

**CITY OF MARATHON, FLORIDA
RESOLUTION 2013-45**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, ACCEPTING THE LOWEST RESPONSIVE AND RESPONSIBLE BID AND APPROVING A CONTRACT BETWEEN THE CITY AND H & R PAVING, INC. FOR RECONSTRUCTION OF THE FISHERMAN'S POINT DRIVE PROJECT IN AN AMOUNT NOT TO EXCEED THE PROJECT OPTION APPROVED BY CITY COUNCIL; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the "City") solicited bids for the Fisherman's Point West Drive Reconstruction Project (the "Project"); and

WHEREAS, two bids were received with the lowest bid submitted being submitted by H & R Paving Inc. ("Contractor") on all three options, and staff subsequently reviewed and determined the bid was complete, the bidder was responsive and responsible; and

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

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

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

Section 2. The Contract between the City and Contractor for option 3 of the Project in an amount not to exceed \$225,312.00, a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form by the City Attorney, is hereby approved. The City Manager is authorized to execute the Contract and expend budgeted funds on behalf of the City.

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

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 28th DAY OF MAY, 2013

THE CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor

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

ATTEST:



Diane Clavier, City Clerk

(City Seal)

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



City Attorney

SECTION 00500
CONSTRUCTION CONTRACT

This Contract (the "Contract") is dated as of the 20th day of June 2013 by and between the City of Marathon (hereinafter called the "CITY") and **H & R Paving Inc.** (hereinafter called "CONTRACTOR") located at: 1955 NW Avenue, Miami, FL 33172.

CITY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

1.1 Project/Work: CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as the following: The Project consists of **FISHERMAN'S POINT DRIVE RECONSTRUCTION** – Milling, construction of limerock base and paving, all in accordance with the construction drawings.

ARTICLE 2. CITY'S REPRESENTATIVE, ARCHITECT AND ENGINEER

2.1 It is understood that the CITY will designate a representative for the Work. The CITY'S REPRESENTATIVE referred to in any of the Contract Documents designated herein is Carlos A. Solis, P.E., 9805 Overseas Highway, Marathon Florida 33050.

2.2

2.3 The CITY's ARCHITECT referred to in any of the Contract Documents designated herein is N/A, N/A.

2.4 The CITY's ENGINEER referred to in any of the Contract Documents designated herein is Carlos A. Solis, P.E., 9805 Overseas Hwy, Marathon, FL 33050

ARTICLE 3. TERM

3.1 Contract Term. The Work shall be substantially completed within Sixty (60) calendar days after the date specified in the Notice to Proceed ("Substantial Completion"), and fully completed and ready for final payment in accordance with the Contract Documents within Seventy five (75) calendar days after the date specified in the Notice to Proceed ("Final Completion").

3.2 Contract Time. The Contract Term shall not commence until the CITY issues to CONTRACTOR a Notice to Proceed and the term of the Contract shall be through the date of final payment unless terminated earlier pursuant to Section 00700 – General Conditions, Article 14, Payments to Contractor and Completion.

3.3 Survival of Obligations. Any obligations by the CONTRACTOR, including but not limited to those set forth in Section 00700 – General Conditions, Article 12, Contractor's General Warranty and Guarantee, that would or could occur after the date of expiration or termination of the Contract shall survive the termination or expiration of the Contract.

3.4 Liquidated Damages. CITY and CONTRACTOR recognize that time is of the essence in this Contract and that the CITY will suffer financial loss if the Work is not completed within the contract times specified in Section 3.1 for the Work above, plus any approved extensions thereof allowed in accordance with the General Conditions. The CONTRACTOR also recognizes that the damages which the City will incur if the Work is not substantially completed on time and/or fully completed on time are not readily ascertainable at the time this Agreement is entered into, and the Contractor recognizes the difficulties involved in proving the actual loss suffered by CITY if the Work is not substantially completed on time and/or fully completed on time. Accordingly, instead of requiring any such proof, CITY and CONTRACTOR agree that as liquidated damages to compensate the City and not as a penalty for delay or as an incentive to complete on time, CONTRACTOR shall pay CITY (\$1,500.00) for each calendar day that expires after the time specified in Section 3.1 for Substantial Completion of the Work. After Substantial Completion, if CONTRACTOR fails to fully complete the Work within the time specified in Section 3.1 for completion and readiness for final payment or any proper extension thereof granted by CITY, CONTRACTOR shall pay CITY (\$1,000.00) for each calendar day that expires after the time specified in Section 3.1 for full completion and readiness for final payment. Contractor agrees that the liquidated damage amounts specified in the Contract Documents bear a reasonable relationship to the actual damages to be suffered due to public inconvenience and damage to the City's reputation if the Contractor fails to substantially complete and/or fully complete the Work on time. The liquidated damages are not in compensation for any other damages, and expressly exclude damages for completion contractor expenses, lost/unrealized revenue, financing costs, professional services, attorney fees, and/or additional City staffing that may be incurred if the work is not substantially completed on time and/or fully completed on time. All liquidated damages amounts will continue to be charged if the Contractor abandons the Work, or is terminated, and the Work is completed by another party.

3.5 Should the Substantial Completion and/or Full/Final Completion and acceptance of Work, together with any modification or additions, be delayed beyond the time for performance set in Section 3.1 above because of lack of performance by the CONTRACTOR, it is understood and agreed that aside from any liquidated damages, the Contractor shall be liable to the City for all actual additional costs and/or losses incurred by the CITY including, but not limited to, completion contractor expenses, lost/unrealized revenue, financing costs, professional services, attorney fees, and/or additional City staffing that incurred because the Work was not substantially completed on time and/or fully completed on time.

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

ARTICLE 4. CONTRACT PRICE

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

4.1.1 The City shall pay the Contractor based on the amount established in the Bid Form attached hereto as **Exhibit "A."** This is a Lump Sum Contract and the unit prices

established in Exhibit A will be the price set for any additions or deduction of any work as directed by the Engineer.

4.2 The CONTRACTOR agrees that all specific cash allowances are included in the above Contract Price and have been computed in accordance with the Contract Documents.

ARTICLE 5. PAYMENT PROCEDURES

5.1 CONTRACTOR shall submit Applications for Payment in accordance with the Section 0700 - General Conditions, Article 14, Payments to Contractor and Completion. Applications for Payment will be processed by CITY as provided in the General Conditions.

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

5.2.1 No progress payment shall be made until CONTRACTOR delivers to the CITY **certified copies of the performance bond and payment bond establishing that the bonds have been recorded with the county clerk**, complete original partial releases of all liens, bond claims, and claims signed by all Subcontractors, materialmen, suppliers, and vendors, indicating amount of partial payment, on a form approved by the CITY, and an affidavit that so far as the CONTRACTOR has knowledge or information, the releases include and cover all Materials and Work for which a lien, bond claim, or claim could be filed for work completed to date.

5.3 The CONTRACTOR agrees that ten percent (10%) of the amount due for Work as set forth in each Application for Payment shall be retained by CITY for each Progress Payment until Final Payment, as defined in Section 0700 - General Conditions, Article 14, Payments to Contractor and Completion.

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

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

ARTICLE 6. INSURANCE/INDEMNIFICATION.

6.1 Insurance. The CONTRACTOR shall secure and maintain throughout the duration of this Contract, insurance of such type and in such amounts necessary to protect its interest and

the interest of the CITY against hazards or risks of loss as specified in the General Conditions of the Contract Documents.

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

ARTICLE 7. CONTRACTOR'S REPRESENTATIONS.

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

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

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

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

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

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

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

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

7.8 The CONTRACTOR warrants the following:

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

7.8.2 Anti-Kickback: The CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the CITY or any other applicable federal or state agency, has any interest, financially or otherwise, in the Project. For breach or violation of this warranty, the CITY shall have the right to declare contractor in default, and/or annul this Contract without liability or, in its discretion, to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

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

7.8.4 Public Entity Crime Statement: The CONTRACTOR warrants that it has not been placed on the convicted vendor list following a conviction for public entity crime, as specified in Document 00200, Section 7.5, of the Instructions to Bidders.

ARTICLE 8. CONTRACT DOCUMENTS.

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

- 8.1.1 Change Orders.
- 8.1.2 Field Orders.
- 8.1.3 Contract for Construction.
- 8.1.4 Exhibits to this Contract.
- 8.1.5 Supplementary Conditions.

8.1.6 General Conditions.

8.1.7 Any federal, state, county or city permits for the Project

8.1.8 Specifications bearing the title: **City of Marathon Fisherman's Point Road Reconstruction.**

8.1.9 Drawings consisting of a cover sheet and inclusive of all sheets bearing the following general titles: See Appendix A of Contract Documents

8.1.10 Bid Documents, including but not limited to: Addendum, Invitation to Bid, Instructions to Bidders, Bid Form provided by CONTRACTOR, Notice of Award and Notice to Proceed.

