

Sponsored by: Garrett

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2024-127**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A CONTRACT WITH CHARLEY TOPPINO & SONS FOR SOMBRERO BOULEVARD DRAINAGE IMPROVEMENTS IN AN AMOUNT NOT TO EXCEED \$4,870,496.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City desires to complete the Sombrero Boulevard Drainage Improvements Project; and

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

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

**Section 2.** The City Council hereby authorizes the City Manager to enter into an agreement and expend budgeted funds on behalf of the City for the Sombrero Boulevard Drainage Improvements Project with Charley Toppino & Sons, Inc. in an amount not to exceed \$4,870,496.00

**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 10<sup>th</sup> DAY OF DECEMBER, 2024.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
Mayor Lynn Landry

AYES: Smith, Matlock, Still, DelGaizo, Landry  
NOES: None  
ABSENT: None  
ABSTAIN: None

ATTEST:

*Hilary H. Palmer*  
\_\_\_\_\_  
Diane Clavier, City Clerk



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

*Steve Williams*  
\_\_\_\_\_  
Steve Williams, City Attorney

EXHIBIT A



6805 OVERSEAS HIGHWAY | MARATHON | FL 33050  
 TEL (305) 289-4161 | FAX(305) 289-4162

MEMORANDUM

To: Daniel Saus

From: Stephen J. Suggs, PE

Date: November 27, 2024

Re: COM Sombrero Blvd Drainage Improvements – Recommendation of Award

A formal bid process for the Sombrero Blvd Drainage Improvements Project located in Marathon, FL was conducted, and a pre-bid meeting was held. The City of Marathon received 2 bids. WEC has evaluated the bids received for the City of Marathon’s Sombrero Blvd Drainage Improvements Project from all contractors. The bid cost and responsiveness checklist can be seen below:

COM Power Sombrero Blvd Drainage Improvements	Charley Toppino & Sons	Ferreira Construction
Base Bid Amount	\$4,870,496.00	\$9,938,100.00
<b>Responsiveness Checklist</b>		
All required tabbed sections provided?	Y	Y
Bid Transmittal Form Section 0300A: 1. Acknowledgement of addenda (Total of 3) 2. All Pricing 3. Properly Signed and Sealed	1. Y 2. Y 3. Y	1. N 2. Y 3. Y
Contractor’s Qualifications Statement, Section 00301 - signed and notarized	Y	Y
Bid Bond, Section 00401, for maximum of 5% of bid amount provided with appropriate surety signatures?	Y	Y
FDOT Form # 375-030-33 Certification of Lobbying Disclosure	Y	Y
Trench Safety Statement Form, Form 0300B, signed and witnessed	Y	Y
Acknowledgment of Conformance with O.S.H.A. Standards, Section 00650 - signed and witnessed	Y	Y
FDOT Form #375-030-32 Certificate of Suspension and Debarment	Y	Y
Evidence of Insurability, provided and properly executed?	Y	Y
Copy of Contractor license(s)/state certification(s)/local registration(s) required to perform the Work	Y	Y
Corporate Resolution evidencing authorization to submit the bid (if applicable)	N/A	N/A
Signed E-Verify System Participation document	Y	Y
<b>Responsibility Checklist</b>		
Did bidder provide documentation of having been performing similar construction services for at least five years?	Y	Y
Did bidder provide a list of key personnel demonstrating adequate qualified personnel to perform the work?	Y	Y

Based on the proposal price and the documents provided, it is recommended that the City of Marathon award the contract for the Sombrero Blvd Drainage Improvements Project to Charley Toppino & Sons with the low bid of **\$4,870,496.00** for the project. Attached to this memorandum is a more detailed breakdown of the proposal.

**SECTION 00300  
BID FORM**

BID FROM:

Company: CHARLEY TOPPINO & SONS, INC.  
Address: 129 TOPPINO INDUSTRIAL DR, KEY WEST, FL 33040  
Phone/ Fax: 305-296-5606

Bidder agrees to furnish all materials, equipment, and labor and to perform all work in accordance with the Contract Documents for construction of: Sombrero Boulevard Drainage Improvements Project in the CITY OF MARATHON, Florida.

To: CITY OF MARATHON  
ATTN: CITY CLERK  
9805 Overseas Highway  
Marathon, Florida 33050

- 1.01 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with CITY in substantially the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents. The bidder also acknowledges that they have examined all bidding documents, the site, and understands that in submitting this bid he waives all rights to plead any misunderstanding regarding the same.
- 2.01 Bidder accepts all of the terms and conditions of the Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. The Bid will remain subject to acceptance for **120** days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of CITY.
- 3.01 In submitting this Bid, Bidder represents, as set forth in the Agreement, that:
- A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of all, which is hereby acknowledged.

