

CITY OF MARATHON, FLORIDA
RESOLUTION 2013-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY TO ENTER INTO CONTINUING SERVICE AGREEMENTS WITH 3RD GENERATION PLUMBING, ABC CONSTRUCTION, ACTION MAINTENANCE, CEB CONSTRUCTION, CHRIS TEL CONSTRUCTION, CORAL MARINE CONSTRUCTION, FHP TECTONICS, GONZALEZ BROS LANDSCAPING, GREENTECH GROUP SOLUTIONS LLC, KEYS CONTRACTING, MARATHON ELECTRIC SIGN AND LIGHT AND SEAMAR DIVERS, FOR GENERAL TRADE SERVICES ON AN AS NEEDED BASIS; AUTHORIZING THE CITY MANAGER TO ENTER INTO THE CONTINUING SERVICE AGREEMENTS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City published a Request For Qualifications (RFQ) for the purpose of entering into continuing service agreements various tradesmen for assorted projects within the City and 3rd Generation Plumbing, ABC Construction, Action Maintenance, CEB Construction, Chris Tel Construction, Coral Marine Construction, FHP Tectonics, Gonzalez Bros Landscaping, Greentech Group Solutions LLC, Keys Contracting, Marathon Electric Sign and Light and Seamar Divers LLC met the requirements of the RFQ.

WHEREAS, entering into these various continuing service agreements will expedite the process of selecting a construction firm to provide needed services while still complying with the policies and procedures of the City's procurement policy.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, that:

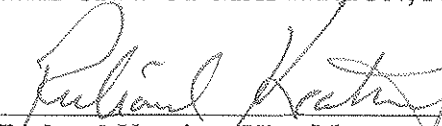
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council authorizes the City Manager to negotiate and enter into Continuing Service Agreements with 3rd Generation Plumbing, ABC Construction, Action Maintenance, CEB Construction, Chris Tel Construction, Coral Marine Construction, FHP Tectonics, Gonzalez Bros Landscaping, Greentech Group Solutions LLC, Keys Contracting, Marathon Electric Sign and Light and Seamar Divers LLC, for general trade services in substantially the form attached hereto as Exhibit "A", and incorporated herein by this reference.

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 22nd DAY OF JANUARY, 2013.

THE CITY OF MARATHON, FLORIDA


Richard Keating, Vice Mayor

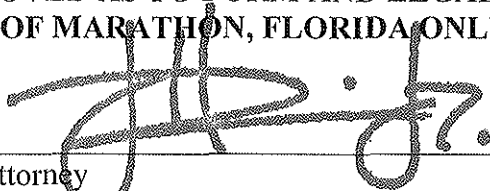
AYES: Bull, Snead, Keating
NOES: None
ABSENT: Cinque
ABSTAIN: Ramsay

ATTEST:


Diane Clavier, City Clerk

(City Seal)

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


City Attorney

AGREEMENT BETWEEN
THE CITY OF MARATHON

AND

3rd Generation Plumbing

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 3rd Generation Plumbing, Inc a Florida corporation whose address and principal place of business is: 3980 Overseas Hwy, MARATHON, FL. 33050 (hereinafter the "Contractor"), and

WHEREAS, the City desires to engage the Contractor to provide plumbing 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 [] specified in Exhibit "A," attached to this Agreement, and made a part hereof by this reference.

2. Term/Commencement Date.

(a) This continuing contract shall be for a term of three (3) years with one (1) – two (2) year renewal at the discretion of the City. Actual completion of projects may extend beyond such term.

(b) Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Work within the timeframes set forth in the Work Schedule, unless extended by the City Manager.

3. Compensation and Payment.

(a) 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.

- (b) Each application for partial payment shall include an affidavit or partial release of lien by Contractor and its subcontractors and suppliers 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.
- (c) The final application for payment shall be accompanied by all documentation called for in the Agreement Documents, together with complete and legally effective releases or waivers (satisfactory to City) of all liens arising out of or filed in connection with the Work. In lieu thereof and as approved by the City, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which City might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any subcontractor or supplier fails to furnish a release or receipt in full, Contractor shall provide the City with a certified written explanation for why the subcontractor or supplier has not been paid.
- (d) The City shall pay Contractor in accordance with the Florida Prompt Payment Act.
- (e) 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.

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. Prior to any payments to Contractor under this Agreement, Contractor shall provide City with partial and final releases (as may be the case for partial or final payment for the Work) of claims by all subcontractors and suppliers.
- (b) Any subcontractors used on the Work must have the prior written approval of the City Manager.

5. **City's Responsibilities.**

- (a) Furnish to Contractor, at the Contractor's written request, all available maps, plans, existing studies, reports and other data pertinent to the Work, in possession of the City.

- (b) Arrange for access to and make all provisions for Contractor to enter upon real property as required for Contractor to perform the Work as may be requested in writing by the Contractor.

6. **Contractor's Responsibilities.**

- (a) The 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, upon written notification from the City Manager, the Contractor shall at Contractors sole expense, immediately correct the work.

7. **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) Upon receipt of the City's written notice of termination, Contractor shall stop the Work unless directed otherwise by the City Manager.
- (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 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 Manager. 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.

- (a) Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than _____ per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles. Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than _____ per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.
- (d) 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 insured or certificate holder. 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);

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) Contractor shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Contractor's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Contractor's performance or non-performance of this Agreement.
- (b) 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: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050

With a Copy to: John Herin
City Attorney
GrayRobinson, P.A.
401 E. Las Olas Blvd., Suite 1850
Ft. Lauderdale, Florida 33301

For The Contractor: James N. MASSARO
PRESIDENT 3rd Generation Alumbay INC.
3980 Overseas Hwy
MARATHON, FL 33050
305-743-4245

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.

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

- (a) This writing 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.
- (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.
- (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 cancel 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 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 either party to this Agreement 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. The Performance and Payment Bonds will cease to be effective on the date of the City's acceptance of the Work. Effective immediately thereafter, a Maintenance Bond will be provided for the one year period commencing on the date of the City's acceptance of the Work in the amount of twenty five percent (25%) of the Work price.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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: Roger Hernstadt
Roger Hernstadt, City Manager

Date: 3-8-13

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

[Signature]
City Attorney

CONTRACTOR

By: James H. Massey
James H. Massey, President

Date: MARCH 5, 2013

AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
ABC Construction

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 ABC Construction, Inc a Florida corporation whose address and principal place of business is: 7215 NW 7 ST (hereinafter the "Contractor"), and Miami FL 33126

WHEREAS, the City desires to engage the Contractor to provide _____ 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 [] specified in Exhibit "A," attached to this Agreement, and made a part hereof by this reference.

2. Term/Commencement Date.

(a) This continuing contract shall be for a term of three (3) years with one (1) – two (2) year renewal at the discretion of the City. Actual completion of projects may extend beyond such term.

(b) Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Work within the timeframes set forth in the Work Schedule, unless extended by the City Manager.

3. Compensation and Payment.

(a) 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.

- (b) Each application for partial payment shall include an affidavit or partial release of lien by Contractor and its subcontractors and suppliers 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.
- (c) The final application for payment shall be accompanied by all documentation called for in the Agreement Documents, together with complete and legally effective releases or waivers (satisfactory to City) of all liens arising out of or filed in connection with the Work. In lieu thereof and as approved by the City, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which City might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any subcontractor or supplier fails to furnish a release or receipt in full, Contractor shall provide the City with a certified written explanation for why the subcontractor or supplier has not been paid.
- (d) The City shall pay Contractor in accordance with the Florida Prompt Payment Act.
- (e) 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.

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. Prior to any payments to Contractor under this Agreement, Contractor shall provide City with partial and final releases (as may be the case for partial or final payment for the Work) of claims by all subcontractors and suppliers.
- (b) Any subcontractors used on the Work must have the prior written approval of the City Manager.

5. **City's Responsibilities.**

- (a) Furnish to Contractor, at the Contractor's written request, all available maps, plans, existing studies, reports and other data pertinent to the Work, in possession of the City.

- (b) Arrange for access to and make all provisions for Contractor to enter upon real property as required for Contractor to perform the Work as may be requested in writing by the Contractor.

6. **Contractor's Responsibilities.**

- (a) The 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, upon written notification from the City Manager, the Contractor shall at Contractor's sole expense, immediately correct the work.

7. **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) Upon receipt of the City's written notice of termination, Contractor shall stop the Work unless directed otherwise by the City Manager.
- (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 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 Manager. 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.

- (a) Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than _____ per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles. Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than _____ per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.
- (d) 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 insured or certificate holder. 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:

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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);

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) Contractor shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Contractor's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Contractor's performance or non-performance of this Agreement.
- (b) 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: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050

With a Copy to: John Herin
City Attorney
GrayRobinson, P.A.
401 E. Las Olas Blvd., Suite 1850
Ft. Lauderdale, Florida 33301

For The Contractor: ABC Construction, Inc
7215 NW 7th St.
MIAMI FL 33126.

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.

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

- (a) This writing 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.
- (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.
- (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 cancel 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 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 either party to this Agreement 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.

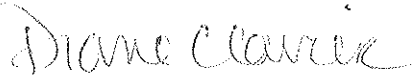
- (a) Prior to commencing the Work identified in Exhibit "A" the Contractor shall deliver to the City Performance and Payment Bonds in the form attached hereto as Exhibit "D" securing its obligations to be performed for the Work. Each Bond shall be in an amount equal to the contract price for the Work. The Performance and Payment Bonds will cease to be effective on the date of the City's acceptance of the Work. Effective immediately thereafter, a Maintenance Bond will be provided for the one year period commencing on the date of the City's acceptance of the Work in the amount of twenty five percent (25%) of the Work price.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

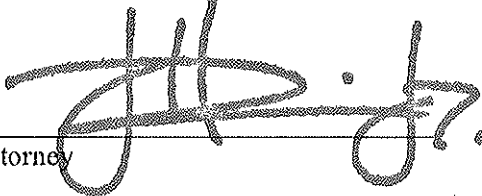


Diane Clavier, City Clerk

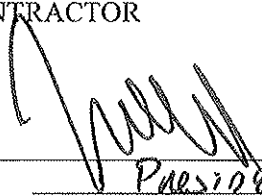

By: Roger Hernstadt, City Manager

Date: 2-12-13

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


City Attorney

CONTRACTOR


By: President, President

Date: 1/31/13

EXHIBIT "A"
SCOPE OF WORK

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.	\$		\$		\$		\$	\$
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
11.								
12.								
13.								
14.								
15.								
16.								
17.								
18.								
19.								
20.								
TOTAL			\$		\$		\$	\$

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

EXHIBIT "C"
CHANGE ORDER

Change Order No. _____

To: City of Marathon
From: _____(Contractor)
Contract: _____
Project: _____
City's Contract No. _____

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

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

This Change Order constitutes full, final, and complete compensation to Contractor for all costs, expenses, overhead, and profit, and any damages of every kind that Contractor may incur in connection with the above referenced changes in the Work under this Agreement. Contractor acknowledges and agrees that (a) the Contract amount of \$_____ under the Agreement will []/will not [] be 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.

