



**THE CITY OF KEY WEST
Tree Commission**

Post Office Box 1409 Key West, FL 33041-1409
Telephone: 305-809-3725

**NOTICE OF ADMINISTRATIVE HEARING
BEFORE THE TREE COMMISSION OF THE CITY OF KEY WEST**

October 23, 2019

Tree Commission
City of Key West
Petitioner,

Vs.

PAC Comm, Inc
2900 NW 39th Street
Miami, FL 33142

An administrative hearing before the Tree Commission for the City of Key West will be held on **Tuesday, November 12, 2019**, at 5:00 p.m., at **Josephine Parker City Hall at Historic Glynn R. Archer School, 1300 White Street, Key West, Florida.**

This hearing will be conducted pursuant to sections 110-288 et. seq. of the Key West City Code. The purpose of this hearing will be to determine if a code violation has been committed by the above named Respondent. **Your presence is required at this Tree Commission meeting.**

Date of alleged violation: prior to July 2, 2019 at Mallory Square, Key West, FL:

Sec. 110-256. Tree abuse.

(b) *Prohibited acts.* A tree shall be considered abused if a person takes an action so that one of the following occurs:

- (1) Significant damage has been inflicted upon any part of a tree, including the root system, by machinery, storage of materials, soil compaction, excavation, vehicle accidents, chemical application or change to the natural grade.
- (2) Damage inflicted to or cutting upon a tree which permits infection or pest infestation.

Sec. 110-321. Required.

(a) Unless a tree removal permit approved by the tree commission and issued by the Urban Forestry Manager has been obtained, no person, whether on publicly or privately owned land, shall cause tree abuse or other harm, or major maintenance to, hatracking, transplanting, topping or removal of the following:

- (1) Any tree listed as "specially protected" in section 110-253;

Factual allegation: One protected Coconut Palm has been removed without benefit of a tree removal permit and one protected Gumbo Limbo tree has been severely damaged by machinery.





If the Tree Commission for the City of Key West finds that there has been a violation of the above code section, it will elect to enter into a compliance settlement agreement pursuant to section 110-291 of the Key West City Code or recommend a fine and further hearing before the Special Master of the City of Key West pursuant to section 110-294 of the Key West City Code.

Attendees are hereby notified that a complete and accurate record of the proceeding is required under Florida Statute 286.0105 if an appeal is sought. Appellants are responsible for providing transcription services.

I hereby certify that the forgoing notice has been mailed to the Respondents and has been sent via e-mail, regular mail, and certified U.S. Mail to the above named Respondent's listed address on this **23th day of October 2019.**

If you have any questions, please call the office at (305) 809-3768.

Karen DeMaria
Urban Forestry Manager
kdemaria@cityofkeywest-fl.gov

STAFF REPORT

DATE: November 8, 2019

RE: Administrative Hearing for Mallory Square-Pac Comm, Inc

FROM: Karen DeMaria, City of Key West Urban Forestry Manager

Pac Comm, Inc was hired to install the new seawall at the Aquarium at Mallory Square. At the same time, the mooring dolphin needed emergency repair in that same area. See attached memo dated September 9, 2019 regarding the sequence of events regarding documentation of the damage to the trees in the area (1-Coconut Palms and 1-Gumbo Limbo).

The work that Pac Comm, Inc did was a City engineering project. Damage to the gumbo limbo and coconut palm was documented and a cost of replacement determined based on the City mitigation fees for closure of the engineering contract (see attached e-mails).

A 4 ft tall palm is a \$250 mitigation fee and dicot tree mitigation fees are 1" diameter equals \$200. The removed coconut palm was approximately 15 ft tall and therefore valued at \$937.50 (15ft/4ft x \$250). Irreparable damage has occurred to the core of the Gumbo limbo tree and therefore, the tree will have to be replaced. The Gumbo Limbo tree is 18.4" diameter and the mitigation replacement value of the tree is \$3,680.

A total of \$4,617.50 was subtracted from the final payment to Pac Comm as per change order signed by the City Manager and dated October 16, 2019. This money will be used to purchase the replacement trees to be planted at Mallory Square.

It is requested that the Tree Commission accept the \$4,617.50 as resolution of this case.



THE CITY OF KEY WEST – Tree Commission

Post Office Box 1409, Key West, FL 33041-1409
(305) 809-3768

Date: September 9, 2019

From: Karen DeMaria, Urban Forestry Manager

Reference: Damage to Trees at Mallory Square-Cable Hut Area, in Relationship to use of Crane.

In January 2019, I was asked to look at trees near the Mallory Square seawall in relation to dolphin repair work being done at the area of the property. A healthy Gumbo Limbo tree and a Royal Poinciana tree were located near the work area. It was determined that several branches of the gumbo limbo tree needed to be trimmed in order to have crane access to the work area. The City foreman in charge of the tree trimmers properly cut several branches for safe access of the crane and protection of the gumbo limbo tree. Besides repair of the mooring dolphin, work was to be done on the seawall around the Aquarium area.

An inspection of the area in July 2019 indicated that the Gumbo limbo tree has been damaged. It appears to have been hit with force. Two large impact wounds with red paint are evident in a few of the branches and the main trunk has a significant impact/stress wound. Also, a coconut palm had been uprooted and was leaning against the fence.

The site inspection in July and another in August determined that the damage to the Gumbo Limbo tree and to the Coconut Palm constitute tree abuse (Sec 110-256).

Tree Commission
MEMORANDUM



Gumbo Limbo tree during construction staging prior to work commencing.



Gumbo Limbo tree when construction had been mostly completed on the aquarium sea wall.



Impact damage to Gumbo limbo branches.



Close up of impact damage, notice red paint.



Impact damage to main trunk of gumbo limbo.



Uprooted
Coconut Palm



Base area of
uprooted
Coconut Palm

damaged

dead + gone



Trees 1 & 2

Trees 3
& 4:
Palms





07/02/2019

57930 03

CARNIVAL VICTORY

RENTALS



Karen DeMaria

From: Karen DeMaria
Sent: Monday, November 4, 2019 4:09 PM
To: Mark Finigan
Cc: Steven P. McAlearney
Subject: FW: Money for Tree Damage
Attachments: PAC CO3_Deducts LD-tree damage-light poles_Signed.pdf; Karen Email.pdf

Mark:

Can I have \$4,617.50 transferred into the Tree Fund account (00137015375200) from the withheld payment for the work at Mallory Square (see attached). This is the fee for the unauthorized removal of (1) Coconut Palm and the irreputable damage to a Gumbo limbo tree that will have to be removed. I have initiated an enforcement case against Pac Comm to be heard at the Tree Commission meeting on Tuesday, November 12 and would like to be able to report that the fee to replace the trees has been paid.

Sincerely,

Karen

Karen DeMaria
Urban Forestry Manager
Certified Arborist FL# 6585A
City of Key West Planning Department
1300 White Street, Key West, FL 33040
305-809-3768



From: Steven P. McAlearney <smcalearney@cityofkeywest-fl.gov>
Sent: Thursday, October 31, 2019 11:04 AM
To: Karen DeMaria <kdemaria@cityofkeywest-fl.gov>
Cc: Steven P. McAlearney <smcalearney@cityofkeywest-fl.gov>
Subject: Money for Tree Damage

Karen,

Mark Finigan is anticipating an email from you requesting the \$4,617.50 for tree damage by Pac Comm, Inc be transferred into the Tree Fund account. That specific amount was accounted for (deducted) by Pac in their last invoice as agreed to with Change Order 3 (attached).

Please let me know if questions,
Steve

Steve McAlearney
Engineering Director
City of Key West
(305) 809-3747





RECEIVED
OCT 16 2019
CITY MANAGER

THE CITY OF KEY WEST
Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3883

CHANGE ORDER

CHANGE ORDER NO. 03

CHANGE ORDER DESCRIPTION Deductive Change Order (Tree Damage, Light Pole x3, Bank Fees and LD's)

PROJECT NAME: Aquarium Seawall Repair

PROJECT CODE: HU1701E01

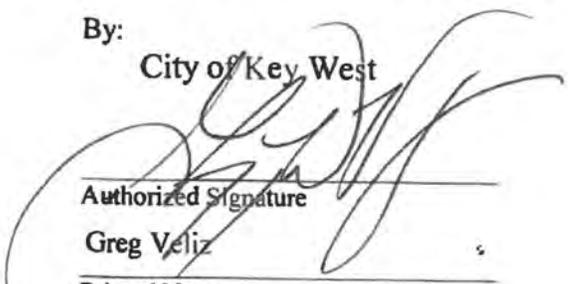
CONTRACTOR NAME: Pac-Com Inc.

