

**CITY OF MARATHON, FLORIDA
RESOLUTION 2017-45**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AWARDED CONTRACT FOR “REPLACEMENT OF RESTROOMS AT COCO PLUM BEACH” TO KEYS CONTRACTING SERVICES; APPROVING CONTRACT IN THE AMOUNT OF \$111,500; 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 Request For Proposals (RFP) for replacement of restrooms at Coco Plum Beach (the “Project”) with responses due on May 15, 2017, on June 2nd responses were ranked and pricing proposals opened; and

WHEREAS, the City obtained a grant from the Tourist Development Commission (TDC) for the replacement of the restroom at Coco Plum Beach with a 50% match from the City; and

WHEREAS, Keys Contracting Services, submitted the lowest responsive and responsible bid in the amount of \$111,500 in response to the City’s RFP; and

WHEREAS, the City Council desires to award the Bid for the Project to and enter into a Contract with Keys Contracting Services, in the amount of \$111,500 as shown in Exhibit “A.”

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 are incorporated herein.

Section 2. The City Manager is authorized to execute the Contract with Keys Contracting Services for the project in the amount of \$111,500, 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 13TH DAY OF JUNE, 2017.

THE CITY OF MARATHON, FLORIDA


Dr. Daniel Zieg, Mayor

AYES: Bartus, Coldiron, Senmartin, Zieg
NOES: None
ABSENT: Cook
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:**



David Migut, City Attorney

SECTION 6
CONSTRUCTION CONTRACT

THIS AGREEMENT is made between the City of Marathon, Florida, a Florida municipal corporation whose address and principal place of business is 9805 Overseas Highway, Marathon, Florida 33050, (hereinafter the "City") and **Keys Contracting Services**, a Florida corporation whose address and principal place of business is: 935 107th Street Gulf, Marathon, FL 33050, (hereinafter the "Contractor"), and

WHEREAS, the City desires to engage the Contractor to provide construction services as specified below (the "Work").

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Contractor and the City agree as follows.

1. **Scope of Services/Deliverables.**

- (a) The Contractor shall provide the Work at the unit price [] or lump sum price [X] specified in **Exhibit "A" – Scope of Work** attached to this Agreement, and made a part hereof by this reference. Contractor shall be responsible for supplying all apparatus, equipment, labor, materials, means of transport, services and tools incidental or necessary to complete the Work.

2. **Term/Commencement Date and Liquidated Damages.**

- (a) Unless specified otherwise in **Exhibit "A"** the Contractor shall not commence work until the City issues Contractor a written Notice to Proceed and the Work shall be substantially completed within **Sixty (60)** calendar days after the date specified in the Notice to Proceed ("Substantial Completion"), and fully completed and ready for final payment in accordance with the Agreement Documents within **Seventy Five (75)** calendar days after the date specified in the Notice to Proceed ("Final Completion"). In any case, ALL work and subsequent final payment request shall be completed no later than September 15, 2017
- (b) Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Work within the timeframes set forth in **Exhibit "A"**, unless extended by the City Manager. The City shall issue a written notice identifying the date the Work is deemed fully complete which shall be the Final Completion date.
- (c) 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 herein, plus any approved extensions thereof allowed by the City. The Contractor also recognizes that the damages which the City will incur if the Work is not substantially completed on time and/or fully completed on time are

not readily ascertainable at the time this Agreement is entered into, and the Contractor recognizes the difficulties involved in proving the actual loss suffered by City if the Work is not substantially completed on time and/or fully completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree that as liquidated damages to compensate the City, and not as a penalty for delay or as an incentive to complete on time, Contractor shall pay City (N/A) for each calendar day that expires after the time specified for Substantial Completion of the Work. After Substantial Completion, if Contractor fails to fully complete the Work within the time specified for Final Completion and readiness for final payment or any proper extension thereof granted by City, Contractor shall pay City (N/A) for each calendar day that expires after the time specified for Final Completion and readiness for final payment. Contractor agrees that the liquidated damage amounts specified herein bear a reasonable relationship to the actual damages to be suffered due to public inconvenience and damage to the City's reputation if the Contractor fails to substantially complete and/or fully complete the Work on time. The liquidated damages are not in compensation for any other damages, and expressly exclude damages for completion contractor expenses, lost/unrealized revenue, financing costs, professional services, attorney fees, and/or additional City staffing that may be incurred if the Work is not substantially completed on time and/or fully completed on time. All liquidated damages amounts will continue to be charged if the Contractor abandons the Work, or is terminated, and the Work is completed by another party.

- (d) Should the Substantial Completion and/or Final Completion and acceptance of Work, together with any modification or additions, be delayed beyond the time for performance set above because of lack of performance by the Contractor, it is understood and agreed that aside from any liquidated damages, the Contractor shall be liable to the City for all actual additional costs and/or losses incurred by the City including, but not limited to, completion contractor expenses, lost/unrealized revenue, financing costs, professional services, attorney fees, and/or additional City staffing that incurred because the Work was not substantially completed on time and/or fully completed on time.
- (e) Monies due to the City for liquidated damages and/or actual damages 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.



3.

Compensation and Payment.

- (a) For the purpose of developing the values to be paid on a monthly basis, Contractor shall submit a Schedule of Values to be reviewed and approved by the City at least thirty (30) days before the first progress payment request. This Schedule of Values shall constitute the values of each unit within each category that will be paid for the Work (see, Application for Payment, Instructions "General Information").
- (b) The Contractor shall invoice the City on a monthly basis. All invoices shall provide a detailed statement of the Work performed by Contractor for the period of time covered by the invoice. Contractor shall use the form attached hereto as **Exhibit "B,"** or such other form as may be provided by City from time to time, which is to be used by Contractor in requesting progress or final payments and which is to include such supporting documentation as is required by the Agreement Documents. The City will withhold 10% of each Pay Application as retainage which shall be paid upon Final Completion of the Work.
- (c) Each application for partial payment shall include partial lien/bond releases from all subcontractors and suppliers and a sworn statement by Contractor that partial payments received from City for the Work have been applied by Contractor to discharge in full all of Contractor's obligations, including payments to subcontractors and suppliers, stated in prior applications for payment. If payment has been withheld from a subcontractor and/or supplier the sworn statement shall state the reasons for the nonpayment. All partial payment requests shall be accompanied by consents of surety for each subcontractor and supplier.
- (d) The final application for payment shall be accompanied by all documentation called for in the Agreement Documents, together with complete and legally effective releases and/or waivers (satisfactory to City) of all liens and claims arising out of or in connection with the Work and consent of the surety, if any, to final payment. If any subcontractor or supplier fails to furnish a sub-tier release, Contractor shall provide the City with a sworn written explanation for why the subcontractor or supplier has not been paid. The City may require the Contractor to provide security to ensure all disputed and/or undisputed amounts owed are paid; or withhold the disputed and/or undisputed amounts owed from the final payment until such time as the final releases and consents of surety for each subcontractor and supplier.
- (e) The City shall pay Contractor in accordance with the Florida Prompt Payment Act. When the Contractor believes the Work is substantially complete, the Contractor shall notify the City and within 15 calendar days the parties shall create and review a single draft punch list of items to be completed in order for the Work to be fully complete. The City shall review the draft punch list and within 5 days of being provided with the draft punch list, the City shall provide

the Contractor with the Final Punch list of work to be completed for the Work to be deemed fully complete.

