

Sponsored by: Janke

**CITY OF MARATHON, FLORIDA
RESOLUTION 2003-053**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY MANAGER TO AWARD A CONTRACT TO KEYS CONSTRUCTORS, INC. FOR THE RENOVATION PROJECT ON THE DODGE LAKE BOAT RAMP

WHEREAS, The Dodge Lake Boat Ramp renovation project was publicly noticed for bidding;
and

WHEREAS, The bid process closed on February 28, 2003; and

WHEREAS, The responsible and lowest bid came from Keys Constructors, Inc. at \$64,657.65.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:

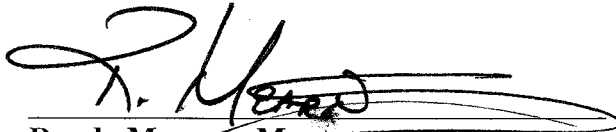
Section 1. The contract for the reconstruction of the Dodge Lake Boat Ramp in Marathon, Florida, is hereby awarded to Keys Constructors, Inc., 10701 6th Avenue Gulf – Marathon, Florida 33050, for the sum of \$64,657.65 and approve the City Manager and City Attorney to negotiate and the Mayor to Sign.

Section 2. Monroe County has an inter-local agreement for Florida Boater Improvement Funds that is earmarked for reimbursement to the City of Marathon for this project. This agreement authorization between the City of Marathon and Monroe County is on the agenda of the next Board of County Commissioners (BOCC) meeting. Funds will need to be appropriated until reimbursement, from the General Fund to the Marina Repair and Maintenance Account 11.575.46.100. Funding from County is 25% matching grant.

Section 3. This Resolution shall be effective immediately upon adoption.

PASSED AND APPROVED by the City Council of the city of Marathon, Florida, this 11th day of March, 2003.

THE CITY OF MARATHON, FLORIDA

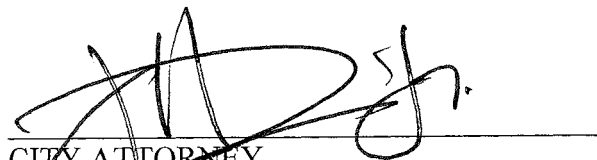

Randy Mearns, Mayor

AYES: Pinkus, Bartus, Worthington, Repetto, Mearns
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:


Cindy L. Ecklund
City Clerk

APPROVED AS TO LEGAL SUFFICIENCY FOR
THE USE AND BENEFIT OF THE CITY OF MARATHON ONLY:


CITY ATTORNEY

CONTRACT FOR
THE CONSTRUCTION
OF THE DODGE LAKE BOAT RAMP

This Contract (the "Contract") dated this 12th day of August, 2003, is made between the City of Marathon, a Florida municipal corporation (the "City"), whose address is 10045-55 Overseas Highway, Marathon, Florida 33050, and Keys Constructors, Inc., a Florida corporation (the "Contractor"), whose address is 10701 6th Avenue Gulf, Marathon, Florida 33050.

1. **Definitions.**

- 1.1 **Application for Payment.** The form acceptable to the City Manager which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documents as determined by the City Manager or Finance Director.
- 1.2 **Change Order.** A written order to the Contractor executed by the City Manager or his designee, issued after execution of this Contract, authorizing and directing a change in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof.
- 1.3 **Contract Documents.** All documents to be considered part of this Contract, including the Instructions to Bidders, all Bid Documents, all Addendums and Attachments to Bid Documents and the Bidder's Proposal. In the event of a conflict between documents, the latter document will supersede.
- 1.4 **Contract Price.** The moneys payable by the City to the Contractor for completion of the Work in accordance with the Contract.
- 1.5 **Contract Time.** The number of days or the dates stated in the Contract to (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment.
- 1.6 **Notice to Proceed.** A written notice given by City Manager or his designee to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform the construction under the Contract. The Notice to Proceed shall not be given until all permits are obtained, as long as any delay in obtaining permits is not caused by Contractor.

