

Sponsored by: Burnett

**CITY OF MARATHON, FLORIDA
RESOLUTION 2008-111**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING AWARD OF CONSTRUCTION CONTRACT TO ATLANTIC CIVIL, INC. FOR CONSTRUCTION OF LITTLE VENICE PHASE II STORMWATER AND PAVING IN AN AMOUNT NOT TO EXCEED \$1,685,911.42; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF THE CONTRACT; AUTHORIZING THE MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Marathon (The City) published an Invitation To Bid (ITB), for Little Venice Phase II Stormwater and Paving Project and received fourteen bids which were opened on May 27, 2008; and

WHEREAS, based upon information provided in the lowest bidder's Contractor's Qualification Statement and information obtained from calls to listed references staff believes the lowest bidder failed to demonstrate they have the experience and the expertise required to complete the project in a manner acceptable to the City; and

WHEREAS, the second lowest bidder, Atlantic Civil, Inc., has performed Stormwater and paving projects similar in nature to this project; and

WHEREAS, this project has Federal Funding in the amount of \$678,156 through Florida Department of Transportation (FDOT) and they have concurred with our contractor selection. The balance of the project will be paid from the Street Maintenance Fund and is budgeted accordingly; and

WHEREAS, staff recommends award of the Construction of Little Venice Phase II Stormwater and Paving Project to Atlantic Civil, Inc.

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


Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby approves the contract between Atlantic Civil, Inc., and the City, a copy of which is attached hereto as Exhibit "A", for the Construction Of Little Venice Phase II Stormwater And Paving Project in an amount of \$1,685,911.42, together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney; and authorizes the Manager to execute the contract.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 22nd day of July, 2008.

THE CITY OF MARATHON, FLORIDA


Edward P. Worthington, Mayor

AYES: Bull, Cinque, Tempest, Vasil, Worthington
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:


Diane Clavier, City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:


Jimmy Morales, City Attorney

SECTION 00500
CONSTRUCTION CONTRACT

THIS CONTRACT (the "Contract") is dated as of the 22nd day of July, **2008** by and between **THE CITY OF MARATHON** (hereinafter called the "**CITY**") and Atlantic Civil, Inc., (hereinafter called **CONTRACTOR**) located at: 9350 South Dixie Highway, Suite 1250, Miami, Florida 33156.

CITY and **CONTRACTOR**, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

1.1 Project/Work. **CONTRACTOR** shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as the following: the **CITY OF MARATHON LITTLE VENICE PHASE II STORMWATER AND PAVING PROJECT**. The project consists of installing stormwater improvements and road overlay.

Article 2. CITY'S REPRESENTATIVE, ARCHITECT AND ENGINEER

2.1. It is understood that the City will designate a representative for the Work. The **CITY'S REPRESENTATIVE** referred to in any of the Contract Documents designated herein is Susie Thomas at City Hall, 9805 Overseas Highway, Marathon Florida 33050.

2.2 The City's **ARCHITECT** referred to in any of the Contract Documents designated herein is N/A.

2.3 The City's **ENGINEER** referred to in any of the Contract Documents designated herein is Edward Castle of The Weiler Engineering Corporation, 5800 Overseas Highway, Suite 36, Marathon, Florida 33050.

Article 3. TERM

3.1 Contract Times. The work shall be substantially completed within **one hundred eighty (180)** calendar days after the date specified in the Notice to Proceed ("Substantial Completion"), and completed and ready for final payment in accordance with the Contract Documents within **two hundred ten (210)** calendar days after the date specified in the Notice to Proceed ("Final Completion").

3.2. Term. The term of the Contract shall be from the date of execution through the date of final payment unless terminated earlier pursuant to Document 00700, Article 14, Payments to Contractor and Completion of the General Conditions.

3.3 Survival of Obligations. Any obligations by the Contractor, including but not limited to Document 00700, Article 12, Contractor's General Warranty and Guarantee, that would or could occur after the date of expiration or termination of the Contract shall survive the termination or expiration of the Contract.

