

**CITY OF MARATHON, FLORIDA
RESOLUTION 2008-94**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, APPROVING THE PROJECT AGREEMENT BETWEEN THE CITY AND KEYS CONTRACTING SERVICES FOR DEMOLITION OF AN UNSAFE STRUCTURE, AUTHORIZING THE CITY TO FILE A LIEN ON THE PROPERTY, AUTHORIZING THE MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Marathon (the “City”) requested qualifications from contractors to provide demolition and repair services to the City in 2007; and

WHEREAS, the Keys Contracting Services (the “Contractor”) and the City have a continuing services agreement for demolition and repair services for unsafe structures; and

WHEREAS, Keys Contracting Services provided the lowest quote for the demolition of the unsafe structure located at 1608 Harbor Drive in the City of Marathon; and

WHEREAS, the City and the Contractor wish to enter into a Project Agreement to authorize the Contractor to demolish the unsafe structure and perform site cleanup at 1608 Harbor Drive (the “Project”);

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


Section 1. The Project Agreement between the City of Marathon and Keys Contracting Services to provide demolition services and site cleanup at 1608 Harbor Drive, a copy of which is attached as Exhibit “A,” 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, is hereby approved.

Section 2. The City Manager is authorized to execute the Project Agreement on behalf of the City and file a lien on the property to cover the City’s costs and expenses in connection with the Project.

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 10th day of June, 2008.


THE CITY OF MARATHON, FLORIDA



Edward P. Worthington, Mayor

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

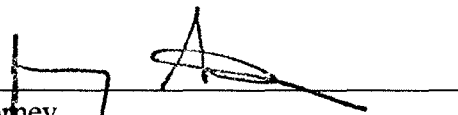
ATTEST:



Diane Clavier
City Clerk

(City Seal)

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



City Attorney

EXHIBIT "A"

PROJECT AGREEMENT

Between

CITY OF MARATHON, FLORIDA

And

KEYS CONTRACTING SERVICES

for

Work Authorization No.01

Demolition and Site Cleanup
RE#00330920-000000

PROJECT AGREEMENT
Between
THE CITY OF MARATHON, FLORIDA
And
KEYS CONTRACTING SERVICES
For
Work Authorization No. 01
Demolition and Site Cleanup
RE#00330920-000000

Pursuant to the provisions contained in the "Continuing Services Agreement" between the CITY OF MARATHON, FLORIDA (the "CITY") and KEYS CONTRACTING SERVICES, ("CONTRACTOR") dated July 24, 2007, this Project Agreement authorizes the CONTRACTOR to provide the services as set forth below:

The CITY and CONTRACTOR agree as follows:

SECTION 1. SCOPE OF SERVICES

1.1 The CONTRACTOR shall provide demolition services to the CITY for the Project as described in the "Project Description" attached as Exhibit "1."

1.2 The "Scope of Services and Project Schedule" and tasks to be provided by the CONTRACTOR for this Project are those services and tasks as listed in Exhibit "2."

1.3 The CITY may request changes that would increase, decrease, or otherwise modify the Scope of Services. Such changes must be contained in a written change order executed by the parties in accordance with the provisions of the Continuing Services Agreement, prior to any deviation from the terms of the Project Agreement, including the initiation of any extra work.

SECTION 2. DELIVERABLES

As part of the Scope of Services and Project Schedule, the CONTRACTOR shall provide to the CITY the following Deliverables:

- Removal of the CMU Building structure
- Removal of the storage sheds
- Removal of RV on site
- Disconnect power supply to structure
- Pump out and abandonment of waste water system
- Removal of concrete walk ways and roof tiles
- Removal of concrete foundation
- Removal of abandoned vehicles
- Removal of all debris and garbage on site
- Removal of small landscape plants around structure
- Level lot to even grade
- Proper disposal of demolition materials

SECTION 3. TERM/TIME OF PERFORMANCE/DAMAGE

3.1 **Term.** This Project Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect, unless otherwise terminated pursuant to Section 6 or other applicable provisions of this Project Agreement. The City Manager, in his sole discretion, may extend the term of this Agreement through written notification to the CONTRACTOR. Such extension shall not exceed 30 days. No further extensions of this Agreement shall be effective unless authorized by the CITY Council.