<u>Addendum No.</u>	<u>Addendum Date</u>
<u>1</u>	<u>10/28/24</u>
<u>2</u>	<u>11/1/24</u>
<u>3</u>	<u>11/5/24</u>

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Bidder is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress and performance of the Work.
  - D. Bidder has carefully studied all documents as applicable: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, and (2) reports and drawings of a Hazardous Environmental Condition, if any.
  - E. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
  - F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
  - G. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
  - H. Bidder has given CITY'S REPRESENTATIVE written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by the CITY'S REPRESENTATIVE is acceptable to Bidder.
  - I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- 4.01 Bidder further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false Bid; Bidder has not solicited or induced any individual or entity to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over CITY.

- 5.01 Bidder's Information:  
The BIDDER states that he is an experienced CONTRACTOR and has completed similar projects within the last five years. This information has been provided on Document 00301, Contractor's Qualifications Statement.
- 6.01 Bidder agrees that the Work will be substantially completed and completed and ready for final payment in accordance with the Contract Documents on or before the dates or within the number of calendar days indicated in the Contract. If the Bidder does not agree with the construction time allocated in the Agreement, the bidder should not submit a bid.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified in the Contract Documents,.
- 7.01 The following documents are attached to and made a condition of this Bid:
- A. Required Bid security in the form of Bid Bond or Cashiers' Check;
  - B. Contractor's Qualifications Statement containing a tabulation of Subcontractors, Suppliers and other individuals and entities required to be identified in this Bid;
  - C. FDOT form #375-030-33 Certification of Lobbying Disclosure
  - D. Signed Trench Safety Act document
  - E. O.S.H.A. Standards Acknowledgement
  - F. FDOT form #375-030-32 Certificate of Suspension & Debarment
  - G. Copy of the contractor license(s)/state certification(s)/local registration(s) required to perform the Work (if any),
  - H. Evidence of Insurability
  - I. Addenda Acknowledgement
  - J. A Corporate Resolution evidencing authorization to submit the bid (if applicable)
  - K. Signed E-Verify System Participation document
- 8.01 The terms used in this Bid with initial capital letters have the meanings indicated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

**Unless otherwise noted, this is a Lump Sum contract. Quantities herein are provided for the use and convenience of the Contractor. Contractor shall verify the quantities and adjust if deemed necessary. All work, labor, and materials needed to complete the work, whether specifically detailed in an item listed below, or incidental to construction, shall be included in the lumps sum cost provided in this bid. There shall be no additional compensation for quantities required to complete the work, unless the scope of work is changed by a Change Order.**

## BID RESPONSE FORM

Item No.	Bid Item No./Description	Units	Qty	Unit Price	Extended Price
<b>1.00</b>	<b>General</b>				
1.01	Mobilization (Maximum of 5% of Base Bid)	LS	1	\$200,000.00	\$200,000.00
1.02	Bonds & Insurance (Maximum of 2.5% of Base Bid)	LS	1	\$90,000.00	\$90,000.00
1.03	Maintenance of Traffic	LS	1	\$112,000.00	\$112,000.00
1.04	Erosion Control (BMPs)	LS	1	\$30,000.00	\$30,000.00
1.05	General Project Management	MO	12	\$12,500.00	\$150,000.00
1.06	Submittals	LS	1	\$30,000.00	\$30,000.00
1.07	General Conditions (Site Trailer, Misc, Etc.)	MO	12	\$6,000.00	\$72,000.00
<b>2.00</b>	<b>Earthwork</b>				
2.01	Clearing & Grubbing	LS	1	\$62,825.00	\$62,825.00
2.02	Embankment	LF	2760	\$60.00	\$165,600.00
<b>3.00</b>	<b>Drainage Structures</b>				
3.01	Furnish & Install 18" ADS HDPE Storm Pipe	LF	2490	\$280.00	\$697,200.00
3.02	Furnish & Install FDOT Type "C" Catch Basin	EA	13	\$12,600.00	\$163,800.00
3.03	Furnish & Install Nyloplast Weir Structure	EA	1	\$23,200.00	\$23,200.00
3.04	Furnish & Install Control Structure	EA	1	\$17,400.00	\$17,400.00
3.05	Furnish & Install FDOT Type 9 Curb Inlet	EA	11	\$8,100.00	\$89,100.00
3.06	Removal/Rerouting of Existing Utilities	LS	1	\$40,000.00	\$40,000.00
<b>4.00</b>	<b>Pump-Assisted Injection Well</b>				
4.01	Furnish & Install Pump-Assisted Injection Well System	LS	1	\$986,500.00	\$986,500.00
4.02	Furnish & Install Concrete Platform	LS	1	\$115,000.00	\$115,000.00
4.03	Furnish & Install Electrical Service and Equipment	LS	1	\$80,800.00	\$80,800.00
4.04	Furnish & Install Fencing	LS	1	\$46,305.00	\$46,305.00
4.05	Furnish & Install Landscaping	LS	1	\$27,000.00	\$27,000.00
<b>5.00</b>	<b>Roadway, Sidewalks &amp; Curb</b>				
5.01	Removal of Existing Asphalt & Rework Existing Base	LS	1	\$469,629.00	\$469,629.00
5.02	Granular Stabilization - #57 Stone	CY	575	\$135.00	\$77,625.00
5.03	Base Group 6 - Limerock	CY	635	\$170.00	\$107,950.00
5.04	Superpave Asphalt Concrete, Type SP-9.5	SY	9441	\$21.00	\$198,261.00

