



**City of Marathon City Council Agenda**  
**Marathon Council Chambers, 9805 Overseas Hwy., Marathon**  
**Tuesday, May 14, 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. National Prevention Week Proclamation (Councilmember Senmartin).....9
  - C. ABATE Motorcycle Safety Awareness Month Proclamation.....10
  - D. 33<sup>rd</sup> Street Redevelopment Discussion (Councilmember Zieg)
  - E. Extending Temporary Trailer Permits for an Additional 90 Days
  - F. Community Announcements .....11
  - G.
6. **City Manager Report**
  - A. Marina Report.....12
  - B. Growth Management Report .....14
  - C. Marathon Fire Rescue Department Report.....20
  - D. Washington DC Update
  - E. Hotel/Motel Association Hurricane Conference
  - F. FCT Grant Discussion.....23
  - G.
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 AT THE CONCLUSION OF ALL COUNCIL BUSINESS; WHICHEVER OCCURS FIRST.**
8. **Quasi Judicial Public Hearing** - 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. Consideration Of A Request By Grassy Key Resort Group, LLC For A Conditional Use Permit and Development Agreement Pursuant to Chapter 102, Articles 8 and 13 Of The City of Marathon Land Development Regulations (LDRs) Entitled “Development Agreement” And “Conditional Use Permits” Respectively, Seeking For The Redevelopment Of Hotel Resort And Commercial Uses On Property Located at 58182 Overseas Highway, Which Is Legally Described As Township 65, Section 24, Range 33; Block 36 Lots 1-2-3-4 And Part of Lots 5-6 (Parcel A) And Westerly 15FT Unnamed Street Adjacent Lot 1 Res B-C-C 8/11/61 And Adjacent Portion Of Flagler Street And Grassy Key Bay Bottom Adjacent Lots 1-2-3 in the Crain’s Subdivision, Grassy Key, Marathon, Florida; Having Real Estate Numbers 00370940-000000. Nearest Mile Marker 58.5.....24

B. Consideration Of A Request For A Conditional Use Permit And Development Agreement For 1477 Overseas Highway LLC And Seasons Inc., 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 An Affordable Mobile Home Park, Located at 1477 Overseas Highway And 263 15<sup>th</sup> Street, Which Are Legally Described As The North 150 Feet of Lot 1 and 2, Part of Lots 1 and 2, Block 2 , Parrish Subdivision, Marathon, Florida, Having Real Estate Numbers 00326770-000000 and 00326760-000000. Nearest Mile Marker 48.....77

**9. Ordinances for First Public Hearing**

A. **Ordinance 2019-08**, Amending The Future Land Use Map From Residential Low (RL) To Residential Medium (RM) For The Property Described As Lots 5 Through 9, Block 58, Crain’s Subdivision, Marathon, Monroe County, Florida, Having Real Estate Numbers As Stated In the Ordinance; 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.....115

B. **Ordinance 2019-09**, Amending The Official Zoning Map From Residential Low (RL) To Residential Medium (RM) For The Property Described As Lots 5 Through 9, Block 58, Crain’s Subdivision, Marathon, Monroe County, Florida, Having Real Estate Numbers As Stated in the Ordinance; 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.....134

**10. Ordinances for Second Public Hearing and Enactment**

A. **Ordinance 2018-11**, Amending The Future Land Use Map And The Zoning Map From Residential Low (RL) to Mixed Use (MU) and Residential Low (RL) For Property Located At 10155 Overseas Highway, Marathon, Florida, Monroe County, Florida, Which Is Legally Described As Part of Govt Lot 2 And Bay Bottom South Of And Adj Part Govt Lot 2, Key Vaca, Having Real Estate Number 00104460-000000; 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.....146

**B. Ordinance 2018-12**, Amending The Future Land Use Map From Residential Low (RL) To Mixed Use (MU) And Residential Low (RL) For Property Located At 10155 Overseas Highway, Marathon, Florida, Monroe County, Florida, Which Is Legally Described As Part Of Govt Lot 2 And Bay Bottom South Of And Adj Part Govt Lot 2, Key Vaca, Having Real Estate Number 00104460-000000; 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.....166

**C. Ordinance 2019-03**, Amending The Future Land Use Map From Residential Medium (RM) To Mixed Use (MU) and Residential Medium (RM) For Part Of The Property Described As 222 99<sup>th</sup> ST. Ocean, Marathon, Monroe County, Florida, Having Real Estate Number 00352210-000000; 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.....170

**D. Ordinance 2019-04**, Amending The Official Zoning Map From Residential Medium (RM) To Mixed Use (MU) and Residential Medium (RM) For Part Of The Property Described As 222 99<sup>th</sup> ST. Ocean, Marathon, Monroe County, Florida, Having Real Estate Number 00352210-000000; 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.....189

**11. Resolutions for Adoption**

**\*A. Resolution 2019-38**, Providing Approval To Expend Additional Funds Through The First Time Home Buyer Loan Funding Program To Additional Qualified Applicants In An Amount Not To Exceed \$10,000.00 Per Applicant And No More Than Ten Additional Applicants Or \$100,000.00; Appropriating Funds; And Providing For An Effective Date.....200

**\*B. Resolution 2019-39**, Authorizing A “Sole-Source” Purchase Pursuant To The City’s Purchasing Policies And Procedures And Approving The Purchase of various Airvac (now the Aqseptance Group) vacuum collection system vacuum pits and appurtenances to provide sewer service connections for new construction, In An Amount Not To Exceed \$45,504.00; Authorizing The City Manager To Enter Into Agreements In Connection Therewith, Appropriating And Expending Budgeted Funds; And Providing For An Effective Date.....204

**\*C. Resolution 2019-40**, Authorizing A “Sole-Source” Purchase Pursuant To The City’s Purchasing Policies And Procedures And Approving The Purchase of Odor Control System Upgrades from Syneco Systems, Inc. for upgrades in Service Area 3, Service Area 5, and Service Area 5 Remote Vacuum Station, In An Amount Not To Exceed \$222,797.25; Authorizing The City Manager To Enter Into Agreements In Connection Therewith, Appropriating And Expending Budgeted Funds; And Providing For An Effective Date.....209

**\*D. Resolution 2019-41**, Awarding Contract For The Construction Of The Marathon Marina Dinghy Dock Project To Shoreline Foundation, Inc.; Approving Contract In The Amount Of \$413,307.00; Authorizing The City Manager To Execute The Contract And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date .....213

**\*E. Resolution 2019-42**, Approving Amendment 1 To Extend Grant Agreement No. 2140 Between The City And The Monroe County Tourist Development Council For the Oceanfront Park Improvements, And Providing For An Effective Date .....231

**\*F. Resolution 2019-43**, Approving Amendment Five Of The Inter-Local Agreement Between The City Of Marathon And Monroe County For Funding Of Ferry Service To Pigeon Key; Authorizing The City Manager To Execute The Inter-Local Agreement And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.....236

**\*G. Resolution 2019-44**, Approving A Contract for Service Area 3 Wastewater Pre-Treatment To Reynolds Construction of Florida, LLC In The Amount Of \$365,000.00; Authorizing The City Manager To Execute The Contract And Appropriate and Expend Funds On Behalf Of The City; And Providing For An Effective Date.....241

**\*H. Resolution 2019-45**, Approving A Contract Change Order #7 With Reynolds Construction For The Area 3 & 4 WWTP Upgrade Project In An Amount Not To Exceed \$368,876.97; Authorizing The City Manager To Execute The Contract Change Order #7 To Appropriate And Expend Funds On Behalf Of The City; And Providing For An Effective Date.....254

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

**13. Council comments**

**14. 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 April 9, 2019 in the Marathon Council Chambers, 9805 Overseas Hwy., Marathon, Florida, Mayor Bartus called the meeting to order at 6:10 pm.

The Pledge of Allegiance was recited.

**ROLL CALL - There were present:**

Councilmember Luis Gonzalez

Councilmember Mark Senmartin

Councilmember Dr. Daniel Zieg

Vice Mayor Steven Cook

Mayor John Bartus, comprising a quorum

Also in attendance were:

City Manager, Chuck Lindsey

City Attorney, David Migut

City Clerk, Diane Clavier

Finance Director Jennifer Johnson

Planning Director George Garrett

Growth Management Director, Doug Lewis

Public Works Director, Carlos Solis

Parks and Recreation Director, Jimmy Schmidt

Sherriff Rick Ramsay, Monroe County Sheriff's Office

Captain Don Hiller, Monroe County Sheriff's Office

Marina Director, Sean Cannon

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

Lindsey added cancellation of the April 23<sup>rd</sup> City Council Meeting and an Update on FKWQIP (Florida Keys Water Quality Improvement Project) Trip under City Manager Report. Lindsey also added Resolution 219-34 to the consent agenda.

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

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

### **City Council Items**

\* Approval of Minutes

Monroe County Sherriff's Office Return of Unspent Funds – Sherriff Ramsay presented a check to the City for \$84,000 and informed everyone crime was down 16.3 percent. Mayor Bartus thanked the MSCO and commented that every year they are able to give back funds.

Keys 100 Race Request for May 18-19 – Lindsey explained the request and commented that the race had never been an issue.

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

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

Autism Awareness Month – Jill Campbell invited everyone to participate in the events scheduled and accepted the proclamation.

National Safe Boating Week Proclamation (Mayor Bartus) USCG Auxiliary Commander Mathews thanked Vice Mayor Cook and the City for their support of Coast Guard Members following the Federal shutdown and accepted the proclamation.

Child Abuse Prevention Month – Guardian Ad Litem volunteers accepted the proclamation

Community Announcements – Community announcements were read. Zieg reminded everyone of the car show benefitting soldiers at the Quay property. Bartus informed everyone of the Rotary Easter Egg Hunt on April 20<sup>th</sup> at 10 am.

## City Manager Report

City Seal Update (Migut) – Migut explained at the last meeting, Councilmember Senmartin gave a 30 day notice to cease use of the City seal. Migut stated his findings are that the application did not give him any trademark rights to the City seal and the City can continue to use its City seal. Migut explained that worldwide, there are two systems commonly referred to as first to use and first to register. The United States is a first to use country, and case law in the United States has continuously held that the use of a trademark protects an entity from someone coming later using the same trademark even if no trademark application was ever filed. While the City has never officially adopted the City seal, it is common knowledge that the City has been using at least two different versions of its seal since shortly after incorporation. Therefore, the fact that someone else has registered the City's seal with the State does not legally affect the City's right and ability to continue to use its seal. Migut also explained that under both Federal and State law, a municipal insignia, such as a city seal cannot be registered as a trademark.

Senmartin thanked Migut for all of his great, quality work and explained that trademark law was confusing. Senmartin commented that one of the key arguments is that the trademark shall not be registered if it consists or compromises a flag, coat of arms, or other insignia of the United States, any state or municipality and that was Migut's basis for saying he could not trademark the seal. Senmartin stated the problem is that it does not belong to this municipality since we have never adopted it as ours, we use it, but it does not belong to us, so technically, yes, I can trademark the seal for myself stated Senmartin. Other cities have adopted their seal for protection and there was no reason why the City should not adopt the seal Senmartin explained.

Bartus stated he would like to protect the seal, but it was not the will of the Council to adopt it by ordinance.

Senmartin stated that the City does not have control over the seal, which means anyone in the room or this town does not need the permission of the City to use the seal but they would need his permission because he is the trademark holder at this point.

Migut disagreed with his first part of the argument. Migut explained the only thing in Florida law that says we have to adopt a seal is if we want to have the criminal prosecution aspect at our disposal. We can still send cease and desist correspondence if we feel someone is using the seal improperly.

Senmartin stated a cease and desist carries no weight if you are not the owner of the seal.

Bartus commented that Florida and US are the first use right Country and State. Migut agreed, we are well protected since we have been using the seal.

Senmartin stated if the City refuses to adopt and protect the seal, then don't worry, he would, it is safe with him until we have a Council that understands and will move forward.

Cook commented as a side note, Senmartin does not actually own the seal, it is an application; all we have to do is say that it has been in use for the last 19 years.

**Citizens' Comments:**

Diane Scott – spoke about dogs without leashes and asked the law be enforced. Scott asked that the seal be adopted and disagreed with the attorney regarding trademark law, as she had done some research.

Parks and Recreation Report – Schmidt gave an overview of his report and highlighted some of the park programs. Bartus thanked Schmidt for the incredible amount of events going on at the parks.

Public Works Report – Solis reported that Sombrero Beach construction was moving at a quick pace and explained the change order for the beach on the agenda and informed everyone that FEMA approved funding for this change order for a three foot wall with a fence to help hold the sand on the beach along with a few other tweaks. Solis also commented that FKAA was installing seven injection wells. Solis informed everyone the Quay Boat parking would be amended per the sketch he distributed to allow for better traffic flow and stacking on the property and not US1. Zieg asked for an update regarding the bus stop tiki huts. Solis explained this was held up as they had to get an easement at K-Mart and FDOT would have to reapply for a permit. Senmartin asked for an update regarding the lighting on Sombrero Beach Road. Solis explained this will have to be put out to bid because of the costs to repair, however, this would be reimbursable by FEMA. Senmartin also commented on an area on Sombrero Beach Road where the edge drops off. Solis explained FKAA would repair the road and he would put this on the list to address the drop off. Bartus commented on the soccer and baseball fields change order and suggested by all means to make that happen and questioned if the entire beach would be open by July 4<sup>th</sup>. Solis explained the beach would substantially be completed by July 4<sup>th</sup> and final completion by the end of July.

Wastewater Utility Report – Lindsey explained Saus was not able to attend tonight's meeting, but he would try to answer any questions.

Cancellation of April 23<sup>rd</sup> meeting – Lindsey requested cancellation of this meeting as there are no items. The Council gave a head nod to cancel the meeting.

Update on FKWQIP (Florida Keys Water Quality Improvement Project) Trip – Lindsey explained that the City was successful in obtaining FKWQIP in the past and that Dan Saus, Mayor Bartus and he along with Key Largo Wastewater District and the Village of Islamorada would be traveling to DC to ask for funding. Lindsey also mentioned that there was an item we placed on consent tonight and the filter upgrade project will be completed with the newer technology that will make our system even better and will be paid for solely with FKWQIP funding. Bartus commented that he and Garrett were involved in the past to ask for this funding, and it has been a long time coming. Lindsey commented that the City received four million last year.

**Ordinances (To be continued)**

**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

Migut explained these items were continued at the last meeting and staff was not able to  
complete these items in time for the packet. Migut explained the items would come back and  
suggested the Council not take any action on them and continue them, however, there are  
people from the public that may want to comment and Migut recommended that if they still  
want to speak they be allowed. Bartus commented that he does want to hear what the public  
has to say and thanked the public for sticking around during the power outage.

Bruce Farraro – spoke against the ordinance as it would negatively impact the owners of  
Skipjack condos.

Lawrence McKenna – spoke against the ordinances and asked everyone to raise their hands  
in the audience that were against the ordinance.

Sari Mundie – read letters from those against the ordinance.

Migut explained if the ordinances were approved and enacted, this would apply City-wide it  
is not just Skipjack.

Everet Breland – spoke against the ordinances, and not being made aware of what was  
happening.

Tom Wright – on behalf of the owners, stated his client was told this was going to be  
continued, and that allowing speakers was fundamentally unfair and wanted his objection on  
the record.

**MOTION:** Senmartin moved to continue Ordinance 2019-06  
**SECOND:** Zieg

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

**MOTION:** Senmartin moved to continue Ordinance 2019-07  
**SECOND:** Cook

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

**Quasi-Judicial Public Hearing:**

**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.

The clerk swore in speakers. Council stated they had no ex parte communications.

Garrett explained the project and request for the amendment to the conditional use. Senmartin questioned the direction to travel for the drive thru as well as the entrance on the site plan and if the housing would have issue regarding headlights at night. Garrett replied it was commercial next door. Senmartin suggested a light barrier.

Jorge Ceparo, agent for applicant explained this was the last piece of hotel and retail portion of the project, this is for only the drive thru, as the retail portion was already approved.

Zieg questioned is we needed to calculate the water and wastewater impacts on what this is and explained we may want to delay this until we know the impacts.

Lindsey explained the wastewater calculations were requested and there is no way to evaluate the numbers unless we knew what was going in there.

Zieg commented if there was something more we should do to know what the impact was before we give blanket approval. George commented that Saus did have some concerns, there will be some ultimate evaluations; we could put a limit on that number. Ceparo explained that once a tenant is chosen, they will need to come in and get a permit and if they exceed the impact, they will not be able to get a permit.

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

**MOTION:** Senmartin moved to approve Resolution 2019-33  
**SECOND:** Cook

Vote of the Motion:

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

Absent: None  
Abstain: None

Vote on the Motion: 5 Yes, 0 No, 0 Absent, 0 Abstain

### **Resolutions for Adoption**

\***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

\* **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.

\* **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.

\* **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.

### **Citizens' Comments:**

Diane Scott – asked to put the bus stop back to its previous location and suggested a water fountain and phone charger at the bus stop. Scott asked for a pavilion at the Jesse Hobbs Park and commented that the Church would be celebrating its 70<sup>th</sup> anniversary.

**Council Comments**

Gonzalez informed everyone that former Councilmember Marilyn Tempest, she had a severe fall and will be having surgery tomorrow and then will go to a rehab center for two months. Gonzalez wished her a speedy recovery and our thoughts and prayers are with her and her family..

Zieg thanked Gonzalez for the information and asked for thoughts and prayers to Marilyn Tempest and her family. Zieg thanked Marathon Fire Rescue as well as MSCO and FHP on a personal note for doing their jobs last week very well. Zieg gave a history of events in 1865, 2003 and 2005. Zieg commented that at the last meeting during the Tallahassee trip discussion, his comments of “show me the money” and “check please” were left out of the minutes.

Senmartin commented that the Sherriff’s office check represents officers we did not have here largely because of the affordable housing shortage. Senmartin also commented on the Marathon High School presentation of Mama Mia is this weekend.

Cook thanked the staff, volunteers, Marathon Fire Rescue and MSCO officers who worked the bridge run and asked everyone to keep Mike Card and family in their prayers and wished everyone a happy Easter.

Bartus also asked for thoughts and prays for the Card family and Tempest family. Bartus congratulated MSCO, EMS, and volunteers for the successful bridge run and gave a special thanks to Solis and Schmidt for doing everything they did to try to get power restored.

**ADJOURNMENT**

With no further business to come before the Council, Mayor Bartus adjourned the meeting at 7:35 pm by unanimous consent.

I certify the above represents an accurate summary of the regular Council meeting of April 9, 2019

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

\_\_\_\_\_  
Date



***CITY OF MARATHON CITY COUNCIL PROCLAMATION***

***National Prevention Week  
May 12<sup>th</sup> through May 18<sup>th</sup>, 2019***

**WHEREAS;** National Prevention Week is an annual health observance dedicated to increasing public awareness of, and action around, mental and/or substance use disorders; and

**WHEREAS** each year, National Prevention Week includes daily themes to focus on major substance use and mental health topics. The 2019 daily themes are:

- Monday, May 13: Preventing Prescription and Opioid Drug Misuse
- Tuesday, May 14: Preventing Underage Drinking and Alcohol Misuse
- Wednesday, May 15: Preventing Illicit Drug and Youth Marijuana Use
- Thursday, May 16: Preventing Youth Tobacco Use
- Friday, May 17: Preventing Suicide; and

**WHEREAS;** National Prevention Week (NPW) is held each year during the third week of May. Originally, SAMHSA chose this week because it is near the start of summer, an important time for school, communities, and prevention professionals to re-focus on prevention. Adolescents and full-time college students most often use substances for the first time during June or July, according to a National Survey on Drug Use and Health data; and

**WHEREAS;** the timing of National Prevention Week still provides a timely opportunity for schools and organizations to host prevention-themed events and activities before the school year ends, raising awareness about this important issue among students and their families. These are key periods of social transitions, a risk factor for youth substance use, and an opportunity to develop or strengthen the community, school, and family bonds that protect young people from substance use and strengthen community health overall; and

**NOW, THEREFORE,** the City of Marathon City Council, do hereby proclaim May 12<sup>th</sup> through May 18<sup>th</sup> as “National Prevention Week in the City of Marathon and call upon our community to observe this week with programs and events that support this year’s theme “Action Today. Healthier Tomorrow.”

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

May 14, 2019  
Date



## City Council of the City of Marathon, Florida

### Motorcycle Safety Awareness Month

**WHEREAS**, motorcycles are increasingly used as a regular means of transportation; and

**WHEREAS**, with motorcycle ownership in Florida exceeding 750,000 registered motorcycles, the Governor of the State of Florida and the National Highway Traffic Safety Administration and the Motorcycle Safety Foundation have traditionally named May as 'Motorcycle Safety Awareness Month; and

**WHEREAS**, communities and motorcycle organizations across this country will be conducting a variety of activities to promote the importance of motorists awareness and safely sharing the road with motorcycles; and

**WHEREAS**, locally, ABATE of Florida, Inc. Southernmost chapter is highly involved in motorcycle safety through the Rider and Motorists Education Programs which include the 'Motorcycle Safety Awareness Program' to educate the non-riding public how to safely share the road with motorcycles; and

**WHEREAS**, ABATE of Florida, Inc. promotes friendship and safety among all motorcyclists using their motto of 'American Bikers Aiming Towards Education' and 'Zero Accidents, Zero Deaths; and

**WHEREAS**, the City of Marathon wishes to join in their public safety campaign in an effort to ensure the safety and well being of its citizens.

**NOW THEREFORE**, the City of Marathon City Council hereby proclaims the month of May be recognized in the City of Marathon as

### **MOTORCYCLE SAFETY AWARENESS MONTH**

and urge our residents and visitors to be more aware of motorcycles on our roads and highways by sharing the road and for all motorcyclists to take advantage of motorcycle safety programs throughout the year.

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

May 14, 2019  
Date

<u>SUBJECT:</u>	<u>DATE:</u>	<u>TIME:</u>	<u>LOCATION</u>
Code Compliance Hearing	5/15	2:00pm	Council Chambers, 9805 Overseas Hwy.
Perils of Flood Public Forum	5/16	5:00pm	Council Chambers, 9805 Overseas Hwy.
Preregistration for Summer Camp Summer Camp begins June 3 <sup>rd</sup> to August 9 <sup>th</sup> . Registration forms can be found on the City's website	5/18	10:00am	Community Park Main Pavilion
Planning Commission Meeting	5/20	5:30pm	Council Chambers, 9805 Overseas Hwy.
2019 Hurricane Preparedness Workshop for the Tourism Industry	5/23	1:00pm	Council Chambers, 9805 Overseas Hwy.
Memorial Day*City Hall Closed*	5/27		
City Council Meeting	5/28	5:30pm	Council Chambers, 9805 Overseas Hwy.

**Community Health Answer the Door Survey:** The Florida Department of Health in Monroe County will be going door to door to ask residents about their experiences with Irma. Participation will help build better health programs for Monroe County.



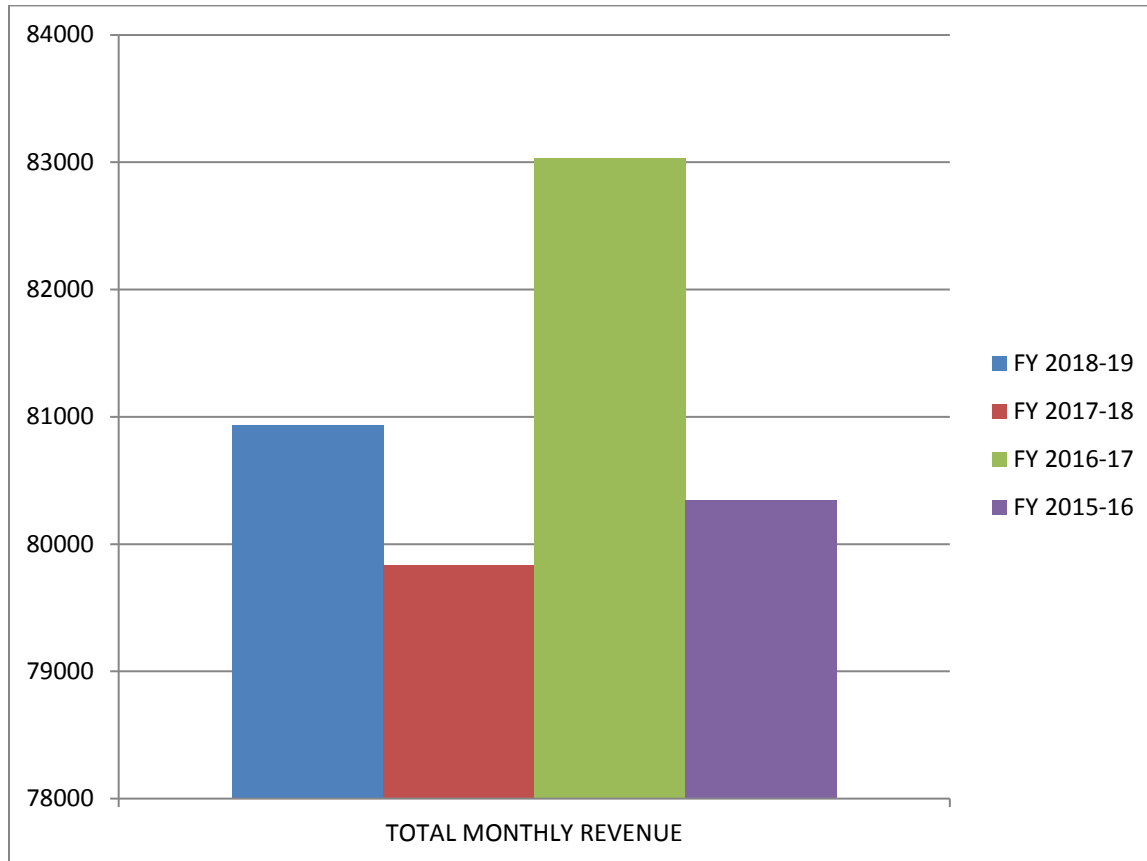
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## Memorandum

**To:** Chuck Lindsey, City Manager  
**From:** Sean Cannon, Ports Director  
**Date:** May 14, 2019  
**Re:** April Monthly Report

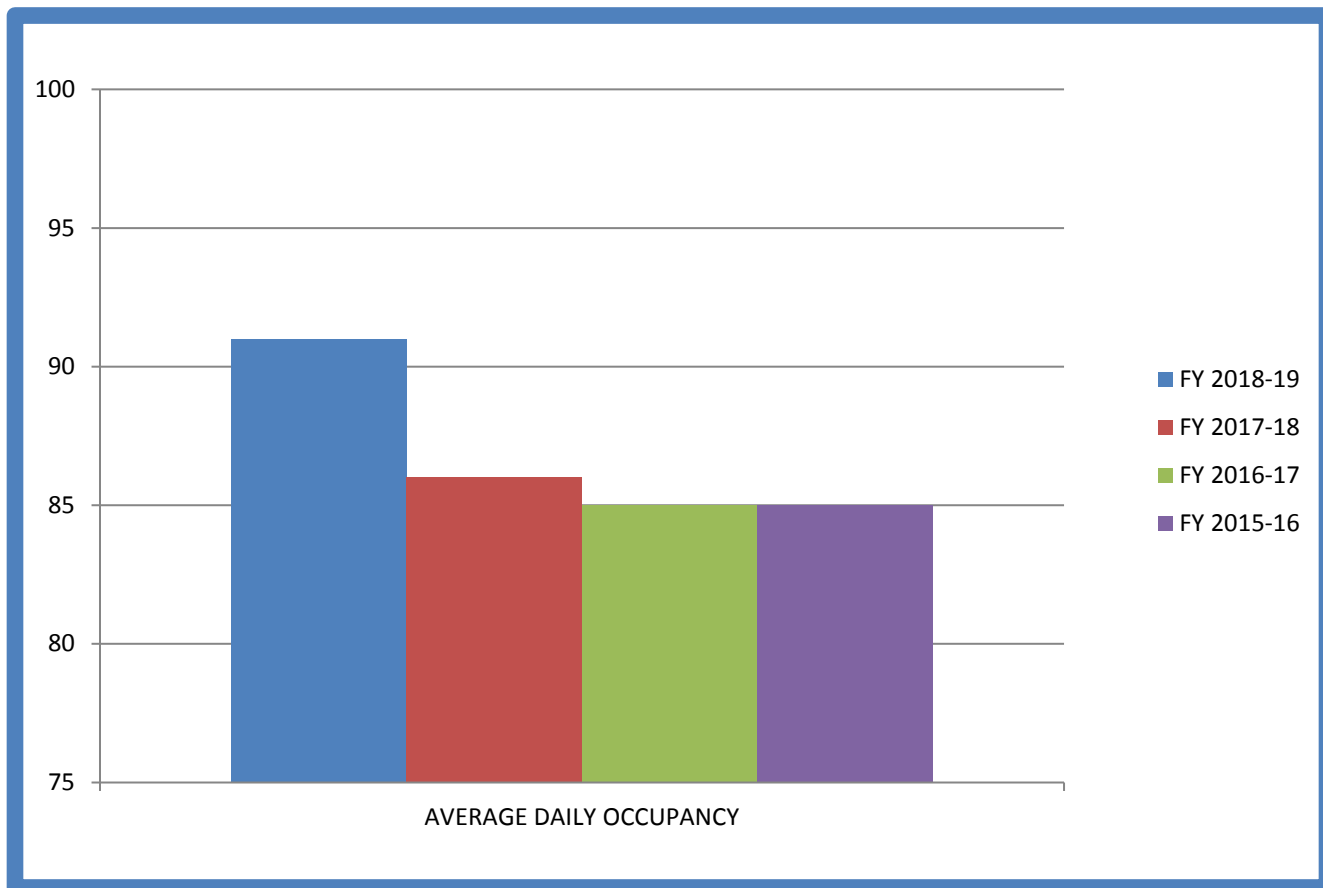
Revenue: City Marina saw \$80,932 in total revenue during the month of April.







Occupancy: April's average daily occupancy was 91%.



**TOTAL TRANSIENT ARRIVALS**

**\*IN-STATE VESSELS: 53**

**\*OUT-OF-STATE VESSELS: 45**

**\*FOREIGN VESSELS: 8**

Derelict Vessels: Staff is waiting to hear who will be tackling this issue in the future.

News: Antoinette Smith has been promoted from part-time janitor to full-time marina technician. She will continue to service the bath house but will also be maintaining the grounds and operating the pumpout boat. FEMA has approved reimbursement for the outer dinghy dock replacement.

Projects: Staff has reviewed the bids for the outer dinghy docks, and has recommended Shoreline Foundation, Inc. for the contract, which is scheduled for Council review and approval. The inner dock plans are still in the permitting process. The office plans are still being drawn up. The security camera system experienced a mild crash when the NVR went down but all security cameras are now back up and running.

# CITY OF MARATHON

## Memorandum



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**Meeting Date:** May 14, 2019

**To:** Honorable Mayor Bartus and City Council Members

**Through:** Chuck Lindsey, City Manager

**From:** Douglas Lewis, Growth Management Director/Building Official

**Subject:** Growth Management Report  
March and April, 2019

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### **Code Compliance Department**

The Code Department sent 3 notices for Hearing before the Special Magistrate scheduled on March 20, 2019. Prior to the meetings, a total of 2 cases were withdrawn after coming into compliance and the remaining case for non-compliance was continued to the April meeting.

The Code Department sent 7 notices for Hearing before the Special Magistrate scheduled on April 17, 2019. Prior to the meetings, a total of 3 cases were withdrawn after coming into compliance. The remaining cases went before the Special Magistrate and the rulings are as follows;

Respondents were found in non-compliance: 2  
Respondents were present and admitted to the violation: 2

The next Code Hearing before the Special May 15, 2019 at 2:00 PM at Marathon City Hall Council chambers, 9805 Overseas Highway, Marathon FL. There are currently 6 cases noticed for this Hearing.

### **Staff Changes**

Forest King has joined the Code Department as a Code Officer. Cody Ward is the new paralegal for the Legal Department. We look forward to continuing to work with him in his new role.

### **Code Cases: March 2019**

### **April 2019**

Cases opened:	18	26
Cases closed:	26	25

Total open cases: 257\*

(\* Approximately 50% of these cases remain open due to fines/fees or have complied by applying for building permits and the permits remain active)

Code Department staff responded to 93 complaints either by telephone, email, online or in person. A total of 44 new cases were opened. The remaining were either quickly resolved, unfounded, civil in nature, or subsequent complaints on an existing code case

Case Type	March	April
Abandoned Vehicle	0	1
Building Code	12	7
Nuisance	0	1
Property Standards	2	6
RV Habitation	1	0
Sewer	0	2
Storm Drain Dumping	1	0
Vacation Rental	0	6
Zoning	2	3
Total	18	26

**March and April 2019 Case Actions**

Notice of Violation: 29

Citations: 2

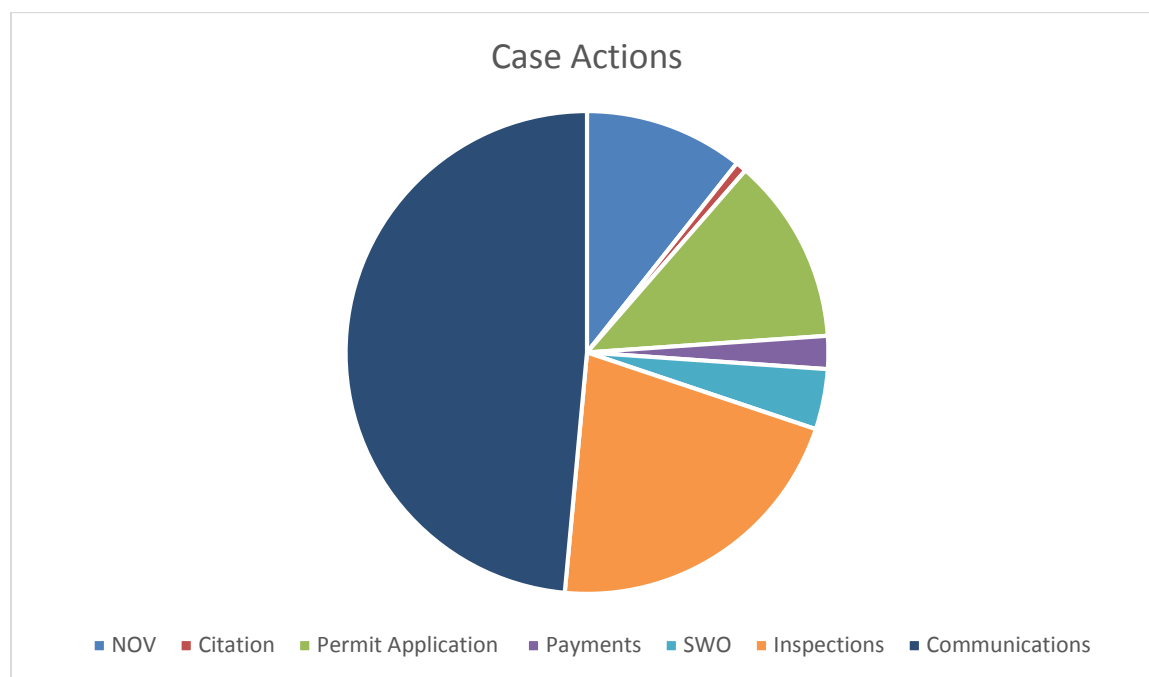
Building permit applications received on code cases: 34

Payments (administrative fees and citations): 6

Stop work orders: 11

Initial/re-inspections: 58

Communication in person, via telephone or email regarding open cases: 132



**Building Department Report – March and April 2019**

**Impact Fees:** As discussed in early Council meetings, our impact fee schedule is out of date. At that time, it was the Council's vote not to proceed with a study of our fees. After our internal review, it is my recommendation and request that we revisit that and move forward with the impact fee study that was commissioned in 2017.

With the 2023 moratorium looming, we may be limited in future revenue from impact fees. Therefore, we need to evaluate our impact fees to be sure that we are being most effective with the fees we collect.

**Permit Fees:** At the request of Council we have reviewed our building permit fees. Currently we are using the fee schedule adopted last year by Council. In reviewing the minutes and notes from Council meetings that approved the current fees, there were several requests to look at the fees in the future.

At the conclusion of our review and the earlier requests from Council, we believe we should commission a study to determine permit fees going forward. The Building Department is mandated to be self-funded. Our current volume is not indicative of what will be our revenue in non-recovery years, therefore, an accurate study to set rates that will allow the department to run independently is important. We will bring back to council a proposal for that study.

**General:**

Several large projects have been completed and closed out including Winn Dixie and Isla Bella.

The redevelopment of Crystal Cove and the Holiday Inn expansion are currently in permitting.

**ISO Building Code Effectiveness Grading Schedule (BCEGS)**

The Insurance Services Office, Inc (ISO) BCEGS is an insurance underwriting and information tool. The ratings range from 1 (best) to 10 (worst) and is analyzed every three years. The ISO score given to the City is 3 for residential and 3 for commercial.

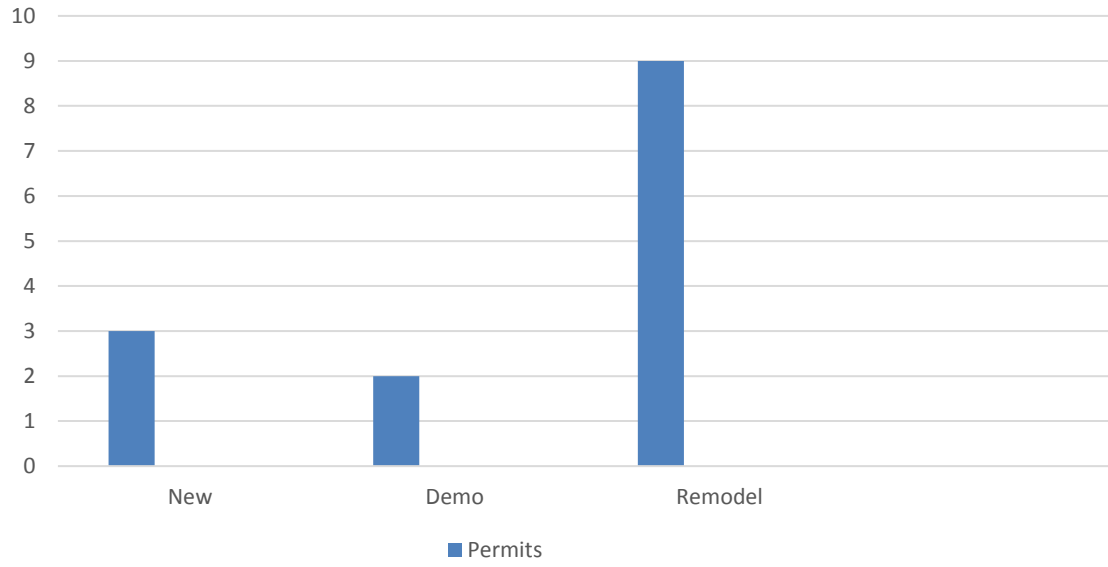
	<u>2019</u>	<u>2016</u>	<u>Max. Points</u>
Commercial	80.28	77.81	100
Residential	77.53	77.17	100

**March 2019**

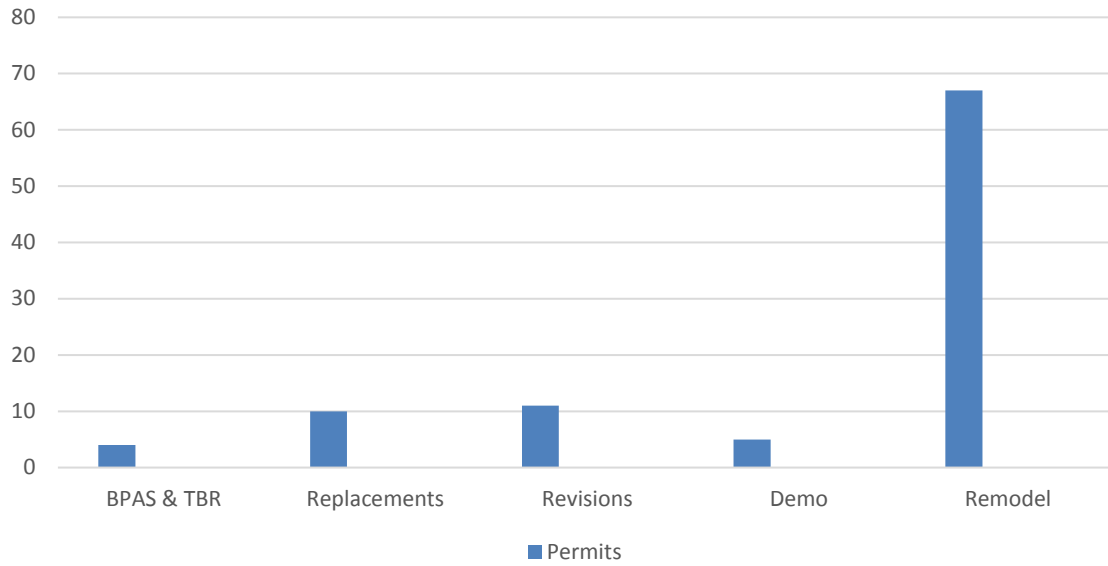
**Permit Totals**

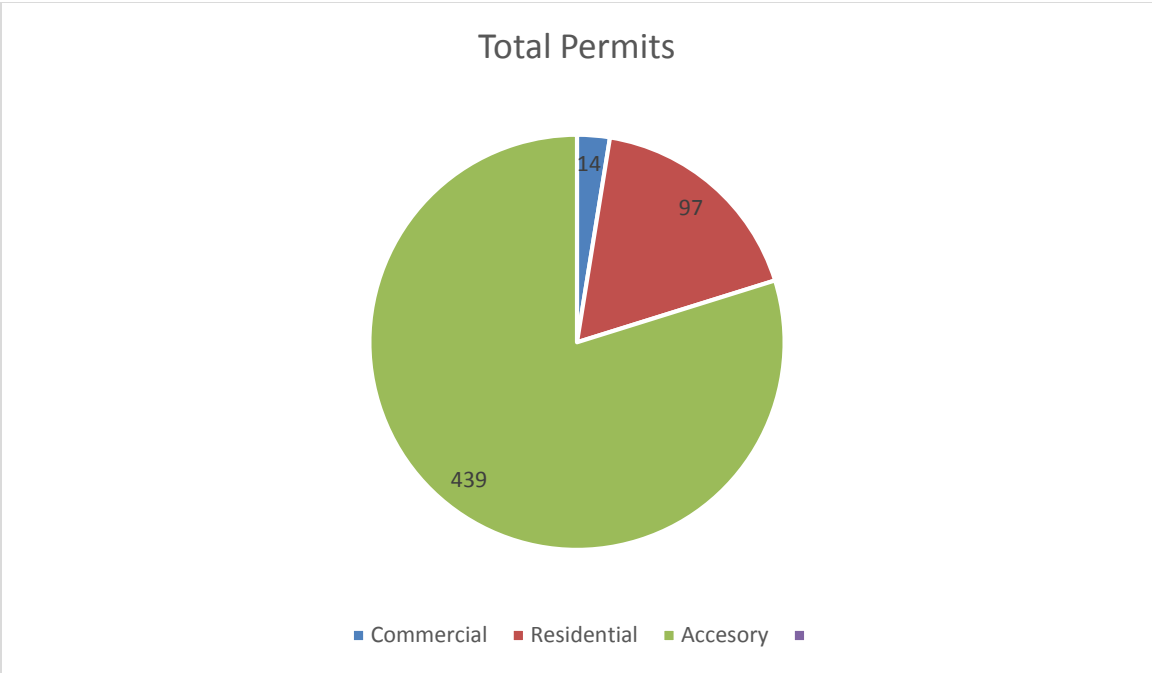
Permit Intake	273
Permits Issued	550
Permits Picked Up	561

### Commercial Plan Review and Permits Processed



### Residential Plan Review and Permits Processed





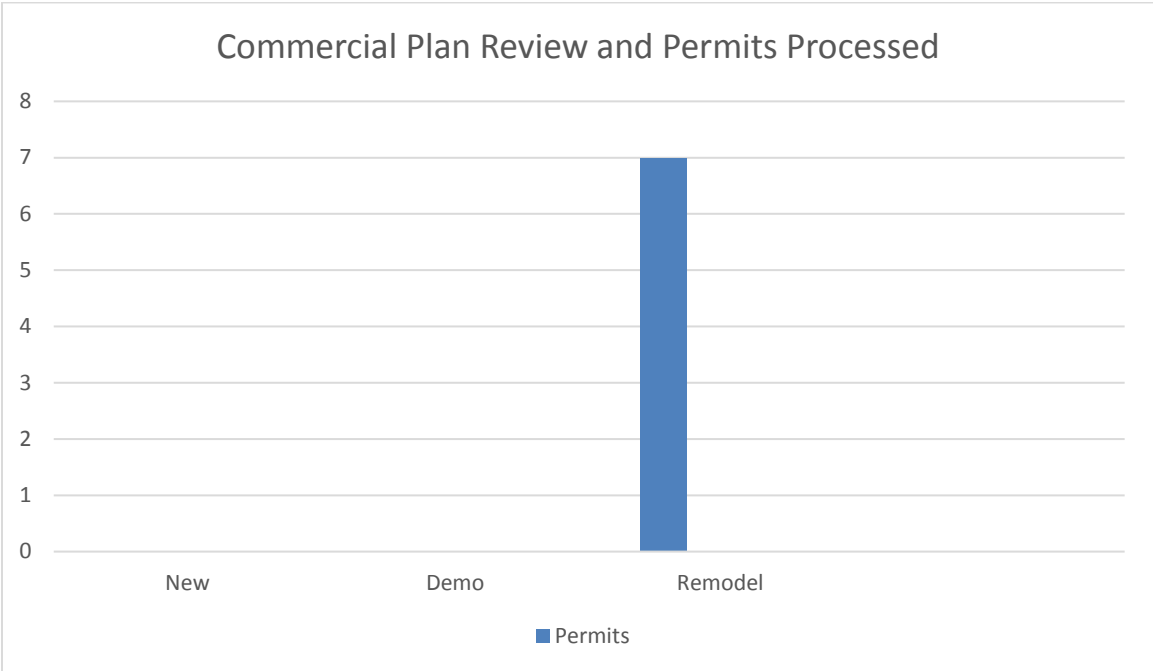
**Total Inspections:** 1,161

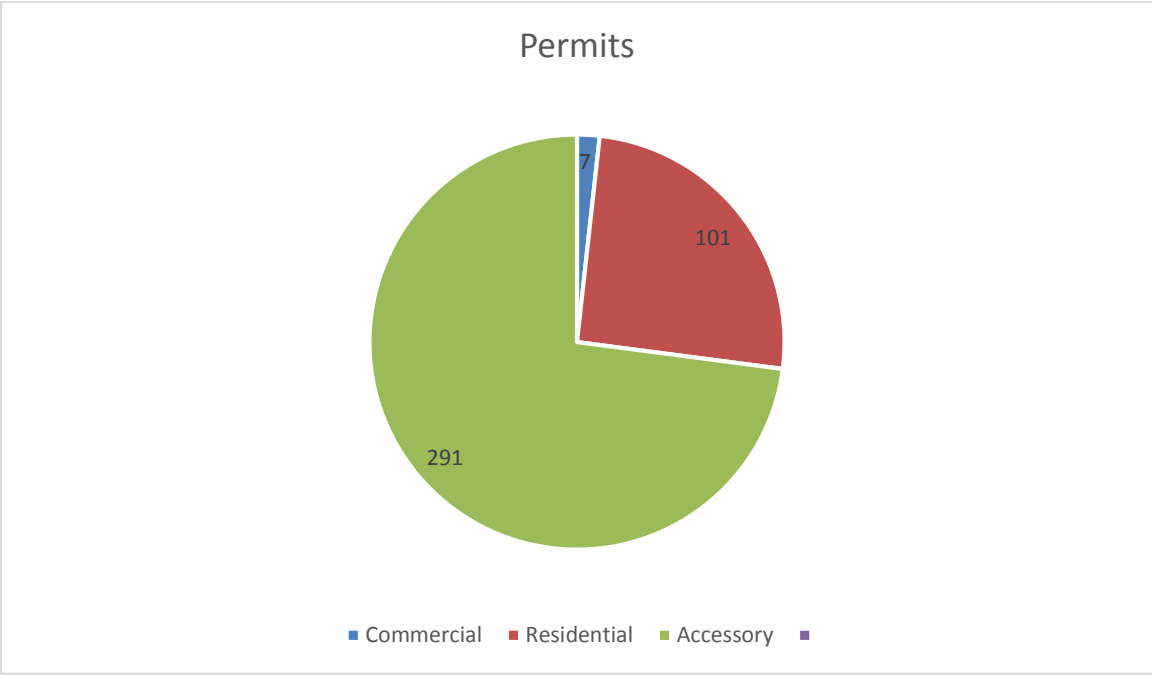
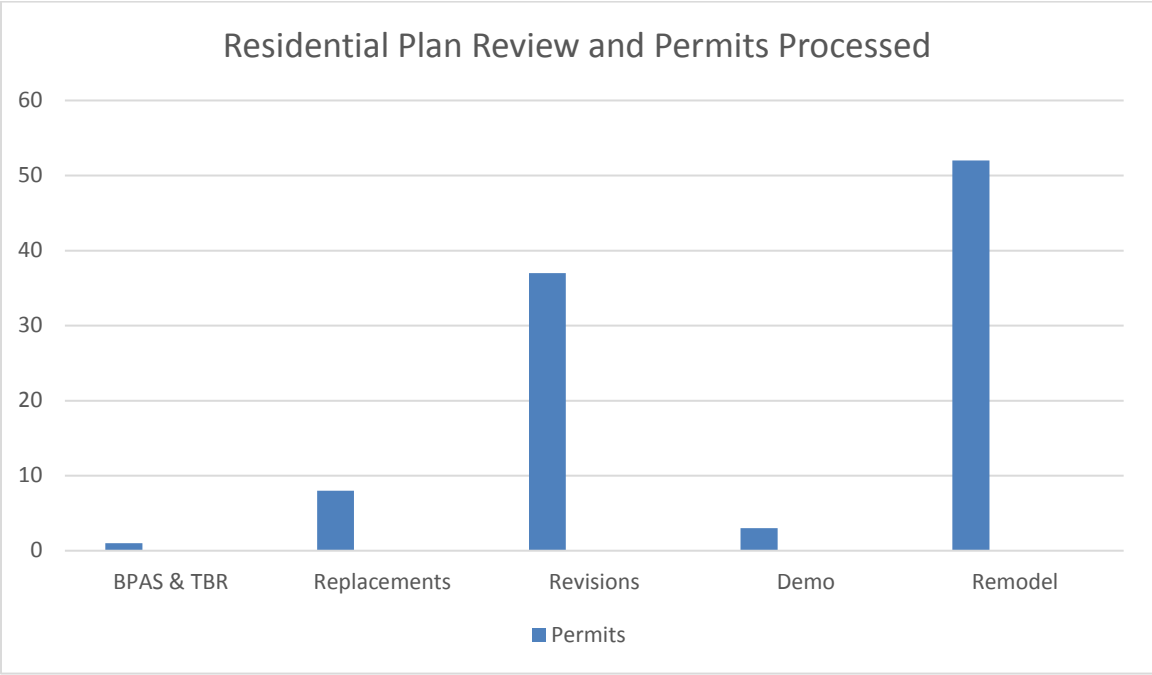
**Total Revenue for Building for March:** \$175,736.12

**April 2019**

**Permit Totals**

Permit Intake	358
Permits Issued	406
Permits Picked Up	394





**Total Inspections: 1095**

**Total Building Revenue for April, 2019: \$185,892.34**



## CITY OF MARATHON FIRE RESCUE

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8900 Overseas Highway, Marathon, Florida 33050  
Phone: (305) 743-5266 Fax: (305) 289-9834

### Memorandum

**Date:** May 14, 2019  
**To:** Honorable Mayor and City Councilmembers  
**From:** John A. Johnson, Fire Chief  
**Through:** Chuck Lindsey, City Manager  
**Subject:** March & April Month End Reports

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#### **ALARM RESPONSES**

	March	April
Fire Incidents	4	2
Hazardous Condition	4	1
Public Service	7	7
False Alarm Fire	14	9
Good Intent Call	8	9
EMS	132	123
Interfacility Transfers	62	56
Total for Month:	231	207
Total Calls for Calendar 2019:	675	882

#### **FIRE PREVENTION**

	March	April
Fire Inspections	49	3
Fire Safety Plan Review	1	2
Vacation Rental Inspections	61	36
Occupational License Inspections	9	4
Annual Life Safety Inspections	47	70
Event Inspections	1	2
Annual State Inspections	1	2
DHR Follow-Up Inspections	0	0
K-9 Call Outs	0	1



## OPERATIONS:

- **Training:**
  - **Fire Officer Training:** All Fire Officers continue daily Incident Management continuing education.
  - **EMS Training:** All Firefighters continue daily BLS and ALS continuing education. New protocol training continues.
  - **Fire Training:** All firefighters continue to conduct daily shift drills.
  - **ARFF:** Personnel conducted unit inventory and operation.
  - **Tactical Medic Program:** This program began to provide training for self-aid to MCSO deputies and the SWAT members. Both of our Tactical medics are instructors in Texas State Universities “Active Attack Integrated Response”. They also are instructors in TCCC “Tactical Combat Casualty Care” program hosted by the Florida SWAT association, the 20<sup>th</sup> SFG and 221<sup>st</sup> EOD at Camp Blanding in Stark Florida. Monthly SWAT training. Total training of 56 hours.
  - **K-9:** A combined 0 hours of advanced training was conducted during each month. *(this program is supported by MFRBA and is at no cost to the taxpayers of Marathon)*
  - **Combined Training:** Target Solution software for all shifts, a total of 169 Courses were taken which totaled 831.36 hours of training.
  - **Instructors on Staff:** We have a total of five fire instructors with live fire certifications and seven EMS instructors

## BENEVOLENT FIREFIGHTER SERVICES

**Benevolent recruitment** – The Department continues to support recruitment of additional personnel coordinated through the Marathon Fire Rescue Benevolent Association. The Benevolent has been developing a new training program to create a career path for our residents who are interested in pursuing a career in the Fire/EMS service.

**INFORMATION** – Over the last two months we have equipped our new Engine 14 and the unit is now in service for the citizens. We have also placed the old engine 14 into service as engine 15 which is now a full ALS unit stationed at station 15 to provide enhanced service to the residents. We are entering hurricane season so please have all your plans in place.

**PUBLIC OUTREACH IN MARCH:**

FFPB Meeting  
MCSO Forcible Entry Training  
Emergency Nurse’s Association of Monroe County – TNCC Class  
American Cancer Society Meetings - 2  
HAM Radio Training  
Benevolent Meeting  
Domestic Abuse Shelter Meeting  
Leadership Monroe County Meeting

**ACTIVITIES ATTENDED IN MARCH:**

Key Colony Beach Day Parade  
Key Colony Beach Rubber Ducky Race  
Leadership Monroe County – Station 14 Vehicle Extrication  
Annual Seafood Festival  
Standby for Coastguard Pepper Spray Training  
Key Colony Beach Commission Meetings – 2  
Key Colony Beach St. Patty’s Day Parade  
Isla Bella Resort – Familiarization Training for each shift  
Monroe County COPCN Meeting  
Blue Angels Air Show

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**PUBLIC OUTREACH IN APRIL:**

Water Drop-Off for 7-Mile Bridge Run  
Benevolent Meeting  
Leadership Monroe County Meeting  
Monroe County EMS Committee Meeting

**ACTIVITIES ATTENDED IN APRIL:**

Grassy Key Marina Fire Extinguisher Training  
7-Mile Bridge Run  
Switlik Elementary Career & Truck Day  
Winn Dixie First Responder Appreciation Breakfast  
Drunk Driving/Texting Demonstration – Marathon High School  
Key Colony Beach Commission Meetings – 2

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## COUNCIL AGENDA ITEM



**Meeting Date:** May 14, 2019

**To:** Honorable Mayor and Council Members

**From:** George Garrett, Planning Director

**Through:** Chuck Lindsey, City Manager

**Subject:** Florida Communities Trust (FCT ) Applications – Quay & Salty’s

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### BACKGROUND:

On September 14, 2018, the City made two applications to the Florida Communities Trust; one for acquisition of the Salty’s property and one for the Quay property. Early in January the City was informed that the ranking for the Salty’s was 6th of 17 qualified applications and that Quay was ranked 8<sup>th</sup> of 17. Further ranking has placed the City’s proposals at 8<sup>th</sup> and 9<sup>th</sup> respectively. This ranking places the City just below the level that will be funded in this year’s FCT funding cycle with the money currently available (\$10,000,000). However, the list is retained in order as projects frequently fall threw during the acquisition process.

Acquisition through the FCT does come with limitations. Specifically, the City has always been informed that revenue’s may not be generated on FCT acquired land (notably, the Community Park site). It has been a general policy of the FCT staff in previous projects to inform applicants that their projects should not be revenue generating. Their website information and communication with current staff indicate the same.

In fact, revenue’s can be generated, but must be recorded. We have been informed that the Rules regarding FCT funding and FCT project operations do not specifically prohibit positive revenues. It is our understanding that these revenues would generally be utilized for maintenance or improvement of the FCT site in question. Apparently, revenues generated must be reported to the Legislature and impact bonding processes through which FCT funds have generally been acquired.

### CONSIDERATION:

Since there are apparent limitations on the ability to generate positive revenue and potentially, even revenues that would be generated for maintenance and site improvement, we wanted to obtain Councils position on whether we should further efforts to acquire with the Salty’s or Quay properties. If we pull our application, then other applicants ranked below the City could become eligible for funds if projects ranked higher on the list fail to complete their acquisition efforts. On the other hand, if we remain on the list, understanding potential limitations on revenue generation, then we ourselves may become eligible for funding under the same premise.

We believe that is appropriate to stay the course in the event that the City does become eligible under this funding cycle for available funds.

CITY COUNCIL AGENDA STATEMENT



**Meeting Date:** May 14, 2019  
**To:** Honorable Mayor and Council Members  
**From:** George Garrett, Planning Director  
**Through:** Chuck Lindsey, City Manager

**Agenda Item:** Consideration Of A Request By Grassy Key Resort Group, LLC For A Conditional Use Permit and Development Agreement Pursuant to Chapter 102, Articles 8 and 13 Of The City of Marathon Land Development Regulations (LDRs) Entitled “Development Agreement” And “Conditional Use Permits” Respectively, Seeking The Redevelopment Of A Hotel Resort And Commercial Uses On Property Located at 58070 and 58182 Overseas Highway, Which Is Legally Described As Township 65, Section 24, Range 33; Bk 36 Lts 1-2-3-4 And PT Lts 5-6 (Parcel A) And Wly 15FT Unnamed ST Adj Lot 1 Res B-C-C 8/11/61 And Adj Portion Of Flagler Street And Grassy Key Bay Bottom Adj Lts 1-2-3 in the Crains Subdivision, Grassy Key, Marathon, Florida; Having Real Estate Numbers 00370940-000000. Nearest Mile Marker 58.5.

**APPLICANT/ OWNER:** Grassy Key Resort Group, LLC

**AGENT:** Lesley Rhyne

**LOCATION:** The project site is located at 58070 and 58182 Overseas Highway at nearest Mile Marker 58. See Figure 1.

**Figure 1  
Project Site**



**REQUEST:** A Conditional Use Permit and Development Agreement for re-development of the subject property having the real estate numbers 00370940-000000 and 00371060-000000

**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 SIZES:**

00370940-000000	1.91 acres or 83,251 square feet of upland and 2.61 acres or 113,729 square feet of submerged land
00371060-000000	0.29 acres or 12,540 square feet of upland and 0.07 acres or 3,198 square feet of submerged lands
<b>TOTAL</b>	<b>2.20 acres of upland and 2.67 acres of submerged land</b>

**SURROUNDING ZONING AND USES:**

	<u><i>Zoning</i></u>	<u><i>Use</i></u>
<b>North</b>	Conservation-Native Area and Residential Conservation	Crain Subdivision, Grassy Key
<b>East</b>	Mixed Use and Residential Medium	Residential Homes and Vacant Lots
<b>South</b>	Atlantic Ocean	N/A
<b>West</b>	Mixed Use and Residential Medium	Crain Subdivision, Hideaway Café, White Sands Inn, and Rainbow Bend

**EXISTING CONDITIONS / PROPOSED REDEVELOPMENT:**

The project site consists of three previously contiguous developed lots now consolidated into one real estate number – 00370970-000000 and an additional nearby parcel – 00371060-000000. The Casa Del Sol Resort and the Yellowtail Inn parcel is currently developed and being rehabilitated after the storm. Bonefish Resort has been demolished after the storm.

The Applicant and owner desires to transfer ten (10) transient hotel/motel units to the proposed redevelopment project from the previous site of Bonefish Resort (RE No. 00371060-000000). Bonefish Resort (RE No.

00371060-000000) will be redeveloped with five (5) recreational vehicle pads (RV) for a period of time of at least five (5) year. At that time, the RV sites will either remain as developed or be consolidated into the larger resort located at 00370940-000000 in consideration of other uses allowed for the zoning district under the City's Comprehensive Plan.

**CURRENT CONDITIONS**

Transient Units: 23 Units (Casa Del Sol / Yellowtail)  
15 Unit Entitlements (Bonefish Resort)

Commercial Floor Area: 11,550 square feet Commercial uses

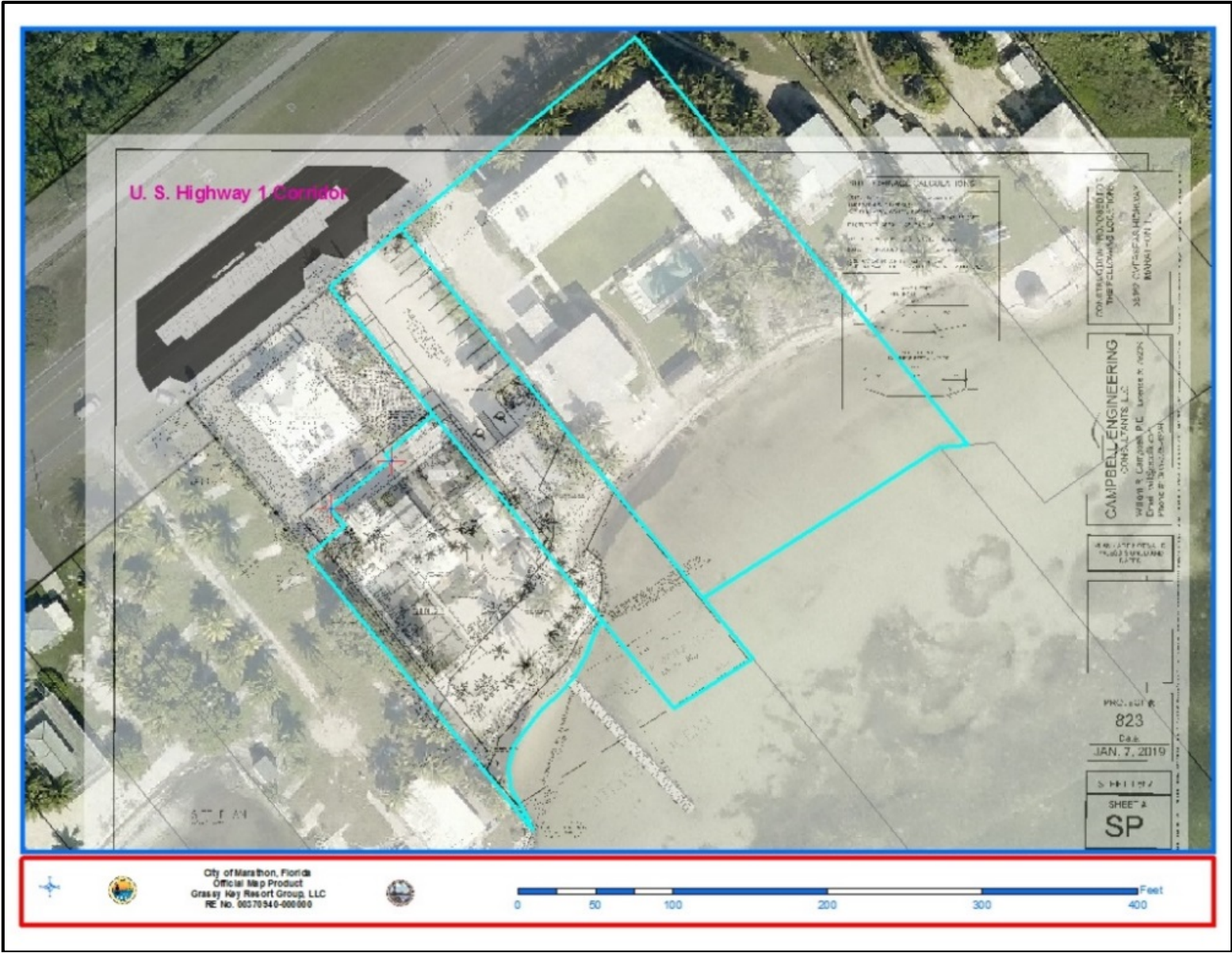
**PROPOSED REDEVELOPMENT:**

Transient Units: 33 Hotel Units (58182 Overseas Highway)  
5 RV Sites (58070 Overseas Highway)

Commercial Floor Area: 11,550 square feet Commercial uses

**See Figure 4 A & B for Site Plan layout.**

**Figure 4A  
Proposed Redevelopment Site Plan**





# Proposed Site Plan Bonfish RV Sites



## **BACKGROUND:**

The Casa Del Sol, Yellowtail Resort, and Bonefish properties were purchased approximately one year prior to Hurricane Irma to become La Te Da By The Sea. Post Irma, the property languished as the owners of La Te Da determined to sell the property and entitlements. The combined properties at the time contained 38 transient residential units as hotel units with approximately 12,000 of commercial space. The proposed project is a simple redevelopment of La Te Da By The Sea with no net increase in transient residential units of commercial area. Ten transient residential unit entitlements will be transferred from the old Bonefish property (58070 Overseas Highway) to the Grassy Flats Resort site (58182 Overseas Highway) and will be redeveloped as hotel units. The five (5) transient entitlements that will remain at the old Bonefish site (58070 Overseas Highway) will be utilized as new RV sites. New commercial components will be included in the redevelopment of the Grassy Flats Resort site.

The combined, redeveloped project site will be known as Grassy Flats Resort and Beach Club.

**All condition 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 Permit and Development Agreement Approval are outlined in Chapter 102, Articles 8 and 13, 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 existing commercial use within the Mixed Use Zoning District. Section 103.15, Table 103.15.2, “Uses By Zoning District,” establishes whether specific uses are allowed as of right, limited, accessory or conditional use permit. That table shows that Hotel/Motel/Resort lodging uses are allowed as Conditional Uses in the MU District. Conditional Use Permit review is intended to allow a broader view of the potential impacts of a project on adjacent uses and on City concurrency related resources such as road capacity, solid waste, sewer, and potable water availability.

Table 103.15.2 in the Land Development Regulations establishes constraints on density and intensity allowed in the MU district based on the types of uses proposed. Using the property area, the proposed use can have up to

(5-25 transient per acre – between 11-55 units) hotel units. Table 103.15.3 further qualifies the allowed range of intensities based on the intensity of retail use.

<b>Development Type</b>	<b>Existing</b>	<b>Proposed</b>	<b>Max Allowed</b>	<b>% Total Area Utilized</b>
Transient Units	38	38	55	69%*
Commercial Floor Area	11,550	11,550	17,825**	20%

Assumes that Transient Units have extinguished 60% of property for density/intensity calculations  
 Assumes that the Commercial Uses proposed are of “Medium Intensity” allowing a 60% FAR.  
 Remaining Area allowed for development (density, intensity, or combination) is approximately 0.44 acres.

The project as proposed meets the basic definition of development in the MU zoning district.

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 redevelopment of an existing conditional use (Hotel, Motel, Resort) into a similar conditional use (Hotel, Motel, Resort), which is consistent with the Mixed Use classification.

The existing land use pattern in the project vicinity consists of mangroves to the North, Atlantic Ocean to the South, Residential homes to the east and west, and commercial and residential uses in between.

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

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

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

The proposed conditional use is a redevelopment of an existing use which has not had any known impact to the health, safety and welfare of the public. No new impacts are expected to arise with the redevelopment. The infrastructure on the site will be upgraded and the site heavily landscaped, creating a substantial improvement to the sites.

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 Land. A site inspection showed the current conditions as scarified with existing buildings and asphalt parking lot. Two of the parcels are designated as Turtle Nesting Beaches. Figure 6 shows the nesting beach areas in yellow. The structure that exist currently on site are within the turtle nesting beach setback. The applicant is proposing the new structures to be no further into the setback than the existing structures, and where possible to locate them further from the setbacks.

The area to include the new hotel development is not a turtle nesting beach. The remaining area is located directly landward of the designated turtle nesting beach this includes, the old Yellowtail Resort Building, the Casa Del Sol Resort structure, the pool and pool deck and a tiki structure. Pursuant to P2018-2251 (Site Work), P2019-0017 (Exterior remodel), P2019-0325 (repair dock) development waterward of these structures is limited to a vegetated berm and walkover which has been permitted and is currently in place. All other redevelopment within the area designated as turtle nesting beaches must comply with Chapter 14, Article II of the Code of Ordinances.

**Figure 6  
Turtle Nesting Beach Map**



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

Site landscaping will be selected from Table 107.68.1, Appendix A, Article 8, Section 107 of the City of Marathon Code of Ordinances. The native vegetation will improve the environmental quality of the site and reduce irrigation needs. The applicant has submitted a detailed vegetation plan that is compliant with the landscaping requirements. Additionally, the applicant will provide additional landscaping to reduce light spillage onto neighboring properties and turtle nesting beaches.

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

- All lighting, beach raking, and redevelopment must comply with Article II of Chapter 14 of the Code of Ordinances.
- Setbacks in front of Casa del Sol is defined in permit P2019-0017 (Exterior remodel), P2019-0325 (dock repair).

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

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

The applicant has provided a breakdown of the proposed occupancy of the onsite buildings. The “Trip Generation Analysis” schedule provided in the Traffic Study indicated that there will be an increase in trip generation from the existing use to the proposed use for the site. The traffic study determined that based on the expected trip generation for the project, there would be no adverse effect on the operating characteristics of U.S. 1. The submitted study finds that the proposed expansion will not inhibit the safe flow of traffic travelling through the City of Marathon, and that no additional improvements are warranted on U.S. 1.

Ingress and egress to the property is being provided through driveways onto Overseas Highway. The trip generation analysis of the traffic study shows that currently the existing uses generate 304 daily trips from the 33 units. With the proposed hotel/resort 38 units, residential units, and commercial space, the daily trip would be a total of 394 total. Therefore, the proposed redevelopment would create an increase in trip generation by 90 trips.

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.

The redevelopment of these properties will require additional fire suppression measures. The applicant has coordinated with the Fire Marshall on the proposed locations of new fire hydrants as well as fire sprinklers. Additional fire truck vehicle access and turnarounds are required.

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

- Clear sight triangles must be shown on the site plan at time of building permit issuance.
- All conditions of the Fire Marshall must be met in site planning and in permit application preparation prior to permit issuance.

**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
Hotel or Motel	107.47.A	1 per every 3 employees	2
		1 per guest room	32
Retail		3 per 1,000 SF	6
		1 per employee at largest shift	2
Total Required			59
Total Provided			59

Section 107.52 includes a requirement that one handicapped space be provided for every 25 spaces required. For 59 spaces, three (3) handicapped spaces are required. Parking space sizes are 9' x 18' for 90 degree parking, and handicapped spaces are 12' x 21' as required by Code. The proposed site plan is consistent with the code requirements for parking and aisle width. Additionally, the applicant proposed that the parking for the hotel be handled through a valet, allowing for stacking parking under the motel structures.

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 (1) space for every ten (10) parking spaces, per Section 107.48. The developer has proposed a bike rack for the project// six bicycle spaces on site.

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

- Bike racks must be shown on the final site plan.

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

The proposed project consists of redevelopment of three existing commercial use. New lighting will be necessary for this project. The applicant has provided a typical lighting plan which conforms with the City of marathon

LDR's. A more detailed lighting plan must be submitted for permitting purposes. 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.

- A detailed lighting plan must be submitted before the project is permitted, including turtle lighting.

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

**5. Utilities, with reference to location and availability;**

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

- Wastewater: The applicant is currently working with the Utilities department to accommodate the wastewater needs, and assess the additional impacts and wastewater fees.
- Water: The Florida Keys Aqueduct Authority currently provides potable water for the facility. Staff recommends a separate meter for irrigation and landscaping.
- Solid Waste: Marathon Garbage Service will provide solid waste disposal.
- Surface Water: The applicant has provided stormwater design information suitable for the Conditional Use application review which demonstrates compliance with City standards. However, a final stormwater plan will be required for building permit issuance.
- Recreation and Open Space: This redevelopment will have a de minimis impact on recreation and open space.
- Roadways: The applicant is 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.

- City approval is required for the stormwater management system prior to Building Permit Approval.
- City approval of the modified connection to the City Wastewater Utility will be required.
- The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for a one year.

**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 by properties zoned RM, requiring a 'high' boundary buffer. The preliminary landscape plans show that this buffer is maintained. The final landscape plans must be approved by the City Biologist. The existing Casa del Sol property has a driveway within the buffer area that provides parking and access under the structure. Staff recommends landscaping as much as possible within the area without hindering the existing vehicle access.

Section 107.71 A. requires that parcels with a MU zoning designation provide a Type 1 Streetscape Treatment for all parcels along U.S. 1. The proposed landscape plan meets the minimum requirements. According to the Code, four canopy trees shall be planted in and about access points. In addition smaller accent trees shall be planted every 120 feet and staggered midway between the large canopy trees. Additionally, all parking not located to the rear of buildings shall be screened from the right-of-way by a landscaped buffer along U.S. 1, including a continuous hedge or combination hedge and earth berm providing 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 and 2, 0 – 10; interior side yard, 10; and, street side, 0-5’. Accessory structures, including pools, have a 10’ setback.

Table 106.28.1 outlines setbacks requirements for a principle structure on in-fill lots, along open water shorelines not adjacent to manmade canals, channels or basins, and which have been altered by the legal placement of fill, which are surrounded by significant development where principal structures are set back less than fifty (50) feet from the MHWL. A resource buffer distance is set at a 20 foot minimum.

This plan shows a 10’ setback on the front yard, 3’ setback on the western side, and a 14’ setback on the eastern side yard, and 50’ 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 existing use has an interior setback of 10’, therefore so long as the proposed redevelopment meets all other setback requirements, the interior side setback is allowed at the proposed 10’.

Setback	Required	Required Landscape	Proposed	Compliant
Front	0-30	10	10	Y
East Side	0-10	20	14	N
West Side	0-10	N/A	3	Y
Shoreline	10	N/A	50	N

As mentioned above, the existing structures are further into the setbacks than is currently proposed. These are being pulled back to the greatest extent practicable. Additionally, TRC review can reduce the required landscape buffer distance in half. Therefore, the 20’ buffer can be reduced to 10’ making the existing driveway as compliant as possible.

Parking area landscaping is required by Section 107.66 of the Code. The City Biologist has reviewed the submitted parking area landscape plan and has found it to be in compliance with the code.

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. Signs for the project will be reviewed prior to issuance of building permit according to Chapter 107, Article 7, Signs.



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

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

- All signs will be reviewed and approved for compliance with the City of Marathon LDR's.
- All final lighting plan must be submitted prior to building permit issuance, and must comply with turtle lighting requirements.
- A final landscaping plan must be submitted prior to building permit issuance.

#### **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. Additionally, the shoreline open space requirement is 70% is open. For the 5,163 SF buffer area, the maximum coverage is 1,549 SF by accessory structures. The applicant proposes 1,000 SF, which 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 has been acknowledged as an area suitable for redevelopment. Adjacent uses include a commercial establishment and residential uses. A redevelopment of existing hotels 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. The site plans show that buildings range from 31' to 33'.

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

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

Section 104.25 Hotels or Motels contains special requirements.

The following criteria are applicable to this redevelopment:

- As a condition of development, the developer and the City shall enter into a Development Agreement, in addition to compliance with all other provisions of the Code.
- All hotel or motels shall provide on- or off-site employee housing living space in an amount equal to a minimum of twenty (20) percent (as may be adjusted from time to time by Council policy to reflect economic conditions) of the approved floor area in guest units.

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

## **CONCLUSION:**

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

The proposed redevelopment consists of the replacement and enhancement of a long standing existing commercial use. As such the development, including the overall upgrading and improvement of the site, furthers the policies for development in the City and is consistent with the Comprehensive Plan and Land Development Regulations. The project is compatible with surrounding uses, and is not expected to create a nuisance, traffic congestion or threat to public, health, safety or welfare.

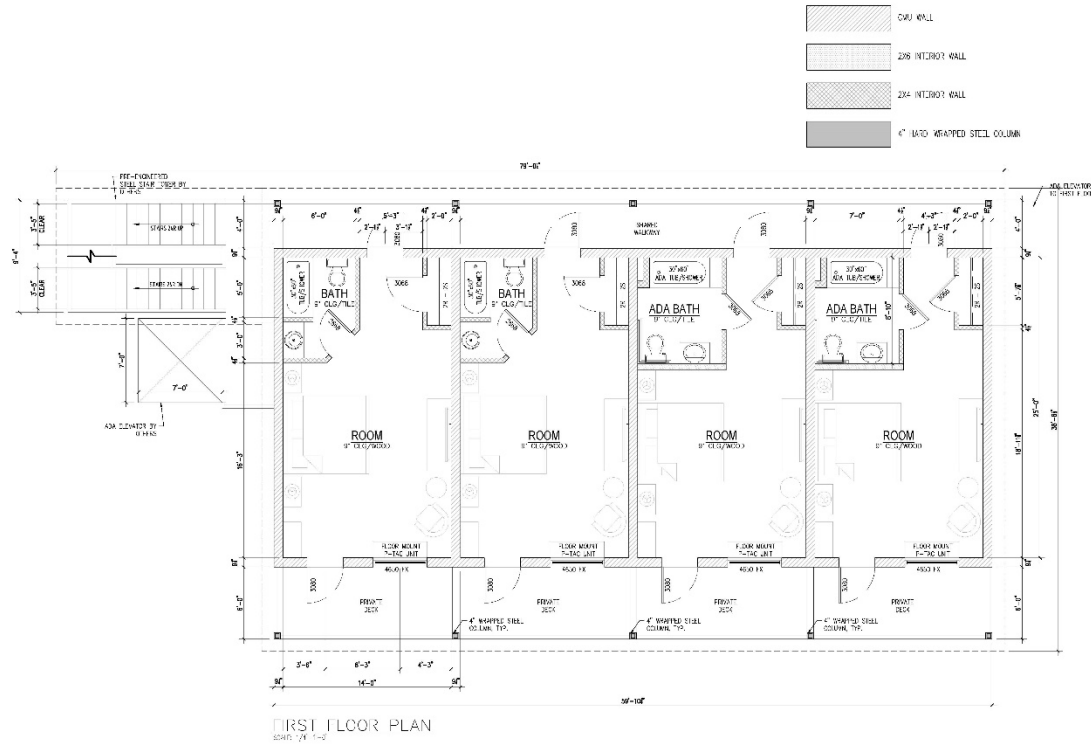
## **RECOMMENDATION:**

The Planning Commission voted 5-0 to forward a recommendation of conditional approval of the redevelopment of Grassy Key Resort, LLC as proposed Motel/Hotel/Resort to the City Council. The proposed conditions of approval are listed below.

### Conditions of Approval

- 1) Redevelopment area not in turtle nesting beach. Area within the turtle nesting beach shall comply with setbacks established in P2018-0251, (Site Work), P2019-0017 (Exterior remodel), P2019-0325 (dock repair).
- 2) The applicant will meet all floodplain related requirements as part of the Building Permit process;
- 3) A detailed lighting plan must be submitted before permit issuance, including requirements for turtle nesting beach lighting;
- 4) City approval is required for the stormwater management system prior to Building Permit Approval.
- 5) City approval of the modified connection to the City Wastewater Utility will be required;
- 6) All signs and turtle lighting will be reviewed and approved for compliance with the City of Marathon LDR's;
- 7) A final landscaping plan must be submitted prior to building issuance;
- 8) Clear sight triangles must be shown on the site plan at time of building permit issuance.
- 9) All hotel or motels shall provide on- or off-site employee housing living space in an amount equal to a minimum of 20 percent (as may be adjusted from time to time by Council policy to reflect economic conditions) of the approved floor area in guest units;
- 10) The applicant will obtain any required permits from ACOE and DEP prior to building permit issuance;
- 11) The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshall;
- 12) As a condition of redevelopment, the developer and the City shall enter into a Development Agreement, in addition to compliance with all other provisions of the Code.
- 13) The Conditional Use Development Order will constitute the Certificate of Concurrence for the project. The determination will be valid for one year.

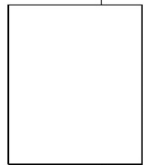




CONSTRUCTION PROPOSED FOR  
THE FOLLOWING LOCATION:  
58162 OVERSEAS HIGHWAY  
MARATHON, FL.

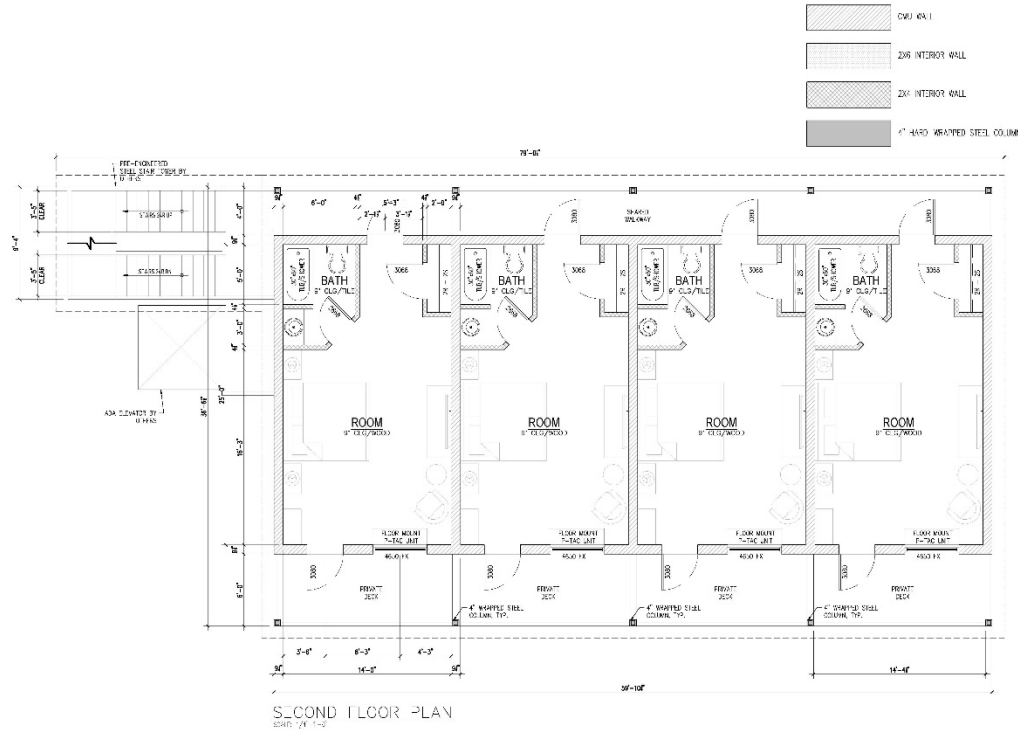
**CAMPBELL ENGINEERING**  
CONSULTANTS LLC  
William R. Campbell, P.E. License #: 79269  
Email: will@cedaik.com  
Phone #: 305-735-4626

PLANS ARE NOT VALID  
UNLESS SIGNED AND  
DATED



PROJECT #:  
**823**  
Date:  
**JAN. 7, 2019**

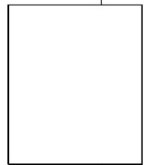
SHEET 2 of 7  
SHEET #  
**A-1**



CONSTRUCTION PROPOSED FOR  
THE FOLLOWING LOCATION:  
58162 OVERSEAS HIGHWAY  
MARATHON, FL.

**CAMPBELL ENGINEERING**  
CONSULTANTS LLC  
William R. Campbell, P.E. License #: 79289  
Email: will@cedaik.com  
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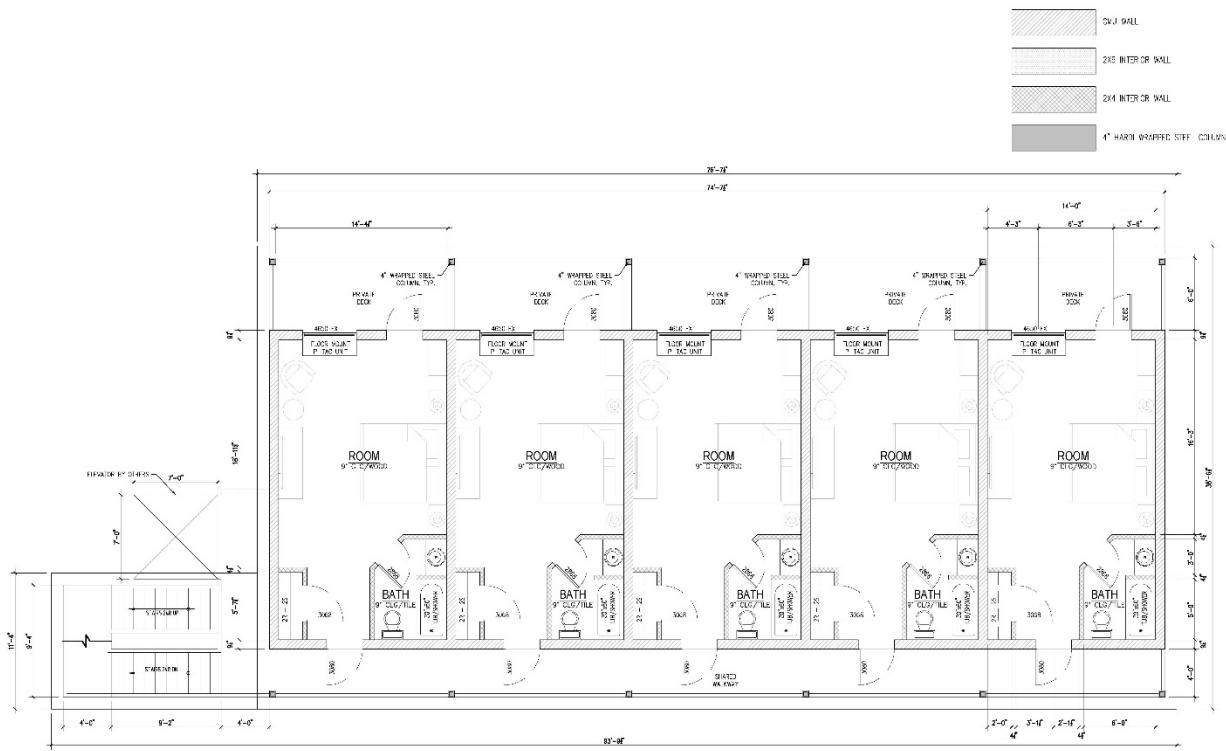
PLANS ARE NOT VALID  
UNLESS SIGNED AND  
DATED



PROJECT #:  
**823**  
Date:  
**JAN. 7, 2019**

SHEET 3 of 7  
SHEET #  
**A-2**

CONSTRUCTION PROPOSED FOR THE FOLLOWING LOCATION: 58162 OVERSEAS HIGHWAY MARATHON, FL. PROJECT # 823 DATE JAN. 7, 2019 SHEET 3 OF 7 SHEET # A-2

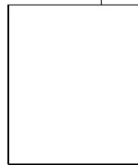


BUILDING B FLOOR PLAN  
SCALE: 1/8" = 1'-0"

CONSTRUCTION PROPOSED FOR  
THE FOLLOWING LOCATION:  
58162 OVERSEAS HIGHWAY  
MARATHON, FL.

**CAMPBELL ENGINEERING**  
CONSULTANTS LLC  
William R. Campbell, P.E. License #: 79269  
Email: will@cedtek.com  
Phone #: 305-735-4626

PLANS ARE NOT VALID  
UNLESS SIGNED AND  
DATED



PROJECT #:  
**823**  
Date:  
**JAN. 7, 2019**

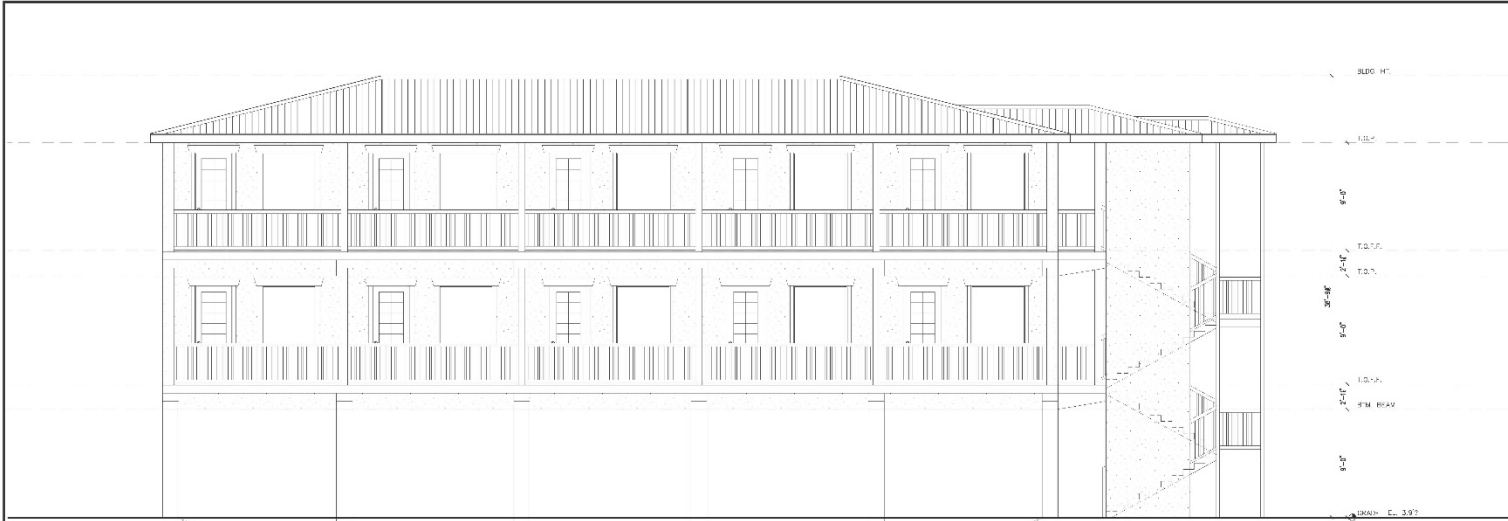
SHEET 4 of 7  
SHEET #  
**A-3**

CONSULTANTS LLC, 11000 W. BOULEVARD, SUITE 100, BOCA RATON, FL 33433. PHONE: 305-735-4626. FAX: 305-735-4627. WWW.CAMPBELL-ENGINEERING.COM. PROJECT: 58162 OVERSEAS HIGHWAY, MARATHON, FL. DATE: JAN. 7, 2019. SHEET: A-3 OF 7.

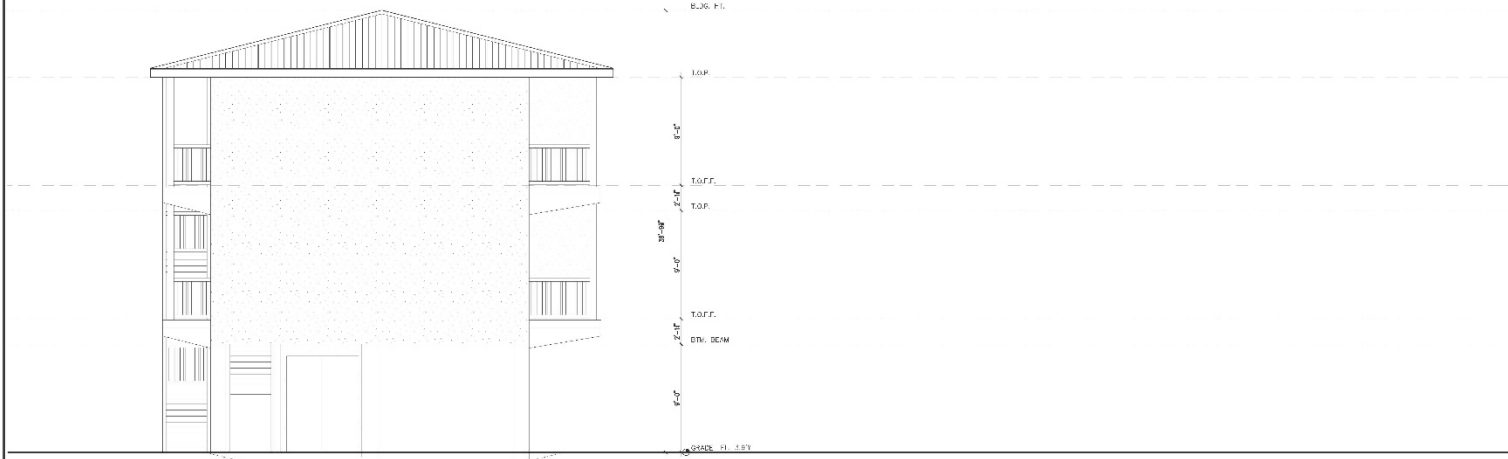








REAR ELEVATION - BUILDING B  
SCALE: 1/4" = 1'-0"



RIGHT SIDE ELEVATION - BUILDING B  
SCALE: 1/4" = 1'-0"

CONSTRUCTION PROPOSED FOR  
THE FOLLOWING LOCATION:  
58162 OVERSEAS HIGHWAY  
MARATHON, FL

**CAMPBELL ENGINEERING**  
CONSULTANTS LLC  
William R. Campbell, P.E. License #: 79289  
Email: will@ceenlk.com  
Phone #: 305-735-4626

PLANS ARE NOT VALID  
UNLESS SIGNED AND  
DATED



PROJECT #:  
**823**  
Date:  
**JAN. 7, 2019**

SHEET 7 of 7

SHEET #  
**A-6**

CONSTRUCTION PROPOSED FOR THE FOLLOWING LOCATION: 58162 OVERSEAS HIGHWAY, MARATHON, FL. PROJECT # 823. SHEET # A-6. DATE: JAN. 7, 2019. DRAWN BY: W. R. CAMPBELL, P.E. LICENSE # 79289. CHECKED BY: W. R. CAMPBELL, P.E. LICENSE # 79289.



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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A REQUEST BY GRASSY KEY RESORT GROUP, LLC FOR A CONDITIONAL USE PERMIT, PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED “CONDITIONAL USE PERMIT” SEEKING AUTHORIZATION FOR THE REDEVELOPMENT OF AN EXISTING HOTEL RESORT AND COMMERCIAL USES ON PROPERTY LOCATED AT 58070 AND 58182 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS TOWNSHIP 65, SECTION 24, RANGE 33; BK 36 LTS 1-2-3-4, PT LTS 5-6 (PARCEL A) AND WLY 15FT UNNAMED ST ADJ LOT 1 RES B-C-C 8/11/61 AND ADJ PORTION OF FLAGLER STREET AND GRASSY KEY BAY BOTTOM ADJ LTS 1-2-3, LOT 12 AND PT LOT 13 IN THE CRAINS SUBDIVISION, GRASSY KEY, MARATHON, FLORIDA: HAVING REAL ESTATE NUMBERS 00370940-000000 AND 00371060. NEAREST MILE MARKER 58.5.**

**WHEREAS**, Grassy Key Resort Group, LLC (The “Applicant”) filed an Application on February 14<sup>th</sup>, 2019 for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**, the applicant has proposed the redevelopment of thirty three (38) transient units (two properties, one motel complex of thirty-three (33) units and five (5) RV sites) and 11,550 square feet of commercial space, including a hotel/motel/resort lodging, retail store, bar, accessory building and accessory uses, clubs, and two swimming pools; and

**WHEREAS**, the 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**, said Grassy Key Resort Group, LLC property located at 58070 Overseas Hwy (RE No. 00371060-000000) consists of 15 transient hotel/motel unit entitlements and commercial space, , and retail store; and

**WHEREAS**, Applicant desires to transfer 10 transient residential units from property located at 58070 Overseas Hwy (RE No. 00371060-000000) to the redevelopment of property located at 58182 Overseas Hwy (RE No. 00370940-000000) leaving 5 transient residential units at 58070 Overseas Hwy (RE No. 00371060-000000) to be developed as recreational vehicle pads (RV); and

**WHEREAS**, the property located at 58182 Overseas Highway (RE No. 00370940-000000) will be redeveloped to include ten (10) new hotel units in accordance with the plans attached.; and

**WHEREAS**, on the 15<sup>th</sup> day April, 2019, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearing”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

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

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

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

**Section 2.** The City Council hereby approves Development Order 2019-07, a copy of which is attached hereto as Exhibit “A”, granting a Conditional Use Permit to Grassy Key Resort Group, LLC subject to the Conditions imposed. The Director of Planning is authorized to sign the Development Order on behalf of the City.

