

# Resolution of the City of Atlantic City

No. 690

Approved as to Form and Legality on Basis of Facts Set Forth

Factual contents certified to by

Assistant City Solicitor /s/ Karl Timbers

Director of Public Works /s/ Paul Jerkins

Prepared by City Solicitor's Office

Council Members KURTZ & RANDOLPH present the following Resolution:

## **RESOLUTION TO AWARD A CONTRACT TO WALTERS MARINE CONSTRUCTION, INC., IN THE AMOUNT OF \$390,000.00**

**BE IT RESOLVED** by the City Council that the bid of **WALTERS MARINE CONSTRUCTION, INC.**, a corporation of the State of New Jersey, with offices located at 3031 Ocean Heights Avenue, Egg Harbor Township, New Jersey 08234, received and publicly opened and read at a meeting of the Purchasing Board held November 9, 2021 for furnishing and delivering F.O.B. to the City of Atlantic City **REPLACEMENT OF DEFECTIVE TIDE CHECK VALVES AND INSTALLATION OF NEW TIDE CHECK VALVES AT VARIOUS NEIGHBORHOODS IN THE CITY** for a TOTAL DELIVERED SUM OF **THREE HUNDRED NINETY THOUSAND DOLLARS (\$390,000.00)**; and subject to the approval of the Commissioner of the Department of Transportation for the use of the Department of Public Works, be and the said bid is hereby **ACCEPTED**, said Corporation being the lowest responsible bidder for the undertaking; and

**BE IT FURTHER RESOLVED** that authority is hereby given to the Mayor to execute and the City Clerk to attest an agreement, to be entered into between the City of Atlantic City and **WALTERS MARINE CONSTRUCTION, INC.**, for the hereinabove undertaking, in strict compliance with the Advertisement, Proposal Form, and the Specifications and Instructions to bidders therefore, approved and adopted by the City Council, said agreement and the required accompanying performance bond to be approved as to form and execution by the City Solicitor; and

**BE IT FURTHER RESOLVED** that a Certificate from the Chief Financial Officer has been attached to this Resolution, showing the availability of funds from Account No. G-02-41-731-A20-926, to satisfy the aforesaid award of contract; and

**BE IT FURTHER RESOLVED**, that this award of contract is contingent upon State approval;  
and

**BE IT FURTHER RESOLVED** that the aforesaid bidder was the lowest responsible bidder.

cr January 14, 2022 11:44 AM

DO NOT USE SPACE BELOW THIS LINE														
RECORD OF COUNCIL VOTE ON FINAL PASSAGE														
COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.	
DELGADO	X						MORSHED	X					X	
DUNSTON	X						RANDOLPH	X				X		
FAUNTLEROY				X			SHABAZZ	X						
KURTZ	X						ZIA	X						
TIBBITT, PRESIDENT													X	
X-Indicates Vote    NV-Not Voting    AB-Absent    MOT-Motion    SEC-Second														

This is a Certified True copy of the Original Resolution on file in the City Clerk's Office.

DATE OF ADOPTION: DECEMBER 21, 2021

/s/ Paula Geletei, City Clerk

**THIS AGREEMENT** made and entered into by and between the **CITY OF ATLANTIC CITY**, a municipal corporation of the State of New Jersey, herein referred to as "**CITY**" located at 1301 Bacharach Boulevard, Atlantic City, New Jersey 08401, and **WALTERS MARINE CONSTRUCTION, INC.**, with offices at 414 Woodbine Ocean View Road, Oceanview, New Jersey 08230, hereinafter referred to as the "**CONTRACTOR**".

**WITNESSETH**

**WHEREAS**, the City is desirous of securing the professional services of a Construction firm for the **REPLACEMENT OF DEFECTIVE TIDE CHECK VALVES AND INSTALLATION OF NEW TIDE CHECK VALVES AT VARIOUS NEIGHBORHOODS IN THE CITY.**

**WHEREAS**, the Contractor is ready, willing and able to undertake such service and provide the City with engineering services.

**WHEREAS**, the City believes the Contractor to be well able to undertake and perform such services for the City and desires to contract with Contractor 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  
SCOPE OF SERVICES**

Contractor shall provide professional services for professional engineering services as more fully set forth in the attached proposal.