8.1.11 Addenda subject matter takes the same precedence of the respective subject matter that it is modifying. Furthermore, each subsequent addendum takes precedence over previous addenda.

8.1.12 The documents listed above shall be incorporated into this Contract (except as expressly noted otherwise above).

8.1.13 There are no Contract Documents other than those listed above in this Article. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions.

8.1.14 The Contract Documents shall remain the property of the CITY. The CONTRACTOR shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided; however, that in no event shall the CONTRACTOR use, or permit to be used, any or all of such Contract Documents on other projects without the City's prior written authorization.

8.1.15 The General Conditions discuss the bond and surety requirements of the CITY. This Contract requires the CONTRACTOR to provide payment and performance bonds, unless stated otherwise in Section 255.05, Florida Statutes.. If the Contract does not require bonds, the references to bonds in the General Conditions do not apply to this Contract.

ARTICLE 9. MISCELLANEOUS.

9.1 Terms used in this Contract which are defined in Article 1 of the General Conditions, Section 700, will have the meanings indicated in the General Conditions. Terms used in Article 1 of the Instructions to Bidders, Section 200, also apply to this Contract.

9.2 Except as otherwise provided in the Contract Documents with respect to subcontractors, no assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party thereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written

consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 CITY and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.4 Severability. Should any provision, paragraph, sentence, word, or phrase contained in this Contract be determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word, or phrase shall be deemed modified to the extent necessary in order to conform with such laws, then shall be deemed severable, and in this Contract, shall remain unmodified and in full force and effect.

9.5 Remedies. If and when any default of this Contract occurs, the CITY may avail itself of any legal or equitable remedies that may apply, including, but not limited to, liquidated damages specified in Article 3.4, actual damages, and specific performance. Such remedies may be exercised in the sole discretion of the CITY. Nothing contained in this Contract shall limit the CITY from pursuing any legal or equitable remedies that may apply. A default by CONTRACTOR under any contract with the CITY will be a default under all contracts with the CITY. The CITY may apply the proceeds from any contract between CONTRACTOR and the CITY to satisfy amounts owed by the CONTRACTOR to the CITY under any other contract.

9.6 Access to Public Records. The CONTRACTOR shall comply with the applicable provisions of Chapter 119, Florida Statutes. The CITY shall have the right to immediately terminate this contract for the refusal by the Contractor to comply with Chapter 119, Florida Statutes. The Contractor shall retain all records associated with this Contract for a period of five (5) years from the date of Final Payment or Termination of this Contract.

9.7 Inspection and Audit. During the term of this Contract and for five (5) years from the date of final completion or Termination, the CONTRACTOR shall allow CITY representatives access during reasonable business hours to CONTRACTOR'S records related to this Contract for the purposes of inspection or audit of such records. If upon an audit of such records, the CITY determines the CONTRACTOR was paid for services not performed, upon receipt of written demand by the CITY, the CONTRACTOR shall remit such payments to the CITY.

9.8 Counterparts. This contract may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

9.9 Notices. Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to:

FOR CONTRACTOR:

H & R Paving, Inc.
1955 NW 110 Avenue
Miami, FL 33172
Attn: Raul Gonzalez, President
Phone 305-261-3005
Fax 305-592-6079

FOR CITY: City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
ATTN: City Manager

WITH COPY TO:

GrayRobinson, PA
401 E. Las Olas Blvd.
Suite 1850
Fort Lauderdale, 33301
Phone: 954-761-8111
Fax: 954-761-8112

9.10 WAIVER OF JURY TRIAL AND VENUE. The CITY and CONTRACTOR knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract, arising out of, under, or in connection with the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party. The venue for any lawsuit arising out of this Contract shall be Monroe County, Florida.

9.11 Attorneys' Fees. If either the CITY or CONTRACTOR is required to enforce the terms of the Contract by court proceedings or otherwise, whether or not formal legal action is required, the parties shall bear their own attorney fees, costs and expenses, at the trial and appellate level.

9.12 Amendments. This Contract may only be amended by the prior written approval of the parties or by execution of a Change Order in the form attached hereto as **Exhibit "B"**.

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract on the respective dates under each signature: THE CITY OF MARATHON, FLORIDA, signing by and through its Mayor or Vice Mayor, authorized to execute same by Council action on the 20th day of June, 2013, and by H&R Paving, Inc. (Contractor), signing by and through its President, duly authorized to execute same.

