

RESOLUTION NO. 18-014

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, RATIFYING AN ADDENDUM TO THE GENERAL UTILITIES SERVICES CONTRACT FOR CHARLEY TOPPINO AND SONS, INC. (CTS) TO INCORPORATE FEDERAL CONTRACTING CLAUSES REQUIRED FOR FEMA REIMBURSEMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE ANY NECESSARY DOCUMENTS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution No. 15-292, the City Commission approved a three-year General Utilities contract with Charley Toppino & Sons, Inc.; and

WHEREAS, Hurricane Irma caused significant damage to the City of Key West on and around September 10, 2017, necessitating emergency repairs to beaches, shoreline, stormwater outfalls, and other public areas; and

WHEREAS, to expedite essential repairs, the City Manager acted without delay, executing with CTS, an addendum to the City's contract with CTS, to implement certain required clauses for the City to request reimbursement from FEMA for damage caused by Hurricane Irma; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached Addendum to General Utilities Service Contract between the City and Charley Toppino and Sons,

Inc. is hereby ratified, incorporating certain Federal Contracting
Clauses required for FEMA reimbursement.

Section 2: That the City Manager is authorized to execute
any related documents, upon consent of the City Attorney.

Section 3: That this Resolution shall go into effect
immediately upon its passage and adoption and authentication by
the signature of the presiding officer and the Clerk of the
Commission.

Passed and adopted by the City Commission at a meeting held
this 3rd day of January, 2018.

Authenticated by the Presiding Officer and Clerk of the
Commission on 4th day of January, 2018.

Filed with the Clerk on January 4, 2018.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Clayton Lopez	<u>Yes</u>
Commissioner Sam Kaufman	<u>Yes</u>
Commissioner Richard Payne	<u>Yes</u>
Commissioner Margaret Romero	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

MEMORANDUM

TO: Jim Scholl, City Manager
Greg Veliz, Assistant City Manager

FROM: John Paul Castro, Utilities Director

DATE: December 11, 2017

SUBJECT: Ratifying an Addendum to General Utilities Services Contract for Charley Toppino and Sons, Inc. to Incorporate Federal Contracting Clauses Required for FEMA Reimbursement

Action Statement:

This resolution will ratify an addendum to Charley Toppino and Sons, Inc. General Utilities Services Contract to incorporate federal contracting clauses that will allow the City to request reimbursement from FEMA.

Background:

Hurricane Irma made landfall in the Lower Keys on September 10, 2017 as a Category 4 Hurricane causing significant erosion and rip rap damage to Simonton St. Beach. To assist in getting the City back to a functioning tourist destination and repair the beach before the November boat races the City requested a task order from Charley Toppino and Sons, Inc. (CTS) to repair the beach and shoreline protection.

The week prior to the boat races CTS completed the work on the beach repairing the erosion and rip rap around the City stormwater outfall.

Purpose and Justification:

Prior to execution of the repairs the addendum was executed by the City Manager and CTS to implement the required clauses for the City to request reimbursement from FEMA for the damage caused by Hurricane Irma.

Addendums to contracts must be approved by the City Commission but there was no lead time to allow prior approval to finish the project prior to the boat races. Ratification of the City Managers execution of the contract addendum is required.

Financial Impact:

There is no financial impact to ratifying the contract addendum to the General Utilities Services Contract.

Key to the Caribbean – Average yearly temperature 77° F.

Recommendation:

City Staff recommends ratifying the addendum to the Charley Toppino and Sons, Inc. General Utilities Services contract to incorporate Federal Contracting Clauses required for FEMA reimbursement.



THE CITY OF KEY WEST
1300 White Street Key West, FL 33040

**ADDENDUM TO GENERAL UTILITIES SERVICES CONTRACT
AGREEMENT**

THIS ADDENDUM TO GENERAL UTILITIES SERVICES CONTRACT AGREEMENT dated December 21, 2017 by Resolution 15-292 is made by and between the CITY OF KEY WEST, FLORIDA, a Florida municipal corporation, with a physical address of 1300 White Street, Key West, Florida 33040, hereinafter referred to as "CITY" and Charley Toppino and Sons Inc, (Toppino's) a Florida corporation, with an address of Post Office Box 787 Key West, FL, 33041, hereinafter referred to as "CONTRACTOR".

WHEREAS, on September 10, 2017, Hurricane Irma made landfall in the Florida Keys, causing severe flooding and significant wind damage; leaving the CITY littered with debris; creating a public safety hazard; and, Federal regulations apply to all of the CITY of Key West contracts using Federal funds as a source for the solicitation of goods and services.

This Addendum to the existing General Utilities Services Contract Agreement between the City and Toppino's hereby modifies the agreement to incorporate Federal contracting requirements to facilitate Federal Emergency Management Agency (FEMA) reimbursement for Hurricane Irma related repairs.

FEDERAL REQUIREMENTS

The following Federal requirements are incorporated by this Addendum for FEMA reimbursable work.

- a. **ACCESS BY THE GRANTEE, SUBGRANTEE, FEDERAL GRANTOR AGENCY AND COMPTROLLER GENERAL:** The CONTRACTOR shall allow access by the grantee, subgrantee, Federal grantor agency and Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions.
- b. **COPYRIGHTS:** The Grantee is free to copyright original work developed in the course of or under the agreement. FEMA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes. Publication resulting from work performed under this agreement shall include an acknowledgement of FEMA financial support, by granted number, and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA views.
- c. **DISADVANTAGED BUSINESS ENTERPRISES (DBE) CONTRACTORS:** The CONTRACTOR agrees to ensure that Disadvantage Business Enterprises as defined in 49 C.F.R. Part 23, as amended, have the maximum opportunity to participate in the performance of contracts and this agreement. In this regard, CONTRACTOR shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 23, as amended, to

ensure that the Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. The CONTRACTOR shall not discriminate on the basis of race, color, national origin or sex in the award and performance of federal assisted contracts.

