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THIS AGREEMENT, made and entered into by and between the **CITY OF ATLANTIC CITY**, a municipal corporation of the State of New Jersey, located at 1301 Bacharach Boulevard, Atlantic City, New Jersey 08401, hereinafter called "**CITY**", and **MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC.**, with offices located at 1616 Pacific Avenue, Suite 501, Atlantic City, New Jersey 08401 hereinafter called "**CONSULTANT**", pursuant to Resolution No. 678 adopted by the Council of the City on October 19, 2022, a copy of which is attached hereto and made a part hereof.

WITNESSETH:

WHEREAS, the City is desirous of securing the services of a Consultant to perform **PROFESSIONAL SERVICES FOR OUTSTANDING REMEDIAL INVESTIGATION ACTIVITIES AND ASSOCIATED REGULATORY REPORTING FOR AREAS OF CONCERN AT 827 ADRIATIC AVENUE, BLOCK 542, LOTS 1, 2 & 9**; and

WHEREAS, the Consultant is ready, willing and able to undertake such service and provide the City with expert advice; and

WHEREAS, the City believes the Consultant to be well able to undertake and perform such services for the City and desires to contract with Consultant for the performance of such services.

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein, and for other good and valuable consideration, the parties hereto agree as follows:

**SECTION ONE
WORK TO BE PERFORMED**

The Consultant shall provide **PROFESSIONAL SERVICES FOR OUTSTANDING REMEDIAL INVESTIGATION ACTIVITIES AND ASSOCIATED REGULATORY REPORTING FOR AREAS OF CONCERN AT 827 ADRIATIC AVENUE, BLOCK 542, LOTS 1, 2 & 9**, as set forth in their attached proposal and made part of this agreement.

**SECTION TWO
CONTRACT PRICE**

The City shall pay to the Consultant, and the Consultant agrees to accept as full and complete compensation and payment for all of the work performed under and in accordance with and pursuant to this Agreement, in amount not to exceed the sum of **THIRTY-FIVE THOUSAND SIX HUNDRED DOLLARS (\$35,600.00)** in the aggregate.

**SECTION THREE
CONTRACT PERIOD**

The Contract shall be for a period of **ONE (1) YEAR** from the date of Mayor's signature.

**SECTION FOUR
PAYMENT METHOD**

Payment to Consultant shall be made upon submission of invoices for payment to the Director of Public Works and approval of the same by the Business Administrator.

It is expressly understood and agreed that payment of monies authorized under and by this agreement shall only be monies and funds appropriated by the Council of the City for the purpose of this agreement and paid into the treasury of the City therefore.

**SECTION FIVE
STATUS OF CONSULTANT**

It is expressly understood and agreed by and between the parties hereto that the status of the Consultant and its employees, officers, and agents shall be that of independent CONSULTANTS. It is not intended, nor shall it be construed, that the Consultant or any of its employees, officers and agents is an employee or officer of the City for any purpose whatsoever.

**SECTION SIX
TERMINATION, CANCELLATION, EXPIRATION**

The parties agree that either party can cancel this Agreement upon 30 days written notice. At the termination, cancellation or expiration of this Agreement in any manner, the acceptance of final payment by the Consultant shall be in full satisfaction of all claims against the City under this Agreement.

**SECTION SEVEN
CERTIFICATE OF COMPLIANCE**

Consultant represents that it is in compliance with all laws of the State of New Jersey, all Ordinances of the City of Atlantic City, including Ordinance No. 24 of 1993, Executive Order No. 1 of 1993, and Exhibit "A" attached hereto and made a part hereof, involving Affirmative Action and minority business participation and will remain so for the term of this Agreement, and failure to continue in compliance shall be deemed a breach of this Agreement.

**SECTION EIGHT
ASSIGNMENT**

Consultant cannot assign its rights or obligations under this Agreement without the prior written consent of the City.

**SECTION NINE
CONFLICT OF INTEREST**

The Consultant covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the within Agreement. The Consultant further covenants that in the performance of this Agreement no person having any such interest shall knowingly be employed by the Consultant or its SUBCONSULTANTS.

**SECTION TEN
INTERPRETATION AND CONSTRUCTION**

Unless expressly provided otherwise herein, this agreement shall be governed by and construed in accordance with the Uniform Commercial Code of the State of New Jersey.

**SECTION ELEVEN
EFFECT OF ILLEGALITY**

If any provision of this agreement is determined to be illegal or against public policy or to violate any provisions of law or code by a court of competent jurisdiction, the remainder of the agreement shall not be affected thereby.

**SECTION TWELVE
CHOICE OF LAW**

This contract shall be governed and construed in accordance with the law of the State of New Jersey and the ordinances of the City of Atlantic City.

