

COUNCIL AGENDA STATEMENT



Meeting Date: January 9, 2024  
To: Honorable Mayor & Members of the City Council  
From: Dan Saus, Utilities Director  
Through: George Garrett, City Manager

Agenda Item: **Resolution 2024-06**, Approving Change Order #2 to the contract with Tropical Underground in An Amount Not to Exceed \$44,174.91 for the agreement with Fairfield Inn to replant landscaping that was removed for the Lift station; Authorizing the City Manager to Execute The Contract And Appropriate Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.

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BACKGROUND & JUSTIFICATION:

City staff made an agreement with Fairfield Inn to replant landscaping that was removed as part of the lift station project as Fairfield allowed us to use their property fir the installation. The cost for this includes supply and installation of a bismarck palms, crinum lilies, red copper leaves, silver buttonwoods, ornamental grass, green island ficus, St. Augustine SOD, top soil, removal and disposal of existing damaged material, irrigation modification, pick up and delivery of field grown palm and small plant material, and heavy equipment rental and delivery. This returns the area to as close to pre-project status as possible.

Staff recommends approval of Change Order #2 to the contract for Tropical Underground for the additional work described in the change order in an amount not to exceed \$44,174.91.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	<u>X</u>	_____
2. Other – 2010 Sewer Mandate	<u>X</u>	_____
3. Not applicable	<u>X</u>	_____

FISCAL NOTE:

The FY24 adopted Wastewater Utility budget includes appropriations of \$15,211,543 for wastewater capital improvements.

RECOMMENDATION: Approval of Resolution.

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2024-06**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING CHANGE ORDER #2 TO THE CONTRACT WITH TROPICAL UNDERGROUND IN AN AMOUNT NOT TO EXCEED \$44,174.91 FOR THE AGREEMENT WITH FAIRFIELD INN TO REPLANT LANDSCAPING THAT WAS REMOVED FOR THE LIFT STATION; 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 Fairfield Lift Station Project was competitively bid on March 16, 2023, and bids received until May 20, 2023, and,

**WHEREAS**, the lowest responsive and responsible bid was received by Tropical Underground In an amount not to exceed \$375,555.75.00 and approved by Council,

**WHEREAS**, the Staff now recommends the City Council to approve Change Order #2 for the additional work described to the proposal from Tropical Underground, in an amount not to exceed \$44,174.91, as provided on Exhibit “2”,

**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 9<sup>TH</sup> DAY OF JANUARY 2024.**

**THE CITY OF MARATHON, FLORIDA**

\_\_\_\_\_  
**Robin Still, Mayor**

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

**ATTEST:**

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Diane Clavier, City Clerk

(City Seal)

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

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Steve Williams, City Attorney

**EXHIBIT "C"  
CHANGE ORDER**

**CHANGE ORDER NO. 2**

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**TO: City of Marathon**

**PROJECT: City of Marathon Fairfield Inn Lift Station**

**CONTRACTOR: Tropical Underground Contracting, LLC**

**DATE: 28 November 2023**

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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 \$407,444.75 under the Agreement will be **changed** by this Change Order, and (b) the schedule for performance of Work will be **changed** by this Change Order. Contractor expressly waives any claims for any additional compensation, damages or time extensions in connection with the above-referenced changes. Except as herein or heretofore expressly modified, all terms of the Agreement shall remain in full force and effect and shall cover the performance of, and payment for, any work authorized hereunder. Any defined terms not defined in this Change Order shall have the meanings set forth in the Agreement.

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

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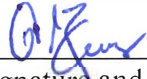
**CONSENT OF SURETY TO CHANGE ORDER**


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.




Old Republic Surety Company

Surety's Name and Corporate Seal

By:   
Signature and Title Angelo G Zervos, Attorney-In-Fact  
City of Marathon

Attest:   
Signature and Title Account Manager  
**Contractor** Tropical Underground Contracting, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By:   
Name: Matthew Giannetti  
Title: C.F.O.

The Change Order is a result of: City obligation and agreement with Fairfield Inn to replant landscaping that was removed as part of the project. The cost for this includes supply and installation of a bismarck palm, crinum lilies, red copper leaves, silver buttonwoods, ornamental grass, green island ficus, St. Augustine SOD, top soil, removal and disposal of existing damaged material, irrigation modification, pick up and delivery of field grown palm and small plant material, and heavy equipment rental and delivery.

The cost breakdown is as follows:

Addition of (1) Field Grown Bismarck Palm (8' CT)	\$5,249.15
Addition of (5) 15-Gallon Crinum Lily	\$684.17
Addition of (40) 7-Gallon Red Copper Leaf	\$2,230.10
Addition of (15) 7-Gallon Silver Buttonwood	\$836.29
Addition of (30) 3-Gallon Ornamental Grass	\$510.13
Addition of (55) 3-Gallon Green Island Ficus	\$1,062.35
(1) St. Augustine SOD Truckload (16 Pallets & Delivery)	\$9,260.74
(1) Top Soil Truckload	\$3,327.73
Existing Damaged Material Removal & Disposal	\$452.84
Irrigation Modification Allowance	\$1,132.08
Pick Up & Delivery of Field Grown Palm & Small Plant Material	\$2,311.20
Heavy Equipment Rental (Backhoe Loader)	\$658.69
Heavy Equipment Rental Delivery (Pick Up & Drop Off)	\$693.36
10% Contractual Markup Per General Conditions 10.5.3	\$2,840.88
Additional Bonding	\$938.00
Foreman & Service Truck for Two Weeks	\$11,987.20
<b>TOTAL</b>	<b>\$44,174.91</b>

