



**City of Marathon City Council Agenda**  
**Marathon Council Chambers, 9805 Overseas Hwy., Marathon**  
**Tuesday, July 9, 2019 5:30 P.M.**

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Roll Call**
4. **Approval of agenda and consent agenda** [Approval of Consent Agenda passes all routine items indicated by asterisk (\*). Consent Agenda items are not considered separately unless a council member so requests. In the event of such a request, the item is returned to the Regular Agenda.]
5. **City Council Items**
  - \*A. Approval of Minutes .....1
  - B. 15 Year Service Award, Captain Joe Forcine Marathon Fire Rescue
  - C. Be Kinder Program Presentation (Councilmember Senmartin)
  - D. Less Than Fee Program Update (Councilmember Zieg).....13
  - E. Community Park Use and Fee Discussion
  - F. Request to Hold Conch Records Video Festival January 3-5<sup>th</sup> and permission to sell Beer and Wine at Marathon Community Park .....15
  - G. Request to Hold Coral Head Music Festival February 2020 and permission to sell Beer and Wine at Marathon Community Park (Mayor Bartus)
  - H. Community Announcements .....20
  - I.
6. **City Manager Report**
  - A. City Marina Report.....21
  - B. Wastewater Utility Report.....24
  - C. Code Magistrate Report.....29
  - D.
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. Resolution 2019-66**, Approving A Request By Holiday Inn Express & Suites For A Time Extension For Approvals Granted Pursuant To Resolutions 2014-105 And 2015-37 Pertaining To The Granting Of Twenty-Five (25) Transient Residential Units (TRUs) For A Project Approved By The City To Expand The Holiday Inn Express & Suites By A Total Of Twenty-Seven (27) Hotel Units Approved Pursuant To Resolutions 2014-61 And 2014-62 For A Conditional Use Permit And A Development Agreement Respectively; Providing That Said Conditional Use Permit And Development Agreement Were Approved For Time Extensions Pursuant To Resolutions 2017-47 And 2018-65; Providing That The Approval Of This Resolution Makes The Approved Time Frames For The Conditional Use Permit, Development Agreement And The Allocation Of Transient Residential Units (TRUs) Contemporaneous; Providing That Said Extension Request Is Issued For Property Which Is Legally Described As Part Of Government Lot 2, Fat Deer Key, Monroe County, Florida, Having Real Estate Numbers 00100260-000100 And 00100260-000102 .....31

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

**A. Ordinance 2019-11**, Amending Section 18-125 Of The City Code Regarding Civil Penalties For The Possession Of Cannabis (Marijuana) For Amounts Under 20 Grams And For Possession Of Drug Paraphernalia; Clarifying The Citation Procedure; Establishing A New Procedure To Contest A Citation; Providing For Severability; Providing For The Repeal Of All Ordinances Inconsistent Herewith; And Providing An Effective Date .....35

**10. Resolutions for Adoption**

**A. Resolution 2019-67**, Determining The Proposed Millage Rate, And The Current Year Rolled-Back Rate, And The Date, Time And Place For The First And Second Budget Public Hearings As Required By Law; Directing The Finance Director To File Said Resolution With The Property Appraiser Of Monroe County Pursuant To The Requirements Of Florida Statutes And The Rules And Regulations Of The Department Of Revenue Of The State Of Florida; And Providing For An Effective Date.....41

**\*B. Resolution 2019-68**, Approving Change Order No. 2 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 \$30,785.62 For Various Items Requested By The City As Part Of The Beach Reconstruction Project; Authorizing The City Manager To Execute The Change Order And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.....44

**C. Resolution 2019-69**, Accepting The Lowest Responsive And Responsible Bid, And Approving A Contract Between The City And H&R Paving, Inc., In An Amount Not To Exceed \$1,755,787.78 For The Aviation Blvd. Multi-Use Trail Project; Authorizing The City Manager To Execute The Contract And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.....53

**\*D. Resolution 2019-70**, Approving Change Order No. 1 To Contract Between The City And XGD Systems, LLC. In The Original Amount Of \$118,500.00.00 For The Re-Sodding Of The Soccer Fields At Community Park; Increasing The Contract In An Amount Not To Exceed \$84,444 For The Re-Sodding of the Baseball Fields and The Dog Park At Oceanfront Park; Authorizing The City Manager To Execute The Change Order And Expend and Appropriate Funds On Behalf Of The City; And Providing For An Effective Date.....70

**\*E. Resolution 2019-71, Rescinding Resolutions 2017-77 And 2018-105 Having Been Superseded By Other Resolutions Or Having Become Unnecessary; And Providing For An Effective Date.....82**

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

The public hearings will commence at 5:30 p.m., or as soon thereafter as business permits, in the City Hall Council Chambers, 9805 Overseas Highway, Marathon, FL. All interested persons are invited to attend the meeting and participate in the discussion; or, written comments may be sent to the City of Marathon, c/o City Clerk, 9805 Overseas Hwy, Marathon, FL 33050. Pursuant to Section 286.0105, Florida Statutes, if a person decides to appeal any decision made by the City Council with respect to any matter considered at such hearing or meeting, one will need a record of the proceedings and for such purpose that person may need to ensure that a verbatim record of the proceedings is made; such record includes the testimony and evidence upon which the appeal is to be based. ADA Assistance: Anyone needing special assistance at the City Council hearing due to disability should contact the City of Marathon City Attorney at (305) 289-4130 at least five days prior thereto. Please contact the City Clerk at [clavird@ci.marathon.fl.us](mailto:clavird@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 June 11, 2019 in the Marathon Council Chambers, 9805 Overseas Hwy., Marathon, Florida, Mayor Bartus called the meeting to order at 5:30 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, Charles Lindsey

Planning Director George Garrett

City Attorney, David Migut

City Clerk, Diane Clavier

Finance Director Jennifer Johnson

Growth Management Director, Doug Lewis

Public Works Director, Carlos Solis

Utility Director, Dan Saus

Captain Don Hiller, Monroe County Sheriff's Office

Marina Director, Sean Cannon

Fire Chief John Johnson

**Approval of Agenda and Consent Agenda**

Zieg removed Resolution 2019-64 from the consent agenda and added item 5D Code Board Discussion.

Lindsey added Resolution 2019-65 to the consent agenda and discussion to request cancellation of the second meetings of the month for June, July & August.

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

**SECOND:** Cook

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

### **City Council Items**

\* Approval of Minutes

**33<sup>rd</sup> Street Project Discussion (Councilmember Zieg)** – Zieg explained the mix of ownership between the City and County on 33<sup>rd</sup> Street and the desire by the County for the City to build a new structure that would address the needs of the Senior Center.

Lindsey announced he has spoken to Kevin Wilson at Monroe County and agreed the survey lines will need to be redrawn before any action can be taken. Lindsey reported a request has been submitted from the City to be on the Board of County Commissioners July Agenda to address the 33<sup>rd</sup> Street issue and he is currently waiting to hear back.

Community Announcements - The Clerk read the Community Announcements.

### **Code Board Discussion**

Zieg explained he had the opportunity to listen to many residents in the community that have expressed displeasure with the Code Special Magistrate and who would like to return to a Code Board system. He stated the Code Department is doing a good job, settling nearly 70% of cases prior to going to a Code hearing, but supports the idea of going back to a Code Board and feels in the long run it would save the City money.

Senmartin spoke against going back to the Code Board system and explained there were a lot of issues with the old system and felt it did not allow people a fair shot at defending themselves and the Special Magistrate made the playing field equal.

Zieg stated he spoke with the Building Official who expressed displeasure with the Special Magistrate and is concerned about the way things have been going. He felt the Code Department will continue to settle cases prior to hearing with a Code Board system.

Gonzalez stated he could go either way on the issue and supports the idea of giving the opportunity for the citizens of the community to have input on the subject.

Cook spoke for keeping the Special Magistrate in place, as it allows for an unbiased ruling.

Bartus questioned if the percentage of resolved cases was the same with the Code Board as Special Magistrate.

Lindsey explained that people are encouraged to get their cases resolved prior to going to the Special Magistrate, but would like to come back to Council with more data and deferred the question to Lewis.

Lewis stated he doesn't have data, as he was hired about the same time as the Special Magistrate. However, he explained he would be happy to research the issue and come back to Council and explained there is a large success rate of getting cases in compliance prior to Special Magistrate.

Bartus stated he was not in favor of going to a Special Magistrate and requested to see more data to explore further. He asked for a head nod from Council to direct staff to gather data showing cases resolved prior to Code Board and cases resolved prior to Special Magistrate.

Cook asked for a timeframe of settled cases to be added to the data report.

### **City Manager Report**

#### **Five Year Service Award, Amanda Riley**

Council and Saus presented Riley with her Five Year Service Award. Lindsey spoke on Riley's accomplishments over the last five years and stated she has gone above and beyond. She has taken on all of the Utility Department's inventory control, asset management and most recently she received her certification for Wastewater Plant Operator.

#### **Review of Vacation Rental Fees (Resolution 2016-46)**

Lindsey explained the annual review and that there was no reason to increase the fees this year and recommended no changes.

**MOTION:** Cook moved to accept the report.

**SECOND:** Zieg

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

### **Park and Recreation Report**

Schmidt provided a report to Council, highlighting that Summer Camp is in good attendance and they are having fun outside and the fishing tournament was successful.

Gonzalez questioned when the batting cages will be replaced. Schmidt explained it's in the process of getting into the budget, the estimated cost is \$5,000 plus labor costs.

### **Monroe County Sherriff's Office, Marathon Substation Report**

Captain Hiller spoke on his report and highlighted several cases of significance.

Bartus thanked Hiller and his staff for addressing the graffiti issues in town.

Senmartin spoke on the congregation of people at the end of 27<sup>th</sup> Street and explained he has received several phone calls from concerned residents and asked Hiller if he is aware of the problem. Hiller explained he is aware of the problem on 27<sup>th</sup> Street, as well as the area on 15<sup>th</sup> Street and he and his staff are working through the issues.

### **Cancellation of the second meeting in June, July and August**

Lindsey explained the reason for cancelling the second meetings is the Planning Commission Meeting is cancelled for June, July is a slow month and in August there is a scheduled trial date and the 300 unit appeal. He asked for a motion to approve cancellation of the second meeting in June, July and August.

**MOTION:** Cook moved to approve.

**SECOND:** Zieg

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

### **Quasi-Judicial Public Hearing:**

Approving A Request By Holiday Inn Express & Suites For A Time Extension For Approvals Granted Pursuant To Resolutions 2014-105 And 2015-37 Pertaining To The Granting Of Twenty-Five (25) Transient Residential Units (TRUs) For A Project Approved By The City To Expand The Holiday Inn Express & Suites By A Total Of Twenty-Seven (27) Hotel Units Approved Pursuant To Resolutions 2014-61 And 2014-62 For A Conditional Use Permit And A Development Agreement Respectively; Providing That Said Conditional Use Permit And Development Agreement Were Approved For Time Extensions Pursuant To Resolutions 2017-47 And 2018-65; Providing That The Approval Of This Resolution Makes The Approved Time Frames For The Conditional Use Permit, Development Agreement And The Allocation Of Transient Residential Units (TRUs) Contemporaneous; Providing That Said Extension Request Is Issued For Property Which Is Legally Described As Part Of Government Lot 2, Fat Deer Key, Monroe County, Florida, Having Real Estate Numbers 00100260-000100 And 00100260-000102

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

Garrett explained the new owner has all their building permit applications submitted and staff expects to issue their permits on time, but for precautionary measures a 60 day time extension is being requested to allow the owner to get all their permits in place. Garrett explained the extension will give them until September 10 2019.

Senmartin questioned when the last time the project was extended. Garrett replied the last extension was at the end of the year in 2018, under Resolution 2018-65, which related to the transition in ownership.

**MOTION:** Cook moved to approve the request by Holiday Inn Express & Suites for a Time Extension for Approvals granted through Resolution 2014-105 & 2015-37.

**SECOND:** Zieg

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

Senmartin stated he is agreeing with the time extension request because of the ownership change; however he doesn't want to see any more time extensions and he will not vote for it in the future.

**Vote of the Motion:**

Yes: Cook, Zieg, Senmartin, Gonzalez, Bartus

No: None

Absent: None

Abstain: None

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

**Resolution 2019-60,** Consideration Of A Request For A Conditional Use Permit For Coral Construction Company Pursuant To Chapter 102, Article 13 Of The City Of Marathon Land Development Regulations (Code) Entitled "Conditional Use Permits" For The Development Of A Property Into Affordable Housing, Outdoor Storage Yard, And Commercial Office Space; Located At 347 Aviation Boulevard; Which Is Legally Described As A Tract Of Land In A Part Of Sections 1 And 2, And Containing Lots 11, 12, 13, 14, 15, And A Portion Of Lots 10 And 16, Schmitt Subdivision, Township 66 South, Range 32 East, Key Vaca, Monroe County, Florida; Having Real Estate Numbers 00101300-000000 & 00101360-000000, Nearest Mile Marker 51.

The clerk swore in speakers. Exparte Communications – Senmartin stated he spoke to Steve Hurley briefly about the project. The rest of the Council stated they had no exparte communications.

Garrett explained the request for a conditional use permit for 14 affordable units and commercial uses as well as the background of the property.

Steve Hurley, with Cardno, provided a PowerPoint presentation. He explained the project is a workforce housing mixed use project and explained the developer was not looking to up zone or request a variance. He explained the buildings on the property are to be three quadplexes with an amenities section including a pool, a tiki hut (or something similar) and tot lot (fenced in green area for kids to play). The landscaping will comply with necessary requirements and there will be commercial office space for Coral Construction Company with additional workforce housing for their company workers. The commercial and residential spaces will have separate entrances. Hurley informed everyone the Fire Marshal approved the parking, water & sewer will be in place, easements for the utilities along the road will be in place. The drainage on site will be properly addressed. He spoke on the traffic impacts on



Aviation Boulevard and US1. He stated the project meets Land Development Regulation requirements and/or exceeds compliance.

Zieg questioned what the dimensions were for the parcel of land and what the new setback requirements are. Garrett did not know the exact dimensions of the property, but stated it was longer than it was wide and roughly 300 feet along Aviation Boulevard. He stated the setback requirements are 15feet.

Zieg questioned what would happen to the market rate unit on the property and if they have any permits for the affordable units yet. Garrett explained the market rate unit could be sold or moved, but there are no plans for it on the site and there are currently no permits for the affordable units.

Zieg questioned how long the property has been zoned Mixed Use and if the City will be exposed to takings cases if the 300 units are not received. Garrett did not know how long the property has been zoned Mixed Use. He explained a condition has been placed on the project and similar projects that says they have been approved for the unit(s) but it's their responsibility to obtain the unit(s).

Zieg asked Garrett to verify that the tallest building on the site will not exceed 37' feet. Garrett verified the buildings will not exceed the height limitation.

Senmartin asked Hurley to clarify if the parking on the commercial side of the property will be for parking vehicles or storing equipment. Hurley explained it's a Land Development requirement for the commercial space to have six parking spots for customers and/or employees to park their vehicles. The parking spots are for office operations. He explained the area just above the office parking is a vacant area with fenced in buffering where equipment and work vehicles will be stored.

