



**City of Marathon City Council Agenda**  
**City Council Chambers, 9805 Overseas Hwy., Marathon**  
**Tuesday, April 9, 2019 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 so requests. In the event of such a request, the item is returned to the Regular Agenda.]
5. **City Council Items**
  - \*A. Approval of Minutes .....1
  - B. Monroe County Sherriff’s Office Return of Unspent Funds
  - C. Keys 100 Race Request for May 18-19.....10
  - D. Autism Awareness Month.....11
  - E. National Safe Boating Week Proclamation (Mayor Bartus) .....12
  - F. Child Abuse Prevention Month.....13
  - G. Community Announcements.....14
  - H.
6. **City Manager Report**
  - A. City Seal Update (Migut)
  - B. Parks and Recreation Report .....15
  - C. Public Works Report.....27
  - D. Wastewater Utility Report.....29
  - E.
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 and 30 minutes total time for this agenda item.] **TIME CERTAIN TO 6:30 PM OR AS SOON AS POSSIBLE THEREAFTER OR AFTER THE LAST AGENDA ITEM; WHATEVER COMES FIRST**
8. **Ordinances - TO BE CONTINUED**
  - A. **Ordinance 2019-06** - Consideration Of An Ordinance To Amend The City Of Marathon Comprehensive Plan Modifying Chapter One, “Future Land Use,” Table 1-1, “Future Land Use Densities And Intensities,” To Provide For Affordable Housing Repurposing Units; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity.....33

**B. Ordinance 2019-07** - Consideration Of An Ordinance To Amend The City Of Marathon Land Development Regulations, Chapter 103, Article 3, “Use And Intensity Tables, Table 103.15.1, “Uses By Zoning District,” To Provide For Affordable Housing Repurposing Units; And Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity.....45

**9. 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 2019-33,** Consideration Of A Request For An Amendment To A Conditional Use Permit For Blue Water Resort Hospitality, LLC In Coordination With Marathon Hospitality LLC, Pursuant To Chapter 102, Article 13 Of The City Of Marathon Land Development Regulations (Code) Entitled “Conditional Use Permits,” For The Addition Of A Drive Through As Part Of The Redevelopment Of The Properties As A Hotel/Motel Resort, Located At 2222 Overseas Highway, Which Is Legally Described As Part Of Lot 2, And Bay Bottom Adjacent To Lot 2, Key Vaccas, Marathon, Florida, Having Real Estate Number 00102730-000000; And Located At 2146 Overseas Highway, Which Is Legally Described As Part Of Lot 2, And Part Of Old State Road 4A, Key Vaccas, Marathon, Florida, Having Real Estate Number 00102810-002000. Nearest Mile Marker 48.....50

**10. Resolutions for Adoption**

**A. Resolution 2019-34** Authorizing A “Sole-Source” Purchase Pursuant To The City’s Purchasing Policies And Procedures And Approving The Purchase of two Eqovua, DAVCO, Forty-X Disc filters for Service Area 3 WWTP In An Amount Not To Exceed \$380,000.00; Authorizing The City Manager To Enter Into Agreements In Connection Therewith, Appropriating And Expending Budgeted Funds; And Providing For An Effective Date.....76

**\*B. Resolution 2019-35,** Approving Change Order No. 1 To Contract Between The City And Discount Rock & Sand, Inc. In The Original Amount Of \$1,343,241.00 For The Reconstruction of Sombrero Beach From Hurricane Irma Damages; Increasing The Contract In An Amount Not To Exceed \$157,400 For Construction Of The Exterior Wall In Lieu Of A Fence As Approved By FEMA For Hazard Mitigation, And Various Other Items; Authorizing The City Manager To Execute The Change Order And Appropriate and Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.....86

**\*C. Resolution 2019-36**, Providing An Amendment Document For Extension Of The Term Specified In Section 3, “Term” Of The Interlocal Agreement Between The City Of Marathon And Monroe County Transferring Affordable Housing Residential Dwelling Unit Allocations For An Approved Project In The Ownership Of Key Vaca LLC, To Be Located Between 4700 And 4800 Overseas Highway, Marathon, Florida On Properties Including Real Estate Numbers 00327110-000000, 00327120-000000, 00327130-000000, And 00327140-000000. Nearest Mile Marker 50; Rescinding Resolution 2017-107; And Providing For An Effective Date. ....94

**\*D. Resolution 2019-37**, Providing An Amendment Document For Extension Of The Term Specified In Section 3, “Term” Of The Interlocal Agreement Between The Monroe County And The City Of Marathon Transferring Affordable Housing Residential Dwelling Unit Allocations For An Approved Project In The Ownership Of Crystal Cove Market Site LLC (Formerly HTG Crystal Cove), To Be Located 4900 Overseas Highway, Marathon, Florida On Properties Including Real Estate Numbers 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, And 00328030-000000. Nearest Mile Marker 50; Rescinding Resolution 2017-106; And Providing For An Effective Date. ....146

- 11. Citizens' comments** [2 minutes per individual - Each individual has one opportunity to speak.]
- 12. Council comments**
- 13. Adjournment**

The public hearings will commence at 5:30 p.m., or as soon thereafter as business permits, in the City Hall Council Chambers, 9805 Overseas Highway, Marathon, FL. All interested persons are invited to attend the meeting and participate in the discussion; or, written comments may be sent to the City of Marathon, c/o City Clerk, 9805 Overseas Hwy, Marathon, FL 33050. 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](mailto:clavierd@ci.marathon.fl.us) if you would like to receive any of the items on the agenda by email.

**CALL TO ORDER** - A Meeting of the City Council of Marathon, Florida was held on March 26, 2019 in the Marathon Council Chambers, 9805 Overseas Hwy., Marathon, Florida, Mayor Bartus called the meeting to order at 5:30 p.m.

The Pledge of Allegiance was recited.

**ROLL CALL - There were present:**

Councilmember Luis Gonzalez

Councilmember Mark Senmartin

Councilmember Dr. Daniel Zieg

Mayor John Bartus, comprising a quorum

Vice Mayor Steven Cook was absent

Also in attendance were:

City Manager, Chuck Lindsey

City Attorney, David Migut

City Clerk, Diane Clavier

Finance Director Jennifer Johnson

Planning Director George Garrett

Utilities Director Dan Saus

Growth Management Director, Doug Lewis

Public Works Director, Carlos Solis

Captain Don Hiller, Monroe County Sheriff's Office

Marina Director, Sean Cannon

Fire Chief John Johnson

### **Approval of Agenda and Consent Agenda**

Mayor Bartus removed the minutes from the consent agenda. Senmartin added City seal clarification as a discussion item under Council items.

Lindsey added James Malmquist 15 year service award as the first item under City Manager Report and added a request for use of the Quay property for a car show on April 27<sup>th</sup> benefitting soldiers as the last item under City manager report

**MOTION:** Zieg moved to approve the agenda as amended.

**SECOND:** Bartus

With no objection from the members of Council, Mayor Bartus declared the motion approved by unanimous consent.

### **City Council Items**

Approval of Minutes - Bartus explained on page five of 84 in the packet regarding the City Seal ordinance he did not vote and the motion failed. Bartus asked that his name be crossed out of the yes vote, and the motion would still fail 3 to 1.

**MOTION:** Gonzalez moved to approve the minutes as amended.

**SECOND:** Zieg

With no objection from the members of Council, Mayor Bartus declared the motion approved by unanimous consent.

Florida Keys Day Briefing (Mayor Bartus) – Bartus informed everyone that on March 18-20, officials from local governments and organizations went up to Tallahassee for Florida Keys Day hosted by our State Representative, Holly Raschein. Bartus thanked our lobbyist, Carol Bracy for making sure we had meetings with key officials above and beyond the day’s scheduled events. Bartus explained City officials met with DEM’s senior staff and Deputy Director Kevin Guthrie, who are revamping their audit procedures and they have committed that the state will be a boots-on-the-ground partner and advocate for local municipalities and counties devastated by hurricanes. Bartus reported they also met with Ken Lawson, head of the Department of Economic Opportunity and discussed the progress of Rebuild Florida, the program that offers grants for people still struggling with damage to their homes. Bartus explained we should start seeing some of that funding going directly to help Keys people soon. Other DEO issues discussed were the 300 affordable housing allocations for Marathon pending appeal, and the Legislature moving forward with the 50-50 Bill and their legal and fiscal responsibility to assist with takings cases. Governor Ron DeSantis has made a serious commitment to improving water quality statewide, including fast-tracking Everglades restoration. Our Marathon delegation met with the Governor’s Chief of Staff, Shane Strum, to discuss Hurricane Irma recovery issues, takings cases and the 50-50 Bill, and the continued need for state involvement as we navigate through the end of new permit allocations and buildout. Bartus reported the important takeaway this year is that decision-makers and officials in Tallahassee are listening to us and promising some real assistance in the very near future.

Migut updated Council on the 50/50 bill by explaining that he flew to Tallahassee with County Commissioner Coldiron and County Attorney Bob Shillinger to support SB 1694 which was the first committee stop. Senator Flores also voiced her support and the SB1694 passed and will now go to the second committee meeting. Senmartin thanked Lindsey who laid a lot of the groundwork for this. Gonzalez also thanked Lindsey for all of his hard work as well as lobbyist Carol Bracy.

Community Announcements – Community announcements were read. Bartus encouraged everyone to participate in the Festival of Hope event and informed everyone he donated a guitar he used in one of his videos to be auctioned off at the event.

#### City Seal Clarification (Councilmember Senmartin)

Senmartin: Let me start by explaining the title of my item. It's not for my clarification, it's for the City's clarification. We had a problem in the past, of the seal being used improperly and we were told that nothing could legally be done, because the City never officially adopted the seal so it didn't belong to anyone. We should actually be thankful this happened, because otherwise we would have never known that. But since then I've tried to get the Council to officially adopt the seal to keep it from being abused in the future and at the last meeting the vote was 3-1 for that very thing. The Mayor was not permitted to vote for some reason, so as we have it on the record officially as the City not wanting to adopt the seal, I decided to do it myself. So this document right here is from the State of Florida, it is my ownership and trademark of the City of Marathon's seal, I now own it. The City can consider this as its 30 day notice to cease and desist using my trademark seal on all of its buildings, cars, uniforms, letterhead, koozie cups, etc. So, I'll let that sink in for a minute, while I point out to the Councilmen who voted against protecting it that it will cost tens of thousands of dollars to remove the seals and come up with a new one at which point I would guess would be trademarked by the City for future protections.

Bartus: Mr. Attorney

Migut: Councilman Senmartin, you have duties in your official capacity and you have duties in your individual capacity. Right now, based on what I heard your action that you just described is in your individual capacity. So, I just wanted to let you know on the record, I represent you in your official capacity in the City, so I'll be looking into this, but I will have to look into it from the perspective of the City.

Senmartin: Understood.

Migut: There might be a conflict where I can't talk to you on your interest in it on a personal capacity, but in the City's capacity. If you will provide me with the documentation, I can look at this in order to update the City more as a whole to give you a legal update of the ramifications of this. I guess this is the best way I can respond to this at this time.

Bartus: Could I ask the Councilmember his intentions for the seal?

Senmartin: My intention was actually to protect it, because I've tried to explain this at previous meetings that we were leaving ourselves open for something happening. The response was, "well I've never seen someone pretend to be a code officer and put a seal on their door and walk onto a jobsite". That is clearly not the only thing that can happen by not protecting our seal. So, it would be very easy for someone to do what I just did and then hold the city hostage and say you can give me \$10,000 bucks and I will give you back your seal. I mean crazier things have happened. So, my intent was to protect it.

Bartus: Anyone else have any input? So, what was our deadline again?

Senmartin: 30 days, but I will say if they City and the Council are willing to revisit this and possibly come up with a better solution, I would be willing to sell my trademark to the City for a \$1.00 plus costs.

Bartus: You're never hit with something totally out of the blue like this until it happens. Mr. Attorney?

Migut: Your in public session right now, you all are allowed to discuss this as much or as little as you want. I would advise you to let me review this and brief you at our next meeting. I'll brief you one on one before then, but I'll also brief you as a whole 14 days from today, which should be enough time to address this matter.

Bartus: It would probably be a good idea to schedule this as an item on our next agenda, so we can discuss this. I know how I feel about the issue. I was in favor of protecting the seal from something like this happening I just didn't know something like this was going to happen so soon and from one of our own. So, let's do that and that's probably all we need to say about this at the current moment.

### **City Manager Report**

Capt. James Malmquist 15 Year Service award – Chief Johnson, Lindsey and the Council presented Captain Malmquist with a service award plaque and thanked him for his service.

Lindsey introduced Matt Lossinger who has saved many lives while in the USCG.

Fire Rescue Department Report – Chief Johnson gave an overview of his written report and informed everyone the new engine was in service. Senmartin questioned who decides who will assist in an emergency. Chief Johnson explained it would be at the request of the agency requesting assistance.

Marina Report – Cannon explained the waiting list for the marina has been the longest the Marina had gone into March with a waiting list. Cannon informed everyone the dinghy dock pre-bid meeting was held today and bids would be due soon.

Quay property car show on April 27<sup>th</sup> benefitting soldiers – Lindsey requested approval for use of the Quay property for a car show on April 27<sup>th</sup> benefitting soldiers.

**MOTION:** Gonzalez moved to approve  
**SECOND:** Zieg

With no objection from the members of Council, Mayor Bartus declared the motion approved by unanimous consent.

**Quasi-Judicial Public Hearing:**

**Resolution 2019-31**, A Resolution Of The City Council Of The City Of Marathon Approving The Ranking And Allocations Of The Market Rate And Affordable Residential Building Permit Allocation System (RBPAS) For Period 2, Year 27 (January 14, 2019 To July 13, 2019); And Providing For An Effective Date.

The Clerk swore in speakers. Mayor Bartus stated he had exparte communications but it would not affect his vote. No other Councilmembers had exparte communications.

Garrett explained there were Nine (9) Market Rate General and three (3) Market Rate Owner Occupied BPAS allocations as shown in "Attachment A" and three (3) Affordable BPAS allocations "Attachment B".

Mayor Bartus called for public comments; hearing none closed comments.

**MOTION:** Zieg moved to approve Resolution 2019-31  
**SECOND:** Gonzalez

Vote of the Motion:

Yes: Zieg, Gonzalez, Senmartin Bartus  
No: None  
Absent: Cook  
Abstain: None

Vote on the Motion: 4 Yes, 0 No, 1 Absent, 0 Abstain

**Resolution 2019-32**, Consideration Of A Request For A Conditional Use Permit For Anchorage Homes, 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 twelve (12) Affordable Housing Units; Located At The End Of 64th Street; Which Is Legally Described As Part Of Tract 8 & Bay Bottom South Of & Adjacent To Tract 8 & Part Of Don - Allen Rd, Section 11, Township 66 South, Range 32, Key Vaca, Monroe County, Florida; Having Real Estate Number 00338720-000000, Nearest Mile Marker 50.5.; And Providing For An Effective Date.

Council stated they had no exparte communications.



Garrett explained the project was previously approved with condition that the Applicant provide a revised site plan to reflect the approval of only twelve residential units. The Condition Use Permit which was the subject of the Resolution was then allowed to lapse. This application reflects an interest to carry through on the original City approval. The Planning Commission reviewed the project on February 25, 2019 unanimously approved.

Senmartin explained he had concerns with the neighbors to the East and North and asked for a landscape or fence buffer

Mayor Bartus called for public comments; hearing none closed comments.

**MOTION:** Zieg moved to approve Resolution 2019-32 with added buffer condition.  
**SECOND:** Gonzalez

Vote of the Motion:

Yes: Zieg, Gonzalez, Senmartin, Bartus  
No: None  
Absent: Cook  
Abstain: None

Vote on the Motion: 4 Yes, 0 No, 1 Absent, 0 Abstain

### **Ordinances for First Public Hearing**

**Ordinance 2019-06**, Amending The City Of Marathon Comprehensive Plan Modifying Chapter One, "Future Land Use," Table 1-1, "Future Land Use Densities And Intensities," To Provide For Affordable Housing Repurposing Units; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity.

**Ordinance 2019-07**, Amending The City Of Marathon Land Development Regulations, Chapter 103, Article 3, "Use And Intensity Tables, Table 103.15.1, " Uses By Zoning District," To Provide For Affordable Housing Repurposing Units; And Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity

Garrett explained the ordinance that would allow for repurposing of units for any place that has a motel/hotel unit could be converted to affordable and the transient would be transferred off site. Garrett explained the proposed densities (up to 25 units per acre) are in line with that allowed in other zoning districts such as Residential High (RH) and Residential Mobile Home (R-MH). There would be no net increase in the impacts associated with the conversion or repurposing of such units. There would be a net gain in affordable housing units through the use of the City's remaining affordable housing allocations.

Barbara Mitchell explained the rationale behind the request for the repurposing units.

Gonzalez questioned how many properties that have done this and may come back to ask for more units. Garrett explained it would be different than a takings case. Mitchell explained the time it takes to rezone is the issue. Zieg questioned the minimum size of the units. Garrett responded 375 sq. feet. Zieg commented he felt the traffic study was flawed and the City just got rid of old run down structures. Senmartin explained his concerns of utility and traffic impacts and felt that 25 units per acre was too much. Bartus commented that a lot of our jobs in the service industry need affordable housing and passing this this week will not guarantee any units to any hotels. Bartus suggested we may want to consider fractional allocations.

Mayor Bartus called for public comments; hearing none closed comments.

**MOTION:** Senmartin moved to approve Ordinance 2019-06 with consideration of a larger square foot per unit (375 sq ft.)

**SECOND:** Bartus

Gonzalez commented that we need affordable housing, but it needs to be done properly. There are too many unknown answers and he would like this tabled until the next meeting or we have the answers.

Vote of the Motion:

Yes: Senmartin, Bartus

No: Zieg, Gonzalez

Absent: Cook

Abstain: None

Vote on the Motion: 2 Yes, 2 No, 1 Absent, 0 Abstain; motion failed.

Migut suggested they could table this ordinance.

**MOTION:** Senmartin moved to bring back Ordinance 2019-06 and 2019-07 at the next meeting.

**SECOND:** Bartus

Vote of the Motion:

Yes: Senmartin Bartus, Gonzalez, Zieg

No: None

Absent: Cook

Abstain: None

Vote on the Motion: 4 Yes, 0 No, 1 Absent, 0 Abstain

Citizens Comments

Diane Scott commented that the City should have a seal.

**Ordinance 2019-08**, Amend The City Of Marathon Comprehensive Plan Modifying Chapter One, "Future Land Use," Table 1-1, "Future Land Use Densities And Intensities," To Provide Assurances That Residences Within RL-C Zoning May Be Rebuilt; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity

Garrett explained this ordinance affects the same areas of code and explained the RL-C zoning in Grassy Key allows for them to be rebuilt.

Mayor Bartus called for public comments; hearing none closed comments.

**MOTION:** Zieg moved to approve Ordinance 2019-08  
**SECOND:** Senmartin

Vote of the Motion:

Yes: Zieg, Senmartin, Gonzalez, Bartus  
No: None  
Absent: Cook  
Abstain: None

Vote on the Motion: 4 Yes, 0 No, 1 Absent, 0 Abstain

**Ordinance 2019-09**, Amending Chapter 103 "Zoning Districts", Article 3 "Use And Intensity Tables", Modifying Table 103.15.1 "Uses By Zoning District" And Table 103.15.2 "Density, Intensity, And Dimension For Zoning Districts;" Amending Chapter 108, Article 3, "Nonconforming Uses," Section 108.12, "Nonconforming Density And Intensity" And Article 4, "Nonconforming Lots," Section 108.13, "Nonconforming Lots;" Providing For The Repeal Of All Code Provisions And Ordinances Inconsistent With This Ordinance; Providing For Severability; Providing For Inclusion In The Code Of Ordinances, City Of Marathon, Florida; And Providing An Effective Date

Mayor Bartus called for public comments; hearing none closed comments.

**MOTION:** Zieg moved to approve Ordinance 2019-09  
**SECOND:** Senmartin

**Vote of the Motion:**

Yes: Zieg, Senmartin, Gonzalez, Bartus  
No: None  
Absent: Cook  
Abstain: None

Vote on the Motion: 4 Yes, 0 No, 1 Absent, 0 Abstain

**Citizens' Comments:**

Diane Scott asked that the bus stop be moved back to its previous location with seats and phone chargers.

**Council Comments**

Gonzalez thanked the Fire Chief and staff for their extremely professional response and saving several homes. Gonzalez reminded everyone little league baseball would be starting and to be careful driving in and around the park and watch for children.

Zieg passed on his thoughts and prayers to Vice Mayor Cook's family. Zieg gave a history of events that happened on this day and thanked Migut for the great letter to the County regarding the ambulance services.

Senmartin commented that he had a great trip to Tallahassee and reminded everyone to be careful.

Bartus also mentioned the great trip to Tallahassee but he was glad to be back in Marathon. Bartus informed everyone he would be at the ribbon cutting for Winn Dixie at 7:30 am tomorrow.

**ADJOURNMENT**

With no further business to come before the Council, Mayor Bartus adjourned the meeting at 7:05 pm by unanimous consent.

I certify the above represents an accurate summary of the regular Council meeting of March 26, 2019

\_\_\_\_\_  
Diane Clavier, City Clerk

\_\_\_\_\_  
Date

## Diane Clavier

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**From:** Bob Becker <bob@ultrasportsllc.com>  
**Sent:** Friday, March 22, 2019 1:58 PM  
**To:** Diane Clavier  
**Subject:** 2019 KEYS100  
**Attachments:** image002.jpg

Hello, Diane. This is Bob Becker from *KEYS100*. This year's race date is May 18-19. We would appreciate an okay for our athletes to run through town on their way from Key Largo to Key West, and to start the 50-mile race at Marathon Garden Club at approximately 10:00 on Saturday morning. We anticipate no changes from previous years. Will you kindly add this request to the Council agenda? I will submit paperwork to Ann. FYI, we have already received the FDOT permit.

Thank you for your help.

Bob

Bob Becker  
Race Director



[bob@ultrasportsllc.com](mailto:bob@ultrasportsllc.com)

V: 954.439.2800

Ultra Sports, LLC  
P.O. Box 2065  
Fort Lauderdale, FL 33303

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**City Council of the  
City of Marathon, Florida  
Proclamation**

**Autism Awareness Month**

**WHEREAS**, autism, the fastest growing developmental disability in the United States, affecting more than three million people is an urgent public health crisis that demands a national response; and

**WHEREAS**, in recognition of the growing needs of the worldwide autistic community and to raise awareness about autism spectrum disorders and the need to provide services to individuals and families who are affected, the City of Marathon proclaims April as Autism Awareness Month; and

**WHEREAS**, Autism Speaks, an organization dedicated to enhancing lives today, accelerating a range of solutions for tomorrow, and promotes the awareness of autism worldwide; and

**WHEREAS**, in light of the growing impact of autism spectrum disorders and the need for greater awareness, Autism Speaks holds their “Light It Up Blue” campaign designed to increase awareness about autism by asking participating organizations to turn their lights blue; and

**WHEREAS**, the City of Marathon is honored to take part in the annual observance of Autism Awareness Month in the hope that it will lead to better understanding of the disorder; and

**NOW THEREFORE**, the City of Marathon City Council hereby recognizes April 2019 as Autism Awareness Month in the City of Marathon, and calls this observance to the attention of all our citizens.

*April 9, 2019*

Date

\_\_\_\_\_  
John Bartus, Mayor



# City Council of the City of Marathon, Florida

## PROCLAMATION

### National Safe Boating Week May 18-24, 2019

**WHEREAS**, on average, 650 people die each year in boating-related accidents in the U.S.; 76% of these are fatalities caused by drowning; and

**WHEREAS**, the vast majority of these accidents are caused by human error or poor judgment and not by the boat, equipment, or environmental factors; and

**WHEREAS**, a significant number of boaters who lose their lives by drowning each year would be alive today had they worn their life jackets; and

**WHEREAS**, modern life jackets are more comfortable, more attractive, and more wearable than styles of years past and deserve a fresh look by today's boating public.

**NOW THEREFORE, BE IT PROCLAIMED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA:**

The City of Marathon, Florida does hereby support the goals of the North American Safe Boating Campaign and proclaim May 18-24, 2019, as National Safe Boating Week in the City of Marathon and the start of the year-round effort to promote safe boating.

*April 9, 2019*

Date

\_\_\_\_\_  
John Bartus, Mayor



**City Council of the  
City of Marathon, Florida  
Proclamation**

**Child Abuse Prevention Month**

**WHEREAS**, the future of children in the Florida Keys depend on nurturing their healthy development; and

**WHEREAS**, the abuse and neglect of children can cause severe, costly and lifelong problems; and

**WHEREAS**, every child has a right to a safe, healthy and happy childhood where they are educationally and developmentally on track; and

**WHEREAS**, research shows that parents and caregivers who have support systems and know how to seek help in times of trouble are more resilient and better able to provide safe environments and nurturing experiences for their children; and

**WHEREAS**, individuals, businesses, schools, and faith-based and community organizations must make children a top priority and take action to support the physical, social, emotional, and educational development and competency of all children; and

**WHEREAS**, the blue and silver pinwheel stands as a symbol of the health and happiness all children deserve; and

**WHEREAS**, during the month of April, Prevent Child Abuse Florida, in collaboration with the Monroe County Guardian Ad Litem Program, the Governor's Office of Adoption and Child Protection, the Florida Department of Children and Families and the Ounce of Prevention Fund of Florida, will implement Pinwheels for Prevention, a statewide campaign promoting awareness of healthy child development, positive parenting practices, and the types of concrete support families need within their communities;

**NOW THEREFORE**, the City of Marathon City Council hereby recognizes April 2019 as Child Abuse Prevention Month in the City of Marathon, and calls this observance to the attention of all our citizens.

*April 9, 2019*

Date

\_\_\_\_\_  
John Bartus, Mayor



<b><u>SUBJECT:</u></b>	<b><u>DATE:</u></b>	<b><u>TIME:</u></b>	<b><u>LOCATION</u></b>
MHS Bistro Dinner	4/12	5:00pm	Marathon High School
MHS Drama Club Presents: Mama Mia	4/12 & 4/13	7:00pm	Marathon High School Performing Arts Center
The Marathon Pentathlon 2019	4/13	8:00am	To Sign-Up Call 305-587-9830
Easter Egg Hunt	4/13	10:00am	Martin Luther Chapel, 325 122 <sup>nd</sup> Street
5 <sup>th</sup> Annual Pops Stiglitz Co-ed Softball Tournament	4/13 & 4/14		Marathon Community Park
Good Friday *City Hall Closed*	4/19		
7 <sup>th</sup> Annual Call-a-Thon Feed the Felines Event	4/19	8am-7pm	Call: 305-743-2520 or 305-942-1553 Checks accepted at Brutus Restaurant & Seafood Market or donate via Paypal: <a href="https://www.paypal.com/donate/?url=https://keysforgottenfelines.org">keysforgottenfelines.org</a>
Earth Day Early Start Children's Activities	4/22	11am-1pm	Community Park Main Pavilion
Celebrate Earth Day Crafts & Activities for Kids	4/22	6pm-8pm	Community Park Main Pavilion
City Council Meeting	4/23	5:30pm	Council Chambers, 9805 Overseas Hwy.

Youth Tennis will begin in late April at the Community Park. For ages 5-18. \$40 for the six week session. Contact Austin at 305-743-6598 for further details.



## CITY OF MARATHON PARKS AND RECREATION

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9805 Overseas Highway, Marathon, Florida 33050  
Phone: (305) 743-6598 Fax: (305) 289-5888

### MEMORANDUM

Date: March 26, 2019  
To: Honorable Mayor and City Council  
From: Jimmy Schmidt, Parks and Recreation Director  
Through: Chuck Lindsey, City Manager  
Subject: Parks and Recreation monthly report

#### **Parks Programs**

**Skate Park** attendance has been low throughout the months of February and early March. Attendance has been mostly from visitors and tourists from other parts of the U.S. Most at the present time are spring break vacationers. The park continues to be open nightly with an attendant present on occasion from 4-10pm. The park is open every morning around 8am and is without an attendant until 4pm. Much routine maintenance has been performed recently on the ramps and bowl. Daily attendance records kept with an attendant present show average daily use numbers fluctuate between 0 and 5.

**Adult Basketball** is ongoing throughout the entire year. The Parks and Recreation Department offers this program one night a week throughout the spring. Pickup games are each Wednesday night from 7:00-9:30pm at Marathon High School gym. Cost per person for each session is \$5 per night or \$30 for the school year. This program is for adults age 18 and older. A total of 42 have registered for and attended the fall program. To date, Andre Garvey, park staff, organizes and runs this program. Nightly attendance averages 16-20 for the spring program. This program will run until the end of the school year.

**Adult Volleyball** is ongoing throughout the school year and follows the same breaks as the Monroe County Schools calendar. Pickup games are on Monday nights from 7:00-9:30pm at Marathon High School gym. Cost per person for each session is \$5 per night or \$30 for the season. This program is for adults age 18 and older. Nightly attendance averages between 10-20 during this spring program. Andre Garvey, P/R staff, runs the program and Krystyn Ransom, P/R staff, assists.

**Home School PE** is for all ages of children who are home-schooled and wish to participate in a weekly PE program. This program meets on Tuesdays at 2pm for an hour each week during the school year calendar. This program is FREE. Austin Tubbs, Park Staff, organizes and runs this weekly. Home School Tennis lessons are offered following the main program to any home-schooler in the main program. To date, 39 have registered. Ages range from 5-16. Average attendance so far this school year is 22. The program follows the Monroe County School Calendar year.

**Roller Night** was at Community Park basketball/hockey court on Friday night, March 1. The 7:30-9:30pm event had kid-appropriate music with parent Courtney Barrett as D.J. The event also featured desserts/cookies and sno-cones, as well as juice/water for the skaters and parents. A total of 48 attended.

**Spring Break Day Camp** took place on weekdays the week of March 18. A total of 14 campers enjoyed sport activities, arts and crafts, and field trips to local spots in Marathon. One out-of-town field trip was taken to Key West to ride the Conch Train. Campers paid \$50 for the week or \$20 per day.

**Family Fun Fest**, an annual event offered by the Parks and Recreation Department, was cancelled early Saturday, January 26, due to weather conditions. The soccer fields were wet from night-long heavy rains and winds were gusting the morning of the scheduled event to prevent the set-up of various vendors. Over 55 non-profit vendors were scheduled to participate in the free event. It is scheduled to take place again on January 25, 2020.

**Under the Stars** showed the movie *Inside Out* on Saturday, March 16. This was a free family movie at Community Park. Attendance was around 150. Prior to the movie, a crafts table was set up for children to make St. Patrick's Day crafts. A sno-cone machine was also on-hand and those attending the movie were treated to a green sno-cone. Ali Adams, P/R staff organized the sno-cones and crafts. Charlotte Quinn, P/R staff, organized the movie.

**Under the Stars** also showed the movie *Elf* on February 23 at the Community Park soccer fields. Around 80 attended. Charlotte Quinn, P/R staff, organized the movie.

**Fishing Fun/Fishing Skills** took place on Saturday, February 23rd at Crane Point's shoreline. The Parks/Recreation Department was awarded an equipment grant from the *Fish Florida* foundation for 80 fishing poles and tackle boxes. There were 53 youth who attended this event. New *Shakespeare Zebco* fishing rods/reels were awarded to all anglers who went through the various learning centers during the event. Centers included the Marathon Wild Bird Center, Turtle Hospital, casting, types of bait, how to bait a hook, catching fish. It started at 10am and ended at noon. Many thanks go to Crane Point COO Charlotte Quinn, Marathon Chapter of OFF and Liz Prieto for donating \$150 to pay for

bait for the event, Marathon Bait and Tackle for generously discounting the bait, Turtle Hospital for providing Turtle Safety sessions, Marathon Wild Bird Center for providing Bird Safety sessions, Publix for donating cookies and snacks, and the many volunteers from Marathon High School and the community who showed up to make this event possible and last but not least, the free poles and tackle boxes from the *Fish Florida Foundation* who made it possible for all of the anglers to take home fishing gear to keep.

**St. Patrick's Day** free sno-cones were passed out at Sombrero Beach on St. Patrick's Day, March 17. A large number of beach-goers enjoyed the icy treat between noon-3pm. Many were out-of-town visitors to our area. Ali Adams and Andre Garvey, P/R staff, ran the activity.

### **Community-run Programs**

**Florida Keys Celtic Festival** was held January 12-13 at Community Park. Organized by St. Colomba Church, the event included Celtic games, several bands, authentic Celtic food, and vendors. Attendance was around 6,000.

**Pigeon Key Art Fest** was held February 2-3 at Community Park. Organized by Pigeon Key, the event included stunning artists and their works, as well as a raffle, great food, and a silent auction. The annual event raises money for the programs at Pigeon Key.

**Coral Head Music Fest** took place February 16-17 and featured nationally-recognized heavy metal and rock bands. Money raised was to assist the American Legion chapter.

**Marathon Youth Club (MYC)** has been organized and is being run by a group of parents, with Caitryn Piscetello as MYC parent in charge. Information can be found on Marathon Youth Club Facebook. Practices and games run six days a week. Monday, Wednesday, and Friday from 5:30pm are Little League games. Tuesday and Thursday from 5:30pm are Softball games. Saturday morning at 9am is T-ball. The park staff is assisting when requested. Opening ceremonies are scheduled for Saturday morning, March 30, at the Community Park baseball fields at 8am. T-ball is for ages 4-6. Little League and Softball are for ages 7-12.

**Hammock House** after-school care (sponsored by St. Colomba Episcopal Church) visited Rotary Park on March 15 for a picnic and they also cleaned up all paper and debris in the play area. They were rewarded with treats.

**K.A.I.R.** sponsored the **Sombrero Beach Run** on Saturday, March 2. The event drew a field of runners nation-wide to compete for awards/ribbons. On Sunday, March 3, the organization held a give-back cookout and had hot dogs and sausage dogs in addition to chips, cookies, juice, water, and hats left from the race. The also had beach games and the P/R staff assisted as requested with games including a watermelon-eating contest, a hula-hoop contest, and a treasure hunt for young children.

**Marathon Seafood Fest** took place on March 9-10 at Community Park. This event, run by Marathon Chapter of OFF and Marathon Chamber of Commerce, had crowds of over 30,000. The great seafood, a variety of vendors, and awesome music made this a great event. The P/R staff was on-hand to assist as needed.

### **Upcoming Programs**

**Relay for Life *Festival of Hope*** will take place Saturday, March 30, from 1-9pm on the soccer fields at Community Park. A free concert will be a part of the event. A cancer-survivor celebration will be at 2pm and a Luminaria ceremony will be at 8pm. This is a one-day-only event. Contact information is through [www.RelayForLife.org/keysfl](http://www.RelayForLife.org/keysfl) or Suzi Youngberg at 305-393-6830.

**Roller Night** will take place on Friday night, April 5, at Community Park basketball/hockey court. The 7:30-9:30pm program is for all ages. Many who attend are young children. Helmets are required. The event features music and free snacks. Skates and scooters are welcome. Ali Adams, P/R staff, is organizing this event.

**Under the Stars** will show the **movie *Grease (PG-13)*** on Saturday, April 6 at Community Park amphitheater. The soccer field will be turned into a drive-in theater and pre-registered cars that pay \$20 each will be allowed to drive onto the field to watch the movie. Applications for the “drive-in” cars are on the city web site. Zonta Club will be selling concessions during the movie. The movie is free to those who walk in and bring a chair or blanket. Charlotte Quinn, P/R staff, is organizing this event.

**Seven Mile Bridge Run** is organized by the Runners Club and takes place at the bridge early morning on Saturday, April 6. Thousands of runners and spectators attend this annually.

**Pops Stiglitz Tournament** features softball games with elimination brackets for the championship title. It takes place on Friday-Sunday, April 12-14, at the Community Park Little League fields. The event’s proceeds go to the Marathon High School senior scholarships.

**Art in the Park** features a variety of arts and crafts with spring and sport themes. This event will be Saturday morning, April 13, at Community Park main pavilion, from 10am-noon. Ali Adams, P/R staff, is organizing this event for ages 3-12.

**Summer Fishing Fun** is a Friday-night, free program being offered in late May and throughout June to give children the opportunity to advance their fishing skills. It will be from 6-8pm on Fridays at Crane Point shoreline and will run for 6 weeks. Ages 4-12. Older volunteers are welcome to assist children in developing these skills. Casting, baiting a hook with live bait, removing a fish from a hook, and rigging a pole with weights and

hooks will be a part of the program. Also, children will learn about how to read an FWC chart on types of fish and the number allowed daily as well as how to measure a fish's length. Advanced registration is not required. All poles and bait will be provided. Ali Adams, P/R staff, is organizing this program.

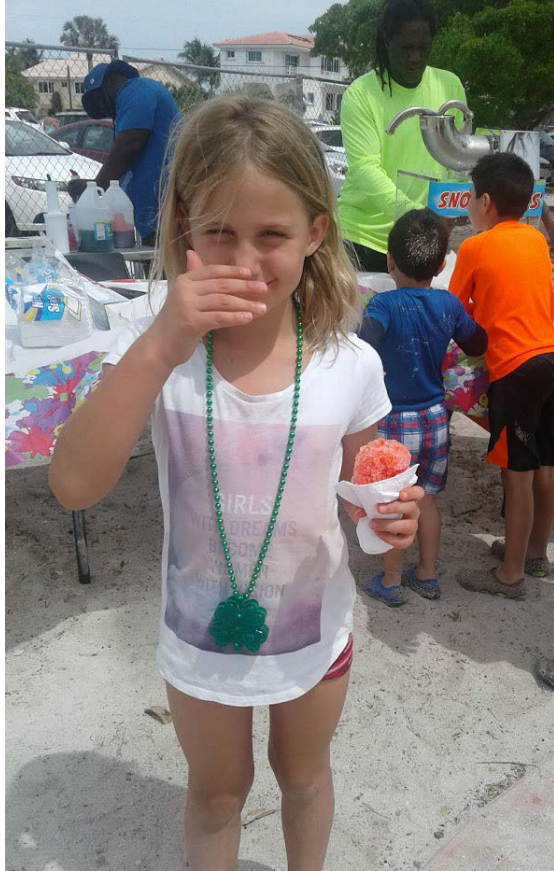
**Summer Camp** will take place this summer for 9+ weeks during Monroe County School's summer break. Camp will be on weekdays only from 8:30-4:30pm. Cost will be \$80 per camper with family discounts available. Out of town field trips will be taken twice weekly. The tentative starting date is June 3.



















## CITY OF MARATHON PUBLIC WORKS

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9805 Overseas Highway, Marathon, Florida 33050  
Phone: (305) 289-4109 Fax: (305) 289-4131

### MEMORANDUM

DATE: April 9, 2019  
TO: Honorable Mayor and City Councilmembers  
FROM: Carlos A. Solis, P.E. Director of Public Works & Engineering  
THROUGH: Chuck Lindsey, City Manager  
SUBJECT: Public Works Update

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The following is an update of the status of Public Works projects and related issues:

### Capital Infrastructure Projects

- **Community Park Office Renovation:** The project is ready to bid. We currently have a few other projects in the bidding process, and will wait a couple of month to let this project.
- **Aviation Blvd. Bike Trail:** Plan revisions are complete. The revisions are intended to reduce the cost of the project to bring it within the project budget. The largest reduction is the elimination of the light poles and fixtures. All conduits and pull boxes will still be installed, allowing us to install the lights at a later time without impacting the constructed infrastructure. The plans have been forwarded to FDOT and as soon as we get the go-ahead, we will re-bid the project. We expect to award the project by the end of May.
- **Jaycees Building:** The building has been removed and the area graded and stabilized with gravel and is being used for additional boat trailer parking for the 33<sup>rd</sup> Street Boat Ramp.
- **Sombrero Beach:** Construction has commenced and the contractor is proceeding with the reconstruction of phase 1, the eastern portion of the beach. Upon completion of the eastern portion, to include all new sidewalks, irrigation electrical and sodding, the contractor will mobilize to the western portion. While the entire project will not be completed by the July 4<sup>th</sup> holiday, the entire beach property will be available for use by the public for the celebration.

- **City Boat Ramps:** The concept plan for the Quay Boat Ramp parking is complete and attached. Final plans should be completed within the next month or so. Once completed, the project will be let to bid for implementation of the plan. We will also be applying for a TDC grant to install restroom for use by the ramp patrons and property visitors.
- **Community Park Soccer Fields:** Repairs to the irrigation system are expected to be completed by next week and the selected contractor to replace the sod will mobilize. The contractor will begin the process of spraying the fields while we complete the irrigation. We are also contemplating re-sodding the baseball fields as a change order to the contract to take advantage of the excellent pricing and mobilization of the contractor.
- **Community Park:** Public works staff along with the Parks and Rec maintenance staff will begin the process of repairing all the irrigation system for the landscape areas in Community Park. We intend to re-sod and install new landscaping to beautify the park to its original condition, similar to City Hall, to create not only a functional facility, but also aesthetically pleasing.

**Misc:**


- **Maintenance:** Public Works crews continue are maintenance on the US 1 medians to keep them trimmed, mulched and weed free. Also, the landscape areas by the Seven Mile Bridge and Coco Plum Drive have been cleaned-up and mulched.
- **FKAA Sombrero Beach Road/Blvd Project:** Work is continuing along Sombrero Beach Road, with traffic limited to one lane in the area of work. Upon completion of the installation. The entire southbound lane in the area of work on Sombrero Beach Road and Sombrero Blvd. will be milled and overlaid. We will also have the bike path in front of the new development milled and overlaid, by the FKAA's contractor with a monetary contribution from the developer.
- **Sombrero Beach Road/Blvd. Drainage:** As part of the water main replacement project, the FKAA is installing injection wells required to dewater the trenches during installation. These wells were set to be abandoned at the end of the project. We have requested that these well be left in place and we have submitted permit application to convert them to permanent stormwater injection wells to alleviate drainage issues in the area. While the City will be responsible for the structures over the wells, we will be saving the approximately \$45,000 each for six well we will be converting.
- **TDC Grant Application:** The City will be submitting grant application for the maintenance of the beaches to increase the funding for the additional beach cleaning services and other proposed maintenance activities. We will also be making application for the installation of restrooms at Sunset Park by the old Seven Mile Bridge and the Quay Property.



