Sponsored by: Williams

CITY OF MARATHON, FLORIDA
RESOLUTION 2026-55

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A CONTRACT WITH CHARLEY TOPPINO AND SONS, INC. FOR CONSTRUCTION OF THE SERVICE AREA 5 WWTP EFFLUENT DISPOSAL UPGRADES IN AN AMOUNT NOT TO EXCEED $634,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, one proposal was received and the proposal submitted by Charley Toppino and Sons, Inc. was determined to be responsive and responsible, with a proposed contract amount of $634,000.00 and;

WHEREAS, the City wishes to move forward with the Service Area 5 Effluent Disposal Upgrade Project as it is critical to avoid unpermitted discharges and to remain in compliance with our FDEP permits;

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 Service Area 5 Effluent Disposal Upgrades Project with Charley Toppino and Sons, Inc. in an amount not to exceed $634,000.00

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 9th DAY OF JUNE 2026.

THE CITY OF MARATHON, FLORIDA

Mayor Lynny Del Gaizo

AYES: Still, Landry, Matlock, Struyf, Del Gaizo
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:

Diane Clavier

Diane Clavier, City Clerk

(City Seal)

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

Steve Williams, City Attorney

#205661 v1

APEX

MEMORANDUM

Date: May 29th, 2026
To: Dan Saus, Utilities Director
From: Steve Suggs, P.E.

Subject: Recommendation of Award – Area 5 WWTP Effluent Disposal Upgrades Project

The City of Marathon published an Invitation to Bid (ITB) for construction of the Area 5 WWTP Effluent Disposal Upgrades Project. The project generally consists of the installation of two new 17.4-inch diameter SDR17 effluent disposal wells at the City of Marathon Area 5 Wastewater Treatment Plant, including associated piping, wellheads, concrete well pads, testing, permitting, and abandonment of the existing effluent disposal wells. The work also includes installation of approximately 81 linear feet of 12-inch HDPE piping and 19 linear feet of 12-inch ductile iron piping, construction of 316 stainless steel wellheads, and submission of all required Florida Department of Environmental Protection (FDEP) documentation for certification of the new disposal wells and abandonment of the existing wells.

One bid was received and evaluated for responsiveness and responsibility in accordance with the requirements of the ITB. A summary of the bid received is provided below:

Bidder	Bid Price	Responsive/Responsible
Charley Toppino & Sons, Inc.	$634,000.00	Yes

Based on the proposal submitted and the review of the bid documents, it is recommended that the City of Marathon award the contract for the Area 5 WWTP Effluent Disposal Upgrades Project to **Charley Toppino & Sons, Inc.** in the amount of **$634,000.00.**

This recommendation is contingent upon receipt and approval of all required bonds, insurance certificates, and execution of contract documents.

Attached to this memorandum are the Notice of Award and Construction Contract for City Council consideration.

SECTION 00670
NOTICE OF AWARD

Dated: June 9, 2026

TO: Charley Toppino ons Inc.
(CONTRACTOR)

ADDRESS: 29 Toppino ndustrial Dri e
ey West lorida 4

OWNER'S PROJECT NO.: _____

PROJECT: Area 5 WWTP Effluent Disposal Upgrades Project

OWNER'S CONTRACT NO.: _____

CONTRACT FOR: Area 5 WWTP Effluent Disposal Upgrades Project

You are notified that your Bid dated May 28th, 2026 for the above Contract has been considered. You are the selected successful Bidder and have been awarded the contract for

All work as specified in the Contract Documents.

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

The Contract Price of your contract is i undred Thirty our Thousand Dollars ($6 4).

Three copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award. Three sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within fifteen days of the date of this Notice of Award, that is by June 24th, 2026 .

1. You must deliver to the OWNER three fully executed counterparts of the Agreement including all the Contract Documents. This includes the triplicate sets of Drawings. Each of the Contract Documents must bear your signature on (the cover) (every) page.

2. You must deliver with the executed Agreement the Contract Security (Bonds) as specified in the Instructions to Bidders and General Conditions.

3. You must deliver to the City certified copies of the payment bond and the performance bond establishing that the bonds have been recorded with the county clerk.

4. (List other conditions precedent).
None.