CONTRACTOR

WITNESS

By: _____
By: H&R PAVING INC.
1955 N.W. 110 AVE
MIAMI, FL 33172

By: _____
(Signature and Title)
(Corporate Seal)
RAUL GONZALEZ - President
(Type Name/Title signed above)
13th day of June, 2013

CITY

ATTEST
Diane Clavier
City Clerk

CITY OF MARATHON, FLORIDA

Mayor

20 day of June, 2013

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

By: _____
City Attorney

(* In the event that the Contractor is a corporation, there shall be attached to each counterpart a certified copy of a resolution of the board of the corporation, authorizing the officer who signs the contract to do so in its behalf.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, Lucyris Gonzalez, certify that I am the Secy Treas of HAL PAVING and that Raul Gonzalez who signed the Bid with the City of Marathon, Monroe County, Florida for HAL PAVING, is Pres, Genl of said Corporation with full authority to sign said **Bid** on behalf of the Corporation.

Signed and sealed this 12 day of June, 2013

(SEAL) Lucyris Gonzalez
Signature

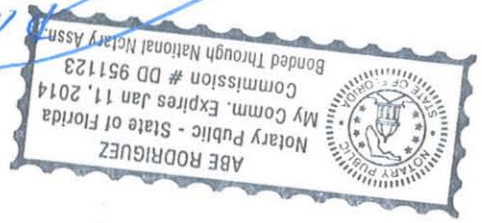
Lucyris Gonzalez / Sec-Treas.
Typed w/Title

STATE OF FLORIDA
COUNTY OF MANI PATE

SWORN TO AND SUBSCRIBED before me this 12 day of June, 2013

My Commission Expires: 2014

Notary Public



CERTIFICATE AS TO AUTHORIZED CORPORATE PERSONNEL

I, Paul Gonzalez, certify that I am the President of HAR PAVING INC., who signed the Bid with the City of Marathon, Monroe County, Florida, for the project titled FISHERMANS BOAT DOCK RECONSTRUCTION, and that the following persons have the authority to sign **payment requests** on behalf of the Corporation:

[Signature] Abe Rodriguez - General Manager
(Signature) (Typed Name w/Title)

(Signature) (Typed Name w/Title)

(Signature) (Typed Name w/Title)

Signed and sealed this ____ day of _____, 20__.

(SEAL) [Signature]
Signature
Paul Gonzalez - President
Typed w/Title

STATE OF FLORIDA
COUNTY OF MONROE

SWORN TO AND SUBSCRIBED before me this 12 day of June, 2013

My Commission Expires: 2014

Notary Public

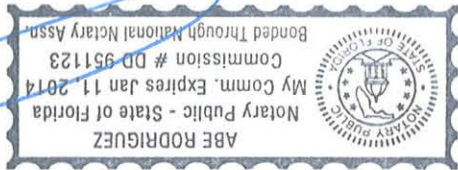


EXHIBIT "A"

<u>ITEM #</u>	<u>ITEM DESCRIPTION</u>	<u>QTY</u>	<u>UNITS</u>	<u>UNIT PRICE</u>	<u>EXTENDED PRICE</u>
1	MOBILIZATION	1	LS	\$10,100.00	\$10,100.00
2	MAINTENANCE OF TRAFFIC	1	LS	\$10,100.00	\$10,100.00
3	MILLING AND TRANSPORTING MILLINGS TO WITHIN 11 MILES EAST	3456	SY	\$5.00	\$17,280.00
4	REMOVE 8" OF ONSITE MATERIAL DISPOSE WITHIN 5 MILES. EAST	3456	SY	\$10.00	\$34,560.00
5	COMPACT SUBGRADE 95% MODIFIED PROCTOR	3456	SY	\$2.00	\$6,912.00
6	8" LIMEROCKBASE COURSE	3456	SY	\$18.00	\$62,208.00
7	2" TYPESP-12.5 ASPHALTIC CONCRETE COURSE	3456	SY	\$22.00	\$76,032.00
8	DENSITY TESTING	1	LS	\$5,000.00	\$5,000.00
9	BONDS AND INSURANCE	1	LS	\$3,100.00	\$3,100.00
TOTAL COST ESTIMATE					\$225,292.00

TOTAL BASE BID Two Hundred Twenty Five Thousand Two Hundred Ninety Two (Dollars)

EXHIBIT "B"
CHANGE ORDER

CHANGE ORDER NO. _____

TO: City of Marathon

PROJECT:

CONTRACTOR: DATE: _____

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

The Work as set forth in the Agreement is hereby amended to include the items set forth on **Exhibit "1"** attached hereto and by this reference made a part hereof.

