

Sponsored by: Burnett

**CITY OF MARATHON, FLORIDA
RESOLUTION 2009-35**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY TO ENTER INTO CONTRACT WITH OAC ACTION CONSTRUCTION, CORP., FOR CONSTRUCTION OF SERVICE AREA # 5 VACUUM STATION IN AN AMOUNT NOT TO EXCEED \$1,109,235; AUTHORIZING THE MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (The City) published an Invitation To Bid (ITB), for Service Area 5 vacuum system for the City's wastewater project (The Project) opening on January 21, 2009; and

WHEREAS, based upon an error in the information provided in the lowest bidder's documents, the lowest bidder requested permission to withdraw and Council approved the withdrawal; and

WHEREAS, the next lowest bidder was OAC Action Construction Corp. (OAC), OAC has performed construction projects consistent with the scope of work for the project and has shown the capabilities to satisfactorily construct projects of this type and magnitude within the contract time frames; and

WHEREAS, staff recommends award of the construction of the Project to OAC Action Construction Corp.

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.

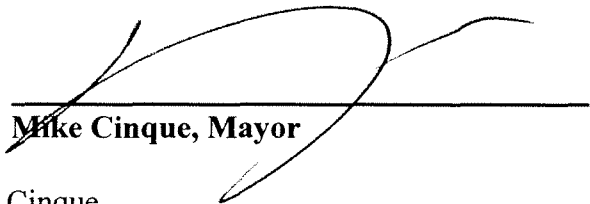
Section 2. The City Council hereby approves the contract between OAC Construction Corp., and the City, a copy of which is attached hereto as Exhibit "A", for the Construction of Service Area 5 Vacuum System for the Wastewater Project in an amount not to exceed \$1,109,235.00, together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney.

Section 3. The City Manager or his designee is authorized to execute the Agreement on behalf of the City.

Section 4. 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 March, 2009

THE CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor

AYES: Ramsay, Snead, Vasil, Worthington, Cinque
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 10th day of March, 2009 by and between **THE CITY OF MARATHON** (hereinafter called the "**CITY**") and **OAC Action Construction Corp.** hereinafter called **CONTRACTOR**) located at: 12540 SW 130th Street, Miami, Florida 33186.

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 SERVICE AREA 5 VACUUM STATION**. The project consists of constructing and installing wastewater pumping facilities, complete, in place, all in accordance with the construction drawings and technical specifications.

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 R. Castle, P.E. of The Weiler Engineering Corporation, 5800 Overseas Highway, Suite 36, Marathon, Florida 33050.

Article 3. TERM

3.1 Contract Times. The Contract #1 work shall be substantially completed within **Two Hundred Seventy (270)** 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 **Three Hundred (300)** 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 One Thousand Five Hundred Dollars (\$1,500.00)** 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 Two Thousand Dollars (\$2,000.00)** 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)

TOTAL
NO. ITEM
ESTIMATED

1. Furnishing all materials, labor, equipment, supervision, and All necessary appurtenances to construct and place into Satisfactory operation the Vacuum Station as shown generally On the Contrat Drawings and called for in the Specifications, less the cost of Owner- Purchased equipment and Contractor's handling fees as listed in Schedule B of the Bid Document.	\$907,935
2. Mobilization, Bonds and Insurance	79,900
3. Contractors Fee for Handling and Coordinating Direct Purchased Equipment Delivery and Related Work	121,400
TOTAL	\$1,109,235

TOTAL OF ALL UNIT PRICES

ONE MILLION ONE HUNDRED NINE THOUSAND TWO HUNDRED THIRTY-FIVE DOLLARS

\$1,109,235 (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: Marathon Service Area 5 Vacuum Station
- 8.1.9 Drawings consisting of a cover sheet and sheets numbered G1 through L101 (34 sheets) inclusive with each sheet bearing the following general title: Marathon Service Area 5 Vacuum Station
- 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:

OAC Action Construction Corp
12540 SW 130th Street Suite 2-3
Miami, Florida 33186
ATTN: Osvaldo Cruz

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 10th day of March, 2009, and by OAC ACTION CONSTRUCTION, CORP. (**Contractor**), signing by and through its **President**, duly authorized to execute same.

CITY

ATTEST
Diane Clavier
City Clerk
12 day of March, 2009.

