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**CITY OF MARATHON, FLORIDA
RESOLUTION 2010-27**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING FIRST AMENDMENT TO CONTRACT DATED AUGUST 8, 2007 WITH GLOBETEC CONSTRUCTION, LLC FOR CONSTRUCTION OF SERVICE AREAS 4 & 6 WASTEWATER AND STORMWATER COLLECTION SYSTEM PROJECT (IN THE AMOUNT OF \$28,916,180.00); AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, pursuant to Resolution 2007-98 the City and GlobeTec entered into a construction contract for the construction of service areas 4 & 6 wastewater and stormwater collection systems ("Contract"); and

WHEREAS, the Area 4 & 6 Wastewater and Stormwater Collection System Project is over 94% complete; and

WHEREAS, GlobeTec has requested that the City consider reducing the retainage of the Contract Price; and

WHEREAS, the City and GlobeTec desire to amend the Contract as set forth herein to decrease the Contract retainage from ten percent (10%) to six percent (6%) of the Contract amount, and to require the delivery of releases from all materialmen, subcontractors suppliers and vendors as a condition of payment of any progress payments, release of any retainage, or final payment ("First Amendment").

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 First Amendment to the Contract between the City and GlobeTec, 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. The City Manager is authorized to execute the First Amendment on behalf of the City.

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

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 9TH DAY OF MARCH, 2010.

THE CITY OF MARATHON, FLORIDA



Ginger Snead, Mayor

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

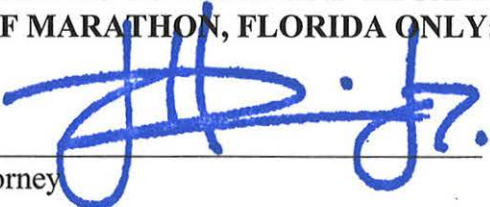


EXHIBIT "A"
To Resolution 2010-27

**FIRST AMENDMENT TO CONSTRUCTION CONTRACT BETWEEN THE CITY OF
MARATHON, FLORIDA AND GLOBETEC CONSTRUCTION, LLC**

This First Amendment to the Construction Contract made and entered into this 9th day of March, 2010, by and between the City of Marathon, Florida, a municipal corporation of the State of Florida ("City") and GlobeTec Construction LLC ("GlobeTec"), a Florida corporation for the construction of service areas 4 & 6 wastewater and stormwater collection systems ("Project").

WHEREAS, pursuant to Resolution 2007-98 the City and GlobeTec entered into a construction contract for the construction of the Project ("Contract"). A copy of the Contract is attached hereto as Exhibit "1" and incorporated by this reference; and

WHEREAS, the City and GlobeTec desire to amend the Contract as set forth herein to decrease the Contract retainage from ten percent (10%) to six percent (6%) of the Contract amount, and to require the delivery of releases from all materialmen, subcontractors suppliers and vendors as a condition of payment of any progress payments, release of any retainage, or final payment.

NOW THEREFORE, in consideration of the mutual covenants set forth in this First Amendment, the parties agree as follows:¹

Section 1. Amendment to Article 5.2 of the Contract. The parties hereby amend Article 5.2 of the Contract to read as follows:

5.2. The CONTRACTOR agrees that ~~ten~~ six percent (~~10~~ 6%) 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.

Section 2. Amendment to Article 5. of the Contract. The parties hereby amend Article 5. of the Contract to read as follows:

5. . ~~The Progress payments, release of any retainage or~~ Final Application for Payment by the CONTRACTOR shall not be made until the CONTRACTOR delivers to the CITY complete original partial releases or Final Waiver 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 claim or lien could be filed. The CONTRACTOR may, if any Subcontractor, materialmen, supplier, or vendor refuses to furnish the required partial release of lien or Final Waiver

¹ / Additions to existing text are shown by underline, and deletions are shown as ~~strikethrough~~.

~~GlobeTec Construction~~

MAR 22 2010

General Contractor

EXHIBIT "A"
To Resolution 2010-27

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.