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

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 14<sup>th</sup> DAY OF MAY, 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

**EXHIBIT “A”  
CITY OF MARATHON, FLORIDA  
CONDITIONAL USE  
DEVELOPMENT ORDER # 2019-07**

**A DEVELOPMENT ORDER APPROVING A REQUEST BY GRASSY KEY RESORT GROUP, LLC FOR A CONDITIONAL USE PERMIT, PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED “CONDITIONAL USE PERMIT” SEEKING AUTHORIZATION FOR THE REDEVELOPMENT OF AN EXISTING HOTEL RESORT AND COMMERCIAL USES ON PROPERTY LOCATED AT 58070 AND 58182 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS TOWNSHIP 65, SECTION 24, RANGE 33; BK 36 LTS 1-2-3-4, PT LTS 5-6 (PARCEL A) AND WLY 15FT UNNAMED ST ADJ LOT 1 RES B-C-C 8/11/61 AND ADJ PORTION OF FLAGLER STREET AND GRASSY KEY BAY BOTTOM ADJ LTS 1-2-3, LOT 12 AND PT LOT 13 IN THE CRAINS SUBDIVISION, GRASSY KEY, MARATHON, FLORIDA: HAVING REAL ESTATE NUMBERS 00370940-000000 AND 00371060. NEAREST MILE MARKER 58.5.**

**WHEREAS**, Grassy Key Resort Group, LLC (The “Applicant”) filed an Application on February 14<sup>th</sup>, 2019 for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**, the applicant has proposed the redevelopment of thirty three (38) transient units (two properties, one motel complex of thirty-three (33) units and five (5) RV sites) and 11,550 square feet of commercial space, including a hotel/motel/resort lodging, retail store, bar, accessory building and accessory uses, clubs, and two swimming pools; and

**WHEREAS**, the 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**, said Grassy Key Resort Group, LLC property located at 58070 Overseas Hwy (RE No. 00371060-000000) consists of 15 transient hotel/motel unit entitlements and commercial space, , and retail store; and

**WHEREAS**, Applicant desires to transfer 10 transient residential units from property located at 58070 Overseas Hwy (RE No. 00371060-000000) to the redevelopment of property located at 58182 Overseas Hwy (RE No. 00370940-000000) leaving 5 transient residential units at 58070 Overseas Hwy (RE No. 00371060-000000) to be developed as recreational vehicle pads (RV); and

**WHEREAS**, the property located at 58182 Overseas Highway (RE No. 00370940-000000) will be redeveloped to include ten (10) new hotel units in accordance with the plans attached.; and

**WHEREAS**, on the 15<sup>th</sup> day April, 2019, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearing”) regarding the

request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

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

**FINDINGS OF FACT:**

1. the applicant has proposed the redevelopment of thirty three (38) transient units (two properties, one motel complex and five (5) RV sites) and 11,550 square feet of commercial space, including a hotel/motel/resort lodging, retail store, bar, accessory building and accessory uses, clubs, and two swimming pools; and
2. In accordance with Section 102.77 of the Code, the Commission and Council considered and determined the Applicant met the following criteria:
  - a. The proposed use is consistent with the Comprehensive Plan and LDRs;
  - b. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;
  - c. The proposed use shall not adversely affect the health, safety, and welfare of the public; and
  - d. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment; and
  - e. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:
    1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;
    2. Off-street parking and loading areas where required, with particular attention to item 1 above;
    3. The noise, glare or odor effects of the conditional use on surrounding properties;
    4. Refuse and service areas, with particular reference to location, screening and Items 1 and 2 above;
    5. Utilities, with reference to location and availability;
    6. Screening and buffering with reference to type, dimensions and character;
    7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding properties;
    8. Required yards and other open space;
    9. General compatibility with surrounding properties; and

**CONDITIONS IMPOSED:**

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

Conditions of Approval

- 1) Redevelopment area not in turtle nesting beach. Area within the turtle nesting beach shall comply with setbacks established in P2018-0251, (Site Work), P2019-0017 (Exterior remodel), P2019-0325 (dock repair).
- 2) The applicant will meet all floodplain related requirements as part of the Building Permit process;
- 3) A detailed lighting plan must be submitted before permit issuance, including requirements for turtle nesting beach lighting;
- 4) City approval is required for the stormwater management system prior to Building Permit Approval.
- 5) City approval of the modified connection to the City Wastewater Utility will be required;
- 6) All signs and turtle lighting will be reviewed and approved for compliance with the City of Marathon LDR's;
- 7) A final landscaping plan must be submitted prior to building issuance;
- 8) Clear sight triangles must be shown on the site plan at time of building permit issuance.
- 9) All hotel or motels shall provide on- or off-site employee housing living space in an amount equal to a minimum of 20 percent (as may be adjusted from time to time by Council policy to reflect economic conditions) of the approved floor area in guest units;
- 10) The applicant will obtain any required permits from ACOE and DEP prior to building permit issuance;
- 11) The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshall;
- 12) As a condition of redevelopment, the developer and the City shall enter into a Development Agreement, in addition to compliance with all other provisions of the Code.
- 13) The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.

**VIOLATION OF CONDITIONS:**

The applicant understands and acknowledges that it must comply with all of the terms and conditions herein, and all other applicable requirements of the City or other governmental agencies applicable to the use of the Property. In accordance with the Code, the Council may revoke this approval upon a determination that the Applicant or its successor or designee is in non-compliance with this Resolution or Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed therein.

**CONCLUSIONS OF LAW:**

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

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

**EFFECTIVE DATE:**

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

\_\_\_\_\_ 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 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.

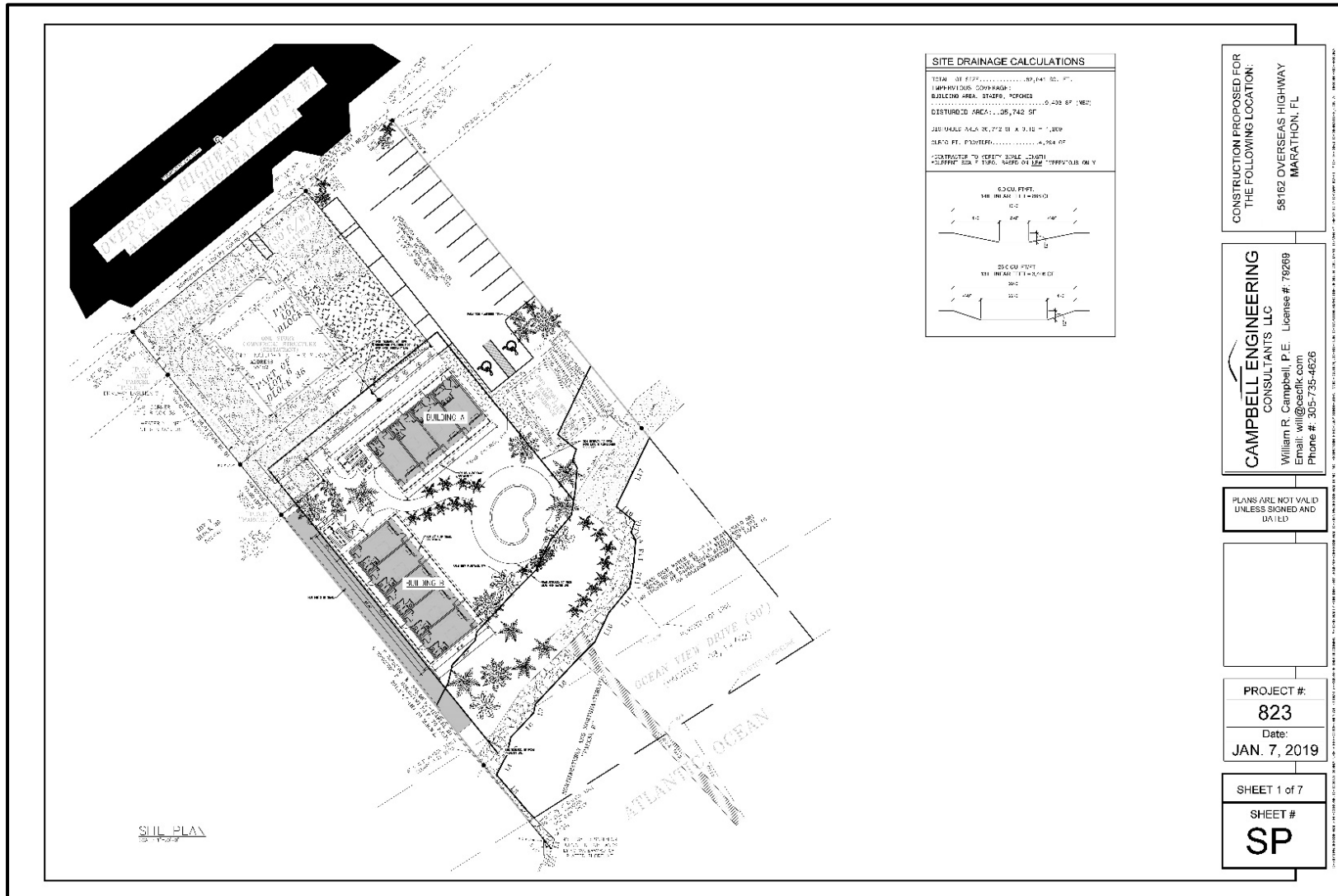
**CERTIFICATE OF SERVICE**

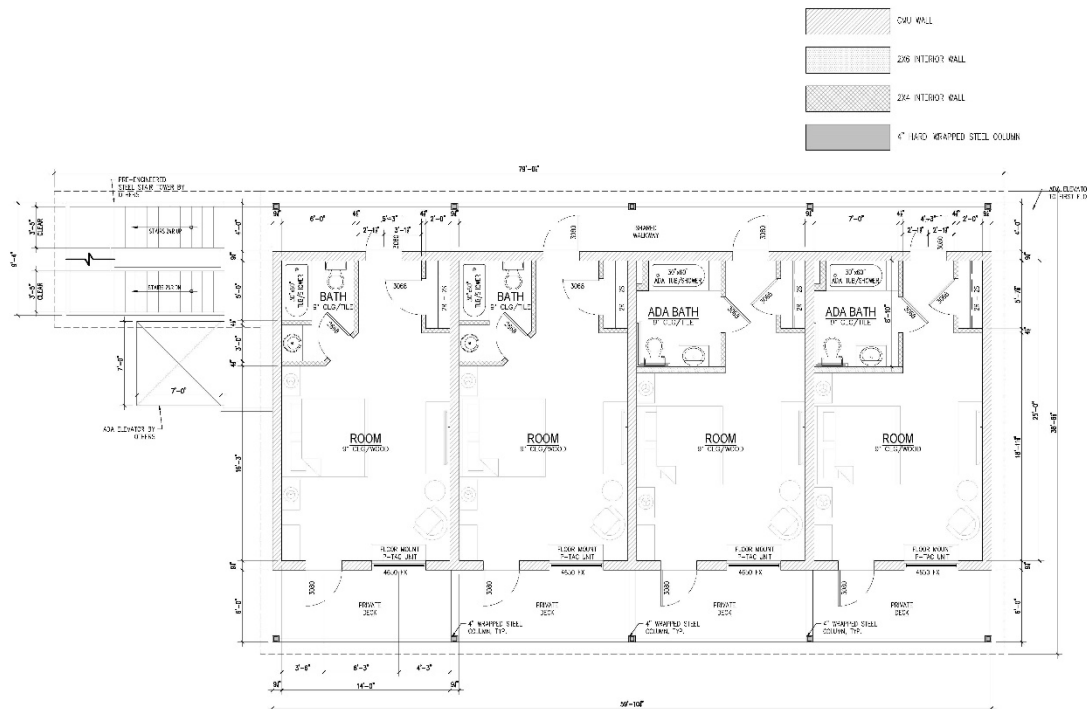
A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to Lesley Rhyne – 2975 Overseas Highway, Marathon, FL 33050 this \_\_\_\_ day of \_\_\_\_\_, 2019.

Diane Clavier, City Clerk



Attachment: Proposed Site Plan A





FIRST FLOOR PLAN  
SCALE: 1/8" = 1'-0"

CONSTRUCTION PROPOSED FOR  
THE FOLLOWING LOCATION:  
88162 OVERSEAS HIGHWAY  
MARATHON, FL

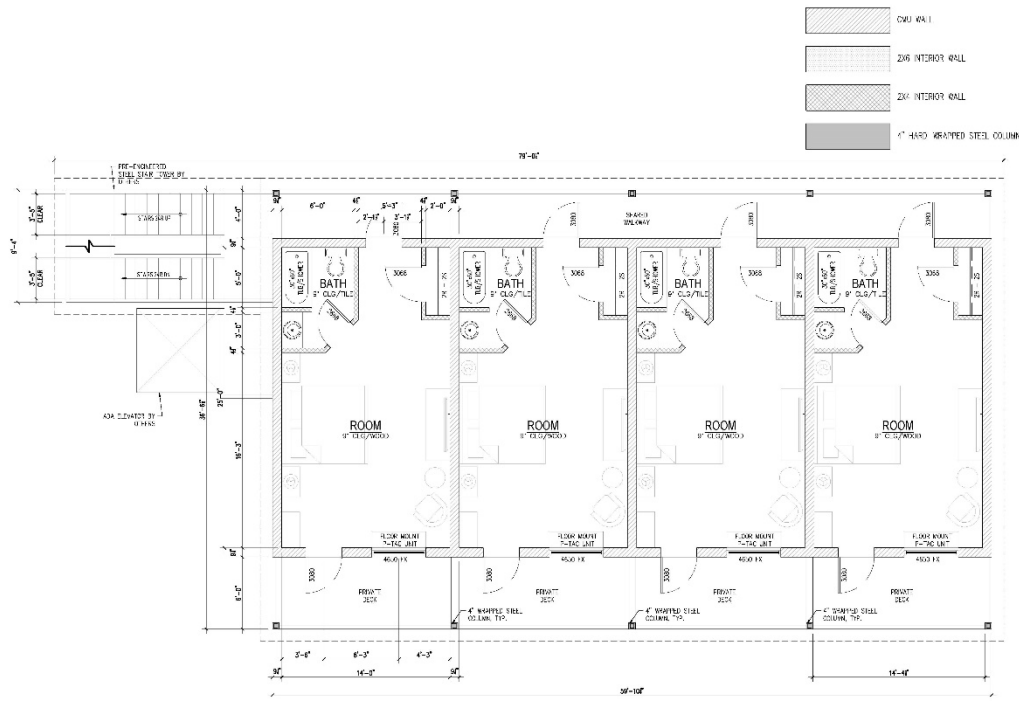
**CAMPBELL ENGINEERING**  
CONSULTANTS LLC  
William R. Campbell, P.E. License #: 79269  
Email: will@cecfk.com  
Phone #: 305-735-4828

PLANS ARE NOT VALID  
UNLESS SIGNED AND  
DATED

PROJECT #:  
**823**  
Date:  
**JAN. 7, 2019**

SHEET 2 of 7  
SHEET #  
**A-1**

CECFK PROFESSIONAL ENGINEERING CONSULTANTS, LLC IS AN EQUAL OPPORTUNITY EMPLOYER. ALL RIGHTS RESERVED. THIS DOCUMENT IS THE PROPERTY OF CECFK. NO PART OF THIS DOCUMENT IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF CECFK. PROFESSIONAL ENGINEERING CONSULTANTS, LLC IS AN EQUAL OPPORTUNITY EMPLOYER. ALL RIGHTS RESERVED. THIS DOCUMENT IS THE PROPERTY OF CECFK. NO PART OF THIS DOCUMENT IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF CECFK.

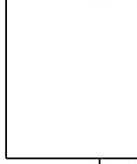


S.COND FLOOR PLAN  
25AR 7/4 1-2

CONSTRUCTION PROPOSED FOR  
THE FOLLOWING LOCATION:  
58162 OVERSEAS HIGHWAY  
MARATHON, FL

**CAMPBELL ENGINEERING**  
CONSULTANTS LLC  
William R. Campbell, P.E. License #: 79269  
Email: will@ceclik.com  
Phone #: 305-735-4828

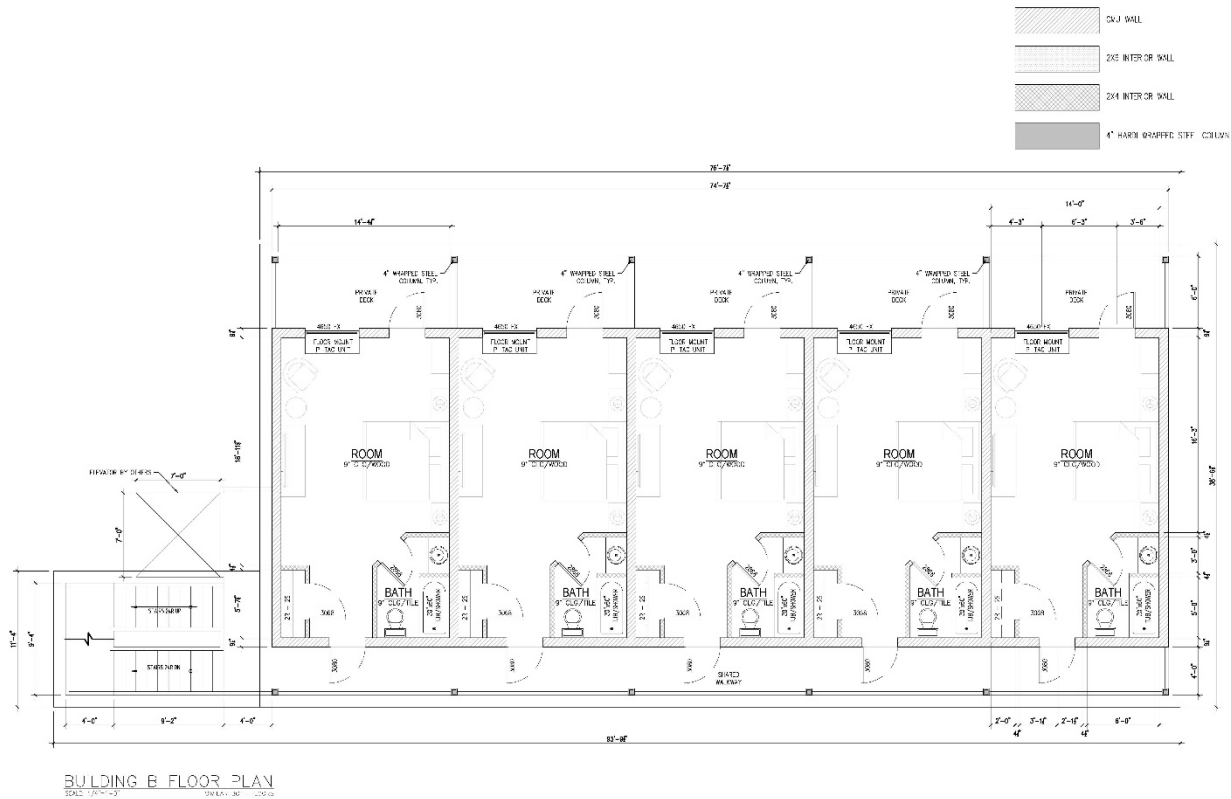
PLANS ARE NOT VALID  
UNLESS SIGNED AND  
DATED



PROJECT #:  
**823**  
Date:  
**JAN. 7, 2019**

SHEET 3 of 7  
SHEET #  
**A-2**

I, WILLIAM R. CAMPBELL, LICENSED PROFESSIONAL ENGINEER, STATE OF FLORIDA, LICENSE NO. 79269, HEREBY CERTIFY THAT I AM THE DESIGNER OF THESE PLANS AND I AM NOT PROVIDING THESE PLANS TO ANY OTHER PARTY FOR ANY OTHER PROJECT. I AM NOT PROVIDING THESE PLANS TO ANY OTHER PARTY FOR ANY OTHER PROJECT.

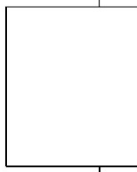


BUILDING B FLOOR PLAN  
SCALE: 1/8" = 1'-0" DRAWING NO. 19-10

CONSTRUCTION PROPOSED FOR  
THE FOLLOWING LOCATION:  
58162 OVERSEAS HIGHWAY  
MARATHON, FL

**CAMPBELL ENGINEERING**  
CONSULTANTS LLC  
William R. Campbell, P.E. License #: 79269  
Email: will@ceclik.com  
Phone #: 305-735-4828

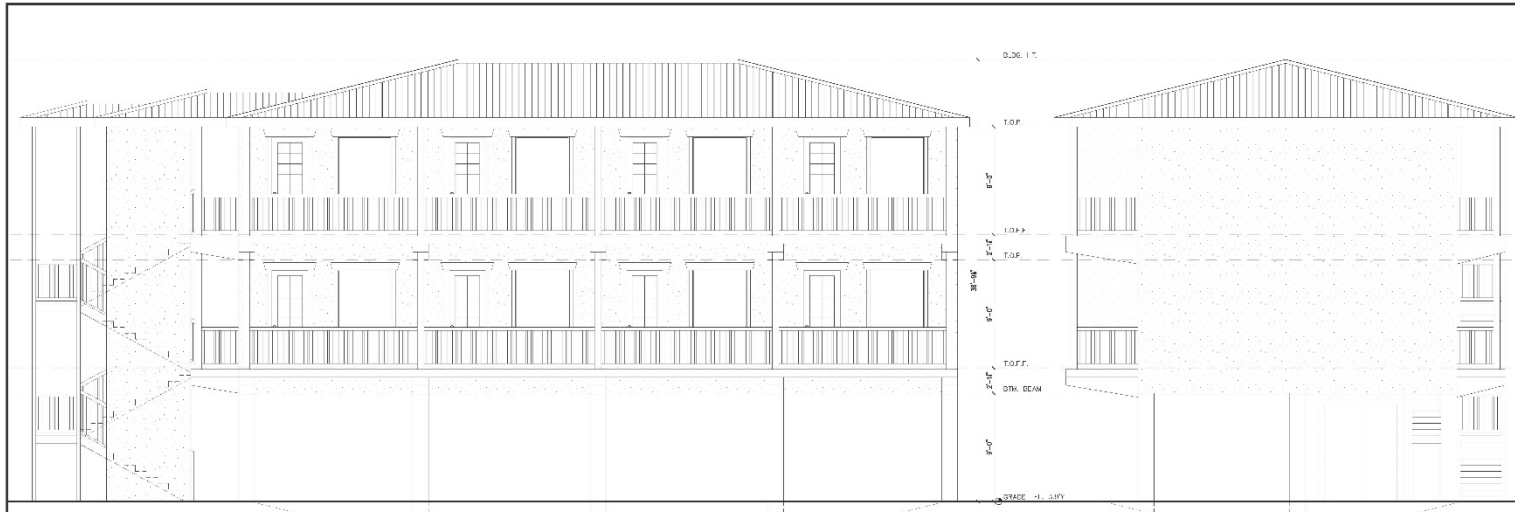
PLANS ARE NOT VALID  
UNLESS SIGNED AND  
DATED



PROJECT #:  
**823**  
Date:  
**JAN. 7, 2019**

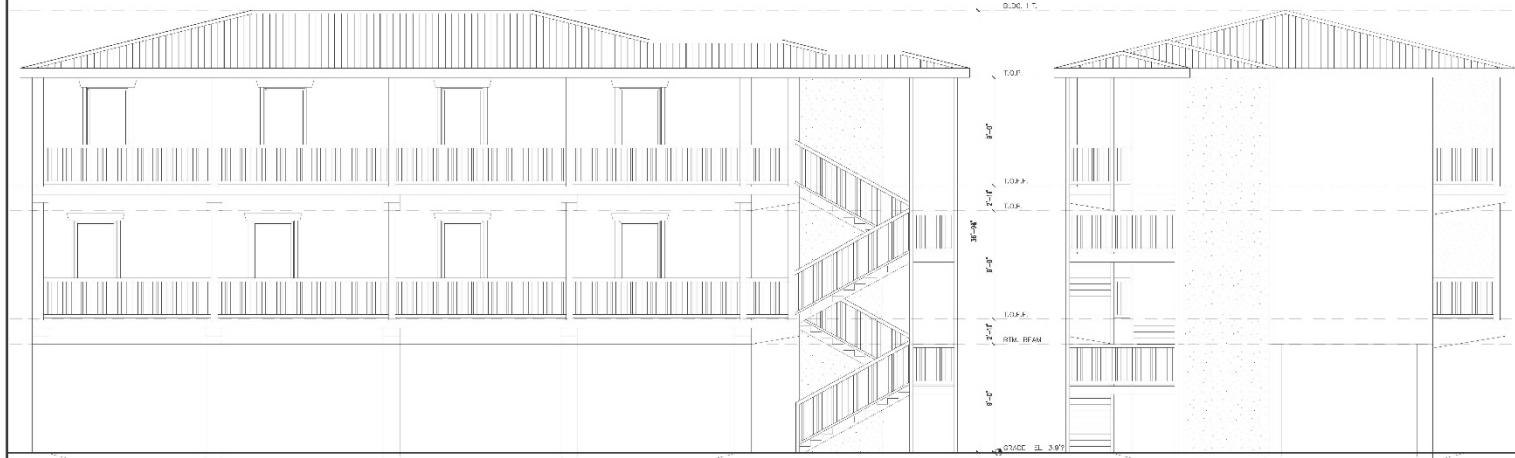
SHEET 4 of 7  
SHEET #  
**A-3**

PROFESSIONAL ENGINEER LICENSE NO. 79269 - WILLIAM R. CAMPBELL, P.E. - FLORIDA. PROFESSIONAL ENGINEER LICENSE NO. 79269 - WILLIAM R. CAMPBELL, P.E. - FLORIDA. PROFESSIONAL ENGINEER LICENSE NO. 79269 - WILLIAM R. CAMPBELL, P.E. - FLORIDA. PROFESSIONAL ENGINEER LICENSE NO. 79269 - WILLIAM R. CAMPBELL, P.E. - FLORIDA.



REAR ELEVATION — BUILDING A  
SCALE: 1/8" = 1'-0"

LEFT ELEVATION — BUILDING A  
SCALE: 1/8" = 1'-0"



FRONT ELEVATION — BUILDING A  
SCALE: 1/8" = 1'-0"

RIGHT ELEVATION — BUILDING A  
SCALE: 1/8" = 1'-0"

CONSTRUCTION PROPOSED FOR  
THE FOLLOWING LOCATION:  
58162 OVERSEAS HIGHWAY  
MARATHON, FL

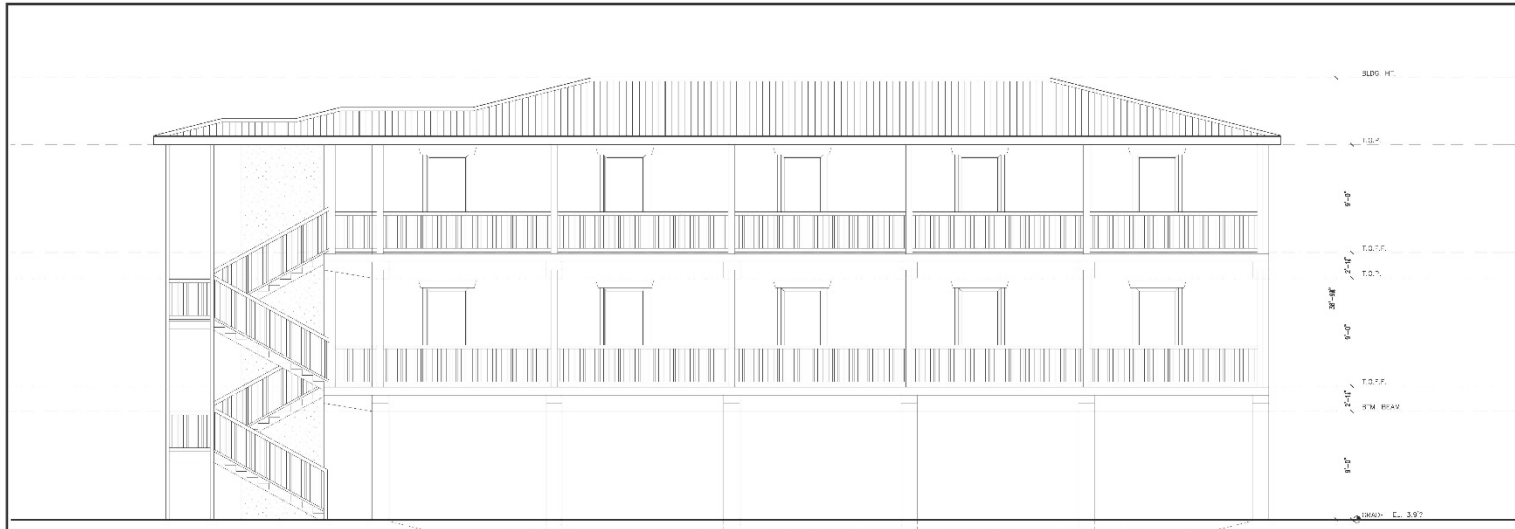
**CAMPBELL ENGINEERING**  
CONSULTANTS LLC  
William R. Campbell, P.E. License #: 79269  
Email: will@cecilk.com  
Phone #: 305-735-4626

PLANS ARE NOT VALID  
UNLESS SIGNED AND  
DATED

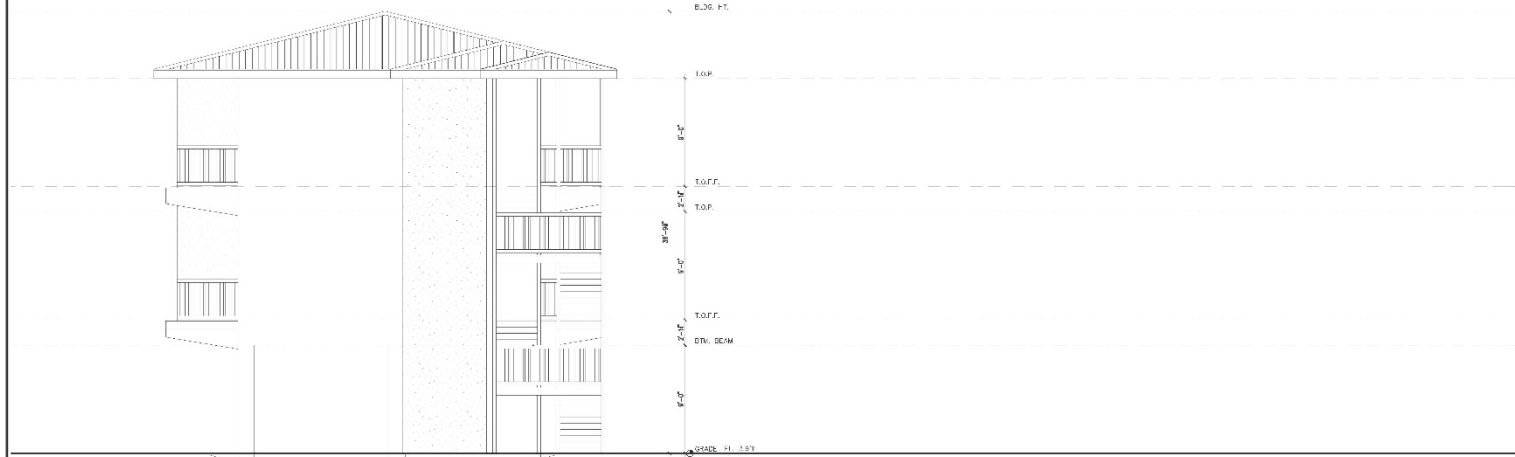
PROJECT #:  
**823**  
Date:  
**JAN. 7, 2019**

SHEET 5 of 7  
SHEET #  
**A-4**

I AM A PROFESSIONAL ENGINEER LICENSED IN THE STATE OF FLORIDA. I HAVE REVIEWED AND APPROVED THE DESIGN AND CONSTRUCTION OF THIS PROJECT. I AM NOT PROVIDING ANY GUARANTEE OR WARRANTY FOR THE DESIGN OR CONSTRUCTION OF THIS PROJECT. I AM NOT PROVIDING ANY GUARANTEE OR WARRANTY FOR THE DESIGN OR CONSTRUCTION OF THIS PROJECT. I AM NOT PROVIDING ANY GUARANTEE OR WARRANTY FOR THE DESIGN OR CONSTRUCTION OF THIS PROJECT.



FRONT ELEVATION - BUILDING B  
SCALE: 1/8" = 1'-0"



LEFT ELEVATION - BUILDING B  
SCALE: 1/8" = 1'-0"

CONSTRUCTION PROPOSED FOR  
THE FOLLOWING LOCATION:  
58162 OVERSEAS HIGHWAY  
MARATHON, FL

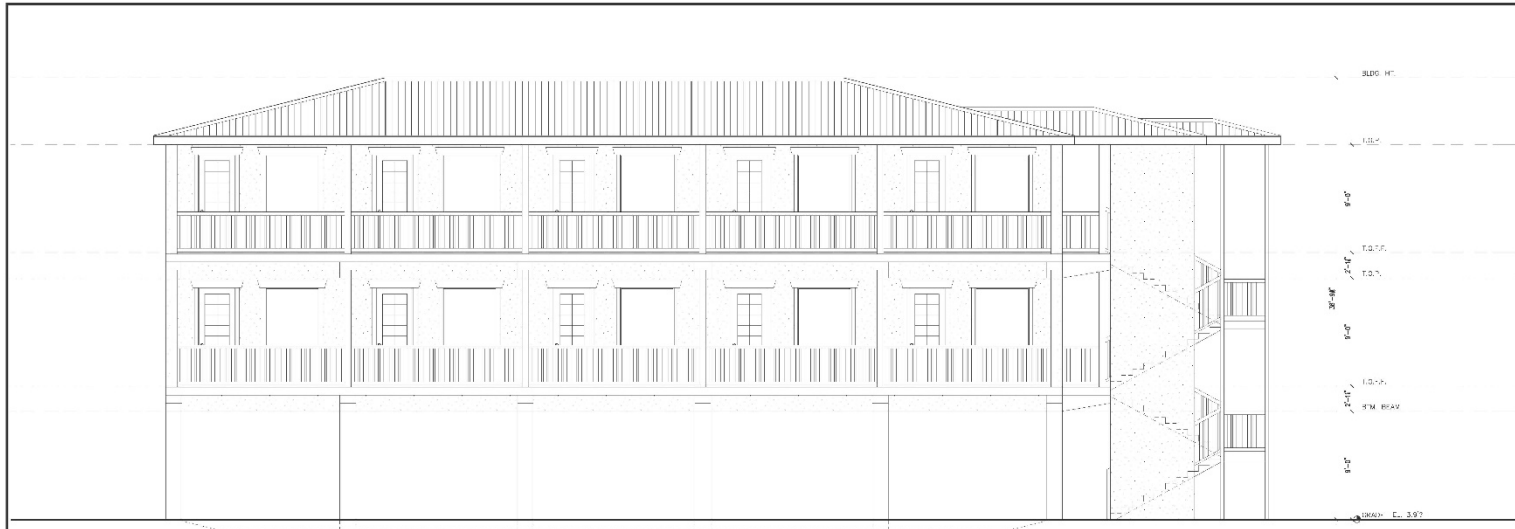
**CAMPBELL ENGINEERING**  
CONSULTANTS LLC  
William R. Campbell, P.E. License #: 79269  
Email: will@cecilk.com  
Phone #: 305-735-4626

PLANS ARE NOT VALID  
UNLESS SIGNED AND  
DATED

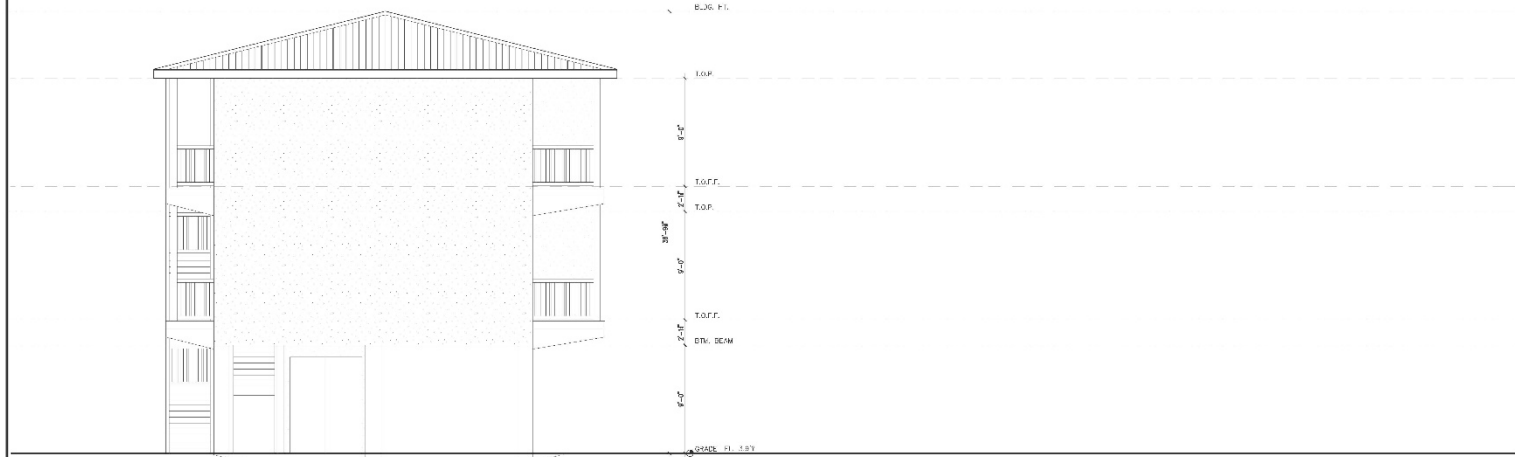
PROJECT #:  
**823**  
Date:  
**JAN. 7, 2019**

SHEET 6 of 7  
SHEET #  
**A-5**

I hereby certify that I am a duly Licensed Professional Engineer in the State of Florida, License No. 79269, and that I am the author of the design and construction documents herein. I am not providing any design or construction services to any other party for the same project as shown on these documents. I am not providing any design or construction services to any other party for the same project as shown on these documents. I am not providing any design or construction services to any other party for the same project as shown on these documents.



R\_REAR ELEVATION BUILDING B  
SCALE: 1/8" = 1'-0"



R\_FRONT ELEVATION - BUILDING B  
SCALE: 1/8" = 1'-0"

CONSTRUCTION PROPOSED FOR  
THE FOLLOWING LOCATION:  
58162 OVERSEAS HIGHWAY  
MARATHON, FL

**CAMPBELL ENGINEERING**  
CONSULTANTS LLC  
William R. Campbell, P.E. License #: 79269  
Email: will@cecilk.com  
Phone #: 305-735-4626

PLANS ARE NOT VALID  
UNLESS SIGNED AND  
DATED

PROJECT #:  
**823**  
Date:  
**JAN. 7, 2019**

SHEET 7 of 7  
SHEET #  
**A-6**

I hereby certify that the above information was prepared by me or under my direct supervision and that I am a duly licensed Professional Engineer in the State of Florida. I am not providing this information for any other project or for any other purpose. I am not providing this information for any other project or for any other purpose.





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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A REQUEST BY GRASSY KEY RESORT GROUP, LLC FOR A DEVELOPMENT AGREEMENT, PURSUANT TO CHAPTER 102, ARTICLES 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED “DEVELOPMENT AGREEMENT” SEEKING AUTHORIZATION FOR THE REDEVELOPMENT OF AN EXISTING HOTEL RESORT AND COMMERCIAL USES ON PROPERTY LOCATED AT 58070 AND 58182 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS TOWNSHIP 65, SECTION 24, RANGE 33; BK 36 LTS 1-2-3-4, PT LTS 5-6 (PARCEL A) AND WLY 15FT UNNAMED ST ADJ LOT 1 RES B-C-C 8/11/61 AND ADJ PORTION OF FLAGLER STREET AND GRASSY KEY BAY BOTTOM ADJ LTS 1-2-3, LOT 12 AND PT LOT 13 IN THE CRAINS SUBDIVISION, GRASSY KEY, MARATHON, FLORIDA: HAVING REAL ESTATE NUMBERS 00370940-000000 AND 00371060. NEAREST MILE MARKER 58.5.**

**WHEREAS**, Grassy Key Resort Group, LLC (The “Applicant”) filed an Application on February 14<sup>th</sup>, 2019 for a Development Agreement pursuant to Chapter 102, Article 8 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**, the applicant has proposed the redevelopment of thirty three (38) transient units (two properties, one motel complex of thirty-three (33) units and five (5) RV sites) and 11,550 square feet of commercial space, including a hotel/motel/resort lodging, retail store, bar, accessory building and accessory uses, clubs, and two swimming pools; and

**WHEREAS**, the 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**, said Grassy Key Resort Group, LLC property located at 58070 Overseas Hwy (RE No. 00371060-000000) consists of 15 transient hotel/motel unit entitlements and commercial space, , and retail store; and

**WHEREAS**, Applicant desires to transfer 10 transient residential units from property located at 58070 Overseas Hwy (RE No. 00371060-000000) to the redevelopment of property located at 58182 Overseas Hwy (RE No. 00370940-000000) leaving 5 transient residential units at 58070 Overseas Hwy (RE No. 00371060-000000) to be developed as recreational vehicle pads (RV); and

**WHEREAS**, the property located at 58182 Overseas Highway (RE No. 00370940-000000) will be redeveloped to include ten (10) new hotel units in accordance with the plans attached.; and

**WHEREAS**, on the 15<sup>th</sup> day April, 2019, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearing”) regarding the request submitted by the Applicant, for a Development Agreement to Chapter 102, Article 8 of the LDRs; and

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

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

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

**Section 2.** The City Council hereby approves a Development Agreement to Grassy Key Resort Group, LLC, a copy of which is attached hereto as Exhibit “A,” subject to the Conditions imposed. The Director of Planning is authorized to sign the Development Order on behalf of the City.

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

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 14<sup>th</sup> DAY OF MAY, 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

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

DRAFT

**EXHIBIT A  
DEVELOPMENT AGREEMENT**

DRAFT

(Space Reserved for Recording)

**Development Agreement  
Grassy Key Resort Group, LLC  
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 Grassy Key Resort Group, LLC, a Florida limited liability company, whose address is 58182 Overseas Highway, Marathon, FL 33050 (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 properties located at 58182 Overseas Hwy and 58070 Overseas Hwy in Marathon, Florida, described in composite Exhibit “A” hereto, which includes the location of a hotel and beach club and its proposed expansion, including a recreational vehicle park; and

**WHEREAS**, the real property described in Exhibit “A” 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 a recreational vehicle park ; and

**WHEREAS**, said Grassy Key Resort Group, LLC property located at 58182 Overseas Hwy (Prior RE Nos. 00370940-000000, 00370980-000000, 00371000-000000 now combined as 00370940-000000) consists of **23** transient hotel/motel units and 86,051 square feet of commercial uses, including a hotel/motel/resort lodging, restaurant, bar, accessory building and accessory uses, clubs, swimming pool, and retail store; and

**WHEREAS**, said Grassy Key Resort Group, LLC property located at 58070 Overseas Hwy (RE No. 00371060-000000) consists of **15** transient hotel/motel units and 11,550 square feet of commercial uses, including a hotel/motel/resort lodging, restaurant, bar, accessory building and accessory uses, clubs, swimming pool, and retail store; and

**WHEREAS**, Owner desires to transfer **10** transient hotel/motel units from property located at 58070 Overseas Hwy (RE No. 00371060-000000) to redevelop property located at 58182 Overseas Hwy (RE No. 00370940-000000) leaving **5** transient hotel/motel units at 58070

Overseas Hwy (RE No. 00371060-000000) to be developed with recreational vehicle pads (RV) for a temporary period of time of five (5) years retaining the rights to redevelop 58070 Overseas Hwy (RE No. 00371060-000000); and

**WHEREAS**, the Marathon Planning Commission held a public hearing on the 15<sup>th</sup> day of April, 2019, to consider this agreement, and recommended approval of this agreement; and

**WHEREAS**, the City Council of Marathon held public hearings on the 14<sup>th</sup> day of May and 28<sup>th</sup> day of May, 2019, to consider this Agreement; and

**WHEREAS**, the City of Marathon desires to encourage development and redevelopment of hotels, motels, and recreational vehicle parks in the City to attract tourism, enhance the economy of the City for the benefit of its residents, improve the good appearance of the City, enhance the City's ability to support needed improvements in infrastructure, and encourage other redevelopment efforts for the economic growth, prosperity and welfare of the residents of the City of Marathon; and

**WHEREAS**, the City has determined that this Agreement is consistent with the local comprehensive plan, is in the public interest, and will further the health, safety, welfare, and goals of the residents of the City of Marathon; and

**WHEREAS**, the proposed redevelopment is permissible and appropriate for the City's Transitional Comprehensive Plan Future Land Use designations of Mixed Use Commercial applicable to the Property and for the Mixed Use Commercial designation in the City's Comprehensive Plan;

**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 expand the redevelopment of 58182 Overseas Hwy (RE No. 00370940-000000) site to include thirty-three (33) transient hotel/motel units and commercial uses, including a hotel/motel/resort lodging, restaurant, bar, accessory building and accessory uses, clubs, swimming pool, and retail store and allow redevelopment of 58070 Overseas Hwy (RE No. 00371060-000000) with five (5) recreational vehicle pads (RV) for a temporary period of time of five (5) years as per the plans 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.

Notwithstanding the above, at any time the Owner may redevelop 58070 Overseas Hwy (RE No. 00371060-000000) with hotel/motel units or any a use consistent with the City of Marathon's Comprehensive Plan. That doesn't otherwise require a Conditional Use Permit approval

### **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.**

Grassy Key Resort Group, LLC is the Owner of properties located at 58182 Overseas Hwy identified by RE No. 00370940-000000 and 58070 Overseas Hwy identified by RE No. 00371060-000000, which properties are the subject of this Agreement and hereinafter referred to as Properties, as described in Exhibit A. 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.**

This Agreement shall remain in effect for a period of ten (10) years, commencing on the Effective Date set forth below. The Owner shall have a period of two (2) years from the Effective Date of this Agreement to obtain the first building permit and five (5) years from the Effective Date of this Agreement to obtain all Certificates of Occupancy and/or Final Inspections for structures on the Property as shown on the Site Plan.

This Agreement may be renewed or extended 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 in composite Exhibit A and incorporated herein by reference. The permitted uses are as follows:

- i. Existing Development
- ii. Transient Units: 33 transient residential (hotel) units at property located at 58182 Overseas Hwy (RE No. 00370940-000000) and 5 transient hotel/motel units at 58070 Overseas Hwy (RE No. 00371060-000000) to be developed with recreational vehicle pads (RV) for a temporary period of time of five (5) years

with rights at any time to redevelop 58070 Overseas Hwy (RE No. 00371060-000000) with hotel/motel units or any use consistent with the City of Marathon's Comprehensive Plan that doesn't require a Conditional Use Permit; and

2. 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, its grantees, successors, or assigns shall have the absolute right to rebuild or repair the affected structure(s) and reinitiate the prior approved use so long as such development is in compliance with this Agreement.

3. The following documents are attached hereto and incorporated by reference, showing the Property Boundary and Existing and Proposed Uses:

Composite Exhibit A: Boundary Survey and Conceptual Site Plan

4. 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.

5. The Owner shall execute and record in the public records of Monroe County a Declaration of Covenants and Restrictions in a form acceptable to the City ensuring that it shall not seek and has no legal right to file for homestead exemption for the Transient Units constructed on the property; and which shall require the occupants of all Transient Units on the property to 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.
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

1. The Parties acknowledge that there exist on the property located 58182 Overseas Hwy (RE No. 00370940-000000):

<u>Development Type</u>	<u>Existing</u>
Transient Units:	33 units

2. The Parties acknowledge that there exist on the property located 58070 Overseas Hwy (RE No. 00371060-000000):

<u>Development Type</u>	<u>Existing</u>
Transient Units:	5 units

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 of Marathon'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:

Grassy Key Resort Group, LLC .  
c/o Matthew Sexton  
58182 Overseas Hwy  
Marathon, FL 33050

With a copy by regular U.S. Mail to:

CUNNINGHAM MILLER PA  
Lesley Rhyne, Esq.  
2975 Overseas Hwy  
Marathon, FL 33050

TO THE CITY:

City Manager  
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

GRASSY KEY RESORT GROUP, LLC

By: Grassy Key Resort Group, LLC  
authorized representative

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Name of witness (printed or typed)

Name: Matthew Sexton

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of witness (printed or typed)

STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Matthew Sexton, as authorized representative of Grassy Key Resort Group, 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:

On the \_\_\_\_\_ day of \_\_\_\_\_, 2019, The City Council of the City of Marathon approved this Agreement by Resolution No. \_\_\_\_\_

ATTEST:

CITY OF MARATHON

\_\_\_\_\_  
City Clerk

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

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

\_\_\_\_\_



COUNCIL AGENDA STATEMENT



**Meeting Date:** May 14, 2019  
**To:** Honorable Mayor and City Councilmembers  
**From:** George Garrett, Planning Director  
**Through:** Chuck Lindsey, City Manager

**Agenda Item:** Consideration Of A Request For A Conditional Use Permit And Development Agreement For 1477 Overseas Highway LLC And Seasons Inc., 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 An Affordable Housing Project, Located at 1477 Overseas Highway And 263 15<sup>th</sup> Street, Which Are Legally Described As The North 150 Feet of Lot 1 and 2, Part of Lots 1 and 2, Block 2 , Parrish Subdivision, Marathon, Florida, Having Real Estate Numbers 00326770-000000 and 00326760-000000. Nearest Mile Marker 48.

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**APPLICANT/ OWNER:** 1477 Overseas Highway LLC and Seasons Inc.

**AGENT:** Mike Aranda Jr. & Mike Aranda Sr.

**LOCATION:** The project site is located at 1477 Overseas Highway and 263 15th Street

**Figure 1**  
**Project Site**



**REQUEST:** A request for a Conditional Use Permit and Development Agreement to:

- Utilize densities allowed pursuant to the partial Residential – Mobile Home (R-MH) zoning associated with a portion of the site
- Develop ten (10) workforce / affordable housing units
- Deed restrict the workforce / affordable units for a minimum of 50 years pursuant to the City’s LDRs

**RECOMMENDATION:**

The Planning staff and other City Staff met in consideration of this item on April 10, 2019 and forward a recommendation of conditional approval for the proposed Conditional Use Permit and Development Agreement submitted by 1477 Overseas Highway LLC and Seasons Inc. The proposed Conditions follow.

The Planning Commission met on April 15, 2019 in review of the proposed project. Staff and the Applicant made brief presentations after which the Planning Commission deliberated forwarding a 5/0 recommendation for approval with two conditions of their own.

1. Utilize densities allowed pursuant to the Residential – Mobile Home (R-MH) zoning associated with a portion of the site
  - a. Develop of ten (10) workforce / affordable housing units
  - b. Deed restrict the workforce / affordable units for a minimum of 50 years pursuant to the City’s LDRs.
2. The Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR’s), BPAS process, or any other legally established process prior to building permit issuance. **THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.**
3. Clear sight triangles must be shown on the site plan at time of building permit issuance.
4. The applicant will provide fire protection plans in accordance with fire protection requirements as required under the State Fire Code and as outlined by the City Fire Marshal and as .
  - a. Particularly, no structure, lying within the proposed building site for each unit, may be closer than 10 feet from one another, including entry stairs, eaves, and porches, or in the alternative
  - b. Shall contain some form of enhanced fire rating so that through the rating, the buildings may be closer than ten (10) feet from one another.
5. The applicant will meet all floodplain related requirements as part of the Building Permit process;
6. The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance.
  - a. Particularly, the development must manage water quality at least (1.5 inches or rainfall over the entire site) and manage stormwater to pre development rate of the twenty-five (25) year, seventy-two (72) hour storm.
7. The applicant will obtain City approval for wastewater management through the City’s Wastewater Utility.
  - a. Particularly, the City has capacity, but will need to install a force main tap, to accommodate the Applicant. The cost of the force main tap shall be borne by the Applicant through their additional required Connection and System Development Charges. The costs of any on-site sewer work shall be borne entirely

by the Applicant.