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

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

City of Marathon, Stan T. William

(OWNER)

By H. T. Will

(AUTHORIZED SIGNATURE)

Interim City Manager

(TITLE)

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

END OF SECTION

SECTION 00500
CONSTRUCTION CONTRACT

This Contract (the "Contract") is dated as of the 9th day of June 2026 by and between the City of Marathon (hereinafter called the "CITY") and Charley Toppino & Sons, Inc. (hereinafter called "CONTRACTOR") located at:

129 Toppino Industrial Drive

Key West, Florida 33040

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

ARTICLE 1. WORK

1.1 Project/Work: CONTRACTOR shall complete all Work as specified or indicated in the plans, Contract Documents and detailed in **Exhibit "A."** The Work is generally described as the following: **Area 5 WWTP Effluent Disposal Upgrades Project**-The City of Marathon is installing two new 17.4" diameter SDR17 effluent disposal wells, each with solid casing to 60' below land surface ("BLS") followed with slotted casing to a minimum of 90' BLS. These wells will be installed at the City of Marathon Area 5 WWTP located at 506 106th Street Gulfside. The scope of work also includes the installation of approximately 81 linear feet of 12" HDPE DR 11 piping and 19 linear feet of 12" DIP (ductile iron piping) to connect the wells to the effluent discharge. The wellheads will be constructed of 316 stainless steel. The piping work includes all materials needed to install the piping including fittings, pipe stands and mechanical components of the wellheads. Each well requires a concrete well pad as shown in the drawings. All labor and materials needed for the concrete work is included in the scope of work After the new effluent disposal wells have been installed and tested, the Contractor is responsible for the proper abandonment of the three existing effluent disposal wells. In addition to performing the scope of work, the Contractor will be responsible for submitting all FDEP applications to certify completion of the installation and testing of the new disposal wells as well as the proper abandonment of the existing wells in accordance with FDEP requirements, including recording the abandonment at the Monroe County Courthouse. Refer to Section 00300 Bid Form, Technical Specifications, and Construction Drawings for further details.

ARTICLE 2. CITY'S REPRESENTATIVE, ARCHITECT AND ENGINEER

2.1 It is understood that the CITY will designate a representative for the Work. The CITY'S REPRESENTATIVE referred to in any of the Contract Documents designated herein is Dan Saus, Utilities Director, 9805 Overseas Highway, Marathon Florida 33050.

2.2 The CITY'S ENGINEER OF RECORD referred to in any of the Contract Documents designated herein is The Weiler Engineering Corporation/An Apex Co.

ARTICLE 3. TERM

3.1 Contract Term. The Work shall be substantially completed within One Hundred Twenty (120) calendar days after the date specified in the Notice to Proceed ("Substantial

Completion"), and fully completed and ready for final payment in accordance with the Contract Document within One Hundred Fifty (150) calendar days after the date specified in the Notice to Proceed ("Final Completion").

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

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

3.4 Liquidated Damages. CITY and CONTRACTOR recognize that time is of the essence in this Contract and that the CITY will suffer financial loss if the Work is not completed within the contract times specified in Section 3.1 for the Work above, plus any approved extensions thereof allowed in accordance with the General Conditions. The CONTRACTOR also recognizes that the damages which the City will incur if the Work is not substantially completed on time and/or fully completed on time are not readily ascertainable at the time this Agreement is entered into, and the Contractor recognizes the difficulties involved in proving the actual loss suffered by CITY if the Work is not substantially completed on time and/or fully completed on time. Accordingly, instead of requiring any such proof, CITY and CONTRACTOR agree that as liquidated damages to compensate the City and not as a penalty for delay or as an incentive to complete on time, CONTRACTOR shall pay CITY ($1000.00) for each calendar day that expires after the time specified in Section 3.1 for Substantial Completion of the Work. After Substantial Completion, if CONTRACTOR fails to fully complete the Work within the time specified in Section 3.1 for completion and readiness for final payment or any proper extension thereof granted by CITY, CONTRACTOR shall pay CITY ($1000.00) for each calendar day that expires after the time specified in Section 3.1 for full completion and readiness for final payment. Contractor agrees that the liquidated damage amounts specified in the Contract Documents bear a reasonable relationship to the actual damages to be suffered due to public inconvenience and damage to the City's reputation if the Contractor fails to substantially complete and/or fully complete the Work on time. The liquidated damages are not in compensation for any other damages, and expressly exclude damages for completion contractor expenses, lost/unrealized revenue, financing costs, professional services, attorney fees, and/or additional City staffing that may be incurred if the work is not substantially completed on time and/or fully completed on time. All liquidated damages amounts will continue to be charged if the Contractor abandons the Work, or is terminated, and the Work is completed by another party.