CITY OF MARATHON, FLORIDA
[Signature]
Mayor

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

By: [Signature]
City Attorney

CONTRACTOR

~~WITNESS~~

By: _____

By [Signature] President
(Signature and Title)

(Corporate Seal)

David Lopez President

(Type Name/Title signed above)

3 day of March, 2009.

(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, Orlando Cruz, certify that I am of the Secretary/CEO, and that Oswaldo Cruz, who signed the Bid with the City of Marathon, Monroe County, Florida for Service Area 9 Vacuum, is President of said Corporation with full authority to sign said Bid on behalf of the Corporation.

Signed and sealed this 3 day of March, ~~2008~~ ²⁰⁰⁹.

(SEAL) [Signature]
Signature

ORLANDO CRUZ CEO
Typed w/Title

STATE OF FLORIDA
COUNTY OF MONROE

SWORN TO AND SUBSCRIBED before me this 3 day of March, ~~2008~~.

My Commission Expires: NOV 26, 2010

[Signature]
Notary Public



LILIA MENDOZA
Commission DD617173
Expires November 26, 2010
Bonded Thru Troy Fain Insurance 800-385-7019

CERTIFICATE AS TO AUTHORIZED CORPORATE PERSONNEL

I, Oswaldo Cruz, certify that I am the President of OAC Action Construction, Corp., who signed the Bid with the City of Marathon, Monroe County, Florida, for the project titled Service Area 3 Vacuum Station, and that the following persons have the authority to sign payment requests on behalf of the Corporation:

[Signature] Oswaldo Cruz President
(Signature) (Typed Name w/Title)

[Signature] Orlando Cruz CEO
(Signature) (Typed Name w/Title)

(Signature) (Typed Name w/Title)

Signed and sealed this 3 day of March, ~~2008~~²⁰⁰⁹.

(SEAL) [Signature]
Signature

Oswaldo Cruz President
Typed w/Title

STATE OF FLORIDA
COUNTY OF MONROE

SWORN TO AND SUBSCRIBED before me this 3 day of March, ~~2008~~²⁰⁰⁹

My Commission Expires: Nov 26, 2010

[Signature]
Notary Public



LILIA MENDOZA
Commission DD617173
Expires November 26, 2010
Bonded Thru Troy Fain Insurance 800-385-7018

CHANGE ORDER NO. _____

TO: City of Marathon

PROJECT: City of Marathon Service Area 5 Vacuum Station

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

Nielson, Alter & Associates, Inc.

Bond Department

Public Works Bond

In compliance with Florida Statutes 255.05(1)(a)

Bond No. 534879P

Contractor *OAC Action Construction Corp.*

Address 12540 S.W. 120th Street, #3

Miami, FL 33165

Phone No. (305) 388-8303

Surety Company Developers Surety and Indemnity Company

Address P.O. Box 19725

Irvine, CA 92623

Phone No. (949) 263-3300

Owner Name The City of Marathon

Address 9805 Overseas Highway

Marathon, FL 33050

Phone No. (305) 289-5005

Contract/Project No. 2009-35

Project Name *City of Marathon Service Area*

5 Vacuum Station

Project Location Marathon, FL

Legal Description Marathon, FL

And Street Address

Description of Work Construction

Front Page

All other bond page(s) are deemed subsequent to this page regardless
of any page number(s) that may be preprinted thereon.

SECTION 00610

PERFORMANCE BOND

BY THIS BOND (the "Bond"), We as OAC ACTION CONSTRUCTION CORP.,
called CONTRACTOR, and Developers Surety and Indemnity Company,
hereinafter called SURETY, are bound to the CITY OF MARATHON, a Florida municipal
corporation, hereinafter called CITY, in the amount of One Million One Hundred Nine Thousand Two
Hundred Thirty Five And No/100** 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: Contract #1: City of Marathon Service Area 5 Vacuum Station

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 30th day of MARCH, 2009

AUTHENTICATION:

Diane Clavier
City Clerk

(SEAL)

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

[Signature]
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

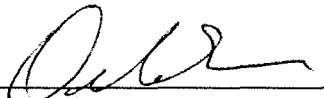
(Witness)

(Partner)

WHEN THE PRINCIPAL IS A CORPORATION:

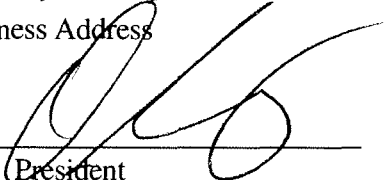
ATTEST:

(Corporate Seal)



(Secretary)

OAC Action Construction Corp.
(Type Corporate Principal Name)
12450 S.W. 130th Street, Suite 3
Miami, FL 33186
Business Address

By: 

(President)

SURETY

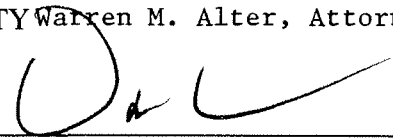
ATTEST:

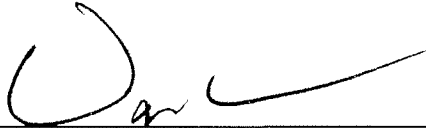
(Surety Seal)

Developers Surety and Indemnity Company
(Type Corporate Surety Name)
P.O. Box 19725
Irvine, CA 92623
Business Address

As per Attached Power of Attorney
(Secretary)

By:
SURETY Warren M. Alter, Attorney In Fact

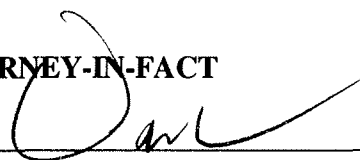
By: 
Florida Resident Agent Warren M. Alter



(Type Florida Resident's Name)

(305) 722-2663
Florida Agent's Business Telephone Number

ATTORNEY-IN-FACT

By: 

Name Warren M. Alter
(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.

POWER OF ATTORNEY FOR
DEVELOPERS SURETY AND INDEMNITY COMPANY
PO Box 19725, IRVINE, CA 92623 (949) 263-3300

KNOW ALL MEN BY THESE PRESENTS, that as except as expressly limited, DEVELOPERS SURETY AND INDEMNITY COMPANY, do each, hereby make, constitute and appoint:

Charles J. Nielson, Warren M. Alter, Charles D. Nielson, Brett M. Rosenhaus, Kevin R. Wojtowicz, Laura Mosholder, Jason Katz, jointly or severally

as their true and lawful Attorney(s)-in-Fact, to make, execute, deliver and acknowledge, for and on behalf of said corporations, as sureties, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as each of said corporations could do, but reserving to each of said corporations full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

This Power of Attorney is granted and is signed by facsimile under and by authority of the following resolutions adopted by the respective Board of Directors of DEVELOPERS SURETY AND INDEMNITY COMPANY, effective as of January 1st, 2008.

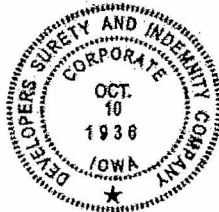
RESOLVED, that the chairman of the Board, the President and any Vice President of the corporation be, and that each of them hereby is, authorized to execute Powers of Attorney, qualifying the attorney(s) named in the Powers of Attorney to execute, on behalf of the corporations, bonds, undertakings and contracts of suretyship; and that the Secretary or any Assistant Secretary of the corporations be, and each of them hereby is, authorized to attest the execution of any such Power of Attorney;

RESOLVED, FURTHER, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporations when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

IN WITNESS WHEREOF, DEVELOPERS SURETY AND INDEMNITY COMPANY have severally caused these presents to be signed by their respective Vice President and attested by their respective Assistant Secretary this January 1st, 2008.

By: [Signature]
Stephen T. Pate, Senior Vice President

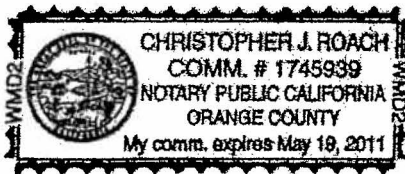
By: [Signature]
Charles L. Day, Assistant Secretary



State of California
County of Orange

On January 1st, 2008 before me, Christopher J. Roach, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Stephen T. Pate and Charles L. Day
Name(s) of Signer(s)



Place Notary Seal Above

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]
Christopher J. Roach

CERTIFICATE

The undersigned, as Assistant Secretary, of DEVELOPERS SURETY AND INDEMNITY COMPANY, does hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked, and furthermore, that the provisions of the resolutions of the respective Boards of Directors of said corporations set forth in the Power of Attorney, are in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, the 25th day of March, 2009

By: [Signature]
Albert Hillebrand, Assistant Secretary

Bond No. 534879P

SECTION 00620

PAYMENT BOND

BY THIS BOND (the "Bond"), We as **OAC ACTION CONSTRUCTION CORP.** _____, called CONTRACTOR, and Developers Surety and Indemnity Company _____, hereinafter called SURETY, are bound to the CITY OF MARATHON, a Florida municipal corporation, hereinafter called CITY, in the amount of One Million One Hundred Nine Thousand Two Hundred Thirty Five And No/100** 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: Contract #1: Marathon Service Area 5 Vacuum Station

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.

