

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2010-100**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A CONTRACT BETWEEN THE CITY AND ARAZOZA BROS., CORP. IN THE AMOUNT OF \$98,621.10 FOR LANDSCAPING SERVICES ON SOMBRERO BEACH ROAD FROM SOMBRERO BLVD. TO AVENIDA PRIMICERIA; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY AND EXPEND BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Marathon (the "City") solicited bids for landscaping services on Sombrero Beach Road (the "Project"); and

**WHEREAS**, the City Clerk opened sealed bids for the Project, and staff subsequently reviewed the bid for completeness, and to determine whether bidders were responsive and responsible; and

**WHEREAS**, it was determined that the bid received from Arazoza Bros. Corporation in the amount of \$98,621.10 was the lowest responsive and responsible bid for the Project; and

**WHEREAS**, the City Council finds that approving of the award of bid for the Project to Arazoza Bros. Corporation is in the best interest of the City; and

**WHEREAS**, the Florida Department of Transportation, through a Local Agency Program Agreement (LAP) will fully fund this project; and

**WHEREAS**, the City Council desires to enter into a contract with Arazoza Bros. Corporation, (the "Contractor") for landscaping services along Sombrero Beach Road in an amount not to exceed \$98,621.10 (the "Contract").

**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.

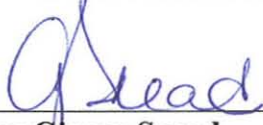
**Section 2.** The Contract between the City and Contractor for landscaping services along Sombrero Beach Road in an amount not to exceed \$98,621.10, a copy of which is attached hereto as Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is hereby approved.

**Section 3.** The City Manager is authorized to execute the Contract and expend budgeted funds 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 14<sup>th</sup> DAY OF SEPTEMBER, 2010.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Mayor Ginger Snead**

AYES: Cinque, Keating, Ramsay, Worthington, Snead  
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

## CONTRACT

THIS CONTRACT is made this 21 day of September, 2010 by and between the City of Marathon, Florida (the "City") and Arazoza Bros., Corp. (the "Contractor") whose address is 15901 SW 242 Street, Homestead, Florida 33092.

The parties, for the consideration provided for below, mutually agree as follows:

**SCOPE OF WORK-** The Contractor shall furnish all labor, materials, supervision, equipment, supplies, and incidentals required to perform the scope of work as outlined in the Detailed Specifications including but not limited to:

The contractor shall furnish and install Green Buttonwoods, Silver Buttonwoods, Orange Geiger Trees, Native Lignum Vitae, Blolly, Black Ironwoods, Wild Tamarinds, Simpson's Stoppers, Florida Thatch Palms, Jamaican Capers, Firebushes, Necklace Pods, Bay Cedars, and Muhly Grass along the length of Sombrero Beach Road from Sombrero Boulevard to Avenida Primiceria. The contractor shall furnish all labor, materials, supervision, equipment, supplies, tools, services, and all other necessary incidentals required to perform complete Sombrero Beach Road Landscaping Project.

### 2.1. **COMPENSATION/PAYMENT-**

- 2.1.1. Contractor shall provide the City with an invoice on a monthly basis within ten (10) days of the end of each month stating the services provided in the preceding month.
- 2.1.2. The City shall make payment on said invoices of approved amounts due, that are not subject to set off, as required under the Florida Prompt Payment Act. No payments shall be due or payable for Work not performed or materials not furnished.
- 2.1.3. The Contractor shall be compensated at the unit prices specified in the Bid Schedule based upon the actual Work completed for the month.
- 2.1.4. Upon proposal requested by City Manager or designee, the Contractor may perform additional services as needed.
- 2.1.5. In the event of a major storm or act of god, the Contractor shall provide a proposal to the City Manager or designee, to return the park or beach to its normal condition.
- 2.1.6. No progress payment shall be made until the CONTRACTOR delivers to the City complete original partial releases of all liens and claims signed by all Subcontractors, materialmen, suppliers, and vendors, indicating amount of partial payment, 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 for work completed to date.