3.4. Liquidated Damages. **CITY** and **CONTRACTOR** recognize that time is of the essence in this Contract and that the **CITY** will suffer financial loss if the Work is not completed within the contract times specified in Section 3.1 for the Work above, plus any approved extensions thereof allowed in accordance with the General Conditions. The **CONTRACTOR** also recognizes the delays, expense and difficulties involved in proving the actual loss suffered by **CITY** if the Work is not completed on time. Accordingly, instead of requiring any such proof, **CITY** and **CONTRACTOR** agree that as liquidated damages for delay (but not as a penalty) **CONTRACTOR** shall pay **CITY Five Hundred Dollars (\$500.00)** for each calendar day that expires after the time specified in Section 3.1 for Substantial Completion of the Work. After Final Completion, if **CONTRACTOR** shall neglect, refuse or fail to complete the remaining Work within the time specified in Section 3.1 for completion and readiness for final payment or any proper extension thereof granted by **CITY**, **CONTRACTOR** shall pay **CITY One Thousand Dollars (\$1,000.00)** for each calendar day that expires after the time specified in Section 3.1 for completion and readiness for final payment.

3.5. Should the Final Completion and acceptance of Work, together with any modification or additions, be delayed beyond the time for performance set in Section 3.1 above because of lack of performance by the **CONTRACTOR**, it is understood and agreed that aside from any other liquidated damages, all actual additional costs incurred by the **CITY** for professional services will be the responsibility of the **CONTRACTOR**.

3.6. Monies due to the **CITY** under Sections 3.4 and 3.5 shall be deducted from any monies due the **CONTRACTOR**, or if no money is due or the amount due is insufficient to cover the amount charged, the **CONTRACTOR** shall be liable for said amount.

Article 4. CONTRACT PRICE

4.1 **CITY** shall pay **CONTRACTOR** for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Sections 4.1.1 and 4.1.2 below:

4.1.1 For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this Section 4.1.1.

4.1.2 Unit Price Work (Combined Bid Form)

Item #	Description	Quantity	Units	Unit Price	Extension
1	18-in Perforated HDPE Pipe in Type 'A' Trench, complete, in place	3265.00	LF	\$133.97	\$437,412.05
2	18-in HDPE Tees, complete, in place	38.00	EA	\$287.84	\$10,937.92
3	18-in Perforated HDPE Pipe in Type 'B' Trench, complete, in place	1250.00	LF	\$90.11	\$112,637.50
4	18-in HDPE perforated end caps, complete, in place	48.00	EA	\$172.17	\$8,264.16
5	Well Control Structure, complete, in place	13.00	EA	\$8,761.13	\$113,894.69
6	8-in injection well, complete, in place	10.00	EA	\$13,358.40	\$133,584.00
7	10-in injection well, complete, in place	1.00	EA	\$15,998.40	\$15,998.40
8	12-in injection well, complete, in place	2.00	EA	\$18,638.40	\$37,276.80
9	Nyloplast Inlet Structure, complete, in place	55.00	EA	\$4,879.86	\$268,392.30
	GENERAL				
10	1 1/2-in roadway overlay	40,000.00	SY	\$9.24	\$369,600.00
11	Bonds, Insurance, Taxes, etc.	1	LS	\$41,119.85	\$41,119.85
12	Mobilization	1	LS	\$136,796.75	\$136,796.75
					\$1,685,911.42

TOTAL OF ALL UNIT PRICES

One million six hundred eighty-five thousand nine hundred eleven dollars and forty-two cents

\$1,685,911.42 (dollars)

Estimated quantities are not guaranteed, and determination of actual quantities and classification are to be made by ENGINEER as provided in the Contract Documents.

4.2. The **CONTRACTOR** agrees that all specific cash allowances are included in the above Contract Price and have been computed in accordance with the Contract Documents.

Article 5. PAYMENT PROCEDURES

5.1 **CONTRACTOR** shall submit Applications for Payment in accordance with the General Conditions, Article 14, Payments to Contractor and Completion. Applications for Payment will be processed by **CITY** as provided in the General Conditions.

5.2 **Progress Payments, Retainage.** **CITY** shall make progress payments, deducting the amount from the Contract Price above, on the basis of **CONTRACTOR'S** Applications for Payment as recommended by the **CITY'S REPRESENTATIVE**, on or about the last day of each month during construction as provided herein. All such payments will be made in accordance with the schedule of values established in the General Conditions or, in the event there is no schedule of values, as provided in the General Conditions.

5.3. The **CONTRACTOR** agrees that ten percent (10%) of the amount due for Work as set forth in each Application for Payment shall be retained by City for each Progress Payment until Final Payment, as defined in the General Conditions, Article 14, Payments to Contractor and Completion.

