

**CITY OF MARATHON, FLORIDA
RESOLUTION 2014-04**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, ACCEPTING THE LOW BID AND APPROVING A CONTRACT BETWEEN THE CITY AND DOUGLAS N. HIGGINS, INC.; IN AN AMOUNT NOT TO EXCEED \$52,100.00 FOR THE REFURBISHMENT OF DODGE LAKE BOAT RAMP AND ADJACENT PARKING AREA; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Marathon (the "City") issued an Invitation to Bid for the refurbishment of the Dodge Lake Boat Ramp and adjacent parking area (the "Project"); and

WHEREAS, the low bid was received from Douglas N. Higgins, Inc. (the "Contractor"); in an amount not to exceed \$52,100.00 for the Project, and staff subsequently reviewed and determined the bid was complete, responsive and responsible; and

WHEREAS, the City Council finds that accepting the bid and entering into a contract for the Project with the Contractor is in the best interest of the City.

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 the Project in an amount not to exceed \$52,100.00 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 Contract and expend budgeted funds 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 14th DAY OF JANUARY, 2014.

THE CITY OF MARATHON, FLORIDA



Dick Ramsay, Mayor

AYES: Snead, Bull, Keating, Ramsay
NOES: Senmartin
ABSENT: None
ABSTAIN: None

ATTEST:

Diane Clavier

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

[Handwritten signature]

CONSTRUCTION CONTRACT

THIS CONTRACT (the "Contract") is dated as of the 23rd day of January 2014 by and between THE CITY OF MARATHON (hereinafter called the "CITY") and Douglas N. Higgins, Inc. (hereinafter called CONTRACTOR) for project located at Dodge Lake Boat Ramp in the award amount of \$52,100.

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:

City Of Marathon – AVIATION BOAT RAMP IMPROVEMENTS

The Contractor shall furnish all labor, materials, supervision, equipment, supplies, and incidentals required to construct new asphalt parking lot to accommodate 5 spaces for vehicle/trailer parking with associated signage and wheel stops. Improvements to include 75 lf of rub railing at existing dock, install 22 lf of trench drain and minor drainage improvements to existing inlet, new concrete sidewalk/ramp, miscellaneous site improvements per site plans and details provided in Demand Star.

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 Carlos Solis at City Hall, 9805 Overseas Highway, Marathon Florida 33050.

Article 3. TERM

3.1 Contract Times. The work shall be substantially completed within fifty (50) calendar days after the date specified in the Notice to Proceed ("Substantial Completion"), and fifteen (15) calendar days after the date specified in the Notice to Proceed ("Final Completion").

3.2. Term. This Contract shall not be effective until the City issues a Notice To Proceed to the Contractor and the terms of the Contract shall be through the date of final payment unless terminated earlier pursuant to Section 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 Fifty Dollars (\$50.00)** for each calendar day that expires after the time specified in Section 3.1 for Substantial Completion of the Work. After Final Completion, if **CONTRACTOR** shall neglect, refuse or fail to complete the remaining Work within the time specified in Section 3.1 for completion and readiness for final payment or any proper extension thereof granted by **CITY**, **CONTRACTOR** shall pay **CITY One Hundred Dollars (\$100.00)** for each calendar day that expires after the time specified in Section 3.1 for completion and readiness for final payment.

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

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

Article 4. CONTRACT PRICE

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

Description	Unit of Measure	Price
The Contractor shall furnish all labor, materials, supervision, equipment, supplies, and incidentals required to construct new asphalt parking lot to accommodate 5 spaces for vehicle/trailer parking with associated signage and wheel stops. Improvements to include 75 lf of rub railing at existing dock, install 22 lf of trench drain and minor drainage improvements to existing inlet, new concrete sidewalk/ramp, miscellaneous site improvements per site plans and details provided in Demand Star.	Lump Sum	\$52,100.

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. **THIS IS A LUMP SUM CONTRACT. QUANTITIES ARE PROVIDED FOR THE BIDDERS CONVENIENCE, AND ESTABLISHMENT OF UNIT PRICE. BIDDER IS TO VERIFY QUANTITIES IN PREPARATION OF THE BID.**

Article 5. PAYMENT PROCEDURES

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

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

5.2.1 No progress payment shall be made until **CONTRACTOR** delivers to **CITY** complete original partial releases and waivers of all liens and claims signed by all Subcontractors, materialmen, suppliers, and vendors, indicating receipt of partial payment due each for work performed since last progress payment. The partial release shall be accompanied by an affidavit stating that, so far as **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. The form of the partial release and waiver of lien and affidavit specified herein shall be approved by the **CITY**.