EXCEPT AS PROVIDED HEREIN, all other terms and conditions of the CONTRACT dated August 8, 2007, and any subsequent amendments, remain in force and effect.


DATED this 9th day of March, 2010.

WITNESSES:

GLOBETEC CONSTRUCTION LLC


Print Name: Joe Bell

By: 
Print Name: ANTONIO ASSENZA
Title: President


Print Name: Joe Bell

THE CITY OF MARATHON, FLORIDA


Roger Hernstadt, City Manager

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:**


#220756 v1

EXHIBIT "A"
To Resolution 2010-27

City Attorney

**CONSTRUCTION CONTRACT
CITY OF MARATHON
SERVICE AREAS 4 & 6 WASTEWATER AND STORMWATER PROJECT**

THIS CONTRACT (the "Contract") is dated as of this 10th day of July, 2007, by and between **THE CITY OF MARATHON** (hereinafter called the "CITY") and **Globetec Construction, LLC** (hereinafter called **CONTRACTOR**) located at: 4774 North Powerline Road, Deerfield Beach, Florida 33073.

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 Areas 4 & 6 Wastewater and Stormwater Project. The project consists of constructing and installing wastewater infrastructure (including dry lines), storm water lines and improvements, water re-use lines and other associated infrastructure, all in accordance with the construction drawings and technical specifications. The project for Service Area 4 will be referred to herein as Contract No. 1. The project for Service Area 6 will be referred to herein as Contract No. 2.

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, 10045-55 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 Michael Hatfield of The Weiler Engineering Corporation, 5800 Overseas Highway, Suite 36, Marathon, Florida 33050.

Article 3. TERM

3.1 Contract Times. (a) The work for Contract No. 1 shall be substantially completed within Seven Hundred Twenty (**720**) calendar days after the date specified in the applicable Notice to Proceed ("Substantial Completion"), and completed and ready for final payment in accordance with the Contract Documents within Seven Hundred Eighty (**780**) calendar days after the date specified in such Notice to Proceed ("Final Completion").

(b) The work for Contract No. 2 shall be substantially completed within Three Hundred Thirty (**330**) calendar days after the date specified in the applicable Notice to Proceed ("Substantial Completion"), and completed and ready for final payment in accordance with the Contract Documents within Three Hundred Sixty (**360**) calendar days after the date specified in such Notice to Proceed ("Final Completion"). The parties agree that the Notice to Proceed for Contract No. 2 shall be delivered by the CITY no earlier than 180 days from the date of this Agreement (unless otherwise directed by the City Council) but in no event later than 180 days after the date of issue of the Notice to Proceed for contract No. 1.

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, then the CONTRACTOR shall be liable for said amount.

3.7. Notwithstanding any other term in the Contract Documents to the contrary, the City shall have the right to terminate this Agreement without penalty with respect to Contract No. 2 at any time prior to the delivery of the Notice to Proceed applicable to Contract No. 2.

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)

ESTIMATED

Item	Item Description	Unit	Quantity	Unit Price	Extended Amount
	Vacuum Main				
1	4" SDR21 PVC Vacuum Sewer	LF	36800	\$50.00	\$1,840,000.00
2	6" SDR21 PVC Vacuum Sewer	LF	21500	\$60.00	\$1,290,000.00
3	8" SDR21 PVC Vacuum Sewer	LF	3075	\$70.00	\$215,250.00
4	10" SDR21 PVC Vacuum Sewer	LF	9400	\$80.00	\$752,000.00
5	6" DIP Bridge Crossing	LS	1	\$25,000.00	\$25,000.00
6	10" DR 11 HDPE US 1 Dir. Drill Crossing	Ea	1	\$70,000.00	\$70,000.00
7	Concrete Encasement	LF	1535	\$40.00	\$61,400.00
	Force Main				\$0.00
8	4" SDR 26 PVC Force Main	LF	3810	\$50.00	\$190,500.00
9	6" SDR 26 PVC Force Main	LF	852	\$60.00	\$51,120.00
10	4" DR11 HDPE US 1 Dir. Drill Crossing	EA	1	\$40,000.00	\$40,000.00
	Reuse Main				\$0.00
11	4" SCH 80 PVC Reuse Main	LF	852	\$50.00	\$42,600.00
12	6" SCH 80 PVC Reuse Main	LF	1203	\$60.00	\$72,180.00
	Gate Valves				\$0.00
13	3" Gate Valve	EA	21	\$900.00	\$18,900.00
14	4" Gate Valve	EA	64	\$1,000.00	\$64,000.00
15	6" Gate Valve	EA	52	\$1,100.00	\$57,200.00
16	8" Gate Valve	EA	4	\$1,400.00	\$5,600.00
17	10" Gate Valve	EA	7	\$2,000.00	\$14,000.00
	Service				\$0.00
18	Vacuum Pits - Type A	EA	141	\$5,000.00	\$705,000.00
19	Vacuum Pits - Type D	EA	180	\$4,800.00	\$864,000.00
20	3" Vacuum Service Connection	EA	802	\$400.00	\$320,800.00

