



COUNCIL AGENDA STATEMENT

Meeting Date: December 10, 2024

To: Honorable Mayor and City Councilmembers

From: Carlos A. Solis, P.E. Director of Public Works

Through: George Garrett, City Manager

Agenda Item: **Resolution 2024-128**, Approving A Memorandum Of Agreement And Covenant Running With The Land Between The State Of Florida, Department of Transportation And The City Of Marathon, Florida; Authorizing The City Manager To Execute The Agreement On Behalf Of The City; And Providing For An Effective Date.

BACKGROUND & JUSTIFICATION:

The City of Marathon, Florida is the fee owner of the Property located at 1090 Overseas Highway, Marathon, Florida 33050, also known as the 7 Mile Marina property. The Florida Department of Transportation ("FDOT") has a right-of-way easement in a portion of the City's property. The proposed Memorandum of Agreement and Covenant Running with the Land clarifies the rights and obligations of both parties regarding the right-of-way easement area.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	_____	_____
2. Other _____	_____	_____
3. Not Applicable	<u> X </u>	_____

FISCAL NOTE:

RECOMMENDATION:

Approval

**CITY OF MARATHON, FLORIDA
RESOLUTION 2024-128**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A MEMORANDUM OF AGREEMENT AND COVENANT RUNNING WITH THE LAND BETWEEN THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION AND THE CITY OF MARATHON, FLORIDA; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon, Florida (the “City”) is the fee owner of the upland real estate parcel number 00101780-000100 in Monroe County, Florida (the “Property”); and

WHEREAS, the Florida Department of Transportation (the “FDOT”) has an easement interest in a portion of the City Property via a Grant of Right-of-Way; and

WHEREAS, the City intends on redeveloping the Property into a commercial marina with boat slips; and

WHEREAS, the City believes that the Memorandum of Agreement and Covenant Running With the Land is in the best interest of the Parties and of the residents of the City of Marathon, Florida.

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

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

Section 2. The Memorandum of Agreement and Covenant Running with the Land between the City and FDOT attached hereto as “Exhibit A,” together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is hereby approved. The City Manager is authorized to execute the Memorandum of Agreement and Covenant Running with the Land on behalf of the City.

Section 3. Effective Date. This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 10th DAY OF DECEMBER, 2024.

THE CITY OF MARATHON, FLORIDA

Lynn Landry, 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

STATE ROAD NO. : SR 5/US 1/Overseas Highway
MANAGING DISTRICT : Six
COUNTY : Monroe
SECTION : 90040
PARCEL NO. : 538

**MEMORANDUM OF AGREEMENT AND
COVENANT RUNNING WITH THE LAND BETWEEN
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
AND THE CITY OF MARATHON, FLORIDA**

THIS MEMORANDUM OF AGREEMENT AND COVENANT RUNNING WITH THE LAND (“Agreement”) is entered into this ____ day of _____, 20__ (the “Effective Date”), by and between the State of Florida, Department of Transportation, an agency of the State of Florida (hereinafter called the “Department”), and the City of Marathon, Florida, a municipal corporation of the State of Florida (hereinafter called the “City”), each referred to herein as, a “Party”, and collectively as the “Parties”.

RECITALS

WHEREAS, the City of Marathon is the fee owner of record of the upland real estate parcel number 00101780-000100 in Monroe County, Florida (the “City Property”), by virtue of a Warranty Deed from Grand Keys, LLC to City of Marathon on December 29, 2021, which is recorded in Official Records Book 3171, Page 1441 of the Public Records of Monroe County, Florida, attached hereto as Exhibit “A” and incorporated herein; and

WHEREAS, the Department has an easement interest in the City Property via a Grant of Right-of-Way granted by the Trustees of the Internal Improvement Fund of the State of Florida (“TIITF”) on September 23, 1932, which is recorded in Deed Book G-4, Page 217 of the Public Records of Monroe County, Florida, attached hereto as Exhibit “B” and incorporated herein (the “Easement Area”), for the purpose of encouraging the construction of a public highway through the lands described, which includes the Easement Area, and protecting said roadway by, including, but not limited to, having the right to remove from or place on said lands any earth, stone, or other material deemed necessary by it in the construction, maintenance, and protection of the road (“Easement Purpose”); and

WHEREAS, the City intends on redeveloping the City Property into a commercial marina with seventeen wet slips and two boat lifts; and

WHEREAS, the Department has determined that the Easement Area is not needed for construction, operation, or maintenance of a transportation facility presently or in the foreseeable future, and therefore, the Department does not currently object to the City’s redevelopment plans of the City Property; and

WHEREAS, notwithstanding the foregoing, the City Property continues to be subject to the Department’s easement and the Department wishes to retain its easement interest in the Easement Area for the Easement Purpose as evidenced by the Department’s Notice of Preservation of Interest dated April 10, 2024, recorded in Official Records Book 3271, Page 2420 in the Public Records of Monroe County, Florida, attached hereto as Exhibit “C” and incorporated herein; and

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WHEREAS, the Parties are entering into this agreement to delineate the Parties' rights as to the Easement Area; and

WHEREAS, the City, by and through Resolution No. _____ dated _____, attached hereto as Exhibit "D" and incorporated herein, has duly authorized the execution of this Agreement and agrees to be bound by the terms hereunder, and has further authorized _____ or his/her designee to take all necessary steps to effectuate the terms of this Agreement.

