



City of Marathon City Council Agenda
9805 Overseas Hwy., Marathon, FL
Tuesday, April 8, 2025 5:30 P.M.

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Roll Call**
4. **Approval of agenda and consent agenda** [Approval of Consent Agenda passes all routine items indicated by asterisk (*). Consent Agenda items are not considered separately unless a Council Member requests. In the event of such a request, the item is returned to the Regular Agenda.]
5. **City Manager Report**
 - A. Discussion Of Timing, Process And Traffic Control For Sombrero Blvd. Stormwater Improvements
 - B. Marathon High School Student Art in City Hall
7. **Citizens' comments on agenda items not scheduled for public hearing and items other than those appearing on the agenda** [Those who have signed in will be given the first opportunity to speak. Time is limited to 2 minutes per speaker.] **TIME CERTAIN TO 6:30 PM OR AS SOON AS POSSIBLE THEREAFTER OR AT THE CONCLUSION OF ALL COUNCIL BUSINESS; WHICHEVER OCCURS FIRST.**
8. **Quasi-Judicial Public Hearings:** Please be advised that the following items on the agenda are quasi-judicial in nature. If you wish to comment upon these items, please inform the Clerk by filling out the available sign-up form. An opportunity for persons to speak on the items will be made available after the applicant and staff has made their presentations on the items. All testimony, including public testimony and evidence, will be made under oath or affirmation. Additionally, each person who gives testimony may be subject to cross-examination. If you refuse either to be cross-examined or to be sworn, your testimony will not be considered. The general public will not be permitted to cross-examine witnesses, but the public may request the Council to ask questions of staff or witnesses on their behalf. Persons representing organizations must present evidence of their authority to speak for the organization. (Councilmember's to communicate ex parte communication.)
 - A. **Resolution 2025-34, A Request For A Development Agreement** For Wharf Marina, Inc. Pursuant To Chapter 102, Article 8 Of The City Of Marathon Land Development Regulations (Code) Entitled "Development Agreement" For The Development Of A Property Into Five (5) Transient Units, Office And Restaurant, And Marina; Located At 1480 Overseas; Which Is As Part Of Government Lot 2 And Bay Bottom North Of And Adjacent To Lot 2 And Adjacent Portion Of State Road 4-A And 1458 Coral Drive Legally Described As Back 3 Part Of Lots 1- 2 -3 And Back 2 Parts Of Lots 1-2-3-4 W R Thompson Subdivision PB 2-104 (Aka Parcels B-C-D-E-F-K-L Per UNREC 1977 C G Bailey Survey On File), Section 9, Township 66 South, Range 32, Key Vaccas, Monroe County, Florida; Having Real Estate Numbers 00102790-000000, & 00320330-000000. Nearest Mile Marker 48. (Second Hearing)....1

B. Resolution 2025-35, Request For A **Development Agreement** For Wharf Marina, Inc. Pursuant To Chapter 102, Article 8 Of The City Of Marathon Land Development Regulations (Code) Entitled “Development Agreement” For The Development Of A Restaurant, Marina, Retail Shop, And Eleven (11) Transient Housing Units At The Property Located At 1622 Overseas Highway, Which Is Legally Described As 9 66 32 Key Vaccas Part Lot 2 & Bay Bottom North Of & Adjacent To Part Government Lot 2 (PT ST RD 4-A), Marathon, Monroe County, Florida, Having Real Estate Number 00102600-000000. Nearest Mile Marker 48.....32

9. Ordinances for First Public Hearing

A. Ordinance 2025-02, Amending Chapter 18, Article 3 (“Abatement Of Criminal Nuisances”) By Deleting Sections 18-186, 18-187, 18-888, 18-189, And 18-190; Providing For The Repeal Of All Ordinances Or Parts Thereof Found To Be In Conflict; Providing For Severability; Providing For Inclusion In The Code Of Ordinances And Providing For An Effective Date.....77

10. Resolutions For Adoption

***A. Resolution 2025-36,** Accepting The Responsible Bid And Approving A Contract Between The City And Pedro Falcon Contractors, Inc. In An Amount Not To Exceed \$193,703.00 For The Alteration to The City Hall Lobby Area and Office Modifications At City Hall; Authorizing The City Manager To Execute The Contract And Appropriate Funds On Behalf Of The City; And Providing For An Effective Date.....87

11. Council comments

12. Adjournment

Pursuant to Section 286.0105, Florida Statutes, if a person decides to appeal any decision made by the City Council with respect to any matter considered at such hearing or meeting, one will need a record of the proceedings and for such purpose that person may need to ensure that a verbatim record of the proceedings is made; such record includes the testimony and evidence upon which the appeal is to be based. ADA Assistance: Anyone needing special assistance at the City Council hearing due to disability should contact the City of Marathon City Attorney at (305) 289-4130 at least five days prior thereto. Please contact the City Clerk at clavierd@ci.marathon.fl.us if you would like to receive any of the items on the agenda by email.

CITY COUNCIL AGENDA STATEMENT



Meeting Date: April 8, 2025
From: Brian Shea, Planning Director
Through: George Garrett, City Manager

Agenda Item: **Resolution 2025-34**, Consideration Of A Request For A Development Agreement For Wharf Marina, Inc. Pursuant To Chapter 102, Article 8 Of The City Of Marathon Land Development Regulations (Code) Entitled "Development Agreement" For The Development Of A Property Into Five (5) Transient Units, Office And Restaurant, And Marina; Located At 1480 Overseas; Which Is As Part Of Government Lot 2 And Bay Bottom North Of And Adjacent To Lot 2 And Adjacent Portion Of State Road 4-A And 1458 Coral Drive Legally Described As Back 3 Part Of Lots 1- 2 -3 And Back 2 Parts Of Lots 1-2-3-4 W R Thompson Subdivision Pb 2-104 (AKA Parcels B-C-D-E-F-K-L Per Unrec 1977 C G Bailey Survey On File), Section 9, Township 66 South, Range 32, Key Vaccas, Monroe County, Florida; Having Real Estate Numbers 00102790-000000, & 00320330-000000. Nearest Mile Marker 48.

RECOMMENDATION:

Staff recommends approval of the project with the recognized conditions and limitations.

APPLICANT/ OWNER: Steve Hurley/Wharf Marina, Inc.
AGENT: Steve Hurley

LOCATION: The project site consists of 2 parcels. The parcels are located at 1480 Overseas Highway nearest mile marker 48. See Figure 1 & 2.

REQUEST: An amendment to a Conditional Use Permit for the redevelopment of the subject property having the real estate numbers 00102790-000000 & 00320330-000000.

LOT SIZE:

RE: 00102790-000000, 1480 Overseas Hwy.
Approximately 1.26 acres upland, 1.86 acres environmentally sensitive lands, and 1.00-acre easement.

RE: 00320330-000000, 1458 Coral Dr. 63,336 sq ft and 0.09-acre easement.

SURROUNDING ZONING AND USES:

	<u>Zoning</u>	<u>Use</u>
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North	Residential Medium and Residential High	Harbor Cay Club
East	Mixed Use	Vacant Land
South	Mixed Use and Residential Mobile Home	Trailerama, Dion's
West	Residential Medium and Mixed Use	Porky's, Wharf Marina

EXISTING CONDITIONS:

The project site consisted of three parcels. A residential four-plex, and the commercial parcel previously was developed with Hanley's Restaurant and Marina. It has been redeveloped into a commercial structure. Housing units from the previous Conditional Use approval have yet to be constructed.

Figure 1: Project Location



FUTURE LAND USE AND ZONING MAP DESIGNATIONS:

Mixed Use Commercial (MU-C) and Residential Medium (RM). See Figures 2 & 3.

Figure 2: Future Land Use Map

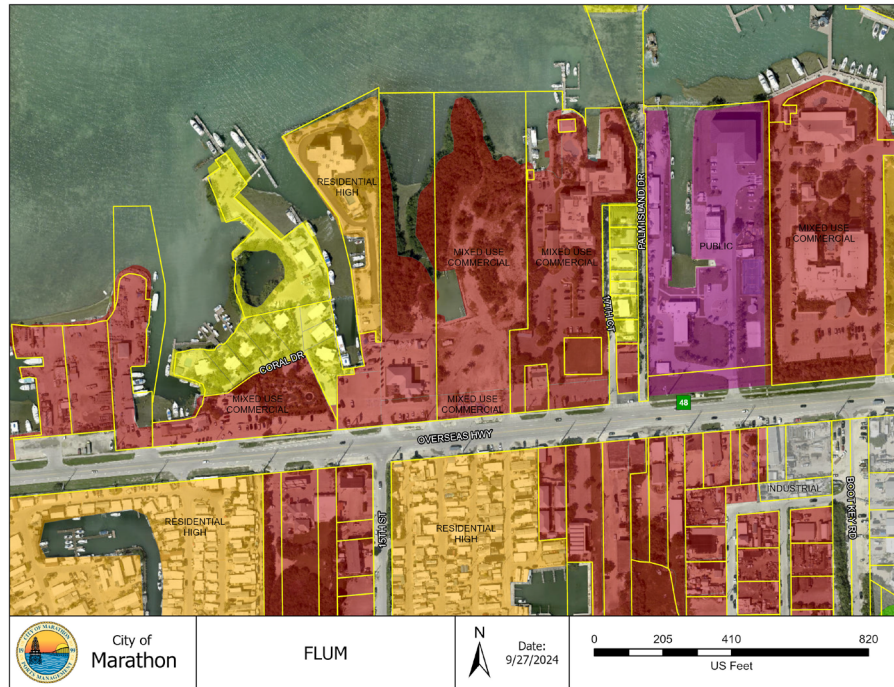
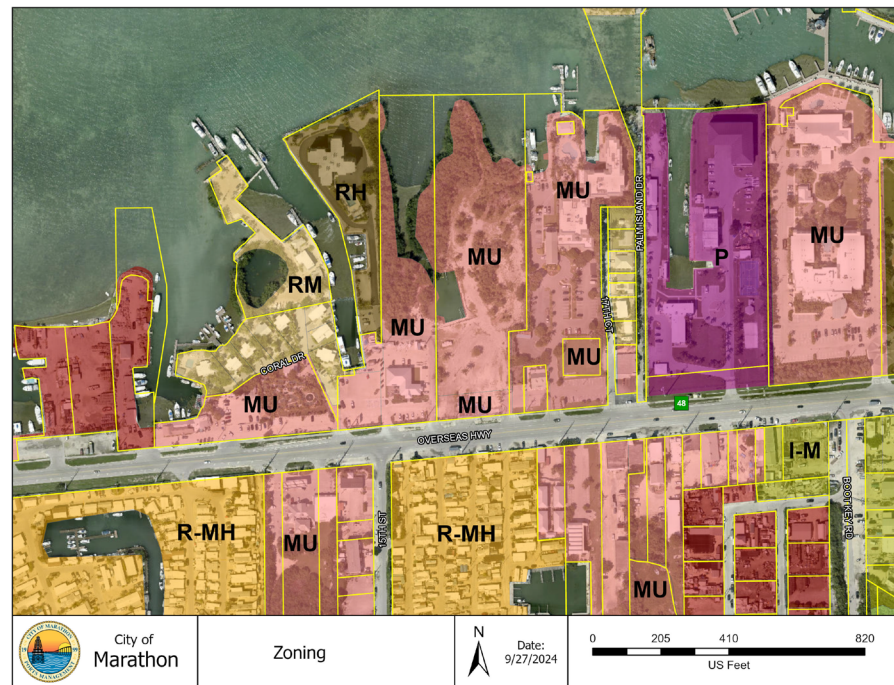


Figure 3: Zoning Map



PROPOSED REDEVELOPMENT:

Transient Units: 5 transient units.

Commercial: 3,640 square feet and accessory structures. Already completed.

BACKGROUND:

The project was a redevelopment of the property to include the construction of new residential uses and commercial and marina uses in the Mixed-Use zoning classification. This report addresses the proposed amendment to the current conditional use.

On June 18, 2019, the City Council passed Resolution 2019-61 approving the original conditional use application. Previous approvals included 6 Market Rate and 1 Affordable Unit; these are no longer being proposed.

All conditions of the Conditional Use approval will have to be met before any building permit will be approved.

EVALUATION FOR COMPLIANCE WITH THE LAND DEVELOPMENT REGULATIONS:

The criteria for evaluating a Conditional Use Approval are outlined in Chapter 102, Article 13, Conditional Use Permits, in the City of Marathon Land Development Regulations.

CRITERIA

A. The proposed use is consistent with the Comprehensive Plan and LDRs;

The proposed redevelopment project is located within the Mixed Use (MU) Zoning District. Per Chapter 103, Article 2, Section 103.09 of the Land Development Regulations, “The MU zoning district is designed to accommodate a wide variety of commercial and retail activities that will result in the most efficient and attractive use of the City's historic business district and the US 1 corridor, in an effort to recognize the role of US1 as the City of Marathon's "Main Street". Specifically, this district provides for land uses that have a strong pedestrian-oriented character, with a mixture and concentration of specialty shopping, transient lodging, retail, personal service, restaurant, cultural, fishing industry, affordable housing, and entertainment uses in the Old Town area. The MU district also provides for large-scale retail and commercial business opportunities in other areas, including larger shopping centers, specialty shopping centers, individual multi-tenant commercial buildings, automobile services and sales, fast food restaurants, affordable housing residential uses, transient lodging and other retail establishments that serve the community at large. The (MU) district is designated within the Mixed-use Commercial (MUC) future land use category on the Future Land Use Map (FLUM).”

The proposed project consists of the development of new residential uses and is consistent with the Mixed-Use Zoning District. Section 103.15 establishes whether specific uses are allowed as of right, limited, accessory or conditional uses, through Table 103.15.2. That table shows that multifamily residential uses are allowed as Conditional Uses in the MU district. Marinas are also a Conditional Use in MU zoning. Conditional Use review is intended to allow a broader view of the potential impacts of a project on adjacent uses and on City concurrency related resources such as road

capacity, solid waste, sewer, and potable water availability.

The development was originally approved with seven (7) residential units. The original Conditional Use approved for 1480 Overseas Highway property was for approximately 75,537 square feet for RE #00320350-000000, #00102790-000000, and #00102860-000000.

The amended conditional use proposes five (5) transient units. Allowed density is 5-25 Units per acre for Transient units. The Mixed-Use Commercial building has already been constructed as the Captain Pips & Starbucks. The Five (5) Transient units over parking have yet to be constructed. The required minimum lot area per unit is 1,742 sq ft with a minimum open space requirement of 20%. The total Site area is 1.73 Acres requiring a minimum of 15,107 sq ft of open space. The site plan provides approximately 20,188 sq ft of open space or 26.7%. The proposed amendment provided a reduced density.

Therefore, the request is **in compliance** with the requirements of these sections.

B. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;

The proposed project is located within the Mixed-Use Commercial Future Land Use District. Policy 1-3.1.4 of the City of Marathon Comprehensive Plan states that the “principal purpose of the Mixed-Use Commercial future land use category is to provide for the establishment of mixed-use development patterns and to recognize established mixed use development patterns within the City. This land use category is intended to provide for the commercial zoning districts where various types of commercial, retail, and office uses may be permitted at intensities which are consistent with the community character and the natural environment and to provide for various types of residential uses, including employee housing and commercial apartments. Whenever and wherever possible, the maintenance and enhancement of commercial fishing and related traditional uses such as retail, storage, and repair and maintenance which support the commercial fishing industry shall be encouraged within this land use category. Heavy industrial uses and similar incompatible uses shall be prohibited. Lawfully established RV parks where the majority of the RVs spaces are maintained and rented as transient spaces are also allowed within the Mixed-Use Commercial future land use category.” The proposed project includes development of similar uses which is consistent with the Mixed-Use classification.

The existing land use pattern in the project vicinity consists of the restaurants, commercial and residential to the east, a mobile home park and gas station to the south, commercial and residential uses to the north, and a restaurant and marina and residential uses to the west.

Otherwise, the redevelopment of the site will result in significant improvement to the site development quality, including upgraded landscaping, stormwater management, and architecture. The improvements are expected to have a positive benefit on the surrounding uses and the City.

Therefore, the request is **in compliance** with the requirements of these sections.

C. The proposed use shall not adversely affect the health, safety, and welfare of the public;

The proposed use is the creation of residential use which has not had any known impact to the

health, safety, and welfare of the public. Additionally, the creation of the office and restaurant space are not expected to create any adverse impacts to the health, safety, and welfare of the public.

The marina will also be required to meet the following criteria as additional protection for health, safety, and welfare:

- Will not have a detrimental effect on the use of such waters for navigation, transportation, recreational or other public purposes and public conveniences;
- Will not restrict the free use of the waterways and navigable waters;
- Will not have a material adverse effect upon the flow of water or tidal currents in the surrounding waters;
- Will not have a material adverse effect upon erosion, erosion control, extraordinary storm drainage, shoaling of channels, or would be likely to adversely affect the water quality presently existing in the area or limit progress that is being made toward improvement of water quality in the area;
- Will not have a material adverse effect upon the natural beauty and recreational advantages of the City;
- Will not have a material adverse effect upon the conservation of wildlife, marine life, and other natural resources, including shorelines, so as to be contrary to the public interest;
- Will not have a material adverse effect upon the uplands surrounding or necessarily affected by such plan or development;
- Will not have a material adverse effect on the community character or safety, health, and welfare of the general public; or
- Will not be inconsistent with adopted State plans (i.e., manatee protection plans), the City of Marathon Comprehensive Plan, other formally adopted natural resource management plans, or any other City ordinances or regulations.

Plans submitted with the project are suitable for the Conditional Use Approval as they relate to Chapter 107, Article 12, 100 Year Floodplain. Final review of floodplain compliance will occur as part of building permit issuance.

Figure 4: FEMA Flood Maps



Further improvements to water quality are expected to arise from stormwater improvements to the site, which should provide up-to-date treatment and eliminate any existing discharges to surface waters. The applicant has submitted preliminary stormwater plans suitable for the Conditional Use Application, and final plans are required prior to building permit issuance.

Site landscaping will be selected from Table 107.68.1, Appendix A, Article 8, Section 107 of the City of Marathon Code of Ordinances. The native vegetation will improve the environmental quality of the site and reduce irrigation needs.

Conservation easement for mangrove area will be required pursuant to Section 106.02.

Pursuant to Article Two of Chapter 106 any native trees within footprints will have to be mitigated. These transplanted and mitigated trees will be monitored per Section 106.10.

Therefore, with conditions, the request is **in compliance** with the requirements of these sections.

- Staff requires that upon planning review, if the redevelopment is found to have any effect on the Eastern Indigo Snake Habitat, then the prescribed protection measures must be undertaken, and the information posted on site.

- A final Landscape/mitigation plan must be submitted prior to permit issuance.
- Conservation Easement for mangrove area will be required pursuant to Section 106.02.

E. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:

1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in cases of fire or catastrophe;

The applicant has provided a breakdown of the proposed occupancy of the onsite buildings. The “Trip Generation Analysis” schedule provided by the traffic engineer shows that the residential use will create 38 net new daily trips. The submitted study finds that the proposed use will not have an adverse impact on the operating characteristics of U.S. 1, nor will it inhibit the safe flow of traffic traveling through the City of Marathon.

Table 1 Captain Pip's - Residential Trip Generation Summary Marathon, Florida								
Land Use	Size	Daily Trips	AM Peak Hour Trips			PM Peak Hour Trips		
			In	Out	Total	In	Out	Total
<i>Approved</i> Multifamily Housing (Low-Rise)	7 DU	42	1	2	3	3	1	4
<i>Proposed</i> Transient Housing (Hotel)	5 DU	38	1	2	3	2	1	3
Difference (Proposed - Approved)		4	0	0	0	1	0	1

Compiled by: KBP Consulting, Inc. (August 2024).

Source: Institute of Transportation Engineers (ITE) Trip Generation Manual (11th Edition).

in Marathon, Florida indicates that the proposed actions will result in a minor increase in daily (+5 trips) and peak hour trips (+1 AM peak hour trip and +1 PM peak hour trip).

Therefore, the request is **in compliance** with the requirements of these sections.

2. Off-street parking and loading areas where required, with particular attention to item 1 above.

Parking requirements are outlined in Section 107.46 (Parking Schedule). For five transient units, one parking space per bedroom is required for each unit. One space is required for every 2 bedrooms, one space per every three employees. The twelve berths require 6 parking spaces. Five spaces were required for the office. The coffee shop required one space for every three seats, and one space for every two employees on the largest shift. This requirement was met. Residential parking is being provided on site. A total of 47 parking spaces are required. The site plan provided a total of 50

parking spaces.

Section 107.52 includes a requirement that one handicapped space be provided for every 25 spaces required. Three ADA spaces are required and are provided. Parking space sizes are 9' x 18' for 90-degree parking.

This property is located adjacent to the Florida Keys Overseas Heritage Trail. As such, bicycle parking is required at a rate of one space for every ten parking spaces. The final site plan must show the bicycle racks on site prior to permit issuance.

Therefore, with the conditions below, the request is **in compliance** with the requirements of these sections.

- The final site plan must show the required parking spaces with prior to permit issuance.
- The final site plan must show the bicycle racks on site prior to permit issuance.

3. The noise, glare, or odor effects of the conditional use on surrounding properties;

The proposed project consists of redevelopment of an existing abandoned commercial use. The proposed residential and commercial uses do not have any adverse effect through noise, glare, or odors; and the proposed use reduces these effects, therefore the proposed uses should have a de minimis impact.

Therefore, the request is **in compliance** with the requirements of this section.

4. Refuse and service areas, with particular reference to locations, screening, and Items 1 and 2 above;

Section 107.39 requires that all dumpsters and recycling bins be fully enclosed and screened. The final site plan must show the dumpster located on a pad and will have to be screened.

Therefore, with conditions, the request is **in compliance** with the requirements of this section.

- The final site plan must show that the dumpsters are screened.

5. Utilities, with reference to location and availability;

Chapter 107, Article 13, establishes the City's Concurrency Management and certification requirements. This Conditional Use constitutes the City's Concurrency Level of Service Certificate, as follows:

- Wastewater: The applicant will provide wastewater and sewage collection and disposal via proposed sanitary clean outs; the property is currently connected to the City sewer system. This project will constitute an expansion, resulting in a de minimis impact. The applicant must provide utility easements for the proposed alterations.
- Water: The Florida Keys Aqueduct Authority will provide potable water for the facility.
- Solid Waste: Marathon Garbage Service will provide solid waste disposal.

- Surface Water: The applicant has provided stormwater design information suitable for the Conditional Use application review which demonstrates compliance with City standards. However, a final stormwater plan will be required for building permit issuance. This will provide a full topographic survey up twenty-five feet off-site and centerline of adjacent road.
- Recreation and Open Space: This redevelopment will have a de minimis impact on recreation and open space.
- Roadways: The applicant is redeveloping the site with a higher intensity than was contained within the prior development; therefore, a traffic study was completed to analyze the impact on transportation facilities.
- Educational Facilities: This redevelopment will have a de minimis impact on educational facilities.

Therefore, with conditions, the request is **in compliance** with the requirements of these sections.

- City approval is required for the stormwater management system prior to Building Permit Approval. This will provide a full topographic survey up twenty-five feet off-site and centerline of adjacent road.
- City approval of the connection to the City Wastewater Utility will be required.
- A utility easement must be recorded for access and maintenance.
- The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.
- Area 3 WWTP has only the capacity for the existing EDU's assigned to this property. No more capacity will be available until the plant is expanded.