CITY

CONTRACTOR

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

Attachment "A"

CHANGE ORDER SUMMARY

This Change Order is necessary to cover changes in the Work to be performed under this Agreement. Except as may be modified herein all of the provisions of the Agreement apply to and govern all Work under this Change Order.

THE FOLLOWING CHANGES ARE MADE TO THE AGREEMENT DOCUMENTS:

- (1) Original Contract Price _____
- (2) Current Contract Price (Adjusted by Previous Change) _____
- (3) Total Proposed Change in Contract Price _____
- (4) New Contract Price (Item 2 + Item 3) _____
- (5) Original Contract Time _____
- (6) Proposed Change in Contract Time _____
- (6) Current Contract Time (Adjusted by Previous Change) _____
- (7) Total Proposed Change in Contract Time _____
- (8) New Contract Time (Item 6 ± Item 7) _____
- (9) Original Contract Substantial Completion Date _____
- (10) New Contract Substantial Completion Date _____

CHANGE ORDER HISTORY						
Item No.	Description	Current Contract Amount	Additive Change	Deductive Change	Net Change Contract Price	Net Change Contract Time
I.	Total Contract Price	\$	\$	\$	\$	
Total					\$	

The Change Order is a result of: _____

_____.

The cost breakdown is as follows:

WORK ITEM DESCRIPTION	PRICE
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
TOTAL	\$

EXHIBIT "D"
PERFORMANCE AND PAYMENT BONDS

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

Payment Bond

Bond No. _____

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

BY THIS BOND (the "Bond"), We _____ as principal (the "Contractor"), and _____ 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 _____ Dollars (\$ _____) for payment of which Contractor and Surety bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, with reference to a written Agreement entered into by Contractor and City, for the following:

Agreement Title: _____
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, change 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 under this Bond after the time limits set forth in Section 255.05, Florida Statutes.

Performance Bond

Bond No. _____

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

BY THIS BOND (the "Bond"), We _____ as principal (the "Contractor"), and _____ 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 _____ Dollars (\$_____) for payment of which Contractor and Surety bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, with reference to a written Agreement entered into by Contractor and City, for the following:

Agreement Title: _____
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 all Work under the Agreement within 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 ___ day of _____, 20__.

Contractor
Name: _____
Its: _____

Signed, sealed and delivered in the presence of:

(Witness) (Name and Address)

(Witness) (Name and Address)

Surety
Name: _____
Its: _____

ATTORNEY-IN-FACT

Name: _____

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-Attorney appointing individual Attorney-in-Fact for execution of Bond on behalf of Surety.

SECTION 0300B

TRENCH SAFETY FORM

This form must be completed and signed by the Bidder.

Failure to complete this form may result in the bid being declared non-responsive.

Bidder acknowledges that the Florida Trench Safety Act, Section 553.60 *et seq*, Fla. Stat. which became effective October 1, 1990, shall be in effect during the period of construction of the Project. The Bidder by signing and submitting the Bid is, in writing, assuring that it will perform any trench excavation in accordance with applicable trench safety standards. The Bidder further identifies the following separate item of cost of compliance with the applicable trench safety standards as well as the method of compliance:

Method of Compliance

Cost

Total: \$ _____

Bidder acknowledges that this cost is included in the applicable items of the Bid and in the Total Base Bid. Failure to complete the above may result in the bid being declared non-responsive.

The Bidder is, and the CITY and ENGINEER are not, responsible to review or assess Bidder's safety precautions, programs of costs, of the means, methods, techniques or technique adequacy, reasonableness of cost, sequences of procedures of any safety precaution, program or cost, including but not limited to, compliance with any and all requirements of Section 553.60 *et seq.*, Fla. Stat. cited as the "Trench Safety Act". Bidder is, and the CITY and ENGINEER are not, responsible to determine, if any safety or safety related standards apply to the Project, including but not limited to, the "Trench Safety Act".

Witness Signature

Bidder's Signature

Witness Signature

Printed Name

Title

Date

Date

AGREEMENT BETWEEN
THE CITY OF MARATHON

AND

Action Maintenance LLC

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 Action Maintenance LLC a Florida corporation whose address and principal place of business is: Marlbury PO Box 1323
(hereinafter the "Contractor"), and Tavernier FL 33070

WHEREAS, the City desires to engage the Contractor to provide Plumbing 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 [] specified in Exhibit "A," attached to this Agreement, and made a part hereof by this reference.

2. Term/Commencement Date.

- (a) This Agreement shall become effective upon the City issuing Contractor a written Notice to Proceed and the Work shall be completed to the City's satisfaction no later than _____ days from the issuance of the Notice to Proceed. The City Manager may extend the term of this Agreement up to an additional sixty (60) at his sole discretion based upon the recommendation of the City's Community Services Director.
- (b) Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Work within the timeframes set forth in the Work Schedule, unless extended by the City Manager.

3. Compensation and Payment.

- (a) The Contractor shall invoice the City on a monthly basis. The total amount invoiced shall not exceed _____. 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.

- (b) Each application for partial payment shall include an affidavit or partial release of lien by Contractor and its subcontractors and suppliers 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.
- (c) The final application for payment shall be accompanied by all documentation called for in the Agreement Documents, together with complete and legally effective releases or waivers (satisfactory to City) of all liens arising out of or filed in connection with the Work. In lieu thereof and as approved by the City, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which City might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any subcontractor or supplier fails to furnish a release or receipt in full, Contractor shall provide the City with a certified written explanation for why the subcontractor or supplier has not been paid.
- (d) The City shall pay Contractor in accordance with the Florida Prompt Payment Act.
- (e) 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.

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. Prior to any payments to Contractor under this Agreement, Contractor shall provide City with partial and final releases (as may be the case for partial or final payment for the Work) of claims by all subcontractors and suppliers.
- (b) Any subcontractors used on the Work must have the prior written approval of the City Manager.

5. **City's Responsibilities.**

- (a) Furnish to Contractor, at the Contractor's written request, all available maps, plans, existing studies, reports and other data pertinent to the Work, in possession of the City.

- (b) Arrange for access to and make all provisions for Contractor to enter upon real property as required for Contractor to perform the Work as may be requested in writing by the Contractor.

6. Contractor's Responsibilities.

- (a) The 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, upon written notification from the City Manager, the Contractor shall at Contractor's sole expense, immediately correct the work.

7. 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) Upon receipt of the City's written notice of termination, Contractor shall stop the Work unless directed otherwise by the City Manager.
- (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 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 Manager. 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.

- (a) Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than _____ per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles. Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than _____ per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.
- (d) 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 insured or certificate holder. 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);

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) Contractor shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Contractor's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Contractor's performance or non-performance of this Agreement.
- (b) 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: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050

With a Copy to: John Herin
City Attorney
GrayRobinson, P.A.
401 E. Las Olas Blvd., Suite 1850
Ft. Lauderdale, Florida 33301

For The Contractor: Frank Veltri
Action Maintenance LLC
PO BOX 1323
Tavernier FL 33070

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.

15. Entire Agreement/Modification/Amendment.

- (a) This writing 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.
- (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.
- (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 cancel 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 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 either party to this Agreement 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.

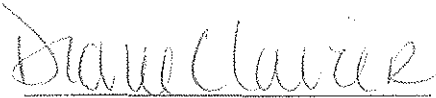
- (a) Prior to commencing the Work identified in Exhibit "A" the Contractor shall deliver to the City Performance and Payment Bonds in the form attached hereto as Exhibit "D" securing its obligations to be performed for the Work. Each Bond shall be in an amount equal to the contract price for the Work. The Performance and Payment Bonds will cease to be effective on the date of the City's acceptance of the Work. Effective immediately thereafter, a Maintenance Bond will be provided for the one year period commencing on the date of the City's acceptance of the Work in the amount of twenty five percent (25%) of the Work price.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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, City Clerk



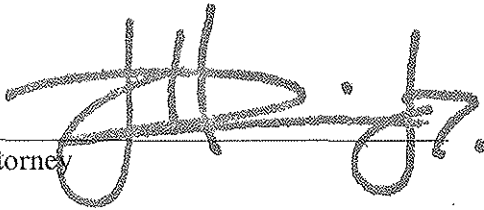
By: 

Roger Hernstadt, City Manager

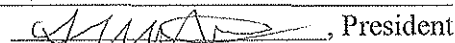
Date: 2.8.13

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

City Attorney



CONTRACTOR Action Maintenance LLC

By: Frank Veitri
, President

Date: Feb 2 2013

EXHIBIT "A"
SCOPE OF WORK

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.	\$		\$		\$		\$	\$
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
11.								
12.								
13.								
14.								
15.								
16.								
17.								
18.								
19.								
20.								
TOTAL			\$		\$		\$	\$

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

EXHIBIT "C"
CHANGE ORDER

Change Order No. _____

To: City of Marathon
From: _____(Contractor)
Contract: _____
Project: _____
City's Contract No. _____

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

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

This Change Order constitutes full, final, and complete compensation to Contractor for all costs, expenses, overhead, and profit, and any damages of every kind that Contractor may incur in connection with the above referenced changes in the Work under this Agreement. Contractor acknowledges and agrees that (a) the Contract amount of \$ _____ under the Agreement will []/will not [] be 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.

CITY

CONTRACTOR

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

Attachment "A"

CHANGE ORDER SUMMARY

This Change Order is necessary to cover changes in the Work to be performed under this Agreement. Except as may be modified herein all of the provisions of the Agreement apply to and govern all Work under this Change Order.