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 \$ 375,555.75
- (2) Current Contract Price (Adjusted by Previous Change Orders) \$ 407,444.75
- (3) Total Proposed Change in Contract Price \$ 44,174.91
- (4) New Contract Price (Item 2 + Item 3) \$ 451,619.66
- (5) Original Contract Time (Days) 270 Days
- (6) Current Contract Time (Adjusted by Previous Change Orders) 270 Days
- (7) Total Proposed Change in Contract Time 45 Days
- (8) New Contract Time (Item 6 + Item 7) 315 Days
- (9) Original Contract Substantial Completion Date December 17<sup>th</sup>, 2023
- (10) New Contract Substantial Completion Date January 31<sup>st</sup>, 2024

CHANGE ORDER HISTORY						
Item No.	Description	Current Contract Amount	Additive Change	Deductive Change	Net Change Contract Price	Net Change Contract Time
I.	CO #1	\$375,555.75	\$31,889.00	\$0.00	\$31,889.00	0
II.	CO #2	\$407,444.75	\$44,174.91	\$0.00	\$44,174.91	45 days
Total					<b>\$76,063.91</b>	45 days



POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That OLD REPUBLIC SURETY COMPANY, a Wisconsin stock insurance corporation, does make, constitute and appoint: GUS E. ZERVOS, STEPHEN M. ZERVOS, ANGELO G. ZERVOS, MICHAEL G. ZERVOS, DONALD W. BURDEN of SOUTHFIELD, MI

its true and lawful Attorney(s)-in-Fact, with full power and authority for and on behalf of the company as surety, to execute and deliver and affix the seal of the company thereto (if a seal is required), bonds, undertakings, recognizances or other written obligations in the nature thereof, (other than bail bonds, bank depository bonds, mortgage deficiency bonds, mortgage guaranty bonds, guarantees of installment paper and note guaranty bonds, self-insurance workers compensation bonds guaranteeing payment of benefits, or black lung bonds), as follows:

ALL WRITTEN INSTRUMENTS

and to bind OLD REPUBLIC SURETY COMPANY thereby, and all of the acts of said Attorneys-in-Fact, pursuant to these presents, are ratified and confirmed. This appointment is made under and by authority of the board of directors at a special meeting held on February 18, 1982.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the board of directors of the OLD REPUBLIC SURETY COMPANY on February 18, 1982.

RESOLVED that, the president, any vice-president or assistant vice president, in conjunction with the secretary or any assistant secretary, may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and on behalf of the company to execute and deliver and affix the seal of the company to bonds, undertakings, recognizances, and suretyship obligations of all kinds; and said officers may remove any such attorney-in-fact or agent and revoke any Power of Attorney previously granted to such person.

RESOLVED FURTHER, that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the Company

- (i) when signed by the president, any vice president or assistant vice president, and attested and sealed (if a seal be required) by any secretary or assistant secretary; or
(ii) when signed by the president, any vice president or assistant vice president, secretary or assistant secretary, and countersigned and sealed (if a seal be required) by a duly authorized attorney-in-fact or agent; or
(iii) when duly executed and sealed (if a seal be required) by one or more attorneys-in-fact or agents pursuant to and within the limits of the authority evidenced by the Power of Attorney issued by the company to such person or persons.

RESOLVED FURTHER that the signature of any authorized officer and the seal of the company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the company; and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, OLD REPUBLIC SURETY COMPANY has caused these presents to be signed by its proper officer, and its corporate seal to be affixed this 21st day of October 2022

Karen J. Haffner signature

Assistant Secretary



OLD REPUBLIC SURETY COMPANY

Alan Pavlic signature

President

STATE OF WISCONSIN, COUNTY OF WAUKESHA - SS

On this 21st day of October 2022, personally came before me, Alan Pavlic and Karen J Haffner, to me known to be the individuals and officers of the OLD REPUBLIC SURETY COMPANY who executed the above instrument, and they each acknowledged the execution of the same, and being by me duly sworn, did severally depose and say: that they are the said officers of the corporation aforesaid, and that the seal affixed to the above instrument is the seal of the corporation, and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority of the board of directors of said corporation.



Kathryn R. Pearson signature

Notary Public

My Commission Expires: September 28, 2026

(Expiration of notary's commission does not invalidate this instrument)

CERTIFICATE

I, the undersigned, assistant secretary of the OLD REPUBLIC SURETY COMPANY, a Wisconsin corporation, CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore, that the Resolutions of the board of directors set forth in the Power of Attorney, are now in force.



46-5195

Signed and sealed at the City of Brookfield, WI this 7th day of December 2023

Karen J. Haffner signature

Assistant Secretary

ORSC 22262 (3-06)

ZERVOS GROUP, INC.