21	6" Single Gravity Service	Ea	16027	\$50.00	\$801,350.00
	Stormwater				\$0.00
22	18" Perforated HDPE Trench Drain	LF	26000	\$109.00	\$2,834,000.00
23	18" HDPE Tees	EA	255	\$300.00	\$76,500.00
24	18" HDPE Solid	LF	5000	\$60.00	\$300,000.00
25	18" HDPE Perforated End Caps	EA	240	\$80.00	\$19,200.00
26	18" HDPE 90 deg elbow	EA	20	\$150.00	\$3,000.00
27	Well Control Structure	Ea	30	\$10,000.00	\$300,000.00
28	8" Injection Well	Ea	7	\$27,000.00	\$189,000.00
29	10" Injection Well	EA	5	\$28,000.00	\$140,000.00
30	12" Injection Well	EA	9	\$30,000.00	\$270,000.00
31	15" Injection Well	EA	4	\$32,000.00	\$128,000.00
32	18" Injection Well	EA	3	\$33,000.00	\$99,000.00
33	24" Injection Well	EA	2	\$34,000.00	\$68,000.00
34	5-foot wide Trench (areas not included with collection system)	LF	1050	\$30.00	\$31,500.00
35	Catch Basins	EA	236	\$4,000.00	\$944,000.00
	General				\$0.00
36	1.5" Asphalt Roadway Overlay	SY	158000	\$13.00	\$2,054,000.00
37	Striping	LF	13000	\$3.00	\$39,000.00
38	Stop Bars	EA	61	\$200.00	\$12,200.00
39	Pavement Section Replacement - Sombrero Blvd.	SY	21500	\$70.00	\$1,505,000.00
40	New Bike Path along Sombrero Blvd.	LF	4900	\$22.00	\$107,800.00
41	Bonds , Insurance, taxes, etc.	LS	1	\$1,125,000.00	\$1,125,000.00
42	Mobilization	LS	1	\$950,000.00	\$950,000.00
	Airport Force Main				\$0.00
43	4" SDR26 Force Main (Airport)	LF	8365	\$50.00	\$418,250.00
44	4" Gate Valve	Ea	13	\$1,100.00	\$14,300.00
45	Increase 4" Force Main to 8" FM	LF	7975	\$12.00	\$95,700.00
46	Increase 4" Gate Valve to 8" GV	Ea	7	\$600.00	\$4,200.00
47	Additional 8" SDR26 FM to VAC Station site	LF	235	\$60.00	\$14,100.00
48	2" C901 HDPE Temporary Force Main	LF	4535	\$10.00	\$45,350.00
49	2" Gate Valve	EA	2	\$600.00	\$1,200.00
50	Buffer Tank	EA	1	\$10,000.00	\$10,000.00
51	3" VAC Service Connection	EA	1	\$400.00	\$400.00
TOTAL BID AMOUNT AREA 4 :					\$19,299,600.00

Less Patch Credit -\$44,200.00
 Adjusted Total \$19,255,400.00
 Area 4 0

Alternate # 1 : Service Area 6

Item	Item Description	Unit	QTY	Unit Price	Extended Amount
	Vacuum Main				
1	4" SDR21 PVC Vacuum Sewer	LF	16900	\$50.00	\$845,000.00
2	6" SDR21 PVC Vacuum Sewer	LF	6700	\$60.00	\$402,000.00
3	8" SDR21 PVC Vacuum Sewer	LF	100	\$70.00	\$7,000.00

4	10" SDR21 PVC Vacuum Sewer	LF	10600	\$80.00	\$848,000.00
4	10" DIP Vacuum Sewer	LF	90	\$200.00	\$18,000.00
6	6" DR 11 HDPE for Vacuum Ser Line	LF	205	\$400.00	\$82,000.00
7	8" DR 11 HDPE for Vacuum Ser Line	LF	130	\$450.00	\$58,500.00
Force Main					
8	6" SDR 26 PVC Force Main	LF	3450	\$60.00	\$207,000.00
9	4" SDR 26 PVC Force Main	LF	1100	\$50.00	\$55,000.00
Gate Valves					
10	3" GV	EA	10	\$900.00	\$9,000.00
11	4" Gate Valves	EA	33	\$1,000.00	\$33,000.00
12	6" Gate Valves	EA	14	\$1,100.00	\$15,400.00
13	10" GV	EA	10	\$2,000.00	\$20,000.00
Service					
14	Vacuum Pits - Type A	EA	58	\$5,000.00	\$290,000.00
15	Vacuum Pits - Type B	EA	6	\$6,000.00	\$36,000.00
16	Vacuum Pits - Type D	EA	50	\$4,800.00	\$240,000.00
17	3" Vac Service Connection	EA	2807	\$400.00	\$1,122,800.00
18	6" Single Gravity Service	Ea	5022	\$50.00	\$251,100.00
19	Concrete Encasement	LF	130	\$40.00	\$5,200.00
20	6" DIP Bridge Crossing	LS	1	\$36,000.00	\$36,000.00
Stormwater					
21	18" Perforated HDPE Trench Drain	LF	9700	\$109.00	\$1,057,300.00
22	18" HDPE Solid	LF	1900	\$360.00	\$684,000.00
23	18" HDPE Tees	EA	45	\$300.00	\$13,500.00
24	18" HDPE Perf End Caps	EA	61	\$80.00	\$4,880.00
25	18" HDPE 90 deg elbow	EA	12	\$150.00	\$1,800.00
26	Catch Basins	EA	84	\$4,000.00	\$336,000.00
27	Well Control Structure	Ea	13	\$10,000.00	\$130,000.00
28	8" Injection Well	Ea	3	\$27,000.00	\$81,000.00
29	10" Injection Well	EA	3	\$28,000.00	\$84,000.00
30	12" Injection Well	EA	4	\$30,000.00	\$120,000.00
31	15" Injection Well	EA	3	\$32,000.00	\$96,000.00
General					
32	1.5" Asphalt Roadway Overlay	SY	61100	\$13.00	\$794,300.00
33	Striping	LF	21400	\$3.00	\$64,200.00
34	Stop Bars	EA	18	\$200.00	\$3,600.00
35	Bonds , Insurance, taxes, etc.	LS	1	\$1,130,000.00	\$1,130,000.00
36	Mobilization	LS	1	\$500,000.00	\$500,000.00

TOTAL BID AMOUNT AREA 6 :	\$ 9,681,580
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Less Patch Credit	-\$20,800.00
Adjusted Total	
Area 6	\$9,660,780.00

Total Contract Amount	\$28,916,180.00
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TOTAL OF ALL UNIT PRICES

Twenty eight million, nine hundred sixteen thousand, one hundred eighty and no/100 DOLLARS

(use words)

\$28,916,180.00 (dollars)

(use numbers)

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.

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.

5.1. 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.

5.2. 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.

5.2.1. 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.

5.3. 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.

5.4. 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.

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

Article 6. INSURANCE/INDEMNIFICATION.

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

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

Article 7. CONTRACTOR'S REPRESENTATIONS.

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

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

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

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

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

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

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

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

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

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

7.8.2. **Anti-Kickback:** The **CONTRACTOR** warrants that no person has been employed or retained to solicit or secure this

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

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

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

Article 8. CONTRACT DOCUMENTS.

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

- 8.1.1.** Change Orders.
- 8.1.2.** Field Orders.
- 8.1.3.** Contract for Construction.
- 8.1.4.** Exhibits to this Contract.
- 8.1.5.** Supplementary Conditions.
- 8.1.6.** General Conditions.
- 8.1.7.** The Department of Environmental Protection permit and the South Florida Water Management District permit for the Project
- 8.1.8.** Specifications bearing the title: Specifications for Area 4 Sewer and Stormwater Project

- 8.1.9. Drawings consisting of a cover sheet and sheets named and numbered as follows:
Marathon Storm Water Project Area 4 – Sheets STG1 through STD3
Marathon Sewer Project Area 4 – Sheets SS1 through SSS2
Marathon Storm Water Project Area 6 – Sheets SWG1 through SWD4
Marathon Sewer Project Area 6 – Sheets SSG1 though SSS2
Airport Force Main – Sheets SSG1 through SSD3
- 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:

Globetec Construction, LLC
4774 North Powerline Road
Deerfield Beach, Florida 33073
ATTN: Antonio Assenza, President

FOR CITY:

City of Marathon
10045-55 Overseas Highway
Marathon, Florida 33050
ATTN: Mike Puto, 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 8th day of August, 2007, and by Globetec Construction, LLC, signing by and through its President, duly authorized to execute same.

CITY

ATTEST:

CITY OF MARATHON, FLORIDA

Deanne Clavier
City Clerk

By: [Signature]
Mayor

21 day of August, 2007.

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

By: [Signature]
City Attorney

CONTRACTOR

WITNESS

By: [Signature]

Globetec Construction, LLC

By [Signature] / President
(Signature and Title)
(Corporate Seal)

Antonio Assenza - President
(Type Name/Title signed above)

14 day of August, 2007.

(* 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, Karen Monico, certify that I am the Assistant Secretary of GlobeTec Construction, and that Antonio Assenza, who signed the Bid with the City of Marathon, Monroe County Florida for GlobeTec Construction, is President of said Corporation with full authority to sign said Bid on behalf of the Corporation.

Signed and sealed this 14 day of August, 2007.

(SEAL)

Karen Monico
Signature

Karen Monico / Asst. Secretary
Typed w/Title

STATE OF FLORIDA
COUNTY OF MONROE

SWORN TO AND SUBSCRIBED before me this 14 day of August, 2007.

My Commission Expires:

Rafael Osorio
Notary Public

NOTARY PUBLIC-STATE OF FLORIDA
Rafael Osorio
Commission # DD592153
Expires: SEP 05, 2010
BONDED THRU ATLANTIC BONDING CO., INC.

EXHIBIT "A"

CHANGE ORDER

CHANGE ORDER

TO: City of Marathon

PROJECT: City of Marathon Service Area 4 Wastewater and Stormwater Project

CONTRACTOR: _____

DATE: _____

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

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

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

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

THE CITY OF MARATHON
a Florida municipal corporation

CONTRACTOR

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____



December 23, 2009

Letter No: 1407 / 00109
Via Electronic Mail

The Weiler Engineering Corporation
5800 Overseas Highway Suite 36
Marathon, Florida 33050

Att: Ed Castle, P.E.
Vice President.

Re: City of Marathon - Area 4 and 6 Wastewater & Stormwater Project.

Subject: Reduction in Retainage (2nd Request)

Dear Mr. Castle:

Please allow this correspondence to serve as our second formal request to the five (5%) percent reduction in retainage as a combination of facts has propelled GTC to once more pursue this request.

First, The City of Marathon has taken and continues to take early possession of portions of the work as it has been approved and certified for its intended use. As a direct result of this partial utilization, the City of Marathon has taken tangible advantage attributable to the beneficial use of the Work.