THE FOLLOWING CHANGES ARE MADE TO THE AGREEMENT DOCUMENTS:

- (1) Original Contract Price _____
- (2) Current Contract Price (Adjusted by Previous Change) _____
- (3) Total Proposed Change in Contract Price _____
- (4) New Contract Price (Item 2 + Item 3) _____
- (5) Original Contract Time _____
- (6) Proposed Change in Contract Time _____
- (6) Current Contract Time (Adjusted by Previous Change) _____
- (7) Total Proposed Change in Contract Time _____
- (8) New Contract Time (Item 6 ± Item 7) _____
- (9) Original Contract Substantial Completion Date _____
- (10) New Contract Substantial Completion Date _____

CHANGE ORDER HISTORY						
Item No.	Description	Current Contract Amount	Additive Change	Deductive Change	Net Change Contract Price	Net Change Contract Time
I.	Total Contract Price	\$	\$	\$	\$	
Total					\$	

EXHIBIT "D"
PERFORMANCE AND PAYMENT BONDS
(The Performance Bond and the Statutory Payment Bond and the covered amounts of each are
separate and distinct from each other)

Payment Bond

Bond No. _____

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

BY THIS BOND (the "Bond"), We _____ as
principal (the "Contractor"), and _____ 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 _____ Dollars
(\$ _____) for payment of which Contractor and Surety bind themselves, their heirs, personal
representatives, executors, administrators, successors and assigns, jointly and severally, with
reference to a written Agreement entered into by Contractor and City, for the following:

Agreement Title: _____
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, change 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 under this Bond after the time limits set forth in Section 255.05, Florida
Statutes.

IN WITNESS WHEREOF, this instrument is executed this the ____ day of _____, 20__.

Contractor
Name: _____
Its: _____

Signed, sealed and delivered in the presence of:

(Witness) (Name and Address)

(Witness) (Name and Address)

Surety
Name: _____
Its: _____

ATTORNEY-IN-FACT

Name: _____

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-Attorney appointing individual Attorney-in-Fact for execution of Bond on behalf of Surety.

Performance Bond

Bond No. _____

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

BY THIS BOND (the "Bond"), We _____ as principal (the "Contractor"), and _____ 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 _____ Dollars (\$_____) for payment of which Contractor and Surety bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, with reference to a written Agreement entered into by Contractor and City, for the following:

Agreement Title: _____
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 all Work under the Agreement within 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 ____ day of _____, 20__.

Contractor
Name: _____
Its: _____

Signed, sealed and delivered in the presence of:

(Witness) (Name and Address)

(Witness) (Name and Address)

Surety
Name: _____
Its: _____

ATTORNEY-IN-FACT

Name: _____

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

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

SECTION 0300B

TRENCH SAFETY FORM

This form must be completed and signed by the Bidder.

Failure to complete this form may result in the bid being declared non-responsive.

Bidder acknowledges that the Florida Trench Safety Act, Section 553.60 *et seq*, Fla. Stat. which became effective October 1, 1990, shall be in effect during the period of construction of the Project. The Bidder by signing and submitting the Bid is, in writing, assuring that it will perform any trench excavation in accordance with applicable trench safety standards. The Bidder further identifies the following separate item of cost of compliance with the applicable trench safety standards as well as the method of compliance:

Method of Compliance

Cost

Total: \$ _____

Bidder acknowledges that this cost is included in the applicable items of the Bid and in the Total Base Bid. Failure to complete the above may result in the bid being declared non-responsive.

The Bidder is, and the CITY and ENGINEER are not, responsible to review or assess Bidder's safety precautions, programs of costs, of the means, methods, techniques or technique adequacy, reasonableness of cost, sequences of procedures of any safety precaution, program or cost, including but not limited to, compliance with any and all requirements of Section 553.60 *et. seq.*, Fla. Stat. cited as the "Trench Safety Act". Bidder is, and the CITY and ENGINEER are not, responsible to determine, if any safety or safety related standards apply to the Project, including but not limited to, the "Trench Safety Act".

Witness Signature

Bidder's Signature

Witness Signature

Printed Name

Title

Date

Date

AGREEMENT BETWEEN
THE CITY OF MARATHON
AND

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 CEB CONSTRUCTION, INC. a Florida corporation whose address and principal place of business is: 2451 NW 109 AVE #4 (hereinafter the "Contractor"), and Miami, FL 33172

WHEREAS, the City desires to engage the Contractor to provide _____ 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 [] specified in Exhibit "A," attached to this Agreement, and made a part hereof by this reference.

2. Term/Commencement Date.

- (a) This Agreement shall become effective upon the City issuing Contractor a written Notice to Proceed and the Work shall be completed to the City's satisfaction no later than _____ days from the issuance of the Notice to Proceed. The City Manager may extend the term of this Agreement up to an additional sixty (60) at his sole discretion based upon the recommendation of the City's Community Services Director.
- (b) Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Work within the timeframes set forth in the Work Schedule, unless extended by the City Manager.

3. Compensation and Payment.

- (a) The Contractor shall invoice the City on a monthly basis. The total amount invoiced shall not exceed _____. 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.

- (b) Each application for partial payment shall include an affidavit or partial release of lien by Contractor and its subcontractors and suppliers 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.
- (c) The final application for payment shall be accompanied by all documentation called for in the Agreement Documents, together with complete and legally effective releases or waivers (satisfactory to City) of all liens arising out of or filed in connection with the Work. In lieu thereof and as approved by the City, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which City might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any subcontractor or supplier fails to furnish a release or receipt in full, Contractor shall provide the City with a certified written explanation for why the subcontractor or supplier has not been paid.
- (d) The City shall pay Contractor in accordance with the Florida Prompt Payment Act.
- (e) 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.

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. Prior to any payments to Contractor under this Agreement, Contractor shall provide City with partial and final releases (as may be the case for partial or final payment for the Work) of claims by all subcontractors and suppliers.
- (b) Any subcontractors used on the Work must have the prior written approval of the City Manager.

5. City's Responsibilities.

- (a) Furnish to Contractor, at the Contractor's written request, all available maps, plans, existing studies, reports and other data pertinent to the Work, in possession of the City.

- (b) Arrange for access to and make all provisions for Contractor to enter upon real property as required for Contractor to perform the Work as may be requested in writing by the Contractor.

6. Contractor's Responsibilities.

- (a) The 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, upon written notification from the City Manager, the Contractor shall at Contractor's sole expense, immediately correct the work.

7. 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) Upon receipt of the City's written notice of termination, Contractor shall stop the Work unless directed otherwise by the City Manager.
- (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 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 Manager. 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.

- (a) Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than _____ per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles. Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than _____ per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.
- (d) 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 insured or certificate holder. 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);

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) Contractor shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Contractor's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Contractor's performance or non-performance of this Agreement.
- (b) 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: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050

With a Copy to: John Herin
City Attorney
GrayRobinson, P.A.
401 E. Las Olas Blvd., Suite 1850
Ft. Lauderdale, Florida 33301

For The Contractor: JAVIER BUSTON, PRESIDENT
CEB CONSTRUCTION, INC.
2451 NW 109 AVE #4
MIAMI, FL 33172

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.

15. Entire Agreement/Modification/Amendment.

- (a) This writing 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.
- (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.
- (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 cancel 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 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 either party to this Agreement 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. The Performance and Payment Bonds will cease to be effective on the date of the City's acceptance of the Work. Effective immediately thereafter, a Maintenance Bond will be provided for the one year period commencing on the date of the City's acceptance of the Work in the amount of twenty five percent (25%) of the Work price.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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:

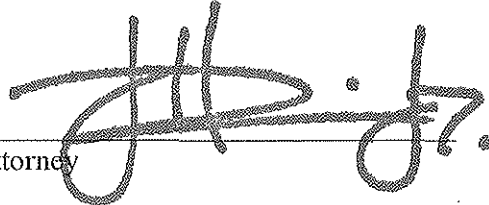
CITY OF MARATHON


Diane Clavier, City Clerk

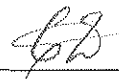

By: Roger Hernstadt, City Manager

Date: 020613

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


City Attorney

CONTRACTOR

By: 
JAVIER BUSTOS, President

Date: 2/1/13

EXHIBIT "A"
SCOPE OF WORK

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.	\$		\$		\$		\$	\$
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
11.								
12.								
13.								
14.								
15.								
16.								
17.								
18.								
19.								
20.								
TOTAL			\$		\$		\$	\$

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

EXHIBIT "C"
CHANGE ORDER

Change Order No. _____

To: City of Marathon
From: _____ (Contractor)
Contract: _____
Project: _____
City's Contract No. _____

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

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

This Change Order constitutes full, final, and complete compensation to Contractor for all costs, expenses, overhead, and profit, and any damages of every kind that Contractor may incur in connection with the above referenced changes in the Work under this Agreement. Contractor acknowledges and agrees that (a) the Contract amount of \$_____ under the Agreement will []/will not [] be 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.

CITY

CONTRACTOR

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

Attachment "A"

CHANGE ORDER SUMMARY

This Change Order is necessary to cover changes in the Work to be performed under this Agreement. Except as may be modified herein all of the provisions of the Agreement apply to and govern all Work under this Change Order.

THE FOLLOWING CHANGES ARE MADE TO THE AGREEMENT DOCUMENTS:

- (1) Original Contract Price _____
- (2) Current Contract Price (Adjusted by Previous Change) _____
- (3) Total Proposed Change in Contract Price _____
- (4) New Contract Price (Item 2 + Item 3) _____
- (5) Original Contract Time _____
- (6) Proposed Change in Contract Time _____
- (6) Current Contract Time (Adjusted by Previous Change) _____
- (7) Total Proposed Change in Contract Time _____
- (8) New Contract Time (Item 6 ± Item 7) _____
- (9) Original Contract Substantial Completion Date _____
- (10) New Contract Substantial Completion Date _____

CHANGE ORDER HISTORY						
Item No.	Description	Current Contract Amount	Additive Change	Deductive Change	Net Change Contract Price	Net Change Contract Time
1.	Total Contract Price	\$	\$	\$	\$	
Total					\$	

EXHIBIT "D"
PERFORMANCE AND PAYMENT BONDS
(The Performance Bond and the Statutory Payment Bond and the covered amounts of each are
separate and distinct from each other)

Payment Bond

Bond No. _____

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

BY THIS BOND (the "Bond"), We _____ as
principal (the "Contractor"), and _____ 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 _____ Dollars
(\$ _____) for payment of which Contractor and Surety bind themselves, their heirs, personal
representatives, executors, administrators, successors and assigns, jointly and severally, with
reference to a written Agreement entered into by Contractor and City, for the following:

Agreement Title: _____
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, change 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 under this Bond after the time limits set forth in Section 255.05, Florida
Statutes.