6. Screening and buffering with reference to type, dimensions, and character;

Table 107.66.1 establishes project boundary buffer standards applicable to the project. The subject parcel is zoned MU and is bordered to the Northeast by property zoned RH, and to the Northwest by property zoned RM. There is a medium project boundary buffer requirement for portions of the project area adjacent to parcels zoned RH. As the access drive for the residential area is adjacent to the RM, additional buffering is not recommended as it would hinder clear site. *Both sites are owned by the applicant, so the buffer reduction does not negatively impact adjacent uses. The City Biologist must approve the final landscape plans.

Buffer Type	Minimum Width	Canopy Tree	Understory Tree	Non-Deciduous	Shrub	Screening
Medium	15 feet	4	2	2	16	No

Section 107.71 C. requires that all multifamily residential developments provide one of two types of buffers along the entire street frontage. The project is along US1 in Old Town and thus requires a type II buffer.

Table 103.15.2 outlines setback requirements in the MU district as follows: front yard 0-30'; interior side yards 10'; and rear setbacks have a 20' setback from the property line.

Table 106.28.1 outlines that the setback of principal structures on a canal is 20' as measured from

MHWL or mangrove fringe whichever is further landward.

This plan shows an 87' setback on the front yard, 62' setback on the side yard setback nearest the RH parcel, 0' setback for the RM parcel, and 15' rear yard setback.

Setback	Required	Required Landscape	Proposed	Compliant
Front	0-30	10	87	Yes
Rear RH	10	15	62	Yes
Rear RM	10	20*	0	Yes**
Rear	20	NA	15	Yes**

The last two rear setbacks in the table, although not standard, may be reviewed as compliant based upon the nonconforming setback sections. ** When a structure is nonconforming because it encroaches into a required setback, this provision will be interpreted as allowing other portions of the structure to be expanded as long as there is no further encroachment into a required setback. Additionally, provided that there will be no adverse impacts on surface water runoff or navigation, the setback from the water may be maintained.

Parking area landscaping is required by Section 107.66 of the Code. Proposed parking area landscaping meets the standards set forth in the code.

Therefore, with conditions, the request is **in compliance** with the requirements of these sections.

- A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
- A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.

7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding uses;

A review of sign requirements at this stage in development approval is not necessary; however, signs for the project will be reviewed prior to issuance of a building permit according to Chapter 107, Article 7, Signs.

Article 107.54 establishes criteria for lighting, including light pole light limitations and other technical criteria. Final lighting plans will be submitted along with final landscaping plans and will include verification from the landscape architect that all provisions of the article are met.

Therefore, the request is **in compliance** with the requirements of these sections.

- All signs will be reviewed and approved for compliance with the City of Marathon LDR's.

8. Required yards and other open space;

Section 106.16 established required open space for the project. The site is scarified; therefore, a twenty percent open space requirement applies.

Therefore, the request is **in compliance** with the requirements of these sections.

9. General compatibility with surrounding properties; and

The project is a redevelopment of property that needs improvement and maintenance. Adjacent uses include a commercial establishment and other residential dwelling units. A redevelopment of the property into a mix of residential units and commercial with marina is expected to be fully compatible with these uses. The proposed project represents improvement to the current state of prior development and is expected to increase compatibility with surrounding properties.

Section 107.40 restricts the height of buildings to 42' as measured from the crown of the roadway or unimproved grade. The site plans show that buildings are below 42'.

Therefore, the request is **in compliance** with the requirements of these sections.

10. Any special requirements set forth in the LDRs for the particular use involved.

Section 104.25 Hotels or Motels

The following criteria are applicable to this redevelopment:

An existing hotel or motel may be redeveloped pursuant to Table 103.15.1, subject to the following standards:

A. General Provisions

1. Each hotel or motel shall comply with all mandatory hurricane evacuation requirements set forth by the City for hotel, motel, and other transient uses.
2. Each hotel or motel shall establish and maintain shuttle transport services to airports and tourist attractions individually or in conjunction with other hotel or motel operators.
3. Except as provided in Subsection (a), all hotel or motels shall provide on- or off-site employee housing living space in an amount equal to a minimum of 25 percent (as may be adjusted from time to time by Council policy to reflect economic conditions) of the approved floor area in guest units; and such housing shall be of any of the following types as outlined in (b) below:
 - a. An exception to the requirement for on- or off-site employee housing living space for hotel/motel redevelopment may be recommended by the Planning Director, the Planning Commission, and approved by the City Council as part of a conditional use and/or development agreement when the following criteria are met:
 - 1) No increase in the number of hotel/motel transient units (unit as described in Subsection 104.25A.4. of the LDRs);
 - 2) No use of transferable building rights (TBRs) (as described specifically in Subsection 107.14B. of the LDRs;

- 3) No significant change (+ or – 10%) in the current project floor area (Floor area as defined in Chapter 110, Article 3 of the LDRs);
 - 4) No significant difference between the current and proposed uses of floor area;
 - 5) No effort to move units off-site through TBRs as part of the proposed project, though they may be documented and preserved for future use; and
 - 6) No significant change or increase in the size or type of project site amenities.
- b. *Housing types.*
- 1) Dormitory pursuant to Section 104.15;
 - 2) Community Workforce Housing Unit pursuant to Section 104.13.
4. All entrances to a hotel or motel unit shall share the same key or means of controlling access so that the hotel or motel room as defined herein is not divisible into separately rentable units.
 5. All hotels or motels must provide a lobby for guests to check in/out.

B. *Redevelopment Criteria.*

- 1) An existing hotel or motel room may be redeveloped to a unit not exceeding 1,500 square feet consisting of no more than two and one-half (2 1/2) bathrooms, three (3) bedrooms and one (1) other living area, subject to the following rates of redevelopment:
 - a. A one (1) bedroom unit may redevelop as a one (1) bedroom unit, without a reduction in the number of units; and
 - b. A one (1) bedroom unit may redevelop as a two (2) bedroom unit at the rate of 90 percent of the one (1) bedroom units being redeveloped as two (2) bedroom units; and
 - c. A one (1) bedroom unit may redevelop as a three (3) bedroom unit at the rate of 80 percent of the one (1) bedroom units being redeveloped as three (3) bedroom units.
- 2) The number of units reduced and not included in the redevelopment shall be tracked over time and registered with the City as Conditional Redevelopment Units and reflected in the data and analysis of the Comprehensive Plan as it is amended.
- 3) Existing hotel units, which exceed allocated densities, may redevelop provided: (1) the parcel has a stormwater management system which meets the requirements of Article 11, of Chapter 107; (2) the wastewater treatment system meets Best Available Treatment wastewater standards; and (3) the structures meet the shoreline setback criteria as established in Article 4 "Open Water, Surface Waters and Wetlands" of Chapter 106.
- 4) As a condition of redevelopment, the developer and the City shall enter into a Development Agreement, in addition to compliance with all other provisions of the Code.
- 5) Redevelopment shall be clustered to the least environmentally sensitive portion of the property pursuant to Section 106.16 to protect existing habitat on site.
- 6) The City may consider, at a future time, proposed amendments to the LDRs to authorize the construction of Conditional Redevelopment Units. Prior to the consideration of such amendment, the City must demonstrate that: (1) a significant reduction in Hurricane Clearance Time has been achieved for the mandatory evacuation of permanent residents;

- (2) the Conditional Redevelopment Units have been tracked; and (3) other environmental and land use issues have been addressed.
- 7) Notwithstanding the foregoing, the developer of a hotel or motel containing less than 12 units may convert existing, lawfully established accessory floor area in the hotel or motel to a second bedroom or third bedroom, as the case may be, to an adjacent existing hotel or motel unit without triggering the requirements of Subsections B.1 or B.4 above; provided, however, that the additional floor area hereunder shall not exceed 425 square feet per unit or 850 square feet in the aggregate per property.

Section 104.42 Outdoor Storage contains special requirements.

- Outdoor storage shall be incidental and subordinate to the primary use located on the property.
- Storage areas shall be located to the side or rear of the principal building and completely screened from view.

Section 104.30 Marina contains special requirements.

The following criteria are applicable to this redevelopment:

- Prior to the issuance of any permit under this article, special conditions may be imposed for such permit. These conditions should include any item which can be reasonably expected to enhance the probability that the proposed activity will be conducted in compliance with the intent of this article. Those conditions may include, but are not limited to, field inspections by City staff, reports, monitoring, bonding, easements, guaranteed survival of non-affected and/or replanted vegetation, protective barriers, setbacks, protective earthwork, replants, signage, restoration, and/or mitigation. Conditions may also be applied in order to ensure consistency with the Comprehensive Plan.
- Prior to the issuance of the Certificate of Occupancy, the marina shall obtain and maintain a Marina Operating Permit, in compliance with all standards of Article 24, Chapter 102.
- It shall be unlawful for any person to deviate from the specific conditions of the permit as set forth by this article without the prior approval of the City Manager.

The proposed development meets all applicable criteria set forth in this section.

Therefore, with the conditions noted above, the request is **in compliance** with the requirements of this section.

CONCLUSION:

The Conditional Use Approval is intended to allow for the integration of certain land uses and structures within the City of Marathon based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses. Conditional uses shall not be allowed where the conditional use would create a nuisance, traffic

congestion, a threat to the public health, safety, or welfare of the community.

The proposed redevelopment consists of the replacement and enhancement of neglected property, as well as the development of new residential units and commercial uses on site. As such the development, including the overall upgrading and improvement of the sites, furthers the policies for development in the City and is consistent with the Comprehensive Plan and Land Development Regulations. The project is compatible with surrounding uses at both project sites, and is not expected to create a nuisance, traffic congestion or threat to public, health, safety, or welfare.

RECOMMENDATION:

Planning staff recommended approval of the proposed Amended Conditional Use Permit and Development Agreement allowing the development of five (5) transient units from the previous approvals which included 6 Market Rate and 1 Affordable Unit, provided all conditions are met prior to permit issuance. The proposed conditions of approval are listed below. Planning Commission recommends approval (4-1).

Conditions of Approval

1. A Final Site Plan must be submitted showing the existing (to be retained) and proposed buildings meeting the required setbacks, the specific setbacks for the old building footprint, parking locations, access drives and all civil engineering features; and
2. City approval of the connection to the City Wastewater Utility is required, including:
 - a. engineering drawings as needed,
 - b. projected wastewater flows, and
 - c. any easements, connections, and projected flows for Casa Cayo.
3. City approval is required for the stormwater management system prior to Building Permit Approval.
4. Area 3 WWTP has only the capacity for the existing EDU's assigned to this property. No more capacity will be available until the plant is expanded.
5. The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal (attached as Exhibit A)
6. A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
7. The final site plan must show that the dumpsters are screened.
8. All signs shall be reviewed and approved for compliance with the City of Marathon LDR's.
9. If the redevelopment is found to have any effect on the Eastern Indigo Snake Habitat, then the prescribed protection measures must be undertaken, and the information poster posted on site.
10. All mangroves associated with the northern portion of the parcel, north of the access easement to Casa Cayo, shall remain intact and may not be removed per the City's protection provisions for Mangrove Habitats.
11. Conservation Easement for mangrove area will be required pursuant to Section 106.02.
12. Outdoor storage shall be incidental and subordinate to the primary use located on the property.
13. Storage areas shall be located to the side or rear of the principal building and completely

- screened from view.
14. Prior to the issuance of any permit under this article, special conditions may be imposed for such permit. These conditions should include any item which can be reasonably expected to enhance the probability that the proposed activity will be conducted in compliance with the intent of this article. Those conditions may include, but are not limited to, field inspections by City staff, reports, monitoring, bonding, easements, guaranteed survival of non-affected and/or replanted vegetation, protective barriers, setbacks, protective earthwork, replants, signage, restoration, and/or mitigation. Conditions may also be applied in order to ensure consistency with the Comprehensive Plan.
 15. It shall be unlawful for any person to deviate from the specific conditions of the permit as set forth by this article without the prior approval of the Planning Director or City Council as appropriate.
 16. The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.
 17. The Applicant must obtain or transfer five (5) transient housing units, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY TRANSIENT UNIT NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.
 18. Property lines must be reconfigured so that all duplex buildings and associated parking are within the same parcel.
 19. *A. General Provisions*
 1. Each hotel or motel shall comply with all mandatory hurricane evacuation requirements set forth by the City for hotel, motel, and other transient uses.
 2. Each hotel or motel shall establish and maintain shuttle transport services to airports and tourist attractions individually or in conjunction with other hotel or motel operators.
 3. Except as provided in Subsection (a), all hotel or motels shall provide on- or off-site employee housing living space in an amount equal to a minimum of 25 percent (as may be adjusted from time to time by Council policy to reflect economic conditions) of the approved floor area in guest units; and such housing shall be of any of the following types as outlined in (b) below:
 - a. An exception to the requirement for on- or off-site employee housing living space for hotel/motel redevelopment may be recommended by the Planning Director, the Planning Commission, and approved by the City Council as part of a conditional use and/or development agreement when the following criteria are met:
 - 1) No increase in the number of hotel/motel transient units (unit as described in Subsection 104.25A.4. of the LDRs);
 - 2) No use of transferable building rights (TBRs) (as described specifically in Subsection 107.14B. of the LDRs);
 - 3) No significant change (+ or – 10%) in the current project floor area (Floor area as defined in Chapter 110, Article 3 of the LDRs);

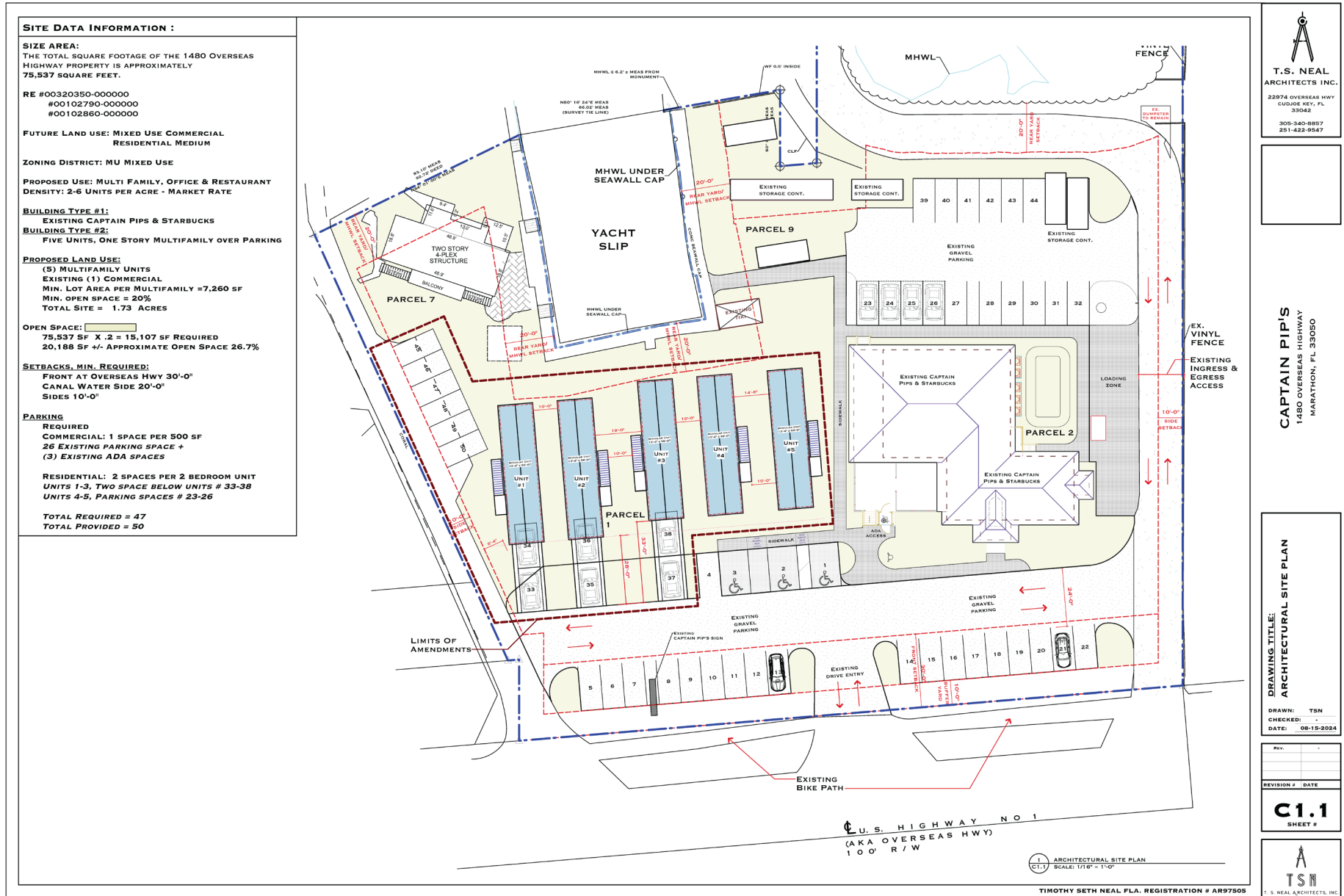
- 4) No significant difference between the current and proposed uses of floor area;
 - 5) No effort to move units off-site through TBRs as part of the proposed project, though they may be documented and preserved for future use; and
 - 6) No significant change or increase in the size or type of project site amenities.
- b. *Housing types.*
- 1) Dormitory pursuant to Section 104.15;
 - 2) Community Workforce Housing Unit pursuant to Section 104.13.
4. All entrances to a hotel or motel unit shall share the same key or means of controlling access so that the hotel or motel room as defined herein is not divisible into separately rentable units.
 5. All hotels or motels must provide a lobby for guests to check in/out.

B. Redevelopment Criteria.

- 1) An existing hotel or motel room may be redeveloped to a unit not exceeding 1,500 square feet consisting of no more than two and one-half (2 1/2) bathrooms, three (3) bedrooms and one (1) other living area, subject to the following rates of redevelopment:
 - a. A one (1) bedroom unit may redevelop as a one (1) bedroom unit, without a reduction in the number of units; and
 - b. A one (1) bedroom unit may redevelop as a two (2) bedroom unit at the rate of 90 percent of the one (1) bedroom units being redeveloped as two (2) bedroom units; and
 - c. A one (1) bedroom unit may redevelop as a three (3) bedroom unit at the rate of 80 percent of the one (1) bedroom units being redeveloped as three (3) bedroom units.
- 2) The number of units reduced and not included in the redevelopment shall be tracked over time and registered with the City as Conditional Redevelopment Units and reflected in the data and analysis of the Comprehensive Plan as it is amended.
- 3) Existing hotel units, which exceed allocated densities, may redevelop provided: (1) the parcel has a stormwater management system which meets the requirements of Article 11, of Chapter 107; (2) the wastewater treatment system meets Best Available Treatment wastewater standards; and (3) the structures meet the shoreline setback criteria as established in Article 4 "Open Water, Surface Waters and Wetlands" of Chapter 106.
- 4) As a condition of redevelopment, the developer and the City shall enter into a Development Agreement, in addition to compliance with all other provisions of the Code.
- 5) Redevelopment shall be clustered to the least environmentally sensitive portion of the property pursuant to Section 106.16 to protect existing habitat on site.
- 6) The City may consider, at a future time, proposed amendments to the LDRs to authorize the construction of Conditional Redevelopment Units. Prior to the consideration of such amendment, the City must demonstrate that: (1) a significant reduction in Hurricane Clearance Time has been achieved for the mandatory evacuation of permanent residents; (2) the Conditional Redevelopment Units have been tracked; and (3) other environmental and land use issues have been addressed.

- 7) Notwithstanding the foregoing, the developer of a hotel or motel containing less than 12 units may convert existing, lawfully established accessory floor area in the hotel or motel to a second bedroom or third bedroom, as the case may be, to an adjacent existing hotel or motel unit without triggering the requirements of Subsections B.1 or B.4 above; provided, however, that the additional floor area hereunder shall not exceed 425 square feet per unit or 850 square feet in the aggregate per property.

Attachments A: Proposed Redevelopment Site Plan



Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-61**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A REQUEST FOR A CONDITIONAL USE PERMIT FOR CAPTAIN PIPS HOLDINGS, LLC PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “CONDITIONAL USE PERMITS” FOR THE DEVELOPMENT OF A PROPERTY INTO MULTIFAMILY HOUSING, OFFICE AND RESTAURANT, AND MARINA; LOCATED AT 1470 OVERSEAS; WHICH IS LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 2 AND BAY BOTTOM NORTH OF AND ADJACENT TO LOT 2 AND ADJACENT PORTION OF STATE ROAD 4-A, PART OF GOVERNMENT LOT 2 IN REAR OF HANLEY’S INC, AND BLOCK 3 PART OF LOT 3 AND GOVERNMENT LOT 2 W R THOMPSON SUBDIVISION, SECTION 9, TOWNSHIP 66 SOUTH, RANGE 32, KEY VACCAS, MONROE COUNTY, FLORIDA; HAVING REAL ESTATE NUMBERS 00320350-000000, 00102790-000000, & 00102760-003000, NEAREST MILE MARKER 48.

WHEREAS, Captain Pips Holdings, LLC (The “Applicant”) filed an Application on February 4th, 2019 for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS, said Captain Pips Holdings, LLC property located at 1470 Overseas Highway (RE Nos. 00320350-000000, 00102790-000000, & 00102760-003000) consists of one residential four-plex and an old commercial structure, used most recently as a restaurant; and

WHEREAS, the Applicant has proposed the redevelopment of three (3) existing properties, such that an existing residential four-plex will remain and will build (six (6) market rate residential units and one (1) affordable residential unit in one multi-plex and, in addition, construct 3,200 square feet of commercial and accessory commercial structures; and

WHEREAS, the City staff reviewed the Applicant’s request for a Conditional Use Permit determining that the Applicant’s project proposal is in compliance with the City’s Comprehensive Plan and Land Development Regulations (LDRs) and further that there was no substantial impact on the City’s Level of Service (LOS); and

WHEREAS, on the 20th day May, 2019, the Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearing”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS, on the 11th day June, 2019, the City Council (the “Council”) conducted a properly advertised public hearing (the “Public Hearing”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS, the City Council made a determination that the Applicant's request for a Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City's Comprehensive Plan and LDRs, is consistent with its policy to encourage the development of residential properties and redevelop commercial in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

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 City Council hereby approves Development Order 2019-10, a copy of which is attached hereto as Exhibit "A", granting a Conditional Use Permit to Captain Pips Holdings, LLC subject to the Conditions imposed. The Director of Planning is authorized to sign the Development Order on behalf of the City.

Section 3. This Resolution shall take effect immediately upon execution.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 11th DAY OF JUNE, 2019.

THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

AYES: Zieg, Gonzalez, Senmartin, Cook, Bartus
NOES: None
ABSENT: None
ABSTAIN: None

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:



David Migut, City Attorney

EXHIBIT "A"
CITY OF MARATHON, FLORIDA
CONDITIONAL USE
DEVELOPMENT ORDER # 2019-10

A DEVELOPMENT ORDER APPROVING A REQUEST FOR A CONDITIONAL USE PERMIT FOR CAPTAIN PIPS HOLDINGS, LLC PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED "CONDITIONAL USE PERMITS" FOR THE DEVELOPMENT OF A PROPERTY INTO MULTIFAMILY HOUSING, OFFICE AND RESTAURANT, AND MARINA; LOCATED AT 1470 OVERSEAS; WHICH IS LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 2 AND BAY BOTTOM NORTH OF AND ADJACENT TO LOT 2 AND ADJACENT PORTION OF STATE ROAD 4-A, PART OF GOVERNMENT LOT 2 IN REAR OF HANLEY'S INC, AND BLOCK 3 PART OF LOT 3 AND GOVERNMENT LOT 2 W R THOMPSON SUBDIVISION, SECTION 9, TOWNSHIP 66 SOUTH, RANGE 32, KEY VACCAS, MONROE COUNTY, FLORIDA; HAVING REAL ESTATE NUMBERS 00320350-000000, 00102790-000000, & 00102760-003000, NEAREST MILE MARKER 48.

