

RESOLUTION NO. 2021- 51

A RESOLUTION AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH MARATHON ENGINEERING & ENVIRONMENTAL SERVICES INC., ATLANTIC CITY, NJ FOR BURNS AVENUE PIPE CROSSING PERMITTING.

WHEREAS, the City Council of the City of Vineland has adopted Resolution No. 2020-66, a Resolution pre-qualifying certain firms to submit proposals for as needed Environmental Consulting Services; and

WHEREAS, the City of Vineland requested a proposals and received two (2) responses for Burns Avenue Pipe Crossing Permitting; and

WHEREAS, the City Engineer has recommended that a contract for the required services be awarded to Marathon Engineering & Environmental Services Inc., Atlantic City, NJ, based upon the proposal received, pursuant to a fair and open process; and

WHEREAS this contract is awarded in an amount not to exceed \$22,900.00; and

WHEREAS, the availability of funds for said Professional Services Contract to be awarded herein have been certified by the Chief Financial Officer; and

WHEREAS, the Local Public Contract Law (N.J.S.A. 40A:11-1, et seq) requires that the Resolution authorizing the award of contract for Professional Services without competitive bidding and the contract itself must be available for public inspection.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Vineland that said contract for Professional Services for Burns Avenue Pipe Crossing Permitting be awarded to Marathon Engineering & Environmental Services Inc., Atlantic City, NJ, based upon the proposal received, pursuant to a fair and open process, in the amount not to exceed \$22,900.00.

Adopted:

President of Council

ATTEST:

City Clerk

19-009

**REQUEST FOR RESOLUTION FOR CONTRACT AWARDS
UNDER 40A:11-5 EXCEPTIONS
(PROFESSIONAL SERVICES, EUS, SOFTWARE MAINTENANCE, ETC)**

1/13/21

(DATE)

1. Service (detailed description): Burns Avenue Pipe Crossing Permitting

2. Amount to be Awarded: \$ 22,900.00

- Encumber Total Award
- Encumber by Supplemental Release

3. Amount Budgeted: \$ _____

4. Budgeted: By Ordinance No. 2017-54
Or Grant: Title & Year _____

5. **Account Number to be Charged: c-04-00-000-1754-78631

6. Contract Period: 1 year

7. Date To Be Awarded: _____

8. Recommended Vendor and Address: Marathon Engineering & Environmental Servi
Contract # ~~2019-51~~ 20-0046
From Cov RFP #2019-51 3 Killdeer Court, Suite 302, Swedesboro, NJ 0

9. Justification for Vendor Recommendation:(attach additional information for Council review)
City Engineer solicited three quotes, receiving two. Marathon is the higher cost
of the two proposers, but appears to have better history with this type of
environmental permitting as well as a more detailed understanding of the scope
of work.

- Non-Fair & Open (Pay-to-Play documents required)
- Fair & Open: How was RFP advertised? Local Paper + Website

10. Evaluation Performed by: David J. Maillet, P.E.

11. Approved by: [Signature]
David J. Maillet, P.E.

12. Attachments:
 Awarding Proposal
 Other: _____

- Send copies to:
Purchasing Division
Business Administration

** If more than one account #, provide break down





MARATHON

Engineering & Environmental Services
WWW.MARATHONCONSULTANTS.COM

November 13, 2020

PRO #20-365

via electronic mail

**City of Vineland
Purchasing Department
Attn: Miguel Mercado, Q.P.A., Purchasing Agent
640 E. Wood Street
Vineland, New Jersey 08362-1508**

**RE: Proposal for Burns Avenue Pipe Crossing Permitting
Burns Avenue between South West Boulevard and South Main Road
City of Vineland, Cumberland County, New Jersey**

Dear Mr. Mercado:

Marathon Engineering & Environmental Services, Inc. ("Marathon") is pleased to present this proposal for professional consulting services associated with the above referenced project. In accordance with the City's Request for Quotation dated November 5, 2020, this proposal includes services required to apply to the New Jersey Department of Environmental Protection ("NJDEP") for a Freshwater Wetlands General Permit and Flood Hazard Area Individual Permit for proposed pavement and safety improvements along Burns Avenue, between South West Boulevard and South Main Road. The segment of roadway to be improved is approximately 2,500 linear feet.