Senmartin questioned what the range of rents the project would be. Hurley explained the vision is for medium to higher level rental, although they do not know the exact rents yet.

Senmartin questioned how many bedrooms/baths the units would be. Hurley replied that currently the project is just in the conditional use phase and the architectural portion has not been fully developed yet, but it probably would be a combination of two and three bedrooms. Senmartin asked if the project would come back to Council with the building phase. Garrett explained it would not come back before Council again. Garrett stated having had discussions with Council about the rent ranges, the consensus was to look into the medium to lower level incomes. Senmartin questioned if the Council Meeting was the proper venue to discuss rent ranges and Garrett replied yes.

Cook spoke on the intersection improvements the neighboring property GEM Homes is paying for and asked if this project would contribute to the improvements. Garrett stated all three projects will have to pay traffic impact fees. Cook stated he felt low to median rents would be proper, due to the effect Hurricane Irma had on people and encouraged Council to think about putting a cap on the affordable rents. Gonzalez agreed and stated median range rents are the bulk of our workforce and the greatest need. Senmartin supported having a mixed income level for the project and especially for the developer, as the project has to be profitable. He supported 120% to 140% and a mix of the lower tier rents.

Zieg stated the actual affordable housing space on the lot is .5 of an acre, because the other uses of commercial space take up the other portion and felt the presentation was misleading in that respect.

Hurley explained how the project met code requirements. Zieg explained he understood the project met the code requirements, but he felt it was too much on the property.

Mayor Bartus called for public comments.

Josh Mothner was sworn in to speak.

Mothner encouraged Council not to make conditions based upon the unknown.

Lindsey reminded Council this hearing could be the only time the project is before Council and encouraged Council to discuss the rents.

**MOTION:** Senmartin moved to approve Resolution 2019-60, with conditions that four units be no higher than 140% and ten units be at 120% or lower.

**SECOND:** Cook

Bartus asked Hurley if the conditions would be agreeable to the Developer and called for a five minute recess at 6:41pm. The meeting was called back to order at 6:45pm.

Hurley stated the applicant is okay with conditions on the table.

**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

**Citizens' Comments:**

Diane Scott – spoke against the neighbor’s candy cane on the Church property.

**Resolution 2019-61** Consideration Of A Request For A Conditional Use Permit For Captain Pips Holdings, LLC Pursuant To Chapter 102, Article 13 Of The City Of Marathon Land Development Regulations (Code) Entitled “Conditional Use Permits” For The Development Of A Property Into Multifamily Housing, Office And Restaurant, And Marina; Located At 1470 Overseas; Which Is Legally Described As Part Of Government Lot 2 And Bay Bottom North Of And Adjacent To Lot 2 And Adjacent Portion Of State Road 4-A, Part Of Government Lot 2 In Rear Of Hanley’s Inc, And Block 3 Part Of Lot 3 And Government Lot 2 W R Thompson Subdivision, Section 9, Township 66 South, Range 32, Key Vaccas, Monroe County, Florida; Having Real Estate Numbers 00320350-000000, 00102790-000000, & 00102760-003000, Nearest Mile Marker 48

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

Garrett explained the site's existing conditions and proposed use. He highlighted the ample screening and buffering conditions and parking as the site is mixed use. He stated the Planning Commission recommends approval, but has concerns regarding the employee commercial parking layout and protection of the mangroves on the property.

Steve Hurley gave a presentation on the requested conditional use. He explained the project is properly zoned for the property through densities and intensities. He provided an overview of the proposed project and explained the access line on the property goes back to Casa Cayo and confirmed the undeveloped land will not be developed. Hurley spoke on the utilities portion and stated they will tie in at the access line. The Fire Marshal determined a fire hydrant will be required at Casa Cayo as well and the fire line can be put within the same easement, running parallel with the sewer line. Hurley explained the details of the six unit housing building along with one affordable workforce housing unit, swimming pool and access to tiki with the Captain Pips operations. He also explained the traffic impacts.

Zieg asked if they have any housing allocations yet. Garrett replied they did not. Zieg questioned how they will obtain permits for the project and if they will apply in the BPAS system. Garrett replied they could apply through the BPAS system or purchase them on the open market.

Zieg asked for clarification that the neighboring property owners understand vacation rental units will be weekly only.

Cook wanted to clarify the responsibility is on the developer to obtain the building permit allocations, not the City. Garrett stated the affordable unit will probably need to come through the City, but the other six units will be the responsibility of the developer.

Mayor Bartus called for public comments.

Bob Mikes, spoke for the nice views on the property but stated the intersection is dangerous and the tourist that use the intersection are not familiar with it and it could pose a problem.

Nancy Greer, Resident of Harbor Cay Club, spoke on the current traffic impacts in the area and asked if there will be a sidewalk.

Karen Gilbert, Resident of Casa Cayo, stated she was in a bike accident two years ago in the area and doesn't want to be in another one. She stated there is not enough access driveway in the plans for pedestrians or bikers.

Bartus asked Hurley if there will be a sidewalk. Hurley stated there is an existing 10ft bike lane along the frontage of the parcels but there is no sidewalk in the design to come out of Casa Cayo.

Cook stated the loading area appears to stick out into the road.

Hurley stated he would look into designing the loading area for vehicles to come in parallel.

**MOTION:** Zieg moved to approve Resolution 2019-61.  
**SECOND:** Gonzalez

Senmartin asked Council if they wanted to address the rent issue. Zieg replied no.

Bartus asked if Council wanted the parallel loading area to be included in the motion. Zieg replied no.

**Vote of the Motion:**

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

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

**Resolution 2019-62** Consideration Of A Request For A Conditional Use Permit For Midway Specialty Care Center, Inc. Pursuant To Chapter 102, Article 13 Of The City Of Marathon Land Development Regulations (Code) Entitled “Conditional Use Permits” For The Development Of A Medical Clinic; Located At 11400 Overseas Highway Units 103 & 104; Which Is Legally Described As Lots 2, 17, And 18 Less The Southerly Seven Feet And Half Vacated Alley, Key Colony Subdivision, Key Vaca, Monroe County, Florida; Having Real Estate Number 00334860-000000, Nearest Mile Marker 53

Council stated they had no exparte communications.

Garrett explained the project would be in the Town Square Mall in two suites on the first floor. He stated Planning Commission recommended approval.

Zieg asked what type of patients the Clinic will service. Garrett explained the facility will be a General Medical and Dental Practice.

Senmartin asked if the Board of Health or DBPR will oversee the business with regard to hazardous waste disposal, etc. Garrett replied yes.

**MOTION:** Gonzalez moved to approve Resolution 2019-62.  
**SECOND:** Zieg

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

**Vote of the Motion:**

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

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

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

**Ordinance 2019-11**, Amending Section 18-125 Of The City Code Regarding Civil Penalties For The Possession Of Cannabis (Marijuana) For Amounts Under 20 Grams And For Possession Of Drug Paraphernalia; Clarifying The Citation Procedure; Establishing A New Procedure To Contest A Citation; Providing For Severability; Providing For The Repeal Of All Ordinances Inconsistent Herewith; And Providing An Effective Date.

Migut introduced Legal Intern Kylee Sipowski and explained she has been doing an excellent job and will be presenting tonight on the Ordinance.

Sipowski provided background information and explained the changes to the Ordinance. She further explained the changes were mirroring Monroe County's Ordinance, which included clarifying the terms, change in fine structures, enforcement and addressing the rights of violators.

Zieg complemented Sipowski on an excellent presentation and asked Migut to work closely with Patrick McCullough and the Sheriff's Office regarding the Ordinance.

Migut stated he has been working with McCullough since February and now the State Attorney's Office. He will make sure if they have any feedback they get it in before the next hearing.

Cook complemented Sipowski on a great job and asked Migut to look into stronger enforcement options if the violator cannot pay the fine.

Migut stated he will look into the matter before the next hearing. Senmartin asked if any tickets have been issued. Hiller replied yes, but not a lot.

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

**MOTION:** Zieg moved to approve Ordinance 2019-11.

**SECOND:** Gonzalez

**Vote of the Motion:**

Yes: Zieg, Gonzalez, Senmartin, Cook, Bartus

No: None

Absent: None

Abstain: None

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

### **Resolutions for Adoption**

\*A. **Resolution 2019-63**, Approving A Two Year Extension To The Agreement Between The City Of Marathon And Keefe, McCullough & Co., LLP For Auditing Services; Authorizing The City Manager To Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.

**B. Resolution 2019-64**, Approving A Memorandum Of Understanding (MOU) Between The Monroe County School District Division Of Career And Technical Education (MCSD) And The City Of Marathon, Florida, Creating MCSD's Fire Academy At Marathon High School To Provide Fire Fighting Training To High School And Adult Students; and Providing For An Effective Date.

Zieg was pleased with the Resolution, and felt it encourages career building in the young locals. He explained the program applies to both high school and adult students and the school district is applying for a grant to cover the costs in an amount of \$52,000. Zieg suggested that if for some reason the grant does not go through, he would like to see Monroe County School District split the cost in half with the City. He also stated he does not think the program should be renewed if the grant is not received.

Chief Johnson explained Hurricane Irma was a major setback in getting the program started. He explained the program will allow students to take the firefighter 1 & the first responder test when they turn eighteen and have completed the program. He explained he's hoping for students to get their training and stay in Marathon long term.

Senmartin stated he's happy the program has come to fruition and thanked Chief Johnson and Deputy Chief Dunford for their hard work.

Chief Johnson stated Deputy Chief Dunford should take all the credit for making the program happen.

Gonzalez questioned if there will be a process in place to select students who are genuinely interested in the field as opposed to students who just don't want to be in school.

Chief stated the program will be about discipline and keeping the students on track and will be a very structured program. He explained there will be a methodology in place to weed out the undesirables, who don't want to be there.

Lindsey stated the first one or two years of the program will be about learning and it will continue to get better.

**MOTION:** Cook moved to approve Resolution 2019-64

**SECOND:** Gonzalez

**Vote of the Motion:**

Yes: Cook, Gonzalez, Senmartin, Zieg, Bartus

No: None

Absent: None

Abstain: None

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

Chief thanked Council for their support and will bring updates back to Council once the program starts.

**\*C. Resolution 2019-65**, Approving Change Order #2 For “39<sup>th</sup> Street Storm Water Improvements Project” To Charlie Toppino & Sons Inc. In The Amount Not To Exceed \$5,141.06; Authorizing The City Manager To Execute The Change Order And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date

**Citizens' Comments:**

Diane Scott requested that the bus stop be brought back to its original location.

**Council Comments**

Zieg provided a history of events that happened this day, thanked Jennifer Johnson for working on the budget and announced home values increased 5.28% last year in the Marathon area. He thanked Staff for prepping Council for the meeting and Kylee Sipowski for an outstanding job on the Ordinance presentation.

Gonzalez thanked staff for their hard work and thanked Kylee Sipowski for the great job on the presentation.

Senmartin welcomed Sipowski aboard for the summer and wished everyone a Happy Fourth of July, since the next meeting will be on 7/9.

Cook thanked staff for their hard work and welcomed Sipowski.

Bartus thanked the Parks & Recreation Department for the hard work preparing for the Fourth of July. He stated Marathon Rotary Club will be selling hot dogs, burgers, beer, soft drinks and water. All the money goes to scholarships for Marathon High School and good works projects in the Community.

**ADJOURNMENT**

With no further business to come before the Council, Mayor Bartus adjourned the meeting at 7:54pm by unanimous consent.

I certify the above represents an accurate summary of the regular Council meeting of June 11, 2019.

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

\_\_\_\_\_  
Date

## COUNCIL AGENDA STATEMENT



**Meeting Date:** July 9, 2019  
**To:** Honorable Mayor and Council Members  
**From:** George Garrett, Planning Director  
**Through:** Chuck Lindsey, City Manager  
**Subject:** Less-Than-Fee

---

### **BACKGROUND:**

At its May 28, 2019 meeting, the City Council requested that staff look into options for adopting a program similar to the County's "Less than Fee" program implemented through the Monroe County Land Authority.

Through Monroe County Resolution 175-2018 with a subsequent revision found in Resolution 438-2018, the County created the "Less than Fee" program for the purchase of residential density associated with adjacent properties in common ownership such that one property is developed while the other has remained vacant. The County Commission committed their Capital Infrastructure dollars to implementing the program with the understanding that Land Authority dollars could not be utilized in this program. The following are excerpts from the Land Authority Website:

#### **What is the "Less than Fee" (LTF) Program?**

It is a willing seller program that would allow you to retain ownership of the adjacent, vacant lot and use it for legally allowed accessory uses like a pool, open yard or garage in exchange for selling the right to build a home on that lot in perpetuity.

#### **Why has the County created this Program?**

Due to state and federal regulations, the Monroe County Board of County Commissioners has a limited number of residential building permits that it can issue to those seeking to build a house on a vacant lot.

In order to eliminate potential residential building rights on vacant land that would otherwise affect our environment, roads and hurricane evacuation, the County Commission created this voluntary Less than Fee Program to retire building rights.

#### **The Program is Very Simple**

The County's offer price for the residential building right on the adjacent lot is the current Market Land Value (MLV) as calculated by the Monroe Property Appraiser. Under the Florida Constitution, the Property Appraiser is independent from the County Commission and is elected by the voters of Monroe County.

**The County may offer to pay you 100% of the MLV provided that you agree to a deed restriction permanently retiring the right to build a home on your vacant lot. The program is completely voluntary for both parties.**

### **ANALYSIS:**

The program is an excellent means to reduce density and therefore, additional growth and liability from taking claims. The use of the Monroe County Land Authority is the appropriate tool as that entity was created to minimize potential takings claims during the implementation of the Monroe County Comprehensive Plan in 1986 through the present. For those that avail themselves of the program; those that are not interested in



additional residential development of adjacent parcels in common ownership, the program provides a relatively inexpensive means for the County and potentially the City to minimize takings liability. The principal issue is the cost of implementing the program.

Currently, the County has dedicated their Capital Infrastructure funds to carry out the program to purchase properties in unincorporated areas of the County only. The City's Capital Infrastructure dollars are committed in large part to offsetting the costs of implementing the City's stormwater program. Thus, the City does not currently have available capital or other dollars for the independent implementation of a similar program within the City of Marathon.

**CONCLUSION:**

In conclusion:

1. The program is a valuable tool that can be utilized to reduce potential takings liability within the City;
2. The program could be implemented by Resolution; a Resolution that would request the Land Authority's implementation of a Less than Fee program on the City's behalf;
3. The City does not currently have the available funds to implement this program within the City;
4. A funding mechanism will have to be developed.

**Request to use The Marathon Community Park during the weekend of  
January 3 - 5, 2020 for a Music Festival called Conch Records Music Video Fest**

**REQUEST MADE BY:** TV88, LLC (*Cliff Rydell, Managing Member*), and  
The Marathon Wild Bird Center (*Kelly Grinter, Executive Director*)

**REQUEST MADE TO:** Marathon City Council at July 9, 2019 Council Meeting

**SPECIFIC REQUESTS:**

- 1) To use The Marathon Community Park for a music festival, with music videos being produced, during the times of 5pm to 10pm on Friday January 3, 2020, 12noon to 10pm on Saturday January 4, 2020, and 12noon to 5pm on Sunday January 5, 2020.
- 2) To sell beer and wine during event hours for consumption at the Park.
- 3) To have the Park rental fees waived.

