

RESOLUTION NO. 2024-317

A RESOLUTION AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, ATLANTIC CITY, NJ TO PROVIDE ADDITIONAL ENVIRONMENTAL TESTING AT PROPERTY LOCATED AT 860 N. ORCHARD ROAD, IN AN AMOUNT NOT TO EXCEED \$51,000.00.

WHEREAS, the City Council of the City of Vineland has adopted Resolution No. 2023-630, a Resolution pre-qualifying certain firms to submit proposals for as needed Environmental Consulting Services; and

WHEREAS, currently pending before City Council of the City of Vineland is an Agreement of Sale to purchase 860 N. Orchard Road;

WHEREAS, the Agreement provides a due diligence period for the City to perform certain environmental testing; and

WHEREAS, previous environmental testing suggested some environmental concerns with the Property; and

WHEREAS, Marathon Engineering & Environmental Services, Atlantic City, NJ has submitted the attached proposal for additional environmental testing to further investigate the environmental concerns with the Property during the due diligence period; and

WHEREAS, it is in the public interest to have the additional environmental testing performed prior to taking title to the Property; and

WHEREAS, the Director of Economic Development has recommended that a contract for the required services be awarded to Marathon Engineering & Environmental Services, Atlantic City, NJ, in the amount not to exceed \$51,000.00, in accordance with Professional Services Contract No. C24-0040 and Marathon’s proposal dated June 12, 2024, pursuant to a fair and open process; 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 the statements of the preamble, hereinabove, are incorporated herein as though fully set forth herein.

BE IT FURTHER RESOLVED the attached proposal from Marathon Engineering & Environmental Services Redevelopment Agreement for additional environmental testing is hereby along with the expenditure of funds necessary to conduct the additional testing;

BE IT FURTHER RESOLVED that said contract for Professional Environmental Services for additional environmental testing at property located at 860 N. Orchard Road, is hereby awarded to Marathon Engineering & Environmental Services, Atlantic City, NJ, is hereby authorized, in accordance with Professional Services Contract No. C24-0040 and in accordance with the proposal dated June 12, 2024, pursuant to a fair and open process, in an amount not to exceed \$51,000.00.

BE IT FURTHER RESOLVED that the Mayor of the City of Vineland is authorized to execute the Proposal in the form and substance attached hereto and made a part hereof.

Adopted: July 23, 2024

President of Council eaa

ATTEST:

City Clerk kp



February 23, 2024
June 12, 2024, amended

PRO #23-197

Sandy Forosisky,
Director of Economic & Community Development
City of Vinland
640 E. Wood Street, PO Box 1508
Vinland, NJ 08362-1508

**Re: Remedial Investigation Activities
Former NJDHS Vinland Development Center -
West Campus**
860 N. Orchard Road
Block 2101, Lot 53
Vinland, Cumberland Co, NJ
NJDEP PI #781203

Dear Ms. Forosisky:

In connection with the findings detailed in the *Preliminary Assessment/ Site Investigation Report* (April 2022) prepared for the above referenced site, and based upon our most recent discussions, Marathon Engineering & Environmental Services, Inc. (Marathon) has amended the 'original' (February 23, 2024) cost proposal to now include:

- The following two areas of concern (AOCs)/ underground storage tanks (USTs) that were being addressed by TTI Environmental for the current property owner (State of New Jersey): one 8,000-gallon Medium Diesel Fuel UST (AOC-2B); and 4,000-gallon ~~Unleaded Gasoline~~ #2 Heating Oil UST (AOC-2D), inclusive of the groundwater impacts (i.e., Arsenic, Chromium, and Lead) detected in TWP-6 installed in this area.
- The two former 20,000-gallon #6 Heating Oil USTs, reportedly removed in 1999, along with the discharge case (#99-08-12-1015-06) for soil contamination identified during the closure.
- Additional sampling for the Abandoned Septic Tank, West of Plumbing Shop (AOC-6) and the Petroleum Drum Storage/ Staining, S Street Garage (AOC-3D) to account for the State's 'new' soil remediation standard (SRS) for Lead, which was amended on March 26, 2024. The new more stringent standard is now 200 ppm for the residential pathway, in lieu of the 'old' 400 ppm standard.