The City has identified the need to reconstruct and enlarge one (1) 18-inch culvert located beneath Burns Avenue. According to the Request for Quotation, the subject culvert conveys surface flow associated with a man-made ditch (headwater of Petticoat Branch). Based on NJDEP's GIS mapping, there are freshwater wetlands located in the vicinity of the subject culvert.

As indicated in the Request for Quotation, the City had a pre-application meeting with the NJDEP, Division of Land Use Regulation ("DLUR") on October 6, 2020. During that meeting, the NJDEP advised that the project most likely requires a permit under the Freshwater Wetlands program (N.J.A.C. 7:7A), either a General Permit or an Individual Permit, and a Flood Hazard Area Individual Permit (N.J.A.C. 7:13). The determination as to whether the project requires a General Permit or an Individual Permit under the Freshwater Wetlands program depends on the results of the wetlands field delineation, which is included in the scope of this proposal.

The following Scope of Services is based on the City's Request for Quotation, the roadway improvement plan set prepared by the City Engineer (dated September 25, 2020), and Marathon's experience with the applicable environmental regulations. Marathon has experience with similar roadway improvement projects that also required permits from the DLUR. Our most recent relevant experience involved the reconstruction of Indian Cabin Road in Mullica Township, Atlantic County, which also involved reconstruction of several culverts and required Freshwater Wetlands General Permit 10A and Flood Hazard Area Individual Permit.

SCOPE OF SERVICES

Task 1: Wetlands/Waters Delineation

For the purpose of this task, the study area is defined as Burns Avenue, between South West Boulevard and Main Road, and adjacent land within 50 feet of the existing edge of pavement of Burns Avenue.

Marathon will perform a field evaluation to determine the extent of regulated wetlands and waters within the study area, as regulated under the New Jersey Freshwater Wetlands Protection Act of 1987. We will delineate the extent of wetlands by applying methods presented in the *Federal Manual for Identifying and Delineating Jurisdictional Wetlands* (1989), in accordance with the NJDEP regulations. We will mark the extent of the upper wetland boundary limit with survey ribbon and/or stakes.

Task 2: Wetlands & Limited Topographic Survey

Marathon's Survey Department will survey the wetlands/waters boundary markers to be set under Task 1 of this proposal. We will perform a limited topographic survey of the existing culvert location, including five (5) roadway cross-sections at the following stations: 5+00, 5+50, 6+00, 6+50, and 7+00. The roadway cross-sections will extend 30 feet beyond the existing edge of pavement on both sides of the road.

Physical features to be mapped include: curb lines, roads, fences, tree rows, buildings, structures, utility poles, light posts, paths & earthen roads, retaining walls, visible drainage structures with invert elevations and pipe type and size, visible sanitary manholes with invert elevations and pipe type and size, visible fire hydrants, water valves, gas valves, visible electric, telephone and cable boxes, and any existing visible utility mark outs.

The horizontal datum will be based on the New Jersey State Plane Coordinate System NAD 83 and the vertical datum will be based on NAVD 1988 using GPS observations.

Task 3: Culvert Engineering Analysis

Marathon will prepare engineering (hydrologic and hydraulic) calculations to address the NJDEP's requirements for reconstruction of a culvert set forth in the New Jersey Flood Hazard Area Control Act Rules (N.J.A.C. 7:13-12.7). Based on the engineering calculations, Marathon will advise of the appropriate culvert type and size. Marathon will prepare a report with exhibits to summarize the engineering analysis.

Based on the roadway improvement plans prepared by the City Engineer, it appears that the proposed culvert will not be classified as a dam that is regulated under the NJDEP Dam Safety Standards (N.J.A.C. 7:20). As such, this proposal does not include engineering or permitting services that are required for the construction/reconstruction of a regulated dam. If the design of the project should change such that the proposed structure qualifies as a regulated dam, then Marathon can provide a supplemental proposal for the required additional services.

Task 4: Application for DLUR Permits

It is anticipated that the project requires a Flood Hazard Area Individual Permit and a Freshwater Wetlands General Permit.

4.1 Permit Plans

Marathon will prepare a set of permit plans to accompany the application to the NJDEP, Division of Land Use Regulation. The permit plans will depict the following:

- Existing conditions taken from the existing roadway improvement plans prepared by the City Engineer and the supplemental survey information collected under Task 2 of this proposal. Existing conditions to be shown include the following:
 - limited topography;
 - existing lot lines, structures, and land coverage;
 - boundaries of freshwater wetlands, wetlands transition areas, regulated waters, and riparian zone;
- Proposed grading (ground elevations);
- The limit of disturbance associated with the proposed structures and regulated activities;
- Soil erosion and sediment control measures.

4.2 Application

Marathon will prepare and submit an application for a Freshwater Wetlands General Permit and Flood Hazard Area Individual Permit. The application will contain the following:

- Cover letter;

- NJDEP application form;
- Application checklists;
- Application fee (provided by Client);
- Certified list of surrounding property owners;
- Evidence of notification letters (via certified mail) to local and county agencies and adjoining property owners;
- Site location maps, including U.S.G.S. topographic map, municipal tax map, and FEMA Flood Insurance Rate map;
- Color photographs of the site with photo location map;
- Wetlands delineation data sheets;
- Engineering Report (prepared by Marathon under Task 3);
- Environmental Report/Compliance Statement that addresses the project's compliance with the Freshwater Wetlands Protection Act Rules and Flood Hazard Area Control Act Rules;
- Report from the NJDEP, Natural Heritage Program;
- Permit plans (prepared by Marathon under Task 4.1);
- Compact disc containing a PDF copy of the entire application.

It appears that the project does not qualify as "major development," as defined in the New Jersey Stormwater Management Regulations (N.J.A.C. 7:8). Therefore, this proposal does not include the engineering of stormwater management features or the preparation of a Stormwater Management Report. If the need for stormwater management engineering arises, Marathon can provide a supplemental proposal for the required engineering services.

The NJDEP regulations require that approvals/permits be recorded with the county clerk. This proposal does not include document recording services. We recommend that an attorney arrange for the recording of the Flood Hazard Area approval(s).

Task 5: Coordination & Consultation Services

Marathon will coordinate, correspond and attend meetings with the Client, the Client's representatives and consultants, and State review professionals, relating to applicable regulatory matters.

Coordination and consultation services will be invoiced on a Time and Material (T&M) Basis according to the prevailing hourly rates as provided on our Standard Fee Schedule. Note that we will only attend meetings at the request and approval of the Client.

SCHEDULE

Upon receiving Notice to Proceed ("NTP"), Marathon will pursue the completion of the authorized Scope of Services in a diligent manner and in accordance with the City's scheduling needs. We estimate that that the Scope of Services can be completed

within approximately 120 days from NTP. We estimate that Tasks 1 and 2 can be completed within approximately 60 days from NTP. Thereafter, we will endeavor to complete the remaining tasks within approximately 60 days.

FEES

Our fee will be allocated according to the following breakdown, which excludes reimbursable expenses.

Task 1:	Wetlands/Waters Delineation	Lump Sum.....	\$1,800
Task 2:	Wetlands & Limited Topographic Survey	Lump Sum.....	\$5,600
Task 3:	Culvert Engineering Analysis	Lump Sum.....	\$5,500
Task 4:	Application for DLUR Permits		
4.1:	Permit Plans.....	Lump Sum.....	\$3,500
4.2:	Application.....	Lump Sum.....	\$6,500
Task 5:	Coordination & Consultation.....	Time & Materials*	

**Fee Note –The invoiced fee for work specified will be based on the actual hours worked to perform tasks based on hourly rates provided in Marathon’s Standard Annual Fee Schedule (see below).*

Our consulting fee includes normal expenses such as clerical expenses, local travel, parking, tolls, etc. Reimbursable expenses include subconsultants, special equipment, travel outside the region, duplication costs for drawings and reports; cost of advertising and certified mailings associated with the required notification, express mail delivery and any unusual expenses will be billed at cost plus fifteen percent (15%).