8. The applicant will obtain sign permits for any signs erected on the property, as required under the Code; and
9. A Final Site Plan must be submitted showing the approved buildings and all civil engineering elements, including final grading, potable water, wastewater, and stormwater management.
10. Applicant will provide a minimum number of parking spaces required under the City’s LDRs and limit parking to the area associated with each individual unit.
11. A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees. Particularly,
12. The Applicant will be required to install a six (6) foot fence or wall with exterior facing landscape vegetation on the U.S. 1 property boundary in lieu of a full landscape buffer.
13. The applicant will obtain approval of final buffering, landscaping, and lighting plans and install all elements of such in coordination with the City staff as needed prior to Certificate of Occupancy;
14. The affordable units must be deed restricted prior to issuance of certificate of occupancy.
15. The individual units proposed shall meet all conditions of the Florida Building and Fire Codes, the conditions of the Conditional Use Permit and Development Agreement and Code Concerning the construction and rental of affordable housing units, Chapter 104, Article 1, Section 104.03 of the LDRs.
16. The Conditional Use Development Order will constitute the Certificate of Concurrence for the project. The determination shall run contemporaneous with the term and timing requirements of the Development Agreement.

**FUTURE LAND USE AND ZONING MAP DESIGNATION:**

Mixed Use Commercial and Residential High (RH) & Mixed Use Commercial (MU) and Residential Mobile Home (RMH). See Figure 2A & 2B.

**Figure 2A & 2B  
Future Land Use & Zoning Map**



**TOTAL PROPERTY SIZE:**

Total acreage: Approx. 0.46 Acres or 19,948 square feet.

**SURROUNDING ZONING AND USES:**

	<u>Zoning</u>	<u>Use</u>

<b>North</b>	MU	Commercial (Restaurant, Commercial Fishing, Vacation Rentals, Redevelopment)
<b>East</b>	R-MH	Mobile Homes
<b>South</b>	R-MH	Residences & Mobile Homes
<b>West</b>	R-MH	Commercial (Dion's) / Mobile Homes

**EXISTING CONDITIONS:**

The project site consists of two parcels. The parcels are currently. New development of affordable residences is underway to the south and KAIR will soon redevelop their Lighthouse Mission site to a location further south.

**PROPOSED REDEVELOPMENT:**

Residential: 10 Affordable Housing Units

**BACKGROUND:**

The proposed project seeks the redevelopment of a commercial and residential property both of which are currently vacant.

The applicant, through the Development Agreement process, wishes to:

- Utilize densities allowed pursuant to the partial Residential – Mobile Home (R-MH) zoning associated with a portion of the site
- Develop of ten (10) workforce / affordable housing units
- Deed restrict he workforce / affordable units for a minimum of 50 years pursuant to the City’s LDRs.

This report addresses the application for a Conditional Use Permit and Development Agreement. **All conditions of the Conditional Use and Development Agreement 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 Development Agreement approval are outlined in Chapter 102, Article 8, Development Agreement & Chapter 102, Article 13, Conditional Use Permits, in the City of Marathon Land Development Regulations.

**CRITERIA**

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

The proposed redevelopment project is located within the Residential Mobile Home (RMH) Zoning District. Per Chapter 103, Article 2, Section 103.09 of the Land Development Regulations, the district is designed to “establish areas of high-density residential uses characterized by mobile homes in mobile home parks,

permanent RVs, and transient RVs where they have previously existed in the District, designated within the Residential High (RH) future land use category on the Future Land Use Map (FLUM).”

The proposed project consists of the redevelopment of an existing commercial and residential area and is consistent with the Residential Mobile Home Zoning District. Section 103.15 establishes whether specific uses are allowed as of right, limited, accessory or conditional uses, through Table 103.15.2. That table shows that multifamily residential uses are allowed as Conditional Uses in the R-MH district. 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 project consists of the redevelopment of a site to include ten (10) individual residential units. The project as proposed meets the basic definition of development in the RM-H zoning district. The units will meet all requirements of the Florida Building Code.

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

- The Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR’s), BPAS process, or any other legally established process prior to building permit issuance. **THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.**

**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 Residential High Future Land Use District. Policy 1-3.1.4 of the City of Marathon Comprehensive Plan states that the “principal purpose of the Residential High future land use category is to provide for high-density single-family, multi-family, and institutional residential development. The Residential High future land use category is characterized by high density compact development on lots with disturbed or scarified vegetation and areas that are appropriate for infill development and that are served by existing infrastructure”. The proposed project includes a redevelopment of vacant use into a higher density use, which is consistent with the Residential High classification.

The existing land use pattern in the project vicinity consists of a mix of residential, multi-family residential, and mobile home uses. Closer to the water near Boot Key Harbor, the area represents one of the remaining active working waterfront locations within the City. The redevelopment of the site will result in significant improvement to the site development quality, including upgraded landscaping, stormwater management, and architecture. The improvements are expected to have a positive benefit on the surrounding uses and the City of Marathon.

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

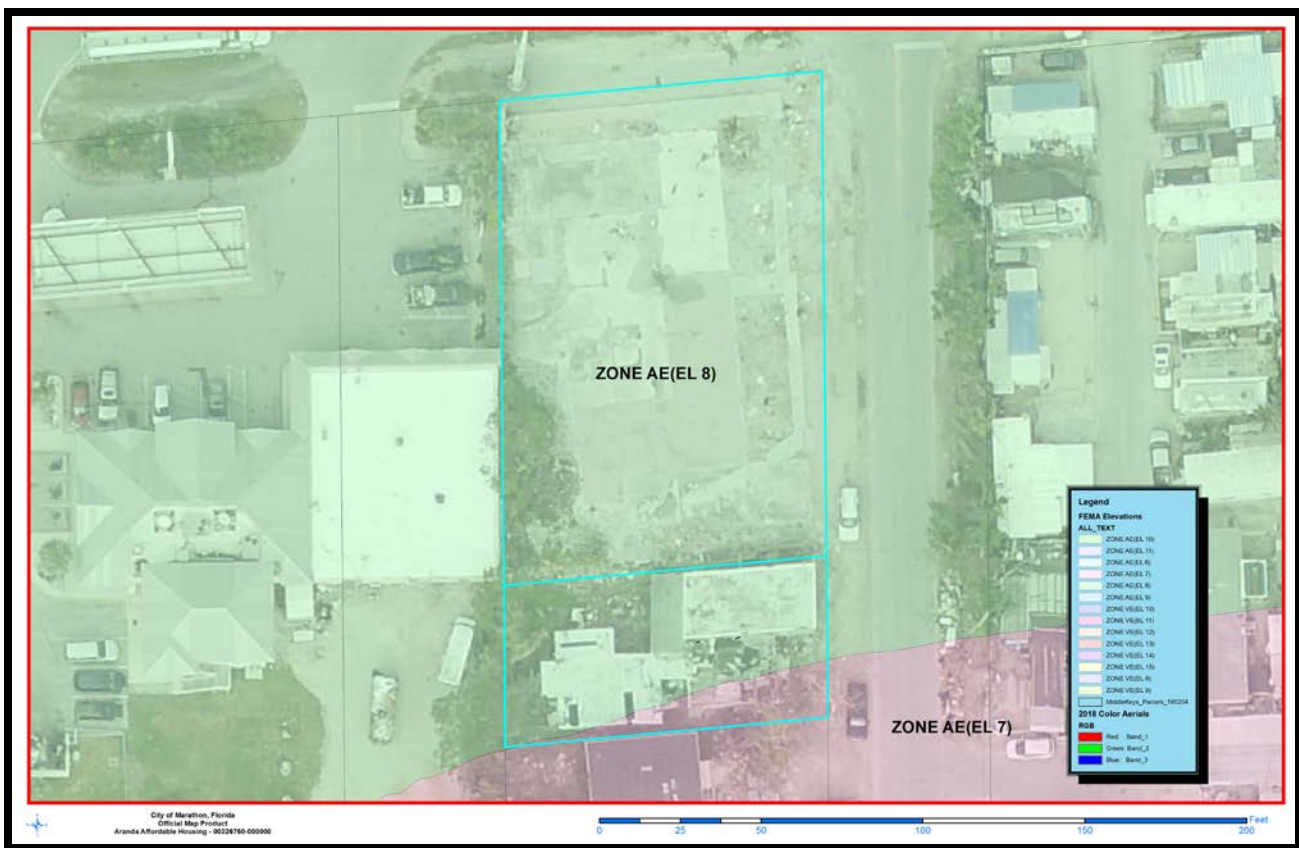
**C. The proposed use shall not adversely affect the health, safety, and welfare of the public;**

The proposed use is a redevelopment of an existing use which has not had any known impact to the health, safety and welfare of the public. No new impacts are expected to arise with the redevelopment.

Plans submitted with the project are suitable for the approval of a Development Agreement in this matter and as they relate to Chapter 107, Article 12, 100 Year Floodplain. Final review of floodplain compliance will occur as part of building permit issuance. See Figure 3

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

**Figure 3  
FEMA NFIP Flood Maps**



**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 land, indicating that there is no natural character to the property at this time. In addition, though found within a ‘Species Focus Area’ as defined in the settlement agreement for the FEMA-FWS lawsuit, “undeveloped land,” as defined therein, falls out of the considerations in the species assessment guides thus having “no impact” on the species of concern, the Eastern Indigo Snake. See figure 4.

**Figure 4**

## Species Focus Area Habitat



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

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

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

- The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal;
- The applicant will meet all floodplain related requirements as part of the Building Permit process;
- The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance;
- The applicant will obtain City approval for wastewater management through the City's Wastewater Utility;
- The applicant will obtain sign permits for any signs erected on the property, as required under the Code; and
- A Final Site Plan must be submitted showing the approved buildings and all civil engineering

elements, including final grading, potable water, wastewater, and stormwater management.

- Applicant will provide a minimum number of parking spaces required under the City's LDRs and limit parking to the area associated with each individual unit..
- A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
- The applicant will obtain approval of final buffering, landscaping, and lighting plans and install all elements of such in coordination with the City staff as needed prior to Certificate of Occupancy;

**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;**

Ingress and egress to the property is being provided on 15<sup>th</sup> Street.

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

- Clear sight triangles must be shown on the site plan at time of building permit issuance.

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

Two parking spaces per unit are required of a single family residence or duplex. The developer is providing twenty four (24) spaces as required.

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

- Applicant will provide a minimum number of parking spaces required under the City's LDRs and limit parking to the area associated with each individual unit.

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

The proposed project consists of development of a residential use. No new impacts will occur.

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;**

Solid Waste pick-up is provided under by MGS. There will be no capacity issues in this regard.

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 City sewer system.
- 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: No additional traffic impact will occur as a result of this project.
- 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.

- City approval is required for the stormwater management system prior to Building Permit Approval.
- City approval of the connection to the City Wastewater Utility will be required.

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

The project will be required to provide street trees for each unit pursuant to the requirements of the LDRs.

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;**

There will be no signs associated with the redevelopment of the site.

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

**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. As proposed, the project will meet the minimum open space requirements.

Additionally, the property is required to provide a landscape buffer along the U.S. 1 property boundary. Section 107.70 requires a medium buffer along this property line.

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

- The Applicant will be allowed to install a six (6) foot wall with exterior facing landscape vegetation on the U.S. 1 property boundary in lieu of a full landscape buffer.

**9. General compatibility with surrounding properties; and**

The project is a development of residential uses in an area of the City which is relatively dense and intense. Adjacent uses include other residences, single family, mobile homes, duplexes, and multifamily units, a day care facility, and two churches and a City park. The proposed project will be compatible with surrounding uses.

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.**

With these modifications to the proposed DA, the request is in compliance with the requirements of this section.

**CONCLUSION:**

The proposed project seeks the development of two contiguous vacant commercial and residential properties. The project furthers the intent of both the City's Comprehensive Plan and Land Development Regulations to:

- Utilize densities allowed pursuant to the partial Residential – Mobile Home (R-MH) zoning associated with a portion of the site
- Develop of ten (10) workforce / affordable housing units
- Deed restrict the workforce / affordable units for a minimum of 50 years pursuant to the City's LDRs and require that the units remain at the project site for ten (10) years.

**RECOMMENDATION:**

The Planning staff and other City Staff met in consideration of this item on April 10, 2019 and forward a recommendation of conditional approval for the proposed Conditional Use Permit and Development Agreement submitted by 1477 Overseas Highway LLC and Seasons Inc. The proposed Conditions follow.

The Planning Commission met on April 15, 2019 in review of the proposed project. Staff and the Applicant made brief presentations after which the Planning Commission deliberated forwarding a 5/0 recommendation for approval with two conditions of their own.

Conditions of Approval

1. Utilize densities allowed pursuant to the Residential – Mobile Home (R-MH) zoning associated with a portion of the site
  - a. Develop of ten (10) workforce / affordable housing units
  - b. Deed restrict the workforce / affordable units for a minimum of 50 years pursuant to the City's LDRs.
2. The Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE

RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.

3. Clear sight triangles must be shown on the site plan at time of building permit issuance.
4. The applicant will provide fire protection plans in accordance with fire protection requirements as required under the State Fire Code and as outlined by the City Fire Marshal and as .
  - c. Particularly, no structure, lying within the proposed building site for each unit, may be closer than 10 feet from one another, including entry stairs, eaves, and porches, or in the alternative
  - d. Shall contain some form of enhanced fire rating so that through the rating, the buildings may be closer than ten (10) feet from one another.
5. The applicant will meet all floodplain related requirements as part of the Building Permit process;
6. The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance.
  - e. Particularly, the development must manage water quality at least (1.5 inches or rainfall over the entire site) and manage stormwater to pre development rate of the twenty-five (25) year, seventy-two (72) hour storm.
7. The applicant will obtain City approval for wastewater management through the City's Wastewater Utility.
- f. Particularly, the City has capacity, but will need to install a force main tap, to accommodate the Applicant. The cost of the force main tap shall be borne by the Applicant through their additional required Connection and System Development Charges. The costs of any on-site sewer work shall be borne entirely by the Applicant.
8. The applicant will obtain sign permits for any signs erected on the property, as required under the Code; and
9. A Final Site Plan must be submitted showing the approved buildings and all civil engineering elements, including final grading, potable water, wastewater, and stormwater management.
10. Applicant will provide a minimum number of parking spaces required under the City's LDRs and limit parking to the area associated with each individual unit.
11. A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees. Particularly,
12. The Applicant will be required to install a six (6) foot fence or wall with exterior facing landscape vegetation on the U.S. 1 property boundary in lieu of a full landscape buffer.
13. The applicant will obtain approval of final buffering, landscaping, and lighting plans and install all elements of such in coordination with the City staff as needed prior to Certificate of Occupancy;
14. The affordable units must be deed restricted prior to issuance of certificate of occupancy.
15. The individual units proposed shall meet all conditions of the Florida Building and Fire Codes, the conditions of the Conditional Use Permit and Development Agreement and Code Concerning the construction and rental of affordable housing units, Chapter 104, Article 1, Section 104.03 of the LDRs.
16. The Conditional Use Development Order will constitute the Certificate of Concurrence for the project. The determination shall run contemporaneous with the term and timing requirements of the Development Agreement.



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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A REQUEST FOR A CONDITIONAL USE PERMIT REQUESTED BY 1477 OVERSEAS HIGHWAY LLC AND SEASONS INC., PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “CONDITIONAL USE PERMITS,” FOR THE REDEVELOPMENT OF THE PROPERTIES AS TEN (10) AFFORDABLE HOUSING RESIDENCES LOCATED AT 1477 OVERSEAS HIGHWAY AND 263 15<sup>TH</sup> STREET, WHICH ARE LEGALLY DESCRIBED AS THE NORTH 150 FEET OF LOT 1 AND 2, PART OF LOTS 1 AND 2, BLOCK 2, PARRISH SUBDIVISION, MARATHON, FLORIDA, HAVING REAL ESTATE NUMBERS 00326770-000000 AND 00326760-000000. NEAREST MILE MARKER 48.**

**WHEREAS**, Request By 1477 Overseas Highway LLC and Seasons Inc. (The “Applicant”) filed an Application on June 26, 2017 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 8 and 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**; the Applicant proposes to develop ten (10) deed restricted affordable residential units; 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 April, 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 14<sup>th</sup> day of May, 2019 and the 28<sup>th</sup> day of May, 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 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 2019-08, a copy of which is attached hereto as Exhibit “A”, granting a Conditional Use Permit to Request By 1477 Overseas Highway LLC and Seasons Inc. subject to the Conditions imposed. The Director of Planning is authorized to sign the development order on behalf of the City.

**Section 3.** This resolution shall take effect immediately upon 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 28<sup>th</sup> day of May, 2019.

THE CITY OF MARATHON, FLORIDA

---

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



**CITY OF MARATHON, FLORIDA  
CONDITIONAL USE  
DEVELOPMENT ORDER # 2019-08**

**A DEVELOPMENT ORDER OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A REQUEST FOR A CONDITIONAL USE PERMIT REQUESTED BY 1477 OVERSEAS HIGHWAY LLC AND SEASONS INC., PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “CONDITIONAL USE PERMITS,” FOR THE REDEVELOPMENT OF THE PROPERTIES AS TEN (10) AFFORDABLE HOUSING RESIDENCES LOCATED AT 1477 OVERSEAS HIGHWAY AND 263 15<sup>TH</sup> STREET, WHICH ARE LEGALLY DESCRIBED AS THE NORTH 150 FEET OF LOT 1 AND 2, PART OF LOTS 1 AND 2, BLOCK 2 , PARRISH SUBDIVISION, MARATHON, FLORIDA, HAVING REAL ESTATE NUMBERS 00326770-000000 AND 00326760-000000. NEAREST MILE MARKER 48.**

**WHEREAS**, Request By 1477 Overseas Highway LLC and Seasons Inc. (The “Applicant”) filed an Application on June 26, 2017 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 8 and 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**; the Applicant proposes to develop ten (10) deed restricted affordable residential units; 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 April, 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 14<sup>th</sup> day of May, 2019 and the 28<sup>th</sup> day of May, 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 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 ten (10) deed restricted affordable residential units with the following determinations:
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;
    3. The noise, glare or odor effects of the conditional use on surrounding properties;
    4. Refuse and service areas, with particular reference to location;
    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. Utilize densities allowed pursuant to the Residential – Mobile Home (R-MH) zoning associated with a portion of the site
  - a. Develop of ten (10) workforce / affordable housing units
  - b. Deed restrict the workforce / affordable units for a minimum of 50 years pursuant to the City's LDRs.
2. The Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. **THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.**
3. Clear sight triangles must be shown on the site plan at time of building permit issuance.
4. The applicant will provide fire protection plans in accordance with fire protection requirements as required under the State Fire Code and as outlined by the City Fire Marshal and as .
  - c. Particularly, no structure, lying within the proposed building site for each unit, may be closer than 10 feet from one another, including entry stairs, eaves, and porches, or in the alternative
  - d. Shall contain some form of enhanced fire rating so that through the rating, the buildings may be closer than ten (10) feet from one another.
5. The applicant will meet all floodplain related requirements as part of the Building Permit process;
6. The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance.
  - e. Particularly, the development must manage water quality at least (1.5 inches or rainfall over the entire site) and manage stormwater to pre development rate of the twenty-five (25) year, seventy-two (72) hour storm.
7. The applicant will obtain City approval for wastewater management through the City's Wastewater Utility.
  - f. Particularly, the City has capacity, but will need to install a force main tap, to accommodate the Applicant. The cost of the force main tap shall be borne by the Applicant through their additional required Connection and System Development Charges. The costs of any on-site sewer work shall be borne entirely by the Applicant.
8. The applicant will obtain sign permits for any signs erected on the property, as required under

the Code; and

9. A Final Site Plan must be submitted showing the approved buildings and all civil engineering elements, including final grading, potable water, wastewater, and stormwater management.
10. Applicant will provide a minimum number of parking spaces required under the City's LDRs and limit parking to the area associated with each individual unit.
11. A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees. Particularly,
12. The Applicant will be required to install a six (6) foot fence or wall with exterior facing landscape vegetation on the U.S. 1 property boundary in lieu of a full landscape buffer.
13. The applicant will obtain approval of final buffering, landscaping, and lighting plans and install all elements of such in coordination with the City staff as needed prior to Certificate of Occupancy;
14. The affordable units must be deed restricted prior to issuance of certificate of occupancy.
15. The individual units proposed shall meet all conditions of the Florida Building and Fire Codes, the conditions of the Conditional Use Permit and Development Agreement and Code Concerning the construction and rental of affordable housing units, Chapter 104, Article 1, Section 104.03 of the LDRs.
16. The Conditional Use Development Order will constitute the Certificate of Concurrence for the project. The determination shall run contemporaneous with the term and timing requirements of the Development Agreement.

**VIOLATION OF CONDITIONS:**

The applicant understands and acknowledges that it must comply with all of the terms and conditions herein, and all other applicable requirements of the City or other governmental agencies applicable to the use of the Property. In accordance with the Code, the Council may revoke this approval upon a determination that the Applicant or its successor or designee is in non-compliance with this Resolution or Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed therein.

**CONCLUSIONS OF LAW:**

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

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

\_\_\_\_\_  
Date

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

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

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Diane Clavier, City Clerk

**NOTICE**

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

In addition, please be advised that pursuant to Chapter 9J-1, Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Community Affairs. During that forty-five days, the Florida Department of Economic Opportunity may appeal this instrument to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this instrument until the appeal is resolved by agreement or order.

**CERTIFICATE OF SERVICE**

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to *Mike Aranda, 1222 SE 47<sup>th</sup> Street #330, Cape Coral, FL 33904*, this \_\_\_ day of \_\_\_\_\_, 2019.

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Diane Clavier City Clerk

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A REQUEST FOR A DEVELOPMENT AGREEMENT REQUESTED BY 1477 OVERSEAS HIGHWAY LLC AND SEASONS INC., PURSUANT TO CHAPTER 102, ARTICLES 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “DEVELOPMENT AGREEMENTS,” FOR THE REDEVELOPMENT OF THE PROPERTIES AS TEN (10) AFFORDABLE HOUSING RESIDENCES LOCATED AT 1477 OVERSEAS HIGHWAY AND 263 15<sup>TH</sup> STREET, WHICH ARE LEGALLY DESCRIBED AS THE NORTH 150 FEET OF LOT 1 AND 2, PART OF LOTS 1 AND 2, BLOCK 2 , PARRISH SUBDIVISION, MARATHON, FLORIDA, HAVING REAL ESTATE NUMBERS 00326770-000000 AND 00326760-000000. NEAREST MILE MARKER 48.**

**WHEREAS**, Request By 1477 Overseas Highway LLC And Seasons Inc. (The “Applicant”) filed an Application on February 201, 2019 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 8 and 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**; the Applicant proposes to develop ten (10) deed restricted affordable residential units; 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 April, 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 Development Agreement pursuant to Chapter 102, Article 8 of the LDRs; and

**WHEREAS**, and on the 14<sup>th</sup> day of May, 2019 and the 28<sup>th</sup> day of May, 2019 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, is 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 and Development Agreement 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 document attached hereto as Exhibit "A", granting 1477 Overseas Highway LLC And Seasons Inc., Inc. a Development Agreement subject to the Conditions imposed.

**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 28<sup>th</sup> day of May, 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

DRAFT



Parcel I.D. Nos.:  
RE# 00326760-000000 and 00326770-000000  
(Space reserved/or recording)

DEVELOPMENT AGREEMENT FOR  
1477 Overseas Highway LLC and Seasons Inc.  
MARATHON, FLORIDA

**THIS DEVELOPMENT AGREEMENT** ("Agreement") is entered into by and between the CITY OF MARATHON, FLORIDA, a Florida municipal corporation (herein referred to as "City"), and 1477 Overseas Highway LLC and Seasons Inc., 1222 SE 47<sup>th</sup> Street Suite #330, Cape Coral, FL 33904, a Delaware Corporation (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 set forth herein.

WITNESSETH:

**WHEREAS**, Owner is the owner of real property located in Marathon, Monroe County, Florida, more particularly described in Exhibit "A" (boundary survey), attached hereto and incorporated herein by reference; and

**WHEREAS**, Owner has submitted a proposal to develop and construct ten (10) affordable residential units; and

**WHEREAS**, the construction and maintenance of affordable housing within the City of Marathon is a desirable goal and will serve to preserve workforce housing in the face of economic gentrification; and

**WHEREAS**, the economic development afforded by this Agreement is in the best interest of both parties to this Agreement as well as the general public in the City of Marathon; and

**WHEREAS**, the Marathon Planning Commission held a public hearing on the 15<sup>th</sup> day of April, 2019, to consider this Agreement, and recommended approval of this Agreement; and

**WHEREAS**, the City Council of Marathon held public hearings on the 14<sup>th</sup> day of May and 28<sup>th</sup> day of May, 2019, to consider this Agreement; and

**WHEREAS**, the City has determined that this Agreement is in the public interest and is consistent with its policy to encourage the redevelopment of Marathon in a manner that provides and preserves affordable housing and will further the health, safety, and welfare of the residents of Marathon; and

**WHEREAS**, the Applicant will utilize densities allowed pursuant to the Residential –

Mobile Home (R-MH) zoning associated with a portion of the site

- a. Develop of ten (10) workforce / affordable housing units
- b. Deed restrict the workforce / affordable units for a minimum of 50 years.

**WHEREAS**, the Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. **THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT, and**

**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:

- A. Allow the Applicant to utilize densities allowed pursuant to the Residential – Mobile Home (R-MH) zoning associated with a portion of the site
- B. To encourage redevelopment of the Property consistent with Objective 1-3.4 in the City's Comprehensive Plan.
- C. To secure the ability to construct Owner's proposed development of residences totaling ten (10) units. Implicit in this Development Agreement are the Conditions imposed in the approval of the Conditional Use Permit for this project. The Conditional Use Permit shall run contemporaneous with the Development Agreement.

#### **III. DEFINITIONS.**

For the purposes of this Agreement, all terms shall have the definitions as found in the Land Development Regulations (LDRs), 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. 1477 Overseas Highway LLC and Seasons Inc., 1222 SE 47<sup>th</sup> St Unit 330 ,Cape Coral, Fl 33904, is the Owner of the Property, which Property is the subject of this Agreement, as described in Exhibit B, Boundary and Topographic Survey. There are no other legal or equitable owners of the subject property known to the parties to this Agreement.

B. Duration of Agreement and Submission of Permit Application. Owner shall have a period of twelve (12) months from the Effective Date of this Agreement to submit an application for a building permit with the City to commence construction of the project contemplated herein. The duration of this Agreement shall be ten (10) years from the effective date. Should the owner not commence construction within eighteen (18) months of the effective date of this Agreement, then this Agreement shall be null and void and the allocation of affordable housing contained herein shall be null and void and said allocation shall revert to the entity contributing the affordable allocations. 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. Building Right Allocations. The Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. **THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT, and**

Affordable Housing is defined in Section 110.00 of the City's LDRs as: "Dwelling units which contain less than or equal to 1,800 square feet of habitable space meet all applicable requirements of the United States Department of Housing and Urban Development minimum property standards as to room sizes, fixtures, landscaping and building materials, when not in conflict with applicable laws of City; and are restricted in perpetuity or as allowed by law for a minimum 50-year period to use by households that meet the requirements of at least one (1) of the following income categories: Very-low, low, median, moderate or middle. The requirements for these income categories are as provided in Chapter 104, "Specific Use Regulations". "

It is agreed that the affordable housing shall comply with the Moderate-income standards or Middle-income standards as set forth in Section 104.03 (d) and 104.03 (e).

Moderate-income is defined as: "A household, whose income (excluding that of fulltime students under 18 years of age) does not exceed 120 percent of the median adjusted gross annual income for households within the county;"

Middle-income is defined as: "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;"

D. Conditions of Approval.

1. Utilize densities allowed pursuant to the Residential – Mobile Home (R-MH) zoning associated with a portion of the site
  - a. Develop of ten (10) workforce / affordable housing units
  - b. Deed restrict the workforce / affordable units for a minimum of 50 years pursuant to the City’s LDRs.
2. The Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR’s), BPAS process, or any other legally established process prior to building permit issuance. **THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.**
3. Clear sight triangles must be shown on the site plan at time of building permit issuance.
4. The applicant will provide fire protection plans in accordance with fire protection requirements as required under the State Fire Code and as outlined by the City Fire Marshal and as .
  - a. Particularly, no structure, lying within the proposed building site for each unit, may be closer than 10 feet from one another, including entry stairs, eaves, and porches, or in the alternative
  - b. Shall contain some form of enhanced fire rating so that through the rating, the buildings may be closer than ten (10) feet from one another.
5. The applicant will meet all floodplain related requirements as part of the Building Permit process;
6. The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance.
  - a. Particularly, the development must manage water quality at least (1.5 inches or rainfall over the entire site) and manage stormwater to pre development rate of the twenty-five (25) year, seventy-two (72) hour storm.
7. The applicant will obtain City approval for wastewater management through the City’s Wastewater Utility.
  - a. Particularly, the City has capacity, but will need to install a force main tap, to accommodate the Applicant. The cost of the force main tap shall be borne by the Applicant through their additional required Connection and System

Development Charges. The costs of any on-site sewer work shall be borne entirely by the Applicant.

8. The applicant will obtain sign permits for any signs erected on the property, as required under the Code; and
9. A Final Site Plan must be submitted showing the approved buildings and all civil engineering elements, including final grading, potable water, wastewater, and stormwater management.
10. Applicant will provide a minimum number of parking spaces required under the City's LDRs and limit parking to the area associated with each individual unit.
11. A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees. Particularly,
12. The Applicant will be required to install a six (6) foot fence or wall with exterior facing landscape vegetation on the U.S. 1 property boundary in lieu of a full landscape buffer.
13. The applicant will obtain approval of final buffering, landscaping, and lighting plans and install all elements of such in coordination with the City staff as needed prior to Certificate of Occupancy;
14. The affordable units must be deed restricted prior to issuance of certificate of occupancy.
15. The individual units proposed shall meet all conditions of the Florida Building and Fire Codes, the conditions of the Conditional Use Permit and Development Agreement and Code Concerning the construction and rental of affordable housing units, Chapter 104, Article 1, Section 104.03 of the LDRs.
16. The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination shall run contemporaneous with the term and timing requirements of the Development Agreement.

E. Sale or Lease. Owner agrees to strictly comply with all the requirements of the City of Marathon regarding sale or leasing of the affordable housing units (general affordable pool as defined in Section 107.06(c) to be constructed as part of the project. The City hereby approves the following special condition regarding the Deed Restriction of these units as affordable:

The Applicant will utilize densities allowed pursuant to the Residential – Mobile Home (R-MH) zoning associated with a portion of the site

- a. Develop of ten (10) workforce / affordable housing units
- b. Deed restrict the workforce / affordable units for a minimum of 50 years pursuant to the City's LDRs.

F. Density and Building Height. The property is located in a Residential High Zoning District as defined in the Land Development Regulations. Maximum building height permitted on the property is thirty-seven (37) feet.

G. Public Facilities, Concurrency, Impact Fees. The following identifies the public facilities that are required that will service the development of the Property: who shall provide the facilities; what new facilities, if any, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of development.

1. Potable Water. Domestic potable water is provided by the Florida Keys Aqueduct Authority.
2. Electric Service. Electric service is provided by Florida Keys Electric Service.
3. Solid Waste. Solid waste service is provided by Marathon Garbage Service or its successors and assigns, as determined by the City Council.
4. Fire Service. Fire service is provided by the Marathon Fire Department.
5. Wastewater, Sewage Collection and Disposal. Wastewater and sewage collection, treatment, and disposal shall be done by connection to the City sewer system.
6. Public Recreational Facilities. Public recreational facilities are available near the property in the Marathon Community Park and the Jesse Hobbs Park.
7. Stormwater Management. There shall be no direct discharge to the City of Marathon Nearshore Waters.
8. Fire Protection. Fire sprinklers will be installed only if required by State Fire Code.
9. Concurrency. All public facilities, with the exception of Wastewater, identified above are available as of the date of this Agreement, and capacity for each is projected to be available concurrent with the impacts of development. Wastewater capacity is available through the Central Sewer system for the City of Marathon.
10. Impact Fees. The City shall waive the impact fees for the affordable units allowed pursuant to Section 111.02 F.3(f).

H. Reservations or Dedications of Land for Public Purposes. These are not contemplated or necessary for this development.

I. Local Development Permits. The following City development approvals are required for the development of the Property.

1. This Development Agreement.
2. Building and related construction permits for the structures, 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.
3. Local Permits for Wastewater Collection and Stormwater Runoff. Nothing in this Agreement shall preclude the parties from applying conditions in addition to Federal, State and regional permits, by mutual agreement, during final site plan review or permitting.

4. Approval of affordable BPAS allocations through the BPAS allocation process.

J. Finding of Consistency. By entering into this Agreement, the City finds that the development permitted or proposed herein is consistent with and furthers the Comprehensive Plan, applicable LDRs and the Principles for Guiding Development set forth in Section 380.0552(7), Florida Statutes.

K. Mutual Cooperation. City and Owner agree to cooperate fully and assist each other in the performance of the provisions of this Agreement.

L. 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

M. 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.

N. 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:

a. 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;

b. 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,

c. The City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or

d. The Agreement is based on substantially accurate 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.

O. 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 LORs. 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.

P. 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:

- a. Failure to comply with the provisions of this Agreement;
- b. 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:

- a. Failure to comply with the provisions of this Agreement;
- b. 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.

Q. 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:

1477 Overseas Highway LLC and Seasons Inc.  
1222 SE 47<sup>th</sup> St Unit 330  
Cape Coral, Fl 33904

TO THE CITY:

Chuck Lindsey, City Manager  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050  
(305) 743-0033

With a copy by regular U.S. Mail to:

David Migut, City Attorney  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050  
(305) 743-0033

R. 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.

S. 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.

T. Binding Effect. This Agreement shall be binding upon the parties hereto, their successors in interest, heirs, assigns, and personal representatives.

U. Assignment. This Agreement may not be assigned without the written consent of the parties, which consent shall not be unreasonably withheld.

V. 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.

W. 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

X. 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

Y. 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.

Z. Use of Singular and Plural. Where the context requires, the singular includes the plural, and plural includes the singular.

A.A. 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.

B.B. 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.

C.C. 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.

D.D. 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 Economic Opportunity, Division of Community Planning, 107 Madison Street, Room 22, Tallahassee, Florida 32399 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.

E.E. 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

1477 Overseas Highway LLC and Seasons Inc.,

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Name: Michael Aranda, Jr.  
Title: President

\_\_\_\_\_  
Name of witness (printed or typed)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of witness (printed or typed)

On the 28<sup>th</sup> day of May, 2019, The City Council of the City of Marathon approved this the Conditional Use Permit for this Agreement by Resolution 2019-XXX and this Agreement by Resolution No. 2019-YYY.

ATTEST:

CITY OF MARATHON

\_\_\_\_\_  
City Clerk

By:\_\_\_\_\_  
John Bartus, Mayor

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

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

## COUNCIL AGENDA STATEMENT



**Meeting Date:** May 14, 2019  
**To:** Honorable Mayor and Council Members  
**From:** George Garrett, Planning Director  
**Through:** Chuck Lindsey, City Manager

**Agenda Item:** **Ordinance 2019-08**, Amending The Future Land Use Map From Residential Low (RL) To Residential Medium (RM) For The Property Described As Lots 5 Through 9, Block 58, Crain's Subdivision, Marathon, Monroe County, Florida, Having Real Estate Numbers 00374600-000000, 00374610-000000, 00374620-000000, 00374630-000000, 00374640-000000; 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.

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**APPLICANT/OWNER:** John Timinsky

**AGENT:** John Wolfe & Barbara Mitchell

**LOCATION:** The subject property is located between 57478 Overseas Highway and 152E Overseas Highway, nearest Mile Marker 57.5, Having Real Estate Numbers 00374600-000000, 00374610-000000, 00374620-000000, 00374630-000000, 00374640-000000.

### Location Map



**REQUEST:** Amend the FLUM Map for the subject properties from Residential Low (RL) to Residential Medium (RM). See Exhibits 1 & 2 below.

**LOT AREA:** The aggregated size of the parcel(s) is approximately 114,998 sq. ft.; 2.64acres

**BACKGROUND:**

The current residential FLUM (Residential Low (RL)) and Zoning (Residential Low (RL)) prohibit the use of this parcel for residential uses. If all five parcels were unified through the Unity of Title process, one unit could be built. Therefore, this FLUM amendment is being sought in order to allow for the development of future residential structures. The total area proposed for FLUM / Zoning change is approximately 114,998 square feet. Currently, the site is vacant.

The Planning Commission heard the item on April 15, 2019 determining that the request met the City’s Comprehensive Plan and Land Development Regulations. Particularly, the Applicant’s argument was persuasive that they were not increasing potential density in the City overall in light of the fact that there had been compensating, and unrelated, decreases in density elsewhere in the City. There was one dissenting vote.

**Current and Proposed Future Land Uses and Zoning**

*Future Land Use Map Designation*

Current: Residential Low (RL)  
Proposed: Residential Medium (RM)

*Land Use (Zoning) District Designation*

Existing: Residential Low (RL)  
Proposed: Residential Medium (RM)

*Use of Properties*

Existing: Vacant  
Proposed: Vacant

**Surrounding FLUM, Zoning and Uses**

The properties subject to the Zoning amendment are located between 57478 Overseas Highway and 152E Overseas Highway, and consists of five parcels. The property is situated in an area with Mixed Use, Residential and Conservation land uses. Adjacent land uses include residential homes to the east and west, a commercial building to the west, the ocean to the south, and conservation and residential uses to the north.

The following table correlates existing uses with the existing FLUM and Zoning map:



**Table 1. Existing Conditions**

	<u><i>Existing FLUM</i></u>	<u><i>Existing Zoning</i></u>	<u><i>Existing Uses</i></u>
<b>North</b>	Conservation	Residential Conservation (R-C) Conservation Native Area (C-NA)	Lake Edna
<b>East</b>	Residential Low; Residential Medium; Mixed Use Commercial	Public; Residential High (RH)	Residences, Hotels
<b>South</b>	NA	NA	Ocean
<b>West</b>	Mixed Use Commercial; Residential Low	Mixed Use, Residential Low	Residences, commercial building

**Existing Habitat**

The existing conditions maps shows the parcel contained predominately invasive exotics. Hurricane Irma caused significant damage to the property. High winds caused many large trees to be felled and the storm surge killed many more. The applicant applied for and obtained an invasive exotic removal permit to remove the Australian pines on site. Therefore, the proposed site of construction is cleared. The parcel remains vacant and contains native wetland vegetation species that are reemerging at a rapid growing pace. Documented wetlands were identified as disturbed saltmarsh habitat in the low elevation and narrow shoreline beach transitional zone or ecotone of the parcels. The property is recognized habitat to a number of state or federally listed animals. Notably the shoreline has been established as turtle nesting habitat.

**FEMA**

The property is located within multiple flood zones that range from AE 8 to AE 10 and VE 11 to VE 13 Flood zones, pursuant to the FIRM map, effective date February 18, 2005. The property also lies within Cat1 through Cat3 SLOSH boundaries.

**FLUM and Land Use History**

The City has not made any amendments to the FLUM or zoning map associated with this property since the adoption of the Current FLUM and Zoning Maps in 2005 & 2007 respectively. The property has historically had land use and zoning designations of low to medium density residential uses.

**DEVELOPMENT ANALYSIS:**

**Current Zoning: Residential Low (RL)**

***Section 103.12 (F). Residential Low***

Section 103.12 (F) of the Land Development Regulations states, “The RL District is intended to establish areas of low-density residential uses characterized by single-family detached dwellings, designated within the Residential Low (RL) future land use category on the Future Land Use Map (FLUM)”.

***Residential Low (RL) Allowable Density***

Market Rate – .5 units per acre

Affordable – .5 units per acre

**Proposed Zoning: Residential Medium (RM)**

***Section 103.12 (C). Residential Medium Districts***

Section 103.12 (C) of the Land Development Regulations states, “The RM District is intended to establish areas of low- to medium-density residential uses characterized principally by single-family detached and two-family dwellings, designated within the Residential Medium (RM) future land use category on the Future Land Use Map (FLUM)”.

***Residential Medium (RR) Allowable Density***

Market Rate – 5 Units per acre

Affordable – 10 units per acre

**ANALYSIS OF ZONING CHANGE REQUEST:**

**Compliance Discussion**

Relevant criteria promulgated in Chapter 163, 380, 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 will be utilized as the focus points for review of the proposed zoning amendment and for future comprehensive plan amendments.

### **Natural Resources**

Direct impacts to natural resources would differ minimally as a result of the proposed FLUM change. The area proposed for a FLUM change is vacant and mostly scarified. The wetland areas are transitional along the beach area.. There are no estuaries, grade change limits the beach to a narrow strip without a natural berm. The beach area is classified as potential nesting habitat for sea turtles. No living marine resources adjacent to the subject area will be adversely impacted by the proposed change in the FLUM map. No modifications such as hardened shoreline structures are proposed.

The existing conditions maps shows the parcel contained predominately invasive exotics. Hurricane Irma caused significant damage to the property. High winds caused many large trees to be felled and the storm surge killed many more. The applicant applied for and obtained an invasive exotic removal permit to remove the Australian Pines on site. Therefore, the proposed site of construction is cleared. The parcel remains vacant and contains native wetland vegetation species that are reemerging at a rapid growing pace. Documented wetlands were identified as disturbed saltmarsh habitat in the low elevation and narrow shoreline beach transitional zone or ecotone of the parcels. The property is recognized habitat to a number of state or federally listed animals. Notably the shoreline has been established as potential turtle nesting habitat.

The proposed FLUM amendment is consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

### **Historical and Cultural Resources**

Protection of historical and cultural resources is crucial under the City’s Comprehensive Plan, Chapters 163 and 380 F.S.

There are no known historical or cultural resources associated with the subject properties or within the area of the requested FLUM change. Therefore, the FLUM change would have no impacts on historical or cultural resources. The proposed FLUM amendment is therefore consistent with these

provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

### **Infrastructure**

- **Wastewater infrastructure**

Wastewater as an issue of infrastructure capacity and means of water quality protection represents the backbone to the City's Comprehensive Plan, the tenants of Chapters 163 and 380 F.S. The subject property inclusive of the area of the proposed FLUM change is served by the Area 5 sewer infrastructure. The Utility Manager for the City of Marathon reviewed the proposed FLUM changes and determined that there would be no adverse impact on sewer capacity if the proposal were approved.

The proposed FLUM change would maintain concurrency levels of wastewater infrastructure capacity and provide limited or no adverse impact resulting from nutrient loading. The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

- **Stormwater infrastructure**

Stormwater infrastructure capacity and means of water quality protection represents another of the backbone elements of the City's Comprehensive Plan, the tenants of Chapters 163 and 380 F.S. The City of Marathon requires that all property owners retain their stormwater on site. All proposals for new developments, and redevelopments, must submit detailed civil engineering plans for review by the City Engineer. Proposals for redevelopment would have to obtain all required permits through other applicable agencies, such as the Department of Environmental Protection & South Florida Water Management District.

An approved Stormwater plan exists for this property concurrent with the construction of the single family residence in 2006. No increase in impervious area is proposed. The proposed FLUM amendment is therefore consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

- **Potable Water**

Monroe County's potable water facilities do not critically constrain the amount of future growth that can be accommodated in the County (see End Note 1). The current FKAA Consumptive Use Permit, when compared to current potable water consumption rates, will provide sufficient potable water to accommodate existing and committed development plus an additional 18,258 equivalent residential units (ERU's) in unincorporated and incorporated Monroe County. The FKAA's Consumptive Use Permit has been renewed (see End Note 1). Costs of improvements to upgrade facilities for potable water supply, treatment and distribution, in order to accommodate future growth impacts, would not be borne by the City, as this utility is private and would be in the FKAA's CIP, not the City's.

An increase in potable water demand is not expected as part of the proposed FLUM change, any increase would have a diminimus impact on potable water infrastructure capacity. The proposed

FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

- **Solid Waste**

Solid waste capacity is managed in the Florida Keys under haul-out contracts to mainland solid waste facilities. There are currently no limits on solid waste capacity that would be impacted by this FLUM proposal.

The proposed FLUM change would maintain concurrency levels of solid waste infrastructure capacity. The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

- **Transportation**

The requested FLUM change is not expected to have an adverse impact on roadway capacity.

Monroe County's roadway facilities do not critically constrain the amount of future growth that can be accommodated in the County or the City (see End Note 1). Although localized deficiencies characterize several segments of US 1, sufficient reserve capacity exists in the overall roadway system to accommodate existing and committed development plus an additional 5,738 residential units (see End Note 1). Only 2,550 were allocated to unincorporated Monroe County in 1992, of which 150 went to the City. Thus, there is reserve capacity on US 1 to accommodate planned growth in the City (see End Note 2).

The proposed FLUM change would maintain concurrency levels of transportation on U.S. Highway 1. The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

### **Affordable Housing**

Affordable housing is an important issue in the Florida Keys and throughout the state of Florida. The City has well over 200 developed or approved affordable housing units. The proposed FLUM change would facilitate a potential for increased affordable housing on site. The proposed FLUM category allows for a potential increase of twenty four (24) units of affordable housing versus the existing FLUM category which currently allows one (1).

The proposed FLUM change will have the effect of enhancing the potential for affordable housing projects. The proposed FLUM amendment is therefore consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

### **Hazard Mitigation**

- **Coastal High Hazard Areas**

The entirety of the parcel is not within the Coastal High Hazard Area (CHHA). Any proposed structures must comply with the provisions of the local City of Marathon Floodplain Regulations, in accordance with the standards as set forth in the National Flood Insurance Program (NFIP).

• **Hurricane Evacuation**

The critical carrying capacity constraint at the present time is related to the requirement that hurricane evacuation clearance times for Monroe County be maintained at or below 30 hours through the Year 2002, and further reduced to 24 hours by 2010 (see End Note 1).

The Florida Department of Economic Opportunity in conjunction with sister state agencies and the participation of all local governments completed an analysis this year of current hurricane evacuation constraints. It was determined that under defined conditions, the County was able to maintain a 24 hour evacuation time while continuing the current ROGO and BPAS allocation formulas. Thus, for the ensuing ten (10) years the City will continue to be able to issue 30 residential allocations per year.

The proposed FLUM change would have a positive impact on hurricane evacuation times with the BPAS system in place. The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

**Ports – Marina Siting**

Staff believes that the proposed FLUM change will have no adverse impact on ports management or the City’s Marina Siting Plan. Marinas are allowed under a conditional use permit in the Mixed Use (MU) zoning district under the City’s Land Development Regulations; the existing and proposed zoning would not support any Marina development.

The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

**Public Use – Access to Water**

The proposed FLUM amendment is located on the Atlantic Ocean. There is no public access to the water from this location.

Staff believes that the proposed FLUM change will have no adverse impact on public access to water. The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

**Land Acquisition**

Land acquisition in the Florida Keys is carried out by the City, County, State, and to a limited extent the federal government for the purposes of resource conservation and management, removal of properties in the CHHA from public ownership, and to provide for public services and facilities. The subject parcels are not on the Florida Forever boundary map.

The proposed FLUM change would have no impact on land acquisition efforts of the above mentioned entities. The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

**SUMMARY:**

The applicant has requested a change in the Zoning Map designation for the property located between 57478 Overseas Highway and 152E Overseas Highway, nearest Mile Marker 57.5. Currently the property is designated as Residential Low (RL). The applicant is requesting a change to Residential Medium (RM), which will make the zoning consistent with the surrounding use on the nearby properties.

Staff found the proposed rezoning consistent with the standards and tenants of Chapter 163 and 380 F.S., and the City's Comprehensive Plan adopted under the requirements of these statutes and rules.

**RECOMMENDATION:**

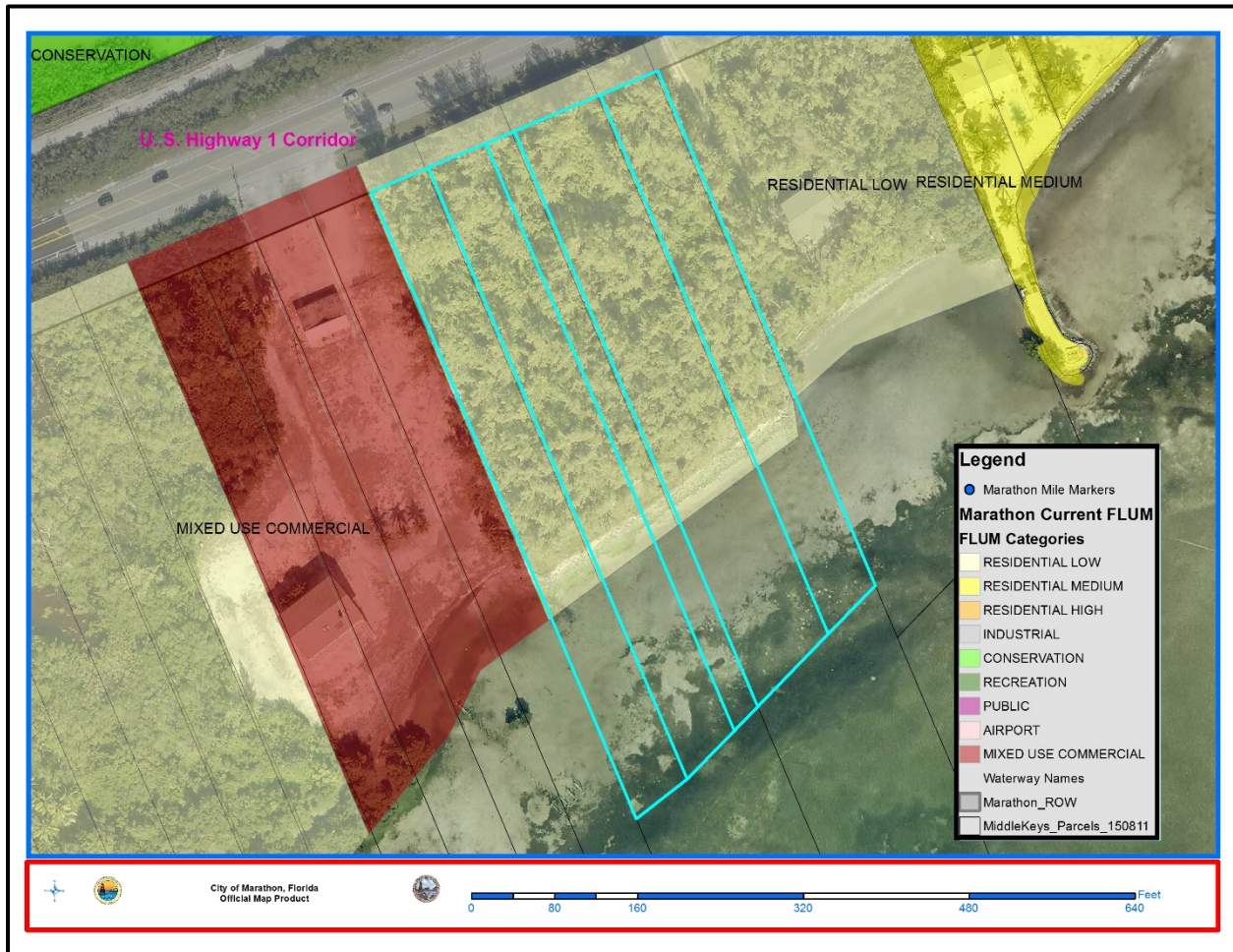
Based on the above information, the Marathon Planning Commission recommends that the City Council approve the proposed FLUM amendment, amending the City's FLUM Map for the subject Parcels from Residential Low (RL) to Residential Medium (RM) and that the amendment be transmitted to the Florida Department of Economic Opportunity.