WHEREAS, Captain Pips Holdings, LLC (The "Applicant") filed an Application on February 4th, 2019 for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS, said Captain Pips Holdings, LLC property located at 1470 Overseas Highway (RE Nos. 00320350-000000, 00102790-000000, & 00102760-003000) consists of one residential four-plex and an old commercial structure, used most recently as a restaurant; and

WHEREAS, the Applicant has proposed the redevelopment of three (3) existing properties, such that an existing residential four-plex will remain and will build (six (6) market rate residential units and one (1) affordable residential unit in one multi-plex and, in addition, construct 3,200 square feet of commercial and accessory commercial structures; and

WHEREAS, the City staff reviewed the Applicant's request for a Conditional Use Permit determining that the Applicant's project proposal is in compliance with the City's Comprehensive Plan and Land Development Regulations (LDRs) and further that there was no substantial impact on the City's Level of Service (LOS); and

WHEREAS, on the 20th day May, 2019, the Planning Commission (the "Commission") conducted a properly advertised public hearing (the "Public Hearing") regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS, on the 11th day June, 2019, the City Council (the "Council") conducted a properly advertised public hearing (the "Public Hearing") regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS, the City Council made a determination that the Applicant's request for a Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City's Comprehensive Plan and LDRs, is consistent with its policy to encourage the development of residential properties and redevelop commercial in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

FINDINGS OF FACT:

1. The Applicant has proposed the redevelopment of three (3) existing properties, such that an existing residential four-plex will remain and will build (six (6) market rate residential units and one (1) affordable residential unit in one multi-plex and, in addition, construct 3,200 square feet of commercial and accessory commercial structures (Site Plan Attached as Attachment 1; and
2. In accordance with Section 102.77 of the Code, the Commission and Council considered and determined the Applicant met the following criteria:
 - a. The proposed use is consistent with the Comprehensive Plan and LDRs;
 - b. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;
 - c. The proposed use shall not adversely affect the health, safety, and welfare of the public; and
 - d. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment; and
 - e. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:
 - 1) Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;
 - 2) Off-street parking and loading areas where required, with particular attention to item 1 above;
 - 3) The noise, glare or odor effects of the conditional use on surrounding properties;
 - 4) Refuse and service areas, with particular reference to location, screening and Items 1 and 2 above;
 - 5) Utilities, with reference to location and availability;
 - 6) Screening and buffering with reference to type, dimensions and character;
 - 7) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding properties;
 - 8) Required yards and other open space;
 - 9) General compatibility with surrounding properties; and

CONDITIONS IMPOSED:

Granting approval of the Application is subject to the following conditions:

Conditions of Approval

1. A Final Site Plan must be submitted showing the existing (to be retained) and proposed buildings meeting the required setbacks, the specific setbacks for the old building footprint, parking locations, and access drives and all civil engineering features; and
2. City approval of the connection to the City Wastewater Utility is required, including:
 - a. engineering drawings as needed,
 - b. projected wastewater flows, and

- c. any easements, connections, and projected flows for Casa Cayo.
- 3. City approval is required for the stormwater management system prior to Building Permit Approval.
- 4. The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal (attached as Exhibit A)
- 5. A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
- 6. The final site plan must show that the dumpsters are screened.
- 7. All signs shall be reviewed and approved for compliance with the City of Marathon LDR's.
- 8. If the redevelopment is found to have any effect on the Eastern Indigo Snake Habitat, then the prescribed protection measures must be undertaken, and the information poster posted on site.
- 9. All mangroves associated with the northern portion of the parcel, north of the access easement to Casa Cayo, shall remain intact and may not be removed per the City's protection provisions for Mangrove Habitats.
- 10. For the Affordable unit
 - a. Dwelling units shall contain less than or equal to 1,800 square feet of habitable space.
 - b. Occupancy of affordable housing units is limited to those meeting the following income requirements:
 - i. Very-low-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 50 percent of the median adjusted gross annual income for households within the county;
 - ii. Low-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 80 percent of the median adjusted gross annual income for households within the county;
 - iii. Median-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 100 percent of the median adjusted gross annual income for households within the county;
 - iv. Moderate-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 120 percent of the median adjusted gross annual income for households within the county;
 - v. Middle-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 160 percent of the median adjusted gross annual income within the county;
 - c. For the purposes of this section, "adjusted gross income" means all wages, income from assets, regular cash or non-cash contributions or gifts from persons outside the household (that will be used to offset the purchase price of the dwelling unit), and such other resources and benefits as may be determined to be income by the United States Department of Housing and Urban Development, adjusted for family size, less deductions allowable under Section 62 of the Internal Revenue Code. Income from assets is calculated at either the actual income from all assets or two (2%) percent of the value of all assets, whichever is greater. If total assets are less than \$5,000.00, no income is considered. Asset inclusions: Cash accounts (checking, savings, IRA, Money Market...), investments, retirement accounts, boats, RV's. Income exclusions: Personal property, automobiles;
 - d. The maximum sales price shall not exceed 300 percent of that amount which represents 160 percent of the median adjusted gross annual income for households within the county;
 - e. The monthly rent shall not exceed 30 percent of that amount which represents the income bracket of the household, i.e., very low, low, median, moderate or middle, divided by 12. In no case shall the monthly rent exceed 160 percent of the median adjusted gross annual income for households within the county, divided by 12; and
 - f. If the dwelling units utilize affordable housing BPAS allocations, the requirements of

Subsection 107.06(c) shall also apply.

- g. Annual income qualification, lease or employment verification, as applicable, by the City, or its designee, shall be limited to rental and employee housing dwelling units. Income verification for owner occupied dwellings shall be performed and approved by the City or its designee prior to the sales closing and occupancy of the dwelling unit.
- h. Two (2) side yards are required for stacked duplexes.
- i. Townhouses are limited to ten (10) dwelling units per row, except for affordable housing.
- j. The private yard area for rooftop balcony dwelling is provided by the roof or balconies of the structure.
- k. The total area of the mixed-use or commercial apartments, including patios and access way shall not exceed the area covered by the ground floor and any covered walks or arcades.
- l. Each unit shall have access to a balcony or patio that is separate from the access to the unit, provides adequate privacy and the size shall be two-tenths (2/10) of unit floor area or a minimum of 60 square feet in size.
- m. The patio area may be wholly or partially replaced by the provision of a recreation yard provided on site. Recreational yards shall be a minimum one-tenth (1/10) of unit floor area.
- 11. Outdoor storage shall be incidental and subordinate to the primary use located on the property.
- 12. Storage areas shall be located to the side or rear of the principal building and completely screened from view.
- 13. Prior to the issuance of any permit under this article, special conditions may be imposed for such permit. These conditions should include any item which can be reasonably expected to enhance the probability that the proposed activity will be conducted in compliance with the intent of this article. Those conditions may include, but are not limited to, field inspections by City staff, reports, monitoring, bonding, easements, guaranteed survival of non-affected and/or replanted vegetation, protective barriers, setbacks, protective earthwork, replants, signage, restoration and/or mitigation. Conditions may also be applied in order to assure consistency with the Comprehensive Plan.
- 14. Prior to the issuance of the Certificate of Occupancy, the marina shall obtain and maintain a Marina Operating Permit, in compliance with all standards of Article 24, Chapter 102.
- 15. It shall be unlawful for any person to deviate from the specific conditions of the permit as set forth by this article without the prior approval of the Planning Director or City Council as appropriate.
- 16. A unity of title must be recorded with the Clerk of Courts, prior to permit issuance.
- 17. Affordable housing deed restrictions must be recorded with the Clerk of Courts, prior to permit issuance.
- 18. The Conditional Use Development Order will constitute the Certificate of Concurrence for the project. The determination will be valid for one year.
- 19. The Applicant must obtain or transfer seven (7) housing units, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.

VIOLATION OF CONDITIONS:

The applicant understands and acknowledges that it must comply with all of the terms and conditions herein, and all other applicable requirements of the City or other governmental agencies applicable to the use of the Property. In accordance with the Code, the Council may revoke this approval upon a determination that the Applicant or its successor or designee is in non-compliance with this Resolution or

Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed therein.

CONCLUSIONS OF LAW:

Based upon the above Findings of Fact, the Council does hereby make the following Conclusions of Law:

1. The Application has been processed in accordance with the applicable provisions of the City Code, and will not be detrimental to the community as a whole; and
2. In rendering its decision, as reflected in this Resolution, the Council has:
 - (a) Accorded procedural due process;
 - (b) Observed the essential requirements of the law;
 - (c) Supported its decision by substantial competent evidence of record; and
3. The Application for a conditional use permit is hereby GRANTED subject to the conditions specified herein.

EFFECTIVE DATE:

This development order shall not take effect for thirty (30) days following the date it is filed with the City Clerk, and during that time, the conditional use approval granted herein shall be subject to appeal as provided in the City Code. An appeal shall stay the effectiveness of this development order until said appeal is resolved.

6/18/19

Date

George Garrett
George Garrett
Director of Planning

This Development Order was filed in the Office of the City Clerk of this 18 day of June, 2019.

Diane Clavier
Diane Clavier, City Clerk

NOTICE

Under the authority of Section 102.79(c) of the City of Marathon Land Development Regulations, this development order shall become null and void with no further notice required by the City, unless a business license has been issued for the use or a complete building permit application for site preparation and building construction with revised plans as required herein is submitted to the City of Marathon Building Official within one (1) year from the date of conditional use approval, or the date when the Department of Community Affairs waives its appeal and all required certificates of occupancy are procured with three (3) years of the date of this development order is approved by the City Council.

In addition, please be advised that pursuant to Chapter 9J-1, Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Community Affairs. During that forty-five days, the Florida Department of Economic Opportunity may

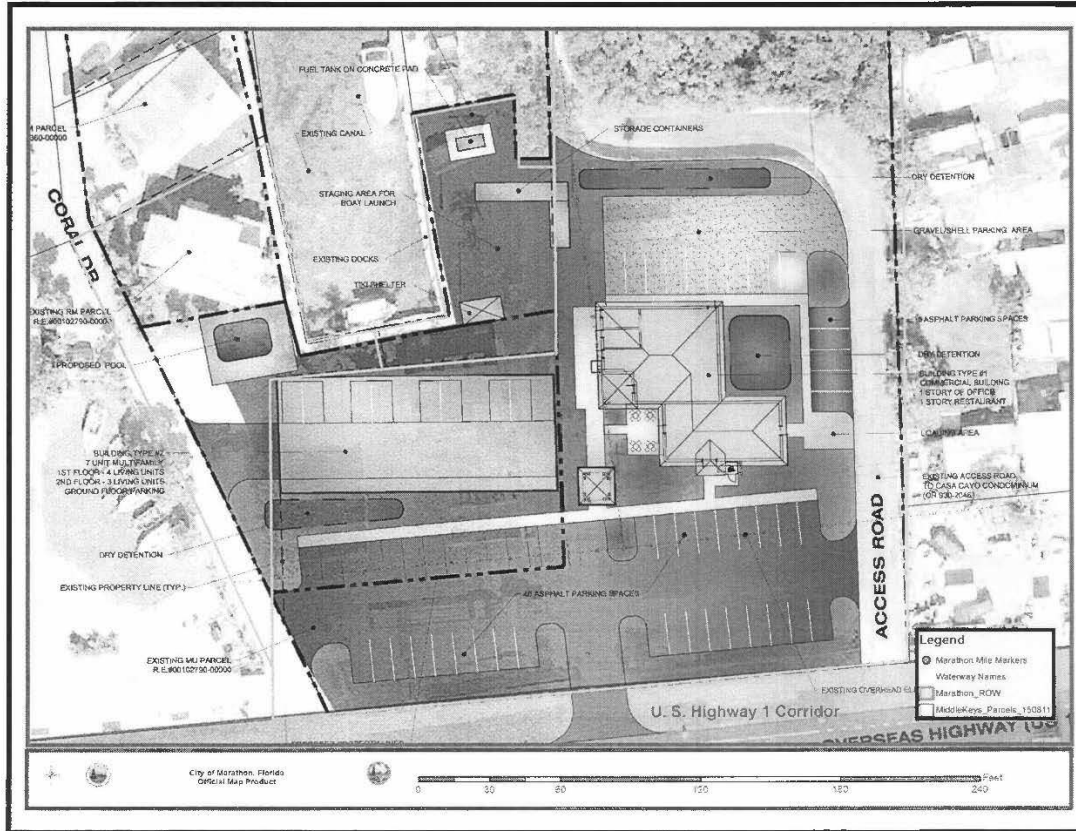
appeal this instrument to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this instrument until the appeal is resolved by agreement or order.

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to Captain Pip's Holdings LLC, 1410 Overseas Highway, Marathon, FL 33050 this 18 day of June, 2019.


Diane Clavier, City Clerk

Attachment 1
Approved Site Plan



**CITY OF MARATHON, FLORIDA
RESOLUTION 2025-34**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON REQUEST FOR A DEVELOPMENT AGREEMENT FOR WHARF MARINA, INC. PURSUANT TO CHAPTER 102, ARTICLE 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “DEVELOPMENT AGREEMENT” FOR THE DEVELOPMENT OF A PROPERTY INTO FIVE (5) TRANSIENT UNITS, OFFICE AND RESTAURANT, AND MARINA; LOCATED AT 1480 OVERSEAS; WHICH IS AS PART OF GOVERNMENT LOT 2 AND BAY BOTTOM NORTH OF AND ADJACENT TO LOT 2 AND ADJACENT PORTION OF STATE ROAD 4-A AND 1458 CORAL DRIVE LEGALLY DESCRIBED AS BACK 3 PART OF LOTS 1- 2 -3 AND BACK 2 PARTS OF LOTS 1-2-3-4 W R THOMPSON SUBDIVISION PB 2-104 (AKA PARCELS B-C-D-E-F-K-L PER UNREC 1977 C G BAILEY SURVEY ON FILE), SECTION 9, TOWNSHIP 66 SOUTH, RANGE 32, KEY VACCAS, MONROE COUNTY, FLORIDA; HAVING REAL ESTATE NUMBERS 00102790-000000, & 00320330-000000. NEAREST MILE MARKER 48.

WHEREAS, A Conditional Use permit was approved on June 18, 2019, pursuant to Chapter 102, Article 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS, Wharf Marina, Inc. (The “Applicant”) filed an Application on September 5, 2024, for an amended Conditional Use Permit pursuant to Chapter 102, Article 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS, the Applicant has proposed the redevelopment of two (2) existing properties, such that five (5) transient units will be constructed in addition, the 3,640 square feet of commercial and accessory commercial structures that have already been constructed; and

WHEREAS, the City staff reviewed the Applicant’s request for a Development Agreement determining that the Applicant’s project proposal is in compliance with the City’s Comprehensive Plan and Land Development Regulations (LDRs) and further that there was no substantial impact on the City’s Level of Service (LOS); and

WHEREAS, on the 24th day of February 2025, the Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearing”) regarding the request submitted by the Applicant, for a Development Agreement pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS, on the 25th day of March 2025, and on the 8th day of April 2025, the City Council (the “Council”) conducted a properly advertised public hearing (the “Public Hearing”) regarding the request submitted by the Applicant, for a Development Agreement pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS, the City Council made a determination that the Applicant’s request for a Development Agreement, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City’s Comprehensive Plan and LDRs, is consistent with its policy to encourage the development of residential properties and redevelop commercial in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

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 City Council hereby approves Development Agreement, a copy of which is attached hereto as Exhibit "A", granting a Development Agreement to Wharf Marina, Inc. subject to the Conditions imposed. The Director of Planning is authorized to sign the Development Order on behalf of the City.

Section 3. This Resolution shall take effect immediately upon execution.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8th DAY OF APRIL 2025.

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:

Steven Williams, City Attorney



CITY COUNCIL AGENDA STATEMENT

Meeting Date: April 8, 2025

From: Brian Shea, Planning Director

Through: George Garrett, City Manager

Agenda Item: **Resolution 2025-35**, Consideration Of A Request For A Development Agreement For Wharf Marina, Inc. Pursuant To Chapter 102, Article 8 Of The City Of Marathon Land Development Regulations (Code) Entitled “Development Agreement” For The Development Of A Restaurant, Marina, Retail Shop, And Eleven (11) Transient Housing Units At The Property Located At 1622 Overseas Highway, Which Is Legally Described As 9 66 32 Key Vaccas Part Lot 2 & Bay Bottom North Of & Adjacent To Part Government Lot 2 (Pt St Rd 4-A), Marathon, Monroe County, Florida, Having Real Estate Number 00102600-000000. Nearest Mile Marker 48.

RECOMMENDATION:

Staff recommends approval of the project with the recognized conditions and limitations.

APPLICANT/ OWNER: Steve Hurley/Wharf Marina, Inc.

AGENT: Steve Hurley

LOCATION: The project site is located at 1622 Overseas Highway at approximately mile marker 48. See Figure 1.

REQUEST: A Development Agreement and Conditional Use Approval for the development of a restaurant, marina, retail shop, and transient housing units.

LOT SIZE:

Total size: Approximately 159,141 square feet
1.10 acres of Environmentally Sensitive

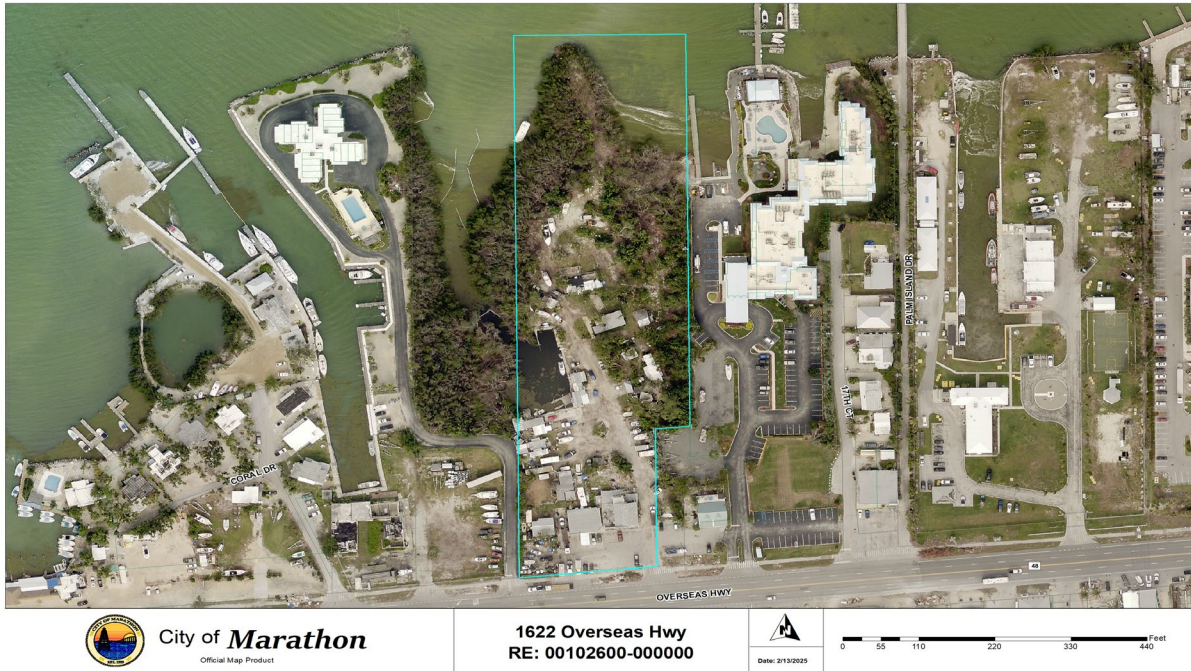
SURROUNDING ZONING AND USES:

	<u>Zoning</u>	<u>Use</u>
North	N/A	Gulf Of Mexico
East	Mixed Use (MU)	Bluegreen Resort and 7 Mile Fly Shop
South	Residential Medium High (R-MH)	Trailerama Park
West	Mixed Use (MU)	Starbucks & Captain Pips

EXISTING CONDITIONS:

The project site consists of developed land that was recently cleared. The existing FLUM is Mixed Use Commercial (MU-C), and the Zoning is Mixed Use (MU). See Figures 2 & 3.

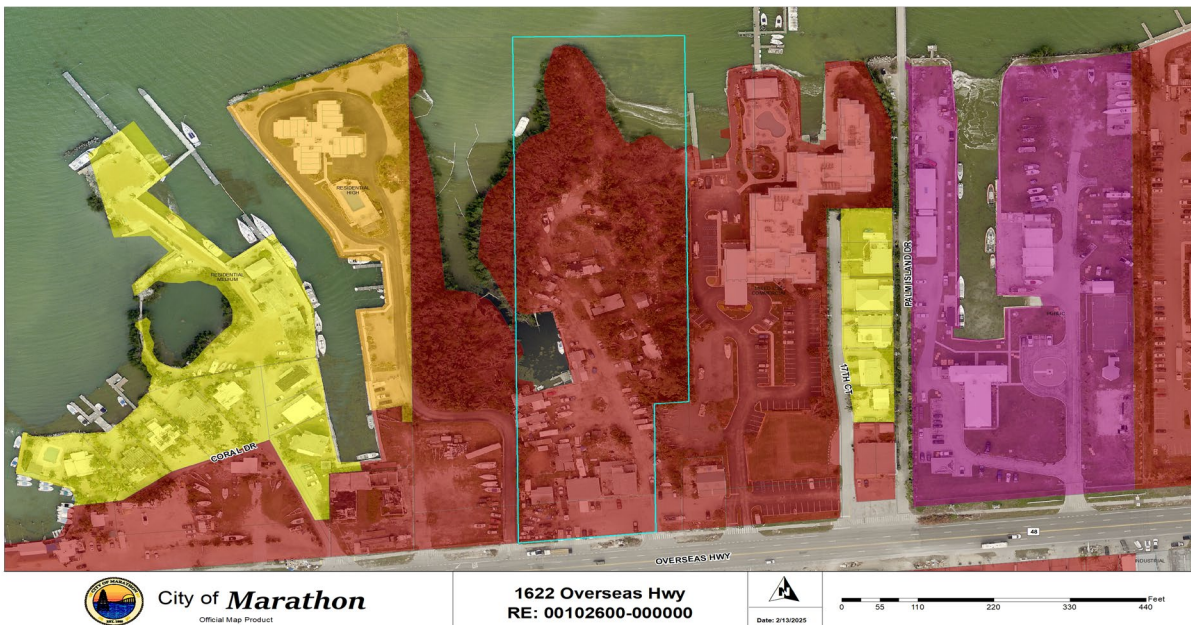
Figure 1 - Project Site



FUTURE LAND USE MAP DESIGNATION:

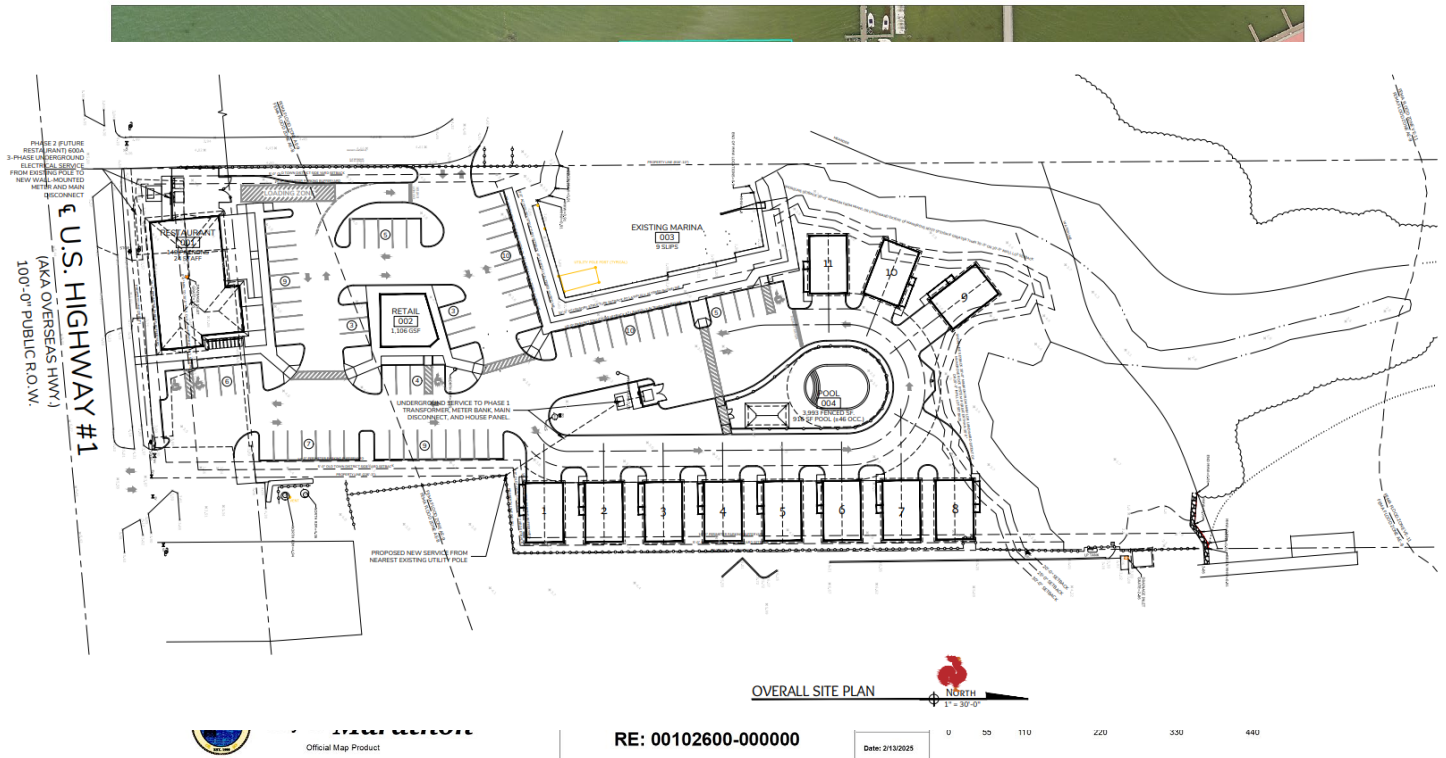
Mixed Use Commercial (MU-C). See Figure 2.

