

RESOLUTION NO. 11-006

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, EXERCISING THE TWO-YEAR RENEWAL OPTION CONTAINED IN THE CONTRACT FOR RIGHT OF WAY MAINTENANCE WITH CHARLIE TOPPINO & SONS, INC., ORIGINALLY APPROVED IN RESOLUTION NO. 08-041; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution No. 08-041, the City Commission approved a three-year contract with a two-year renewal option with Charley Toppino & Sons, Inc. for right of way maintenance; and

WHEREAS, the City Commission, having considered staff recommendations, has chosen to renew the contract, for the two year extension period.

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

Section 1: That the contract is hereby extended for two years, pursuant to the contract documents approved in Resolution No. 08-041;

Section 2: 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 4th day of January, 2011.

Authenticated by the presiding officer and Clerk of the Commission on January 5, 2011.

Filed with the Clerk January 5, 2011.



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
FROM: Greg Veliz, Community Services Director
VIA: David Fernandez, Assistant City Manager- Operations
DATE: December 13, 2010
SUBJECT: Right of Way Maintenance Service Contract Award

ACTION STATEMENT: Exercising the two-year option to extend the Right of Way Maintenance and Sidewalk Cleaning Service contract to Charley Toppino & Sons Inc. as per original contract option, based on Resolution 08-041.

BACKGROUND:

The right of way crews are responsible for the proper light pruning, trimming, weeding, mowing, litter removal and sweeping of City right of ways, sidewalks, curbs and gutters. The City has maintained a combination of contract and City Public Works staff right of way maintenance crews since 2000. This arrangement works well and helps assure that City right of ways are being maintained daily irrespective of available manpower in Public Works. Often, the Public Works department is required to suspend right of way maintenance to support other operations such as special events. The contract right of way staff also works with the Public Works staff, clearing storm drains when rain events prevent regular street and sidewalk maintenance.

As the demands for Public Works services and cleaner sidewalks increases each year, staff requested contract maintenance of a two person crew to perform high pressure washing and gum removal services in the right of way RFP. This has allowed for both a contracted and Public Works crew to clean sidewalks at the same time doubling the amount of sidewalk that has been cleaned each day.

Regular right of way maintenance is critical to the long-term care and maintenance of the City storm water system and is required by the EPA to maintain the City's National Pollution Discharge Elimination System (NPDES) permit.

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

PURPOSE AND JUSTIFICATION: Charley Toppino and Sons, Inc. has provided the City of Key West a level of service that has made a significant positive impact on the cleanliness of the city.

Staff compared the cost of the service contract versus implementing a new four-person right of way maintenance crew and two-person sidewalk cleaning crew. It is determined that costs are initially similar, however; the financial and operational flexibility that contracted services allow would be deficient. Increasing staff levels and procurement of new equipment is not conducive with departmental budgetary goals.

OPTIONS:

1. Exercise the two-year option to extend the Right of Way Maintenance and Sidewalk Cleaning Service contract to Charley Toppino & Sons Inc. as per original contract option. This option would replace the need to hire six new full time employees to perform the same work. Charley Toppino & Sons Inc. has consistently performed well maintaining the City right of way since 2000. This option ensures that right of way maintenance and sidewalk cleaning will continue five days a week. The provisions of the contract allow the City to terminate said contract without cause with thirty days notice to the contractor.
2. Do not exercise the two-year option to extend the Right of Way Maintenance and Sidewalk Cleaning Service contract to Charley Toppino & Sons Inc. as per original contract option. This option would increase service requirements without an increase in staffing. A potential degradation in right of way maintenance and sidewalk cleanliness could ensue.

FINANCIAL IMPACT:

The Right of Way and Sidewalk Cleaning Contract is funded under the Internal Improvements, Streets Account No. 102-4102-34. The original cost of the contract was \$317,466.76 with annual Consumer Price Index (CPI) adjustments. Currently the budgeted amount for this contract is \$329,400. This amount shows a 3.8% increase over the last three years and is consistent with national CPI increase.

RECOMMENDATION:

Staff recommends approval Option 1; exercise the option to extend the Right of Way Maintenance and Sidewalk Cleaning Service contract.

RESOLUTION NO. 08-041

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AWARDING THE BID OF TOPPINO'S INC., FOR RIGHT OF WAY MAINTENANCE IN THE AMOUNT OF \$317,466.76 PER YEAR; PROVIDING FOR AN EFFECTIVE DATE

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

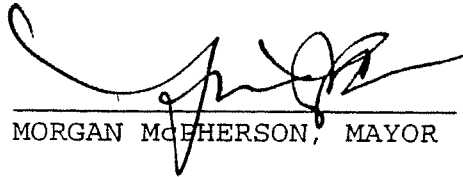
Section 1: That the bid of Charley Toppino & Sons, Inc. for a three-year maintenance contract in the amount of \$317,466.76 per year is hereby awarded.

Section 2: 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 5th day of February, 2008.

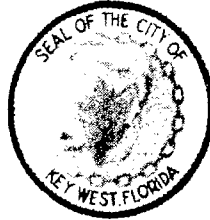
Authenticated by the presiding officer and Clerk of the Commission on February 6, 2008.

Filed with the Clerk February 6, 2008.


MORGAN McEHERSON, MAYOR


ATTEST:


CHERYL SMITH, CITY CLERK



THE CITY OF KEY WEST

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

To: Jim Scholl, City Manager
From: R.B. Havens, Public Works Manager 
CC: Shawn Smith, City Attorney
Date: January 23, 2008
Reference: Right of Way Maintenance Service Contract Award

ACTION STATEMENT: Approval of a Resolution awarding a three-year Right of Way Maintenance Service contract to Charley Toppino & Sons Inc. not to exceed \$317,466.76 per year contingent on available funding each fiscal year.

STRATEGIC PLAN:

Regular right of way maintenance is critical to the long-term care and maintenance of the City storm water system and is required by the EPA to maintain the City's National Pollution Discharge Elimination System (NPDES) permit.

CITIZEN BENEFIT:

Routine right of way maintenance improves the overall appearance of the City and creates a cleaner environment.

BACKGROUND:

The right of way crews are responsible for the proper light pruning, trimming, weeding, mowing, litter removal and sweeping of City right of ways, sidewalks, curbs and gutters.

The City has maintained a combination of contract and City Public Works staff right of way maintenance crews since 2000. This arrangement works well and helps assure that City right of ways are being maintained daily irrespective of available manpower in Public Works. Often, the Public Works department is required to suspend right of way maintenance to support other operations such as special events. The contract right of way staff also works with the Public Works staff, clearing storm drains when rain events prevent regular street and sidewalk maintenance.

As the demands for Public Works services and cleaner sidewalks increases each year, staff requested a price proposal for a two person crew to perform high pressure washing and gum removal services in the right of way RFP. This would allow for both a contracted and Public Works crew to clean sidewalks at the same time doubling the amount of sidewalk

MEMORANDUM



THE CITY OF KEY WEST

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that could be cleaned each day. This cost for this service is not budgeted for FY08 and would go into effect October 1, 2008 for FY09 contingent on available funding.

RFP#14-007 Right of Way Maintenance Service Provider opened January 2, 2008 at 3:00pm with four companies responding. Staff has carefully reviewed the proposals submitted. Please see attached spreadsheet for detailed information about the proposals.

OPTIONS / ADVANTAGES / DISADVANTAGES:

- Do not award a right of way maintenance contract.

This option is not recommended. The state mandated reduction in property taxes this FY required Public Works to eliminate three maintenance positions this year. Further staff reductions may be necessary next year to balance the Public Works budget. The right of way maintenance contract is funded from the Gas Tax fund for road maintenance. Having a contracted right of way crew allows the City to continue to have uninterrupted right of way maintenance that is not tied to available moneys budgeted to the general fund.

- Hire additional Public Works staff to perform the right of way maintenance instead of contracting a right of way crew.

This option is not recommended. As mentioned above, the Public Works department has had to reduce staff to meet budgeting requirements this FY. Unless moneys are moved from another fund, or property taxes are increased next FY, funds will not be available for additional full time staff. The right of way contract stipulates that any work under the contract is contingent on available funding. Also, having a contracted right of way crew assures that right of way maintenance is continuing five days a week regardless of other needs in the Public Works department.

- Award a three-year contract right of way maintenance contract with Charley Toppino & Sons Inc.

Staff recommends this option. Charley Toppino & Sons Inc. proposed the lowest price for the work. They also were the only company to provide all the required documentation in their proposal. This company has been performing well maintaining the City right of way since 2000. This option will insure that right of way maintenance will continue to be performed five days a week. This option would replace the need to hire six new full time employees to perform the same work. The contract will allow the City to terminate the contract, without cause, with thirty days notice to the contractor.

MEMORANDUM



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MEMORANDUM

FINANCIAL IMPACT:

The cost for the four-person right of way crew is proposed not to exceed \$239,999.76 per year. This project was budgeted in 102-4102-46 Gas Tax Fund for FY08 and funds are available.

The cost for the two-person pressure washer crew is proposed not to exceed \$77,467.00 per year and was not budgeted for FY08. This portion of the contract would go into effect October 1, 2008 contingent on available funding.

The contract allows the City to terminate the contract, without cause, with thirty days written notice to the contractor. The multi-year contract would only be continued contingent on available funding.

RECOMMENDATION:

Staff recommends approval of the Resolution.

Proposals for RFP #04-007 Right of Way Maintenance Services

	Listing of Proposers Based on Price Proposals	Listing of Proposers Based on Experience/Resources
1		
2	Charley Toppino & Sons \$317,466.76	Charley Toppino & Sons 19
3	Key West Landscaping \$349,440.00	Key West Landscaping 45
4	Neighborhood Maintenance \$374,400.00	E & E Concrete 54
	E & E Concrete \$642,249.40	Neighborhood Maintenance 60

RFP #04-007 Right of Way Maintenance Services Proposal Matrix

Opened Wednesday January 2, 2008 3:00pm

Response Check List

Mandatory Submittals

	Key West Landscaping	Charley Toppino & Sons	E & E Concrete	Neighborhood Maintenance
Cost of Services Proposal (Attachement A)	Yes	Yes	Yes	Yes
Cost of Services Proposal (Attachement B)	Yes	Yes	Yes	Yes
Anti-Kickback Affidavit (Attachement C)	Yes	Yes	Yes	Yes
Public Entity Crimes Certification (Attachement D)	Yes	Yes	Yes	Yes
Statement of Proposers Understanding of Work	Yes	Yes	Yes	No
Description of Relevant Experience Last Five Years	Yes	Yes	Yes	Yes
Names, Qualifications, Experience of Project Manager	Yes	Yes	Yes	No
Detailed Description of Equipment of and Machinery	Yes	Yes	Yes	No
Detailed Description of ROE Crew Performance Standards	Yes	Yes	Yes	Yes
List of References from Similar Projects Last Five Years	No	Yes	Yes	Yes
Statement of Local Availability	Yes	Yes	No	No
No Conflict Statement	Yes	Yes	Yes	Yes
Proof of Min \$1,000,000 General Liability	Yes	Yes	Yes	No
List of Project Related Claims Last Five Years	No	Yes	Yes	No
	Yes	Yes	Yes	No

Qualifications/Experience

Points	Key West Landscaping	Charley Toppino & Sons	E & E Concrete	Neighborhood Maintenance
Proposer's past performance and experience providing proposed services, including demonstrating relevant experience	3	1	4	2
Qualifications and experience of Project Manager	2	1	3	4
Qualifications and experience of Key Personnel assigned to the Project	2	1	3	4
Qualifications, experience, and past performance of Proposer	3	1	4	2
Familiarity with local conditions	2	1	3	4
Description of past (within last 5 years) and on-going litigation involving Proposer and Subcontractors	1	1	1	5
Sub Total for Qualifications/Experience	13	6	18	21

Project Management Plan		Key West Landscaping	Charley Toppino & Sons	E & E Concrete	Neighborhood Maintenance
1-4	Documentation of understanding of Scope of Work and requirements	3	1	2	4
1-4	Proposer's Performance Standards Proposal	1	2	3	4
1-4	Proposer's Equipment Resources	3	1	2	4
1-4	Proposer's resources, capacity to perform Quality and sufficiency of staffing plan and organizational structure	3	1	2	4
1-4	Safety Plan	2	1	3	4
1-4		4	1	2	3
	Sub Total for Project Management Plan	16	7	14	23
Past Performance (Based on Reference Verification)		Key West Landscaping	Charley Toppino & Sons	E & E Concrete	Neighborhood Maintenance
1-4	Past Performance of Proposer	3	1	4	2
1-4	Past Performance of Proposed Project Manager	2	1	3	4
1-4	Overall satisfaction of Customers	3	1	4	2
	Sub Total for Past Performance	8	3	11	8
		8	3	11	8
Total Score		45	19	54	60

Price Proposal Matrix

	Key West Landscaping	Charley Toppino & Sons	E & E Concrete	Neighborhood Maintenance
Right of Way Maintenance				
Four Man Crew per day	\$896.00	\$923.08	\$1,646.79	\$960.00
Four Man Crew per five day work week	\$4,480.00	\$4,615.38	\$8,233.95	\$4,800.00
Four Man Crew per day on Weekends/Holidays	\$1,024.00	\$1,084.25	\$2,470.19	\$1,536.00
Right of Way Pressure Washing				
Two Man Crew per day	\$448.00	\$297.95	\$823.40	\$480.00
Two Man Crew per five day work week	\$2,240.00	\$1,489.75	\$4,117.00	\$2,400.00
Two Man Crew per day on Weekends/Holidays	\$512.00	\$297.95	\$1,235.10	\$720.00
Sub Total Four Man ROW Crew Plus Two Man Pressure Washing Crew Per Week	\$6,720.00	\$6,105.13	\$12,350.95	\$7,200.00
Four Man Crew per five day work week x 52 weeks	\$232,960.00	\$239,999.76	\$428,165.40	\$249,600.00
Two Man Crew per five day work week x 52 weeks	\$116,480.00	\$77,467.00	\$214,084.00	\$124,800.00
Compined Cost for Four Man Crew per week and Two Man Pressure Washing Crew per week for one years service	\$349,440.00	\$317,466.76	\$642,249.40	\$374,400.00

CITY OF KEY WEST

AGREEMENT TO FURNISH
RIGHT OF WAY MAINTENANCE SERVICES
TO THE
CITY OF KEY WEST

JANUARY 2008

Contractor:

Charley Toppino & Sons Inc.
P.O. Box 787
Key West, Florida 33041

Agreement to Furnish Right of Way Maintenance Services to the City of Key West

This AGREEMENT made and entered into by and between the City of Key West, a municipal corporation of the State of Florida, whose address is 525 Angela Street, Key West, Florida 33040, hereafter referred to as the "CITY" and Charley Toppino & Sons Inc, whose address is P.O. Box 787, Key West, Florida 33041 hereafter referred to as the "Contractor". This agreement shall be effective on the date of execution of the last party to sign the AGREEMENT for the term specified in Paragraph 6.1.

Article 1. Scope of Services

Provide right-of-way maintenance services. The proposed services should include but are not limited to; Light Pruning, Trimming, High Pressure Washing and Gum Removal, Weeding, Mowing, Litter Removal and Sweeping of City Sidewalks, Curbs and Gutters and other right of way maintenance services which the CONTRACTOR is qualified to provide and which the CITY authorizes the CONTRACTOR to undertake in connection with present and planned activities identified below. The specific services, which the CONTRACTOR agrees to furnish, are set forth as follows:

- 1.1 Provide not less than four (4) full time employees and all equipment necessary to perform right of way maintenance on City streets, alleys, right-of-ways, curbs and sidewalks as directed including; Light Pruning, Trimming, Weeding, Mowing, Litter Removal and Sweeping of City Sidewalks, Curbs and Gutters leaving all areas serviced in a well groomed neat and clean appearance;
- 1.2 Provide not less than two (2) full time employees and all equipment necessary to perform high pressure washing cleaning services and gum removal for City streets, sidewalks and street furniture. Crew must wash one (1) City block, both sides, daily leaving sidewalks, curbs and street furniture in a well groomed neat and clean appearance. Sidewalks and gutters are to be free of stains and gum;
- 1.3 Provide the proper equipment and machinery to complete each task in a safe and efficient manor maximizing the available person-hours;
- 1.4 Provide the City with a report of the daily total of linier feet of right of way that was properly maintained. Digital photos showing a sample of the work completed shall be included in the report. This report will be submitted with the Contractor's request for payment;
- 1.5 On days that rain prevents regular right of way maintenance, the Contractor will assist the City Public Works Department clearing storm drains in low lying areas to help prevent flooding. The Contractor will be compensated at the same rate as right of way maintenance and will be required to report the number of drains cleared each day with the Contractor's request for payment;

Contractor shall provide the above-mentioned Scope of Services as tasked by the CITY for the work specifically identified in RFP No. 14-007 (Attachment F) and any other tasks as assigned under this scope.

Article 2. Compensation

As consideration for providing the services enumerated in Article 1, the CITY shall pay the CONTRACTOR fees as per the following;

- 2.1 Lump sum payment, which includes compensation for all the CONTRACTOR'S salaries, general overhead costs, direct expenses, and profit.
 - A. The contractor will be compensated for work completed by a fully staffed right of way crew as per Attachment "A". The Contractor will submit proof of payroll for a complete crew with the request for payment. If for any reason the entire four (4) person crew is not present during the work week, a person out sick etc, the pay request should reflect the missing crew member and deduct the cost of each missing worker at 25% of the compensation for that day, and contract daily production requirements shall be adjusted accordingly.
 - B. The contractor will be compensated for work completed by a fully staffed pressure washer crew as per Attachment "B". The Contractor will submit proof of payroll for a complete crew with the request for payment. If for any reason the an entire two (2) person crew is not present during the work week, person out sick etc, the pay request should reflect the missing crew member and deduct the cost of each missing worker at 50% of the compensation for that day, and contract daily production requirements shall be adjusted accordingly.
- 2.2 Annual Compensation Increase
 - A. The contract compensation shall increase each year. This increase will go into effect on the anniversary of the contract execution based on the CPIU National as posted by the US Department of Labor for All Cities, All items for the most recent prior twelve-month period that data is available.
- 2.3 Work Contingent on Funding of Contract
 - A. Compensation for work performed under this AGREEMENT is contingent on available funds being budgeted each fiscal year by the CITY. If the CITY fails to budget funds to cover the cost of work performed under this AGREEMENT, the CITY shall notify the CONTRACTOR immediately in writing providing the CONTRACTOR not less than thirty (30) days notice prior to the end of the fiscal year end that funds will not be available to compensate the CONTRACTOR for any work the next fiscal.
 - B. Funding for compensation for work to be performed under this AGREEMENT for the four (4) person right of way crew has been approved and is available for fiscal year 2008 ending September 30, 2008. Funding for compensation for work to be performed under this AGREEMENT for the two (2) person pressure washer crew has not been approved for the fiscal year 2008 ending September 30, 2008. Funding for compensation for work to be performed under this AGREEMENT for the two (2) person pressure washer crew is anticipated to be available for the fiscal year 2009 starting October 1, 2008.

Article 3. Invoicing and Payment

Monthly invoices will be issued by CONTRACTOR for all work performed during the preceding month under this AGREEMENT, as prescribed in Article 2. Invoices are to be submitted and paid in accordance with the Florida Prompt Payment Act.

Article 4. Obligations of the Contractor

4.1. General

- A. The CONTRACTOR will serve as CITY'S professional right of way maintenance service provider under this AGREEMENT, providing professional right of way maintenance and furnishing customary services incidental thereto. The CONTRACTOR shall perform the work described in this AGREEMENT as directed by the City Director of Public Works or their designee.

4.2. Standard of Care

- A. The standard of care applicable to the CONTRACTOR's services will be the degree of skill and diligence normally employed by professional Contractors performing the same or similar services at the time said services are performed. The CONTRACTOR will perform any services not meeting this standard without additional compensation.

4.4. Contractor's Personnel at the Work Site

- A. The presence or duties of the CONTRACTOR's personnel at a work site, where a contractor is other than Charley Toppino & Sons Inc, whether as onsite representatives or otherwise, do not make the CONTRACTOR or its personnel in any way responsible for those duties that belong to the CITY and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the Contract Documents and any health or safety precautions required by such construction work. The CONTRACTOR and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity(s) or any other persons at the site except CONTRACTOR's own personnel.
- B. The CONTRACTOR's crews shall always perform their duties in a professional manner and appearance.

4.5 Safety

- B. The CONTRACTOR'S crews shall always perform their duties in a safe manner taking special care to be aware of their surroundings and any potential safety hazards that could cause harm to persons or personal property resulting from the CONTRACTOR's work.

- B. The CONTRACTOR shall maintain a safety training program that meets all Federal, State and Local Laws and Ordinances and as is described in Attachment "F".

4.6 Damages

- B. The CONTRACTOR shall report any damages to City property or private property caused during the course of work to the City Public Works Director immediately. The CONTRACTOR shall be responsible for any damages to City property or private property caused by the CONTRACTOR, the CONTRACTOR's employees or its' agents during the performance of work under this AGREEMENT.

4.7 Disposal of Debris

- A. The CONTRACTOR will establish an account at the City Transfer Station for debris disposal. All waste and debris removed during ROW maintenance activities for the City will be disposed of under this account at no charge to the CONTRACTOR.

4.8 Care of Equipment

- A. The CONTRACTOR shall acquire and maintain, in good working order and appearance, all the necessary machinery and equipment to perform under this AGREEMENT in a safe and efficient manor.

4.9 Contractor's Insurance

- A. The CONTRACTOR will maintain throughout this AGREEMENT the following insurance:
 - 1. Worker's compensation and employer's liability insurance as required by the State of Florida, where the work is performed.
 - 2. Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, nonowned, or hired vehicles, with \$1,000,000 combined single limits.
 - 3. Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of the CONTRACTOR or of any of its employees, agents, or subcontractors, with \$1,000,000 per occurrence and in the aggregate.
 - 4. CITY will be named as an additional insured with respect to CONTRACTOR's liabilities hereunder in insurance coverage's identified in items 2 and 3, and CONTRACTOR waives subrogation against CITY as to said policies.

- 4.10 Subcontractors
 - A. The CONTRACTOR may not assign or subcontract its obligations under this AGREEMENT without the written consent of the CITY.
- 4.11 Permits, Licenses and Fees
 - A. The CONTRACTOR is responsible for and shall maintain all permits licenses and fees necessary to legally perform the work described in this AGREEMENT.

Article 5. Obligations of the City

- 5.1. Authorization to Proceed
 - A. Authorization to proceed will be considered to be given upon written "Notice to Proceed" by the CITY to the CONTRACTOR and as directed by the CITY Public Works Director.
- 5.2 Access to Facilities and Property
 - A. The CITY will make its facilities accessible to CONTRACTOR as required for CONTRACTOR's performance of its services. CITY will perform, at no cost to CONTRACTOR, such tests of equipment, machinery, pipelines, and other components of the CITY'S facilities as may be required in connection with CONTRACTOR's services, unless otherwise agreed to. The CITY will be responsible for all acts of CITY'S personnel.
- 5.3 Prompt Notice
 - A. The CITY will give prompt written notice to CONTRACTOR whenever CITY observes or becomes aware of any development that affects the scope or timing of CONTRACTOR's services, or any defect in the work of the CONTRACTOR.
- 5.4 Contractor Indemnification and Claims
 - A. CITY agrees use its best efforts to include the following in all construction contracts with contractors not affiliated with CONTRACTOR:
 - 1. The provisions of Article 4.4, Contractor's Personnel at Construction Site
 - 2. Provisions proving contractor indemnification of CITY and CONTRACTOR as additional insureds on the contractor's general liability insurance policy
- 5.5 Litigation Assistance
 - A. The Scope of Services does not include costs of CONTRACTOR for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by CITY. All such services required or requested of CONTRACTOR by CITY, except for suits or claims between the parties to this AGREEMENT, will be reimbursed as mutually agreed in a separate agreement, and payment for such services shall be in accordance with Article 3, unless and until there is a finding by a court or arbitrator that CONTRACTOR's sole negligence caused CITY's damage.

Article 6. General Legal Provisions

- 6.1 Agreement Period
- A. The duration of the AGREEMENT shall be three (3) years commencing from the date this AGREEMENT was entered into, with an additional two-year option to extend on behalf of the CITY, which must be approved by Resolution of the City Commission.
- 6.2 Reuse of Project Documents
- A. Reports, drawings, specifications, documents and other deliverables of the CONTRACTOR, whether in hard copy or in electronic form, are instruments of service for the project of the City. All specifications and plans shall be made available on re-writable CD and are the property of the City of Key West. Reuse, change, or alteration on another project, by the CITY or by others acting on behalf of the CITY of any such instruments of service without the written permission of the CONTRACTOR will be at the CITY's sole risk. The CITY agrees to indemnify and defend the CONTRACTOR and its officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, litigation expenses and attorney's fees arising out of or related to such unauthorized reuse, change, or alteration.
- 6.3 Force Majeure
- A. The CONTRACTOR is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the CONTRACTOR.
- B. In the event of a delay that results in additional costs to the CONTRACTOR, an appropriate increase in compensation and schedule will be authorized in writing.
- 6.4 Termination
- A. This agreement may be terminated at any time, with or without cause, by the CITY upon sixty (60) days written notice to the CONTRACTOR. No further work will be performed by CONTRACTOR upon receipt of this notice unless specifically authorized by the Director of Utilities of the City of Key West. This agreement may also be terminated at any time, with or without cause, by the CONTRACTOR upon ninety (90) days written notice to the CITY.
- B. On termination, the CONTRACTOR will be paid for all authorized services performed up to the termination date plus, if terminated for the convenience of the CITY, reasonable expenses incurred during the close-out of the AGREEMENT. The CITY will not pay for anticipatory profits.
- 6.5 Suspension, Delay, or Interruption Of Work
- A. The CITY may suspend, delay, or interrupt the services of the CONTRACTOR for the convenience of the CITY. In the event of such suspension, delay, or interruption, or any other act or neglect of CITY or CITY's subcontractors, CITY will pay CONTRACTOR for work performed to date. An equitable adjustment

in the work schedule and CONTRACTOR's compensation will be made as agreed to by both parties.

- B. In the event delays to the project are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

6.6 Third Party Beneficiaries

- A. This Agreement gives no rights or benefits to anyone other than the CITY and CONTRACTOR and has no third party beneficiaries. CONTRACTOR's services are defined solely by this proposed scope of services, and not by any other contract or agreement that may be associated with the work.
- B. All work products will be prepared for the exclusive use of CITY for specific application to the property described in the proposed scope of services. No warranty, expressed or implied, is made. There are no beneficiaries of the work products other than CITY, and no other person or entity is entitled to rely upon the work products without the written consent of CONTRACTOR. Any unauthorized assignment of related work product shall be void and unenforceable.

6.7 Indemnification

- A. The CONTRACTOR shall indemnify and hold harmless the CITY, its officers and employees, from liabilities, property damage, losses, personal injuries, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of CONTRACTOR, its employees or agents, in the performance of this AGREEMENT.
- B. This indemnification shall survive the expiration or termination of this AGREEMENT. In the event that any action or proceeding is brought against the CITY by reason of such claim or demand, CONTRACTOR shall, upon written notice from the CITY, resist and defend such action or proceeding by counsel satisfactory to the CITY. The CONTRACTOR shall defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the CITY's option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the CITY whether performed by CONTRACTOR, or by persons employed or used by CONTRACTOR.
- C. In no event shall CONTRACTOR, its affiliated corporations, officers, employees, or any of its subcontractors be liable for any incidental, indirect, special, punitive, economic or consequential damages, including but not limited to loss of revenue or profits, suffered or incurred by CITY or any of its agents, including other contractors engaged at the project site, as a result of this AGREEMENT or CONTRACTOR's performance or non-performance of services pursuant to this AGREEMENT. Limitations of liability provided in this paragraph apply whether the liability is claimed to arise in contract, tort (including negligence), strict liability, or otherwise.

6.8 Assignment

- A. CONTRACTOR shall not assign all or any part of this Agreement without the prior consent of the CITY by Resolution of the Key West City Commission.

6.9 Jurisdiction

- A. The law of the state of Florida and Monroe County will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it.

6.10 Severability and Survival

- A. If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- B. ARTICLES 4, 5, and 6 will survive termination of this AGREEMENT for any cause.

6.11 Dispute Resolution

- A. The parties will use their best efforts to resolve amicably any dispute, including the use of alternative dispute resolution options.
- B. Unless otherwise agreed in writing, the CONTRACTOR shall continue the Work and maintain the approved schedules during any arbitration proceedings. If the Contractor continues to perform, Owner shall continue to make payments in accordance with this AGREEMENT.

Article 7. Schedules, Attachments and Signatures

This AGREEMENT, including its Schedules, Attachments "A" and "B" and Right of Way Maintenance Proposal #14-007, Attachment "F" constitutes the entire AGREEMENT, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

IN WITNESS WHEREOF, the parties execute below:

For the CITY, _____

Dated this 11 day of Feb, 2008.

By: _____
Name, Morgan McPherson Title, Mayor City of Key West

By: Cheri Smith
Name, Cheri Smith Title, City Clerk

For the CONTRACTOR, Charley Toppino & Sons, Inc.

Dated this 1 day of 27, 2008.

By: Richard Toppino V.P.
Name Title

Attachment "A"
Right of Way Maintenance Service Provider Cost
Schedule

Attachment "A"

Right of Way Maintenance Service Provider

Cost Proposal Form

Dollar amount in words has precedence.

Cost to provide a four man ROW services for City Streets and Sidewalks

Four Man ROW Crew per day \$ 923.08

Dollar amount written in words

\$ Nine Hundred & Twenty Three - 08/100

Four Man ROW Crew per five day work week \$ 4,615.38

Dollar amount written in words

\$ Four Thousand, Six Hundred & Fifteen - 38/100

Four Man ROW Crew per day on Weekends/Holidays \$ 1,084.25

Dollar amount written in words

\$ One Thousand, Eighty Four - 25/100



Signature of Proposer

Richard Toppano V.P.
Printed Name and Title

Attachment "B"
**Right of Way Maintenance Service Provider Cost
Schedule (Pressure Washing)**

Attachment "B"

Right of Way Maintenance Service Provider
Cost Proposal Form
Dollar amount in words has precedence.

Cost to provide a two man pressure washing crew for City Streets and Sidewalks

Two Man Pressure Washing Crew per day \$ 297.95

Dollar amount written in words
\$ Two Hundred & Ninety Seven — 95/100

Two Man Pressure Washing Crew per five day work week \$ 1,489.75

Dollar amount written in words
\$ One Thousand, Four Hundred & Eighty Nine — 75/100

Two Man Pressure Washing Crew per day on Weekends/Holidays \$ 297.95

Dollar amount written in words
\$ Two Hundred & Ninety Seven — 95/100

Richard Toppino
Signature of Proposer

Richard Toppino U.P.
Printed Name and Title