Second, as stated on the 2009 Florida Statutes Chapter 255 Section 255.078, "Public Construction Retainage" Subsections 2 and 4 (see attached), GTC is entitled to reduction of the funds withheld as our records show that 50% completion of the construction services purchased was reached on the December 26, 2008 and as of the November payment period, the total cost of the construction services, including all the cost associated with the approved change orders, expended by the City of Marathon is 94 percent.

Finally, any payment of retainage made by the City of Marathon, which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers will be timely remit to those subcontractors and suppliers, unless the amounts are the subject of a dispute or claim.

By reason of the aforementioned and in order to avoid further financial burden to our firm, we are hereby formally requesting the 5 percent reduction in retainage to the forthcoming Pay request No. 28 for the period ending November 30, 2009.

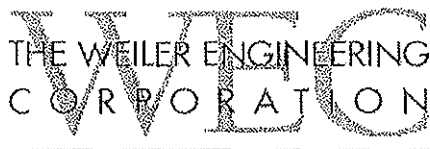
We look forward to a prompt and positive response and should you have any questions or wish to further discuss this issue, please contact the undersigned at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ricardo Delfino', with a stylized flourish at the end.

Ricardo Delfino
Project Manager
cc. File/M.O.

4774 N Powerline Road -- Deerfield Beach, FL 33442
Phone 954 590 3305 Fax 954 590 3307 -- web site: globeteconstruction.com



"Excellence in Engineering"

6805 Overseas Highway
Marathon, Florida 33050
(305) 289-4161 ph
(305) 289-4162 fax

MEMORANDUM

To: Zully Hemeyer
From: Ed Castle, PE
Date: February 12, 2010
Re: Area 4 and 6 Retainage

As of Application for Payment No.29, Globetec has reached 94% completion of the Area 4 and Area 6 Wastewater and Stormwater Project based on project cost.

They have completed approximately and released for connection approximately 75% of the streets in Area 4 and approximately 65% of the streets in Area 6. The areas in which the streets have been released were provided to you in color-coded maps on February 3rd via email. The streets have all been overlaid and the vacuum pits and laterals tested. Punch list items in some areas remain to be completed. A list of these streets released for connection was provided on February 12th for publication on the City's web site.

Several contractors have requested that the City reduce retainage from 10% to 5%. The City is exempted from the statute that requires the reduction of retainage to not more than 5% due to the small population. However, the City is not prevented from reducing the retainage. As of Application for Payment No. 29, the City is withholding approximately \$2.9 million dollars in retainage on the Globetec contract, representing 10% of the cost of work completed through December 2009. The reduction in retainage to 5% would release approximately \$1.45 million, with the remaining \$1.45 million being withheld to Final Completion along with additional retainage accrued at 5%.

As the Engineer for the City's wastewater and stormwater project, it is my professional opinion that the City would be adequately protected by retainage withheld at 5% rather than at 10% considering the stage of completion of the project. Performance and Payment bonds remain in effect providing additional protection, as does the project warranty. I would suggest, however, that an additional 1% be withheld as assurance that adequate funds exist to cover the disputed payment that may be owed to BAT Construction until that matter is resolved.

Should the City desire to accommodate the requested reduction, this should be accomplished through a Change Order approved by Council. If requested, I will prepare a Change Order reflecting a reduction in retainage to 6% for the Council Agenda.

Select Year: 2009

The 2009 Florida Statutes

Title XIV
TAXATION AND
FINANCE

Chapter 218
FINANCIAL MATTERS PERTAINING TO POLITICAL
SUBDIVISIONS

View Entire
Chapter

218.735 Timely payment for purchases of construction services.--

(1) The due date for payment for the purchase of construction services by a local governmental entity is determined as follows:

(a) If an agent must approve the payment request or invoice prior to the payment request or invoice being submitted to the local governmental entity, payment is due 25 business days after the date on which the payment request or invoice is stamped as received as provided in s. 218.74(1).

(b) If an agent need not approve the payment request or invoice which is submitted by the contractor, payment is due 20 business days after the date on which the payment request or invoice is stamped as received as provided in s. 218.74(1).

(2) The local governmental entity may reject the payment request or invoice within 20 business days after the date on which the payment request or invoice is stamped as received as provided in s. 218.74(1). The rejection must be written and must specify the deficiency in the payment request or invoice and the action necessary to make the payment request or invoice proper.