- (f) If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the Contractor the undisputed portion of the invoice. Upon written request of the Finance Director, the Contractor shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.
- (g) All payments shall only be from appropriations budgeted on an annual basis.

4. **Subcontractors.**

- (a) The Contractor shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Work.
- (b) Any subcontractors used on the Work must have the prior written approval of the City Manager and be properly licensed and insured in the same amounts as the Contractor.

5. **City's Responsibilities.**

- (a) Upon request, if available, the City shall furnish maps, plans, studies, reports and other information regarding anticipated field conditions readily available and in the City's possession.
- (b) The City shall arrange for access to and make all provisions for Contractor to enter upon real property as required for Contractor to inspect the site and perform the Work as may be requested in writing by the Contractor.

6. **Contractor's Responsibilities.**

- (a) Contractor shall exercise the same degree of care, skill and diligence in the performance of the Work as is ordinarily provided by a professional under similar circumstances. If at any time during the term of this Agreement or within one year from the completion of the Work, it is determined that the Contractor's deliverables are incorrect, defective or fail to conform to the Scope of Work or perform as intended, upon written notification from the City Manager, the Contractor shall at Contractor's sole expense, immediately correct the Work.
- (b) Contractor and its subcontractors shall comply with all applicable laws and regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall develop and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent public and private property and of underground facilities and other



utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be immediately remedied by Contractor. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and the City has made final payment to Contractor.

- (c) On a daily basis during the course of the Work, Contractor shall maintain the site free of debris and dust so as to minimize any inconvenience to surrounding properties. Upon completion of the Work, Contractor shall remove all apparatus, debris, equipment, materials, and tools created or used to construct the Work, and except for the Work or as otherwise directed by the City return the site in the same condition as at the beginning of the Work.
- (d) If the Work will create any obstructions, road closures or traffic impacts, Contractor shall provide the City and surrounding property owners with no less than seventy-two (72) hours prior notice of the anticipated or planned obstructions, road closures or traffic impacts.

5. Termination.

- (a) The City Manager without cause may terminate this Agreement upon thirty (30) days written notice to the Contractor, or immediately with cause.
- (b) Unless directed otherwise in writing by the City Manager, upon receipt of the City's written notice of intent to terminate or notice of actual termination, Contractor shall stop the Work.
- (c) In the event of termination by the City, the Contractor shall be paid for all Work accepted by the City Manager up to the date of termination.
- (d) The Contractor shall transfer all books, records, reports, working drafts, documents, maps, and data properly indexed and labeled pertaining to the Work to the City, in a hard copy and/or electronic format (as specified by the City) within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

8. Insurance.

The Contractor shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by the City. The underwriter of such insurance shall be qualified to do business in the State of Florida and have agents



upon whom service of process may be made in the State of Florida. If requested by the City Manager, the insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers. The insurance coverage shall include a minimum of:

- (a) Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law. Contractors with Worker's Compensation exemption shall not hold City liable for employee injury or claims.
- (b) Comprehensive Automobile and Vehicle Liability Insurance, and General Liability Insurance shall be in accordance with Exhibit C.
- (c) The Contractor will add the City as an additional named insured on all insurance policies applicable to the Work under this Agreement. Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Certificates of Insurance shall include the City as additional named insured. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9. **Nondiscrimination.**

- (a) During the term of this Agreement, Contractor shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination.

10. **Agreement Documents.**

THE AGREEMENT 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 AGREEMENT AS THOUGH PHYSICALLY ATTACHED AS A PART THEREOF:

Change Orders
Agreement
Exhibits to the Agreement
Bid Documents (Addendum, Invitation to Bid/RFQ, Instructions to Bidders/Proposers, Proposal Form provided by Contractor, Notice of Award and Notice to Proceed);

CONTRACTOR AGREES THAT THERE IS NO IMPLIED OR EXPRESS WARRANTY OF CONSTRUCTABILITY WITH REGARD TO THE WORK OR DESIGN ENCOMPASSED BY THE AGREEMENT DOCUMENTS.

11. **Attorneys' Fees and Waiver of Jury Trial.**

- (A) **IF EITHER THE CITY OR CONTRACTOR IS REQUIRED TO ENFORCE THE TERMS OF THE AGREEMENT BY COURT PROCEEDINGS OR OTHERWISE, WHETHER OR NOT FORMAL LEGAL ACTION IS REQUIRED, THE PARTIES SHALL BEAR THEIR OWN ATTORNEY FEES, COSTS AND EXPENSES, AT THE TRIAL AND APPELLATE LEVEL.**
- (b) In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily, and intentionally waives its right to trial by jury.

12. **Indemnification.**

- (a) General Indemnity. Contractor shall indemnify and hold harmless the City, its officers, and employees, from or on account of all claims, damages, losses, liabilities and expenses, direct, indirect or consequential, including, but not limited to, fees and charges of engineers, architects, attorney's, consultants and other professionals and trial and appellate court and arbitration costs arising out of or resulting from the performance of the Work, excluding claims arising from the sole negligence of City. Such indemnification shall specifically include but not be limited to claims, damages, losses and expenses arising out of or resulting from (i) any and all bodily injuries, sickness, death, disease; (ii) injury to or destruction of real property or tangible personal property, be it publicly or privately owned, including the loss of use resulting therefrom; (iii) other such damages, liabilities or losses received or sustained by any person or persons during or on account of any operations connected with the construction of the Work including the warranty period; (iv) the use of any improper materials; (v) any construction defect including patent defects; (vi) any act or omission of Contractor or his Subcontractors, agents, servants or employees; (vii) the violation of any federal, state, county or City laws, ordinances or regulations by Contractor, his Subcontractors, agents, servants or employees; (viii) the breach or alleged breach by Contractor of any term of this Agreement, including the breach or alleged breach of any warranty or guarantee.
- (B) **DEFENSE. IN THE EVENT THAT ANY CLAIMS ARE BROUGHT OR ACTIONS ARE FILED AGAINST THE CITY THAT ARE ENCOMPASSED BY THE CONTRACTOR'S DUTY TO INDEMNIFY AS STATED IN THIS AGREEMENT, THE CONTRACTOR AGREES TO DEFEND AGAINST ALL CLAIMS AND ACTIONS BROUGHT AGAINST THE CITY REGARDLESS OF WHETHER SUCH CLAIMS OR ACTIONS ARE RIGHTFULLY OR WRONGFULLY BROUGHT OR FILED. CITY RESERVES THE RIGHT TO SELECT ITS OWN LEGAL COUNSEL TO CONDUCT ANY DEFENSE IN ANY SUCH PROCEEDINGS AND ALL COSTS AND FEES ASSOCIATED THEREWITH INCLUDING ANY**