## Utility Department Monthly Update

**MEETING DATE:** April 9, 2019

**TO:** Honorable Mayor and City Councilmembers

**FROM:** Daniel Saus, Utility Director 

**THROUGH:** Charles Lindsey, City Manager

**SUBJECT:** **February 2019 Utility Department Update**

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### A. Wastewater Treatment Plants

#### 1. General Issues

- a. The extremely high flows of the season are back but the system is handling them well. We have not experienced any back up or operational issues due to the heavy influx of tourists and snowbirds but did have a significant number of call outs.

#### 2. Odor Complaints / Mitigation

- a. We received no odor complaints for the wastewater treatment facilities in February.

#### 3. Effluent Quality Report/Plant Performance

The February 2019 wastewater facility performance chart is shown below because the January numbers are just being tabulated. The plant permits now require AWT compliance and the operations staff is doing an amazing job as reflected in our effluent quality as shown below. **(Effluent results are always a month behind due to sampling, shipping, & lab reporting)**



# City of Marathon Wastewater Treatment Plant Performance Data for:

**FEBRUARY 2019**

Parameters:			CBOD mg/L		TSS mg/L		TN mg/L		TP mg/L	
WWTP	Permit (MGD)	MADF (MGD)	Monthly Average (6.25)	Annual Average (5.0)	Monthly Average (6.25)	Annual Average (5.0)	Monthly Average (3.75)	Annual Average (3.0)	Monthly Average (1.25)	Annual Average (1.0)
AREA 3	0.250	0.181	1.96	3.75	1.9	2.34	1.178	2.81	0.874	1.00
AREA 4	0.400	0.256	1.78	5.95	1.10	4.42	0.80	2.04	0.76	1.00
AREA 5	0.450	0.294	2.93	1.42	1.3	0.84	1.6	2.08	0.3	0.38
AREA 6	0.200	0.090	4.51	1.95	0.5	0.8	2.40	1.896	0.087	0.144
AREA 7	0.200	0.044	1.0	1.74	0.50	0.66	1.49	1.76	0.064	0.132

## B. Collection System

1. In February, we had caught up on the grease trap list and have full compliance at this time.
2. We have a new technician assigned to the grinder pump system in Grassy Key. He is extremely thorough and has made several improvements in the system, in the last 2 months.
3. Vacuum Station Salinities
  - a. January's vacuum station salinities were at as follows (in parts per thousand): SA3: 1.85; SA4: 1.91; SA5: 2.31; SA6: 0.84 and SA7: 1.1. This indicates a very little amount of saltwater intrusion into our system.
4. Wastewater System Connections
  - a. The City's wastewater system parcel connection rate is currently standing at approximately 99%. (Only customers that are in code or do not have a certificate of occupancy are not connected)
5. Code Compliance
  - a. There are currently 20 open code cases in process for failure to connect to the City's central wastewater system, code violations, or expired permits.

## 6. Call-Outs

a. From February 1st to February 28th there were 28 documented Call outs for the entire Collections System. Of these, 23 were system generated, typically low vacuum detected at one of our Vacuum Stations. These 23 call outs did not result in any inconvenience to our customers in any way as the problems were detected and remedied by Collections/Maintenance City Staff before these problems could become a nuisance to the homeowners or residents at these locations.

b. The other call outs were as follows:

- i. 2-5-19: Backup Area 5. 121 Brian Rd. The Manager on Duty phone received a call from the resident about a backup at the property. The City Technician responded and found the Vacuum Pit overwhelmed with water. The Tech manually fired the valve and emptied the sump of water and put Vacuum Pit back into service. No damage to property.
- ii. 2-6-19: Backup Area 4. 1140 Bolivar de Palmas. The Manager on Duty phone received a call from the resident about a backup at the property. The City Tech responded and inspected the equipment and found there was not any vacuum at the Vacuum Pit. The Vacuum Main was water logged. The Tech then proceeded to purge the water from the Vacuum Main and restored vacuum in the line. He then checked the operation of the Vacuum Pit and found it to be operational. The Vacuum Pit was put back into operation. No damage to property.
- iii. 2-11-19: Backup Area 5. 11290 O/S Hwy. Centennial Bank. The Manager on Duty phone received a call from the bank about a backup at the property. The City Tech responded and inspected the equipment and found the Vacuum Pit to be operational. He informed the bank that the issue was on their side of the system.
- iv. 2-15-19: Backup Area 4. 13 Man-o-War St. The Manager on Duty phone received a call from the resident about a backup at the property. The City Tech responded and inspected the equipment and found the Vacuum Pit to be operational. He informed the resident that the problem was on their side of the system.
- v. 2-16-19: Backup Area 4. 4290 O/S Hwy. Barracuda Grill. The business called the Manager on Duty phone to report a backup at the property. The Tech responded and inspected the equipment and found the Vacuum Pit Valve malfunctioning. He replaced the valve and put the Vacuum Pit back into operation. No damage to property.

## 7. Odor Complaints / Mitigation

- a. We received one odor complaint in February for the collection system for the remote vacuum station located at the corner of US1 and Aviation Boulevard. We had changed the media 3 months ago and the expected life span is 1 year so it was a surprise. We ordered new media and are looking into the possibility of re-routing and maybe using a different type of media and/or vessel that might be longer lasting than the existing system.

## C. Service Plant upgrades & Construction

1. The Service Area 3 WWTP upgrade project is now completed.
2. The Service Area 4 WWTP upgrade is now completed.
3. The Area 5 WWTP upgrades are still in progress. All of the MBR and AS tanks have been repaired and recoated on the inside and outside of tanks. New MBR membranes were installed in February. Work to evaluate and repair the influent equalization tank is underway.
4. The design for the sludge facility at Area 6 is still in progress.

## D. Grants Update Summary

1. LP44041 17 Million dollar Grant – No major changes this month.
  - i. Finance is working on the next draw at this time.

## COUNCIL AGENDA STATEMENT



**Meeting Date:** March 26, 2019  
**To:** Honorable Mayor and Council Members  
**From:** George Garrett, Planning Director  
**Through:** Chuck Lindsey, City Manager

### Agenda Items:

**Ordinance 2019-06** - Consideration Of An Ordinance To Amend The City Of Marathon Comprehensive Plan Modifying Chapter One, "Future Land Use," Table 1-1, "Future Land Use Densities And Intensities," To Provide For Affordable Housing Repurposing Units; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity.

**Ordinance 2019-07** - Consideration Of An Ordinance To Amend The City Of Marathon Land Development Regulations, Chapter 103, Article 3, "Use And Intensity Tables, Table 103.15.1, " Uses By Zoning District," To Provide For Affordable Housing Repurposing Units; And Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity

### RECOMMENDATION

Planning Commission provides a 3/1 recommendation for approval.

### BACKGROUND AND REQUEST:

**APPLICANT:** Republic Marathon, LLC and Millennium Asset, LLC

Agents: Thomas Wright and/or Barbara Mitchell

**REQUEST:** The Applicant is requesting that the City include a new density provision intended to provide densities of up to 25 units per acre in the Mixed Use FLUM category and Mixed Use Commercial (MU) Land Use or Zoning District to allow for "Repurposing" existing transient hotel/motel units to deed restricted affordable housing units. Such units shall be termed "Repurposing Units."

## Comprehensive Plan

- Chapter One, “Future Land Use,” Table 1-1, “Future Land Use Densities And Intensities,”

## Land Development Regulations

- Chapter 103 “Zoning Districts”, Article 3 “Use And Intensity Tables”, Table 103.15.1 “Uses By Zoning District”
- Chapter 104, Article 1, Add “Affordable Housing Repurpose Unite”

Draft Ordinances are attached for review as is the Applicants application for the proposed change to the Comprehensive Plan and Land Development Regulations

## **ANALYSIS OF COMPREHENSIVE PLAN CHANGE REQUEST:**

### **Preface**

The current Land Development Regulations provide only brief guidance concerning the review of a proposed Comprehensive Plan Amendment.

Section 102.19 simply states:

#### **Section 102.19. Standards for Review.**

When considering an application for a Comprehensive Plan Amendment, the review shall include all standards and criteria of Fla. Stat. ch. 163.

Standards in Chapter 163, F.S. offer some additional guidance, but are limited. Pertinent sections of Chapter 163 promulgate process rather than establishing criteria for the development of a proposed Comprehensive Plan Amendment. Chapter 163.3184, Process for adoption of comprehensive plan or plan amendment, define the sequential process for transmittal, review, and approval of a Comprehensive Plan Amendment. Most relevant to this delineation of process is the definition of “**compliance**” which is recited for review below:

#### **163.3184 Process for adoption of comprehensive plan or plan amendment.--**

(1) DEFINITIONS.--As used in this section, the term:

(b) "In compliance" means consistent with the requirements of ss. [163.3177](#), when a local government adopts an educational facilities element, 163.3178, 163.3180, 163.3191, and 163.3245, with the state comprehensive plan, with the appropriate strategic regional policy plan, and with chapter 9J-5, Florida Administrative Code, where such rule is not inconsistent with this part and with the principles for guiding development in designated areas of critical state concern and with part III of chapter 369, where applicable. Thus, leading through an exhaustive process, the State Land Planning Agency must find a Comprehensive Plan or Plan Amendment in compliance in accordance with the above definition. Process as further defined in the section leads from Local Government Transmittal through review by the State Land Planning Agency and other required local and state government bodies to a finding of “in compliance” by the State Land Planning Agency.

Review is contemplated and expected to be completed by such agencies as the South Florida Regional Planning Council, whose responsibility it is to review the proposal for consistency with the Strategic Regional Policy Plan. Such review is not therefore, the responsibility of the local government to determine consistency in this regard and will not be addressed herein. Though referenced in the definition of compliance and elsewhere Chapters 163.3177, 163.3191, 163.3245, and 369 will not be reviewed as a compliance matter. Chapter 163.3177 defines required elements in a comprehensive plan. The City has an approved comprehensive plan which must be assumed to have all required elements. Chapter 163.3191 refers to the required Evaluation and Appraisal Report (EAR); a review of an approved comprehensive plan required of the City every seven years. The City is not subject to an EAR at this juncture and therefore is not relevant as a criterion to the review herein. Finally, Chapter 163.3245 refers to the development of an optional sector plan. This optional element of an approved comprehensive plan was not adopted by the City and therefore will not be used as a criterion for review in this proposed FLUM amendment. Chapter 369 refers to invasive aquatic plant control and the Wekiva River area and similarly will not be the subject of compliance review herein.

Other pertinent review elements leading to a determination of compliance are found in Chapter 163.3178 Coastal management, Chapter 163.3180 Concurrency and the principals for guiding development in the Florida Keys Area of Critical State Concern. This application for a FLUM amendment will be analyzed against the limited compliance issues found in sections of Chapter 163 F.S. and Chapter 380 F.S. noted immediately above. Relevant sections are provided in EXHIBITS 2, 3, & 4 attached or with website references for your review

### **Compliance Discussion**

Relevant criteria promulgated in Chapters 163 and 380 F.S. can be itemized in bullets as follows based on the critical concerns more specifically identified in the City's comprehensive plan:

- Natural Resource Protection
  - Wetlands
  - Estuaries
  - Living marine resources
  - Beaches / Dunes
  - Unique wildlife habitat
  - Water Quality
- Historical Resources
- Infrastructure / Concurrency Management
  - Wastewater
  - Stormwater
  - Potable Water
  - Solid Waste
  - Transportation
- Affordable Housing
- Hazard Mitigation
  - CHHA
  - Hurricane Evacuation
- Ports

- Marina Siting
- Public Use
  - Shoreline use and Access
  - Water dependent and independent activity
- Land Acquisition
  - Conservation
  - CHHA
  - Public Services

These bullet items should be utilized as the focus points for review of the proposed FLUM amendment and for future comprehensive plan amendments.

## **SUMMARY**

The Planning Commission reviewed the proposed Ordinance on February 25, 2019. After extensive deliberation, the Planning Commission recommended that the Ordinance be moved forward to the City Council for review and approval.

## **ANALYSIS**

### Natural Resources

As the proposed Ordinance only allows for the redevelopment of existing transient hotel/motel units into deed restricted affordable housing units, there will be no impacts to natural resources. Transient units, thus freed up and transferred under the proposed Ordinance would by necessity be required to meet all other aspects of the City's Comprehensive Plan and Land Development Regulations. Staff suggests that the inevitable transfer or the transient entitlements would be limited to receiver sites that would pose no environmental impact.

### Historical and Cultural Resources

As the proposed Ordinance only allows for the redevelopment of existing transient hotel/motel units into deed restricted affordable housing units, there will be no impacts to historical and cultural resources. Transient units, thus freed up and transferred under the proposed Ordinance would by necessity be required to meet all other aspects of the City's Comprehensive Plan and Land Development Regulations. Staff suggests that the inevitable transfer or the transient entitlements would be limited to receiver sites that would pose no impact historical and cultural resources.

### Infrastructure

The "repurposing of existing transient residential unit should cause no net impact to existing infrastructure. The transfer of the transient entitlements originally associated with the developed units could cause some additional impact to infrastructure though all new development would be within the limits of the existing BPAS system. Thus, the capacity of the City's infrastructure should be sufficient to manage the development of new transient units on other properties within the City of Marathon.

However, specific site related impacts will have to be assessed on a case by case basis based on the review of a project proposal for the receiver site(s) for the transient entitlements.

#### Wastewater infrastructure

The “repurposing of existing transient residential unit should cause no unforeseen impact to existing wastewater infrastructure. The transfer of the transient entitlements originally associated with the developed units would cause some additional use of capacity within the City’s wastewater infrastructure though all new development would be within the limits of the existing BPAS system. Thus, the capacity of the City’s wastewater infrastructure should be sufficient to manage the development of new transient units on other properties within the City of Marathon. However, specific site related impacts will have to be assessed on a case by case basis based on the review of a project proposal for the receiver site(s) for the transient entitlements.

#### Stormwater infrastructure

The “repurposing of existing transient residential unit should cause no unforeseen impact to existing stormwater infrastructure. The City’s stormwater infrastructure is entirely within its Rights-Of Way and is intended to manage the rain water that hits its streets. New development does not generally impact this infrastructure. However, specific site related impacts will have to be assessed on a case by case basis based on the review of a project proposal for the receiver site(s) for the transient entitlements. All new development must meet the City’s on-site requirements for stormwater retention and detention.

#### Potable Water

The “repurposing of existing transient residential unit should cause no net impact to existing potable water supplies. The transfer of the transient entitlements originally associated with the developed units would cause some additional impact to the FKAA potable water supply though all new development would be within the limits of the existing BPAS system. Thus, the capacity of the FKAA’s infrastructure should be sufficient to manage the development of new transient units on other properties within the City of Marathon.

#### Solid Waste

The “repurposing of existing transient residential unit should cause no net impact to existing infrastructure. The transfer of the transient entitlements originally associated with the developed units would cause some additional impact to solid waste capacity though all new development would be within the limits of the existing BPAS system. As solid waste is currently transferred out of the City limits to the mainland, no resultant impacts should occur and all new development pays both its immediate Impact Fees related to solid waste and its long term and continuing costs of solid waste disposal.



### Transportation

The “repurposing of existing transient residential unit should cause no net impact to existing infrastructure. The transfer of the transient entitlements originally associated with the developed units would cause some additional impact to transportation capacity which is limited within the City. However, specific site related impacts will have to be assessed on a case by case basis based on the review of a project proposal for the receiver site(s) for the transient entitlements. Impacts Fees could or specific conditions of development could offset any potential impacts.

### Affordable Housing

The creation of “repurposed units” in the City’s Code and revised densities provides another unique opportunity to establish needed affordable housing. There will be a positive impact to the City’s current affordable housing limitations.

### Hazard Mitigation

The “repurposing of existing transient residential unit should cause no net impact to existing infrastructure that would require hazard mitigation. The transfer of the transient entitlements originally associated with the developed units would cause some additional impact to the City’s infrastructure. These would be limited to the total number of units “repurposed” and the resultant creation of new transient units at another location. Hazard Mitigation is a long term objective related to reducing risks to the City’s infrastructure and its overall capacity. Limited new development does not generally impact this aspect of the City’s operations. Long term, the City is always attempting to protect itself further from the impacts of such events as hurricanes and resulting winds and floods.

### Coastal High Hazard Areas

The Coastal High Hazard Area is equivalent to a “V Zone” FEMA NFIP category. The “repurposing of existing transient residential unit should cause no net impact to the City’s floodplain management capabilities. The provisions inserted in Chapter 104 of the LDRs would limit repurposing units to those that are above the base flood elevations. All new development of the transferred transient units would have to be built to all flood and wind related requirements.

### Hurricane Evacuation

The “repurposing of existing transient residential unit should cause no net impact to hurricane evacuation. Inevitably, the only affordable units remaining available for such repurposing units would be “early evacuation affordable units.” These units, in general would be required to evacuate at the same time as transient unit occupants. The transfer of the transient entitlements originally associated with the developed units would cause some additional impact to hurricane evacuation capacity within the first 24 hours of the County’s evacuation process. However, this is currently accounted for in BPAS and the Hurricane Evacuation Memorandum of Understanding.

### Ports – Marina Siting

The “repurposing of existing transient residential unit should cause no net impact to existing ports and marina infrastructure. The transfer of the transient entitlements originally associated with the developed units would cause some additional impact to existing marina public and private facilities within the City. These impacts could be mitigated through appropriate conditions and requirements of new transient unit development and through the appropriate use of impact fees that would be tolled on any new transient unit development.

### Public Use – Access to Water

The “repurposing of existing transient residential unit should cause no net impact to existing points of access to water. The transfer of the transient entitlements originally associated with the developed units would cause some additional impact to facilities such as boat ramps within the City. These impacts could be mitigated through appropriate conditions and requirements of new transient unit development and through the appropriate use of impact fees that would be tolled on any new transient unit development.

### Land Acquisition

The proposed Ordinances should not impact the City, County, or State’s capacity to acquire conservation lands or acquisition of lands for any other public purpose.

### **Alternate Compliance Review Criteria**

Since there are no internal Comprehensive Plan change review criteria available in Chapter 102, Article 6, those that would apply for an LDR text change request (Chapter 102, Article 7) are useful. The basis for the LDR text change criteria are the same as for a Comprehensive Plan change ultimately.

Section 102.26(B) of the Land Development Regulations requires that the following standards and criteria be considered for any proposed text amendment. Each criteria and explanation of relevance to this proposed amendment are listed below:

#### **A. The need and justification for the change;**

The City and surrounding County currently experiences a critical need for and shortage of affordable housing units. The proposed Ordinance would provide the ability, at slightly higher densities, to provide affordable housing through the repurposing of existing hotel /motel units. The proposed densities (up to 25 units per acre) are in line with that allowed in other zoning districts such as Residential High (RH) and Residential Mobile Home (R-MH). There would be no net increase in the impacts associated with the conversion or repurposing of such units. There would be a net gain in affordable housing units through the use of the City’s remaining affordable housing allocations. Transient units that would be transferred from repurposed properties, would otherwise be required to meet all aspects of the City’s Code as part of their redevelopment.

#### **B. The consistency of the proposed amendment with the Comprehensive Plan; and**

The proposed Ordinances would comport with existing policies within the Comprehensive Plan and corresponding sections within the LDRs.

**C. Whether the proposed change shall further the purposes of the LDRs and other City Codes, regulations and actions designed to implement the Comprehensive Plan.**

As the purpose of these ordinance is to strengthen the Comprehensive Plan and LDRs through creation of new opportunities to create affordable housing, the proposed Ordinance both further the purposes of the City's Comprehensive Plan and Land Development Regulation..

**CONCLUSION:**

The proposed Amendment is consistent with and furthers the goals of the City of Marathon Comprehensive Plan and Land Development Regulations.

**RECOMMENDATION:**

The Planning Commission recommends approval of the proposed Ordinances with suggested revisions the proposed Ordinance to include.

**Sponsored by: Lindsey**  
**Introduction Date:** February 25, 2019  
**Public Hearing Dates:** March 12, 2019  
TBD  
**Enactment date:**

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2019-06**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING THE CITY OF MARATHON COMPREHENSIVE PLAN MODIFYING CHAPTER ONE, “FUTURE LAND USE,” TABLE 1-1, “FUTURE LAND USE DENSITIES AND INTENSITIES,” TO PROVIDE FOR AFFORDABLE HOUSING REPURPOSING UNITS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY.**

**WHEREAS**, the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Florida Statutes, provides for comprehensive plan implementation through the enactment of certain ordinances; and

**WHEREAS**, the City of Marathon is located within an Area of Critical State Concern (ACSC), pursuant to Sections 380.05 and 380.0552, Florida Statutes, hereinafter referred to the “Keys ACSCs”; and

**WHEREAS**, Keys’ Local Governments have adopted state-mandated Comprehensive Plans and Land Development Regulations pursuant to both Chapters 163 and 380.055, Florida Statutes, which have been approved by the State, as required by law, and;

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

**WHEREAS**, the purpose of the proposed Ordinance is to enhance and extend the City’s options and capacity to provide affordable housing for its citizens,

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

~~Strikethrough~~ = deletion      **bold underline** = addition

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

**SECTION 2.** Amend Chapter One, Table 1-1 to read as follows:

Policy 1-3.2.7 Restrict Density and Intensity of Development

Table 1-1 establishes the maximum range of allocated density and intensity (F.A.R.) permitted in each future land use category per acre. New development and redevelopment, unless otherwise specified, shall not exceed the thresholds established in the table below.

With the exception of mixed use development that contains affordable/work force housing, when a proposed development is for a combination of uses, the acreage required for each use shall be determined independently based on the floor area ratio in Table 1-1 for each individual use.

\*\*\*

**TABLE 1-1  
Future Land Use Densities and Intensities\***

Future Land Use Category	Permitted Residential Density (Units per acre)			Hotel/Motel/RV Spaces (Units per acre)	Maximum Intensity (floor area ratio)	Minimum Open Space Ratio
	Market Rate	Affordable	Licensed Mobile Home or RV Parks			
Airport (AD)	0		0	N/A	0.15 - 0.50	0.2
Conservation (C)	0.1- 0.25 <sup>7</sup>	0.1-0.25	0	N/A	0.05 - 0.10	0.5
Industrial (I)	0	5-10	0	N/A	0.85	0.2
Mixed Use Commercial (MUC)	2 – 6	10 – 15 <u>25<sup>7</sup></u>	10-25	5 - 25	0.15 - 0.60 <sup>4</sup>	0.2
Public Uses (PU)	0	15-25	0	3 – 25	0.15 - 0.75	0.2
Recreation (R)	0.25	0.25	0	5 – 15	0.15 - 0.50	0.2
Residential High (RH)	8	15 - 25	15-25	0	0	0.2
Residential Medium (RM)	5	10	0	0	0	0.2
Residential Low (RL)	0.5	0.5	0	0	0	0.5

Note:

1. See Objective 1-3.9 and subsequent policies.
2. The allocated and maximum net densities for submerged lands shall be 0.
3. For properties consisting of hammocks or disturbed wetlands within the Mixed Use Commercial future land use categories, the floor area ratio shall be 0.10 and the maximum net residential density shall be 0.
4. Open space shall be increased based upon the requirement for a habitat evaluation and shall conform to Table 4-1 of the Coastal and Conservation Element.
5. The FAR in Mixed Use developments may be increased to .75 if mitigated by the development of affordable/workforce housing is provided.

~~Strikethrough~~ = deletion

**bold underline** = addition

**TABLE 1-1  
Future Land Use Densities and Intensities\***

Future Land Use Category	Permitted Residential Density (Units per acre)	Hotel/Motel/RV Spaces (Units per acre)	Maximum Intensity (floor area ratio)	Minimum Open Space Ratio
6. Residential Densities found in this Table are subject to the provisions of Policy 1-3.5.16				
7.— <b><u>The affordable residential density in the Mixed Use FLUM district may be increased to 25 units per acre specifically for the re-use (repurposing) of existing transient structures into deed restricted affordable housing units.</u></b>				

\*All development and redevelopment shall comply with this Plan and the Land Development regulations.

**SECTION 3.** The Provisions of the Code of Ordinances, City of Marathon, Florida and all Ordinances or parts of Ordinances 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 sentence, section, 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 sentences, sections, clauses or phrases of the 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 the provisions of this Ordinance shall become and be made part of the Marathon Comprehensive Plan, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

**SECTION 6.** The provisions of this Ordinance constitute a “land development regulation” as state law defines that term. Accordingly, the City Clerk is authorized and directed to forward a copy of this Ordinance to the State Department of Economic Opportunity for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

**SECTION 7.** This Ordinance shall be effective immediately upon approval by the State Department of Economic Opportunity pursuant to Chapter 380, Florida Statutes.

~~Strikethrough~~ = deletion      **bold underline** = addition

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS \_\_\_\_<sup>th</sup> DAY OF \_\_\_\_\_, 2019.**

**THE CITY OF MARATHON, FLORIDA**

\_\_\_\_\_  
**John Bartus, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

\_\_\_\_\_  
Diane Clavier, City Clerk

(City Seal)

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

\_\_\_\_\_  
David Migut, City Attorney

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**Sponsored by: Lindsey**  
**Introduction Date:** February 28, 2019  
**Public Hearing Dates:** March 12, 2019  
TBD  
**Enactment Date:**

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2019-07**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS, CHAPTER 103, ARTICLE 3, “USE AND INTENSITY TABLES, TABLE 103.15.1, “ USES BY ZONING DISTRICT,” TO PROVIDE FOR AFFORDABLE HOUSING REPURPOSING UNITS; AND PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY**

**WHEREAS**, the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Florida Statutes, provides for comprehensive plan implementation through the enactment of certain ordinances; and

**WHEREAS**, the City of Marathon is located within an Area of Critical State Concern (ACSC), pursuant to Sections 380.05 and 380.0552, Florida Statutes, hereinafter referred to the “Keys ACSCs”; and

**WHEREAS**, Keys’ Local Governments have adopted state-mandated Comprehensive Plans and Land Development Regulations pursuant to both Chapters 163 and 380.055, Florida Statutes, which have been approved by the State, as required by law, and;

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

**WHEREAS**, the purpose of the proposed Ordinance is to preserve the rights of individual single family residential lot and property owners through a clarification of language in the City’s Land Development Regulations.

~~Strikethrough~~ = deletion      **bold underline** = addition



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

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

**SECTION 2.** Amend Chapter 103, Article 3, Table 103.15.1 to read as follows providing for the addition of “Affordable Housing Repurpose Unit:”

Table 103.15.1  
USES BY ZONING DISTRICT

Uses in bold have specific conditions listed in Chapter 104																
ZONING DISTRICT	C-NA	C-OI	RL-C	RL	RM	RM-1	RM-2	R-MH	RH	MU	MU-M*	I-G	I-M*	A	P	PR
***																
<b><u>Affordable Housing Repurpose Unit</u></b>										<b><u>C</u></b>						
***																

**SECTION 3.** Amend Chapter 103, Article 3, Table 103.15.2 to read as follows:

Table 103.15.2  
DENSITY, INTENSITY AND DIMENSIONS FOR ZONING DISTRICTS

	A	C-NA	C-OI	I-G	I-M	MU	MU-M	P	PR	RH	R-MH	RM	RM-1	RM-2	RL	RL-C
Density Range (units per acre)		.25	0.1	<del>5-</del> <u>10</u>	<del>5-</del> <u>10</u>	6-15 <del>25</del> <sup>4</sup>	6-15	10-25	1/4ac	8-25	8-25	<del>5-</del> <u>10</u>	4	5	0.5	.25 <del>4</del>

Footnotes for Table 103.15.2

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~~4—The affordable residential density in the Mixed Use FLUM district may be increased to 25 units per acre specifically for the re-use (repurposing) of existing transient structures into deed restricted affordable housing units.~~

SECTION 4. Amend Chapter 104, Article 1, adding Section 104.04, “Affordable Housing Repurpose Unit” and renumbering thereafter to read as follows:

**Section 104.04 “Affordable Housing Repurpose Unit”**

Affordable Housing Repurpose Units shall be allowed pursuant to Table 103.15.1 through a Conditional Use Permit or Development Agreement process within the Mixed Use – Commercial zoning district with conditions that follow. These units redevelop existing transient residential structures into deed restricted affordable housing units. They must be attached, multi-family structures. Minimum size requirements are 325 square feet up to a maximum of 650 square feet (one bedroom) to a maximum of 1,150 square feet (two bedroom)). Occupancy of these units is limited to those meeting the income requirements of this Chapter. Following requirements shall be met.

- A. Affordable Housing criteria set forth in this chapter and Chapter 110, “Definitions;”
- B. Shall be permanently deed restricted as affordable pursuant to the provisions of the LDRs;
- C. Shall be restricted to occupancy to households that derive at least 70 percent of their income from gainful employment in Monroe County;
- D. Shall be restricted to occupancy of 28 days or longer;
- E. Shall not be allowed for vacation rental use and permits;
- F. Shall not be sold separately as a condominium;
- G. Shall be limited to existing transient units that meet the FEMA NFIP base flood elevation requirements for the site;
- H. The transient entitlements associated with the Repurpose Unit shall be transferred off site as set forth in Chapter 107, Article 2, “Transfer of Building Rights;” and
- I. The transfer and redevelopment of such transient entitlements shall only be allowed on receiver sites or portions of sites that are not considered as mangroves, saltmarsh and buttonwood, or hammock habitats within the City of Marathon.

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**bold underline** = addition

**SECTION 5.** The Provisions of the Code of Ordinances, City of Marathon, Florida and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**SECTION 6.** The provisions of this Ordinance are declared to be severable, and if any sentence, section, 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 sentences, sections, clauses or phrases of the Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**SECTION 7.** It is the intention of the City Council and it is hereby ordained 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 word “Ordinance” shall be changed to “Section” or other appropriate word.

**SECTION 8.** The provisions of this Ordinance constitute a “land development regulation” as state law defines that term. Accordingly, the City Clerk is authorized and directed to forward a copy of this Ordinance to the State Department of Economic Opportunity for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

**SECTION 9.** This Ordinance shall be effective immediately upon approval by the State Department of Economic Opportunity pursuant to Chapter 380, Florida Statutes.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS \_\_\_\_<sup>th</sup> DAY OF \_\_\_\_\_, 2019.**

**THE CITY OF MARATHON, FLORIDA**

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**John Bartus, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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**ATTEST:**

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Diane Clavier, City Clerk

(City Seal)

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

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David Migut, City Attorney

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CITY COUNCIL AGENDA STATEMENT



**Meeting Date:** April 9, 2019  
**From:** George Garrett, Planning Director  
**To:** Honorable Mayor and Council Members  
**Through:** Chuck Lindsey, City Manager

**Agenda Item:** **Resolution 2019-33**, Consideration Of A Request For An Amendment to a Conditional Use Permit And Development Agreement For Marriott Hospitality LLC and Blue Water Resort Hospitality, LLC, Pursuant to Chapter 102, Articles 8 & 13 Of The City of Marathon Land Development Regulations (Code) Entitled “Conditional Use Permits” And “Development Agreements,” For The Redevelopment Of The Properties As a Hotel/Motel Resort, Located at 2222 Overseas Highway, Which Is Legally Described As Part Of Lot 2, and Bay Bottom Adjacent To Lot 2, Key Vaccas, Marathon, Florida, Having Real Estate Number 00102810-000000, 00102810-001000, 00102810-002000, and 00102730-000000. Nearest Mile Marker 48.

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**RECOMMENDATION:**

The Planning Commission forwards a unanimous recommendation of conditional approval of the mixed use Residential and Commercial project known as Serenity Cove to the City Council. The proposed conditions of approval are listed below.

Conditions of Approval

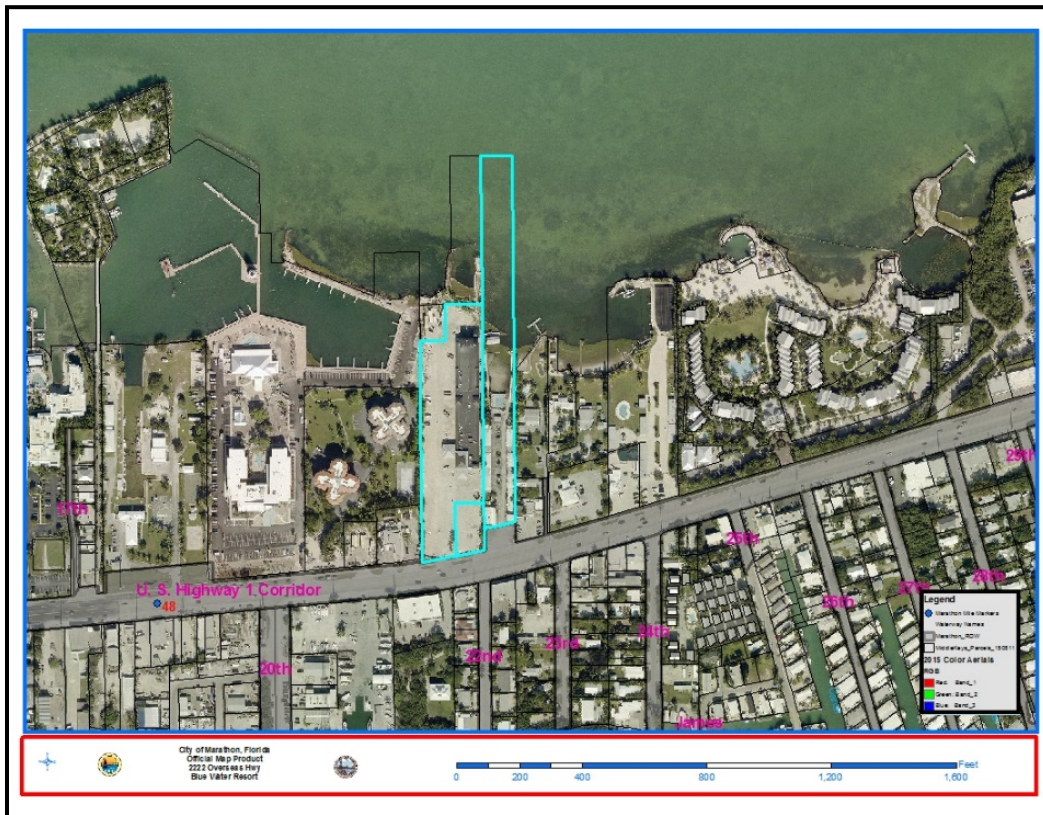
1. Approval of parking and the project revision is conditioned on shared access easements and final abandonment of FDOT ROW which is a part of the proposed site plan.
2. Clear sight triangles must be shown on the site plan at time of building permit issuance;
3. The applicant will meet all floodplain related requirements as part of the Building Permit process;
4. The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance;
5. The applicant will connect to the City wastewater utility system prior to the issuance of a Certificate of Occupancy (CO).
6. The applicant will obtain sign permits for any signs erected on the property, as required under the Code; and
7. All areas or features which project above 37 feet shall be non-habitable space.

**APPLICANT/ OWNER:** Marriott Hospitality LLC and Blue Water Resort Hospitality, LLC

**AGENT:** Marriott Hospitality LLC and Blue Water Resort Hospitality, LLC

**LOCATION:** The project site is located at 2146 and 2222 Overseas Highway nearest mile marker 48. See Figure 1.

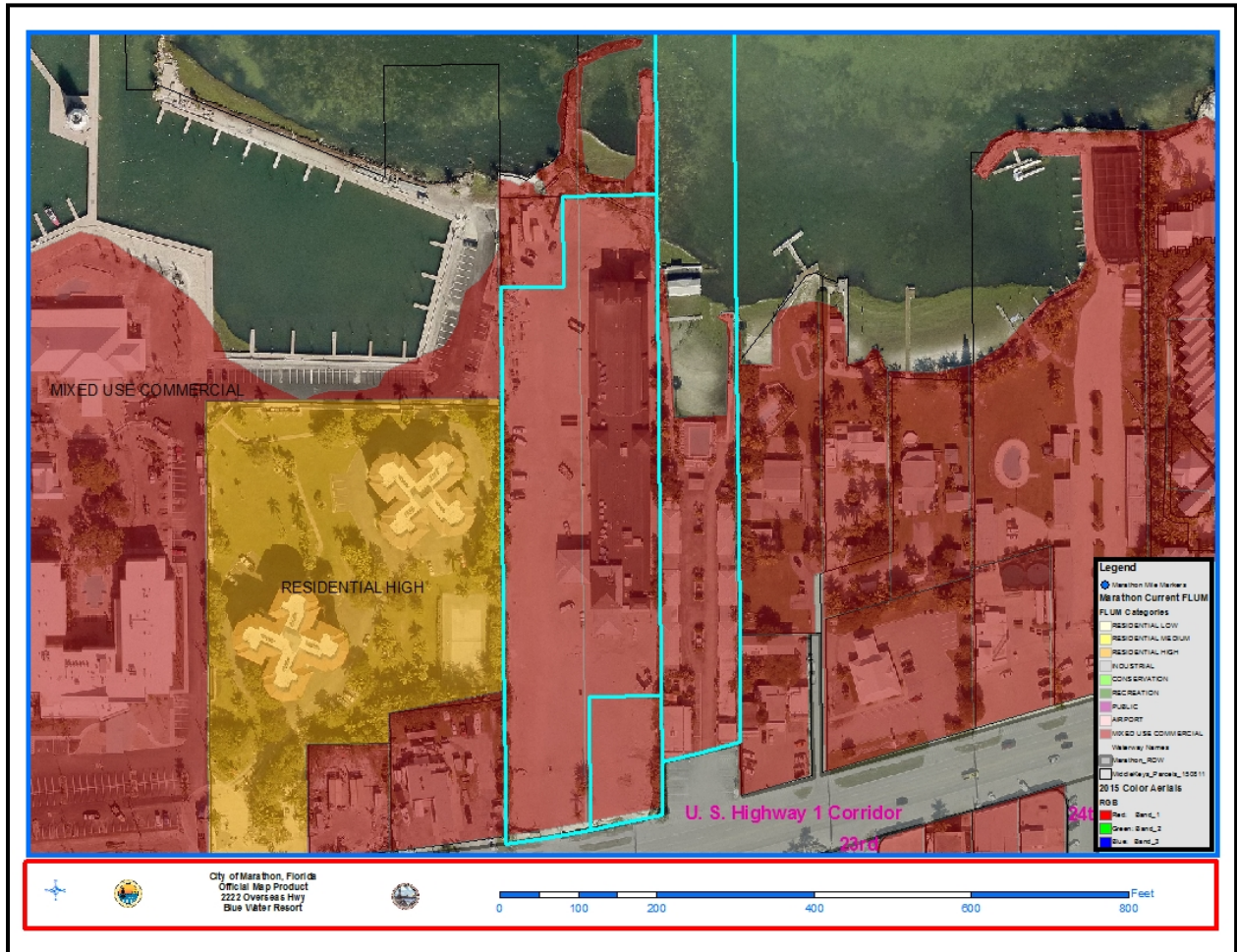
**Figure 1  
Project Site**



**REQUEST:** An amendment to a Conditional Use Approval and Development Agreement for the redevelopment of the subject property having the real estate numbers 00102810-000000, 00102810-001000, 00102810-002000, and 00102730-000000. The specific request is to allow a “restaurant with drive-through window” for the commercial building (6,000 square foot) approved as part of the two Conditional Use Permits and Development Agreements (Resolutions 2012-120 & 121 and Resolutions 2015-51 & 52) for the combined projects of Courtyard Marriott and Blue Water Resort.

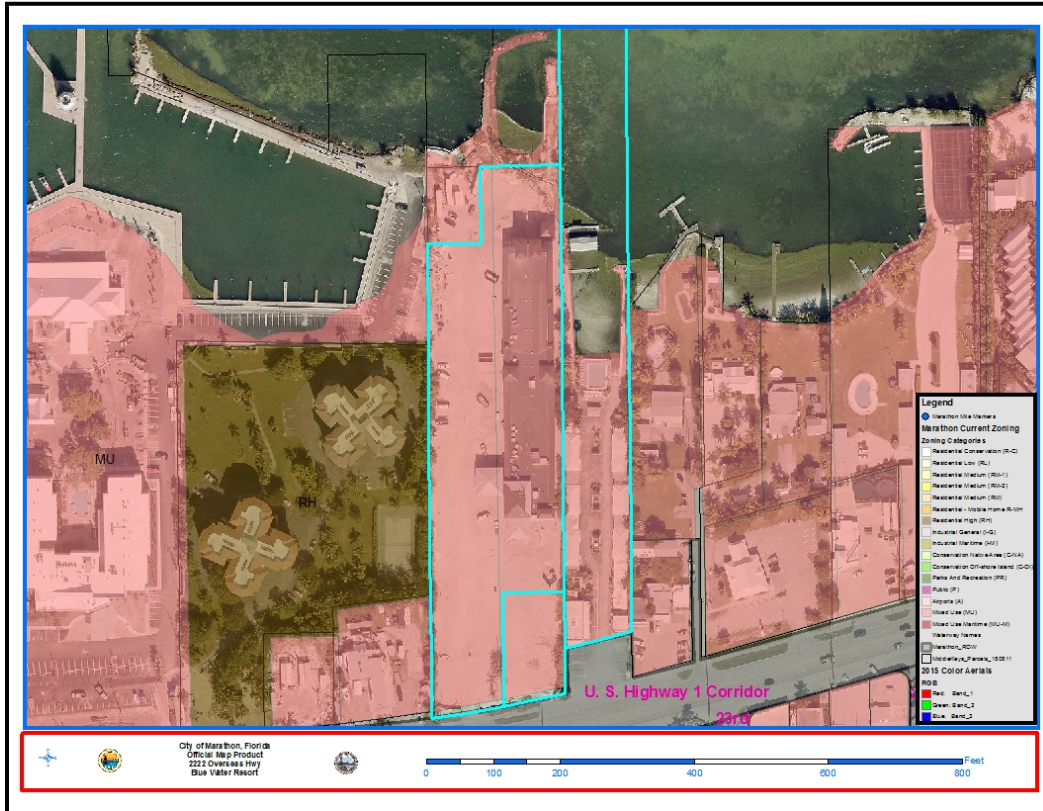
**FUTURE LAND USE MAP DESIGNATION:**  
Mixed Use Commercial (MUC). See Figure 2.