IN WITNESS WHEREOF, this instrument is executed this the ____ day of _____, 20__.

Contractor
Name: _____
Its: _____

Signed, sealed and delivered in the presence of:

(Witness) (Name and Address)

(Witness) (Name and Address)

Surety
Name: _____
Its: _____

ATTORNEY-IN-FACT

Name: _____

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-Attorney appointing individual Attorney-in-Fact for execution of Bond on behalf of Surety.

Performance Bond

Bond No. _____

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

BY THIS BOND (the "Bond"), We _____ as principal (the "Contractor"), and _____ 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 _____ Dollars (\$_____) for payment of which Contractor and Surety bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, with reference to a written Agreement entered into by Contractor and City, for the following:

Agreement Title: _____
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 all Work under the Agreement within 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 ____ day of _____, 20__.

Contractor
Name: _____
Its: _____

Signed, sealed and delivered in the presence of:

(Witness) (Name and Address)

(Witness) (Name and Address)

Surety
Name: _____
Its: _____

ATTORNEY-IN-FACT

Name: _____

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-Attorney appointing individual Attorney-in-Fact for execution of Bond on behalf of Surety.

SECTION 0300B

TRENCH SAFETY FORM

This form must be completed and signed by the Bidder.

Failure to complete this form may result in the bid being declared non-responsive.

Bidder acknowledges that the Florida Trench Safety Act, Section 553.60 *et seq*, Fla. Stat. which became effective October 1, 1990, shall be in effect during the period of construction of the Project. The Bidder by signing and submitting the Bid is, in writing, assuring that it will perform any trench excavation in accordance with applicable trench safety standards. The Bidder further identifies the following separate item of cost of compliance with the applicable trench safety standards as well as the method of compliance:

Method of Compliance

Cost

Total: \$ _____

Bidder acknowledges that this cost is included in the applicable items of the Bid and in the Total Base Bid. Failure to complete the above may result in the bid being declared non-responsive.

The Bidder is, and the CITY and ENGINEER are not, responsible to review or assess Bidder's safety precautions, programs of costs, of the means, methods, techniques or technique adequacy, reasonableness of cost, sequences of procedures of any safety precaution, program or cost, including but not limited to, compliance with any and all requirements of Section 553.60 *et. seq.*, Fla. Stat. cited as the "Trench Safety Act". Bidder is, and the CITY and ENGINEER are not, responsible to determine, if any safety or safety related standards apply to the Project, including but not limited to, the "Trench Safety Act".

Witness Signature

Bidder's Signature

Witness Signature

Printed Name

Title

Date

Date

**AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
CHRIS-TEL COMPANY OF SOUTHWEST FLORIDA, INC. D/B/A CHRIS-TEL CONSTRUCTION**

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 CHRIS-TEL CONSTRUCTION a Florida corporation whose address and principal place of business is: 2534-A EDISON AVE. FORT MYERS, FL 33901, (hereinafter the "Contractor"), and

WHEREAS, the City desires to engage the Contractor to provide GENERAL CONTRACTING / CONSTRUCTION MANAGEMENT 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 [] specified in Exhibit "A," attached to this Agreement, and made a part hereof by this reference.

2. **Term/Commencement Date.**

- (a) This Agreement shall become effective upon the City issuing Contractor a written Notice to Proceed and the Work shall be completed to the City's satisfaction no later than TBD days from the issuance of the Notice to Proceed. The City Manager may extend the term of this Agreement up to an additional sixty (60) at his sole discretion based upon the recommendation of the City's Community Services Director.
- (b) Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Work within the timeframes set forth in the Work Schedule, unless extended by the City Manager.

3. **Compensation and Payment.**

- (a) The Contractor shall invoice the City on a monthly basis. The total amount invoiced shall not exceed TBD. 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.

- (b) Each application for partial payment shall include an affidavit or partial release of lien by Contractor and its subcontractors and suppliers 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.
- (c) The final application for payment shall be accompanied by all documentation called for in the Agreement Documents, together with complete and legally effective releases or waivers (satisfactory to City) of all liens arising out of or filed in connection with the Work. In lieu thereof and as approved by the City, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which City might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any subcontractor or supplier fails to furnish a release or receipt in full, Contractor shall provide the City with a certified written explanation for why the subcontractor or supplier has not been paid.
- (d) The City shall pay Contractor in accordance with the Florida Prompt Payment Act.
- (e) 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.

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. Prior to any payments to Contractor under this Agreement, Contractor shall provide City with partial and final releases (as may be the case for partial or final payment for the Work) of claims by all subcontractors and suppliers.
- (b) Any subcontractors used on the Work must have the prior written approval of the City Manager.

5. **City's Responsibilities.**

- (a) Furnish to Contractor, at the Contractor's written request, all available maps, plans, existing studies, reports and other data pertinent to the Work, in possession of the City.

- (b) Arrange for access to and make all provisions for Contractor to enter upon real property as required for Contractor to perform the Work as may be requested in writing by the Contractor.

6. **Contractor's Responsibilities.**

- (a) The 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, upon written notification from the City Manager, the Contractor shall at Contractors sole expense, immediately correct the work.

7. **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) Upon receipt of the City's written notice of termination, Contractor shall stop the Work unless directed otherwise by the City Manager.
- (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 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 Manager. 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.

- (a) Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$50,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles. Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than \$1,000,000.00 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.
- (d) 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 insured or certificate holder. 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);

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) Contractor shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Contractor's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Contractor's performance or non-performance of this Agreement.
- (b) 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: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050

With a Copy to: John Herin
City Attorney
GrayRobinson, P.A.
401 E. Las Olas Blvd., Suite 1850
Ft. Lauderdale, Florida 33301

For The Contractor: HOWARD L. WHEELER, JR., PRESIDENT
CHRIS-TEL CONSTRUCTION
2534-A EDISON AVE.
FORT MYERS, FL 33901
239-226-0500

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.

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

- (a) This writing 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.
- (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.
- (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 cancel 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 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 either party to this Agreement 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. The Performance and Payment Bonds will cease to be effective on the date of the City's acceptance of the Work. Effective immediately thereafter, a Maintenance Bond will be provided for the one year period commencing on the date of the City's acceptance of the Work in the amount of twenty five percent (25%) of the Work price.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

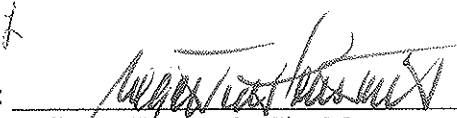
IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates under each signature. The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same; and by Contractor by and through its President, who has been duly authorized to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

ATTEST:

CITY OF MARATHON



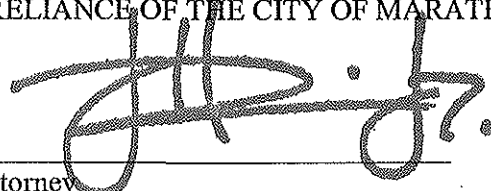
Diane Clavier, City Clerk

AK
By: 

Roger Fernstadt, City Manager


Date: 2.19.13

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



City Attorney

CONTRACTOR

By: 

HOWARD L. WHEELER, JR., President

Date: 14 FEBRUARY 2013

AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
Coral Marine Construction

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 Coral Marine Construction a Florida corporation whose address and principal place of business is: 10610 7th Ave Gulf Marathon FL 33050 (hereinafter the "Contractor"), and

WHEREAS, the City desires to engage the Contractor to provide _____ 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 [] specified in Exhibit "A," attached to this Agreement, and made a part hereof by this reference.

2. Term/Commencement Date.

(a) This continuing contract shall be for a term of three (3) years with one (1) – two (2) year renewal at the discretion of the City. Actual completion of projects may extend beyond such term.

(b) Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Work within the timeframes set forth in the Work Schedule, unless extended by the City Manager.

3. Compensation and Payment.

(a) 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.

- (b) Each application for partial payment shall include an affidavit or partial release of lien by Contractor and its subcontractors and suppliers 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.
- (c) The final application for payment shall be accompanied by all documentation called for in the Agreement Documents, together with complete and legally effective releases or waivers (satisfactory to City) of all liens arising out of or filed in connection with the Work. In lieu thereof and as approved by the City, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which City might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any subcontractor or supplier fails to furnish a release or receipt in full, Contractor shall provide the City with a certified written explanation for why the subcontractor or supplier has not been paid.
- (d) The City shall pay Contractor in accordance with the Florida Prompt Payment Act.
- (e) 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.

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. Prior to any payments to Contractor under this Agreement, Contractor shall provide City with partial and final releases (as may be the case for partial or final payment for the Work) of claims by all subcontractors and suppliers.
- (b) Any subcontractors used on the Work must have the prior written approval of the City Manager.

5. **City's Responsibilities.**

- (a) Furnish to Contractor, at the Contractor's written request, all available maps, plans, existing studies, reports and other data pertinent to the Work, in possession of the City.

- (b) Arrange for access to and make all provisions for Contractor to enter upon real property as required for Contractor to perform the Work as may be requested in writing by the Contractor.

6. Contractor's Responsibilities.

- (a) The 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, upon written notification from the City Manager, the Contractor shall at Contractors sole expense, immediately correct the work.

7. 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) Upon receipt of the City's written notice of termination, Contractor shall stop the Work unless directed otherwise by the City Manager.
- (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 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 Manager. 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.

- (a) Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than _____ per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles. Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than _____ per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.
- (d) 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 insured or certificate holder. 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);

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) Contractor shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Contractor's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Contractor's performance or non-performance of this Agreement.
- (b) 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: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050

With a Copy to: John Herin
City Attorney
GrayRobinson, P.A.
401 E. Las Olas Blvd., Suite 1850
Ft. Lauderdale, Florida 33301

For The Contractor: Coral Marine Construction
George Steinmetz
10610 7th Avenue Gulf
Marathon FL 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.