Figure 2 - Future Land Use Map



ZONING MAP DESIGNATION:
Mixed Use (MU). See Figure 3.

Figure 3 - Zoning Map



PROPOSED DEVELOPMENT:

The applicant requests the development of a Restaurant, Marina, Retail Space and Transient Housing Units.

Transient Units:	11 Units (Hotel)
Marina:	9 Slips
Commercial:	5,509 square feet (Restaurant)
	1,106 square feet (Retail Space)

Figure 4 - Proposed Site Plan

BACKGROUND:

The proposed project is a redevelopment of recently cleared land to include a restaurant, marina, retail shop and transient housing units. Conditional Use Approval is required for project approval. This report addresses the Conditional Use application. **All conditions of the Conditional Use approval will have to be met before any building permit will be approved.**

EVALUATION FOR COMPLIANCE WITH THE LAND DEVELOPMENT REGULATIONS:

The criteria for evaluating a Conditional Use Approval are outlined in Chapter 102, Article 13, Conditional Use Permits, in the City of Marathon Land Development Regulations.

CRITERIA

A. The proposed use is consistent with the Comprehensive Plan and LDRs;

The proposed redevelopment project is located within the Mixed Use (MU) Zoning District. Per Chapter 103, Article 2, Section 103.09 of the Land Development Regulations, the district is designed to “accommodate a wide variety of commercial and retail activities that will result in the most efficient and attractive use of the City’s historic business district and the US1 Corridor, in an effort to recognize the role of US1 as the City of Marathon’s “Main Street.” The MU district also provides for large-scale retail and commercial business opportunities in other areas, including larger shopping center, specialty shopping centers, individual multi-tenant commercial buildings, automotive services and sales, fast food restaurants, affordable housing uses, transient lodging and other retail establishments that serve the community at large.”

The proposed project consists of the development of a restaurant, marina, retail shop and transient housing units and is consistent with the Mixed-Use Zoning District. Section 103.15 establishes whether specific uses are allowed as of right, limited, accessory or conditional uses, through Table 103.15.2. That table shows that multifamily residential uses are allowed as Conditional Uses in the MU district. Marinas are also a Conditional Use in MU zoning. Conditional Use review is intended to allow a broader view of the potential impacts of a project on adjacent uses and on City concurrency related resources such as road capacity, solid waste, sewer, and potable water availability.

Table 103.15.2 in the Land Development Regulations establishes constraints on density and intensity allowed in the MU district based on the types of uses proposed. Table 103.15.3 further qualifies the allowed range of intensities based on the intensity of retail use. In its review of this project, staff determined the overall development proposal to be consistent with a “restaurant/bar” use. As such, the following table reflects the proposed project intensity (shown as floor area (FA)) against the maximum intensity and floor area allowed under the constraints imposed on retail, high intensity development. The table also reflects the need for additional floor area that the applicant will have to acquire through the commercial building permit allocation system (CBPAS). The eleven (11)

transient units require 1,742 sq ft each for a total of 19,162 sq ft.

Wharf Marina, Inc			
Calculation of Intensity Limits & Requirements for CBPAS Application			
Use 1		Restaurant/Bar	
Intensity		Low	
FAR (See Table 103.15.3)		0.60	
Site Area		159,141 sq ft	
11 Transient Units		19,162	
Limits of FA Based on Intensity		83,987 sq ft	
Requested FA	FA Entitlements	FA Required Through CBPAS	% of FA Limit
6,615	5,115	1,500	7%

The project as proposed meets the basic definition of development in the MU zoning district and will not exceed any intensity constraints imposed on the type proposed.

Therefore, with conditions, the request is **in compliance** with the requirements of these sections.

B. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;

The proposed project is located within the Mixed-Use Commercial Future Land Use District. Policy 1-3.1.4 of the City of Marathon Comprehensive Plan states that the “principal purpose of the Mixed-Use Commercial land use category is to provide for the establishment of Mixed-Use development patterns and to recognize established mixed use development patterns within the City.” This land use category is intended to provide for the commercial zoning districts where various types of commercial, retail, and office uses may be permitted at intensities which are consistent with the community character and the natural environment and to provide for various types of residential uses, including employee housing and commercial apartments. Whenever and wherever possible, the maintenance and enhancement of commercial fishing and related traditional uses such as retail, storage, and repair and maintenance which support the commercial fishing industry shall be encouraged within this land use category. Heavy industrial uses and similarly incompatible uses shall be prohibited. Lawfully established RV parks where the majority of the RVs spaces are maintained and rented as transient spaces are also allowed within the Mixed-Use Commercial future land use category.” The proposed project includes development of similar uses which is consistent with the Mixed-Use classification.

The existing land use pattern in the project vicinity consists of mixed use to the east and west, residential medium high to the south, and Gulf of Mexico to the north.

Th redevelopment of the site will result in significant improvement to the site development quality, including upgraded landscaping, stormwater management, and architecture. The improvements are expected to have a positive benefit on the surrounding uses and the City of Marathon.

Therefore, the request is **in compliance** with the requirements of these sections.

C. The proposed use shall not adversely affect the health, safety, and welfare of the public;

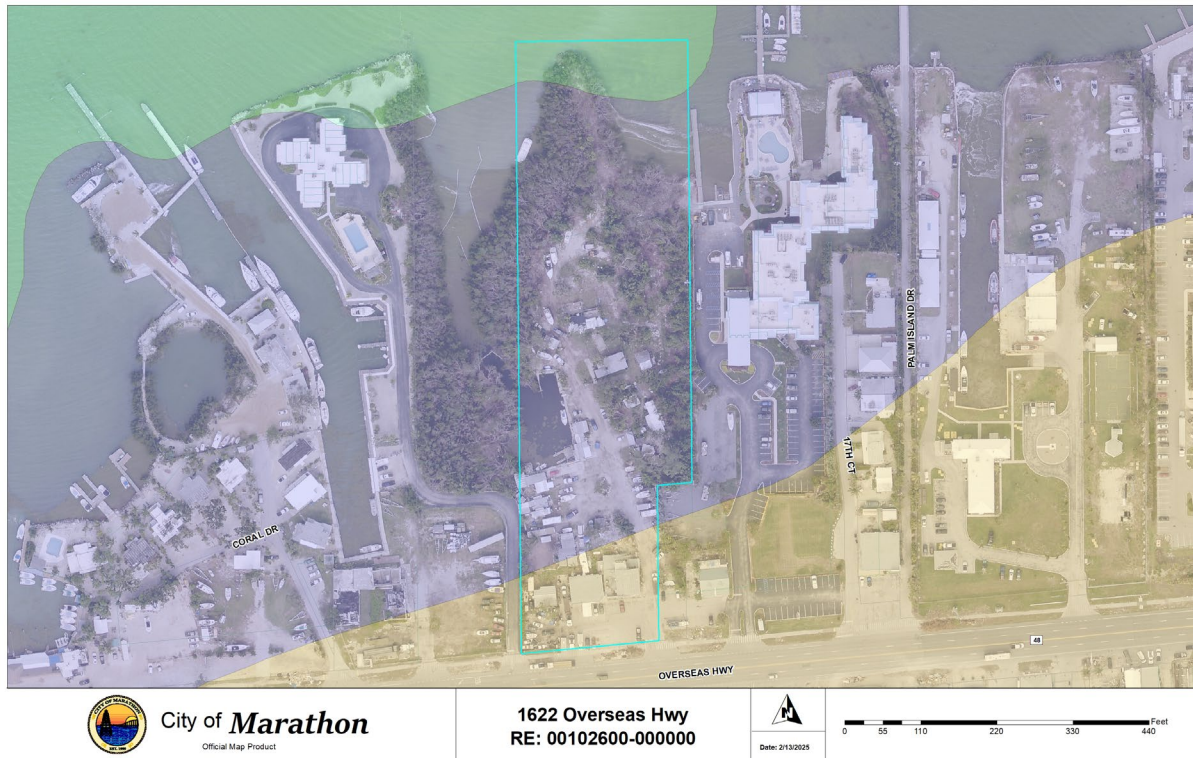
The proposed use is the creation of both commercial and transient use which has not had any known impact to the health, safety, and welfare of the public. Additionally, the creation of the retail and restaurant space are not expected to create any adverse impacts to the health, safety, and welfare of the public as well as the affordable housing units.

The marina will also be required to meet the following criteria as additional protection for health, safety, and welfare:

- Will not have a detrimental effect on the use of such waters for navigation, transportation, recreational or other public purposes and public conveniences;
- Will not restrict the free use of the waterways and navigable waters;
- Will not have a material adverse effect upon the flow of water or tidal currents in the surrounding waters;
- Will not have a material adverse effect upon erosion, erosion control, extraordinary storm drainage, shoaling of channels, or would be likely to adversely affect the water quality presently existing in the area or limit progress that is being made toward improvement of water quality in the area;
- Will not have a material adverse effect upon the natural beauty and recreational advantages of the City;
- Will not have a material adverse effect upon the conservation of wildlife, marine life, and other natural resources, including shorelines, so as to be contrary to the public interest;
- Will not have a material adverse effect upon the uplands surrounding or necessarily affected by such plan or development;
- Will not have a material adverse effect on the community character or safety, health, and welfare of the general public; or
- Will not be inconsistent with adopted State plans (i.e., manatee protection plans), the City of Marathon Comprehensive Plan, other formally adopted natural resource management plans, or any other City ordinances or regulations.

Plans submitted with the project are suitable for the Conditional Use Approval as they relate to Chapter 107, Article 12, 100 Year Floodplain. Final review of floodplain compliance will occur as part of building permit issuance.

**Figure 5
Flood Zones**



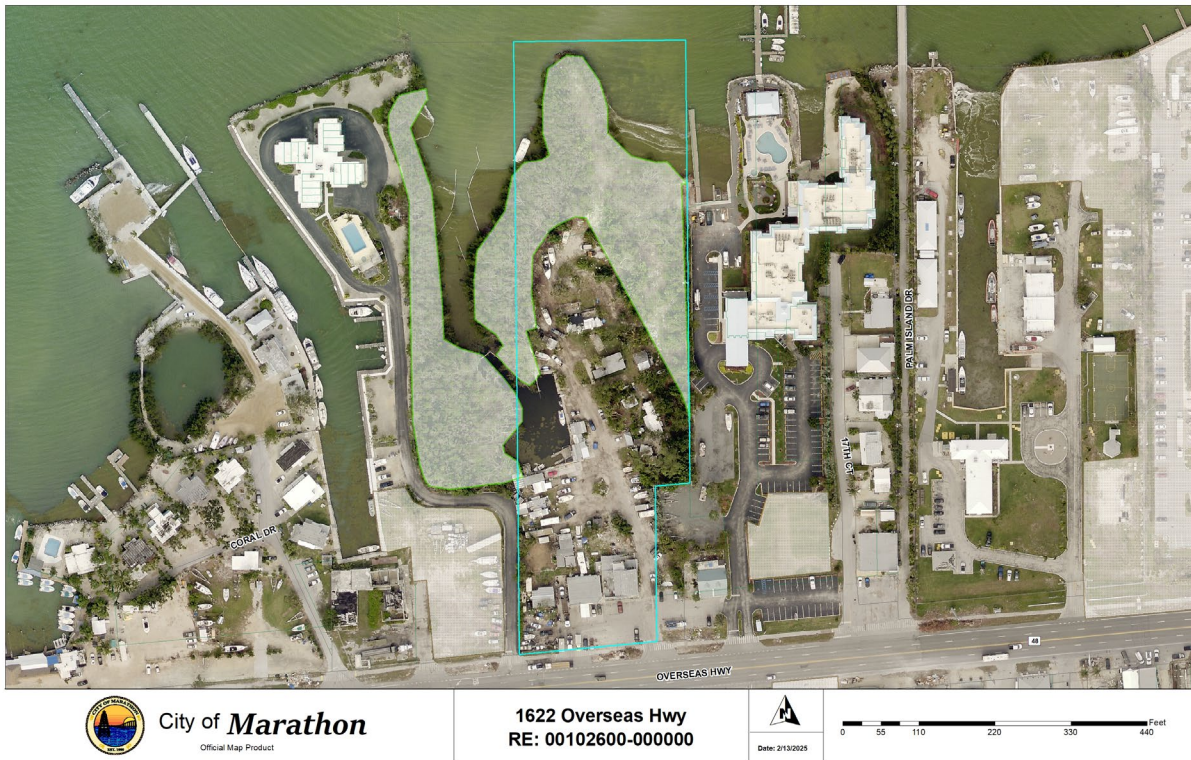
Therefore, with conditions, the request is **in compliance** with the requirements of these sections.

- Marina Operating Permit will be required.

D. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment:

The existing conditions maps indicate the subject area is designated as previously developed. A site inspection showed the property is comprised of upland, shoreline wetland and submerged lands. Most of the parcel is scarified. Both native and exotic vegetation are scattered predominantly in the center of the parcel. A meandering rock wall generally separated the uplands from the fringing wetlands. Fringing wetlands, including a wide mangrove fringe, are present. A portion of the property is recognized as possible habitat for a state or federally listed animal species, the eastern indigo snake. Figure 6 shows that this portion falls under the category of mangroves. Should any development necessitate the removal of existing native vegetation within these areas an impact determination will be made using the Species Assessment Guides.

Figure 6
FEMA-FWS Species Focus Area Map



Further improvements to water quality are expected to arise from stormwater improvements to the site, which should provide up-to-date treatment and eliminate any existing discharges to surface waters. The applicant has submitted preliminary stormwater plans suitable for the Conditional Use Application, and final plans are required prior to building permit issuance.

Site landscaping will be selected from Table 107.68.1, Appendix A, Article 8, Section 107 of the City of Marathon Code of Ordinances. The native vegetation will improve the environmental quality of the site and reduce irrigation needs.

Conservation easement for mangrove area will be required pursuant to Section 106.02

Pursuant to Article Two of Chapter 106 any native trees within footprints will have to be mitigated. These transplanted and mitigated trees will be monitored per Section 106.10.

Therefore, with conditions, the request is **in compliance** with the requirements of these sections.

- Staff requires that upon planning review, if the redevelopment is found to have any effect on the Eastern Indigo Snake Habitat, then the prescribed protection measures must be undertaken, and the information posted on site.
- A final Landscape/mitigation plan must be submitted prior to permit issuance.
- Conservation easement for mangrove area pursuant to Section 106.02.

E. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:

1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in cases of fire or catastrophe;

The applicant has provided a breakdown of the proposed occupancy of the onsite buildings. The “Trip Generation Analysis” schedule provided by the traffic engineer shows that combined uses will create 51 net new daily trips. The submitted study finds that the proposed increase in units will not have an adverse impact on the operating characteristics of U.S. 1, nor will it inhibit the safe flow of traffic traveling through the City of Marathon.

Table 1 Wharf Marina Trip Generation Summary Marathon, Florida								
Land Use	Size	Daily Trips	AM Peak Hour Trips			PM Peak Hour Trips		
			In	Out	Total	In	Out	Total
<i>Existing / Previous Uses</i>								
High-Turnover Sit-Down Restaurant ¹	3,000 SF	355	0	0	0	16	11	27
Automobile Service Center	2,000 SF	33	3	1	4	2	2	4
Mobile Homes	11 DU	77	1	3	4	4	2	6
Marina (Wet Slips)	9 Berths	23	0	1	1	1	1	2
Total		488	4	5	9	23	16	39
<i>Existing / Proposed Uses</i>								
Fine Dining Restaurant	149 Seats	375	2	1	3	28	14	42
Retail	1,020 SF	56	1	1	2	4	3	7
Transient Housing (Hotel)	11 Units	85	3	2	5	3	3	6
Marina (Wet Slips)	9 Berths	23	0	1	1	1	1	2
Total		539	6	5	11	36	21	57
Difference (Proposed - Previous)		51	2	0	2	13	5	18

Ingress and egress to the properties is an existing two (2) driveways on Overseas Hwy. The trip generation analysis of the traffic study shows that with the analyzed units and commercial, the daily trips generated would be 539.

Therefore, the request is **in compliance** with the requirements of these sections.

2. Off-street parking and loading areas where required, with particular attention to item 1 above;

Parking requirements are outlined in Section 107.46 (Parking Schedule). The following table shows the parking requirement for the commercial uses on the parcel:

Use	Code Citation	Requirement	Spaces Required
Mixed Use Development (Restaurant)	107.47	1 per 3 seats, plus required stacking spaces, plus 1 per every 2 employees on the largest shift	62
Retail Sales & Service	107.47	3 per 1,000 sf of GFA, plus 1 per employee at largest shift	4
Marina	107.47	1 per 2 wet slips	5
Hotel/Motel	107.47	1 per every 3 employees, plus 1 per guest room, required parking for accessory use	22 based on bedrooms
Total Required			93
Total Provided			93

If additional employees are required, then parking will be reevaluated unless employees are shared or accounted for within existing commercial.

Section 107.52 includes a requirement that one handicapped space be provided for every 25 spaces required. For 93 required spaces, two handicapped spaces are required. Parking space sizes are 9' x 18' for 90-degree parking, and handicapped spaces are 12' x 21' as required by the Code.

The Code also requires bicycle parking to be provided for educational facilities, multifamily dwellings, commercial, institutional, and industrial uses, as well as all developments adjacent to a bike path, at a rate of one space for every ten parking spaces, per Section 107.48. The developer has provided 11 proposed bicycle parking spaces.

Therefore, with the conditions below, the request is **in compliance** with the requirements of these sections.

- The final site plan must show the required parking spaces with prior to permit issuance.
- The final site plan must show the bicycle racks on site prior to permit issuance.

3. The noise, glare, or odor effects of the conditional use on surrounding properties;

The proposed project consists of a new development of a restaurant/bar, marina, retail, and residential housing. New lighting will be constructed for this project. The applicant must provide detailed lighting plans which conform to the letter with the City of Marathon LDR's. The applicant's detailed plans should achieve the net result of no detrimental noise, glare or odors being generated by any of the uses.

Therefore, with the conditions above, the request is **in compliance** with the requirements of this section.

4. Refuse and service areas, with particular reference to locations, screening, and Items 1 and 2 above;

Section 107.39 requires that all dumpsters and recycling bins be fully enclosed and screened. The final site plan must show the dumpster located on a pad and will have to be screened.

Therefore, with conditions, the request is **in compliance** with the requirements of this section.

- The final site plan must show that the dumpsters are screened.

5. Utilities, with reference to location and availability;

Chapter 107, Article 13, establishes the City's Concurrency Management and certification requirements. This Conditional Use constitutes the City's Concurrency Level of Service Certificate, as follows:

- Wastewater: The applicant will provide engineering drawings to support force main connection along US 1.
- Water: The Florida Keys Aqueduct Authority will provide potable water for the facility.
- Solid Waste: Marathon Garbage Service will provide solid waste disposal.
- Surface Water: The applicant has provided stormwater design information suitable for the Conditional Use application review which demonstrates compliance with City standards. However, a final stormwater plan will be required for building permit issuance.
- Recreation and Open Space: This redevelopment will have a de minimis impact on recreation and open space.
- Roadways: The applicant is developing the site with a higher intensity than was contained within the development; therefore, a traffic study is required to analyze the impact on transportation facilities. Furthermore, final site layout and traffic flow will be dependent on FDOT, City of Marathon Public Works, and City Fire Marshal analysis.
- Educational Facilities: This redevelopment will have a de minimis impact on educational facilities.

Therefore, with conditions, the request is **in compliance** with the requirements of these sections.

- City approval is required for the stormwater management system prior to Building Permit Approval.
- The Conditional Use Development Order will constitute the Certificate of Concurrency for

the project. The determination will be valid for one year.

- The Area 3 WWTP has only the capacity for the existing EDU's assigned to this property. No more capacity will be available until the plant is expanded.

6. Screening and buffering with reference to type, dimensions, and character;

Table 107.70.1 establishes project boundary buffer standards applicable to the project. The subject parcel is zoned MU and is bordered to the East and West by property zoned MU. The final landscape plans must be approved by the City Biologist.

Section 107.71 A. requires that parcels with a MU zoning designation provide a Type 1 Streetscape Treatment for all parcels along US 1. The proposed landscape plan meets the minimum requirements. Access driveway to be located closer to the mixed used property but may vary to protect native vegetation.

Parking area landscaping is required by Section 107.66 of the Code. Proposed parking area landscaping meets the standards set forth in the code.

Therefore, with conditions, the request is **in compliance** with the requirements of these sections.

- A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
- A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.

7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding uses;

A review of sign requirements at this stage in development approval is not necessary; however, signs for the project will be reviewed prior to issuance of a building permit according to Chapter 107, Article 7, Signs.

Therefore, the request is **in compliance** with the requirements of these sections.

- All signs will be reviewed and approved for compliance with the City of Marathon LDR's.