THE FOLLOWING MODIFICATIONS TO THE CONTRACT ARE HEREBY ORDERED:
(Detail provided on additional page(s). Yes or No)

| CONTRACT VALUE | | CONTRACT TIME (CALENDAR DAYS) | |
|------------------------|----------------------|-------------------------------|------------------|
| ORIGINAL CONTRACT | \$ <u>818,570.00</u> | ORIGINAL CONTRACT | <u>150</u> DAYS |
| PREVIOUS CHANGE ORDERS | \$ <u>-12,309.52</u> | PREVIOUS CHANGE ORDERS | <u>63</u> DAYS |
| THIS CHANGE ORDER | \$ <u>-54,981.42</u> | THIS CHANGE ORDER | <u> </u> DAYS |
| REVISED CONTRACT VALUE | \$ <u>751,279.06</u> | REVISED CONTRACT TIME | <u>213</u> DAYS |

REVISED CONTRACT COMPLETION DATE: July 3, 2019

By: City of Key West



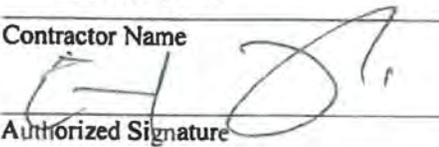
 Authorized Signature
 Greg Veliz

 Printed Name
 City Manager

 Title
10/16/19

 Date

By: Pac-Com, Inc.

Contractor Name


 Authorized Signature
 Emmanuel Pacin

 Printed Name
 President

 Title
10/15/19

 Date

Key to the Caribbean – average yearly temperature 77 ° Fahrenheit.

City of Key West
Aquarium Seawall Repairs
HU1701E01 - 0011910 5196500

| COR # | CO # | Description | Requested | CKW approved |
|---|------|--------------------------------------|---------------|----------------------|
| N/A | 1 | Additional Time | \$0.00 | \$0.00 |
| N/A | 2 | Pedi Bridge Repair Credit | (\$12,309.52) | (\$12,309.52) |
| OCR 1 | 3 | Mallory Square Tree Damage | (\$4,617.50) | (\$4,617.50) |
| OCR 1 | 3 | MS Light Pole Damage | (\$6,637.07) | (\$6,637.07) |
| OCR 1 | 3 | Liquidated Damages (@ 500 X 87 days) | (\$43,500.00) | (\$43,500.00) |
| OCR 1 | 3 | NSF Charge | (\$226.85) | (\$226.85) |
| | | | | |
| | | | | |
| Total Change Order 3 | | | | (\$54,981.42) |
| Previously approved Change Order | | | | |

| | |
|--------------------------------|----------------------|
| Original Contract Value | \$818,570.00 |
| Total Change Order #2 | (\$12,309.52) |
| Total Change Order #3 | (\$54,981.42) |
| Adjusted Contract Value | \$751,279.06 |

| | |
|---------------------------------------|---------------------|
| Total invoiced/paid to date | \$645,009.73 |
| Balance before Change Order #3 | \$161,250.75 |
| Balance AFTER Change Order #3 | \$106,269.33 |

Karen DeMaria

From: Frodsham, Dave <Dave.Frodsham@tetrattech.com>
Sent: Tuesday, October 22, 2019 3:01 PM
To: Karen DeMaria; Steven P. McAlearney
Cc: Lewis K. Howell
Subject: RE: Mallory Square Tree damage-Mooring Dolphin or Aquarium Seawall Contractor

Hi Karen,

We are awaiting some close-out paperwork from PAC including a final approved pay application and releases of liens for their subs & suppliers prior to issuing their final payment. A deductive change order was issued for the contract to account for the liquidated damages due to delayed schedule, the damage to the trees, and damage to the light poles. In other words, we are not expecting to receive a paper check from PAC for the damages as noted, but rather we are shorting them that sum from their original contract.

I don't know if this creates an issue on your end in terms of accounting for payment of the tree damage, but that is the way we intend to handle it. We had walked down the road of getting checks, but for a number of reasons that became infeasible.

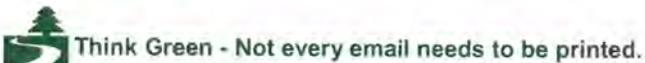
I hope this is an acceptable way for PAC to settle payment with you for this project. If there is anything I can do to be of assistance, please feel free to contact me.