5.3.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated above, but, in each case, less the aggregate of payments previously made and less such amounts as **CITY'S REPRESENTATIVE** shall determine, or **CITY** may withhold, in accordance with the General Conditions.

5.4. The payment of any Application for Payment by **CITY**, including the Final Request, does not constitute approval or acceptance by **CITY** of any item of the Work in such Request for Payment, nor shall it be construed as a waiver of any of City's rights hereunder or at law or in equity.

5.5. The Final Application for Payment by **CONTRACTOR** shall not be made until the **CONTRACTOR** delivers to the City complete original releases of all liens and claims signed by all Subcontractors, materialmen, suppliers, and vendors on a form approved by the **CITY**, and an affidavit that so far as the **CONTRACTOR** has knowledge or information, the releases include and cover all Materials and Work for which a lien or claim could be filed. The **CONTRACTOR** may, if any Subcontractor, materialmen, supplier or vendor refuses to furnish the required Final Waiver of Lien, furnish a bond satisfactory to City to defend and indemnify City and any other property owner, person or entity City may be required to indemnify against any lien or claim.

5.6. **Final Payment.** Upon final completion and acceptance of the Work in accordance with the General Conditions, **CITY** shall pay the remainder of the Contract Price and any retainage as recommended by the **CITY'S REPRESENTATIVE**.

Article 6. INSURANCE/INDEMNIFICATION.

6.1. Insurance. The **CONTRACTOR** shall secure and maintain throughout the duration of this Contract, insurance of such type and in such amounts necessary to protect its interest and the interest of the **CITY** against hazards or risks of loss as specified in the General Conditions of the Contract Documents.

6.2. Indemnification. The **CONTRACTOR** shall indemnify, defend and hold harmless the **CITY**, their officials, agents, employees, and volunteers as set forth in General Conditions of the Contract Documents.

Article 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce **CITY** to enter into this Contract, **CONTRACTOR** makes the following representations:

7.1. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda) and the other related data identified in the Bidding Documents including "technical data."

7.2. CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

7.3. CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

7.4. CONTRACTOR has made, or caused to be made, examinations, investigations, tests and/or studies as necessary to determine surface and subsurface conditions at or on the site. **CONTRACTOR** acknowledges that **CITY** does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to underground facilities at or contiguous to the site. **CONTRACTOR** has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by **CONTRACTOR** and safety precautions and programs incident thereto. **CONTRACTOR** does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

7.5. The **CONTRACTOR** is aware of the general nature of Work to be performed by **CITY** and others at the site that relates to the Work as indicated in the Contract Documents.

7.6. The **CONTRACTOR** has correlated the information known to **CONTRACTOR**, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

7.7. The **CONTRACTOR** has given the **CITY'S REPRESENTATIVE** written notice of all conflicts, errors, ambiguities or discrepancies that **CONTRACTOR** has discovered in the Contract Documents and the written resolution thereof by the **CITY'S REPRESENTATIVE** is acceptable to **CONTRACTOR**, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

7.8. The **CONTRACTOR** warrants the following:

7.8.1. Anti-Discrimination: The **CONTRACTOR** agrees that it will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this Contract because of race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

7.8.2. Anti-Kickback: The **CONTRACTOR** warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the **CITY, FDEP, SFWMD** or **FDOT** has any interest, financially or otherwise, in the Project. For breach or violation of this warranty, the City shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

7.8.3. Licensing and Permits: The **CONTRACTOR** warrants that it shall have, prior to commencement of work under this Contract and at all times during said work, all required licenses and permits whether federal, state, County or City.

7.8.4. Public Entity Crime Statement: The **CONTRACTOR** warrants that it has not been placed on the convicted vendor list following a conviction for public entity crime, as specified in Document 00100, Section 7.5, of the Instructions to Bidders.

Article 8. CONTRACT DOCUMENTS.