- 1.7 **Site.** Lands or areas indicated in the Contract as being furnished by City upon which the Work is to be performed.
- 1.8 **Substantial Completion.** The time at which the Work (or specified part thereof) has progressed to the point where, in the opinion of the City Manager, the Work (or specified part thereof) is sufficiently complete, in accordance with the Contract, so that the Work (or specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
- 1.9 **Supplier.** A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with the Contractor to furnish materials or equipment to be incorporated in the Work by Contractor.
2. **Scope of Services.** – The following services (the "Project" or "Work") shall be provided to the City by the Contractor for the construction of the Dodge Lake Boat Ramp (the "Ramp") with specific reference to the Work Specifications outlined in Section 3 of this Contract:
- a. The development of all engineering, architectural and any other plans and drawings required to construct the Work; and
 - b. Obtaining all permits required for the Work; and
 - c. Payment of all taxes and fees required to complete the Work; and
 - d. All supervision, labor, equipment, and tools required for the construction of the Ramp.
 - e. The Construction of the Ramp in accordance with the approved plans.
3. **Compensation/Payment.**
- 3.1 Contractor shall be paid by the City pursuant to the following schedule upon approval by the City Manager of submitted invoices corresponding with completion of the following phases of the Work:
- a. 10% upon approval by the City Manager of all designs, plans and drawings prepared by Contractor;
 - b. 10% upon obtaining all permits and licenses;
 - c. 15% upon completion of first section of the ramp;
 - d. 10% upon commencement of mobilization;
 - e. 15% upon Substantial Completion of the ramp;
 - f. 25% upon Substantial Completion of the wooden piers;
 - g. 15% upon final completion and acceptance of the Work by the City Manager.
- 3.2 The City shall make payment on said invoices of approved amounts due, which are not subject to set off, as required under the Florida Prompt

Payment Act. No payments shall be due or payable for Work not performed or materials not furnished.

3.3 The Contractor shall be compensated for final completion of the Project the total lump sum of \$64,657.65, plus additions or deletions as per change order.

4. **Work Specifications.** The Contractor shall prepare plans and drawings, which shall include the following specifications:

- a. The Ramp shall include a grated or trough style drain installed above the Mean High Watermark, covering the entire width of the Ramp to capture any bilge water drained out of boats pulled up on the Ramp. The drain will discharge into an oil trap compartment with an ex-filtration trench for clean bilge water.
- b. Oil absorbing sorbes will float on the surface of the trap compartment for the treatment of any floating oil products. City will supply the oil absorbing sorbes.
- c. A cleanout accessway shall be included on the surface grade.
- d. The apron to the Ramp shall be constructed to prevent the spilling over of any surface water and any water running into nearshore waters.
- e. All leveling stone shall be #57 Rock.
- f. All bushes noted on the permits drawings, attached as Exhibit "A", shall be green and silver buttonwood and shall be planted in accordance with the City
- g. Existing City signs shall be protected from construction or replaced to fit the design of the Ramp and associated parking areas.
- h. Any directional information signs shall be provided by the Contractor and must be consistent with regard to color.
- i. Temporary ramp closure signs may be used by the Contractor.
- j. All fasteners and deck attachments shall be stainless steel or hot dip galvanized coating.
- k. Turbidity screens or curtains are to be utilized at all times during shoreline construction activities to prevent turbidity and pollution of nearshore waters.

5. **Indemnification.**

5.1 In consideration of the entry of this Contract and to the extent permitted by Chapter 725, Florida Statutes, the Contractor shall indemnify, protect, defend and hold harmless the City, its officers, agents and employees from and against all liability, claims, damages, losses and expenses, including reasonable attorney's fees and costs at both trial and appellate levels arising out of or resulting from the performance of Work under this contract, caused by any negligence, recklessness or intentionally wrongful conduct of the Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable, excluding engineering and design.