**DETAILS OF REQUESTS:**

**1) Usage of Park**

This event will be like the three previous Conch Records Music Video Fests which took place at The Marathon Community Park, because all the performers who will be on stage will be local musicians – and the stage crew, and those involved in the production of the music videos which come from it will all be locals or annual snowbirds as well.

This event will be unlike other events which have taken place at The Park, because:

- a) Each musician, stagehand, and production crew personnel will have a vested interest in ensuring that everything goes on successfully during the weekend without incident. In the Agreement with the organizers, those participating in the event will agree to pick up trash from the field as they see it (including cigarette butts), and report any misuse of the field or misconduct of any nature to one of the organizers or proper authorities.
- b) There will be no vehicles of any kind allowed on the field other than one golf cart for the Event organizers to use. This will include all tent set up and tear down hauling trucks.
- c) We will NOT be selling tent space at the Event. There will be one large tent area for musicians to use for selling music related items, and to socialize while not performing on stage.
- d) Other than the musician's tent, there will be a large eating tent, and tents at the two admission gates – All tents will be brought in to the field and taken off the field by hand or by hand carts.
- e) The refrigerated beer truck will stay parked in the parking lot all weekend, and cold beer will be brought in to the field and put on ice as needed with hand trucks.
- f) To protect the underground irrigation system, there will be no stakes in the ground, and buckets filled with weighted material will hold the tents up.

## **2) Selling of alcohol during the event**

The Marathon Wild Bird Center operates under I.R.C. 501(c)3. It is a well-established tourist attraction on the Crane Point property in Marathon.

This Request is for the Marathon WBC to operate the beer and wine booth and to manage the collection of funds of all alcohol sales, keeping 100% of all proceeds for its own operating purposes. The Marathon WBC will operate under a State license to sell alcohol at the Park which they will pay the fees for after approval of this Event by Council.

The Wild Bird Center is planning the move of their facility closer to the entrance gate, which will benefit greatly from the proceeds which come from this Event.

The Wild Bird Center was selected to handle all alcohol sales because it needs the money, and because the Executive Director has the experience participating at many community events in the City, and in operating beer booths.

## **3) Waiving of rental fees**

Income from T-shirt sales and event food sales (*hamburger, hot dog, pizza*) will be divided up among each of the individual performers, stagehands, and production crew.

The Marathon Wild Bird Center will handle all beer, wine, soft drinks, and water sales.

So any Park rental fees asked for by the City will be coming directly from the proceeds of both.

## **NOTES FOR MEETING WITH COUNCIL:**

Every City, County, and State office and local businesses who will need to approve, or at least have knowledge of this Event has been contacted, and those who need to give their approval of the Event have done so.

These are our 'Plans of Action'

### **Security Plan**

We will hire as many off-duty deputies that the Sheriff's Office requires for this Event. We will meet next when we get closer to the Event weekend, and discuss weather conditions and what attendance might be at the Event. At that point the Sheriff will decide the exact number of off-duty deputies we will need to hire, and we will hire them.

No special US1 traffic assistance will be needed at this point, but we will analyze it further with the State Highway Patrol and the Sheriff's Office as we get closer to Event date, and we have a better idea of what attendance to this Event might be.

We are in direct communication with the Marathon Captain of The Monroe County Sheriff's Office about this Event, and we are prepared to pay all required fees and secure the deputies upon our approval of the Event by Council.

Captain Don Hiller will be present at this council meeting to answer any questions Council might have regarding the Security of the Event or the Sheriff's approval of this Event.

### **Emergency Response Plan**

Emergencies and disasters can strike anywhere and at any time. Someone who attends this Event can be adversely affected by the sun, or fall and be injured, someone could have unexpected heart failure, or there could be a disaster during the event caused by an act of God.

Because an emergency can occur at any time without warning, it is the responsibility of us as event organizers to ensure that all Emergency Medical Services vehicles and personnel have quick and easy access on and off the field.

During the hours of the Event, we will keep the two vehicle gates to the east and west of the amphitheater closed but unlocked. Each gate will be manned by Event volunteers who will be briefed prior to taking their position.

They will be ready to fully open the gates and clear the area if an emergency occurs, making sure that all EMS vehicles and personnel have easy access on and off the field.

We are in direct communication with the Fire Chief of The City of Marathon who will be present at this council meeting to answer any questions Council might have regarding the Fire Department's approval of this Event.

### **Garbage Plan**

For sanitary purposes, it is most important for us as the Event organizers to keep the Park free from garbage build-up during the weekend. The less that there are trash pileups, the less that attendees will be inclined to put trash anywhere other than in trash cans.

Our Garbage Plan will mirror the 'Broken Window Theory' which the Monroe County Sheriff's Office is a strong supporter of.

*The broken windows theory is a criminological theory which states that visible signs of crime, anti-social behavior, and civil disorder create an urban environment that encourages further crime and disorder, including serious crimes.*

The City's Parks and Recreation Department will supply barrels during the weekend, and we will supply all the liners and be responsible for ensuring that all garbage gets properly disposed of.

Marathon Garbage Service (289-2430) has agreed to provide a "Donation Letter" to the City for all extra trash pickups which are needed during the weekend at no additional cost to the City. However, they do not wish to provide that letter until after the Event has been approved by the City, and the Event date gets closer in time.

This is the same service that MGS provided on the prior Conch Records Music Video Fests, so we have worked with them before on this matter.

**Plan for Protection of the Field at the City Park**

Keeping the Broken Window Theory in mind, we will ensure that the Park and the field stays clean and respected throughout the weekend while we have our Event, and will immediately cure, or have cured, any damage to the field which is found during the final walk through after the Event has ended.

Musicians will have a vested interest in making sure that the Event weekend is the best it can be, without incident or damage of any kind to the Park.

No vehicles will be allowed on the field during the Event weekend other than City or County vehicles, and one golf cart for the organizers.

There will be no staking of tents at all, and there will be no vendors selling anything on site other than the buying and selling of music related equipment.

We will also provide an insurance policy which covers any damage to the field. The policy will be bound by paying the insurance premium after Council's approval.

**CONCLUSION:**

**The January 3-5, 2020 Conch Records Music Video Fest is a WIN - WIN situation for all involved:**

**\* Musicians**

In the Florida Keys, we have many local musicians who are as talented as any of the national stars we hear on the radio. Our local musicians elect to live down here in The Keys, and by doing so, they have limited opportunities to get on stage and play in front of large crowds.

The Conch Records Music Video Fests give our local talented musicians an opportunity to get on stage and record a music video, or a demo video, or just perform in front of a much larger crowd than they play for at our local bars.

The musicians who perform at this Music Video Fest, the stagehands, and the video production crew will take part in greeting attendees at the front gates, grilling up and selling event foods, and socializing with music fans.

To many musicians in The Keys, this Music Video Fest will be the most favorite gig they will have all year!

**\* *Locals & Visitors to the Area***

This Event will give an opportunity for locals to come and watch many, if not all their favorite local bands and solo acts throughout the first weekend of the year – which will be the first weekend after the prior weeks of holiday season running around.

**\* *TV88***

Putting on the Conch Records Music Video Fest is a way for TV88 to advertise itself as a video production company.

**\* *The Marathon Wild Bird Center***

Alcohol, soft drink and water sales will give The WBC a good amount of much needed money, as it is having a difficult time raising the money it needs to move the facilities closer to the Crane Point entrance.

**\* *The City of Marathon***

Staying consistent with the mission of the City of Marathon Parks and Recreation Department, this Event will provide a professionally managed leisure activity for all ages.

We respectfully request Marathon City Council's approval to put on the next Conch Records Music Video Fest during the weekend of January 3<sup>rd</sup> through the 5<sup>th</sup>, 2020.

<u>SUBJECT:</u>	<u>DATE:</u>	<u>TIME:</u>	<u>LOCATION</u>
Friday Night Kickball (free program) Ages 4-10	7/12	7:00pm	Community Park Baseball Fields
Household Hazardous Waste & E-Waste Drop Off	7/13	9am-1pm	Monroe County Public Works Facility Behind the Airport (10600 Aviation Blvd.)
Planning Commission Meeting	7/15	5:30pm	Council Chambers, 9805 Overseas Hwy.
Code Compliance Hearing	7/17	2:00pm	Council Chambers, 9805 Overseas Hwy.
Friday Night Kickball (free program) Ages 4-10	7/19	7:00pm	Community Park Baseball Fields
Mini Lobster Season	7/24 & 7/25	Begins at 12:01am on Wednesday 7/24 and Ends at 12:00 midnight on Thursday 7/25	
Friday Night Kickball (free program) Ages 4-10	7/26	7:00pm	Community Park Baseball Fields
City Council Meeting	8/13	5:30pm	Council Chambers, 9805 Overseas Hwy.

2019 Summer Camp is going through August 9<sup>th</sup> for Ages 5-13 at the Marathon Community Park. \$80 per week (\$20 discount applies for each additional family member). For more information contact Jaymie or Austin at the Park office, 305-743-6598.



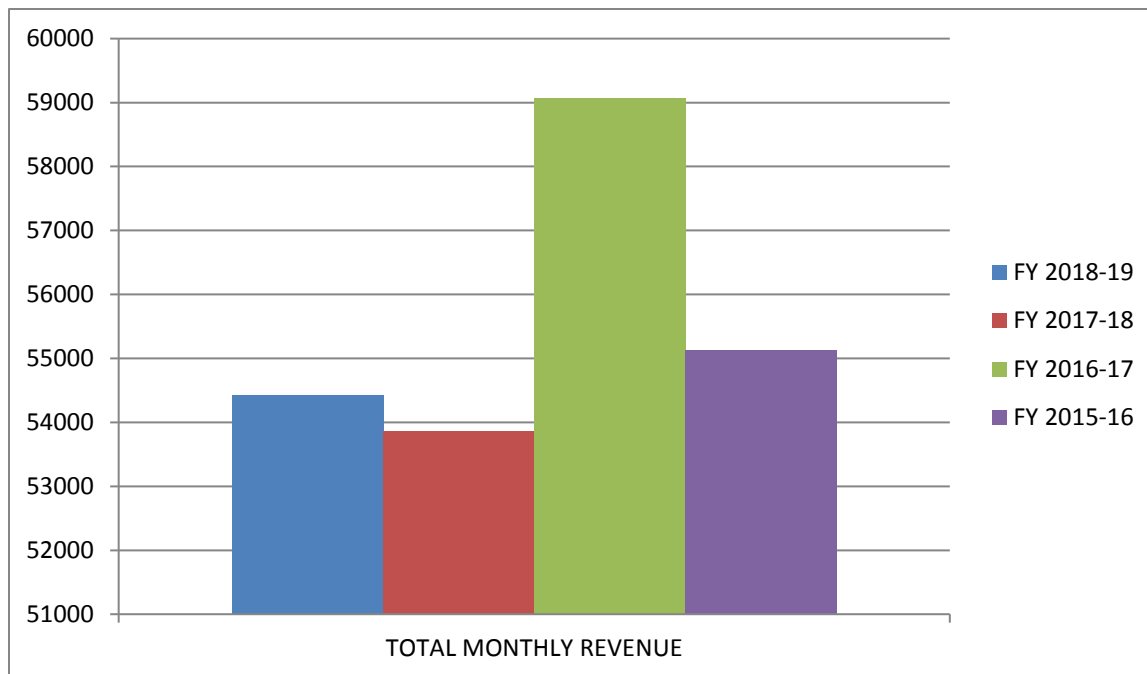
---

---

## Memorandum

**To:** Chuck Lindsey, City Manager  
**From:** Sean Cannon, Ports Director  
**Date:** July 9, 2019  
**Re:** June Monthly Report

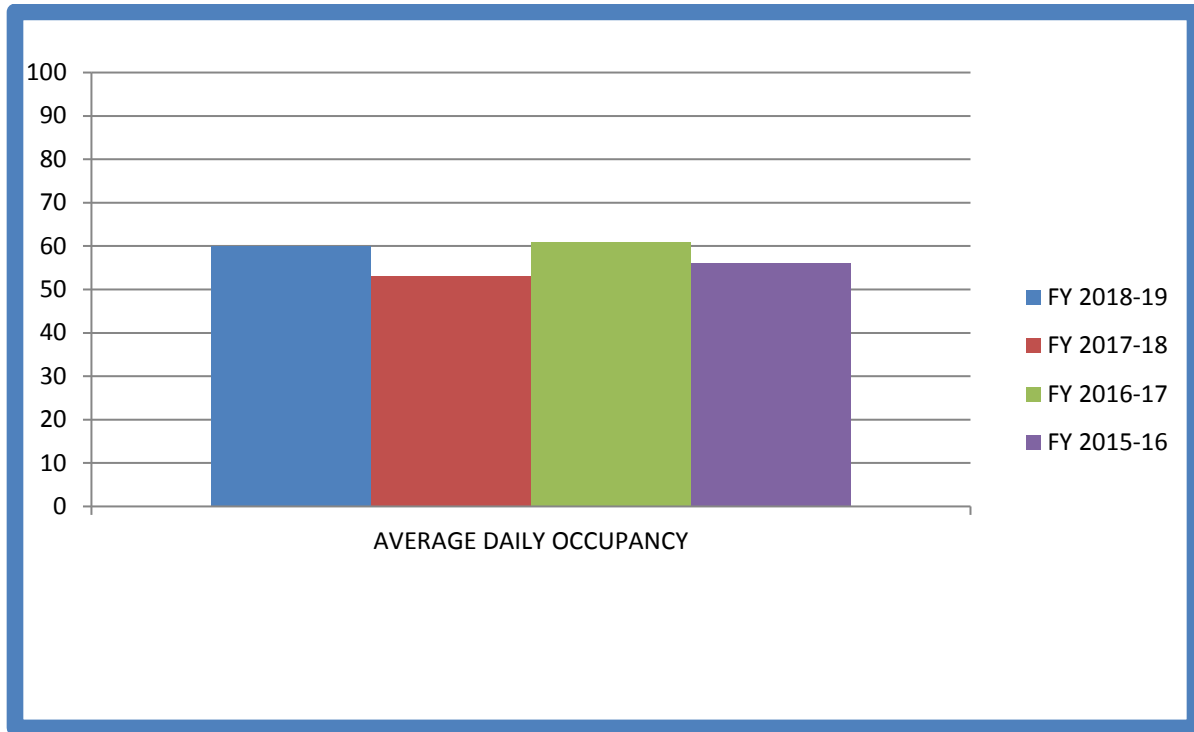
Revenue: City Marina saw \$54,430 in total revenue during the month of June.







Occupancy: June's average daily occupancy was 60%.



**TOTAL TRANSIENT ARRIVALS**

**\*IN-STATE VESSELS: 27**

**\*OUT-OF-STATE VESSELS: 8**

**\*FOREIGN VESSELS: 1**

Derelict Vessels: FWC is handling all derelict vessels.