For clarity, the 'original' (February 23, 2024) cost proposal was limited to the following AOCs:

AOC-6: Abandoned Septic Tank, West of Plumbing Shop; where soil samples collected from this area revealed concentrations of Arsenic exceeding the State's Residential Ingestion Dermal and Migration to Groundwater (MGW) standards; and Lead and Mercury concentrations exceeding the MGW standards.

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Also, the following contaminants were detected in a temporary well (TWP-4) installed for this AOC at concentrations exceeding the State's Groundwater Quality Standards (GWQS): Aluminum, Arsenic, Benzo[a]anthracene, Iron, Lead, Manganese, and 2-Methylnaphthalene. In connection with the detection of the select metals noted, Marathon reviewed NJDEP's *Frequently Asked Questions for the Impact to Ground Water Pathway in Soil Remediation Standard*. The guidance provided in this document notes that 'the GWQS for Aluminum, Manganese, Silver and Zinc are secondary, that is they are not based on health considerations, but primarily on aesthetic considerations such as taste, odor and appearance. Additionally, these elements may be found as background contaminants.' Therefore, they do not need to be addressed unless there is cause to believe that their presence is due to a site discharge. 'The same holds true for contaminants such as Sodium and Iron'.

AOC-11B: HAP, Northern Area; where soil samples collected from this area revealed concentrations of Lead exceeding the State's Residential Ingestion Dermal and MGW standards. It is noted, however, that the sample locations demonstrating the elevated Lead concentrations were collected from an area also identified as historic fill material (North Gravel Pit) - AOC-7A. Based upon the lack of other historically applied pesticide (HAP) parameters (Arsenic and pesticides) in the samples, the Lead is more likely attributable to the historic fill (HF) than HAP.

SCOPE OF SERVICES

This scope of services is based upon Marathon's knowledge of the Subject Property, along with the State's Administrative Requirements for the Remediation of Contaminated Sites (NJAC 7:26C et seq.); Technical Requirements for Site Remediation (NJAC 7:26E et seq.); UST Regulations (NJAC 7:14B et seq.); and associated NJDEP guidance. This proposal assumes that no remediation work (i.e., cleanup) will be required as a result of the remedial investigation (RI) tasks proposed herein; and that the contaminant issues can be administratively addressed via the methods provided for in NJDEP's *Technical Guidance for the Attainment of Remediation Standards and Site-Specific Criteria*. Conversely, if the contaminant issues cannot be addressed administratively, then additional remediation work will be required.

Task 1: LSRP Services

Pursuant to the NJDEP Site Remediation Reform Act, NJAC 58:10C (SRRRA), such activities must proceed under the supervision of a State Licensed Site Remediation Professional (LSRP). The LSRP will certify that the work was performed, managed, or supervised by the LSRP, the work is the basis of the submission, and that the work and the submitted documents are consistent with all applicable remediation requirements. All subsequent tasks will be completed under the oversight and guidance of an LSRP; and all submittals to the NJDEP will be certified by an LSRP.

Task 2: Geophysical Survey

A geophysical survey of the subsurface conditions at the Subject Property in the areas of interest will first be conducted in an effort to accurately locate any other underground tanks and/or product piping that may exist. The survey will also be utilized as a private 'utility' mark-out in an effort to more accurately locate any utilities that may be located within the designated work areas.

To accomplish this task, it is envisioned that three instruments will be used. First, an electromagnetic (EM) survey will be conducted over the area, followed by a ground penetrating radar (GPR) survey at selected locations throughout the site. These instruments are highly sensitive to the presence of buried metal and non-metal objects, and anomalous subsurface

conditions. In addition, a sitewide radiofrequency (RF) survey will be conducted as it is more sensitive to buried electric lines, telecommunication lines, and charged lines.

It is noted that the successful completion of this task is dependent upon the property owner/ tenant to remove and relocate (off-site) all vehicles and temporarily stored items that could impede full access to the Subject Property and could cause interference with the instrumentation.

Task 3: Sampling Activities

Soils: As detailed below, the proposed soil sampling will be limited in scope to those items deemed necessary to both re-assess contaminant impacts previously identified and to delineate the impacts as required. Assuming the soils to be collected are 'clean' or that the contaminant concentrations are 'reasonably low', it is believed that the data will be used to administratively address the soil issues in the subject AOCs. If this is not the case, then additional work may be required.