COSTS OR FEES OF AN APPEAL SHALL BE THE RESPONSIBILITY OF CONTRACTOR.

- (c) **Specific Indemnity.** Contractor shall indemnify and hold harmless the City for liability for damages to persons or property caused in whole or in part by any act, omission, or default of the City, its officers, directors, agents, or employees arising from the Agreement or its performance. Such indemnification shall not include claims of, or damages resulting from, gross negligence, or willful, wanton or intentional misconduct of the City or its officers, directors, agents or employees, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Contractor or any of the Contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees. The extent of the indemnification shall be limited to \$5,000,000 which the parties agree bears a reasonable commercial relationship to the contract. The monetary limitation on the extent of the indemnification provided to the City shall not be less than \$1 million per occurrence.
- (D) **PAYMENT OF LOSSES.** CONTRACTOR SHALL PAY ALL CLAIMS, LOSSES, LIENS, SETTLEMENTS OR JUDGMENTS OF ANY NATURE WHATSOEVER, EXCLUDING ONLY THOSE IN WHICH THE DAMAGES AROSE OUT OF THE SOLE NEGLIGENCE OF CITY, IN CONNECTION WITH THE FOREGOING INDEMNIFICATIONS, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY'S FEES AND COSTS TO DEFEND ALL CLAIMS OR SUITS IN THE NAME OF CITY WHEN APPLICABLE.
- (E) **CONTRACTOR'S INDEMNIFICATION SHALL NOT BE LIMITED TO THE AMOUNT OF COMPREHENSIVE GENERAL LIABILITY INSURANCE WHICH CONTRACTOR IS REQUIRED TO OBTAIN UNDER THE AGREEMENT. NOTHING CONTAINED HEREIN IS INTENDED NOR SHALL IT BE CONSTRUED TO WAIVE CITY'S RIGHTS AND IMMUNITIES UNDER THE COMMON LAW OR SECTION 768.28 FLORIDA STATUTES, AS AMENDED FROM TIME TO TIME. THIS OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR OTHERWISE REDUCE ANY OTHER RIGHT OR OBLIGATION OF INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO ANY PARTY DESCRIBED IN THIS SECTION AND ITS SUBPARTS.**
- (f) The provisions of this section shall survive termination of this Agreement.

13. **Notices/Authorized Representatives.**

- (a) Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or



certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the City: City Manager
9805 Overseas Highway
Marathon, Florida 33050

With a Copy to: David Migut
City Attorney
9805 Overseas Hwy
Marathon, FL 33050

For The Contractor: CHRIS GRATTON
935 107th ST. GULF
MARATHON, FLA
33050

14. **Governing Law.**

- (a) This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court or the Federal Southern District of Florida.
- (b) **THE CONTRACTOR SHALL COMPLY WITH THE APPLICABLE PROVISIONS OF CHAPTER 119, FLORIDA STATUTE RELATING TO PUBLIC RECORDS. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-289-4130, cityofmarathon@ci.marathon.fl.us, 9805 OVERSEAS HIGHWAY, MARATHON, FL 33050.**

15. **Entire Agreement/Modification/Amendment.**

- (a) This writing together with all Bidding Documents, RFP and any other portion of the bid contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

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(B) NO AGENT, EMPLOYEE, OR OTHER REPRESENTATIVE OF EITHER PARTY IS EMPOWERED TO MODIFY OR AMEND THE TERMS OF THIS AGREEMENT, UNLESS EXECUTED WITH THE SAME FORMALITY AS THIS DOCUMENT. THIS AGREEMENT MAY BE AMENDED TO PROVIDE FOR ADDITIONS, DELETIONS, AND REVISIONS IN THE WORK OR TO MODIFY THE TERMS AND CONDITIONS THEREOF VIA A WRITTEN CHANGE ORDER, IN THE FORM ATTACHED HERETO AS EXHIBIT "C," OR SUCH OTHER FORM AS MAY BE PROVIDED BY CITY FROM TIME TO TIME.

16. **Ownership and Access to Records and Audits.**

- (a) All records, books, documents, maps, data, deliverables, papers, and financial information (the "Records") that result from the Contractor providing services to the City under this Agreement shall be the property of the City. The Records shall be properly indexed and labeled.
- (b) The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Contractor involving transactions related to this Agreement.
- (c) The City may terminate this Agreement for refusal by the Contractor to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.



17. **Nonassignability.**

- (a) This Agreement shall not be assignable by Contractor unless such assignment is first approved by the City Manager. The City is relying upon the apparent qualifications and personal expertise of the Contractor, and such firm's familiarity with the City's area, circumstances, and desires.

18. **Severability.**

- (a) If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

19. **Independent Contractor.**

- (a) The Contractor and its employees, volunteers and agents shall be and remain independent contractor and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

20. **Compliance with Laws.**

- (a) The Contractor shall ensure that it, and all its subcontractors (at all tiers), comply with all federal, state and local applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Work.

21. **Waiver.**

- (a) The failure of the City to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

22. **Survival of Provisions.**

- (a) Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.



23. **Prohibition of Contingency Fees.**

- (a) The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

24. **Counterparts.**

- (a) This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart shall constitute one and the same instrument.

25. **Authorization to Sign Agreement.**

- (a) The execution and delivery of this Agreement by Contractor is within Contractor's capacity and all requisite action has been taken to make this Agreement valid and binding on Contractor in accordance with its terms.

26. **Non-Exclusive Agreement.**

- (a) The services to be provided by the Contractor pursuant to this Agreement shall be non-exclusive and nothing herein shall preclude the City from engaging other firms to perform the same or similar services for the benefit of the City as determined in its sole and absolute discretion.