8. Required yards and other open space;

Section 106.16 established required open space for the project. The site is disturbed with exotics; therefore, a twenty percent open space requirement applies. This results in 31,828 square feet of pervious area (including landscape area).

Therefore, the request is **in compliance** with the requirements of these sections.

9. General compatibility with surrounding properties; and

The project is a development of property that is disturbed with exotics. Adjacent uses include a commercial establishment and other residential dwelling units. The development of the property into a mix of transient units and commercial with marina and restaurant is expected to be fully compatible with these uses. The proposed project represents improvement to the current state of development and is expected to increase compatibility with surrounding properties.

Section 107.40 restricts the height of buildings to 42' as measured from the crown of the roadway or unimproved grade. The final site plan must show the buildings' height.

Therefore, the request is **in compliance** with the requirements of these sections.

10. Any special requirements set forth in the LDRs for the particular use involved.

Section 104.25 Hotels or Motels

The following criteria are applicable to this redevelopment:

An existing hotel or motel may be redeveloped pursuant to Table 103.15.1, subject to the following standards:

A. General Provisions

1. Each hotel or motel shall comply with all mandatory hurricane evacuation requirements set forth by the City for hotel, motel, and other transient uses.
2. Each hotel or motel shall establish and maintain shuttle transport services to airports and tourist attractions individually or in conjunction with other hotel or motel operators.
3. Except as provided in Subsection (a), all hotel or motels shall provide on- or off-site employee housing living space in an amount equal to a minimum of 25 percent (as may be adjusted from time to time by Council policy to reflect economic conditions) of the approved floor area in guest units; and such housing shall be of any of the following types as outlined in (b) below:
 - a. An exception to the requirement for on- or off-site employee housing living space for hotel/motel redevelopment may be recommended by the Planning Director, the Planning Commission, and approved by the City Council as part of a conditional use and/or development agreement when the following criteria are met:
 - 1) No increase in the number of hotel/motel transient units (unit as described in Subsection 104.25A.4. of the LDRs);
 - 2) No use of transferable building rights (TBRs) (as described specifically in Subsection 107.14B. of the LDRs);
 - 3) No significant change (+ or – 10%) in the current project floor area (Floor area as defined in Chapter 110, Article 3 of the LDRs);
 - 4) No significant difference between the current and proposed uses of floor area;
 - 5) No effort to move units off-site through TBRs as part of the proposed project, though they may be documented and preserved for future

- use; and
- 6) No significant change or increase in the size or type of project site amenities.
- b. *Housing types.*
 - 1) Dormitory pursuant to Section 104.15;
 - 2) Community Workforce Housing Unit pursuant to Section 104.13.
- 4. All entrances to a hotel or motel unit shall share the same key or means of controlling access so that the hotel or motel room as defined herein is not divisible into separately rentable units.
- 5. All hotels or motels must provide a lobby for guests to check in/out.

B. *Redevelopment Criteria.*

- 1) An existing hotel or motel room may be redeveloped to a unit not exceeding 1,500 square feet consisting of no more than two and one-half (2 1/2) bathrooms, three (3) bedrooms and one (1) other living area, subject to the following rates of redevelopment:
 - a. A one (1) bedroom unit may redevelop as a one (1) bedroom unit, without a reduction in the number of units; and
 - b. A one (1) bedroom unit may redevelop as a two (2) bedroom unit at the rate of 90 percent of the one (1) bedroom units being redeveloped as two (2) bedroom units; and
 - c. A one (1) bedroom unit may redevelop as a three (3) bedroom unit at the rate of 80 percent of the one (1) bedroom units being redeveloped as three (3) bedroom units.
- 2) The number of units reduced and not included in the redevelopment shall be tracked over time and registered with the City as Conditional Redevelopment Units and reflected in the data and analysis of the Comprehensive Plan as it is amended.
- 3) Existing hotel units, which exceed allocated densities, may redevelop provided: (1) the parcel has a stormwater management system which meets the requirements of Article 11, of Chapter 107; (2) the wastewater treatment system meets Best Available Treatment wastewater standards; and (3) the structures meet the shoreline setback criteria as established in Article 4 "Open Water, Surface Waters and Wetlands" of Chapter 106.
- 4) As a condition of redevelopment, the developer and the City shall enter into a Development Agreement, in addition to compliance with all other provisions of the Code.
- 5) Redevelopment shall be clustered to the least environmentally sensitive portion of the property pursuant to Section 106.16 to protect existing habitat on site.
- 6) The City may consider, at a future time, proposed amendments to the LDRs to authorize the construction of Conditional Redevelopment Units. Prior to the consideration of such amendment, the City must demonstrate that: (1) a significant reduction in Hurricane Clearance Time has been achieved for the mandatory evacuation of permanent residents; (2) the Conditional Redevelopment Units have been tracked; and (3) other environmental and land use issues have been addressed.
- 7) Notwithstanding the foregoing, the developer of a hotel or motel containing less than 12 units may convert existing, lawfully established accessory floor area in the hotel or motel to a second bedroom or third bedroom, as the case may be, to an adjacent existing hotel or motel unit without triggering the requirements of Subsections B.1 or B.4 above;

provided, however, that the additional floor area hereunder shall not exceed 425 square feet per unit or 850 square feet in the aggregate per property.

Section 104.30 Marina contains special requirements.

The following criteria are applicable to this redevelopment:

- Prior to the issuance of any permit under this article, special conditions may be imposed for such a permit. These conditions should include any item which can be reasonably expected to enhance the probability that the proposed activity will be conducted in compliance with the intent of this article. Those conditions may include, but are not limited to, field inspections by City staff, reports, monitoring, bonding, easements, guaranteed survival of non-affected and/or replanted vegetation, protective barriers, setbacks, protective earthwork, replants, signage, restoration, and/or mitigation. Conditions may also be applied in order to ensure consistency with the Comprehensive Plan.
- Prior to the issuance of the Certificate of Occupancy, the marina shall obtain and maintain a Marina Operating Permit, in compliance with all standards of Article 24, Chapter 102.
- It shall be unlawful for any person to deviate from the specific conditions of the permit as set forth by this article without the prior approval of the City Manager.

The proposed development meets all applicable criteria set forth in this section.

Therefore, with the conditions noted above, the request is **in compliance** with the requirements of this section.

CONCLUSION:

The Conditional Use Approval is intended to allow for the integration of certain land uses and structures within the City of Marathon based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses. Conditional uses shall not be allowed where the conditional use would create a nuisance, traffic congestion, a threat to the public health, safety, or welfare of the community.

The proposed development consists of the enhancement of property, as well as the development of new transient units and commercial uses on site. As such the development, including the overall upgrading and improvement of the sites, furthers the policies for development in the City and is consistent with the Comprehensive Plan and Land Development Regulations. The project is compatible with surrounding uses at both project sites, and is not expected to create a nuisance, traffic congestion or threat to public, health, safety, or welfare.

RECOMMENDATION:

Planning staff recommended approval of the proposed Conditional Use Permit and Development Agreement allowing the development of the Restaurant/Bar, Marina, Retail Space and Transient housing units, provided all conditions are met prior to permit issuance. The proposed conditions of approval are listed below. Planning Commission recommends approval (4-1).

Conditions of Approval

- 1) The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal;
- 2) The final site plan must show the required parking spaces with prior to permit issuance.
- 3) The final site plan must show the bicycle racks on site prior to permit issuance.
- 4) The applicant will meet all floodplain related requirements as part of the Building Permit process;
- 5) The applicant will provide engineering drawings to support force main connections along US 1.
- 6) Permit site plan must meet 25yr-72hr storm event per storm water code Section 107.88.
- 7) The applicant will obtain the required permits to fully enclose and screen the dumpster in accordance with Section 107.39;
- 8) The applicant will obtain sign permits for any signs erected on the property, as required under the Code; and
- 9) The Conditional Use Development Order will constitute the Certificate of Concurrence for the project. The determination will be valid for one year.
- 10) The Applicant must obtain or transfer five (5) transient housing units, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY TRANSIENT UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.
- 11) Staff requires that upon planning review, if the redevelopment is found to have any effect on the Eastern Indigo Snake Habitat, Stock Island Tree Snail and Keys Tree Cactus, then the prescribed protection measures must be undertaken, and the information poster posted on site.
- 12) Conservation easement for mangrove area will be required pursuant to Section 106.02.
- 13) A final Landscape/mitigation plan must be submitted prior to permit issuance.
- 14) A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
- 15) A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.
- 16) Prior to the issuance of the Certificate of Occupancy, the marina shall obtain and maintain a Marina Operating Permit, in compliance with all standards of Article 24, Chapter 102.
- 17) Prior to the issuance of any permit under this article, special conditions may be imposed for such permit. These conditions should include any item which can be reasonably expected to enhance the probability that the proposed activity will be conducted in compliance with the

intent of this article. Those conditions may include, but are not limited to, field inspections by City staff, reports, monitoring, bonding, easements, guaranteed survival of non-affected and/or replanted vegetation, protective barriers, setbacks, protective earthwork, replants, signage, restoration, and/or mitigation. Conditions may also be applied in order to ensure consistency with the Comprehensive Plan.

- 18) It shall be unlawful for any person to deviate from the specific conditions of the permit as set forth by this article without the prior approval of the City Manager.
- 19) Area 3 WWTP has only the capacity for the existing EDU's assigned to this property. No more capacity will be available until the plant is expanded.
- 20) The applicant must obtain Allocations for the proposed eleven (11) transient units.
- 21) Applicant will provide pedestrian sidewalk access and signage as shown on approved site plan.

22) *A. General Provisions*

- 1. Each hotel or motel shall comply with all mandatory hurricane evacuation requirements set forth by the City for hotel, motel, and other transient uses.
- 2. Each hotel or motel shall establish and maintain shuttle transport services to airports and tourist attractions individually or in conjunction with other hotel or motel operators.
- 3. Except as provided in Subsection (a), all hotel or motels shall provide on- or off-site employee housing living space in an amount equal to a minimum of 25 percent (as may be adjusted from time to time by Council policy to reflect economic conditions) of the approved floor area in guest units; and such housing shall be of any of the following types as outlined in (b) below:
 - a. An exception to the requirement for on- or off-site employee housing living space for hotel/motel redevelopment may be recommended by the Planning Director, the Planning Commission, and approved by the City Council as part of a conditional use and/or development agreement when the following criteria are met:
 - 1) No increase in the number of hotel/motel transient units (unit as described in Subsection 104.25A.4. of the LDRs);
 - 2) No use of transferable building rights (TBRs) (as described specifically in Subsection 107.14B. of the LDRs);
 - 3) No significant change (+ or – 10%) in the current project floor area (Floor area as defined in Chapter 110, Article 3 of the LDRs);
 - 4) No significant difference between the current and proposed uses of floor area;
 - 5) No effort to move units off-site through TBRs as part of the proposed project, though they may be documented and preserved for future use; and
 - 6) No significant change or increase in the size or type of project site amenities.
 - b. *Housing types.*
 - 1) Dormitory pursuant to Section 104.15;
 - 2) Community Workforce Housing Unit pursuant to Section 104.13.
- 4. All entrances to a hotel or motel unit shall share the same key or means of controlling access so that the hotel or motel room as defined herein is not divisible into

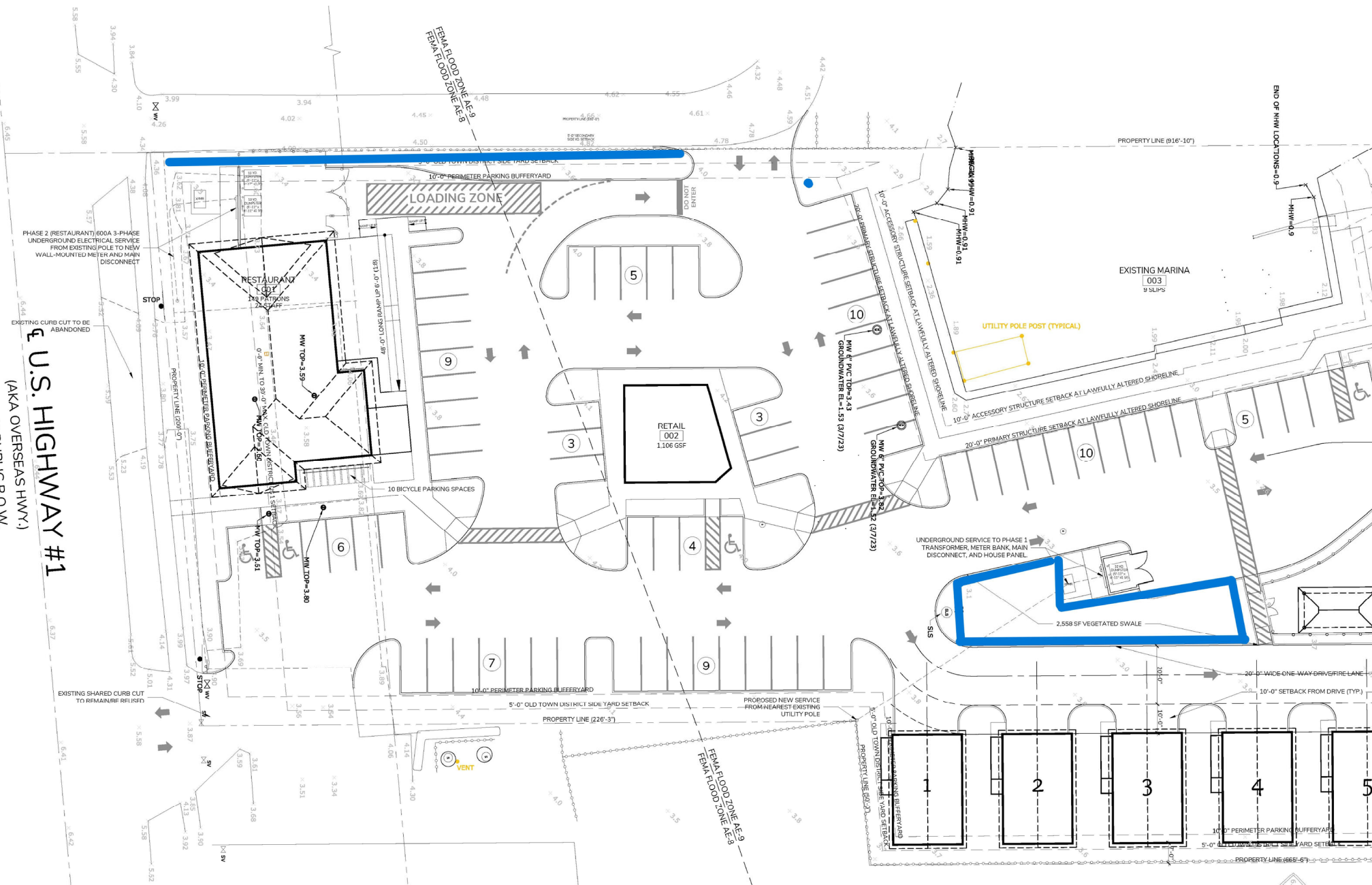
separately rentable units.

5. All hotels or motels must provide a lobby for guests to check in/out. This will be located in the retail building.

B. Redevelopment Criteria.

- 1) An existing hotel or motel room may be redeveloped to a unit not exceeding 1,500 square feet consisting of no more than two and one-half (2 1/2) bathrooms, three (3) bedrooms and one (1) other living area, subject to the following rates of redevelopment:
 - a. A one (1) bedroom unit may redevelop as a one (1) bedroom unit, without a reduction in the number of units; and
 - b. A one (1) bedroom unit may redevelop as a two (2) bedroom unit at the rate of 90 percent of the one (1) bedroom units being redeveloped as two (2) bedroom units; and
 - c. A one (1) bedroom unit may redevelop as a three (3) bedroom unit at the rate of 80 percent of the one (1) bedroom units being redeveloped as three (3) bedroom units.
 - 2) The number of units reduced and not included in the redevelopment shall be tracked over time and registered with the City as Conditional Redevelopment Units and reflected in the data and analysis of the Comprehensive Plan as it is amended.
 - 3) Existing hotel units, which exceed allocated densities, may redevelop provided: (1) the parcel has a stormwater management system which meets the requirements of Article 11, of Chapter 107; (2) the wastewater treatment system meets Best Available Treatment wastewater standards; and (3) the structures meet the shoreline setback criteria as established in Article 4 "Open Water, Surface Waters and Wetlands" of Chapter 106.
 - 4) As a condition of redevelopment, the developer and the City shall enter into a Development Agreement, in addition to compliance with all other provisions of the Code.
 - 5) Redevelopment shall be clustered to the least environmentally sensitive portion of the property pursuant to Section 106.16 to protect existing habitat on site.
 - 6) The City may consider, at a future time, proposed amendments to the LDRs to authorize the construction of Conditional Redevelopment Units. Prior to the consideration of such amendment, the City must demonstrate that: (1) a significant reduction in Hurricane Clearance Time has been achieved for the mandatory evacuation of permanent residents; (2) the Conditional Redevelopment Units have been tracked; and (3) other environmental and land use issues have been addressed.
 - 7) Notwithstanding the foregoing, the developer of a hotel or motel containing less than 12 units may convert existing, lawfully established accessory floor area in the hotel or motel to a second bedroom or third bedroom, as the case may be, to an adjacent existing hotel or motel unit without triggering the requirements of Subsections B.1 or B.4 above; provided, however, that the additional floor area hereunder shall not exceed 425 square feet per unit or 850 square feet in the aggregate per property.
- 23) Applicant will provide three (3) boat trailer parking spaces as shown on site plan.





**CITY OF MARATHON, FLORIDA
RESOLUTION 2025-35**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON REQUESTING A DEVELOPMENT AGREEMENT FOR WHARF MARINA, INC. PURSUANT TO CHAPTER 102, ARTICLE 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “DEVELOPMENT AGREEMENT” FOR THE DEVELOPMENT OF A RESTAURANT, MARINA, RETAIL SHOP, AND ELEVEN (11) TRANSIENT HOUSING UNITS AT THE PROPERTY LOCATED AT 1622 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS 9 66 32 KEY VACCAS PART LOT 2 & BAY BOTTOM NORTH OF & ADJACENT TO PART GOVERNMENT LOT 2 (PT ST RD 4-A), MARATHON, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00102600-000000. NEAREST MILE MARKER 48.

WHEREAS, Wharf Marina, Inc. (The “Applicant”) filed an Application on November 8th, 2024 for Development Agreement pursuant to Chapter 102, Article 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS, the Applicant has proposed the development of a restaurant, marina, retail space and eleven (11) transient housing units; and

WHEREAS, the City staff reviewed the Applicant’s request for a Development Agreement determining that the Applicant’s project proposal is in compliance with the City’s Comprehensive Plan and Land Development Regulations (LDRs) and further that there was no substantial impact on the City’s Level of Service (LOS); and

WHEREAS, on the 24th day of February 2025, the Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearing”) regarding the request submitted by the Applicant, for a Development Agreement pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS, on the 25th day of March 2025 and on the 8th day of April 2025, the City Council (the “Council”) conducted a properly advertised public hearing (the “Public Hearing”) regarding the request submitted by the Applicant, for a Development Agreement pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS, the City Council made a determination that the Applicant’s request for a Development Agreement subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City’s Comprehensive Plan and LDRs, is consistent with its policy to encourage the development of residential properties and redevelop commercial in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

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 City Council hereby approves Development Order 2024-9, a copy of which is attached hereto as Exhibit “A”, granting a Conditional Use Permit and Development Agreement to Wharf Marina, Inc. subject to the Conditions imposed. The Director of Planning is authorized to sign the Development Order on behalf of the City.

Section 3. This Resolution shall take effect immediately upon execution.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8th DAY OF APRIL 2025.

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:

Steven Williams, City Attorney

This Instrument Prepared By:
Gregory S. Oropeza, Esq.
Oropeza, Stones & Cardenas, PLLC
211 Simonton Street
Key West, FL 33040

Return To:
City of Marathon
9805 Overseas Highway
Marathon, Florida 33050

Re Parcel No.: 00102600-000000

----- [SPACE ABOVE THIS LINE FOR RECORDING DATA] -----

**DEVELOPMENT AGREEMENT
PURSUANT TO
CHAPTER 163, FLORIDA STATUTES**

THIS DEVELOPMENT AGREEMENT, executed by the Parties as of the _____ day of _____ 2025, and having the Effective Date specified below, is entered into by and between:

CITY OF MARATHON, a Florida municipal
corporation ("CITY")

and

WHARF MARINA, INC., a Florida corporation
hereinafter referred to as ("Owner").

R E C I T A L S:

- A. WHEREAS, the Florida Local Government Development Agreement Act (the "Act"), Chapter 86-191, Laws of Florida, now codified at Sections 163.3220 through 163.3243, Florida Statutes, authorizes local governments to enter into development agreements with property owners subject to the procedures and requirements of the Act; and
- B. WHEREAS the lack of certainty in the approval of a development can result in a waste of economic land resources, discourage sound capital improvement planning and financing and escalate the cost of housing and development and discourage commitment to comprehensive planning; and
- C. WHEREAS, assurance to a developer that upon receipt of his or her development permit that he or she may proceed in accordance with existing laws and policies, subject to the conditions of a development and financing, assists in assuring that there are adequate capital facilities for the development, encourages private participation in comprehensive planning and reduces the economic costs of development; and

- D. WHEREAS, the Owner is the legal and equitable owner of real property located in Monroe County, Florida, with a principal address of 1622 Overseas Highway, Marathon, Florida 33050, also located within the jurisdictional boundaries of the City of Marathon (the "City"), as described on attached Exhibit "1" (the "Property"); and
- E. WHEREAS, the Owner intends to build eleven (11) transient units to be built as elevated one-story structures approximately 888 square feet in size, a 1,106 square foot retail store, a 5,509 square foot restaurant with 152 seats, a pool and a tiki hut, and to continue to operate a marina facility with nine (9) boat slips; and
- F. WHEREAS, the City determined that the Property is entitled to two (2) Transient Dwelling Units, six (6) Market Rate Units, and 3,400 square feet of commercial transferrable building right(s) by and through that certain April 23, 2021 Determination of Building Rights Letter recorded on October 18, 2023 in Official Records Book Number 3247, Page 1190 of the Public Records of Monroe County, Florida; and
- G. WHEREAS, the Owner transferred six (6) Transient Residential units to the Property by and through that certain Warranty Deed for Transfer of Building Rights recorded On July 12, 2024 in Official Records Book Number 3284, Page 958 of the Public Records of Monroe County, Florida, and that certain Deed of Transfer recorded on July 12, 2024 in Official Records Book Number 3284, Page 963 of the Public Records of Monroe County, Florida; and
- H. WHEREAS, Owner intends to transfer three (3) Transient Residential units from Parcel ID No. 00328520-000000 to the Property; and
- I. WHEREAS, the Owner has submitted permit applications to the City to enter into a development agreement to establish for the record existing and proposed uses for the Property; and
- J. WHEREAS, to encourage future development of the Property consistent with the City's Comprehensive Plan and Land Development Regulations, the Owner and the City desire to agree upon and reduce to contractual terms, the status of the current and proposed site development regarding the Property; and
- K. WHEREAS, City has determined that this Agreement is in the public interest, is consistent with its policy to encourage the development of property in the City, and will further the health, safety and welfare of the residents of the City; and
- L. WHEREAS, City has provided its Notice of Intent to consider entering into this Development Agreement by advertisements published in newspapers of general circulation and readership in Monroe County, Florida, on and, and by mailing a copy of the Notice of Intent to Owner, and by announcing the date, time, and place of the second hearing during the first hearing; and

- M. WHEREAS, the City Counsel of the City of Marathon has held public hearings to consider this Agreement, and has found and determined that its execution of this Agreement will further the objectives of the Local Government Comprehensive Planning and Land Development Regulation Act, and that the development contemplated and permitted by this Agreement is consistent with the City's Comprehensive Plan and Land Development Regulations.