(3) If a payment request or an invoice is rejected under subsection (2) and the contractor submits a corrected payment request or invoice which corrects the deficiency specified in writing by the local governmental entity, the corrected payment request or invoice must be paid or rejected on the later of:

(a) Ten business days after the date the corrected payment request or invoice is stamped as received as provided in s. 218.74(1); or

(b) If the governing body is required by ordinance, charter, or other law to approve or reject the corrected payment request or invoice, the first business day after the next regularly scheduled meeting of the governing body held after the corrected payment request or invoice is stamped as received as provided in s. 218.74(1).

(4) If a dispute between the local governmental entity and the contractor cannot be resolved by the procedure in subsection (3), the dispute must be resolved in accordance with the dispute resolution procedure prescribed in the construction contract or in any applicable ordinance. In the absence of a prescribed procedure, the dispute must be resolved by the procedure specified in s. 218.76(2).

(5) If a local governmental entity disputes a portion of a payment request or an invoice, the undisputed portion shall be paid timely, in accordance with subsection (1).

(6) When a contractor receives payment from a local governmental entity for labor, services, or materials furnished by subcontractors and suppliers hired by the contractor, the contractor shall remit payment due to those subcontractors and suppliers within 10 days after the contractor's receipt of payment. When a subcontractor receives payment from a contractor for labor, services, or materials furnished by subcontractors and suppliers hired by the subcontractor, the subcontractor shall remit payment due to those subcontractors and suppliers within 7 days after the subcontractor's receipt of payment. Nothing herein shall prohibit a contractor or subcontractor from disputing, pursuant to the terms of the relevant contract, all or any portion of a payment alleged to be due to another party if the contractor or subcontractor notifies the party whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute. The contractor or subcontractor must pay all undisputed amounts due within the time limits imposed by this section.

(7)(a) Each contract for construction services between a local governmental entity and a contractor must provide for the development of a list of items required to render complete, satisfactory, and acceptable the construction services purchased by the local governmental entity. The contract must specify the process for the development of the list, including responsibilities of the local governmental entity and the contractor in developing and reviewing the list and a reasonable time for developing the list, as follows:

1. For construction projects having an estimated cost of less than \$10 million, within 30 calendar days after reaching substantial completion of the construction services purchased as defined in the contract, or, if not defined in the contract, upon reaching beneficial occupancy or use; or
2. For construction projects having an estimated cost of \$10 million or more, within 30 calendar days, unless otherwise extended by contract not to exceed 60 calendar days, after reaching substantial completion of the construction services purchased as defined in the contract, or, if not defined in the contract, upon reaching beneficial occupancy or use.

(b) If the contract between the local governmental entity and the contractor relates to the purchase of construction services on more than one building or structure, or involves a multiphased project, the contract must provide for the development of a list of items required to render complete, satisfactory, and acceptable all the construction services purchased pursuant to the contract for each building, structure, or phase of the project within the time limitations provided in paragraph (a).

(c) The failure to include any corrective work or pending items not yet completed on the list developed pursuant to this subsection does not alter the responsibility of the contractor to complete all the construction services purchased pursuant to the contract.

(d) Upon completion of all items on the list, the contractor may submit a payment request for all remaining retainage withheld by the local governmental entity pursuant to this section. If a good faith dispute exists as to whether one or more items identified on the list have been completed pursuant to

the contract, the local governmental entity may continue to withhold an amount not to exceed 150 percent of the total costs to complete such items.

(e) All items that require correction under the contract and that are identified after the preparation and delivery of the list remain the obligation of the contractor as defined by the contract.

(f) Warranty items may not affect the final payment of retainage as provided in this section or as provided in the contract between the contractor and its subcontractors and suppliers.

(g) Retainage may not be held by a local governmental entity or a contractor to secure payment of insurance premiums under a consolidated insurance program or series of insurance policies issued to a local governmental entity or a contractor for a project or group of projects, and the final payment of retainage as provided in this section may not be delayed pending a final audit by the local governmental entity's or contractor's insurance provider.