News: Seamar inspection of the mooring ball was done early June and passed with no red flags. The marina has been working on hurricane preparedness; i.e hurricane policies, employee FEMA training, etc. Marina is also in preparation for the annual hurricane seminar coming up in July (flyer attached).

Projects: The annual painting of the bathroom and showers.

# HURRICANE



## Preparation For Boaters

# GET READY

Page 23 of 85

**July 13th**

**10:00 AM-12:00**

**With:**

**Capt. Marti Brown**

**Kennard "Chip" Kasper**

Meteorologist-in-Charge  
at NOAA/National Weather Service

**Matthew McJunkin**

Assistant Ports director

**Guest Attendees From:**

**Monroe County**

**Emergency Management**

**FWC**

**US Coast Guard**

**Will be held at**

**Marathon City Marina**


**800 35th St. Ocean**



## Utility Department Monthly Update

**MEETING DATE:** July 9, 2019

**TO:** Honorable Mayor and City Councilmembers

**FROM:** Daniel Saus, Utility Director 

**THROUGH:** Charles Lindsey, City Manager

**SUBJECT:** **June 2019 Utility Department Update**

---

### A. Wastewater Treatment Plants

#### 1. General Issues

- a. We are working on the odor control upgrades at the Area 3 plant, the remote vacuum station, and the Area 5 plant. Installation should be completed within two weeks.

#### 2. Odor Complaints / Mitigation

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

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

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

**City of Marathon  
Wastewater  
Treatment Plant  
Performance Data for:**

**MAY 2019**

Parameters:			CBOD mg/L		TSS mg/L		TN mg/L		TP mg/L	
WWTP	Permit (MGD)	MADF (MGD)	Monthly Average (6.25)	Annual Average (5.0)	Monthly Average (6.25)	Annual Average (5.0)	Monthly Average (3.75)	Annual Average (3.0)	Monthly Average (1.25)	Annual Average (1.0)
AREA 3	0.250	0.177	2.47	2.53	0.5	2.1	1.55	2.38	0.719	0.964
AREA 4	0.400	0.266	1.64	5.33	0.97	1.55	0.818	1.92	0.637	0.78
AREA 5	0.450	0.271	1.93	1.29	0.5	0.82	1.48	1.98	0.30	0.39
AREA 6	0.200	0.073	1.0	1.68	0.5	0.78	1.48	1.91	0.188	0.133
AREA 7	0.200	0.036	5.9	1.89	1.48	0.77	2.19	1.67	0.189	0.123

## B. Collection System

1. In June, we were caught up on the grease trap list and have full compliance at this time.
2. Our new technician assigned to the grinder pump system in Grassy Key has made tremendous progress and the system is now better than it ever has been with minimal alarms and/or call outs.
3. Vacuum Station Salinities for June:
  - a. January's vacuum station salinities were at as follows (in parts per thousand): SA3: 1.9; SA4: 1.6; SA5: 2.4; SA6: 0.8 and SA7: 0.9. This indicates a very little amount of saltwater intrusion into our system.
4. Wastewater System Connections

- a. The City's wastewater system parcel connection rate is currently standing at approximately 99%. (Only customers that are in code or do not have a certificate of occupancy are not connected)

## 5. Code Compliance

- a. There are currently 19 open code cases in process for failure to connect to the City's central wastewater system, code violations, or expired permits. Most of them are residential properties in some point in the foreclosure process.

## 6. Call-Outs

- a. From June 1st to June 30th there were 41 documented Call outs for the entire Collections System. Of these, 31 were system generated, typically low vacuum detected at one of our Vacuum Stations. These 31 call outs did not result in any inconvenience to our customers in any way as the problems were detected and remedied by Collections/Maintenance City Staff before these problems could become a nuisance to the homeowners or residents at these locations.
- b. The other call outs were as follows:
  - i. 6-8-19: Backup Area 4. 451 64<sup>th</sup> Street. The Resident called the afterhours MOD phone about a backup at the property. The Tech arrived and found the Vacuum Pit to be overwhelmed with water. He fired the Vacuum Pit manually emptying the sump of water and put the pit back into service. No damage to property.
  - ii. 6-9-19: Backup Area 5. 781 83<sup>rd</sup> Street. The Resident called the afterhours MOD phone and the Tech responded to the call. He investigated and found the Vacuum Pit to be overwhelmed with water and the Clean out cap broken with a rock situated on top covering it. He took a picture of the Clean out and he manually fired the Vacuum Pit to clear the sump of water and put the pit back into operation. The Collections Dept. repaired the broken Cleanout the very next morning as it was part of City property. No damage to property.
  - iii. 6-9-19: Alarm Area 7. 58569 Morton Street. The Resident called the afterhours MOD phone to tell the Tech about the Alarm going off on the Grinder Pump Station and he responded to the call. He investigated and found the Grinder Pump Station working properly. The actual Alarm itself was malfunctioning. The Lift Station Tech showed up the next morning and fixed the problem No damage to property.
  - iv. 6-12-19: Backup Area 5. 1116 73<sup>rd</sup> Street. The Resident called the afterhours MOD phone and informed the Tech that water was backing up into the property. He responded and found the City equipment working properly. Home owner side issue.
  - v. 6-17-19: Backup Area 5. 10887 O/S Hwy. The Law Offices of Hal Schumacher. The business called City Hall and the Tech responded. He found

the Controller had come off of the valve and caused the Vacuum Pit to fill with water. He replaced the Controller and Valve and manually fired the pit clearing the water from the sump. The pit was then put back into service. No damage to property.

- vi. 6-20-19: Backup Area 4. 740 46<sup>th</sup> Street. A resident called the afterhours MOD phone about a backup at the property. A Tech responded and inspected the Vacuum Pit. He found a bad Controller and Valve. He replaced the Controller and Valve, then manually fired the pit to clear the water out of the sump. No damage to property.
- vii. 6-21-19: Backup Area 4. 104 41<sup>st</sup> Street. The MOD phone received a call about a backup at the property. The Tech responded and inspected the Vacuum Pit. He found that the Suction Tube was clogged with grease and debris. He cleared the clog and put the pit back into service. He also informed the resident about not putting grease or oils down the drains. No damage to property.
- viii. 6-21-19: Backup Area 5. 800 74<sup>th</sup> Street. The afterhours Mod phone received a call about a backup at the residence. The Tech responded and inspected the Vacuum Pit. He found the Controller and Valve bad. He replaced the Controller and Valve, then fired the pit manually clearing the sump of water. He then put the pit back into operation. No damage to property.
- ix. 6-26-19: Backup Area 3. 408 30<sup>th</sup> Street. The afterhours MOD phone received a call about a backup from the residence and the Tech responded. He inspected the City Equipment and found it to be working properly. Homeowner side issue.
- x. 6-29-19: Backup Area 4. 3800 Gulfview Ave. Marlin Bay. The afterhours MOD phone received a call about a backup from the residence and the Tech responded. He inspected the City Equipment and found that the Breather had come loose in the Vacuum Pit. He installed a new Controller and Valve. He reinserted the Breather then manually fired the pit emptying the sump of water. He then put the pit back into service. No damage to property.

## 7. Odor Complaints / Mitigation

- a. We received one odor complaint in June for the collection system for the remote vacuum station located at the corner of US1 and Aviation Boulevard. An odor control upgrade for this area was approved by City Council at the last council meeting and that equipment has been received. Installation and start-up are scheduled for July 8<sup>th</sup>.

## C. Service Plant upgrades & Construction

- 1. The Service Area 3 WWTP redundant filter upgrade project was approved and the filter is nearly completed.. ACOE grant money is available for reimbursement.

2. The Service Area 3 WWTP wastewater pre-treatment project was recently approved by Council and work is well underway. We expect completion before the end of July.
3. The Area 5 WWTP upgrades are still in progress. The damaged influent EQ tank repairs are nearly completed. The final coatings are going on at this time. We expect the tank to be back on line before mini season.
4. The design for the sludge facility at Area 6 is on hold at this time.
5. The design for the Area 3 to 4 re-pump and force main is now in progress.

## D. Grants Update Summary

1. LP44041 17 Million dollar Grant – No major changes this month.
  - i. Finance is working on the next draw at this time.
2. Regarding the ACOE PCA (possible grant money for next year) : The House E & W Appropriations Committee just released the report for the fiscal 2020 Energy-Water Appropriations bill. The bill was passed by the full committee and it contains \$100M for Army Corps Section 219! This is the most funding we have ever seen from the House side for the Section 219 program. We still need to see where the Senate comes down and how they hash out the difference later in the year but this is a great start for a chance at FY2020 funding from ACOE.

# CITY OF MARATHON



## Memorandum

---

**Meeting Date:** July 9, 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  
Special Magistrate

---

On July 11, 2017 Council passed Ordinance 2017-03 establishing a Special Magistrate to replace the Code Compliance Board. A contract with our special magistrate was approved on June 12, 2018 by Resolution 2018-62.

The first Code Hearing with the Special Magistrate was on August 15, 2018 and there have been 11 scheduled Hearings to date.

The following is a break down comparing one year with the Code Compliance Board and one year with the Special Magistrate for notices of hearings sent, cases heard, rulings and cancellations.

	Special Magistrate 2018-2019	Code Compliance Board 2016
Notices of Hearing Sent	91	52
Cases Withdrawn for compliance	45	18
Cases Heard	46	34
In Violation	40	31
Not In Violation	1	0
Continued	5	3
Hearings Scheduled	11	12
Hearings Cancelled	2	5

The mechanism for appeal remained the same with both the Code Compliance Board and the Special Magistrate. An appeal of a ruling must go before Circuit Court, however an appeal of the amount of a fine may go before City Council. There were no appeals to either the Circuit Court or City Council during the time period reported for the Code Compliance Board and there have been no appeals of any rulings or fines imposed by the Special Magistrate.

Since the appointment of the Special Magistrate the Code Department has been able to streamline several processes to utilize staff time more efficiently. Code Board attorney fees for the seven Hearings in 2016 were \$1,225.00 (\$175.00 per Hearing). The Special Magistrate fees for the eleven Hearings in 2018-2019 were \$1950.00 (\$177.00 per Hearing).

According to Florida Statute “the local governing body of a county or a municipality that has a population equal to or greater than 5,000 persons must appoint seven-member code enforcement boards.” Additionally, The Local Government Code Enforcement Boards Act requires that, when



possible, such boards be composed of “an architect, a businessperson, an engineer, a general contractor, a subcontractor, and a realtor.” Aside from maintaining the board demographics, lack of attendance can prohibit a board from achieving quorum numbers and lead to cancellation of the scheduled meeting.

Florida Statute also requires a local government to maintain separate legal counsel for its code enforcement board (“The local governing body attorney shall either be counsel to an enforcement board or shall represent the municipality or county by presenting cases before the enforcement board, but in no case shall the local governing body attorney serve in both capacities.”). Therefore in addition to the City attorney, a separate attorney had to be retained specifically to board meetings. This statutory mandate to employ an additional attorney as advisor to the volunteer board may negate the cost savings of using a volunteer board.

## CITY COUNCIL AGENDA STATEMENT



**Meeting Date:** June 11, 2019

**To:** Honorable Mayor and Council Members

**From:** George Garrett, Planning Director

**Through:** Chuck Lindsey, City Manager

**Agenda Item:** **Resolution 2019-66**, Consideration of A Request By Holiday Inn Express & Suites For A Time Extension For Approvals Granted Pursuant To Resolutions 2014-105 And 2015-37 Pertaining To The Granting Of Twenty-Five (25) Transient Residential Units (TRUs) For A Project Approved By The City To Expand The Holiday Inn Express & Suites By A Total Of Twenty-Seven (27) Hotel Units Approved Pursuant To Resolutions 2014-61 And 2014-62 For A Conditional Use Permit And A Development Agreement Respectively; Providing That Said Conditional Use Permit And Development Agreement Were Approved For Time Extensions Pursuant To Resolutions 2017-47 And 2018-65; Providing That The Approval Of This Resolution Makes The Approved Time Frames For The Conditional Use Permit, Development Agreement And The Allocation Of Transient Residential Units (TRUs) Contemporaneous; Providing That Said Extension Request Is Issued For Property Which Is Legally Described As Part Of Government Lot 2, Fat Deer Key, Monroe County, Florida, Having Real Estate Numbers 00100260-000100 And 00100260-000102.

---

### **BACKGROUND:**

Resolution 2019-02 serves to do the following with regard to the Conditional Use Permit and Development Agreement for the expansion of the Holiday Inn Express:

1. The duration and time line for the Agreement originally memorialized in Resolution 2014-62 is now established as follows:
  - a. All building permits must be obtained by July 10, 2019.
  - b. Certificates of Occupancy for all buildings permitted under the Development Agreement must be obtained by July 10, 2021.
2. So long as the Conditional Use Permit memorialized originally in Resolution 2014-61 and the Agreement memorialized originally in Resolution 2014-62 remain valid and in good standing with the City, then the twenty-five (25) Transient Residential Unit Allocations originally allocated and memorialized in Resolution 2014-105 remain associated with the Holiday Inn Express and Suites project approval, whether in original ownership or another owner.

This request serves only to extend the time frame for obtaining buildings permits currently set at July 10, 2019. The Applicant has submitted a complete set of construction plans. They are currently under review by the City. The Applicant is simply trying to ensure that they meet appropriate deadlines. In as much as the City is reviewing the plans now, this should not be an issue. However, in an abundance of caution, the Applicant wants to make sure that they are not in default. They are requesting a minimal extension. Staff is suggesting that the extension be granted for up to sixty (60) days.

---

Yes

No

  X    
2. Other –Sewer Mandate

              X  

FISCAL NOTE:

NA

APPROVED BY FINANCE DIRECTOR:

NA

---

**RECOMMENDATION:**

Approval

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-66**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A REQUEST BY HOLIDAY INN EXPRESS & SUITES FOR A TIME EXTENSION FOR APPROVALS GRANTED PURSUANT TO RESOLUTIONS 2014-105 AND 2015-37 PERTAINING TO THE GRANTING OF TWENTY-FIVE (25) TRANSIENT RESIDENTIAL UNITS (TRUS) FOR A PROJECT APPROVED BY THE CITY TO EXPAND THE HOLIDAY INN EXPRESS & SUITES BY A TOTAL OF TWENTY-SEVEN (27) HOTEL UNITS APPROVED PURSUANT TO RESOLUTIONS 2014-61 AND 2014-62 FOR A CONDITIONAL USE PERMIT AND A DEVELOPMENT AGREEMENT RESPECTIVELY; PROVIDING THAT SAID CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT WERE APPROVED FOR TIME EXTENSIONS PURSUANT TO RESOLUTIONS 2017-47 AND 2018-65; PROVIDING THAT THE APPROVAL OF THIS RESOLUTION MAKES THE APPROVED TIME FRAMES FOR THE CONDITIONAL USE PERMIT, DEVELOPMENT AGREEMENT AND THE ALLOCATION OF TRANSIENT RESIDENTIAL UNITS (TRUS) CONTEMPORANEOUS; PROVIDING THAT SAID EXTENSION REQUEST IS ISSUED FOR PROPERTY WHICH IS LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 2, FAT DEER KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00100260-000100 AND 00100260-000102.**

**WHEREAS**, pursuant to Resolution 2019-02, the terms of the Conditional Use Permit, Development Agreement, and allocation of Transient Residential Units (TRUs); now runs contemporaneously; and

**WHEREAS**, the term of such approvals was determined to be:

- a. All building permits must be obtained by July 10, 2019.
- b. Certificates of Occupancy for all buildings permitted under the Development Agreement must be obtained by July 10, 2021.