3.2 **Commencement.** The CONTRACTOR'S services under this Project Agreement and the time frames applicable to this Project Agreement shall commence upon the date provided in a written Notification of Commencement ("Commencement Date") provided to the CONTRACTOR from the CITY. The CONTRACTOR shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. CONTRACTOR must receive written notice from the City Manager prior to the beginning the performance of services.

3.3 **Contract Time.** Upon receipt of the Notification of Commencement, the CONTRACTOR shall commence services to the CITY on the Commencement Date, and shall continuously perform services to the CITY, without interruption, in accordance with the time frames set forth in the "Project Schedule," a copy of which is attached and incorporated into this Agreement as Exhibit "3". The number of calendar days from the Commencement Date, through the date set forth in the Project Schedule for completion of the Project or the date of actual completion of the Project, whichever shall last occur, shall constitute the Contract Time.

3.4 **Liquidated Damages.** Unless otherwise excused by the CITY in writing, in the event that the CONTRACTOR fails to meet to the contract time for completion of services as determined by the Project Schedule, the CONTRACTOR shall pay to the CITY the sum of dollars identified below per day for each and every calendar day unexcused delay beyond the completion date, plus approved time extensions, until completion of the project: \$100.00 per day. The CONTRACTOR may claim extension if the factors involved are not under their direct control.

Any sums due and payable hereunder by the CONTRACTOR shall be payable, not as a penalty, but as liquidated damages representing and estimate at or before the time of executing this Agreement. When the CITY reasonably believes that completion will be inexcusably delayed, the CITY shall be entitled, but not required, to withhold from any amounts otherwise due the CONTRACTOR an amount then believed by the CITY to be adequate to recover liquidated damages applicable to such delays. If and when the CONTRACTOR overcomes the delay in achieving completion, or any part thereof, for which the CITY has withheld payment, the CITY shall promptly release to the CONTRACTOR those funds withheld, but no longer applicable, as liquidated damages.

3.5 All limitations of time set forth in this Agreement are of the essence.

SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION

4.1 **Lump Sum Compensation.** CITY agrees to pay CONTRACTOR as compensation for performance of all services described in Exhibit "2" \$ 14,750.00.

4.2 **Reimbursable Expenses.** The following expenses are reimbursable at their actual cost: travel and accommodations, long distance telephone calls, facsimile, courier services, mileage (at a rate approved by the CITY), photo and reproduction services. All document reproductions are also reimbursable at a rate approved by the CITY.

SECTION 5. BILLING AND PAYMENTS TO THE CONTRACTOR

5.1 Invoices

5.1.1 **Lump Sum Compensation and Reimbursable Expenses.** CONTRACTOR shall submit invoices which are identified by the specific project number on a monthly basis in a timely manner. These invoices shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished in accordance with the Payment Schedule set forth in Exhibit "3", to this Project Agreement. Invoices for each phase shall not exceed amounts allocated to each phase of the Project plus reimbursable expenses accrued during each phase. The statement shall show a summary of fees with accrual of the total and credits for portions previously paid by the CITY. The CITY shall pay CONTRACTOR within thirty (30) calendar days of approval by the City Manager of any invoices submitted by CONTRACTOR to the CITY.

5.2 **Disputed Invoices.** In the event that all or a portion of an invoice submitted to the CITY for payment to the CONTRACTOR is disputed, or additional backup documentation is required, the CITY shall notify the CONTRACTOR within fifteen (15) working days of receipt of the invoice of such objection, modification or additional documentation request. The CONTRACTOR shall provide the CITY with additional backup documentation within five (5) working days of the date of the CITY'S notice. The CITY may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CONTRACTOR. The CITY, at its sole discretion, may pay to the CONTRACTOR the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

5.3 **Suspension of Payment.** In the event that the CITY becomes credibly informed that any representations of the CONTRACTOR, provided pursuant to Subparagraph 5.1, are wholly or partially inaccurate, or in the event that the CONTRACTOR is not in compliance with any term or condition of this Project Agreement, the CITY may withhold payment of sums then or in the future otherwise due to the CONTRACTOR until the inaccuracy, or other breach of Project Agreement, and the cause thereof, is corrected to the CITY'S reasonable satisfaction.

5.4 **Retainage.** The CITY reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due to the CONTRACTOR until the project is completed. Said retainage may be withheld at the sole discretion of the City Manager and as security for the successful completion of the CONTRACTOR'S duties and responsibilities under the Project Agreement.