- 2.2. **TERM-** This Agreement shall be effective upon Notice to Proceed and shall continue through June 30, 2012
- 2.3. **CONTRACTOR'S DUTY TO INSPECT-** The Contractor has carefully examined the described rights of way, water management areas and similar planting areas and has made sufficient tests and other investigations to fully satisfy himself as to site conditions, and he assumes full responsibility therefore. The Contractor shall be responsible for the repair or replacement of any facility damaged by the Contractor.
- 2.4. **NON-WAIVER-** The approval, and/or acceptance of any part of the Work by the City shall not operate as a waiver by City of any other terms and conditions of the Agreement.
- 2.5. **PROTECTION OF PROPERTY AND THE PUBLIC-** The Contractor shall continuously maintain adequate protection of all his Work from damage and shall protect public and private property from injury or loss arising in connection with this contract as follows:
- 2.5.1. The Contractor shall take all necessary precautions for the safety of employees in the performance of the Work on, about or adjacent to the premises, and shall comply with all applicable provisions of Federal, State, and local laws, including, but not limited to the requirements of the Occupational Safety and Health Act of 1970, and amendments thereto, the Construction safety Act of 1969, and amendments thereto, and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed.
- 2.5.2. The Contractor shall erect and properly maintain at all times, all necessary safeguards, including sufficient lights and danger signals on or near the Work, from sunset to sunrise, suitable railings, barricades, or other hazards or other protective devices about unfinished work, open trenches, embankments, or other hazards and obstructions to traffic; provide all necessary security staff on the Work by day or by night for the safety of the public; and take all necessary precautions to prevent accidents and injuries to persons or property on or near the Work.
- 2.5.3. The Contractor shall be completely responsible for, and shall replace and make good all loss, injury, or damage to any property (including landscaping, walks, drives, or structures of the City and of any land adjoining any work sites, which may be caused by Contractor. The Contractor shall, at all times while the Work is in progress, use extraordinary care to see that adjacent property, whether real or personal, is not endangered in any way by reason of fire, water, or construction operations, and shall take all necessary or directed steps, to protect the property. The same care shall be exercised by all Contractor's and subcontractor's employees.
- 2.5.4. Buildings, sidewalks, fences, shade trees, lawns and all other improvements shall be duly protected from damage by Contractor. Property obstructions, such as sewers, drains, water or gas lines, conduits, railroads, poles, walls, posts, galleries, bridges, manholes, valve boxes, meter boxes, street monuments, etc., shall be carefully protected

from injury and shall not be displaced. The Contractor shall give due notice to any department or public service corporation controlling such items as manholes, valve boxes, meter boxes, street monuments, etc., prior to adjusting them to grade and shall be held strictly liable to the affected utility if any such appliances are disturbed, damaged or covered up during the course of the Work.

2.6. **INDEMNIFICATION-**

2.6.1. The Contractor shall indemnify and hold harmless the City, its officers, agents and employees from and against all liability, claims, damages, losses and expenses, including reasonable attorney's fees and costs at both trial and appellate levels arising out of or resulting from the performance of Work under this contract, caused by any act or omission of the Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable.

2.6.2. This indemnification obligation shall survive the termination of this Agreement.

2.6.3. The Contractor shall defend the City or provide for such defense, at the City's option.

2.6.4. The Contractor shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by him, on the Work. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this contract. Contractor shall secure and pay for all permits, fees, licenses, and inspections necessary for the execution of the Work, and upon termination of this contract for any reason, Contractor shall transfer such permits, if any, and if allowed by law, to the City.

2.7. **CONTRACT DOCUMENTS-** The following documents shall, by this reference, be considered part of this Contract:

Instructions to Bidders;  
All Addendums;  
Contract Agreement;  
Proposal;  
Detailed Specifications;  
Qualification Statement;  
Public Entity Crime Form;  
Federal Highway Administration/Florida Department of Transportation Provisions;  
Insurance Certificates;  
Permits;  
Licenses

The plans included with the bid document contain the specifications for the Sombrero Beach Road Landscaping Project.

2.8. **CONTRACTOR'S EMPLOYEES-**

2.8.1. The Contractor shall at all times have a competent supervisor on site who thoroughly understands the Work, who shall, as the Contractor's agent, supervise, direct and otherwise conduct the Work. Contractor's employees shall serve the public in a courteous, helpful, and impartial manner.

2.8.2. Contractor's employees shall wear a clean uniform that provides identification of both the Contractor's company and the name of the employee.

2.8.3. Contractor shall, upon receipt of a written request from the City, immediately exclude any employee of Contractor from providing Work under this Agreement.

2.8.4. The Work contemplated in this Agreement is on public property, accordingly no alcoholic beverages shall be allowed.

2.10. **VEHICLES AND EQUIPMENT-** Contractor shall have on hand at all times and in good working order such vehicles, machinery, tools, accessories, and other items necessary to perform the Work under this Agreement. All vehicles used by Contractor to provide services under this agreement shall be painted uniformly with the name of Contractor, business telephone number, and the number of the vehicle in letters legible by the public. The City may require the repair or replacement of equipment as reasonably necessary. No other advertising shall be permitted on the vehicles. Specific equipment needed for individual parks will be noted under that parks scope of work.

2.11. **INSURANCE-**The Contractor shall provide and maintain during the life of this Agreement the following coverages.

2.11.1. "Worker's Compensation Insurance" in amounts as specified by Florida Law.

2.11.2. Comprehensive and general liability and auto insurance policies. Insurance shall be provided with a limit of \$1,000,000.00 for general liability and \$300,000.00 for comprehensive and auto as follows:

a. Comprehensive General Liability Insurance, including Products and/or Completed Operations, Explosion Hazard, Collapse Hazard and Underground Property Damage Hazard. The City shall be named as additional insured.

b. Comprehensive Auto Liability Insurance. The City shall be named as an additional insured.

c. Contractual Liability Insurance. The City shall be named as additional insured.

2.11.3. All insurance shall be obtained from companies that are licensed and authorized to do business in the State of Florida.

2.11.4. At the time of execution of this Agreement, the Contractor will file with the City certificates of such insurance that are acceptable to the City. These certificates shall contain a provision that the coverage afforded under the policies will not be canceled or materially changed until at least thirty (30) days prior written notice has been given to the City.

2.12. **ASSIGNMENT AND AMENDMENT**- No assignment by the Contractor of this contract or any part of it, or any monies due or to become due, shall be made, nor shall the Contractor hire a subcontractor to perform its duties under this Agreement without prior written approval of the City. This Agreement may only be amended by the parties with the same formalities as this Agreement.

2.13. **TERMINATION**-

2.13.1. Either party may terminate this Agreement without cause upon 30 days written notice to the other party.

2.13.2. Upon notice of such termination, the City shall determine the amounts due to the Contractor for services performed up to the date of termination. The Contractor shall not be entitled to payment of any lost profits or for Work performed after the date of termination.

2.13.3. After receipt of a notice of termination, and except as otherwise directed, the Contractor shall stop all Work under this Agreement, and shall do so on the date specified in the notice of termination.

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

2.14. **CHOICE OF LAW**- This contract shall be governed by the laws of the State of Florida. Venue shall lie in Monroe County.

2.15. **ATTORNEY'S FEES**- In the event either party to this Agreement is required to retain legal counsel to enforce any of its rights under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party together with court costs incurred in any litigation at any trial and appellate proceedings.

2.16. **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 Agreement for a period of three (3) years from the date of Termination.

2.17. **INSPECTION AND AUDIT**- During the term of this Agreement and for three (3) years from the date of Termination the Contractor shall allow City representatives access

during reasonable business hours to Contractor's records related to this Agreement for the purposes of inspection or audit of such records. If upon audit of such records, the City determines the Contractor was paid for services not performed, upon receipt of written demand by the City, the Contractor shall remit such payments to the City.

- 2.18. **SEVERABILITY**- If a term, provision, covenant, contract or condition of this contract is held to be void, invalid, or unenforceable, the same shall not affect any other portion of this contract and the remainder shall be effective as though every term, provision, covenant, contract or condition had not been contained herein.
- 2.19. **WAIVER OF JURY TRIAL**- The parties irrevocably, knowingly agree to waive their rights to a trial by jury in any action to enforce the terms or conditions of this Agreement.
- 2.20. **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.
- 2.21. **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:

City:

City of Marathon  
9805 Overseas Highway  
Marathon, FL 33050

Attention: City Manager

Contractor:

Arazoza Bros., Corp.  
15901 SW 242 Street  
Homestead, Florida 33092  
Attn: Albert Arazoza, President



IN WITNESS WHEREOF the parties hereto have executed this agreement on the day and date first above written.

Attest:

CITY OF MARATHON

By: Diane Clavier  
Diane Clavier, City Clerk

By: Roger T. Hernstadt 09/21/10  
Roger T. Hernstadt, City Manager

Date: 9/21/10

Approved by City Attorney for legal sufficiency for City use only:

By: [Signature]  
City Attorney

Signed, sealed and witnessed in the presence of:

\* As to Contractor:

By: [Signature]

By: [Signature]

(\* 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.

## SCOPE OF WORK

**5.01** The contractor shall furnish and install Green Buttonwoods, Silver Buttonwoods, Orange Geiger Trees, Native Lignum Vitae, Bolly, Black Ironwoods, Wild Tamarinds, Simpson's Stoppers, Florida Thatch Palms, Jamaican Capers, Firebushes, Necklace Pods, Bay Cedars, and Muhly Grass along the length of Sombrero Beach Road from Sombrero Boulevard to Avenida Primiceria. The contractor shall furnish all labor, materials, supervision, equipment, supplies, tools, services, and all other necessary incidentals required to perform complete Sombrero Beach Road Landscaping Project.

CHANGE ORDER # 1

TO: City of Marathon

**PROJECT:** Sombrero Beach Road Landscape Project contract dated September 21, 2010  
**ENGINEER:** City of Marathon  
**CONTRACTOR:** Arazoza Bros., Corp.  
**DATE:** February 17, 2011

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 in Exhibits "A" and "B" attached hereto and by this reference made a part hereof.

This Change Order constitutes full, final, and complete compensation to Arazoza Bros., Corp. for all costs, expenses, overhead, and profit, and any damages of every kind that Arazoza Bros., Corp. may incur in connection with the above referenced changes in the Construction Work under this Agreement. Arazoza Bros., Corp. acknowledges and agrees that (a) the Guaranteed Maximum Price of \$98,621.10 under the Agreement will be **changed** by this Change Order, (b) the provisions in Exhibit A addressing Title VI-Civil Rights Act of 1964, Executive Order Number 11246, Equal Employment Opportunity, and Payroll Submittal with Employee Information will be incorporated into the Contract, and (c) the Davis-Bacon Wage Rate Table for Highway Construction in Monroe County FL 299 at Exhibit B which was published on 3/12/2010 will replace Davis-Bacon Wage Rate Table for Highway Construction in Monroe County FL 35 included in the original bid document . Arazoza Bros., Corp. 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.

*cd*  
CITY OF MARATHON  
a Florida municipal corporation  
By: [Signature]  
Name: Roger T. Hermsdorf  
Title: City Manager

ARAZOZA BROS., CORP.  
By: [Signature]  
Name: Alberto Arazoza  
Title: President

## Exhibit "A"

### CHANGE ORDER SUMMARY

Change Order No. 1  
 Project Title Sombrero Beach Road Landscape Project  
 Bid No. N/A  
 Owner: City of Marathon  
 Contractor: Arazoza Bros., Corp.  
 Agreement Date: September 21, 2010

This Change Order is necessary to cover changes in the work to be performed under this Agreement. The GENERAL CONDITIONS, SUPPLEMENTARY CONDITIONS, and STANDARD SPECIFICATIONS apply to and govern all work under this Change Order.

**THE FOLLOWING CHANGES ARE MADE TO THE CONTRACT DOCUMENTS:**

- |      |   |                          |
|------|---|--------------------------|
| (1)  | Original Contract Price                                     | <u>\$98,621.10</u>       |
| (2)  | Current Contract Price (Adjusted by Previous Change Orders) | <u>\$98,621.10</u>       |
| (3)  | Total Proposed Change in Contract Price                     | <u>\$3,082.54</u>        |
| (4)  | New Contract Price (Item 2 + Item 3)                        | <u>\$101,703.64</u>      |
| (5)  | Original Contract Time                                      | <u>75 Days</u>           |
| (6)  | Proposed Change in Contract Time                            | <u>27 Days</u>           |
| (6)  | Current Contract Time (Adjusted by Previous Change Orders)  | <u>75 Days</u>           |
| (7)  | Total Proposed Change in Contract Time                      | <u>27 Days</u>           |
| (8)  | New Contract Time (Item 6 + Item 7)                         | <u>102 Days</u>          |
| (9)  | Original Contract Final Completion Date                     | <u>January 29, 2011</u>  |
| (10) | New Contract Final Completion Date                          | <u>February 25, 2011</u> |

SOMBRERO BEACH ROAD EXTENSION CHANGE ORDER HISTORY						
Item No.	Description	Current Contract Amount	Additive Change	Deductive Change	Net Change Contract Price	Net Change Contract Time
1.	Total Contract Price	\$98,621.10	\$3,082.54	\$0.00	\$3,082.54	27 Days
<b>Total</b>					\$3,082.54	<b>27 Days</b>

The funding source for this project is from a LAP agreement with FDOT. Although the initial approval of the LAP agreement by FDOT determined that the project was not Federally Funded, and the applicable minimum wage and other criteria did not apply, FDOT acknowledged a mistake in their review, and the criteria is required for the funding of the project. As a result, the contractor is required to pay wages higher than what was anticipated under the contract documents. The change order amounts to the difference in the wages.

The Florida Department of Transportation also requested that the following contract provisions be incorporated into the contract.

**Title VI – Civil Rights Act of 1964**

The City of Marathon and all contractors and subcontractors associated with the execution of this project will comply with all requirements imposed by Title VI of the Civil Rights Act of 1964 and the regulations of the U.S. Department of Transportation issued thereunder. All contracts and subcontracts associated with this project will ensure compliance with Title VI of the Civil Rights Act of 1964, 49 CFR Part 21, and related statutes and regulations.

**Executive Order (EO) Number 11246, Equal Employment Opportunity**

EO Number 11246 bans discrimination and requires contractors and subcontractors to take affirmative action to ensure that all individuals have an equal opportunity for employment, without regard to race, color, religion, sex, national origin, disability or status as a Vietnam era or special disabled veteran. This project will comply with EO 11246 and all contracts and subcontracts will reference EO 11246.

**Payroll Submittal With Employee Information**

Payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5 (a) (3) (i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individual identifying number for each employee (e.g. ' last four digits of social)''

Finally, the applicable U.S. Department of Labor Wage Rates Table was updated from FL 35 to FL 299 on 10/09/09 just prior to the close of the bid. The Florida Department of Transportation has requested that the new applicable Wage Rate Table, listed in Exhibit B, be included in the Contract.

## EXHIBIT B

General Decision Number: FL100299 03/12/2010 FL299

Superseded General Decision Number: FL20080299

State: Florida

Construction Type: Highway

Counties: Glades, Hardee, Hendry and Monroe Counties in Florida.

## HIGHWAY CONSTRUCTION PROJECTS

Modification Number      Publication Date  
0                              03/12/2010

SUFL2009-196 08/05/2009

	Rates	Fringes
CARPENTER, Including Formwork....	\$ 11.97	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 10.05	0.00
LABORER: Asphalt Raker.....	\$ 9.75	2.19
LABORER: Common or General.....	\$ 9.94	0.00
LABORER: Flagger.....	\$ 9.43	0.00
LABORER: Pipelayer.....	\$ 8.33	0.00
OPERATOR: Backhoe/Excavator.....	\$ 10.42	0.00
OPERATOR: Bulldozer.....	\$ 11.69	0.00
OPERATOR: Distributor.....	\$ 10.38	0.00
OPERATOR: Grader/Blade.....	\$ 13.78	0.00
OPERATOR: Loader.....	\$ 10.33	0.00
OPERATOR: Milling Machine.....	\$ 10.08	0.00
OPERATOR: Oiler.....	\$ 9.58	0.00
OPERATOR: Paver.....	\$ 11.59	2.10
OPERATOR: Roller.....	\$ 10.23	0.00
OPERATOR: Screed.....	\$ 11.70	0.00
OPERATOR: Tractor.....	\$ 8.15	0.00
TRUCK DRIVER: 4 Axle Truck.....	\$ 11.18	1.60
TRUCK DRIVER: Lowboy Truck.....	\$ 11.86	0.00
TRUCK DRIVER: Dump Truck.....	\$ 17.00	0.00

-----  
WELDERS - Receive rate prescribed for craft performing  
operation to which welding is incidental.

=====  
Unlisted classifications needed for work not included within  
the scope of the  
classifications listed may be added after award only as  
provided in the labor  
standards contract clauses (29 CFR 5.5(a)(1)(ii)).  
-----

--  
In the listing above, the "SU" designation means that rates  
listed under the  
identifier do not reflect collectively bargained wage and  
fringe benefit  
rates. Other designations indicate unions whose rates have  
been determined  
to be prevailing.  
-----

--  
WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can  
be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on  
a wage  
determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests  
for summaries  
of surveys, should be with the Wage and Hour Regional Office  
for the area in  
which the survey was conducted because those Regional Offices  
have  
responsibility for the Davis-Bacon survey program. If the  
response from this  
initial contact is not satisfactory, then the process described  
in 2.) and  
3.) should be followed.

With regard to any other matter not yet ripe for the formal  
process  
described here, initial contact should be with the Branch of  
Construction  
Wage Determinations. Write to:

Branch of Construction Wage Determinations

Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7).

Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION



**This is the *front page* of the performance/payment bond issued in compliance with  
Florida Statute Chapter 255.05**

Surety Name: Liberty Mutual Insurance Company  
175 Berkeley Street  
Boston, MA 02116  
800-367-2230

Bond Number: 964014469

Contractor Name: Arazoza Brothers Corp.  
15901 S.W. 242<sup>nd</sup> Street  
Homestead, FL 33031  
305-246-3223

Owner Name: City of Marathon  
9805 Overseas Highway  
Marathon, FL 33050  
305-743-0033

Project Number: N/A

Project Description: Sombrero Beach Road Landscaping Installation Project

Project Address: Sombrero Beach Road, Marathon, FL

Legal Description of Property: Sombrero Beach Road, Marathon, Monroe County,  
FL

**This is the *front page* of the bond. All other pages are subsequent regardless of the  
pre-printed numbers.**



Interchange Corporate Center  
450 Plymouth Road, Suite 400  
Plymouth Meeting, PA. 19462-1644  
Ph. (610) 832-8240

### PERFORMANCE BOND

Bond Number: 964014469

KNOW ALL MEN BY THESE PRESENTS, that we  
ARAZOZA BROTHERS CORP.

, as principal (the "Principal"),  
and LIBERTY MUTUAL INSURANCE COMPANY, a Massachusetts stock insurance company, as surety (the  
"Surety"), are held and firmly bound unto  
CITY OF MARATHON, 9805 Overseas Highway, Marathon, FL 33050

, as obligee (the "Obligee"), in  
the penal sum of  
NINETY EIGHT THOUSAND SIX HUNDRED TWENTY ONE AND 10/100-----

Dollars (\$98,621.10 ),

for the payment of which sum well and truly to be made, the Principal and the Surety, bind ourselves, our heirs,  
executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has by written agreement, dated the \_\_\_\_\_ day of \_\_\_\_\_,  
entered into a contract (the "Contract") with the Obligee for

SOMBRERO BEACH ROAD LANDSCAPING INSTALLATION PROJECT

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall promptly and  
faithfully perform the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and  
effect.

#### PROVIDED AND SUBJECT TO THE CONDITIONS PRECEDENT:

1. Whenever the Principal shall be, and declared by the Obligee to be in default under the Contract, the Obligee  
having performed the Obligee's obligations thereunder, the Surety may promptly remedy the default, or shall  
promptly:
  - 1.1 Arrange for the Principal, with consent of the Obligee, to perform and complete the Contract; or
  - 1.2 Undertake to perform and complete the Contract itself, through its agents or through independent  
contractors; or
  - 1.3 Obtain a bid or bids from alternative contractors to complete the Contract in accordance with its terms and  
conditions, and upon determination by the Surety of the lowest responsible bidder, or if the Obligee elects,  
upon determination by the Obligee and the Surety jointly of the lowest responsible bidder, arrange for a  
contract between such bidder and the Obligee, and make available as work progresses (even though  
there should be a default or a succession of defaults under the contract or contracts of completion  
arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the  
contract price; but not exceeding the amount set forth in the first paragraph of this bond. The term  
"balance of the contract price," as used in this paragraph, shall mean the total amount payable by the  
Obligee to the Principal under the Contract and any amendments thereto, less the amount properly paid  
by the Obligee to the Principal; or
  - 1.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with  
reasonable promptness under the circumstances:
    - a. After investigation, determine the amount for which it may be liable to the Obligee and, as soon as  
practicable after the amount is determined, tender payment therefor to the Obligee; or
    - b. Deny liability in whole or in part and notify the Obligee citing reasons therefor.

2. Notwithstanding any other provision of this bond or the Contract, or otherwise, the Surety is not responsible for and shall not be held liable to the Obligees for any hazardous waste removal and the Surety shall not be held liable to, or in any other respect be responsible to, the Obligees by way of indemnity, claims or otherwise, or to any public authority or to any other person, firm or corporation, for or on account of any fines or claims by any public authority or for bodily injuries or property damage to any person or thing, including, but not limited to, injury or damage due to the release or threat of release of hazardous substances of any kind or damage to real estate or to the environment or clean-up costs or other damages of whatever kind or nature arising out of any act of commission or omission by the Principal, the Principal's agents, servants, employees, subcontractors or suppliers or any other person in connection with the performance of the Contract. This limitation applies regardless of when any such fine is assessed, claim is made, or injury, damage, release or threat of release occurs and without regard to any term or condition of the Contract.
3. The Surety hereby waives notice of any alteration or extension of time made by the Obligees.
4. Any suit under this bond must be instituted before the expiration of one (1) year from the date on which the Principal ceased to work on the Contract or such time period as otherwise permitted by relevant statute. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
5. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligees named herein or the heirs, executors, administrators or successors of the Obligees.
6. Any claims must be presented in writing to Liberty Mutual Insurance Company to the attention of the Surety Law Department at the above address.

DATED as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

WITNESS/ATTEST:

  
\_\_\_\_\_

ARAZOZA BROTHERS CORP.

(Principal)

By:

Name: Alberto Arazoza  
Title: President

(Seal)

LIBERTY MUTUAL INSURANCE COMPANY

(Surety)

By:

Attorney-In-Fact  
James F. Murphy

(Seal)



Interchange Corporate Center  
450 Plymouth Road, Suite 400  
Plymouth Meeting, PA. 19462-1644  
Ph. (610) 832-8240

### PAYMENT BOND

Bond Number: 964014469

KNOW ALL MEN BY THESE PRESENTS, that we  
ARAZOZA BROTHERS CORP.

, as principal (the "Principal"),  
and Liberty Mutual Insurance Company, a Massachusetts stock insurance company, as surety (the "Surety"),  
are held and firmly bound unto

CITY OF MARATHON, 9805 Overseas Highway, Marathon, FL 33050

in the penal sum of

NINETY EIGHT THOUSAND SIX HUNDRED TWENTY ONE AND 10/100-----

Dollars (\$ 98,621.10\*\*\*\*\* ),

for the payment of which sum well and truly to be made, the Principal and the Surety, bind ourselves, our heirs,  
executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has by written agreement dated the \_\_\_\_\_ day of \_\_\_\_\_,  
entered into a contract (the "Contract") with the Obligee for

SOMBRERO BEACH ROAD LANDSCAPING INSTALLATION PROJECT

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall promptly  
make payment to all Claimants, as hereinafter defined, for all labor and material used or reasonably required for  
use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full  
force and effect.

#### PROVIDED AND SUBJECT TO THE CONDITIONS PRECEDENT:

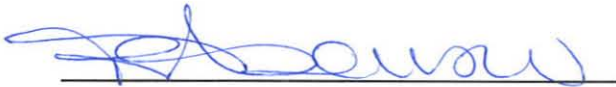
1. A "Claimant" is defined as one having a direct contract with the Principal or with a subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The Principal and the Surety hereby jointly and severally agree with the Obligee that every Claimant, who has not been paid in full before the expiration of a period of ninety (90) days (or such lesser or greater time period as otherwise permitted by relevant law) after the date on which the last of such Claimant's work or labor was done or performed, or materials were furnished by such Claimant, may sue on this bond for the use of such Claimant, prosecute the suit to final judgment for such sum or sums as may be justly due Claimant, and have execution thereon. The Obligee shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any Claimant:
  - (a) Unless Claimant, other than one having a direct contract with the Principal, shall have given written notice to the Principal and the Surety within ninety (90) days (or such lesser or greater time period as otherwise permitted by relevant law) after such Claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in separate envelopes addressed to the Principal and Surety. The Principal may be served at any place where an office is regularly maintained for the transaction of business, or in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer. The Surety may be served to the attention of The Surety Law Department at the above-listed address.
  - (b) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

(c) After the expiration of one (1) year (or such lesser or greater time period as otherwise permitted by relevant law) following the date on which the Subcontractor provided the last labor and/or materials to the project. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