- 5.2 This indemnification obligation shall survive the termination of this Contract.
- 5.3 The Contractor shall defend the City or provide for such defense, at the City's option. The Contractor shall immediately notify the City Manager in writing of any claims received by the Contractor.
- 5.4 The Contractor shall be held responsible for any violation of existing laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by him, on the Work. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this contract. Contractor shall secure and pay for all permits, fees, licenses, and inspections necessary for the execution of the Work, and upon termination of this contract for any reason, Contractor shall transfer such permits, if any, and if allowed by law, to the City.
- 5.5 To the extent this indemnification clause or any other clause in this Contract does not comply with Chapter 725, Florida Statutes, as may be amended, this provision and all aspects of the Contract shall hereby be interpreted as the parties' intention for the indemnification clauses to comply with Chapter 725, Florida Statutes, as may be amended.

6. **Term.**

- 6.1 This Contract shall be effective upon execution by both parties and shall continue for 120 days. The City may extend the Contract upon the sole discretion of the City Manager.
- 6.2 The Contractor shall initiate work on the Project upon receipt of a written Notice to Proceed by the City Manager or his designee. The Contractor shall complete the Work within 120 days of the commencement date in the Notice to Proceed.
- 6.3 The Contractor shall not be entitled to seek any damages for delay, whether such damages are caused by the Contractor, the City, an act of God or for any other reason.
- 6.4 Contract Time shall be extended by the City Manager in the event of an unforeseeable act of God. The Contractor shall request in writing for an extension of time to complete the Work, provided to the City Manager within seven (7) days of the events giving rise to the delay.

7. **Termination.**

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

7.2 The City may terminate this Contract without cause upon sixty (60) days written notice to the Contractor.

7.3 Upon notice of such termination under either 7.1 or 7.2, the City shall determine the amounts due to the Contractor for services performed and accepted up to the date of termination. If the termination is for cause, the City may utilize the balance of funds remaining for the Project to complete the Project. The Contractor shall not be entitled to payment of any lost profits or for Work performed after the date of termination.

7.4 After receipt of a notice of termination, and except as otherwise directed by the City Manager or his designee, the Contractor shall stop all Work under this Contract, and shall do so on the date specified in the notice of termination.

7.5 Time is of the essence. Failure of the Contractor to complete the Work within the prescribed time period shall be considered a default by the Contractor and the City may terminate this Contract under Section 7.1 for such default. Upon such default, the City shall be entitled to retain the balance of funds due the Contractor.

8. **Contractor's Duty to Inspect.**

8.1 The Contractor has made sufficient site visits and other investigations to fully satisfy himself as to Site conditions.

8.2 The Contractor shall be responsible for the repair or replacement of any landscape materials, including but not limited to irrigation systems, plants, shrubs, sod, trees and palms damaged by the Contractor and not part of the scope of the Work.

9. **Differing Physical Conditions.** If during the construction of the Ramp the Contractor believes that any physical condition at or contiguous to the Site that is uncovered or revealed either:

- a. is of such a nature as to establish that any specification that the Contractor is entitled to rely upon is materially inaccurate; or
- b. is of such nature as to require a change in the Contract Documents; or
- c. differs materially from that shown or indicated in the Contract Documents;
or

- d. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; or
- e. is unforeseeable, at the discretion of the City Manager.

then Contractor shall, promptly after becoming aware thereof and before further disturbing the physical conditions or performing any Work in connection therewith (except in the case of an emergency as described in Section 14 of this Contract), notify City Manager in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of notification by the to do so by the City Manager or his designee. Time for performance of the Contract shall not toll when Work is stopped under this Section.

- 10. **Contractor's Supervision.** Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall be responsible to see that the completed Work complies accurately with the Contract Documents and the plans and designs approved by the City Manager.
- 11. **Service, Materials and Equipment.** Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, and all other facilities and incidentals necessary for the performance, start-up and completion of the Work.
- 12. **Substitutes.** Whenever an item or equipment is specified or described in the Contract Documents or the designs, plans or drawings approved by the City Manager, by using the name or a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. In the event that the Contractor cannot obtain or install the particular item provided for, the approval of the City Manager or his designee will be required to substitute the item.
- 13. **Permits.** Unless otherwise provided in the Contract Documents, Contractor shall obtain all permits and licenses for the City. City shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work on the effective date of the Contract. Contractor shall pay all charges of utility owners for connections to the Work, and City shall pay all charges of such

utility owners for capital costs related thereto, such as plant investment fees. City will be billed the cost of the permits at Contractor's cost and any mitigation costs.