27. **Performance and Payment Bonds.**

- (a) Prior to commencing the Work identified in **Exhibit "A,"** the Contractor shall deliver to the City Performance and Payment Bonds in the form attached hereto as **Exhibit "D"** securing its obligations to be performed for the Work. Each Bond shall be in an amount equal to the contract price for the Work, and the Contractor shall record them in the Public Records of Monroe County and provide the City with certified copies of same. No payments shall be made to the Contractor until such time as the certified copies of the recorded Performance and Payment Bonds have been supplied to the City. The Performance and Payment Bonds will cease to be effective on the date of the City's final payment for the Work. Effective immediately thereafter, Contractor shall provide a Maintenance Bond for the one year warranty period commencing on the date of the City's final payment for the Work in the amount of one hundred twenty five percent (125%) of the Work price.

28. **Continuing the Work.**

- (a) Unless directed otherwise in writing by the City Manager, Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with City.

29. **CHANGES IN THE WORK.**

- (A) **WITHOUT INVALIDATING THE AGREEMENT AND WITHOUT NOTICE TO ANY SURETY, CITY MAY, AT ANY TIME OR FROM TIME-TO-TIME, ORDER ADDITIONS, DELETIONS, OR REVISIONS IN THE WORK BY A WRITTEN AMENDMENT OR CHANGE ORDER. UPON RECEIPT OF ANY SUCH DOCUMENT, CONTRACTOR SHALL PROMPTLY PROCEED WITH THE WORK INVOLVED.**
- (B) **THE CONTRACT PRICE MAY ONLY BE CHANGED BY A WRITTEN CHANGE ORDER. ANY CLAIM FOR AN INCREASE OR DECREASE IN THE CONTRACT PRICE SHALL BE BASED ON WRITTEN NOTICE OF INTENT TO CLAIM DELIVERED TO THE CITY PROMPTLY [BUT IN NO EVENT LATER THAN THREE (3) BUSINESS DAYS AFTER THE FIRST OCCURRENCE OF THE EVENT GIVING RISE TO THE AMOUNT OF THE CLAIM]. CONTRACTOR SHALL DELIVER TO THE CITY A GOOD FAITH ESTIMATE OF THE COST AND TIME IMPACTS CAUSED BY THE CLAIM CAUSING EVENT WITHIN SEVEN (7) CALENDAR DAYS OF THE FIRST OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM. WITHIN SEVEN (7) CALENDAR DAYS OF THE CONCLUSION OF THE CLAIM CAUSING EVENT, BUT NO LATER THAN THE SUBSTANTIAL COMPLETION DATE, CONTRACTOR SHALL DELIVER TO THE CITY A FULL AND COMPLETE WRITTEN CLAIM IDENTIFYING ALL COSTS AND TIME IMPACTS THAT THE CONTRACTOR BELIEVES SHOULD BE PAID DUE TO THE CLAIM CAUSING EVENT AND SHALL INCLUDE FULL AND FINAL SUBSTANTIATION FOR ALL PRICE AND TIME ADJUSTMENTS. THE CITY MANAGER WILL REVIEW THE CLAIM AND MAKE A DECISION ON THE REQUEST. THE CITY MANAGER'S DECISION WILL BE FINAL UNLESS WITHIN SEVEN (7) CALENDAR DAYS OF THE DATE OF THE CITY MANAGER'S DECISION THE CONTRACTOR PROVIDES THE CITY WITH WRITTEN NOTICE EXPRESSLY STATING THAT THE CONTRACTOR DISPUTES THE DECISION AND INTENDS TO PURSUE THE MATTER VIA LITIGATION. FAILURE BY CONTRACTOR TO STRICTLY COMPLY WITH THE PROVISIONS OF THIS ARTICLE WILL RESULT IN A WAIVER OF THE CLAIM.**

30. **SUBSURFACE CONDITIONS**

- (a) Information shown on the Drawings and/or indicated in the Agreement Documents as to the location of existing utilities and subsurface conditions has

been prepared from the most reliable data available to the City. This information is not guaranteed, however, and it shall be the Contractor's responsibility to determine the location, character and depth of existing utilities. The City expressly disclaims any warranty as to the underground conditions to be encountered. The Contractor should not rely on locations, condition, or quantity of subsurface structures or conditions depicted on drawings, as the locations, condition, and quantities are approximations.

31. Compensation for Delay.

- (a) NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE CITY BY REASON OF ANY DELAYS, DISRUPTION, INTERFERENCE, OR HINDRANCE (collectively "Delay"). Notwithstanding anything to the contrary contained in the Agreement Documents, the Contractor shall not be entitled to additional compensation for any Delay unless the Delay shall have been caused by acts constituting willful or intentional interference by the City with the Contractor's performance of the Work, and then only where such acts continue after Contractor's written notice to the City of such interference.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates under each signature. The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same; and by Contractor by and through its President, who has been duly authorized to execute same.

ATTEST:

CITY OF MARATHON

Diane Clavier
Diane Clavier, City Clerk

By: Chuck Lindsey
Chuck Lindsey, City Manager

Date: July 3, 2017

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

David Migut
David Migut, City Attorney

CONTRACTOR

By: Craig Gratton
Craig Gratton, President

Date: 6.23.17



EXHIBIT "A"
SCOPE OF WORK

SCOPE OF WORK – The Contractor shall furnish all labor, materials, supervision, equipment supplies, and incidentals required to provide a turnkey facility consisting of removal and replacement of a bathroom facility at Coco Plum Beach. The project shall, at a minimum, include:

1. Provide a Pre-Fabricated ADA accessible bathroom consisting of separate men's and women's facility.
 - 1.1. The building shall meet all requirements of the current Florida building Code, inclusive of hurricane wind loading for this area, at the time of bid.
 - 1.2. The building shall meet all current ADA access and accommodation requirements.
 - 1.3. Each restroom shall be equipped with a water closet, sink and drying paper dispenser.
 - 1.4. The building shall be set at the same elevation as the existing restroom to accommodate access. Since this elevation is below the 100 year flood elevation, the building will require flood proofing.
 - 1.5. The building shall be set on a 6" minimum concrete slab with floor drains tied to the sewer system in each restroom. All modifications to the existing foundation, footers slab and incidental work is included in the bid price.
 - 1.6. The building should be design to provide natural lighting and ventilation during day light hours. It is preferred to have no electrical service to the building. Electrical service will be considered in the scoring as it relates to additional cost to the project.
 - 1.7. Building plans shall be submitted to the City for product review and issuance of building permits by the contractor. Cost of plans, engineering design and all required information is inclusive in the bid price.
 - 1.8. Metal doors are not acceptable. The City would prefer the use of fiberglass doors with all stainless steel hardware. Doors shall meet the hurricane wind load requirements or provide provisions and material to shutter the entrance during a hurricane.
 - 1.9. All interior hardware shall be stainless steel.
 - 1.10. The restroom shall operate under normal gravity flow and standard water pressure from the public water system. Building should not contain any additional mechanical equipment such as pressurization, pumps or any similar device.
2. Contractor is responsible for all demolition, clearing and all other preparation to install new restroom. The City, at it's sole discretion, may request that the compost component of the existing bathroom be made available to the city.
3. All site work, and any required restoration, including sodding, repair of sidewalks, or any other damaged caused by construction activities, shall be the contractor's responsibility and included in the bid pricing.
4. Contractor shall provide a 1-1/4" water service from the proposed meter to the building. The water service shall be installed via an existing 3" water service terminating approximately 10 feet from the building. Installation from the end of the casing to the building shall be per open cut (See attached site plan). Contractor shall install a ZURN RPZ model 975XL2, per the detail in the contract documents. Contractor is responsible to cut existing casing as indicated on the site plan to accommodate the proposed meter, by the FCAA, and RPZ.



City of Marathon Coco Plum Beach Restroom Replacement
ADDENDUM NO. 1

6/20/2017

Notice to All Proposers: The Following Addendum Is shall clarify or change information in the bid documents

1. The attached existing restroom details are to be added and made part of the Contract Documents

The following are clarifications to the Contract Documents

1. The contractor shall not include any cost provisions for the re-use of the composting component of the existing restroom. Should the City exercise its option on re-using this system, any cost associated with transporting or storage of the system will be borne by the City. Contractor is responsible for disposal unless requested otherwise by the City.
2. The building will not be required to be flood proof. The City considers the building an auxiliary building, and as such vents of one square inch per square foot of building area shall be provided instead of flood proofing.
3. The City will consider material other than fiberglass for the doors, however metal doors will not be considered.
4. Hot water will not be required for the restrooms.
5. The attached plans for the existing restrooms shall be incorporated into the contract documents.

City of Marathon Coco Plum Beach Restroom Replacement
ADDENDUM NO. 2

6/20/2017

Notice to All Proposers: The Following Addendum shall clarify or change information in the bid documents


1. The restroom shall be constructed at a different location as indicated in the attached Site Plan.
 2. The restroom shall be installed on a slab on grade. Permitted plans shall include the design of slab.
 3. Existing restroom shall be removed, and composed area below restroom filled.
 4. All other requirements as previously indicated shall remain as noted.
- 

EXHIBIT "B"
APPLICATION FOR PAYMENT

Application For Payment No. _____

To: City of Marathon
From: _____
Agreement: _____
Project: _____
City's Agreement No. _____
For Work accomplished through the date of: _____

1.	Original Contract Price:	\$ _____
2.	Net change by Change Orders and Written Amendments (+ or -):	\$ _____
3.	Current Contract Price (1 plus 2):	\$ _____
4.	Total completed and stored to date:	\$ _____
5.	Retainage (per Agreement):	
	_____ % of completed Work:	\$ _____
	_____ % of stored material:	\$ _____
	Total Retainage:	\$ _____
6.	Total completed and stored to date less retainage (4 minus 5):	\$ _____
7.	Less previous Application for Payments:	\$ _____
8.	DUE THIS APPLICATION (6 MINUS 7):	\$ _____

Accompanying Documentation: _____

Contractor's Certification:

The undersigned Contractor certifies that (1) all previous progress payments received from City on account of Work done under the Agreement referred to above have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment numbered 1 through _____ inclusive; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to City at time of payment free and clear of all liens, security interests and encumbrances (except such as are covered by a Bond acceptable to City indemnifying City against any such lien, security interest or encumbrance); and (3) all Work covered by this Application for Payment is in accordance with the Agreement Documents and not defective.

Date

Contractor

By: _____

State of _____
County of _____

Subscribed and sworn to before me this ___ day of _____, 20__

Notary Public
My Commission expires: _____

Payment of the above AMOUNT DUE THIS APPLICATION is recommended.

Dated _____

City's Representative

APPLICATION FOR PAYMENT

INSTRUCTIONS

A. GENERAL INFORMATION

The sample form of Schedule of Values is intended as a guide only. Many projects require a more extensive form with space for numerous items, descriptions of Change Orders, identification of variable quantity adjustments, summary of materials and equipment stored at the site and other information. It is expected that a separate form will be developed by City and Contractor at the time Contractor's Schedule of Values is finalized. Note also that the format for retainage must be changed if the Agreement permits (or the law provides), and Contractor elects to deposit securities in lieu of retainage.

B. COMPLETING THE FORM

The Schedule of Values, submitted and approved, should be reproduced as appropriate in the space indicated on the Application for Payment form. Note that the cost of materials and equipment is often listed separately from the cost of installation. Also, note that each Unit Price is deemed to include Contractor's overhead and profit.

All Change Orders affecting the Contract Price should be identified and included in the Schedule of Values as required for progress payments.

The form is suitable for use in the Final Application for Payment as well as for Progress Payments; however, the required accompanying documentation is usually more extensive for final payment. All accompanying documentation should be identified in the space provided on the form.

C. LEGAL REVIEW

All accompanying documentation of a legal nature, such as lien waivers, should be reviewed by an attorney.

Application No. _____

Date: _____

ITEM	UNIT PRICE	ESTIMATED QUANTITY	SCHEDULE OF VALUES AMOUNT	QUANTITY COMPLETED	AMOUNT	%	MATERIAL STORED	AMOUNT COMPLETED AND STORED
1. Concrete Foundation	\$20,000	1	\$20,000		\$		\$	\$
2. Block Walls	\$15,000	1	\$15,000					
3. Roof Dry-In	\$10,000	1	\$10,000					
4. Metal Roof	\$10,000	1	\$10,000					
5. Sewer	\$5,000	1	\$5,000					
6. Water Services	\$10,000	1	\$10,000					
7. Plumbing Fixtures	\$5,000	1	\$5,000					
8. Stucco	\$10,000	1	\$10,000					
9. Paint	\$10,000	1	\$10,000					
10. Restoration	\$4,500	1	\$4,500					
11. Demolition Existing	\$12,000	1	\$12,000					
<u>Bath</u>								
12.								
13.								
14.								
15.								
16.								
17.								
18.								
19.								
20.								
TOTAL	\$111,500		\$111,500		\$		\$	\$

Note: Total Schedule of Values Amount should equal the current Contract Price.