NOW THEREFORE, in consideration of the matters set forth above (which are incorporated herein by reference), the exchange of the mutual promises set forth herein, and other good and valuable consideration, the parties hereto agree as follows:

1. **INCORPORATION OF RECITALS & EXHIBITS.** The parties confirm and agree that the above recitals are true and correct and incorporate the terms and provisions herein for all purposes. All terms and provisions of all Exhibits which are attached to this Agreement and referenced in this Agreement are, by this reference, incorporated into this Agreement for all purposes.
2. **Purposes of Agreement.**
 - A. To encourage Redevelopment of the Property consistent with Objective 1-3.1 of the City's Comprehensive Plan;
 - B. To secure the ability to redevelop the site to include eleven (11) transient one-story units, a 5,509 square foot restaurant with 152 seats, a 1,106 square foot retail store, and a pool and tiki hut.
3. **DEFINITIONS.** For the purposes of this Agreement, in addition to those terms which are specifically defined elsewhere in this Agreement the following terms shall have the following definitions:
 - 3.1 ***"Agreement"*** – This Development Agreement, as the same may be subsequently amended, modified, or supplemented pursuant to its terms and provisions and pursuant to the provisions of Sections 163.3161 through 163.3215, inclusive, of the Florida Statutes.
 - 3.2 ***"City"*** – City of Marathon, a Florida municipal corporation.
 - 3.3 ***"City Code"*** – The City's Code of Ordinances, as the same may be subsequently amended, modified, or supplemented.
 - 3.4 ***"City Laws and Policies"*** – The laws and policies of City concerning development of real property arising under City's Comprehensive Plan, the City Code, policies approved by City Council, and Resolutions approved by City Council.

- 3.5 ***“County”*** – Monroe County, Florida, a political subdivision of the State of Florida.
- 3.6 ***“Effective Date”*** – The date the terms of this Agreement become effective, as set forth in paragraph 8.16.
- 3.7 ***“Entitlements”*** – All heretofore established and future rights with respect to the Property, or any portion thereof, existing as of the Effective Date of this Agreement to develop the Property or any portion thereof for, under, or in accordance with a particular use, development intensity, requirements (or non-requirements) for site plan review, site and building design specifications and criteria, and requirements (or non-requirements) for public hearings concerning approvals of development plans, existing as of the Effective Date of this Agreement under the provisions of the City Laws and Policies.
- 3.8 ***“Florida Department of Commerce (FDC)”*** and ***“state land agency”*** - Refers to the administrative agency designated for the purposes of each federal workforce development grant as defined in Title IV, Chapter 20, Section 60, Florida Statutes.
- 3.9 ***“Land Development Regulations”*** – Chapter 101. *et seq.*, of the City Code in existence on the Effective Date of this Agreement.
- 3.10 ***“Parcel” or “Parcels”*** – One or more of the parcels of real property located in Monroe County, Florida, specifically described or referenced in this Agreement, including the Property (as defined below).
- 3.11 ***“Party” or “Parties”*** – As applicable, either Owner or City, or both Owner and City.
- 3.12 ***“Property”*** – The real properties owned by Owner located within the jurisdictional boundaries of City also located in Monroe County, Florida, as described on attached Exhibit **“1.”**
- 3.13 ***“Public Facilities”*** – Those facilities that are specifically described in Section 163.3221, Florida Statutes, and as set forth in this Agreement.
4. **REPRESENTATIONS AND WARRANTIES.** As a material inducement to the other Party to enter into this Agreement, each Party makes the following representations and warranties regarding this Agreement:
- 4.1 **Owner Representations and Warranties.** Owner represents and warrants to City that:
- 4.1.1 Owner is the legal and equitable owner of the Property.

4.1.2 Owner has taken all corporate actions prerequisite necessary for the execution and delivery of this Agreement, and upon the execution and delivery of this Agreement by Owner the obligations of Owner hereunder shall be valid and binding obligations of Owner. The entities or individuals executing this Agreement on behalf of Owner are duly authorized representatives of Owner, authorized to execute this Agreement in their respective capacities as set forth below.

4.1.3 The execution and delivery of this Agreement is not in contravention with, or prohibited by, the terms and provisions of any agreement, covenant, Court Order, Judgment, or the Articles of Organization or Operating Agreement of Owner.

4.2 **City Representations and Warranties.** City represents and warrants to Owner that:

4.2.1 The actions by City hereunder are consistent with the terms and provisions of the City's Comprehensive Plan and City Code.

4.2.2 City has taken all necessary actions prerequisite to the execution and delivery of this Agreement, including but not limited to the necessary public hearings, providing proper notice of the public hearings, and conducting public hearings related thereto.

4.2.3 Upon the execution and delivery of this Agreement by the City, the obligations of City shall be valid and binding obligations of City.

4.2.4 Execution and delivery of this Agreement is not in contravention with, or prohibited by, the terms and provisions of the City's Charter, Code of Ordinances, Land Development Regulations, or by the terms and provisions of any agreement, covenant, Court Order or Judgment to which City is a party.

5. **TERM AND DURATION OF THE AGREEMENT.** The Owner shall have two (2) years from the Effective Date of this Agreement to submit a permit application to obtain the building permits for the proposed development, and shall have sixty (60) months from the Effective Date of this Agreement to obtain Certificates of Occupancy for the proposed development under this Agreement.

This Agreement may be renewed or extended as provided herein. If the Owner has not complied with the terms of this section, this Agreement may be subject to termination as provided herein; provided, however, that delays in the adherence to the schedule of construction that are occasioned by Acts of God or circumstances outside the control of the City or Owner shall not be grounds for termination so long as the Owner demonstrates reasonable progress in the schedule of construction as shown in the Annual report(s) due hereunder.

6. **PERMITTED USES.**

1. The Development permitted on the Property shall consist of those uses set forth herein, as identified on the site plan attached hereto as Exhibit "3," and incorporated herein by reference. The permitted uses are as follows:
 - a. Transient Uses: 11 Transient units (11 single story elevated buildings,
A 5,509 square foot 152 seat restaurant,
1,106 square foot retail store,
Pool, and
Tiki Hut
 - b. Existing Development to Remain: 9 boat slips
2. For the duration of this Agreement, the Parties agree that any and all of the approved redevelopment shall adhere to, conform to, and be controlled by this Agreement, the Exhibits attached hereto and incorporated by reference, notwithstanding minor modifications to the Site Plan, the LDRs and the Comprehensive Plan governing the redevelopment of the Property on the Effective Date of this Agreement. In the event that all or a portion of the existing or authorized development subject to this Agreement should be destroyed by storm, fire or other disaster, the Owner, it's grantees, successors, or assigns shall have the right to rebuild or repair the affected structure(s) and reinitiate the prior approved use so long as such development is in compliance with this Agreement.
3. The following documents are attached hereto and incorporated by reference, showing the Property Boundary and Existing and Proposed Uses:

Exhibit 1: Legal Description
Exhibit 2: Survey
Exhibit 3: Existing Site Plan
Exhibit 4: Project Site Plan
4. Maximum Building Height shall be forty-two (42) feet, as provided in Section 107.40 of the LDRs, with the exception of any architectural features depicted on the site plan, which will require approval by the Director.

5. The Owner shall execute and record in the public records of Monroe County a Declaration of Covenants and Restrictions in a form acceptable to the City ensuring that it shall not seek and has no legal right to file for homestead exemption for the Transient Units constructed on the Property and which shall require the occupants for the Transient Units constructed on the Property to comply with Hurricane Evacuation Requirements set forth in Policy 1-2.2.1 of the Future Land Use Element of the City's Comprehensive Plan, in effect or as amended.
7. **PUBLIC FACILITIES.** The public facilities that are required and that will service the development authorized by this Agreement; who shall provide the facilities; what new facilities, if any, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of development.
 - (a) Potable Water. Domestic potable water is provided by the Florida Keys Aqueduct Authority.
 - (b) Electric service. Electric service is provided by Florida Keys Electric Cooperative.
 - (c) Solid Waste. Solid waste is provided by Marathon Garbage Services or its successors and assigns, as determined by the City Council.
 - (d) Fire Service. Fire service is provided by the Marathon Fire Department.
 - (e) Wastewater. Wastewater collection and treatment is provided by the City of Marathon.
- 7.1 Concurrency. All public facilities identified are available as of the date of this Agreement, and capacity for each is projected to be available concurrent with the impacts of development.
- 7.2 Impact Fees. Any increased impacts on public facilities or public services attributable to development of the Property and the cost of capital improvements to meet the associated demand on such facilities or services shall be paid by Owner to the City, concurrent with the issuance of the building permits. Owner shall be responsible for any applicable City impact fees required by the City code, as well as by payment of any applicable utility system development fees.
- 7.3 Modifications to the Site Plan. The proposed development is depicted on the Site Plan attached hereto as Exhibit 3. The Site Plan is hereby approved by the City Counsel, and all subsequent site plans, site plan approvals, and building permits will substantially comply with the Site Plan, provided, however, that the final site plan may deviate from the Site Plan to accommodate refinements to the development plan made by the Owner, including minor shifts in the locations of structures, roadways, pathways, and parking, and for minor increases or decreases in the projected square footage of each proposed structure. For purposes of modifications, a minor increase or decrease in

square footage of a proposed structure shall constitute +/-200 square feet for each structure.

7.4 Final Approval of pending permitting application(s) shall be obtained by Owner in accordance with the City Code of Ordinances, which shall not be unreasonably withheld by the City.

7.5 Additional Development Conditions. The following additional conditions, terms, restrictions and other requirements have been determined by the City to be necessary for the approval of this Agreement and shall be incorporated into the formal Site Plan approval process.

7.5.1 Setbacks. Setbacks shall comply with all applicable requirements of the City Code.

7.5.2 Utilities, Lighting and Signage. Utilities, lighting and signage shall comply with all applicable requirements of the City Code, including the waterfront lighting criteria set forth therein.

7.5.3 Landscaping. Owner shall submit a plan to utilize best practices of landscaping throughout the Property, in accordance with the provisions of the City Code and Land Development Regulations.

7.5.4 Fire Safety. Owner shall provide fire protection facilities as required by the City Code, Florida Fire Prevention Code and Life Safety Code.

7.5.5 Stormwater Management. The development shall comply with the stormwater management criteria in the City Code and shall meet all applicable federal, state and regional stormwater management requirements.

7.5.6 Additional Conditions by Mutual Consent. Nothing in this Agreement shall preclude the parties from applying additional conditions by mutual agreement during final site plan review or permitting.

7.6 Cost Recovery by City. Owner shall provide a cost recovery deposit to City and reimburse all fees and expenses of outside attorneys and third-party consultants that the City engages in connection with this Agreement and the implementation thereof.

8. LOCAL DEVELOPMENT PERMITS.

The following is a list of all Development Permits approved or needed to be obtained for the redevelopment of the Property as specified and requested in this Agreement:

1. This Development Agreement.

2. Conditional Use Approval.
3. The Final Site Plan, Landscape Plan, Drainage Plan, Building Elevations and Floor Plan approvals.
4. Building and related construction permits for all structures utilized for principal use or accessory use, land clearing and landscaping. At any time any building permit is applied for, Owner shall demonstrate compliance with all applicable Federal, State and Municipal Disabled-access Regulations in effect at the time of application.
5. Federal, State, Regional, and Local Permits for Stormwater runoff, if applicable.

Nothing in this Agreement shall preclude the parties from applying additional conditions by mutual agreement, during Final Site Plan review or permitting.

8.1 The City Laws and Policies governing the development of the Property on the Effective Date of this Agreement shall govern the future development of the Property for the duration of this Agreement. The Property shall retain, without modification or limitation, all development currently existing and options currently available under the City Laws and Policies, notwithstanding any future amendment of the City Laws and Policies.

8.2 Notwithstanding any recitals above, in the event that the City, subsequent to the Effective Date, modifies City Laws and Policies and includes the Property within such modifications, in a manner that provides the Property with additional options that are reasonably expected to enhance the development of the Property, or decrease the time or expense associated with such development, such modified laws and policies shall apply to the Property.

8.3 Development Permits. Certain provisions of this Agreement will require that the City and/or its boards, departments, or agencies take certain governmental actions, acting in their governmental capacity, and issue Development Permits in order to accomplish and satisfy the authorization and construction of the Owner's Project.

8.4 Applications for Development Approvals. Promptly after the Effective Date hereof, the Owner initiate and diligently pursue any necessary Development Approval applications. The City shall process all Development Permit applications in a timely fashion and the City shall cooperate with the Owner (at no cost to the City) in processing all necessary Development Approvals from federal, State and County agencies, as needed.

8.5 Permits from Other Regulatory Entities. Other agency permits may be required as provided by applicable law prior to the City's issuance of building permits for redevelopment of the Property. The Developer shall obtain all necessary permits from other local, regional, State and federal regulatory entities and provide copies of each to the City within a reasonable time after such permits are issued.

8.6 Development to Comply with City Code, Comprehensive Plan and Permit Conditions. The development described in and authorized by this Agreement shall be developed in accordance with all required permits, and in accordance will applicably provisions of the City's Comprehensive Plan, City Code and Land Development Regulations in effect on the date of execution of this Agreement. No certificate of occupancy for any building on the Property shall be issued until all plans for that building are approved by the City and the Owner has complied with all conditions in permits issued by the City and other regulatory authorities for that building.

8.7 Compliance with Permits, Terms, Conditions and Restrictions Not Identified Herein. The failure of this Agreement to address a particular permit, condition, term or restriction shall not relieve the Owner of having to comply with the law governing said permitting, requirements, conditions, terms or restrictions.

9. **REDEVELOPMENT.**

City acknowledges that, by the covenants and terms of this Agreement, the Owner may develop eleven (11) transient units to be built as eleven (11) elevated single-story structures, a 5,509 square foot 152 seat restaurant, a 1,106 square foot retail store, pool, and tiki hut. All other residential or commercial space will remain in place as it currently exists.

10. **RIGHT OF AMENDMENT, RENEWAL, AND TERMINATION.**

This Agreement may be amended, renewed, or terminated as follows:

- A. As provided in Section 163.3237, Florida Statutes, this Agreement may be amended by mutual consent of the parties to this Agreement or by their successors interest. Amendment under this provision shall be accomplished by an instrument in writing signed by the parties or their successors.
- B. As provided in Section 163.3237, Florida Statutes, this Agreement may be renewed by the mutual consent of the parties, subject to the public hearing requirement in section 163.3225, Florida Statutes, and applicable LDRs. The City shall conduct at least two (2) public hearings, one of which may be held by the local planning agency at the option of the City. Notice of intent to consider renewal of the Agreement shall be advertised approximately fifteen (15) days before each public hearing in a newspaper of general circulation and readership in Marathon, and shall be mailed to all affected property owners before the first public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing. The notice shall specify the location of the land subject to the Agreement, the development uses on the Property, the population densities, and the building intensities and height and shall specify a place where a copy of the Agreement can be obtained.

- C. This Agreement may be terminated by Owner or its successor(s) in interest following a breach of this Agreement by the City upon written notice to the City as provided in this Agreement.
- D. Pursuant to Section 163.3235, Florida Statutes, this Agreement may be revoked or modified by the City if, on the basis of substantial competent evidence, the City finds there has been a failure by Owner to comply with the terms of this Agreement.
- E. This Agreement may be terminated by mutual consent of the parties.

11. **GENERAL PROVISIONS.**

11.1 **Notices.**

11.1.1 All notices, requests, consents and other communications required or under this Agreement shall be in writing (including faxed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, faxed, or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed to the following or to such other addresses as any party may designate by notice complying with the terms of this paragraph:

a. AS TO THE CITY:

Attn: City Mayor
City of Marathon
9805 Overseas Highway
Marathon, Florida 33050

1) With Copy To:
Attn: City Attorney

b. AS TO OWNER:

Attn: James Figuerado, Jr.
Wharf Marina, Inc.
489 Maddison Court
5628 Shaddelee Lane W
Fort Myers, Florida 33919

1) With Copy To:
Gregory S. Oropeza, Esq.
Oropeza, Stones & Cardenas, PLLC
221 Simonton Street
Key West, Florida 33040

11.1.2 Each such notice shall be deemed delivered:

- a. On the date delivered if by personal delivery.
- b. On the date of facsimile transmission if by facsimile; and
- c. If the notice is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; (b) the date upon which delivery is refused; (c) the date upon which notice is designated by the postal authorities as not having been delivered; or (d) the third business day after mailing.
- d. Notwithstanding the foregoing, service by personal delivery delivered, or by facsimile sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.

11.1.3 If a notice is delivered by multiple means, the notice shall be deemed delivered upon the earliest date determined in accordance with the preceding subparagraph.

11.1.4 If the above provisions require notice to be delivered to more than one person (including a copy), the notice shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.

11.2 Negation of Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership before Owner and City in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprises. Each Party shall be considered a separate Party, no Party shall have the right to act as an agent for another Party and no Party shall the right to act as an agent for another Party unless expressly authorized to do so in this Agreement.

11.3 No Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided no right, privileges or immunities of any Party hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained in this Agreement.

11.4 Default Provisions.

11.4.1 The terms of this Agreement shall not entitle any Party to cancel, rescind, or otherwise terminate this Agreement. However, except as expressly set forth herein (e.g., in paragraph 8.4.5), such limitations shall not affect in any manner any other rights or remedies which a Party may have hereunder or under applicable law by reason of any such breach.

11.4.2 All easements, rights and covenants contained herein shall be enforceable by suit for specific performance and mandatory injunctive relief, in addition to any other remedies provided by law or equity except as expressly set forth herein (e.g., in paragraph 8.4.5).

11.4.3 No Party shall be entitled to pursue any action for specific performance, injunctive relief, or any other available remedy arising out of a default under this Agreement until the non-defaulting Party has provided to the Party alleged to be in default a written Default Notice specifying the specific nature of the default, and the alleged defaulting Party has failed to cure the default within sixty (60) days of the effective date of the Default Notice. In the event the cure of a default reasonably requires greater than the 60 day time period specified, the grace period granted herein shall, if the defaulting Party has initiated cure of the default within the 60 day time period and is continuing to pursue completion of the cure with due diligence, extend the reasonable time period required for the cure of the default to the period which is a reasonable time period.

11.4.4 In the event of a material default by Owner with respect to its obligations to City under this Agreement, and failure of Owner to cure the default within the grace period set forth above, in addition to any other remedies available to them under the terms of this Agreement, City shall be entitled to withhold issuance of additional development permits or authorizations until the default has been cured. If Owner has, prior to the occurrence of the default, conveyed some or all of the Property to unrelated third parties (such parcel or parcels then becoming a "Third Party Parcel") and the default of Owner is not with respect to, or impact City obligations regarding, the Third-Party Parcel, the right of City to withhold permits upon a default by Owner shall not extend to City permits pending or to be issued with respect to a successor owner of such Third-Party Parcel.

11.4.5 In the event of a material default by City with respect to its obligations to Owner under this Agreement, and failure of City to cure the default within the grace period set forth above, Owner may seek relief as set forth in paragraph 8.4.2 against City but may not seek damages (including, without limitation, compensatory damages or lost profits), such relief being expressly waived by Owner.

11.5 Estoppel Statements. Each Party agrees that upon written request from time to time of any other Party it will timely issue at no charge to a current or prospective lender to such Party, or to a current or prospective purchaser or successor party to such other Party, or to another governmental entity requesting or requiring the same, an Estoppel Statement stating:

11.5.1 Whether the Party to whom the request has been directed knows of any default by any Party under this Agreement, and if there are known defaults, specifying the nature thereof.

11.5.2 Whether this Agreement has been modified or amended in any way by such Party (and if it has, stating the nature thereof).

11.5.3 That to the best of the requested Party's knowledge this Agreement, as of the Estoppel Statement date is in full force and effect.

11.5.4 That (if known by the requested Party, if not known by the requested Party that Party shall reply only with respect to any monies owed to it) to the best of the requested Party's knowledge there are not any monies currently owed by any Party to another Party under the terms of this Agreement, or if there are monies owed, the amount and details of all monies owed.

11.5.5 That, as to the Project or as to a specific parcel therein (as applicable, based upon the request) there are no moratoriums or suspensions of the right to procure Development Orders, Building Permits, or Certificate of Occupancy or other development approvals in effect as of the date of the Estoppel Statement.

11.5.6 Such written statement shall act as a waiver of any claim by the Party furnishing it to the extent such claim is based on facts contrary to those asserted against a bona fide mortgagee or purchaser for value without knowledge of facts to the contrary of those contained in the Estoppel Certificate who has acted in reasonable reliance upon the statement; however, such statement shall in no event subject the Party furnishing it to any liability whatsoever, notwithstanding the negligent or other inadvertent failure of such Party to disclose correct and/or relevant information.

11.6 Litigation. In the event of any litigation arising out of this Agreement, each party shall bear their own costs incurred with respect to such litigation. In the event this Agreement is challenged successfully, the parties agree to be bound by any modification pursuant any legal authority. If any such event occurs the City shall be indemnified by Owner for any costs, including attorney's fees, in defending such challenge. In the event that any legal modification to this Agreement results from a legal challenge, the City shall not be held responsible for any resultant impact including financial consequences in accordance with this Section 8.6. In the event that the proposed development becomes impossible or impractical based upon such legal challenge, the parties agree that this Agreement is void.

11.7 Binding Effect. The parties to this Agreement represent to each other that each party fully understands the facts surrounding this Agreement and each is

signing this Agreement fully and voluntarily, intending to be bound by it. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective spouses, heirs, executors, and administrators. There are no representations or warranties other than those set forth herein.

11.8 **Headings.** The headings contained within this Agreement are for identification purposes only, and shall not be construed to amend, modify, or alter the terms of the Agreement.

11.9 **Severability.** Except as otherwise set forth herein, in the event any provision or paragraph of this Agreement is determined to be invalid or unenforceable, such determination shall not affect the enforceability or the validity of the remaining provisions of this Agreement.

11.10 **Survival of Representations and Warranties.** All representations and warranties contained herein are made in writing by the parties in connection herewith shall survive the execution and delivery of this Agreement.

11.11 **Successors.**

11.11.1 All covenants and agreements in this Agreement made by or on behalf of any parties hereto shall bind and inure to the benefit of the respective successors of the parties hereto, whether so expressed or not.

11.11.2 Upon a sale or other transfer of a Parcel or a portion thereof, the terms and provisions of this Agreement, as applicable, shall remain in full force and effect as to the Parcel or a portion of the Parcel.

11.11.3 Assignment. This Agreement is non-assignable without City's consent, and the Owner shall not assign the Owner's rights and obligations under this Agreement without the prior written consent of the City, which shall not be unreasonably withheld.

11.12 **Applicable Law.** This Agreement is being delivered in the State of Florida and shall be construed and enforced in accordance with the laws of the State of Florida. The venue for any legal proceeding arising out of this Agreement shall be Monroe County, Florida.

11.13 **Counterparts.** This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

11.14 **Amendment of Agreement.** This Agreement cannot be changed, modified or released orally, but only by an agreement in writing signed by the parties against whom enforcement of said change, modification or discharge is sought.

11.15 **Gender.** As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular as the context may require.

11.16 **Effective Date.**

11.16.1 This Agreement shall become effective upon completion of its execution by both Parties, and the recordation of the Agreement in the Public Records of Monroe County, Florida.