14. **Emergencies.** In emergencies affecting the safety or protection of persons or the Work or the property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury or loss. Contractor shall give City Manager prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If City Manager determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such emergency, a Change Order will be issued.

15. **Changes in Work.**
 - 15.1 Changes in the Scope of Services of the Contract consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the City by Change Order without invalidating this Contract, provided the changes comply with the permit requirements.

 - 15.2 The execution of a Change Order by the City and the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contractor, by executing the Change Order, waives and forever releases any claim against the City for additional time or compensation for matters relating to or arising out of or resulting from the Services included within or affected by the executed Change Order, unless approved by City Manager.

 - 15.3 The City Manager is solely authorized to negotiate and execute Change Orders.

 - 15.4 Change Orders must be approved by design engineer.

16. **Safety and Protection.** Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - a. all persons on the Site or who may be affected by the Work;

 - b. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

 - c. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and other facilities

and incidentals not designated for removal, relocation or replacement in the course of construction.

17. **Resolving Discrepancies.** Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any laws or regulations applicable to the performance of the Work, unless such an interpretation of the provisions of the Contract Documents would result in a violation of such laws or regulations.
18. **Non-Waiver.** The approval, and/or acceptance of any part of the Work by the City shall not operate as a waiver by the City of any other terms and conditions of the Contract.
19. **Compliance with Laws/Codes/Rules, Etc.**
 - 19.1 The Contractor shall comply with all existing laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project and where future applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project create additional expense to the Contractor, the City will compensate these costs. The Contractor shall give all applicable notices pertaining to the same. Contractor represents to City that it is not a person or affiliate as defined in §287.133, Florida Statutes, which has been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for public entity crime. Contractor acknowledges and agrees that it may not submit a bid on a contract to provide any goods or services to the City, may not submit a bid on a contract with the City for the construction or repair of any public building or public work, may not submit bids on leases of real property with the City, may not be awarded an opportunity to perform work as a Contractor, supplier, subcontractor or Contractor under a contract with the City, and may not transact business with the City in an amount set forth in §287.107, Florida Statutes, for Category Two for a period of Thirty-Six (36) months from the date of being placed on the convicted vendor list.
 - 19.2 Contractor shall make application utilizing existing drawings. Architectural and structural design is solely responsibility of design engineer. Any modification by permitting agencies will need to be reviewed by engineer.

19.3 The Contractor shall be familiar with all existing environmental rules and regulations that may affect the Work. All fines and penalties for environmental violations as a result of any future changes to laws, ordinances, rules, regulations and lawful orders shall be assessed to the City. Contractor shall be responsible for all fines and penalties for environmental violations as a result of any existing laws, ordinances, rules, regulations and lawful orders existing at the time of execution shall be paid by Contractor. The Contractor further agrees to indemnify, protect, defend, and hold harmless the City its elected officials, officers, employees, consultants, and agents from any liabilities, damages or claims that may result from any action by the Contractor in violation of any environmental laws, ordinances, rules, regulations and lawful orders, including but not limited to those of the South Florida Water Management District and the Environmental Protection Agency.

SD
existing

20. **Protection of Property and the Public.** The Contractor shall continuously maintain adequate protection of all his Work from damage and shall protect public and private property from injury or loss arising in connection with this contract as follows:

- a. The Contractor shall take all necessary precautions for the safety of employees in the performance of the Work on, about or adjacent to the premises, and shall comply with all applicable provisions of Federal, State, and local laws, including, but not limited to the requirements of the Occupational Safety and Health Act of 1970, and amendments thereto, the Construction safety Act of 1969, and amendments thereto, and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed.
- b. The Contractor shall erect and properly maintain at all times, all necessary safeguards, including sufficient lights and danger signals on or near the Work, from sunset to sunrise, suitable railings, barricades, or other hazards or other protective devices about unfinished work, open trenches, embankments, or other hazards and obstructions to traffic; provide all necessary security staff on the Work by day or by night for the safety of the public; and take all necessary precautions to prevent accidents and injuries to persons or property on or near the Work.
- c. The Contractor shall be completely responsible for, and shall replace and make good all loss, injury, or damage to any property (including landscaping, walks, drives, or structures of the City and of any land adjoining any work sites, which may be caused by Contractor). The Contractor shall, at all times while the Work is in progress, use extraordinary care to see that adjacent property, whether real or personal, is not endangered in any way by reason of fire, water, or construction

operations, and shall take all necessary or directed steps, to protect the property. The same care shall be exercised by all Contractor's employees.