EXHIBIT "C"

INSURANCE REQUIREMENTS

CONTRACTOR shall provide or cause to be provided the following insurance and shall also ensure that the following insurance language shall be included in the Subcontractor Contracts. Prior to commencement of Work, certificates of insurance shall be provided evidencing CONTRACTOR's and its Subcontractor's compliance with these insurance requirements; provided, however, builder's risk insurance shall not be required unless and until the Work commences. Without limiting any of the other obligations or liabilities of CONTRACTOR and the Subcontractors, the CONTRACTOR and each Subcontractor shall provide, pay for, and maintain in force until all of the Work is completed and accepted by the CITY (or for such duration as otherwise specified hereinafter), the insurance coverages set forth herein.

1. Workers' Compensation insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include:
 - (a) Employers' Liability with a limit of One Million Dollars (\$1,000,000) each accident.
 - (b) If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.
2. Comprehensive General Liability with minimum limits of Three Million Dollars (\$3,000,000) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability with respect to CONTRACTOR, and Three Million Dollars (\$3,000,000) with per occurrence respect to Subcontractors, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:
 - (a) Premises or Operations;
 - (b) Independent Contractors;
 - (c) Products or Completed Operations for contracts over Fifty Thousand Dollars (\$50,000.00) CONTRACTOR shall maintain in force until at least three (3) years after completion of all work required under the CONTRACT, coverage for Products and Completed Operations, including Broad Form Property Damage;
 - (d) Explosion, Collapse and Underground Coverages;

- (e) Broad Form Property Damage;
 - (f) Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless or indemnification agreement;
 - (g) Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability; and
 - (h) CITY and CONTRACTOR are to be expressly included as "Additional Insureds" with respect to liability arising out of operations performed for CITY and CONTRACTOR by or on behalf of CONTRACTOR and Subcontractors or acts or omissions of CITY or CONTRACTOR in connection with general supervision of such operation.
3. Umbrella Liability, general aggregate of Three Million Dollars (\$3,000,000).
4. Business Automobile Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:
- (a) Owned Vehicles.
 - (b) Hired and Non-Owned Vehicles.
5. Builder's Risk Insurance for the construction of above ground buildings or structures is required. The coverage shall be "All Risk" form for One Hundred Percent of the completed value, including CITY and CONTRACTOR as named insureds, with a deductible of not more than Twenty-five Thousand Dollars (\$25,000) each claim.
- (a) Waiver of Occupancy Clause or Warranty-Policy must be specifically endorsed to eliminate any "occupancy clause" or similar warranty or representation that the building(s), addition(s) or structure(s) in the course of construction shall not be occupied without specific endorsement of the policy. The policy must be endorsed to provide that the Builder's Risk Coverage will continue to apply until the Substantial Completion Date.
 - (b) When the buildings or structures are located within an identified special flood hazard area, flood insurance must be afforded for the lesser of the total insurable value of such buildings or structures, or, the maximum amount of flood insurance coverage available under the National Flood Program.

All required insurance shall be evidenced by valid and enforceable policies issued by a company licensed to do business in the State of Florida and otherwise acceptable to the CITY. The CONTRACTOR shall not cancel (or permit any

lapse under) any policy of required insurance. Each policy of required insurance shall: (i) contain the agreement of the insurer that the insurer shall not cancel or materially alter the same without thirty (30) days' prior written notice to CITY except in the case of non-payment by the CONTRACTOR for which ten (10) days' prior written notice will be provided to CITY; (ii) provide for third party vicarious liability; (iii) delete the insured versus insured exclusion with respect to claims brought by the CITY; and (iv) be effective for a period from the date of this CONTRACT through at least one (1) year after completion of the Work provided hereunder, except for professional liability insurance which shall be effective for a period from the date of this CONTRACT through at least five (5) years after completion of the Work provided hereunder and builder's risk insurance which shall be effective through Substantial Completion. Insurance shall be provided to the CITY at the times required by Section 00700.16.4 of the General Conditions at which time the CONTRACTOR shall deliver to CITY a certificate of insurance naming CITY as an additional insured as required hereunder for each policy of required insurance except for professional liability insurance. The minimum coverage and time periods specified above are not intended, and shall not be construed, to limit any liability of the CONTRACTOR to CITY under this Contract Documents. Neither party shall be liable to the other for loss or damage covered by insurance to the extent that insurance proceeds are actually available with respect to such loss or damage and to the extent that the applicable policies of such insurance include the waiver or subrogation (which the parties shall obtain if available without additional premium). CONTRACTOR is responsible for the payment of all deductibles in connection with any claims made under the insurance policies required by the Contract Documents. The cost of deductibles paid by CONTRACTOR shall be included in the Contract Price.





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

06/19/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Kelly White & Associates Insurance, LLC P.O. Box 350909 Jacksonville FL 32235	CONTACT NAME: HOUSE PHONE (A/C No. Ext): 904-880-8881 E-MAIL ADDRESS: kelly@kwhiteinsurance.com	FAX (A/C No.):
	INSURER(S) AFFORDING COVERAGE	
INSURED Keys Contracting Services Inc 935 107th Street Gulf Marathon FL 33050	INSURER A: Colony Insurance Company	
	INSURER B: Travelers Property & Casualty Company	
	INSURER C:	
	INSURER D: Commerce & Industry	
	INSURER E: Travelers Property & Casualty Company	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** KEYS17061916323427 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER			103 GL 0013693-01	04/20/2017	04/20/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/PROP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS <input type="checkbox"/> HIRED AUTOS			BA-2H556465	06/06/2017	06/06/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Personal Injury \$ 10,000
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) if yes, describe under DESCRIPTION OF OPERATIONS below	Y/N		WC13673871-01	06/20/2017	06/20/2018	<input checked="" type="checkbox"/> PER STATUTE <input checked="" type="checkbox"/> OTHER Includes USL&H E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
E	Contractor' Equipment			660 5F245954	01/25/2017	01/25/2018	\$306,000 Scheduled


DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

City of Marathon
 Building Department
 9805 Overseas Highway
 Marathon FL 33050

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE


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EXHIBIT "D"
PAYMENT AND PERFORMANCE BONDS

(The Statutory Payment and Performance Bonds and the covered amounts of each are separate and distinct from each other)

Doc# 2132177
Bk# 2865 P# 1317

Payment Bond

Bond No.602-114720-4

This Bond must be recorded by Contractor and a certified copy provided to the City before payment will be made by the City.