8.1 The Contract Documents listed below, which are listed in their order of precedence for the purpose of resolving conflicts, errors and discrepancies, by this reference shall become a part of the **CONTRACT** as though physically attached as a part thereof:

- 8.1.1 Change Orders.
- 8.1.2 Field Orders.
- 8.1.3 Contract for Construction.
- 8.1.4 Exhibits to this Contract.
- 8.1.5 Supplementary Conditions.
- 8.1.6 General Conditions.
- 8.1.7 The Department of Environmental Protection permit and the South Florida Water Management District permit for the Project
- 8.1.8 Specifications bearing the title: Specifications for Little Venice Phase II Stormwater Project
- 8.1.9. Drawings consisting of a cover sheet and sheets numbered AR1, STG 1 through STG 3, STD 1 through STD 7, and N-1 through N-30 consecutively inclusive with each sheet bearing the following general title: Marathon Little Venice Phase II.
- 8.1.10. Bid Documents, including but not limited to: Addendum, Invitation to Bid, Instructions to Bidders, Bid Form provided by CONTRACTOR, Notice of Award and Notice to Proceed.
- 8.1.11. Addenda subject matter takes the same precedence of the respective subject matter that it is modifying. Furthermore, each subsequent addendum takes precedence over previous addenda.
- 8.1.12. The documents listed above shall be incorporated into this Contract (except as expressly noted otherwise above).
- 8.1.13. There are no Contract Documents other than those listed above in this Article. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions.
- 8.1.14. The Contract Documents shall remain the property of the CITY. The CONTRACTOR shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided; however, that in no event shall the CONTRACTOR use, or permit to be used, any or all of such Contract Documents on other Projects without the City's prior written authorization.
- 8.1.15. The General Conditions discuss the bond and surety requirements of the CITY. This Contract does [XX] does not [] require bonds. If the Contract does not require bonds, the references to bonds in the General Conditions do not apply to this Contract.

Article 9. MISCELLANEOUS.

9.1. Terms used in this Contract which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions. Terms used in Article 1 of the Instructions to Bidders also apply to this Contract.

9.2. Except as otherwise provided in the Contract Documents with respect to subcontractors, no assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party thereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3. **CITY** and **CONTRACTOR** each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.4. Severability: Should any provision, paragraph, sentence, word, or phrase contained in this Contract be determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word, or phrase shall be deemed modified to the extent necessary in order to conform with such laws, then shall be deemed severable, and in this Contract, shall remain unmodified and in full force and effect.

9.5. Remedies: If and when any default of this Contract occurs, the **CITY** may avail itself of any legal or equitable remedies that may apply, including, but not limited to, actual damages and specific performance. Such remedies may be exercised in the sole discretion of the **CITY**. Nothing contained in this Contract shall limit the **CITY** from pursuing any legal or equitable remedies that may apply.

9.6. Access to Public Records: The **CONTRACTOR** shall comply with the applicable provisions of Chapter 119, Florida Statutes. The **CITY** shall have the right to immediately terminate this contract for the refusal by the Contractor to comply with Chapter 119, Florida Statutes. The Contractor shall retain all records associated with this Contract for a period of five (5) years from the date of Final Payment or Termination of this Contract.

9.7. Inspection and Audit: During the term of this Contract and for five (5) years from the date of Termination, the **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 an 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 remit such payments to the **CITY**.

9.8. 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.

9.9. 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:

Atlantic Civil, Inc.
9350 South Dixie Highway
Suite 1250
Miami, Florida 33156
Attn: Steve Torcise, Jr.

FOR CITY:

City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
ATTN: Clyde Burnett, City Manager

WITH COPY TO:

Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 W. Flagler Street, Suite 2200
Miami, Florida 33130
ATTN: City Attorney

9.10. Waiver Of Jury Trial And Venue: The **CITY** and **CONTRACTOR** knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract, arising out of, under, or in connection with the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party. The venue for any lawsuit arising out of this Contract shall be in the Middle Keys Division, Monroe County, Florida.

9.11. Attorneys' Fees: If either the **CITY** or **CONTRACTOR** is required to enforce the terms of the Contract by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including, but not limited to, court costs, and reasonable attorneys' fees.

9.12. Amendments: This Contract may only be amended by the prior written approval of the parties or by execution of a Change Order in the form attached hereto as Exhibit A.

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract on the respective dates under each signature: THE CITY OF MARATHON, FLORIDA, signing by and through its Mayor or Vice Mayor, authorized to execute same by Council action on the 22nd day of, July 2008, and by Atlantic Civil, Inc. (**Contractor**), signing by and through its **President**, duly authorized to execute same.

CITY

ATTEST


City Clerk

CITY OF MARATHON, FLORIDA

Mayor

5 day of August, 2008.

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF THE CITY OF MARATHON ONLY:

By: [Signature]
City Attorney

CONTRACTOR

Atlantic Civil, Inc.