11.16.2 Notwithstanding the foregoing:

- a. The parties shall be obligated to perform any obligations hereunder that are required before such Effective Date; and
- b. In the event that this Agreement is challenged, including a challenge pursuant to Section 163.3243, Florida Statutes, within thirty (30) days of the recordation of this Agreement in the Public Records of Monroe County, Florida, the obligations of the parties shall be suspended hereunder, except to the extent such suspension would be inconsistent with requirements of Florida Department of Commerce.

(This Space is intentionally left blank)

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

**SIGNATURE PAGE(S) OF
CITY OF MRATHON AND
WHARF MARINA, INC.**

ATTEST: **CITY OF MARATHON, FLORIDA**

By: _____
Diane Clavier, City Clerk

By: _____
Lynn Landry, Mayor

APPROVED AS TO FORM AND
LEGALITY:

Date: _____, 2025.

Steven Williams, City Attorney

APPROVED BY THE CITY COUNSEL OF MARATHON ON
_____, 2025.

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing **DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 163, FLORIDA STATUTES** was acknowledged before me this _____ day of _____, 2025, by Lynn Landry, as Mayor of Marathon, Florida, a Florida municipal corporation, on behalf of the City.

Notary Public, State of Florida

Name: _____ (Please print or type)

Commission Number:

Commission Expires:

Notary: Check one of the following: ____ Personally known
OR ____ Produced Identification (if this box is checked, fill in blank below).

Type of Identification Produced: _____

WHARF MARINA, INC.

By: _____
James Figuerado, as President

Date: _____, 2025

STATE OF FLORIDA
COUNTY OF _____

The foregoing **DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 163, FLORIDA STATUTES** was acknowledged before me this _____ day of _____, 2025, by James Figuerado, as President of Wharf Marina, Inc.

Notary Public, State of Florida

Name: _____ (Please print or type)

Commission Number:

Commission Expires:

Notary: Check one of the following: ____ Personally known
OR ____ Produced Identification (if this box is checked, fill in blank below).

Type of Identification Produced: _____

EXHIBIT "1"

Property Address and Parcel Identification Number:

1622 Overseas Highway, Marathon, Florida 33050

Real Estate No.: 00102600-000000

Alternative Key No.: 1119806

Parcel 1

The part of Government Lot 2, Section 9, Township 66 South, Range 32 East, on Key Vaca, Monroe County, Florida, more particularly described as follows:

Begin at the intersection of the West Boundary line of Section 9, Township 66 South, Range 32 East, and the centerline of U.S. Highway No. 1, and run northeasterly along said centerline a distance of 776.60 feet to a point; thence run North a distance of 116 feet to a point on the Northerly right-of-way line of Old State Highway 4A, the point of beginning of the land herein described; thence run Easterly along said Northerly right-of-way line of Old State Highway 4A, and parallel to the said centerline of U.S. Highway No. 1, a distance of 200 feet to a point; from this point run North a distance of 158.78 feet to a point; thence along a line parallel to the said centerline of U.S. Highway No. 1, a distance of 50 feet to a point; from this point run North a distance of 450 feet, more or less, to the waterline of the Bay of Florida; thence continue North for a distance of 220 feet; from this point run West a distance of 248.8 feet to a point; thence run South a distance of 300 feet more or less, to the shoreline of the Bay of Florida; thence continue South for a distance of 520 feet, more or less, to the point of beginning.; also,

All right, title and interest in and to that portion of Old State Highway 4A lying south of the above described land between the West Boundary line extended South to the northerly right-of-way line of U.S. Highway No. 1, and a line parallel to said extended West Boundary line and 200 feet East thereof, and north of the northerly right-of-way line of U.S. Highway No. 1.

Parcel 2

The part of Government Lot 2, Section 9, Township 66 South, Range 32 East, on Key Vaca, Monroe County, Florida, more particularly described as follows:

Commencing at a point at the Southeasterly corner of the property belonging to W.R. Thompson, Trustee, as described in ORB 100, Page 504, public records of Monroe County, Florida, said point being on the northerly Right-of-way line of U.S. Highway No. 1, and said point being also the point of beginning of the property hereinafter described from the point of beginning run Northeasterly along the Northerly Right-of-Way line of U.S. Highway No. 1 for a distance of 200 feet to a point; thence run North 158.78 feet to a point; thence run Northeasterly along a line parallel to the northerly Right-of-way line of said U.S. Highway No. 1 for a distance of 50 feet to a point; thence run North to a point on the mean high water line of the Bay of Florida; thence meander the mean high water line of the Bay of Florida in a Northwesterly and Southwesterly

direction to a point on the East line of the aforesaid property belonging to W.R. Thompson, Trustee; thence South along a line parallel to the aforesaid north course for a distance of 420 feet, more or less, to the point of beginning; said property being described in Deed Book G-9, Page 572, and Deed Book G-24, Page 315, public records of Monroe County, Florida; including Bay Bottom adjoining said land as described in Deed Book G-59, Page 297, Public Records of Monroe County, Florida.

FULL LEGAL DESCRIPTION(S) TO BE DETERMINED

EXHIBIT “2”

Survey

Exhibit “3”
Existing Site Plan

Exhibit “4”
Project Site Plan

Business Impact Estimate Form

This Business Impact Estimate Form is provided to document compliance with and exemption from the requirements of Sec. 166.041(4), Fla. Stat. If one or more boxes are checked below under “Applicable Exemptions”, this indicates that the City of Marathon has determined that Sec. 166.041(4), Fla. Stat., does not apply to the proposed ordinance and that a business impact estimate is not required by law. If no exemption is identified, a business impact estimate required by Sec. 166.041(4), Fla. Stat. will be provided in the “Business Impact Estimate” section below. In addition, even if one or more exemptions are identified, the City of Marathon may nevertheless choose to provide information concerning the proposed ordinance in the “Business Impact Estimate” section below. This Business Impact Estimate Form may be revised following its initial posting.

Proposed ordinance’s title/reference:

Proposed Ordinance 2025-02 Abatement of Criminal Nuisances

Applicable Exemptions:

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant, or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☐ The proposed ordinance is enacted to implement the following:
 - ☐ Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements, and development permits;
 - ☐ Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
 - ☐ Section 553.73, Florida Statutes, relating to the Florida Building Code; or
 - ☐ Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

Business Impact Estimate:

The City of Marathon hereby publishes the following information:

- 1. A summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):**

Ordinance 2025-02 amends Chapter 18, Article 3 titled "Abatement of Criminal Nuisances" of the City of Marathon Code of Ordinances by deleting six (6) sections related to the creation of a Nuisance Abatement Board and the duties and powers of same. The City has not recently used a Nuisance Abatement Board and there are other avenues to address nuisance claims contained in the Code of Ordinances. As such, this proposed ordinance removes moot provisions of the Code of Ordinances.

- 2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the municipality, including the following, if any:**

- (a) An estimate of direct compliance costs that businesses may reasonably incur if the ordinance is enacted:**

Ordinance 2025-02 does not impose a direct compliance cost on businesses as the ordinance pertains to public nuisances and the avenues to address same.

- (b) Identification of any new charge or fee on businesses subject to the proposed ordinance, or for which businesses will be financially responsible:**

Ordinance 2025-02 does not impose a new charge or fee on businesses as the ordinance pertains to removing moot language having to do with public nuisances and a Nuisance Abatement Board.

- (c) An estimate of the municipality's regulatory costs, including an estimate of revenues from any new charges or fees that will be imposed on businesses to cover such costs:**

None.

- 3. A good faith estimate of the number of businesses likely to be impacted by the ordinance:**

None.

4. Additional information the governing body determines may be useful (if any):

No additional information.

Note: *The City's provision of information in the Business Impact Estimate section above, notwithstanding an applicable exemption, shall not constitute a waiver of the exemption or an admission that a business impact estimate is required by law for the proposed ordinance. The City's failure to check one or more exemptions below shall not constitute a waiver of the omitted exemption or an admission that the omitted exemption does not apply to the proposed ordinance under Sec. 166.041(4), Fla. Stat., Sec. 166.0411, Fla. Stat., or any other relevant provision of law.*



COUNCIL AGENDA STATEMENT

Meeting Date: April 8, 2025

To: Honorable Mayor and City Councilmembers

From: Steven Williams, City Attorney

Agenda Item: **Ordinance 2025-02**, Amending Chapter 18, Article 3 (“Abatement Of Criminal Nuisances”) By Deleting Sections 18-186, 18-187, 18-888, 18-189, And 18-190; Providing For The Repeal Of All Ordinances Or Parts Thereof Found To Be In Conflict; Providing For Severability; Providing For Inclusion In The Code Of Ordinances And Providing For An Effective Date.

BACKGROUND & JUSTIFICATION:

This Ordinance deletes the provisions in the City of Marathon Code of Ordinances pertaining to a Nuisance Abatement Board due to the fact that the City has not recently used such a board. This Ordinance and the removal of the sections related to the Nuisance Abatement Board, does not restrict the right of any person to proceed against any public nuisance nor restrict the City Attorney from bringing a civil proceeding under Florida Statute Section 823.05.

CONSISTENCY CHECKLIST:

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

FISCAL NOTE:

RECOMMENDATION:

Approval of Ordinance

Sponsored By: Williams
City Council Public Hearing Date: April 8, 2025
May 13, 2025
Enactment Date: May 13, 2025

**CITY OF MARATHON, FLORIDA
ORDINANCE 2025-02**

AN ORDINANCE BY THE CITY OF MARATHON, FLORIDA, AMENDING CHAPTER 18, ARTICLE 3 (“ABATEMENT OF CRIMINAL NUISANCES”) BY DELETING SECTIONS 18-185, 18-186, 18-187, 18-888, 18-189, AND 18-190; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS THEREOF FOUND TO BE IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (“City”) is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes, and

WHEREAS, Chapter 166, *Florida Statutes*, grants the City broad municipal home rule powers to provide for the health, safety and welfare of its residents, business owners and visitors by enacting regulations for the protection of the public; and

WHEREAS, Section 893.138, *Florida Statutes*, grants the City the ability to establish a Nuisance Abatement Board, which was created through Ordinance 2008-28; and

WHEREAS, Chapter 18, Section 18-183 of the City of Marathon Code of Ordinances allows the City Attorney to sue the person or persons maintaining a nuisance, and the owner or agent of the building or ground on which the nuisance exists; and

WHEREAS, Chapter 18, Section 18-184 of the City of Marathon Code of Ordinances does not restrict the right of any person to proceed against any public nuisance; and

WHEREAS, the City has not recently used a Nuisance Abatement Board and, therefore, the City Council deems that the Sections of the Marathon Code of Ordinances pertaining to a Nuisance Abatement Board are moot.

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

~~Strikethrough~~ = deletion

Bold underline = addition

SECTION 1. The above recitals are true, correct, and incorporated herein by this reference.

SECTION 2. Chapter 18 of the Code of Ordinances, City of Marathon, Florida, is hereby amended to be read as follows:

Sec 18-183 Enjoining Of Nuisances

When any nuisance as defined in Fla. Stat. § 823.05 exists, the City Attorney may sue, in the name of the State on his relation to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists.

Sec 18-184 Rights Preserved

This Division does not restrict the right of any person to proceed against any public nuisance under Fla. Stat. § 60.05.

~~Sec 18-185 Definitions~~

~~The following definitions shall apply in the interpretation and enforcement of this Article:~~

~~*Board* means the Nuisance Abatement Board of the City of Marathon.~~

~~*City Attorney* means the legal counselor for the City of Marathon or any Assistant City Attorney.~~

~~*Clerk* means the person appointed by the local governing body of the City of Marathon to perform the clerical duties necessary to carry out the activities of the Board.~~

~~*County* means Monroe County, Florida.~~

~~*Operator* means the tenant, lessee or person having control or possession of the premises.~~

~~*Public nuisance* means any place or premises within the City, which has been used on more than two (2) occasions within a six month period as; (i) the site of the unlawful sale or delivery of controlled substances as defined in Fla. Stat. ch. 893; (ii) the site of prostitution activity in violation of Fla. Stat. § 796.07; (iii) by a criminal street gang for the purpose of conducting a pattern of criminal street gang activity as defined by Fla. Stat. § 874.03; or (iv) the site of a violation of Fla. Stat. § 812.019; relating to dealing in stolen property.~~

~~Sec 18-186 Nuisance Abatement Board Established~~

~~There is hereby created and established a Nuisance Abatement Board (the "Board"), to hear evidence relating to the existence of criminal public nuisances on premises located in the City. The City Council shall sit as the Nuisance Abatement Board.~~

~~Sec 18-187 Complaint Review Procedures~~

- ~~(a) Any employee, officer or resident of the City may file a complaint with the Clerk regarding the existence of a public nuisance on premises located in the City.~~
- ~~(b) When the Clerk receives a complaint, the City Attorney shall review the complaint to determine if the complaint properly alleges that a public nuisance exists on the premises. If the City Attorney determines that the complaint properly alleges that a public nuisance exists on the premises, the Clerk shall promptly request a hearing before the Board.~~
- ~~(c) The Board, through its Clerk, shall schedule a hearing, and written notice of the hearing shall be sent to the owner and operator(s) of the premises complained of, at their last known addresses at least five (5) days prior to the scheduled hearing.~~
- ~~(d) The notice of hearing shall include:~~
 - ~~(1) A statement of the time, place and nature of the hearing;~~
 - ~~(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;~~
 - ~~(3) A reference to the particular sections of the statutes and ordinances involved; and~~
 - ~~(4) A short and plain statement summarizing the nuisance complaint.~~

~~Sec 18-188 Conduct Of Hearings~~

- ~~(a) The Chairman of the Board may call hearings of the Board. Hearings may also be called by written notice signed by at least three (3) members of the Board. The Board, at a hearing, may set a future hearing date. The Board shall attempt to convene no less frequently than once every month, but may meet more or less often as the demand necessitates. The Board shall adopt rules for the conduct of its hearings. Minutes shall be kept of all hearings, and all hearings shall be open to the public. The Board shall have the power to subpoena owners, operators, witnesses and evidence to hearings. The City shall provide clerical and administrative personnel as may be reasonably required for the proper performance of the Board's duties.~~
- ~~(b) The City Attorney shall present cases before the Board. All parties shall have an opportunity to present evidence and argument on all issues involved, to conduct cross-examination, to submit rebuttal evidence, and to be represented by counsel. When appropriate, the public may be given an opportunity to present oral or written communications. The Board may consider any evidence, including evidence of the general reputation of the place or premises. All testimony shall be under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. Orders of the Board shall be based on competent and substantial evidence, and any finding that a nuisance exists must be based on a "preponderance of the evidence" standard.~~
- ~~(c) The concurring votes of at least four (4) Board members are required in order to approve any Board order concerning the abatement of a public nuisance.~~
- ~~(d) After considering all evidence, the Board may declare the place or premises to be a public nuisance and may enter an order as follows:~~

- ~~(1) Immediately prohibiting the maintaining of the nuisance;~~
- ~~(2) Immediately prohibiting the operating or maintaining of the place or premises including the closure of the place or premises or any part thereof;~~
- ~~(3) Immediately prohibiting the conduct, operation or maintenance of any business or activity on the premises which is conducive to such nuisance; or~~
- ~~(4) Requiring the owner of such place or premises declared to be a public nuisance to adopt such procedure as may be appropriate under the circumstances to abate any such nuisance.~~
- ~~(e) An order entered under Subsection (d) shall expire after one (1) year, or at such earlier time as stated in the order. The Board may retain jurisdiction to modify its orders prior to the expiration of the orders.~~
- ~~(f) In the event that orders of the Board expire and/or are not complied with, or are for any reason ineffective, the Board may then bring a complaint under Fla. Stat. § 60.05, seeking temporary and permanent injunctive relief against any public nuisance described.~~
- ~~(g) A certified copy of a Board order may be recorded in the public records of the County and shall constitute notice to any subsequent purchasers, successors in interest or assigns if the violation concerns real property and the finding therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest or assigns. If an order is recorded in the public records of the County pursuant to this Subsection and the order is complied with by the date specified in the order, the Board shall issue an order acknowledging compliance that shall be recorded in the public records of the County.~~
- ~~(h) The Board, upon notification by the City that an order of the Board has not been complied with by the set time or, upon finding, of a public nuisance, may order the violator to pay a fine in an amount specified in this Section for each day the violation continues past the date set by the Board for compliance. In the case of a recurring public nuisance, for each date a recurring public nuisance continues beginning with the date the recurring public nuisance is found to have occurred by the City. A fine imposed pursuant to this Section shall not exceed \$250.00 per day for the violation and shall not exceed \$500.00 per day for a recurring public nuisance.~~
- ~~(i) A certified copy of an order imposing a fine may be recorded in the public records and thereafter shall constitute a lien against the property upon which the violation exists. A lien arising from a fine imposed pursuant to this Section runs in favor of the City and the City may execute a satisfaction or release of lien entered pursuant to this Section. The City shall be entitled to collect all costs incurred, including reasonable Attorney fees, in the recording of, the filing of a satisfaction of and foreclosure of a valid lien. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the Sheriffs of this State, including levy against the personal property, but shall not be deemed to be a court judgment expect for enforcement purposes.~~
- ~~(j) After three (3) months from the filing of any lien which remains unpaid, the Nuisance Abatement Board may authorize the City Attorney to foreclose upon the lien. No lien~~

~~created pursuant to the provisions of this Chapter may be foreclosed on real property which is a "homestead" under Article X, Section 4 of the State Constitution.~~
~~(k) If the City prevails in prosecuting a case before the Board, it shall be entitled to recover all costs, including reasonable Attorney's fees, incurred in investigating and prosecuting the case at hearings before the Board or on appeal.~~

~~Sec 18-189 Appeals~~

~~Any aggrieved party may appeal a final decision of the Nuisance Abatement Board to the Circuit Court of Monroe County, Florida. Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the Board. An appeal shall be filed within 30 days of the date of the Board decision appealed from.~~

~~Sec 18-190 Remedies~~

~~This Article does not restrict the right of any person to proceed under Fla. Stat. § 60.05, or similar law against any public nuisance.~~

SECTION 3. Any provisions of the Code of Ordinances of the City of Marathon, Florida or Ordinances or parts of Ordinances that are in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 4. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, or phrases of this Ordinance, but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 5. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Marathon Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the "Ordinance" shall be changed to "Section" or other appropriate word.

SECTION 6. This Ordinance shall become effective immediately upon approval.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,
FLORIDA, THIS 13th DAY OF MAY, 2025.**

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:**

Steven Williams, City Attorney



COUNCIL AGENDA STATEMENT

Meeting Date: March 25, 2025

To: Honorable Mayor and Councilmembers

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

Through: George Garrett, City Manager

Agenda Item: **Resolution 2025-36**, Accepting The Responsible Bid And Approving A Contract Between The City And Pedro Falcon Contractors, Inc.. In An Amount Not To Exceed \$193,703.00 For The Alteration to The City Hall Lobby Area and Office Modifications At City Hall; Authorizing The City Manager To Execute The Contract And Appropriate Funds On Behalf Of The City; And Providing For An Effective Date

BACKGROUND & JUSTIFICATION:

The City has long thought to improve security measures at City Hall to better protect staff against the potential of any aggression against City staff. The proposed improvements will provide safety features in the lobby, by securing access to the offices and providing bullet-proof glass and doors. Also, as we move from paper-based storage of data to electronic storage format, we have determined that converting certain rooms from file storage areas to offices will better serve the growing needs of the City. As such, plans were prepared for the above-mentioned work, and the project was let out to bids. two contractors responded, and the bid tabulation is as follows:

- | | |
|-----------------------------------|--------------|
| 1. FSV Construction Company | \$167,000.00 |
| 2. Pedro Falcon Contractors, Inc. | \$193,703.00 |

After reviewing the bid, checking references and financial statements, staff recommend that the contract not be awarded to the lowest bidder, FVC Construction Company. As such, staff recommend that the contract be awarded to Pedro Falcon Contractors, Inc. in the amount of \$193,703.00.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan – Chapter 8	<u>X</u>	___
2. Other: MCTDC grant requirement	<u>X</u>	___

FISCAL NOTE:

The adopted FY25 Capital Infrastructure Budget includes appropriations of \$265,000 for this project with the Building Department contributing \$32,500 of the \$265,000.

RECOMMENDATION: Approval of Resolution

**CITY OF MARATHON, FLORIDA
RESOLUTION 2025-36**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA ACCEPTING THE RESPONSIBLE BID AND APPROVING A CONTRACT BETWEEN THE CITY AND PEDRO FALCON CONTRACTORS, INC.. IN AN AMOUNT NOT TO EXCEED \$193,703.00 FOR THE ALTERATION TO THE CITY HALL LOBBY AREA AND OFFICE MODIFICATIONS AT CITY HALL; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND APPROPRIATE FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City has long though to improve security measures at City Hall to better protect staff against the potential of any aggression against City staff. The proposed improvements will provide safety features in the lobby as well as reconfiguring certain rooms from file storage to offices will better serve the growing needs of the City; and

WHEREAS, the City published an Invitation to Bid for the City's Interior Renovations at City Hall (the "Project") on February 7th of 2025 and two bids were received and opened on March 12th of 2025; and

WHEREAS, the City desires to accept the bid of Pedro Falcon Electrical Contractors, the most responsive and responsible bidder, although not the lowest bidder; and enter into a contract with Pedro Falcon Electrical Contractors Inc.

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 Contract between the City and Pedro Falcon Electrical Contractors "the Contractor" for the construction of the Project in an amount not to exceed \$193,703.00, a copy of which is 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. The City Manager is authorized to execute the Contract and appropriate funds on behalf of the City.

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 8TH DAY OF APRIL, 2025.

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

SECTION 00500
CONSTRUCTION CONTRACT

THIS AGREEMENT is made between the City of Marathon, Florida, a Florida municipal corporation whose address and principal place of business is 9805 Overseas Highway, Marathon, Florida 33050, (hereinafter the “City”) and Pedro Falcon Contractors Inc a Florida corporation whose address and principal place of business is: 31160 Avenue C Big Pine Key, Fl 33043, (hereinafter the “Contractor”), and

WHEREAS, the City desires to engage the Contractor to provide construction services as specified below (the “Work”).

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Contractor and the City agree as follows.

1. Scope of Services/Deliverables.

1.1 Project/Work: CONTRACTOR shall complete all Work as specified or indicated in the plans, Contract Documents and detailed in Scope of work. The Work is generally described as the following:

- (a) The construction of this project consists of labor, materials and equipment necessary to complete interior renovations to City Hall as shown in the provided Architectural Plans. The City will provide all site plans required for permitting.

2. Term/Commencement Date and Liquidated Damages.

- (a) Unless specified otherwise in Exhibit “A” the Contractor shall not commence work until the City issues Contractor a written Notice to Proceed and the Work shall be substantially completed within One Hundred (100) calendar days after the date specified in the Notice to Proceed (“Substantial Completion”), and fully completed and ready for final payment in accordance with the Agreement Documents within One Hundred Thirty (130) calendar days for final completion after the date specified in the Notice to Proceed.
- (b) Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Work within the timeframes set forth in Exhibit “A”, unless extended by the City Manager. The City shall issue a written notice identifying the date the Work is deemed fully complete which shall be the Final Completion date.
- (c) Should the Substantial Completion and/or Final Completion and acceptance of Work, together with any modification or additions, be delayed beyond the time for performance set above because of lack of performance by the Contractor, it is understood and agreed that aside from any liquidated damages, the Contractor shall be liable to the City for all actual additional

costs and/or losses incurred by the City including, but not limited to, completion contractor expenses, lost/unrealized revenue, financing costs, professional services, attorney fees, and/or additional City staffing that incurred because the Work was not substantially completed on time and/or fully completed on time.