**Figure 2  
Future Land Use Map**



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

**Figure 3**  
**Zoning Map**



**LOT SIZE:**

Total acreage: Approx. 4.82 Acres or 209,886 square feet of uplands, 1.603 acres or 69,845 square feet of submerged land, and 0.1557 Acres or 6,786 square feet DOT ROW.

**SURROUNDING ZONING AND USES:**

	<u><i>Zoning</i></u>	<u><i>Use</i></u>
<b>North</b>	N/A	Gulf of Mexico
<b>East</b>	Mixed Use	Residential Homes and Restaurants
<b>South</b>	Mixed Use & Residential Medium	Residential neighborhood of 22 <sup>nd</sup> Street, West Marine
<b>West</b>	Mixed Use	Marriot Resort



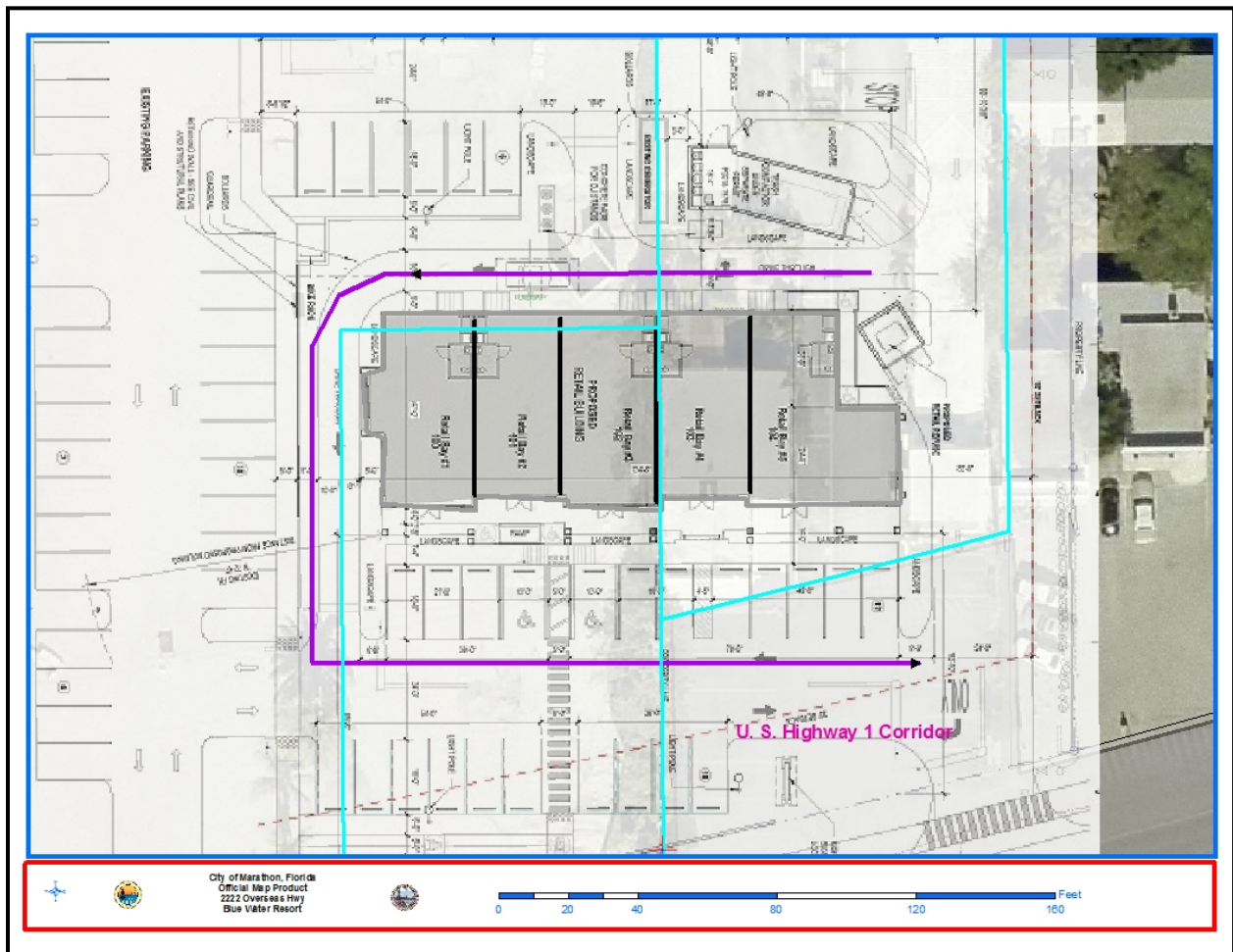
**EXISTING CONDITIONS:**

The project site consists of four (4) contiguous parcels. The parcel is currently developed, with the Courtyard Marriott (95 hotel rooms) and Blue Water Resort (22 hotel units) and two pools. The combined and connected developments are open for business as approved through Resolutions 2012-120 & 121 and Resolutions 2015-51 & 52. As part of the approved Development Agreements for the combined projects, 6,000 square feet of commercial floor area is approved for development. In addition, the project has acquired a parcel from FDOT upon which the approved commercial area and proposed project revision will be placed. This acquisition was a condition of the aforementioned Resolutions for project approval.

**PROPOSED DEVELOPMENT:**

Commercial Floor Area: 5,500 +/- square foot restaurant with a drive-thru.

**Figure 4  
Proposed Redevelopment Site Plan**



## **BACKGROUND:**

As part of the approved Development Agreements for the combined projects of Marriott Hospitality LLC and Blue Water LLC, 6,000 square feet of commercial floor area was approved for development of retail square footage. The proposed amendment to the existing Conditional Use Permits (combined Marriott Hospitality LLC and Blue Water Resort Hospitality, LLC) requests a revision to specifically allow a “restaurant with a drive-through.” This report addresses the Conditional Use application. All affordable/workforce housing obligations have been met for these combined projects. **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 development 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 redevelopment of an existing commercial use and is consistent with the Mixed Use Zoning District. At this juncture, the Courtyard Marriott and Blue Water Resort are open of business. The Applicant is proposing a revision to the approved commercial retail area to allow a restaurant with a drive-through feature. 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 the use of “Restaurant with Drive-through” are allowed through a Conditional Use Permit review. 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 proposed revision is allowed in the Mixed Use (MU) zoning district. Six thousand square feet of commercial floor area was approved in the original project development approvals which is less than the limits of floor area for the overall site in consideration of the existing hotel rooms (117) and the limits of density on the property.

Table 103.15.3 qualifies the allowed range of intensities based on the intensity of retail use.

<b>Development Type</b>	<b>Proposed</b>	<b>Maximum Allowed</b>
<b>Commercial Floor Area</b>	5,500 SF	
Low Intensity (60% FAR)		10,917 SF
Medium Intensity (45% FAR)		8,187 SF
High Intensity (25% FAR)	0	4,548 SF

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.” The proposed project includes a redevelopment of an existing conditional use (hotel/motel/resort) into the same conditional use, which is consistent with the Mixed Use classification.

The existing land use pattern in the project vicinity consists of a mixed use commercial and Residential to the east, commercial uses and residential uses to the south, commercial hotel uses to the west, and the Gulf of Mexico to the north.

Otherwise, the further development of the site under the existing development approvals and the proposed amendment, has and will further will result in significant improvement to the site, 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 existing approvals, including the hotels and retail area, was originally shown to have no known impacts to the health, safety and welfare of the public. No new impacts are expected to arise with the proposed revision to allow a restaurant with a drive-through.

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.

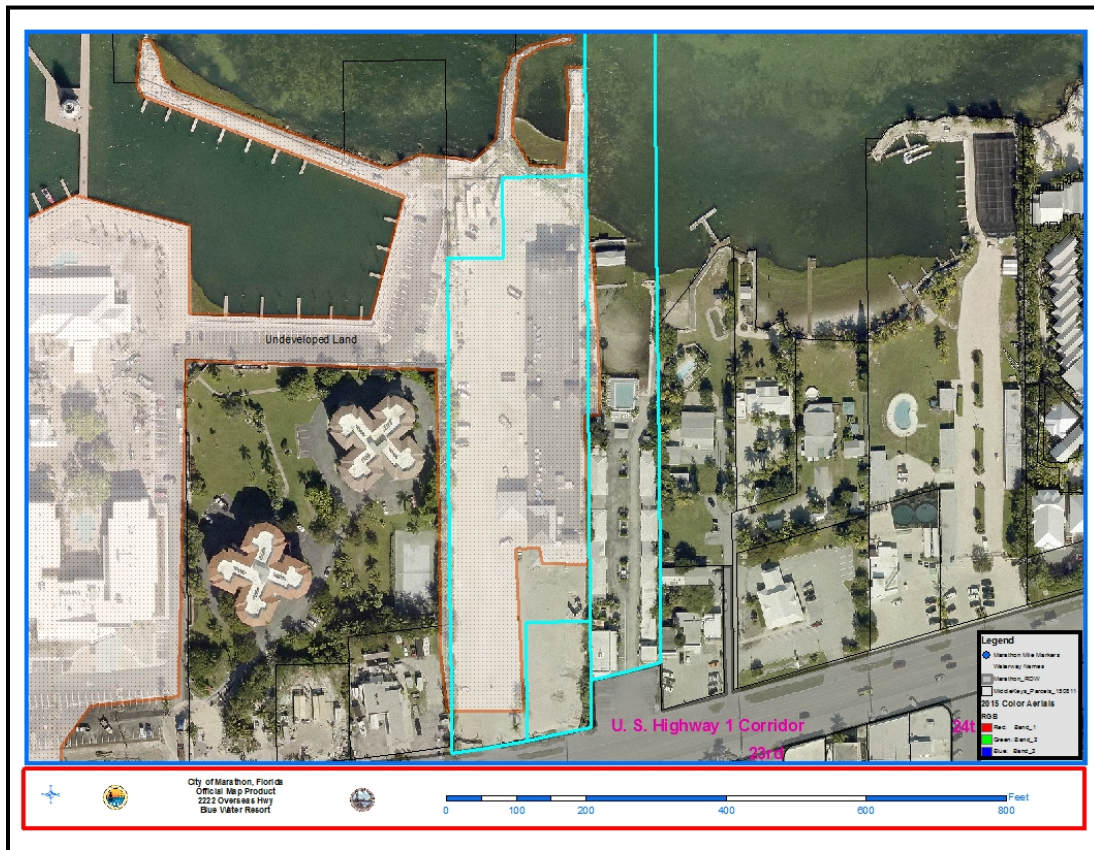
Therefore, the request is **in compliance** with the requirements of these sections.

**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 “developed”. A site inspection showed the current conditions as scarified with existing buildings and asphalt parking lot. A small portion of the property is recognized as possible habitat for a state or federally listed animal species, the eastern indigo snake. Figure 5 shows that this portion falls under the category of undeveloped land, because at the time there was no building developed on it.

In addition, though found within a ‘Species Focus Area’ as defined in the settlement agreement for the FEMA-FWS lawsuit, “undeveloped land” falls out of the considerations in the species assessment guides thus having “no impact” on the species of concern, the Eastern Indigo Snake.

**Figure 5  
Species Focus Area Habitat**



Further improvements to water quality are expected to arise from continued stormwater improvements to the site, which should provide up-to-date treatment and eliminate any existing discharges to surface waters. The applicant has completed stormwater plans for the hotel as currently developed. The proposed revision will require stormwater improvements as well.

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.

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

**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 occupancy proposed in the redevelopment of the addition of retail with drive thru). The “Trip Generation Analysis” schedule was provided in the original Traffic Study, which indicated that there would be no increase in trip generation as the project in question is a simple redevelopment of additional retail. However, since the applicant is moving forward with the commercial expansion of the project, a modification of the Conditional Use Permit is required including the provision of a further traffic analysis. A more recent traffic study has not been submitted, however, any change in traffic generation, positive or negative would not impact the overall LOS for U.S. 1 in the project area. Ingress and egress from the site is sufficient in staff’s opinion to appropriately handle traffic from the site.

Ingress and egress to the property is being provided through an existing curb cut on U.S. 1.

Section 107.43 requires site triangles where the access drive intersects with the street. Clear site triangles must be shown on the site plan at time of building permit issuance.

Therefore, with conditions, 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	Spaces provided
Existing hotel	107.46	1 per every 3 employees, plus 1 per guest room, required parking for accessory uses	133	135
Retail sales and services	107.46	3 per 1,000 of GFA plus 1 per employee at the largest shift	16	16

\* The applicant proposes to share the existing staff from the Marriott Hotel with the Blue Waters property.

Section 107.52 includes a requirement that one handicapped space be provided for every 25 spaces required. For 16 additional required spaces, 2 handicapped spaces are required. Two additional handicapped spaces are provided. Parking space sizes are 9' x 18' for 90 degree parking, and handicapped spaces are 12' x 21' as required by Code. The proposed parking includes spaces that cross property lines, as well as spaces in the abandoned FDOT ROW.

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 and will expand existing bicycle racks.

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

- Approval of parking is conditioned on shared access easements and final abandonment of FDOT ROW.

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

The proposed project consists of redevelopment of an existing commercial use. New lighting will be necessary for this project. The applicant has not provided detailed lighting plans for the restaurant as part of the Marriott / Blue Waters site 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 conditions, 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 combined site plan indicates that the dumpster is screened.

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

**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 property is currently not connected to the City sewer system. The applicant will provide wastewater and sewage collection and disposal via connecting to the system that is required for the Marriot development to the west of the property.
- 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 must submit a final stormwater plan before building permit issuance.

- Recreation and Open Space: This redevelopment will provide more recreation and open space than exists on site currently.
- 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 since existing uses are being replaced in kind.

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

**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 east and west by properties zoned MU. There are no project boundary buffer requirements for portions of the project area adjacent to parcels zoned MU. Required landscaping has been installed for the project site overall. The new restaurant will require additional landscaping as well.

Section 107.71 A. requires that parcels with a MU zoning designation provide a Type 2 Streetscape Treatment for all parcels along US 1 in the old town district. According to the Code, native canopy street trees shall be required along US 1, with the spacing being determined by species type, the street trees shall also be spaced an average of 40 feet on center. Additionally all parking not located to the rear of buildings shall be screened from the streets, sidewalk, and open spaces by low walls, fences, or low berms in combination with plantings to achieve at least a three-foot high visual screen within two (2) years of planting.

Table 103.15.2 outlines setback requirements in the MU district as follow: front yard 0 – 30’; side yard 1, 0 – 10; interior side yard, 10.

Table 106.28.1 outlines setbacks requirements for a principle structure on a manmade canal as 20’ measured from the Mean High Water Line.

This plan shows a 15’ setback on the front yard (pre ROW Abandonment), 30’ setback on the eastern side yard, and 0’ setback on the western side and 136’ rear yard setback.

Section 107.36 A. 1. states that for parcels in the MU district the required interior yard setback may be reduced through the conditional use process. The interior side yard setback in this case would allow the proposed Blue Water Resort to tie into the existing Marriott Resort structure.

<b>Setback</b>	<b>Required</b>	<b>Proposed</b>	<b>Compliant</b>
Front	0-30	63-90	Yes
East Side (Interior)	0-5	17	Yes
West Side (Interior)	10	35	Yes
Rear	20	136	Yes

Parking area landscaping is required by Section 107.66 of the Code. A final landscape plan must show the required parking landscaping.

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

**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 for the restaurant 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. According to rough calculations, 10,849 square feet of pervious area (including landscape area), or 23.2% of the site, is provided as open space. This exceeds the open space requirement.

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 long standing existing uses in an area of the City which is relatively dense and intense. Adjacent uses include a commercial establishment and another motel/hotel/resort. A redevelopment of the existing motel/hotel/resort 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 37' as measured from the crown of the roadway or unimproved grade. Hotel building appurtenances which project above 37 feet shall be considered as necessity for roof-top access, a part of required hotel mechanical equipment (air conditioning, elevators, etc.), or as minor architectural features.

Therefore, with the conditions below, 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.**



The Applicant is in the process of finalizing the acquisition of property from FDOT. In part, the FDOT once acquired helps meet density / intensity requirements and provides area for required parking spaces. As this property acquisition is nearing completion the project can be considered compliant in this regard.

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

- Prior to issuance of permits for the restaurant requested by the Applicant, final acquisition of the FDOT ROW near the entrance to the Blue Water Resort portion of the property shall be required.

### **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 of a restaurant with a drive through brings specificity to the previous approvals of 6,000 square feet of commercial floor area as part of the Marriott and Blue Water projects. The project is compatible with surrounding uses, and is not expected to create a nuisance, traffic congestion or threat to public, health, safety or welfare.

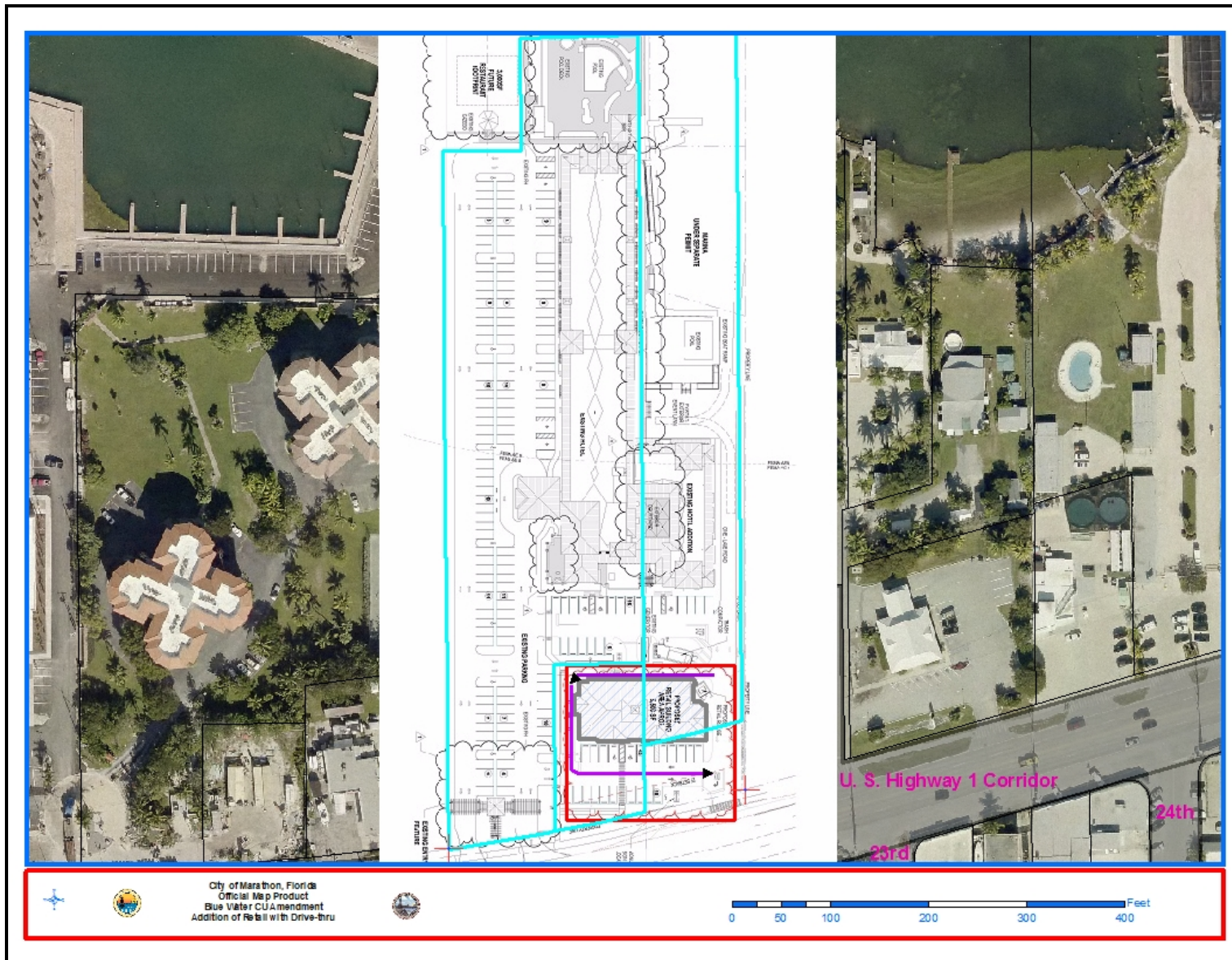
### **RECOMMENDATION:**

The Planning Commission forwards a unanimous recommendation of the amendment for conditional approval of the Motel/Hotel/Resort to the City Council. The proposed conditions of approval are listed below.

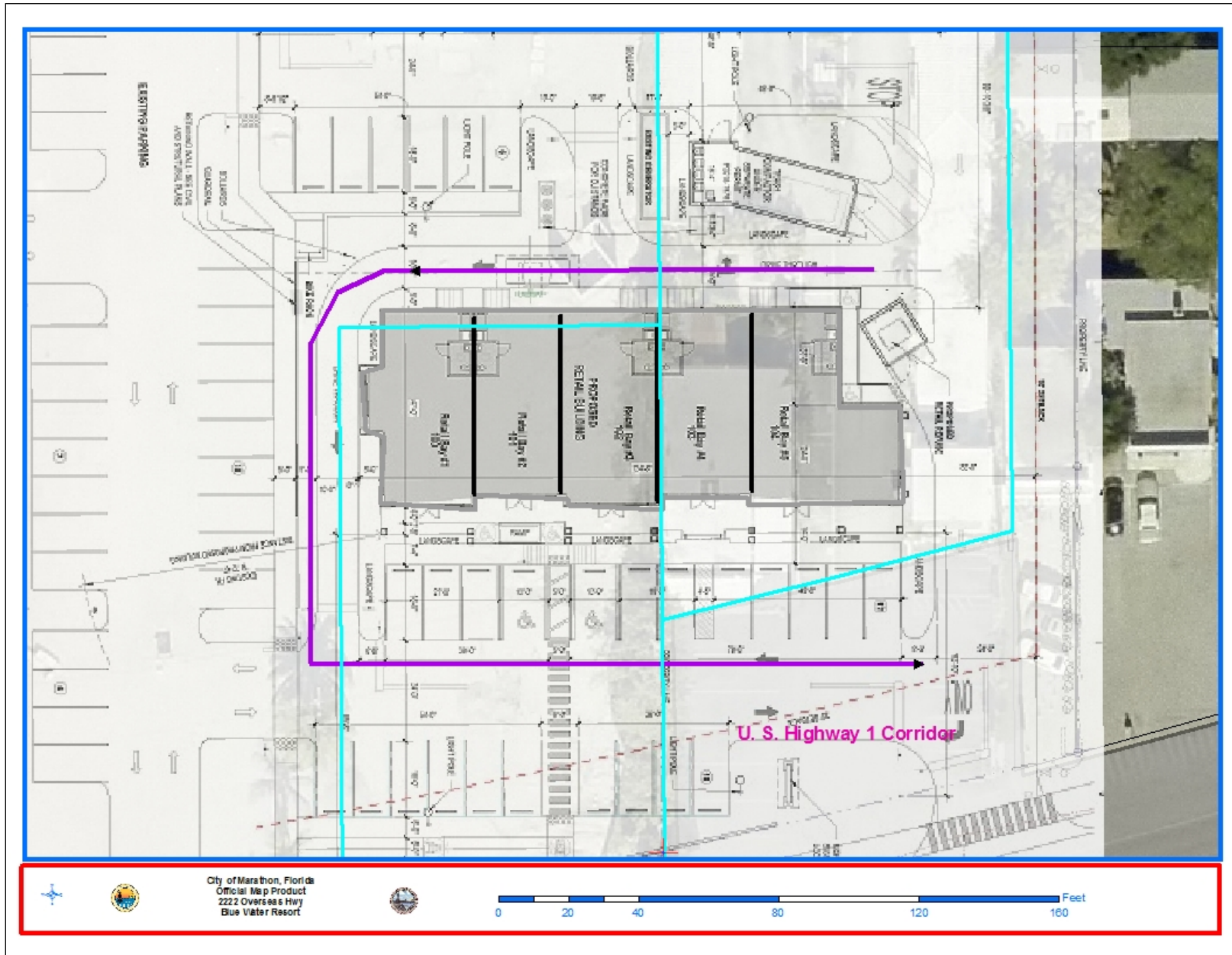
#### Conditions of Approval

1. Approval of parking and the project revision is conditioned on shared access easements and final abandonment of FDOT ROW which is a part of the proposed site plan.
2. Clear sight triangles must be shown on the site plan at time of building permit issuance;
3. The applicant will meet all floodplain related requirements as part of the Building Permit process;
4. The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance;
5. The applicant will connect to the City wastewater utility system prior to the issuance of a Certificate of Occupancy (CO).
6. The applicant will obtain sign permits for any signs erected on the property, as required under the Code; and
7. All areas or features which project above 37 feet shall be non-habitable space.

**Attachments:**  
Attachment A: Proposed Site Plan



**Attachments:**  
Attachment B: Proposed Site Plan (Larger scale)



**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-33**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST FOR AN AMENDMENT TO A CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT FOR MARRIOTT HOSPITALITY LLC AND BLUE WATER RESORT HOSPITALITY, LLC, PURSUANT TO CHAPTER 102, ARTICLES 8 & 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “CONDITIONAL USE PERMITS” AND “DEVELOPMENT AGREEMENTS,” FOR THE REDEVELOPMENT OF THE PROPERTIES AS A HOTEL/MOTEL RESORT, LOCATED AT 2222 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS PART OF LOT 2, AND BAY BOTTOM ADJACENT TO LOT 2, KEY VACCAS, MARATHON, FLORIDA, HAVING REAL ESTATE NUMBER 00102810-000000, 00102810-001000, 00102810-002000, AND 00102730-000000. NEAREST MILE MARKER 48.**

**WHEREAS**, Marriott Hospitality LLC (The “Applicant”) filed an Application on February 18, 2015 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 13 and 8 respectively of the City of Marathon Land Development Regulations (LDRs) approved as Resolutions 2012-51 & 52; and

**WHEREAS**, Blue Water Resort Hospitality LLC, (The “Applicant”) filed an Application on February 18, 2015 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 13 and 8 respectively of the City of Marathon Land Development Regulations (LDRs) approved as Resolutions 2015-120 & 121); and

**WHEREAS**; the Applicant proposes to add approximately 5,500 square feet of additional retail with drive-thru; and

**WHEREAS**, Blue Water Resort Hospitality LLC, (The “Applicant”) filed an Application on November 27, 2018 to amend the Conditional Use Permit pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**, City staff reviewed the Applicant’s request for a Conditional Use Permit determining that the Applicant’s project proposal was 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 28<sup>th</sup> day of January, 2019, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, and on the 9<sup>th</sup> day of April, 2019 the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) 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 and further, that the approval is in the public interest, is consistent with its policy to encourage the redevelopment of hotels and motels in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS**, the purpose of the Conditional Use Permit is 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 and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

**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 2019-02, a copy of which is attached hereto as Exhibit “A”, amending a Conditional Use Permit to Marriott Hospitality LLC and Blue Water Resort Hospitality LLC for the development of a 5,500 square foot restaurant with drive-thru. 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 its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 9<sup>th</sup> DAY OF APRIL, 2019.**

**THE CITY OF MARATHON, FLORIDA**

---

**John Bartus, 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:**

---

David Migut, City Attorney



**CITY OF MARATHON, FLORIDA  
AMENDMENT TO AN APPROVED CONDITIONAL USE  
DEVELOPMENT ORDER # 2019-02**

**A DEVELOPMENT ORDER OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST FOR AN AMENDMENT TO A CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT FOR MARRIOTT HOSPITALITY LLC AND BLUE WATER RESORT HOSPITALITY, LLC, PURSUANT TO CHAPTER 102, ARTICLES 8 & 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “CONDITIONAL USE PERMITS” AND “DEVELOPMENT AGREEMENTS,” FOR THE REDEVELOPMENT OF THE PROPERTIES AS A HOTEL/MOTEL RESORT, LOCATED AT 2222 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS PART OF LOT 2, AND BAY BOTTOM ADJACENT TO LOT 2, KEY VACCAS, MARATHON, FLORIDA, HAVING REAL ESTATE NUMBER 00102810-000000, 00102810-001000, 00102810-002000, AND 00102730-000000. NEAREST MILE MARKER 48.**

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**WHEREAS**; the Applicant proposes to add approximately 5,500 square feet of additional retail with drive-thru; and

**WHEREAS**, Blue Water Resort Hospitality LLC, (The “Applicant”) filed an Application on November 27, 2018 to amend the Conditional Use Permit pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**, City staff reviewed the Applicant’s request for a Conditional Use Permit determining that the Applicant’s project proposal was 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 28<sup>th</sup> day of January, 2019, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter

102, Article 13 of the LDRs; and

**WHEREAS**, and on the 9<sup>th</sup> day of April, 2019 the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) 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 and further, that the approval is in the public interest, is consistent with its policy to encourage the redevelopment of hotels and motels in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS**, the purpose of the Conditional Use Permit is 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 and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

**FINDINGS OF FACT:**

- 1. The OWNER is proposing the addition of restaurant with drive thru in compliance with Chapter 104.25 A. 4. (a).
- 2. In accordance with Section 102.77 of the LDRs, the Commission and Council considered and determined that the OWNER 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
10. The allocation and transfer of transient residential units (TRUs).
11. Obligations to provide adequate workforce housing.
12. Any special requirements set forth in the LDRs for the Proposed Use involved.

**CONDITIONS IMPOSED:**

Granting approval of the Amendment to the CUP is subject to the following conditions:

1. Approval of parking and the project revision is conditioned on shared access easements and final abandonment of FDOT ROW which is a part of the proposed site plan.
2. Clear sight triangles must be shown on the site plan at time of building permit issuance;
3. The applicant will meet all floodplain related requirements as part of the Building Permit process;
4. The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance;
5. The applicant will connect to the City wastewater utility system prior to the issuance of a Certificate of Occupancy (CO).
6. The applicant will obtain sign permits for any signs erected on the property, as required under the Code; and
7. All areas or features which project above 37 feet shall be non-habitable space.

**VIOLATION OF CONDITIONS:**

The OWNER 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 City Code and LDRs, the Council may revoke this approval upon a determination that the OWNER or its successor or designee is in non-compliance with this Resolution, City Code, or LDRs. Failure to adhere to the terms and conditions of approval contained herein is a violation of the City 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 LDRs, 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 CUP Amendment 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 CUP Amendment granted herein shall be subject to appeal as provided in the LDRs. An appeal shall stay the effectiveness of this development order until said appeal is resolved.

\_\_\_\_\_  
Date

\_\_\_\_\_  
George Garrett  
Director of Planning

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

\_\_\_\_\_  
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 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 Economic Opportunity 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.

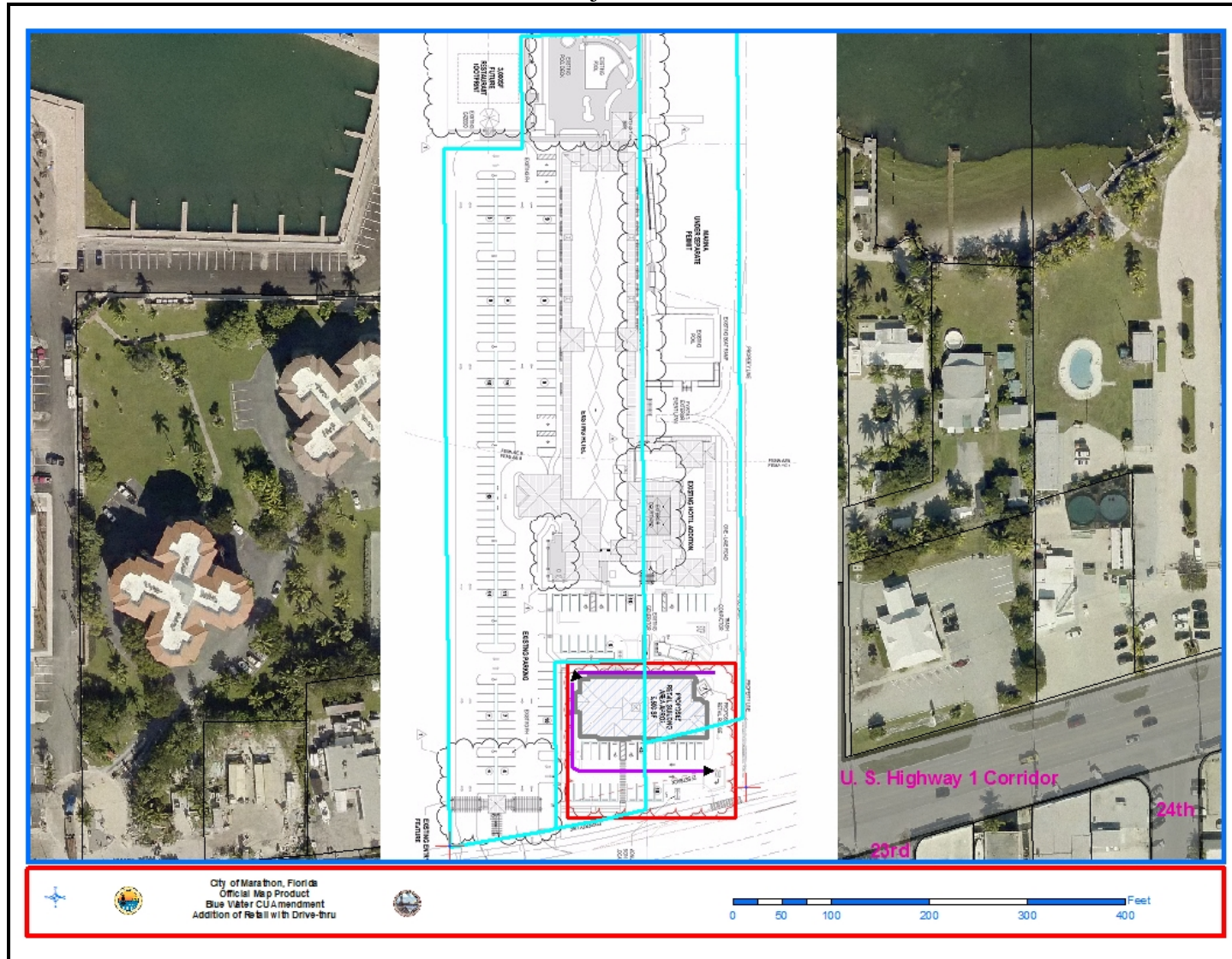
In addition, please be advised that pursuant to Chapter 9J-1, Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Economic Opportunity. During that forty-five days, the Florida Department of Economic Opportunity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

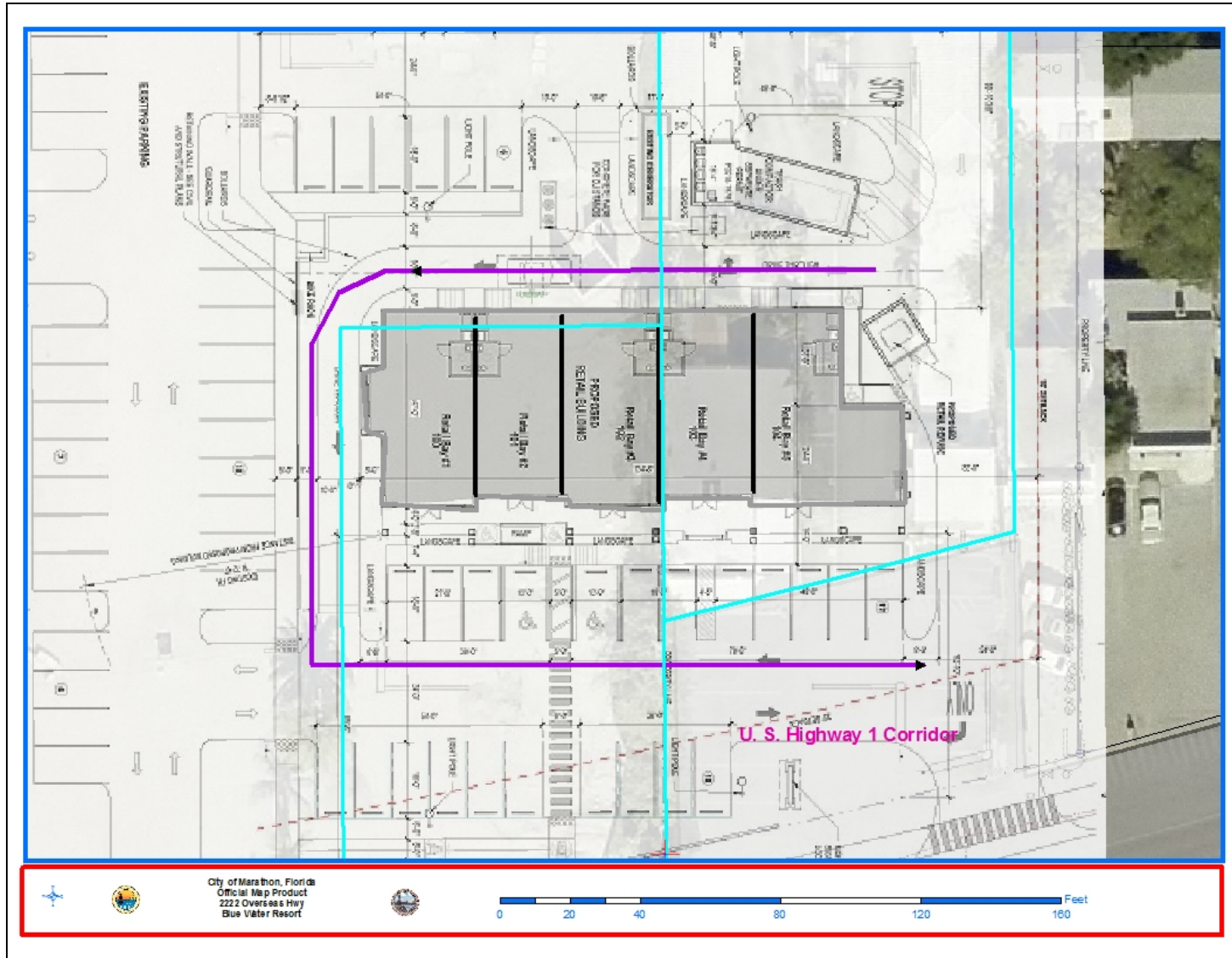
A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to \_\_\_\_\_,  
this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Diane Clavier, City Clerk

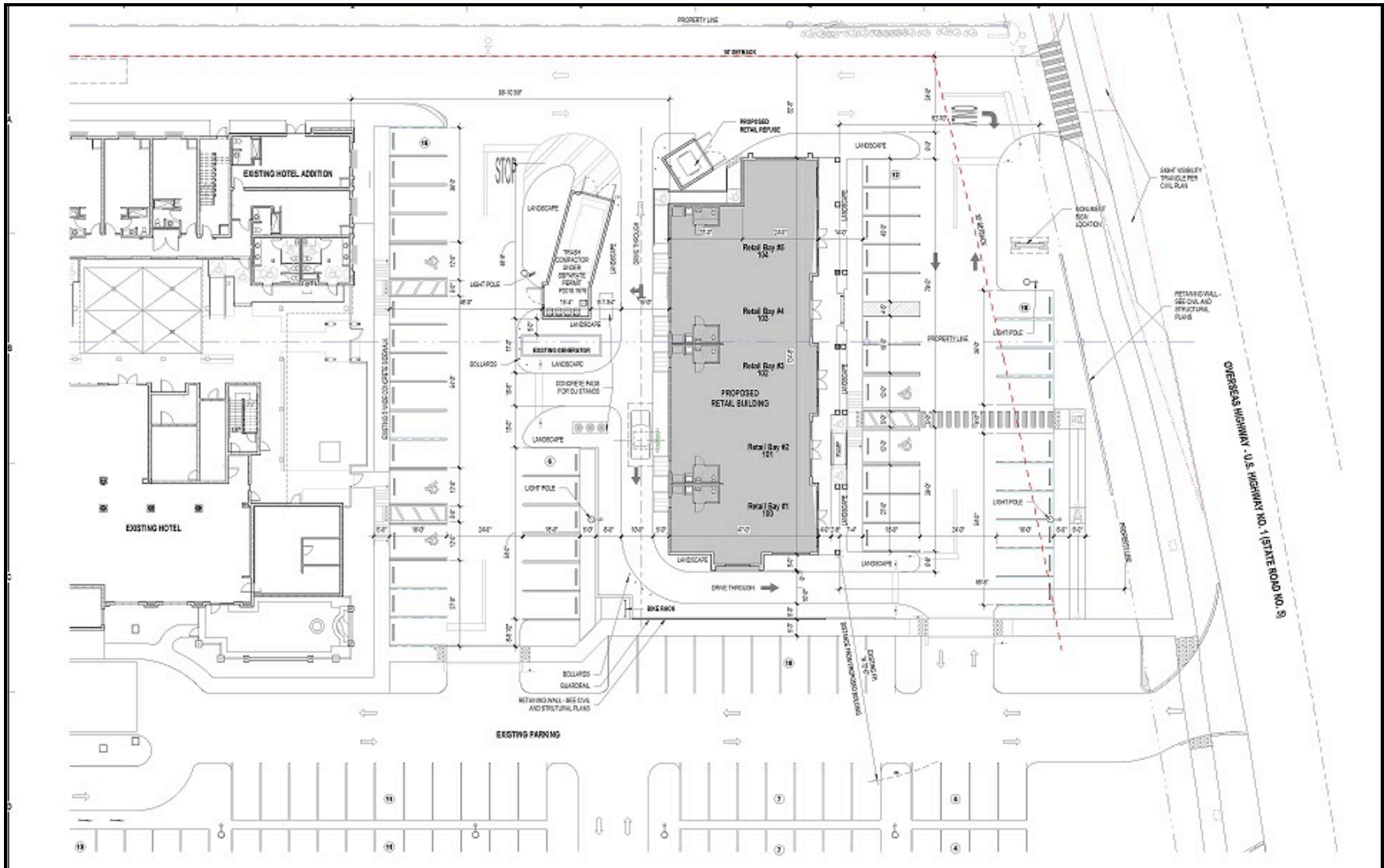
# ATTACHMENT A Project Plans



Attachment B: Proposed Site Plan (Larger scale)



Attachment C: Ground Floor Plan



COUNCIL AGENDA STATEMENT

Meeting Date: April 9, 2019  
To: Honorable Mayor and Council Members  
From: Dan Saus, Utility Director  
Through: Charles Lindsey, City Manager



Agenda Item: **Resolution 2019-34** Authorizing A “Sole-Source” Purchase Pursuant To The City’s Purchasing Policies And Procedures And Approving The Purchase of two Eqovua, DAVCO, Forty-X Disc filters for Service Area 3 WWTP In An Amount Not To Exceed \$380,000.00; Authorizing The City Manager To Enter Into Agreements In Connection Therewith, Appropriating And Expending Budgeted Funds; And Providing For An Effective Date

BACKGROUND & JUSTIFICATION:

We are so satisfied with the performance of the Forty-X disc filters previously installed we would like to purchase an additional two for the Service Area 3 WWTP. These filters considerable help the overall functioning of the plant especially during high flow times as we are experiencing right now.

