

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2020-42**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A CONTRACT FOR THE INSTALLATION OF A SERVICE AREA 3 TO SERVICE AREA 4 FORCE MAIN TO KEY HONEY CONTRACTING LLC., IN AN AMOUNT NOT TO EXCEED \$419,415.00; AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, in accordance the City's competitive bidding procedures, the Service Area 3 to Service Area 4 Force Main Project was competitively bid on May 15<sup>th</sup> and bids received until June 18<sup>th</sup> and,

**WHEREAS**, the lowest responsive and responsible bid was received by Key Honey Contracting LLC. In an amount not to exceed \$419,415.00 and,

**WHEREAS**, the City Manager recommends the City Council to approve a contract with Key Honey Contracting LLC., in an amount not to exceed \$419,415.00, as provided on Exhibit "B",

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

**Section 1.** The above recitals are true and correct and are incorporated herein by this reference.

**Section 2.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 14<sup>TH</sup> DAY OF July, 2020.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Steve Cook, Mayor**

AYES: Bartus, Senmartin, Zieg, Gonzalez, Cook  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

  
\_\_\_\_\_  
Diane Clavier, City Clerk

(City Seal)

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

  
\_\_\_\_\_  
City Attorney

**SECTION 00500**  
**AGREEMENT BETWEEN**  
**THE CITY OF MARATHON**  
**AND**  
**Key Honey Contracting, LLC**  
**For**

**Marathon's Area 3 to 4 Force Main Project**

**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 Key Honey Contracting, LLC a Florida corporation whose address and principal place of business is: 9 Bay Drive Key West, FL 33040, (hereinafter the "Contractor"), and

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

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

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

- (a) The Contractor shall provide the Work at the unit prices of specified in **Exhibit "A" Marathon Area 3 to 4 Force Main Project** attached to this Agreement and made a part hereof by this reference. Contractor shall be responsible for supplying all apparatus, equipment, labor, materials, means of transport, services and tools incidental or necessary to complete the Work as described in the Bid Documents.

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

- (a) Unless specified otherwise in **Exhibit "A"** the Contractor shall not commence work until the City issues Contractor a written Notice to Proceed and the Work shall be substantially completed within **(90)** calendar days after the date specified in the Notice to Proceed ("Substantial Completion"), and fully completed and ready for final payment in accordance with the Agreement Documents within **(120)** calendar days after the date specified in the Notice to Proceed ("Final Completion"). The City Manager may extend the term of this Agreement up to an additional fifteen (15) days at his sole discretion based upon the recommendation of the City's Community Services Director, City Engineer or Utilities 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 **Exhibit "A"**, unless extended by the City Manager. The City shall issue a written notice identifying the date the Work is deemed fully complete which shall be the Final Completion date.
- (c) City and Contractor recognize that time is of the essence in this Contract and that the City will suffer financial loss if the Work is not completed within the contract

times specified herein, plus any approved extensions thereof allowed by the City. The Contractor also recognizes that the damages which the City will incur if the Work is not substantially completed on time and/or fully completed on time are not readily ascertainable at the time this Agreement is entered into, and the Contractor recognizes the difficulties involved in proving the actual loss suffered by City if the Work is not substantially completed on time and/or fully completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree that as liquidated damages to compensate the City, and not as a penalty for delay or as an incentive to complete on time, Contractor shall pay City **(\$250.00)** for each calendar day that expires after the time specified for Substantial Completion of the Work. After Substantial Completion, if Contractor fails to fully complete the Work within the time specified for Final Completion and readiness for final payment or any proper extension thereof granted by City, Contractor shall pay City **(\$100.00)** for each calendar day that expires after the time specified for Final Completion and readiness for final payment. Contractor agrees that the liquidated damage amounts specified herein bear a reasonable relationship to the actual damages to be suffered due to public inconvenience and damage to the City's reputation if the Contractor fails to substantially complete and/or fully complete the Work on time. The liquidated damages are not in compensation for any other damages, and expressly exclude damages for completion contractor expenses, lost/unrealized revenue, financing costs, professional services, attorney fees, and/or additional City staffing that may be incurred if the Work is not substantially completed on time and/or fully completed on time. All liquidated damages amounts will continue to be charged if the Contractor abandons the Work, or is terminated, and the Work is completed by another party.

- (d) Should the Substantial Completion and/or Final Completion and acceptance of Work, together with any modification or additions, be delayed beyond the time for performance set above because of lack of performance by the Contractor, it is understood and agreed that aside from any liquidated damages, the Contractor shall be liable to the City for all actual additional costs and/or losses incurred by the City including, but not limited to, completion contractor expenses, lost/unrealized revenue, financing costs, professional services, attorney fees, and/or additional City staffing that incurred because the Work was not substantially completed on time and/or fully completed on time.
- (e) Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Contractor, or if no money is due or the amount due is insufficient to cover the amount charged, the Contractor shall be liable for said amount.