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

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

CONSENT OF SURETY TO CHANGE ORDER

The Surety Agrees that this change order is not a cardinal change and if the Change Order includes an increase in the Contract amount, then the penal amount of the payment and performance bond issued for this Contract is increased by the dollar amount of this Change Order.

_____ (Seal)
Surety's Name and Corporate Seal

By: _____
Signature and Title

Attest: _____
Signature and Title

THE CITY OF MARATHON
a Florida municipal corporation

CONTRACTOR

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

SECTION 00670
NOTICE OF AWARD

Dated: June 4, 2013

TO: **H & R Paving, Inc.**
(CONTRACTOR)

ADDRESS: 1955 N.W. 110 Ave.
Miami, FL 33172

OWNER'S PROJECT NO.: _____

PROJECT: **City of Marathon – Fisherman's Point Drive Reconstruction**

OWNER'S CONTRACT NO.: _____

CONTRACT FOR: **Roadway Reconstruction Within The Fisherman's Point Development**

(Insert name of Contract as it appears in the Bidding Documents)

You are notified that your Bid dated April 12, 2013 for the above Contract has been considered. You are apparent successful bidder and have been awarded the contract for **Option 3 of the Bid For The reconstruction of all roadways with the Fisherman's Point Development.**

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

The Contract Price of your contract is \$225,292.00
Two Hundred Twenty Five Thousand Three Hundred Ninety Two Dollars (\$225,292.00
).

Three sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within ten days of the date of this Notice of Award, that is by **June 14, 2013** .

1. You must deliver to the OWNER three fully executed counterparts of the Agreement including all the Contract Documents. This includes the triplicate sets of Drawings. Each of the Contract Documents must bear your signature where indicated.
2. You must deliver with the executed Agreement the Contract Security (Bonds) as specified in the General Conditions (Section 16).
3. Proof of Insurance as specified in the General Conditions (Section 16.5 and Exhibit D)
4. (List other conditions precedent).

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

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

City of Marathon
(OWNER)

By: 
(AUTHORIZED SIGNATURE)

Carlos A. Solis, Public Works Manager
(TITLE)

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

END OF SECTION



PROPOSED MILLING AND PAVEMENT RECONSTRUCTION



DESIGNED BY:	CMS
DRAWN BY:	CMS
CHECKED BY:	CMS
SCALE:	1"=40'
DATE:	FEB/2014
JOB NUMBER:	1406
SHEET:	C-1

SITE PLAN	
FISHERMAN'S POINT	
WEST DRIVE RECONSTRUCTION	

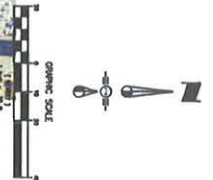
NO.	DESCRIPTION	DATE	BY
1			

REUSE OF DOCUMENT
 THESE IDEAS & DESIGN INCORPORATED TO PROJECT AS A RESULT OF THE CITY OF MARATHON'S REQUEST FOR PROPOSALS. THE CITY OF MARATHON IS NOT TO BE USED FOR ANY OTHER PROJECT WITHOUT WRITTEN AUTHORIZATION OF THE CITY OF MARATHON.