**SECTION THIRTEEN
INSURANCE**

Before commencing the work, and as a condition precedent for payment, the Consultant shall purchase and maintain insurance, in conformance with the provisions contained in this Agreement. This insurance will provide a defense and indemnify the City of Atlantic City (City) against any such claim, damage, loss or expense that is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use, which arises out of the Consultant's operations under this Agreement. This insurance shall apply regardless of whether the operations, actions, derelictions or failures to act from which the claim arises, are attributable to the Consultant, any of its consultants, officers, agents, subcontractors, employees, anyone directly or indirectly employed by any of them

including anyone for whose acts of the aforementioned may be liable by operation of statute, government regulation, or applicable case law and the City, unless caused by the sole negligence of the City.

Proof of this insurance shall be provided to the City before the work commences as set forth below. In no event shall the failure to provide this proof, prior to the commencement of the work, be deemed a waiver by the City of the Consultant's insurance obligations set forth herein.

In the event that the insurance company (ies) issuing the policy (ies) required by this section deny coverage to the City, the Consultant will defend and indemnify the City at the Consultant's expense.

Minimum of Liability.

The Consultant must obtain the required insurance with the carrier rated A- VII or better by A.M. Best. The Consultant shall maintain at least the limits of liability as set forth below:

Commercial General Liability Insurance

- \$ 1,000,000 Each Occurrence (Bodily Injury and Property Damage)
- \$ 2,000,000 General Aggregate
- \$ 2,000,000 Product/Completed Operations Aggregate
- \$ 1,000,000 Personal and Advertising Injury.

Contractual Liability that will respond to the Indemnification clause, shall be included in the policy. The General Aggregate Limit shall apply separately to the work as defined in Scope of Services. As an alternative, the Consultant may provide Commercial General Liability Insurance with no General Aggregate. This policy must respond to bodily injury and property damage claims arising out of Professional Liability.

Professional Liability Insurance

- \$ 1,000,000 Each Claim
 - \$ 2,000,000 General Aggregate
- If policy is a claims-made form, Consultant must identify known claims that affect the aggregate.

Comprehensive Automobile Liability Insurance

- \$ 1,000,000 Combined Single Limit Bodily Injury and Property Damage.

Coverage must include all owned, non-owned and hired vehicles used by the Consultant.

Workers' Compensation and Employers' Liability Insurance

\$ 500,000 Each Accident

\$ 500,000 Each Employee for Injury by Disease

\$ 500,000 Aggregate for Injury by Disease.

If the Consultant is a Sole Proprietor, Partnership or LLC, Insurance Policy and Certificate must indicate that the proprietor/partners/members are "included". This requirement does not apply if inclusion is not allowed by state law.

Umbrella

\$ 2,000,000 per Occurrence

\$ 2,000,000 Aggregate.

Contractual Liability and the General Aggregate shall apply on the same basis as the primary insurance.

Additional Insured Status and Certificate of Insurance.

The City, along with their respective elected or appointed officials, officers, agents and employees, shall be named as Additional Insureds for Operations and Products/Completed Operations on the Consultant's Commercial General Liability Policy which must be primary and noncontributory with respect to the Additional Insureds. If the Contractor's policy limits are greater than the minimum limits noted above, the minimum limits required are automatically adjusted to those greater limits.

It is expressly understood by the parties to this Agreement that it is the intent of the parties that any insurance obtained by the City is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by the Consultant, any of its consultants, officers, agents, subcontractors, employees or anyone directly or indirectly employed by any of them or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law.

A Waiver of Subrogation Clause shall be added to the General Liability and Automobile policies in favor of the City, and this clause shall apply to the City's elected or appointed officials,

officers, agents and employees. It should also apply to the Consultant's Workers' Compensation policy if allowed by state law.

Prior to commencement of work, Consultant shall submit a Certificate of Insurance in favor of the City and an Additional Insured Endorsement (in a form acceptable to the City) as required hereunder.

No Limitation on Liability.

In any and all claims against the Additional Insureds by any employee of the Consultant, anyone directly or indirectly employed by the Consultant or anyone for whose acts the Consultant may be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damage, compensation or benefits payable by or for the Consultant under workers' compensation acts, disability benefit acts or other employee benefit acts.

Failure to Obtain/Maintain, Cancellation and Renewal.

The Consultant shall maintain in effect all insurance coverages required under this Agreement at the Consultant's sole expense and with insurance companies acceptable to the City. In the event the Consultant fails to obtain or maintain any insurance coverage required under this Agreement, the City may, at its sole discretion, purchase such coverage as desired for the City's benefit and charge the expense to the Consultant, or, in the alternative, terminate this Agreement. In the event the coverage is cancelled or non-renewed, the Consultant will provide 21 days advance notice of the cancellation or non-renewal.