**WHEREAS**, the Applicant has submitted building construction plans which are currently under review by the City; and

**WHEREAS**, the Applicant is simply trying to ensure that they meet reasonable and essential deadlines; and

**WHEREAS**, in as much as the City is reviewing the construction plans currently, meeting the existing deadline should not be an issue; and

**WHEREAS**, in an abundance of caution, the Applicant wants to make sure that they are not in default; and

**WHEREAS**, staff is suggesting that the extension be granted for up to sixty (60) days; and

**WHEREAS**, this Resolution serves only to extend the time frame for obtaining buildings permits currently set at July 10, 2019,

**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 following represent the direction of the City Council:

All building permits pursuant this amendment to Resolution 2019-02 must be obtained by September 10, 2019.

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

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

Sponsored by: Migut  
Introduction Date: June 11, 2019  
Public Hearing Dates: June 11, 2019  
July 9, 2019  
Enactment Date:

**CITY OF MARATHON, FLORIDA  
ORDINANCE NO. 2019-11**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING SECTION 18-125 OF THE CITY CODE REGARDING CIVIL PENALTIES FOR THE POSSESSION OF CANNABIS (MARIJUANA) FOR AMOUNTS UNDER 20 GRAMS AND FOR POSSESSION OF DRUG PARAPHERNALIA; CLARIFYING THE CITATION PROCEDURE; ESTABLISHING A NEW PROCEDURE TO CONTEST A CITATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES INCONSISTENT HEREWITH; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on April 26, 2016, the City Council of the City of Marathon (the “City Council”) enacted Ordinance No. 2016-04, which gave law enforcement officers the option of issuing city ordinance code violation to a person in possession of less than 20 grams of marijuana; and

**WHEREAS**, Ordinance 2016-04 has been codified into the City Code of Ordinances (the “City Code”) at Section 18-125; and

**WHEREAS**, Marathon City Code Section 18-125, *Offenses under state law; Prohibited*, sets forth provisions governing the issuance of a civil citation for possession of less than 20 grams of marijuana; and

**WHEREAS**, the City Council finds that Marathon City Code Section 18-125 needs clarification to permit law enforcement officers to issue the citations; and

**WHEREAS**, the City Council finds that Marathon City Code Section 18-125 needs clarification for citizens to understand the procedures used if a civil citation is issued; and

**WHEREAS**, the City Council finds that Marathon City Code Section 18-125 needs clarification in the procedure the Clerk of the Circuit Court of Monroe County will utilize in processing the citation; and

**WHEREAS**, the City Council finds that Marathon City Code Section 18-125 needs to be amended to add that that a citation may be referred to the Office of the State Attorney for possible criminal prosecution should the person fail to act on the citation; and

**WHEREAS**, the City Council finds that Marathon City Code Section 18-125 needs to be amended to update the minimum and maximum fines to be assessed for the citation.

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

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

**Section 2.** Section 18-125 entitled “Offenses under state law; Prohibited.” is hereby amended to read as follows:

**Sec 18-125. Offenses under state law; Prohibited.**

- (a) It shall be unlawful within the City, for any person to commit any act or fail to perform any duty, the commission of which, or the failure of which, constitutes a misdemeanor under the laws of the State of Florida.
- (b) Whoever shall violate the provisions of this section, upon conviction thereof, shall be punished by the same penalty as is provided by the laws of the State.
- (c) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
  - (1) Adult shall mean any person 18 years of age or older.
  - (2) Cannabis shall mean all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term does not include "low-THC cannabis," as defined in F.S. § 381.986, if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed, in conformance with F.S. § 381.986.
  - (3) Clerk shall mean the Clerk of the Circuit Court of Monroe County, Florida.
  - (4) Drug paraphernalia shall have the same meaning as that term has been defined in F.S. § 893.145. In determining whether an object is drug paraphernalia, a court or other authority or jury shall consider, in addition to all other logically relevant factors, the factors identified in F.S. § 893.146.
  - (5) Marijuana shall have the same meaning as the term "cannabis."

~~(e)~~(d) Notwithstanding subsection (a) the following misdemeanors under State law are

eligible to receive a civil violation notice, at the discretion of a law enforcement officer, provided that such violations are not charged in conjunction with any charge that is a felony, driving under the influence, incident involving domestic violence, or violent crime, as those terms are defined under State law.

(1) Possession of Marijuana ~~Cannabis~~ in an amount of twenty (20) grams or less, as set forth in section 893.13(6) (b) of Florida Statutes, as such may be amended from time to time; and/or

(2) Possession of Drug Paraphernalia, as set forth in Section 893.146 and 893.147(1) (b) of Florida Statutes, as such may be amended from time to time.

(3) Penalties and enforcement.

(a) A person violating subsection ~~(e)(d)~~(1) or ~~(e)(d)~~(2) shall receive a civil fine of ~~One Hundred Dollars (\$100.00) for first time violators and Two Hundred Fifty Dollars (\$250.00) for repeat violations within a one (1) year period.~~ in the amount of at least \$105.00 but not to exceed \$500.00.

(b) Enforcement. The Monroe County Sheriff's Office shall enforce this section within the City. This shall not preclude other law enforcement agencies from any action to assure with this section and all applicable laws. If a police officer finds a violation of ~~(e)(d)~~(1) or ~~(e)(d)~~(2), the police officer will be authorized to issue a civil citation. The citation shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, ~~instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before the code compliance board within ten (10) days after service of the citations, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.~~ and contain at least the following:

- i. The date and time of issuance;
- ii. The name and address of the person to whom the citation was issued;
- iii. The date on which the infraction occurred;
- iv. The name and title of the law enforcement officer;
- v. The procedure to pay the penalty or to contest the citation;
- vi. The applicable penalty if the citation is contested;
- vii. A conspicuous statement that the violation may be contested by requesting to appear before a county court judge, and that if the violator fails to pay the fine or fails to schedule an appearance to contest before a county court judge, the Clerk



shall refer the matter to the Office of the State Attorney for possible criminal prosecution.

- (c) Rights of violators; Payment of fine; Right to appear; Failure to pay civil fine or to appeal; ~~Appeals from decisions of the special magistrate.~~
- i. A violator who has been served with a civil citation under this Section must elect to either:
    - a. pay the civil fine in the manner indicated on the citation; The minimum penalty for a violation shall be a fine in the amount of at least \$105.00 but not to exceed \$500.00; or
    - ~~b. request an administrative hearing before the code compliance board to appeal the citation, which must be requested within ten (10) days of the service of the citation.~~
    - b. contact the Clerk to schedule a court hearing within thirty (30) days of the issuance of the citation to contest the citation.
  - ii. ~~The procedures for appeal by administrative hearing of the citation shall be as set forth in this section and section 10-8 of the City Code. Applications for hearings must be accompanied by a Fifty Dollar (\$50.00) administrative fee, which shall be refunded if the named violator prevails in the appeal.~~
  - iii. ~~If the named violator, after issuance of the civil citation, fails to pay the civil fine, or fails to timely request an administrative hearing before the code compliance board, the City's code director may be informed of such failure by report from the police officer. The failure of the named violator to appeal the decision of the police officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the code compliance board, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.~~
  - iv. ~~A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator,~~

~~which may be enforced in the same manner as a court judgement by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgement except for enforcement purposes. On or after the sixty first (61st) day following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien.~~

- ~~v. Any party aggrieved by a decision of the code compliance board may appeal that decision to a court of competent jurisdiction.~~
- ~~vi. The code compliance board shall be prohibited from hearing the merits of the citation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the citation.~~
- ~~vii. The code compliance board shall not have discretion to alter the penalties described herein.~~
- ii. Uncontested citation. If the person cited does not contest the citation, the penalty shall be \$105.00, which shall be paid within (30 days) of the issuance of the citation, by U.S. Mail or in person at the Clerk's office. The Clerk is authorized to establish procedures for accepting payment by mail for uncontested citations.
- iii. Contested citation. If the person contests the citation he shall, within thirty (30) days of the issuance of the citation, contact the Clerk to schedule a court hearing. The Clerk shall provide a court date for the person cited and to the issuing office to appear before a county court judge. After a hearing, if the Court finds that a violation of this provision has occurred, fines up to \$500, plus court costs, may be imposed by the court. The Court may make a finding that the person cited has an inability to pay the citation and may order court supervised community service in lieu of the fine.
- iv. Referral to the Office of the State Attorney. If the named violator fails to pay the civil fine, or fails to contact the Clerk to schedule a court hearing to contest the citation, the Clerk shall refer the matter to the Office of the State Attorney to forward the citation to the Office of the State Attorney to review for possible criminal prosecution for failure to comply, which may result in a fine not to exceed \$500 or

**by imprisonment in the county jail not to exceed 60 days or by both such fine and imprisonment.**

v. Inability to pay uncontested citation. If the person cited has an inability to pay the minimum fine amount, the person cited shall follow the procedure described in subsection (iii) above.

d. Applicability. Juvenile offenders are not eligible to be charged under this section.

**Section 3. Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance is 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 4. Repeal of Conflicting Provisions.** The provisions of the Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**Section 5. Effective Date.** This Ordinance shall become effective immediately upon adoption.

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

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

ATTEST:

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

Approved As To Form and Legality for the Use and Reliance of the City Of Marathon Only

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

Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-67**

**A RESOLUTION OF THE CITY COUNCIL OF MARATHON, FLORIDA;  
DETERMINING THE PROPOSED MILLAGE RATE, AND THE  
CURRENT YEAR ROLLED-BACK RATE, AND THE DATE, TIME AND  
PLACE FOR THE FIRST AND SECOND BUDGET PUBLIC HEARINGS  
AS REQUIRED BY LAW; DIRECTING THE FINANCE DIRECTOR TO  
FILE SAID RESOLUTION WITH THE PROPERTY APPRAISER OF  
MONROE COUNTY PURSUANT TO THE REQUIREMENTS OF  
FLORIDA STATUTES AND THE RULES AND REGULATIONS OF THE  
DEPARTMENT OF REVENUE OF THE STATE OF FLORIDA; AND  
PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, on June 26, 2019, the Honorable Scott P. Russell, Property Appraiser of Monroe County, Florida (the “Property Appraiser”), served upon the City of Marathon (the “City”), a “Certification of Taxable Value” certifying to the City its 2019 taxable value; and

**WHEREAS**, the City Council has reviewed the taxable value supplied by the Property Appraiser in accordance with Section 200.065, *Florida Statutes*, et seq.; and

**WHEREAS**, the provisions of Section 200.065, *Florida Statutes*, requires that within thirty-five (35) days of service of the Certification of Taxable Value upon a municipality, said municipality shall be required to furnish to the Property Appraiser the proposed millage rate, the current year rolled-back rate, and the date, time and place at which a public hearing will be held to consider the proposed millage and the tentative budget; and

**WHEREAS**, the City Council desires to announce the dates of the first and second public hearings to the Property Appraiser.

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

**Section 1.** The proposed millage is declared to be \_\_\_\_\_ mills, which is \$\_\_\_\_\_ per \$1,000.00 of assessed property within the City of Marathon, Florida. The proposed millage is \_\_\_\_\_% greater than the rolled back rate.

**Section 2.** The current year rolled-back millage rate, computed pursuant to Section 200.065, *Florida Statutes*, is 2.4459 mills, which is \$2.4459 per \$1,000.00 of assessed value.

**Section 3.** The maximum millage rate which may be adopted by a *majority vote* of the governing body, pursuant to Section 200.185, *Florida Statutes*, is 2.5288 mills, which is \$2.5288 per \$ 1,000.00 of assessed value.

**Section 4.** That the date, time and place of the first and second public hearings are set by the City Council as follows:

<u>Date</u>	<u>Time</u>	<u>Place</u>
September 12, 2019	5:05 p.m.	Marathon City Hall 9805 Overseas Highway Marathon, Florida
September 19, 2019	5:05 p.m.	Marathon City Hall 9805 Overseas Highway Marathon, Florida

**Section 4.** The Finance Director is directed to electronically submit a certified copy of this resolution to the Monroe County Property Appraisers Office.

**Section 5.** This resolution shall take effect immediately upon its adoption.

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

---

City Attorney



COUNCIL AGENDA STATEMENT

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

Agenda Item: Resolution 2019-68, Approving Change Order No. 2 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 \$30,785.62 For Various Items Requested By The City As Part Of The Beach Reconstruction Project; Authorizing The City Manager To Execute The Change Order And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.

BACKGROUND & JUSTIFICATION:

As part of the reconstruction of Sombrero Beach due to damages suffered from Hurricane Irma, the A few items have are being addressed that staff felt are an enhancement to the project that were not specifically addressed in the plans and specifications. The electrical service to the eastern portion of the beach is modified to be more efficient, resulting in a cost savings of the installation. The City also determined that the size of the Coconut trees specified in the plans were of insufficient size to make an immediate impact to the project, and requested that taller trees be installed.

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

CONSISTENCY CHECKLIST:

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

FISCAL NOTE:

The FY19 Capital Infrastructure budget includes appropriations of \$1,392,588 for the Sombrero Beach Irma Recovery Project, and \$400,000 for the Irma beach re-nourishment for both City beaches. A percentage of this project will be reimbursed by FEMA and the State of Florida.

RECOMMENDATION:

Approval of Resolution

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-68**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING CHANGE ORDER NO. 2 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 \$30,785.62 FOR VARIOUS ITEMS REQUESTED BY THE CITY AS PART OF THE BEACH RECONSTRUCTION PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CHANGE ORDER AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

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

**WHEREAS**, as part of the reconstruction of Sombrero Beach due to damages suffered from Hurricane Irma, the City has identified a few items to enhance the project that were not specifically addressed in the plans and specifications; and

**WHEREAS**, the electrical service to the eastern portion of the beach is modified to be more efficient, resulting in a cost savings of the installation. The City also determined that the size of the Coconut trees specified in the plans were of insufficient size to make an immediate impact to the project, and requested that taller trees be installed; and

**WHEREAS**, change order #2 is found to be reasonable for the additional work requested by City staff to be performed by Discount Rock and Sand, as the General Contractor, in the amount of \$30,785.62.

**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 #2 is attached hereto, together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is hereby approved. The City Manager is authorized to execute the contract and expend budgeted funds on behalf of the City.