Thank you,



Dave Frodsham PE | Senior Civil Engineer
Cell: 772.380.5491 | Direct: 772.781.3440
Main: 772.781.3400 | Fax: 772.781.3411
dave.frodsham@tetrattech.com

Tetra Tech
759 S. Federal Highway | Suite 314 | Stuart, FL 34994
www.tetrattech.com



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From: Karen DeMaria <kdemaria@cityofkeywest-fl.gov>
Sent: Tuesday, October 22, 2019 1:45 PM
To: Frodsham, Dave <Dave.Frodsham@tetrattech.com>; Steven P. McAlearney <smcalearney@cityofkeywest-fl.gov>
Cc: Lewis K. Howell <lhowell@cityofkeywest-fl.gov>
Subject: RE: Mallory Square Tree damage-Mooring Dolphin or Aquarium Seawall Contractor

Karen DeMaria

From: Karen DeMaria
Sent: Tuesday, September 17, 2019 4:24 PM
To: Steven P. McAlearney
Subject: RE: Mallory Square Tree damage-Mooring Dolphin or Aquarium Seawall Contractor

Steve:

I measured the Gumbo limbo and it is 18.4" diameter therefore its value is \$3680 (\$200 x 18.4").

The coconut palm was approximately 15 ft tall. The Tree Commission values a 4 ft tall palm at \$250 therefore, the palm value would be \$937.50 (15 ft /4 ft x \$250).

These values are based on replacement tree requirements for Tree Removal permits as stated in Section 110-327 of the City Code.

Sincerely,

Karen

From: Steven P. McAlearney <smcalearney@cityofkeywest-fl.gov>
Sent: Friday, September 13, 2019 2:00 PM
To: Frodsham, Dave <Dave.Frodsham@tetrattech.com>
Cc: Karen DeMaria <kdemaria@cityofkeywest-fl.gov>
Subject: FW: Mallory Square Tree damage-Mooring Dolphin or Aquarium Seawall Contractor

Dave,
Here are estimates of tree damage costs. I'm checking with Finance now to see if we received the check (in the amount of \$4537.07) their accounting claims was sent.
Steve

From: Karen DeMaria <kdemaria@cityofkeywest-fl.gov>
Sent: Thursday, September 12, 2019 4:04 PM
To: Steven P. McAlearney <smcalearney@cityofkeywest-fl.gov>
Subject: RE: Mallory Square Tree damage-Mooring Dolphin or Aquarium Seawall Contractor

You asked about a cost of the damage to the trees.

1. Coconut Palm—That palm is approximately 15ft tall. To replace that palm would be between \$840 and \$1,190 (based on how much I paid a year ago to purchase 15ft Maypan Palms). The price is dependent on availability.
2. Gumbo Limbo – The value of dicot trees is based on the diameter of the trunk. I have not measured the trunk yet but would guesstimate around 18-20" diameter (I will measure it next week). Tree Commission mitigation requirements value dicot trees at \$200 per inch therefore, the cost of replacement would be around \$3,600.

Sincerely,

Karen

From: Karen DeMaria

Sent: Monday, September 9, 2019 2:18 PM

To: Steven P. McAlearney <smcalearney@cityofkeywest-fl.gov>

Subject: Mallory Square Tree damage-Mooring Dolphin or Aquarium Seawall Contractor

Steve:

Attached is a memo I finally typed up regarding the tree damage at Mallory Square near the Cable huts in association with the mooring dolphin repair and the new aquarium seawall. There was one other tree involved, a Royal Poinciana but that tree died of issues not related to the construction work.

Who was the contractor/s that did the work out there? May I please have their contact information so I can process an enforcement case. I would also appreciate acknowledgement of this issue with their close out requirements. Do any of the inspector reports make note of the tree damage?

Sincerely,

Karen

Karen DeMaria

Urban Forestry Manager

Certified Arborist FL# 6585A

City of Key West Planning Department

1300 White Street, Key West, FL 33040

305-809-3768



Karen DeMaria

From: Ronald Ramsingh
Sent: Friday, September 13, 2019 1:47 PM
To: Karen DeMaria
Subject: RE: CoKW Aquarium Seawall - Tree damage

I would agree.

RR

From: Karen DeMaria <kdemaria@cityofkeywest-fl.gov>
Sent: Friday, September 13, 2019 1:33 PM
To: Ronald Ramsingh <r Ramsingh@cityofkeywest-fl.gov>
Subject: FW: CoKW Aquarium Seawall - Tree damage

Ron:

I have been working with engineering regarding tree damage issues at Mallory Square-seawall and dolphin mooring project. Should I also process an enforcement case in front of the Tree Commission?