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

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

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

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

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

Article 6. INSURANCE/INDEMNIFICATION.

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

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

Article 7. CONTRACTOR'S REPRESENTATIONS.

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

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

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

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

7.4. CONTRACTOR has made, or caused to be made, examinations, investigations, tests 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, or any other applicable federal or State Agency** 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 Technical Specifications bearing the title: Technical Specifications for **CITY OF MARATHON – AVIATION BOAT RAMP.**

8.1.9 Drawings consisting of sheets 01 and 02, with each sheet bearing the following general title: **CITY OF MARATHON – AVIATION BOAT RAMP.**

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:

Douglas N Higgins, Inc.
3390 Travis Pointe Rd. Suite A
Ann Arbor, MI 48108

FOR CITY:

City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
ATTN: Roger Hernstadt, City Manager

WITH COPY TO:

Gray-Robinson
401 E. Las Olas Blvd., Suite 1850
Ft Lauderdale
ATTN: John Herin – 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, Vice

Mayor or City Manager, authorized to execute same by Council action on the 23 day of January, 2014, and by Douglas Higgins, Inc. (**Contractor**), signing by and through its **President**, duly authorized to execute same.

CITY

ATTEST

Diane Clavier
City Clerk, Diane Clavier

Roger T. Hernstadt
Roger T. Hernstadt, City Manager
012214

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

By: [Signature]
City Attorney

CONTRACTOR

WITNESSES:

[Signature]
Name: Daniel Higgins

[Signature]
Name: Sandra Garrison

Douglas N. Higgins, Inc.
By: Kellya. Wilkie
Its: Vice President



(Corporate Seal)

(* 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.

CHANGE ORDER NO. _____

TO: City of Marathon

PROJECT: CITY OF MARATHON – DODGE LAKE BOAT RAMP PROJECT

CONTRACTOR: _____

DATE: _____

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

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

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

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

THE CITY OF MARATHON
a Florida municipal corporation

CONTRACTOR

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

END OF SECTION

CERTIFICATE OF SECRETARY

The undersigned, being the duly elected secretary of Douglas N. Higgins, Inc., a Michigan corporation, hereby certifies that the following resolution was duly adopted by the Board of Directors of said corporation at a meeting held on July 1, 2013 and that said resolution is in full force and effect:

"RESOLVED, That the following listed persons are hereby authorized to execute, on behalf of Douglas N. Higgins, Inc., any and all contracts and documents."

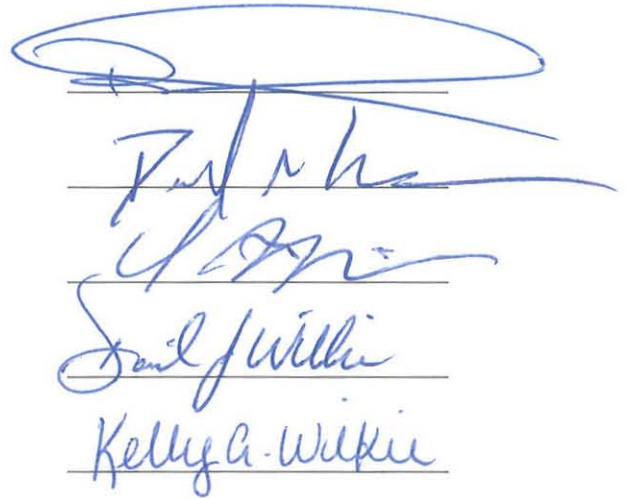
Brandy L. Bartolone

Daniel N. Higgins

Douglas N. Higgins

David J. Wilkie

Kelly A. Wilkie



Handwritten signatures in blue ink corresponding to the names listed on the left. The signatures are: Brandy L. Bartolone, Daniel N. Higgins, Douglas N. Higgins, David J. Wilkie, and Kelly A. Wilkie.

Kelly A. Wilkie
Kelly A. Wilkie
Secretary

Dated: July 1, 2013

AIA Document A312™ – 2010

Bond No. 35BCSEP0712

Performance Bond

Doc# 1967155
Bk# 2669 Pg# 950

CONTRACTOR:

(Name, legal status and address)

Douglas N. Higgins, Inc.
3390 Travis Pointe, Suite A
Ann Arbor, MI 48108

SURETY:

(Name, legal status and principal place of business)

Hartford Accident and Indemnity Company
One Hartford Plaza, T-4
Hartford, CT 06155

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

OWNER:

(Name, legal status and address)

The City of Marathon
9805 Overseas Highway
Marathon, FL 33050

CONSTRUCTION CONTRACT

Date:

Amount: Fifty-Two Thousand One Hundred and 00/100 (\$52,100.00)

Description:

(Name and location)

Dodge Lake Boat Ramp Project
City of Maraton

BOND

Date: January 17, 2014

(Not earlier than Construction Contract Date)

Amount: Fifty-Two Thousand One Hundred and 00/100 (\$52,100.00)

Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL

Company: *(Corporate Seal)*
Douglas N. Higgins, Inc.