**End Notes:**

1. The source of the future land use analysis based on carrying capacity limitations can be found in the Monroe County Comprehensive Plan Technical Document (Data and Analysis) Section 2.4 (pp2-86 – 2-95).
2. City of Marathon, Comprehensive Plan Data and Analysis, page 10.

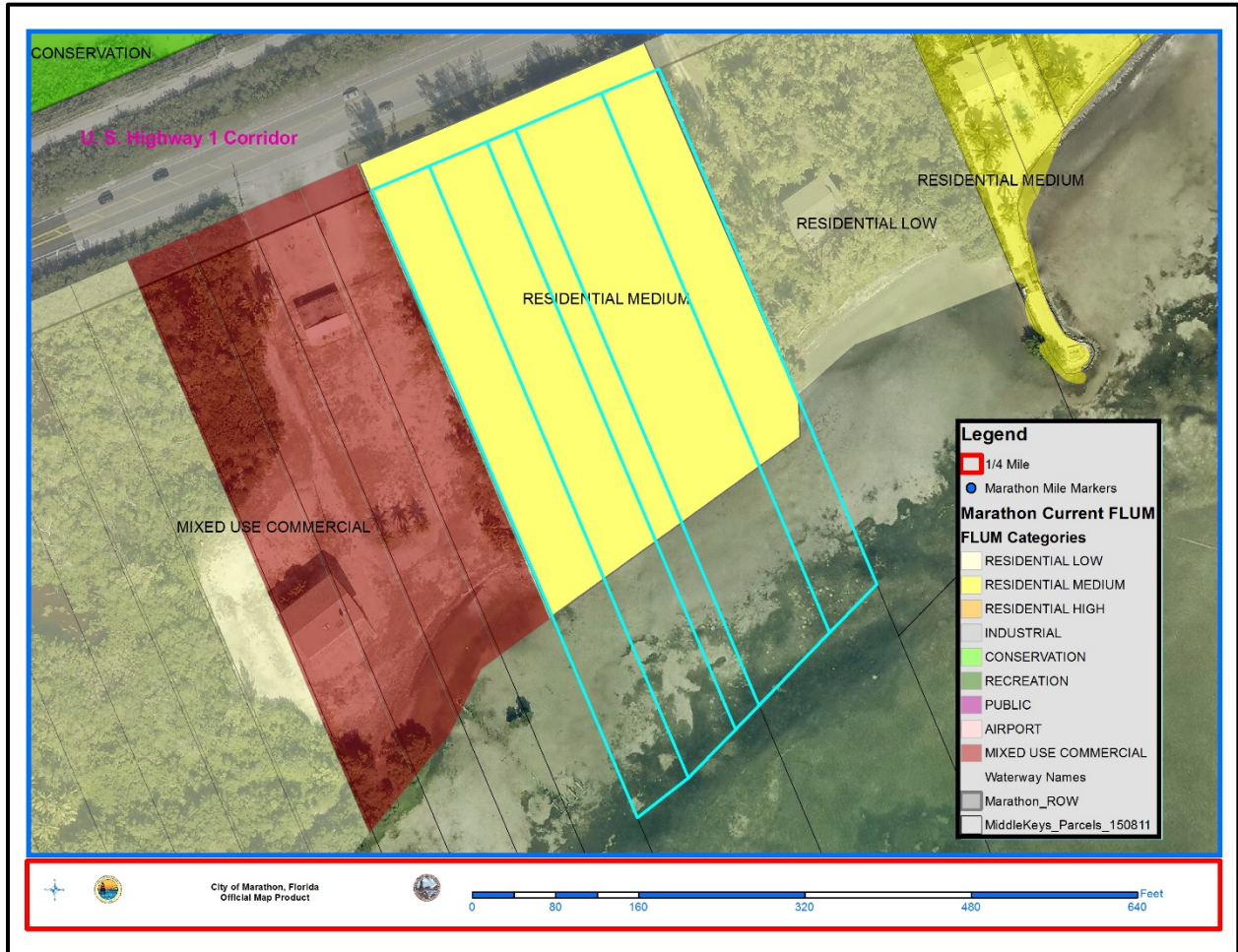
# EXHIBIT 1 EXISTING & PROPOSED ZONING MAPS

## Existing Future Land Use Map (FLUM)

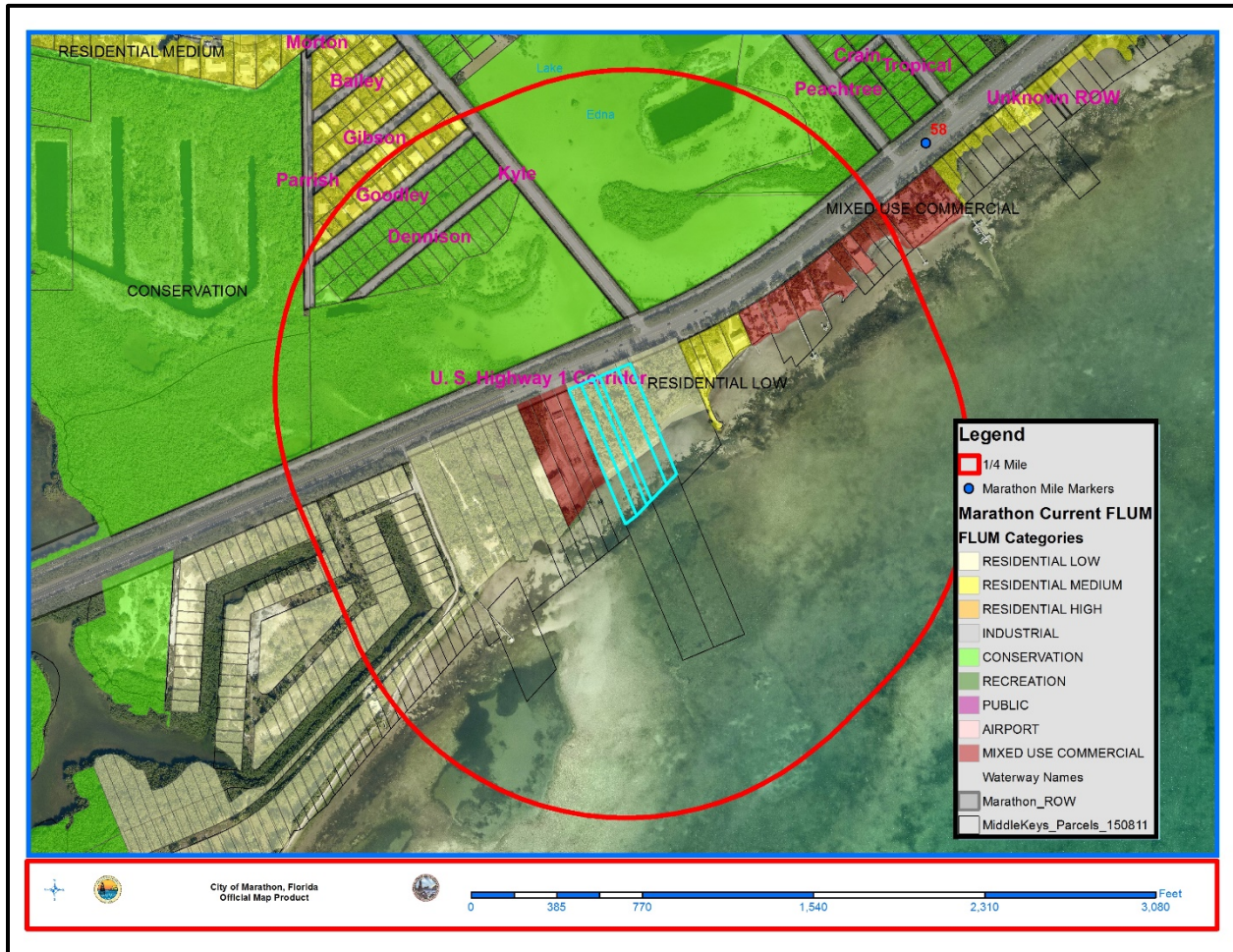




# Proposed Future Land Use Map (FLUM)

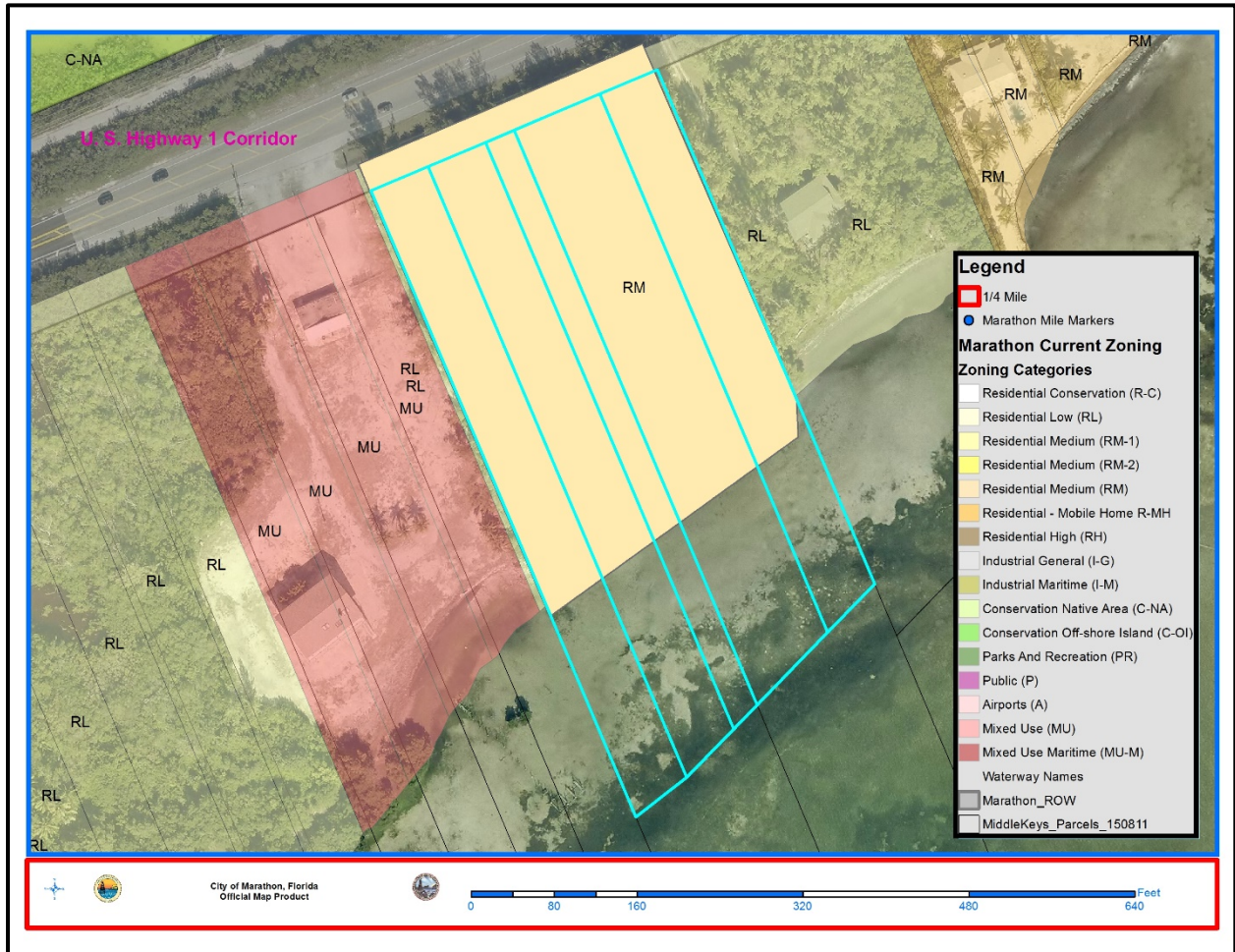


# Proposed Future Land Use Map (FLUM)

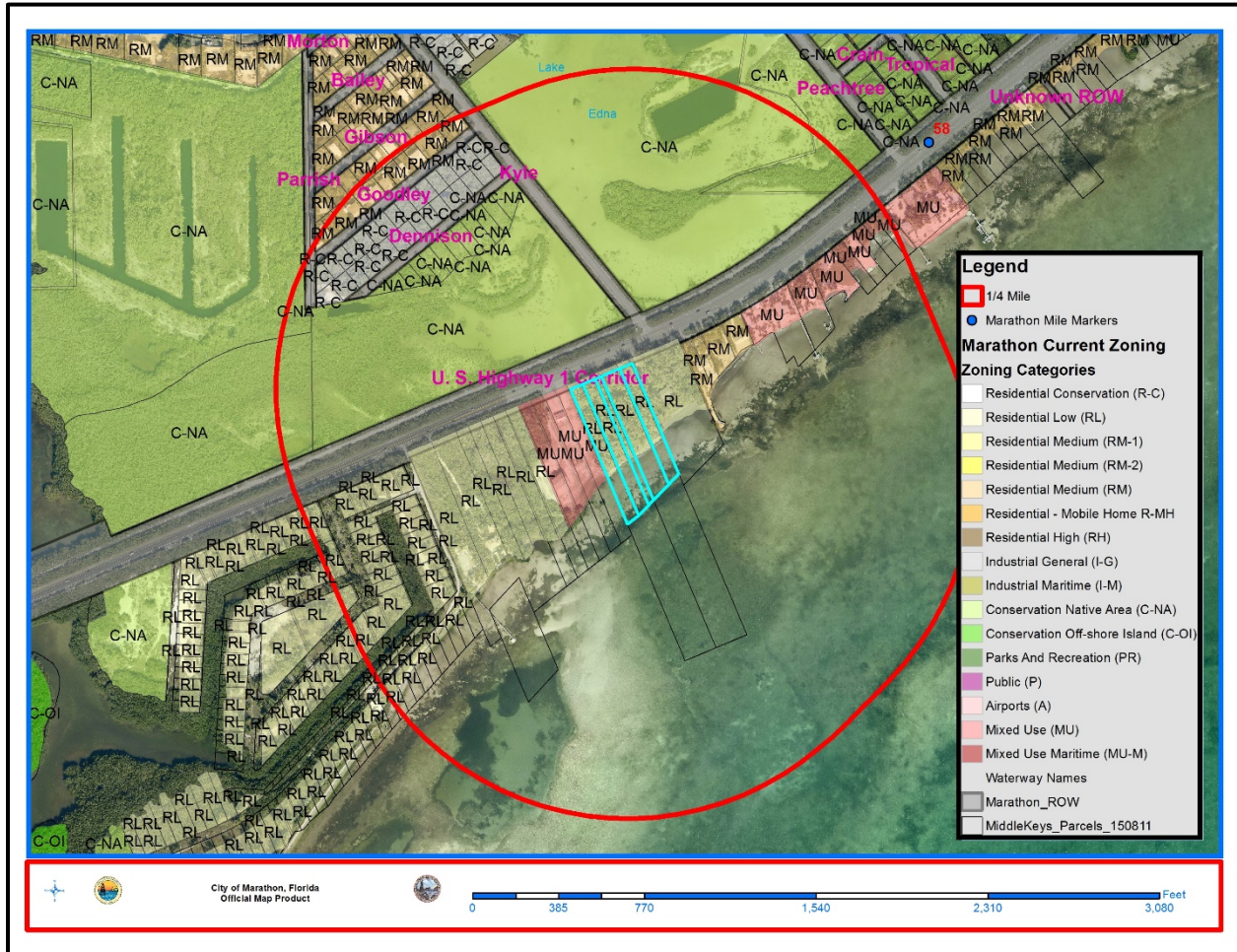




# Proposed ZONING



# Proposed ZONING



**Sponsored By:** Lindsey  
**Planning Commission Public Hearing Date:** April 15, 2019  
**City Council Public Hearing Dates:** May 14, 2019  
**Transmittal Date:**  
**Enactment Date:**

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2019-08**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING THE FUTURE LAND USE MAP FROM RESIDENTIAL LOW (RL) TO RESIDENTIAL MEDIUM (RM) FOR THE PROPERTY DESCRIBED AS LOTS 5 THROUGH 9, BLOCK 58, CRAIN'S SUBDIVISION, MARATHON, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00374600-000000, 00374610-000000, 00374620-000000, 00374630-000000, 00374640-000000; 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**, pursuant to the provisions of Chapters, 163, 166 and 380 Florida Statutes, the City of Marathon, Florida (the "City") proposes to amend the City's Future Land Use Map (the "Map") to change the land use district designation of property owned by Mr. Timinsky from Residential Low (RL) to Mixed Use (MU) and Residential Low (RL); and

**WHEREAS**, amending the Map designation of the Property furthers the goals, objectives and policies of the City Comprehensive Plan (the "Plan"); and

**WHEREAS**, pursuant to Chapter 163, *Florida Statutes*, and Sections 101.02 and 102.22 of the Code, the Planning Commission sitting as the Local Planning Agency publicly considered the proposed Zoning Map amendment on November 1, 2018 at a duly noticed public hearing, and has recommended approval of the proposed Map amendment to the City Council; and

**WHEREAS**, pursuant to the same legislative provision, the City Council considered the recommendation of the Planning Commission, accepted public input, and deliberated on the proposed Map amendment on May 14, 2019 at a duly noticed public hearing, and recommended that the amendment be transmitted to the Florida Department of Economic Opportunity (DEO) for review; and

**WHEREAS**, in accordance with Section 166.041, *Florida Statutes*, notice of the public hearings concerning the proposed Map amendment has been provided to the general public; and

**WHEREAS**, the City Council finds that approval of the proposed Map amendment is in the best interest of the City and complies with applicable laws and is consistent with the South Florida Regional Plan, the State Plan, Chapter 163, *Florida Statutes*, the principles for guiding development in the Florida Keys Area of Critical State Concern, the goals, objectives, and policies of the Plan, Chapter 102, Article 6 of the Code, and promotes and protects the health, safety and welfare of the residents of the City; and

**WHEREAS**, the City Council desires to approve the proposed Map amendment, in accordance with State law.

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

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

**SECTION 2.** The proposed FLUM Map designation change of the Property is approved in its first reading from its current designation of Residential Low (RL) to Residential Medium (RM), as illustrated on the attached Exhibit 1.

**SECTION 3.** The City Council directs staff to transmit the revised Map reflecting the Map amendment, and all data and analysis supporting the Map amendment, to the Department of Economic Opportunity, in its capacity as the State Land Planning Agency, as required by Chapters 163 and 380, *Florida Statutes*.

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

**SECTION 5.** The effective date of this FLUM Amendment, if the amendment is not timely challenged, shall be the date the state land planning agency posts a notice of intent determining that this amendment is in compliance. If timely challenged, or if the state land planning agency issues a notice of intent determining that this amendment is not in compliance, this amendment shall become effective on the date the state land planning agency or the Administration Commission enters a final order determining this adopted amendment to be in compliance. No development orders, development permits, or land uses dependent on this amendment may be issued or commence before it has become effective. If a final order of noncompliance is issued by the Administration Commission, this amendment may nevertheless be made effective by adoption of a resolution affirming its effective status, a copy of which resolution shall be sent to the State Land Planning Agency.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS  
14TH DAY OF MAY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

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

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

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

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

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



# Exhibit 1





## COUNCIL AGENDA STATEMENT

**Meeting Date:** May 14, 2019  
**To:** Honorable Mayor and Council Members  
**From:** George Garrett, Planning Director  
**Through:** Chuck Lindsey, City Manager

**Agenda Item:** **Ordinance 2019-09** Amending The Official Zoning Map From Residential Low (RL) To Residential Medium (RM) For The Property Described As Lots 5 Through 9, Block 58, Crain's Subdivision, Marathon, Monroe County, Florida, Having Real Estate Numbers 00374600-000000, 00374610-000000, 00374620-000000, 00374630-000000, 00374640-000000; 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.

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**APPLICANT/OWNER:** John Timinsky

**AGENT:** John Wolfe & Barbara Mitchell

**LOCATION:** The subject property is located between 57478 Overseas Highway and 152E Overseas Highway, nearest Mile Marker 57.5, Having Real Estate Numbers 00374600-000000, 00374610-000000, 00374620-000000, 00374630-000000, 00374640-000000.

### Location Map



**REQUEST:** Amend the Zoning Map for the subject properties from Residential Low (RL) to Residential Medium (RM). See Exhibits 1 & 2 below.

**LOT AREA:** The aggregated size of the parcel(s) is approximately 114,998 sq. ft.; 2.64 acres

**BACKGROUND:**

The current residential FLUM (Residential Low (RL)) and Zoning (Residential Low (RL)) prohibit the use of this parcel for residential uses. If all five parcels were unified through the Unity of Title process, one unit could be built. Therefore, this FLUM amendment is being sought in order to allow for the development of future residential structures. The total area proposed for FLUM / Zoning change is approximately 114,998 square feet. Currently, the site is vacant.

The Planning Commission heard the item on April 15, 2019 determining that the request met the City’s Comprehensive Plan and Land Development Regulations. Particularly, the Applicant’s argument was persuasive that they were not increasing potential density in the City overall in light of the fact that there had been compensating, and unrelated, decreases in density elsewhere in the City. There was one dissenting vote.

**Table 1. Old vs. New Zoning & FLUM**

	Pre 2005	Pre 2007	2005	2007
	OLD FLUM	OLD ZONING	CURRENT FLUM	CURRENT ZONING
<b>Timinsky Parcels</b>	Residential Low	Suburban Residential	Residential Low	Residential Low

**Current and Proposed Future Land Uses and Zoning**

*Future Land Use Map Designation*

Current: Residential Low (RL)  
 Proposed: Residential Medium (RM)

*Land Use (Zoning) District Designation*

Existing: Residential Low (RL)  
 Proposed: Residential Medium (RM)

*Use of Properties*

Existing: Vacant  
 Proposed: Vacant

The properties subject to the Zoning amendment are located on U.S. 1 nearest mile marker 57.5 and consists of a total of 5 parcels. The property is situated in an area with Mixed Use, Residential and Conservation land uses. Adjacent land uses include residential homes to the east and west, a commercial building to the west, the ocean to the south, and conservation and residential uses to the north.

The following table correlates existing uses with the existing FLUM and Zoning map:

**Table 2. Existing Conditions**

	<u>Existing FLUM</u>	<u>Existing Zoning</u>	<u>Existing Uses</u>
<b>North</b>	Conservation	Residential Conservation (R-C) Conservation Native Area (C-NA)	Lake Edna
<b>East</b>	Residential Low; Residential Medium; Mixed Use Commercial	Public; Residential High (RH)	Residences, Hotels
<b>South</b>	NA	NA	Ocean
<b>West</b>	Mixed Use Commercial; Residential Low	Mixed Use, Residential Low	Residences, commercial building

**Existing Habitat**

The existing conditions maps shows the parcel contained predominately invasive exotics. Hurricane Irma caused significant damage to the property. High winds caused many large trees to be felled and the storm surge killed many more. The applicant applied for and obtained an invasive exotic removal permit to remove the Australian pines on site. Therefore, the proposed site of construction is cleared. The parcel remains vacant and contains native wetland vegetation species that are reemerging at a rapid growing pace. Documented wetlands were identified as disturbed saltmarsh habitat in the low elevation and narrow shoreline beach transitional zone or ecotone of the parcels. The property is recognized habitat to a number of state or federally listed animals. Notably the shoreline has been established as turtle nesting habitat.

**FEMA**

The property is located within multiple flood zones that range from AE 8 to AE 10 and VE 11 to VE 13 Flood zones, pursuant to the FIRM map, effective date February 18, 2005. The property also lies within Cat1 through Cat3 SLOSH boundaries.

**Zoning and Land Use History**

The City has not made any amendments to the FLUM or zoning map associated with this property since the adoption of the Current FLUM and Zoning Maps in 2005 & 2007 respectively. The property has historically had land use and zoning designations of Low to medium density residential uses.

## ANALYSIS OF ZONE CHANGE REQUEST:

Section 102.64 of the Land Development Regulations requires that the following standards and criteria be considered in any rezoning application. Each criteria and explanation of relevance to this application are listed below:

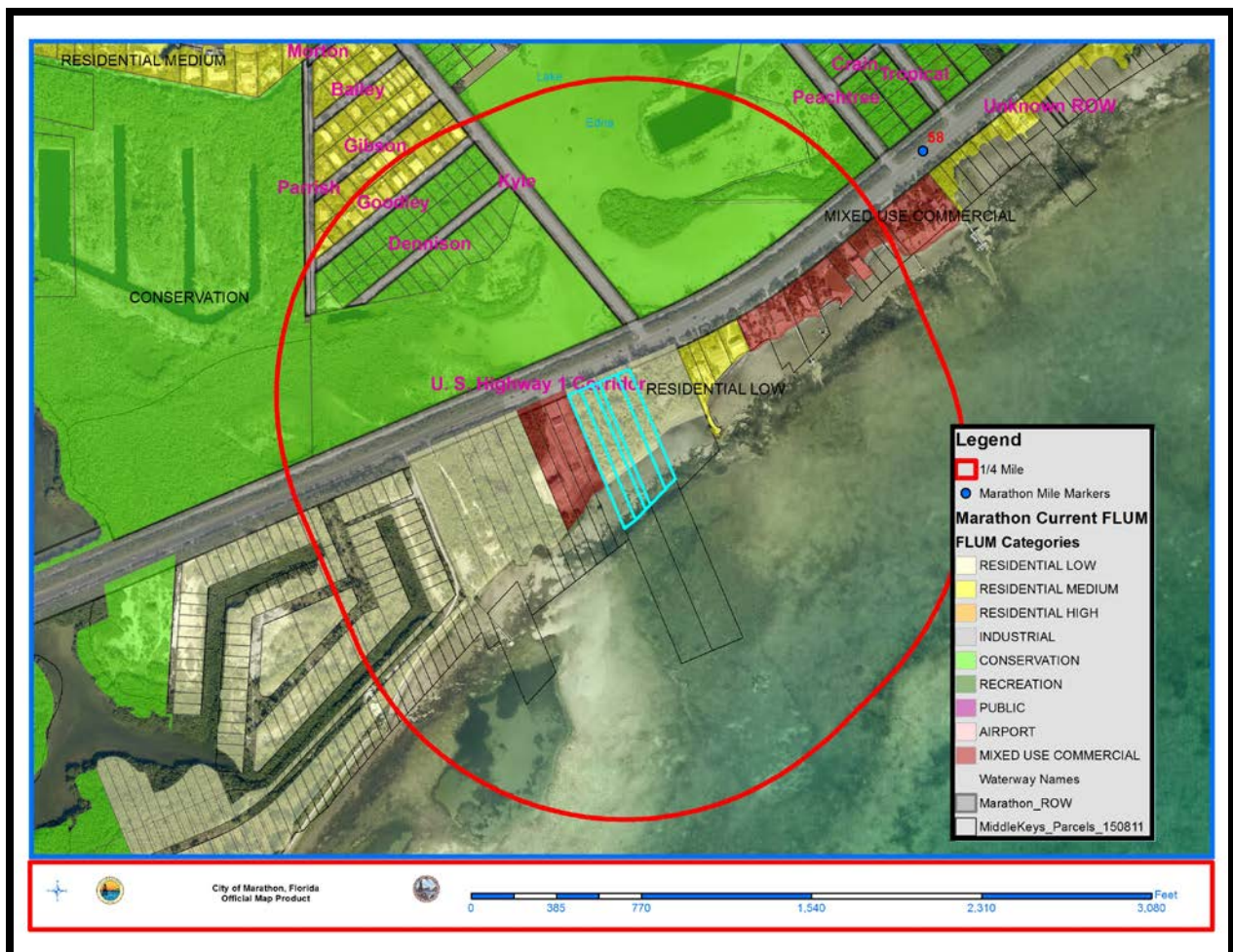
- A. **Consistency:** The proposed rezoning is consistent with the Comprehensive Plan and the LDRs.

The proposed zoning change is consistent with the existing FLUM designation and the Comprehensive Plan Goals, Objectives and Policies

It is staff's finding that the request is *in compliance* with this review criterion.

B. **Compatibility:**

In accordance with neighborhood planning practices, a ¼ mile buffer was applied to the property in order to analyze compatibility with surrounding Future Land Uses and Zoning.



Predominately the FLUM designation for this area is Mixed Use along US1 Ocean Side, and Conservation US1 Gulfside. If the proposed zoning change were approved, Residential zoning categories would change from Residential Low to Residential Medium.

While it is clear that the cumulative changes to land use/ zoning proportions are minimal, the location of the proposed change along the larger MU boundary with RM in the neighborhood has the potential for creating less compatibility issues. These issues are best addressed on a site specific basis as development proposals are presented.

The proposed change to Residential Medium (RM) would make the zoning consistent with similar zoning abutting US1. It is suggested that staff consider looking into FLUM and Zoning changes for the remaining single family parcel currently zoned residential low, as the use is nonconforming to density, and this would create further consistency.

The applicant provided analysis of 112 parcels located along US1 Oceanside. Of these 61 were zoned RM. Of the RM 67% were developed, 12% vacant, and 21% are unbuildable based upon size and habitat. There are 15 RL parcels, 6 of which are developed, and 9 remain vacant. Five of the nine are part of this Zoning and FLUM change request. The remaining 4 are largely environmentally sensitive and have upland acreage of .1, .3, .25, and 1.0.

The proposed rezoning is compatible with the present zoning pattern and conforming uses of nearby property and the character of the surrounding area. Therefore, it is staff's finding that the request is *in compliance* with this criterion.

C. **Development Patterns:** The proposed rezoning shall result in logical and orderly development patterns.

**As stated in B, above, the rezoning of the lots** to Residential Medium (RM) would make the zoning consistent with the adjacent zonings along US1. The properties are currently vacant, and any redevelopment would have to comply with all regulations as set forth in the Comprehensive Plan, Land Development Regulations and Florida Building Code.

Therefore, it is staff's opinion that the request is *in compliance* with this criterion.

D. **Suitability:** The affected property is suitable for the uses that are permitted by the proposed zoning districts.

Many of the parcels are residential, and primarily within the single family market rate category. Any future redevelopment would have to be compliant with the permitted uses within the RM zoning district, of which single family residences are permitted as of right, pending allocations.

Therefore, it is staff's opinion that the request is *in compliance* with this criterion.

E. **Adequate Public Services:** The proposed rezoning is consistent with the adequate public facilities requirements of the Plan.

Adequate supply of public services is present to accommodate the proposed rezoning. Wastewater,

potable water, solid waste, and stormwater measures can be easily completed to accommodate new development.

Therefore, it is staff's opinion that the request is *in compliance* with this criterion.

- F. **Access:** Available ingress and egress is adequate for potential uses in the proposed zoning district.

Currently the parcels are vacant, and there is no direct access points onto US1. A traffic study was completed and shows that US1 has the carrying capacity for the increased units. Access permits will be required with Florida Department of Transportation.

Therefore, it is staff's opinion that the request is *in compliance* with this criterion.

- G. **Public Health, Safety, and Welfare:** The uses allowed within the proposed zoning district shall not adversely affect health, safety, and welfare.

Any new development will be required to meet current regulations regarding landscaping, buffers, setbacks, stormwater management and other LDRs. The proposed redevelopment associated with the overall project should have a positive impact on the area and surrounding properties.

Therefore, it is staff's opinion that the request is *in compliance* with this requirement.

### **Section 102.66. – Residential Density Restriction.**

In compliance with density standards adopted and approved by DEO, it should be noted, that RL requires 2two acres for affordable housing, as well as two acres for market rate housing. Therefore the change amounts to a maximum difference in twenty five affordable units, and if market rate, an increase in thirteen units.

### **SUMMARY:**

The applicant has requested a change in the Zoning Map designation for properties located between 57478 Overseas Highway and 152E Overseas Highway, nearest Mile Marker 57.5. Currently the properties are designated as Residential Low (RL). The applicant is requesting a change to Residential Medium (RM), which will make the zoning consistent with the development along US1.

Staff finds the proposed rezoning consistent with the standards and tenants of Chapter 163 and 380 F.S., and the City's Comprehensive Plan adopted under the requirements of theses statutes and rules.

### **RECOMMENDATION:**

Based on its review, the Planning Commission provides a recommendation for approval to the City Council, supporting a zoning change from RL to RM.

# EXHIBIT 1 EXISTING & PROPOSED ZONING MAPS

## Existing ZONING



|



# Proposed ZONING



**Sponsored By:** Lindsey  
**Planning Commission Public Hearing Date:** April 15, 2019  
**City Council Public Hearing Dates:** May 14, 2019  
**Enactment Date:**

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2019-09**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING THE OFFICIAL ZONING MAP FROM RESIDENTIAL LOW (RL) TO RESIDENTIAL MEDIUM (RM) FOR THE PROPERTY DESCRIBED AS LOTS 5 THROUGH 9, BLOCK 58, CRAIN'S SUBDIVISION, MARATHON, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00374600-000000, 00374610-000000, 00374620-000000, 00374630-000000, 00374640-000000; 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**, pursuant to the provisions of Chapters, 163, 166 and 380 Florida Statutes, the City of Marathon, Florida (the "City") proposes to amend the Land Development Regulations (LDRs) Zoning Map (the "Map") to change the land use district designation from Residential High (RL) to Residential Medium (RM) for parcels having Real Estate Numbers 00374600-000000, 00374610-000000, 00374620-000000, 00374630-000000, 00374640-000000, Marathon, Monroe County, Florida; and

**WHEREAS**, amending the Map designation of the Property furthers the goals, objectives and policies of the City Comprehensive Plan (the "Plan"); and

**WHEREAS**, pursuant to Chapter 163, *Florida Statutes*, and Sections 101.02 and 102.22 of the Code, the Planning Commission sitting as the Local Planning Agency publicly considered the proposed Map amendment on April, 2019 at a duly noticed public hearing, and has recommended approval of the proposed Map amendment to the City Council; and

**WHEREAS**, the City Council reviewed and approved transmittal of this Ordinance to the Florida Department of Economic Opportunity and other required agency reviewers; and

**WHEREAS**, pursuant to the same legislative provision, the City Council considered the recommendation of the Planning Commission, accepted public input, and deliberated on the proposed Map amendment on May 14, 2019 and again on July 9, 2019 at duly noticed public hearings, and recommended that the amendment be transmitted to the Florida Department of Community Affairs (DCA) for review; and

**WHEREAS**, in accordance with Section 166.041, *Florida Statutes*, notice of the public hearings concerning the proposed Map amendment has been provided to the general public; and

**WHEREAS**, the City Council finds that approval of the proposed Map amendment is in the best interest of the City and complies with applicable laws and is consistent with the South Florida Regional Plan, the State Plan, Chapter 163, *Florida Statutes*, the principles for guiding development in the Florida Keys Area of Critical State Concern, the goals, objectives, and policies of the Plan, Chapter 102, Article 6 of the Code, and promotes and protects the health, safety and welfare of the residents of the City; and

**WHEREAS**, the City Council desires to approve the proposed Map amendment, in accordance with State law.

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

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

**Section 2.** In accordance with State law, the City’s Comprehensive Plan and the LDRs, the land use district designation is hereby changed from Residential Low (RL) to Residential Medium (RM) for parcels having Real Estate Numbers 00374600-000000, 00374610-000000, 00374620-000000, 00374630-000000, 00374640-000000 Marathon, Monroe County, Florida.

**Section 3.** The City shall timely transmit the revised Map reflecting the Map amendment, and all data and analysis supporting the Map amendment, to the State of Florida Department of Community Affairs, in its capacity as the State Land Planning Agency (the “Department”), as required by Chapters 163 and 380, *Florida Statutes*.

**Section 4.** That upon its effective date, the revised Map shall replace the City’s Future Land Use Map, previously applicable to the City pursuant to Sections 163.3167(4), 380.05(10) and 380.0552(9), *Florida Statutes*, and Section 9(6) of the City Charter to the fullest extent allowed by law.

**Section 5.** The provisions of this Ordinance constitute a “land development regulation” as State law defines that term. Accordingly, the City Clerk is authorized to forward a copy of this Ordinance to the Department for approval pursuant to Sections 380.05(6) and (11), *Florida Statutes*.

**Section 6.** That this Ordinance shall be effective immediately upon approval by the Department pursuant to Chapter 380, *Florida Statutes*.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,  
FLORIDA, THIS \_\_ DAY OF \_\_\_\_\_, 2019.**

**THE CITY OF MARATHON, FLORIDA**

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**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

“EXHIBIT A”



CITY COUNCIL AGENDA STATEMENT



**Meeting Date:** May 14, 2019  
**To:** Honorable Mayor and Council Members  
**From:** George Garrett, Planning Director  
**Through:** Chuck Lindsey, City Manager

**Agenda Item:** **Ordinance 2018-11 and 2018-12**, Amending The Future Land Use Map And The Zoning Map From Residential Low (RL) to Mixed Use (MU) and Residential Low (RL) For Property Located At 10155 Overseas Highway, Marathon, Florida, Monroe County, Florida, Which Is Legally Described As Part of Govt Lot 2 And Bay Bottom South Of And Adj Part Govt Lot 2, Key Vaca, Having Real Estate Number 00104460-000000; 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.

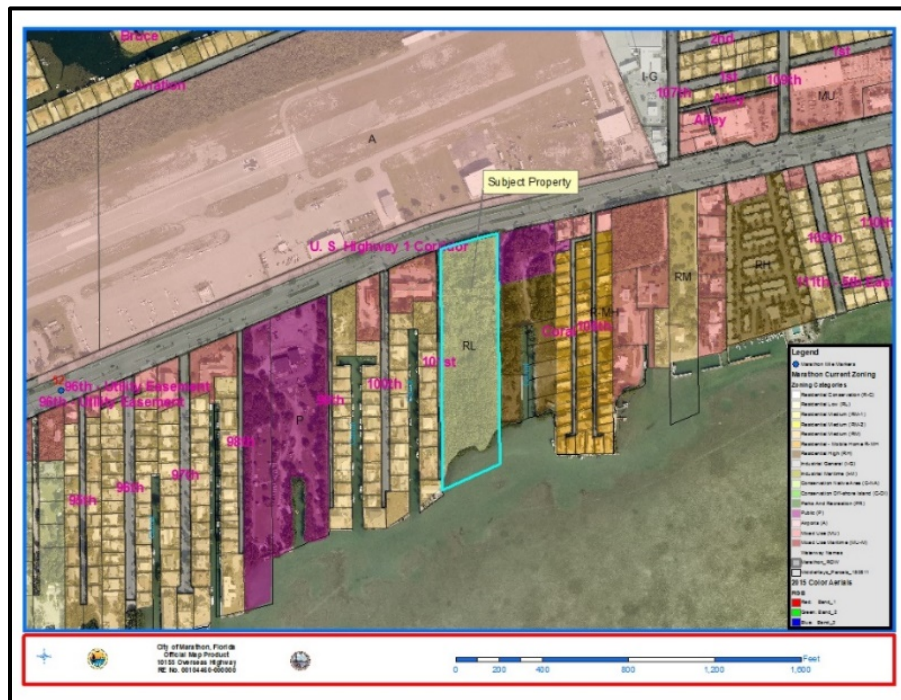
**APPLICANT/OWNER:** Guillermo Torres

**AGENT:** L. Steven Hurley

**LOCATION:** The subject property is located at 10155 Overseas Highway, near Mile Marker 49.5 and is legally described as Part of Govt Lot 2 And Bay Bottom South Of And Adj Part Govt Lot 2, Key Vaca, Having Real Estate Number 00104460-000000.

**ADDRESS:** 10155 Overseas Highway, near Mile Marker 52.5

**Location Map**



**REQUEST:** Amend the Future Land Use Map (FLUM) for the subject properties from Residential Low (RL) to Mixed Use (MU) and Residential Low (RL). See existing and proposed FLUM maps for the property (Exhibit 1).

**LOT AREA:** The aggregated size of the parcel is approximately 291,358 sq./ft.;6.69 acres  
 Upland area is approximately 98,575 sq. ft. or 2.26 acres  
 (Proposed area of rezone).  
 Wetland area is approximately 146,358 sq. ft. or 3.35 acres  
 Area to remain RL zone: 191,488.99 sq. ft. or 4.39 acres

**BACKGROUND:**

The current residential FLUM (Residential Low – RL) and Zoning (Residential Low – RL) prohibit the use of this parcel for non-residential uses. Therefore, this FLUM amendment is being sought in order to allow for the development of future residential and commercial structures. The total area proposed for FLUM / Zoning change is 98,575 square feet (approximately 280 feet along 101<sup>st</sup> Street and 450 feet along 104<sup>th</sup> Street). Currently, the site is vacant and consists of both uplands and wetlands. The area identified as a wetland will be incorporated in future design for onsite open space and storm water management and will be require a conservation easement for future protection of the mangroves resident there.

There have been a number of proposed changes to the FLUM and Zoning; once under the County’s jurisdiction and twice under the City’s jurisdiction. The principal reason for denying changes in the past has been protection of a relatively intact wetland and upland hammock parcel, one of few remaining in the center of Marathon. The last time that an attempt was made to change the FLUM and zoning was in 2011 at which time City staff was prepared to recommend a change from RL to MU-C for the front 225 feet, running roughly in line with the adjacent properties similarly zoned to the east and west. The reason at that time for the staff recommendation is that a large part of the upland hammock had become invaded with exotic vegetation, largely Australian pine. Local opposition to the FLUM / zoning change at that time led to the Council turning the request down.

At this juncture, the entirety of the front roughly 300 to 400 feet were destroyed by Hurricane Irma and the resulting dead vegetation has been cleared.

The City Council heard the item November 13, 2019 and approved it for review by the Florida Department of Economic Opportunity (DEO). The DEO approved for final hearing and approval, thus it is before at this time for final approval. In addition, the Council will hear and approve in a second hearing, the corresponding Zoning amendment.

	<b>Pre 2005</b>	<b>Pre 2007</b>	<b>2005</b>	<b>2007</b>
	<b>OLD FLUM</b>	<b>OLD ZONING</b>	<b>CURRENT FLUM</b>	<b>CURRENT ZONING</b>
<b>10155 OSH</b>	Residential Low & Native Area	Suburban Residential	Residential Low	Residential Low

**Current and Proposed Future Land Uses and Zoning**

*Future Land Use Map Designation*

Current: Residential Low (RL)  
Proposed: Mixed Use (MU) and Residential Low (RL)

*Land Use (Zoning) District Designation*

Existing: Residential Low (RL)  
Proposed: Mixed Use (MU) and Residential Low (RL)

*Use of Properties*

Existing: Vacant  
Proposed: Residential and Commercial

*Property Development*

Existing:

Total Site Area: Approx. 291,416 sq. ft. or 6.69 acres  
Upland Area: 114,243 sq. ft. or 2.62 acres  
Wetland Area: 147,642 sq. ft. or 3.39 acres  
Submerged Area: 29,493 sq. ft. or 0.68 acres

Proposed:

Total Site Area: Approx. 291,416 sq. ft. or 6.69 acres  
Upland Area: 98,575 sq. ft. or 2.26 acres proposed for re-FLUM & rezoning  
Single Family Dwelling Units: up to 6 Market Rate units per acre or  
Up to 15 Affordable/Workforce units per ac  
Commercial Floor Area: 14,766 sq. ft. to 59,067 sq. ft.

**Surrounding FLUM, Zoning and Uses**

The properties subject to the FLUM amendment is located on U.S. 1 between 101<sup>st</sup> ST and 104<sup>th</sup> St., Ocean and consist of a total of 1 parcel. The property is situated in an area with Mixed Use, Residential and Public land uses. Adjacent land uses include the City of Marathon Public Works Building and Residential zoned properties to the east, and the 100<sup>th</sup> Street Center (ReMax Bldg.) and residential development immediately to the west.

The following table correlates existing uses with the existing FLUM and Zoning map:



**Table 1. Existing Conditions**

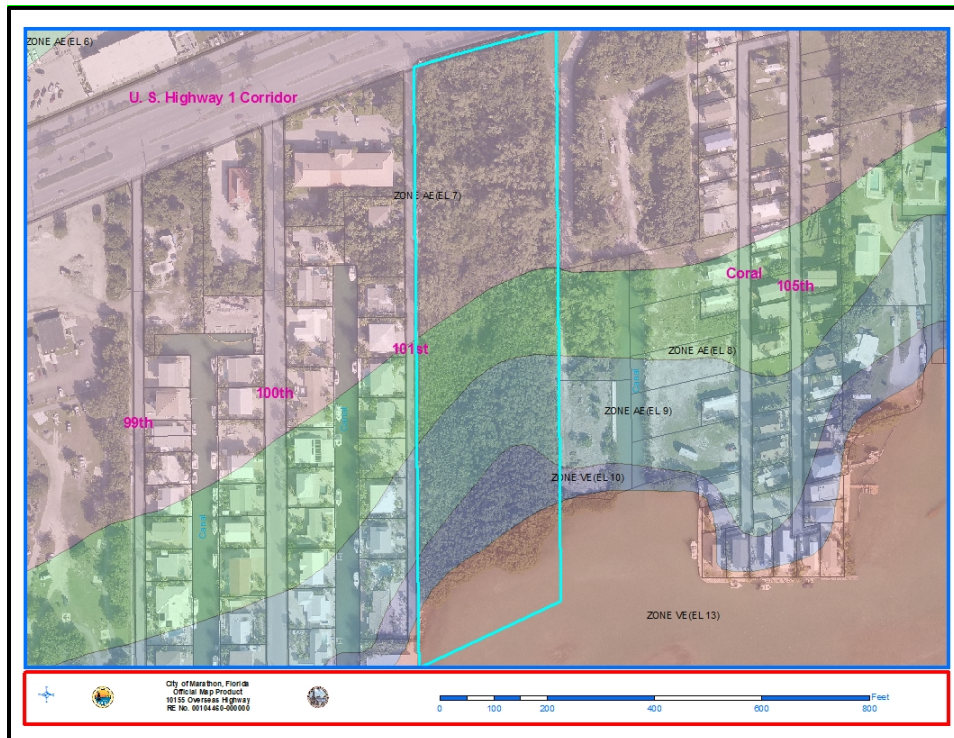
	<u>Existing FLUM</u>	<u>Existing Zoning</u>	<u>Existing Uses</u>
<b>North</b>	Airport (A) Industrial (I-G)	Airport (A) Industrial	MTH Airport Mosquito Control, Monroe Concrete
<b>East</b>	Public; Residential High (RH)	Public; Residential High (RH)	Public Works Building, La Palma of the FK Subdivision
<b>South</b>	N/A	N/A	Ocean
<b>West</b>	Mixed Use; Residential Medium	Mixed Use; Residential Medium	100 <sup>th</sup> ST. Center (ReMax Bldg) Farrara Shores Subdivision

**Existing Habitat**

The existing conditions maps shows the parcel has protected vegetation. Hurricane Irma caused significant damage to the property. High winds caused many large trees to be felled and the storm surge killed many more. Therefore, the proposed site of construction is cleared. The parcel remains vacant and contains native wetland vegetation (primarily red mangroves) to the south of the proposed re-FLUM and re-zoning. Documented wetlands will have no development. The property is recognized habitat to a number of state or federally listed animal species and falls within Florida Forever boundaries or critical habitat areas. A conservation easement covering the wetland area will be required as part of any future on-site development, regardless of use or FLUM/Zoning.

**FEMA**

The property is within multiple flood zones: extending from the shoreline, the property includes VE 13 and VE10, AE 9, AE 8, and AE 7 Flood zones.

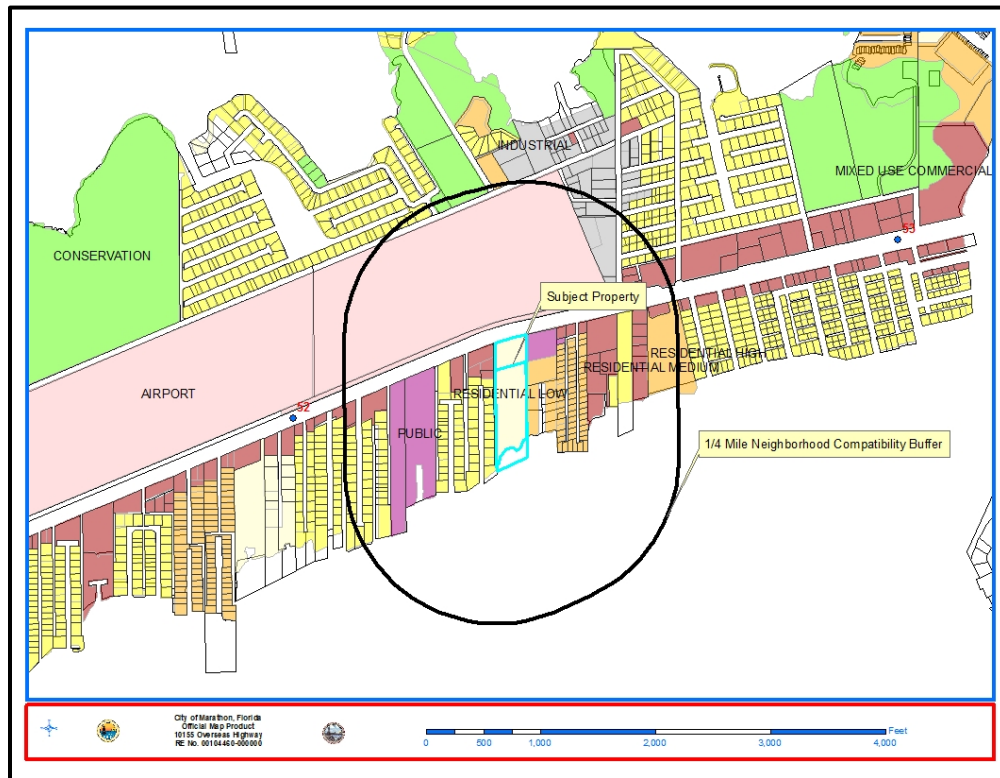


**Zoning and Land Use History**

The City has not made any amendments to the FLUM or zoning map associated with this property since the adoption of the Current FLUM and Zoning Maps in 2005 & 2007 respectively. The property has historically had land use and zoning designations of low density residential uses. As noted above, there have been a number of proposed changes to FLUM and zoning over the years.

**ANALYSIS OF FLUM CHANGE REQUEST:**

In accordance with neighborhood planning practices, a ¼ mile buffer was applied to the property in order to analyze compatibility with surrounding Future Land Uses and Zoning.



**Table 3. Existing vs. Proposed Neighborhood FLUM Compatibility**

Current Neighborhood FLU	# Parcels
Area Conservation	2
<b>Area MU</b>	<b>23</b>
Area P	2
Area RH/RM-H	67
Area RM	101
<b>Area RL</b>	<b>1</b>
Area Industrial	1
Area Airport	1
<b>Totals</b>	<b>198</b>

Proposed Neighborhood FLU	# Parcels
Area Conservation	2
<b>Area MU</b>	<b>24</b>
Area P	2
Area RH/RM-H	67
Area RM	101
<b>Area RL</b>	<b>1</b>
Area Industrial	1
Area Airport	1
<b>Totals</b>	<b>199</b>

<b>Current Neighborhood FLU</b>	<b># Parcels</b>	<b>Square Feet</b>	<b>Acres</b>	<b>Percent</b>
Area Conservation	22	421,529	9.7	16.29%
Area MUC	7	263,973	6.1	10.20%
<b>Area P</b>	<b>4</b>	<b>206,313</b>	<b>4.7</b>	<b>7.97%</b>
Area RH	4	473,193	10.9	18.28%
Area RM	15	374,378	8.6	14.46%
<b>Area RL</b>	<b>19</b>	<b>848,884</b>	<b>19.5</b>	<b>32.80%</b>
<i>Totals</i>	<i>71</i>	<i>2,588,270</i>	<i>59.4</i>	<i>100.00%</i>
<b>Proposed Neighborhood</b>				
<b>FLU</b>	<b># Parcels</b>	<b>Square Feet</b>	<b>Acres</b>	<b>Percent</b>
Area Conservation	22	421,529	9.7	16.29%
Area MUC	7	263,973	6.1	10.20%
<b>Area P</b>	<b>5</b>	<b>235,878</b>	<b>5.4</b>	<b>9.11%</b>
Area RM-H	4	473,193	10.9	18.28%
Area RM	15	374,378	8.6	14.46%
<b>Area RL</b>	<b>18</b>	<b>819,319</b>	<b>18.8</b>	<b>31.66%</b>
<i>Totals</i>	<i>71</i>	<i>2,588,270</i>	<i>59.4</i>	<i>100%</i>

Predominately the FLUM designation along U.S. 1 is Mixed Use (MU). The FLUM for this area is Mixed Use (MU), Public (P), Residential Medium (RM), and Residential High (RH). While changing the parcels to a Mixed Use and Residential Low would result in the second parcel with a mixed zone (the adjacent parcel to the east of the subject property is zoned Public (P) and Residential High (RH) therefore, it corresponds to the use that has been on site historically.

While it is clear that the cumulative changes to land use/zoning proportions are minimal, the location of the proposed change along the larger Mixed Use boundary with Residential High (RH) and Residential Medium (RM) in the neighborhood does not create any compatibility issues. Any Zoning District boundary issues are best addressed on a site specific basis as development proposals are presented.

The proposed change to Mixed Use (MU) and Residential Low (RL) would make the zoning consistent with the surrounding areas.

The proposed rezoning *is compatible* with the present zoning pattern and conforming uses of nearby property and the character of the surrounding area. Therefore, it is staff's finding that the request is *in compliance* with this criterion.

## **DEVELOPMENT ANALYSIS:**

### **Current FLUM: Residential Low (RL)**

#### ***Policy 1-3.1.4 Residential Low***

*The principal purpose of the Residential Low future land use category is to provide for low-density residential development. The Residential Low future land use category is characterized by partially developed areas with substantial native vegetation with limited infrastructure. Low intensity public utilities and institutional uses are also allowed.*

#### ***Residential Low – Development Potential***

Market Rate – 0.5 units per acre  
Affordable – 0.5 units per acre  
Transient – 0 units per acre  
F.A.R. – N/A  
Minimum Open Space – 50%

### **Proposed FLUM: Mixed Use**

#### ***Policy 1-3.1.4 Mixed Use Commercial***

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

#### ***Mixed Use - Development Potential***

Market Rate – 6 Units per acre  
Affordable – 15 units per acre  
Transient – 5-25  
Commercial F.A.R. – 0.15% - 0.6%  
Minimum Open Space – 20% on upland area, 50% on conservation area

#### **Potential Changes in Development Potential**

Market Rate – 2-6 Units per acre  
Affordable – 10-15 units per acre  
Commercial F.A.R. – 14,766 sq. ft. to 59,067 sq. ft.  
Minimum Open Space – 20% on upland area, 100% on conservation easement area.

## **ANALYSIS OF FLUM CHANGE REQUEST:**

### **Consistency with Adopted Comprehensive Plan Goals, Objectives and Policies.**

**The following excerpts from the City of Marathon Comprehensive Plan apply to the proposed development.**

Policy 1-1.1.1 states the City is to protect and enhance the “small town” atmosphere and to encourage mixed- use development patterns.

Policy 1-1.1.3 states the City is to protect viable and stable residential neighborhoods from inconsistent uses via LDR standards for landscaping, buffering, bulk restrictions, building height, setbacks and separation between uses.

Policy 1-1.1.4 states the City shall continue to maintain Land Development Regulations which implement the following techniques required to create a smooth land use transition where it is not feasible to separate incompatible land uses.

- a. Variable buffers, combining land and landscaping to achieve adequate separation of uses, appropriate open space, reduction of potential noise, light, glare, and pollution, and screening of physical features of a proposed development;
- b. Variable setbacks, based upon degree of difference in proposed use, density, intensity, scale, mass, or height;
- c. Placement and effective screening or shielding of site features such as lights, signs, dumpsters, loading areas, parking areas, outdoor storage, or other features with potential negative impacts;
- d. Effective transitions of on-site densities, intensities, scale, mass, and height; and
- e. Other innovative site design features that effectively achieve compatibility and effectively mitigate potential negative impacts.

## **FL State Statutes**

### **Compliance Discussion**

Relevant criteria promulgated in Chapter 163 and 380, 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

The above bullet items will be utilized as the focus points for review of the proposed zoning amendment and for future comprehensive plan amendments.

### **Natural Resources**

Direct impacts to natural resources would differ minimally as a result of the proposed FLUM change. The area proposed for a FLUM change is vacant. There are associated wetlands. However, a conservation easement will be required to protect the environmentally sensitive area in any future proposed development. There are no estuaries, beach areas or dunes associated with the area proposed for FLUM change. Similarly, no living marine resources adjacent to the subject area will be adversely impacted by the proposed change in the FLUM map. The property abuts the Atlantic Ocean. No modifications such as hardened shoreline structures are proposed.

The existing conditions maps indicate the property as vacant. The upland area is disturbed and cleared of vegetation. The parcel falls within Mangrove Environmentally Protected Areas. This environmental sensitive area is home to wildlife habitat such as the East Indigo Snake, Keys Tree Cactus and Keys Tree Snail, species that are protected. The upland area of proposed development is not expected to be adversely impacted by future development as the site has been disturbed and cleared after Hurricane Irma. This property is also within the Florida Forever boundaries, which is land that has been identified as critical areas suitable for acquisition by federal, state, or local agencies.

The proposed FLUM amendment *is consistent* with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

### **Historical and Cultural Resources**

Protection of historical and cultural resources is crucial under the City’s Comprehensive Plan, Chapters 163 and 380 F.S.

There are no known historical or cultural resources associated with the subject properties or within the area of the requested FLUM change. Therefore, the FLUM change would have no impacts on historical or cultural resources. The proposed FLUM amendment *is therefore consistent* with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

## **Infrastructure**

### **• Wastewater infrastructure**

Wastewater as an issue of infrastructure capacity and means of water quality protection represents the backbone to the City's Comprehensive Plan, the tenants of Chapters 163 and 380 F.S. The subject property inclusive of the area of the proposed FLUM change is served by the Area 5 sewer infrastructure. The Utility Manager for the City of Marathon reviewed the proposed FLUM changes and determined that there would be no adverse impact on sewer capacity if the proposal were approved.

The proposed FLUM change would maintain concurrency levels of wastewater infrastructure capacity and provide limited or no adverse impact resulting from nutrient loading. The proposed FLUM amendment *is, therefore, consistent* with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

### **• Stormwater infrastructure**

Stormwater infrastructure capacity and means of water quality protection represents another of the backbone elements of the City's Comprehensive Plan, the tenants of Chapters 163 and 380 F.S. The City of Marathon requires that all property owners retain their stormwater on site. All proposals for new developments, and redevelopments, must submit detailed civil engineering plans for review by the City Engineer. Proposals for redevelopment would have to obtain all required permits through other applicable agencies, such as the Department of Environmental Protection & South Florida Water Management District.

Staff believes that the proposed zoning change would have a diminimus impact on stormwater infrastructure capacity and *is, therefore, consistent* with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

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### **• Potable Water**

Monroe County's potable water facilities do not critically constrain the amount of future growth that can be accommodated in the County (see End Note 1). The current FKAA Consumptive Use Permit, when compared to current potable water consumption rates, will provide sufficient potable water to accommodate existing and committed development plus an additional 18,258 equivalent residential units (ERU's) in unincorporated and incorporated Monroe County. The FKAA's Consumptive Use Permit has been renewed (see End Note 1). Costs of improvements to upgrade facilities for potable water supply, treatment and distribution, in order to accommodate future growth impacts, would not be borne by the City, as this utility is private and would be in the FKAA's CIP, not the City's.

An increase in potable water demand is not expected as part of the proposed FLUM change, any increase would have a diminimus impact on potable water infrastructure capacity. The proposed FLUM amendment *is, therefore, consistent* with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

### **• Solid Waste**

Solid waste capacity is managed in the Florida Keys under haul-out contracts to mainland solid waste facilities. There are currently no limits on solid waste capacity that would be impacted by this FLUM proposal.

The proposed FLUM change would maintain concurrency levels of solid waste infrastructure capacity. The proposed FLUM amendment *is, therefore, consistent* with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

- **Transportation**

The requested FLUM change is not expected to have an adverse impact on roadway capacity.

Monroe County's roadway facilities do not critically constrain the amount of future growth that can be accommodated in the County or the City (see End Note 1). Although localized deficiencies characterize several segments of US 1, sufficient reserve capacity exists in the overall roadway system to accommodate existing and committed development plus an additional 5,738 residential units (see End Note 1). Only 2,550 were allocated to unincorporated Monroe County in 1992, of which 150 went to the City. Thus, there is reserve capacity on US 1 to accommodate planned growth in the City (see End Note 2).

The proposed FLUM change would maintain concurrency levels of transportation on U.S. Highway 1. The proposed FLUM amendment *is, therefore, consistent* with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

### **Affordable Housing**

Affordable housing is an important issue in the Florida Keys and throughout the state of Florida. The City has well over 200 developed or approved affordable housing units. The proposed FLUM change would facilitate a potential for increased affordable housing on site. The Public FLUM category allows for a potential increase of 14.5 units per acre of affordable housing versus the RL FLUM category.

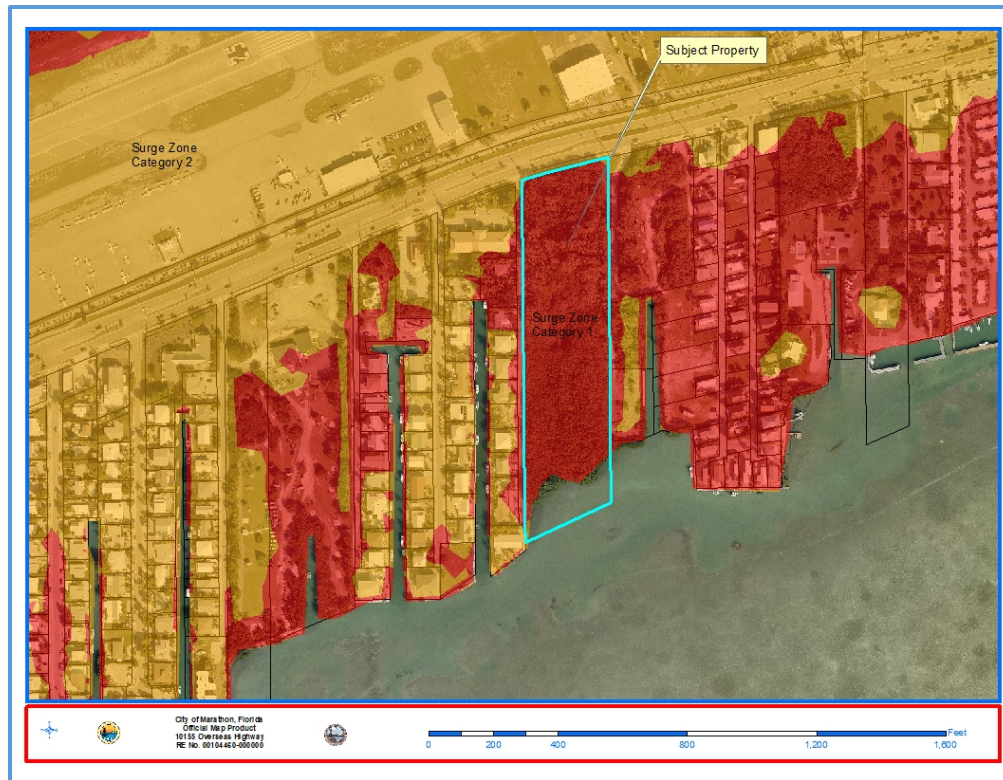
The proposed FLUM change will have the effect of enhancing the potential for affordable housing projects. The proposed FLUM amendment *is therefore consistent* with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

### **Hazard Mitigation**

- **Coastal High Hazard Areas**

The entirety of the parcel lies within the Coastal High Hazard Area (CHHA). The current proposal will have the effect of removing permanent density in the CHHA; consistent with discouragement of development in these areas per the Comprehensive Plan. The current structure complies with the provisions of the local City of Marathon Floodplain Regulations, in accordance with the standards as set forth in the National Flood Insurance Program (NFIP).





While development in the CHHA is to be discouraged in the Comprehensive Plan, it can be permitted by the Land Development Regulations in cases where it cannot be avoided; in these cases, development is required to comply with local Floodplain Management Regulations related to Velocity zone construction. The City has recently revised its floodplain regulations to comply with all recent revisions to the construction standards typically applied in a VE (CHHA) zone.

The proposed FLUM change results in a diminished hazard to public safety. Permanent residential would be replaced with non- residential and therefore represents decreased development in the CHHA on site. The proposed FLUM amendment *is, therefore, consistent* with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

• **Hurricane Evacuation**

The critical carrying capacity constraint at the present time is related to the requirement that hurricane evacuation clearance times for Monroe County be maintained at or below 30 hours through the Year 2002, and further reduced to 24 hours by 2010 (see End Note 1).

The Florida Department of Economic Opportunity in conjunction with sister state agencies and the participation of all local governments completed an analysis this year of current hurricane evacuation constraints. It was determined that under defined conditions, the County was able to maintain a 24 hour evacuation time while continuing the current ROGO and BPAS allocation formulas. Thus, for the ensuing ten (10) years the City will continue to be able to issue 30 residential allocations per year.

The proposed FLUM change would have a positive impact on hurricane evacuation times with the BPAS system in place. The proposed FLUM amendment *is, therefore, consistent* with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

## **Ports – Marina Siting**

Staff believes that the proposed FLUM change will have no adverse impact on ports management or the City's Marina Siting Plan. Marinas are allowed under a conditional use permit in the Mixed Use (MU) zoning district under the City's Land Development Regulations; while no marina development is foreseeable, a Marina Operating Permit, consistent with the LDRs would be required, this would include obtaining coordination letters from external agencies, and all necessary Federal, State and local approvals and permitting.

The proposed FLUM amendment *is, therefore, consistent* with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

## **Public Use – Access to Water**

The proposed FLUM amendment is located on Florida Bay. There is no public access to the water from this location.

Staff believes that the proposed FLUM change will have no adverse impact on public access to water. The proposed FLUM amendment *is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.*

## **Land Acquisition**

Land acquisition in the Florida Keys is carried out by the City, County, State, and to a limited extent the federal government for the purposes of resource conservation and management, removal of properties in the CHHA from public ownership, and to provide for public services and facilities. The subject parcel is on the Florida Forever boundary map.

The proposed FLUM change would have no impact on land acquisition efforts of the above mentioned entities so long a conservation easement is ensured. The proposed FLUM amendment *is, therefore, consistent* with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

## **SUMMARY:**

The applicant has requested a change in the FLUM and Zoning Map designations for the property located on 10155 Overseas Highway. Currently the property is designated as Residential Low (RL). The applicant is requesting a change to Mixed Use (MU) and Residential Low (RL), which will make the zoning consistent with the surrounding use on the properties.

On November 13, 2018 the City Council found the proposed FLUM change and rezoning consistent with the standards and tenants of Chapter 163 and 380 F.S., and the City's Comprehensive Plan adopted under the requirements of these statutes and rules.

## **RECOMMENDATION:**

Based on the Councils approval in November of 2018 and DEO's affirmative ORC, staff recommends final approval in the second hearing of this item, adopting both the FLUM change and the Zoning change from RL to MU.

**End Notes:**

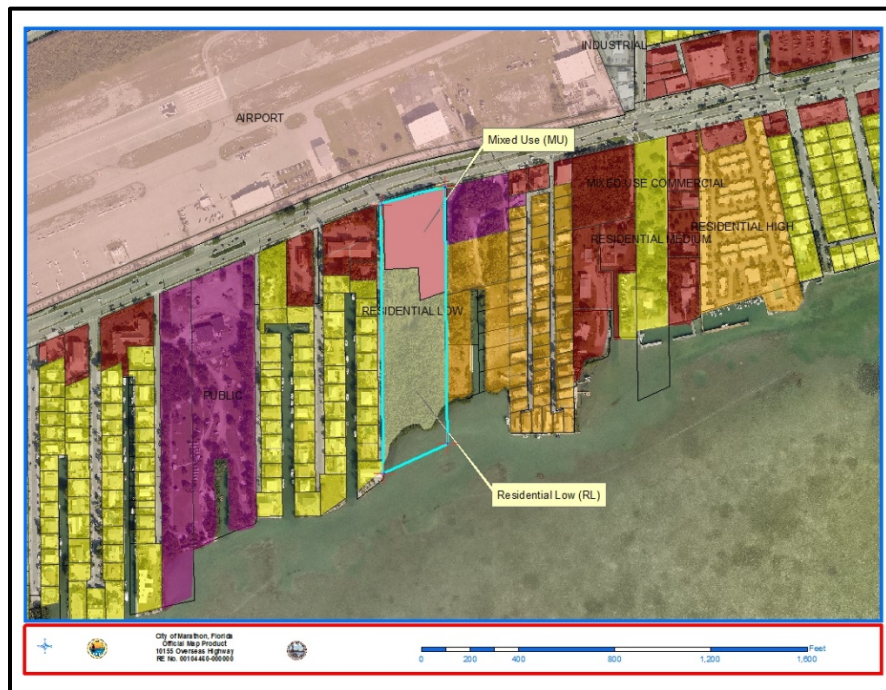
1. The source of the future land use analysis based on carrying capacity limitations can be found in the Monroe County Comprehensive Plan Technical Document (Data and Analysis) Section 2.4 (pp2-86 – 2-95).
2. City of Marathon, Comprehensive Plan Data and Analysis, page 10.

**EXHIBIT 1A**  
**EXISTING & PROPOSED FLUM MAPS**

**Existing FLUM**

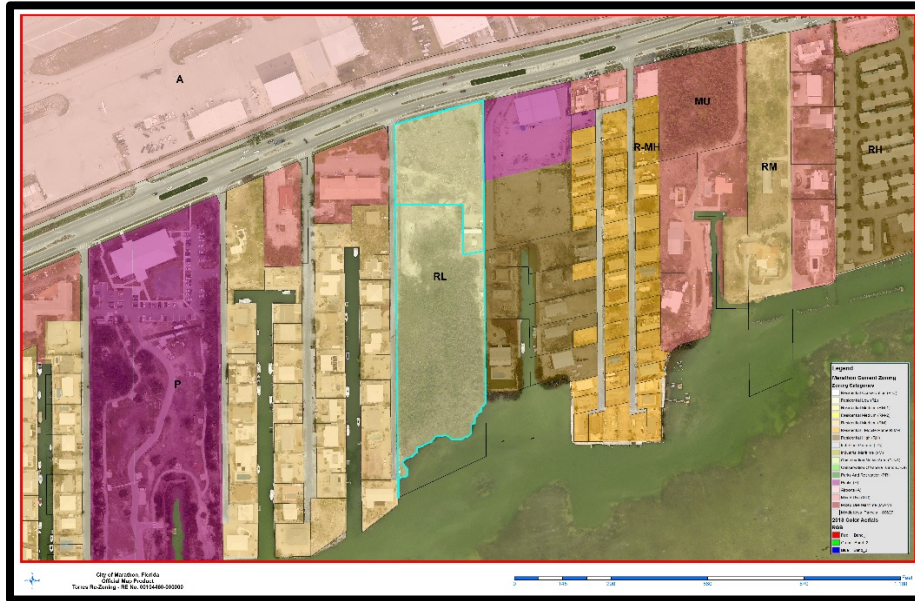


**Proposed FLUM Map**

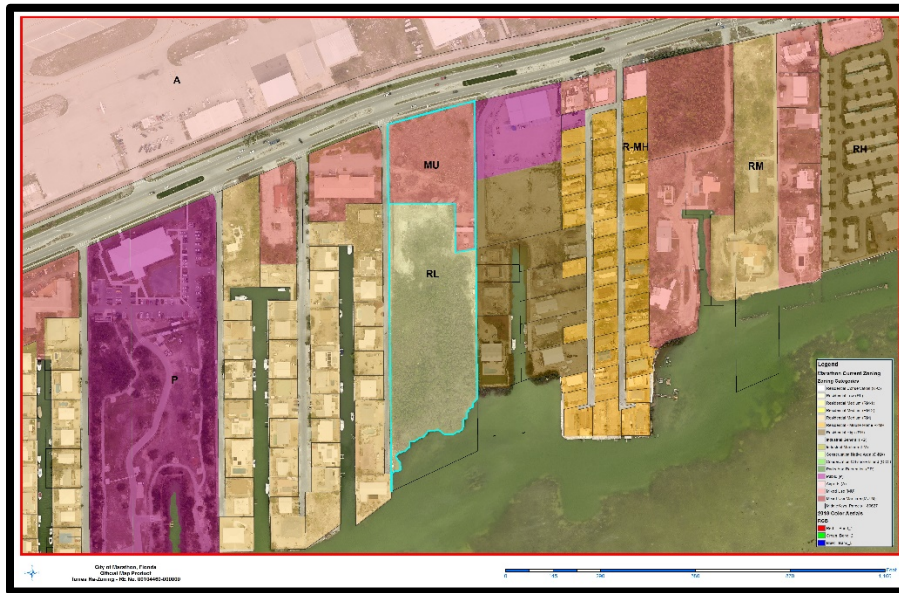


**EXHIBIT 1B**  
**EXISTING & PROPOSED ZONING MAPS**

## Existing Zoning



## Proposed Zoning



**Sponsored By:** Lindsey  
**Planning Commission Public Hearing Date:** October 15, 2018  
**City Council Public Hearing Dates:** November 13, 2018  
May 14, 2019  
**Enactment Date:**

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2018-11**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING THE FUTURE LAND USE MAP FROM RESIDENTIAL LOW (RL) TO MIXED USE (MU) AND RESIDENTIAL LOW (RL) FOR PROPERTY LOCATED AT 10155 OVERSEAS HIGHWAY, MARATHON, FLORIDA, MONROE COUNTY, FLORIDA, WHICH IS LEGALLY DESCRIBED AS PART OF GOVT LOT 2 AND BAY BOTTOM SOUTH OF AND ADJ PART GOVT LOT 2, KEY VACA, HAVING REAL ESTATE NUMBER 00104460-000000; 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**, pursuant to the provisions of Chapters, 163, 166 and 380 Florida Statutes, the City of Marathon, Florida (the "City") proposes to amend the City's Future Land Use Map (the "Map") to change the land use district designation of property owned by La Palma 101, Inc., from Residential Low (RL) to Mixed Use (MU) and Residential Low (RL); and

**WHEREAS**, amending the Map designation of the Property furthers the goals, objectives and policies of the City Comprehensive Plan (the "Plan"); and

**WHEREAS**, pursuant to Chapter 163, *Florida Statutes*, and Sections 101.02 and 102.22 of the Code, the Planning Commission sitting as the Local Planning Agency publicly considered the proposed Zoning Map amendment on October 15, 2018 at a duly noticed public hearing, and has recommended approval of the proposed Map amendment to the City Council; and

**WHEREAS**, pursuant to the same legislative provision, the City Council considered the recommendation of the Planning Commission, accepted public input, and deliberated on the proposed Map amendment on November 13, 2018 at a duly noticed public hearing, and recommended that the amendment be transmitted to the Florida Department of Economic Opportunity (DEO) for review; and

**WHEREAS**, in accordance with Section 166.041, *Florida Statutes*, notice of the public hearings concerning the proposed Map amendment has been provided to the general public; and

**WHEREAS**, the Florida Department of Economic Opportunity forwarded a letter of “No Objection” to Ordinance 2018-11, thus approving a FLUM amendment for the subject parcels from Residential Low (RL) to Mixed Use (MU) and Residential Low (RL); and

**WHEREAS**, the City Council finds that approval of the proposed Map amendment is in the best interest of the City and complies with applicable laws and is consistent with the South Florida Regional Plan, the State Plan, Chapter 163, *Florida Statutes*, the principles for guiding development in the Florida Keys Area of Critical State Concern, the goals, objectives, and policies of the Plan, Chapter 102, Article 6 of the Code, and promotes and protects the health, safety and welfare of the residents of the City; and

**WHEREAS**, the City Council desires to approve the proposed Map amendment, in accordance with State law.

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

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

**SECTION 2.** The proposed FLUM Map designation change of the Property is approved in its first reading from its current designation of Residential Low (RL) to Mixed Use (MU) and Residential Low (RL), as illustrated on the attached Exhibit 1.

**SECTION 3.** The City Council directs staff to transmit the revised Map reflecting the Map amendment, and all data and analysis supporting the Map amendment, to the Department of Economic Opportunity, in its capacity as the State Land Planning Agency, as required by Chapters 163 and 380, *Florida Statutes*.

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

**SECTION 5.** The effective date of this FLUM Amendment, if the amendment is not timely challenged, shall be the date the state land planning agency posts a notice of intent determining that this amendment is in compliance. If timely challenged, or if the state land planning agency issues a notice of intent determining that this amendment is not in compliance, this amendment shall become effective on the date the state land planning agency or the Administration Commission enters a final order determining this adopted amendment to be in compliance. No development orders, development permits, or land uses dependent on this amendment may be issued or commence before it has become effective. If a final order of noncompliance is issued by the Administration Commission, this amendment may nevertheless be made effective by adoption of a resolution affirming its effective status, a copy of which resolution shall be sent to the State Land Planning Agency.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS  
14TH DAY OF MAY 2019.**

**THE CITY OF MARATHON, FLORIDA**

---

**John Bartus, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

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Diane Clavier, City Clerk

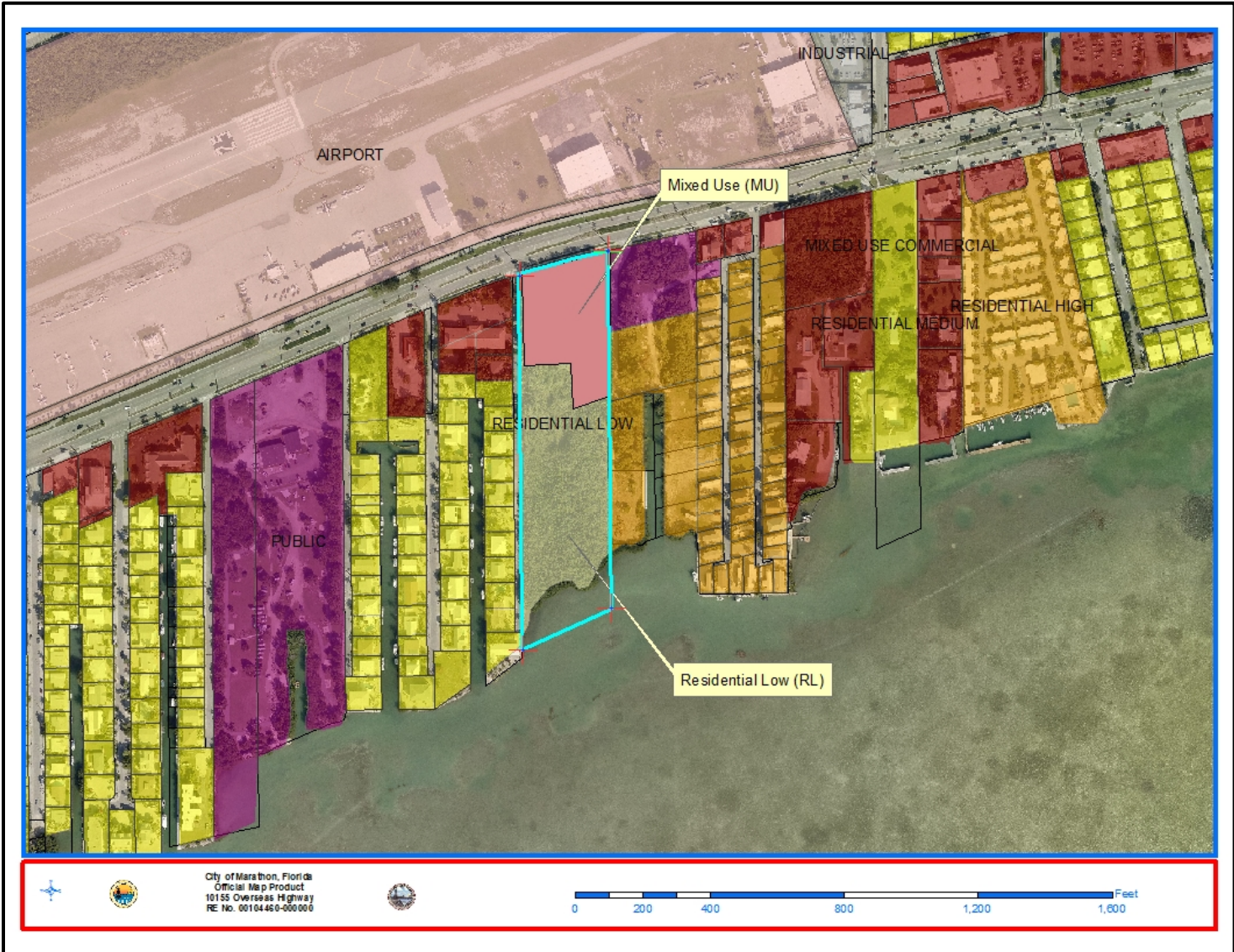
**APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

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David Migut, City Attorney



# Exhibit 1



**Sponsored By:** Lindsey  
**Planning Commission Public Hearing Date:** October 15, 2018  
**City Council Public Hearing Dates:** November 13, 2018  
May 14, 2019  
**Enactment Date:**

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2018-12**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING THE ZONING MAP FROM RESIDENTIAL LOW (RL) TO MIXED USE (MU) AND RESIDENTIAL LOW (RL) FOR PROPERTY LOCATED AT 10155 OVERSEAS HIGHWAY, MARATHON, FLORIDA, MONROE COUNTY, FLORIDA, WHICH IS LEGALLY DESCRIBED AS PART OF GOVT LOT 2 AND BAY BOTTOM SOUTH OF AND ADJ PART GOVT LOT 2, KEY VACA, HAVING REAL ESTATE NUMBER 00104460-000000; 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**, pursuant to the provisions of Chapters, 163, 166 and 380 Florida Statutes, the City of Marathon, Florida (the "City") proposes to amend the City's Future Land Use Map (the "Map") to change the land use district designation of property owned by La Palma 101, Inc., legally described as a Portions of Gov't Lot 2, Section 6, Township 66, Range 33, and Bay Bottom South Of And Adjacent Portion Gov't Lot 2, Key Vaca, Marathon, Monroe Co., Florida; and

**WHEREAS**, amending the Map designation of the Property furthers the goals, objectives and policies of the City Comprehensive Plan (the "Plan"); and

**WHEREAS**, the Florida Department of Economic Opportunity forwarded a letter of "No Objection" to Ordinance 2018-11, the FLUM Map change, thus approving the FLUM amendment for the subject parcels from Residential Low (RL) to Mixed Use (MU) and Residential Low (RL); and

**WHEREAS**, pursuant to Chapter 163, *Florida Statutes*, and Sections 101.02 and 102.22 of the Code, the Planning Commission sitting as the Local Planning Agency publicly considered the proposed Zoning Map amendment on October 15, 2018 at a duly noticed public hearing, and has recommended approval of the proposed Map amendment to the City Council; and

**WHEREAS**, pursuant to the same legislative provision, the City Council considered the recommendation of the Planning Commission, accepted public input, and deliberated on the proposed Map amendment on November 13, 2018 and again on May 13, 2019 at a duly noticed public hearing, and recommended that the amendment be transmitted to the Florida Department of Economic Opportunity (DEO) for final approval; and

**WHEREAS**, in accordance with Section 166.041, *Florida Statutes*, notice of the public hearings concerning the proposed Map amendment has been provided to the general public; and

**WHEREAS**, the City Council finds that approval of the proposed Map amendment is in the best interest of the City and complies with applicable laws and is consistent with the South Florida Regional Plan, the State Plan, Chapter 163, *Florida Statutes*, the principles for guiding development in the Florida Keys Area of Critical State Concern, the goals, objectives, and policies of the Plan, Chapter 102, Article 6 of the Code, and promotes and protects the health, safety and welfare of the residents of the City; and

**WHEREAS**, the City Council desires to approve the proposed Map amendment, in accordance with State law.

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

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

**Section 2.** In accordance with State law, the City of Marathon Comprehensive Plan, and as shown in Exhibit 1, the Zoning Map designations of the Properties are amended from their current designation of Residential Low (RL) to Mixed Use (MU) and Residential Low (RL).

**Section 3.** The City shall timely transmit the revised Zoning Map reflecting the Map amendment, and all data and analysis supporting the Map amendment, to the State of Florida Department of Economic Opportunity, in its capacity as the State Land Planning Agency (the “Department”), as required by Chapters 163 and 380, *Florida Statutes*.

**Section 4.** That upon its effective date, the revised Map shall replace the City’s Zoning Map, previously applicable to the City pursuant to Sections 163.3167(4), 380.05(10) and 380.0552(9), *Florida Statutes*, and Section 9(6) of the City Charter to the fullest extent allowed by law.

**Section 5.** The provisions of this Ordinance constitute a “land development regulation” as State law defines that term. Accordingly, the City Clerk is authorized to forward a copy of this Ordinance to the Department for approval pursuant to Sections 380.05(6) and (11), *Florida Statutes*.

**Section 6.** That this Ordinance shall be effective immediately upon approval by the Department pursuant to Chapter 380, *Florida Statutes*.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,  
FLORIDA, THIS 14TH DAY OF MAY, 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

# Exhibit 1



# COUNCIL AGENDA STATEMENT



**Meeting Date:** May 14, 2019  
**To:** Honorable Mayor and Council Members  
**From:** George Garrett, Planning Director  
**Through:** Chuck Lindsey, City Manager

**Agenda Item:** **Ordinance 2019-03**, Amending The Future Land Use Map From Residential Medium (RM) To Mixed Use (MU) and Residential Medium (RM) For Part Of The Property Described As 222 99<sup>th</sup> ST. Ocean, Marathon, Monroe County, Florida, Having Real Estate Number 00352210-000000; 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.

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**APPLICANT/OWNER:** Mario & Kay Ferrucci

**AGENT:** L. Steven Hurley

**LOCATION:** The subject property is located at 222 99<sup>th</sup> Street, near Mile Marker 52, Having Real Estate Number 00352210-000000.

**ADDRESS:** 222 99<sup>th</sup> street, near Mile Marker 52

## Location Map



**REQUEST:** Amend the FLUM Map for the subject properties from Residential Medium (RM) to Mixed Use (MU). See Exhibits 1 & 2 below.

**LOT AREA:** The aggregated size of the parcel(s) is approximately 36745 sq. ft.; .84 acres  
Proposed area of rezone is approximately 27,993 sq. ft. or .64 acres  
Area to remain RM zone: 8752 sq. ft. or .20 acres

**BACKGROUND:**

The current residential FLUM (Residential Medium – RM) and Zoning (Residential Medium – RM) prohibit the use of this parcel for non-residential uses. Therefore, this FLUM amendment is being sought in order to allow for the development of future residential and commercial structures. The total area proposed for FLUM / Zoning change is 27,993 square feet. Currently, the site is developed with an existing duplex. The area totaling 8,752 square feet, near the canal, is being split off through the Simple subdivision process, and is not changing the Zoning/FLUM.

Planning staff transmitted the proposed FLUM amendment to the Department of Economic Opportunity receiving in reply, a positive ORC indicating no objection to the proposed FLUM change.

**Current and Proposed Future Land Uses and Zoning**

*Future Land Use Map Designation*

Current: Residential Medium (RM)  
Proposed: Mixed Use Commercial (MUC)

*Land Use (Zoning) District Designation*

Existing: Residential Medium (RM)  
Proposed: Mixed Use (MU)

*Use of Properties*

Existing: Duplex  
Proposed: Two Additional Duplexes

**Surrounding FLUM, Zoning and Uses**

The properties subject to the Zoning amendment are located on U.S. 1 adjacent to 99th ST, Ocean and consist of a total of 1 parcels. The property is situated in an area with Mixed Use, Residential and Public land uses. Adjacent land uses include the City of Marathon City Hall properties to the west, Pizza Hut to the east, and residential development immediately to the south.

The following table correlates existing uses with the existing FLUM and Zoning map:

**Table 1. Existing Conditions**

	<u><i>Existing FLUM</i></u>	<u><i>Existing Zoning</i></u>	<u><i>Existing Uses</i></u>
<b>North</b>	Airport (A); Industrial (I)	Airport (A); Industrial General (I-G)	MTH Airport; FK Mosquito Control; Monroe Concrete
<b>East</b>	Mixed Use; Residential Medium	Public; Residential High (RH)	Pizza Hut, Remax, Dermatology, Supervisor of Elections, Residential of 100 <sup>th</sup> and 101 <sup>st</sup> Streets
<b>South</b>	Residential Medium	Residential Medium	99 <sup>th</sup> Street residences
<b>West</b>	Public	Public	City Hall

**Existing Habitat**

The existing conditions maps shows the parcel has protected vegetation. Hurricane Irma caused significant damage to the property. High winds caused many large trees to be felled and the storm surge killed many more. Therefore, the proposed site of construction is cleared. The parcel remains vacant and contains native wetland vegetation (primarily red mangroves) to the south of the proposed Re-FLUM and re-zoning. Documented wetlands will have no development. The property is recognized habitat to a number of state or federally listed animal species and falls within Florida Forever boundaries or critical habitat areas. A conservation easement will be required as part of condition of approval.

**FEMA**

The property is located entirely within the AE 7 Flood zone, pursuant to the FIRM map, effective date February 18, 2005. The entirety of the property also lies within Cat2 SLOSH boundary.

**FLUM and Land Use History**

The City has not made any amendments to the FLUM or zoning map associated with this property since the adoption of the Current FLUM and Zoning Maps in 2005 & 2007 respectively. The property has historically had land use and zoning designations of medium density residential uses.

**DEVELOPMENT ANALYSIS:**

**Current Zoning: Residential Medium (RM)**

***Section 103.12 (C). Residential Medium***

Section 103.12 (C) of the Land Development Regulations states, “The RM District is intended to establish areas of low- to medium-density residential uses characterized principally by single-family detached and two-family dwellings, designated within the Residential Medium (RM) future



land use category on the Future Land Use Map (FLUM)”.

***Residential Medium (RM) Allowable Density***

Market Rate – 5 units per acre    Affordable – 10 units per acre

***Proposed Zoning: Mixed Use (MU)***

***Section 103.09 (A). Mixed-Use Districts***

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

***Mixed Use (MU) Allowable Density***

Market Rate – 6 Units per acre

Affordable – 15 units per acre

Transient – 5-25

Commercial F.A.R. – 0.15% - 0.6%

Minimum Open Space – 20% on upland area, 50% on conservation area

**ANALYSIS OF ZONING CHANGE REQUEST:**

**Compliance Discussion**

Relevant criteria promulgated in Chapter 163, 380, 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 will be utilized as the focus points for review of the proposed zoning amendment and for future comprehensive plan amendments.

### **Natural Resources**

Direct impacts to natural resources would differ minimally as a result of the proposed FLUM change. The area proposed for a FLUM change is developed and partially scarified. There are no associated wetlands. There are no estuaries, beach areas or dunes associated with the area proposed for FLUM change. Similarly, no living marine resources adjacent to the subject area will be adversely impacted by the proposed change in the FLUM map. No modifications such as hardened shoreline structures are proposed.

The existing conditions maps indicate the property as developed. The upland area is disturbed and cleared of vegetation. The parcel is not in a species focus area, and thus is not an environmentally sensitive area is home to wildlife habitat such as the East Indigo Snake, Keys Tree Cactus and Keys Tree Snail, species that are protected. The upland area of proposed development is not expected to be adversely impacted by future development as the site has been disturbed and cleared. This property is also not within the Florida Forever boundaries, which is land that has been identified as critical areas suitable for acquisition by federal, state, or local agencies.

The proposed FLUM amendment is consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

### **Historical and Cultural Resources**

Protection of historical and cultural resources is crucial under the City's Comprehensive Plan, Chapters 163 and 380 F.S.

There are no known historical or cultural resources associated with the subject properties or within the area of the requested FLUM change. Therefore, the FLUM change would have no impacts on historical or cultural resources. The proposed FLUM amendment is therefore consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

## **Infrastructure**

### **• Wastewater infrastructure**

Wastewater as an issue of infrastructure capacity and means of water quality protection represents the backbone to the City's Comprehensive Plan, the tenants of Chapters 163 and 380 F.S. The subject property inclusive of the area of the proposed FLUM change is served by the Area 5 sewer infrastructure. The Utility Manager for the City of Marathon reviewed the proposed FLUM changes and determined that there would be no adverse impact on sewer capacity if the proposal were approved.

The proposed FLUM change would maintain concurrency levels of wastewater infrastructure capacity and provide limited or no adverse impact resulting from nutrient loading. The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

### **• Stormwater infrastructure**

Stormwater infrastructure capacity and means of water quality protection represents another of the backbone elements of the City's Comprehensive Plan, the tenants of Chapters 163 and 380 F.S. The City of Marathon requires that all property owners retain their stormwater on site. All proposals for new developments, and redevelopments, must submit detailed civil engineering plans for review by the City Engineer. Proposals for redevelopment would have to obtain all required permits through other applicable agencies, such as the Department of Environmental Protection & South Florida Water Management District.

An approved Stormwater plan exists for this property concurrent with the construction of the single family residence in 2006. No increase in impervious area is proposed. The proposed FLUM amendment is therefore consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

### **• Potable Water**

Monroe County's potable water facilities do not critically constrain the amount of future growth that can be accommodated in the County (see End Note 1). The current FCAA Consumptive Use Permit, when compared to current potable water consumption rates, will provide sufficient potable water to accommodate existing and committed development plus an additional 18,258 equivalent residential units (ERU's) in unincorporated and incorporated Monroe County. The FCAA's Consumptive Use Permit has been renewed (see End Note 1). Costs of improvements to upgrade facilities for potable water supply, treatment and distribution, in order to accommodate future growth impacts, would

not be borne by the City, as this utility is private and would be in the FCAA's CIP, not the City's.

An increase in potable water demand is not expected as part of the proposed FLUM change, any increase would have a diminimus impact on potable water infrastructure capacity. The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

- **Solid Waste**

Solid waste capacity is managed in the Florida Keys under haul-out contracts to mainland solid waste facilities. There are currently no limits on solid waste capacity that would be impacted by this FLUM proposal.

The proposed FLUM change would maintain concurrency levels of solid waste infrastructure capacity. The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

- **Transportation**

The requested FLUM change is not expected to have an adverse impact on roadway capacity.

Monroe County's roadway facilities do not critically constrain the amount of future growth that can be accommodated in the County or the City (see End Note 1). Although localized deficiencies characterize several segments of US 1, sufficient reserve capacity exists in the overall roadway system to accommodate existing and committed development plus an additional 5,738 residential units (see End Note 1). Only 2,550 were allocated to unincorporated Monroe County in 1992, of which 150 went to the City. Thus, there is reserve capacity on US 1 to accommodate planned growth in the City (see End Note 2).

The proposed FLUM change would maintain concurrency levels of transportation on U.S. Highway 1. The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

### **Affordable Housing**

Affordable housing is an important issue in the Florida Keys and throughout the state of Florida. The City has well over 200 developed or approved affordable housing units. The proposed FLUM change would facilitate a potential for increased affordable housing on site. The Public FLUM category allows for a potential increase of three (3) units of affordable housing versus the existing FLUM category which currently allows six (6).

The proposed FLUM change will have the effect of enhancing the potential for affordable housing projects. The proposed FLUM amendment is therefore consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

## **Hazard Mitigation**

### **• Coastal High Hazard Areas**

The entirety of the parcel is not within the Coastal High Hazard Area (CHHA). The current structure is preFIRM and must comply with the provisions of the local City of Marathon Floodplain Regulations, in accordance with the standards as set forth in the National Flood Insurance Program (NFIP).

### **• Hurricane Evacuation**

The critical carrying capacity constraint at the present time is related to the requirement that hurricane evacuation clearance times for Monroe County be maintained at or below 30 hours through the Year 2002, and further reduced to 24 hours by 2010 (see End Note 1).

The Florida Department of Economic Opportunity in conjunction with sister state agencies and the participation of all local governments completed an analysis this year of current hurricane evacuation constraints. It was determined that under defined conditions, the County was able to maintain a 24 hour evacuation time while continuing the current ROGO and BPAS allocation formulas. Thus, for the ensuing ten (10) years the City will continue to be able to issue 30 residential allocations per year.

The proposed FLUM change would have a positive impact on hurricane evacuation times with the BPAS system in place. The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

## **Ports – Marina Siting**

Staff believes that the proposed FLUM change will have no adverse impact on ports management or the City's Marina Siting Plan. Marinas are allowed under a conditional use permit in the Mixed Use (MU) zoning district under the City's Land Development Regulations; however, the portion zoned MU is not adjacent to any water.

The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

## **Public Use – Access to Water**

The proposed FLUM amendment is located on Florida Bay. There is no public access to the water from this location.

Staff believes that the proposed FLUM change will have no adverse impact on public access to water. The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

## **Land Acquisition**

Land acquisition in the Florida Keys is carried out by the City, County, State, and to a limited extent the federal government for the purposes of resource conservation and management, removal of properties in the CHHA from public ownership, and to provide for public services and facilities. The subject parcel is not on the Florida Forever boundary map.

The proposed FLUM change would have no impact on land acquisition efforts of the above mentioned entities. The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

### **SUMMARY:**

The applicant has requested a change in the FLUM designation for the property located on 222 99<sup>th</sup> Street. Currently the property is designated as Residential Medium (RM). The applicant is requesting a change to Mixed Use Commercial (MUC), which will make the FLUM/zoning consistent with the surrounding use on the nearby properties.

The City Council found the proposed FLUM change and rezoning consistent with the standards and tenants of Chapter 163 and 380 F.S., and the City's Comprehensive Plan adopted under the requirements of these statutes and rules.