**SECTION FOURTEEN
INDEMNIFICATION**

The CONSULTANT shall indemnify, defend and hold harmless the CITY from and against any claim (including any claim brought by employees of CONSULTANT), liability, damage or expense (including attorneys' fees) that such CITY may incur relating to, arising out of or existing by reason of (i) CONSULTANT'S performance of this Agreement or the conditions created thereby (including the use, misuse or failure of any equipment used by CONSULTANT or its

SUBCONSULTANTS, servants or employees) or (ii) CONSULTANT 's breach of this Agreement or the inadequate or improper performance of this Agreement by CONSULTANT or its SUBCONSULTANTS, servants or employees.

SECTION FIFTEEN WAIVER AND RENUNCIATION

No waiver or renunciation by either party to this agreement with respect to any breach or default or of any right or remedy consequent thereon shall be deemed to constitute a continuing waiver or renunciation or a waiver or renunciation of any other breach or default or any other right or remedy consequent thereon unless such waiver or renunciation be expressed in writing, signed by the party making such waiver or renunciation and specifying the nature and extent of such waiver or renunciation.

SECTION SIXTEEN STATUS OF CONSULTANT

It is expressly understood and agreed by and between the parties hereto that the status of the consultant and its employees, officers, and agents shall be that of independent contractors. It is not intended, nor shall it be construed, that the consultant or any of its employees, officers and agents is an employee or officer of the City for any purpose whatsoever.

SECTION SEVENTEEN MODIFICATION OF AGREEMENT

Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if in writing signed by each party or an authorized representative of each party.

Consultant acknowledges that he/she cannot commence or continue to represent the City or any named individual or incur any expenses that would cause the contract amount to be exceeded without first receiving prior written authorization from the City Solicitor. Additionally, the City requires a 30-day notice including a case status report setting forth an estimate of the fees

and costs anticipated whenever a request is made for a Change Order that would cause the contract amount to be exceeded.

Further, the City will not accept invoices representing time and expenses that were performed or incurred outside or beyond the contract end date.

Any work not specifically authorized may be rejected for payment at the discretion of the City.

SECTION EIGHTEEN POLITICAL CONTRIBUTION DISCLOSURE

This contract has been awarded to **MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC.** based on the merits and abilities of **MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC.**, to provide the goods or services as described herein. This contract was awarded through a "fair and open process" pursuant to N.J.S.A. 19:44A-20.4 et seq. Nevertheless, the undersigned does hereby attest that **MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC.**, their subsidiaries, assigns or principals controlling in excess of 10% of the company have not made a reportable contribution pursuant to the Election Law Enforcement Commission pursuant to N.J.S.A. 19:44A-8 or 19:44A-16, in the one (1) year period preceding the award of the contract that would, pursuant to P.L. 2004, c.19, affect its eligibility to perform this contract, nor will it make such a reportable contribution during the term of the contract that will affect its eligibility to perform this contract.

IN WITNESS WHEREOF, the City has caused the Seal of the City of Atlantic City to be hereto affixed and this Agreement to be signed by the Mayor and attested by the City Clerk thereof, and Consultant has caused this Agreement to be executed by its President and attested by its Secretary and its corporate seal to be hereto affixed the day and year first below written.

ATTEST:


Paula Geletei, City Clerk

CITY OF ATLANTIC CITY

BY: 
Marty Small, Sr., Mayor

Date: 12-6-22

ATTEST:


Susan M. Moore

MARATHON ENGINEERING &
ENVIRONMENTAL SERVICES, INC.

BY: 
President

The within Agreement approved as to form and execution.

Date: 12/6/2022

BY: 
Karl Timbers, Esquire
Assistant City Solicitor

STATE OF)

) SS.

COUNTY OF)

I CERTIFY that on November 2, 2022,

RICK RICCIARDI the Secretary or Assistant Secretary of the Corporation, personally came before me, and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the secretary or assistant secretary of MARATHON BUSINESS ENGINEERING & ENVIRONMENTAL SERVICES, INC. (the corporation named in this document);
- (b) this person is the attesting witness to the signing of this document by the proper corporate officer of the corporation;
- (c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors and;
- (d) this person signed this proof to attest to the truth of these facts.

Signed and sworn to before me on

[Signature]
Secretary or Asst. Secretary

November 2, 2022

[Signature]
Notary Public of New Jersey

SUSAN M. MOORE
 NOTARY PUBLIC OF NEW JERSEY
 Commission # 2341670
 My Commission Expires 03/13/2026