Sincerely,

Karen

From: Frodsham, Dave <Dave.Frodsham@tetratech.com>
Sent: Friday, September 13, 2019 1:04 PM
To: epacin@paccomminc.com; Steven P. McAlearney <smcalearney@cityofkeywest-fl.gov>; Lewis K. Howell <lhowell@cityofkeywest-fl.gov>; Rand Santos <rsantos@paccomminc.com>; Karen DeMaria <kdemaria@cityofkeywest-fl.gov>
Subject: CoKW Aquarium Seawall - Progress Meeting #31 Minutes

All,

Please find attached minutes from this week's call, enforcement memo regarding tree damage, and current punchlist for the project.

Thank you,



Dave Frodsham PE | Senior Civil Engineer
Cell: 772.380.5491 | Direct: 772.781.3440
Main: 772.781.3400 | Fax: 772.781.3411

Karen DeMaria

From: Frodsham, Dave <Dave.Frodsham@tetrattech.com>
Sent: Friday, September 13, 2019 12:29 PM
To: Karen DeMaria
Cc: Steven P. McAlearney; Lewis K. Howell
Subject: FW: Mallory Square Tree damage-Mooring Dolphin or Aquarium Seawall Contractor
Attachments: Mallory Gumbo Tree Damage memeo 9-9-19.pdf

Karen,

My apologies; I intended to copy you on this notice to the Contractor. Please know that we do have this item to the punchlist.

When you have a moment, please let me know what the final dollar amount is for the fine, and to whom PAC should cut a check. In the event that payment is not received, we will withhold from their final payment.

Thank you,



Dave Frodsham PE | Senior Civil Engineer
Cell: 772.380.5491 | Direct: 772.781.3440
Main: 772.781.3400 | Fax: 772.781.3411
dave.frodsham@tetrattech.com

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From: Frodsham, Dave
Sent: Friday, September 13, 2019 12:25 PM
To: Emmanuel Pacin <epacin@paccomminc.com>
Cc: Steve McAlearney (smcalearney@cityofkeywest-fl.gov) <smcalearney@cityofkeywest-fl.gov>; Lewis K. Howell <lhowell@cityofkeywest-fl.gov>
Subject: FW: Mallory Square Tree damage-Mooring Dolphin or Aquarium Seawall Contractor

Manny,

Please be aware of the attached. We will get you the final dollar amount for the fines for damage to 2 trees.

Thank you,



Dave Frodsham PE | Senior Civil Engineer

Cell: 772.380.5491 | Direct: 772.781.3440

Main: 772.781.3400 | Fax: 772.781.3411

dave.frodsham@tetrattech.com

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Think Green - Not every email needs to be printed.

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From: Steven P. McAlearney <smcalearney@cityofkeywest-fl.gov>

Sent: Friday, September 13, 2019 8:15 AM

To: Karen DeMaria <kdemaria@cityofkeywest-fl.gov>

Cc: Frodsham, Dave <Dave.Frodsham@tetrattech.com>; Lewis K. Howell <lhowell@cityofkeywest-fl.gov>; Steven P. McAlearney <smcalearney@cityofkeywest-fl.gov>

Subject: RE: Mallory Square Tree damage-Mooring Dolphin or Aquarium Seawall Contractor

⚠ CAUTION: This email originated from an external sender. Verify the source before opening links or attachments. ⚠

Karen,

Got it, thank you.

Dave,

Please add attached memo and costs below to the punch list.

Thank you,

Steve

From: Karen DeMaria <kdemaria@cityofkeywest-fl.gov>

Sent: Thursday, September 12, 2019 4:04 PM

To: Steven P. McAlearney <smcalearney@cityofkeywest-fl.gov>

Subject: RE: Mallory Square Tree damage-Mooring Dolphin or Aquarium Seawall Contractor

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From: Karen DeMaria

Sent: Monday, September 9, 2019 2:18 PM

To: Steven P. McAlearney <smcalearney@cityofkeywest-fl.gov>

Subject: Mallory Square Tree damage-Mooring Dolphin or Aquarium Seawall Contractor

Steve:

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Sincerely,

Karen

Karen DeMaria

Urban Forestry Manager

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