5.5 **Final Payment.** Submission of the CONTRACTOR'S invoice for final payment and reimbursement shall constitute the CONTRACTOR'S representation to the CITY that, upon receipt from the CITY of the amount invoiced, all obligations of the CONTRACTOR to others, including its consultants, incurred in connection with the Project, shall be paid in full. The CONTRACTOR shall deliver to the CITY all documents requested by the CITY evidencing payments to any and all subcontractors, and all final specifications, plans, or other documents as dictated in the Scope of Services and Deliverable. Acceptance of final payment shall constitute a waiver of any and all claims against the CITY by the CONTRACTOR.

SECTION 6. TERMINATION/SUSPENSION

6.1 **For Cause.** This Project Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONTRACTOR abandons this Project Agreement or causes it to be terminated by the CITY, the CONTRACTOR shall indemnify the CITY against any loss pertaining to this termination. In the event that the CONTRACTOR is terminated by the CITY for cause and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 6.2 of this Project Agreement and the provision of Section 6.2 shall apply.

6.2 **For Convenience.** This Project Agreement may be terminated by the CITY for convenience upon fourteen (14) calendar days' written notice to the CONTRACTOR. In the event of termination, the CONTRACTOR shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding subContractor obligations. The CONTRACTOR shall be compensated for all services performed to the satisfaction of the CITY and for reimbursable expenses incurred prior to the date of termination. The CONTRACTOR shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of Paragraph 5.1 of this Project Agreement. Under no circumstances shall the CITY make any payment to the CONTRACTOR for services which have not been performed.

6.3 **Assignment upon Termination.** Upon termination of this Project Agreement, a copy of all of the CONTRACTOR's work product shall become the property of the CITY and the CONTRACTOR shall, within ten (10) working days of receipt of written direction from the CITY, transfer to either the CITY or its authorized designee, a copy of all work product in its possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the CONTRACTOR pertaining to this Project Agreement. Further, upon the CITY'S request, the CONTRACTOR shall assign its rights, title and interest under any subcontractor's agreements to the CITY.

6.4 **Suspension for Convenience.** The CITY shall have the right at any time to direct the CONTRACTOR to suspend its performance, or any designated part thereof, for any reason whatsoever or without reason, for a cumulative period of up to thirty (30) calendar days. If any such suspension is directed by the CITY, the CONTRACTOR shall immediately comply with same. In the event the CITY directs a suspension of performance as provided for herein through no fault of the CONTRACTOR, the CITY shall pay to the CONTRACTOR its reasonable costs, actually incurred and paid, of demobilization and remobilization, as full compensation for any such suspension.

SECION 7. INCORPORATION OF TERMS AND CONDITONS OF CONTINUING SERVICE AGREEMENT

7.1 This Project Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement dated July 24, 2007 between the parties as though fully set forth herein. In the event that any terms or conditions of this Project Agreement conflict with the Continuing Services Agreement, the provisions of this specific Project Agreement shall prevail and apply.

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ATTEST:

CITY OF MARATHON

Diane Clavier
Diane Clavier, City Clerk

By: Clyde Burnett
Clyde Burnett, City Manager

Date: 6/11/08

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

Jimmy Morales
Jimmy Morales, City Attorney

ATTEST:

CONTRACTOR

Secretary

By: Chris Gratton
Chris Gratton, President

Please type name of Secretary

Date: 6/4/08

(CORPORATE SEAL)

WITNESSES:

Ann Hogan
Print Name: Ann Hogan

Hillary Harrison
Print Name: Hillary Harrison

Exhibit "1"

Project Description

Demolition and site cleanup at 1608 Harbor Drive, having RE# 00330920-000000.

Exhibit "2"

Scope of Services and Project Schedule

Scope of Work to Include:

- Removal of the CMU Building structure
- Removal of the storage sheds
- Removal of RV on site
- Disconnect power supply to structure
- Pump out and abandonment of waste water system
- Removal of concrete walk ways and roof tiles
- Removal of concrete foundation
- Removal of abandoned vehicles
- Removal of all debris and garbage on site
- Removal of small landscape plants around structure
- Level lot to even grade
- Proper disposal of demolition materials

Removal of the large trees and permit fees are not included.

All Work (the Project) to be completed and debris removed within 30 days of issuance of demolition permit.

EXHIBIT “3”

Payment Schedule

Payment due in full upon completion of project and within 30 days of invoice. Payment not to exceed \$14,750.00