### **RECOMMENDATION:**

The City Council approved the proposed amendment for transmittal to DEO on February 26, 2019. DEO sent back an ORC indicating that they had no objections to the proposed FLUM change. Staff recommendation is to approve the proposed FLUM change in its second public hearing.

### **End Notes:**

1. The source of the future land use analysis based on carrying capacity limitations can be found in the Monroe County Comprehensive Plan Technical Document (Data and Analysis) Section 2.4 (pp2-86 – 2-95).
2. City of Marathon, Comprehensive Plan Data and Analysis, page 10.

**EXHIBIT 1  
EXISTING & PROPOSED ZONING MAPS**

**Existing Future Land Use Map (FLUM)**



# Proposed Future Land Use Map (FLUM)





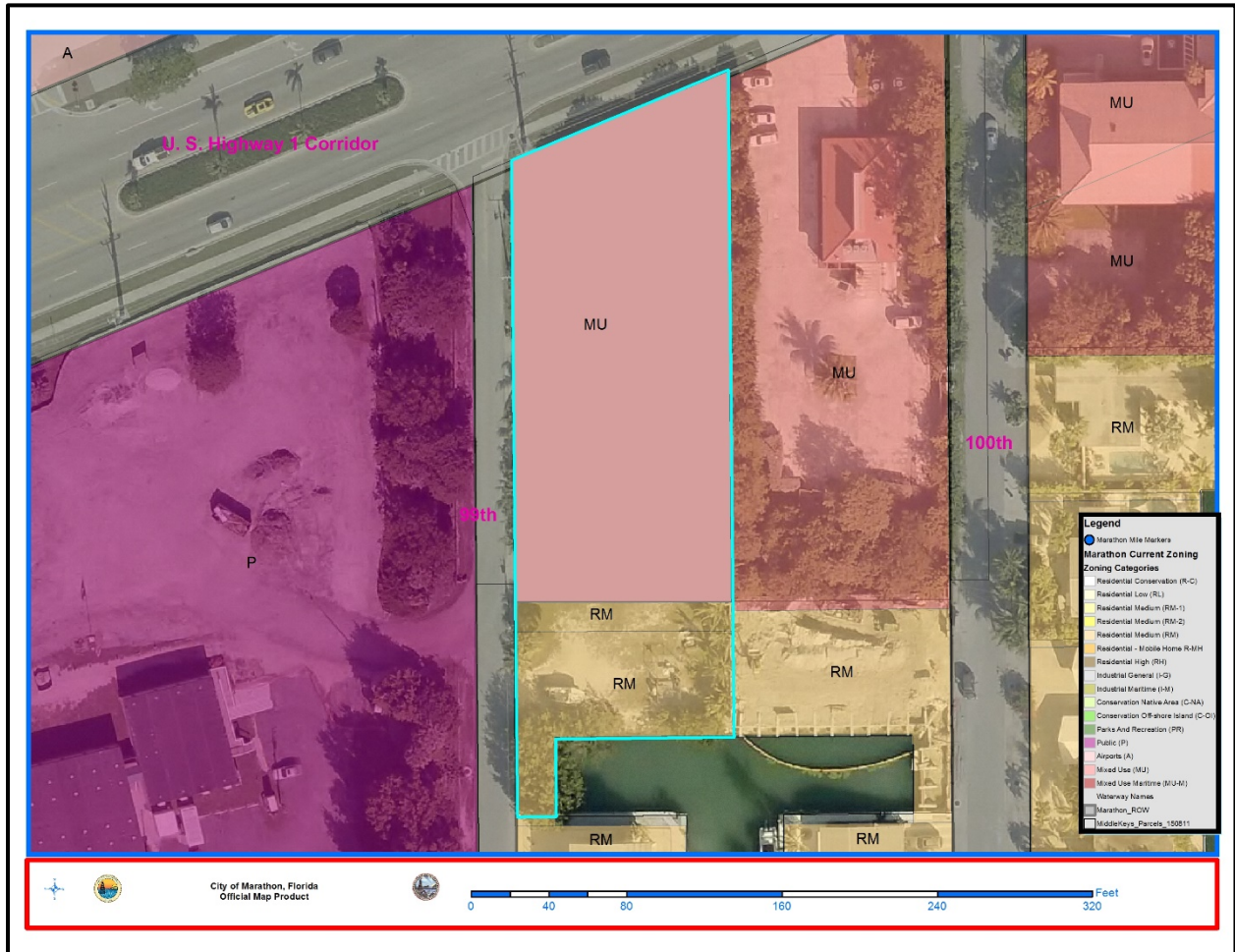


# EXHIBIT 2 EXISTING & PROPOSED ZONING MAPS

## Existing ZONING



# Proposed ZONING





**Sponsored By:** Lindsey  
**Planning Commission Public Hearing Date:** January 28, 2019  
**City Council Public Hearing Dates:** February 26, 2019  
May 14, 2019  
**Enactment Date:**

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2019-03**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING THE COMPREHENSIVE PLAN FUTURE LAND USE MAP (FLUM) DESIGNATION FROM RESIDENTIAL MEDIUM (RM) TO MIXED USE COMMERCIAL (MU-C) AND RESIDENTIAL MEDIUM (RM) FOR PART OF THE PROPERTY DESCRIBED AS 222 99TH ST. OCEAN, MARATHON, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00352210-000000; 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**, pursuant to the provisions of Chapters, 163, 166 and 380 Florida Statutes, the City of Marathon, Florida (the "City") proposes to amend the City's Future Land Use Map (the "Map") to change the land use district designation of a portion of property owned by Mario and Kay Ferrucci located at 222 99th St. ocean, Marathon, Monroe County, Florida, having real estate number 00352210-000000; and

**WHEREAS**, amending the Map designation of the Property furthers the goals, objectives and policies of the City Comprehensive Plan (the "Plan"); and

**WHEREAS**, pursuant to Chapter 163, *Florida Statutes*, and Sections 101.02 and 102.22 of the Code, the Planning Commission sitting as the Local Planning Agency publicly considered the proposed Map amendment on January 28th, 2019 at a duly noticed public hearing, and has recommended approval of the proposed Map amendment to the City Council; and

**WHEREAS**, the City Council reviewed and approved transmittal of this Ordinance to the Florida Department of Economic Opportunity and other required agency reviewers; and

**WHEREAS**, pursuant to the same legislative provision, the City Council considered the recommendation of the Planning Commission, accepted public input, and deliberated on the proposed Map amendment on February 26, 2019 at a duly noticed public hearing, and recommended that the amendment be transmitted to the Florida Department of Economic Opportunity (DEO) for review; and

**WHEREAS**, in accordance with Section 166.041, *Florida Statutes*, notice of the public hearings concerning the proposed Map amendment has been provided to the general public; and

**WHEREAS**, the City Council finds that approval of the proposed Map amendment is in the best interest of the City and complies with applicable laws and is consistent with the South Florida Regional Plan, the State Plan, Chapter 163, *Florida Statutes*, the principles for guiding development in the Florida Keys Area of Critical State Concern, the goals, objectives, and policies of the Plan, Chapter 102, Article 6 of the Code, and promotes and protects the health, safety and welfare of the residents of the City; and

**WHEREAS**, the City Council desires to approve the proposed Map amendment, in accordance with State law.

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

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

**Section 2.** In accordance with State law and the Code, the Map designation of the northerly 240 feet of the Property as illustrated in “Exhibit A” is amended from its current designation of Residential Medium (RM) to Mixed Use (MU).

**Section 3.** The City shall timely transmit the revised Map reflecting the Map amendment, and all data and analysis supporting the Map amendment, to the State of Florida Department of Community Affairs, in its capacity as the State Land Planning Agency (the “Department”), as required by Chapters 163 and 380, *Florida Statutes*.

**Section 4.** That upon its effective date, the revised Map shall replace the City’s Future Land Use Map, previously applicable to the City pursuant to Sections 163.3167(4), 380.05(10) and 380.0552(9), *Florida Statutes*, and Section 9(6) of the City Charter to the fullest extent allowed by law.

**Section 5.** The provisions of this Ordinance constitute a “land development regulation” as State law defines that term. Accordingly, the City Clerk is authorized to forward a copy of this Ordinance to the Department for approval pursuant to Sections 380.05(6) and (11), *Florida Statutes*.

**Section 6.** That this Ordinance shall be effective immediately upon approval by the Department pursuant to Chapter 380, *Florida Statutes*.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,  
FLORIDA, THIS 14<sup>TH</sup> DAY OF MAY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

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**John Bartus, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

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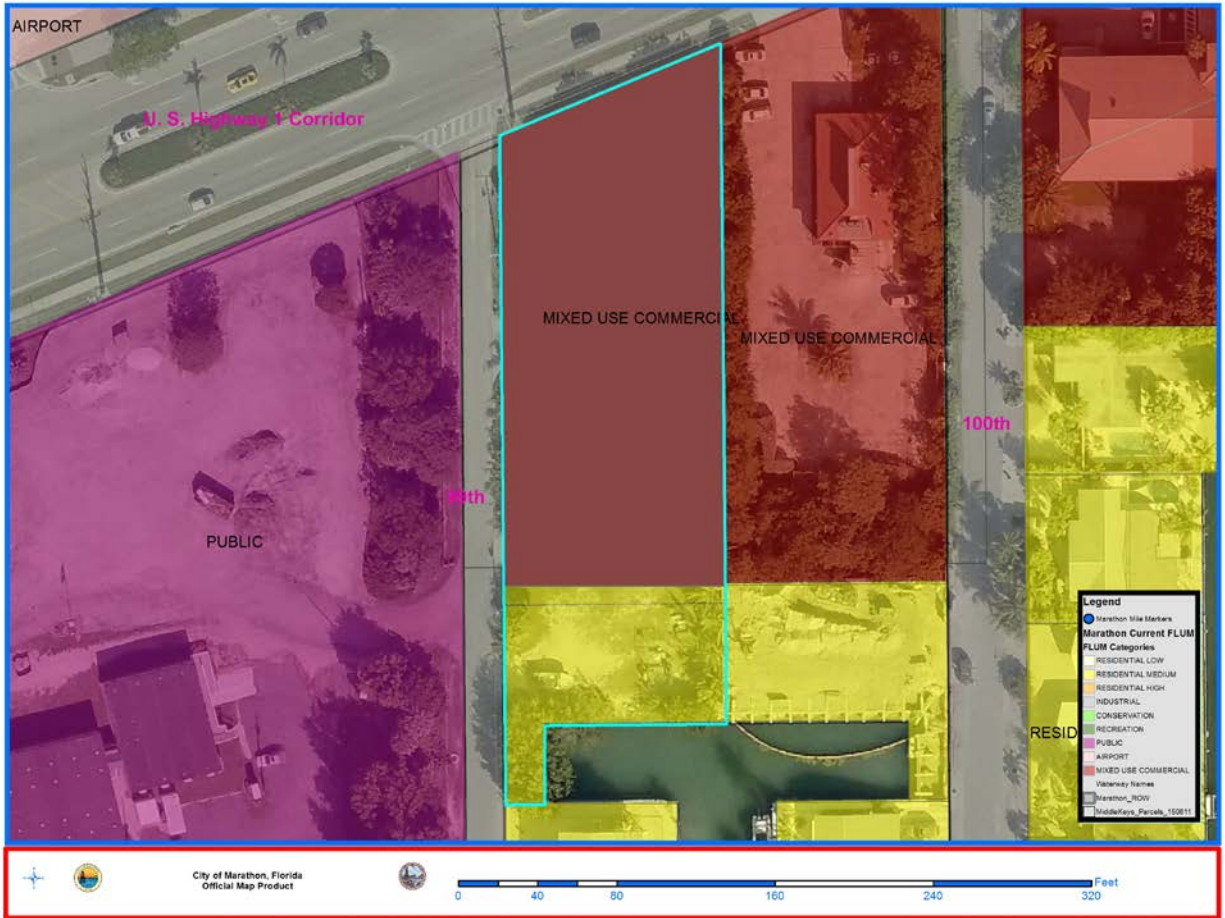
Diane Clavier, City Clerk

**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

“EXHIBIT A”





# COUNCIL AGENDA STATEMENT



**Meeting Date:** May 14, 2019  
**To:** Honorable Mayor and Council Members  
**From:** George Garrett, Planning Director  
**Through:** Chuck Lindsey, City Manager

**Agenda Item:** **Ordinance 2019-04** Amending The Official Zoning Map From Residential Medium (RM) To Mixed Use (MU) and Residential Medium (RM) For Part Of The Property Described As 222 99<sup>th</sup> ST. Ocean, Marathon, Monroe County, Florida, Having Real Estate Number 00352210-000000; 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.

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**APPLICANT/OWNER:** Mario & Kay Ferrucci

**AGENT:** Steve Hurley

**LOCATION:** The subject property is located at 222 99<sup>th</sup> Street, near Mile Marker 52, Having Real Estate Number 00352210-000000.

## Location Map



**REQUEST:** Amend the FLUM Map for the subject properties from Residential Medium (RM) to Mixed Use (MU). See Exhibits 1 & 2 below.

**LOT AREA:** The aggregated size of the parcel(s) is approximately 36745 sq. ft.; .84 acres  
 Proposed area of rezone is approximately 27,993 sq. ft. or .64 acres  
 Area to remain RM zone: 8752 sq. ft. or .20 acres

**BACKGROUND:**

The current residential FLUM (Residential Medium – RM) and Zoning (Residential Medium – RM) prohibit the use of this parcel for non-residential uses. Therefore, this FLUM amendment is being sought in order to allow for the development of future residential and commercial structures. The total area proposed for FLUM / Zoning change is 27,993 square feet. Currently, the site is developed with an existing duplex. The area totaling 8,752 square feet, near the canal, is being split off through the Simple subdivision process, and is not changing the Zoning/FLUM.

Planning staff transmitted the proposed FLUM amendment to the Department of Economic Opportunity receiving in reply, a positive ORC indicating no objection to the proposed FLUM change. Approving the FLUM Map change allows staff to bring the corresponding Zoning Map change forward for approval.

**Table 1. Old vs. New Zoning & FLUM**

	Pre 2005	Pre 2007	2005	2007
	OLD FLUM	OLD ZONING	CURRENT FLUM	CURRENT ZONING
<b>222 99th</b>	Residential Medium	Residential Medium	Residential Medium	Residential Medium

This Zoning amendment is being sought in order to allow the proposed redevelopment currently seeking Conditional Use Permit (“CUP”) to proceed, and in order to provide for potential future commercial use.

Current improvements on the lot are an existing duplex structure.

**Current and Proposed Future Land Uses and Zoning**

*Future Land Use Map Designation*

Current: Residential Medium (RM)  
 Proposed: Mixed Use Commercial (MUC)

*Land Use (Zoning) District Designation*

Existing: Residential Medium (RM)  
 Proposed: Mixed Use (MU)

*Use of Properties*

Existing: Duplex

Proposed: Three Duplexes

The properties subject to the Zoning amendment are located on U.S. 1 adjacent to 99th St., Ocean and consist of a total of 1 parcel. The property is situated in an area with Mixed Use, Residential and Public land uses. Adjacent land uses include the City of Marathon City Hall properties to the west, Pizza Hut to the east, and residential development immediately to the south.

The following table correlates existing uses with the existing FLUM and Zoning map:

**Table 2. Existing Conditions**

	<b><u>Existing FLUM</u></b>	<b><u>Existing Zoning</u></b>	<b><u>Existing Uses</u></b>
<b>North</b>	Airport (A); Industrial (I)	Airport (A); Industrial General (I-G)	MTH Airport; FK Mosquito Control; Monroe Concrete
<b>East</b>	Mixed Use; Residential Medium	Public; Residential High (RH)	Pizza Hut, Remax, Dermatology, Supervisor of Elections, Residential of 100 <sup>th</sup> and 101 <sup>st</sup> Streets
<b>South</b>	Residential Medium	Residential Medium	99 <sup>th</sup> Street residences
<b>West</b>	Public	Public	City Hall

### **Existing Habitat**

The existing conditions maps shows the parcel has protected vegetation. Hurricane Irma caused significant damage to the property. High winds caused many large trees to be felled and the storm surge killed many more. Therefore, the proposed site of construction is cleared. The parcel remains vacant and contains native wetland vegetation (primarily red mangroves) to the south of the proposed Re-FLUM and re-zoning. Documented wetlands will have no development. The property is recognized habitat to a number of state or federally listed animal species and falls within Florida Forever boundaries or critical habitat areas. A conservation easement will be required as part of condition of approval.

### **FEMA**

The property is located entirely within the AE 7 Flood zone, pursuant to the FIRM map, effective date February 18, 2005. The entirety of the property also lies within Cat2 SLOSH boundary.

### **Zoning and Land Use History**

The City has not made any amendments to the FLUM or zoning map associated with this property since the adoption of the Current FLUM and Zoning Maps in 2005 & 2007 respectively. The property has historically had land use and zoning designations of medium density residential uses.

## ANALYSIS OF ZONE CHANGE REQUEST:

Section 102.64 of the Land Development Regulations requires that the following standards and criteria be considered in any rezoning application. Each criteria and explanation of relevance to this application are listed below:

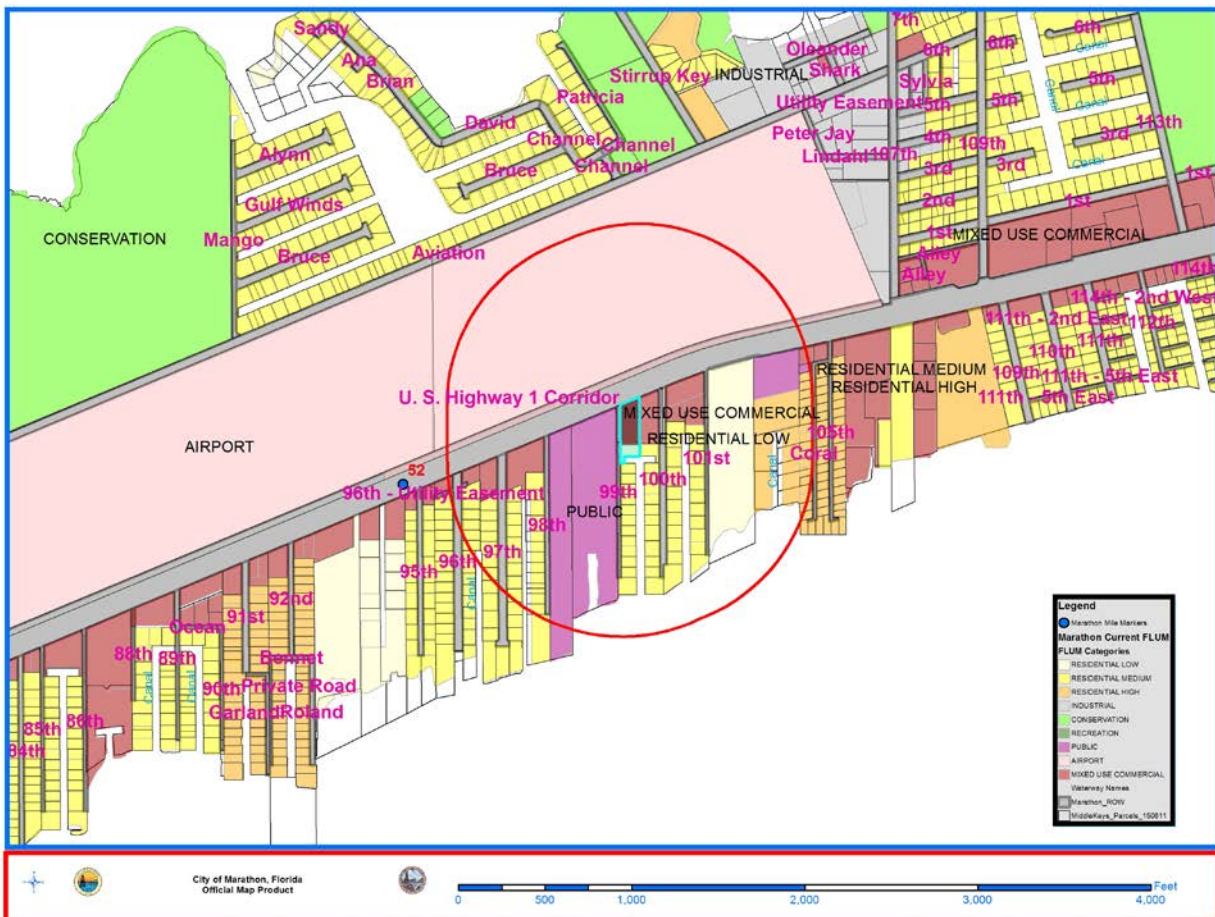
- A. **Consistency:** The proposed rezoning is consistent with the Comprehensive Plan and the LDRs.

The proposed zoning change is consistent with the existing FLUM designation and the Comprehensive Plan Goals, Objectives and Policies

It is staff's finding that the request is *in compliance* with this review criterion.

B. **Compatibility:**

In accordance with neighborhood planning practices, a ¼ mile buffer was applied to the property in order to analyze compatibility with surrounding Future Land Uses and Zoning.



remain the same.

While it is clear that the cumulative changes to land use/ zoning proportions are minimal, the location of the proposed change along the larger MU boundary with RM in the neighborhood has the potential for creating compatibility issues. These issues are best addressed on a site specific basis as development proposals are presented.

The proposed change to Mixed Use (MU) would make the zoning consistent with similar zoning abutting US1.

The proposed rezoning is compatible with the present zoning pattern and conforming uses of nearby property and the character of the surrounding area. Therefore, it is staff's finding that the request is *in compliance* with this criterion.

- C. **Development Patterns:** The proposed rezoning shall result in logical and orderly development patterns.

As stated in B, above, the rezoning of the lots to Mixed Use (MU) would make the zoning consistent with the adjacent zonings along US1. The properties are currently developed, and any redevelopment would have to comply with all regulations as set forth in the Comprehensive Plan, Land Development Regulations and Florida Building Code.

Therefore, it is staff's opinion that the request is *in compliance* with this criterion.

- D. **Suitability:** The affected property is suitable for the uses that are permitted by the proposed zoning districts.

The existing duplex is a conditional use in RM. Any future redevelopment would have to be compliant with the permitted uses within the MU zoning district, of which duplexes are still a conditional use.

Therefore, it is staff's opinion that the request is *in compliance* with this criterion.

- E. **Adequate Public Services:** The proposed rezoning is consistent with the adequate public facilities requirements of the Plan.

Adequate supply of public services is present to accommodate the proposed rezoning. Development specific concurrency requirements will be reviewed as part of the CUP amendment application and during final site plan review.

Therefore, it is staff's opinion that the request is *in compliance* with this criterion.

- F. **Access:** Available ingress and egress is adequate for potential uses in the proposed zoning district.

Access to the property is available via an existing entrances on 99<sup>th</sup> Street.

Therefore, it is staff's opinion that the request is *in compliance* with this criterion.

**G. Public Health, Safety, and Welfare:** The uses allowed within the proposed zoning district shall not adversely affect health, safety, and welfare.

Any new development will be required to meet current regulations regarding landscaping, buffers, setbacks, stormwater management and other LDRs. While the current conditional use has not had any known significant impact to the health, safety and welfare of the public, the proposed redevelopment associated with the overall project should have a positive impact on the area and surrounding properties.

Therefore, it is staff's opinion that the request is *in compliance* with this requirement.

**Section 102.66. – Residential Density Restriction.**

In compliance with density standards adopted and approved by DEO, it should be noted, that the change only amounts to a maximum difference in three affordable units, and if market rate, no change in units.

**SUMMARY:**

The applicant has requested a change in the Zoning Map designation for properties located on 222 99<sup>th</sup> Street. Currently the properties are designated as Residential Medium (RM). The applicant is requesting a change to Mixed Use (MU), which will make the zoning consistent with the development along US1. The rezoning will also allow consistency with the proposed CUP amendment.

The City Council found the proposed rezoning consistent with the standards and tenants of Chapter 163 and 380 F.S., and the City's Comprehensive Plan adopted under the requirements of these statutes and rules.

**RECOMMENDATION:**

The City Council approved the proposed Zoning amendment when approving the FLUM amendment for transmittal to DEO on February 26, 2019. DEO sent back an ORC indicating that they had no objections to the proposed FLUM change. Approving the FLUM Map change allows staff to bring the corresponding Zoning Map change forward for approval. Staff recommendation is to approve the proposed Zoning change in its second public hearing.



**Sponsored By:** Lindsey  
**Planning Commission Public Hearing Date:** January 28, 2019  
**City Council Public Hearing Dates:** February 26, 2019  
May 14, 2019  
**Enactment Date:**

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2019-04**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING THE OFFICIAL ZONING MAP FROM RESIDENTIAL MEDIUM (RM) TO MIXED USE (MU) AND RESIDENTIAL MEDIUM (RM) FOR PART OF THE PROPERTY DESCRIBED AS 222 99TH ST. OCEAN, MARATHON, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00352210-000000; 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**, pursuant to the provisions of chapters, 163, 166 and 380 Florida Statutes, the City of Marathon, Florida (the "city") proposes to amend the City's Land Use District Map from Residential Medium (RM) to Mixed Use (MU) property located at located at 222 99th St. ocean, Marathon, Monroe County, Florida, having real estate number 00352210-000000; and

**WHEREAS**, amending the Map designation of the Property furthers the goals, objectives and policies of the City Comprehensive Plan (the "Plan") and Land Development Regulations (LDRs); and

**WHEREAS**, pursuant to Chapter 163, *Florida Statutes*, and Sections 101.02 and 102.22 of the Code, the Planning Commission sitting as the Local Planning Agency publicly considered the proposed Zoning Map amendment on January 28th, 2019 at a duly noticed public hearing, and has recommended approval of the proposed Map amendment to the City Council; and

**WHEREAS**, pursuant to the same legislative provision, the City Council considered the recommendation of the Planning Commission, accepted public input, and deliberated on the proposed Map amendment on February 26, 2019 and XXX at duly noticed public hearings, and recommended that the amendment be transmitted to the Florida Department of Economic Opportunity (DEO) for review; and

**WHEREAS**, in accordance with Section 166.041, *Florida Statutes*, notice of the public hearings concerning the proposed Map amendment has been provided to the general public; and



**WHEREAS**, the City Council finds that approval of the proposed Map amendment is in the best interest of the City and complies with applicable laws and is consistent with the South Florida Regional Plan, the State Plan, Chapter 163, *Florida Statutes*, the principles for guiding development in the Florida Keys Area of Critical State Concern, the goals, objectives, and policies of the Plan, Chapter 102, Article 6 of the Code, and promotes and protects the health, safety and welfare of the residents of the City; and

**WHEREAS**, the City Council desires to approve the proposed Map amendment, in accordance with State law.

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

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

**Section 2.** In accordance with State law, the City of Marathon Comprehensive Plan, and as shown in Exhibit 1, the Zoning Map designations of the Properties are amended from their current designation from Residential Medium (RM) to Mixed Use (MU).

**Section 3.** The City shall timely transmit the revised Zoning Map reflecting the Map amendment, and all data and analysis supporting the Map amendment, to the State of Florida Department of Economic Opportunity, in its capacity as the State Land Planning Agency (the “Department”), as required by Chapters 163 and 380, *Florida Statutes*.

**Section 4.** That upon its effective date, the revised Map shall replace the City’s Land Use District Map, previously applicable to the City pursuant to Sections 163.3167(4), 380.05(10) and 380.0552(9), *Florida Statutes*, and Section 9(6) of the City Charter to the fullest extent allowed by law.

**Section 5.** The provisions of this Ordinance constitute a “land development regulation” as State law defines that term. Accordingly, the City Clerk is authorized to forward a copy of this Ordinance to the Department for approval pursuant to Sections 380.05(6) and (11), *Florida Statutes*.

**Section 6.** That this Ordinance shall be effective immediately upon approval by the Department pursuant to Chapter 380, *Florida Statutes*.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,  
FLORIDA, THIS 14<sup>TH</sup> DAY OF MAY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

---

**John Bartus, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

---

Diane Clavier, City Clerk

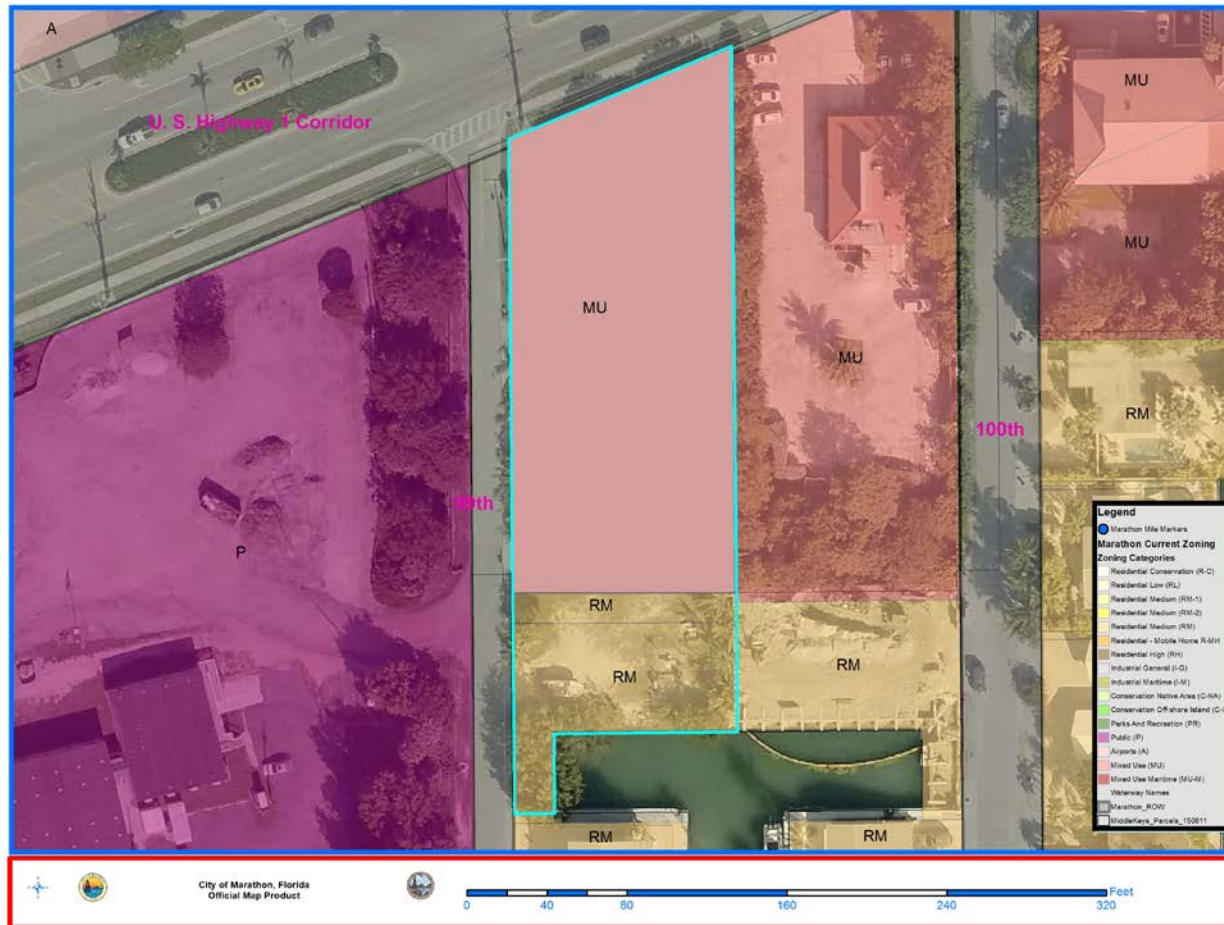
**APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

---

David Migut, City Attorney

# Exhibit 1

## Approved Zoning



CITY COUNCIL AGENDA STATEMENT



Meeting Date: May 14, 2019  
To: Honorable Mayor and City Councilmembers  
From: George Garrett, Planning Director  
Through: Chuck Lindsey, City Manager

Agenda Item: **Resolution 2019-38, Providing Approval To Expend Additional Funds Through The First Time Home Buyer Loan Funding Program To Additional Qualified Applicants In An Amount Not To Exceed \$10,000.00 Per Applicant And No More Than Ten Additional Applicants Or \$100,000.00; Appropriating Funds; And Providing For An Effective Date.**

BACKGROUND & JUSTIFICATION:

The City adopted by ordinance the First Time Home Buyer Program for the City of Marathon in 2010. The City Council approved an additional 10 -\$10,000 loans to become available for first time home buyers on September 11, 2018. To date the City’s First Time Home Buyer Administrator has approved ten (10) applicants and is recommending the extension of the program for an additional ten (10) First Time Home Buyer Loans.

CONSISTENCY CHECKLIST:

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

FISCAL NOTE:

The Affordable Housing Fund balance available for appropriation as of April 30, 2019 was approximately \$1,080,000.

RECOMMENDATION:

Approval of Resolution



## CITY OF MARATHON, FLORIDA

---

9805 Overseas Highway, Marathon, Florida 33050  
Phone: (305) 743-0033 Fax: (305) 743-3667

TO: City Council  
Chuck Lindsey, City Manager

FROM: George Garrett, Planning Director

DATE: May 14, 2019

SUBJECT: FIRST TIME HOMEBUYER ASSISTANCE PROGRAM

---

As you know, the City Council may in each fiscal year appropriate funds during the budget process to the First Time Homebuyer Assistance Program, including transferring funds from the City's Affordable Housing Program fund.

Through public meetings and input, Council guidance, and staff consideration, Staff requested that the City Council continue to implement and potentially expand this program.

The following report pertains to the last fiscal year of the program:

- Number of applicants: 15
- Number of loans given: 11
- Number of applications withdrawn: 1
- Number of applications currently under review: 5
- Number of defaults: 0
- Number of noncompliance incidents: 0
- Number of participants refinancing first mortgage loans: 1
- The average sales price of housing units for the fiscal year: \$326,636
- The income and income category (very low, low median, and moderate) of each new participant:
  - Very Low (50%) 0
  - Low (80%) 3
  - Median (100%) 2
  - Moderate (120%) 6
- Any repayments of loans made pursuant to the program: 0

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-38**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, PROVIDING APPROVAL TO EXPEND ADDITIONAL FUNDS THROUGH THE FIRST TIME HOME BUYER LOAN FUNDING PROGRAM TO ADDITIONAL QUALIFIED APPLICANTS IN AN AMOUNT NOT TO EXCEED \$10,000.00 PER APPLICANT AND NO MORE THAN TEN ADDITIONAL APPLICANTS OR \$100,000.00; APPROPRIATING FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, The City of Marathon enacted by Ordinance a program known as the First Time Home Buyer Loan Program (the “Program”); and

**WHEREAS**, the City Council directed its affordable housing administrator to seek, qualify, and bring forward qualified applicants for the Program in order to disperse \$10,000 in reimbursable loans to each qualified applicant; and

**WHEREAS**, the affordable housing administrator has carried out the direction of the City Council having distributed loans to ten (10) individuals and recommends extending the opportunity to additional applicants, each in the amount of \$10,000.00 and approving the expenditure of up to \$100,000.00 from the City’s affordable housing program fund,

**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.** City Council approves the additional expenditure of up to \$100,000.00 from the City’s Affordable housing Program Fund for up to ten (10) additional First Time Home Buyer loans.

**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 14<sup>th</sup> DAY OF MAY 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

COUNCIL AGENDA STATEMENT

Meeting Date: May 14, 2019  
To: Honorable Mayor and Council Members  
From: Dan Saus, Utility Director  
Through: Charles Lindsey, City Manager



Agenda Item: **Resolution 2019-39**, Authorizing A “Sole-Source” Purchase Pursuant To The City’s Purchasing Policies And Procedures And Approving The Purchase of various Airvac (now the Aqseptance Group) vacuum collection system vacuum pits and appurtenances to provide sewer service connections for new construction, In An Amount Not To Exceed \$45,504.00; Authorizing The City Manager To Enter Into Agreements In Connection Therewith, Appropriating And Expending Budgeted Funds; And Providing For An Effective Date

---

BACKGROUND & JUSTIFICATION:

The FY 2018-19 budget anticipated the need to provide new sewer connections for all of the ongoing construction in the city. New service connection costs are partially offset by wastewater assessments. This purchase is grant reimbursable through LP44041 Mayfield Grant.

CONSISTENCY CHECKLIST:

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

FISCAL NOTE:

The FY19 Wastewater Utility budget includes appropriations of \$300,000 for new service connections, and as of April 30, 2019 there was \$91,491 of uncommitted budget remaining.

RECOMMENDATION:

Approve Resolution



**Sold-to address**

City of Marathon, Florida  
 9805 Overseas Highway  
 Marathon FL 33050

**Ship-to address**

City of Marathon  
 10335 Overseas Hwy.  
 Marathon FL 33050

Quotation	
<b>Number/Date</b>	20066630 / 04/22/2019
<b>Reference no./Date</b>	
<b>Sold-To</b>	10000670
<b>Validity period</b>	04/22/2019 to 05/22/2019
<b>Sales person name</b>	Southeast 1
<b>Entered by</b>	Becky Murphy

**We deliver according to the following conditions:**

Currency USD

**Terms of payment:** Within 30 days without deduction

**Terms of delivery:** CIP Marathon, FL

**THIS IS NOT A BILL**

US05MAR06P03  
 \*freight to be added

Item	Material Description	Qty	UoM	Price	Value
000010	VP3030WTA 1PC PIT PACK, 5'	6.000	EA	1,441.00 USD	8,646.00
000020	VP3030WTB VALVE/BREATHER FOR 1PC 5' PIT	6.000	EA	1,563.00 USD	9,378.00
000030	VP4830WTA 1 PC PIT PACK, 6.5'	6.000	EA	1,773.00 USD	10,638.00
000040	VP4830WTB VALVE/BREATHER - 1PC 6.5' PIT	6.000	EA	1,563.00 USD	9,378.00
000050	VPFLEXHOSE 3"VALVE PIT FLEX HOSE	12.000	EA	104.00 USD	1,248.00
000060	AT1000-1 6" AIR TERM, SANDSTONE, W/DOOR	12.000	EA	235.00 USD	2,820.00
000070	CICLID-SEAL-US CAST IRON LID W/SEAL, USF	12.000	EA	155.00 USD	1,860.00
000080	CICFRAME-US CAST IRON COVER (FRAME ONLY) USF	12.000	EA	128.00 USD	1,536.00

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Items total			45,504.00
Tax Jur Code Level 1	0.000	45,504.00	0.00
Final amount			45,504.00

**THIS IS NOT A BILL**

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-39**

**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 VARIOUS AIRVAC VACUUM PITS AND APPUTENANCES (NOW THE AQSEPTANCE GROUP), IN AN AMOUNT NOT TO EXCEED \$45,504.00; AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENTS IN CONNECTION THEREWITH, APPROPRIATING AND EXPENDING BUDGETED FUNDS; 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 by utilizing existing contract terms and prices entered into by other local, state or federal governmental authorities that followed a competitive bidding procedure leading to the award of the contract in question; and

**WHEREAS**, the City desires to take advantage of the Sole Source purchasing procedure, to purchase various Airvac (now the Aqseptance Group) vacuum system components in an amount not to exceed \$45,504.00, which may be submitted for reimbursement from the LP44041 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 for the purchase of various Airvac vacuum system components in an amount not to exceed \$45,504.00

**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 14<sup>th</sup> DAY OF MAY, 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

COUNCIL AGENDA STATEMENT

Meeting Date: May 14, 2019  
To: Honorable Mayor and Council Members  
From: Dan Saus, Utility Director  
Through: Charles Lindsey, City Manager



Agenda Item: **Resolution 2019-40** Authorizing A “Sole-Source” Purchase Pursuant To The City’s Purchasing Policies And Procedures And Approving The Purchase of Odor Control System Upgrades from Syneco Systems, Inc. for upgrades in Service Area 3, Service Area 5, and Service Area 5 Remote Vacuum Station, In An Amount Not To Exceed \$222,797.25; Authorizing The City Manager To Enter Into Agreements In Connection Therewith, Appropriating And Expending Budgeted Funds; And Providing For An Effective Date

BACKGROUND & JUSTIFICATION:

Although we have fully recovered from Irma, some long lasting effects were felt in our odor control systems. We replaced the flooded media and have working systems but the vessels themselves need replacing and we are taking this opportunity to upgrade to larger vessels and more volume of media to give the systems more detention time and therefore more effective treatment. This purchase is grant reimbursable through the ACOE Grant Agreement.

CONSISTENCY CHECKLIST:

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

FISCAL NOTE:

The FY19 Wastewater Utility Fund budget includes appropriations of \$4,373,500 for wastewater capital improvements, however, this specific project wasn’t contemplated when the budget was prepared. This purchase is reimbursable from the FKWQIP ACOE funding allocation of \$998,000 that the City was granted for FY19.

RECOMMENDATION:

Approve Resolution

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-40**

**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 ODOR CONTROL SYSTEM UPGRADES FROM SYNECO SYSTEMS, INC., IN AN AMOUNT NOT TO EXCEED \$222,797.25; AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENTS IN CONNECTION THEREWITH, APPROPRIATING AND EXPENDING BUDGETED FUNDS; 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 by utilizing existing contract terms and prices entered into by other local, state or federal governmental authorities that followed a competitive bidding procedure leading to the award of the contract in question; and

**WHEREAS**, the City desires to take advantage of the Sole Source purchasing procedure, to purchase for odor control system upgrades for Service Area 3, Service Area 5, and Service Area 5 Remote Vacuum Station in an amount not to exceed \$222,797.25, which may be submitted for reimbursement through the ACOE Grant Agreement.

**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 for the purchase of odor control upgrades from Syneco Systems, Inc., in an amount not to exceed \$222,797.25

**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 14<sup>th</sup> DAY OF MAY, 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



7945 Stone Creek Dr, Suite 50  
 Chanhassen, MN 55317  
 Tele: 952-927-9215  
 Fax: 952-927-9224  
 E-mail: [sales@synecosystems.com](mailto:sales@synecosystems.com)  
[www.synecosystems.com](http://www.synecosystems.com)

# Quotation

**Prepared For:**

City of Marathon  
 9805 Overseas Highway  
 Marathon, FL 33050

Account #: 1311

Quote #	Quote Date	Valid Thru	Terms	Prepared by	Ship Via	FOB
20868	2019-04-23	2019-05-24	NET30	DanFalkman	FREIGHT	FREIGHTMA

00:00:00 00:00:00

N

Item	Description	Quantity	Unit Price	Total Price
PMCUSTOM	Area 3 WWTP Purchase of a Peacemaker R-10 FRP Dry Air Scrubber with 500 cubic feet of Converting / Oxidizing media. Area 3 WWTP H2S: Average: 29 PPM. Peak: 303 PPM Airflow: Max = 1,365 SCFM	1.00	\$74,265.75	74,265.75
PMCUSTOM	Area 5-15 Airport Purchase of a Peacemaker R-10 FRP Dry Air Scrubber with 500 cubic feet of Converting / Oxidizing media. Area 5-15 Airport H2S: 20 PPM Airflow: 1,365 SCFM	1.00	\$74,265.75	74,265.75
PMCUSTOM	Area 5 WWTP: Purchase of a Peacemaker R-10 FRP Dry Air Scrubber with 500 cubic feet of Converting / Oxidizing media. Area 5 WWTP H2S: 6 PPM Designed Airflow: 1,365 SCFM	1.00	\$74,265.75	74,265.75

Taxable Total	Tax Rate	Tax Amount	Quote Total
0.00	0.00	0.00	222,797.25

**TERMS AND CONDITIONS**

- All orders are subject to manufacturer's acceptance.
- Full freight allowed to jobsite if access is available via common carrier.
- Shipment will be made via most economical way within 30 days of receipt of order.
- Manufacturer shall not be liable for failure or delay in delivery due to any cause beyond its control.
- Installation of equipment herein shall be under the control and at the expense of Purchaser.
- Taxes if applicable are not included in this quotation.
- Exchange per agreement signed.
- Amendment to this quotation can only be done in writing by an officer of Syneco Systems, Inc.
- Payment is due in 30 days from the date of the invoice.
- A 2% monthly late fee will be added for all past due balances.

**Thank you for your Business.**



COUNCIL AGENDA STATEMENT



Meeting Date: May 14, 2019  
 To: Honorable Mayor & Members of the City Council  
 From: Sean Cannon, Ports Director  
 Through: Charles Lindsey, City Manager

Agenda Item: **Resolution 2019-41**, Awarding Contract For The Construction Of The Marathon Marina Dinghy Dock Project To Shoreline Foundation, Inc.; Approving Contract In The Amount Of \$413,307.00; Authorizing The City Manager To Execute The Contract And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date

BACKGROUND & JUSTIFICATION:

An invitation to bid was issued on March 12<sup>th</sup>, and a mandatory pre bid meeting was held at City hall in on March 26<sup>th</sup> and on the 18<sup>th</sup> of April two bids were received by the Clerk with Shoreline Foundation, Inc. being the lowest responsive and responsible bidder.

Shoreline Foundation, Inc. has completed many successful projects in the Keys, and is fully qualified for this project. This project has been obligated by FEMA as reimbursable.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	<u>X</u>	___
2. Other – 2010 Sewer Mandate	___	___
3. Not applicable	___	___

FISCAL NOTE:

The Adopted FY19 budget for the Marina includes appropriations of \$1,500,000 for Hurricane Irma recovery efforts, of which \$379,793 was slated for this project. The FEMA Project Worksheet for this permanent repair was obligated by FEMA and the State of Florida Department of Emergency Management (DEM) on April 28, 2019 for an estimated cost of \$379,793, of which FEMA will reimburse 75% and the State 12.5% The reimbursement to the City will be based on actual costs incurred. The deadline for permanent repair project completion was 18 months post storm, or March 10, 2019. The City has submitted a request for time extension for this project with the DEM.

RECOMMENDATION:

Approval of the Resolution

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-41**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AWARDING CONTRACT FOR THE CONSTRUCTION OF THE MARATHON MARINA DINGHY DOCK PROJECT TO SHORELINE FOUNDATION, INC.; APPROVING CONTRACT IN THE AMOUNT OF \$413,307.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Marathon (the “City”) issued an Invitation to Bid (ITB) for the Marathon Marina Dinghy Dock Project (the “Project”); and

**WHEREAS**, the lowest bid for services was received from Shoreline Foundation, Inc. in the amount of \$413,307 and was found to be responsive; and

**WHEREAS**, staff has reviewed the bid response package and has determined that the package submitted by the apparent low bidder, Shoreline Foundation Inc. meets the criteria for responsiveness and responsibility. As such, it is staff’s opinion that Shoreline Foundation, Inc. is the lowest cost, responsive and responsible bidder and has the necessary construction capabilities to satisfactorily complete the Project within the contract time frames.

**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.** The Project Agreement attached hereto as Exhibit “A”, together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is hereby approved. The City Manager is authorized to sign the Project Agreement 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 14<sup>th</sup> DAY OF MAY, 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

**AGREEMENT BETWEEN  
THE CITY OF MARATHON**

**AND  
SHORELINE FOUNDATION, INC.**

**For  
Marathon Marina Dinghy Dock Project**

**THIS AGREEMENT** is made between the City of Marathon, Florida, a Florida municipal corporation whose address and principal place of business is 9805 Overseas Highway, Marathon, Florida 33050, (hereinafter the “City”) and (contractor) a Florida corporation whose address and principal place of business is: (address), (hereinafter the “Contractor”), and

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

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

**1. Scope of Services/Deliverables.**

- (a) The Contractor shall provide the Work at the unit prices of specified in **Exhibit “A” Marathon Marina Dinghy Dock Project** attached to this Agreement, and made a part hereof by this reference. Contractor shall be responsible for supplying all apparatus, equipment, labor, materials, means of transport, services and tools incidental or necessary to complete the Work as described in the Bid Documents.

**2. Term/Commencement Date and Liquidated Damages.**

- (a) Unless specified otherwise in **Exhibit “A”** the Contractor shall not commence work until the City issues Contractor a written Notice to Proceed and the Work shall be substantially completed within **(90)** calendar days after the date specified in the Notice to Proceed (“Substantial Completion”), and fully completed and ready for final payment in accordance with the Agreement Documents within **(120)** calendar days after the date specified in the Notice to Proceed (“Final Completion”). The City Manager may extend the term of this Agreement up to an additional fifteen (15) days at his sole discretion based upon the recommendation of the City’s Community Services Director, City Engineer or Utilities Director.
- (b) Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Work within the timeframes set forth in **Exhibit “A”**, unless extended by the City Manager. The City shall issue a written notice identifying the date the Work is deemed fully complete which shall be the Final Completion date.

- (c) City and Contractor recognize that time is of the essence in this Contract and that the City will suffer financial loss if the Work is not completed within the contract times specified herein, plus any approved extensions thereof allowed by the City. The Contractor also recognizes that the damages which the City will incur if the Work is not substantially completed on time and/or fully completed on time are not readily ascertainable at the time this Agreement is entered into, and the Contractor recognizes the difficulties involved in proving the actual loss suffered by City if the Work is not substantially completed on time and/or fully completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree that as liquidated damages to compensate the City, and not as a penalty for delay or as an incentive to complete on time, Contractor shall pay City (\$250.00) for each calendar day that expires after the time specified for Substantial Completion of the Work. After Substantial Completion, if Contractor fails to fully complete the Work within the time specified for Final Completion and readiness for final payment or any proper extension thereof granted by City, Contractor shall pay City (\$250.00) for each calendar day that expires after the time specified for Final Completion and readiness for final payment. Contractor agrees that the liquidated damage amounts specified herein bear a reasonable relationship to the actual damages to be suffered due to public inconvenience and damage to the City's reputation if the Contractor fails to substantially complete and/or fully complete the Work on time. The liquidated damages are not in compensation for any other damages, and expressly exclude damages for completion contractor expenses, lost/unrealized revenue, financing costs, professional services, attorney fees, and/or additional City staffing that may be incurred if the Work is not substantially completed on time and/or fully completed on time. All liquidated damages amounts will continue to be charged if the Contractor abandons the Work, or is terminated, and the Work is completed by another party.
- (d) Should the Substantial Completion and/or Final Completion and acceptance of Work, together with any modification or additions, be delayed beyond the time for performance set above because of lack of performance by the Contractor, it is understood and agreed that aside from any liquidated damages, the Contractor shall be liable to the City for all actual additional costs and/or losses incurred by the City including, but not limited to, completion contractor expenses, lost/unrealized revenue, financing costs, professional services, attorney fees, and/or additional City staffing that incurred because the Work was not substantially completed on time and/or fully completed on time.
- (e) Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Contractor, or if no money is due or the amount due is insufficient to cover the amount charged, the Contractor shall be liable for said amount.