15. Entire Agreement/Modification/Amendment.

- (a) This writing 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.
- (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.
- (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 cancel 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 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 either party to this Agreement 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. The Performance and Payment Bonds will cease to be effective on the date of the City's acceptance of the Work. Effective immediately thereafter, a Maintenance Bond will be provided for the one year period commencing on the date of the City's acceptance of the Work in the amount of twenty five percent (25%) of the Work price.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT "A"
SCOPE OF WORK

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.	\$		\$		\$		\$	\$
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
11.								
12.								
13.								
14.								
15.								
16.								
17.								
18.								
19.								
20.								
TOTAL			\$		\$		\$	\$

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

EXHIBIT "C"
CHANGE ORDER

Change Order No. _____

To: City of Marathon
From: _____(Contractor)
Contract: _____
Project: _____
City's Contract No. _____

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

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

This Change Order constitutes full, final, and complete compensation to Contractor for all costs, expenses, overhead, and profit, and any damages of every kind that Contractor may incur in connection with the above referenced changes in the Work under this Agreement. Contractor acknowledges and agrees that (a) the Contract amount of \$ _____ under the Agreement will []/will not [] be 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.

CITY

CONTRACTOR

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

Attachment "A"

CHANGE ORDER SUMMARY

This Change Order is necessary to cover changes in the Work to be performed under this Agreement. Except as may be modified herein all of the provisions of the Agreement apply to and govern all Work under this Change Order.

THE FOLLOWING CHANGES ARE MADE TO THE AGREEMENT DOCUMENTS:

- (1) Original Contract Price _____
- (2) Current Contract Price (Adjusted by Previous Change) _____
- (3) Total Proposed Change in Contract Price _____
- (4) New Contract Price (Item 2 + Item 3) _____
- (5) Original Contract Time _____
- (6) Proposed Change in Contract Time _____
- (6) Current Contract Time (Adjusted by Previous Change) _____
- (7) Total Proposed Change in Contract Time _____
- (8) New Contract Time (Item 6 ± Item 7) _____
- (9) Original Contract Substantial Completion Date _____
- (10) New Contract Substantial Completion Date _____

CHANGE ORDER HISTORY						
Item No.	Description	Current Contract Amount	Additive Change	Deductive Change	Net Change Contract Price	Net Change Contract Time
I.	Total Contract Price	\$	\$	\$	\$	
Total					\$	

EXHIBIT "D"
PERFORMANCE AND PAYMENT BONDS
(The Performance Bond and the Statutory Payment Bond and the covered amounts of each are separate and distinct from each other)

Payment Bond

Bond No. _____

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

BY THIS BOND (the "Bond"), We _____ as principal (the "Contractor"), and _____ 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 _____ Dollars (\$ _____) for payment of which Contractor and Surety bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, with reference to a written Agreement entered into by Contractor and City, for the following:

Agreement Title: _____
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, change 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 under this Bond after the time limits set forth in Section 255.05, Florida Statutes.

IN WITNESS WHEREOF, this instrument is executed this the ____ day of _____, 20__.

Contractor
Name: _____
Its: _____

Signed, sealed and delivered in the presence of:

(Witness) (Name and Address)

(Witness) (Name and Address)

Surety
Name: _____
Its: _____

ATTORNEY-IN-FACT

Name: _____

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-Attorney appointing individual Attorney-in-Fact for execution of Bond on behalf of Surety.

Performance Bond

Bond No. _____

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

BY THIS BOND (the "Bond"), We _____ as principal (the "Contractor"), and _____ 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 _____ Dollars (\$ _____) for payment of which Contractor and Surety bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, with reference to a written Agreement entered into by Contractor and City, for the following:

Agreement Title: _____
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 all Work under the Agreement within 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 ____ day of _____, 20__.

Contractor _____
Name: _____
Its: _____

Signed, sealed and delivered in the presence of:

(Witness) (Name and Address)

(Witness) (Name and Address)

Surety _____
Name: _____
Its: _____

ATTORNEY-IN-FACT

Name: _____

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-Attorney appointing individual Attorney-in-Fact for execution of Bond on behalf of Surety.

SECTION 0300B

TRENCH SAFETY FORM

This form must be completed and signed by the Bidder.

Failure to complete this form may result in the bid being declared non-responsive.

Bidder acknowledges that the Florida Trench Safety Act, Section 553.60 *et seq*, Fla. Stat. which became effective October 1, 1990, shall be in effect during the period of construction of the Project. The Bidder by signing and submitting the Bid is, in writing, assuring that it will perform any trench excavation in accordance with applicable trench safety standards. The Bidder further identifies the following separate item of cost of compliance with the applicable trench safety standards as well as the method of compliance:

Method of Compliance

Cost

Total: \$ _____

Bidder acknowledges that this cost is included in the applicable items of the Bid and in the Total Base Bid. Failure to complete the above may result in the bid being declared non-responsive.

The Bidder is, and the CITY and ENGINEER are not, responsible to review or assess Bidder's safety precautions, programs of costs, of the means, methods, techniques or technique adequacy, reasonableness of cost, sequences of procedures of any safety precaution, program or cost, including but not limited to, compliance with any and all requirements of Section 553.60 *et. seq.*, Fla. Stat. cited as the "Trench Safety Act". Bidder is, and the CITY and ENGINEER are not, responsible to determine, if any safety or safety related standards apply to the Project, including but not limited to, the "Trench Safety Act".

Witness Signature

Bidder's Signature

Witness Signature

Printed Name

Title

Date

Date

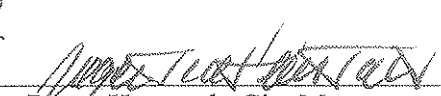
IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates under each signature. The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same; and by Contractor by and through its President, who has been duly authorized to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

ATTEST:

CITY OF MARATHON



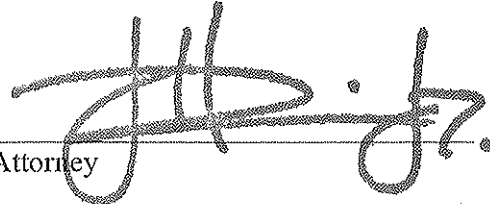
Diane Clavier, City Clerk

^{DL}
By: 

Roger Hernstadt, City Manager


Date: 2-8-13

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



City Attorney

CONTRACTOR

By: 

Member, President

Date: 2/7/13

AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
FHP Tectonics Corp.

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 FHP Tectonics Corp. a Florida corporation whose address and principal place of business is: 290 NW 165 St, P200, Miami, FL, 33169 (hereinafter the "Contractor"), and

WHEREAS, the City desires to engage the Contractor to provide General Contracting 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 [] specified in Exhibit "A," attached to this Agreement, and made a part hereof by this reference.

2. Term/Commencement Date.

(a) This continuing contract shall be for a term of three (3) years with one (1) – two (2) year renewal at the discretion of the City. Actual completion of projects may extend beyond such term.

(b) Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Work within the timeframes set forth in the Work Schedule, unless extended by the City Manager.

3. Compensation and Payment.

(a) 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.

- (b) Each application for partial payment shall include an affidavit or partial release of lien by Contractor and its subcontractors and suppliers 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.
- (c) The final application for payment shall be accompanied by all documentation called for in the Agreement Documents, together with complete and legally effective releases or waivers (satisfactory to City) of all liens arising out of or filed in connection with the Work. In lieu thereof and as approved by the City, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which City might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any subcontractor or supplier fails to furnish a release or receipt in full, Contractor shall provide the City with a certified written explanation for why the subcontractor or supplier has not been paid.
- (d) The City shall pay Contractor in accordance with the Florida Prompt Payment Act.
- (e) 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.

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. Prior to any payments to Contractor under this Agreement, Contractor shall provide City with partial and final releases (as may be the case for partial or final payment for the Work) of claims by all subcontractors and suppliers.
- (b) Any subcontractors used on the Work must have the prior written approval of the City Manager.

5. **City's Responsibilities.**

- (a) Furnish to Contractor, at the Contractor's written request, all available maps, plans, existing studies, reports and other data pertinent to the Work, in possession of the City.

- (b) Arrange for access to and make all provisions for Contractor to enter upon real property as required for Contractor to perform the Work as may be requested in writing by the Contractor.

6. **Contractor's Responsibilities.**

- (a) The 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, upon written notification from the City Manager, the Contractor shall at Contractor's sole expense, immediately correct the work.

7. **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) Upon receipt of the City's written notice of termination, Contractor shall stop the Work unless directed otherwise by the City Manager.
- (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 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 Manager. 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.

- (a) Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than _____ per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles. Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than _____ per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.
- (d) 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 insured or certificate holder. 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);

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) Contractor shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Contractor's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Contractor's performance or non-performance of this Agreement.
- (b) 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: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050

With a Copy to: John Herin
City Attorney
GrayRobinson, P.A.
401 E. Las Olas Blvd., Suite 1850
Ft. Lauderdale, Florida 33301

For The Contractor: David P. Roy, Senior Project Manager
FHP Tectonics Corp.
290 NW 165th Street, Suite P200
Miami, Florida 33169

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.

15. Entire Agreement/Modification/Amendment.

- (a) This writing 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.
- (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.
- (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 cancel 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 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 either party to this Agreement 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.

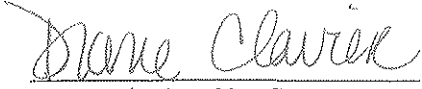
- (a) Prior to commencing the Work identified in Exhibit "A" the Contractor shall deliver to the City Performance and Payment Bonds in the form attached hereto as Exhibit "D" securing its obligations to be performed for the Work. Each Bond shall be in an amount equal to the contract price for the Work. The Performance and Payment Bonds will cease to be effective on the date of the City's acceptance of the Work. Effective immediately thereafter, a Maintenance Bond will be provided for the one year period commencing on the date of the City's acceptance of the Work in the amount of twenty five percent (25%) of the Work price.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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



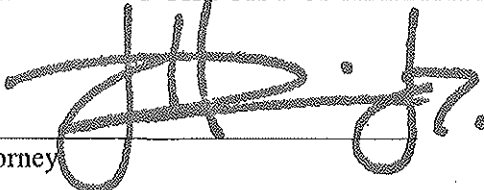
Diane Clavier, City Clerk


By: 

Roger Hernstadt, City Manager


Date: 2-8-13

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



City Attorney

CONTRACTOR


By: _____
David P. Roy, President
Senior Project Manager

Date: 2/6/13

AGREEMENT BETWEEN
THE CITY OF MARATHON

AND
Gonzalez Landscaping

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 Gonzalez Landscaping, a Florida corporation whose address and principal place of business is: PO BOX 501740, (hereinafter the "Contractor"), and Marathon FL 33050

WHEREAS, the City desires to engage the Contractor to provide Landscape Maintenance 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 [] specified in Exhibit "A," attached to this Agreement, and made a part hereof by this reference.