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

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

CHANGE ORDER # 2 –

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

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

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

This Change Order constitutes full, final, and complete compensation to **Discount Rock & Sand, Inc.** for all costs, expenses, overhead, and profit, and any damages of every kind that **Discount Rock & Sand, Inc.** may incur in connection with the above referenced changes in the Construction Work under this Agreement. **Discount Rock & Sand, Inc.** acknowledges and agrees that (a) the Guaranteed Maximum Price of \$1,499,641.00 under the Agreement will be **changed** by this Change Order. **Discount Rock & Sand, Inc.** expressly waives any claims for any additional compensation, damages or time extensions in connection with the above-referenced changes. Except as herein or heretofore expressly modified, all terms of the Agreement shall remain in full force and effect and shall cover the performance of, and payment for, any work authorized hereunder. Any defined terms not defined in this Change Order shall have the meanings set forth in the Agreement.

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

CITY OF MARATHON  
a Florida municipal corporation

Discount Rock & Sand, Inc.

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

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

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

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

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

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

## Exhibit "A"

### CHANGE ORDER SUMMARY

Change Order No. 2  
Project Title **City of Marathon City Hall Project**  
Bid No. 2018-009  
Owner: City of Marathon  
Contractor: **Discount Rock & Sand, Inc.**  
Agreement Date: February 26, 2019

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

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

(1)	Original Contract Price	<u>\$1,343,241.00</u>
(2)	Current Contract Price (Adjusted by Previous C.O.)	<u>\$1,500,641.00</u>
(3)	Total Proposed Change in Contract Price	<u>\$30,785.62.00</u>
(4)	New Contract Price (Item 2 + Item 3)	<u>\$1,531,426.62</u>
(5)	Original Contract Time	<u>180 Days</u>
(6)	Proposed Change in Contract Time	<u>0 Days</u>
(6)	Current Contract Time (Adjusted by Previous C.O.)	<u>180 Days</u>
(7)	Total Proposed Change in Contract Time	<u>21 Days</u>
(8)	New Contract Time (Item 6 + Item 7)	<u>201 Days</u>
(9)	Original Contract Final Completion Date	<u>September 18, 2019</u>
(10)	New Contract Final Completion Date	<u>October 9, 2019</u>

## CITY OF MARATHON CITY HALL PROJECT CHANGE ORDER HISTORY

Item No.	Description	Current Contract Amount	Additive Change	Deductive Change	Net Change Contract Price	Net Change Contract Time
1.		<u>\$1,343,241.00</u>	<u>\$206,000.00</u>	\$48,600.00	<u>\$157,400.00</u>	0 Days
2		<u>1,500,641.00</u>	\$43,185.58	\$12,399.96	\$30,785.62	21 Days
<b>Total</b>		<b>\$1,500,641.00</b>	\$249,185.58	\$48,600.00	<b>\$200,585.58</b>	<b>21 Days</b>

## **Exhibit “B”**

### **CHANGE ORDER JUSTIFICATION**

The contractors electrical sub-contractor proposed a change to the design which reduced the size of a long run of electrical wire to service the eastern restroom , irrigation pump and pavilion, and replace with a new service with a shorter run resulting in a more efficient service at a reduce installation cost. We also determined that a booster for the speaker system is required for the extreme long run of speaker cable required to provide service to the far eastern portion of the beach.

It was also determined that a few items shown on the plans were not covered in the schedule of values for the project, and this change order addresses those items.

During Construction we discovered an underground pipe which provides some drainage relief to the eastern portion of the park. The CO includes the installation of two yard drains and 32 feet of pipe to connect to this system.

It is determined that the sizes of some of the proposed landscaping are too small to provide an immediate impact, therefore the sizes of the proposed Coconut trees is increased.

# DISCOUNT ROCK & SAND, INC.

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

Sombrero Beach Irma Recovery Project  
P2019-0301

## ELECTRICAL SYSTEM

CREDIT FOR 800" ELECTRICAL RUN (DUDCT) THIS RUN IS FOR RUNNING WIRE ONE SIDE OF THE BEACH TO CONNECT TO ONE PANEL	\$7,000.00
TOTAL DEDUCT	<\$7,000.00>

---

## ADD ON

- |  |            |
|--|------------|
| 1. The cost for the second service, 200amp 3 phase gear, is  | \$5,475.00 |
| 2. Install booster system for extreme long run of speaker cable<br>To far eastern pavilion to address loss of signal power in system | \$1,200.00 |

TOTAL ADD ON	\$6,675.00
--------------	------------

---

NET AMOUNT	< <b>\$325.00</b> >
------------	---------------------

Time Implication	2 Days
------------------	--------

## SITE UTILITY WORK

### Unit Price Items

1-18" Drain field	\$2,307.00
1-Foot Wash Station	\$4,400.00

### New Items

1-18" Vertical French Drain	\$2,300.00
1-24" Yard Drain Assembly	\$700.00
36 LF 12" ADS Pipe @ \$36.11/LF	\$1,300.00
1-Nyloplastic Drain	\$3,300.00
275 LF Relocated Fencing Pipe @ \$13.00/LF	\$3,575.00
1-4" Gate Valve	\$450.00

TOTAL ADD ONS	<b>\$18,332.00</b>
---------------	--------------------

<b>NET AMOUNT</b>	<b>\$18,332.00</b>
Time Implication	12 Days

**Site Fencing**

1-Aluminum Decorative Door.	\$900.00
1-Double Gate for Irrigation Enclosure Access	\$450.00
2-6'Chainlink Gate to Access City Own House @ \$900.00 Each	\$1,800.00
1464 LF of tension wire for bottom fence of 3' Wall @\$2.45/LF	\$3,586.80

<b>TOTAL ADD ON</b>	<b>\$6,736.80</b>
---------------------	-------------------

---

15% Profit & Overhead	\$1,010.52
-----------------------	------------

<b>NET AMOUNT</b>	<b>\$7,747.32</b>
-------------------	-------------------

Time Implication	2 Days
------------------	--------

**Landscaping**

Replace 243 18"x18" Horizontal Coco Plums with 243 Red Tip Coco Plums 30"x18"	No Charge
Delete 13 Sable Palms @ \$351.92/ea	<\$4,574.96>
Delete 11 Coconut Trees 7' Overall Height @ \$75/ea	<\$825.00>
Add 17 Coconut Trees 16'-18' Overall Height @ \$575.00/ea	\$9,775.00

<b>TOTAL DEDUCT</b>	<b>&lt;\$5,399.96&gt;</b>
<b>TOTAL ADD ON</b>	<b>\$9,775.00</b>

---

<b>Net Amount</b>	<b>\$4,375.04</b>
-------------------	-------------------

15% Profit & Overhead	\$656.26
<b>NET AMOUNT</b>	<b>\$5,031.30</b>

Time Implication	2 Days
------------------	--------

Additional Time Implication for Demobilization Due to 4 <sup>th</sup> of July	3 Days
---	--------

<b>Total C.O. Amount</b>	<b>\$30,785.62</b>
--------------------------	--------------------

<b>Total Time Implication</b>	<b>21 Days</b>
-------------------------------	----------------



COUNCIL AGENDA STATEMENT

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

Agenda Item: **Resolution 2019-69**, Accepting The Lowest Responsive And Responsible Bid, And Approving A Contract Between The City And H&R Paving, Inc., In An Amount Not To Exceed \$1,755,787.78 For The Aviation Blvd. Multi-Use Trail Project; 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:

The City has applied and received LAP grant funding from FDOT for the Aviation Blvd. Multi-Use Project. FDOT has issued a Notice To Proceed for the Project. In December of 2018, the City let the project to bid and three bids were received, the low bid was over \$800,000 over the budget, mostly due to the proposed lighting for the project. Subsequently, the bids were rejected. The City revised the plans, eliminating the light poles while still installing the infrastructure for future lights, and made some other minor changes to the project. The Project was re-bid, and two bids were received as noted in the Bid Tabulation below.

Base Bid Tabulation:

H&R Paving Inc.	\$1,755,787.78
Charley Toppino & Sons, Inc	\$1,801,705.52

Both Bidders are deemed to be responsive and responsible per the contract documents. As such staff, in accordance with the grant requirements of FDOT and the FHWA, recommends award of the contract to the lowest responsive and responsible bidder H&R Paving, Inc.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	XX	___

FISCAL NOTE:

The FY19 Street Maintenance Budget includes appropriations of \$2,200,000 for the Aviation Multi Use Trail project. This project will also have to be re-appropriated in FY20 during the budget process.

RECOMMENDATION: Council approve Resolution



**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-69**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, ACCEPTING THE LOWEST RESPONSIVE AND RESPONSIBLE BID, AND APPROVING A CONTRACT BETWEEN THE CITY AND H&R PAVING, INC., IN AN AMOUNT NOT TO EXCEED \$1,755,787.78 FOR THE AVIATION BLVD. MULTI-USE TRAIL PROJECT; 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”) received LAP grant funding from FDOT for the Aviation Blvd. Multi Use Project (the “Project”); and

**WHEREAS**, the City of Marathon (the “City”) issued a Request for Proposals for the project in accordance with the grant requirements of FDOT and the FHWA; and

**WHEREAS**, two bids were received; the lowest bid was received from H & R Paving Inc. (the “Contractor”) in the amount of \$1,755,787.78 for the Project, and staff subsequently reviewed and determined the bid was complete, the bidder was responsive and responsible; and

**WHEREAS**, the City Council finds that accepting the bid and entering into a contract for the Project with the Contractor is in the best interest of the City.

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

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

**Section 2.** The Contract between the City and Contractor for the Project in an amount not to exceed \$1,755,787.78, 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 execute the Contract and expend budgeted funds on behalf of the City.

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

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

**SECTION 00500  
CONSTRUCTION CONTRACT**

This Contract (the “Contract”) is dated as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by and between the City of Marathon (hereinafter called the “CITY”) and H&R Paving, Inc. (hereinafter called “CONTRACTOR”) located at: 1955 NW 110<sup>th</sup> Ave. Miami, FL 33172.

CITY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1. WORK**

- 1.1 Project/Work: CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as the following: The Project consists of **AVIATION BLVD. MULTI-USE TRAIL, ROADWAY & HARDSCAPE IMPROVEMENTS** consisting of the construction of Multi Use recreational trail, shifting and overlay of Aviation Blvd., site improvements, landscaping, hardscape, and street lighting, inclusive of all labor supplies, material required for a complete project as indicated and in accordance in the contract and construction documents.

**ARTICLE 2. CITY’S REPRESENTATIVE, ARCHITECT AND ENGINEER**

2.1 It is understood that the CITY will designate a representative for the Work. The CITY’S REPRESENTATIVE referred to in any of the Contract Documents designated herein is Carlos A. Solis, P.E. Director of Public Works and Engineering, 9805 Overseas Highway, Marathon Florida 33050.

2.2 The CITY’s ENGINEER OF RECORD referred to in any of the Contract Documents designated herein is Chen-Moore & Assoc, Inc, 500 W. Cypress Creek Rd. Ft Lauderdale, FL 33309.

2.3

**ARTICLE 3. TERM**

3.1 Contract Term. The Work shall be substantially completed within Two Hundred and Thirty (230) 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 Contract Documents within Two Hundred and Sixty (260) calendar days after the date specified in the Notice to Proceed (“Final Completion”).

3.2 Contract Time. The Contract Term shall not commence until the CITY issues to CONTRACTOR a Notice to Proceed and the term of the Contract shall be through the date of final payment unless terminated earlier pursuant to Section 00700 – General Conditions, Article 14, Payments to Contractor and Completion.

3.3 Survival of Obligations. Any obligations by the CONTRACTOR, including but not limited to those set forth in Section 00700 – General Conditions, Article 12, Contractor’s General Warranty and Guarantee, that would or could occur after the date of expiration or termination of the Contract shall survive the termination or expiration of the Contract.

3.4 Liquidated Damages. CITY and CONTRACTOR recognize that time is of the essence in this Contract and that the CITY will suffer financial loss if the Work is not completed within the contract times specified in Section 3.1 for the Work above, plus any approved extensions thereof allowed in accordance with the General Conditions. The CONTRACTOR also recognizes that the damages which the City will incur if the Work is not substantially completed on time and/or fully completed on time are not readily ascertainable at the time this Agreement is entered into, and the Contractor recognizes the difficulties involved in proving the actual loss suffered by CITY if the Work is not substantially completed on time and/or fully completed on time. Accordingly, Liquidated Damages shall be imposed in accordance with Section 00701 subsection 8-10.

3.5 Should the Substantial Completion and/or Full/Final Completion and acceptance of Work, together with any modification or additions, be delayed beyond the time for performance set in Section 3.1 above because of lack of performance by the CONTRACTOR, it is understood and agreed that aside from any liquidated damages, the Contractor shall be liable to the City for all actual additional costs and/or losses incurred by the CITY including, but not limited to, completion contractor expenses, lost/unrealized revenue, financing costs, professional services, attorney fees, and/or additional City staffing that incurred because the Work was not substantially completed on time and/or fully completed on time.

3.6 Monies due to the CITY under Sections 3.4 and 3.5 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.

#### **ARTICLE 4. CONTRACT PRICE**

4.1 CITY shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to this Article.

4.1.1 For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated on the Unit Price Bid Form attached hereto as **Exhibit “A.”** Estimated quantities are not guaranteed, and determination of actual quantities and classification are to be made by ENGINEER as provided in the Contract Documents.

4.2 The CONTRACTOR agrees that all specific cash allowances are included in the above Contract Price and have been computed in accordance with the Contract Documents.

#### **ARTICLE 5. PAYMENT PROCEDURES**

5.1 CONTRACTOR shall submit Applications for Payment in accordance with the Section 0700 - General Conditions, Article 14, Payments to Contractor and Completion. Applications for Payment will be processed by CITY as provided in the General Conditions.

5.2 Progress Payments, Retainage. CITY shall make progress payments, deducting the amount from the Contract Price above, on the basis of CONTRACTOR'S Applications for Payment as recommended by the CITY'S REPRESENTATIVE, on or about the last day of each month during construction as provided herein. All such payments will be made in accordance with the schedule of values established in the General Conditions or, in the event there is no schedule of values, as provided in the General Conditions.

5.2.1 No progress payment shall be made until CONTRACTOR delivers to the CITY **certified copies of the performance bond and payment bond establishing that the bonds have been recorded with the county clerk**, complete original partial releases of all liens, bond claims, and claims signed by all Subcontractors, materialmen, suppliers, and vendors, indicating amount of partial payment, on a form approved by the CITY, and an affidavit that so far as the CONTRACTOR has knowledge or information, the releases include and cover all Materials and Work for which a lien, bond claim, or claim could be filed for work completed to date.

5.2.2 No progress payment shall be made until **CONTRACTOR** delivers to **CITY** complete original partial releases and waivers of all liens and claims signed by all Subcontractors, materialmen, suppliers, and vendors, indicating receipt of partial payment due each for work performed since last progress payment. The partial release shall be accompanied by an affidavit stating that, so far as **CONTRACTOR** has knowledge or information, the releases include and cover all Materials and Work for which a lien or claim could be filed for work completed to date. The form of the partial release and waiver of lien and affidavit specified herein shall be approved by the CITY.

5.2.3

5.3 The CONTRACTOR agrees that ten percent (10%) of the amount due for Work as set forth in each Application for Payment shall be retained by CITY for each Progress Payment until Final Payment, as defined in Section 0700 - General Conditions, Article 14, Payments to Contractor and Completion.