3.

**Compensation and Payment.**

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

undisputed portion of the invoice. Upon written request of the Finance Director, the Contractor shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

- (g) All payments shall only be from appropriations budgeted on an annual basis.

4. **Subcontractors.**

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

5. **City's Responsibilities.**

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

6. **Contractor's Responsibilities.**

- (a) Contractor shall exercise the same degree of care, skill and diligence in the performance of the Work as is ordinarily provided by a professional under similar circumstances. If at any time during the term of this Agreement or within one year from the completion of the Work, it is determined that the Contractor's deliverables are incorrect, defective or fail to conform to the Scope of Work or perform as intended, upon written notification from the City Manager, the Contractor shall at Contractor's sole expense, immediately correct the Work.
- (b) Contractor and its subcontractors shall comply with all applicable laws and regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall develop and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent public and private property and of underground facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be immediately remedied by Contractor.

Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and the City has made final payment to Contractor.

- (c) On a daily basis during the course of the Work, Contractor shall maintain the site free of debris and dust so as to minimize any inconvenience to surrounding properties. Upon completion of the Work, Contractor shall remove all apparatus, debris, equipment, materials, and tools created or used to construct the Work, and except for the Work or as otherwise directed by the City return the site in the same condition as at the beginning of the Work.
- (d) If the Work will create any obstructions, road closures or traffic impacts, Contractor shall provide the City and surrounding property owners with no less than seventy-two (72) hours prior notice of the anticipated or planned obstructions, road closures or traffic impacts.
- e) Permits: Unless otherwise provided, Contractor shall obtain and pay for all construction permits and licenses. The City shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for prosecution of 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) Unless directed otherwise in writing by the City Manager, upon receipt of the City's written notice of intent to terminate or notice of actual termination, Contractor shall stop the Work.
- (c) In the event of termination by the City, the Contractor shall be paid for all Work accepted by the City Manager up to the date of termination.
- (d) The Contractor shall transfer all books, records, reports, working drafts, documents, maps, and data properly indexed and labeled pertaining to the Work to the City, in a hard copy and/or electronic format (as specified by the City) within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

8. **Insurance.**

The Contractor shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by the City. The underwriter of such insurance shall be qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida. If requested by the City Manager, the insurance coverage shall be primary insurance with respect to the City,

its officials, employees, agents and volunteers. The insurance coverage shall include a minimum of:

- (a) Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law. Contractors with Worker's Compensation exemption shall not hold City liable for employee injury or claims.
- (a) Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than **\$10,000** 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 **\$100,000** per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.
- (d) The Contractor will add the City as an additional named insured on all insurance policies applicable to the Work under this Agreement. Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Certificates of Insurance shall include the City as additional named insured. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9. **Nondiscrimination.**

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

10. **Agreement Documents.**

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

Change Orders

Agreement

Exhibits to the Agreement

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



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

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

- (a) If either the City or Contractor is required to enforce the terms of the Agreement by court proceedings or otherwise, whether or not formal legal action is required, the parties shall bear their own attorney fees, costs and expenses, at the trial and appellate level.
- (b) In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily, and intentionally waives its right to trial by jury.

12. **Indemnification.**

- (a) **General Indemnity.** Contractor shall indemnify and hold harmless the City, its officers, and employees, from or on account of all claims, damages, losses, liabilities and expenses, direct, indirect or consequential, including, but not limited to, fees and charges of engineers, architects, attorney's, consultants and other professionals and trial and appellate court and arbitration costs arising out of or resulting from the performance of the Work, excluding claims arising from the sole negligence of City. Such indemnification shall specifically include but not be limited to claims, damages, losses and expenses arising out of or resulting from (i) any and all bodily injuries, sickness, death, disease; (ii) injury to or destruction of real property or tangible personal property, be it publicly or privately owned, including the loss of use resulting therefrom; (iii) other such damages, liabilities or losses received or sustained by any person or persons during or on account of any operations connected with the construction of the Work including the warranty period; (iv) the use of any improper materials; (v) any construction defect including patent defects; (vi) any act or omission of Contractor or his Subcontractors, agents, servants or employees; (vii) the violation of any federal, state, county or City laws, ordinances or regulations by Contractor, his Subcontractors, agents, servants or employees; (viii) the breach or alleged breach by Contractor of any term of this Agreement, including the breach or alleged breach of any warranty or guarantee.
- (b) **Defense.** In the event that any claims are brought or actions are filed against the City that are encompassed by the Contractor's duty to indemnify as stated in this Agreement, the Contractor agrees to defend against all claims and actions brought against the City regardless of whether such claims or actions are rightfully or wrongfully brought or filed. City reserves the right to select its own legal counsel to conduct any defense in any such proceedings and all costs and fees associated

therewith including any costs or fees of an appeal shall be the responsibility of Contractor.