By: Steve Torcise, Jr. [Signature]

By [Signature]
(Signature and Title)

(Corporate Seal)

WITNESS

[Signature]

Rick Torcise, Secretary

(Type Name/Title signed above)

30 day of July, 2008.

(In the event that the Contractor is a corporation, there shall be attached to each counterpart a certified copy of a resolution of the board of the corporation, authorizing the officer who signs the contract to do so in its behalf.*

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, Rick Torcise, certify that I am of the Secretary, and that Steve Torcise, Jr., who signed the Bid with the City of Marathon, Monroe County, Florida for Atlantic Civil, Inc., is President of said Corporation with full authority to sign said Bid on behalf of the Corporation.

Signed and sealed this 30 day of July, 2008.

(SEAL) 
Signature

Rick Torcise, Secretary
Typed w/Title

STATE OF FLORIDA
COUNTY OF ~~MONROE~~ MIAMI-DADE

SWORN TO AND SUBSCRIBED before me this 30 day of July, 2008.

My Commission Expires:

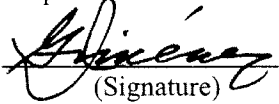

Notary Public

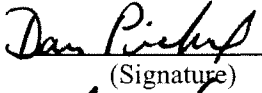


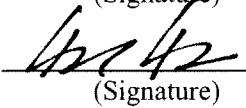
Vickie J. Pennell
Commission # DD442899
Expires August 13, 2009
Bonded Troy Fair - Insurance Inc 800-385-7018

CERTIFICATE AS TO AUTHORIZED CORPORATE PERSONNEL

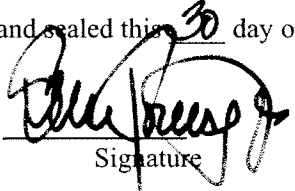
I, Steve Torcise, Jr., certify that I am the President of Atlantic Civil, Inc., who signed the Bid with the City of Marathon, Monroe County, Florida, for the project titled Little Venice Ph 2 Stormwater & Paving, and that the following persons have the authority to sign payment requests on behalf of the Corporation:

 Geraldo Jimenez, PE - Vice Pres. of Engineering
(Signature) (Typed Name w/Title)

 Dan Pickel, Project Manager
(Signature) (Typed Name w/Title)

 Ted Tabor, Project Manager
(Signature) (Typed Name w/Title)

Signed and sealed this 30 day of July, 2008.

(SEAL) 
Signature
Steve Torcise, Jr., President
Typed w/Title

STATE OF FLORIDA
COUNTY OF ~~MONROE~~ MIAMI-DADE

SWORN TO AND SUBSCRIBED before me this 30 day of July, 2008.

My Commission Expires:


Notary Public



Vickie J. Pennell
Commission # DD442899
Expires August 13, 2009
Bonded Troy Fair - Insurance Inc. 800-385-7018

CHANGE ORDER NO. _____

TO: City of Marathon

PROJECT: City of Marathon Little Venice Phase II Stormwater Project

CONTRACTOR: DATE: _____

This Change Order will authorize the following change to the Agreement:

The Work as set forth in the Agreement is hereby amended to include the items set forth on Exhibit "A" attached hereto and by this reference made a part hereof.

This Change Order constitutes full, final, and complete compensation to the Contractor for all costs, expenses, overhead, and profit, and any damages of every kind that the Contractor may incur in connection with the above referenced changes in the Work, and any other effect on any of the Work under this Agreement. The Contractor acknowledges and agrees that (a) the Contract Price of \$ _____ under the Agreement will be [unchanged] [changed] by this Change Order, and (b) the schedule for performance of Work will be [unchanged] [changed] by this Change Order. Contractor expressly waives any claims for any additional compensation, damages or time extensions in connection with the above-referenced changes. Except as herein or heretofore expressly modified, all terms of the Agreement shall remain in full force and effect and shall cover the performance of, and payment for, any work authorized hereunder. Any defined terms not defined in this Change Order shall have the meanings set forth in the Agreement.

By signing below the parties indicate acceptance of this Change Order as set forth herein.

THE CITY OF MARATHON
a Florida municipal corporation

CONTRACTOR

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

END OF SECTION

UNANIMOUS WRITTEN CONSENT
OF THE DIRECTORS AND SHAREHOLDERS
OF
FLORIDA ROCK AND SAND COMPANY, INC.