NOW THEREFORE, in consideration of the covenants, promises, understandings, and agreements made by each Party to the other as set forth herein, the Parties do hereby mutually agree as follows:

1. The Recitals set forth above are incorporated into and are made a part hereof.
2. The term of this Agreement shall commence on the Effective Date and shall terminate only upon mutual written agreement of the Parties.
3. The City shall not construct or install, or allow any other party to construct or install, any improvements within the Easement Area that interfere with or prohibit the Department from engaging in the Easement Purpose granted to it by TIITF. The City shall apply for a permit from the Department and any other applicable governmental agencies prior to the construction or installation of any improvements.
4. If the City constructs and/or installs any improvements permitted by the Department within the Easement Area ("Authorized Improvements"), the City hereby acknowledges and agrees that: (a) the design and construction of all Authorized Improvements shall be performed and completed by the City (i) in a good and workmanlike manner, (ii) free from liens and defects, and (iii) in full compliance with all laws, rules, regulations, ordinances, codes and other requirements of governmental and quasi-governmental authorities having jurisdiction; and (b) upon final completion of the Authorized Improvements, the City shall (i) remove all debris, equipment and materials from the Easement Area, (ii) restore the Easement Area to substantially the same condition as existed prior to the construction or installation of the Authorized Improvements, and (iii) keep and maintain the Authorized Improvements (and all parts and components thereof) in good condition, repair and working order at all times.
5. In furtherance of the Easement Purpose, the Department, its successors and assigns, shall have the right to enter the Easement Area and place within the Easement Area any improvements which, in its sole discretion, it deems necessary for the Easement Purpose ("Transportation-related Improvements"). With the exception of emergency repairs or maintenance situations pursuant to paragraph 8 herein, and to the extent feasible, prior to performing any construction and/or installation of Transportation-related Improvements that require removal or demolition of any of the City's Authorized Improvements in the Easement Area, the Department shall coordinate the necessary removals or demolitions with the City, at the City's sole cost and expense, or alternatively, allow the City the

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- opportunity to perform such removals or demolitions of said obstructions. In the event the removal or demolition is performed by the Department, the City shall reimburse the Department for any removal or demolition expenses actually incurred by the Department no later than sixty (60) days from receipt by the City of the invoice(s) submitted by the Department. Any of the City's Authorized Improvements removed or demolished pursuant to this paragraph may be restored by the City, at its sole cost and expense, to the condition existing prior to removal or demolition.
6. The Department reserves the right to remove or demolish any improvements within the Easement Area installed by the City, its successors and assigns that are not permitted by the Department. The City shall reimburse the Department for any removal or demolition expenses actually incurred by the Department no later than sixty (60) days from receipt by the City of the invoice(s) submitted by the Department.
 7. The City shall release, indemnify, defend, save and hold harmless the Department, its employees, officers, and agents (collectively, "Indemnitees"), of and from any and all losses, fines, penalties, costs, damages, claims, demands, suits and liabilities of any nature including reasonable attorney fees (including regulatory and appellate fees) (collectively, "Claims"), arising out of or because of any act, error, omission, or negligent act by the City, its officers, agents, or employees, to the extent and within the limitations of Section 768.28, Florida Statutes. Notwithstanding anything to the contrary contained herein, the obligation of the City to indemnify, defend and hold Indemnitees harmless as set forth herein shall not apply to the extent that any such Claims arise from the sole negligence or willful misconduct of Indemnitees as determined by a final, non-appealable adjudication or judgment by a court of competent jurisdiction.
 8. In the event that the Department needs to make emergency repairs or conduct emergency maintenance to any Transportation-related Improvements (including, but in no way limited to, utilities) located within the Easement Area, the Department, its successors and assigns, shall have the right to perform such emergency repairs or emergency maintenance, including the right to remove or demolish any of the City's Authorized Improvements placed within the Easement Area that obstruct or impede the Department's access to said Transportation-related Improvements for the purpose of emergency repairs or emergency maintenance. Prior to performing any emergency repair or emergency maintenance that requires removal or demolition of any of the City's Authorized Improvements, the Department shall make reasonable efforts to notify the City of such necessary removals or demolitions. Any of the City's Authorized Improvements removed or demolished pursuant to this paragraph may be restored by the City, at its sole cost and expense, to the condition existing prior to removal or demolition.
 9. It is understood and agreed that the rights and obligations of each Party shall constitute a covenant running with the land and shall extend to and be made binding on the City, the Department, and their successors and/or assigns.
 10. The provisions of this Agreement may be enforced by all appropriate actions at law and in equity by the respective Parties.