Additional ACOE funding became available to the City this fiscal year and this purchase is reimbursable through the ACOE Florida Keys Water Quality Improvement Program (FKWQIP) agreement dated October 14, 2008.

CONSISTENCY CHECKLIST:

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

FISCAL NOTE:

The FY19 Adopted Wastewater Utilities Budget includes appropriations of \$4,373,500 for wastewater improvements; however this specific item wasn’t anticipated during the budget process. This purchase will be submitted to ACOE for reimbursement.

RECOMMENDATION:

Approve Resolution



March 28, 2019

Dan Saus  
City of Marathon  
9805 Overseas Highway  
Marathon FL 33050  
305.731.4097

Dear Mr. Saus,

Evoqua Water Technologies is the Original Equipment Manufacture of the Forty-X<sup>®</sup> Disc Filter provided for the Marathon, FL Area WWTP Upgrade. As such we should be considered the sole source for in-kind expansions, replacements, spares, and materials to rebuild and repair of this equipment. This will guarantee factory fit, manufacturing engineering and long-term service life of the equipment and that all filters onsite utilize the same components. It is the only filter that meets all the existing equipment's specifications in their entirety.

The Forty-X<sup>®</sup> Disc Filter Systems have inherent specific design characteristics that must be taken into consideration to assure the owner that the filters will operate at the most efficient mode in any state of design flow and design loading. Manufactured equipment and components and certain purchased materials are specifically designed and manufactured for use only in the Forty-X<sup>®</sup> Filters and are specific to Evoqua Water Technologies.

If you desire additional information, do not hesitate to contact me at 229.227.8737. I will be more than happy to discuss the equipment.

Sincerely,

A handwritten signature in blue ink that reads "P. Harden". The signature is fluid and cursive, with a long horizontal stroke at the end.

Patrick Harden, P.E.  
Product Manager  
Evoqua Water Technologies LLC



**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-34**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING A “SOLE SOURCE” PURCHASE PURSUANT TO THE CITY’S PURCHASING POLICIES AND PROCEDURES AND APPROVING THE PURCHASE OF TWO EVOQUA FORTY-X DISC FILTERS FROM EVOQUA WATER TECHNOLOGIES, LLC, IN AN AMOUNT NOT TO EXCEED \$380,000.00; AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT IN CONNECTION THEREWITH, APPROPRIATING AND EXPENDING BUDGETED FUNDS WHICH WILL BE SUBMITTED FOR REIMBURSEMENT FROM THE ACOE FKQWIP AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, pursuant to Ordinance 2015-04, the City adopted purchasing policies and procedures (the “Purchasing Policies and Procedures”) after determining that it was fiscally prudent and in the City’s best interest to adopt policies and procedures for City employees and officials regarding the acquisition and purchase of contractual services, equipment, goods, and other similar types of services; and

**WHEREAS**, the Purchasing Policies and Procedures allow the City Council to enter into contracts for materials, supplies, equipment, public improvements or services without competitive bidding when supplies, equipment, or services are only available from a sole source, which is the case in this instance; and

**WHEREAS**, the City desires to take advantage of the Sole Source purchasing procedure, to purchase two Evoqua Forty-X filters in an amount not to exceed \$380,000.00, which will be submitted for reimbursement from the ACOE FKQWIP grant.

**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 authorizes the City Manager to enter into an agreement and expend budgeted funds on behalf of the City two Evoqua Forty-X filters in an amount not to exceed \$380,000.00

**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 9<sup>th</sup> DAY OF APRIL, 2019.**

**THE CITY OF MARATHON, FLORIDA**

---

**Mayor John Bartus**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

---

Diane Clavier, City Clerk

(City Seal)

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

---

David Migut, City Attorney

**EVOQUA FORTY-X DISC FILTER  
FIRM PROPOSAL**

Project Name: **Marathon, FL Area #3 & 4 Disc Filter**

Date: **4/3/2019**

Proposal Number: **190157-A1**

**Process Performance Requirements:**

Avg. Daily Flow:	<b>0.6</b>	mgd =	417 gpm
Peak Daily Flow:	<b>1.2</b>	mgd =	833 gpm
Influent Avg. TSS:	<b>10</b>	mg/l	
Influent Peak TSS:	<b>20</b>	mg/l	
Effluent TSS:	<b>5</b>	mg/l	

**Forty-X Filter Sizing and Selection:**

Number of Filters:	<b>2</b>	
Filter Model Number:	<b>E1403T</b>	
Avg. Hydraulic Loading Rate:	<b>3.09</b>	gpm
Avg. Solids Loading Rate at Avg. Flow:	<b>0.37</b>	mg/l
Max Solids Loading Rate at Avg. Flow:	<b>0.74</b>	mg/l
Peak Hydraulic Loading Rate:	<b>6.18</b>	gpm
Avg. Solids Loading Rate at Peak Flow:	<b>0.74</b>	mg/l
Max Solids Loading Rate at Peak Flow:	<b>1.48</b>	mg/l

**Forty-X Filter Specs:**

Submergence:	<b>65%</b>	
Effective Filter Surface Area	<b>135</b>	ft <sup>2</sup> / filter
Drum Rotational Speed	<b>1-3</b>	rpm
Drum Drive Motor	<b>2</b>	Hp, 480V, 3ph, 60Hz
Backwash Pump	<b>33</b>	gpm at 100+ psi
Backwash Pump Motor	<b>5</b>	Hp, 480V, 3ph, 60Hz
Material of Construction:		
Filter Tank	<b>304</b>	<b>SS</b>
Central drum	<b>304</b>	<b>SS</b>
Sliding Cover	<b>304</b>	<b>SS</b>
Filter Cloth	<b>316SS</b>	
Filter Panel Box	<b>ABS / PPE</b>	
Backwash Trough	<b>304</b>	<b>SS</b>
Spray Manifold	<b>304</b>	<b>SS</b>

**Evoqua Additional Scope:**

Each filter to have individual PLC based control panel with HMI and ethernet port (of Evoqua's standard design and components). Mounted on the filter.

Level probe for automatic backwash operation.

Standard equipment spare parts including: 4 filter panels and 4 spray noz: (each filter)

Equipment startup and operator training: 2 days on site, 1 trip. (each filter)

**Supplied by Others**

- Civil construction and installation; including piping, concrete works, and electrical connections
- Other instrumentations not described herein
- Control Panel stands or mounting
- Effluent/ Bypass Weirs
- Equipment Access Platform or Grating
- Equipment Freeze Protection
- Any necessary bid bonding requirements
- Influent feed pumps or influent isolation valves
- Any other items not explicitly indicated in this proposal

**Equipment Budget Pricing:**

Two (2) Forty-X Disc Filter(s) and scope as defined above..... **\$380,000.00** US Dollars

F.O.B. Thomasville, Georgia. Freight is included.

Taxes and Duties are Not Included.

Price and delivery estimate valid only for 45 days from date of this proposal.

Recent market conditions have resulted in exceptionally volatile prices for materials. This means that the cost used for developing the prices in this quotation are subject to escalation. As a result of the recent tariffs, it has become necessary for Evoqua to pass along any escalation in the cost of materials affected by recent tariffs.

**Delivery:**

Submittals: N/A (New filters to match existing filters on site)

Equipment: 12 weeks after approved order for equipment delivery.

The scope of supply and pricing are based on Evoqua's standard equipment selection, standard terms of sale and warranty terms. Any variations from these standards may affect this budgetary quotation. Additionally, please note that this budgetary quotation is for review and informational purposes only and does not constitute an offer for acceptance.

\*\*\*\*\*

Quotation Submitted by Evoqua Water Technologies, LLC: Lance A. Clark

Signature below indicates acceptance of this quotation, including the Standard Terms of Sale attached hereto.

Accepted by Buyer:

Acknowledged by Seller:

\_\_\_\_\_  
Company Name

Evoqua Water Technologies, LLC

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EVOQUA WATER TECHNOLOGIES LLC**

**Standard Terms of Sale**

1. **Applicable Terms.** These terms govern the purchase and sale of equipment, products, related services, leased products, and media goods if any (collectively herein "Work"), referred to in Seller's proposal ("Seller's Documentation"). Whether these terms are included in an offer or an acceptance by Seller, such offer or acceptance is expressly conditioned on Buyer's assent to these terms. Seller rejects all additional or different terms in any of Buyer's forms or documents.
2. **Payment.** Buyer shall pay Seller the full purchase price as set forth in Seller's Documentation. Unless Seller's Documentation specifically provides otherwise, freight, storage, insurance and all taxes, levies, duties, tariffs, permits or license fees or other governmental charges relating to the Work or any incremental increases thereto shall be paid by Buyer. If Seller is required to pay any such charges, Buyer shall immediately reimburse Seller. If Buyer claims a tax or other exemption or direct payment permit, it shall provide Seller with a valid exemption certificate or permit and indemnify, defend and hold Seller harmless from any taxes, costs and penalties arising out of same. All payments are due within 30 days after receipt of invoice. Buyer shall be charged the lower of 1 ½% interest per month or the maximum legal rate on all amounts not received by the due date and shall pay all of Seller's reasonable costs (including attorneys' fees) of collecting amounts due but unpaid. All orders are subject to credit approval by Seller. Back charges without Seller's prior written approval shall not be accepted.
3. **Delivery.** Delivery of the Work shall be in material compliance with the schedule in Seller's Documentation. Unless Seller's Documentation provides otherwise, delivery terms are ExWorks Seller's factory (Incoterms 2010). Title to all Work shall pass upon receipt of payment for the Work under the respective invoice. Unless otherwise agreed to in writing by Seller, shipping dates are approximate only and Seller shall not be liable for any loss or expense (consequential or otherwise) incurred by Buyer or Buyer's customer if Seller fails to meet the specified delivery schedule.
4. **Ownership of Materials and Licenses.** All devices, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data, software and other documents or information prepared or disclosed by Seller, and all related intellectual property rights, shall remain Seller's property. Seller grants Buyer a non-exclusive, non-transferable license to use any such material solely for Buyer's use of the Work. Buyer shall not disclose any such material to third parties without Seller's prior written consent. Buyer grants Seller a non-exclusive, non-transferable license to use Buyer's name and logo for marketing purposes, including but not limited to, press releases, marketing and promotional materials, and web site content.
5. **Changes.** Neither party shall implement any changes in the scope of Work described in Seller's Documentation without a mutually agreed upon change order. Any change to the scope of the Work, delivery schedule for the Work, any Force Majeure Event, any law, rule, regulation, order, code, standard or requirement which requires any change hereunder shall entitle Seller to an equitable adjustment in the price and time of performance.
6. **Force Majeure Event.** Neither Buyer nor Seller shall have any liability for any breach or delay (except for breach of payment obligations) caused by a Force Majeure Event. If a Force Majeure Event exceeds six (6) months in duration, the Seller shall have the right to terminate the Agreement without liability, upon fifteen (15) days written notice to Buyer, and shall be entitled to payment for work performed prior to the date of termination. "**Force Majeure Event**" shall mean events or circumstances that are beyond the affected party's control and could not reasonably have been easily avoided or overcome by the affected party and are not substantially attributable to the other party. Force Majeure Event may include, but is not limited to, the following circumstances or events: war, act of foreign enemies, terrorism, riot, strike, or lockout by persons other than by Seller or its sub-suppliers, natural catastrophes or (with respect to on-site work), unusual weather conditions.
7. **Warranty.** Subject to the following sentence, Seller warrants to Buyer that the (i) Work shall materially conform to the description in Seller's Documentation and shall be free from defects in material and workmanship and (ii) the Services shall be performed in a timely and workmanlike manner. Determination of suitability of treated water for any use by Buyer shall be the sole and exclusive responsibility of Buyer. The foregoing warranty shall not apply to any Work that is specified or otherwise demanded by Buyer and is not manufactured or selected by Seller, as to which (i) Seller hereby assigns to Buyer, to the extent assignable, any warranties made to Seller and (ii) Seller shall have no other liability to Buyer under warranty, tort or any other legal theory. The Seller warrants the Work, or any components thereof, through the earlier of (i) eighteen (18) months from delivery of the Work or (ii) twenty-four (24) months from initial operation of the Work or ninety (90) days from the performance of services (the "Warranty Period"). If Buyer gives Seller prompt written notice of breach of this warranty within the Warranty Period, Seller shall, at its sole option and as Buyer's sole and exclusive remedy, repair or replace the subject parts, re-perform the Service or refund the purchase price. Unless otherwise agreed to in writing by Seller, (i) Buyer shall be responsible for any labor required to gain access to the Work so that Seller can assess the available remedies and (ii) Buyer shall be responsible for all costs of installation of repaired or replaced Work. If Seller determines that any claimed breach is not, in fact, covered by this warranty, Buyer shall pay Seller its then customary charges for any repair or replacement made by Seller. Seller's warranty is conditioned on Buyer's (a) operating and maintaining the Work in accordance with Seller's instructions, (b) not making any unauthorized repairs or alterations, and (c) not being in default of any payment obligation to Seller. Seller's warranty does not cover (i) damage caused by chemical action or abrasive material, misuse or improper installation (unless installed by Seller) and (ii) media goods

(such as, but not limited to, resin, membranes, or granular activated carbon media) once media goods are installed. THE WARRANTIES SET FORTH IN THIS SECTION 7 ARE THE SELLER'S SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITATION OF LIABILITY PROVISION BELOW. SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE.

8. **Indemnity.** Seller shall indemnify, defend and hold Buyer harmless from any claim, cause of action or liability incurred by Buyer as a result of third party claims for personal injury, death or damage to tangible property, to the extent caused by Seller's negligence. Seller shall have the sole authority to direct the defense of and settle any indemnified claim. Seller's indemnification is conditioned on Buyer (a) promptly, within the Warranty Period, notifying Seller of any claim, and (b) providing reasonable cooperation in the defense of any claim.

9. **Assignment.** Neither party may assign this Agreement, in whole or in part, nor any rights or obligations hereunder without the prior written consent of the other party; provided, however, the Seller may assign its rights and obligations under these terms to its affiliates or in connection with the sale or transfer of the Seller's business and Seller may grant a security interest in the Agreement and/or assign proceeds of the agreement without Buyer's consent.

10. **Termination.** Either party may terminate this agreement, upon issuance of a written notice of breach and a thirty (30) day cure period, for a material breach (including but not limited to, filing of bankruptcy, or failure to fulfill the material obligations of this agreement). If Buyer suspends an order without a change order for ninety (90) or more days, Seller may thereafter terminate this Agreement without liability, upon fifteen (15) days written notice to Buyer, and shall be entitled to payment for work performed, whether delivered or undelivered, prior to the date of termination.

11. **Dispute Resolution.** Seller and Buyer shall negotiate in good faith to resolve any dispute relating hereto. If, despite good faith efforts, the parties are unable to resolve a dispute or claim arising out of or relating to this Agreement or its breach, termination, enforcement, interpretation or validity, the parties will first seek to agree on a forum for mediation to be held in a mutually agreeable site. If the parties are unable to resolve the dispute through mediation, then *any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Pittsburgh, Pennsylvania before three arbitrators who are lawyers experienced in the discipline that is the subject of the dispute and shall be jointly selected by Seller and Buyer. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The Arbitrators shall issue a reasoned decision of a majority of the arbitrators, which shall be the decision of the panel. Judgment may be entered upon the arbitrators' decision in any court of competent jurisdiction. The substantially prevailing party as determined by the arbitrators shall be reimbursed by the other party for all costs, expenses and charges, including without limitation reasonable attorneys' fees, incurred by the prevailing party in connection with the arbitration. For any order shipped outside of the United States, any dispute shall be referred to and finally determined by the International Center for Dispute Resolution in accordance with the provisions of its International Arbitration Rules, enforceable under the New York Convention (Convention on the Recognition and Enforcement of Foreign Arbitral Awards) and the governing language shall be English.*

12. **Export Compliance.** Buyer acknowledges that Seller is required to comply with applicable export laws and regulations relating to the sale, exportation, transfer, assignment, disposal and usage of the Work provided under this Agreement, including any export license requirements. Buyer agrees that such Work shall not at any time directly or indirectly be used, exported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with such applicable export laws and regulations. It shall be a condition of the continuing performance by Seller of its obligations hereunder that compliance with such export laws and regulations be maintained at all times. BUYER AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.

13. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, AND SELLER'S TOTAL LIABILITY ARISING AT ANY TIME FROM THE SALE OR USE OF THE WORK, INCLUDING WITHOUT LIMITATION ANY LIABILITY FOR ALL WARRANTY CLAIMS OR FOR ANY BREACH OR FAILURE TO PERFORM ANY OBLIGATION UNDER THE CONTRACT, SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE WORK. THESE LIMITATIONS APPLY WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY.

14. **Rental Equipment / Services.** Any leased or rented equipment ("Leased Equipment") provided by Seller shall at all times be the property of Seller with the exception of certain miscellaneous installation materials purchased by the Buyer, and no right or property interest is transferred to the Buyer, except the right to use any such Leased Equipment as provided herein. Buyer agrees that it shall not pledge, lend, or create a security interest in, part with possession of, or relocate the Leased Equipment. Buyer shall be responsible to maintain the Leased Equipment in good and efficient working order. At the end of the initial term specified in the order, the terms shall automatically renew for the identical period unless canceled in writing by Buyer or Seller not sooner than three (3) months nor later than one (1) month from termination of the initial order or any renewal terms. Upon any renewal, Seller shall have the right to issue notice of increased pricing which shall be effective for any renewed terms unless Buyer objects in writing within fifteen (15) days of issuance of said notice. If Buyer timely cancels service in writing prior to the end of the initial or any renewal term this shall not relieve Buyer of its

obligations under the order for the monthly rental service charge which shall continue to be due and owing. Upon the expiration or termination of this Agreement, Buyer shall promptly make any Leased Equipment available to Seller for removal. Buyer hereby agrees that it shall grant Seller access to the Leased Equipment location and shall permit Seller to take possession of and remove the Leased Equipment without resort to legal process and hereby releases Seller from any claim or right of action for trespass or damages caused by reason of such entry and removal.

15. **Miscellaneous.** These terms, together with any Contract Documents issued or signed by the Seller, comprise the complete and exclusive statement of the agreement between the parties (the "Agreement") and supersede any terms contained in Buyer's documents, unless separately signed by Seller. No part of the Agreement may be changed or cancelled except by a written document signed by Seller and Buyer. No course of dealing or performance, usage of trade or failure to enforce any term shall be used to modify the Agreement. To the extent the Agreement is considered a subcontract under Buyer's prime contract with an agency of the United States government, in case of Federal Acquisition Regulations (FARs) flow down terms, Seller will be in compliance with Section 44.403 of the FAR relating to commercial items and those additional clauses as specifically listed in 52.244-6, Subcontracts for Commercial Items (OCT 2014). If any of these terms is unenforceable, such term shall be limited only to the extent necessary to make it enforceable, and all other terms shall remain in full force and effect. The Agreement shall be governed by the laws of the Commonwealth of the "State of Florida" without regard to its conflict of laws provisions. Both Buyer and Seller reject the applicability of the United Nations Convention on Contracts for the international sales of goods to the relationship between the parties and to all transactions arising from said relationship.

May 2015





COUNCIL AGENDA STATEMENT

Date: April 9, 2019
To: Honorable Mayor and City Council
From: Carlos A. Solis, P.E., Director of Public Works and Engineering
Through: Chuck Lindsey, City Manager

Agenda Item: Resolution 2019-35, Approving Change Order No. 1 To Contract Between The City And Discount Rock & Sand, Inc. In The Original Amount Of \$1,343,241.00 For The Reconstruction of Sombrero Beach From Hurricane Irma Damages; Increasing The Contract In An Amount Not To Exceed \$157,400 For Construction Of The Exterior Wall In Lieu Of A Fence As Approved By FEMA For Hazard Mitigation, And Various Other Items; Authorizing The City Manager To Execute The Change Order And Appropriate Funds and Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.

BACKGROUND & JUSTIFICATION:

As part of the reconstruction of Sombrero Beach due to damages suffered from Hurricane Irma, the City applied for hardening mitigation funding for the construction of a wall along the perimeter of the property to contain the sand on the site and minimize the damage to the adjacent infrastructure. Subsequent to the issuance of the contract, FEMA approved the funding. As part of the bid, an alternate price was requested for the construction of the wall. This change order includes the credit for the fence included in the base bid, and the cost for the wall as established in the bid. The change order also includes a couple minor adjustment to the design for decorative fencing at the main entrance, similar to the existing decorative fencing, and elevating the irrigation control system, which is also funded by FEMA hazard mitigation.

The cost for the proposed additions were reviewed by the design team and the construction manager, and deemed to be reasonable for the proposed work. A detail summary of the cost is attached.

CONSISTENCY CHECKLIST:

Table with 3 columns: Item, Yes, No. Row 1: 1. Comprehensive Plan: Yes/No. Row 2: 2. Other: Yes/No. Row 3: 3. Not applicable: X

FISCAL NOTE:

Finance Director: \_\_\_\_\_

RECOMMENDATION:

Approval of Resolution

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-35**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING CHANGE ORDER NO. 1 TO CONTRACT BETWEEN THE CITY AND DISCOUNT ROCK & SAND, INC. IN THE ORIGINAL AMOUNT OF \$1,343,241.00 FOR THE RECONSTRUCTION OF SOMBRERO BEACH FROM HURRICANE IRMA DAMAGES; INCREASING THE CONTRACT IN AN AMOUNT NOT TO EXCEED \$157,400 FOR CONSTRUCTION OF THE EXTERIOR WALL IN LIEU OF A FENCE AS APPROVED BY FEMA FOR HAZARD MITIGATION, AND VARIOUS OTHER ITEMS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CHANGE ORDER AND APPROPRIATE FUNDS AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marathon (the “City”) awarded the contract for the reconstruction of Sombrero Beach Project” (the “Project”) by Resolution 2019-15 on February 12, 2019; and

**WHEREAS**, as part of the reconstruction of Sombrero Beach due to damages suffered from Hurricane Irma, the City applied for hardening mitigation funding for the construction of a wall along the perimeter of the property to contain the sand on the site and minimize the damage to the adjacent infrastructure and FEMA approved the funding; and

**WHEREAS**, as part of the bid, an alternate price was requested for the construction of the wall. This change order includes the credit for the fence included in the base bid, and the cost for the wall as established in the bid as well as a few minor adjustments to the design for decorative fencing; and

**WHEREAS**, change order #1 is found to be reasonable for the additional work requested by City staff to be performed by Discount Rock and Sand, as the General Contractor, in the amount of \$157,400.

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

**Section 1.** The foregoing recitals are true and correct and are incorporated herein by this reference.

**Section 2.** Change Order #1 is attached hereto, together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is hereby approved. The City Manager is authorized to execute the contract and expend budgeted 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 9<sup>th</sup> DAY OF APRIL, 2019.**

**THE CITY OF MARATHON, FLORIDA**

---

**John Bartus, 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:**

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David Migut, City Attorney

CHANGE ORDER # 1 –

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TO: City of Marathon  
PROJECT: Sombrero Beach Irma Reconstruction Project  
ENGINEER: Weiler Engineering  
CONTRACTOR: Discount Rock & Sand, Inc.  
DATE: April 1, 2019

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This Change Order will authorize the following change to the Agreement:

The Work as set forth in the Agreement is hereby amended to include the items set forth in Exhibits “B” attached hereto and by this reference made a part hereof.

This Change Order constitutes full, final, and complete compensation to **Discount Rock & Sand, Inc.** for all costs, expenses, overhead, and profit, and any damages of every kind that **Discount Rock & Sand, Inc.** may incur in connection with the above referenced changes in the Construction Work under this Agreement. **Discount Rock & Sand, Inc.** acknowledges and agrees that (a) the Guaranteed Maximum Price of \$1,343,241.00 under the Agreement will be **changed** by this Change Order. **Discount Rock & Sand, Inc.** expressly waives any claims for any additional compensation, damages or time extensions in connection with the above-referenced changes. Except as herein or heretofore expressly modified, all terms of the Agreement shall remain in full force and effect and shall cover the performance of, and payment for, any work authorized hereunder. Any defined terms not defined in this Change Order shall have the meanings set forth in the Agreement.

By signing below the parties indicate acceptance of this Change Order as set forth herein.

CITY OF MARATHON  
a Florida municipal corporation

Discount Rock & Sand, Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## Exhibit "A"

### CHANGE ORDER SUMMARY

Change Order No. 1  
Project Title **City of Marathon City Hall Project**  
Bid No. 2018-009  
Owner: City of Marathon  
Contractor: **Discount Rock & Sand, Inc.**  
Agreement Date: February 26, 2019

This Change Order is necessary to cover changes in the work to be performed under this Agreement. The GENERAL CONDITIONS, SUPPLEMENTARY CONDITIONS, and STANDARD SPECIFICATIONS apply to and govern all work under this Change Order.

#### **THE FOLLOWING CHANGES ARE MADE TO THE CONTRACT DOCUMENTS:**

(1)	Original Contract Price	<u>\$1,343,241.00</u>
(2)	Current Contract Price (Adjusted by Previous C.O.)	<u>\$1,343,241.00</u>
(3)	Total Proposed Change in Contract Price	<u>\$ 157,400.00</u>
(4)	New Contract Price (Item 2 + Item 3)	<u>\$1,500,641.00</u>
(5)	Original Contract Time	<u>180 Days</u>
(6)	Proposed Change in Contract Time	<u>0 Days</u>
(6)	Current Contract Time (Adjusted by Previous C.O.)	<u>180 Days</u>
(7)	Total Proposed Change in Contract Time	<u>0 Days</u>
(8)	New Contract Time (Item 6 + Item 7)	<u>180 Days</u>
(9)	Original Contract Final Completion Date	<u>September18,2019</u>
(10)	New Contract Final Completion Date	<u>September18,2019</u>

## CITY OF MARATHON CITY HALL PROJECT CHANGE ORDER HISTORY

Item No.	Description	Current Contract Amount	Additive Change	Deductive Change	Net Change Contract Price	Net Change Contract Time
1.		<u>\$1,343,241.00</u>	<u>\$206,000.00</u>	\$48,600.00	<u>\$157,400.00</u>	0 Days
<b>Total</b>		<b>\$1,343,241.00</b>	\$206,000.00	\$48,600.00	<b>\$157,400.00</b>	<b>0 Days</b>

## **Exhibit “B”**

### **CHANGE ORDER JUSTIFICATION**

The contract included an alternate bid for the construction of a perimeter wall-fence in lieu of a six foot fence. Subsequent to the contract, FEMA has approved the hazard mitigation for the construction of the wall to protect the infrastructure adjacent to the beach in future storms. Credit is issued for the six foot fence in the original contract.

The City also requested the fence portion along the main entrance to be a decorative aluminum fence similar to the aluminum fence in that area prior to the storm. The cost also includes the decorative gates in this area.

We have also requested that the contractor install sumps between the showers and foot wash stations, and the drainfields. This will allow City staff to clean-out the sumps of accumulated sand and prevent the sand from entering the drainfields, which is more difficult.

# DISCOUNT ROCK & SAND, INC.

P.O. Box 504484 • Marathon, FL 33050  
(305) 743-5680 Office • (305) 289-4200 Fax

Sombrero Beach Irma Recovery Project  
P2019-0301

## DEDUCTS

CREDIT FOR 1450 LF OF 6' CHAIN LINK FENCE	\$38,000.00
CREDIT FOR FRENCH DRAIN	\$7,000.00
CREDIT FOR 2-6'X6' GATE @\$900.00 EACH	\$1800.00
CREDIT FOR 1-12'X6' GATE @ \$900.00	\$900.00
CREDIT FOR 1-8'X6' GATE @ \$900.00	\$900.00
<b>TOTAL CREDIT DEDUCT</b>	<b>\$48,600.00</b>

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## ADD ON

1. 1464 LF OF 3' WALL W/FENCE INCLUDES 14' ADDITIONAL LENGTH	\$156,501.60
2. BASE PLATES WITH 3' FENCE POST (150) QUANTITY + (12) FOR CITY FUTURE REPLACEMENT	\$16,200.00
3. EXTENDED RETAINING WALL AREA (GAZEBO AREA CONFLICT)	\$ 6,500.00
4. IRRIGATION AND RPZ FOUNDATION 10'L X 3'W X 5'H	\$ 6,500.00
5. ADDITIONAL ALUMINUM DECORATIVE FENCE PANEL W/ (2) FENCE DOORS AT ENTRANCE	\$15,000.00
<u>6. (5) SAND COLLECTOR BY SHOWERS / FOOT WASH @ \$1059.68 EACH</u>	<u>\$5298.40</u>
<b>TOTAL ADDITION</b>	<b>\$206,000.00</b>
<b>TOTAL CHANGE ORDER AMOUNT</b>	<b>\$157,400.00</b>



## CITY COUNCIL AGENDA STATEMENT



**Meeting Date:** April 9, 2019

**To:** Honorable Mayor and Council Members

**From:** George Garrett, Deputy City Manager / Planning Director

**Through:** Chuck Lindsey, City Manager

Agenda Item: **Resolution 2019-36**, Providing An Amendment Document For Extension Of The Term Specified In Section 3, "Term" Of The Interlocal Agreement Between The City Of Marathon And Monroe County Transferring Affordable Housing Residential Dwelling Unit Allocations For An Approved Project In The Ownership Of Key Vaca LLC, To Be Located Between 4700 And 4800 Overseas Highway, Marathon, Florida On Properties Including Real Estate Numbers 00327110-000000, 00327120-000000, 00327130-000000, And 00327140-000000. Nearest Mile Marker 50; Rescinding Resolution 2017-107; And Providing For An Effective Date.

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### RECOMMENDATION:

Approval of Resolutions 2019-36

### BACKGROUND

On December 13, 2016 the City of Marathon granted a Conditional Use Permit to Keys Affordable Development III LLC pursuant to Resolution 2016-122 to construct fifty-five (55) multifamily affordable housing units. In 2017 the Conditional Use Permit noted in Resolution 2016-122 was assigned to Key Vaca LLC the title owner of the property and remains in full force and effect. The attached Resolution which will be adopted on next Tuesday March 12, 2019 confirms the assignment of the Conditional Use Permit to Key Vaca LLC.

On December 13, 2016 the City adopted Resolution 2016-113 approving an Interlocal Agreement between the City of Marathon and Monroe County for the transfer of fifty-five (55) affordable housing units which ran in favor of Keys Affordable Development III LLC. On July 11, 2017 the City of Marathon adopted Resolution 2017-54 which rescinded Resolution 2016-113 for the purposes, in part, of assigning the project to Key Vaca LLC. On July 11, 2017 the City of Marathon adopted Resolution 2017-55 which approved an Interlocal Agreement (ILA) between the City of Marathon and Monroe County transferring Fifty-five (55) affordable housing residential dwelling units to the City to be utilized in the project approved through Resolution 2016-122 as assigned to Key Vaca LLC. The subject project sought and has ultimately received tax credit funding through the Florida Housing Finance Corporation. The project known as Key Vaca LLC and Crystal Cove Market Site LLC (originally HTG Crystal Cove) have submitted building plans jointly to complete a combined project. The building plans should be approved within the next several weeks (approximately March 31, 2019); and

The ILA provides a “reverter clause” and a term which specifies that:

“Section 3. TERM: Subject to and upon the terms and conditions set forth herein, this Interlocal Agreement shall continue in force until the following occurs:

The project does not complete construction and does not obtain Certificates of Occupancy for all fifty-five (55) affordable housing units contemplated herein by December 31, 2019. All affordable housing units for which Certificates of Occupancy are issued prior to December 31, 2019 shall remain subject to this Interlocal Agreement irrespective of whether all 55 affordable housing units contemplated herein receive Certificates of Occupancy.”

There is a previous request (Resolution 2017-107) for an extension which Monroe County determined to be unnecessary at the time, thus Resolution 2017-107 should also be rescinded in favor of the current proposed Resolution.

The City is requesting that the term specified in Section 3 of the ILA (attached) be extended to through the physical year of 2021 to allow appropriate time for the combined projects to be completed and to receive a Certificate of Occupancy. This request is codified in Resolution 2019-27.

This Resolution provides the Amendment Document that the County requires in order to carry out the extension request.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	<u>  X  </u>	<u>      </u>
2. Other – 2010 Sewer Mandate	<u>      </u>	<u>  X  </u>

FISCAL NOTE:

RECOMMENDATION

Approval of Resolutions

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-36**

**A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, PROVIDING AN AMENDMENT DOCUMENT FOR EXTENSION OF THE TERM SPECIFIED IN SECTION 3, "TERM" OF THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF MARATHON AND MONROE COUNTY TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL DWELLING UNIT ALLOCATIONS FOR AN APPROVED PROJECT IN THE OWNERSHIP OF KEY VACA LLC, TO BE LOCATED BETWEEN 4700 AND 4800 OVERSEAS HIGHWAY, MARATHON, FLORIDA ON PROPERTIES INCLUDING REAL ESTATE NUMBERS 00327110-000000, 00327120-000000, 00327130-000000, AND 00327140-000000. NEAREST MILE MARKER 50; RESCINDING RESOLUTION 2017-107; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on December 13, 2016 the City of Marathon granted a Conditional Use Permit to Keys Affordable Development III LLC pursuant to Resolution 2016-122 to construct fifty-five (55) multifamily affordable housing units; and

**WHEREAS**, in 2017 the Conditional Use Permit noted in Resolution 2016-122 was assigned to Key Vaca LLC the title owner of the property and remains in full force and effect; and

**WHEREAS**, on December 13, 2016 the City adopted Resolution 2016-113 approving an Interlocal Agreement between the City of Marathon and Monroe County for the transfer of fifty-five (55) affordable housing units which ran in favor of Keys Affordable Development III LLC; and

**WHEREAS**, on July 11, 2017 the City of Marathon adopted Resolution 2017-54 which rescinded Resolution 2016-113 for the purposes, in part, of assigning the project to Key Vaca LLC; and

**WHEREAS**, on July 11, 2017 the City of Marathon adopted Resolution 2017-55 which approved an Interlocal Agreement (ILA) between the City of Marathon and Monroe County transferring Fifty-five (55) affordable housing residential dwelling units to the City to be utilized in the project approved through Resolution 2016-122 as assigned to Key Vaca LLC; and

**WHEREAS**, the subject project sought and has ultimately received tax credit funding through the Florida Housing Finance Corporation; and

**WHEREAS**, the project known as Key Vaca LLC and Crystal Cove Market Site LLC (originally HTG Crystal Cove) have submitted building plans jointly to complete a combined project; and

**WHEREAS**, the building plans should be approved within the next several weeks (approximately March 31, 2019); and

**WHEREAS**, the ILA provides a “reverter clause” and a term which specifies that:

“**Section 3. TERM:** Subject to and upon the terms and conditions set forth herein, this Interlocal Agreement shall continue in force until the following occurs:

The project does not complete construction and does not obtain Certificates of Occupancy for all fifty-five (55) affordable housing units contemplated herein by December 31, 2019. All affordable housing units for which Certificates of Occupancy are issued prior to December 31, 2019 shall remain subject to this Interlocal Agreement irrespective of whether all 55 affordable housing units contemplated herein receive Certificates of Occupancy.”

**WHEREAS**, the City requests that the term specified in Section 3 of the ILA (attached) be extended to through the physical year of 2021 to allow appropriate time for the combined projects to be completed and to receive a Certificate of Occupancy; and

**WHEREAS**, a request to extend the ILA was made in Resolution 2019-27; and

**WHEREAS**, this Resolution provides the Amendment Document that the County requires in order to carry out the extension request,

**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 requests that the term specified in Section 3 of the ILA (Resolution 2017-55) be extended to through the physical year of 2021, December 31, 2021 (codified in Resolution 2019-29) and provides the attached Amendment document for proposed execution.

**Section 3. Effective Date.** This Resolution shall become effective immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 9TH DAY OF APRIL, 2019.**

**THE CITY OF MARATHON, FLORIDA**

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**John Bartus, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

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Diane Clavier, City Clerk

(City Seal)

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

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David Migut, City Attorney

**AMENDMENT 1 TO**  
**INTERLOCAL AGREEMENT BETWEEN MONROE COUNTY AND THE CITY**  
**OF MARATHON TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL**  
**DWELLING UNIT ALLOCATIONS**

This Amendment ("Amendment") to and Interlocal Agreement ("Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2019, by and between Monroe County, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida 33040 ("County"), and the City of Marathon, a municipal corporation of the State of Florida, whose address is 9805 Overseas Highway, Marathon, Florida 33050 (the "City").

**WITNESSETH:**

**WHEREAS**, Policy 101.2.15 of the Year 2010 Monroe County Comprehensive Plan allows Rate of Growth Ordinance building permit allocations (hereinafter "affordable housing ROGO allocations" or "affordable ROGOs") for affordable housing projects to be pooled and transferred between local government jurisdictions within the Florida Keys Area of Critical Concern, if accomplished through an interlocal agreement between the sending and receiving local governments; and

**WHEREAS**, Chapter Five (5) of the City Comprehensive Plan identifies goals, objectives and policies to provide for development pursuant to intergovernmental coordination and interlocal agreements; and

**WHEREAS**, Monroe County and the City of Marathon have previously entered into Interlocal Agreements to transfer affordable ROGOs; and

**WHEREAS**, Monroe County and the City of Marathon recognize the potential economic value of such transferable affordable ROGO allocations; and

**WHEREAS**, this Agreement is entered into pursuant to Florida Statutes, Section 163.01, *et seq.*, Florida Interlocal Cooperation Act of 1969, which states:

"It is the purpose of this section to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities"; and

**WHEREAS**, the comprehensive plans of Monroe County and the City of Marathon expressly identify interlocal agreements as a means of resolving issues mutually affecting their respective jurisdictions; and

**WHEREAS**, Monroe County and the City of Marathon recognize the value of regional partnerships in smart growth and the need in this instance to extend this Interlocal Agreement (ILA) as previously approved; and

**WHEREAS**, property in the ownership of Key Vaca, LLC pursuant to City Resolution 2016-122 has an approved Conditional Use Permit for a project that includes fifty-five (55) affordable housing/workforce housing pertaining to the following site; and

**WHEREAS**, Key Vaca LLC has submitted plans for construction which the City has reviewed and is nearing approval for; and

**WHEREAS**, on or about August 16, 2017 the City of Marathon and Monroe County entered into an ILA in order to provide fifty-five (55) affordable ROGO allocations for the Key Vaca, LLC project; and

**WHEREAS**, Section 15. of the Agreement provides the mechanism to amend the Agreement, providing further that, “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,

**WHEREAS**, such a request is codified in Resolution 2019-27 of the City of Marathon, Florida; and

**WHEREAS**, this Resolution provides the Amendment Document that the County requires in order to carry out the extension request,

**WHEREAS**, the parties have determined that this Amendment to this Agreement is in the best interests of the public and the public health, safety, and welfare; and

**NOW, THEREFORE**, the parties hereto agree as follows:

**Section 1. AMENDMENT:** Pursuant to this Amendment to the existing Agreement, Section 3, the “Term” of the Agreement is hereby amended to become December 31, 2021 with terms as follows:

“**Section 3. TERM:** Subject to and upon the terms and conditions set forth herein, this Interlocal Agreement shall continue in force until the following occurs:

The project does not complete construction and does not obtain Certificates of Occupancy for all fifty-five (55) affordable housing units contemplated herein by December 31, 2021. All affordable housing units for which Certificates of Occupancy are issued prior to December 31, 2021 shall remain subject to this Interlocal Agreement irrespective of whether all 55 affordable housing units contemplated herein receive Certificates of Occupancy.”