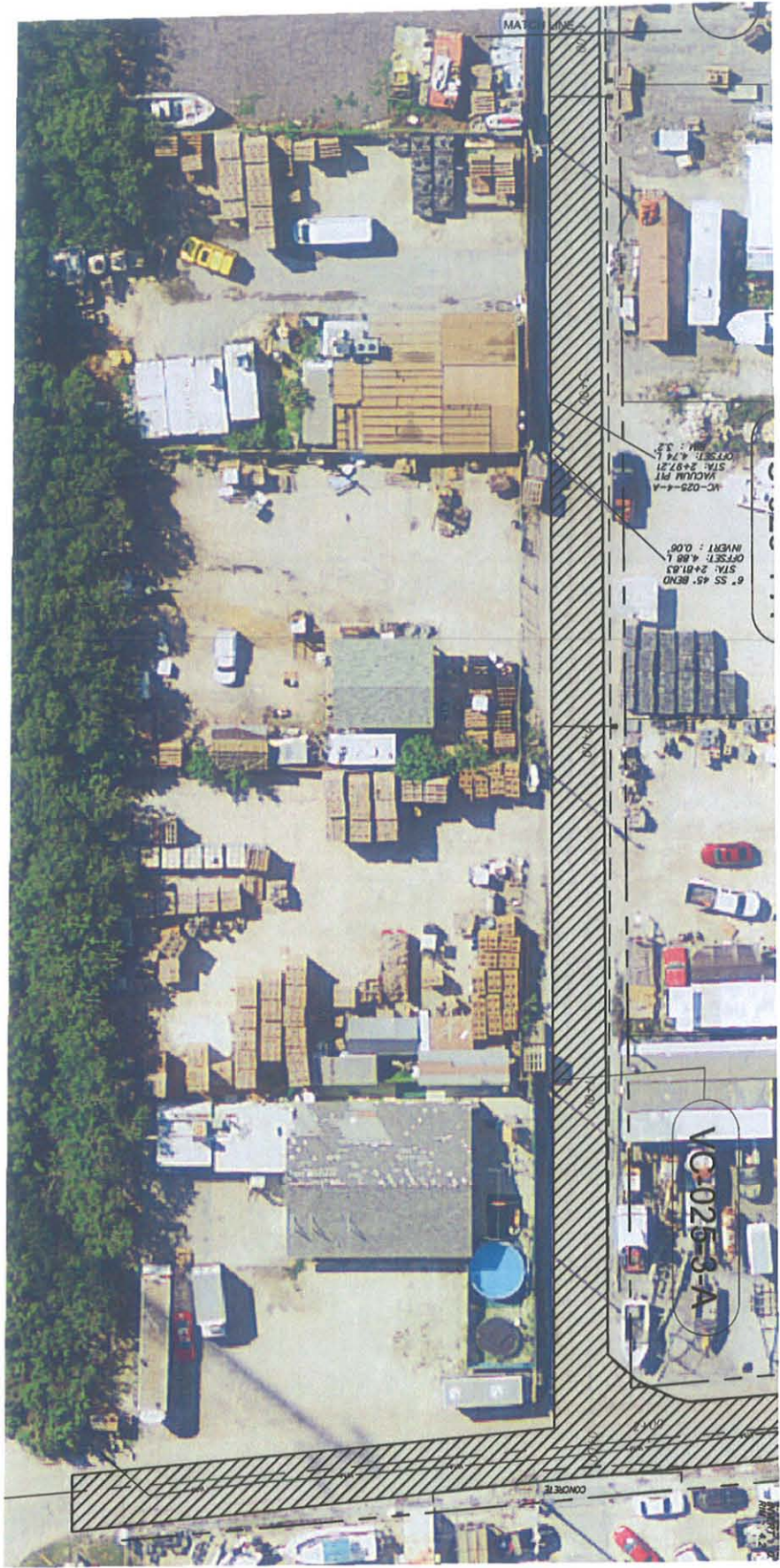
CITY OF MARATHON
 9805 OVERSEAS HWY
 MARATHON, FL 33050
 305-743-0033

CARLOS A. SOLIS
 FLORIDA PROFESSIONAL ENGINEER
 #1714



PROPOSED MILLING AND PAVEMENT RECONSTRUCTION

SHEET C-2	JOB NUMBER 18000	SCALE 1"=50'	DATE 2/13	DRAWN BY C/S	DESIGNED BY C/S	CUSTOM FISHERMAN'S POINT WEST DRIVE RECONSTRUCTION	REUSE OF DOCUMENT THIS DRAWING IS A DESIGN INCORPORATED HEREIN AS AN INSTRUMENT OF PROFESSIONAL SERVICE BY THE PROPERTY OF THE CITY OF MARATHON. IT IS NOT TO BE USED FOR ANY OTHER PROJECT WITHOUT THE WRITTEN AUTHORIZATION OF THE CITY OF MARATHON.		CITY OF MARATHON 9805 OVERSEAS HWY MARATHON, FL 33050 305-743-0033	CARLOS A. SOLIS FLORIDA PROFESSIONAL ENGINEER NO. 43715
NO.	DESCRIPTION	DATE	BY							



PROPOSED MILLING AND PAVEMENT RECONSTRUCTION



DESIGNED BY: CAS
 DRAWN BY: CAS
 CHECKED BY: CAS
 SCALE: 1"=40'
 DATE: 2/13
 CADD FILE: NAME
 JOB NUMBER: NAME
 SHEET: C-3

SITE PLAN
 FISHERMAN'S POINT
 WEST DRIVE RECONSTRUCTION

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMITS	02/13/20

REUSE OF DOCUMENT
 I HEREBY DESIGNATE AND INCORPORATE ALL INFORMATION CONTAINED HEREIN AS PART OF THIS DESIGN AND I AM NOT PROVIDING ANY OTHER INFORMATION TO THE CITY OF MARATHON. THIS DOCUMENT IS THE PROPERTY OF THE CITY OF MARATHON AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED. AUTHORIZATION OF THE CITY OF MARATHON.

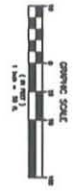


CITY OF MARATHON
 9805 OVERSEAS HWY
 MARATHON, FL 33050
 305-743-0033

CARLOS A. SOLIS
 FLORIDA PROFESSIONAL ENGINEER NO. 8778



PROPOSED MILLING AND PAVEMENT RECONSTRUCTION



SHEET C-4	JOB NUMBER DATE SCALE DRAWN BY CHECKED BY CONTRACTOR	DESIGNER BY DATE SCALE DRAWN BY CHECKED BY CONTRACTOR	SITE PLAN FISHERMAN'S POINT WEST DRIVE RECONSTRUCTION	REUSE OF DOCUMENT THE IDEAS & DESIGN INCORPORATED HEREIN, AS AN INSTRUMENT OF PROFESSIONAL SERVICE, IS THE PROPERTY OF THE CITY OF MARATHON AND IS NOT TO BE USED FOR ANY OTHER PROJECT WITHOUT WRITTEN AUTHORIZATION OF THE CITY OF MARATHON.		CITY OF MARATHON 9805 OVERSEAS HWY MARATHON, FL 33050 305-743-0033	CARLOS A. SOLIS FLORIDA PROFESSIONAL ENGINEER NO. 47134

Bond No. 929570977

Doc# 1939941
Bk# 2637 Pg# 833

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Performance Bond

CONTRACTOR:

(Name, legal status and address)

H&R Paving, Inc.
1955 Northwest 110th Avenue
Miami, FL 33172

OWNER:

(Name, legal status and address)

City of Marathon, Florida
9805 Overseas Highway
Marathon, FL 33050

CONSTRUCTION CONTRACT

Date:

Amount: \$ 225,292.00

Description:

(Name and location)

Fisherman's Point Drive Reconstruction

SURETY:

(Name, legal status and principal place of business)

Western Surety Company
333 S Wabash Ave.
Chicago, IL 60604
Mailing Address for Notices

333 S Wabash Ave.
Chicago, IL 60604

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

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

Two Hundred Twenty Five Thousand Two Hundred Ninety Two Dollars and 00/100

BOND

Date: 6-21-2013

(Not earlier than Construction Contract Date)

Amount: \$225,292.00

Two Hundred Twenty Five Thousand Two Hundred Ninety Two Dollars and 00/100

Modifications to this Bond: None

See Section 16

CONTRACTOR AS PRINCIPAL

Company: *(Corporate Seal)*

H&R Paving, Inc.

Signature: _____

Raul Gonzalez

Name and Title: President

SURETY

Company: *(Corporate Seal)*

Western Surety Company

Signature: _____

Charles D. Nielson

Name and Title: Attorney-in-Fact



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

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Nielson, Hoover & Associates
8000 Governors Square Blvd. #101
Miami Lakes, FL 33016
305-722-2663
S-1852/AS 8/10

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

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

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

§ 14 Definitions

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

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

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

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

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

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

§ 16 Modifications to this bond are as follows:

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

CONTRACTOR AS PRINCIPAL

Company: _____
(Corporate Seal)

SURETY

Company: _____
(Corporate Seal)

Signature: _____
Name and Title:
Address

Signature: _____
Name and Title:
Address

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Laura D Mosholder, John R Neu, Charles J Nielson, Brett M Rosenhaus, Kevin Wojtowicz, Mary C Aceves, Glenn Arvanitis, Charles D Nielson, David R Hoover, Katherine S Grimsley, Individually

of Miami Lakes, FL, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 21st day of September, 2012.



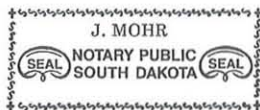
WESTERN SURETY COMPANY

Paul T. Bruflat
Paul T. Bruflat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 21st day of September, 2012, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires
June 23, 2015



J. Mohr
J. Mohr, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this _____ day of _____, _____.



WESTERN SURETY COMPANY

L. Nelson
L. Nelson, Assistant Secretary

Nielson, Hoover & Associates
Bond Department
PUBLIC WORKS BOND
In compliance with Florida statutes 255.05 (1) (a)

Bond No. 929570977

Bond Amount: \$225,292.00

Contractor's Name: H & R Paving, Inc.

