 **Final Payment.** Submission of the CONTRACTOR'S invoice for final payment shall constitute the CONTRACTOR'S representation to the CITY that, upon receipt from the CITY of the amount invoiced, all obligations of the CONTRACTOR to others, including its Subcontractors, incurred in connection with the Project, shall be paid in full. The CONTRACTOR shall deliver to the CITY all documents requested by the CITY evidencing payments to any and all subcontractors, and releases of liens. Acceptance of final payment shall constitute a waiver of any and all claims against the CITY by the CONTRACTOR.

SECTION 6. TERMINATION/SUSPENSION

- 6.1 The City Manager without cause may terminate this Agreement upon thirty (30) days written notice to the Contractor, or immediately with cause.
- 6.2 Upon receipt of the City's written notice of termination, Contractor shall stop the Work unless directed otherwise by the City Manager.
- 6.3 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.

6.4 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.

SECTION 7. COMPLIANCE WITH LAW

7.1 **COMPLIANCE WITH LAWS** – The parties shall comply with all applicable local, state and federal laws and guidelines relating to the services that are subject to this Agreement. Federal regulations apply to all of the City of Marathon contracts using Federal funds as a source for the solicitation of goods and services. The following Federal requirements apply to this Emergency Agreement:

7.2 **ACCESS BY THE GRANTEE, SUBGRANTEE, FEDERAL GRANTOR AGENCY AND COMPTROLLER GENERAL:** The Contractor shall allow access by the grantee, sub grantee, Federal grantor agency and Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions.

7.3 **CLEAN AIR AND WATER ACTS:** The Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1386), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), (Contracts and/or subcontracts, and sub grants of amounts in excess of \$100,00.00).

7.4 **CONTRACT WORK HOURS AND SAFETY STANDARDS:** The Contractor shall comply 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). (Constructions contracts awarded by grantees and sub grantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers.)

7.5 **COPELAND ANTI-KICKBACK ACT:** The Contractor shall comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and sub grants for construction repair).

7.6 **COPYRIGHTS:** The Grantee is free to copyright original work developed in the course of or under the agreement. FEMA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes. Publication resulting from work performed under this agreement shall include an acknowledgement of FEMA financial support, by granted number, and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA views.

7.7 **DISADVANTAGED BUSINESS ENTERPRISES (DBE) CONTRACTORS:** The contractor agrees to ensure that Disadvantage Business Enterprises as defined in 49 C.F.R. Part 23, as amended, have the maximum opportunity to participate in the

performance of contracts and this agreement. In this regard, contractor shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 23, as amended, to ensure that the Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. The contractor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of federal assisted contracts.

7.8 ENERGY POLICY AND CONSERVATION ACT: The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

7.9 EQUAL EMPLOYMENT OPPORTUNITY: The Contractor shall comply 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 C.F.R. Chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or sub grantees).

7.10 REPORTING:

7.10.1 Reports Submission: Per 44 CFR 13.50, when the appropriate grant award performance period expires, the Grantee shall submit the following documents within 90 days: (1) Financial performance or Progress Report; (2) Financial status Report (SF 269) or outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable); (3) Final request for payment (SF-270) (if applicable); (4) Invention disclosure (if applicable); and (5) Federally-owned property report.

7.10.2 Reports Acceptance: FEMA shall review the Grantee reports, perform the necessary financial reconciliation, negotiate necessary adjustments between the Grantee’s and FEMA’s records, and close grant in writing.

7.11 RETENTION OF ALL RECORDS: The Contractor is required to retain all records for three (3) years after grantees or subgrantees make final payments and all other pending matters are closed.

7.12 BYRD ANTI-LOBBYING AMENDMENT (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.

SECTION 8 INCORPORATION OF TERMS AND CONDITIONS OF CONTINUING SERVICE AGREEMENT

8.1 This Project Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement dated **March 10, 2020** between the parties as though fully set forth herein. In the event that any terms or conditions of this Project Agreement conflict with the Continuing Services Agreement, the provisions of this specific Project Agreement shall prevail and apply.

PURSUANT TO F.S. 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR ANY NEGLIGENCE.

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SECTION 10 Project Records

10.1 All final plans, documents, reports, studies and other data prepared by the Contractor or a subContractor will bear the endorsement of a person in the full employ of the Contractor or the subContractor and duly registered in the appropriate professional category.

10.2 After the City's acceptance of final plans and documents, an electronic copy of the Contractor's or the sub Contractor's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

10.3 Upon completion of any construction by a contractor on a project assigned to Contractor, the Contractor shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Contractor shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Contractor.

10.4 The Contractor shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

10.5 All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of City, and reproducible copies shall be made available upon request to the City.

10.6 All project records shall be maintained by Contractor and made available upon request of the City of Marathon.

10.7 City at all times for the duration of this Agreement and during the period stated by Florida Records Retention Schedules. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Contractor involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Contractor to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

SECTION 11 Ownership and Access to Public Records.

- 11.1 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.
- 11.2 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 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.
- 11.3 “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.
- 11.4 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.
- 11.5 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.
- 11.6 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.

- 11.7 **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.**

SECTION 12 E-VERIFY

12.1 **E-Verify System** - Beginning January 1, 2021, in accordance with F.S. 448.095, the Contractor and any subcontractor shall register with and shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status 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 work authorization status of all new employees hired by the subcontractor during the Contract term. Any subcontractor shall provide an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor shall comply with and be subject to the provisions of F.S. 448.095

PAYMENT UNDER THIS PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.

IN WITNESS WHEREOF, the parties have executed this instrument on this _____ day of _____, 2020.

CONTRACTOR:

CITY:

By: _____

By: _____

Its: _____

Its: City Manager

ATTEST:

Diane Clavier, City Clerk

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

City Attorney

This agreement shall be executed on behalf of Contractor by its President or a Vice President. If executed by a person other than Contractor's President or a Vice President, then attach evidence of that person's actual authority to bind Contractor to this agreement.

**EXHIBIT “1”
PROJECT DESCRIPTION**

EXHIBIT “2”
SCOPE OF SERVICES AND PROJECT SCHEDULE

SCOPE OF SERVICES

GENERAL UNDERSTANDING

SECTION 1

1.0 PROJECT SCOPE OF WORK