Signature: *Kellya Wilkie*
Name: Kelly A. Wilkie
and Title: Vice-President

(Any additional signatures appear on the last page of this Performance Bond.)

SURETY

Company: *(Corporate Seal)*
Hartford Accident and Indemnity Company

Signature: *Heather M. Johnson*
Name: Heather M. Johnson
and Title: Attorney in Fact

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Hylant Group
24 Frank Lloyd Wright Dr.
P.O. Box 541
Suite J4100
Ann Arbor, MI 48106
(734) 741-0044

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. 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.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company:

(Corporate Seal)

Company:

(Corporate Seal)

Signature: _____

Signature: _____

Name and Title:

Name and Title:

Address

Address

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

AIA[®] Document A312[™] – 2010

Payment Bond

CONTRACTOR:

(Name, legal status and address)

Douglas N. Higgins, Inc.
3390 Travis Pointe, Suite A
Ann Arbor, MI 48108

SURETY:

(Name, legal status and principal place of business)

Hartford Accident and Indemnity Company
One Hartford Plaza, T-4
Hartford, CT 06155

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312–2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

OWNER:

(Name, legal status and address)

The City of Marathon
9805 Overseas Highway
Marathon, FL 33050

CONSTRUCTION CONTRACT

Date:

Amount: Fifty-Two Thousand One Hundred and 00/100 (\$52,100.00)

Description:

(Name and location)

Dodge Lake Boat Ramp Project
City of Marathon

BOND

Date: January 17, 2014

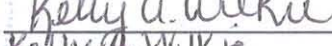
(Not earlier than Construction Contract Date)

Amount: Fifty-Two Thousand One Hundred and 00/100 (\$52,100.00)

Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL

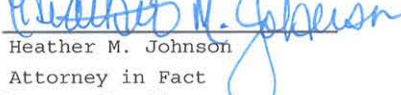
Company: *(Corporate Seal)*
Douglas N. Higgins, Inc.

Signature: 
Name: Kelly A. Wilkie
and Title: Vice-President

(Any additional signatures appear on the last page of this Payment Bond.)

SURETY

Company: *(Corporate Seal)*
Hartford Accident and Indemnity Company

Signature: 
Name: Heather M. Johnson
and Title: Attorney in Fact

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Hylant Group
24 Frank Lloyd Wright Dr.
P.O. Box 541
Suite J4100
Ann Arbor, MI 48106
(734) 741-0044

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. 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.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: _____

Name and Title: _____

Address _____

Signature: _____

Name and Title: _____

Address _____

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

POWER OF ATTORNEY

Direct Inquiries/Claims to:

THE HARTFORD

BOND, T-4

One Hartford Plaza

Hartford, Connecticut 06155

call: 888-266-3488 or fax: 860-757-5835

KNOW ALL PERSONS BY THESE PRESENTS THAT:

Agency Code: 35-350851

- Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- Hartford Casualty Insurance Company, a corporation duly organized under the laws of the State of Indiana
- Hartford Accident and Indemnity Company, a corporation duly organized under the laws of the State of Connecticut
- Hartford Underwriters Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- Twin City Fire Insurance Company, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of Illinois, a corporation duly organized under the laws of the State of Illinois
- Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Florida

Doc# 1967155
BK# 2669 P## 958

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, up to the amount of unlimited:

Heather M. Johnson, Joel E. Speckman, Terri Mahakian, David Harlock
of
Ann Arbor, MI

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by , and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on August 1, 2009 the Companies have caused these presents to be signed by its Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



Wesley W. Cowling

Wesley W. Cowling, Assistant Secretary

M. Ross Fisher

M. Ross Fisher, Vice President

STATE OF CONNECTICUT }
COUNTY OF HARTFORD } ss. Hartford

On this 12th day of July, 2012, before me personally came M. Ross Fisher, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

Kathleen T. Maynard

Kathleen T. Maynard
Notary Public

My Commission Expires July 31, 2016

I, the undersigned, Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of January 17, 2014.

Signed and sealed at the City of Hartford.



MONROE COUNTY
OFFICIAL RECORDS

Gary W. Stumper

Gary W. Stumper, Vice President