- (d) Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Contractor, or if no money is due or the amount due is insufficient to cover the amount charged, the Contractor shall be liable for said amount.
- (e) Liquidated Damages. CITY and CONTRACTOR recognize that time is of the essence in this Contract and that the CITY will suffer financial loss if the Work is not completed within the contract times specified in Section 3.1 for the Work above, plus any approved extensions thereof allowed in accordance with the General Conditions. The CONTRACTOR also recognizes that the damages which the City will incur if the Work is not substantially completed on time and/or fully completed on time are not readily ascertainable at the time this Agreement is entered into, and the Contractor recognizes the difficulties involved in proving the actual loss suffered by CITY if the Work is not substantially completed on time and/or fully completed on time. Accordingly, instead of requiring any such proof, CITY and CONTRACTOR agree that as liquidated damages to compensate the City and not as a penalty for delay or as an incentive to complete on time, CONTRACTOR shall pay CITY **(\$1,000.00)** foreach calendar day that expires after the time specified in Section 3.1 for substantial Completion of the Work. After Substantial Completion, if CONTRACTOR fails to fully complete the Work within the time specified in Section 3.1 for completion and readiness for final payment or any proper extension thereof granted by CITY, CONTRACTOR shall pay CITY **(\$750.00)** for each calendar day that expires after the time specified in Section 3.1 for full completion and readiness for final payment. Contractor agrees that the liquidated damage amounts specified in the Contract Documents bear a reasonable relationship to the actual damages to be suffered due to public inconvenience and damage to the City's reputation if the Contractor fails to substantially complete and/or fully complete the Work on time. The liquidated damages are not in compensation for any other damages, and expressly exclude damages for completion contractor expenses, lost/unrealized revenue, financing costs, professional services, attorney fees, and/or additional City staffing that may be incurred if the work is not substantially completed on time and/or fully completed on time. All liquidated damages amounts will continue to be charged if the Contractor abandons the Work, or is terminated, and the Work is completed by another party.
- (f) Should the Substantial Completion and/or Full/Final Completion and acceptance of Work, together with any modification or additions, be delayed beyond the time for performance set in Section 3.1 above because of lack of

performance by the Contractor, it is understood and agreed that aside from any liquidated damages, the Contractor shall be liable to the City for all actual additional costs and/or losses incurred by the CITY including, but not limited to, completion contractor expenses, lost/unrealized revenue, financing costs, professional services, attorney fees, and/additional City staffing that incurred because the Work was not substantially completed on time and/or fully completed on time.

- (g) Monies due to the CITY under Sections (e) and (f) shall be deducted from any monies due the CONTRACTOR, or if no money is due or the amount due is insufficient to cover the amount charged, the CONTRACTOR shall be liable for said amount.

3. **Compensation and Payment.**

- (a) For the purpose of developing the values to be paid on a monthly basis, Contractor shall submit a Schedule of Values to be reviewed and approved by the City at least thirty (30) days before the first progress payment request. This Schedule of Values shall constitute the values of each unit within each category that will be paid for the Work (see, Application for Payment, Instructions “General Information”).
- (b) The Contractor shall invoice the City on a monthly basis. All invoices shall provide detailed statement of the Work performed by Contractor for the period of time covered by the invoice. Contractor shall use the form attached hereto as Exhibit “B,” or such other form as may be provided by City from time to time, which is to be used by Contractor in requesting progress or final payments and which is to include such supporting documentation as is required by the Agreement Documents. The City will withhold 5% of each Pay Application as retainage which shall be paid upon Final Completion of the Work.
- (c) Each application for partial payment shall include partial lien/bond releases from all subcontractors and suppliers and a sworn statement by Contractor that partial payments received from City for the Work have been applied by Contractor to discharge in full all of Contractor’s obligations, including payments to subcontractors and suppliers, stated in prior applications for payment. If payment has been withheld from subcontractor and/or supplier the sworn statement shall state the reasons for the non payment. All partial payment requests shall be accompanied by consents of surety for each subcontractor and supplier.
- (d) The final application for payment shall be accompanied by all documentation called for in the Agreement Documents, together with complete and legally effective release and/or waivers (satisfactory to City) of all liens and claims arising out of or in connection with the Work and consent of the surety, if any,

to final payment. If any subcontractor or supplier fails to furnish a sub-tier release, Contractor shall provide the City with a sworn written explanation for why the subcontractor or supplier has not been paid. The City may require the Contractor to provide security to ensure all disputed and/or undisputed amounts owed are paid; or withhold the disputed and/or undisputed amounts owed from the final payment until such time as the final releases and consents of surety for each subcontractor and supplier.

- (e) The City shall pay the Contractor in accordance with the Florida Prompt Payment Act. When the Contractor believes the Work is substantially complete, the Contractor shall notify the City and within 15 calendar days the parties shall create and review a single draft punch list of items to be completed in order for the Work to be fully complete. The City shall review the draft punch list and within 5 days of being provided with the draft punch list, the City shall provide the Contractor with the Final Punch list of work to be completed for the Work to be deemed fully complete.
- (f) If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay the Contractor the undisputed portion of the invoice. Upon written request of the Finance Director, the Contractor shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.
- (g) All payments shall only be from appropriations budgeted on an annual basis.

4. **Subcontractors.**

- (a) The Contractor shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Work.
- (b) Any subcontractors used on the Work must have prior written approval of the City Manager and be properly licensed and insured in the same amounts as the Contractor.

5. **City's Responsibilities.**

- (a) Upon request, if available, the City shall furnish maps, plans, studies, reports and other information regarding anticipated field conditions readily available and in the City's possession.
- (b) The City shall arrange for access to and make all provisions for Contractor to enter upon real property as required for Contractor to inspect the site and perform the Work as may be requested in writing by the Contractor.

6. **Contractor's Responsibilities.**

- (a) Contractor shall exercise the same degree of care, skill and diligence in the performance of the Work as is ordinarily provided by a professional under similar circumstances. If at any time during the term of this Agreement or within one year from the completion of the Work, it is determined that the Contractor's deliverables are incorrect, defective or fail to conform to the Scope of Work or perform as intended, upon written notification from the City Manager, the Contractor shall at Contractor's sole expense, immediately correct the Work.
- (b) Contractor and its subcontractors shall comply with all applicable laws and regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall develop and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent public and private property and of underground facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, and Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be immediately remedied by Contractor. The contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and the City has made final payment to Contractor.
- (c) On a daily basis during the course of the Work, Contractor shall maintain the site free of debris and dust so as to minimize any inconvenience to surrounding properties. Upon completion of the Work, Contractor shall remove all apparatus, debris, equipment, materials, and tools created or used to construct the Work, and except for the Work or as otherwise directed by the City return the site in the same condition as at the beginning of the Work.
- (d) If the Work will create any obstructions, road closures or traffic impacts, Contractor shall provide the City and surrounding property owners with no less than seventy-two (72) hours prior notice of the anticipated or planned obstructions, road closures or traffic impacts.

7. Termination

- (a) The City Manager without cause may terminate this Agreement upon thirty (30) days written notice to the Contractor, or immediately with cause.
- (b) Unless directed otherwise in writing by the City Manager, upon receipt of the City written notice of intent to terminate or notice of actual termination, the Contractor shall stop the Work.

- (c) In the event of termination by the City, the Contractor shall be paid for all Work accepted by the City Manager up to the date of termination.
- (d) The Contractor shall transfer all books, records, reports, working drafts, documents, maps, and data properly indexed and labeled pertaining to the Work to the City, in a hard copy and/or electronic format (as specified by the City) within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.
- (e) The Contractor shall transfer all books, records, reports, working drafts, documents, maps, and data properly indexed and labeled pertaining to the Work to the City, in a hard copy and/or electronic format (as specified by the City) within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

8. **Insurance.**

UPON EXECUTION OF THIS **CONTRACT**, CONTRACTOR SHALL SUBMIT CERTIFICATE(S) OF INSURANCE TO THE CITY EVIDENCING THE REQUIRED COVERAGES AND SPECIFICALLY PROVIDING THAT **CITY IS NAMED AS AN ADDITIONAL INSURED** WITH RESPECT TO THE REQUIRED COVERAGES AND THE OPERATIONS.

CONTRACTOR shall file Certificates of Insurance with the City, reflecting evidence of all Coverages. All certificates of insurance must clearly identify the Contract to which they pertain, including a brief description of the subject matter of the Contract. They shall be filed with the City's Risk Management within fourteen (14) days of the execution of this Contract by both parties. The certificates of insurance shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty (30) days' prior written notice has been given to the City. Policies for Coverage shall be issued by companies authorized to do business under the laws of the State of Florida and any such companies' financial ratings must be no less than A-VII in the latest edition of the "BEST'S KEY RATING GUIDE", published by A.M. Best Guide.

All coverages shall be in force throughout the life of this Contract. In the event insurance certificates provided to City indicate that any insurance shall terminate and lapse during the period of this Contract and any and all amendments or extensions of it, then in that event, CONTRACTOR shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like Coverages for the remaining term of the Contract and any and all extension of it, is in effect.

CONTRACTOR shall procure and maintain at its own expense and keep in effect during the full term of the Contract a policy or policies of insurance which must include the following coverages and minimum limits of liability:

General Liability insurance with limits of not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage including coverage for contractual liability, personal injury, broad form property damage, products and completed operations. Annual Aggregate shall apply "Per Project/Job". This policy of insurance shall be written in an "occurrence" based format and include a Waiver of Subrogation in favor of the City.

Comprehensive or Business Automobile Liability insurance with/ limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage including coverages for owned, hired, and non-owned vehicles, equipment or both as applicable This policy of insurance shall be written in an "occurrence" based format and include a Waiver of Subrogation in favor of the City.

Workers Compensation- Statutory Limits (per limits outlined by Chapter 440, Florida Statutes)

Employers Liability Limits:

- \$500,000 for bodily injury caused by an accident, each accident
- \$500,000 for bodily injury caused by disease, each employee
- \$500,000 for bodily injury caused by disease, policy limit

Workers Compensation must be provided for all persons fulfilling this contract, whether employed, contracted, temporary or subcontracted.

Contractor(s) must be in compliance with all applicable State and federal workers' compensation laws, including US Longshore and Harbor Workers Compensation Act, Jones Act (maritime), Federal Employers Liability Act (railroad), etc.

Subcontractors' Compliance: It is the responsibility of the contractor to ensure that all subcontractors comply with all insurance requirements.

Cancellation Requirements: Required insurance shall always be maintained during which the contractor is on City premises. The above policies shall provide the City of Marathon with 30 days' written notice of cancellation or material change from the insurer. If the policies do not contain such a provision, it is the responsibility of the Contractor to provide such notice.

Notice Requirements: If an insurable incident occurs while CONTRACTOR is engaged in a City project, notification to the City is required.

Certificates of Insurance/Verification of Coverage: Proof of the required insurance reflecting all required insurance above will be furnished by CONTRACTOR to the City of Marathon by Certificate of Insurance within 5 days of notification of award. All certificates (and any required documents) must be received and approved by the City before any work commences to permit CONTRACTOR time to remedy any deficiencies.

Valid Certificates verifying coverage is in force as required above must be on file with the City at all times during contract. If the policies renew during the term of the Contract, updated Certificates verifying coverage is in force shall be submitted to the City within 10 days of expiration. Contractor and/or any Subcontractor shall not perform or continue to work pursuant to this contract, unless all coverages remain in full force and effect; work delay is subject to provisions in this contract. If contractor fails to provide proof of insurance within 7 days of City's receipt of notice at any time during this contract, the City shall have the right to consider the contract breached, and therefore terminated.

A copy of Additional Insured Endorsement or other endorsements may be attached to the Certificate.

Description of Operations section of COI: Confirm coverage required is documented in the body of the Certificate of Insurance, and also in the Description of Operations. Additionally, include Job, Event, Contract, or Contract number.

Notices/ Certificate Holder:

City of Marathon
9805 Overseas Highway
Marathon, FL 33050

The City of Marathon, Florida reserves the right to review/revise, reject or accept any required policies of insurance, including limits, coverages or endorsements, herein throughout the term of this Contract.

9. **Nondiscrimination.**

(a) During the term of this Agreement, Contractor shall not discriminate against any of its employees or applicants for employment because of their race, color,

religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination.

10. **Agreement Documents.**

The Agreement Documents listed below, which are listed in their order of precedence for the purpose of resolving conflicts, errors and discrepancies, by this reference shall become a part of the Agreement as though physically attached as a part thereof:

Plans Titled “ **Interior Renovations at City Hall**”

Change Orders Agreement

Exhibits to the Agreement

Bid Documents (Addendum, Invitation to Bid, Instructions to Bidders/Proposers, Proposal Form provided by Contractor, Notice of Award and Notice to Proceed)

CONTRACTOR AGREES THAT THERE IS NO IMPLIED OR EXPRESS WARRANTY OF CONSTRUCTABILITY WITH REGARD TO THE WORK OR DESIGN ENCOMPASSED BY THE AGREEMENT DOCUMENTS.

11. **Attorneys’ Fees and Waiver of Jury Trial.**

- (a) If either the City or Contractor is required to enforce the terms of the Agreement by court proceedings or otherwise, whether or not formal legal action is required, the parties shall bear their own attorney fees, costs and expenses, at the trial and appellate level.
- (b) In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily, and intentionally waives its right to trial by jury.

12. **Indemnification.**

- (a) General Indemnity. Contractor shall indemnify and hold harmless the City, its officers, and employees, from or on account of all claims, damages, losses, liabilities and expenses, direct, indirect or consequential, including, but not limited to, fees and charges of engineers, architects, attorney’s, consultants and other professionals and trial and appellate court and arbitration costs arising out of or resulting from the performance of the Work, excluding claims arising from the sole negligence of City. Such indemnification shall specifically include but not be limited to claims, damages, losses and expenses arising out of or resulting from (i) any and all bodily injuries, sickness, death, disease; (ii) injury to or destruction of real property or tangible personal property, be it publicly or privately owned, including the loss of use resulting therefrom; (iii) other such damages, liabilities or losses received or sustained by any person or persons during or on account of any operations connected with the construction

of the Work including the warranty period; (iv) the use of any improper materials; (v) any construction defect including patent defects; (vi) any act or omission of Contractor or his Subcontractors, agents, servants or employees; (vii) the violation of any federal, state, county or City laws, ordinances or regulations by Contractor, his Subcontractors, agents, servants or employees; (viii) the breach or alleged breach by Contractor of any term of this Agreement, including the breach or alleged breach of any warranty or guarantee.

- (b) Defense. In the event that any claims are brought or actions are filed against the City that are encompassed by the Contractor's duty to indemnify as stated in this Agreement, the Contractor agrees to defend against all claims and actions brought against the City regardless of whether such claims or actions are rightfully or wrongfully brought or field. City reserves the right to select its own legal counsel to conduct any defense in any such proceedings and all costs and fees associated therewith including any costs or fees of an appeal shall be the responsibility of Contractor.
- (c) Specific Indemnity. Contractor shall indemnify and hold harmless the City for liability for damages to persons or property caused in whole or in part by any act, omission, or default of the City, its officers, directors, agents, or employees arising from the Agreement or its performance. Such indemnification shall not include claims of, or damages resulting from, gross negligence, or willful, wanton or intentional misconduct of the City or its officers, directors, agents or employees, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Contractor or any of the Contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees. The extent of the indemnification shall be limited to \$5,000,000 which the parties agree bears a reasonable commercial relationship to the contract. The monetary limitation on the extent of the indemnification provided to the City shall not be less than \$1 million per occurrence.
- (d) Payment of Losses. Contractor shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever, excluding only those in which the damages arose out of the sole negligence of City, in connection with the foregoing indemnification, including, but not limited to, reasonable attorney's fees and costs to defend all claims or suits in the name of City when applicable.
- (e) Contractor's indemnification shall not be limited to the amount of comprehensive general liability insurance which Contractor is required to obtain under the Agreement. Nothing contained herein is intended nor shall it be construed to waive the City's rights and immunities under the common law or Section 768.28 Florida Statutes, as amended from time to time. This obligation shall not be construed to negate, abridge, or otherwise reduce any

other right or obligation of indemnity which would otherwise exist as to any party described in this Section and its subparts.

(f) The provisions of this section shall survive termination of this Agreement.

13. **Notices/Authorized Representatives.**

- (a) Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

FOR CITY: City of Marathon
 9805 Overseas Highway
 Marathon, Florida 33050
 ATTN: City Manager

WITH COPY TO:

 City Attorney
 9805 Overseas Highway
 Marathon, Florida 33050
 Phone: 305-289-4103
 Fax: 305-289-4123

FOR CONTRACTOR:

14. **Governing Law.**

- (a) This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court or the Federal Southern District of Florida.

15. **Entire Agreement/Modification/Amendment.**

- (a) This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.
- (b) No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document. This Agreement may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof via a written Change Order, in such form as may be provided by City from time to time.

16. **Ownership and Access to Records and Audits.**

16.1.1 Access to Public Records. The CONTRACTOR shall comply with the applicable provisions of Chapter 119, Florida Statutes.

All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City. The Records are not intended or represented to be suitable for use, partial use, or reuse by the City or others on extensions of this project or on any other project. Any such use, reuse, or modifications made by the City to any of Consultant's Records will be at City's sole risk and without liability to Consultant, and City shall, to the extent allowable by Florida law, and subject to Section 768.28, Florida Statute, and all monetary limits listed therein, indemnify, defend and hold Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The "CONTRACTOR" as defined by Section 119.0701(1)(a), Florida Statutes, and shall comply with the public records provisions of Chapter 119, Florida Statutes, including the following:

1. Keep and maintain public records required by the City to perform the service.
2. Upon request from the City Clerk, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CONTRACTOR does not transfer the records to the City.
4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the CONTRACTOR or keep and maintain public records required by the City to perform the service. If the CONTRACTOR transfers all public records to the City upon completion of the contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City Clerk, in a format that is compatible with the information technology systems of the City.

5. Public Records” is defined in Section 119.011(12), Florida Statutes, and includes all documents, papers, letters, photographs, data processing software, or other material, regardless of physical form, made or received in connection with this Agreement.

6. Should the CONTRACTOR assert any exemption to the requirements of Chapter 119 and related law, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the CONTRACTOR.

7. The CONTRACTOR consents to the City’s enforcement of the CONTRACTOR’s Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the CONTRACTOR shall pay all court costs and reasonable attorney’s fees incurred by the City.

8. The CONTRACTOR’s failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by the Contractor shall be grounds for immediate unilateral cancellation of this Agreement by the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, DIANE CLAVIER AT 305-289 5020, CITYCLERK@CI.MARATHON.FL.US, OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.

17. **Nonassignability.**

(a) This Agreement shall not be assignable by Contractor unless such assignment is first approved by the City Manager. The City is relying upon the apparent qualifications and personal expertise of the Contractor, and such firm's familiarity with the City's area, circumstances, and desires.

18. **Severability.**

(a) If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

19. **Independent Contractor.**

(a) The Contractor and its employees, volunteers and agents shall be and remain independent contractor and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

20. **Compliance with Laws.**

(a) The Contractor shall ensure that it, and all its subcontractors (at all tiers), comply with all federal, state and local applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Work.

(b) **E-Verify.** In accordance with F.S. 448.095, the Contractor shall utilize the U.S.

Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term.

21. **Waiver.**

(a) The failure of the City to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach of wrongful conduct.

22. **Survival of Provisions.**

(a) Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

23. **Prohibition of Contingency Fees.**

(a) The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

24. **Counterparts.**

(a) This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart shall constitute one and the same instrument.

25. **Authorization to Sign Agreement.**

- (a) The execution and delivery of this Agreement by Contractor is within Contractor's capacity and all requisite action has been taken to make this Agreement valid and binding on Contractor in accordance with its terms.

26. **Non-Exclusive Agreement.**

- (a) The services to be provided by the Contractor pursuant to this Agreement shall be non-exclusive and nothing herein shall preclude the City from engaging other firms to perform the same or similar services for the benefit of the City as determined in its sole and absolute discretion.

27. **Continuing the Work.**

- (a) Unless directed otherwise in writing by the City Manager, Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with City.

28. **Changes In The Work.**

- (a) Without invalidating the Agreement and without notice to any surety, City may, at any time or from time-to-time, order additions, deletions, or revisions in the Work by a Written Amendment or Change Order. Said changes shall be in accordance with Article 10 of the General Conditions.

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract on the respective dates under each signature: THE CITY OF MARATHON, FLORIDA, signing by and through its Mayor or Vice Mayor, authorized to execute same by Council action on the ____ day of _____, 20____, and by _____ (Contractor), signing by and through its _____, duly authorized to execute same.

CONTRACTOR

WITNESS

By:

By: _____

Name & Title

By _____
(Signature and Title)
(Corporate Seal)

(Type Name/Title signed above)

____ day of _____, 20____.

CITY

ATTEST

CITY OF MARATHON, FLORIDA

City Clerk

_____,
City Manager

____ day of _____, 20____.

APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE CITY OF MARATHON ONLY:

By: _____
City Attorney

(*) In the event that the Contractor is a corporation, there shall be attached to each counterpart a certified copy of a resolution of the board of the corporation, authorizing the officer who signs the contract to do so in its behalf.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the
_____ of _____ and that
_____, who signed the Bid with the City of Marathon, Monroe County, Florida
for _____, is _____ of said Corporation with full
authority to sign said Bid on behalf of the Corporation.

Signed and sealed this ____ day of _____, 20__.

(SEAL) _____
Signature

Typed w/Title

STATE OF FLORIDA
COUNTY OF _____

SWORN TO AND SUBSCRIBED before me this ____ day of _____, 20__.

My Commission Expires:

Notary Public

CERTIFICATE AS TO AUTHORIZED CORPORATE PERSONNEL

I, _____, certify that I am the _____ of _____,
who signed the Bid with the City of Marathon, Monroe County, Florida, for the project titled _____, and that the following persons
have the authority to sign payment requests on behalf of the Corporation:

(Signature) (Typed Name w/Title)

(Signature) (Typed Name w/Title)

(Signature) (Typed Name w/Title)

Signed and sealed this ____ day of _____, 20__.

(SEAL) _____
Signature

Typed w/Title

STATE OF FLORIDA
COUNTY OF MONROE

SWORN TO AND SUBSCRIBED before me this ____ day of _____,
20__.

My Commission Expires:

Notary Public

EXHIBIT “A”

BID FORM
Interior Renovations at City Hall

SCHEDULE OF QUANTITIES (UNLESS OTHERWISE STATED, PROVIDE AND INSTALL)					
ITEM #	ITEM	UNIT OF MEASURE	QUANTITY	\$ PRICE PER UNIT	\$ TOTAL BID ITEM
1	Mobilization	LS	1	\$	\$41,920.00
2	Bonds	LS	1	\$	\$3,798.00
3	Demolition	LS	1	\$	\$9,722.00
4	Electrical	LS	1	\$	\$22,008.00
5	Mechanical	LS	1	\$	\$4,943.00
6	Wall Framing	LS	1	\$	\$3,685.00
7	Millwork	LS	1		\$6,604.00
8	Drywall, Walls, & Painting	LS	1	\$	\$20,171.00
9	Standard Doors	LS	3	\$	\$13,951.00
10	Bulletproof Doors	LS	2	\$	\$17,002.00
11	Bulletproof Glass	LS	1	\$	\$17,002.00
12	Relocation of Keypad Entry System	LS	1	\$	\$3,590.00
13	Flooring	LS	1	\$	\$22,810.00
14	Ceilings	LS	1		\$6,497.00
				GRAND TOTAL BASE BID AMOUNT	\$193,703.00

END OF SECTION