- (c) Specific Indemnity. Contractor shall indemnify and hold harmless the City for liability for damages to persons or property caused in whole or in part by any act, omission, or default of the City, its officers, directors, agents, or employees arising from the Agreement or its performance. Such indemnification shall not include claims of, or damages resulting from, gross negligence, or willful, wanton or intentional misconduct of the City or its officers, directors, agents or employees, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Contractor or any of the Contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees. The extent of the indemnification shall be limited to \$5,000,000 which the parties agree bears a reasonable commercial relationship to the contract. The monetary limitation on the extent of the indemnification provided to the City shall not be less than \$1 million per occurrence.
- (d) Payment of Losses. Contractor shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever, excluding only those in which the damages arose out of the sole negligence of City, in connection with the foregoing indemnifications, including, but not limited to, reasonable attorney's fees and costs to defend all claims or suits in the name of City when applicable.
- (e) Contractor's indemnification shall not be limited to the amount of comprehensive general liability insurance which Contractor is required to obtain under the Agreement. Nothing contained herein is intended nor shall it be construed to waive City's rights and immunities under the common law or Section 768.28 *Florida Statutes*, as amended from time to time. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party described in this Section and its subparts.
- (f) The provisions of this section shall survive termination of this Agreement.

13. **Notices/Authorized Representatives.**

- (a) Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

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

With a Copy to: City Attorney  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

For The Contractor: Richard L. Gibbs III, President  
Key Honey Contracting, LLC  
9 Bay Drive  
Key West, FL 33040

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. The Records shall be properly indexed and labeled.
- (b) The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Contractor involving transactions related to this Agreement.
- (c) The City may terminate this Agreement for refusal by the Contractor to allow access by the City Manager or his designee to any Records pertaining to work

performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

17. **Nonassignability.**

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

18. **Severability.**

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

19. **Independent Contractor.**

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

20. **Compliance with Laws.**

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

21. **Waiver.**

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

22. **Survival of Provisions.**

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

23. **Prohibition of Contingency Fees.**

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

24. **Counterparts.**

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

25. **Authorization to Sign Agreement.**

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

26. **Non-Exclusive Agreement.**

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

27. **Performance and Payment Bonds.**

- (a) Prior to commencing the Work identified in **Exhibit "A,"** the Contractor shall deliver to the City Performance and Payment Bonds in the form attached hereto as **Exhibit "D"** securing its obligations to be performed for the Work. Each Bond shall be in an amount equal to the contract price for the Work. The Performance and Payment Bonds will cease to be effective on the date of the City's final payment for the Work. Effective immediately thereafter, Contractor shall provide a Maintenance Bond for the one year warranty period commencing on the date of the City's final payment for the Work in the amount of one hundred twenty five percent (125%) of the Work price.
- (b) City may deem this Section "Not Applicable" as provided on the Instructions to Bid for the Work.

28. **Continuing the Work.**

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

29. **Changes In The Work.**

- (a) Without invalidating the Agreement and without notice to any surety, City may, at any time or from time-to-time, order additions, deletions, or revisions in the Work by a Written Amendment or Change Order. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved.
- (b) The Contract Price may only be changed by a written Change Order. Any claim for an increase or decrease in the Contract Price shall be based on written notice of intent to claim delivered to the City promptly [but in no event later than three (3) business days after the first occurrence of the event giving rise to the amount of the claim]. Contractor shall deliver to the City a good faith estimate of the cost and time impacts caused by the claim causing event within seven (7) calendar days of the first occurrence of the event giving rise to the claim. Within seven (7) calendar days of the conclusion of the claim causing event, but no later than the Substantial Completion date, Contractor shall deliver to the City a full and complete written claim identifying all costs and time impacts that the Contractor believes should be paid due to the claim causing event and shall include full and final substantiation for all price and time adjustments. The City Manager will review the claim and make a decision on the request. The City Manager's decision will be final unless within seven (7) calendar days of the date of the City Manager's decision the Contractor provides the City with written notice expressly stating that the Contractor disputes the decision and intends to pursue the matter via litigation. Failure by Contractor to strictly comply with the provisions of this article will result in a waiver of the claim.