FILED
99 OCT 25 PM 3:4
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

The undersigned, being all of the Shareholders and all of the Directors of FLORIDA ROCK AND SAND COMPANY, INC., a Florida corporation (the "Corporation"), do hereby agree that, upon execution of this consent, the resolutions set forth below shall be deemed to have been adopted to the same extent and to have the same force and effect as if adopted at a formal meeting of the Shareholders and Directors of the Corporation, duly called and held for the purpose of acting upon proposals to adopt such resolutions. The undersigned do hereby waive all formal requirements, including the necessity of holding a formal meeting, and any requirement that notice of such meeting be given. The following resolutions are hereby adopted:

RESOLVED, that Article I of the Articles of Incorporation of the Corporation be deleted and replaced by new Article I, as follows:


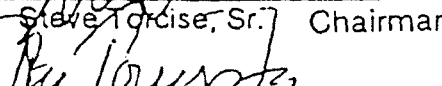
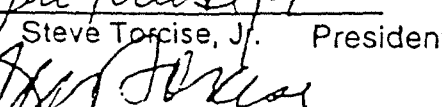

"ARTICLE I

The name of the Corporation shall be: "ATLANTIC CIVIL, INC."

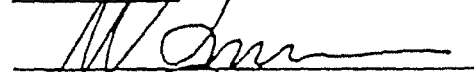
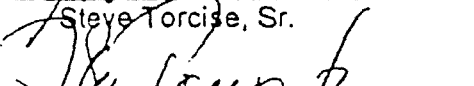
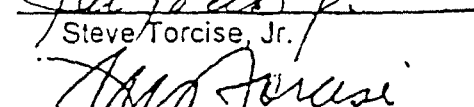
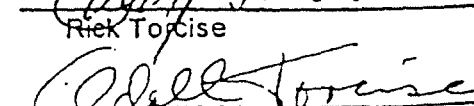
FURTHER RESOLVED, that the President of the Corporation be and hereby is authorized and directed, for and on behalf of the Corporation, to execute and deliver any and all documents and instruments, and take any and all other actions necessary or desirable to effectuate the intent and purpose of the foregoing resolution.

IN WITNESS WHEREOF, the undersigned, constituting all of the Shareholders and all of the members of the Board of Directors of the Corporation, have executed this unanimous written consent on this 15 day of October, 1999.

SHAREHOLDERS:


Steve Torcise, Sr. Chairman

Steve Torcise, Jr. President

Rick Torcise Vice President
Secretary/Treasurer
Estate of Sam Torcise
By: 
Adell Torcise Director

DIRECTORS:


Steve Torcise, Sr.

Steve Torcise, Jr.

Rick Torcise

Adell Torcise

FRONT PAGE

**CONTRACTOR'S PERFORMANCE AND PAYMENT BOND
(Public Work)**

Bond No.: 929425075

Contractor Name: Atlantic Civil, Inc.

Contractor Address: 9350 South Dixie Highway, Suite 1250, Miami, FL 33156

Contractor Phone No.: 305 670-9610

Surety Company: Western Surety Company

Owner Name: City of Marathon

Owner Address: 9805 Overseas Highway, Marathon, FL 33050

Owner Phone No.: 305 743-0033

Obligee Name: Same as above

(If different from property
Owner, or Dual Oblgee)

Obligee Address: Same as above

Obligee Phone No.: Same as above

Bond Amount: \$1,685,911.42

Contract No. (if applicable) N/A

Description of Work:

City of Marathon Little Venice Phase II Stormwater and Paving Project

Project Location: City of Marathon

Legal Description: Various

This Bond has been furnished to comply with the requirements of F.S. 255.05. This bond is hereby amended such that all provisions and limitations, including conditions, notice and time limitations of F.S. 255.05(2) are incorporated herein by reference. Any provision of this bond which conflicts with or purports to grant broader or more expanded coverage in excess of the minimum of the applicable statute shall be deemed deleted herefrom. This bond is a statutory bond, not a common law bond.

This is the front page of the Performance/Payment Bond(s) regardless of preprinted numbers on other pages issued in compliance with Florida Statute 255.05.