**3. Compensation and Payment.**

- (a) For the purpose of developing the values to be paid on a monthly basis, Contractor shall submit a Schedule of Values to be reviewed and approved by the City at least thirty (30)

days before the first progress payment request. This Schedule of Values shall constitute the values of each unit within each category that will be paid for the Work (see, Application for Payment, Instructions “General Information”).

- (b) The Contractor shall invoice the City on a monthly basis. All invoices shall provide a detailed statement of the Work performed by Contractor for the period of time covered by the invoice. Contractor shall use the form attached hereto as **Exhibit “B,”** or such other form as may be provided by City from time to time, which is to be used by Contractor in requesting progress or final payments and which is to include such supporting documentation as is required by the Agreement Documents. The City will withhold 10% of each Pay Application as retainage which shall be paid upon Final Completion of the Work.
- (c) Each application for partial payment shall include partial lien/bond releases from all subcontractors and suppliers and a sworn statement by Contractor that partial payments received from City for the Work have been applied by Contractor to discharge in full all of Contractor’s obligations, including payments to subcontractors and suppliers, stated in prior applications for payment. If payment has been withheld from a subcontractor and/or supplier the sworn statement shall state the reasons for the nonpayment. All partial payment requests shall be accompanied by consents of surety for each subcontractor and supplier.
- (d) The final application for payment shall be accompanied by all documentation called for in the Agreement Documents, together with complete and legally effective releases and/or waivers (satisfactory to City) of all liens and claims arising out of or in connection with the Work and consent of the surety, if any, to final payment. If any subcontractor or supplier fails to furnish a sub-tier release, Contractor shall provide the City with a sworn written explanation for why the subcontractor or supplier has not been paid. The City may require the Contractor to provide security to ensure all disputed and/or undisputed amounts owed are paid; or withhold the disputed and/or undisputed amounts owed from the final payment until such time as the final releases and consents of surety for each subcontractor and supplier.
- (e) The City shall pay Contractor in accordance with the Florida Prompt Payment Act. When the Contractor believes the Work is substantially complete, the Contractor shall notify the City and within 15 calendar days the parties shall create and review a single draft punch list of items to be completed in order for the Work to be fully complete. The City shall review the draft punch list and within 5 days of being provided with the draft punch list, the City shall provide the Contractor with the Final Punch list of work to be completed for the Work to be deemed fully complete.
- (f) If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the Contractor the undisputed portion of the invoice. Upon written request of the Finance Director, the Contractor shall provide

written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

- (g) All payments shall only be from appropriations budgeted on an annual basis.

**4. Subcontractors.**

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

**5. City's Responsibilities.**

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

**6. Contractor's Responsibilities.**

- (a) Contractor shall exercise the same degree of care, skill and diligence in the performance of the Work as is ordinarily provided by a professional under similar circumstances. If at any time during the term of this Agreement or within one year from the completion of the Work, it is determined that the Contractor's deliverables are incorrect, defective or fail to conform to the Scope of Work or perform as intended, upon written notification from the City Manager, the Contractor shall at Contractor's sole expense, immediately correct the Work.
- (b) Contractor and its subcontractors shall comply with all applicable laws and regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall develop and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent public and private property and of underground facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be immediately remedied by Contractor. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and the City has made final payment to Contractor.

- (c) On a daily basis during the course of the Work, Contractor shall maintain the site free of debris and dust so as to minimize any inconvenience to surrounding properties. Upon completion of the Work, Contractor shall remove all apparatus, debris, equipment, materials, and tools created or used to construct the Work, and except for the Work or as otherwise directed by the City return the site in the same condition as at the beginning of the Work.
- (d) If the Work will create any obstructions, road closures or traffic impacts, Contractor shall provide the City and surrounding property owners with no less than seventy-two (72) hours prior notice of the anticipated or planned obstructions, road closures or traffic impacts.
- e) Permits: Unless otherwise provided, Contractor shall obtain and pay for all construction permits and licenses. The City shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for prosecution of the work.

**7. Termination.**

- (a) The City Manager without cause may terminate this Agreement upon thirty (30) days written notice to the Contractor, or immediately with cause.
- (b) Unless directed otherwise in writing by the City Manager, upon receipt of the City's written notice of intent to terminate or notice of actual termination, Contractor shall stop the Work.
- (c) In the event of termination by the City, the Contractor shall be paid for all Work accepted by the City Manager up to the date of termination.
- (d) The Contractor shall transfer all books, records, reports, working drafts, documents, maps, and data properly indexed and labeled pertaining to the Work to the City, in a hard copy and/or electronic format (as specified by the City) within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

**8. Insurance.**

The Contractor shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by the City. The underwriter of such insurance shall be qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida. If requested by the City Manager, the insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers. The insurance coverage shall include a minimum of:

- (a) Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law. Contractors with Worker's Compensation exemption shall not hold City liable for employee injury or claims.



(b) Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability as stated below:

a. Bodily Injury:

- 1) \$2,000,000 Each Person
- 2) \$2,000,000 Each Occurrence

b. Property Damage:

- 1) \$2,000,000 Each Occurrence, or
- 2) A combined single limit of \$2,000,000.

© Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than stated below:

Commercial General Liability (ISO Form CG 00 01)

a. Bodily Injury (including completed operations and products liability):

- 1) \$2,000,000 Each Occurrence
- 2) \$2,000,000 Annual Aggregate

b. Property Damage:

- 1) \$2,000,000 Each Occurrence
- 2) \$2,000,000 Annual Aggregate,
- 3) or a combined single limit of \$2,000,000

c. Property Damage liability insurance will provide Explosion, Collapse and Underground coverage where applicable.

d. Personal Injury, with employment exclusion deleted: \$2,000,000 Annual Aggregate

(d) The Contractor will add the City as an additional named insured on all insurance policies applicable to the Work under this Agreement. Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Certificates of Insurance shall include the City as additional named insured. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9. **Nondiscrimination.**

- (a) During the term of this Agreement, Contractor shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination.

10. **Agreement Documents.**

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

Change Orders

Agreement

Exhibits to the Agreement

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

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

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

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

12. **Indemnification.**

- (a) General Indemnity. Contractor shall indemnify and hold harmless the City, its officers, and employees, from or on account of all claims, damages, losses, liabilities and expenses, direct, indirect or consequential, including, but not limited to, fees and charges of engineers, architects, attorney's, consultants and other professionals and trial and appellate court and arbitration costs arising out of or resulting from the performance of the Work, excluding claims arising from the sole negligence of City. Such indemnification shall specifically include but not be limited to claims, damages, losses and expenses arising out of or resulting from (i) any and all bodily injuries, sickness, death, disease; (ii) injury to or destruction of

real property or tangible personal property, be it publicly or privately owned, including the loss of use resulting therefrom; (iii) other such damages, liabilities or losses received or sustained by any person or persons during or on account of any operations connected with the construction of the Work including the warranty period; (iv) the use of any improper materials; (v) any construction defect including patent defects; (vi) any act or omission of Contractor or his Subcontractors, agents, servants or employees; (vii) the violation of any federal, state, county or City laws, ordinances or regulations by Contractor, his Subcontractors, agents, servants or employees; (viii) the breach or alleged breach by Contractor of any term of this Agreement, including the breach or alleged breach of any warranty or guarantee.

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

City's rights and immunities under the common law or Section 768.28 *Florida Statutes*, as amended from time to time. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party described in this Section and its subparts.

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

**13. Notices/Authorized Representatives.**

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

For the City: Charles Lindsey  
City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to: David Migut  
City Attorney  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

For The Contractor: James Royo, President  
Shoreline Foundation, Inc.  
2781 SW 56<sup>th</sup> Avenue  
Pembroke Park, FL 33023  
(954) 985-0460 Phone  
(954) 985-0462 Fax

**14. Governing Law.**

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

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

(a) This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

- (b) No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document. This Agreement may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof via a written Change Order, in the form attached hereto as **Exhibit “C,”** or such other form as may be provided by City from time to time.

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

- (a) All records, books, documents, maps, data, deliverables, papers, and financial information (the “Records”) that result from the Contractor providing services to the City under this Agreement shall be the property of the City. The Records shall be properly indexed and labeled.
- (b) The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Contractor involving transactions related to this Agreement.
- (c) The City may terminate this Agreement for refusal by the Contractor to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

**17. Nonassignability.**

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

**18. Severability.**

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

**19. Independent Contractor.**

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

20. **Compliance with Laws.**

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

21. **Waiver.**

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

22. **Survival of Provisions.**

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

23. **Prohibition of Contingency Fees.**

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

24. **Counterparts.**

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

25. **Authorization to Sign Agreement.**

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

26. **Non-Exclusive Agreement.**

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

**27. Performance and Payment Bonds.**

- (a) Prior to commencing the Work identified in **Exhibit “A,”** the Contractor shall deliver to the City Performance and Payment Bonds in the form attached hereto as **Exhibit “D”** securing its obligations to be performed for the Work. Each Bond shall be in an amount equal to the contract price for the Work. The Performance and Payment Bonds will cease to be effective on the date of the City’s final payment for the Work. Effective immediately thereafter, Contractor shall provide a Maintenance Bond for the one year warranty period commencing on the date of the City’s final payment for the Work in the amount of one hundred twenty five percent (125%) of the Work price.
- (b) City may deem this Section “Not Applicable” as provided on the Instructions to Bid for the Work.

**28. Continuing the Work.**

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

**29. Changes In The Work.**

- (a) Without invalidating the Agreement and without notice to any surety, City may, at any time or from time-to-time, order additions, deletions, or revisions in the Work by a Written Amendment or Change Order. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved.
- (b) The Contract Price may only be changed by a written Change Order. Any claim for an increase or decrease in the Contract Price shall be based on written notice of intent to claim delivered to the City promptly [but in no event later than three (3) business days after the first occurrence of the event giving rise to the amount of the claim]. Contractor shall deliver to the City a good faith estimate of the cost and time impacts caused by the claim causing event within seven (7) calendar days of the first occurrence of the event giving rise to the claim. Within seven (7) calendar days of the conclusion of the claim causing event, but no later than the Substantial Completion date, Contractor shall deliver to the City a full and complete written claim identifying all costs and time impacts that the Contractor believes should be paid due to the claim causing event and shall include full and final substantiation for all price and time adjustments. The City Manager will review the claim and make a decision on the request. The City Manager’s decision will be final unless

within seven (7) calendar days of the date of the City Manager's decision the Contractor provides the City with written notice expressly stating that the Contractor disputes the decision and intends to pursue the matter via litigation. Failure by Contractor to strictly comply with the provisions of this article will result in a waiver of the claim.

**30. Subsurface Conditions**

- (a) Information shown on the Drawings and/or indicated in the Agreement Documents as to the location of existing utilities and subsurface conditions has been prepared from the most reliable data available to the City. This information is not guaranteed, however, and it shall be the Contractor's responsibility to determine the location, character and depth of existing utilities. The City expressly disclaims any warranty as to the underground conditions to be encountered. The Contractor should not rely on locations, condition, or quantity of subsurface structures or conditions depicted on drawings, as the locations, condition, and quantities are approximations.

**31. Compensation for Delay.**

- (a) **NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE CITY BY REASON OF ANY DELAYS, DISRUPTION, INTERFERENCE, OR HINDRANCE** (collectively "Delay"). Notwithstanding anything to the contrary contained in the Agreement Documents, the Contractor shall not be entitled to additional compensation for any Delay unless the Delay shall have been caused by acts constituting willful or intentional interference by the City with the Contractor's performance of the Work, and then only where such acts continue after Contractor's written notice to the City of such interference.

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**IN WITNESS WHEREOF**, the parties have executed this Agreement on the respective dates under each signature. The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same; and by Contractor by and through its President, who has been duly authorized to execute same.

ATTEST:

CITY OF MARATHON

\_\_\_\_\_

Diane Clavier, City Clerk

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

Charles Lindsey, City Manager

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

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

\_\_\_\_\_

David Migut, City Attorney

CONTRACTOR

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

James Royo, President

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

**EXHIBIT "A"**

**SCOPE OF WORK**

**City of Marathon**

**Marathon Marina Dingy Dock Project**

**Date of Issue: February/15/2019**

**By: The Weiler Engineering Corporation**

**Briefly described as: The construction of this project consists of labor, materials and equipment necessary to construct a dingy dock with heavy duty brackets, gussets, tie-up cleats and access ladders, an aluminum gangway that is ADA compliant, a landing to access dinghy docks, and 12" diameter pressure treated wood pilings with durosleeve pvc wrap for the dock and landing for the City of Marathon.**

**All sections, addendums and forms from the Bid Documents as bid on March 27, 2019 are to be included as contract documents.**



COUNCIL AGENDA STATEMENT

Meeting Date: May 14, 2019  
To: Honorable Mayor and Councilmembers  
From: Carlos A. Solis, P.E., Director of Public Works & Engineering  
Through: Chuck Lindsey, City Manager

Agenda Item: **Resolution 2019-42**, Approving Amendment 1 To Extend Grant Agreement No. 2140 Between The City And The Monroe County Tourist Development Council For the Oceanfront Park Improvements, And Providing For An Effective Date

BACKGROUND & JUSTIFICATION:

The Monroe County Tourist Development Council awarded the grants to the City of Marathon during the FY2018 and FY2019 Capital Funding. The City of Marathon executed the grant agreements. Due to the many ongoing projects resulting from Hurricane Irma, and conflicts with other work, City staff requested a time extension for the completion of the Projects to December 2019. The District III of the Tourist Development Council recommended approval at the February 27, 2019, Advisory Council meeting. The Public Works and Parks and Recreation Departments will oversee the implementation of the project with a completion date of December 31, 2019.

ATTACHMENTS

MCTDC Grant Agreement No. 2140 Amendment 1

CONSISTENCY CHECKLIST:

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

FISCAL NOTE:

The Adopted FY19 Capital Infrastructure budget includes appropriations of revenues and expenditures in the amount of \$76,400 for project expenses, and TDC grant revenue reimbursement. Work not completed by September 30, 2019 will have to be re-appropriated during the City’s FY20 budget process.

RECOMMENDATION: Approval of Resolution

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-42**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AMENDMENT 1 TO EXTEND GRANT AGREEMENT NO. 2140 BETWEEN THE CITY AND THE MONROE COUNTY TOURIST DEVELOPMENT COUNCIL FOR THE OCEANFRONT PARK IMPROVEMENTS, AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Marathon (the “City”) applied for grant assistance for improvements and upgrades for facilities at Oceanfront Park under the Monroe County Tourist Development Council (the “TDC”) Grants Program and was the grant was awarded in the amount of \$76,400; and

**WHEREAS**, it has become necessary to revise the termination date of the project to December 31, 2019 due to delays in the construction process, and

**WHEREAS**, the City has determined that it is in the best interest of the City to enter into Amendment 1 to Agreement 2140 with the TDC Grants Program.

**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 are incorporated herein

**Section 2.** The Council hereby approves Amendment 1 to Agreement No. 2140 between the City and the TDC Grants Program that is attached as Exhibit “A” hereto. The Mayor is authorized to execute said Amendment 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 14<sup>TH</sup> DAY OF MAY, 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

**AMENDMENT (2<sup>nd</sup> AMENDMENT) TO AGREEMENT**

**THIS AMENDMENT** to Agreement dated this \_\_\_\_\_ day of \_\_\_\_\_ 2019, is entered into by and between the Board of County Commissioners for Monroe County, on behalf of the Tourist Development Council, and **The City of Marathon** a Government agency organized and operating under the laws of the state of Florida (Grantee).

**WHEREAS**, there was an Agreement entered into on October 17, 2018 between the parties, awarding \$76,400 to Grantee for the **Oceanfront Park Renovation Project (“Agreement”)**; and

**WHEREAS**, it has become necessary to revise the termination date of the project to December 31, 2019 due to delays in the construction process, and

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein the parties agree to the amend Agreement as follows:

1. Paragraph 1 of the agreement shall be revised to read as follows: This Agreement is for the period of **October 17, 2018 to December 31, 2019**. This Agreement shall remain in effect for the stated period unless one party gives to the other written notification of termination pursuant to and in compliance with paragraphs 7, 12 or 13 of the original Agreement dated October 17, 2018.

2. Any references to termination date and submission of invoices shall be revised to read December 31, 2019.

3. The remaining provisions of the agreement dated October 17, 2018 shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties have set their hands and seal on the day and year first above written.

(SEAL)  
Attest: Kevin Madok, Clerk

Board of County Commissioners  
of Monroe County

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
Mayor/Chairman

**The City of Marathon**

**Attest:**

By. \_\_\_\_\_  
**City Clerk**

By \_\_\_\_\_  
**Mayor**

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Print Name**

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

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

COUNCIL AGENDA STATEMENT



Meeting Date: May 14, 2019  
To: Honorable Mayor and City Councilmembers  
From: Chuck Lindsey, City Manager

Agenda Item: **Resolution 2019-43**, Approving Amendment Five Of The Inter-Local Agreement Between The City Of Marathon And Monroe County For Funding Of Ferry Service To Pigeon Key; Authorizing The City Manager To Execute The Inter-Local Agreement And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date

BACKGROUND & JUSTIFICATION:

Since 2007, the old Seven Mile Bridge has been closed to vehicular traffic due to deterioration. Because the bridge needs to be rebuilt or significantly renovated, the Florida Department of Transportation (FDOT), the owner, has taken certain steps to limit use of the structure to pedestrian and bicycles. As a result of the current accessibility limitations, a ferry service mode of transportation to Pigeon Key, an island owned by Monroe County and a popular tourist destination was established in December of 2007.

The City of Marathon Council previously approved the request by Pigeon Key Foundation to be part of a Monroe County coalition to support the ferry service from Marathon to Pigeon Key at 7.5 percent or \$18,750 per year; whichever is less (on a reimbursement basis) for routine ferry services excluding special events. This 5th amendment will increase the amount up to \$19,143.90 or 7.5% whichever is less on an annual term beginning in July of 2019.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	_____	_____
2. Other _____	_____	_____
3. Not applicable_____		

FISCAL NOTE:

RECOMMENDATION: Approve Resolution



**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-43**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A FIFTH AMENDMENT OF THE INTER-LOCAL AGREEMENT BETWEEN THE CITY OF MARATHON AND MONROE COUNTY FOR FUNDING OF FERRY SERVICE TO PIGEON KEY; AUTHORIZING THE CITY MANAGER TO EXECUTE THE INTER-LOCAL AGREEMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the Florida Department of Transportation (FDOT) has jurisdiction over and maintains the Old Seven-Mile Bridge from the City of Marathon (City) to Pigeon Key in Monroe County (County); and

**WHEREAS**, Pigeon Key is presently occupied by the Pigeon Key Foundation, a non-profit organization devoted to marine education and historic interpretation of the Florida Keys' heritage; and

**WHEREAS**, on the 16<sup>th</sup> day of May, 2012 the parties executed an Interlocal Agreement (ILA) outlining the City's reimbursement payment for the ferry service to Pigeon Key at a rate of 7.5% for one year of the cost of the contractor invoiced base (routine) ferry service or \$18,750, whichever is less; and

**WHEREAS**, on the 15<sup>th</sup> day of May 2013, the parties executed Amendment 1 to the ILA extending the funding of the ferry service for another year until June 30, 2014; and

**WHEREAS**, on the 22<sup>nd</sup> day of April, 2014, the parties executed Amendment II to the ILA extending the funding of the ferry service for another year until June 30, 2015; and

**WHEREAS**, on the 15<sup>th</sup> day of May, 2015, the parties executed Amendment III to the ILA extending the funding of the ferry service for three years until June 30, 2018; and

**WHEREAS**, on the 12<sup>th</sup> day of June 2018, the parties executed Amendment IV to the ILA extending the funding of the ferry service for three years until June 30, 2021; and

**WHEREAS**, the FDOT, the County and the Pigeon Key Foundation have obligated partial funds for three more one year terms of ferry service in order to maintain traffic between the City and Pigeon Key to permit Pigeon Key Foundation to continue its educational and historic functions;

**WHEREAS**, Monroe County received a request from the ferry service contractor to increase the base ferry price, the City's portion to the increase in the base ferry price is 7.5% of the base ferry service (no special events or overhead costs or charges) up to \$19,143.90, whichever is less, on an annual term beginning July 1, 2019 for three (3) consecutive terms.

**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 Fifth Amendment to the ILA between the City, and the County, a copy of which is attached hereto as Exhibit "A", together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is hereby approved. The City Manager is authorized to sign the Amendment 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 14<sup>th</sup> DAY OF MAY, 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:**

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David Migut, City Attorney

**AMENDMENT 5 TO THE INTERLOCAL AGREEMENT  
BETWEEN CITY OF MARATHON AND MONROE COUNTY**

**THIS AMENDMENT 5 to the INTERLOCAL AGREEMENT (ILA)** is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2019 between Monroe County, a political subdivision of the State of Florida (hereafter, the COUNTY) and the City of Marathon, a municipal corporation organized and existing under the laws of the State of Florida (hereafter, the CITY)

**WHEREAS**, on the 16<sup>th</sup> day of May, 2012 the parties executed an ILA outlining reimbursement for the ferry service to Pigeon Key at a rate of 7.5% of the cost of the base service or \$18,750, whichever is less, for one year; and

**WHEREAS**, on the 15<sup>th</sup> day of May, 2013 the parties executed Amendment 1 to the ILA extending the funding of the ferry service for another year until June 30, 2014; and

**WHEREAS**, on the 21<sup>st</sup> day of May, 2014 the parties executed Amendment 2 to the ILA extending the funding of the ferry service for another year until June 30, 2015; and

**WHEREAS**, on the 20<sup>th</sup> day of May, 2015 the parties executed Amendment 3 to the ILA extending the funding of the ferry service for an additional 3 years until June 30, 2018; and

**WHEREAS**, on the 20<sup>th</sup> day of June, 2018 the parties executed Amendment 4 to the ILA extending the funding of the ferry service for an additional 3 years until June 30, 2021; and

**WHEREAS**, Monroe County received a request from the ferry service contractor to increase the base ferry price, if the increase is approved by the County, the City agrees to increase their contribution towards the base ferry price; and

**WHEREAS**, the City agrees to the increase in the base ferry price:

**NOW THEREFORE**, in consideration of the mutual promises contained herein, the COUNTY and the CITY agree to amend the ILA as follows:

1. **The City of Marathon will reimburse Monroe County 7.5% of the base ferry service (no special events or overhead costs or charges) up to \$19,143.90, whichever is less, on an annual term beginning July 1, 2019 for three (3) consecutive terms.**

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

2. All other terms and conditions of the ILA, as amended, are in effect and remain unchanged.

BOARD OF COUNTY COMMISSIONERS OF  
MONROE COUNTY, FLORIDA

CITY OF MARATHON:

BY: \_\_\_\_\_  
Mayor/Chairperson

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

(SEAL)  
Attest: KEVIN MADOK, CLERK

(SEAL)

BY: \_\_\_\_\_  
Deputy Clerk

ATTEST: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

COUNCIL AGENDA STATEMENT



Meeting Date: May 14, 2019  
To: Honorable Mayor & Members of the City Council  
From: Dan Saus, Utilities Manager  
Through: Charles Lindsey, City Manager

Agenda Item: **Resolution 2019-44**, Approving A Contract for Service Area 3 Wastewater Pre-Treatment To Reynolds Construction of Florida, LLC In The Amount Of \$365,000.00; Authorizing The City Manager To Execute The Contract And Appropriate and Expend Funds On Behalf Of The City; And Providing For An Effective Date.

BACKGROUND & JUSTIFICATION:

The City of Marathon (the “City”) issued an Invitation to Bid (ITB) for “Service Area 3 Wastewater Pre-Treatment,” (the “Project”) on April 8, 2019, with sealed bids opened and publicly read on May 3, 2019 at 3:00 PM at City Hall.

We received only one bid, attached as Exhibit “A”. City staff recommends the award of the contract the lowest responsive and a responsible bid for the work in the amounts of \$365,000.00. The proposed bid award and subsequent contract will provide the City with a pre-treatment system that will reduce the CBOD loading to the plant and help us achieve our AWT requirements. This work is grant reimbursable through the ACOE grant agreement.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	<u>X</u>	___
2. Other – 2010 Sewer Mandate	<u>X</u>	___
3. Not applicable	<u>X</u>	___

FISCAL NOTE:

The FY19 Wastewater Utility Fund budget includes appropriations of \$4,373,500 for wastewater capital improvements, however, this specific project wasn’t contemplated when the budget was prepared. Approval of this resolution will appropriate funds in the budget to complete this project This purchase is reimbursable from the FKWQIP ACOE funding allocation of \$998,000 that the City was granted for FY19.

RECOMMENDATION: Approval of Resolution.

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-44**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A CONTRACT FOR “SERVICE AREA 3 WASTEWATER PRE-TREATMENT PROJECT” TO REYNOLDS CONSTRUCTION OF FLORIDA, LLC IN THE AMOUNT OF \$365,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND APPROPRIATE AND EXPEND FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marathon (the “City”) issued an Invitation to Bid (ITB) on April 8, 2019 for “Service Area 3 Wastewater Pre-Treatment Project”, (the “Project”); the bids were read aloud at City Hall on May 3, 2019 at 3:00 PM; and

**WHEREAS**, the lowest bid that was found to be responsive and responsible was received from Reynolds Construction of Florida, LLC in the amount of \$365,000.00; and

**WHEREAS**, the City staff wish to enter into a contract with Reynolds Construction of Florida, LLC, which will enable the City to complete the Service Area 3 Pre-Treatment Project,

**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.** The contract attached hereto as Exhibit “B”, 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 sign 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 14<sup>th</sup> DAY OF MAY, 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

# EXHIBIT "A"

Service Area 3 Wastewater Pretreatment  
City of Marathon  
Bid Documents

## SECTION 00300

### BID FORM

#### PART 1 GENERAL

##### 1.01 Description

The following Bid, for the (1) SERVICE AREA 3 WASTEWATER PRETREATMENT is hereby made to the City of Marathon, hereafter called the Owner. This Bid is submitted by (2):

Reynolds Construction, LLC dba Reynolds Construction of Florida, LLC

300 E. Broad Street

Fairburn, GA 30213

770-969-4040

(1) Name of Project as shown in the Invitation for Bids

(2) Name, address, and telephone number of Bidder

##### 1.02 The Undersigned:

###### A. Acknowledges receipt of:

1. Project Manual and Drawings identified within the Project Manual.

2. Addenda:	Number	<u>1</u>	Dated	<u>4/24/19</u>
	Number	<u>2</u>	Dated	<u>4/30/19</u>
	Number	<u>      </u>	Dated	<u>      </u>

B. Has examined the site and all Bidding Documents and understands that in submitting his Bid, he waives all right to plead any misunderstanding regarding the same.

###### C. Agrees:

1. To hold this Bid open for 90 calendar days after the bid opening date.

2. To accept the provisions of the Instructions to Bidders regarding disposition of Bid Security.

Reynolds Construction of Florida, LLC

NAME OF BIDDER

Section 00300

Page 1 of 5



3. To enter into and execute a contract with the Owner, if awarded on the basis of this Bid, and to furnish a Performance Bond and a Labor and Material Payment Bond in accordance with the Instructions to Bidders.
4. To accomplish the work in accordance with the Contract Documents.
5. To begin work not later than **15** days after the issuance of a Notice to Proceed; to achieve substantial completion of the work within **45** calendar days of the date of the Notice to Proceed; and to achieve final completion within **15** calendar days from substantial completion.
6. To accept the provisions of the Agreement as to liquidated damages in the event of failure to complete the work on time.

**1.03 Bid Schedule**

The Bidder hereby agrees to perform all work as required by the Contract Documents for the following Base Bid Lump Sum plus any selected additive alternates. All work required to be performed by the Contract Documents is to be included within the following Pay Items, inclusive of furnishing all manpower, equipment, materials and performance of all operations relative to construction of the project. Work for which there is not a Pay Item will be considered incidental to the Contract and no additional compensation will be allowed. This Lump Sum Bid shall be considered a Not-to-Exceed price. Should this Lump Sum Bid amount be exceeded by the Contractor without prior written authorization from the Owner, the Contractor does so at its own risk.

**Lump Sum Bid (Numeric):**    \$ 365,000.00 \_\_\_\_\_

**Lump Sum Bid (Written):**

Three Hundred Sixty-Five Thousand \_\_\_\_\_ **Dollars and No Cents**

**1.04 List of Subcontractors**

List the subcontractors, if any that the Bidder proposes to use to perform a portion of the work with a value of more than one half of one percent of the total bid. Prior to award, the Bidder must provide evidence of each subcontractor's valid business license, and evidence of each subcontractor's valid certificate of competency or registration under Ch. 489, Fla. Stat.

If the Bidder fails to list a subcontractor or lists more than one subcontractor for the same portion of work and the value of that work is more than one half of one percent of the total bid, the Bidder shall be considered to have agreed to perform that portion of the work without the use of a subcontractor and to have represented the Bidder to be qualified to perform that work. The Bidder shall not remove or replace subcontractors listed in the bid subsequent to the lists being made public at the bid opening, except upon good cause shown.

Reynolds Construction of Florida, LLC  
\_\_\_\_\_  
NAME OF BIDDER

## EXHIBIT "B"

### CITY OF MARATHON AREA 3 WASTEWATER PRE-TREATMENT PROJECT

THIS CONTRACT (the "Contract") is dated this 14th day of May by and between the CITY OF MARATHON, FLORIDA (hereinafter called the "CITY") and Reynolds Construction of Florida, LLC (hereinafter called "Contractor") located at 300 Broad Street Fairburn, GA 30213.

The City and Contractor in consideration of the mutual covenants hereinafter set forth, and subject to the terms and conditions herein stated, the parties agree as follows:

**1. Effect/Scope of Work.**

The Contractor shall furnish all Work as specified in the Contract Documents. The work is generally described as the Service Area 3 Wastewater Pre-Treatment Project. Therefore, all work and associated compensation shall be made under the terms, conditions and prices of this Contract, the contract documents and with the Contractor's bid as specified herein.

**2. Contractor Performance.**

If Contractor fails to perform according to the requirements of this Contract, City shall notify Contractor in writing. Should the Contractor fail to correct the problem within three (3) calendar days, the City may take further action up to termination.

**3. Compensation/Payment.**

- a. Contractor shall submit copies of all receipts and other documentation supporting lawful disposal of liquid sludge for each deposit. Contractor shall provide City the name and location of the final destination and disposal facility prior to commencement of Work and within five (5) calendar days of any changes. The City shall be provided with copies of receipts from the disposal facility for each deposit.
- b. Contractor shall provide the City with an invoice on a monthly basis within ten (10) days of the end of each month stating the services provided in the preceding month. Invoice shall contain copies of documentation for all solid waste disposal, sludge disposal and preventative maintenance log.
- c. The Contractor shall be compensated at the unit prices specified on Exhibit C based upon the actual Work completed for the month.
- d. The City shall make payment of said invoices of approved amounts due, as required under the Florida Prompt Payment Act. No payments shall be due or payable for Work not performed or materials not furnished.

**4. Contract Amendment.**

Change Order means a document, which is signed by Contractor and City, and authorizes an addition, deletion or revision in the Scope of Work, or an adjustment in compensation or contract time, issued on or after the effective date of the Contract.

**5. Term.**

This Contract shall be effective upon execution by both parties. This Contract shall remain in effect for two years from the date of execution unless terminated earlier in accordance with this Contract. The City Manager may, at his/her sole option, extend this Contract on the same terms and conditions for two additional one year term extensions by written notice delivered at least sixty (60) days prior to termination of this Contract.

**6. Contractor's Responsibilities.**

- a. The Contractor has carefully examined the Scope of Work; the area for the Work contemplated on the Invitation to Bid and has made sufficient investigations to fully satisfy himself as to site conditions, and assumes full responsibility for all related Scope of Work.
- b. The Contractor agrees to coordinate all Work with City's wastewater plant operator or designee.
- c. The Contractor shall maintain applicable license(s) and provide City with all license renewals within ten (10) calendar days of expiration date.
- d. Contractor shall secure and pay for all tipping fees, licenses, insurances and inspections necessary for the execution of the Work. Upon termination of this Contract for any reason, Contractor shall transfer such permits, if any, and if allowed by law, to the City.
- e. The Contractor hereby certifies its capability of performing all required Work including clean-up from City premises in a neat and timely manner immediately following completion of Work. Contractor agrees to leave City premises in the same or better condition as provided.
- f. The Contractor shall operate the centrifuge equipment using methods that will minimize odor and noise within the limits and capabilities of the City's wastewater facilities. The Contractor agrees that the Work shall be performed in such a manner as to provide a minimum of inconvenience and odors to any neighboring community residing in the area. Any debris or other material spilled shall be immediately removed, cleaned and treated with hydrated lime or other method including the area and surrounding area acceptable to the City.
- g. The Contractor shall continuously maintain adequate protection of all his Work from damage and shall protect public and private property from injury or loss arising in connection with this contract as follows:

1. The Contractor shall take all necessary precautions for the safety of employees in the performance of the Work on, about or adjacent to the premises, and shall comply with all applicable provisions of Federal, State, and local laws, including, but not limited to the requirements of the Occupational Safety and Health Act of 1970, and amendments thereto, the Construction safety Act of 1969, and amendments thereto, and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed.
  2. The Contractor shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by him, on the Work. Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this contract.
  3. The Contractor shall erect and properly maintain at all times, all necessary safeguards, including sufficient lights, protective devices and danger signals on or near the Work, signage, barricades, or indication of other hazards and obstructions to traffic, and take all necessary precautions to prevent accidents and injuries to persons or property on or near the Work.
  4. The Contractor shall be completely responsible for, and shall replace and make good all loss, injury, or damage to any property (including landscaping, walks, drives, or structures of the City and of any land adjoining any work sites, which may be caused by Contractor. The Contractor shall, at all times while the Work is in progress, use extraordinary care to see that adjacent property, whether real or personal, is not endangered in any way by reason of fire, water, or sludge, and shall take all necessary or directed steps, to protect all property. The same care shall be exercised by all Contractor's and subcontractor's employees.
  5. Buildings, sidewalks, fences, shade trees, lawns and all other improvements shall be duly protected from damage by Contractor. Property obstructions, such as sewers, drains, water or gas lines, conduits, railroads, poles, walls, posts, galleries, bridges, manholes, valve boxes, meter boxes, street monuments, etc., shall be carefully protected from injury and shall not be displaced. The Contractor shall give due notice to any department or public service corporation controlling such items as manholes, valve boxes, meter boxes, street monuments, etc., prior to impacting and shall be held strictly liable to the affected utility if any such appurtenances are disturbed, damaged or covered up during the course of the Work.
- h. Contractor agrees that the Work will be primarily performed between the hours of 7:00 A.M. and 6:00 P.M., Monday through Friday. Emergency work may also be required.

**7. Vehicles and Equipment.**

Contractor shall have on hand at all times and in good working order such vehicles, machinery, tools, accessories, and other items necessary to perform the Work under this Contract. All vehicles used by Contractor to provide services under this Contract shall be painted uniformly with the name of Contractor, business telephone number, and the number of the vehicle in letters legible by the public and as required by FDOT.

**9. Insurance.**

- a. The Contractor shall secure and maintain throughout the duration of this Contract, insurance of such type and in such amounts necessary to protect its interest and the interest of the City against hazards or risks of loss as specified below (as described in Exhibit "B"). The underwriter of such insurance shall be qualified to do business in Florida, be rated AB or better, and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers, and naming the City as an additional insured.

**10. Certificate of Insurance.**

Contractor shall provide the City Manager with Certificates of Insurance for all required policies. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Contract and shall state that such insurance is as required by this Contract. The City reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the City. If a policy is due to expire prior to the completion of the services, renewal Certificates of Insurance or policies shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the City Manager.

**11. Additional Insured.**

- a. The City is to be specifically included as an Additional Insured for the liability of the City resulting from operations performed by or on behalf of Contractor in performance of this Contract. Contractor's insurance, including that applicable to the City as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the City shall be in excess of and shall not contribute to Contractor's insurance. Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.
- b. All deductibles or self-insured retentions must be declared to and be approved by the City Manager. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

**12. Assignment and Amendment.**

No assignment by the Contractor of this Contract or any part of it, or any monies due or to become due, shall be made, nor shall the Contractor hire a subcontractor to perform its duties under this Contract without prior written approval of the City Manager. This Contract may only be amended by the parties with the same formalities as this Contract.

**13. Non-Waiver.**

The approval, and/or acceptance of any part of the Work by the City shall not operate as a waiver by City of any other terms and conditions of the Contract.

**14. Indemnification.**

- a. Contractor hereby agrees to indemnify, defend and hold harmless the City, and City's officers and employees from liabilities, damages, losses and costs (including, but not limited to, reasonable attorney's fees at any level) on account of or relating to the Work, the bid, any resulting contract or acts related thereto, and whether caused in whole or part by the negligence or fault of City, or otherwise.
- b. The provisions of this INDEMNIFICATION are solely for the benefit of the Contractor and City and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- c. This indemnification obligation shall survive the termination of this Contract.

**15. Ownership and Access to Public Records.**

15.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Contractor providing services to the City under this Agreement shall be the property of the City.

15.2 The Consultant is a "Contractor" as defined by Section 119.0701(1)(a), Florida Statutes, and shall comply with the public records provisions of Chapter 119, Florida Statutes, including the following:

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

Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City Clerk, in a format that is compatible with the information technology systems of the City.

- 15.3 “Public Records” is defined in Section 119.011(12), Florida Statutes, and includes all documents, papers, letters, photographs, data processing software, or other material, regardless of physical form, made or received in connection with this Agreement.
- 15.4 Should the Contractor assert any exemption to the requirements of Chapter 119 and related law, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the Consultant.
- 15.5 The Contractor consents to the City’s enforcement of the Consultant’s Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the Consultant shall pay all court costs and reasonable attorney’s fees incurred by the City.
- 15.6 The Contractor’s failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by the Consultant shall be grounds for immediate unilateral cancellation of this Agreement by the City.
- 15.7 **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-743-0033, [CITYCLERK@CI.MARATHON.FL.US](mailto:CITYCLERK@CI.MARATHON.FL.US), OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.**

**16. No Assignment.**

Contractor shall not sell, assign, transfer or convey this Contract, in whole or in part, without the prior written consent of the City Manager. Any such assignment without prior approval shall be void ab initio.

**17. Applicable Law.**

Contractor shall be solely responsible for and shall comply with all federal, state and local laws regarding the Work required hereunder.

**18. Termination.**

- a. Either party may terminate this Contract without cause upon 30 days written notice to the other party.
- b. Upon notice of such termination, the City shall determine the amounts due to the Contractor for services performed up to the date of termination. The Contractor

shall not be entitled to payment of any lost profits or for Work performed after the date of termination.

- c. After receipt of a notice of termination, and except as otherwise directed, the Contractor shall stop all Work under this Contract, and shall do so on the date specified in the notice of termination.
- d. The City may terminate this Contract upon five (5) days written notice if the Contractor defaults on any material term of this Contract.

**19. Choice of Law.**

This Contract shall be governed by the laws of the State of Florida. Venue shall lie in Monroe County. This Contract and all actions thereunder shall in all respects be governed by and interpreted and enforced pursuant to the laws of the State of Florida. Any suit arising out of this Contract shall be brought in Monroe County, Middle Keys Division, Florida or U.S. Southern District Court.

**20. Waiver of Jury Trial and Venue.**

The City and Contractor knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon this Contract and arising out of, under, or in connection with the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party.

**21. Attorneys' Fees.**

If either the City or Contractor is required to enforce the terms of this Contract by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including, but not limited to, court costs, and reasonable attorneys' fees together with court costs incurred in any litigation at any trial and appellate proceedings.

**22. Severability.** Should any provision, paragraph, sentence, word, or phrase contained in this document be determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word, or phrase shall be deemed modified to the extent necessary in order to conform with such laws, and the remainder shall remain unmodified and in full force and effect.

**23. Counterparts.**

This Contract may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

**24. Notices.**

Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to:



*For City:*

Charles Lindsey  
City Manager  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050  
Telephone: (305) 743-0033  
Facsimile: (305) 289-4123

*For Contractor:*

Name / Title \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_  
City, State Zip \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

IN WITNESS WHEREOF the parties hereto have executed this Contract on the day and date first above written.

Attest:

CITY OF MARATHON

By: \_\_\_\_\_  
**Diane Clavier, City Clerk**

By: \_\_\_\_\_  
**Charles Lindsey, City Manager**

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

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

Signed, sealed and witnessed in the presence of:

As to Contractor: Reynolds Construction of Florida, LLC

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

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

COUNCIL AGENDA STATEMENT



Meeting Date: May 14, 2019  
To: Honorable Mayor & Members of the City Council  
From: Dan Saus, Utilities Manager  
Through: Chuck Lindsey, City Manager

Agenda Item: **Resolution 2019-45**, Approving A Contract Change Order #7 With Reynolds Construction For The Area 3 & 4 WWTP Upgrade Project In An Amount Not To Exceed \$368,876.97; Authorizing The City Manager To Execute The Contract Change Order #7 To Appropriate And Expend Funds On Behalf Of The City; And Providing For An Effective Date

BACKGROUND & JUSTIFICATION:

The City of Marathon put out a bid for “Marathon Area 3 & 4 WWTP Upgrades” back in 2016 and Reynolds construction won the bid and was awarded the contract. The membrane upgrade as well as the tank rehabilitation project for the Area 5 WWTP was added to this contract in change order #4.

This Change Order #7 is for additional work, in the amount of \$368,876.97 to provide many plant upgrades including; major required repairs to the existing influent equalization tank interior, upgraded odor control piping (to avoid the same concrete deterioration issues in the future), relocation of existing influent equalization pumps and piping to outside the tank for safety and serviceability in the future, and several other miscellaneous improvements many of which can be much more easily be done now while the plant upgrade is in progress and especially while grant funding is still available.

The complete change order summary is attached as Exhibit C.

This project is grant reimbursable from Grant LP44041.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	_____	_____
2. Other – 2010 Sewer Mandate	_____	_____
3. Not applicable	_____	_____

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 FDEP LP44041 \$17M Mayfield grant for reimbursement.

RECOMMENDATION:

Approval of the Resolution

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-45**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A CONTRACT CHANGE ORDER #7 WITH REYNOLDS CONSTRUCTION FOR THE AREA 3 & 4 WWTP UPGRADE PROJECT IN AN AMOUNT NOT TO EXCEED \$368,876.97; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT CHANGE ORDER #7 TO APPROPRIATE AND EXPEND FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Marathon (the “City”) awarded the contract for the “Area 3 & 4 WWTP Upgrade Project” (the “Project”) and issued a notice to proceed on January 3, 2017; and

**WHEREAS**, change order #7 is found to be reasonable for the additional work requested by City staff and recommended by the city’s engineer to be performed by Reynolds Construction, as the General Contractor, in the amount of \$368,876.97; and

**WHEREAS**, the City wishes to execute this change order #7 for additional piping, pump modifications, new headworks, etc.

**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 #7 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 14th DAY OF MAY 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

**EXHIBIT “C”  
CHANGE ORDER**

**CHANGE ORDER NO. 07**

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**TO: City of Marathon**

**PROJECT: Marathon Area 3&4 WWTP Upgrades**

**CONTRACTOR: Reynold’s Construction**

**DATE: May 14, 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 on **Exhibit “1”** attached hereto and by this reference made a part hereof.

This Change Order constitutes full, final, and complete compensation to the Contractor for all costs, expenses, overhead, and profit, and any damages, and/or time adjustments of every kind that the Contractor may incur in connection with the above referenced changes in the Work, and any other effect on any of the Work under the Agreement. The Contractor acknowledges and agrees that (a) the Contract Price of **\$6,485,865.27** under the Agreement will be **changed** by this Change Order, and (b) the schedule for performance of Work will be **changed** by this Change Order. Contractor 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.

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**CONSENT OF SURETY TO CHANGE ORDER**

The Surety Agrees that this change order is not a cardinal change and if the Change Order includes an increase in the Contract amount, then the penal amount of the payment and performance bond issued for this Contract is increased by the dollar amount of this Change Order.

\_\_\_\_\_  
Surety's Name and Corporate Seal (Seal)

By: \_\_\_\_\_  
Signature and Title  
**City of Marathon**

Attest: \_\_\_\_\_  
Signature and Title  
**Contractor**

By: \_\_\_\_\_  
Name: Charles Lindsey  
Title: City Manager

By: \_\_\_\_\_  
Name: Josh Vondersaar  
Title: District Manager

Exhibit "1"

CHANGE ORDER SUMMARY

This Change Order is necessary to cover changes in the Work to be performed under this Agreement. Except as may be modified herein all of the provisions of the Agreement apply to and govern all Work under this Change Order.

THE FOLLOWING CHANGES ARE MADE TO THE AGREEMENT DOCUMENTS:

(1)	Original Contract Price	\$2,924,150.00
(2)	Current Contract Price (Adjusted by Previous Change Orders)	\$6,485,865.27
(3)	Total Proposed Change in Contract Price	\$368,876.97
(4)	New Contract Price (Item 2 + Item 3)	\$6,854,742.24
(5)	Original Contract Time	300 Days
(6)	Proposed Change in Contract Time	45 Days
(7)	Current Contract Time (Adjusted by Previous CO)	935 Days
(8)	Total Change in Contract Time	680 Days
(9)	New Contract Time (Item 6 ± Item 7)	980 Days
(10)	Original Contract Substantial Completion Date	Sep 30, 2017
(I1)	New Contract Substantial Completion Date	July 12, 2019

CHANGE ORDER HISTORY						
Item No.	Description	Current Contract Amount	Additive Change	Deductive Change	Net Change Contract Price	Net Change Contract Time
I.	CO #1	\$2,924,150.00	\$115,464.34	\$0	\$115,464.34	0
II	CO #2	\$3,039,614.34	\$34,571.55	(\$5,000)	\$29,571.55	100
III	CO #3	\$3,069,285.89	\$30,000.00	\$0	\$30,000.00	90
IV	CO #4	\$3,099,185.89	\$2,913,225.57	\$0	\$2,913,225.57	215
V	CO #5	\$6,012,411.46	\$0	\$0	\$0	140
VI	CO #6	\$6,012,411.46	\$473,907.52	(\$453.71)	\$473,453.81	90
VII	CO#7	\$6,485,865.27	\$368,876.97	\$0	\$368,876.97	45
Total					\$3,930,592.24	680 Days

The Change Order is a result of: Expanded scope of work during the emergency repairs to the Area 5 WWTP as well as several Owner desired improvements beyond the original scope of the emergency repairs. Several planned repairs require an expanded scope beyond the original proposal such as the equalization tank due to uncovered conditions during construction. These improvements are to improve the operation of WWTPs in the City of Marathon. A detailed breakdown of the improvements is attached for reference.

The cost breakdown is as follows:

WORK ITEM DESCRIPTION	PRICE
Replacement of the membranes in MBRs at Area 5	\$14,346.44
Install a 36" hinged manway on the wall of the EQ Tank at Area 5	\$18,774.21
Relocating of the Area 4 Digester drain	\$4,500.73
Repair of Door openings on Vac stations	\$1,488.43
Replace 8" valve at Area 4 on reuse water	\$3,680.56
Install EQ Pumps outside of EQ tank with new header, suction valves, and piping Area 5.	\$85,111.02
Install new odor control piping to the EQ tank Area 5	\$41,563.01
Install new sprinkler system on the aeration Tanks #1 and #2 Area 5	\$8,103.19
Install a riser section to the existing vertical stand pipes with a drain into SBR at Area 4, 6, and 7.	\$63,398.18
Pricing to apply additional coatings inside the Area 5 EQ Tank	\$92,088.56
Add davit crane to the new MBR Feed Pumps Area 5	\$13,693.11
Remove and Replace 4" digester decant pipe at Area 3 and 4.	\$22,129.53
<b>TOTAL</b>	<b>\$368,876.97</b>



# May 2019 - June 2019

May 2019						June 2019							
Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su
		1	2	3	4	5						1	2
6	7	8	9	10	11	12	3	4	5	6	7	8	9
13	14	15	16	17	18	19	10	11	12	13	14	15	16
20	21	22	23	24	25	26	17	18	19	20	21	22	23
27	28	29	30	31			24	25	26	27	28	29	30

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
May 13	14 5:30pm City Council Meeting (City Hall Council Chambers, 9805 Overseas Hwy.)	15 2:00pm Code Compliance Hearing (Council Chambers, 9805 Overseas Hwy.)	16 5:00pm Perils of Flood Public Forum (Council Chambers, 9805 Overseas Hwy.)	17	18	19
20 5:30pm Planning Commission Meeting (City Hall Council Chambers, 9805 Overseas Hwy.) -	21	22	23 1:00pm 2019 Hurricane Preparedness Workshop for the Tourism Industry (Council Chambers,	24	25	26
27 Memorial Day-City Hall Closed	28 5:30pm City Council Meeting (City Hall Council Chambers, 9805 Overseas Hwy.)	29	30	31	Jun 1	2
3	4	5	6	7	8	9
10	11 5:30pm City Council Meeting (City Hall Council Chambers, 9805 Overseas Hwy.)	12	13	14	15	16