2. Term/Commencement Date.

(a) This continuing contract shall be for a term of three (3) years with one (1) – two (2) year renewal at the discretion of the City. Actual completion of projects may extend beyond such term.

(b) Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Work within the timeframes set forth in the Work Schedule, unless extended by the City Manager.

3. Compensation and Payment.

(a) 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.

- (b) Each application for partial payment shall include an affidavit or partial release of lien by Contractor and its subcontractors and suppliers 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.
- (c) The final application for payment shall be accompanied by all documentation called for in the Agreement Documents, together with complete and legally effective releases or waivers (satisfactory to City) of all liens arising out of or filed in connection with the Work. In lieu thereof and as approved by the City, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which City might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any subcontractor or supplier fails to furnish a release or receipt in full, Contractor shall provide the City with a certified written explanation for why the subcontractor or supplier has not been paid.
- (d) The City shall pay Contractor in accordance with the Florida Prompt Payment Act.
- (e) 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.

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. Prior to any payments to Contractor under this Agreement, Contractor shall provide City with partial and final releases (as may be the case for partial or final payment for the Work) of claims by all subcontractors and suppliers.
- (b) Any subcontractors used on the Work must have the prior written approval of the City Manager.

5. **City's Responsibilities.**

- (a) Furnish to Contractor, at the Contractor's written request, all available maps, plans, existing studies, reports and other data pertinent to the Work, in possession of the City.

- (b) Arrange for access to and make all provisions for Contractor to enter upon real property as required for Contractor to perform the Work as may be requested in writing by the Contractor.

6. Contractor's Responsibilities.

- (a) The 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, upon written notification from the City Manager, the Contractor shall at Contractor's sole expense, immediately correct the work.

7. 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) Upon receipt of the City's written notice of termination, Contractor shall stop the Work unless directed otherwise by the City Manager.
- (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 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 Manager. 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.

- (a) Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than _____ per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles. Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than _____ per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.
- (d) 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 insured or certificate holder. 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);

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) Contractor shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Contractor's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Contractor's performance or non-performance of this Agreement.
- (b) 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: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050

With a Copy to: John Herin
City Attorney
GrayRobinson, P.A.
401 E. Las Olas Blvd., Suite 1850
Ft. Lauderdale, Florida 33301

For The Contractor: Gonzalez Landscaping
PO Box 501740
Marathon FL 33050
305-395-8294

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.

15. Entire Agreement/Modification/Amendment.

- (a) This writing 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.
- (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.
- (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 cancel 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.

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- (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 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 either party to this Agreement 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.

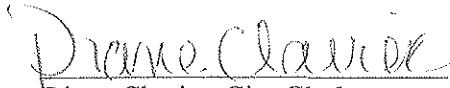
- (a) Prior to commencing the Work identified in Exhibit "A" the Contractor shall deliver to the City Performance and Payment Bonds in the form attached hereto as Exhibit "D" securing its obligations to be performed for the Work. Each Bond shall be in an amount equal to the contract price for the Work. The Performance and Payment Bonds will cease to be effective on the date of the City's acceptance of the Work. Effective immediately thereafter, a Maintenance Bond will be provided for the one year period commencing on the date of the City's acceptance of the Work in the amount of twenty five percent (25%) of the Work price.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

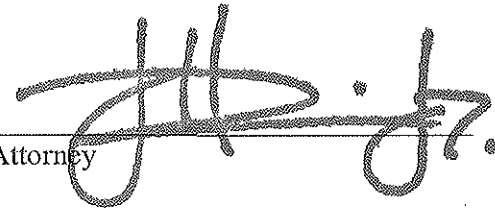


Diane Clavier, City Clerk


By: _____
Roger Hernstadt, City Manager

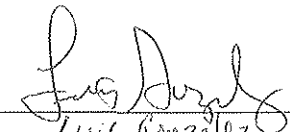
Date: 2/10/13

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



City Attorney

CONTRACTOR


By: _____
Luis Gonzalez, President

Date: 2.12.13

EXHIBIT "A"
SCOPE OF WORK

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.	\$		\$		\$		\$	\$
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
11.								
12.								
13.								
14.								
15.								
16.								
17.								
18.								
19.								
20.								
TOTAL			\$		\$		\$	\$

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

EXHIBIT "C"
CHANGE ORDER

Change Order No. _____

To: City of Marathon
From: _____(Contractor)
Contract: _____
Project: _____
City's Contract No. _____

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

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

This Change Order constitutes full, final, and complete compensation to Contractor for all costs, expenses, overhead, and profit, and any damages of every kind that Contractor may incur in connection with the above referenced changes in the Work under this Agreement. Contractor acknowledges and agrees that (a) the Contract amount of \$_____ under the Agreement will []/will not [] be 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.

CITY

CONTRACTOR

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

Attachment "A"

CHANGE ORDER SUMMARY

This Change Order is necessary to cover changes in the Work to be performed under this Agreement. Except as may be modified herein all of the provisions of the Agreement apply to and govern all Work under this Change Order.

THE FOLLOWING CHANGES ARE MADE TO THE AGREEMENT DOCUMENTS:

- (1) Original Contract Price _____
- (2) Current Contract Price (Adjusted by Previous Change) _____
- (3) Total Proposed Change in Contract Price _____
- (4) New Contract Price (Item 2 + Item 3) _____
- (5) Original Contract Time _____
- (6) Proposed Change in Contract Time _____
- (6) Current Contract Time (Adjusted by Previous Change) _____
- (7) Total Proposed Change in Contract Time _____
- (8) New Contract Time (Item 6 ± Item 7) _____
- (9) Original Contract Substantial Completion Date _____
- (10) New Contract Substantial Completion Date _____

CHANGE ORDER HISTORY						
Item No.	Description	Current Contract Amount	Additive Change	Deductive Change	Net Change Contract Price	Net Change Contract Time
I.	Total Contract Price	\$	\$	\$	\$	
Total					\$	

EXHIBIT "D"
PERFORMANCE AND PAYMENT BONDS
(The Performance Bond and the Statutory Payment Bond and the covered amounts of each are separate and distinct from each other)

Payment Bond

Bond No. _____

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

BY THIS BOND (the "Bond"), We _____ as principal (the "Contractor"), and _____ 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 _____ Dollars (\$ _____) for payment of which Contractor and Surety bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, with reference to a written Agreement entered into by Contractor and City, for the following:

Agreement Title: _____
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, change 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 under this Bond after the time limits set forth in Section 255.05, Florida Statutes.

IN WITNESS WHEREOF, this instrument is executed this the ____ day of _____, 20__.

Contractor
Name: _____
Its: _____

Signed, sealed and delivered in the presence of:

(Witness) (Name and Address)

(Witness) (Name and Address)

Surety
Name: _____
Its: _____

ATTORNEY-IN-FACT

Name: _____

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-Attorney appointing individual Attorney-in-Fact for execution of Bond on behalf of Surety.

Performance Bond

Bond No. _____

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

BY THIS BOND (the "Bond"), We _____ as principal (the "Contractor"), and _____ 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 _____ Dollars (\$_____) for payment of which Contractor and Surety bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, with reference to a written Agreement entered into by Contractor and City, for the following:

Agreement Title: _____
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 all Work under the Agreement within 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 ____ day of _____, 20__.

Contractor
Name: _____
Its: _____

Signed, sealed and delivered in the presence of:

(Witness) (Name and Address)

(Witness) (Name and Address)

Surety
Name: _____
Its: _____

ATTORNEY-IN-FACT

Name: _____

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-Attorney appointing individual Attorney-in-Fact for execution of Bond on behalf of Surety.

SECTION 0300B

TRENCH SAFETY FORM

This form must be completed and signed by the Bidder.

Failure to complete this form may result in the bid being declared non-responsive.

Bidder acknowledges that the Florida Trench Safety Act, Section 553.60 *et seq*, Fla. Stat. which became effective October 1, 1990, shall be in effect during the period of construction of the Project. The Bidder by signing and submitting the Bid is, in writing, assuring that it will perform any trench excavation in accordance with applicable trench safety standards. The Bidder further identifies the following separate item of cost of compliance with the applicable trench safety standards as well as the method of compliance:

Method of Compliance

Cost

Total: \$ _____

Bidder acknowledges that this cost is included in the applicable items of the Bid and in the Total Base Bid. Failure to complete the above may result in the bid being declared non-responsive.

The Bidder is, and the CITY and ENGINEER are not, responsible to review or assess Bidder's safety precautions, programs of costs, of the means, methods, techniques or technique adequacy, reasonableness of cost, sequences of procedures of any safety precaution, program or cost, including but not limited to, compliance with any and all requirements of Section 553.60 *et. seq.*, Fla. Stat. cited as the "Trench Safety Act". Bidder is, and the CITY and ENGINEER are not, responsible to determine, if any safety or safety related standards apply to the Project, including but not limited to, the "Trench Safety Act".

Witness Signature

Bidder's Signature

Witness Signature

Printed Name

Title

Date

Date

AGREEMENT BETWEEN
THE CITY OF MARATHON

AND
Greentech Group Solutions, LLC

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 GREENTECH GROUP SOLUTIONS, LLC a Florida corporation whose address and principal place of business is: 7999 OJS HIGHWAY, MARATHON, FL (hereinafter the "Contractor"), and

WHEREAS, the City desires to engage the Contractor to provide GREENTECH GROUP SOLUTIONS, LLC 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 [] specified in Exhibit "A," attached to this Agreement, and made a part hereof by this reference.

2. Term/Commencement Date.

- (a) This Agreement shall become effective upon the City issuing Contractor a written Notice to Proceed and the Work shall be completed to the City's satisfaction no later than TBD days from the issuance of the Notice to Proceed. The City Manager may extend the term of this Agreement up to an additional sixty (60) at his sole discretion based upon the recommendation of the City's Community Services Director.
- (b) Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Work within the timeframes set forth in the Work Schedule, unless extended by the City Manager.

3. Compensation and Payment.

- (a) The Contractor shall invoice the City on a monthly basis. The total amount invoiced shall not exceed _____. 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.

- (b) Each application for partial payment shall include an affidavit or partial release of lien by Contractor and its subcontractors and suppliers 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.
- (c) The final application for payment shall be accompanied by all documentation called for in the Agreement Documents, together with complete and legally effective releases or waivers (satisfactory to City) of all liens arising out of or filed in connection with the Work. In lieu thereof and as approved by the City, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which City might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any subcontractor or supplier fails to furnish a release or receipt in full, Contractor shall provide the City with a certified written explanation for why the subcontractor or supplier has not been paid.
- (d) The City shall pay Contractor in accordance with the Florida Prompt Payment Act.
- (e) 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.

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. Prior to any payments to Contractor under this Agreement, Contractor shall provide City with partial and final releases (as may be the case for partial or final payment for the Work) of claims by all subcontractors and suppliers.
- (b) Any subcontractors used on the Work must have the prior written approval of the City Manager.

5. **City's Responsibilities.**

- (a) Furnish to Contractor, at the Contractor's written request, all available maps, plans, existing studies, reports and other data pertinent to the Work, in possession of the City.

- (b) Arrange for access to and make all provisions for Contractor to enter upon real property as required for Contractor to perform the Work as may be requested in writing by the Contractor.

6. Contractor's Responsibilities.

- (a) The 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, upon written notification from the City Manager, the Contractor shall at Contractor's sole expense, immediately correct the work.

7. 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) Upon receipt of the City's written notice of termination, Contractor shall stop the Work unless directed otherwise by the City Manager.
- (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 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 Manager. 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.

- (a) Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than _____ per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles. Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than _____ per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.
- (d) 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 insured or certificate holder. 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);

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) Contractor shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Contractor's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Contractor's performance or non-performance of this Agreement.
- (b) 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: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050

With a Copy to: John Herin
City Attorney
GrayRobinson, P.A.
401 E. Las Olas Blvd., Suite 1850
Ft. Lauderdale, Florida 33301

For The Contractor: GREENTECH GROUP SOLUTIONS, LLC
7999 OVERSEAS HIGHWAY #20
MARATHON FL. 33050
305-269-0949

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.

15. Entire Agreement/Modification/Amendment.

- (a) This writing 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.
- (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.
- (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 cancel 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 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 either party to this Agreement 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. The Performance and Payment Bonds will cease to be effective on the date of the City's acceptance of the Work. Effective immediately thereafter, a Maintenance Bond will be provided for the one year period commencing on the date of the City's acceptance of the Work in the amount of twenty five percent (25%) of the Work price.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]



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, City Clerk

^{PR}
By: 

Roger Hernstadt, City Manager

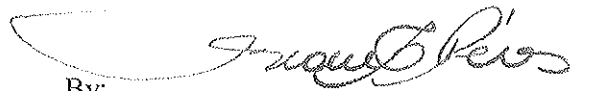
Date: 02/14/13

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



City Attorney

CONTRACTOR

By: 

JUAN PEREZ V., President

Date: 02.13.13



EXHIBIT "A"
SCOPE OF WORK

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.	\$		\$		\$		\$	\$
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
11.								
12.								
13.								
14.								
15.								
16.								
17.								
18.								
19.								
20.								
TOTAL			\$		\$		\$	\$

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

EXHIBIT "C"
CHANGE ORDER

Change Order No. _____

To: City of Marathon
From: _____(Contractor)
Contract: _____
Project: _____
City's Contract No. _____

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

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

This Change Order constitutes full, final, and complete compensation to Contractor for all costs, expenses, overhead, and profit, and any damages of every kind that Contractor may incur in connection with the above referenced changes in the Work under this Agreement. Contractor acknowledges and agrees that (a) the Contract amount of \$_____ under the Agreement will []/will not [] be 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.

CITY

CONTRACTOR

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

Attachment "A"

CHANGE ORDER SUMMARY

This Change Order is necessary to cover changes in the Work to be performed under this Agreement. Except as may be modified herein all of the provisions of the Agreement apply to and govern all Work under this Change Order.

THE FOLLOWING CHANGES ARE MADE TO THE AGREEMENT DOCUMENTS:

- (1) Original Contract Price _____
- (2) Current Contract Price (Adjusted by Previous Change) _____
- (3) Total Proposed Change in Contract Price _____
- (4) New Contract Price (Item 2 + Item 3) _____
- (5) Original Contract Time _____
- (6) Proposed Change in Contract Time _____
- (6) Current Contract Time (Adjusted by Previous Change) _____
- (7) Total Proposed Change in Contract Time _____
- (8) New Contract Time (Item 6 ± Item 7) _____
- (9) Original Contract Substantial Completion Date _____
- (10) New Contract Substantial Completion Date _____

CHANGE ORDER HISTORY						
Item No.	Description	Current Contract Amount	Additive Change	Deductive Change	Net Change Contract Price	Net Change Contract Time
I.	Total Contract Price	\$	\$	\$	\$	
Total					\$	

EXHIBIT "D"
PERFORMANCE AND PAYMENT BONDS
(The Performance Bond and the Statutory Payment Bond and the covered amounts of each are separate and distinct from each other)

Payment Bond

Bond No. _____

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

BY THIS BOND (the "Bond"), We _____ as principal (the "Contractor"), and _____ 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 _____ Dollars (\$ _____) for payment of which Contractor and Surety bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, with reference to a written Agreement entered into by Contractor and City, for the following:

Agreement Title: _____
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, change 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 under this Bond after the time limits set forth in Section 255.05, Florida Statutes.

IN WITNESS WHEREOF, this instrument is executed this the ____ day of _____, 20__.

Contractor
Name: _____
Its: _____

Signed, sealed and delivered in the presence of:

(Witness) (Name and Address)

(Witness) (Name and Address)

Surety
Name: _____
Its: _____

ATTORNEY-IN-FACT

Name: _____

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-Attorney appointing individual Attorney-in-Fact for execution of Bond on behalf of Surety.

Performance Bond

Bond No. _____

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

BY THIS BOND (the "Bond"), We _____ as principal (the "Contractor"), and _____ 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 _____ Dollars (\$ _____) for payment of which Contractor and Surety bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, with reference to a written Agreement entered into by Contractor and City, for the following:

Agreement Title: _____
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 all Work under the Agreement within 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 ____ day of _____, 20__.

Contractor
Name: _____
Its: _____

Signed, sealed and delivered in the presence of:

(Witness) (Name and Address)

(Witness) (Name and Address)

Surety
Name: _____
Its: _____

ATTORNEY-IN-FACT

Name: _____

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-Attorney appointing individual Attorney-in-Fact for execution of Bond on behalf of Surety.

SECTION 0300B

TRENCH SAFETY FORM

This form must be completed and signed by the Bidder.

Failure to complete this form may result in the bid being declared non-responsive.

Bidder acknowledges that the Florida Trench Safety Act, Section 553.60 et seq, Fla. Stat. which became effective October 1, 1990, shall be in effect during the period of construction of the Project. The Bidder by signing and submitting the Bid is, in writing, assuring that it will perform any trench excavation in accordance with applicable trench safety standards. The Bidder further identifies the following separate item of cost of compliance with the applicable trench safety standards as well as the method of compliance:

Method of Compliance

Cost

Total: \$ TBD

Bidder acknowledges that this cost is included in the applicable items of the Bid and in the Total Base Bid. Failure to complete the above may result in the bid being declared non-responsive.

The Bidder is, and the CITY and ENGINEER are not, responsible to review or assess Bidder's safety precautions, programs of costs, of the means, methods, techniques or technique adequacy, reasonableness of cost, sequences of procedures of any safety precaution, program or cost, including but not limited to, compliance with any and all requirements of Section 553.60 et. seq., Fla. Stat. cited as the "Trench Safety Act". Bidder is, and the CITY and ENGINEER are not, responsible to determine, if any safety or safety related standards apply to the Project, including but not limited to, the "Trench Safety Act".

Witness Signature

[Handwritten Signature]
Bidder's Signature

Witness Signature

Juan C. Perez
Printed Name

Title

Date

VP.

Date

02.13.13

[Handwritten mark]

AGREEMENT BETWEEN
THE CITY OF MARATHON

AND
KEYS CONTRACTING SERVICES INC.

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: 6465 Overseas Hwy #3
(hereinafter the "Contractor"), and MARATHON, FLA. 33050

WHEREAS, the City desires to engage the Contractor to provide
CONTRACTING 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 [] specified in Exhibit "A," attached to this Agreement, and made a part hereof by this reference.

2. Term/Commencement Date.

(a) This continuing contract shall be for a term of three (3) years with one (1) – two (2) year renewal at the discretion of the City. Actual completion of projects may extend beyond such term.

(b) Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Work within the timeframes set forth in the Work Schedule, unless extended by the City Manager.

3. Compensation and Payment.

(a) 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.

- (b) Each application for partial payment shall include an affidavit or partial release of lien by Contractor and its subcontractors and suppliers 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.
- (c) The final application for payment shall be accompanied by all documentation called for in the Agreement Documents, together with complete and legally effective releases or waivers (satisfactory to City) of all liens arising out of or filed in connection with the Work. In lieu thereof and as approved by the City, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which City might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any subcontractor or supplier fails to furnish a release or receipt in full, Contractor shall provide the City with a certified written explanation for why the subcontractor or supplier has not been paid.
- (d) The City shall pay Contractor in accordance with the Florida Prompt Payment Act.
- (e) 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.

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. Prior to any payments to Contractor under this Agreement, Contractor shall provide City with partial and final releases (as may be the case for partial or final payment for the Work) of claims by all subcontractors and suppliers.
- (b) Any subcontractors used on the Work must have the prior written approval of the City Manager.

5. **City's Responsibilities.**

- (a) Furnish to Contractor, at the Contractor's written request, all available maps, plans, existing studies, reports and other data pertinent to the Work, in possession of the City.

- (b) Arrange for access to and make all provisions for Contractor to enter upon real property as required for Contractor to perform the Work as may be requested in writing by the Contractor.