**Section 2. EFFECT ON THE AGREEMENT:** In all other respect, the Agreement remains in full force and effect.

**Section 3. EFFECTIVE DATE:** This Agreement shall take effect on the date set forth above.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

(SEAL)

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

ATTEST: KEVIN MADOK, CLERK

By: \_\_\_\_\_  
Clerk

By: \_\_\_\_\_  
Mayor \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: \_\_\_\_\_  
Assistant County Attorney

ATTEST:

THE CITY OF MARATHON, FLORIDA

By: \_\_\_\_\_  
DIANE CLAVER  
City Clerk

By: \_\_\_\_\_  
Mayor \_\_\_\_\_  
Date: \_\_\_\_\_

(City Seal)

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

By: \_\_\_\_\_  
David Migut, City Attorney



**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-27**

**A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, REQUESTING AN EXTENSION OF THE TERM SPECIFIED IN SECTION 3, "TERM" OF THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF MARATHON AND MONROE COUNTY TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL DWELLING UNIT ALLOCATIONS FOR AN APPROVED PROJECT IN THE OWNERSHIP OF KEY VACA LLC, TO BE LOCATED BETWEEN 4700 AND 4800 OVERSEAS HIGHWAY, MARATHON, FLORIDA ON PROPERTIES INCLUDING REAL ESTATE NUMBERS 00327110-000000, 00327120-000000, 00327130-000000, AND 00327140-000000. NEAREST MILE MARKER 50; RESCINDING RESOLUTION 2017-107; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on December 13, 2016 the City of Marathon granted a Conditional Use Permit to Keys Affordable Development III LLC pursuant to Resolution 2016-122 to construct fifty-five (55) multifamily affordable housing units; and

**WHEREAS**, in 2017 the Conditional Use Permit noted in Resolution 2016-122 was assigned to Key Vaca LLC the title owner of the property and remains in full force and effect; and

**WHEREAS**, on December 13, 2016 the City adopted Resolution 2016-113 approving an Interlocal Agreement between the City of Marathon and Monroe County for the transfer of fifty-five (55) affordable housing units which ran in favor of Keys Affordable Development III LLC; and

**WHEREAS**, on July 11, 2017 the City of Marathon adopted Resolution 2017-54 which rescinded Resolution 2016-113 for the purposes, in part, of assigning the project to Key Vaca LLC; and

**WHEREAS**, on July 11, 2017 the City of Marathon adopted Resolution 2017-55 which approved an Interlocal Agreement (ILA) between the City of Marathon and Monroe County transferring Fifty-five (55) affordable housing residential dwelling units to the City to be utilized in the project approved through Resolution 2016-122 as assigned to Key Vaca LLC; and

**WHEREAS**, the subject project sought and has ultimately received tax credit funding through the Florida Housing Finance Corporation; and

**WHEREAS**, the project known as Key Vaca LLC and Crystal Cove Market Site LLC (originally HTG Crystal Cove) have submitted building plans jointly to complete a combined project; and

**WHEREAS**, the building plans should be approved within the next several weeks (approximately March 31, 2019); and

**WHEREAS**, the ILA provides a “reverter clause” and a term which specifies that:

“**Section 3. TERM:** Subject to and upon the terms and conditions set forth herein, this Interlocal Agreement shall continue in force until the following occurs:

The project does not complete construction and does not obtain Certificates of Occupancy for all fifty-five (55) affordable housing units contemplated herein by December 31, 2019. All affordable housing units for which Certificates of Occupancy are issued prior to December 31, 2019 shall remain subject to this Interlocal Agreement irrespective of whether all 55 affordable housing units contemplated herein receive Certificates of Occupancy.”

**WHEREAS**, the City requests that the term specified in Section 3 of the ILA (attached) be extended to through the physical year of 2021 to allow appropriate time for the combined projects to be completed and to receive a Certificate of Occupancy; and

**WHEREAS**, there is a previous request (Resolution 2017-107) for an extension which Monroe County determined to be unnecessary at the time, thus Resolution 2017-107 should also be rescinded in favor of the current proposed Resolution,

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

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

**Section 2.** The Conditional Use Permit and Development Order noted in Resolution 2016-122 is hereby formally assigned to Key Vaca LLC the title owner of the property and remains in full force and effect.

**Section 3.** Rescind Resolution 2017-107.

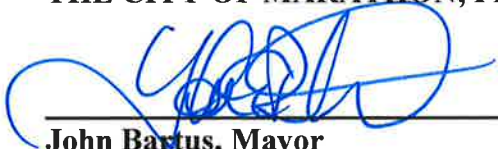
**Section 4.** The City requests that the term specified in Section 3 of the ILA (Resolution 2017-55) be extended to through the physical year of 2021, December 31, 2021.

**Section 5.** The City Clerk shall forward a certified copy of this Resolution to appropriate individuals at Monroe County, Florida, the Florida Department of Economic Opportunity, the Florida Housing Finance Corporation, the Florida Task Force on Affordable Housing, and the Executive Offices of the Governor.

**Section 6. Effective Date.** This Resolution shall become effective immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 12TH DAY OF MARCH, 2019.**

**THE CITY OF MARATHON, FLORIDA**



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**John Bartus, Mayor**

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

**ATTEST:**



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Diane Clavier, City Clerk

(City Seal)

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



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David Migut, City Attorney

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2017-55**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN MONROE COUNTY AND THE CITY OF MARATHON TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL ALLOCATIONS FOR AN APPROVED PROJECT APPROVED TO BE LOCATED ON PROPERTY IN THE OWNERSHIP OF KEY VACA, LLC.; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marathon (the "City") wishes to enter into an Interlocal Agreement with Monroe County (the "County") for the purposes of Transferring affordable housing unit allocations; and

**WHEREAS**, the Interlocal Agreement with the County is in the best interest of Monroe County and the City of Marathon for the purposes of providing opportunities for affordable housing,

**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 Interlocal Agreement (ILA) attached hereto as Exhibit "A", between Monroe County and the City of Marathon Transferring Affordable Housing Residential Allocations For A Project located on property in the ownership of Key Vaca, LLC. is hereby approved. The Mayor is authorized to sign the ILA on behalf of the City, and the City Manager is authorized to expend budgeted 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 11<sup>th</sup> DAY OF JULY, 2017.**

**THE CITY OF MARATHON, FLORIDA**

  
Dr. Daniel Zieg, Mayor

AYES: Bartus, Coldiron, Cook, Senmartin, Zieg  
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

**INTERLOCAL AGREEMENT BETWEEN MONROE  
COUNTY AND THE CITY OF MARATHON  
TRANSFERRING AFFORDABLE HOUSING  
RESIDENTIAL DWELLING UNIT ALLOCATIONS**

This Agreement ("Agreement") is made and entered into this 16<sup>th</sup> day of August, 2017, by and between Monroe County, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida 33040 ("County"), and the City of Marathon, a municipal corporation of the State of Florida, whose address is 9805 Overseas Highway, Marathon, Florida 33050 (the "City").

Doc# 2139264 10/10/2017 10:27AM  
Filed & Recorded in Official Records of  
MONROE COUNTY KEVIN MADOK

**WITNESSETH:**

**WHEREAS**, Monroe County and the City of Marathon recognize the value of regional partnerships in smart growth; and

**WHEREAS**, Policy 101.2.15 of the Year 2010 Monroe County Comprehensive Plan allows Rate of Growth Ordinance building permit allocations (hereinafter "affordable housing ROGO allocations" or "affordable ROGOs") for affordable housing projects to be pooled and transferred between local government jurisdictions within the Florida Keys Area of Critical Concern, if accomplished through an interlocal agreement between the sending and receiving local governments; and

**WHEREAS**, Chapter Five (5) of the City Comprehensive Plan identifies goals, objectives and policies to provide for development pursuant to intergovernmental coordination and interlocal agreements; and

**WHEREAS**, Monroe County and the City of Marathon have previously entered into Interlocal Agreements to transfer affordable ROGOs; and

**WHEREAS**, Monroe County and the City of Marathon recognize the potential economic value of such transferable affordable ROGO allocations; and

**WHEREAS**, this Agreement is entered into pursuant to Florida Statutes, Section 163.01, *et seq.*, Florida Interlocal Cooperation Act of 1969, which states:

"It is the purpose of this section to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities"; and

**WHEREAS**, the comprehensive plans of Monroe County and the City of Marathon expressly identify interlocal agreements as a means of resolving issues mutually affecting their respective jurisdictions; and

**WHEREAS**, property in the ownership of Key Vaca, LLC pursuant to City Resolution 2016-122 has an approved Conditional Use Permit for a project that includes fifty-five (55) affordable housing/workforce housing pertaining to the following site:

See Attachment "A"

**WHEREAS**, the parties have determined that this Agreement is in the best interests of the public and the public health, safety, and welfare.

**NOW, THEREFORE**, the parties hereto agree as follows:

**Section 1. TRANSFER:** The parties agree to permit the transfer of 55- affordable housing ROGO allocations, comprised of fifty-two (52) low-income category and three (3) very-low income category affordable housing ROGO allocations, from Monroe County to the City of Marathon for allocation, pursuant to this Agreement, and subject to the conditions contained herein, including but not limited to:

Key Vaca, LLC, or its assignee and successors-in-interest, acting on its Conditional Use Permit approval from the City of Marathon; and

Key Vaca, LLC, or its assignee and successors-in-interest, constructing and obtaining a Certificate of Occupancy for all of the affordable housing units, situated upon the subject property described herein, related to the transferred affordable housing ROGO allocations subject of this Interlocal Agreement, prior to December 31, 2019; and

The recording of a 99-year Affordable Housing Deed Restriction on all of the affordable housing units contemplated herein, in accordance with this Agreement, and in accordance with the applicable requirements of the Code of Ordinances, City of Marathon, Florida and similar requirements of the Florida Building Code (FBC).

**Section 2. ASSIGNMENT:** Monroe County has assigned its rights to the affordable housing ROGO allocation contemplated herein to the City, and the fifty-five (55) affordable housing ROGO allocations are to be issued by the City in consideration of the Conditional Use Approval pursuant to City Resolution 2016-122 issued and assigned to property owned by Key Vaca, LLC (Legal Description attached as **Exhibit "A"**). In the event the subject project or, as applicable, Key Vaca, LLC, or, as applicable, its assign(s) and successor(s) in interest or title, fail to complete the construction as evidenced by issuance of a Certificate of Occupancy for all fifty-five (55) units by the City of Marathon, any units which have not received a Certificate of Occupancy shall result in those allocations reverting to Monroe County and to their former status under the Agreement; no amendment to this Agreement is necessary or required to trigger this automatic reverter clause.

**Section 3. TERM:** Subject to and upon the terms and conditions set forth herein, this Interlocal Agreement shall continue in force until the following occurs:

The project does not complete construction and does not obtain Certificates of Occupancy for all fifty-five (55) affordable housing units contemplated herein by December 31, 2019. All affordable housing units for which Certificates of Occupancy are issued prior to December 31, 2019 shall remain subject to this Interlocal Agreement irrespective of whether all 55 affordable housing units contemplated herein receive Certificates of Occupancy.

**Section 4. NOTIFICATION:** The City of Marathon shall immediately notify Monroe County of any assignment(s) and successor(s) in interest or title to Key Vaca, LLC for the duration of Key Vaca, LLC's interest(s) in the affordable housing ROGO allocation contemplated herein, and shall immediately notify Monroe County of any assignment(s) and successor(s) in interest or title to the affordable housing ROGO allocations contemplated herein above at least thirty (30) business days prior to the date of such transfer or succession by certified U.S. Postal Service Certified mail to the Monroe County Planning & Environmental Resources Senior Director. The City of Marathon shall further provide prompt written notice to Monroe County of the extension, termination, or expiration of the aforesaid Conditional Use Permit for project contemplated herein. The City of Marathon shall further provide prompt written notice to Monroe County of the issuance of Certificates of Occupancy for the subject affordable housing units within thirty (30) business days after issuance of said Certificates.

All such notices under this Section ("**Section 4.**") shall be sent to the following addresses:

Monroe County County Administrator  
1100 Simonton Street, Key West, FL 33040; and

Monroe County Planning & Environmental Resources Department  
**Attn: Senior Director**  
**Subject:** City of Marathon Interlocal Agreement  
2798 Overseas Highway, Marathon, FL 33050; and

With a copy to:

Monroe County Attorney's Office  
**Attn:** County Attorney  
**Subject:** City of Marathon Interlocal Agreement  
P.O. Box 1026  
Key West, FL ~~33040~~ 33041

Failure of the City of Marathon or Key Vaca, LLC, or their assign(s) or successor(s) in interest or title, to perform any act required by this Interlocal Agreement shall neither impair nor limit the validity of this Agreement or limit its enforceability in any way.

**Section 5. CONSTRUCTION AND INTERPRETATION:** The construction and interpretation of this Interlocal Agreement and Monroe County Code(s) provisions in arising from, related to, or in connection with this Agreement, shall be deferred in favor of Monroe County and such construction and interpretation shall be entitled to great weight on trial and on appeal.



**Section 6. NO WAIVER:** Monroe County shall not be deemed to have waived any rights under this Interlocal Agreement unless such waiver has been expressly and specifically provided.

**Section 7. LIMITATION OF LIABILITY:** In the event of any litigation related to, arising from, or in connection with this Interlocal Agreement, the parties hereto and Key Vaca, LLC, and its assignees and successors-in-interest, hereby agree to expressly waive their right to a jury trial.

**Section 8. DUTY TO COOPERATE:** When required to under this Interlocal Agreement, the City of Marathon and Key Vaca, LLC, and its assignees and successors-in-interest, shall, to ensure the implementation of the government purpose furthered by this Agreement, cooperate with Monroe County's reasonable requests, regarding the conditions and provisions contained herein.

**Section 9. GOVERNING LAWS/VENUE:** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida and the United States. Exclusive venue for any dispute arising under this Agreement shall be in the Sixteenth Judicial Circuit in and for Monroe County, Florida. In the event of any litigation, the prevailing party is entitled to a reasonable attorney's fee and costs. This Agreement is not subject to arbitration.

**Section 10. NONDISCRIMINATION:** The parties agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, or national origin; (2) Section 504 of the Rehabilitation Act of 1973, as amended (42 U.S.C. s. 11913), which prohibits discrimination on the basis of age; (3) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (4) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (5) The Public Health Service Act of 1912, ss. 523 and 527 (42 U.S.C. ss. 290 dd-3 and 290 ee(03)), as amended, relating to confidentiality of alcohol and drug abuse patient records; (6) The Americans With Disabilities Act of 1990 (42 U.S.C. s. 1201 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; (7) The Civil Rights Act of 1992 (Chapter 760, Florida Statutes, and Section 509.021, Florida Statutes), as may be amended from time to time, relating to non-discrimination; and (8) any other nondiscrimination provisions in any federal or state statutes or local ordinances which may apply to the parties to, or the subject matter of, this Agreement.

**Section 11. CODE OF ETHICS:** The parties agree that their officers and employees recognize and will be required to comply with the standards of conduct relating to public officers and employees as delineated in Section 112.313, Florida Statutes regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position; conflicting employment or contractual relationship; and disclosure or

use of certain information.

**Section 12. NO SOLICITATION/PAYMENT:** The parties warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not been paid or agreed to pay any person, company, corporation, individuals, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach of violation of this provision, each party agrees that the other party shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

**Section 13. SUBORDINATION:** This Agreement is subordinate to the laws and regulations of the United States and the State of Florida, whether in effect on commencement of this Interlocal Agreement or adopted after that date.

**Section 14. INCONSISTENCY:** If any item, condition, or obligation of this Agreement is in conflict with other items of this Agreement, the inconsistencies shall be construed so as to give meaning to those terms which limited the County's responsibility or liability.

**Section 15. PUBLIC ACCESS TO RECORDS:** The parties shall allow and permit members of the public reasonable access to, and inspection of, all documents, papers, letters or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the parties in conjunction with this Agreement.

**Section 16. NON-RELIANCE BY THIRD-PARTIES:** Other than as stated herein, no person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the parties agree that neither the County nor the City, or any agent, officer, or employee of each shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

**Section 17. NO PERSONAL LIABILITY:** No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of a party in his or her individual capacity, and no member, officer, agent or employee of a party shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

**Section 18. NOTICES:** In addition to those communications and notice requirements set forth in Section 4. of this Agreement, all notices and other communications hereunder must be in writing and addressed as follows, or to any other address which either party may designate to the other party by mail:

If to Monroe County:

Roman Gastesi, Jr., County Administrator  
Monroe County Historic Gato Building  
1100 Simonton Street  
Key West, Florida 33040; and

Planning & Environmental Resources Department  
**Attn: Senior Director**  
**Subject: City of Marathon Interlocal Agreement**  
2798 Overseas Highway, Marathon, FL 33050; and

With a copy to:

Monroe County Attorney's Office  
**Attn: County Attorney**  
**Subject: City of Marathon Interlocal Agreement**  
P.O. Box 1026  
Key West, FL ~~33040~~ 33041

If to the City:

City Manager  
9805 Overseas Highway  
Marathon, Florida 33050

George Garrett, Planning Director  
9805 Overseas Highway  
Marathon, Florida 33050

With a copy to:

David Migut, Esquire  
City Attorney  
9805 Overseas Highway  
Marathon, FL 33050

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

**Section 15. ENTIRE AGREEMENT/MODIFICATION/AMENDMENT:** 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. 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.

**Section 16. Inconsistency, Partial Invalidity, Severability, and Survival of Provisions:** If any condition or provision hereunder, or any portion thereof, is/are held to be invalid or unenforceable in or by any administrative hearing officer or court of competent jurisdiction, the invalidity or unenforceability of such condition(s) or provision(s) shall neither limit nor impair the operation, enforceability, or validity of any other condition or provision hereunder, or remaining portions thereof. All such other condition(s) or provision(s), or portions thereof, shall continue unimpaired in full force and effect.

**Section 17. Captions and Paragraph Headings:** Captions and paragraph headings, where used herein, are inserted for convenience only and are not intended to descriptively limit the scope and/or intent of the particular paragraph or text to which they refer.

**Section 18. Authority to Attest:** Each party to this Interlocal Agreement represents and warrants to the other that the execution, delivery, and performance of this Agreement has been duly authorized by all necessary corporate and other organizational action, as required.

**Section 19. MISCELLANEOUS:** Each party represents and warrants to the other that the execution, delivery, and performance of this Agreement has been duly authorized by all necessary corporate or other organizational action, as required.

**Section 20. COUNTERPARTS:** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

**Section 21. EFFECTIVE DATE:** This Agreement shall take effect on the date set forth above.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.



(SEAL)

ATTEST: KEVIN MADOK, CLERK

By: Kevin Madok o.c.  
Clerk

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By: George Neugent  
Mayor

Date: August 16, 2017

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: Stewart  
Assistant County Attorney

ATTEST:

THE CITY OF MARATHON, FLORIDA

By: Diane Claver  
DIANE CLAVER  
City Clerk

By: R. Daniel Ziegler  
Mayor  
Date: 7-12-17

(City Seal)

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

By: David Migut  
David Migut, City Attorney



ATTACHMENT "A"

FILE # 1402B41  
BK# 1942 PG# 541

All that property deeded to the grantor by that Warranty Deed recorded in Official Records Book 1092 page 2353 of the Public Records of Monroe County, Florida, more particularly described as follows:

Lots 1, 2, 3 and 4, THOMPSON & ADAMS SUBDIVISION, according to the Plat thereof recorded Plat Book 2, Page 24, of the Public Records of Monroe County, Florida.

Also

A parcel of Bay Bottom land in the Bay of Florida at Key Vaca, Monroe County, Florida, north of and adjacent to Lots 1, 2, 3 and 4 of "THOMPSON-ADAMS SUBDIVISION", as recorded in Plat Book 2, Page 24, Monroe County, Florida Records, said bay bottom land also being in Section 10, Township 66 South, Range 32 East, and more particularly described as follows:

Commencing at the intersection of the East line of Section 10, Township 66, South, Range 32 East, and the northerly right-of-way line of Old State Highway No. 4A, run southwestwardly along the northerly right-of-way line of Old State Highway No. 4A for a distance of 1259.44 feet to a point; thence with a deflected angle to the right of 105 degrees and 40' and north for a distance of 850 feet, more or less, to the northwest corner of Lot 1 of said "THOMPSON-ADAMS" Subdivision, said corner also to be known as the Point of Beginning of the bay bottom land hereinafter described; from said point beginning continue north for a distance of 250 feet, more or less; thence at right angles and easterly for a distance of 403.89 feet to a point; thence at right angles and south for a distance of 210 feet, more or less to the shoreline; thence meander the shoreline in a northwesterly, southeasterly and southwestwardly

~~direction for a distance of 600 feet, more or less, to the Point of Beginning.~~

Also

Part of Government Lot 1, Section 10, Township 66 South, Range 32 East and more particularly described as follows:

Commencing at a point where the Westerly boundary line of Lot 1 of THOMPSON & ADAMS Subdivision, plat of which is recorded in Plat Book 2, Page 24 of Monroe County, Florida Records, intersects with the Northern boundary line of the right-of-way of U.S. Highway No. 1 of said plat and running thence along the Northern boundary of said highway in a Northeasterly direction 209.74 feet to a point where the East boundary line of Lot 2 of said plat intersects with the northern boundary of said highway; thence running at a straight angle with the Eastern boundary line of said Lot 2 in a southerly direction 66 feet, more or less, to the former right-of-way of the F.S.C. Ry. Company and which is the present right-of-way of the Overseas Road and Toll Bridge District;

thence along the northern boundary of said Overseas Road and Toll Bridge District's right-of-way 209.74 feet;

thence north to the point of Beginning.

Also

Part of Government Lot 1, Section 10, Township 66 South, Range 32 East and more particularly described as follows:



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BK# 1942 PG# 542

Commencing at a point where the Westerly boundary line of Lot 3 of THOMPSON & ADAMS Subdivision, plat of which is recorded in Plat Book 2, Page 24 of Monroe County, Florida Records, intersects with the Northern Boundary line of the right-of-way of U.S. Highway No. 1 of said plat and running thence along the Northern boundary of said highway in a Northeastly direction 209.74 feet to a point where the East boundary line of Lot 4 of said plat intersects with the Northern boundary of said highway; thence running at a straight angle with the Eastern boundary of said Lot 4 in a Southerly direction 66 feet, more or less, to the former right-of-way of the F.B.C. Ry. Company and which is now the present right-of-way of the Overseas Road & Toll Bridge District; thence along the Northern boundary line of the right-of-way of said Overseas Road & Toll Bridge District 209.74 feet; thence north to the Point of Beginning.

A parcel of bay bottom land in the Bay of Florida in Section 10, Township 66 South, Range 32 East, north of lots 1, 2, 3 and 4 of THOMPSON-ADAMS Subdivision at Key Vaca, Monroe County, Florida and being more particularly described by metes and bounds as follows:

Commencing at the intersection of the East line of Section 10, Township 66 South, Range 32 East, and the Northwestly right-of-way line of Old State Highway No. 4A, bear Southwestly along the Northwestly right-of-way line of Old State Highway 4A for a distance of 1258.44 feet to a point; thence bear North for a distance of 1110 feet to the Point of Beginning of the parcel of bay bottom land hereinafter described; from said Point of Beginning, continue bearing North for a distance of 600 feet to a point; thence bear East for a distance of 403.89 feet to a point; ~~thence bear South for a distance of 600 feet to a point; thence bear West for a distance of 403.89 feet, back to the Point of Beginning.~~  
thence bear West for a distance of 403.89 feet, back to the Point of Beginning.

**EXCEPT**

A parcel of bay bottom land in the Bay of Florida in Section 10, Township 66 South, Range 32 East, North of Lots 1, 2, 3 and 4 of THOMPSON-ADAMS Subdivision, at Key Vaca, Monroe County, Florida, and being more particularly described by metes and bounds as follows:

Commencing at the intersection of the East line of Section 10, Township 66 South, Range 32 East, and the Northwestly right-of-way line of Old State Highway 4A, bear Southwestly along the Northwestly right-of-way line of Old State Highway No. 4A for a distance of 1258.44 feet to a point; thence bear North for a distance of 1710 feet to a point; thence bear East along a line which is the northerly boundary line of the parcel of bay bottom land hereinafter described and is the line constituting the Point of Beginning of such description, to-wit:  
From said northerly boundary line of beginning bear South on a line running parallel with and 4 feet West of the West side of LITTLE EMMA ISLAND, GOVERNMENT Lot 7

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BX#1942 PG#543

and thence continuing south on such line to a point 4 feet southwest of said island;  
thence bear east to a point 20 feet southeast of said island;  
thence north to the said northerly boundary line of beginning;  
thence bear West along said northerly boundary line to the Point of Beginning.

**ALSO EXCEPTING**

A tract of filled in land in the Bay of Florida, north of Lot 1 and a part of Lot 2 of "THOMPSON-ADAMS SUBDIVISION", as recorded in Plat Book 2, Page 24 of the Public Records of Monroe County, Florida and being more particularly described by metes and bounds as follow:

Commencing at the Southwest corner of Lot 1, bear North along the West line of Lot 1, and Lot 1 extended North, for a distance of 936.95 feet to the Point of Beginning of the tract of land hereinafter described;  
from said Point of Beginning, continue bearing North for a distance of 135 feet, more or less, to a point on the shoreline;  
thence bear East, 112.18 feet, more or less, to the West side of an existing canal;  
thence bear South along the West side of said existing canal for a distance of 135 feet, more or less, to a point which is bearing due East from the Point of Beginning;  
thence bear West for a distance of 112.18 feet, back to the Point of Beginning.  
And that portion of bay bottom land which lies Northerly of and contiguous to said UPLAND 112.18 feet by 135 feet parcel,

**ALSO EXCEPTING**

A part of Old State Road 4A and a part of Lot 1 of "THOMPSON-ADAMS SUBDIVISION", as recorded in Plat Book 2, Page 24 of the Public Records of Monroe County, Florida and being more particularly described by metes and bounds as follows:

Commencing at the Southwest corner of Lot 1, said corner to be known as the Point of Beginning of that part of Lot 1, hereinafter described, bear North along the west line of Lot 1, 391.95 feet; thence bear East, 30 feet; thence bear South, 952.09 feet to the Southerly right-of-way line of Old State Road 4A; thence bear South 74 degrees 20' West, along the Southerly right-of-way line of Old State Road 4A, 31.16 feet; thence bear North, 68.55 feet, back to the Point of Beginning.

**ALSO EXCEPTING**

Fourteen parcels of land lying in part of Lots 1 and 2 of "THOMPSON-ADAMS SUBDIVISION", Plat Book 2, Page 24, described as follows:

Commencing at the Southwest corner of Lot 1, bear North 591.95 feet;  
thence bear East, 30 feet;





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thence bear South, 135 feet to the POINT OF BEGINNING, of the parcel of land hereinafter described; from said POINT OF BEGINNING, continue bearing South, 45 feet;  
thence bear East, 82 feet, more or less, to a canal;  
thence bear North 45 feet, more or less, along said canal to a point which is bearing East from the Point of Beginning;  
thence bear West, 82 feet, more or less, back to the "POINT OF BEGINNING".

AND

Commencing at the Southwest Corner of Lot 1, bear North, 891.95 feet;  
thence bear East 30 feet;  
thence bear South 45 feet to the POINT OF BEGINNING of the parcel of land hereinafter described; from said POINT OF BEGINNING, continue bearing South 45 feet;  
thence bear East 82 feet, more or less, to a canal;  
thence bear North, along said canal, 45 feet, more or less, to a point which is bearing East from the Point of Beginning;  
thence bear West, 82 feet, more or less, back to the "POINT OF BEGINNING".

AND

Commencing at the Southwest Corner of Lot 1, bear North 891.95 feet;  
thence bear East, 30 feet;  
thence bear South 45 feet to the POINT OF BEGINNING of the parcel of land hereinafter described; from said POINT OF BEGINNING, continue bearing South 45 feet;  
thence bear East 82 feet, more or less, to a canal;  
thence bear North, 45 feet, more or less, along said canal to a point which is bearing East from the POINT OF BEGINNING; thence bear West, 82 feet, more or less, back to the POINT OF BEGINNING.

AND

Commencing at the Southwest corner of Lot 1, bear North 74 degrees and 20 minutes East, 31.16 feet;  
thence bear North 298.54 feet to the POINT OF BEGINNING of the parcel of land hereinafter described; from said POINT OF BEGINNING, continue bearing North, 45 feet; thence bear East, 57 feet, more or less, to the edge of an existing boat basin; thence bear South 12.5 feet; thence bear East 25 feet, more or less, to a point on the shoreline of an existing canal and basin; thence bear South 32.5 feet to a point which is bearing East from the POINT OF BEGINNING, thence bear West, 82 feet, more or less, back to the POINT OF BEGINNING.

AND

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Commencing at the Southwest corner of Lot 1, bear North 74 degrees and 20 minutes East, 15.58 feet;  
thence bear North, 338.54 feet to the POINT OF BEGINNING of the parcel of land hereinafter described; from said POINT OF BEGINNING, continue bearing North 45 feet;  
thence bear East, 57 feet, more or less, to a boat basin;  
thence bear South, 12.9 feet;  
thence bear East, 25 feet, more or less, to a canal;  
thence bear South, along said canal, 33 feet, more or less, to a point which is bearing East from the POINT OF BEGINNING;  
thence bear West, 82 feet, back to the POINT OF BEGINNING.

AND

Commencing at the Southwest corner of Lot 1, bear North 74 degrees and 20 minutes East, 31.16 feet;  
thence bear North, 343.54 feet to the POINT OF BEGINNING of the parcel of land hereinafter described;  
thence continue North, 45 feet;  
thence bear East, 82 feet, more or less, to a canal;  
thence bear Southerly along said canal 33 feet, more or less, to a Boatlip;  
thence bear West, along said Boatlip, 25 feet, more or less;  
thence bear South, along said Boatlip, 12.5 feet to a point which is bearing East from the POINT OF BEGINNING;  
thence bear West, 57 feet, more or less, back to the POINT OF BEGINNING.

AND

Commencing at the Southwest corner of Lot 1, bear North 74 degrees and 20 minutes East, 31.16 feet;  
thence bear North, 388.54 feet to the POINT OF BEGINNING of the parcel of land hereinafter described;  
thence continue bearing North 45 feet;  
thence bear East, 57.46 feet to a Boatlip;  
thence bear South, 19.93 feet, along said Boatlip;  
thence bear East, 27.09 feet to a canal;  
thence bear Southerly along said canal, 25.07 feet to a point which is bearing East from the Point of Beginning;  
thence bear West, 82 feet, more or less, back to the POINT OF BEGINNING.

AND

Commencing at the Southwest corner of Lot 1, bear North 74 degrees and 20 minutes East, 31.16 feet;



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thence bear North, 433.54 feet to the POINT OF BEGINNING of the parcel of land hereinafter described; from said POINT OF BEGINNING;

continue bearing North 45 feet;  
thence bear East, 82 feet, more or less, to a canal;  
thence bear Southerly along said canal, 32.59 feet to a Boatlip;  
thence bear West, along said Boatlip, 27.9 feet, thence bear South, 12.47 feet to a point which is bearing East from the POINT OF BEGINNING, thence bear West, 57.46 feet, back to the POINT OF BEGINNING.

AND

Commencing at the Southwest Corner of Lot 1, bear North 74 degrees, 20' East, 31.16 feet;  
thence bear North 523.54 feet to a POINT OF BEGINNING of the parcel of land hereinafter described;  
thence continue North, 45 feet;  
thence bear East, 37 feet, more or less, to a canal;  
thence bear Southerly along said canal 31 feet to a Boatlip;  
thence bear West, along said Boatlip, 30.19 feet;  
thence bear South, along said Boatlip, 12.27 feet to a point which is bearing East from the POINT OF BEGINNING;  
thence bear West 57 feet, more or less, back to the POINT OF BEGINNING.

AND

Commencing at the Southwest corner of Lot 1, bear North 74 degrees, 20' East, 31.16 feet;  
thence bear North 478.54 feet to the POINT OF BEGINNING of the parcel of land hereinafter described;  
thence continue bearing North, 45 feet;  
thence bear East 57 feet, more or less, to a Boatlip;  
thence bear South along said Boatlip, 12.53 feet;  
thence bear East, along said Boatlip, 29.9 feet to a canal;  
thence bear Southerly along said canal 32 feet, more or less, to a point which is bearing East, from the POINT OF BEGINNING;  
thence bear West, 85 feet, more or less, back to the POINT OF BEGINNING.

AND

Commencing at the Southwest corner of Lot 1, bear North, 891.95 feet;  
thence bear East, 30 feet;  
thence bear South, 180 feet to the POINT OF BEGINNING of the parcel of land hereinafter described; from said POINT OF BEGINNING, continue bearing South, 45 feet;



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thence bear East, 82 feet, more or less, to a canal;  
thence bear North 45 feet, more or less, along said canal to a point which is bearing East  
from the POINT OF BEGINNING;  
thence bear West, 82 feet, more or less back to the "POINT OF BEGINNING";  
together with any and all riparian rights therewith belonging or appertaining.

AND

Commencing at the Southwest corner of Lot 1, bear North 74 degrees, 25' East, 31.16  
feet;  
thence bear North 613.54 feet to the POINT OF BEGINNING of the parcel of land  
hereinafter described;  
thence continue bearing North 45 feet;  
thence bear East 84 feet, more or less, to a canal;  
thence bear southerly along said canal 32 feet, more or less, to a boatslip;  
thence bear West along said Boatslip 31.7 feet;  
thence bear South along said Boatslip 12.1 feet to a point which is bearing East from the  
POINT OF BEGINNING;  
thence bear West 57 feet, more or less, back to the POINT OF BEGINNING.

AND

Commencing at the Southwest corner of Lot 1, bear North 74 degrees and 20 minutes  
East, 31.16 feet;  
thence bear North, 568.54 feet to the POINT OF BEGINNING of the parcel of land  
hereinafter described;  
thence continue bearing North, 45 feet;  
thence bear East, 57 feet, more or less, to a Boatslip;  
thence bear South, along said Boatslip, 12.6 feet;  
thence bear East, along said Boatslip, 31.67 feet to a canal;  
thence bear Southerly, along said canal, 32 feet, more or less, to a point which is bearing  
East from the POINT OF BEGINNING;  
thence bear West, 87 feet, more or less, back to the POINT OF BEGINNING.

AND

Commencing at the Southwest Corner of Lot 1, bear North, 891.95 feet to the POINT OF  
BEGINNING of the parcel of land hereinafter described; from said POINT OF  
BEGINNING, continue bearing North, 45 feet;  
thence bear East, 112 feet, more or less, to a canal;  
thence bear South, 45 feet, more or less, along said canal to a point which is East from the  
POINT OF BEGINNING;  
thence bear West, 112 feet, more or less, back to the POINT OF BEGINNING.

FILE #1402941  
BK#1942 PG#540

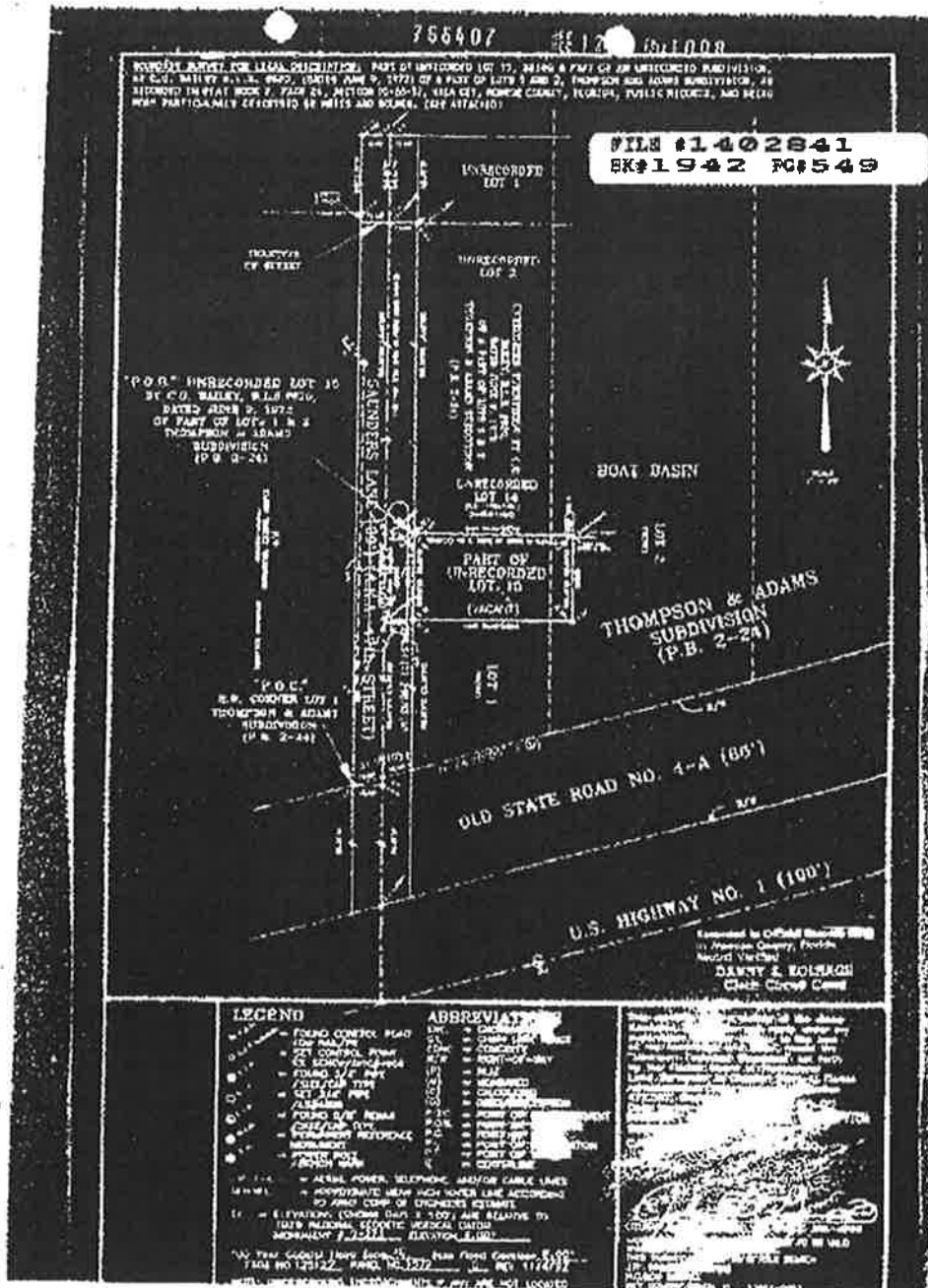
Less that property conveyed by the Grantor in Warranty Deed recorded in Official Records Book 1240, page 1006 of Public Records of Monroe County, Florida, more particularly described as follows:

Part of unrecorded Lot 15, being a part of an unrecorded subdivision, by C.G. Bailey R.L.S. #620, (Dated June 9, 1972) of a part of Lots 1 and 2, THOMPSON AND ADAMS SUBDIVISION, as recorded in Plat Book 2, Page 24, Section 10-66-32, Vaca Key, Monroe County, Florida, Public Records, and being more particularly described by metes and bounds as follows:

Commencing at the Southwest corner of Lot 1, THOMPSON AND ADAMS SUBDIVISION, bear North 74 degrees, 20 minutes, 00 seconds East along the Northerly right-of-way of Old State Road 4A, 31.16 feet to the East right-of-way line of Saunders Lane, as recorded in official Records Book 464, Page 324 of said Public Records;  
thence bear North along said right-of-way line, 298.54 feet to the southwest corner of Lot 14 of said unrecorded subdivision and as recorded in official Records Book 1170, Page 1481, and the POINT OF BEGINNING of unrecorded Lot 15;  
thence bear East along the South line of said unrecorded Lot 14, 82.00 feet to the mean high water line of an existing boat basin;  
thence bear South 45.00 feet;  
thence bear West 82.00 feet to the said East right-of-way line of said Saunders Lane  
thence bear North along said right-of-way line, 43.00 feet, to the POINT OF BEGINNING.  
CONTAINING 3690 +/- SQUARE FEET

SEE ATTACHED SURVEY DATED 11/20/92 BY JOHN PAUL GRIMES, III,  
FLORIDA REGISTERED LAND SURVEYOR #4906.

*[Handwritten mark]*





FILE #1402843  
BK#1942 PGS 50

Less that property deeded by the Grantor by Warranty Deed recorded in Official Records Book 1188 page 1401 of the Public Records of Monroe County, Florida, more particularly described as follows:

Parcel of land being a part of Lot 4, THOMPSON AND ADAMS SUBDIVISION, as recorded in Plat Book 2, Page 24, and filled bay bottom land as recorded in Official Records Book 762, Page 244, Vaca Key, Monroe County, Florida, Public Records and being further described as follows:

Commencing at the Southeast corner of Lot 4 of said THOMPSON AND ADAMS SUBDIVISION, bear North along the East line of said Lot 4, 648.82 feet to the Northeast corner of Parcel "A" as recorded in Official Record Book 1099, Page 1999 and the POINT OF BEGINNING; thence bear West along the North line of said Parcel "A", 100.97 feet, to the West line of said Lot 4; thence bear North along the West line of said Lot 4, 424.35 feet, to the mean high water line of the Gulf of Mexico, (also known as Florida Bay); thence meander the mean high water line in a generally easterly and then southerly direction on the following seventeen (17) descriptive courses:

1. Thence North 89 degrees, 56 minutes, 18 seconds East, 51.04 feet;
2. Thence South 69 degrees, 49 minutes, 54 seconds East, 25.32 feet;
3. Thence South 39 degrees, 51 minutes, 43 seconds East, 13.12 feet;
4. Thence South 02 degrees, 34 minutes, 41 seconds West, 31.30 feet;
5. Thence South 00 degrees, 27 minutes, 47 seconds West, 51.13 feet;
6. Thence South 03 degrees, 51 minutes, 22 seconds West, 57.41 feet;
7. Thence South 01 degrees, 12 minutes, 06 seconds East, 17.60 feet;
8. Thence North 89 degrees, 11 minutes, 24 seconds East, 3.60 feet;
9. Thence South 06 degrees, 53 minutes, 22 seconds East, 18.99 feet;
10. Thence South 80 degrees, 51 minutes, 55 seconds East, 10.21 feet;
11. Thence North 27 degrees, 58 minutes, 39 seconds East, 14.35 feet;
12. Thence South 00 degrees, 00 minutes, 12 seconds West, 24.87 feet;
13. Thence South 03 degrees, 22 minutes, 43 seconds West, 42.78 feet;
14. Thence South 03 degrees, 24 minutes, 34 seconds East, 47.08 feet;
15. Thence South 02 degrees, 01 minutes, 17 seconds West, 51.03 feet;
16. Thence South 04 degrees, 03 minutes, 06 seconds West, 24.06 feet;
17. Thence South 11 degrees, 46 minutes, 11 seconds East, 17.47 feet, to the East line of said Lot 4; thence bear South, along the East line of said Lot 4, 33.9 feet, more or less, back to the POINT OF BEGINNING.