- d. Buildings, sidewalks, fences, shade trees, lawns and all other improvements shall be duly protected from damage by Contractor. Property obstructions, such as sewers, drains, water or gas lines, conduits, poles, walls, posts, galleries, bridges, manholes, valve boxes, meter boxes, street monuments, etc., shall be carefully protected from injury and shall not be displaced. The Contractor shall give due notice to any utility or public service corporation controlling such items as manholes, valve boxes, meter boxes, street monuments, etc., prior to adjusting them to grade and shall be held strictly liable to the affected utility if any such appliances are disturbed, damaged or covered up during the course of the Work.

21. **Contractor's Employees.**

- 21.1 Contractor shall at all times have a competent supervisor on site who thoroughly understands the Work, who shall, as the Contractor's agent, supervise, direct and otherwise conduct the Work. Contractor's employees shall serve the public in a courteous, helpful and impartial manner.
- 21.2 Contractor's employees shall wear a uniform or clothing that indicates identification of the Contractor or the employee.
- 21.3 Contractor shall, upon receipt of a written request by the City Manager, immediately exclude any employee of Contractor from providing Work under this Contract.
- 21.4 The Work contemplated in this Contract is on public property, accordingly no alcoholic beverages shall be allowed.

22. **Vehicles and Equipment.** At all times throughout the Term of this Contract, Contractor shall be responsible to provide any and all vehicles, machinery, tools, accessories, and other items necessary to perform the Work. All vehicles used by Contractor to provide services under this Contract shall be licensed to operate in the State of Florida.

23. **Insurance.**

- 23.1 Contractor shall provide and maintain in force, until all the Work to be performed under this Contract has been completed and accepted by the City, all insurance policies at such minimal coverages as are identified in the attached Exhibit "B." The City must be listed as a certificate holder or insured.

- 23.2 The required insurance coverage is not to cease and is to remain in full force throughout the Term of this Contract.
- 23.3 City shall not be responsible for purchasing and maintaining any insurance to protect the interests of Contractor, subcontractors or others on the Work. City specifically reserves all statutory and common law rights and immunities and nothing herein is intended to limit or waive same including, but not limited to, the procedural and substantive provisions of Florida Statute 768.28 and Florida Statute 95.11.
- 23.4 If the initial insurance expires prior to the completion of the Work, renewal copies of policies shall be furnished at least thirty (30) days prior to the date of their expiration.
- 23.5 At the time of execution of this Agreement, the Contractor shall furnish to the City Certificates of Insurance or endorsements evidencing the insurance coverage specified herein that are acceptable to the City Manager. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Contract, and state that such insurance is as required by this Contract.
- 23.6 All deductibles must be declared by Contractor and must be approved by the City Manager. At the option of the City Manager, either the Contractor shall eliminate or reduce such deductible with respect to the City, or the Contractor shall procure a bond, in a form satisfactory to the City, covering the same. These certificates shall be endorsed with a restriction that the coverage afforded under the policies will not be canceled or materially changed until at least thirty (30) days prior written notice has been given to the City.
24. **Assignment and Amendment.** No assignment by the Contractor of this Contract or any part thereof or any monies due or to become due, shall be made, nor shall the Contractor hire a subcontractor to perform its duties under this Contract without prior written approval of the City Manager or his designee. This Contract may only be amended by the parties with the same formalities as this Contract.
25. **Governing law; Venue.** This Contract shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In case of any dispute or litigation involving this Contract, the parties hereof expressly agree that venue for any such proceeding will be exclusively in Monroe County, Florida and no action or proceeding shall be brought in any other County.
26. **Prohibition Against Contingency Fees.** The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it