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

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

ARTICLE 4. CONTRACT PRICE

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

4.1.1 This Agreement is a Lump Sum agreement. Estimated quantities, as listed in the bid form, are provided solely to assist the contractor, and determination of actual quantities and classification are to be verified by CONTRACTOR prior to submittal of the bid as provided in the Contract Documents. The Work will be treated as Lump Sum regardless of the quantities and unit prices for each pay item.

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

ARTICLE 5. PAYMENT PROCEDURES

5.1 CONTRACTOR shall submit Applications for Payment in accordance with Section 00700 - General Conditions, Article 14, Payments to Contractor and Completion. Applications for Payment will be processed by CITY as provided in the General Conditions.

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

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

5.2.2 No progress payment shall be made until CONTRACTOR delivers to CITY complete original partial releases and waivers of all liens and claims signed by all Subcontractors, materialmen, suppliers, and vendors, indicating receipt of partial payment due each for work performed since last progress payment. The partial release shall be accompanied by an affidavit stating that, so far as CONTRACTOR has knowledge or information, the releases include and cover all Materials and Work for which a lien or claim could be filed for work completed to date. The form of the partial release and waiver of lien and affidavit specified herein shall be approved by the CITY.

5.3 The CONTRACTOR agrees that five percent (5%) of the amount due for Work as set forth in each Application for Payment shall be retained by CITY for each Progress Payment

until Final Payment, as defined in Section 00700 - General Conditions, Article 14, Payments to Contractor and Completion.

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

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

5.5 The Final Application for Payment by CONTRACTOR shall not be made until the CONTRACTOR delivers to the City complete original final releases of all liens and claims signed by all Subcontractors, materialmen, suppliers, and vendors on a form approved by the CITY, and an affidavit that so far as the CONTRACTOR has knowledge or information, the releases include and cover all Materials and Work for which a lien or claim could be filed. The CONTRACTOR may, if any Subcontractor, materialmen, supplier, or vendor refuses to furnish the required Final Waiver of Lien, furnish a bond satisfactory to City to defend and indemnify City and any other property owner, person or entity City may be required to indemnify against any lien or claim.

ARTICLE 6. INSURANCE/INDEMNIFICATION.

6.1 Insurance. The CONTRACTOR shall secure and maintain throughout the duration of this Contract, insurance of such type and in such amounts necessary to protect its interest and the interest of the CITY against hazards or risks of loss as specified in the General Conditions of the Contract Documents.

6.2 Indemnification. The CONTRACTOR shall indemnify, defend and hold harmless the CITY, their officials, agents, employees, and volunteers from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of this Contract and as set forth in General Conditions of the Contract Documents.

6.3 This indemnification shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity.

ARTICLE 7. CONTRACTOR'S REPRESENTATIONS.

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

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

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

7.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work. Contractor shall abide with all conditions in attached Attachment A

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

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

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

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

7.8 The CONTRACTOR warrants the following:

7.8.1 Equal Employment: During the performance of this contract, the CONTRACTOR agrees as follows:

a. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms

of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

b. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c. The CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONTRACTOR's legal duty to furnish information.

d. In the event of the CONTRACTOR's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

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

Contract Price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

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

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

ARTICLE 8. CONTRACT DOCUMENTS.

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

8.1.1 Change Orders.

8.1.2 Field Orders.

8.1.3 Contract for Construction.

8.1.4 Exhibits to this Contract.

8.1.5 General Conditions.

8.1.6 Any federal, state, county or city permits for the Project.

8.1.7 Specifications bearing the title: Specifications for Area 5 WWTP Effluent Disposal Upgrades Project.

8.1.8 Drawings consisting of a cover sheet and inclusive of all sheets bearing the following general titles: Area 5 WWTP Effluent Disposal Upgrades Project.

8.1.9 Bid Documents, including but not limited to: Addendum, Invitation to Bid, Instructions to Bidders, Bid Form provided by CONTRACTOR, Notice of Award and Notice to Proceed, and all other provisions and sections of the Bid Documents.

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

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

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

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

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

ARTICLE 9. MISCELLANEOUS.

9.1 Terms used in this Contract which are defined in Article 1 of the General Conditions, Section 00700, will have the meanings indicated in the General Conditions. Terms used in Article 1 of the Instructions to Bidders, Section 00200, also apply to this Contract.

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

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

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

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

9.6 Access to Public Records. The CONTRACTOR shall comply with the applicable provisions of Chapter 119, Florida Statutes.

9.6.1 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. The Records are not intended or represented to be suitable for use, partial use, or reuse by the City or others on extensions of this project or on any other project. Any such use, reuse, or modifications made by the City to any of Consultant's Records will be at City's sole risk and without liability to Consultant, and City shall, to the extent allowable by Florida law, and subject to Section 768.28, Florida Statute, and all monetary limits listed therein, indemnify, defend and hold Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom.

9.6.2 The "CONTRACTOR" as defined by Section 119.0701(1)(a), Florida Statutes, shall comply with the public records provisions of Chapter 119, Florida Statutes, including the following:

a. Keep and maintain public records required by the City to perform the service.

b. 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.

c. 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 CONTRACTOR does not transfer the records to the City.

d. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the CONTRACTOR or keep and maintain public records required by the City to perform the service. If the CONTRACTOR transfers all public records to the City upon completion of the contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the contract, the CONTRACTOR 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.

9.6.3 "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.

9.6.4 Should the CONTRACTOR 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 CONTRACTOR.

9.6.5 The CONTRACTOR consents to the City's enforcement of the CONTRACTOR's Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the CONTRACTOR shall pay all court costs and reasonable

attorney's fees incurred by the City.

9.6.6 The CONTRACTOR'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 CONTRACTOR shall be grounds for immediate unilateral cancellation of this Agreement by the City.

9.6.7 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, Diane Clavier, at 305-289-5020, clavierd@ci.marathon.fl.us, or 9805 Overseas Hwy, Marathon, Florida 33050.

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

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

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

FOR CONTRACTOR:

Charley Toppino & Sons, Inc.
129 Toppino Industrial Drive
Key West, Florida 33040

FOR CITY:

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

WITH COPY TO:

City Attorney
9805 Overseas Highway
Marathon, Florida 33050
Phone: 305-289-4103
Fax: 305-289-4123

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

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

9.12 Amendments. This Contract may only be amended by the prior written approval of the parties or by execution of a Change Order in the form as provided by the City.

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract on the respective dates under each signature: THE CITY OF MARATHON, FLORIDA, signing by and through its Mayor or Vice Mayor, authorized to execute same by Council action on the 9th day of June, 2026, and by Charley Toppino & Sons, Inc. (Contractor), signing by and through its ___,duly authorized to same. execute

CONTRACTOR

WITNESS

By: _____

By: _____
(Signature and Title)
(Corporate Seal)

_____
(Type Name/Title signed above)

_____ day of _____, 20___

By: Charley Toppino & Sons, Inc.
129 Toppino Industrial Drive
Key West, Florida 33040

CITY

ATTEST

_____
City Clerk

_____ day of _____, 20___.

CITY OF MARATHON, FLORIDA

_____,
City Manager

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

By: _____
City Attorney

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

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, Richard Toppino, certify that I am the President of Charley Toppino & Sons, Inc. and that Richard Toppino (Self), who signed the Bid with the City of Marathon, Monroe County, Florida for Area 5 WWTP Effluent Disposal Upgrades Project, is President of said Corporation with full authority to sign said Bid on behalf of the Corporation.

Signed and sealed this 29 day of May, 2026

(SEAL) _____
Signature

Richard Toppino, President
Typed w/Title

STATE OF FLORIDA
COUNTY OF Monroe

SWORN TO AND SUBSCRIBED before me this 29 day of May, 2026

My Commission Expires:

_____
Notary Public

Notary Public State of Florida
Michael Labrada
My Commission HH 679465
Expires 6/19/2029

CERTIFICATE AS TO AUTHORIZED CORPORATE PERSONNEL

I, Richard Toppino, certify that I am the President of Charley Toppino & Sons, Inc., who signed the Bid with the City of Marathon, Monroe County, Florida, for the project titled Area 5 WWTP Effluent Disposal Upgrades Project, and that the following persons have the authority to sign payment requests on behalf of the Corporation:

John Toppino, Secretary
(Signature) (Typed Name w/Title)

(Signature) (Typed Name w/Title)

(Signature) (Typed Name w/Title)

Signed and sealed this 29 day of May, 2026.

(SEAL)

Signature

Richard Toppino, President
Typed w/Title

STATE OF FLORIDA
COUNTY OF MONROE

SWORN TO AND SUBSCRIBED before me this 29 day of May, 2026.

My Commission Expires:

Notary Public

Notary Public State of Florida
Michael Labrada
My Commission HH 679465
Expires 6/19/2029