5.3.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated above, but, in each case, less the aggregate of payments previously made and less such amounts as CITY'S REPRESENTATIVE shall determine, or CITY may withhold, in accordance with the General Conditions.

5.4 The payment of any Application for Payment by CITY, including the Final Request, does not constitute approval or acceptance by CITY of any item of the Work in such Request for Payment, nor shall it be construed as a waiver of any of CITY's rights hereunder or at law or in equity.

5.5 The Final Application for Payment by CONTRACTOR shall not be made until the CONTRACTOR delivers to the City complete original final releases of all liens and claims signed by all Subcontractors, materialmen, suppliers, and vendors on a form approved by the CITY, and

an affidavit that so far as the CONTRACTOR has knowledge or information, the releases include and cover all Materials and Work for which a lien or claim could be filed. The CONTRACTOR may, if any Subcontractor, materialmen, supplier or vendor refuses to furnish the required Final Waiver of Lien, furnish a bond satisfactory to City to defend and indemnify City and any other property owner, person or entity City may be required to indemnify against any lien or claim.

#### **ARTICLE 6. INSURANCE/INDEMNIFICATION.**

6.1 Insurance. 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 in the General Conditions of the Contract Documents.

6.2 Indemnification. The CONTRACTOR shall indemnify, defend and hold harmless the CITY, their officials, agents, employees, and volunteers as set forth in General Conditions of the Contract Documents.

6.3 To the fullest extent permitted by law, the Agency's contractor shall indemnify and hold harmless the Agency, the State of Florida, Department of Transportation, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of this Contract.

6.4 This indemnification shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity.

#### **ARTICLE 7. CONTRACTOR'S REPRESENTATIONS.**

In order to induce CITY to enter into this Contract, CONTRACTOR makes the following representations:

7.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda) and the other related data identified in the Bidding Documents including "technical data."

7.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

7.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

7.4 CONTRACTOR has made, or caused to be made, examinations, investigations, tests, or studies as necessary to determine surface and subsurface conditions at or on the site. CONTRACTOR acknowledges that CITY does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect

to subsurface conditions or underground facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

7.5 The CONTRACTOR is aware of the general nature of Work to be performed by CITY and others at the site that relates to the Work as indicated in the Contract Documents.

7.6 The CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

7.7 The CONTRACTOR has given the CITY'S REPRESENTATIVE written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by the CITY'S REPRESENTATIVE is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

7.8 The CONTRACTOR warrants the following:

7.8.1 Anti-Discrimination: The CONTRACTOR agrees that it will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this Contract because of race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

7.8.2 Anti-Kickback: The CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the CITY or any other applicable federal or state agency, has any interest, financially or otherwise, in the Project. For breach or violation of this warranty, the CITY shall have the right to declare contractor in default, and/or annul this Contract without liability or, in its discretion, to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

7.8.3 Licensing and Permits: The CONTRACTOR warrants that it shall have, prior to commencement of work under this Contract and at all times during said work, all required licenses and permits whether federal, state, County or City.

7.8.4 Public Entity Crime Statement: The CONTRACTOR warrants that it has not been placed on the convicted vendor list following a conviction for public entity crime, as specified in Document 00200, Section 7.5, of the Instructions to Bidders.

## **ARTICLE 8. CONTRACT DOCUMENTS.**

8.1 The Contract 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 Contract as though physically attached as a part thereof:

8.1.1 Change Orders.

8.1.2 Field Orders.

8.1.3 Contract for Construction.

8.1.4 Exhibits to this Contract.

8.1.5 Supplementary Conditions.

8.1.6 General Conditions.

8.1.7 Any federal, state, county or city permits for the Project

8.1.8 Specifications bearing the title: **Contract Documents for AVIATION BLVD. MULTI-USE TRAIL, ROADWAY & HARDSCAPE IMPROVEMENTS.**

8.1.9 Drawings consisting of a cover sheet and inclusive of all sheets bearing the following general titles: **AVIATION BLVD. MULTI-USE TRAIL, ROADWAY & HARDSCAPE IMPROVEMENTS.**

8.1.10 Bid Documents, including but not limited to: Addendum, Invitation to Bid, Instructions to Bidders, Bid Form provided by CONTRACTOR, Notice of Award and Notice to Proceed.

8.1.11 Addenda subject matter takes the same precedence of the respective subject matter that it is modifying. Furthermore, each subsequent addendum takes precedence over previous addenda.

8.1.12 The documents listed above shall be incorporated into this Contract (except as expressly noted otherwise above).

8.1.13 There are no Contract Documents other than those listed above in this Article. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions.

8.1.14 The Contract Documents shall remain the property of the CITY. The CONTRACTOR shall have the right to keep one record set of the Contract Documents upon



completion of the Project; provided; however, that in no event shall the CONTRACTOR use, or permit to be used, any or all of such Contract Documents on other projects without the City's prior written authorization.

8.1.15 The General Conditions discuss the bond and surety requirements of the CITY. This Contract requires the CONTRACTOR to provide payment and performance bonds, unless stated otherwise in Section 255.05, Florida Statutes.. If the Contract does not require bonds, the references to bonds in the General Conditions do not apply to this Contract.

## **ARTICLE 9. Public Records.**

9.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City.

9.2 The "Contractor" as defined by Section 119.0701(1)(a), Florida Statutes, and shall comply with the public records provisions of Chapter 119, Florida Statutes, including the following:

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

9.3 "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.

9.4 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 Contractor.

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

9.6 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 Contractor shall be grounds for immediate unilateral cancellation of this Agreement by the City.

**9.7 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.**

#### **ARTICLE 10. MISCELLANEOUS.**

10.1 Terms used in this Contract which are defined in Article 1 of the General Conditions, Section 700, will have the meanings indicated in the General Conditions. Terms used in Article 1 of the Instructions to Bidders, Section 200, also apply to this Contract.

10.2 Except as otherwise provided in the Contract Documents with respect to subcontractors, no assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party thereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.3 CITY and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

10.4 Severability. Should any provision, paragraph, sentence, word, or phrase contained in this Contract 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, then shall be deemed severable, and in this Contract, shall remain unmodified and in full force and effect.

10.5 Remedies. If and when any default of this Contract occurs, the CITY may avail itself of any legal or equitable remedies that may apply, including, but not limited to, liquidated damages specified in Article 3.4, actual damages, and specific performance. Such remedies may be exercised in the sole discretion of the CITY. Nothing contained in this Contract shall limit the CITY from pursuing any legal or equitable remedies that may apply. A default by CONTRACTOR under any contract with the CITY will be a default under all contracts with the CITY. The CITY may apply the proceeds from any contract between CONTRACTOR and the CITY to satisfy amounts owed by the CONTRACTOR to the CITY under any other contract.

10.6 Access to Public Records. The CONTRACTOR shall comply with the applicable provisions of Chapter 119, Florida Statutes. The CITY shall have the right to immediately terminate this contract for the refusal by the Contractor to comply with Chapter 119, Florida Statutes. The Contractor shall retain all records associated with this Contract for a period of five (5) years from the date of Final Payment or Termination of this Contract.

10.7 Inspection and Audit. During the term of this Contract and for five (5) years from the date of final completion or Termination, the CONTRACTOR shall allow CITY representatives access during reasonable business hours to CONTRACTOR’S records related to this Contract for the purposes of inspection or audit of such records. If upon an audit of such records, the CITY determines the CONTRACTOR was paid for services not performed, upon receipt of written demand by the CITY, the CONTRACTOR shall remit such payments to the CITY.

10.8 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.

10.9 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 CONTRACTOR:

\_\_\_\_\_  
H & R Paving  
\_\_\_\_\_  
1955 NW 110 Avenue  
\_\_\_\_\_  
Miami, FL 33172  
\_\_\_\_\_  
305-261-3005 / 305-592-6079  
\_\_\_\_\_

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

WITH COPY TO:

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

10.10 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 the Contract, 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. The venue for any lawsuit arising out of this Contract shall be Monroe County, Florida.

10.11 Attorneys' Fees. If either the CITY or CONTRACTOR is required to enforce the terms of the Contract 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.

10.12 Amendments. This Contract may only be amended by the prior written approval of the parties or by execution of a Change Order in the form attached hereto as **Exhibit "B"**.

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

**CONTRACTOR**

WITNESS

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

By \_\_\_\_\_  
(Signature and Title)  
(Corporate Seal)

\_\_\_\_\_  
(Type Name/Title signed above)

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CITY**

CITY OF MARATHON, FLORIDA

ATTEST

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

\_\_\_\_\_  
Mayor

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

By: \_\_\_\_\_  
City Attorney

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

CERTIFICATE AS TO CORPORATE PRINCIPAL

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

Signed and sealed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(SEAL) \_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed w/Title

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

SWORN TO AND SUBSCRIBED before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission Expires:

\_\_\_\_\_  
Notary Public



ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
<b>ITEM NO. 1 - GENERAL CONDITIONS</b>					
1	MOBILIZATION	1.00	LS	\$49,962.50	\$49,962.50
2	MAINTENANCE OF TRAFFIC	1.00	LS	\$68,791.00	\$68,791.00
3	BONDS AND INSURANCE	1.00	LS	\$26,331.95	\$26,331.95
				<b>SUBTOTAL</b>	<b>\$145,085.45</b>
<b>ITEM NO. 2 - ROADWAY CONSTRUCTION</b>					
4	CLEAR AND GRUB	1.00	LS	\$341,509.88	\$341,509.88
5	1" ASPHALT FOR BIKE PATH	6,990.00	SY	\$10.00	\$69,900.00
6	DEMOLITION - REMOVAL OF EXISTING ASPHALT BIKE PATH	4,950.00	SY	\$11.00	\$54,450.00
7	4" BASE ROCK UNDER BIKE PATH, COMPACTED	7,910.00	SY	\$27.00	\$213,570.00
8	6" CONCRETE REST AREA (S)	7.00	SY	\$72.00	\$504.00
9	SWALE GRADING (Sod)	1,222.00	LF	\$7.00	\$8,554.00
10	SAW CUT PAVEMENT	22,850.00	LF	\$1.00	\$22,850.00
11	CONSTRUCT 5 FEET SHOULDER 107TH STREET	1,270.00	SY	\$35.00	\$44,450.00
12	CONSTRUCT AVIATION BLVD WIDENING	2,385.00	SY	\$42.00	\$100,170.00
13	MILL AND RESURFACE PAVEMENT (4" 3/4" AVG DEPTH)	55.00	SY	\$82.00	\$4,510.00
14	OVERLAY AVIATION BLVD AND 107TH ST (AVG 3/4" OF SP-9.5)	890.00	TN	\$160.00	\$142,400.00
15	OVERBUILD SUPER ELEVATION (AVG 2" OF SP-12.5)	120.00	TN	\$180.00	\$21,600.00
16	8' WIDE FRICTION PAVE CROSSWALK	70.00	SY	\$586.00	\$41,020.00
17	TYPE F CURB & GUTTER	0.00	LF		\$0.00
18	4" CONCRETE SIDEWALK	85.00	SY	\$54.00	\$4,590.00
19	6" CONCRETE SIDEWALK	45.00	SY	\$72.00	\$3,240.00
20	CONSTRUCT SHOULDER WALL	45.00	CY	1,912.00	\$86,040.00
21	ADJUST CATCH BASIN FRAME AND GRATE AND REPLACE GRATE	2.00	EA	2,500.00	\$5,000.00
22	RAISE CATCH BASIN FRAME AND GRATE AND REPLACE GRATE	1.00	EA	1,500.00	\$1,500.00
23	ADJUST MANHOLE RIM	2.00	EA	1,200.00	\$2,400.00
24	SILT FENCE	8,600.00	LF	1.00	\$8,600.00
25	FLOATING TURBIDITY BARRIER	280.00	LF	1.00	\$280.00
				<b>SUBTOTAL</b>	<b>\$1,177,137.88</b>
<b>ITEM NO. 3 - SIGNAGE AND MARKING</b>					
26	6" THERMOPLASTIC STRIPING - 10'-30' SKIP (WITH REFLECTORS)	8,380.00	LF	\$1.10	\$9,218.00
27	6" THERMOPLASTIC STRIPING - DOUBLE YELLOW (WITH REFLECTORS)	1,675.00	LF	\$2.10	\$3,517.50
28	4" THERMOPLASTIC STRIPING - SOLID WHITE	3,780.00	LF	\$1.10	\$4,158.00
29	4" PROFILED THERMOPLASTIC SOLID WHITE	2,200.00	LF	\$1.50	\$3,300.00
30	4" THERMOPLASTIC STRIPING - 4'-10' SKIP WHITE (WITH REFLECTORS)	280.00	LF	\$1.10	\$308.00
31	12" THERMOPLASTIC STRIPING - CROSS WALKS	325.00	LF	\$3.00	\$975.00
32	24" THERMOPLASTIC STRIPING - STOP BARS AND CROSSWALK	75.00	LF	\$5.00	\$375.00
33	THERMOPLASTIC STRIPING - BICYCLE WITH BIKE ARROW	9.00	EA	\$300.00	\$2,700.00
34	THERMOPLASTIC STRIPING - SHARED LANE MARKING	4.00	EA	\$300.00	\$1,200.00
35	CROSSWALK WARNING THERMOPLASTIC TRIANGLE MARKINGS	105.00	LF	\$10.00	\$1,050.00
36	BLUE RPM	7.00	EA	\$5.00	\$35.00
37	REMOVE SIGN	2.00	EA	\$50.00	\$100.00
38	RELOCATE SIGN	6.00	EA	\$100.00	\$600.00
39	"YIELD HERE TO PEDESTRIAN" SIGN	8.00	EA	\$250.00	\$2,000.00
40	BICYCLE ROUTE SIGN	1.00	EA	\$300.00	\$300.00
41	SPEED LIMIT SIGN	1.00	EA	\$250.00	\$250.00
42	"NO STANDING AT ANY TIME" SIGN	1.00	EA	\$250.00	\$250.00
43	BICYCLE SIGN	4.00	EA	\$300.00	\$1,200.00
44	OTHER SIGN "NO PARKING"	1.00	EA	\$200.00	\$200.00
45	GUARDRAIL REPLACEMENT WITH 2' WIDE ASPHALT	295.00	LF	\$119.21	\$35,167.00
46	TACTILE WARNING STRIPS	12.00	EA	\$322.00	\$3,864.00
				<b>SUBTOTAL</b>	<b>\$70,766.00</b>
<b>ITEM NO. 4 - LANDSCAPING</b>					
47	ORANGE GEIGER TREE - 10' OAH, 5'SPR., 2" CAL.	17.00	EA	\$295.00	\$5,015.00
48	SABAL PALM - 10' - 12' CT	25.00	EA	\$325.00	\$8,125.00
49	HORIZONTAL COCOPLUM - 36"x36"	758.00	EA	\$45.00	\$34,110.00
50	RED TIP COCOPLUM - 48"x48"	198.00	EA	\$50.00	\$9,900.00
51	FIRE BUSH - 48"x48"	5.00	EA	\$35.00	\$175.00
52	MUHLI GRASS - 24" HT	1,795.00	EA	\$8.00	\$14,360.00
53	SIMPSON STOPPER - 24"x24"	341.00	EA	\$40.00	\$13,640.00
54	FAKAHATCHEE GRASS - 18"x18"	1,298.00	EA	\$8.00	\$10,384.00
55	COONTIE - 12" HT, FULL	344.00	EA	\$18.00	\$6,192.00
56	CUCUMBERLEAF SUNFLOWER (DUNE SUNFLOWER) - 6"x6"	1,757.00	EA	\$6.00	\$10,542.00
57	MULCH	1.00	CY	\$100.00	\$100.00
58	BAHIA SOD - SOLID SOD	31,805.00	SF	\$1.40	\$44,527.00
				<b>SUBTOTAL</b>	<b>\$157,070.00</b>
<b>ITEM NO. 5 - SITE AMENITIES</b>					
59	BENCHES	2.00	EA	\$1,909.00	\$3,818.00
60	TRASH RECEPTACLES	2.00	EA	\$972.00	\$1,944.00
61	-PULL BOXES FOR FUTURE LIGHTPOLES	98.00	EA	\$300.00	\$29,400.00
62	ELECTRIC SERVICE CONDUIT	8,300.00	LF	\$20.55	\$170,565.00
				<b>SUBTOTAL</b>	<b>\$205,727.00</b>
				<b>SUBTOTAL</b>	<b>\$1,755,787.78</b>
<b>TOTAL ESTIMATED COST</b>					
1	ITEM NO. 1 - GENERAL CONDITIONS	145,085.45			
2	ITEM NO. 2 - ROADWAY CONSTRUCTION	1,177,137.88			
3	ITEM NO. 3 - SIGNAGE AND MARKING	70,767.45			
4	ITEM NO. 4 - LANDSCAPING & AMMENITIES	157,070.00			
5	ITEM NO. 5 - SITE AMMENITIES	205,727.00			
7	AVIATION BLVD TOTAL	1,755,787.78			