IN WITNESS WHEREOF, this instrument is executed this the 25th day of
March, 2009.

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:

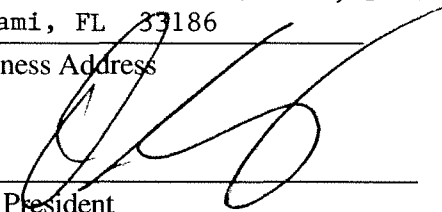
(Corporate Seal)



Secretary

OAC Action Construction Corp.
(Corporate PRINCIPAL Name)
12450 S.W. 130th Street, Suite 3
Miami, FL 33186

Business Address

By: 

President

ATTEST:

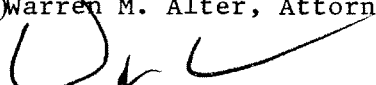
(Surety Seal)

Developers Surety and Indemnity Company
(Corporate SURETY)
P.O. Box 19725
Irvine, CA 92623

Business Address

As per Attached Power of Attorney
(Secretary)

By: 
(Surety) Warren M. Alter, Attorney In Fact


Florida Resident Agent Warren M. Alter

ATTORNEY-IN-FACT

By: 

Name Warren M. Alter
(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.

POWER OF ATTORNEY FOR
DEVELOPERS SURETY AND INDEMNITY COMPANY
PO Box 19725, IRVINE, CA 92623 (949) 263-3300

KNOW ALL MEN BY THESE PRESENTS, that as except as expressly limited, DEVELOPERS SURETY AND INDEMNITY COMPANY, do each, hereby make, constitute and appoint:

Charles J. Nielson, Warren M. Alter, Charles D. Nielson, Brett M. Rosenhaus, Kevin R. Wojtowicz, Laura Mosholder, Jason Katz, jointly or severally

as their true and lawful Attorney(s)-in-Fact, to make, execute, deliver and acknowledge, for and on behalf of said corporations, as sureties, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as each of said corporations could do, but reserving to each of said corporations full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

This Power of Attorney is granted and is signed by facsimile under and by authority of the following resolutions adopted by the respective Board of Directors of DEVELOPERS SURETY AND INDEMNITY COMPANY, effective as of January 1st, 2008.

RESOLVED, that the chairman of the Board, the President and any Vice President of the corporation be, and that each of them hereby is, authorized to execute Powers of Attorney, qualifying the attorney(s) named in the Powers of Attorney to execute, on behalf of the corporations, bonds, undertakings and contracts of suretyship; and that the Secretary or any Assistant Secretary of the corporations be, and each of them hereby is, authorized to attest the execution of any such Power of Attorney;

RESOLVED, FURTHER, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporations when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

IN WITNESS WHEREOF, DEVELOPERS SURETY AND INDEMNITY COMPANY have severally caused these presents to be signed by their respective Vice President and attested by their respective Assistant Secretary this January 1st, 2008.

By: *Stephen T. Pate*
Stephen T. Pate, Senior Vice President

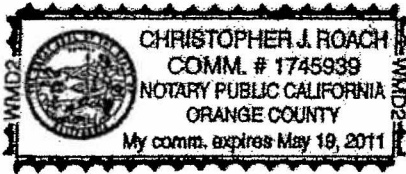
By: *Charles L. Day*
Charles L. Day, Assistant Secretary



State of California
County of Orange

On January 1st, 2008 before me, Christopher J. Roach, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Stephen T. Pate and Charles L. Day
Name(s) of Signer(s)



Place Notary Seal Above

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Christopher J. Roach*
Christopher J. Roach

CERTIFICATE

The undersigned, as Assistant Secretary, of DEVELOPERS SURETY AND INDEMNITY COMPANY, does hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked, and furthermore, that the provisions of the resolutions of the respective Boards of Directors of said corporations set forth in the Power of Attorney, are in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, the 25th day of March, 2009

By: *Albert Hillebrand*
Albert Hillebrand, Assistant Secretary