AND

A parcel of bay bottom land, being a portion of the bay bottom land as recorded in Official Record Book 762, Pages 244 to 251; said bay bottom land also being that portion of bay bottom land lying North and East of Parcel "D" as described above, Vaca Key, Monroe County, Florida, Public Records, and being further described as follows:



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BK#1942 PG#551

Commencing at the Southeast corner of Lot 4 of said THOMPSON AND ADAMS SUBDIVISION, bear North along the East line of said Lot 4, 682.42 feet to the mean high water line and the POINT OF BEGINNING; from said POINT OF BEGINNING bear North, along the East line of said bay bottom as recorded in Official Record Book 762, Pages 244 to 251, 514 feet, more or less, to the Northeast corner of said bay bottom; thence bear West, along the North line of said bay bottom, 100.97 feet, more or less, to its intersection with the West line of said Parcel "D" projected North, thence bear South along said west line of Parcel "B" projected North, 524 feet, more or less, to the mean high water line of the Gulf of Mexico (also known as the Florida Bay), being the Northwest corner of said Parcel "D"; thence meander the mean high water line in a generally Easterly and then Southerly direction on the following seventeen (17) descriptive courses:

1. Thence North 89 degrees, 56 minutes, 18 seconds East, 51.04 feet;
2. Thence South 69 degrees, 49 minutes, 54 seconds East, 25.32 feet;
3. Thence South 39 degrees, 51 minutes, 43 seconds East, 13.12 feet;
4. Thence South 02 degrees, 34 minutes, 41 seconds West, 31.30 feet;
5. Thence South 00 degrees, 27 minutes, 47 seconds West, 51.13 feet;
6. Thence South 03 degrees, 51 minutes, 22 seconds West, 57.41 feet;
7. Thence South 01 degrees, 18 minutes, 06 seconds East, 17.60 feet;
8. Thence North 89 degrees, 11 minutes, 24 seconds East, 3.60 feet;
9. Thence South 06 degrees, 53 minutes, 22 seconds East, 18.99 feet;
10. Thence South 80 degrees, 51 minutes, 53 seconds East, 10.21 feet;
11. Thence North 27 degrees, 58 minutes, 39 seconds East, 14.35 feet;
12. Thence South 00 degrees, 00 minutes, 12 seconds West, 24.87 feet;
13. Thence South 03 degrees, 22 minutes, 43 seconds West, 42.78 feet;
14. Thence South 03 degrees, 24 minutes, 34 seconds East, 47.08 feet;
15. Thence South 02 degrees, 01 minutes, 17 seconds West, 31.03 feet;
16. Thence South 04 degrees, 03 minutes, 06 seconds West, 24.06 feet;
17. Thence South 11 degrees, 46 minutes, 11 seconds East, 17.47 feet, more or less, to the East line of said Lot 4 and the POINT OF BEGINNING.

Together with easement rights for ingress and egress as to the real property particularly described as follows:

**EASEMENT "A"**

Situated in the County of Monroe and State of Florida and known as being a 25 foot wide easement over and upon a portion of Old State Highway 4-A, and over and upon a portion of Lot 4 of THOMPSON AND ADAMS SUBDIVISION of a part of Government Lot 1, Section 10, Township 66 South, Range 32 East on Key Vaca as shown by Plat recorded in Plat Book 2, Page 24 of Monroe County, Florida, Public Records and more particularly described as follows:



FILE #1402841  
BK#1942 PG#552

COMMENCING on the southerly right-of-way line of Old State Highway 4-A at its intersection with the southerly prolongation of the West line of Lot 4 of THOMPSON AND ADAMS SUBDIVISION as shown by Plat recorded in Plat Book 2, Page 24 of Monroe County, Florida Public Records, said southerly right-of-way line being also the northerly right-of-way line of U.S. Highway No. 1, and said intersection being also the POINT OF BEGINNING of the Easement herein intended to be described; from said POINT OF BEGINNING bear North 68.55 feet to the southwesterly corner of said Lot 4, said southwesterly corner being located upon the northerly right-of-way line of said Old State Highway 4-A; thence continue bearing North along the West line of said Lot 4, 334.62 feet; thence bear southeasterly along the arc of a curve deflecting to the left, 52.58 feet, said curve having a radius of 50.49 feet, the chord of which bears South 29 degrees, 50 minutes, 11 seconds East 50.24 feet, thence bear South 352.57 feet to a point on the said southerly right-of-way line of Old State Road No. 4-A; thence bear South 74 degrees, 20 minutes, 00 seconds West along said right-of-way line 25.96 feet back to the POINT OF BEGINNING.

ALSO

EASEMENT "B"

Situated in the County of Monroe and State of Florida and known as being a 25 foot wide easement over and upon a portion of Old State Highway 4-A; and over and upon a portion of Lot 4 of THOMPSON AND ADAMS SUBDIVISION of a part of Government Lot 1, Section 19, Township 66 South, Range 32 East on Key Vaca as shown by plat recorded in Plat Book 2, Page 24 of the Monroe County, Florida, Public Records, and more particularly described as follows:

COMMENCING on the southerly right-of-way line of Old State Highway 4-A at its intersection with the southerly prolongation on the East line of Lot 4 of THOMPSON AND ADAMS SUBDIVISION as shown by Plat recorded in Plat Book 2, Page 24 of Monroe County, Florida Public Records, said southerly right-of-way line of U.S. Highway No. 1, and said intersection being also the POINT OF BEGINNING of the Easement herein intended to be described; from said POINT OF BEGINNING bear North 68.55 feet to the southeasterly corner of said Lot 4, said southeasterly corner being located upon the northerly right-of-way line of said Old State Highway 4-A; thence continue bearing North along the East line of said Lot 4, 230.29 feet to a point of curvature thereon; thence bear northwesterly along the arc of a curve, deflecting to the left 79.31 feet, said curve having a radius of 50.49 feet, the chord of which bears North 45 degrees, 00 minutes, 00 seconds West 71.40 feet to a point of inflection; thence continue Northwesterly on the arc of a curve, deflecting to the right 46.93 feet, said curve having a radius of 25.49 feet, the chord of which bears North 45 degrees, 00 minutes, 00 seconds West 36.05 feet to a point of tangency; thence bear South 43.58 feet; thence bear southeasterly on the arc of a curve, deflecting to the left, 26.73 feet, said curve having a radius of 25.49 feet, the chord of which bears South 74 degrees, 50 minutes, 10 seconds



FILE #1402841  
BK# 1942 PG# 553

East 26.41 feet to a point of inflection; thence continue southeasterly on the arc of a curve, deflecting to the right, 40.03 feet, said curve having a radius of 25.49 feet, the chord of which bears South 45 degrees, 00 minutes, 00 seconds East 36.05 feet to a point of tangency; thence bear South 305.85 feet to a point on the said southerly right-of-way line of Old State Road No. 4-A; thence bear North 74 degrees, 20 minutes, 00 seconds East along said right-of-way line 25.96 feet back to the POINT OF BEGINNING.

ALSO

EASEMENT "C"

Situated in the County of Monroe and State of Florida and known as being a 25 foot wide easement over and upon a portion of Lot 4 of THOMPSON AND ADAMS SUBDIVISION of a part of Government Lot 1, Section 10, Township 66 South, Range 32 East on Key Vaca as shown by Plat recorded in Plat Book 2, Page 24 of Monroe County, Florida Public Records, and more particularly described as follows:

COMMENCING on the northerly right-of-way line of Old State Highway 4-A at the southwesterly corner of Lot 4 of THOMPSON AND ADAMS SUBDIVISION as shown by Plat recorded in Plat Book 2, Page 24 of Monroe County, Florida Public Records, bear North along the West line of said Lot 4, 334.61 feet to the POINT OF BEGINNING of the easement herein intended to be described; from said POINT OF BEGINNING continue bearing North along the said West line of Lot 4, 509.93 feet; thence bear East 25.00 feet; thence bear South 353.31 feet; thence bear northwesterly on the arc of a curve deflecting to the right 52.58 feet, said curve having a radius of 50.40 feet, the chord of which bears North 29 degrees, 50 minutes, 11 seconds West 50.24 feet back to the POINT OF BEGINNING.

ALSO

EASEMENT "D"

Being a 15 foot easement over and upon a portion of Lot 3 and 4, THOMPSON AND ADAMS SUBDIVISION, as recorded in Plat Book 2, Page 24, Vaca Key, Monroe County, Florida, Public Records and being further described as follows:

COMMENCING at the southeast corner of Lot 3, bear North along the East line of said Lot 3, 644.54 feet to the Northwest corner of Easement "C" as recorded in Official Record Book 1099, Page 2022 and 2023, and the POINT OF BEGINNING of said 15 foot easement; thence bear West, 7.50 feet to the Southeast corner of Parcel "E" as recorded in Official Record Book 1099, Page 1999 and 2000; thence bear North along the East line of said Parcel "E" and its projection; 298.50 feet; thence bear East 15.00 feet; thence bear South parallel with the East line of said Lot 3, 298.50 feet to the Northerly terminus of said Easement "C"; thence bear West along said Northerly terminus of Easement "C", 7.50 feet, back to the POINT OF BEGINNING.



ALSO

EASEMENT "F"

FILE #1402041  
BK#1942 PG#554

Situated in the County of Monroe and State of Florida and known as being a 25 foot easement over and upon a portion of Lot 4, THOMPSON AND ADAMS SUBDIVISION, as recorded in Plat Book 2, Page 24, Monroe County, Florida Public Records, and being further described as follows:

Commencing at the Southwest corner of said Lot 4, bear North along the West line of said Lot 4, 544.54 feet, to the Northwest corner of Easement "C" as recorded in Official Record Book 1099, Page 2022 and 2023, and the POINT OF BEGINNING of said 25 foot easement; thence continue bearing North along the West line of said Lot 4, 32.67 feet, to the Southwest Corner of Parcel "D" as described above; thence bear East, along the South line of said Parcel "D", 25.00 feet, to the Northwest corner of Parcel "A" as recorded in Official Records Book 1099, Page 1999 and 2000; thence bear South along the West line of said Parcel "A", 32.67 feet; thence bear West, 25.00 feet, back to the POINT OF BEGINNING.

Less that property deceded by the Grantor by Warranty Deed recorded in Official Records Book 1099, Pages 2022-2024 of the Public Records of Monroe County, Florida, more particularly described as follows:

**EASEMENT "A"**

FILE # 1402641  
BK# 1942 PG# 535

Situated in the County of Monroe and State of Florida and known as being a 25 foot wide easement over and upon a portion of Old State Highway 4A, and over and upon a portion of Lot 4 of THOMPSON AND ADAMS SUBDIVISION of a part of Government Lot 1, Section 10, Township 66 South, Range 32 East on Key Vaca as shown by plat recorded in Plat Book 2, Page 24, of Monroe County, Florida, Public Records and more particularly described as follows:

Commencing on the southerly right-of-way line of Old State Highway 4A at its intersection with the southerly prolongation of the West line of Lot 4 of THOMPSON AND ADAMS SUBDIVISION as shown by plat recorded in Plat Book 2, Page 24, of Monroe County, Florida Public Records, said southerly right-of-way line being also the northerly right-of-way line of U.S. Highway No. 1, and said intersection being also the POINT OF BEGINNING of the Easement herein intended to be described; from said POINT OF BEGINNING bear North 68.55 feet to the southwesterly corner of said Lot 4, said southwesterly corner being located upon the northerly right-of-way line of said Old State Highway 4A; thence continue bearing North along the West line of said Lot 4, 334.62 feet; thence bear southeasterly along the arc of a curve deflecting to the left, 52.58 feet, said curve having a radius of 50.49 feet, the chord of which bears South 29 degrees, 50 minutes, 11 seconds East 50.24 feet; thence bear South 352.57 feet to a point on the said southerly right-of-way line of Old State Road No. 4A; thence bear South 74 degrees, 20 minutes, 00 seconds West along said right-of-way line 25.96 feet back to the POINT OF BEGINNING.

The GRANTOR herein expressly retains and reserves to himself, his heirs, executors and assigns, the sole right and option to re-locate the above described Easement "A" at the sole expense of the GRANTOR, his heirs, executors and assigns along, over and across the following described portion of GRANTOR'S property hereinafter referred to as EASEMENT "B". EASEMENT "B" shall be equivalent in condition and construction to the existing road which comprises Easement "A". It is expressly agreed and understood that upon completion of said relocation that Easement "A" shall be extinguished and the parties hereto shall promptly execute an acknowledgment attesting to the extinguishment of said Easement "A" and the completion of Easement "B".

EASEMENT "B" being a 25 foot wide easement over and upon a portion of Old State Highway 4A, and over and upon a portion of Lot 4 of THOMPSON AND ADAMS SUBDIVISION of a part of Government Lot 1, Section 10, Township 66 South, Range 32 East on Key Vaca as shown by plat recorded in Plat Book 2, Page 24 of the Monroe County, Florida, Public Records, and more particularly described as follows:



FILE #1402841  
BK#1942 PG#556

Commencing on the southerly right-of-way line of Old State Highway 4A at its intersection with the southerly prolongation on the East line of Lot 4 of THOMPSON AND ADAMS SUBDIVISION as shown by plat recorded in Plat Book 2, Page 24 of Monroe County, Florida Public Records, said southerly right-of-way line of U.S. Highway No. 1, and said intersection being also the POINT OF BEGINNING of the Easement herein intended to be described; from said POINT OF BEGINNING bear North 68.55 feet to the southeasterly corner of said Lot 4, said southeasterly corner being located upon the northerly right-of-way line of said Old State Highway 4A; thence continue bearing North along the East line of said Lot 4, 230.29 feet to a point of curvature thereon; thence bear Northwesterly along the arc of a curve, deflecting to the left 79.31 feet, said curve having a radius of 50.49 feet, the chord of which bears North 45 degrees, 00 minutes, 00 seconds West 71.40 feet to a point of inflection; thence continue Northwesterly on the arc of a curve, deflecting to the right 40.03 feet, said curve having a radius of 25.49 feet, the chord of which bears North 45 degrees, 00 minutes, 00 seconds West 36.05 feet to a point of tangency; thence bear South 43.58 feet; thence bear Southeasterly on the arc of a curve, deflecting to the left, 26.73 feet, said curve having a radius of 25.49 feet, the chord of which bears South 74 degrees, 50 minutes, 10 seconds East 26.41 feet to a point of inflection; thence continue Southeasterly on the arc of a curve, deflecting to the right, 40.03 feet, said curve having a radius of 25.49 feet, the chord of which bears South 45 degrees, 00 minutes, 00 seconds East 36.05 feet to a point of tangency; thence bear South 305.85 feet to a point on the said Southerly right-of-way line of Old State Road 4A; thence bear North 74 degrees, 20 minutes, 00 seconds East along said right-of-way line 25.96 feet back to the POINT OF BEGINNING.

ALSO

EASEMENT "C"

Situated in the County of Monroe and State of Florida and known as being a 25 foot wide easement over and upon a portion of Lot 4 of THOMPSON AND ADAMS SUBDIVISION of a part of Government Lot 1, Section 10, Township 66 South, Range 32 East on Key Vaca as shown by plat recorded in Plat Book 2, Page 24 of Monroe County, Florida Public Records, and more particularly described as follows:

Commencing on the northerly right-of-way line of Old State Highway 4A at the southwest corner of Lot 4 of THOMPSON AND ADAMS SUBDIVISION as shown by plat recorded in Plat Book 2, Page 24 of Monroe County, Florida Public Records, bear North along the West line of said Lot 4, 334.61 feet to the POINT OF BEGINNING of the easement herein intended to be described; from said POINT OF BEGINNING continue bearing North along the said West line of Lot 4, 309.93 feet; thence bear East 23.60 feet; thence bear South 353.31 feet; thence bear northwesterly on the arc of a curve deflecting to the right 52.58 feet, said curve having a radius of 50.49 feet, the chord of which bears North 29 degrees, 50 minutes, 11 seconds West 50.24 feet back to the POINT OF BEGINNING.



ALSO

EASEMENT "D"

FILE # 1402841  
BK# 1542 PG# 557

Situated in the County of Monroe and State of Florida and known as being an easement over and upon a part of Lots 3 and 4 of being an easement over and upon a part of Lots 3 and 4 of THOMPSON AND ADAMS SUBDIVISION of a part of Government Lot 1, Section 10, Township 66 South, Range 32 East on Key Vaca as shown by plat recorded in Plat Book 2, Page 24 of Monroe County, Florida Public Records, said easement being more particularly described as follows:

Commencing on the northerly right-of-way line of Old State Highway 4A at the southwesterly corner of Lot 4 of THOMPSON AND ADAMS SUBDIVISION as shown by plat recorded in Plat Book 2, Page 24 of Monroe County, Florida, Public Records, bear North along the West line of said Lot 4, 644.54 feet; thence bear West 7.50 feet to the POINT OF BEGINNING of the easement herein intended to be described; from said POINT OF BEGINNING bear North 273.50 feet; thence bear East 15.00 feet; thence bear South 273.50 feet; thence bear West 15.00 feet back to the POINT OF BEGINNING.

(NOTE: Said easement contains the following covenant of the Grantor of the easement)  
By signing and acknowledging below, the GRANTEES herein, for themselves, their heirs, executors and assigns, covenant with the GRANTOR, his heirs, executors and assigns, that the GRANTEES, from time to time, and at all times hereafter agree that they will be responsible for a proportionate share of the maintenance, repair and liability to the aforementioned grants of easement rights of ingress and egress as more specifically stated hereinafter.

Maintenance, repair and liability on Easement "A" and "B" will be the responsibility of the GRANTOR herein, his heirs, executors and assigns and maintenance, repair and liability on Easement "C" and "D" will be the responsibility of the GRANTEES herein, their heirs, executors and assigns. Provided, however, that GRANTOR retains some rights to make necessary and reasonable decisions and determinations regarding required repair and maintenance and future improvements to the easement rights of ingress and egress granted in Easements "A" and "B". Each party agrees to maintain their respective easements so that each easement is suitable to provide for passage and use as herein contemplated. GRANTEES, their heirs, executors, and assigns may at their sole option and expense, make improvements other than in the course of regular repairs and maintenance to the easements which they are responsible for maintaining as set forth to hereinabove. Provided however, that no such improvements shall

hinder or obstruct passage or detrimentally affect any other  
easement rights for ingress or egress granted herein.

ALSO

FILE # 1402841  
BK# 1942 PC# 550

EASEMENT "E"

A one foot (1") wide easement running parallel with the Northern most boundary of  
Parcel A, as more particularly described by metes and bounds as follows, to wit:

EXHIBIT "2"

DESCRIPTION OF PARCEL "A"

Situated in the County of Monroe and State of Florida and known as being a part of Lot 4  
of THOMPSON AND ADAMS SUBDIVISION of a part of Government Lot 1, Section  
10, Township 66 South, Range 32 East on Key Vaca as shown by plat recorded in Plat  
Book 2, Page 24 of Monroe County, Florida Public Records, and more particularly  
described as follows:

COMMENCING on the northerly right-of-way line of Old State Highway 4A, at the  
southeasterly corner of Lot 4 of THOMPSON AND ADAMS SUBDIVISION as shown  
by plat recorded in Plat Book 2, Page 24 of Monroe County, Florida Public Records, bear  
North along the East line of said Lot 4, 230.29 feet to the POINT OF BEGINNING of  
that portion of Lot 4 herein intended to be described; from said POINT OF BEGINNING  
bear northwesterly on the arc of a curve deflecting to the left 79.31 feet, said curve having  
a radius of 50.49 feet, the chord of which bears North 45 degrees, 00 minutes, 00 seconds  
West 71.40 feet to a point of inflection; thence continue northwesterly on the arc of a  
curve, deflecting to the right, 40.03 feet, said curve having a radius of 25.49 feet, the  
chord of which bears North 45 degrees, 00 minutes, 00 seconds West 36.05 feet to a point  
of tangency; thence bear North 342.55 feet; thence bear East 75.97 feet to a point on the  
East line of said Lot 4; thence bear South along the East line of said Lot 4, 418.55 feet  
back to the POINT OF BEGINNING and containing 28,367.63 square feet (0.6512 acres)  
of land.

And from the Northeasterly corner of Parcel "A" continuing approximately 100.91 feet in  
a Westerly direction parallel with the Northernmost boundary of said Parcel "A" for the  
exclusive purpose of erecting a fence. All expenses, repair, maintenance and liability for  
said fence to be borne solely by the GRANTEES herein, their heirs, executors and  
assigns.

The GRANTOR retains the right to make all reasonable decisions and determinations  
regarding required repair and maintenance and future improvements to the  
aforementioned easement rights of ingress and egress granted herein, other than as  
provided hereinabove.

FILE #1402841  
BK#1942 PG#559

The GRANTOR herein expressly reserves to himself, his heirs, executors and assigns the right to use the aforementioned easements across GRANTOR'S land, and the GRANTEE'S herein for themselves, their heirs, executors and assigns agree to the joint use of the above described easement rights of ingress and egress across GRANTOR'S land by GRANTOR, his heirs, executors and assigns.

The aforementioned easements over GRANTOR'S above described land shall run with GRANTOR'S land entitled thereto and be binding on the GRANTOR, his heirs, executors and assigns and any person who shall hereafter acquire title to GRANTOR'S property, and shall also run with GRANTEE'S land entitled thereto and be binding on the GRANTEE'S, their heirs and assigns and any person who shall hereafter acquire title to GRANTEE'S property.

**EXHIBIT "A"**

Lots 1, 2, 3 and 4, THOMPSON & ADAMS SUBDIVISION, according to the Plat thereof recorded in Plat Book 2, Page 24, of the Public Records of Monroe County, Florida.

ALSO

A parcel of bay bottom land in the Bay of Florida at Key Vaca, Monroe County, Florida, north of and adjacent to Lots 1, 2, 3 and 4 of "THOMPSON & ADAMS SUBDIVISION", as recorded in Plat Book 2, Page 24, Monroe County, Florida Records; said bay bottom land also being in Section 10, Township 66 South, Range 32 East, and more particularly described as follows:

Commencing at the intersection of the East line of Section 10, Township 66, South, Range 32 East, and the northerly right-of-way line of Old State Highway No. 4A, run southwesterly along the northerly right-of-way line of Old State Highway No. 4A for a distance of 1258.44 feet to a point; thence with a deflected angle to the right of 105 degrees and 40 minutes and north for a distance of 950 feet, more or less, to the northwest corner of Lot 1 of said "THOMPSON & ADAMS SUBDIVISION", said corner also to be known as the POINT OF BEGINNING of the bay bottom land hereinafter described; from said POINT OF BEGINNING continue north for a distance of 260 feet more or less; thence at right angles and easterly for a distance of 403.89 feet to a point; thence at right angles and south for a distance of 210 feet, more or less to the shoreline; thence meander the shoreline in a northwesterly, southeasterly and southwesterly direction for a distance of 600 feet, more or less, back to the POINT OF BEGINNING.

ALSO

Part of Government Lot 1, Section 10, Township 66 South, Range 32 East and more particularly described as follows:





FILE #1402841  
BK#1942 PG#550

Commencing at a point where the Westerly boundary line of Lot 1 of THOMPSON AND ADAMS SUBDIVISION, a plat of which is recorded in Plat Book 2, Page 24 of Monroe County, Florida Records, intersects with the Northern boundary line of the right-of-way of U.S. Highway No. 1 of said plat and running thence along the Northern boundary of said highway in a Northeasterly direction 209.74 feet to a point where the East boundary line of Lot 2 of said plat intersects with the northern boundary of said highway; thence running at a straight angle with the Eastern boundary line of said Lot 2 in a southerly direction 66 feet, more or less, to the former right-of-way of the F.E.C. Ry. Company and which is the present right-of-way of the Overseas Road and Toll Bridge District; thence along the northern boundary of said Overseas Road and Toll Bridge District's right-of-way 209.74 feet; thence North to the POINT OF BEGINNING.

**ALSO**

Part of Government Lot 1, Section 10, Township 66 South, Range 32 East and more particularly described as follows:

Commencing at a point where the Westerly boundary line of Lot 3 of THOMPSON & ADAMS SUBDIVISION, plat of which is recorded in Plat Book 2, Page 24 of Monroe County, Florida Records, intersects with the Northern Boundary line of the right-of-way of U.S. Highway No. 1 of said plat and running thence along the Northern boundary of said highway in a Northeasterly direction 209.74 feet to a point where the East boundary line of Lot 4 of said plat intersects with the Northern Boundary of said highway; thence running at a straight angle with the Eastern boundary of said Lot 4 in a Southerly direction 66 feet, more or less, to the former right-of-way of the F.E.C. Ry. Company and which is now the present right-of-way of the Overseas Road & Toll Bridge District;

FILE #1402841  
BK#1942 PG#551

Less that property deeded by the Grantor by Warranty Deed recorded in Official Records Book 1189, page 2468 and 2469, of the Public Records of Monroe County, Florida, more particularly described as follows:

A parcel of land, being a part of Lots 2 and 3, THOMPSON AND ADAMS SUBDIVISION, as recorded in Plat Book 2, page 24, Vaca Key, Monroe County, Florida, Public Records, and being further described as follows:

COMMENCING at the Southeast corner of Lot 3, of said THOMPSON AND ADAMS SUBDIVISION, bear North along the East line of said Lot 3, 619.30 feet, to the POINT OF BEGINNING; thence continue bearing North, along the East line of said Lot 3, 25.24 feet, to the Easterly projection of the South line of Parcel "B" as recorded in Official Record Book 1099, page 1999, thence bear West, to and along said South line of Parcel "B", 136.92 feet, more or less, to the mean high water line of an existing canal; thence bear South 10 degrees, 19 minutes, 44 seconds East, along said mean high water line, 25.66 feet, more or less, to a point which is West from the POINT OF BEGINNING; thence bear East, 132.22 feet, more or less, to the POINT OF BEGINNING.



FILE #1402841  
BK#1942 PG#562

RAY BOTTOM DESCRIPTION "C"

A parcel of bay-bottom land, being a portion of the bay-bottom land as recorded in Official Record Book 762, Pages 244 to 251; said bay-bottom land also being that portion of bay-bottom land lying West of a portion of Parcel "B" as recorded in Official Record Book 1099, Page 1999 and 2000, Yaca Key, Monroe County, Florida, Public Records, and being further described as follows:

Commencing at the Southeast corner of Lot 3 of said THOMPSON AND ADAMS SUBDIVISION, bear North along the East line of said Lot 3, 918.04 feet, to a line which is projected East from the most Easterly North corner of Parcel "B" as recorded in Official Record Book 1099, page 1999 and 2000; thence bear West, to and along the Northerly line of said Parcel "B", 101.00 feet; thence bear North along the line of Parcel "B", 73.71 feet; thence bear South 87 degrees, 49 minutes, 49 seconds West, along the most Northerly line of said Parcel "B", 32.58 feet, to the Northwest corner of an existing concrete dock as described in said Parcel "B" and the POINT OF BEGINNING; thence bear South 01 degrees, 22 minutes, 17 seconds East, along the West edge of said concrete dock, 104.27 feet, to the Southwesterly corner thereof; thence bear North 86 degrees, 39 minutes, 21 seconds West, 20.62 feet, to a point in an existing canal on the West line of said bay-bottom as described in Official Records Book 762, Page 244 to 255; thence bear North, 103.04 feet, to a point in said canal, thence bear East 18.09 feet, to the POINT OF BEGINNING.



FILE # 1402841  
BK# 1942 PG# 563

A parcel of land being a part of Lots 2 and 3, THOMPSON AND ADAMS SUBDIVISION, as recorded in Plat Book 2, page 24, and filled bay bottom land, as recorded in Official Records Book 762, page 244, Vaca Key, Monroe County, Florida, Public Records, and being further described as follows:

Commencing at the Southeast corner of Lot 3 of said THOMPSON AND ADAMS SUBDIVISION, bear North along the East line of said Lot 3, 918.04 feet, to a line which is projected East from the most Easterly North corner of Parcel "B" as recorded in Official Record Book 1099, Page 1999 and 2000, and the POINT OF BEGINNING; thence bear West, to and along the Northerly line of said Parcel "B", 101.00 feet; thence bear North, along the line of Parcel "B", 73.71 feet; thence bear South 87 degrees, 49 minutes and 49 seconds West, along the most Northerly line of said Parcel "B", 27.46 feet, to the mean high water line of an existing canal; thence meander the mean high water line in a generally Northerly and the Easterly direction on the following four (4) descriptive courses:

1. Thence North 00 degrees, 31 minutes, 25 seconds West, 94.97 feet;
2. Thence North 59 degrees, 21 minutes, 02 seconds East, 21.87 feet;
3. Thence North 86 degrees, 44 minutes, 19 seconds East, 44.72 feet;
4. Thence North 88 degrees, 08 minutes, 09 seconds East, 65.87 feet, to the East line of said Lot 3; thence bear South, along the East line of said Lot 3, 183.47 feet, more or less, back to the POINT OF BEGINNING.

AND

A parcel of bay bottom land, being a portion of the bay bottom land as recorded in Official Records Book 762, page 244 to 251; said bay bottom land also being that portion of bay bottom land lying North and West of Parcel "E" as described above, Vaca Key, Monroe County, Florida, Public Records, and being further described as follows:

Commencing at the Southeast corner of Lot 3 of said THOMPSON AND ADAMS SUBDIVISION, bear North along the East line of said Lot 3, 918.04 feet to a line which is projected East from the most Easterly North corner of Parcel "B" as recorded in Official Record Book 1099, page 1999 and 2000; thence bear West, to and along the Northerly line of said Parcel "B", 101.00 feet; thence bear North, along the line of Parcel "B", 73.71 feet; thence bear South 87 degrees, 49 minutes, 49 seconds West, along the most Northerly line of said Parcel "B", 27.46 feet, to the mean high water line of an existing canal; and the POINT OF BEGINNING; thence meander the mean high water line in a generally Northerly and then Easterly direction on the following four (4) descriptive courses:

1. Thence North 00 degrees, 31 minutes, 25 seconds West, 94.97 feet;
2. Thence North 59 degrees, 21 minutes, 02 seconds East, 21.87 feet;
3. thence North 86 degrees, 44 minutes, 19 seconds East, 44.72 feet;



4. Thence North 88 degrees, 08 minutes, 09 seconds East, 63.87 feet; to the East line of said Lot 3, thence bear North, along the Northerly projection of the East line of said Lot 3, 524 feet, more or less, to the North line of the bay bottom land as recorded in Official Record Book 762, Pages 244 to 257; thence bear West, along said North line of the bay bottom land, 100 feet, more or less, to the East line of the bay bottom land of Little Emma Island, as recorded in Official Record Book 247, page 535; thence bear South along said East line of said bay bottom land of Little Emma Island, 250 feet, more or less; thence bear West, along the South line of said bay bottom land of Little Emma Island, 50 feet, more or less, to a line which is bearing North from a point which bears West, 23.21 feet, from the POINT OF BEGINNING; thence bear South along said line, 384 feet, more or less, to said point, thence bear East, 23.21 feet, back to the POINT OF BEGINNING.

FILE # 1402841  
BK# 1942 PG# 564



Together with that certain parcel of land to be used as ingress and egress particularly described as follows:

FILE # 1402841  
BK# 1942 PG# 565

**EASEMENT "D"**

Being a 15 foot easement over and upon a portion of Lot 3 and 4, THOMPSON AND ADAMS SUBDIVISION, as recorded in Plat Book 2, page 24, Vaca Key, Monroe County, Florida, Public Records and being further described as follows:

COMMENCING at the Southeast corner of Lot 3, bear North along the East line of said Lot 3, 644.54 feet to the Northwest corner of Easement "C" as recorded in Official Record Book 1099, Page 2022 and 2023, and the POINT OF BEGINNING of said 15 foot easement; thence bear West, 7.50 feet to the Southeast corner of Parcel "B" as recorded in Official Record Book 1099, Page 1999 and 2000; thence bear North along the East line of said Parcel "B" and its projection, 298.50 feet; thence bear East 15.00 feet; thence bear South parallel with the East line of said Lot 3, 298.50 feet to the Northerly terminus of said Easement "C"; thence bear West along said Northerly terminus of Easement "C", 7.50 feet, back to the POINT OF BEGINNING.

Subject to the easement rights as set forth in Deed of Easement filed in Official Records 1099, Page 2022 and further reserving unto the Grantor herein all rights of easement relocation and other rights as set forth in the said Deed of Easement filed in Official Records 1099, Page 2022.

Together with easement rights for ingress and egress as the real property particularly described as follows:

**EASEMENT "A"**

Situated in the County of Monroe and State of Florida and known as being a 25 foot wide easement over and upon a portion of Old State Highway 4A, and over and upon a portion of Lot 4 of THOMPSON AND ADAMS SUBDIVISION of a part of Government Lot 1, Section 10, Township 66 South, Range 32 East on Key Vaca as shown by plat recorded in Plat Book 2, Page 24 of Monroe County, Florida, Public Records, and more particularly described as follows:

COMMENCING on the southerly right-of-way line of Old State Highway 4A at its intersection with the Southerly prolongation of the West line of Lot 4 of THOMPSON AND ADAMS SUBDIVISION as shown by plat recorded in Plat Book 2, Page 24 of Monroe County, Florida, Public Records, said Southerly right-of-way line being also the Northerly right-of-way line of U.S. Highway No. 1, and said intersection being also the POINT OF BEGINNING of the Easement herein intended to be described; from said POINT OF BEGINNING bear North 68.55 feet to the Southwesterly corner of said Lot 4, said Southwesterly corner being located upon the Northerly right-of-way line of said Old State Highway 4A; thence continue bearing North along the West line of said Lot 4,



334.62 feet; thence bear Southeasterly along the arc of a curve deflecting to the left, 52.53 feet, said curve having a radius of 50.49 feet, the chord of which bears South 29 degrees, 50 minutes, 11 seconds East 50.24 feet; thence bear South 352.57 feet to a point on the said southerly right-of-way line of Old State Road No. 4A; thence bear South 74 degrees, 20 minutes, 00 seconds West along said right-of-way line 25.96 feet back to the POINT OF BEGINNING.

ALSO

FILE # 1402841  
BK# 1942 PG# 566

EASEMENT "B"

Situated in the County of Monroe and State of Florida and known as being a 25 foot wide easement over and upon a portion of Old State Highway 4A, and over and upon a portion of Old State Highway 4A, and over and upon a portion of Lot 4 of THOMPSON AND ADAMS SUBDIVISION of a part of Government Lot 1, Section 10, Township 66 South, Range 32 East on Key Vaca as shown by plat recorded in Plat Book 2, Page 24 of the Monroe County, Florida, Public Records, and more particularly described as follows:

COMMENCING on the Southerly right-of-way line of Old State Highway 4A, at its intersection with the Southerly prolongation on the East line of Lot 4 of THOMPSON AND ADAMS SUBDIVISION as shown by plat recorded in Plat Book 2, Page 24, of Monroe County, Florida, Public Records, said Southerly right-of-way line of U.S. Highway No. 1, and said intersection being also the POINT OF BEGINNING of the Easement herein intended to be described; from said POINT OF BEGINNING, bear North 68.55 feet to the Southeasterly corner of said Lot 4, said Southeasterly corner being located upon the Northerly right-of-way line of said Old State Highway 4A; thence continue bearing North along the East line of said Lot 4, 230.29 feet to a point of curvature thereon; thence bear Northwesterly along the arc of a curve, deflecting to the left 79.31 feet, said curve having a radius of 50.49 feet, the chord of which bears North 45 degrees, 00 minutes, 00 seconds West 71.40 feet to a point of inflection; thence continue Northwesterly on the arc of a curve, deflecting to the right 40.03 feet, said curve having a radius of 25.49 feet, the chord of which bears North 45 degrees, 00 minutes, 00 seconds West 36.95 feet to a point of tangency; thence bear South 43.58 feet; thence bear Southeasterly on the arc of a curve, deflecting to the left, 26.73 feet, said curve having a radius of 25.49 feet, the chord of which bears South 74 degrees, 50 minutes, 10 seconds East 25.41 feet to a point of inflection; thence continue Southeasterly on the arc of a curve, deflecting to the right, 40.03 feet, said curve having a radius of 25.49 feet, the chord of which bears South 45 degrees, 00 minutes, 00 seconds East 36.05 feet to a point of tangency; thence bear South 305.85 feet to a point on the said Southerly right-of-way line of Old State Road No. 4A; thence bear North 74 degrees, 20 minutes, 00 seconds East along said right-of-way line 25.96 feet back to the POINT OF BEGINNING.

ALSO



FILE # 1402841  
BR# 1942 PG# 567

EASEMENT "C"

Situated in the County of Monroe and State of Florida and known as being a 25 foot wide easement over and upon a portion of Lot 4, THOMPSON AND ADAMS SUBDIVISION of a part of Government Lot 1, Section 10, Township 66 South, Range 32 East on Key Vaca as shown by plat recorded in Plat Book 2, page 24 of Monroe County, Florida Public Records, and more particularly described as follows:

COMMENCING on the Northerly right-of-way line of Old State Highway 4A at the Southwesterly corner of Lot 4 of THOMPSON AND ADAMS SUBDIVISION as shown by plat recorded in Plat Book 2, Page 24 of Monroe County, Florida, Public Records, bear North along the West line of said Lot 4, 334.61 feet to the POINT OF BEGINNING of the easement herein intended to be described; from said POINT OF BEGINNING, continue bearing North along the said West line of Lot 4, 309.93 feet; thence bear East 25.00 feet, thence bear South 353.31 feet; thence bear Northwesterly on the arc of a curve deflecting to the right 52.58 feet, said curve having a radius of 50.49 feet, the chord of which bears North 29 degrees, 50 minutes, 11 seconds West, 50.24 feet back to the POINT OF BEGINNING.

ALSO

EASEMENT "E"

Situated in the County of Monroe and State of Florida and known as being a 25 foot easement over and upon a portion of Lot 4, THOMPSON AND ADAMS SUBDIVISION, as recorded in Plat Book 2, page 24, Monroe County, Florida, Public Records and being further described as follows:

Commencing at the Southwest corner of said Lot 4, bear North along the West line of said Lot 4, 644.54 feet to the Northwest corner of Easement "C" as recorded in Official Record Book 1099, Page 2022 and 2023 and the POINT OF BEGINNING of said 25 foot easement, thence continue bearing North along the West line of said Lot 4, 32.67 feet, to the Southwest corner of Parcel "D" as described above; thence bear East along the South line of said Parcel "D", 25.00 feet to the Northwest corner of Parcel "A" as recorded in Official Record Book 1099, page 1999 and 2000; thence bear South along the West line of said Parcel "A", 32.67 feet, thence bear West, 25.00 feet back to the POINT OF BEGINNING.



FILE # 1402841  
BK# 1942 PG# 568

EXHIBIT "A"

Less that property deeded by the Grantor by Warranty Deed recorded in Official Records Book 1099, Pages 1999-2001, of the Public Records of Monroe County, Florida, more particularly described as follows:

DESCRIPTION OF PARCEL "A"

Situated in the County of Monroe and State of Florida and known as being a part of Lot 4 of the THOMPSON AND ADAMS SUBDIVISION of a part of Government Lot 1, Section 10, Township 66 South, Range 32 East on Key Vaca as shown by plat recorded in Plat Book 2, page 24, of Monroe County, Florida Public Records, and more particularly described as follows:

COMMENCING on the Northerly right-of-way line of Old State Highway 4A at the Southeastly corner of Lot 4 of THOMPSON AND ADAMS SUBDIVISION as shown by plat recorded in Plat Book 2, Page 24 of Monroe County, Florida Public Records, bear North along the East line of said Lot 4, 230.29 feet to the POINT OF BEGINNING of that portion of Lot 4 herein intended to be described, from said POINT OF BEGINNING bear Northwesterly on the arc of a curve deflecting to the left 79.31 feet, said curve having a radius of 50.49 feet, the chord of which bears North 45 degrees, 00 minutes, 00 seconds West, 71.40 feet to a point of inflection; thence continue Northwesterly on the arc of a curve, deflecting to the right, 40.03 feet, said curve having a radius of 25.49 feet, the chord of which bears North 45 degrees, 00 minutes, 00 seconds West, 36.05 feet to a point of tangency; thence bear North 342.55 feet; thence bear East 75.97 feet to a point on the East line of said Lot 4; thence bear South along the East line of said Lot 4, 418.55 feet back to the POINT OF BEGINNING and containing 28,367.63 square feet (0.6512 acres) of land.