- d. **ENERGY POLICY AND CONSERVATION ACT:** The CONTRACTOR shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).
- e. **EQUAL EMPLOYMENT OPPORTUNITY:** During the performance of this contract, the CONTRACTOR agrees as follows:
 - i. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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, 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 setting forth the provisions of this nondiscrimination clause.
 - ii. 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 considerations for employment without regard to race, color, religion, sex, or national origin.
 - iii. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - iv. The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - v. The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- vi. In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this contract or with any of the said 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 or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as 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.
 - vii. The CONTRACTOR will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.
 - viii. CONTRACTOR shall:
 1. Place qualified small and minority businesses and women's business enterprises on solicitation lists.
 2. Assure that small and minority businesses and women's business enterprises are solicited whenever they are potential sources.
 3. Divide work, when economically feasible, into smaller tasks to permit maximum participation by small and minority businesses, and women's business enterprises.
 4. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
 5. Provide documentation of compliance with 1-4 above.
- f. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT COMPLIANCE**
- i. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- ii. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- iii. Withholding for unpaid wages and liquidated damages. The Federal Emergency Management Agency (FEMA) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- iv. Subcontracts. The CONTRACTOR Or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

g. CLEAN AIR ACT

- i. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The contractor agrees to report each violation to the City of Key West and understands and agrees that the City of Key West will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

h. FEDERAL WATER POLLUTION CONTROL ACT

- i. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

The contractor agrees to report each violation to the City of Key West and understands and agrees that the City of Key West will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA."

i. DEBARMENT AND SUSPENSION:

- i. This contract is a covered transaction for purposes of 2 C.F.R. pt.180 and 2 C.F.R. pt. 3000. As such the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- ii. The CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2C.F.R. part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- iii. This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- iv. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

j. BYRD ANTI-LOBBYING AMENDMENT,

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

- i. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for

influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

- ii. Attach Certification for Contracts, Grants, Loans, and Cooperative Agreements submitted with bid if exceeding \$100,000)

k. PROCUREMENT OF RECOVERED MATERIALS

- i. In the performance of this contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired-
 - (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - (ii) Meeting contract performance requirements; or
 - (iii) At a reasonable price.
- ii. Information about this requirement, along with the list of EPA- designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/sinn/comprehensive-procurement-guideline-cpg-program>."

- l. **RETENTION OF ALL RECORDS:** The CONTRACTOR is required to retain all records for seven (7) years after grantees or subgrantees make final payments and all other pending matters are closed.

ADDITIONAL FEDERAL REQUIREMENTS

- a. **REMEDIES** – In the event of a breach by CONTRACTOR of the terms and conditions of this Agreement CITY shall be entitled to recover any and all monetary damages arising therefrom including the recovery of reasonable attorney fees at all trial and appellate levels.

b. ACCESS TO RECORDS

- i. The CONTRACTOR agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- ii. The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- iii. The CONTRACTOR agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

- b. **DHS SEAL, LOGO AND FLAGS:** the CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.
- c. **COMPLIANCE WITH FEDERAL LAW, REGULATIONS AND EXECUTIVE ORDERS:** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The CONTRACTOR will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- d. **NO OBLIGATION:** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, CONTRACTOR, or any other party pertaining to any matter resulting from the contract."
- e. **FRAUD AND FALSE OR FRAUDULENT OR RELATED ACTS:** The CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONTRACTOR's actions pertaining to this contract.

IN WITNESS WHEREOF, the parties hereto have made and executed this Addendum to Agreement as of the day and year last executed below.

Frank P. Jorgensen
(Contractor Principle, Title)
CONTRACTOR

11/7/17
Date

JK Scholl
James K. Scholl, City Manager
CITY OF KEY WEST

07 Nov 2017
Date

RESOLUTION NO. 15-292

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AWARDED CONTRACTS ON A WORK ORDER BASIS TO TWO BIDDERS IN RESPONSE TO INVITATION TO BID (ITB) NO. 15-021 FOR GENERAL UTILITIES SERVICES; AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE CONTRACTS UPON ADVICE OF THE CITY ATTORNEY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City issued an Invitation to Bid for firms capable of providing general utilities construction-related services; and

WHEREAS, two firms submitted responses on September 2, 2015, and city staff reviewed the responses, and determined both firms to be qualified, and recommended that the City engage each one on a Work Order basis;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That an award of contract, based upon the responses to ITB #15-021 for general utilities services submitted by DN Higgins, Inc. and Charley Toppino & Sons, Inc. is each hereby approved.

Section 2: That the City Manager is hereby authorized to negotiate and execute contracts with each of the companies in substantial conformance with the bid documents, upon advice and consent of the City Attorney, for a term of three (3) years, with an extension of up to two years.

Section 3: Specific work orders issued pursuant to the contracts shall comply with the City's procurement guidelines.

Section 4: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held
this 7th day of October, 2015.

Authenticated by the Presiding Officer and Clerk of the
Commission on 8th day of October, 2015.

Filed with the Clerk on October 8, 2015.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>Yes</u>
Commissioner Teri Johnston	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Absent</u>
Commissioner Jimmy Weekley	<u>Yes</u>
Commissioner Tony Yaniz	<u>Yes</u>


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK