

CITY COUNCIL AGENDA STATEMENT



Meeting Date: April 11, 2023

To: Honorable Mayor and Council Members

From: George Garrett, City Manager

Agenda item: **Resolution 2023-41**, Approving An Interlocal Agreement (ILA) Between The City Of Marathon And The Florida Keys Aqueduct Authority To Add An Additional Fire Hydrant, Including Piping, To An FKAA Request For Proposals, As Part Of Upgrading Existing Fire Protection In Association With The Crawl Key Distribution Upgrades.

BACKGROUND

The Florida Keys Aqueduct Authority (FKAA) is currently prepared to bid upgrades to their distribution lines leading to Crawl Key. Public Works and the FKAA have discussed and the FKAA has approved expanding their bid package in order to place a fire hydrant near the Quay property.

The addition will benefit the City and its improvements to the Quay property. The City has budgeted funds to pay for the hydrant improvements.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	_____	___X___
2. Other – 2010 Sewer Mandate	_____	___X___

FISCAL NOTE:

The Adopted FY23 Capital Infrastructure Budget includes appropriations of \$150,000 for the Fire Hydrant project, which is 100% funded by Impact Fees.

RECOMMENDATION:

Approval

Sponsored by: Garrett

**CITY OF MARATHON, FLORIDA
RESOLUTION 2023-41**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT (ILA) BETWEEN THE CITY OF MARATHON AND THE FLORIDA KEYS AQUEDUCT AUTHORITY TO ADD AN ADDITIONAL FIRE HYDRANT, INCLUDING PIPING, TO AN FCAA REQUEST FOR PROPOSALS, AS PART OF UPGRADING EXISTING FIRE PROTECTION IN ASSOCIATION WITH THE CRAWL KEY DISTRIBUTION UPGRADES.

WHEREAS, the Florida Keys Aqueduct Authority (FKAA) is currently prepared to bid upgrades to their distribution lines leading to Crawl Key; and

WHEREAS, the City has budgeted funds to pay for the hydrant improvements; and

WHEREAS, and Public Works and the FKAA have discussed and the FKAA has approved expanding their bid package in order to place a fire hydrant near the Quay property; and

WHEREAS, the addition will benefit the City and its improvements to the Quay property; and

WHEREAS, it is for the health, safety, and welfare and in the best interest of its citizens that the City of Marathon, Florida adopts this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The ILA attached as Exhibit “A” together with such non-material changes as may be acceptable to the City Manager and approved as to form by the City Attorney, is hereby approved.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 11TH DAY OF APRIL, 2023.

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

Steve Williams, City Attorney



BOARD OF DIRECTORS, FLORIDA KEYS AQUEDUCT AUTHORITY

AGENDA ITEM SUMMARY

AGENDA ITEM: _____ TAB: _____ CONSENT: _____ REGULAR: _____

MEETING DATE: _____ DEPARTMENT: _____

AGENDA TITLE:

DOCUMENTATION: Included: To-Follow: Not Required:

Cost to FCAA: \$ _____

BUDGETED: Yes No

Cost to Others: \$ _____

Total Cost: \$ _____

Department: _____

Department Director: _____

Exe. Director: _____

Deputy Exe. Director: _____

Internal Auditor: _____

General Counsel: _____

BOARD ACTION:

Approved: Tabled: Disapproved: Recommendation Revised:

Comments: _____

Date: _____

Recording Clerk: _____

FLORIDA KEYS AQUEDUCT AUTHORITY



1100 Kennedy Drive Key West, FL 33040
Telephone: 305-296-2454

MEMORANDUM

TO: Gregory W. Veliz, Executive Director

FROM: David Hackworth, PE, Director of Engineering

DATE: January 27, 2023

SUBJECT: Project #2359-21 – Crawl Key Distribution Upgrades

Action Statement

Consideration to approve an Interlocal Agreement (ILA) with the City of Marathon to upgrade existing fire protection in association with the Crawl Key Distribution Upgrades.

Background

FKAA is currently designing improvements to the distribution and storage tank in Crawl Key, Marathon. The City of Marathon has plans to develop an adjacent property (12650 Overseas Highway), which will require upsizing the existing 2-inch water main to 6-inch and extending it to the proposed fire hydrant. The new main will be approximately 930 lineal feet.

Purpose and Justification

By integrating the upgrade of these fire lines into the Crawl Key distribution project, impacts to the community will be reduced by avoiding the need for the City of Marathon to conduct a separate construction phase in the future. In addition, this expansion improves FKAA's fire protection capabilities. If executed by both parties, the City of Marathon will pay the cost associated with the upgraded lines and new hydrant under this agreement.

Financial

The costs associated with this additional work will be covered by the City of Marathon under this Interlocal Agreement.

**INTERLOCAL AGREEMENT
BETWEEN THE
FLORIDA KEYS AQUEDUCT AUTHORITY
AND
THE CITY OF MARTHON**

THIS INTERLOCAL AGREEMENT is entered into by and between the Florida Keys Aqueduct Authority (hereinafter the “Authority”) an independent special district existing as a public agency under laws of the State of Florida and The City of Marathon, Florida (hereinafter “Marathon”), a Florida Municipal Corporation.

WHEREAS, the Authority was created by Special Legislation, Chapter 76-441, Laws of Florida, as amended; and

WHEREAS, Marathon, was formed in 1999 by the Legislature of the State of Florida pursuant to Chapter 99-427 Laws of Florida; and

WHEREAS, the Authority is in the process of designing improvements to the distribution and storage tank in Crawl Key, which will require improvements to its existing 2” water main; and

WHEREAS, Marathon has plans to develop an adjacent property located at 12650 Overseas Highway, which would require upsizing the existing 2” water main to a 6” water main and the installation of an additional fire hydrant. The water main would be extended by approximately 930 lineal feet; and

WHEREAS, the Authority has agreed to bid the proposal to upgrade the existing 2” water main to 6”, with approximately 930 lineal feet added, as a bid alternate of the proposed improvement. Marathon assumes the cost of this upgrade should the bid alternate price be acceptable to Marathon. Otherwise, the Authority will continue construction without upgrading the current 2” water main.

NOW, THEREFORE, in consideration of the mutual covenants, representations and promises set forth in this Agreement and for other good and valuable consideration each to the

other, receipt of which is hereby acknowledged by each party, the “Authority” and “Marathon” hereby agree, stipulate, and covenant as follows:

ARTICLE I DEFINITIONS

WORDS AND TERMS. Words and terms used herein shall have the meanings set forth below:

“**Agreement**” means this Interlocal Agreement.

“**Authority**” means the Florida Keys Aqueduct Authority.

“**Authorized Representative**” means the official of the “Authority” or “Marathon” authorized by ordinance or resolution to sign documents of the nature identified in this Agreement.

“**Marathon**” means the City of Marathon, Florida.

ARTICLE II INTERLOCAL AGREEMENT

PURPOSE OF INTERLOCAL AGREEMENT. The purpose of this Agreement is to bid and confirm the assumption of payment by Marathon for the following described project:

The Authority will include an alternative to its improvements of its 2” water main project, which will upgrade the existing 2” water main to 6”, extend the water main by approximately 930 lineal feet and install a proposed fire hydrant. Should Marathon find the bid price of the lowest responsive responsible bidder for the 6” bid alternate design acceptable, Marathon shall notify the Authority of its decision to proceed under this Agreement and immediately deposit the funds needed under the bid alternate design with the Authority. Otherwise, the Authority will continue construction without upgrading the current 2” water main.

ARTICLE III GENERAL PROVISIONS

SECTION 3.01 Upon the execution of this Interlocal Agreement by both parties, the Authority will proceed with the bidding for the construction and upgrade to the Authority’s Crawl Key Site.

SECTION 3.02 *ASSIGNMENT OF RIGHTS UNDER AGREEMENT.* Neither the Authority nor Marathon shall have the power to assign rights or obligations created by this Agreement to any third party without the prior written consent of the other party.

SECTION 3.03 *AMENDMENT OF AGREEMENT.* This Agreement may be amended only in a writing signed by an Authorized Representative of each of the parties hereto.