DESCRIPTION OF PARCEL "B"

Situated in the County of Monroe and State of Florida and known as being parts of Lots 2 & 3 of THOMPSON & ADAMS SUBDIVISION of a part of Government Lot 1, Section 10, Township 66 South, Range 32 East on Key Vaca as shown by plat recorded in Plat Book 2, Page 24 of Monroe County, Florida Public Records, and more particularly described as follows:

COMMENCING on the Northerly right-of-way line of Old State Highway 4A at the Southeastly corner of Lot 3 of THOMPSON & ADAMS SUBDIVISION as shown by plat recorded in Plat Book 2, page 24, of Monroe County, Florida Public Records, bear North along the East line of said Lot 3, 644.54 feet; thence bear West 7.50 feet to the POINT OF BEGINNING of that portion of Lots 2 & 3 herein intended to be described, from said POINT OF BEGINNING, bear North, parallel with East line of said Lot 3, 273.50 feet to a point; thence bear West 93.50 feet to a point, on the West line of said Lot





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3; thence bear North along said West line of Lot 3, 73.71 feet to a point thereon; thence bear South 87 degrees, 49 minutes, 49 seconds West, 32.58 feet to the Northwest corner of a concrete dock constructed along the mean high water line on the Easterly bank of an existing canal; thence bear South 01 degrees, 22 minutes, 17 seconds East along the West edge of said concrete dock 104.27 feet to a Southwesterly corner thereof; thence bear North 86 degrees, 39 minutes, 21 seconds West, 20.62 feet to a point in said existing canal; thence bear South 00 degrees, 51 minutes, 00 seconds East in said existing canal, 89.04 feet; to a Northwesterly corner of a concrete dock constructed along the mean high water line on the easterly bank of said existing canal; thence bear South 00 degrees, 51 minutes, 00 seconds East, along the Westerly edge of said concrete dock 72.58 feet to the most Southwesterly corner thereof; thence bear North 87 degrees, 36 minutes, 12 seconds East, along the Southerly end of said concrete dock 7.93 feet to its intersection with the mean high water line on the Easterly bank of said existing canal; thence meander said mean high water line in a generally Southerly direction on the following descriptive courses bearing first South 06 degrees, 14 minutes, 51 seconds East, 6.14 feet; thence South 71 degrees, 21 minutes, 26 seconds, West 6.04 feet; thence South 21 degrees, 55 minutes, 41 seconds East 13.00 feet; thence South 29 degrees, 30 minutes, 10 seconds West, 4.57 feet; thence South 13 degrees, 20 minutes, 39 seconds East 10.31 feet; thence South 46 degrees, 30 minutes, 38 seconds East 7.36 feet; thence South 04 degrees, 57 minutes, 30 seconds West, 9.92 feet; thence South 32.62 feet to a point on said mean high water line which bears West, 129.42 feet from the POINT OF BEGINNING hereof; thence bear East 129.42 feet back to the POINT OF BEGINNING and containing 0.915 acres, 0.098 acres of which is submerged by waters of said existing canal.

LESS AND EXCEPTING THE FOLLOWING:

PARCEL "C"

A tract of land and water in a part of Lots 2 and 3 of THOMPSON AND ADAMS SUBDIVISION, as recorded in Plat Book 2, Page 24 of the Public Records of Monroe County, Florida and being more particularly described by metes and bounds as follows: Commencing at the Southeast corner of Lot 3, bear North, 725.97 feet; thence bear West, 69.27 feet to the POINT OF BEGINNING of the tract of land and water hereinafter described; thence bear North 02 degrees and 48 minutes West, 156.28 feet; thence bear North 86 degrees and 24 minutes West, 81.11 feet; thence bear South 02 degrees and 43 minutes East, 161.37 feet to a point which is bearing West from the POINT OF BEGINNING; thence bear East, 89.95 feet, back to the POINT OF BEGINNING.

ALSO INCLUDED IN THIS CONVEYANCE AND SEPARATELY DESCRIBED AS THE FOLLOWING:

PARCEL "D"

A tract of land and water in a part of Lots 2 and 3 of THOMPSON AND ADAMS SUBDIVISION, as recorded in Plat Book 2, page 24 of the Public Records of Monroe County, Florida and being more particularly described by metes and bounds as follows:



Commencing at the Southeast corner of Lot 3, bear North 725.97 feet; thence bear West, 69.27 feet to the POINT OF BEGINNING of the tract of land and water hereinafter described; thence bear North 02 degrees and 48 minutes West, 156.28 feet; thence bear North 85 degrees and 24 minutes West, 81.11 feet; thence bear South 02 degrees and 43 minutes East, 161.37 feet to a point which is bearing West from the POINT OF BEGINNING; thence bear East 80.95 feet, back to the POINT OF BEGINNING.

FILE #1402841  
BK#1942 PGS 70

AND ALSO

Situated in the County of Monroe and State of Florida and known as being a part of Lot 4 of Thompson and Adams Subdivision of a part of Government Lot 1, Section 10, Township 66 South, Range 32 East on Key Vaca as shown by plat recorded in Plat Book 2, Page 24 of Monroe County, Florida Public Records and more particularly described as follows:

Commencing on the northerly right-of-way line of Old State Highway 4-A at the southeasterly corner of Lot 4 of Thompson and Adams Subdivision as shown by plat recorded in Plat Book 2, Page 24 of Monroe County, Florida Public Records, bear North along the East line of said Lot 4, 230.29 feet to THE POINT OF BEGINNING of that portion of Lot 4 herein intended to be described, from said Point of Beginning bear northwesterly on the arc of a curve, deflecting to the left, 79.31 feet, said curve having a radius of 50.49 feet, the chord of which bears North 45 degrees, 00 minutes, 00 seconds West 71.40 feet to a point of inflection; thence continue northwesterly on the arc of a curve, deflecting to the right, 40.83 feet, said curve having a radius of 25.49 feet the chord of which bears North 45 degrees, 00 minutes, 00 seconds West 36.05 feet to a point of tangency; thence bear North 342.55 feet; thence bear East 75.97 feet to a point on the East line of said Lot 4; thence bear south along the East line of said Lot 4, 418.55 feet back to the Point of Beginning, subject to Easements set forth in Grant of Easement of even date herewith, executed by Grantee in favor of Grantor.

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2017-107**

**A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, REQUESTING AN EXTENSION OF THE TERM SPECIFIED IN SECTION 3, "TERM" OF THE INTERLOCAL AGREEMENT BETWEEN THE MONROE COUNTY AND THE CITY OF MARATHON TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL DWELLING UNIT ALLOCATIONS FOR AN APPROVED PROJECT IN THE OWNERSHIP OF KEY VACA LLC, TO BE LOCATED BETWEEN 4700 AND 4900 \ OVERSEAS HIGHWAY, MARATHON, FLORIDA ON PROPERTIES INCLUDING REAL ESTATE NUMBERS 00327110-000000, 00327120-000000, 00327130-000000, AND 00327140-000000. NEAREST MILE MARKER 50; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, On or about December 0f 2016, the City of Marathon and Monroe County entered into an Interlocal Agreement (ILA) transferring Fifty-five (55) affordable housing residential dwelling units to the City to be utilized in a project in the ownership of Key Vaca, LLC; and

**WHEREAS**, the ILA provided a "reverter clause" and a term which specified that:

**"Section 3. TERM:** Subject to and upon the terms and conditions set forth herein, this Interlocal Agreement shall continue in force until the following occurs:

The project does not complete construction and does not obtain Certificates of Occupancy for all fifty-five (55) affordable housing units contemplated herein by December 31, 2019. All affordable housing units for which Certificates of Occupancy are issued prior to December 31, 2019 shall remain subject to this Interlocal Agreement irrespective of whether all 55 affordable housing units contemplated herein receive Certificates of Occupancy."

**WHEREAS**, subject project did not request FHFC LIHTC/WORKFORCE housing funding in the 2016-2017 competitive cycle, but did in the following cycle and did not qualify; and

**WHEREAS**, the City and the project owner remain resolute in the approved project as an FHFC LIHTC/WORKFORCE and wish to assure that it may continue to apply in future grant cycles; and

**WHEREAS**, further, with the impacts of Hurricane Irma in Marathon and on the Florida Keys in general, the imperative need for additional workforce housing is at a crisis level; and

**WHEREAS**, the City requests that the term specified in Section 3 of the ILA be extended to include the remainder of the 2018-2019 competitive cycle and extend through the physical year of 2020.

**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 requests that the term specified in Section 3 of the ILA be extended to include the remainder of the 2018-2019 competitive cycle and extend through the physical year of 2020.

**Section 3.** The City Clerk shall forward a certified copy of this Resolution to appropriate individuals at Monroe County, Florida, the Florida Department of Economic Opportunity, the Florida Housing Finance Corporation, the Florida Task Force on Affordable Housing, and the Executive Offices of the Governor.

**Section 4. Effective Date.** This Resolution shall become effective immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 12TH DAY OF DECEMBER, 2017.**

**THE CITY OF MARATHON, FLORIDA**

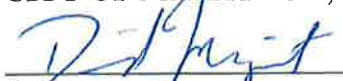
  
\_\_\_\_\_  
Michelle Coldiron, Mayor

AYES: Bartus, Cook, Senmartin, Zieg, Coldiron  
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

## CITY COUNCIL AGENDA STATEMENT



**Meeting Date:** April 9, 2019  
**To:** Honorable Mayor and Council Members  
**From:** George Garrett, Planning Director  
**Through:** Chuck Lindsey, City Manager

Agenda Item: **Resolution 2019-37**, Providing An Amendment Documents For Extension Of The Term Specified In Section 3, “Term” Of The Interlocal Agreement Between The Monroe County And The City Of Marathon Transferring Affordable Housing Residential Dwelling Unit Allocations For An Approved Project In The Ownership Of Crystal Cove Market Site LLC (Formerly HTG Crystal Cove), To Be Located 4900 Overseas Highway, Marthon, Florida On Properties Including Real Estate Numbers 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, And 00328030-000000. Nearest Mile Marker 50; Rescinding Resolution 2017-106; And Providing For An Effective Date.

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### RECOMMENDATION:

Approval of Resolution 2019-37

### BACKGROUND

On or about December of 2016, the City of Marathon and Monroe County entered into an Interlocal Agreement (ILA) (Resolution 2016-125) transferring forty-six (46) affordable housing residential dwelling units to the City to be utilized in a project in the ownership of HTG Crystal Cove, LLC. the subject project sought and has ultimately received tax credit funding through the Florida Housing Finance Corporation. the project known as Crystal Cove Market Site LLC (originally HTG Crystal Cove) and Key Vaca LLC have submitted building plans jointly to complete a combined project. The building plans should be approved within the next several weeks (approximately March 31, 2019).

The ILA provides a “reverter clause” and a term which specifies that:

“Section 3. TERM: Subject to and upon the terms and conditions set forth herein, this Interlocal Agreement shall continue in force until the following occurs:

The project is not granted funding by FHFC LIHTC/WORKFORCE program in the FY16-17 or FY 17-18 competitive cycle; or

The project does not complete construction and does not obtain Certificates of Occupancy for all forty-six (46) affordable housing units contemplated herein by

December 31, 2019. All affordable housing units for which Certificates of Occupancy are issued prior to December 31, 2019 shall remain subject to this Interlocal Agreement irrespective of whether all 46 affordable housing units contemplated herein receive Certificates of Occupancy.”

The City requests that the term specified in Section 3 of the ILA (attached) be extended to through the physical year of 2021 to allow appropriate time for the combined projects to be completed and to receive a Certificate of Occupancy. There is a previous request (Resolution 2017-106) for an extension which Monroe County determined to be unnecessary at the time, thus Resolution 2017-106 should also be rescinded in favor of the current proposed Resolution. This request is codified in Resolution 2019-28.

This Resolution provides the Amendment Document that the County requires in order to carry out the extension request.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	<u>  X  </u>	<u>      </u>
2. Other – 2010 Sewer Mandate	<u>      </u>	<u>  X  </u>

FISCAL NOTE:

RECOMMENDATION

Approval of Resolution

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-37**

**A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, PROVIDING AN AMENDMENT DOCUMENT FOR EXTENSION OF THE TERM SPECIFIED IN SECTION 3, “TERM” OF THE INTERLOCAL AGREEMENT BETWEEN THE MONROE COUNTY AND THE CITY OF MARATHON TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL DWELLING UNIT ALLOCATIONS FOR AN APPROVED PROJECT IN THE OWNERSHIP OF CRYSTAL COVE MARKET SITE LLC (FORMERLY HTG CRYSTAL COVE), TO BE LOCATED 4900 OVERSEAS HIGHWAY, MARATHON, FLORIDA ON PROPERTIES INCLUDING REAL ESTATE NUMBERS 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, AND 00328030-000000. NEAREST MILE MARKER 50; RESCINDING RESOLUTION 2017-106; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, On or about December of 2016, the City of Marathon and Monroe County entered into an Interlocal Agreement (ILA) (Resolution 2016-125) transferring forty-six (46) affordable housing residential dwelling units to the City to be utilized in a project in the ownership of HTG Crystal Cove, LLC; and

**WHEREAS**, the subject project sought and has ultimately received tax credit funding through the Florida Housing Finance Corporation; and

**WHEREAS**, the project known as Crystal Cove Market Site LLC (originally HTG Crystal Cove) and Key Vaca LLC have submitted building plans jointly to complete a combined project; and

**WHEREAS**, the building plans should be approved within the next several weeks (approximately April 30, 2019); and

**WHEREAS**, the ILA provides a “reverter clause” and a term which specifies that:

**“Section 3. TERM:** Subject to and upon the terms and conditions set forth herein, this Interlocal Agreement shall continue in force until the following occurs:

The project is not granted funding by FHFC LIHTC/WORKFORCE program in the FY16-17 or FY 17-18 competitive cycle; or

The project does not complete construction and does not obtain Certificates of Occupancy for all forty-six (46) affordable housing units contemplated herein by December 31, 2019. All affordable housing units for which Certificates of Occupancy are issued prior to December 31, 2019 shall remain subject to this Interlocal Agreement irrespective of whether all 46 affordable housing units contemplated herein receive Certificates of Occupancy.”

**WHEREAS**, the City requests that the term specified in Section 3 of the ILA be extended to through the physical year of 2021 to allow appropriate time for the combined projects to be completed and to receive a Certificate of Occupancy; and

**WHEREAS**, a request to extend the ILA was made in Resolution 2019-28; and

**WHEREAS**, this Resolution provides the Amendment Document that the County requires in order to carry out the extension request,

**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 requests that the term specified in Section 3 of the ILA (Resolution 2016-125) be extended through the physical year of 2021, December 31, 2021 and that the attached Amendment Document be conveyed to Monroe County for review and approval.

**Section 3.** The City Clerk shall forward a certified copy of this Resolution to appropriate individuals at Monroe County, Florida, the Florida Department of Economic Opportunity, the Florida Housing Finance Corporation, the Florida Task Force on Affordable Housing, and the Executive Offices of the Governor.

**Section 4. Effective Date.** This Resolution shall become effective immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 9TH DAY OF APRIL, 2019.**

**THE CITY OF MARATHON, FLORIDA**

\_\_\_\_\_  
**John Bartus, 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:**

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David Migut, City Attorney

**AMENDMENT 1 TO**  
**INTERLOCAL AGREEMENT BETWEEN MONROE COUNTY AND THE CITY**  
**OF MARATHON TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL**  
**DWELLING UNIT ALLOCATIONS**

This Amendment ("Amendment") to an Interlocal Agreement ("Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2019, by and between Monroe County, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida 33040 ("County"), and the City of Marathon, a municipal corporation of the State of Florida, whose address is 9805 Overseas Highway, Marathon, Florida 33050 (the "City").

**WITNESSETH:**

**WHEREAS**, Policy 101.2.15 of the Year 2010 Monroe County Comprehensive Plan allows Rate of Growth Ordinance building permit allocations (hereinafter "affordable housing ROGO allocations" or "affordable ROGOs") for affordable housing projects to be pooled and transferred between local government jurisdictions within the Florida Keys Area of Critical Concern, if accomplished through an interlocal agreement between the sending and receiving local governments; and

**WHEREAS**, Chapter Five (5) of the City Comprehensive Plan identifies goals, objectives and policies to provide for development pursuant to intergovernmental coordination and interlocal agreements; and

**WHEREAS**, Monroe County and the City of Marathon have previously entered into Interlocal Agreements to transfer affordable ROGOs; and

**WHEREAS**, Monroe County and the City of Marathon recognize the potential economic value of such transferable affordable ROGO allocations; and

**WHEREAS**, this Agreement is entered into pursuant to Florida Statutes, Section 163.01, *et seq.*, Florida Interlocal Cooperation Act of 1969, which states:

"It is the purpose of this section to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities"; and

**WHEREAS**, the comprehensive plans of Monroe County and the City of Marathon expressly identify interlocal agreements as a means of resolving issues mutually affecting their respective jurisdictions; and

**WHEREAS**, Monroe County and the City of Marathon recognize the value of regional partnerships in smart growth and the need in this instance to extend this Interlocal Agreement (ILA) as previously approved; and

**WHEREAS**, property in the ownership of HTG Crystal Cove pursuant to City Resolution 2016-122 has an approved Conditional Use Permit for a project that includes fifty-five (55) affordable housing/workforce housing pertaining to the following site; and

**WHEREAS**, HTG Crystal Cove has submitted plans for construction which the City has reviewed and is nearing approval for building permits; and

**WHEREAS**, on or about December 14, 2016 the City of Marathon and Monroe County entered into an ILA in order to provide forty-six (46) affordable ROGO allocations for the Key Vaca, LLC project; and

**WHEREAS**, Section 15. of the Agreement provides the mechanism to amend the Agreement, providing further that, “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,

**WHEREAS**, such a request is codified in Resolution 2019-28 of the City of Marathon, Florida; and

**WHEREAS**, this Resolution provides the Amendment Document that the County requires in order to carry out the extension request,

**WHEREAS**, the parties have determined that this Amendment to this Agreement is in the best interests of the public and the public health, safety, and welfare; and

**NOW, THEREFORE**, the parties hereto agree as follows:

**Section 1. AMENDMENT:** Pursuant to this Amendment to the existing Agreement, Section 3, the “Term” of the Agreement is hereby amended to become December 31, 2021 with terms as follows:

“**Section 3. TERM:** Subject to and upon the terms and conditions set forth herein, this Interlocal Agreement shall continue in force until one of the following occur:

The project is not granted funding by FHFC LIHTC/WORKFORCE program by at least the FY18-19 competitive cycle; or

The project does not complete construction and does not obtain Certificates of Occupancy for all 46 affordable housing units contemplated herein by December 31, 2021. All affordable housing units for which Certificates of Occupancy are issued prior to December 31, 2021 shall remain subject to this Interlocal Agreement irrespective of whether all 46 affordable housing units contemplated herein receive Certificates of Occupancy.”

**Section 2. EFFECT ON THE AGREEMENT:** In all other respects, the Agreement remains in full force and effect.

**Section 3. EFFECTIVE DATE:** This Agreement shall take effect on the date set forth above.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

(SEAL)

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

ATTEST: KEVIN MADOK, CLERK

By: \_\_\_\_\_  
Clerk

By: \_\_\_\_\_  
Mayor \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: \_\_\_\_\_  
Assistant County Attorney

ATTEST:

THE CITY OF MARATHON, FLORIDA

By: \_\_\_\_\_  
DIANE CLAVER  
City Clerk

By: \_\_\_\_\_  
Mayor \_\_\_\_\_  
Date: \_\_\_\_\_

(City Seal)

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

By: \_\_\_\_\_  
David Migut, City Attorney

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-28**

**A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, REQUESTING AN EXTENSION OF THE TERM SPECIFIED IN SECTION 3, "TERM" OF THE INTERLOCAL AGREEMENT BETWEEN THE MONROE COUNTY AND THE CITY OF MARATHON TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL DWELLING UNIT ALLOCATIONS FOR AN APPROVED PROJECT IN THE OWNERSHIP OF CRYSTAL COVE MARKET SITE LLC (FORMERLY HTG CRYSTAL COVE), TO BE LOCATED 4900 OVERSEAS HIGHWAY, MARATHON, FLORIDA ON PROPERTIES INCLUDING REAL ESTATE NUMBERS 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, AND 00328030-000000. NEAREST MILE MARKER 50; RESCINDING RESOLUTION 2017-106; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, On or about December of 2016, the City of Marathon and Monroe County entered into an Interlocal Agreement (ILA) (Resolution 2016-125) transferring forty-six (46) affordable housing residential dwelling units to the City to be utilized in a project in the ownership of HTG Crystal Cove, LLC; and

**WHEREAS**, the subject project sought and has ultimately received tax credit funding through the Florida Housing Finance Corporation; and

**WHEREAS**, the project known as Crystal Cove Market Site LLC (originally HTG Crystal Cove) and Key Vaca LLC have submitted building plans jointly to complete a combined project; and

**WHEREAS**, the building plans should be approved within the next several weeks (approximately March 31, 2019); and

**WHEREAS**, the ILA provides a "reverter clause" and a term which specifies that:

**"Section 3. TERM:** Subject to and upon the terms and conditions set forth herein, this Interlocal Agreement shall continue in force until the following occurs:

The project is not granted funding by FHFC LIHTC/WORKFORCE program in the FY16-17 or FY 17-18 competitive cycle; or

The project does not complete construction and does not obtain Certificates of Occupancy for all forty-six (46) affordable housing units contemplated herein by December 31, 2019. All affordable housing units for which

Certificates of Occupancy are issued prior to December 31, 2019 shall remain subject to this Interlocal Agreement irrespective of whether all 46 affordable housing units contemplated herein receive Certificates of Occupancy.”

**WHEREAS**, the City requests that the term specified in Section 3 of the ILA (attached) be extended to through the physical year of 2021 to allow appropriate time for the combined projects to be completed and to receive a Certificate of Occupancy; and

**WHEREAS**, there is a previous request (Resolution 2017-106) for an extension which Monroe County determined to be unnecessary at the time, thus Resolution 2017-106 should also be rescinded in favor of the current proposed Resolution,

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

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

**Section 2.** Rescind Resolution 2017-106.

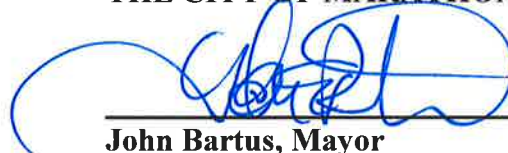
**Section 3.** The City requests that the term specified in Section 3 of the ILA (Resolution 2016-125) be extended through the physical year of 2021 - December 31, 2021.

**Section 4.** The City Clerk shall forward a certified copy of this Resolution to appropriate individuals at Monroe County, Florida, the Florida Department of Economic Opportunity, the Florida Housing Finance Corporation, the Florida Task Force on Affordable Housing, and the Executive Offices of the Governor.

**Section 5. Effective Date.** This Resolution shall become effective immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 12TH DAY OF MARCH, 2019.**

**THE CITY OF MARATHON, FLORIDA**



\_\_\_\_\_

**John Bartus, Mayor**

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

**ATTEST:**

Diane Clavier

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

David Migut, City Attorney

Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2016-125**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING MINOR REVISIONS TO THE INTERLOCAL BETWEEN MONROE COUNTY AND THE CITY OF MARATHON, APPROVED ORIGINALLY PURSUANT TO RESOLUTION 2016-104, TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL ALLOCATIONS FOR A PROJECT KNOWN AS HTG CRYSTAL COVE APPROVED BY THE CITY UNDER RESOLUTIONS 2016-71 & 2016-72; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marathon (the "City") wishes to enter into an Inter-Local Agreement with Monroe County (the "County") for the purposes of Transferring affordable housing unit allocations; and

**WHEREAS**, the Monroe County requested minor and non-substantive modifications to the ILA approved by the City pursuant to Resolution 2016-104 and the City has made such minor modifications,

**WHEREAS**, the Inter-Local Agreement with the County is in the best interest of Monroe County and the City of Marathon for the purposes of providing opportunities for affordable housing,

**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 Revised Inter-local Agreement (ILA) attached hereto as Exhibit "A", between Monroe County and the City of Marathon Transferring Affordable Housing Residential Allocations for a project known as HTG Crystal Cove. (Resolutions 2016-71 & 2016-72 provided as Exhibits "B" & "C") is hereby approved.

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

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13<sup>th</sup> DAY OF DECEMBER, 2016.**

**THE CITY OF MARATHON, FLORIDA**

  
Dr. Daniel Zieg, 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:**

  
\_\_\_\_\_  
David Migut, City Attorney

**INTERLOCAL AGREEMENT BETWEEN MONROE  
COUNTY AND THE CITY OF MARATHON  
TRANSFERRING AFFORDABLE HOUSING  
RESIDENTIAL DWELLING UNIT ALLOCATIONS**

This Agreement ("Agreement") is made and entered into this <sup>14<sup>th</sup></sup> day of December, 2016, by and between Monroe County, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida 33040 ("County"), and the City of Marathon, a municipal corporation of the State of Florida, whose address is 9805 Overseas Highway, Marathon, Florida 33050 (the "City").

**WITNESSETH:**

**WHEREAS**, Monroe County and the City of Marathon recognize the value of regional partnerships in smart growth; and

**WHEREAS**, Policy 101.2.15 of the Year 2010 Monroe County Comprehensive Plan allows Rate of Growth Ordinance building permit allocations (hereinafter "affordable housing ROGO allocations" or "affordable ROGOs") for affordable housing projects to be pooled and transferred between local government jurisdictions within the Florida Keys Area of Critical Concern, if accomplished through an interlocal agreement between the sending and receiving local governments; and

**WHEREAS**, Chapter Five (5) of the City Comprehensive Plan identifies goals, objectives and policies to provide for development pursuant to intergovernmental coordination and interlocal agreements; and

**WHEREAS**, Monroe County and the City of Marathon have previously entered into Interlocal Agreements to transfer affordable ROGOs; and

**WHEREAS**, Monroe County and the City of Marathon recognize the potential economic value of such transferable affordable ROGO allocations; and

**WHEREAS**, this Agreement is entered into pursuant to Florida Statutes, Section 163.01, *et seq.*, Florida Interlocal Cooperation Act of 1969, which states:

"It is the purpose of this section to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities"; and

**WHEREAS**, the comprehensive plans of Monroe County and the City of Marathon expressly identify interlocal agreements as a means of resolving issues mutually affecting their respective jurisdictions; and

**WHEREAS**, the State of Florida Housing Finance Corporation (FHFC) Low Income Housing Tax Credits (LIHTC) application deadline is January 6, 2017; and

**WHEREAS**, HTG Crystal Cove Resort, LLLP a Florida limited liability limited partnership and or their assigns will be an applicant for FHFC LIHTC/ WORKFORCE funding for Forty-six (46) affordable housing units (hereinafter referred to as "project") expected to be ranked and approved by the spring of 2017 (i.e., between March 20, 2017, and May 1, 2017), with closing on the project expected to occur by the fall of 2017 (i.e., between September 22, 2017, and December 20, 2017); and

**WHEREAS**, HTG Crystal Cove Resort, LLLP has received City of Marathon approval of a Conditional Use Permit by Resolution 2016-71 for a project that includes 46 affordable housing/workforce housing units pertaining to the following site:

### **Legal Description attached as Exhibit A**

**WHEREAS**, the parties have determined that this Agreement is in the best interests of the public and the public health, safety, and welfare.

**NOW, THEREFORE**, the parties hereto agree as follows:

**Section 1. TRANSFER:** The parties agree to permit the transfer of up to 46 affordable housing ROGO allocations, comprised of Twenty-three(23) low-income category, three (3) very-low income category, and twenty (20) moderate affordable housing ROGO allocations, from Monroe County to the City of Marathon for allocation, pursuant to this Agreement, and subject to the conditions contained herein, including but not limited to:

HTG Crystal Cove Resort, LLLP, or its assignee, constructing and obtaining a Certificate of Occupancy for all of the affordable housing units, situated upon the subject property described herein, related to the transferred affordable housing ROGO allocations subject of this Interlocal Agreement, prior to December 31, 2019; and

The recording of a 99-year Affordable Housing Deed Restriction on all of the affordable housing units contemplated herein, in accordance with this Agreement, and in accordance with the applicable requirements of the Code of Ordinances, City of Marathon, Florida and similar requirements of the Florida Building Code (FBC).

**Section 2. ASSIGNMENT:** Monroe County has assigned its rights to the affordable housing ROGO allocation contemplated herein to the City, and the 46 affordable housing ROGO allocations are to be issued by the City to be used specifically by HTG Crystal Cove Resort, LLLP, or its successor or assign, at the development in Marathon known as "Crystal Cove on 4900 Overseas Highway, Marathon" (Legal Description attached as Exhibit "A"). In the event the subject project or, as applicable, HTG Crystal Cove Resort, LLLP, or, as applicable, its assign(s) and successor(s) in interest or title, fail to obtain

federal or state housing financial assistance and complete the construction as evidenced by issuance of a Certificate of Occupancy for all 46 units by the City of Marathon, any units which have not received a Certificate of Occupancy shall result in those allocations reverting to Monroe County and to their former status under the Agreement; no amendment to this Agreement is necessary or required to trigger this automatic reverter clause.

**Section 3. TERM:** Subject to and upon the terms and conditions set forth herein, this Interlocal Agreement shall continue in force until one of the following occur:

The project is not granted funding by FHFC LIHTC/WORKFORCE program in the FY16-17 or FY 17-18 competitive cycle; or

The project does not complete construction and does not obtain Certificates of Occupancy for all 46 affordable housing units contemplated herein by December 31, 2019. All affordable housing units for which Certificates of Occupancy are issued prior to December 31, 2019 shall remain subject to this Interlocal Agreement irrespective of whether all 46 affordable housing units contemplated herein receive Certificates of Occupancy.

**Section 4. NOTIFICATION:** The City of Marathon shall (1) Immediately notify Monroe County of any assignment(s) and successor(s) in interest or title to HTG Crystal Cove Resort, LLLP's interest(s) in the affordable housing ROGO allocation contemplated herein, and (2) Shall immediately notify Monroe County of any assignment(s) and successor(s) in interest or title to the affordable housing ROGO allocations contemplated herein above at least thirty (30) business days prior to the date of such transfer or succession by certified U.S. Postal Service Certified mail to the Monroe County Planning & Environmental Resources Senior Director. The City of Marathon shall further provide prompt written notice to Monroe County of the extension, termination, or expiration of the aforesaid Conditional Use Permit for project contemplated herein. The City of Marathon shall further provide prompt written notice to Monroe County of the issuance of Certificates of Occupancy for the subject affordable housing units within thirty (30) business days after issuance of said Certificates. All such notices under this Section ("Section 4.") shall be sent to the following addresses:

Monroe County Administrator  
1100 Simonton Street, Key West, FL 33040; and

Monroe County Planning & Environmental Resources Department  
**Attn: Senior Director**  
**Subject:** City of Marathon Interlocal Agreement  
2798 Overseas Highway, Marathon, FL 33050; and

With a copy to:

Monroe County Attorney's Office  
**Attn:** County Attorney

**Subject:** City of Marathon Interlocal Agreement  
P.O. Box 1026  
Key West, FL ~~33040~~ 33041

Thomas D. Wright, Esq.  
Law Offices of Thomas D. Wright, Chartered  
9711 Overseas Highway  
Marathon, FL 33050  
Attorney for Property Owners

Failure of the City of Marathon or HTG Crystal Cove Resort, LLLP or their assign(s) or successor(s) in interest or title, to perform any act required by this Interlocal Agreement shall neither impair nor limit the validity of this Agreement or limit its enforceability in any way.

**Section 5. CONSTRUCTION AND INTERPRETATION:** The construction and interpretation of this Interlocal Agreement and Monroe County Code(s) provisions in arising from, related to, or in connection with this Agreement, shall be deferred in favor of Monroe County and such construction and interpretation shall be entitled to great weight on trial and on appeal.

**Section 6. NO WAIVER:** Monroe County shall not be deemed to have waived any rights under this Interlocal Agreement unless such waiver has been expressly and specifically provided.

**Section 7. LIMITATION OF LIABILITY:** In the event of any litigation related to, arising from, or in connection with this Interlocal Agreement, the parties hereto and Keys Affordable Development III, LLC, and its assignees and successors-in-interest, hereby agree to expressly waive their right to a jury trial.

**Section 8. DUTY TO COOPERATE:** When required to under this Interlocal Agreement, the City of Marathon and Keys Affordable Development, III, LLC, and its assignees and successors-in-interest, shall, to ensure the implementation of the government purpose furthered by this Agreement, cooperate with Monroe County's reasonable requests, regarding the conditions and provisions contained herein.

**Section 9. GOVERNING LAWS/VENUE:** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida and the United States. Exclusive venue for any dispute arising under this Agreement shall be in the Sixteenth Judicial Circuit in and for Monroe County, Florida. In the event of any litigation, the prevailing party is entitled to a reasonable attorney's fee and costs. This Agreement is not subject to arbitration.

**Section 10. NONDISCRIMINATION:** The parties agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to

(1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, or national origin; (2) Section 504 of the Rehabilitation Act of 1973, as amended 3) U.S.C. s. 1975, as amended (42 U.S.C. ss. 6101-6107)), which prohibits discrimination on the basis of age; (4) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (5) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (6) The Public Health Service Act of 1912, ss. 523 and 527 (42 U.S.C. ss. 290 dd-3 and 290 ee(03)), as amended, relating to confidentiality of alcohol and drug abuse patient records; (7) The Americans With Disabilities Act of 1990 (42 U.S.C. s. 1201 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; (8) The Civil Rights Act of 1992 (Chapter 760, Florida Statutes, and Section 509.021, Florida Statutes), as may be amended from time to time, relating to non-discrimination; and (9) any other nondiscrimination provisions in any federal or state statutes or local ordinances which may apply to the parties to, or the subject matter of, this Agreement.

**Section 11. CODE OF ETHICS:** The parties agree that their officers and employees recognize and will be required to comply with the standards of conduct relating to public officers and employees as delineated in Section 112.313, Florida Statutes regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position; conflicting employment or contractual relationship; and disclosure or use of certain information.

**Section 12. NO SOLICITATION/PAYMENT:** The parties warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not been paid or agreed to pay any person, company, corporation, individuals, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach of violation of this provision, each party agrees that the other party shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

**Section 13. SUBORDINATION:** This Agreement is subordinate to the laws and regulations of the United States and the State of Florida, whether in effect on commencement of this Interlocal Agreement or adopted after that date.

**Section 14. INCONSISTENCY:** If any item, condition, or obligation of this Agreement is in conflict with other items of this Agreement, the inconsistencies shall be construed so as to give meaning to those terms which limited the County's responsibility or liability.

**Section 15. PUBLIC ACCESS TO RECORDS:** The parties shall allow and permit members of the public reasonable access to, and inspection of, all documents, papers, letters or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the parties in

conjunction with this Agreement.

**Section 16. NON-RELIANCE BY THIRD-PARTIES:** Other than as stated herein, no person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the parties agree that neither the County nor the City, or any agent, officer, or employee of each shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

**Section 17. NO PERSONAL LIABILITY:** No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of a party in his or her individual capacity, and no member, officer, agent or employee of a party shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

**Section 18. NOTICES:** In addition to those communications and notice requirements set forth in **Section 4.** of this Agreement, all notices and other communications hereunder must be in writing and addressed as follows, or to any other address which either party may designate to the other party by mail:

If to Monroe County:

Roman Gastesi, Jr., County Administrator  
Monroe County Historic Gato Building  
1100 Simonton Street  
Key West, Florida 33040; and

Planning & Environmental Resources Department  
Attn: Senior Director  
Subject: City of Marathon Interlocal Agreement  
2798 Overseas Highway, Marathon, FL 33050; and

With a copy to:

Monroe County Attorney's Office  
Attn: County Attorney  
Subject: City of Marathon Interlocal Agreement  
P.O. Box 1026  
Key West, FL ~~33040~~ 33041

Thomas D. Wright, Esq.  
Law Offices of Thomas D. Wright, Chartered  
9711 Overseas Highway  
Marathon, FL 33050

Attorney for Property Owners

If to the City:

City Manager  
9805 Overseas Highway  
Marathon, Florida 33050

George Garrett, Planning Director  
9805 Overseas Highway  
Marathon, Florida 33050

With a copy to:  
David Migut, Esquire  
City Attorney  
9805 Overseas Highway  
Marathon, FL 33050

Thomas D. Wright, Esq.  
Law Offices of Thomas D. Wright, Chartered  
9711 Overseas Highway  
Marathon, FL 33050  
Attorney for Property Owners

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

**Section 15. ENTIRE AGREEMENT/MODIFICATION/AMENDMENT:** 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. 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.

**Section 16. Inconsistency, Partial Invalidity, Severability, and Survival of Provisions:** If any condition or provision hereunder, or any portion thereof, is/are held to be invalid or unenforceable in or by any administrative hearing officer or court of competent jurisdiction, the invalidity or unenforceability of such condition(s) or provision(s) shall neither limit nor impair the operation, enforceability, or validity of any other condition or provision hereunder, or remaining portions thereof. All such other condition(s) or provision(s), or portions thereof, shall continue unimpaired in full force and effect.



**Section 17. Captions and Paragraph Headings:** Captions and paragraph headings, where used herein, are inserted for convenience only and are not intended to descriptively limit the scope and/or intent of the particular paragraph or text to which they refer.

**Section 18. Authority to Attest:** Each party to this Interlocal Agreement represents and warrants to the other that the execution, delivery, and performance of this Agreement has been duly authorized by all necessary corporate and other organizational action, as required.

**Section 19. MISCELLANEOUS:** Each party represents and warrants to the other that the execution, delivery, and performance of this Agreement has been duly authorized by all necessary corporate or other organizational action, as required.

**Section 20. COUNTERPARTS:** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

**Section 21. EFFECTIVE DATE:** This Agreement shall take effect on the date set forth above.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.



SEVIN MADOK, CLERK

By: Gamela Stumack D.C.  
Clerk

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By: George R. Neugent  
Mayor George Neugent

Date: December 14, 2016

FILED FOR RECORD  
2017 JAN 30 AM 2:40

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: \_\_\_\_\_  
Assistant County Attorney

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:  
Steven T. Williams  
STEVEN T. WILLIAMS  
ASSISTANT COUNTY ATTORNEY  
Date: 1/20/17

ATTEST:  
By: Diane Claver  
DIANE CLAVER  
City Clerk

THE CITY OF MARATHON, FLORIDA  
By: R. Samuel Ziegler  
Mayor  
Date: 19 Dec 2016

(City Seal)

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

By: *David Migut*  
David Migut, City Attorney



STATE OF FLORIDA  
COUNTY OF MONROE

This copy is a True Copy of the  
Original on File in this Office. Witness  
My hand and Official Seal  
And that same is in full force and effect

This 31st day of January

A.D., 20 17

KEVIN MADOK, CPA  
Clerk Circuit Court

By: *Samuel Stanwick*  
Deputy Clerk

EXHIBIT "A"

LEGAL DESCRIPTION

Lots 5 and 6 of Thompson and Adams Subdivision of Government Lot 1, Section 10, Township 66 South, Range 32 East which plat is recorded in Plat Book 2, at Page 24 of the Public Records of Monroe County, Florida.

That portion of a 66-Foot right-of-way of Old State Highway 4A, lying immediately South of Lot 5 of Thompson and Adams Subdivision according to the plat thereof recorded in Plat Book 2, Page 24, of the Public Records of Monroe County, Florida.

Together with a parcel of bay bottom land in the Bay of Florida, North of and adjacent to Lot 5 of Thompson-Adams Subdivision, as recorded in Plat Book 2, Page 24 of the Public Records of Monroe County, Florida. Said Subdivision also being in a part of Government Lot 1, Section 10, Township 66 South, Range 32 East, and being more particularly described by metes and bounds as follows:

Commencing at the intersection of the East line of Section 10, Township 66 South, Range 32 East, and the northwesterly right-of-way line of Old State Highway No. 4A. Bear southwesterly along the northwesterly right-of-way line of Old State Highway No. 4A for a distance of 734.09 feet to the Southeast corner of said Lot 5; thence bear North along the East line of Lot 5 for a distance of 889.77 feet to the point of beginning of the parcel of bay bottom land hereinafter described, from said point of beginning, continue bearing North along the East line of Lot 5, extended, for a distance of 220 feet to a point, thence at right angles and West for a distance of 100.97 feet to a point on the West line of Lot 5, extended North, thence bear South along the West line of Lot 5, extended North, for a distance of 270 feet, more or less, to a point on the shoreline, thence meander the shoreline in a southerly and northeasterly direction for a distance of 220 feet, more or less, back to the point of beginning.

BB 1

Together with a parcel of bay bottom land in the Bay of Florida North of and adjacent to Lot 6 of Thompson and Adams Subdivision as recorded in Plat Book 2, Page 24 of the Public Records of Monroe County, Florida, said subdivision also being in a part of Government Lot 1, Section 10, Township 66 South, Range 32 East and being more particularly described by metes and bounds as follows:

Commencing at the intersection of the M.H.W.L. of the Gulf of Mexico and the West boundary of Lot 6 of said Thompson and Adams Subdivision of Government Lot 1, Section 10, Township 66 South, Range 32 East as per plat thereof in Plat Book 2, Page 24, of the Public Records of Monroe County, Florida, as and for the point of beginning of the property to be described. Run thence North into the waters of the Gulf of Mexico for a distance of 323 feet; thence at a right angle and East for a distance of 100.97 feet to a point; thence at a right angle and South to the M.H.W.L. at a point where it intersects the Eastern boundary of said Lot 6; thence meander said M.H.W.L. in a westerly direction to the point of beginning.

BB 2

Lots 1 and 2, in Block 1 of Vaca Village, according to the plat thereof recorded in Plat Book 2, Page 106, a Re-Subdivision of Lot 7 and 8 of "Thompson and Adams Subdivision" as recorded in Plat Book 2, at Page 24, of the Public Records of Monroe County, Florida.

Lots 9, 10, 11, 12 and 13, Block 1, Vaca Village, a Subdivision as recorded in Plat Book 2, Page 106, of the Public Records of Monroe County, Florida.