30. **Subsurface Conditions**

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

31. **Compensation for Delay.**

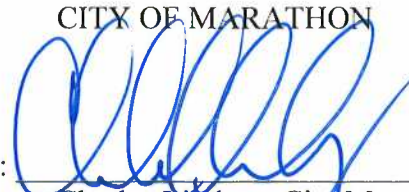
- (a) **NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE CITY BY REASON OF ANY DELAYS, DISRUPTION, INTERFERENCE, OR HINDRANCE** (collectively "Delay"). Notwithstanding anything to the contrary contained in the Agreement Documents, the Contractor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

**[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:

  
\_\_\_\_\_  
Diane Clavier, City Clerk


CITY OF MARATHON  
  
By: \_\_\_\_\_  
Charles Lindsey, City Manager

Date: Aug 12, 2020

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

  
\_\_\_\_\_  
City Attorney

CONTRACTOR

  
By: \_\_\_\_\_  
Richard Gibbs III, President  
Key Honey Contracting, LLC

Date: 8/27/20



**SECTION 11      Ownership and Access to Public Records.**

- 11.1 All records, books, documents, maps, data, deliverables, papers and financial information (the “Records”) that result from the Consultant providing services to the City under this Agreement shall be the property of the City.
- 11.2 The Consultant is a “Contractor” as defined by Section 119.0701(1)(a), Florida Statutes, and shall comply with the public records provisions of Chapter 119, Florida Statutes, including the following:
  1. Keep and maintain public records required by the City to perform the service.
  2. Upon request from the City Clerk, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
  3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Consultant does not transfer the records to the City.
  4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City Clerk, in a format that is compatible with the information technology systems of the City.
- 11.3 “Public Records” is defined in Section 119.011(12), Florida Statutes, and includes all documents, papers, letters, photographs, data processing software, or other material, regardless of physical form, made or received in connection with this Agreement.
- 11.4 Should the Consultant assert any exemption to the requirements of Chapter 119 and related law, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the Consultant.
- 11.5 The Consultant consents to the City’s enforcement of the Consultant’s Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the Consultant shall pay all court costs and reasonable attorney’s fees incurred by the City.

11.6 The Consultant's failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by the Consultant shall be grounds for immediate unilateral cancellation of this Agreement by the City.

11.7 **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-743-0033, [CITYCLERK@CI.MARATHON.FL.US](mailto:CITYCLERK@CI.MARATHON.FL.US), OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.**

**EXHIBIT "A"**  
**SCOPE OF WORK**

**City of Marathon**  
**Area 3 to 4 Force Main Project**  
**Date of Issue: 05/14/2020**  
**By: The Weiler Engineering Corporation**

Briefly described as: The construction of this project consists of labor, materials and equipment necessary to install the 4" HDPE pipe via directional drill method of installation from the Marathon Area 3 Wastewater Treatment Facility, along the US 1 Corridor from the Marathon Area 3 WWTP to 53<sup>rd</sup> Street Ocean, down 53<sup>rd</sup> Street Ocean to tie into the existing force main on Sombrero Boulevard at the intersection with 53<sup>rd</sup> Street Ocean. All sections, addendums and forms from the Bid Documents as bid on June 18th, 2020 are to be included as contract documents. The Contractor agrees to perform the work work for the unit costs as bid and presented below.

ITEM NO.	DESCRIPTION	UNITS	QTY	UNIT COST	TOTAL COST
1	<b>Area 3 to 4 Force Main:</b> Provide and install all labor, materials and equipment necessary to install 4" HDPE pipe via directional drill method of installation from the Marathon Area 3 Wastewater Treatment Facility, along the US 1 Corridor from the Marathon Area 3 WWTP to 53 <sup>rd</sup> Street Ocean, down 53 <sup>rd</sup> Street Ocean to tie into the existing force main on Sombrero Boulevard at intersection with 53 <sup>rd</sup> Street Ocean.	LF	4,310	\$79.00	\$340,490.00
2	<b>Area 3 to 4 Force Main:</b> Provide and install all labor, materials and equipment necessary to install 4" plug valves as shown on plans.	EA	3	\$3,000.00	\$9,000.00
3	<b>Area 3 to 4 Force Main:</b> Provide and install all labor, materials and equipment necessary to install hot tap of existing 4" Force main on Sombrero Boulevard, including the tee and gate valve, as shown on the plans.	LS	1	14,025.00	14,025.00
5	Maintenance of Traffic	LS	1	39,000.00	39,000.00
6	Bonds and Insurance	LS	1	\$7,500.00	\$7,500.00
7	Mobilization (not to exceed 2.5% of total cost)	LS	1	\$9,400.00	\$9,400.00
<b>Total Base Bid</b>					<b>\$419,415.00</b>