BY THIS BOND (the "Bond"), We (Keys Contracting Services, Inc. 935 107 Street, Marathon, FL 33050, 305-743-7080) as principal (the "Contractor"), and (United States Fire Insurance Company, 305 Madison Avenue, Morristown, NJ 07962, 973-326-7345) as surety (the "Surety"), are bound to the City of Marathon, a Florida municipal corporation whose address is 9805 Overseas Highway, Marathon, Florida 33050, [phone number: (305) 743-0033] (the "City"), in the amount of One Hundred Eleven Thousand Five Hundred Dollars (\$111,500.00) for payment of which Contractor and Surety bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, with reference to a written Agreement entered into by Contractor and City, for the following:

Agreement Title: Coco Plum Beach Bathroom Replacement
Agreement No.: _____
Agreement Date: _____

THE CONDITION OF THIS BOND is that if the Contractor:

Promptly makes payments to all claimants as defined in Section 255.05(1), *Florida Statutes*, supplying Contractor with labor, material, and/or supplies, used directly or indirectly by Contractor in the prosecution of the Work provided for in the Agreement;

THEN THIS BOND IS VOID, OTHERWISE, IT REMAINS IN FULL FORCE.

Any changes in or under the Agreement Documents and compliance or noncompliance with any formalities connected with the Agreement or with the changes, do not affect Surety's obligation under this Bond. Surety hereby waives notice of any alteration or extension of time to the Agreement made by the City.

Claimants must comply with notice requirements set forth in Section 255.05(2), *Florida Statutes*. No action shall be instituted against Contractor or Surety under this Bond after the time limits set forth in Section 255.05, *Florida Statutes*.

**BOND PREMIUM BASED ON
FINAL CONTRACT PRICE**

IN WITNESS WHEREOF, this instrument is executed this the 21 day of June, 2017

WHEN THE CONTRACTOR IS AN INDIVIDUAL:

Contractor
Name: _____

Signed, sealed and delivered in the presence of:

(Witness)

(Name and Address)

(Witness)

(Name and Address)

WHEN THE CONTRACTOR OPERATES UNDER A TRADE NAME:

Contractor
Name: _____
Business Name: _____

Signed, sealed and delivered in the presence of:

(Witness)

(Name and Address)

(Witness)

(Name and Address)

WHEN THE CONTRACTOR IS A CORPORATION:
Keys Contracting Services, Inc.

Chris Gratton
Contractor
Name: Chris Gratton
Its: President
Corporation Name: Keys Contracting Services, Inc.

Signed, sealed and delivered in the presence of:

Laura Gratto
(Corporate Secretary)
Name: Laura Gratto



SURETY

United States Fire Insurance Company
Surety: Robert Barra
Name: Robert Barra
Its: Attorney In Fact

Signed, sealed and delivered in the presence of:

Symon Shockey
(Witness)
Karen Hawley
(Witness)

Lynn Shockey 8775 NW 52 PL - Coral Springs, FL 33067
(Name and Address)
Karen Hawley 9323 W. Sample Rd. Coral Springs, FL 33067
(Name and Address)

ATTORNEY-IN-FACT

Robert Barra
Name: Robert Barra

NOTE 1: Surety shall provide evidence of signature authority, i.e., a certified copy of Power of Attorney.

NOTE 2: If both the Principal and Surety are Corporations, the respective Corporate Seals shall be affixed and attached.

NOTE 3: Surety shall include evidence that Agent/Attorney-in-Fact is licensed in Florida.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Florida.

ATTACH a certified copy of Power-of-Authority appointing individual Attorney-in-Fact for execution of Bond on behalf of Surety.

Performance Bond

Doc# 2132177
Bk# 2865 Pgn 1321

Bond No. 602-114720-4

This Bond must be recorded by Contractor and a certified copy provided to the City before payment will be made by the City.

BY THIS BOND (the "Bond"), We (Keys Contracting Services, Inc., 935 107 Street, Marathon, FL 33050, 305-743-7080.) as principal (the "Contractor"), and (United States Fire Insurance Company, 305 Madison Avenue, Morristown, NJ 07962, 973-326-7345.) as surety (the "Surety"), are bound to the City of Marathon, a Florida municipal corporation whose address is 9805 Overseas Highway, Marathon, Florida 33050, [phone number: (305) 743-0033] (the "City"), in the amount of One Hundred Eleven Thousand Five Hundred Dollars (\$111,500.00) for payment of which Contractor and Surety bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, with reference to a written Agreement entered into by Contractor and City, for the following:

Agreement Title: Coco Plum Beach Bathroom Replacement
Agreement No.: _____
Agreement Date: _____

THE CONDITION OF THIS BOND is that if the Contractor:

1. Performs said Agreement in accordance with its terms and conditions, the Agreement being made a part of this Bond by reference, at the times and in the manner prescribed in the Agreement; and
2. Pays City all losses, damages (direct and consequential, including delay and liquidated damages), expenses, costs, and attorney's fees, including appellate proceedings, that City sustains because of a default by Contractor under the Agreement; and
3. Pays City all other amounts due City by Contractor because of a default by Contractor under the Agreement; and
4. Performs the guarantee of all Work and materials furnished under the Agreement for the time specified in the Agreement;

THEN THIS BOND IS VOID, OTHERWISE, IT REMAINS IN FULL FORCE.

Any changes in or under the Agreement Documents and compliance or noncompliance with any formalities connected with the Agreement or with the changes, do not affect Surety's obligation under this Bond. Surety hereby waives notice of any alteration, change or extension of time to the Agreement made by the City.

No action shall be instituted under this Bond after the time limits set forth in Section 255.05, Florida Statutes.

IN WITNESS WHEREOF, this instrument is executed this the 21 day of June, 2017

WHEN THE CONTRACTOR IS AN INDIVIDUAL:

Contractor
Name: _____

Signed, sealed and delivered in the presence of:

(Witness)

(Name and Address)

(Witness)

(Name and Address)

WHEN THE CONTRACTOR OPERATES UNDER A TRADE NAME:

Contractor
Name: _____
Business Name: _____

Signed, sealed and delivered in the presence of:

(Witness)

(Name and Address)

(Witness)

(Name and Address)

WHEN THE CONTRACTOR IS A CORPORATION:
Keys Contracting Services, Inc.

[Signature]
Contractor Name: Chris Gratton
Its: President
Corporation Name: Keys Contracting Service,s Inc.