To complete the proposed soil sampling at the Subject Property, Marathon will work with its subcontractor to advance up to ±47 borings to the prescribed depths utilizing the services of a geoprobe unit. The soils generated from the borings will be continuously screened in the field using a photo-ionization detector (PID) where applicable to bias sample collection from the most impacted depth intervals (if encountered), after which the affected areas will be repaired in-kind.

For the abandoned septic tank area (AOC-6) located to the west of the plumbing shop, the following sample locations/ depths/ analyses are proposed:

Sample(s)	Depths (ft)	Analysis	Day
B8 & B9	0-2, 5, 10, 20 & 25	As (total)	1
B10, P1 – P5	tbd (1 sample each)	As (total) Pb (total, SPLP pending)	2-3
B10	8.5-9	Hg (total & SPLP)	2-3
B11	3.5-4	Pb (total & SPLP)	1

For the historically applied pesticide (HAP) / historic fill (HF) area (AOC-11B) located on the northern portion of the site.

Sample(s)	Depths (ft)	Analysis	Day
HAP6 & HAP7	5, 10, 15, 20 & 25	Pb (total, SPLP pending)	1
HF1, HF2 & HF3	tbd (1 sample each)	Pb (total, SPLP pending)	2-3
P6 - P15	tbd (1 sample each)	Pb (total, SPLP pending)	2-3

For the two 20,000-gallon #6 Heating Oil USTs (AOC-2A), located just south of the Boiler House; noting that data from the previous samples (B12 – B14) collected from this area will be re-assessed and utilized (if applicable) to possibly reduce the proposed scope.

Sample(s)	Depths (ft)	Analysis	Day
P16 – P29	15 (tbd, based upon PID)	EPH (CAT II Contingent)	tbd

For the one 8,000-gallon Medium Diesel Fuel UST (AOC-2B), located just north of the Boiler House; noting that data from the previous sample (B18) collected from this area will be re-assessed and utilized (if applicable) to possibly reduce the proposed scope.

Sample(s)	Depths (ft)	Analysis	Day
P30 – P33	15 (tbd, based upon PID)	EPH (CAT I)	tbd

For the one 4,000-gallon ~~Unleaded Gasoline #2~~ Heating Oil UST (AOC-2D), located just northeast of the Boiler House; noting that data from the previous samples (B16, B17 & B19) collected from this area will be re-assessed and utilized (if applicable) to possibly reduce the proposed scope

Sample(s)	Depths (ft)	Analysis	Day
P34 – P37	15 (tbd, based upon PID)	EPH (CAT I)	tbd

For the purpose of this proposal, it is assumed that up to 55 soil samples total will be collected from the borings noted in the tables above; and that this work will be completed over four (4) 8-hour workdays. The samples will then be delivered to a State certified laboratory where they will be analyzed for the location-specific parameters noted; unless current field conditions indicate otherwise. The total cost will be adjusted for 'contingent' samples collected, placed on 'hold' for potential use but not analyzed; and other lab-related charges. If additional samples and/or analyses are required, the cost will be considered an extra and invoiced as such.

Groundwater: As detailed below, the proposed groundwater sampling will be limited in scope to those items deemed necessary to re-assess contaminant impacts previously identified. Assuming the groundwater samples to be collected are 'clean' or that the contaminant concentrations are 'reasonably low', it is believed that the data will be used to close-out the groundwater issue in the two subject AOCs. If this is not the case, then additional work may be required.

Based upon the information provided in the April 2022 Report, Marathon and its subcontractor will use a drill rig to install two shallow (± 40 ft) 'permanent' wells; as groundwater is reported to be at an approximate depth of ± 32 feet. These monitoring wells will be constructed with 2-inch diameter schedule-40 PVC screen and casing, and finished with a steel 'stick-up' manhole/ protector. As for location, one well (MW-1) will be installed in close proximity to the abandoned septic tank/ system (AOC-6), in the immediate area of the former TWP-4; and the other well (MW-2) will be installed in close proximity to the one 8,000-gallon Medium Diesel Fuel UST (AOC-2B) and 4,000-gallon ~~Unleaded Gasoline #2~~ Heating Oil UST (AOC-2D), in the immediate area of the former TWP-6. If it is deemed necessary during the course of work that the drill cuttings and/or purge water be drummed for future off-site disposal, it will be considered extra work and invoiced as such.