**EXHIBIT "B"**

**APPLICATION FOR PAYMENT**

**Application For Payment No. \_\_\_\_\_**

To: City of Marathon  
From:  
Project: Marathon Area 3 to 4 Force Main 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.	<b>DUE THIS APPLICATION (6 MINUS 7):</b>	<b>\$ _____</b>

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.								
<b>TOTAL</b>			\$		\$		\$	\$

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

**EXHIBIT "C"**  
**CHANGE ORDER**

**CHANGE ORDER NO.** \_\_\_\_\_

---

---

**TO: City of Marathon**

**PROJECT: Marathon Area 3 to 4 Force Main 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 \$ \_\_\_\_\_ XXXXXX 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  
**City of Marathon**

Attest: \_\_\_\_\_  
Signature and Title  
**Contractor**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



Exhibit "1"

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"**  
**PAYMENT AND PERFORMANCE BONDS**

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

**Payment Bond**

**Bond No.** \_\_\_\_\_

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

BY THIS BOND (the "Bond"), We (Insert Name, Address and Telephone No.) as principal (the "Contractor"), and (Insert Name, Address and Telephone No.) 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 or extension of time to the Agreement made by the City.

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

IN WITNESS WHEREOF, this instrument is executed this the \_\_\_ day of \_\_\_\_\_, 20\_\_.

**WHEN THE CONTRACTOR IS AN INDIVIDUAL:**

\_\_\_\_\_  
Contractor  
Name: \_\_\_\_\_

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

(Name and Address)

\_\_\_\_\_  
\_\_\_\_\_  
(Witness)

\_\_\_\_\_

(Name and Address)

**WHEN THE CONTRACTOR OPERATES UNDER A TRADE NAME:**

\_\_\_\_\_  
Contractor  
Name: \_\_\_\_\_  
Business Name: \_\_\_\_\_

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

(Name and Address)

\_\_\_\_\_  
\_\_\_\_\_  
(Witness)

\_\_\_\_\_

(Name and Address)

**WHEN THE CONTRACTOR IS A CORPORATION:**

\_\_\_\_\_  
Contractor  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Corporation Name: \_\_\_\_\_

Signed, sealed and delivered in the presence of:

Corporate Seal

\_\_\_\_\_  
(Corporate Secretary)  
Name: \_\_\_\_\_

**SURETY**

\_\_\_\_\_  
Surety  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
\_\_\_\_\_  
(Name and Address)

\_\_\_\_\_  
\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
\_\_\_\_\_  
(Name and Address)

**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 by Contractor and a certified copy provided to the City before payment will be made by the City.**

BY THIS BOND (the "Bond"), We (Insert Name, Address and Telephone No.) as principal (the "Contractor"), and (Insert Name, Address and Telephone No.) 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 the guarantee of all Work and materials furnished under the Agreement for the time specified in the Agreement;

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

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

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

IN WITNESS WHEREOF, this instrument is executed this the \_\_\_ day of \_\_\_\_\_, 20\_\_.

**WHEN THE CONTRACTOR IS AN INDIVIDUAL:**

\_\_\_\_\_  
Contractor  
Name: \_\_\_\_\_

Signed, sealed and delivered in the presence of:

_____	_____
_____	_____
(Witness)	
	_____
	_____
	(Name and Address)
_____	_____
_____	_____
(Witness)	
	_____
	_____
	(Name and Address)

**WHEN THE CONTRACTOR OPERATES UNDER A TRADE NAME:**

\_\_\_\_\_  
Contractor  
Name: \_\_\_\_\_  
Business Name: \_\_\_\_\_

Signed, sealed and delivered in the presence of:

_____	_____
_____	_____
(Witness)	
	_____
	_____
	(Name and Address)
_____	_____
_____	_____
(Witness)	
	_____
	_____
	(Name and Address)



**WHEN THE CONTRACTOR IS A CORPORATION:**

\_\_\_\_\_  
Contractor  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Corporation Name: \_\_\_\_\_

Signed, sealed and delivered in the presence of:

Corporate Seal

\_\_\_\_\_  
(Corporate Secretary)  
Name: \_\_\_\_\_

**SURETY**

\_\_\_\_\_  
Surety  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
\_\_\_\_\_  
(Name and Address)

\_\_\_\_\_  
\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
\_\_\_\_\_  
(Name and Address)

**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.

END OF SECTION  
SECTION 00500