**SECTION TWO  
CONTRACT PRICE**

The City shall pay to the Contractor, and the Contractor 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 a total sum not to exceed **THREE HUNDRED NINETY THOUSAND DOLLARS (\$390,000.00)**.

**SECTION THREE  
CONTRACT PERIOD**

The contract shall be for a period of **150 CALENDAR DAYS** commencing upon notification by the City.

**SECTION FOUR  
CONTRACT DOCUMENTS**

The contract documents which comprise the contract between **CITY** and **CONTRACTOR** are as follows:

- a. This agreement
- b. Form of Advertisement, Notice to Contractors, Proposal Form, Specifications and Addenda, approved and adopted by the Council of the **CITY** and the bid or proposal of the **CONTRACTOR** received and publicly opened and read at a meeting of the Purchasing Board, covering the items set forth in this Agreement, all of which documents are attached hereto and on file in the Office of the City Clerk of the **CITY**, and are hereby made a part of this Agreement as though each were set forth verbatim herein.
- c. Any work required by one or more of said documents and not by the other shall be performed as if required by both. Any requirements pursuant to this Agreement or specifications in conflict with the Bid Proposal shall be governed by this agreement and specifications.
- d. Contractor shall be required to comply with City Ordinance No. 44 of 2014 and specifically subsections (a) and (b) of Article 1 establishing a first source

employment linkage program to facilitate and encourage private sector employment opportunities for Atlantic City residents.

- e. If there is any conflict between the terms and conditions of the specifications and the vendor's proposal, specifications control.
- f. Specifications and bid documents drafted by the Contractors shall include terms requiring bidders to make every effort to give preference when hiring sub-contractors, labors or other professionals to local Atlantic City residents and business to the extent allowable by law.

#### **SECTION FIVE PAYMENT METHOD**

Payment to Contractor shall be made upon submission of monthly status reports as to percentage of completion and invoices for payment to the Business Administrator and approval of the same by the Business Administrator upon completion of the services to be provided. 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 SIX STATUS OF CONTRACTOR**

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

#### **SECTION SEVEN 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 Contractor shall be in full satisfaction of all claims against the City under this Agreement.

**SECTION EIGHT  
CERTIFICATE OF COMPLIANCE**

Contractor 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 NINE  
ASSIGNMENT**

Contractor cannot assign its rights or obligations under this Agreement without the prior written consent of the **CITY**.

**SECTION TEN  
CONFLICT OF INTEREST**

The Contractor 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 Contractor further covenants that in the performance of this Agreement no person having any such interest shall knowingly be employed by the Contractor or its subcontractors.

**SECTION ELEVEN  
COMPLIANCE**

The Contractor/Contractor, at all times, will observe and comply with all Federal State and

Local laws ordinances and regulations in any manner affecting the conduct of the work under this Agreement.

**SECTION TWELVE  
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 THIRTEEN  
FULL AGREEMENT**

This agreement constitutes the entire agreement between the parties and any prior understandings or representation of any kind preceding the date of this agreement shall not be binding on either party except to the extent incorporated in this agreement.

**SECTION FOURTEEN  
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. All actions, whether sounding in contract or tort, relating to the validity, construction, interpretation or enforcement of this Agreement shall be instituted in the courts of New Jersey and in the County of Atlantic and in no other.

**SECTION FIFTEEN  
INDEMNIFICATION**

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

Contractor's breach of this agreement or the inadequate or improper performance of this Agreement by Contractor or its subcontractors, servants or employees.

## **SECTION SIXTEEN INSURANCE**

Before commencing work, and as a condition precedent for payment, the Contractor 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 Contractor'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 Contractor or any of its officers, agents, subcontractors, employees, or 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 work, be deemed a waiver by the City of the Contractor'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 Contractor will defend and indemnify the City at the Contractor's expense.

The Contractor must obtain the required insurance with the carrier rated A-VIII or better by A. M. Best. In the event the Contractor subcontracts any part of this project, these insurance requirements must apply to all subcontractors.

The Contractor shall maintain at least the limits of liability as set forth below:

***Commercial General Liability Insurance***

\$1,000,000.00 Each Occurrence (Bodily Injury and Property Damage)

\$2,000,000.00 General Aggregate

\$2,000,000.00 Products/Completed Operations Aggregate

\$1,000,000.00 Personal and Advertising Injury

Contractual liability that will respond to Indemnification shall be included in the policy. The General Liability and Umbrella/Excess Liability policy Aggregate Limits shall apply separately to the project/location as defined in Section One, Scope of Services. As an alternative, the Contractor may provide Commercial General Liability Insurance with no aggregate.

***Comprehensive Automobile Liability Insurance***

\$ 1,000,000.00 Combined Single Limit Bodily Injury and Property Damage. Coverage must include all owned, non-owned and hired vehicles used by the Contractor.

***Umbrella Liability Insurance***

\$ 4,000,000 per Occurrence

\$ 4,000,000 Aggregate.

Policy to apply excess of General Liability, Automobile Liability and Coverage B.

***Workers' Compensation and Employers' Liability Insurance***

\$ 500,000.00 Each Accident

\$ 500,000.00 Each Employee for Injury by Disease

\$ 500,000.00 Aggregate for Injury by Disease

If the Contractor 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 law.

***Professional Liability Insurance***

\$ 1,000,000 Each Claim

\$ 3,000,000 Aggregate

Contractor must confirm that the full limits are available, and they have not been reduced by other claims. In the event the Professional Liability coverage is written on a Claims-Made basis, Contractor warrants that the policy retroactive date precedes the date of this contract and that either continuous coverage or an extended discovery period of 2 years will be maintained from the date this contract is completed.

***Other Conditions***

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 Contractor's Commercial General Liability Policy, Business Auto Liability and Excess Policy all of which must be primary and noncontributory with respect to the Additional Insureds.

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, noncontributory and not co-primary in relation to the coverage (s) procured by the Contractor, any of its Contractor's, 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 operations of statute, government regulation or applicable case law.

A Waiver of Subrogation clause shall be added to the General Liability, Excess Liability, Automobile Liability and Professional Liability 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 Contractor's Worker's Compensation policy if allowed by state law. 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.

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

In any and all claims against the Additional Insureds by any employee of the Contractor, anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor 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 Contractor under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

The Contractor shall maintain in effect all insurance coverages required under this Agreement at the Contractor's sole expense and with a carrier(s) rated A-VIII or better by A. M. Best. In the event the Contractor 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 Contractor, or, in the alternative, terminate this Agreement. In the event the coverage is cancelled or non-renewed, the insurance carrier(s) will provide 30 days advance notice of the cancellation or non-renewal.

**SECTION SEVENTEEN  
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 EIGHTEEN  
BINDING**

This agreement shall be binding upon the heirs, assigns, and/or successors in right, title or interest of the parties to the Agreement.

**SECTION NINETEEN  
CAPTIONS**

All captions in this agreement are for convenience only. They should not be deemed part of this agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof.

**SECTION TWENTY  
POLITICAL CONTRIBUTION DISCLOSURE**

This contract has been awarded to **WALTERS MARINE CONSTRUCTIONM INC.**, based on the merits and abilities of **WALTERS MARINE CONSTRUCTION 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 **WALTERS MARINE CONSTRUCTION INC.**, their subsidiaries, assigns or principals controlling in excess of 10% of the company have neither made a contribution, that is reportable 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 a reportable contribution during the term of the contract to any political party committee in the City Of Atlantic City if a member of that political party is serving in an elective public office of the City Of Atlantic City when the contract is awarded, or to any candidate committee of any person serving in an elective public office of the City Of Atlantic City when the contract is awarded. The vendor must comply with “Local Unit Pay-to-Play Law” (P.L. 2004, c.19, as amended by P.L. 2005, c. 51) and City of Atlantic Ordinance No. 11 of 2011 establishing that business entity which makes political contributions to municipal candidates and municipal and county political parties in excess of certain thresholds shall be limited in its ability to receive public contracts from the City of Atlantic City.

**SECTION TWENTY-ONE  
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. 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.

**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 Contractor 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:**

**CITY OF ATLANTIC CITY**

Paula Geletei  
Paula Geletei, City Clerk

BY: Marty Small, Sr.  
Marty Small, Sr., Mayor

DATE: 1/5/22

**WITNESS**

**WALTERS MARINE CONSTRUCTION INC.**

David E. Southard  
David E. Southard  
Secretary

BY: William E. Walters Jr.  
William E. Walters Jr. President  
President

The within Agreement approved as to form and execution.

DATE: 1/14/2022

BY: Matthew D. Sykes  
Matthew D. Sykes  
Assistant City Solicitor