(h) If a local governmental entity fails to comply with its responsibilities to develop the list required under paragraph (a) or paragraph (b), as defined in the contract, within the time limitations provided in paragraph (a), the contractor may submit a payment request for all remaining retainage withheld by the local governmental entity pursuant to this section. The local governmental entity need not pay or process any payment request for retainage if the contractor has, in whole or in part, failed to cooperate with the local governmental entity in the development of the list or failed to perform its contractual responsibilities, if any, with regard to the development of the list or if paragraph (8)(f) applies.

(8)(a) With regard to any contract for construction services, a local governmental entity may withhold from each progress payment made to the contractor an amount not exceeding 10 percent of the payment as retainage until 50-percent completion of such services.

(b) After 50-percent completion of the construction services purchased pursuant to the contract, the local governmental entity must reduce to 5 percent the amount of retainage withheld from each subsequent progress payment made to the contractor. For purposes of this subsection, the term "50-percent completion" has the meaning set forth in the contract between the local governmental entity and the contractor or, if not defined in the contract, the point at which the local governmental entity has expended 50 percent of the total cost of the construction services purchased as identified in the contract together with all costs associated with existing change orders and other additions or modifications to the construction services provided for in the contract. However, notwithstanding this subsection, a municipality having a population of 25,000 or fewer, or a county having a population of 100,000 or fewer, may withhold retainage in an amount not exceeding 10 percent of each progress payment made to the contractor until final completion and acceptance of the project by the local governmental entity.

(c) After 50-percent completion of the construction services purchased pursuant to the contract, the contractor may elect to withhold retainage from payments to its subcontractors at a rate higher than 5 percent. The specific amount to be withheld must be determined on a case-by-case basis and must be based on the contractor's assessment of the subcontractor's past performance, the likelihood that such

performance will continue, and the contractor's ability to rely on other safeguards. The contractor shall notify the subcontractor, in writing, of its determination to withhold more than 5 percent of the progress payment and the reasons for making that determination, and the contractor may not request the release of such retained funds from the local governmental entity.

(d) After 50-percent completion of the construction services purchased pursuant to the contract, the contractor may present to the local governmental entity a payment request for up to one-half of the retainage held by the local governmental entity. The local governmental entity shall promptly make payment to the contractor, unless the local governmental entity has grounds, pursuant to paragraph (f), for withholding the payment of retainage. If the local governmental entity makes payment of retainage to the contractor under this paragraph which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the contractor shall timely remit payment of such retainage to those subcontractors and suppliers.

(e) This section does not prohibit a local governmental entity from withholding retainage at a rate less than 10 percent of each progress payment, from incrementally reducing the rate of retainage pursuant to a schedule provided for in the contract, or from releasing at any point all or a portion of any retainage withheld by the local governmental entity which is attributable to the labor, services, or materials supplied by the contractor or by one or more subcontractors or suppliers. If a local governmental entity makes any payment of retainage to the contractor which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the contractor shall timely remit payment of such retainage to those subcontractors and suppliers.

(f) This section does not require the local governmental entity to pay or release any amounts that are the subject of a good faith dispute, the subject of a claim brought pursuant to s. 255.05, or otherwise the subject of a claim or demand by the local governmental entity or contractor.

(g) The time limitations set forth in this section for payment of payment requests apply to any payment request for retainage made pursuant to this section.

(h) Paragraphs (a)-(d) do not apply to construction services purchased by a local governmental entity which are paid for, in whole or in part, with federal funds and are subject to federal grantor laws and regulations or requirements that are contrary to any provision of the Local Government Prompt Payment Act.

(i) This subsection does not apply to any construction services purchased by a local governmental entity if the total cost of the construction services purchased as identified in the contract is \$200,000 or less.

(9) All payments due under this section and not made within the time periods specified by this section shall bear interest at the rate of 1 percent per month, or the rate specified by contract, whichever is greater.

History.--s. 3, ch. 95-331; s. 3, ch. 2001-169; s. 3, ch. 2005-230.