SECTION 00610
PERFORMANCE BOND

BY THIS BOND (the "Bond"), We as Atlantic Civil, Inc.,
called CONTRACTOR, and Western Surety Company,
hereinafter called SURETY, are bound to the CITY OF MARATHON, a Florida municipal
corporation, hereinafter called CITY, in the amount of One Million Six Hundred Eighty Five Thousand
Nine Hundred Eleven Dollars and Forty Two Cents Dollars

for payment of which CONTRACTOR and SURETY bind themselves, their heirs, personal
representatives, executors, administrators, successors and assigns, jointly and severally, with
reference to a written CONTRACT entered into by CONTRACTOR and CITY, for the following:

Contract Title: City of Marathon Little Venice Phase II Stormwater Project

THE CONDITION OF THIS BOND is that if the CONTRACTOR:

1. Performs said contract in accordance with its terms and conditions; and
2. Pays CITY all losses, damages (direct and consequential including delay and liquidated damages), expenses, costs, and attorney's fees, including appellate proceedings, that CITY sustains because of a default by CONTRACTOR under the CONTRACT; and
3. Pays CITY and all other amounts due CITY by CONTRACTOR because of a default by CONTRACTOR under the CONTRACT; and
4. Performs the guarantee of all work and materials furnished under the CONTRACT for the time specified in the CONTRACT;

THEN THIS BOND IS VOID, OTHERWISE, IT REMAINS IN FULL FORCE.

Any changes in or under the Contract Documents and compliance or noncompliance with formalities, connected with the Contract or with the changes, do not affect the Surety's obligation under this bond. Surety hereby waives notice of any alteration or extension of time made by the City. Any suit under this bond must be initiated before the expiration of the limitation period applicable to common law bonds under Florida Statutes.

CITY

CITY OF MARATHON, FLORIDA

By: Clyde Burnett

The 19 day of August, 2008

AUTHENTICATION:

Diane Clavier
City Clerk

(SEAL)

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF THE
CITY OF MARATHON ONLY:

H A
City Attorney

WHEN THE PRINCIPAL IS AN **INDIVIDUAL**:

Signed, sealed and delivered in the presence of:

(Witness)

By: _____
(Individual Principal)

(Witness)

Business Address

WHEN THE PRINCIPAL OPERATES UNDER A **TRADE NAME**:

Signed, sealed and delivered in the presence of:

(Witness)

Business Name and Address

(Witness)

By: _____
Signature of Individual

WHEN A **PARTNERSHIP**:

Signed, sealed and delivered in the presence of:

(Witness)

Name and Address of Partnership


(Witness)

(Partner)

WHEN THE PRINCIPAL IS A CORPORATION:

ATTEST:

(Corporate Seal)


(Secretary)
Rick Torcise

Atlantic Civil, Inc.

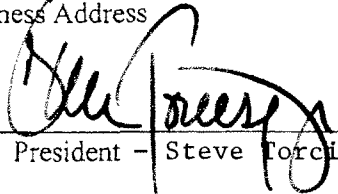
(Type Corporate Principal Name)

9350 South Dixie Highway, Suite 1250

Miami, FL 33156

Business Address

By:



President - Steve Torcise, Jr.

SURETY


ATTEST:

(Surety Seal)

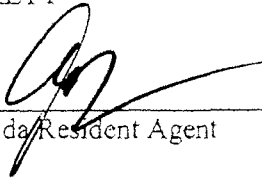
Western Surety Company

(Type Corporate Surety Name)

P.O. Box 5077
Sioux Falls, SD 57117
Business Address


(Secretary)

By:
SURETY

By: 
Florida Resident Agent

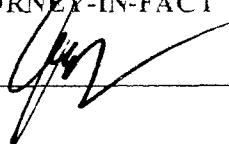
William L. Parker

(Type Florida Resident's Name)

305 670-6111

Florida Agent's Business Telephone Number

ATTORNEY-IN-FACT

By: 

Name William L. Parker
(Type)

NOTE 1: Surety shall provide evidence of signature authority, i.e., a certified copy of Power of Attorney.

NOTE 2: If both the Principal and Surety are Corporations, the respective Corporate Seals shall be affixed and attached.

NOTE 3: Surety shall include evidence that Agent is licensed in Florida.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Florida.

ATTACH a certified copy of Power-of-Attorney appointing individual Attorney-in-Fact for execution of Performance Bond on behalf of Surety.

