



COUNCIL AGENDA STATEMENT

Meeting Date: February 14, 2023
From: Sean Cannon, Marina Director
Through: George Garrett, City Manager

Agenda Item: **Resolution 2023-24**, Authorizing The City Manager To Enter Into An Agreement With Live Flyer, Inc. For Cleaning And Inspection Of The Boot Key Harbor City Marina Mooring Field In An Annual Amount Not To Exceed \$49,883; And Providing For An Effective Date

BACKGROUND & JUSTIFICATION:

The City requires triennial cleanings and inspections of the moorings in Boot Key Harbor for the City Marina as per the Boot Key Harbor City Marina Management Plan to ensure functional integrity and safety of the moorings.

The City bid the cleaning and inspection of the mooring twice and received one bid each time; the first bid opening we received one bid which was rejected due to the cost being over eight hundred thousand dollars, which was much more than the cost to install the moorings. That bidder was from out of the State of Florida, and after rejection of the bids we found out when the bidder researched the hotel costs in December, calculated the price of accommodations in their bid.

This current bid is in line in with what staff anticipated the costs to be. Staff budgeted \$38,000 for this contract. Live Flyer included many recommendations from other Cities and Counties in Florida. Staff recommends approval of the contract with Live Flyer, Inc. in an amount not to exceed \$49,883.00.

CONSISTENCY CHECKLIST:	Yes	No	
1. Comprehensive Plan			<u> X </u> <u> </u>
2. Other <u>Marina Master Plan</u>			<u> X </u> <u> </u>
3. Not applicable <u> </u>			

FISCAL NOTE:

The Adopted FY23 Marina Budget includes appropriations of \$37,650 for this annual service, and a budget line item transfer can be completed to cover the cost overage.

RECOMMENDATION: Council Approve Resolution

Sponsored by: Garrett

**CITY OF MARATHON, FLORIDA
RESOLUTION 2023-XX**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH LIVE FLYER, INC. FOR CLEANING AND INSPECTION OF THE BOOT KEY HARBOR CITY MARINA MOORING FIELD IN AN ANNUAL AMOUNT NOT TO EXCEED \$49,883; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City published a Request for Proposals for the cleaning and inspection of the Boot Key Harbor City Marina Mooring Field; and

WHEREAS, the moorings are managed by the City and require inspections as per the Boot Key Harbor City Marina Management Plan to ensure functional integrity and safety; and

WHEREAS, the City staff recommends Live Flyer, Inc.;

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 City Council hereby authorizes the City Manager to enter into an Agreement with Live Flyer, Inc. for quarterly Mooring Buoy Cleaning and Inspections, a copy of which is attached as Exhibit "A," in an annual amount not to exceed \$49,833.00, together with such changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney.

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 FEBRUARY, 2023

THE CITY OF MARATHON, FLORIDA

Louis Gonzalez, 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:**

City Attorney Steve Williams

THIS CONTRACT is made this _____ day of _____, 2023 by and between the City of Marathon, Florida (the "City") and Live Flyer Inc. (the "Contractor").

The parties, for the consideration provided for below, mutually agree as follows:

- 6.1. **SCOPE OF WORK-** The Contractor shall furnish all labor, materials, supervision, equipment, supplies, and incidentals required to perform the scope of work as outlined in the Detailed Specifications.
- 6.2. **COMPENSATION/PAYMENT**
\$49,833.00 per year. Contractor shall provide the City with an invoice upon completion of each inspection and cleaning project (3 Each per year)
- 6.3. **TERM-** This Agreement shall be effective March 1, 2023 and shall continue until January 31, 2024. The City may, at its sole option, extend this Agreement on the same terms and conditions for two (2) additional terms of one (1) year each. Such extensions shall be effective upon receipt of a written notice from the City Manager to the Contractor received not later than 30 days prior to the date of termination.
- 6.4. **CONTRACTOR'S DUTY TO INSPECT-** The Contractor has carefully examined the described site areas and similar site areas and has made sufficient tests and other investigations to fully satisfy himself/herself/itself as to site conditions, and he/she/it assumes full responsibility therefore. The Contractor shall be responsible for the repair or replacement of any facility damaged by the Contractor.
- 6.5. **NON-WAIVER-** The approval, and/or acceptance of any part of the Work by the City shall not operate as a waiver by City of any other terms and conditions of the Agreement.
- 6.6. **PROTECTION OF PROPERTY AND THE PUBLIC-** The Contractor shall continuously maintain adequate protection of all the Work from damage and shall protect public and private property from injury or loss arising in connection with the Contract as follows:
- 6.6. 1. The Contractor shall take all necessary precautions for the safety of employees in the performance of the Work on, about or adjacent to the premises, and shall comply with all applicable provisions of Federal, State, and local laws, including, but not limited to the requirements of the Occupational Safety and Health Act of 1970, and amendments thereto, the Construction Safety Act of 1969, and amendments thereto, and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed.
- 6.6.2. The Contractor shall take all necessary precautions to prevent accidents and injuries to persons or property on or near the Work.
- 6.6.3. The Contractor shall be completely responsible for, and shall replace and make good all loss, injury, or damage to any property (including landscaping, walks, drives, or structures of the City) and of any land or body of water adjoining any work sites, which may be caused by Contractor. The Contractor shall, at all times while the Work is in progress, use extraordinary care to see that adjacent property, whether real or personal, is not endangered in any way, and all environmental protection precautions are adhered to, and shall take all necessary or directed steps, to protect the property and environment. The same care shall be exercised by all Contractor's and subcontractor's employees.
- 6.7. **INDEMNIFICATION**
- 6.7.1 . The Contractor shall indemnify and hold harmless the City, its officers, agents and employees from and against all liability, claims, damages, losses and expenses, including reasonable attorney's fees and costs at both trial and appellate levels arising out of or resulting from the performance of

Work under this contract, caused by any act or omission of the Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable.

6.7.2. This indemnification obligation shall survive the termination of this Agreement.

6.7.3. The Contractor shall defend the City or provide for such defense, at the City's option.

6.7.4. The Contractor shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by him, on the Work. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this contract. Contractor shall secure and pay for all permits, fees, licenses, and inspections necessary for the execution of the Work, and upon termination of this contract for any reason, Contractor shall transfer such permits, if any, and if allowed by law, to the City.

6.8. **CONTRACT DOCUMENTS**- The following documents shall, by this reference, be considered part of this Contract:

Instructions to Bidders;

All Addendums;

Contract Agreement;

Invitation to Bid Document;

Bid;

Detailed Specifications;

Qualification Statement;

Insurance Certificates;

Licenses;

6.9. **CONTRACTOR'S EMPLOYEES**

6.9.1. Contractor's employees shall serve the public in a courteous, helpful, and impartial manner.

6.9.2. Contractor shall, upon receipt of a written request from the City, immediately exclude any employee of Contractor from providing Work under this Agreement.

6.9.3. The Work contemplated in this Agreement is on public property, accordingly no alcoholic beverages shall be allowed.

6.10. **INSURANCE**- UPON EXECUTION OF THIS **AGREEMENT**, CONTRACTOR SHALL SUBMIT CERTIFICATE(S) OF INSURANCE TO THE CITY EVIDENCING THE REQUIRED COVERAGES AND SPECIFICALLY PROVIDING THAT **CITY IS NAMED AS AN ADDITIONAL INSURED** WITH RESPECT TO THE REQUIRED COVERAGES AND THE OPERATIONS.

Contractor shall file Certificates of Insurance with the City, reflecting evidence of all Coverages. All certificates of insurance must clearly identify the Contract to which they pertain, including a brief description of the subject matter of the Contract. They shall be filed with the City within fourteen (14) days of the execution of this Agreement by both parties. The certificates of insurance shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty (30) days' prior written notice has been given to the City. Policies for Coverage shall be issued by companies authorized to do business under the laws of the State of Florida and any such companies' financial ratings must be no less than A-VII in the latest edition of the "BEST'S KEY RATING GUIDE", published by A.M. Best Guide.

All coverages shall be in force throughout the life of this Agreement. In the event insurance certificates provided to City indicate that any insurance shall terminate and lapse during the period of this Agreement and any and all amendments or extensions of it, then in that event, Contractor shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like Coverages for the remaining term of the Agreement and any and all extension of it, is in effect.

Contractor shall procure and maintain at its own expense and keep in effect during the full term of the Agreement a policy or policies of insurance which must include the following coverages and minimum limits of liability:

6.10.1 Commercial General Liability

General Liability insurance with limits of not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage including coverage for contractual liability, personal injury, broad form property damage, products and completed operations.

6.10.2 Watercraft Liability

Watercraft Liability Insurance, when necessary to use watercraft for the performance of the Contractor's services under the terms of this Contract, either by Contractor or any subcontractor, and if excluded by commercial general liability coverage, watercraft liability with a minimum limit of \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Protection & Indemnity where applicable.

6.10.3 Automobile Liability

Comprehensive or Business Automobile Liability insurance with/ limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage including coverages for owned, hired, and non-owned vehicles, equipment or both as applicable.

6.10.4 Workers' Compensation

A. Workers Compensation Limit- Statutory Limits (per limits outlined by Chapter 440, Florida Statutes)

B. USL&H and Jones Act Coverage Limit- \$1,000,000

C. Employers Liability Limits:

- \$1,000,000 for bodily injury caused by an accident, each accident
- \$1,000,000 for bodily injury caused by disease, each employee
- \$1,000,000 for bodily injury caused by disease, policy limit

Workers Compensation must be provided for all persons fulfilling this contract, whether employed, contracted, temporary or subcontracted.

Contractor(s) must be in compliance with all applicable State and federal workers' compensation laws, including US Longshore and Harbor Workers Compensation Act, Jones Act (maritime), Federal Employers Liability Act (railroad), etc.

6.10.5 In no event shall Contractor be permitted to utilize in the execution of this agreement, the following:

- i) any employee, subcontractor or subcontractor employee that is exempted or purported to be exempt from Workers' Compensation insurance coverage; or
- ii) any employee, subcontractor or subcontractor employees who will be covered by an employee leasing arrangement.

6. 11. **ASSIGNMENT AND AMENDMENT**- No assignment by the Contractor of this contract or any part of it, or any monies due or to become due, shall be made, nor shall the Contractor hire a sub-contractor to perform its duties under this Contract without prior written approval of the City. This Contract may only be amended by the parties with the same formalities as this Contract.

6.12. **TERMINATION**

6.12.1 . Either party may terminate this Contract without cause upon 30 days written notice to the other party.

6.12.2. Upon notice of such termination, the City shall determine the amounts due to the Contractor for services performed up to the date of termination. The Contractor shall not be entitled to payment of any lost profits or for Work performed after the date of termination.

6.12.3 . After receipt of a notice of termination, and except as otherwise directed, the Contractor shall stop all Work under this Contract, and shall do so on the date specified in the notice of termination.

6.12.4. The City may terminate this Contract upon five (5) days written notice if the Contractor defaults on any material term of this Contract.

6.13. **CHOICE OF LAW**- This contract shall be governed by the laws of the State of Florida. Venue shall lie in Monroe County.

6.14. **ATTORNEY'S FEES**- In the event either party to this Agreement is required to retain legal counsel to enforce any of its rights under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party together with court costs incurred in any litigation at any trial and appellate proceedings.

6.15. **ACCESS TO PUBLIC RECORDS- Ownership and Access to Public Records.**

6.15.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City.

16.15.2 The Consultant 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 Consultant 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 Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant 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.

16.15.3 "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.

16.15.4 Should the Consultant 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 Consultant.

16.15.5 The Consultant consents to the City's enforcement of the Consultant's Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the Consultant shall pay all court costs and reasonable attorney's fees incurred by the City.

16.15.6 The Consultant'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 Consultant shall be grounds for immediate unilateral cancellation of this Agreement by the City.

16.15.7 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, CLAVIERD@CI.MARATHON.FL.US, OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.

6.16. **INSPECTION AND AUDIT-** During the term of this Contract and for three (3) years from the date of Termination the Contractor shall allow City representatives access during reasonable business hours to Contractor's records related to this Contract for the purposes of inspection or audit of such records. If upon audit of such records, the City determines the Contractor was paid for services not performed, upon receipt of written demand by the City, the Contractor shall remit such payments to the City.

6.17. **SEVERABILITY-** If a term, provision, covenant, contract or Condition of this Contract is held to be void, invalid, or unenforceable, the same shall not affect any other portion of this Contract and the remainder shall be effective as though every term, provision, covenant, contract or condition had not been contained herein.

6.18. **WAIVER OF JURY TRIAL-** The parties irrevocably, knowingly agree to waive their rights to a trial by jury in any action to enforce the terms or conditions of this Contract.

6.19. **COUNTERPARTS-** This Contract may be signed in one or more counterparts, each of which, when executed shall be deemed an original and together shall constitute one and the same instrument.

16.20. **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:

City of Marathon

9805 Overseas Highway

Marathon, FL 33050

Attention: George Garrett, City Manager

Contractor: Live Flyer Inc.
647 Mill Road
Carrabelle, FL 32322

IN WITNESS WHEREOF the parties hereto have executed this agreement on the day and date first above written.

Attest: CITY OF MARATHON

By: _____ By: _____
Diane Clavier, City Clerk George Garrett, City Manager

By: _____
Steve Williams, City Attorney

Signed, sealed and witnessed in the presence of: As to Contractor:



By: _____
Printed Names: _____

By: Jennifer Wilkinson
Jennifer Wilkinson (Feb 3, 2023 14:25 EST)

JOHN WARD - PRESIDENT

JENNIFER WILKINSON - WITNESS

(*) In the event that the Contractor is a corporation, there shall be attached to each counterpart a certified copy of a resolution of the board of the corporation, authorizing the officer who signs the contract to do so in its behalf.