After developing the monitoring wells to a turbid free condition (if possible), Marathon will allow them to stabilize for a 2-week period prior to collecting the first round of groundwater samples. For confirmation purposes, Marathon will collect a second round of groundwater samples ± 90 days after the first event. These groundwater samples will then be delivered to a certified laboratory, where they will be analyzed for the previously detected 'classes' of contaminants of concern: semi-volatile organics (SVOs) and select priority pollutant (PP) metals.

Task 4: Monitoring Well Abandonment (if applicable)

Assuming that the groundwater is determined to be 'clean', then Marathon will work with a State Licensed Well Driller (B.Environmental Investigations) to properly abandon the two newly installed monitoring wells (Task 3) and file the required *Monitoring Well Abandonment Report* with NJDEP.

Task 5: Public Notification

Following NJDEP's Public Notification & Outreach Guidance, it is assumed for the purpose of this proposal that Marathon will prepare an informational sign at the Subject Property in lieu of preparing/ mailing notification letters to each property owner/ tenant located within 200 feet. The signs, two (2) in this case, must include contact information for both the person responsible for conducting the remediation (PRCR) and the licensed site remediation professional (LSRP).

Task 6: Reporting & Administrative Tasks

During completion of the work, Marathon will provide required oversight and administrative functions for the subcontracted professionals and owners/occupants of the property. The work also includes preparation of equipment; travel to and from the project site; and cleaning, decontaminating, and recalibrating of sampling/testing equipment. It also includes all items to ensure that the quality assurance/ quality control (QA/QC) requirements for all samples are satisfied and that all NJDEP guidelines for collection, preservation, and transport of samples for analysis are followed as outlined in their *Field Sampling Procedures Manual*.

Upon conclusion of the investigative tasks, Marathon will prepare/submit a summary report detailing the results of the sampling activities and cleanup conducted on-site. This report will detail all work conducted in relation to this phase of the project, including the results of all laboratory analyses and field screenings. The report will clearly and concisely display all pertinent data and information in tables and figures that will assist in the understanding of the investigative findings. Quality assurance and quality control documentation, required by NJDEP, will also be included.

As previously mentioned, the soils data will be used to administratively address the soil issues for the subject AOCs, assuming the soils to be collected are 'clean' or that the contaminant concentrations are 'reasonably low'. This work will involve one of NJDEP's compliance averaging techniques, as outlined in their *Technical Guidance for the Attainment of Remediation Standards and Site-Specific Criteria*.

Also, an electronic data submission (EDS) will be prepared for the sampling data collected if needed by NJDEP. As part of the EDS, the x- and y- coordinates (i.e., latitude and longitude) generated during the survey work will be assigned to each of the parameters reported by the laboratory and all of the data along with other required information pertinent to the project will be appropriately formatted.

Task 7: Response Action Outcome

If supported by the sampling activities and after all requisite NJDEP fees have been paid, Marathon will issue an unrestricted use, area of concern (AOC)-specific Response Action Outcome (RAO) letter for the subject AOCs and/or other previously identified/ investigated AOCs.

Task 8: Meetings, Coordination & Consultation Services

Marathon will coordinate, correspond and attend meetings and conference calls with the Client, the Client's representatives and consultants, contractors, and Municipal/ County/ State review professionals to resolve issues relating to the applicable regulatory matters. Additionally, Marathon will prepare/ submit (at the City's request) a supplemental grant application via NJDEP's Hazardous Discharge Site Remediation Fund (HDSRF) program. The services performed under this task will be invoiced on a Time and Material (T&M) basis according to the prevailing hourly rates as provided in Marathon's Standard Fee Schedule. Note that due to the anticipated work on this task, \$5,000 has been included in the proposal for budgetary purposes.

SCHEDULE

Marathon is prepared to begin work on this project upon receipt of written Notice to Proceed (NTP) and will endeavor to complete the work in accordance with your scheduling needs.

FEES

Marathon proposes to complete this scope of services in accordance with the following lump sum fees.

Task 1 LSRP Services	\$2,500
Task 2: Geophysical Survey	\$4,000
Task 3 Sampling Activities	\$31,750
Task 4 Monitoring Well Abandonment (if applicable).....	\$2,750
Task 5 Public Notification.....	\$1,000
Task 6 Reporting & Administrative Tasks	\$5,000
Task 7 Response Action Outcome.....	\$1,500
Task 8 Meetings, Coordination & Consultation Services.....	<i>time & materials (\$5,000)</i>
Total (Tasks 1 thru 8)	\$51,000

As previously noted, Task 8 will be invoiced on a time & materials; and the \$5,000 is simply included as a place holder for budgetary purposes.

STANDARD FEE SCHEDULE

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/Planning Hearing Testimony	\$220/Hour
Principal/Director of Engineering (State Licensed PE).....	\$220/Hour
Principal/Managing Planner	\$220/Hour
Principal Engineer (State Licensed PE).....	\$200/Hour
Principal Planner (State Licensed PP).....	\$200/Hour
Principal Surveyor (State Licensed PLS).....	\$190/Hour
Principal Environmental Scientist	\$190/Hour
New Jersey LSRP	\$190/Hour
Senior Project Manager/Engineer (State Licensed PE)	\$190/Hour
Project Manager	\$175/Hour
Project Engineer (State Licensed PE)	\$175/Hour
Senior Designer	\$160/Hour
Senior Environmental Scientist	\$160/Hour
Engineer (State Licensed PE)	\$160/Hour
Staff Engineer (State Certified FE/FS)	\$150/Hour
Designer II	\$160/Hour
Designer I	\$145/Hour
Environmental Scientist II.....	\$160/Hour
Environmental Scientist I.....	\$135/Hour
CADD Operator/Technician.....	\$125/Hour
Survey Technician	\$110/Hour
Senior Technician/Construction Inspection.....	\$120/Hour
Technician II	\$120/Hour
Technician I	\$90/Hour
Administrative Assistant	\$80/Hour

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

BILLING AND PAYMENT

Invoices must be paid within 30 days of receipt of invoice. Past due invoices will carry an interest rate of 1.5% per month.

TERMS AND CONDITIONS

Marathon's General Terms and Conditions are enclosed and are considered as part of this proposal. The Client indicates by the execution of this proposal that the General Terms and Conditions have been reviewed and are understood.

SPECIAL CONDITIONS

- The cost provided is not based upon NJ Prevailing Wage Rates, as this will be considered a professional services contract. If this is not the case, and the use of NJ Prevailing Wage Rates is required, the cost of this project will need to be adjusted and agreed upon prior to completing any authorized work activities.
- This proposal assumes that no additional remediation will be necessary. In the event that additional remediation is necessary, Marathon will provide a separate proposal for those services.
- The proposal assumes that no impact to groundwater is observed and/or reported. In the event that further groundwater investigation is warranted, Marathon will provide a separate proposal for those services.
- Unrestricted access to the Subject Property will be provided by client.
- It is assumed that the work area is free of utilities.
- Participation in conference calls and attendance at project meetings will be billed on a time and materials basis.
- In the event that additional remedial investigation, and/or remedial action(s) are warranted based on the results of the included soil / groundwater investigation to demonstrate attainment NJDEP screening levels and/or remediation standards, those services will be presented under separate proposal.
- Responses to NJDEP audits will be billed as out of scope services on a time and materials basis. Marathon will not be held liable for any New Jersey Department of Environmental Protection (NJDEP) Notice of Deficiency (NOD), Notice of Violation (NOV), or related fines in the performance or scheduling of the proposed scope of work.
- Marathon and its subcontractors are not responsible for damage to any utilities that are not marked out by one call or the client.
- Laboratory analysis will be submitted on a standard (2-week) turnaround time.
- Marathon is not responsible for any NJDEP fees.
- This proposal is valid for ninety (90) days, from date of issuance.

We look forward to continuing to work with you on this project. Assuming this proposal is acceptable, please sign the last page and return it as our notice to proceed. If you have any questions, please feel free to contact us.

Sincerely,

Marathon Engineering & Environmental Services, Inc.



Kayleigh Sena, LSRP
Environmental Manager



Henry Weigel, PE, LSRP
Sr. Environmental Engineer

Enclosure

PRO #23-197

ACCEPTED BY:

Authorized Signature for Client and Date

Print Name and Title

**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.