COUNCIL AGENDA STATEMENT

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

Agenda Item: **Resolution 2019-70**, Approving Change Order No. 1 To Contract Between The City And XGD Systems, LLC. In The Original Amount Of \$118,500.00.00 For The Re-Sodding Of The Soccer Fields At Community Park; Increasing The Contract In An Amount Not To Exceed \$84,444.00 For The Re-Sodding of the Baseball Fields and The Dog Park At Oceanfront Park; Authorizing The City Manager To Execute The Change Order And Expend and Appropriate Funds On Behalf Of The City; And Providing For An Effective Date.

BACKGROUND & JUSTIFICATION:

The City entered into a contract with XGD Systems, LLC on March 7, 2019 for the re-sodding of the soccer fields at Community Park. Subsequent to the issuance of the contract, the City decided it should take advantage of the pricing to re-sod the baseball fields at Community Park, and the dog park at Ocean Front Park, which are both in need of re-sodding. The price includes a small adjustment to the unit pricing that was discovered in the sodding of the soccer field. While the unit cost went up a few cents, it is still lower than the second low bid of the original contract. Staff therefore recommends approval of the change order.

The cost for the baseball field requires appropriation of funds by the Council as this cost was not anticipated in the current budget. The cost of the dog park sodding is covered 100% by a TDC grant.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan:	_____	_____
2. Other: _____	_____	_____
3. Not applicable: X		

FISCAL NOTE:

The FY19 budget includes appropriations of \$76,400 for the Ocean Front Park project that is 100% TDC grant funded. The funding for the Community Park baseball field re-sodding will be appropriated, if approved.

RECOMMENDATION:

Approval of Resolution

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-70**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING CHANGE ORDER NO. 1 TO CONTRACT BETWEEN THE CITY AND XGD SYSTEMS, LLC. IN THE ORIGINAL AMOUNT OF \$118,500.00.00 FOR THE RE-SODDING OF THE SOCCER FIELDS AT COMMUNITY PARK; INCREASING THE CONTRACT IN AN AMOUNT NOT TO EXCEED \$84,444 FOR THE RE-SODDING OF THE BASEBALL FIELDS AND THE DOG PARK AT OCEANFRONT PARK; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CHANGE ORDER AND EXPEND APPROPRIATED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marathon (the “City”) entered into contract with XGD Systems, LLC for re-sodding the soccer fields at Community Park (the “Project”) in March of 2019; and

**WHEREAS**, the City wishes to take advantage of the pricing and re-sod the baseball fields and dog park at Oceanfront Park, which are both in need of Re-sodding; and

**WHEREAS**, the cost of the dog park sodding is covered 100% by a TDC grant; and

**WHEREAS**, the City recommends that the Council authorize the City to enter into a change order with XGD Systems, LLC, and expend and appropriate funds in the amount of \$84,444.00

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

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

**Section 2.** Change Order #1 is attached hereto, together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is hereby approved. The City Manager is authorized to execute the change order and expend appropriated funds on behalf of the City.

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

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 9<sup>TH</sup> DAY OF JULY, 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

CHANGE ORDER # 1 –

TO: City of Marathon  
PROJECT: Soccer Fields Refurbishment  
ENGINEER: City of Marathon  
CONTRACTOR: XGC Systems, LLC.  
DATE: June 13, 2019

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

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

This Change Order constitutes full, final, and complete compensation to **XGC Systems, LLC.** for all costs, expenses, overhead, and profit, and any damages of every kind that **XGC Systems, LLC.** may incur in connection with the above referenced changes in the Construction Work under this Agreement. **XGC Systems, LLC.** acknowledges and agrees that (a) the Guaranteed Maximum Price of \$118,500.00 under the Agreement will be **changed** by this Change Order. **XGC Systems, LLC.** expressly waives any claims for any additional compensation, damages or time extensions in connection with the above-referenced changes. Except as herein or heretofore expressly modified, all terms of the Agreement shall remain in full force and effect and shall cover the performance of, and payment for, any work authorized hereunder. Any defined terms not defined in this Change Order shall have the meanings set forth in the Agreement.

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

CITY OF MARATHON  
a Florida municipal corporation

XGC Systems, LLC..

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

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

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

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

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

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

## Exhibit "A"

### CHANGE ORDER SUMMARY

Change Order No. 1  
Project Title **Community Park Soccer Field Reburshment**  
Bid No. 2019-002  
Owner: City of Marathon  
Contractor: **XGC Systems, LLC.**  
Agreement Date: March 7, 2019

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

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

(1)	Original Contract Price	<u>\$118,500.00</u>
(2)	Current Contract Price (Adjusted by Previous C.O.)	<u>\$118,500.00</u>
(3)	Total Proposed Change in Contract Price	<u>\$84,444.00.</u>
(4)	New Contract Price (Item 2 + Item 3)	<u>\$202,944.00</u>
(5)	Original Contract Time	<u>45 Days</u>
(6)	Proposed Change in Contract Time	<u>95 Days</u>
(6)	Current Contract Time (Adjusted by Previous C.O.)	<u>45 Days</u>
(7)	Total Proposed Change in Contract Time	<u>95 Days</u>
(8)	New Contract Time (Item 6 + Item 7)	<u>140 Days</u>
(9)	Original Contract Final Completion Date	<u>May 27,2019</u>
(10)	New Contract Final Completion Date	<u>August 30, 2019</u>

**COMMUNITY PARK SOCCER FIELD REBURBISHMENT  
CHANGE ORDER HISTORY**

Item No.	Description	Current Contract Amount	Additive Change	Deductive Change	Net Change Contract Price	Net Change Contract Time
1.		<u>\$118,500.00</u>	<u>\$84,444.00</u>	\$0	<u>\$84,444.00</u>	95 Days
<b>Total</b>		<b>\$118,500.00</b>	<u><b>\$84,444.00</b></u>	<b>\$0</b>	<b>\$84,444.00</b>	<b>95 Days</b>

**Exhibit "B"**

## **CHANGE ORDER JUSTIFICATION**

The City wishes to extend to contract and re-sod the baseball fields at Community Park, and the enclosed dog park at Oceanfront Park. The contractor provided pricing for the request based on the conditions, and additional services requested, applying a pre-emergent to prevent germination of weed seeds. Option 1 is selected.

# XGD SYSTEMS LLC

415 NW Flagler Ave., Unit 302, Stuart, FL 34994

Tel: 772-286-3419 Fax: 772-286-2855

[www.xgd.systems](http://www.xgd.systems)

## Community Park Soccer/Amphitheater Fields Refurbishment City of Marathon, Florida CHANGE ORDER PROPOSAL #1

**TO:** City of Marathon, Attn.: Carlos A. Solis, PE; Director of Public Works; via Email: [solisc@ci.marathon.fl.us](mailto:solisc@ci.marathon.fl.us)  
**FROM:** XGD Systems, LLC  
Attn.: Bruce Sheldon; via Email: [bsheldon@xgd.systems](mailto:bsheldon@xgd.systems)  
**DATE:** May 22, 2019

---

~ Costs associated with the addition of one additional application of Round-Up on approximately half of the site as requested by the City of Marathon ~

### Scope of Work:

Add one additional application of Round-Up on approximately half of the site.

**Total (Add):** =\$ 2,407.30

---

- A Change Order will be issued upon approval of this change order proposal. The value of the Change Order will be \$2,407.30.
  - The value of the contract will increase by \$2,407.30.
  - The contract time will increase by two (2) working days.
  - Notification of acceptance or denial of this Change Order Proposal is requested within 5 days to maintain the project's schedule.
- 

Bruce Sheldon, Operations Manager

May 22, 2019

\_\_\_\_\_  
City of Marathon, Florida

\_\_\_\_\_  
Date





# XGD SYSTEMS LLC

415 NW Flagler Ave., Unit 302, Stuart, FL 34994

Tel: 772-286-3419 Fax: 772-286-2855

[www.xgd.systems](http://www.xgd.systems)

## Change Order Proposal

**PROPOSAL FOR:**

**City of Marathon, FL**

**Attention:** Carlos Solis

**email:** Solisc@ci.marathon.fl.us

**FROM:**

**XGD Systems LLC d/b/a Eco Blue Systems**

**Attention:** Bruce Sheldon

**email:** bsheldon@xgd.systems

**RE:**

Additional work – Community Park Sports Fields

**DATE:**

June 26, 2019 *revised July 2, 2019*

---

### Scope of Work:

XGD Systems LLC, dba Eco Blue Systems will re-sod two baseball fields and the enclosed dog park at Oceanfront Park. The sites are summarized as follows:

1. North Baseball Field	34,900 sf
2. South Baseball Field	36,000 sf
3. Oceanfront Park Dog Field	17,563 sf
<b>TOTAL</b>	<b>88,463 sf</b>

We have held our unit pricing consistent with our original bid, but with the following differences:

- Our original pricing was based on utilizing our Spader unit to pulverize and rototill the fields in one operation. We discovered that the site is too rocky to use this strategy, so we are pricing this additional work using more traditional turf removal methods.
- Our original unit prices were based on the scope of work taking place on 1 large site. This additional work is for 3 separate areas.
- The sod used on the original scope was immature and tender making it very difficult to install. This resulted in abnormally high occurrences of tearing and patching. We have approached a different vendor who will provide more mature turf that shouldn't fall apart when handled. The result is a slight increase in price for the new sod.



# XGD SYSTEMS LLC

415 NW Flagler Ave., Unit 302, Stuart, FL 34994

Tel: 772-286-3419 Fax: 772-286-2855

[www.xgd.systems](http://www.xgd.systems)

## Additional Work - Pricing

Spray RoundUp - 2 Applications (88,463 sf @ \$0.05/sf)	\$7,500.00
Remove Existing Turf (88,463 sf @ \$0.02/sf)	\$1,769.26
Dispose Existing Turf (88,463 sf @ \$0.07/sf)	\$6,192.41
Roll & Apply 1 Application of Fert. (88,463 sf @ \$0.02/sf)	\$1,769.26
Rototill Existing subgrade (88,463 sf @ \$0.03/sf)	\$2,653.89
Finish Grading w/ Laser Grader (88,463 sf @ 0.10/sf)	\$8,846.30
Supply & Install Celebration Sod (88,463 sf @ 0.61/sf)	\$53,962.43
<b>TOTAL ADDITIONAL WORK</b>	<b>\$79,616.70</b>

Option 1 - Application of of Ronstar G @ 200 lbs per acre \$ 2,420.00

Total with option 1 **\$82,036.70**

Option 2 – Application of 15-0-15 fert with .67% Ronstar @ 300 lbs per acre \$ 2,200.00

Total with option 2 **\$81,816.70**







CITY COUNCIL AGENDA STATEMENT



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

Agenda Item: **Resolution 2019-71**, Rescinding Resolutions 2017-77 And 2018-105 Having Been Superseded By Other Resolutions Or Having Become Unnecessary; And Providing For An Effective Date.

---

BACKGROUND & JUSTIFICATION:

The City of Marathon passed Resolution 2017-77 providing revisions to an Interlocal Agreement between the City of Marathon and Monroe County. Resolution 2017-77 has been superseded by City of Marathon Resolution 2019-57.

The City of Marathon passed Resolution 2018-105, a “380 Agreement” concerning the approval of a project known as Seaview Commons, LLC. The purpose of Resolution 2018-105 is no longer necessary or required. Both Resolutions should be rescinded and made null and void.

CONSISTENCY CHECKLIST:

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

FISCAL NOTE:

APPROVED BY FINANCE DIRECTOR:

---

RECOMMENDATION:

Approval of Resolution

Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-71**

**A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, RESCINDING RESOLUTIONS 2017-77 AND 2018-105 HAVING BEEN SUPERCEDED BY OTHER RESOLUTIONS OR HAVING BECOME UNNECESSARY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marathon passed Resolution 2017-77 providing revisions to an Interlocal Agreement between the City of Marathon and Monroe County; and

**WHEREAS**, Resolution 2017-77 has been superseded by City of Marathon Resolution 2019-57; and

**WHEREAS**, the City of Marathon passed Resolution 2018-105, a “380 Agreement” concerning the approval of a project known as Seaview Commons, LLC; and

**WHEREAS**, the purpose of Resolution 2018-105 is no longer necessary; and

**WHEREAS**, both Resolutions should be rescinded and made null and void,

**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.** By adoption of this Resolution, Resolutions 2017-77 and 2018-105, are hereby rescinded and become null and void.

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

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

# July 2019 - August 2019

July 2019

Mo	Tu	We	Th	Fr	Sa	Su
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

August 2019

Mo	Tu	We	Th	Fr	Sa	Su
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
Jul 8	9 5:30pm City Council Meeting (City Hall Council Chambers, 9805 Overseas Hwy.)	10	11	12	13	14
15 5:30pm Planning Commission Meeting (City Hall Council Chambers, 9805 Overseas Hwy.) -	16	17 2:00pm Code Compliance Hearing (Council Chambers, 9805 Overseas Hwy.)	18	19	20	21
22	23 5:30pm *Cancelled* City Council Meeting (Council Chambers, 9805 Overseas Hwy.)	24	25	26	27	28
29	30	31	Aug 1	2	3	4
5	6	7	8	9	10	11