5.05	Superpave Asphalt Concrete, Type SP-12.5	SY	7751	\$31.00	\$240,281.00
5.06	Concrete Sidewalk (4" Thick, Sta 4+00 to Sombrero Beach Rd)	SY	1540	\$108.00	\$166,320.00
5.07	Concrete Curb & Gutter, Type F	LF	2440	\$44.00	\$107,360.00
5.08	Thermoplastic Striping	LS	1	\$40,000.00	\$40,000.00
5.09	Density Testing	LS	1	\$25,000.00	\$25,000.00
5.10	Record Drawings	LS	1	\$32,500.00	\$32,500.00
	<b>Total Base Bid =</b>				\$4,663,656.00
<b>6.00</b>	<b>Bid Alternate #1</b>				
6.01	Clean Existing 18" Perforated Storm Pipe	LS	1	\$13,500.00	\$13,500.00
6.02	Superpave Asphalt Concrete, Type SP-9.5	SY	1155	\$28.00	\$32,340.00
6.03	Thermoplastic Striping	LS	1	\$17,000.00	\$17,000.00
	<b>Total Bid Alternate #1 =</b>				\$62,840.00
<b>7.00</b>	<b>Bid Alternate #2</b>				
7.01	Furnish & Install Backup Generator	LS	1	\$144,000.00	\$144,000.00
	<b>Total Bid Alternate #2 =</b>				\$144,000.00
<b>TOTAL LUMP SUM BID (Total of Above Items) =</b>					\$4,870,496.00

TOTAL BID FOUR MILLION EIGHT HUNDRED SEVENTY THOUSAND FOUR HUNDRED NINETY SIX Dollars  
(insert price using words)



1. Bidder will complete the work in accordance with the Contract Documents for the Total Base Bid itemized above.

SUBMITTED on \_\_\_\_\_ 11/25, 2024.

State Contractor License No. CGC 1518488. (If applicable.)

If Bidder is:

**An Individual**

Name (typed or printed): \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
*(Individual's Signature)*

Doing business as: \_\_\_\_\_

Business address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

**A Partnership**

Partnership Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
*(Signature of general partner -- attach evidence of authority to sign)*

Name (typed or printed): \_\_\_\_\_

Business address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

**A Corporation**

Corporation Name: Charley Toppino & Sons, Inc. (SEAL)

State of Incorporation: FL

Type (General Business, Professional, Service, Limited Liability): General Contractor

By: Andrew Toppino  
*(Signature -- attach evidence of authority to sign)*

Name (typed or printed): Andrew Toppino

Title: Vice President

(CORPORATE SEAL)

Attest \_\_\_\_\_  
*(Signature of Corporate Secretary)*

Business address: 129 Toppino Industrial Drive, Key West, FL 33040

Phone No.: 305-296-5606 FAX No.: \_\_\_\_\_

Date of Qualification to do business is 9/2/1984.

End of Section

**AGREEMENT BETWEEN  
THE CITY OF MARATHON  
AND  
CHARLEY TOPPINO & SONS, INC.  
For**

**SOMBRERO BOULEVARD DRAINAGE IMPROVEMENTS 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 Charley Toppino & Sons, Inc., (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 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 **(335)** 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 **(365)** 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 **(\$1,000.00)** 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 **(\$1,000.00)** 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.

### **E-VERIFY**

**E-Verify System** - Beginning January 1, 2021, in accordance with F.S. 448.095, the Contractor and any subcontractor shall register with and shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees hired by the Contractor during the term

of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees hired by the subcontractor during the Contract term. Any subcontractor shall provide an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor shall comply with and be subject to the provisions of F.S. 448.095

14. **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:           George Garrett  
                              City Manager  
                              City of Marathon, Florida  
                              9805 Overseas Highway  
                              Marathon, Florida 33050

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

For The Contractor:

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.

(b)

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:

CITY OF MARATHON

for: Hilary H. Palmer  
Diane Clavier, City Clerk

By: George Garrett  
George Garrett, City Manager  
Date: 12/16/24

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

Steve Williams  
Steve Williams, City Attorney

CONTRACTOR  
By: Richard Laffoon  
Date: 12/16/24