Signed, sealed and delivered in the presence of:

[Signature]
(Corporate Secretary)
Name: LARA GRATTON



SURETY

[Signature]
United States Fire Insurance Company
Surety Name: Robert Barra
Its: Attorney In Fact

Signed, sealed and delivered in the presence of:

[Signature]
(Witness)

[Signature] 8171 NW 52 pl. Coral Springs, FL
(Name and Address) 33067

[Signature]
(Witness)

[Signature] 9323 W. Sample Rd.
(Name and Address) Coral Springs, FL 33061

ATTORNEY-IN-FACT

[Signature]
Name: Robert Barra

NOTE 1: Surety shall provide evidence of signature authority, i.e., a certified copy of Power of Attorney.

NOTE 2: If both the Principal and Surety are Corporations, the respective Corporate Seals shall be affixed and attached.

NOTE 3: Surety shall include evidence that Agent/Attorney-in-Fact is licensed in Florida.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Florida.

ATTACH a certified copy of Power-of-Authority appointing individual Attorney-in-Fact for execution of Bond on behalf of Surety.

END OF SECTION
SECTION 00500

**POWER OF ATTORNEY
UNITED STATES FIRE INSURANCE COMPANY
PRINCIPAL OFFICE - MORRISTOWN, NEW JERSEY**

00975419218

KNOW ALL MEN BY THESE PRESENTS: That United States Fire Insurance Company, a corporation duly organized and existing under the laws of the state of Delaware, has made, constituted and appointed, and does hereby make, constitute and appoint:

Robert Barra

each, its true and lawful Attorney(s)-In-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver: Any and all bonds and undertakings of surety and other documents that the ordinary course of surety business may require, and to bind United States Fire Insurance Company thereby as fully and to the same extent as if such bonds or undertakings had been duly executed and acknowledged by the regularly elected officers of United States Fire Insurance Company at its principal office, in amounts or penalties not exceeding: **Seven Million, Five Hundred Thousand Dollars (\$7,500,000).**

This Power of Attorney limits the act of those named therein to the bonds and undertakings specifically named therein, and they have no authority to bind United States Fire Insurance Company except in the manner and to the extent therein stated.

This Power of Attorney revokes all previous Powers of Attorney issued on behalf of the Attorneys-In-Fact named above and expires on January 31, 2018.

This Power of Attorney is granted pursuant to Article IV of the By-Laws of United States Fire Insurance Company as now in full force and effect, and consistent with Article III thereof, which Articles provide, in pertinent part:

Article IV, Execution of Instruments - Except as the Board of Directors may authorize by resolution, the Chairman of the Board, President, any Vice-President, any Assistant Vice President, the Secretary, or any Assistant Secretary shall have power on behalf of the Corporation:

(a) to execute, affix the corporate seal manually or by facsimile to, acknowledge, verify and deliver any contracts, obligations, instruments and documents whatsoever in connection with its business including, without limiting the foregoing, any bonds, guarantees, undertakings, recognizances, powers of attorney or revocations of any powers of attorney, stipulations, policies of insurance, deeds, leases, mortgages, releases, satisfactions and agency agreements;

(b) to appoint, in writing, one or more persons for any or all of the purposes mentioned in the preceding paragraph (a), including affixing the seal of the Corporation.

Article III, Officers, Section 3.11, Facsimile Signatures. The signature of any officer authorized by the Corporation to sign any bonds, guarantees, undertakings, recognizances, stipulations, powers of attorney or revocations of any powers of attorney and policies of insurance issued by the Corporation may be printed, facsimile, lithographed or otherwise produced. In addition, if and as authorized by the Board of Directors, dividend warrants or checks, or other numerous instruments similar to one another in form, may be signed by the facsimile signature or signatures, lithographed or otherwise produced, of such officer or officers of the Corporation as from time to time may be authorized to sign such instruments on behalf of the Corporation. The Corporation may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Corporation, notwithstanding the fact that he may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, United States Fire Insurance Company has caused these presents to be signed and attested by its appropriate officer and its corporate seal hereunto affixed this 10th day of March, 2016.

UNITED STATES FIRE INSURANCE COMPANY



Anthony R. Slimowicz, Senior Vice President

State of New Jersey }
County of Morris }

On this 10th day of March 2016, before me, a Notary public of the State of New Jersey, came the above named officer of United States Fire Insurance Company, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of United States Fire Insurance Company thereto by the authority of his office.

**SONIA SCALA
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES 3/25/2019**

Sonia Scala (Notary Public)

I, the undersigned officer of United States Fire Insurance Company, a Delaware corporation, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy is still in force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of United States Fire Insurance Company on the 21 day of June 2017
UNITED STATES FIRE INSURANCE COMPANY



**MONROE COUNTY
OFFICIAL RECORDS**

Al Wright, Senior Vice President

NOTICE OF AWARD

Dated: June 16, 2017

TO: Keys Contracting Services
(CONTRACTOR)

ADDRESS: 935 107th Ave.
Marathon, FL 33050

OWNER'S PROJECT NO.: _____

PROJECT: **Coco Plum Beach Bathroom Replacement**

OWNER'S CONTRACT NO.: _____

CONTRACT FOR: Replacement of existing compost restroom with new restroom utilizing public utilities along with all site work and incidental work described in the contract documents.

You are notified that your Bid dated June 2, 2017 for the above Contract has been considered. You are the selected successful Bidder and have been awarded the contract for Replacement of existing compost restroom with new restroom utilizing public utilities along with all site work and incidental work described in the contract documents..

(Indicate total Work, alternates or sections of Work awarded)

The Contract Price of your contract is One Hundred Eleven thousand five hundred Dollars (\$ 111,500.00).

Three copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

You must comply with the following conditions precedent within ten days of the date of this Notice of Award, that is by June 30, 2017.

1. You must deliver to the OWNER three fully executed counterparts of the Agreement including all the Contract Documents.
2. You must deliver with the executed Agreement the Contract Security (Bonds) as specified in the Instructions to Bidders and General Conditions.
3. You must deliver to the City certified copies of the payment bond and the SECTION 00670

performance bond establishing that the bonds have been recorded with the county clerk.

4. (List other conditions precedent).

Failure to comply with these conditions within the time specified will entitle OWNER to consider you bid abandoned, to annul this Notice of Award and to declare your Bid Security forfeited.

Within ten days after you comply with those conditions, OWNER will return to you one fully signed counterpart of the Agreement with the Contract Documents attached.

City of Marathon, Carlos A. Solis, P.E.
(OWNER)

By 
(AUTHORIZED SIGNATURE)

Director of Public Works & Engineering
(TITLE)

Copy to ENGINEER
(Use Certified Mail,
Return Receipt Requested)