Services performed on a Time & Materials basis, or those that are outside the scope of this proposal, will be billed according to the prevailing hourly rates set forth on the following Standard Fee Schedule:

Expert Testimony	\$220/Hour
Principal Engineer (State Licensed PE)	\$195/Hour
Principal Environmental Scientist	\$195/Hour
Principal Planner (State Licensed PP)	\$195/Hour
Principal Surveyor (State Licensed PLS)	\$175/Hour
Two Person Survey Crew.....	\$165/hour
Senior Engineer (State Licensed PE).....	\$155/Hour
Project Engineer (State Licensed PE).....	\$150/Hour
Project Landscape Architect (State Licensed LA)	\$150/Hour
Senior Environmental Scientist	\$150/Hour
Staff Engineer (State Certified FE/FS)	\$135/Hour
Environmental Scientist.....	\$125/Hour
CADD Operator/Technician.....	\$110/Hour
Construction Inspection/Observation	\$ 90/Hour

Administrative Assistant \$ 65/Hour

Marathon will request authorization to proceed from the Client prior to performing work beyond the scope of this proposal.

BILLING AND PAYMENT

Fees will be invoiced monthly on a proportionate basis based on the work completed during that period. Invoices are due upon receipt and payment must be received in full within thirty (30) days of their date. Past due invoices will carry an interest rate of 1.5% per month.

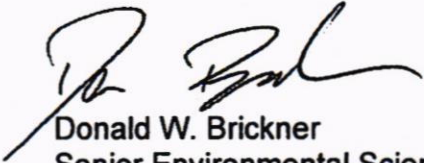
TERMS AND CONDITIONS

1. Marathon's General Terms and Conditions are enclosed and are considered part of this proposal. By the execution of this proposal, the Client indicates that the General Terms and Conditions have been reviewed and are understood.
2. Scope does not include any item not specifically mentioned above.
3. This proposal includes an application for a Freshwater Wetlands General Permit. If the need for a Freshwater Wetlands Individual Permit is discovered, Marathon will provide a supplemental proposal for the required additional services.
4. Based on the roadway improvement plans prepared by the City Engineer, it appears that the proposed culvert will not be classified as a dam that is regulated under the NJDEP Dam Safety Standards (N.J.A.C. 7:20). As such, this proposal does not include engineering or permitting services that are required for the construction/reconstruction of a regulated dam. If the design of the project should change such that the proposed structure qualifies as a regulated dam, then Marathon can provide a supplemental proposal for the required additional services.
5. As specified in the City's Request for Quotation, "any and all revisions required by NJDEP to the City's 'Burns Avenue Pavement & Safety Improvements' plans shall be performed by City staff."

We appreciate the opportunity to offer our services to the City. If this proposal is acceptable, please sign one copy and return it to our office as our Notice to Proceed.

Sincerely,

Marathon Engineering & Environmental Services, Inc.



Donald W. Brickner
Senior Environmental Scientist



Rick Ricciardi, P.P., A.I.C.P.
President

Enclosure

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PRO #20-365

ACCEPTED BY:

Signature of authorized representative

Date

Print or Type Name and Title of authorized representative

Accounting/Invoice Contact Name and e-mail address

**MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC.
GENERAL TERMS AND CONDITIONS**

1. **Time of Acceptance.** This Proposal is offered with the presumption that authorization to proceed will be issued within thirty (30) calendar days. As such, this Proposal will remain in effect and may be accepted for thirty (30) calendar days from this date. If a signed agreement is not consummated within this time frame, Marathon reserves the right to revoke or revise the Proposal including the fees and schedule quoted herein. If the Proposal is submitted to the Client and the Client fails to return a signed copy of the Proposal but knowingly allows Marathon to proceed with the services, then Client shall be deemed to have accepted the terms of the Proposal and these General Terms & Conditions. Once accepted, the General Terms & Conditions and this Proposal shall collectively constitute the "Agreement".
2. **Entire Agreement.** If there is a conflict or inconsistency between any express term or condition in the Proposal and these General Terms & Conditions, the Proposal shall take precedent. The Proposal and these General Terms & Conditions, including any attachments thereto, represent the entire agreement and understanding between the Parties regarding the subject matter hereof and supersedes any and all prior and contemporaneous proposals, agreements, representations, understandings and negotiations between the Parties hereto, whether oral or written, with respect to the subject matter hereof.
3. **Term.** This Agreement shall be effective from the date of execution hereof and shall continue until completion of performance of all services required to be performed hereunder, unless terminated earlier pursuant to Section 4 hereof.
4. **Termination.** (i) *By Client.* Client shall have the right to terminate this Agreement without penalty upon delivery of written notice of such termination to Marathon. Upon receipt of such notice, Marathon shall promptly discontinue its performance of services as is reasonably possible and shall attempt to minimize further charges to Client. Client shall remain obligated to compensate Marathon for services performed and expenses incurred in accordance with this Agreement. (ii) *By Marathon.* Marathon shall have the right to terminate this Agreement without penalty upon delivery of written notice of such termination to Client, without prejudice to any other rights or remedies that Marathon may have, in the event that Client shall fail to perform substantially in accordance with the terms of this Agreement through no fault of Marathon, and Client shall fail to correct such default within such ten (10) day period. Client shall remain obligated to compensate Marathon for services performed and expenses incurred in accordance with this Agreement.
5. **Adjustment of Fees.** If work pursuant to the Agreement progresses beyond the conclusion of the calendar year in which the Agreement was entered into (December 31st of the calendar year), Marathon reserves the right to increase its fees thereafter based on its annual updated fee schedule. Further, when Marathon is asked to perform services based on information provided by the Client, Marathon will quote a fee to check or verify the information provided. If the Client accepts the additional fee request, Marathon will then assume responsibility for work based on the information provided. If the Client declines to pay Marathon the additional fee for verifying the information provided, the Client agrees to indemnify Marathon against fees and other costs of defense arising out of Marathon's reliance on information provided by the Client.

6. Invoicing and Payment. Invoices are due upon receipt and payment must be received in full within thirty (30) days of their date. Past due invoices will carry an interest rate of 1.5% per month. If Client is more than one party, Client shall be jointly and severally liable for all outstanding invoices.
7. Suspension for Non-Payment. Unless Marathon receives a written notice of Client's dispute of an invoice (including the amount withheld and the reason for doing so) within twenty (20) days of the invoice date and payment by Client of any undisputed amount, then Marathon may suspend services and refuse to release work on this Agreement or any other agreement between Client and Marathon until Client has paid all sums due. If Marathon does not receive written notice of Client's dispute of an invoice within twenty (20) days of the invoice date, it will be presumed correct.
8. Ownership of Documents. All drawings, sketches, reports, surveys, investigations, specifications and other documents ("Documents") in any form, including electronic, prepared by Marathon are instruments of Marathon's services, and as such are and shall remain Marathon's property. Upon payment in accordance with the Agreement, Client shall have the right to use and reproduce the documents solely for the purposes contemplated by the Agreement ("Project"). The Documents are prepared for use on this Project only, and are not be appropriate for use on other projects, any additions or alterations of the Project, or completion of the Project by others. Use of the Documents in violation of this paragraph without the express written consent of Marathon is prohibited and shall be at Client's sole risk. Client agrees to indemnify, defend and hold harmless Marathon from any claims, damages, losses, liabilities and expenses arising from such prohibited uses.
9. Collection/Enforcement. If Marathon turns over for collection or legal action any overdue invoice, Client agrees to pay, in addition to damages and interest as permitted by law, all costs and expenses (including reasonable attorney fees where recovery of same is not prohibited by law). Reasonable attorney fees is defined as either the amount of fifteen percent (15%) of the total unpaid balance due or the attorneys' fees actually incurred by Marathon, which election shall be made by Marathon at the time of collection and/or judgment. Client also specifically agrees to pay Marathon's reasonable attorney's fees and costs incurred in collecting or satisfying any judgment that may be recovered by Marathon.
10. Reservation of Rights and Remedies. No right or remedy herein conferred upon or reserved to Marathon is intended to be exclusive of any other right or remedy provided herein or by law, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity.
11. Insurance. Marathon will maintain its own Workman's Compensation, General Liability, and Professional Liability Insurance coverage.
12. Limitation of Liability. Client and Marathon have considered the risks and rewards associated with the Agreement, as well as Marathon's total fee for services. Notwithstanding any other provision of this Agreement to the contrary, Client agrees that Marathon's liability (including the liability of its officers, directors, employees, agents, subcontractors, and consultants) to Client, except to the extent losses are covered by proceeds of any insurance provided pursuant to Section 11 hereof, arising out of or related to Marathon's performance of services under this Agreement, whether based in contract (including breach of warranty), tort (including negligence, whether of Marathon or others), strict liability or otherwise, shall not exceed in the aggregate the greater of: (i) \$50,000.00 or

- (ii) the total fees paid to Marathon for services performed under this Agreement. In no event shall Marathon be liable in contract, tort or otherwise, to Client for any losses, delayed or diminished profits, revenues or opportunities, losses by reason of shutdown or inability to utilize or complete the project, or any other incidental, special, indirect or consequential damages of any kind or nature whatsoever resulting from Marathon's performance or failure to perform services under this Agreement. No deductions shall be made from Marathon's compensation due to any claim by the Client or others not a party to this Agreement. The provisions of this Section 12 shall survive the expiration or termination of the Agreement.
13. Delays. Marathon cannot be responsible for delays due to force majeure, acts of God and governmental or regulatory agencies or bodies.
14. Approvals. Marathon does not represent or warrant that any permit, license or approval will be issued by any governmental or regulatory agency or body. Marathon will endeavor to prepare applications for such permits, licenses, or approvals in conformity with the applicable requirements; but, in view of the complexity of and the frequent changes in applicable rules and regulations and interpretations by the applicable governmental or regulatory agency or body or its personnel, Marathon cannot guarantee that any such application will be considered complete or will conform to all applicable requirements or will be approved or will be approved at a certain time or within a certain time period. Marathon's fees are due and payable regardless of ultimate approval.
15. Warranty of Performance. Marathon shall exercise that degree of care or skill ordinarily exercised under similar circumstances by members of its profession performing the types of services as those to be performed by Marathon under the Agreement. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED. This Agreement is solely for the benefit of the Client and its successors. There is no third-party beneficiary to this Agreement.
16. Witness Fee. In the event that Marathon is served with a subpoena or is otherwise required by issuance of any order, rule or decision to attend a deposition, arbitration or other judicial or administrative proceeding, and give testimony or produce documents regarding any matter related to the project and/or services performed under this Agreement, Client understands and agrees that Marathon shall be compensated for the actual hours expended at such proceeding and in preparation therefor and in travel to and from such proceeding, and document reproduction costs and administrative costs. This Section shall survive the expiration or termination of this Agreement.
17. Modifications and Waiver. This Agreement may be modified or amended only by a writing signed by the Parties hereto and explicitly referencing this Agreement. A failure or delay of any party to this Agreement to enforce any of the provisions hereof or to require performance of any provision hereof shall in no way be construed to be a waiver of such provisions.
18. Severability. If any provision or provisions contained herein shall contravene or be invalid under applicable law, such contravention or invalidity shall not invalidate the whole Agreement, but the Agreement shall be construed as not containing the particular provision or provisions held to be invalid and the rights and obligations of the Parties shall be construed and enforced accordingly.
19. Governing Law. This Agreement shall be construed by the laws of the State in which the real property that is the subject of this Agreement is located.