4. Surety shall have no liability to any Claimant under this Bond for any amount unless it is due and owing to the Claimant by the Principal pursuant to the express terms of the contract between the Principal and Claimant or, if the Claimant does not have a direct Contract with Principal, pursuant to the terms and conditions of the Contract between the Claimant and the Subcontractor to the Principal. The Bond incorporates all of the Principal's contractual defenses, including but not limited to pay-if-paid provisions, whereby payment to the Claimant is subject to the condition precedent of the Obligee's payment to the Principal, and other limitations on amounts due under the Contract between Principal and Claimant.
5. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by the Surety of mechanics' liens, which may be filed of record against such improvement, whether or not claim for the amount of such lien be presented under and against this bond.

DATED as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

WITNESS / ATTEST:



\_\_\_\_\_

ARAZOZA BROTHERS CORP.

(Principal)

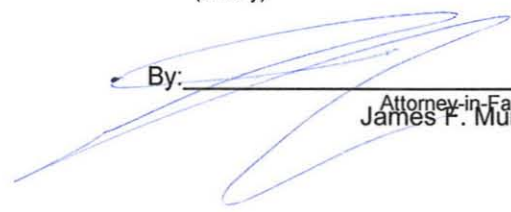
By:  \_\_\_\_\_ (Seal)

Name: Alberto Aragoza

Title: President

LIBERTY MUTUAL INSURANCE COMPANY

(Surety)

By:  \_\_\_\_\_ (Seal)

Attorney-in-Fact  
James F. Murphy

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

LIBERTY MUTUAL INSURANCE COMPANY  
BOSTON, MASSACHUSETTS  
POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS: That Liberty Mutual Insurance Company (the "Company"), a Massachusetts stock insurance company, pursuant to and by authority of the By-law and Authorization hereinafter set forth, does hereby name, constitute and appoint **GERALD J. ARCH, JAMES F. MURPHY, SHAWN BURTON, JOANNE M. MURSELL, MICHAEL A. HOLMES, ALL OF THE CITY OF FT. LAUDERDALE, STATE OF FLORIDA**.....

, each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations in the penal sum not exceeding **FIFTY MILLION AND 00/100**\*\*\*\*\* DOLLARS (\$ **50,000,000.00**\*\*\*\*\* ) each, and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company in their own proper persons.

That this power is made and executed pursuant to and by authority of the following By-law and Authorization:

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

By the following instrument the chairman or the president has authorized the officer or other official named therein to appoint attorneys-in-fact:

Pursuant to Article XIII, Section 5 of the By-Laws, Garnet W. Elliott, Assistant Secretary of Liberty Mutual Insurance Company, is hereby authorized to appoint such attorneys-in-fact as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

That the By-law and the Authorization set forth above are true copies thereof and are now in full force and effect.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of Liberty Mutual Insurance Company has been affixed thereto in Plymouth Meeting, Pennsylvania this 28th day of July, 2010.

LIBERTY MUTUAL INSURANCE COMPANY

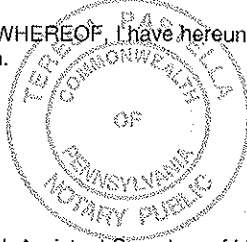


By Garnet W. Elliott  
Garnet W. Elliott, Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA ss  
COUNTY OF MONTGOMERY

On this 28th day of July, 2010, before me, a Notary Public, personally came Garnet W. Elliott, to me known, and acknowledged that he is an Assistant Secretary of Liberty Mutual Insurance Company; that he knows the seal of said corporation; and that he executed the above Power of Attorney and affixed the corporate seal of Liberty Mutual Insurance Company thereto with the authority and at the direction of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Teresa Pastella, Notary Public  
Plymouth Twp., Montgomery County  
My Commission Expires March 28, 2013  
Member, Pennsylvania Association of Notaries

By Teresa Pastella  
Teresa Pastella, Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the officer or official who executed the said power of attorney is an Assistant Secretary specially authorized by the chairman or the president to appoint attorneys-in-fact as provided in Article XIII, Section 5 of the By-laws of Liberty Mutual Insurance Company.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of Liberty Mutual Insurance Company at a meeting duly called and held on the 12th day of March, 1980.

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said company, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.



By David M. Carey  
David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.