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11. Nothing in this Agreement shall be construed as a waiver or attempted waiver by the either Party of its sovereign immunity under the Constitution and laws of the State of Florida.
12. No failure by any Party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, duty, agreement, or condition.
13. All notices, requests, demands, and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if (a) personally delivered; (b) if sent for next day delivery to a domestic address by a recognized overnight delivery service (e.g., Federal Express), with a record of receipt; or (c) three (3) days after being sent, if sent by certified or registered mail, return receipt requested, to each Party indicated below and addressed as follows:

To the Department: Florida Department of Transportation
1000 NW 111th Avenue
Miami, FL 33172
Attn: Right-of-Way Manager

To the City: City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
Attn: Steven Williams, City Attorney

Each Party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent.

14. This Agreement may be executed in counterparts, and when taken together, the same shall constitute a binding agreement on all Parties. A photocopy or facsimile copy of this Agreement and any signatory hereon shall be considered for all purposes as an original.
15. This Agreement shall be binding upon and shall insure to the benefit of the Parties hereto, and their respective successors, permitted assigns, heirs and legal representatives; provided, however that this Agreement may not be assigned by either Party without the express written consent of the other Party.
16. This Agreement is governed by and shall be interpreted and enforced under the laws of the State of Florida. Venue for any actions or suits arising from or related to this Agreement shall be in the Circuit Courts of Leon County, Florida.
17. This Agreement, together with all exhibits attached hereto, embodies and constitutes the entire understanding and agreement between the City and the Department concerning the rights granted herein and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, with respect thereto are merged herein.

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This Agreement may be amended or modified only in writing of the same formality by this Agreement and executed by each Party.

18. Upon execution of this Agreement, the Department shall record it in the Official Public Records of Monroe County, Florida.

[REMAINDER INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS.]

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IN WITNESS WHEREOF, the Parties have read and agree with the terms and conditions of this Agreement.

CITY OF MARATHON, FLORIDA

By: _____
(Print name)

Title: _____

Date: _____

**STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION**

By: _____
(Print name)

Title: _____

Date: _____

Approved as to form and legality:

By: _____
(Print name)

Title: _____

Approved as to form and legality:

By: _____
(Print name)

Title: _____

Parcel "C"

Description of the existing waterward boundary line, as of July 1, 1975, lying Westerly of and adjacent to those lands as described in official records books 2047, page 1772 of the public records of Monroe County, Florida, said line on and adjacent to Florida bay, in section 8, township 66 South, range 32 East, Hog Key, and being more particularly described by metes and bounds as follows:

Commencing at the intersection of the baseline of State Road No. 5, also known as U.S. Highway No.1, as shown on the Florida Department of Transportation right-of-way map of State Road No. 5 labeled Section 90030-(2522)2530, sheet 4 of 5, approved on April 16, 1979, and recorded in road map Book 1 at Page 145 of the Public Records of Monroe County, Florida, with the East line of said Section 8, Township 66 South, Range 32 East, on Hog Key, Monroe County, Florida, thence bear South 84 degrees, 43 Minutes, 53 Seconds West, (bearing basis) along said baseline for a distance of 1089.78 feet, to its intersection with the Southerly prolongation of the Westerly shoreline of Hog Key as shown upon said right-of-way map of Florida State Road No. 5 the intersection of said shoreline prolongation with the said baseline of said State Road No. 5, being located South 84 Degrees, 43 Minutes, 53 Seconds West, 3.63 Feet, measure along said baseline, from the Southwest corner of the North portion of Government Lot 1, Section 8, Township 66 South, Range 32 East, as described in official Record Book 817, Page 1458 of Monroe County, Florida, Public Records; thence bear North 04 Degrees, 56 Minutes, 07 Seconds East, along said Westerly Shoreline /Southerly prolongation, for a distance of 50.80 feet, to intersect with a line 50.00 feet Northerly of and parallel with said baseline also being the Northerly right-of-way line of said U.S. Highway No. 1; thence bear South 84 Degrees, 43 Minutes, 53 Seconds West, along said right-of-way line projected, for a distance of 146.62 feet to the Point of Beginning of the existing waterward boundary line hereinafter described, thence bear North 05 Degrees, 16 Minutes, 07 Seconds West, along the Westerly edge of the filled upland area, for a distance of 9.14 feet, to the mean high water line of Florida Bay; thence bear along said mean high water line for the following 8 courses,

- 1) North 78 Degrees 44 Minutes 44 Seconds East, 9.25 Feet;
- 2) North 70 Degrees 20 Minutes 48 Seconds East, 43.50 Feet;
- 3) North 65 Degrees 18 Minutes 33 Seconds East, 20.77 Feet;
- 4) North 72 Degrees 47 Minutes 20 Seconds East, 10.05 Feet;
- 5) North 60 Degrees 53 Minutes 23 Seconds East, 15.63 Feet;
- 6) North 73 Degrees 59 Minutes 30 Seconds East, 13.69 Feet;
- 7) North 06 Degrees 41 Minutes 17 Seconds West, 7.48 Feet;
- 8) North 84 Degrees 18 Minutes 50 Seconds East, 46.68 Feet; to said Westerly shoreline and terminus of this description.