has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

27. **Third Parties.** Neither the Contractor nor City intend to directly or substantially benefit a third party by this Contract. Therefore, the parties agree that there are no third party beneficiaries to this Contract and that no third party shall be entitled to assert a claim against either of them based upon this Contract.
28. **Attorney's fees.** In the event either party to this Contract is required to retain legal counsel to enforce any of its rights under this Contract, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party together with court costs incurred in any litigation at any trial and appellate proceedings.
29. **Days.** The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.
30. **Access to Public Records.** The Contractor shall comply with the applicable provisions of Chapter 119, Florida Statutes. Contractor shall retain all records associated with this Contract for a period of three (3) years from the termination of this Contract. The City may cancel this Contract for refusal by the Contractor to allow access by the City Manager or his designee to any records pertaining to Work performed under this Contract that are subject to the provisions of Chapter 119, Florida Statutes.
31. **Inspection and Audit.** During the Term of this Contract, Contractor shall allow City representatives access during reasonable business hours to Contractor's records related to this Contract for the purposes of inspection or audit of such records. If upon audit of such records, the City determines the Contractor was paid for services not performed, upon receipt of written demand by the City, the Contractor shall immediately remit such payments to the City.
32. **Ownership of Records.** All records, books, documents, maps, data, drawings, plans, deliverables, papers and financial information that result from the Contractor providing services to the City under this Contract shall be the property of the City.
33. **Severability.** If a term, provision, covenant, contract or condition of this Contract is held to be void, invalid, or unenforceable, the same shall not affect any other portion of this Contract and the remainder shall be effective as though every term, provision, covenant, contract or condition had not been contained herein.

34. **Warranties of Work.** Contractor will warrant their Work for 365 days from the acceptance of the Work. All trees planted by the Contractor shall be guaranteed for 365 days from the acceptance of the Work.
35. **Counterparts.** This Contract may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.
36. **Warranties.** Any manufacturer's warranties provided to the Contractor for the Boat Ramp shall be assigned to the City. Contractor will warrant their Work for days from the acceptance of the Work.
37. **Notices.** Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to:

FOR CONTRACTOR:

Keys Constructors, Inc.
Attn: William J.C. Devitt
10701 6th Avenue Gulf
Marathon, Florida 33050
Telephone: (305) 743-5438

FOR CITY:

City of Marathon
Attn: Scott Janke, City Manager
10045-55 Overseas Highway
Marathon, Florida 33050
Telephone: (305) 743-0033
Facsimile: (305) 743-3667

WITH A COPY TO:

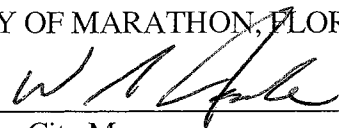
Weiss, Serota Helfman, Pastoriza, Guedes, Cole & Boniske, P.A.
City Attorneys
Attn: Nina Boniske
2665 S. Bayshore Drive
Suite 420
Miami, Florida 33133
Telephone: (305) 854-0800
Facsimile: (305) 854-2323

[Acknowledgments on following page]

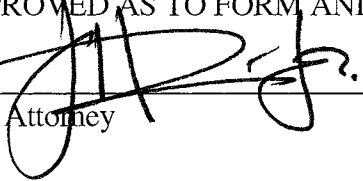
IN WITNESS WHEREOF, the parties hereto have made and executed this Contract on the respective dates under each signature: CITY OF MARATHON, FLORIDA, signing by and through its City Manager, authorized to execute same by Council action on the 11th day of March, 2003, and KEYS CONSTRUCTORS, INC., signing by and through _____, duly authorized to execute same.

ATTEST:


City Clerk

CITY
CITY OF MARATHON, FLORIDA
By: 

City Manager
13 day of August, 2003.


APPROVED AS TO FORM AND SUFFICIENCY:
By: 

City Attorney

WITNESS

Print Name: _____

(Corporate Seal)
N/A

CONTRACTOR
KEYS CONSTRUCTORS, INC.
By: 

Print Name: William J. C. Dewitt
Print Title: President

12 day of August, 2003.