Contractor's Address: 1955 NW 110 Ave., Miami, FL 33172

Contractor's Phone No. 305-541-6869

Surety Company: Western Surety Company

Surety's Address: 333 S Wabash Ave., Chicago, IL 60604

Surety's Phone No. 605-336-0850

Owner's Name: City of Marathon, Florida

Owner's Address: 9805 Overseas Highway, Marathon, FL 33050

Owner's Phone No. 305-743-0033

Obligee's Name:
(If contracting entity is different from the owner, the contracting public entity)

Obligee's Address:

Obligee's Phone No.

Contract No. (If applicable): N/A

Project Name: Fisherman's Point Drive Reconstruction

Project Location: Marathon, Monroe County, Florida

Legal Description: Various Locations

Description of Work: Roadwork Reconstruction

FRONT PAGE

ALL OTHER BOND PAGE(S) ARE DEEMED SUBSEQUENT TO THIS PAGE REGARDLESS OF ANY PAGE NUMBER(S) THAT MAY BE PREPRINTED THEREON

Bond No. 929570977

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Payment Bond

CONTRACTOR:

(Name, legal status and address)

H&R Paving, Inc.
1955 Northwest 110th Avenue
Miami, FL 33172

SURETY:

(Name, legal status and principal place of business)

Western Surety Company
333 S Wabash Ave.
Chicago, IL 60604
Mailing Address for Notices

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

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

OWNER:

(Name, legal status and address)

City of Marathon, Florida
9805 Overseas Highway
Marathon, FL 33050

333 S Wabash Ave.
Chicago, IL 60604

CONSTRUCTION CONTRACT

Date:

Amount: \$225,292.00

Two Hundred Twenty Five Thousand Two Hundred Ninety Two Dollars and 00/100

Description:

(Name and location)

Fisherman's Point Drive Reconstruction

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$225,292.00

Two Hundred Twenty Five Thousand Two Hundred Ninety Two Dollars and 00/100

Modifications to this Bond:

None

See Section 18

CONTRACTOR AS PRINCIPAL

Company: *(Corporate Seal)*

H&R Paving, Inc.

SURETY

Company: *(Corporate Seal)*

Western Surety Company

Signature:

Raul Gonzalez

Name and Title:

President

Signature:

Charles D. Nielson

Name and Title:

Charles D. Nielson
Attorney-in-Fact



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

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Nielson, Hoover & Associates
8000 Governors Square Blvd. #101
Miami Lakes, FL 33016
305-722-2663
S-2149/AS 8/10

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 16 Definitions

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

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

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

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

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

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

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

§ 18 Modifications to this bond are as follows:

**Doc# 1939941
Bk# 2637 Pg# 842**

The provisions and limitations of Section 255.05 Florida Statutes, including but not limited to the notice and time limitations in Sections 255.05(2) and 255.05(10), are incorporated in this bond by reference.

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

CONTRACTOR AS PRINCIPAL

Company: _____
(Corporate Seal)

SURETY

Company: _____
(Corporate Seal)

Signature: _____
Name and Title:
Address

Signature: _____
Name and Title:
Address

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Laura D Mosholder, John R Neu, Charles J Nielson, Brett M Rosenhaus, Kevin Wojtowicz, Mary C Aceves, Glenn Arvanitis, Charles D Nielson, David R Hoover, Katherine S Grimsley, Individually

of Miami Lakes, FL, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 21st day of September, 2012.

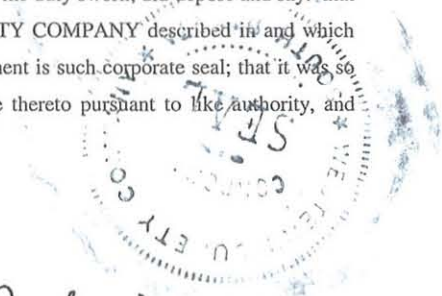


WESTERN SURETY COMPANY

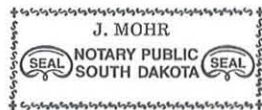
Paul T. Bruflat
Paul T. Bruflat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 21st day of September, 2012, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.



My commission expires
June 23, 2015



J. Mohr
J. Mohr, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this _____ day of _____, _____.



WESTERN SURETY COMPANY

L. Nelson
L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.