6. Contractor's Responsibilities.

- (a) The 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, upon written notification from the City Manager, the Contractor shall at Contractor's sole expense, immediately correct the work.

7. 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) Upon receipt of the City's written notice of termination, Contractor shall stop the Work unless directed otherwise by the City Manager.
- (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 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 Manager. 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.

- (a) Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than _____ per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles. Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than _____ per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.
- (d) 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 insured or certificate holder. 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);

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) Contractor shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Contractor's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Contractor's performance or non-performance of this Agreement.
- (b) 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: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050

With a Copy to: John Herin
City Attorney
GrayRobinson, P.A.
401 E. Las Olas Blvd., Suite 1850
Ft. Lauderdale, Florida 33301

For The Contractor: Chris Gratton, President
KEYS CONTRACTING SERVICES
6465 O/S Hwy #3
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.

15. Entire Agreement/Modification/Amendment.

- (a) This writing 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.
- (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.
- (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 cancel 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 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 either party to this Agreement 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. The Performance and Payment Bonds will cease to be effective on the date of the City's acceptance of the Work. Effective immediately thereafter, a Maintenance Bond will be provided for the one year period commencing on the date of the City's acceptance of the Work in the amount of twenty five percent (25%) of the Work price.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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



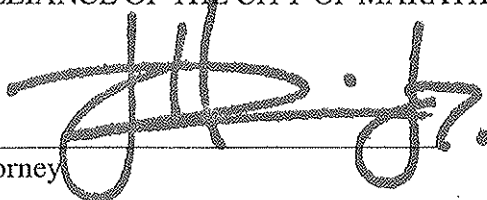
Diane Clavier, City Clerk

^{PR}
By: 

Roger Hernstadt, City Manager

Date: 2.1.13

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



City Attorney

CONTRACTOR

By: 

Chris Grayson, President

Date: 2-1-13

AGREEMENT BETWEEN
THE CITY OF MARATHON

AND
MARATHON ELECTRIC SIGN+LIGHT, INC.

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 MARATHON ELECTRIC SIGN+LIGHT, INC. a Florida corporation whose address and principal place of business is: 10690 AVIATION BLVD (hereinafter the "Contractor"), and MARATHON, FL

WHEREAS, the City desires to engage the Contractor to provide ELECTRICAL + SIGN WORK 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 [] specified in Exhibit "A," attached to this Agreement, and made a part hereof by this reference.

2. Term/Commencement Date.

(a) This continuing contract shall be for a term of three (3) years with one (1) – two (2) year renewal at the discretion of the City. Actual completion of projects may extend beyond such term.

(b) Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Work within the timeframes set forth in the Work Schedule, unless extended by the City Manager.

3. Compensation and Payment.

(a) 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.

- (b) Each application for partial payment shall include an affidavit or partial release of lien by Contractor and its subcontractors and suppliers 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.
- (c) The final application for payment shall be accompanied by all documentation called for in the Agreement Documents, together with complete and legally effective releases or waivers (satisfactory to City) of all liens arising out of or filed in connection with the Work. In lieu thereof and as approved by the City, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which City might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any subcontractor or supplier fails to furnish a release or receipt in full, Contractor shall provide the City with a certified written explanation for why the subcontractor or supplier has not been paid.
- (d) The City shall pay Contractor in accordance with the Florida Prompt Payment Act.
- (e) 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.

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. Prior to any payments to Contractor under this Agreement, Contractor shall provide City with partial and final releases (as may be the case for partial or final payment for the Work) of claims by all subcontractors and suppliers.
- (b) Any subcontractors used on the Work must have the prior written approval of the City Manager.

5. **City's Responsibilities.**

- (a) Furnish to Contractor, at the Contractor's written request, all available maps, plans, existing studies, reports and other data pertinent to the Work, in possession of the City.

- (b) Arrange for access to and make all provisions for Contractor to enter upon real property as required for Contractor to perform the Work as may be requested in writing by the Contractor.

6. **Contractor's Responsibilities.**

- (a) The 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, upon written notification from the City Manager, the Contractor shall at Contractor's sole expense, immediately correct the work.

7. **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) Upon receipt of the City's written notice of termination, Contractor shall stop the Work unless directed otherwise by the City Manager.
- (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 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 Manager. 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.

- (a) Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than _____ per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles. Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than _____ per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.
- (d) 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 insured or certificate holder. 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);

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) Contractor shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Contractor's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Contractor's performance or non-performance of this Agreement.
- (b) 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: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050

With a Copy to: John Herin
City Attorney
GrayRobinson, P.A.
401 E. Las Olas Blvd., Suite 1850
Ft. Lauderdale, Florida 33301

For The Contractor: RANDALL MEATWOS,
PRESIDENT
MARATHON ELECTRIC SIGN & LIGHT, INC.
10690 AVIATOR BLVD
MARATHON, FL 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.

15. Entire Agreement/Modification/Amendment.

- (a) This writing 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.
- (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.
- (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 cancel 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 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 either party to this Agreement 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. The Performance and Payment Bonds will cease to be effective on the date of the City's acceptance of the Work. Effective immediately thereafter, a Maintenance Bond will be provided for the one year period commencing on the date of the City's acceptance of the Work in the amount of twenty five percent (25%) of the Work price.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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



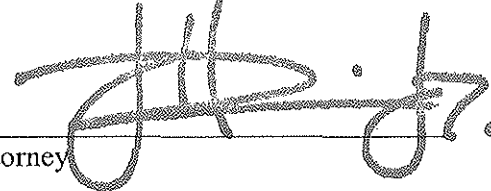
Diane Clavier, City Clerk


By: 

Roger Hernstadt, City Manager

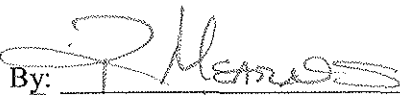
Date: 2-15-13

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



City Attorney

CONTRACTOR

By: 

Randall Menzies, President

Date: 2/15/13

AGREEMENT BETWEEN
THE CITY OF MARATHON
AND

Seamar Divers, LLC.

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 Seamar Divers, LLC. a Florida corporation whose address and principal place of business is: 11379 NW 122 street, Miami FL 33178 (hereinafter the "Contractor"), and

WHEREAS, the City desires to engage the Contractor to provide General Contracting 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 [] specified in Exhibit "A," attached to this Agreement, and made a part hereof by this reference.

2. **Term/Commencement Date.**

- (a) This Agreement shall become effective upon the City issuing Contractor a written Notice to Proceed and the Work shall be completed to the City's satisfaction no later than _____ days from the issuance of the Notice to Proceed. The City Manager may extend the term of this Agreement up to an additional sixty (60) at his sole discretion based upon the recommendation of the City's Community Services Director.
- (b) Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Work within the timeframes set forth in the Work Schedule, unless extended by the City Manager.

3. **Compensation and Payment.**

- (a) The Contractor shall invoice the City on a monthly basis. The total amount invoiced shall not exceed _____. 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.

- (b) Each application for partial payment shall include an affidavit or partial release of lien by Contractor and its subcontractors and suppliers 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.
- (c) The final application for payment shall be accompanied by all documentation called for in the Agreement Documents, together with complete and legally effective releases or waivers (satisfactory to City) of all liens arising out of or filed in connection with the Work. In lieu thereof and as approved by the City, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which City might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any subcontractor or supplier fails to furnish a release or receipt in full, Contractor shall provide the City with a certified written explanation for why the subcontractor or supplier has not been paid.
- (d) The City shall pay Contractor in accordance with the Florida Prompt Payment Act.
- (e) 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.

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. Prior to any payments to Contractor under this Agreement, Contractor shall provide City with partial and final releases (as may be the case for partial or final payment for the Work) of claims by all subcontractors and suppliers.
- (b) Any subcontractors used on the Work must have the prior written approval of the City Manager.

5. **City's Responsibilities.**

- (a) Furnish to Contractor, at the Contractor's written request, all available maps, plans, existing studies, reports and other data pertinent to the Work, in possession of the City.

- (b) Arrange for access to and make all provisions for Contractor to enter upon real property as required for Contractor to perform the Work as may be requested in writing by the Contractor.

6. **Contractor's Responsibilities.**

- (a) The 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, upon written notification from the City Manager, the Contractor shall at Contractors sole expense, immediately correct the work.

7. **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) Upon receipt of the City's written notice of termination, Contractor shall stop the Work unless directed otherwise by the City Manager.
- (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 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 Manager. 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.

- (a) Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than _____ per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles. Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than _____ per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.
- (d) 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 insured or certificate holder. 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);

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) Contractor shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Contractor's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Contractor's performance or non-performance of this Agreement.
- (b) 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: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050

With a Copy to: John Herin
City Attorney
GrayRobinson, P.A.
401 E. Las Olas Blvd., Suite 1850
Ft. Lauderdale, Florida 33301

For The Contractor: Eloy J Anaya
Seamar Divers, LLC.
11379 NW 122 St
Miami FL 33178
305-605-6896 ext 306.

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.

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

- (a) This writing 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.
- (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.
- (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 cancel 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 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 either party to this Agreement 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.

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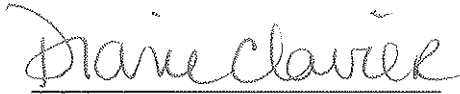
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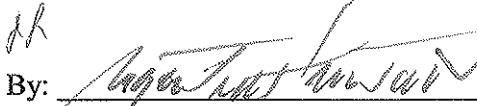
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ATTEST:

CITY OF MARATHON



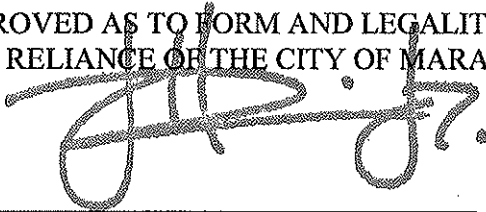
Diane Clavier, City Clerk

JK
By: 

Roger Hernstadt, City Manager

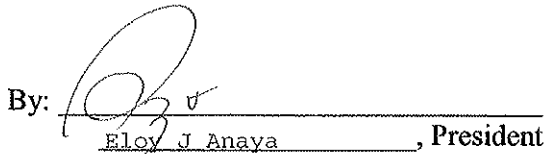
Date: 2.19.13

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



City Attorney

CONTRACTOR

By: 
Eloy J. Anaya, President

Date: 02/13/2013