Also

883  
A parcel of bay bottom land in Section 10, Township 66 South, Range 32 East, North of and adjacent to Key Vaca described as: Commencing at the Section corner common to Sections 2, 3, 10 and 11 of Township 66 South, Range 32 East; thence South along the section line common to Sections 10 and 11, 1631.62 feet to the Northerly right of way line of Old State Highway 4A, as existing July 23, 1954; thence South 74°20'00" West, 539.93 feet along said Northerly right of way line; thence North 1083.2 feet, more or less, to the M.H.W.L. of the Gulf of Mexico, the Point of Beginning; thence continuing North along said Line, extended into the waters of the Gulf of Mexico, 100 feet, more or less; thence at a right angle and West, 186.94 feet; thence at a right angle and South, 323 feet, more or less, to the M.H.W.L. of the Gulf of Mexico where it intersects the West line of the Glenn H. Curtiss properties; thence meandering said M.H.W.L. in an Easterly and Northerly direction 325 feet, more or less, to the Point of Beginning.

Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2016-125**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING MINOR REVISIONS TO THE INTERLOCAL BETWEEN MONROE COUNTY AND THE CITY OF MARATHON, APPROVED ORIGINALLY PURSUANT TO RESOLUTION 2016-104, TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL ALLOCATIONS FOR A PROJECT KNOWN AS HTG CRYSTAL COVE APPROVED BY THE CITY UNDER RESOLUTIONS 2016-71 & 2016-72; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marathon (the "City") wishes to enter into an Inter-Local Agreement with Monroe County (the "County") for the purposes of Transferring affordable housing unit allocations; and

**WHEREAS**, the Monroe County requested minor and non-substantive modifications to the ILA approved by the City pursuant to Resolution 2016-104 and the City has made such minor modifications,

**WHEREAS**, the Inter-Local Agreement with the County is in the best interest of Monroe County and the City of Marathon for the purposes of providing opportunities for affordable housing,

**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 Revised Inter-local Agreement (ILA) attached hereto as Exhibit "A", between Monroe County and the City of Marathon Transferring Affordable Housing Residential Allocations for a project known as HTG Crystal Cove. (Resolutions 2016-71 & 2016-72 provided as Exhibits "B" & "C") is hereby approved.

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

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13<sup>th</sup> DAY OF DECEMBER, 2016.**

THE CITY OF MARATHON, FLORIDA

  
Dr. Daniel Zieg, 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:**

  
\_\_\_\_\_  
David Migut, City Attorney

Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2016-71**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, APPROVING A REQUEST BY HTG CRYSTAL COVE RESORT, LLLP FOR A CONDITIONAL USE PERMIT PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED "CONDITIONAL USE PERMITS," AUTHORIZING THE DEVELOPMENT OF A TWENTY-EIGHT (28) UNIT RV PARK, FORTY-SIX AFFORDABLE HOUSING UNITS, AND 7,700 SQUARE FEET OF COMMERCIAL RETAIL ON PROPERTIES LOCATED AT AND ADJACENT TO 4900 OVERSEAS HIGHWAY; REAL ESTATE NUMBERS 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, AND 00328030-000000. NEAREST MILE MARKER 50**

**WHEREAS**, HTG Crystal Cove, LLLP., (The "Applicant") filed an Application on June 30, 2016 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**; the Applicant proposes to develop twenty-eight (28) RV, forty-six (46) workforce and affordable housing residential units, and 7,700 square feet of commercial space; and

**WHEREAS**, City staff reviewed the Applicant's request for a Conditional Use Permit determining that the Applicant's project proposal was 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 15<sup>th</sup> day of August, 2015, the City of Marathon Planning Commission (the "Commission") conducted a properly advertised public hearing (the "Public Hearings") regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, and on the 23<sup>rd</sup> day of August, 2016 and the 13<sup>th</sup> day of September, 2016, the City Council (the "Council") conducted properly advertised public hearings (the "Public Hearings") 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 and further, that the approval is in the

public interest, is consistent with its policy to encourage the redevelopment of properties within the City of Marathon and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS**, the purpose of the Conditional Use Permit is 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 and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district.

**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 2016-07, a copy of which is attached hereto as Exhibit "A", granting a Conditional Use Permit to HTG Crystal Cove Resort, L.L.P. 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 its adoption by the City of Marathon and after review and approval by the Department of Economic Opportunity pursuant to Chapters 163 and 380, *Florida Statutes*.

**PASSED AND APPROVED** by the City Council of the city of Marathon, Florida, this 13<sup>th</sup> day of September, 2016.

**THE CITY OF MARATHON, FLORIDA**



**Mark Senmartin, Mayor**

AYES: Zieg, Bartus, Kelly, Coldiron, Senmartin  
NOES: None  
ABSENT: None  
ABSTAIN: None

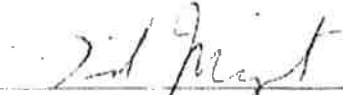
**ATTEST:**

  
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



**CITY OF MARATHON, FLORIDA  
CONDITIONAL USE  
DEVELOPMENT ORDER # 2016-07**

**A DEVELOPMENT ORDER APPROVING A REQUEST BY HTG CRYSTAL COVE RESORT, LLLP FOR A CONDITIONAL USE PERMIT PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED "CONDITIONAL USE PERMITS," AUTHORIZING THE DEVELOPMENT OF A TWENTY-EIGHT (28) UNIT RV PARK, FORTY-SIX AFFORDABLE HOUSING UNITS, AND 7,700 SQUARE FEET OF COMMERCIAL RETAIL ON PROPERTIES LOCATED AT AND ADJACENT TO 4900 OVERSEAS HIGHWAY; REAL ESTATE NUMBERS 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, AND 00328030-000000. NEAREST MILE MARKER 50**

**WHEREAS**, HTG Crystal Cove, LLLP., (The "Applicant") filed an Application on June 30, 2016 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**; the Applicant proposes to develop twenty-eight (28) RV, forty-six (46) workforce and affordable housing residential units, and 7,700 square feet of commercial space; and

**WHEREAS**, City staff reviewed the Applicant's request for a Conditional Use Permit determining that the Applicant's project proposal was 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 15<sup>th</sup> day of August, 2015, the City of Marathon Planning Commission (the "Commission") conducted a properly advertised public hearing (the "Public Hearings") regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, and on the 23<sup>rd</sup> day of August, 2016 and the 13<sup>th</sup> day of September, 2016, the City Council (the "Council") conducted properly advertised public hearings (the "Public Hearings") 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 and further, that the approval is in the public interest, is consistent with its policy to encourage the redevelopment of properties within the City of Marathon and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS**, the purpose of the Conditional Use Permit is 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 and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

**FINDINGS OF FACT:**

1. The applicant will develop twenty-eight (28) unit RV park, forty-six (46) workforce and affordable housing units, and 7,700 square feet of Commercial Floor Area, and accessory structures as may be appropriate (See Attached Site Plan as Attachment 1).
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 lighting plan must be submitted prior to permit issuance.
2. A final landscape plan must be submitted prior to permit issuance.
3. Dumpsters are to be screened per code.
4. All conditions of the Fire Marshall must be met prior to permit issuance.
5. Where the project boundary buffer is reduced, thicker landscaping and screening is required.
6. Additional screening is to be created along the canal facing RV lots. The criteria established in Section 107.66 F shall be applied to this area with the additional height needed to screen headlights.
7. All signs will be reviewed and approved for compliance with the City of Marathon LDR's.
8. Each RV site shall comply with all hurricane evacuation requirements set forth for City transient uses.
9. Existing entitlements include thirty (30) transient residential units (TRUs), one (1) market rate residential unit, and 1,633 square feet of commercial square footage. These entitlement shall be utilized to complete the project as approved. The approval of this Development Agreement does not convey or grant a vested right or entitlement to future allocations of affordable residential units by the City for the forty-six (46) affordable residential units referenced and approved in this Development Agreement. Such allocations shall be made at a future date consistent with the comprehensive plan amendments and LDR amendments. It is the intent of the applicant, with the support of the City, to seek the necessary affordable residential unit allocations through an Inter-local Agreement transferring the units from Monroe County to the City of Marathon.
10. Dwelling units shall contain less than or equal to 1,800 square feet of habitable space. Occupancy of affordable housing units is limited to those meeting the following income requirements:
  - a. 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;
  - b. 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;
  - c. 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;

- d. 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;
  - e. 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;
11. 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.
  12. 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.
  13. For any community workforce units the following requirements shall be met:
    - a. Affordable housing criteria set forth in above and Chapter 110 "Definitions";
    - b. Shall be permanently deed-restricted as affordable;
    - c. Shall be restricted to occupancy to households that derive at least 70 percent of their household income from gainful employment in Monroe County;
    - d. Shall be restricted to occupancy for 28 consecutive days or longer;
    - e. Shall not be used for vacation rental use; and
    - f. Shall not be sold separately as a condominium.
  14. 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.
  15. 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.
  16. 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.
  17. The developer and the City shall enter into a Development Agreement which at a minimum promulgates a requirement that necessary workforce housing units, pursuant to Chapter 104 Article 1, Section 104.25 and the City's Zoning in Progress concerning affordable housing, be complete prior to the Certificate of Occupancy for all RV units. In the alternative, the will accept a bond for the value of the units or an irrevocable letter of credit which shall only be released upon completion of the required units.
  18. For RV lots 1-10: The owner has agreed to locate an opaque fence no less than 42" high, and buffered on the canal side by landscaping suitable to the City of Marathon. The location of

the fence sections will extend for twelve feet (12') on the canal front sides of the lot to be located in front of the RV parking to shield headlights from shining across the canal.

19. An emergency gate entry/exit gate is allowed for emergency vehicle access at the northeast corner of the project site for entry/exit to and from 50<sup>th</sup> Street. This gate shall be continuous secured except to allow emergency vehicle access. The use of the gate for general or routine access of owners or patrons of the RV or affordable housing project elements is prohibited.

**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 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.

11/3/2008  
Date

George Garraty  
George Garraty  
Director of Planning

This Development Order was filed in the Office of the City Clerk of this 11 day of NOV, 2008.

Diane Clavier  
Diane Clavier, City Clerk

NOTICE

Under the authority of Section 102.79(e) 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.

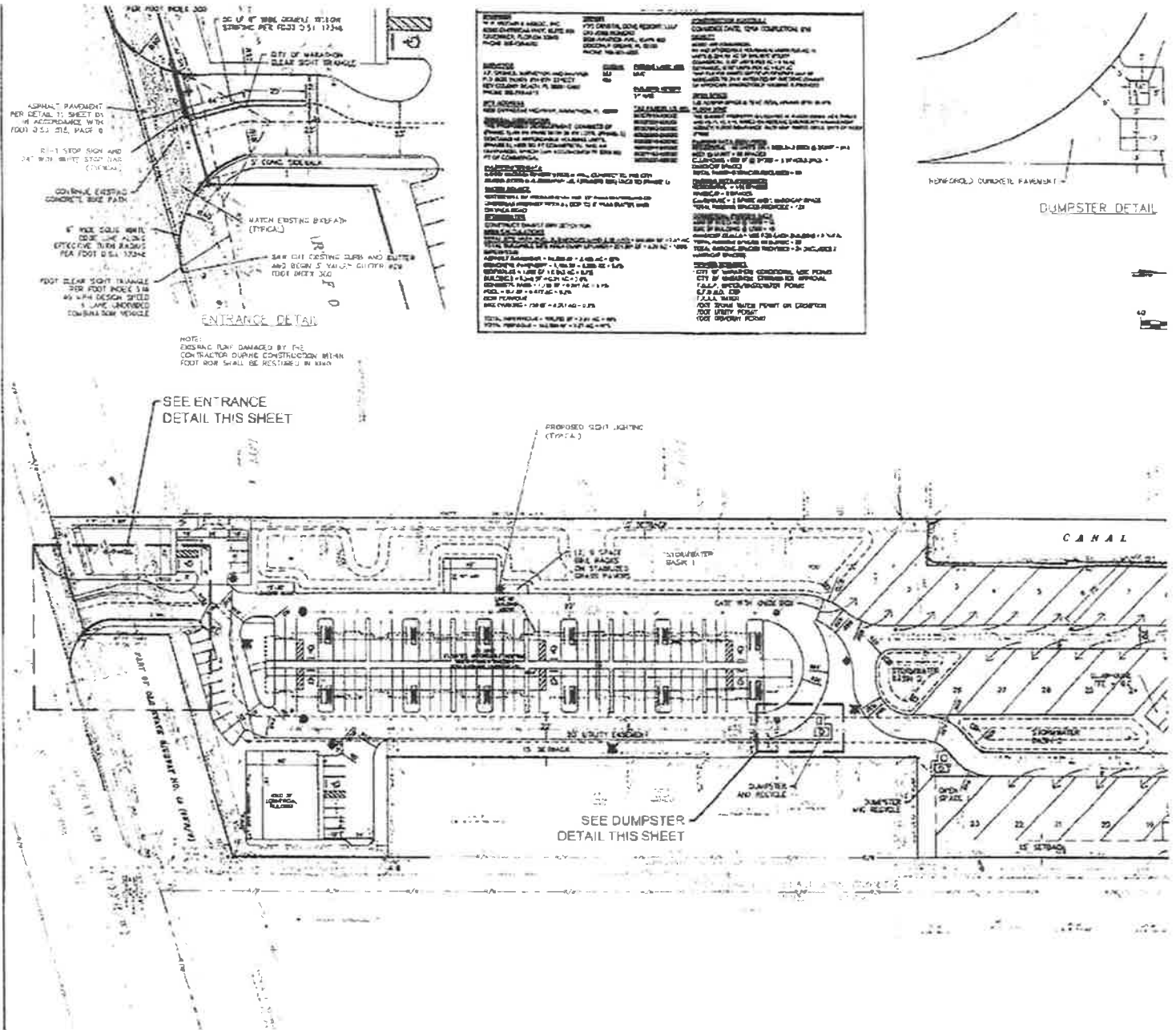
CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished, via U. S. certified mail, return receipt requested, addressed to John Saunders, Agent  
this 11 day of Nov, 2016. John Saunders, Agent  
30198 Overseas Hwy, Ste. 2  
Big Ledge, FL 33137

Diane Clavier  
Diane Clavier City Clerk



Doc# 2109300  
Bk# 2837 Pgs 2071



Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2016-72**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, APPROVING A REQUEST BY HTG CRYSTAL COVE RESORT, LLLP FOR A DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 102, ARTICLES 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED "DEVELOPMENT AGREEMENT," AUTHORIZING THE DEVELOPMENT OF A TWENTY-EIGHT (28) UNIT RV PARK, FORTY-SIX AFFORDABLE HOUSING UNITS, AND 7,700 SQUARE FEET OF COMMERCIAL RETAIL ON PROPERTIES LOCATED AT AND ADJACENT TO 4900 OVERSEAS HIGHWAY; REAL ESTATE NUMBERS 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, AND 00328030-000000. NEAREST MILE MARKER 50**

**WHEREAS**, HTG Crystal Cove, L.L.P., (The "Applicant") filed an Application on June 30, 2016 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**; the Applicant proposes to develop twenty-eight (28) RV, forty-six (46) workforce and affordable housing residential units, and 7,700 square feet of commercial space; and

**WHEREAS**, City staff reviewed the Applicant's request for a Development Agreement determining that the Applicant's project proposal was 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 15<sup>th</sup> day of August, 2015, the City of Marathon Planning Commission (the "Commission") conducted a properly advertised public hearing (the "Public Hearings") regarding the request submitted by the Applicant, for a Development Agreement pursuant to Chapter 102, Article 8 of the LDRs; and

**WHEREAS**, and on the 23<sup>rd</sup> day of August, 2016 and the 13<sup>th</sup> day of September, 2016, the City Council (the "Council") conducted properly advertised public hearings (the "Public Hearings") regarding the request submitted by the Applicant, for a Development Agreement pursuant to Chapter 102, Article 8 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 and further, that the approval is in the public interest, is consistent with its policy to encourage the redevelopment of properties within the City of Marathon and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS**, the purpose of the Conditional Use Permit is 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 and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district.

**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 the Development Agreement, attached hereto as "Exhibit A."

**Section 3.** This resolution shall take effect immediately upon its adoption by the City of Marathon and after review and approval by the Department of Economic Opportunity pursuant to Chapters 163 and 380, *Florida Statutes*.

**PASSED AND APPROVED** by the City Council of the city of Marathon, Florida, this 13<sup>th</sup> day of September, 2016.

**THE CITY OF MARATHON, FLORIDA**



**Mark Senmartin, Mayor**

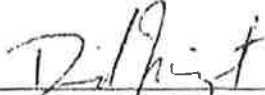
AYES: Zieg, Bartus, Coldiron, Kelly, Senmartin  
NOES: None  
ABSENT: None  
ABSTAIN: None

**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

RE Nos. 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000,  
00328000-000000, 00328010-000000, 00328020-000000, AND 00328030-000000

(Space Reserved for Recording)

Development Agreement for  
HTG Crystal Cove Resort, LLLP  
Marathon, Florida

This Development Agreement ("Agreement") is entered into by and between the City of Marathon, a Florida Municipal Corporation (herein referred to as "City"), and HTG Crystal Cove Resort, LLLP, a Florida limited liability limited partnership, whose address is 3225 Aviation Avenue, Suite 602, Coconut Grove, Florida 33133 (herein referred to as "Owner"), pursuant to *Chapter 102, Article 8* of the Land Development Regulations of the City of Marathon, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes, and is binding on the effective date as set forth herein.

**WITNESSETH:**

**WHEREAS,** Owner owns real property located in Marathon, Florida, described in Exhibit "A" hereto, which is the location of HTG Crystal Cove Resort LLLP and its proposed redevelopment; and

**WHEREAS,** said HTG Crystal Cove Resort LLLP hold entitlements to thirty-four (34) transient residential units, one (1) market rate residential units, and 1,633 square feet of commercial space; and

**WHEREAS,** the real property described in Exhibit "1" is designated on the City's Future Land Use Map (FLUM) as Mixed Use Commercial (MU-C), and is zoned as Mixed Use (MU), which land use designation and zoning allow the property to be used for transient rentals; and

**WHEREAS,** Owner desires to develop twenty-eight (28) RV sites and amenities in an RV Park, forty-six (46) workforce and affordable housing residential units, and 7,700 square feet of commercial development; and

**WHEREAS,** the City's affordable housing requirement for transient uses, as set out in Section 104.25 of the City of Marathon Land Development Regulations requires that new transient development provide affordable housing in an amount equal to 20% of the square footage of new transient development; and

**WHEREAS,** the Marathon Planning Commission held a public hearing on the 15<sup>th</sup> day of August, 2016, to consider this agreement, and recommended approval of this agreement; and

WHEREAS, the City Council of Marathon held public hearings on the 23<sup>rd</sup> day of August and 13<sup>th</sup> day of September, 2016, to consider this Agreement; and

WHEREAS, the City has determined that this Agreement is in the public interest, is consistent with its policy to encourage the redevelopment of hotels and motels in Marathon, and will further the health, safety and welfare of the residents of Marathon.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as Follows:

**I. RECITALS.**

The foregoing recitals are a part of this Agreement on which the parties have relied and are incorporated into this Agreement by reference.

**II. PURPOSES OF AGREEMENT.**

The purposes of this Agreement are as Follows:

To re-develop the HTG Crystal Cove Resort L.L.P site to include the development of twenty-eight (28) RV sites, forty-six (46) workforce and affordable housing residential units, and up to 7,700 square feet of commercial area, said Property noted in Exhibit A, consistent with the City of Marathon's Comprehensive Plan and Objective 1-3.4 of the City of Marathon's Comprehensive Plan;

**III. Definitions.**

For the purposes of this Agreement, all terms shall have the definitions as found in the City of Marathon's Land Development Regulations, Comprehensive Plan and in Chapter 163, Florida Statutes, or in other applicable Florida Statutes, and if not defined in the Code, Plan, or Statute, the term shall be understood by its usual and customary meaning.

**IV. Statutory and Code Requirements.**

The Parties recognize the binding effect of the Florida Local Government Development Agreement Act, Sections 163.3221, et seq., Florida Statutes, as to the form and content of this Agreement and in accordance therewith set forth and agree to the following:

**A. Legal Description and Ownership.**

HTG Crystal Cove Resort L.L.P is the Owner of the Property identified by Real Estate Numbers 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, and 00328030-000000 which are the Properties the  
603628040 2

subject of this Agreement, as described in Exhibit 2, Improvement Location and Boundary Survey. At time of development, there will be no other legal or equitable owners of the subject property known to the parties to this Agreement.

**B. Duration of Agreement.**

The Owner shall have a period of one (1) year from the Effective Date of this Agreement to obtain the first building permit for the RV Park site and three (3) years from the Effective Date of this Agreement to obtain the first permit for the workforce and affordable housing component of the project. All Certificates of Occupancy and/or Final Inspections for structures on the Property as shown on the Site Plan shall be obtained within seven (7) years.

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.

**C. Permitted Uses.**

1. The Development permitted on the Property shall consist of those uses set forth herein, as identified on the conceptual site plan attached hereto as Exhibit 3, and incorporated herein by reference. The permitted uses are as follows:

- i. Twenty-eight (28) RV Park RV sites
- ii. Forty-six (46) workforce and affordable housing residential units; and
- iii. 7,700 square feet of commercial development.
- iv. Requirement to provide workforce housing pursuant to Section 104.25 A. of the LDRs.

2. Existing entitlements include thirty-four (34) transient residential units (TRUs), one (1) market rate residential unit, and 1,633 square feet of commercial square footage. These entitlements shall be utilized to complete the project as approved. The approval of this Development Agreement does not convey or grant a vested right or entitlement to future allocations of affordable residential units by the City for the forty-six (46) affordable residential units referenced and approved in this Development Agreement. Such allocations shall be made at a future date consistent with the comprehensive plan amendments and LDR amendments. It is the intent of the applicant, with the support of the City, to seek the necessary affordable residential unit allocations through an Inter-local Agreement transferring the units from Monroe County to the City of Marathon.

3. For the duration of this Agreement, the Parties agree that any and all of the approved development shall adhere to, conform to, and be controlled by this Agreement, the Exhibits attached hereto and incorporated by reference, the LDRs and the Comprehensive Plan governing the development of the subject 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 absolute right to rebuild or repair the affected structure(s) and reinstate the prior approved use so long as such development is in compliance with this Agreement.

4. Through this Development Agreement and the approval of Resolution 2016-71 which provides a Conditional Use Permit for the project, the Developer agrees to all Conditions approved in the Conditional Use Permit.

5. Pursuant to this Development Agreement the Owner agrees that that required workforce housing units, pursuant to Chapter 104 Article 1, Section 104.25 and the City's Zoning in Progress concerning affordable housing, shall be complete prior to the Certificate of Occupancy for all RV units. In the alternative, the City will accept a bond for the value of the units or an irrevocable letter of credit which shall only be released upon completion of the required units.

6. The following documents are attached hereto and incorporated by reference, showing the Property Boundary and Existing and Proposed Uses:

Exhibit 1: Warranty Deed

Exhibit 2: Site Survey

Exhibit 3: Conceptual Site Plan as approved herein and pursuant to the City's approval of a Conditional Use Permit

7. Maximum Building Height shall be thirty-seven (37) feet, as provided in Future Land Use Element Policy 1-3.2.5 in the City's Comprehensive Plan and as defined by the LDRs.

8. 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 all Transient Units on the property comply with Hurricane Evacuation Requirements set forth in Policy 1-2.2.1 of the Future Land Use Element of City's Comprehensive Plan, in effect or as amended.

#### D. Public Facilities

1. The Florida Keys Aqueduct Authority provides domestic potable water.

2. Electric Service is provided by the Florida Keys Electric Co-op.

3. Solid Waste Service is provided by Marathon Garbage Service.

4. Owner shall provide wastewater and sewage collection and disposal by expanding its current connection to the City.

5. Educational Facilities. The redevelopment of transient use as contemplated by this Agreement



will not impact education facilities.

6. **Recreational Facilities.** The Property includes onsite recreational facilities for visitors and guests of the property. Therefore, redevelopment of the property will have no impact on public recreation facilities.

7. **Stormwater.** A Stormwater Management System which meets all applicable local, state and federal requirements shall be constructed onsite as part of the Site Redevelopment. This system will retain, detain, and treat Stormwater on the Property and therefore will provide a substantial benefit to water quality in the area. There shall be no direct discharge to the City of Marathon Nearshore Waters.

8. Any increased impacts on Public Facilities or Public Services attributable to each unit of the development, and the cost of capital improvement to meet the associated increased demand on such facilities or services, shall be assured by payment to the City, concurrent with the issuance of the building permits for each unit, of any City of Marathon Impact Fees required by the ordinance then in effect, as well as by payment by owner of any applicable utility system Development Fees. In addition, Owner agrees to be subject to any reasonable impact fee ordinance adopted by the City within twenty-four (24) months after the Effective Date of the Agreement, providing such ordinance applies equally and uniformly to all redevelopment in Marathon.

9. **Fire Protection.** The Owner shall provide fire hydrants and other such fire protection facilities as required by the Life Safety Code administered by the City Fire Department. Fire sprinklers will be installed as required by City Code.

E. Local Development Permits.

The following is a list of all Development Permits approved or needed to be approved 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.

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

F. Finding of Consistency.

By Entering into this Agreement, the City finds that the redevelopment permitted or proposed herein is consistent with and furthers the Comprehensive Plan (as defined herein), applicable LDRs and the Principles for Guiding Development set forth at Section 380.0552(7), Florida Statutes.

G. Existing BPAS Exempt Units and Square Footage

The Parties acknowledge that there exist on the Property:

<u>Development Type</u>	<u>Existing</u>
Transient Units:	30 units
Single Family Dwellings:	1 Market Rate Residential Units
Commercial Floor Area:	1,633 Sq. Ft.

H. Reservations or Dedications of Land for Public Purposes.

The parties anticipate that Owner may reserve or dedicate land for public purposes in connection with the Redevelopment, but is currently unaware of the specifics of such reservation(s) or dedication(s). Reservations and dedications for public purposes in connection with this Agreement may be requested by the City's Comprehensive Plan and City Code. Such reservations or rededications may include, by way of example, easements necessary for the provision of stormwater, utility, and wastewater services to the Property.

I. Mutual Cooperation.

City and Owner agree to cooperate fully and assist each other in the performance of the provisions of this Agreement.

J. Development to Comply with Permits and City Comprehensive Plan and Code Provisions.

The redevelopment shall be developed in accordance with all required permits and in accordance with all applicable provisions of the City's Comprehensive Plan and Land Development Regulations in effect on the effective date of this Agreement. No Certificate of Occupancy for an individual building shall be issued until all plans for that building are approved by the City and Owner has complied with all conditions in permits issued by the City and the other regulatory entities for that building. The City agrees that any permits or certificates of occupancy to be issued by the City shall not be unreasonably withheld or delayed.

K. Compliance With Permit, Terms, Conditions, and Restrictions Not Identified Herein.

The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve Owner of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

L. Laws Governing.

1. For the duration of this Agreement, all approved development of the Property shall comply with and be controlled by this Agreement and provisions of the City's Comprehensive Plan and City Code in effect on the date of execution of this Agreement, inclusive of text changes and rezoning approved by the City Council on the date of the City's approval of this Agreement, if any. The parties do not anticipate that the City will apply subsequently adopted laws and policies to the Property, except as expressly provided in this Agreement.

2. Pursuant to Section 163.3233, Florida Statutes, the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that:

- i. The new laws and policies are not in conflict with the laws and policies governing the Agreement and do not prevent development of the land uses, intensities, or densities set forth in this Agreement;
- ii. The new laws and policies are essential to the public health, safety, or welfare, and the City expressly states that they shall apply to the development that is subject to this Agreement;
- iii. The City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or
- iv. The Agreement is based on substantially inaccurate information supplied by Owner.

Provided, however, nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property.

3. If state or federal laws enacted after the Effective Date of this Agreement preclude any party's compliance with the terms of this Agreement, it shall be modified as necessary to comply with the relevant state or Federal laws. However, this Agreement shall not be construed to waive or abrogate any rights that may vest pursuant to common law.

M. Amendment, Renewal and Termination.

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

1. 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 in interest. Amendment

under this provision shall be accomplished by an instrument in writing signed by the parties or their successors.

2. 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.

3. 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.

4. 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.

5. This Agreement may be terminated by mutual consent of the parties.

N. Breach of Agreement and Cure Provisions.

1. If the City concludes that there has been a material breach in this Agreement by Owner, prior to revoking this Agreement, the City shall serve written notice on Owner identifying the term or condition the City contends has been materially breached and providing Owner with ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to this Agreement. Each of the following events shall be considered a material breach of this Agreement:

- (i) Failure to comply with the provisions of this Agreement;
- (ii) Failure to comply with terms and conditions of permits issued by the City or other regulatory entity for the development authorized by this Agreement.

2. If Owner concludes that there has been a material breach in the terms of this Agreement by the City, Owner shall serve written notice on the City identifying the term or condition Owner contends has been materially breached and providing the City with ninety (90) days from the date of receipt of the notice to cure the breach, or negotiate an amendment to this Agreement. The following events shall be considered a material breach of this Agreement:

- (i) Failure to comply with the provisions of this Agreement;

(ii) Failure to timely process any application for Site Plan approval or other development authorized by this Agreement.

3. If either party waives a material breach in this Agreement, such a waiver shall not be deemed a waiver of any subsequent breach.

4. Notwithstanding any other provisions of this Development Agreement to the contrary, neither party hereto shall be deemed to be in default under this Development Agreement where delay in the construction or performance of the obligations imposed by this Development Agreement are caused by war, revolution, labor strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions, embargoes, litigation (excluding litigation between the City and the Owner), tornadoes, hurricanes, tropical storms or other severe weather events, or any other causes beyond the control of such party. The time of performance hereunder, as well as the term of this Development Agreement, shall be extended for the period of any forced delays or delays caused or resulting from any of the foregoing causes. The Owner must submit evidence to the City's reasonable satisfaction of any such delay.

O. Notices.

All notices, demands, requests, or replies provided for or permitted by this Agreement, including notification of a change of address, shall be in writing to the addressees identified below, and may be delivered by anyone of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Services as certified or registered mail, return receipt requested, postage prepaid; or (c) by deposit with an overnight express delivery service with a signed receipt required. Notice shall be effective upon receipt. The addresses and telephone numbers of the parties are as follows:

**TO OWNER:**

HTG Crystal Cove Resort I.LLP  
3225 Aviation Avenue, Suite 602  
Coconut Grove, Florida 33133

With a copy by regular U.S. Mail to:

Thomas D Wright  
Florida Board Certified Real Estate Attorney  
9711 Overseas Highway  
Marathon, Florida 33050

**TO THE CITY:**

City Manager  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050  
(305) 743-0033

With a copy by regular U.S. Mail to:

City Attorney  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050  
(305) 743-0033

P. Annual Report.

On each anniversary date of the Effective Date of this Agreement, Owner shall provide the City with a report identifying (a) the amount of development authorized by this Agreement that has been completed, (b) the amount of development authorized by this Agreement that remains to be completed, and (c) any changes to the plan of development that have occurred during the one (1) year period from the Effective Date of this Agreement or from the date of the last Annual Report.

Q. Enforcement.

In accordance with Section 163.3243, Florida Statutes, any party to this Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes, or the State Land Planning Agency may file an action for injunctive relief in the Circuit Court of Monroe County, Florida, to enforce the terms of this Agreement or to challenge the compliance of this Agreement with the provisions of Section 163.3220-163.3243, Florida Statutes.

R. Binding Effect.

This Agreement shall be binding upon the parties hereto, their successors in interest, heirs, assigns, and personal representatives.

S. Assignment.

This Agreement may not be assigned without the written consent of the parties, which consent shall not be unreasonably withheld.

T. Drafting of Agreement.

The parties acknowledge that they jointly participated in the drafting of this Agreement and that no term or provision of this Agreement shall be construed in favor of or against either party based solely on the drafting of the Agreement.

U. Severability.

In the event any provision, paragraph or section of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the

enforceability or validity of the remaining provisions of this Agreement.

V. Applicable Laws.

This Agreement was drafted and delivered in the State of Florida and shall be construed and enforced in accordance with the laws of the State of Florida.

W. Litigation/Attorneys Fees; Venue; Waiver of Right to Jury Trial.

As between the City and Owner, in the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorney's fees. This includes, but is not limited to, reimbursement for reasonable attorney's fees and costs incurred with respect to any appellate, bankruptcy, post-judgment, or trial proceedings related to this Agreement. Venue for any legal proceeding arising out of this Agreement shall be in Monroe County, Florida.

THE PARTIES TO THIS AGREEMENT WAIVE THE RIGHT TO A JURY TRIAL IN ANY LITIGATION ARISING OUT OF THIS AGREEMENT.

X. Use of Singular and Plural.

Where the context requires, the singular includes the plural, and plural includes the singular.

Y. Duplicate Originals; Counterparts.

This Agreement may be executed in any number of originals and in counterparts, all of which evidence one agreement. Only one original is required to be produced for any purpose.

Z. Headings.

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

AA. Entirety of Agreement.

This Agreement incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, or understandings regarding the matters contained herein. The parties agree that there are no commitments, agreements, or understandings concerning the subjects covered by this Agreement that are not contained in or incorporated into this document and, accordingly, no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether written or oral. This Agreement contains the entire and exclusive understanding and agreement among the parties and may not be modified in any manner except by an instrument in writing signed by the parties.

**BB. Recording Effective Date.**

The Owner shall record this Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date the last party signs this Agreement. A copy of the recorded Agreement showing the date, page and book where recorded shall be submitted to the State Land Planning Agency at the Department of Community Affairs, Division of Community Planning, 2555 Shumard Oak Boulevard, Tallahassee FL 32399-2100 by hand delivery or registered or certified United States mail, or by a delivery service that provides a signed receipt showing the date of delivery, within fourteen (14) days after the Agreement is recorded and received by the Owner or his agents. Owner shall also provide a copy of the recorded Agreement to the City at 9805 Overseas Highway, Marathon, Florida 33050, within the same time period. This Agreement shall become effective thirty (30) days after the date the State Land Planning Agency receives its copy pursuant to Section 163.3239, Florida Statutes


**CC. Date of Agreement.**

The Date of this Agreement is the date the last party signs and acknowledges this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year below written. Signed, sealed, and delivered in the presence of.

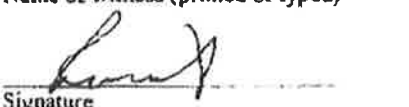
**WITNESSES:**

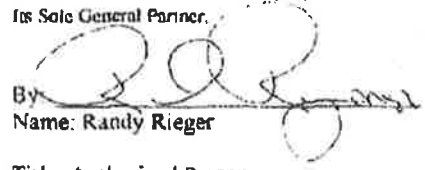
**OWNER**

  
Signature  
JOSE M. ROMERO III  
Name of witness (printed or typed)

HTG Crystal Cove Resort LLLP,  
A Florida Limited Liability Limited Partnership

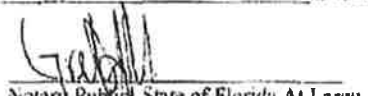
By: HTG Crystal Cove Resort GP, LLC,  
A Florida Limited Liability Company  
Its Sole General Partner.

  
Signature  
RICHARD A. MATLOF  
Name of witness (printed or typed)

By:   
Name: Randy Rieger  
Title: Authorized Person

**STATE OF FLORIDA COUNTY OF MONROE**

The following instrument was acknowledged before me on this 10<sup>th</sup> day of NOVEMBER, 2016, by Randy Rieger, as Authorized Person of HTG Crystal Cove Resort GP, LLC, who is Personally known to me or who produced \_\_\_\_\_ as identification, and who did/did not take an oath.

  
Notary Public, State of Florida At Large  
My commission expires \_\_\_\_\_

TAL 481 479.332v2 7-20-08  
003426040 2



RM GK



On the 13<sup>th</sup> day of September, 2016, The City Council of the City of Marathon approved this Agreement by Resolution No. 2016-72

ATTEST:

*Diane Clavie*  
City Clerk

CITY OF MARATHON  
By: *[Signature]*  
Mark Senmartin, Mayor

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

*[Signature]*  
David Migut, City Attorney

~~Doc# 2109300~~  
~~Bk# 2837 Pg# 2089~~

Doc# 2100183  
Bk# 2826 Pg# 1964

EXHIBIT I

TAL 451.479.332v2 7-30-08  
603628040 2

EXHIBIT "A"

LEGAL DESCRIPTION

Lots 5 and 6 of Thompson and Adams Subdivision of Government Lot 1, Section 10, Township 66 South, Range 32 East which plat is recorded in Plat Book 2, at Page 24 of the Public Records of Monroe County, Florida.

That portion of a 66-Foot right-of-way of Old State Highway 4A lying immediately South of Lot 5 of Thompson and Adams Subdivision according to the plat thereof recorded in Plat Book 2, Page 24, of the Public Records of Monroe County, Florida.

Together with a parcel of bay bottom land in the Bay of Florida, North of and adjacent to Lot 5 of Thompson-Adams Subdivision, as recorded in Plat Book 2, Page 24 of the Public Records of Monroe County, Florida. Said Subdivision also being in a part of Government Lot 1, Section 10, Township 66 South, Range 32 East, and being more particularly described by notes and bounds as follows:

Commencing at the intersection of the East line of Section 10, Township 66 South, Range 32 East, and the northwesterly right-of-way line of Old State Highway No. 4A. Bear southwestly along the northwesterly right-of-way line of Old State Highway No. 4A for a distance of 734.39 feet to the Southeast corner of said Lot 5; thence bear North along the East line of Lot 5 for a distance of 359.77 feet to the point of beginning of the parcel of bay bottom land hereinafter described, from said point of beginning, continue bearing North along the East line of Lot 5, extended, for a distance of 220 feet to a point, thence at right angles and West for a distance of 130.97 feet to a point on the West line of Lot 5, extended North, thence bear South along the West line of Lot 5, extended North, for a distance of 270 feet, more or less, to a point on the shoreline, thence meander the shoreline in a southerly and northeasterly direction for a distance of 220 feet, more or less, back to the point of beginning.

Together with a parcel of bay bottom land in the Bay of Florida North of and adjacent to Lot 6 of Thompson and Adams Subdivision as recorded in Plat Book 2, Page 24 of the Public Records of Monroe County, Florida, said subdivision also being in a part of Government Lot 1, Section 10, Township 66 South, Range 32 East and being more particularly described by notes and bounds as follows:

Commencing at the intersection of the M.H.W.L. of the Gulf of Mexico and the West boundary of Lot 6 of said Thompson and Adams Subdivision of Government Lot 1, Section 10, Township 66 South, Range 32 East as per plat thereof in Plat Book 2, Page 24, of the Public Records of Monroe County, Florida, as and for the point of beginning of the property to be described. Run thence North into the waters of the Gulf of Mexico for a distance of 323 feet; thence at a right angle and East, for a distance of 100.97 feet to a point; thence at a right angle and South to the M.H.W.L. at a point where it intersects the Eastern boundary of said Lot 6; thence meander said M.H.W.L. in a westerly direction to the point of beginning.

TAL 431,479.332v2 7-30-08  
603626040.2

MONROE COUNTY  
OFFICIAL RECORDS

MONROE COUNTY  
OFFICIAL RECORDS

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2017-106**

**A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, REQUESTING AN EXTENSION OF THE TERM SPECIFIED IN SECTION 3, "TERM" OF THE INTERLOCAL AGREEMENT BETWEEN THE MONROE COUNTY AND THE CITY OF MARATHON TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL DWELLING UNIT ALLOCATIONS FOR AN APPROVED PROJECT IN THE OWNERSHIP OF HTG CRYSTAL COVE LLC, TO BE LOCATED 4900 OVERSEAS HIGHWAY, MARATHON, FLORIDA ON PROPERTIES INCLUDING REAL ESTATE NUMBERS 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, AND 00328030-000000. NEAREST MILE MARKER 50; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, On or about December 0f 2016, the City of Marathon and Monroe County entered into an Interlocal Agreement (ILA) transferring forty-six (46) affordable housing residential dwelling units to the City to be utilized in a project in the ownership of HTG Crystal Cove, LLC; and

**WHEREAS**, the ILA provided a "reverter clause" and a term which specified that:

"Section 3. TERM: Subject to and upon the terms and conditions set forth herein, this Interlocal Agreement shall continue in force until one of the following occur:

The project is not granted funding by FHFC LIHTC/WORKFORCE program in the FY16-17 or FY 17-18 competitive cycle; or

The project does not complete construction and does not obtain Certificates of Occupancy for all 46 affordable housing units contemplated herein by December 31, 2019. All affordable housing units for which Certificates of Occupancy are issued prior to December 31, 2019 shall remain subject to this Interlocal Agreement irrespective of whether all 46 affordable housing units contemplated herein receive Certificates of Occupancy."

**WHEREAS**, subject project did not request FHFC LIHTC/WORKFORCE housing funding in the 2016-2017 competitive cycle, but did in the following cycle and did not qualify; and

**WHEREAS**, the City and the project owner remain resolute in the approved project as an FHFC LIHTC/WORKFORCE and wish to assure that it may continue to apply in future grant cycles; and

**WHEREAS**, further, with the impacts of Hurricane Irma in Marathon and on the Florida Keys in general, the imperative need for additional workforce housing is at a crisis level; and

WHEREAS, the City requests that the term specified in Section 3 of the ILA be extended to include the remainder of the 2018-2019 competitive cycle and extend through the physical year of 2020.

**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 requests that the term specified in Section 3 of the ILA be extended to include the remainder of the 2018-2019 competitive cycle and extend through the physical year of 2020.

**Section 3.** The City Clerk shall forward a certified copy of this Resolution to appropriate individuals at Monroe County, Florida, the Florida Department of Economic Opportunity, the Florida Housing Finance Corporation, the Florida Task Force on Affordable Housing, and the Executive Offices of the Governor.

**Section 4. Effective Date.** This Resolution shall become effective immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 12TH DAY OF DECEMBER, 2017.**

THE CITY OF MARATHON, FLORIDA


  
\_\_\_\_\_  
Michelle Coldiron, Mayor

AYES: Bartus, Cook, Senmartin, Zieg, Coldiron  
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