SECTION 3.04 *SEVERABILITY.* If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The Authority and Marathon agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

SECTION 3.05 *ATTORNEY'S FEES AND COSTS.* The Authority and Marathon agree that in the event any cause of action or legal proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, court costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the Circuit Court of Monroe County. Nothing contained herein shall be construed as a waiver of either party's Sovereign Immunity limitations of Section 726.28 Florida Statutes.

SECTION 3.06 *ADJUDICATION OF DISPUTES OR DISAGREEMENTS.*
The parties agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the issue or issues are still

not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.

SECTION 3.07 *NONDISCRIMINATION.*

The parties agree that there will be no discrimination against any person under this agreement, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VII of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination in employment on the basis of race, color, religion, sex, and national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101- 6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s.3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 12101 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties hereto, or the subject matter of, this Agreement.

SECTION 3.08 *COOPERATION.* In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, the parties agree to participate, to the extent reasonably required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the

substance of this Agreement or provision of the services under this Agreement. The parties specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement or any Attachment or Addendum to this Agreement.

SECTION 3.09 ***COVENANT OF NO INTEREST.*** The Parties covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

SECTION 3.10 ***CODE OF ETHICS.*** The parties agree that their officers and employees recognize and will be required to comply with the standards of conduct relating to public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

SECTION 3.11 ***NO SOLICITATION/PAYMENT.*** The Parties warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, each party agrees that the other party shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

SECTION 3.12 ***PUBLIC ACCESS TO RECORDS.*** The parties shall allow and permit members of the public reasonable access to, and inspection of, all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the parties in conjunction with this Agreement.

SECTION 3.13 ***NON-WAIVER OF IMMUNITY.*** Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the parties in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local

government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by a party be required to contain any provision for waiver.

SECTION 3.14 *LEGAL OBLIGATIONS; NON-DELEGATION OF DUTIES.*

This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any other participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of either party, except to the extent permitted by law.

SECTION 3.15 *NON-RELIANCE BY NON-PARTIES.* No person or entity shall be entitled to rely upon any terms of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the parties agree that neither the “Authority” nor the “Marathon” or any agent, officer, or employee of each shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement.

SECTION 3.16 *NO PERSONAL LIABILITY.* No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of a party in his or her individual capacity, and no member, officer, agent or employee of a party shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

SECTION 3.17 *SECTION HEADINGS.* Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

SECTION 3.18 *GOVERNING LAW; VENUE.* This Agreement shall be governed by and construed in accordance with the Laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the parties agree

that venue will lie in the appropriate court or before the appropriate administrative body in the 16h Judicial Circuit in and for Key West, Monroe County, Florida.

SECTION 3.19 All notices, requests, demands, elections, consents, approvals, and other communications hereunder must be in writing and addressed as follows, or to any other address which either party may designate to the other party by mail:

If to MARATHON: George Garrett
City Manager
City of Marathon
9805 Overseas Highway
Marathon, Florida 33050

With a copy to: Steven T. Williams
City Attorney
9805 Overseas Highway
Marathon, Florida 33050

If to AUTHORITY: Gregory W. Veliz
Executive Director
1100 Kennedy Drive
Key West, Florida 33040

With a copy to: Shawn D. Smith
Co-General Counsel
1100 Kennedy Drive
Key West, Florida 33040

Any Notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered; or sent by overnight delivery service.

ARTICLE IV

EXECUTION OF AGREEMENT

SECTION 4.01 **DEFAULT.** In the event of any failure of compliance by either party hereto with any of its material obligations to the other party as provided herein, such action shall constitute a default under this Agreement. Upon any such default, the non-defaulting party shall provide to the defaulting party a written Notice of such default, which Notice (a “Default

Notice”) shall state in reasonable detail the actions the defaulting party must take to cure the same. The defaulting party shall cure any such default within 30 days following the date of the Default Notice.

Notwithstanding the provisions of this Section, if any such default by the defaulting party remains uncured at the conclusion of any specified 30 day cure period, and if the nature of the defaulting party’s obligations are such that more than 30 days is required to effect cure, then the defaulting party shall not be in default hereunder and the non-defaulting party shall not have the right to exercise its termination rights granted herein as a result of any such default, if the defaulting party commences cure within the applicable cure period and thereafter diligently pursues cure to completion of performance.

In the event the defaulting party fails to affect any required cure as provided for herein, the defaulting party shall be deemed to be in uncured default hereunder, and the non-defaulting party shall have the right, but shall not be obligated, upon written Notice to the defaulting party, to terminate this Agreement.

If such Notice is given, this Agreement shall terminate on the date set forth in the Notice and the parties shall be relieved of all rights and obligations hereunder, except for any rights and obligations that expressly survive termination.

SECTION 4.02 **FUNDING.** The parties agree that Marathon’s only responsibility under this Agreement is to provide funding relating to Marathon’s scope of work under the bid alternate portion of the project prior to the Authority’s acceptance of the bid alternate portion of the project.

SECTION 4.03 **COUNTERPARTS.** This Agreement shall be executed in two or more counterparts, any of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

SECTION 4.04 **SUPERSEDES OTHER AGREEMENTS.** The parties agree that this Agreement represents their mutual agreement and replaces and supersedes any prior agreements, understandings, or communications on the subject of the Agreement, whether written or oral.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on their behalf by the Executive Director of the Authority and Marathon's Mayor.

Authority Board Approved:

FLORIDA KEYS AQUEDUCT AUTHORITY

ATTEST:

Clerk

By: _____
Gregory W. Veliz, Executive Director

Dated: _____

THE CITY OF MARATHON

ATTEST:

DIANE CLAVIER, CITY CLERK

As Clerk

By: _____
Luis Gonzalez, Mayor

Dated: _____

**FLORIDA KEYS AQUEDUCT AUTHORITY
RESOLUTION # 23-08**

**A RESOLUTION OF THE FLORIDA KEYS AQUEDUCT AUTHORITY
AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AN
INTERLOCAL AGREEMENT WITH MARATHON IN ORDER FOR
MARATHON TO FUND THE ADDITIONAL COSTS OF A PROPOSED
ALTERNATIVE BID IMPROVEMENT OF CRAWL KEY
INFRASTRUCTURE.**

WHEREAS, the Florida Keys Aqueduct Authority (the “Authority”) was created by Special Legislation, Chapter 76-441, Laws of Florida, as amended; and

WHEREAS, Marathon, was formed in 1999 by the Legislature of the State of Florida pursuant to Chapter 99-427 Laws of Florida; and

WHEREAS, the Authority is in the process of designing improvements to the distribution and storage tank in Crawl Key, which will require improvements to its existing 2” water main; and

WHEREAS, Marathon has plans to develop an adjacent property located at 12650 Overseas Highway, which would require upsizing the existing 2” water main to a 6” water main and the installation of an additional fire hydrant. In addition, the water main would be extended by approximately 930 lineal feet; and

WHEREAS, the Authority has agreed to bid the proposal to upgrade the existing 2” water main to 6”, with approximately 930 lineal feet added as well as installation of the proposed fire hydrant, as a bid alternate of the proposed improvement. Marathon shall assume the cost of this upgrade should the bid alternate price be acceptable to Marathon. If not, the Authority will continue construction without upgrading the current 2” water main.

WHEREAS, the parties have the legal authority to enter into this Interlocal Agreement and to implement its terms; and

NOW, THEREFORE BE IT RESOLVED, that the Florida Keys Aqueduct Authority Board of Directors does hereby:

AUTHORIZE THE EXECUTIVE DIRECTOR TO EXECUTE AN INTERLOCAL AGREEMENT WITH MARATHON IN ORDER FOR MARATHON TO FUND THE ADDITIONAL COSTS OF A PROPOSED ALTERNATIVE BID IMPROVEMENT OF CRAWL KEY INFRASTRUCTURE.

ADOPTED THIS _____ DAY OF FEBRUARY 2023.

FLORIDA KEYS AQUEDUCT AUTHORITY

By: _____
J. Robert Dean, Chairman

(Corporate Seal)

ATTEST:

Antoinette M. Appell, Secretary/Treasurer