SECTION 00620
PAYMENT BOND

BY THIS BOND (the "Bond"), We as Atlantic Civil, Inc. _____, called CONTRACTOR, and Western Surety Company _____, hereinafter called SURETY, are bound to the CITY OF MARATHON, a Florida municipal corporation, hereinafter called CITY, in the amount of One Million Six Hundred Eighty Five Thousand Nine Hundred Eleven Dollars and Forty Two Cents Dollars for payment of which CONTRACTOR and SURETY bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, with reference to a written CONTRACT entered into by CONTRACTOR and CITY, for the following:

Contract Title: City of Marathon Little Venice Phase II Stormwater Project

THE CONDITION OF THIS BOND is that if the CONTRACTOR:

Promptly makes payments to all claimants as defined in Section 255.05(1), Florida Statutes, supplying CONTRACTOR with labor, material, or supplies, used directly or indirectly by CONTRACTOR in the prosecution of the work provided for in the contract;

THEN THIS BOND IS VOID, OTHERWISE, IT REMAINS IN FULL FORCE.

Any changes in or under the Contract Documents and compliance or noncompliance with formalities, connected with the CONTRACT or with the changes, do not affect Surety's obligation under this bond. Surety hereby waives notice of any alteration or extension of time made by the CITY.

Claimants must comply with notice requirements set forth in Section 255.05(2), Florida Statutes. No action shall be instituted against the CONTRACTOR or Surety under this bond after one (1) year from the performance of the labor or completion of the delivery of the materials or supplies.

This bond is given to comply with section 255.05 Florida Statutes, and any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05 (2), Florida Statutes.

IN WITNESS WHEREOF, this instrument is executed this the 29th day of
July, 2008.

WHEN THE PRINCIPAL IS AN INDIVIDUAL:

Signed, sealed and delivered in the presence of:

(Witness)

By: _____
(Individual Principal)

(Witness)

Business Address

WHEN THE PRINCIPAL OPERATES UNDER A TRADE NAME:

Signed, sealed and delivered in the presence of:

(Witness)

Business Name and Address

(Witness)

By: _____
Signature of Individual

WHEN A PARTNERSHIP:

Signed, sealed and delivered in the presence of:

(Witness)

Name and Address of Partnership


(Witness)

By: _____
(Partner)

WHEN THE PRINCIPAL IS A CORPORATION:

ATTEST:

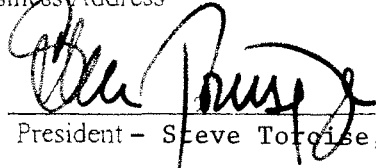
(Corporate Seal)


Secretary - Rick Torcise

Atlantic Civil, Inc.

(Corporate PRINCIPAL Name)
9350 South Dixie Highway, Suite 1250
Miami, FL 33156


Business Address

By: 

President - Steve Torcise, Jr.

ATTEST:

(Surety Seal)

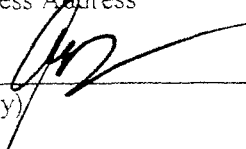


(Secretary)

Western Surety Company
(Corporate SURETY)

P.O. Box 5077
Sioux Falls, SD 57117

Business Address

By: 

(Surety)

William L. Parker
Florida Resident Agent

ATTORNEY-IN-FACT

By: 

Name William L. Parker
(Type)

NOTE 1: Surety shall provide evidence of signature authority, i.e., a certified copy of Power of Attorney.

NOTE 2: If both the Principal and Surety are Corporations, the respective Corporate Seals shall be affixed and attached

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Florida.

ATTACH a certified copy of Power-of-Attorney appointing individual Attorney-in-Fact for execution of Performance Bond on behalf of Surety.

The Performance Bond and the Statutory Payment Bond and the covered amounts of each are separate and distinct from each other.

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

William L Parker, Harold M Humphrey, Charles C Ball, Davor I Mimica, Ileana M Bauza, William F Kleis, Phillip C Lyons, Alejandro Soto, J Hayes Worley Jr, Individually

of Miami, FL, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed on this 13th day of November, 2006.



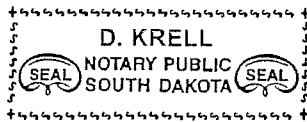
WESTERN SURETY COMPANY

Paul T. Bruflat, Senior Vice President

State of South Dakota }
County of Minnehaha } ss

On this 13th day of November, 2006, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Senior Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires
November 30, 2012



D. Krell, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 29 day of July, 2008.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary