



City of Marathon City Council Agenda
Marathon Council Chambers, 9805 Overseas Hwy., Marathon
Tuesday, October 8, 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 councilmember so requests.]

5. City Council Items

- *A. Approval of Minutes1
- B. Tree Dedication in Memory of Alphonso Ornelas
- C. Proposed Modification to the Florida Keys National Marine Sanctuary Management Plan
Presentation by Sarah Fangman (Councilmember Zieg)
- D. World Habitat Day Proclamation.....20
- E. Breast Cancer Awareness Month Proclamation21
- F. Fire Prevention Week Proclamation.....22
- G. Request to Waive the Rules for Use of Meeting Room for Veterinary Hospital
Lecture.....23
- H. Airport Update (Councilmember Zieg)
- I. Lion’s Club Dorian Relief (Councilmember Gonzalez)
- J. Design Standards for New Development Task Force (Councilmember Senmartin)
- K. Community Announcements.....24
- L.

6. City Manager Report

- A. Wastewater Utility Update.....25
- B. Park and Recreation Update.....30
- C. Growth Management Update.....34
- 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.] **6:30 PM OR AS SOON AS POSSIBLE THEREAFTER OR AFTER THE LAST AGENDA ITEM; WHATEVER COMES FIRST**

8. Ordinances for Second Public Hearing and Enactment

A. Ordinance 2019-10, Amending The City’s Comprehensive Plan To Modify Or Add To Its Conservation And Coastal Element, Goals Objectives, And Policies To Comply With Florida Statute 163.3178(2)(F) “Peril of Flood”; Intending To Modify, “Purpose;” Goal 4-1, “Conserve, Manage, Use, And Protect Natural And Environmental Resources;” Policy 4-1.3.3, “Surface Water Management And Flood Damage Prevention;” And Objective 4-1.17, “Minimum Coastal Hazards;” And Intending To Add Policies To Include Policy 4-1.17.8, “Strategies For Responding To Sea Level Rise;” Policy 4-1.17.9, “Flood-Resistant Development Requirements;” Policy 4-1.17.10, “Extreme Weather Event Mitigation;” And Policy 4-1.17.11, “Best Practices And Mitigation Strategies;” And Finally, Intending To Modify Objective 4-1.22, “Reduce Exposure To Natural Hazards,” Policy 4-1.22.5, “Manage Redevelopment Activities; And Policy 4-1.22.8, “Regulate Redevelopment Of Non-Conforming Structures To The Required Base Flood Elevation;” Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity After The First Hearing By The City Council; And Providing For An Effective Date.41

9. Resolutions for Adoption

***A. Resolution 2019-100**, A Request To The City Of Marathon By 76 Pelican, LLC To Abandon The Public Right Of Way Located At 57642 Overseas Highway, Known As Flagler Street, Described As Being Adjacent To And Contiguous With Part Of Government Lot 5 Between Blocks 53 To 58, Crains Subdivision, Grassy Key, Having Real Estate Number 00373870-000000. Nearest Mile Marker 58.....58

***B. Resolution 2019-101**, Approving Agreement No. MV361 For CVA 19-955 With The Department Of Environmental Protection Clean Vessel Act Grant Program And Authorizing Acceptance Of \$78,773.33 In Grant Funding For Pump Out Operations, Equipment Maintenance and Repair and Educational Materials; Authorizing The City Manager To Execute The Agreement; Providing For Conflicts; Severability; And An Effective Date.....79

***C. Resolution 2019-102**, Approving And Authorizing The City Manager To Extend The Agreement With Culver’s Cleaning Company For One Year For Cleaning Services At Marathon City Hall, Fire Station And Utility/Public Works Building In An Amount Not To Exceed \$53,300 Per Year; And Providing For An Effective Date.....85

***D. Resolution 2019-103**, Authorizing The City To Extend The Agreement With Ronald L. Book, P.A. For Professional Consulting And Lobbying Services Before The Legislature Of The State Of Florida; Authorizing The City Manager To Expend Budgeted Funds, And Execute The Extension Agreement; And Providing An Effective Date.....88

***E. Resolution 2019-104**, Awarding Change Order #2 to the Work Authorization 2017-05B for the Engineering Design and Construction Management Services for the Service Area 5 Wastewater Treatment Facility Emergency Repairs and Upgrades To Weiler Engineering Corporation.; Increasing the Contract in the Amount of \$11,510.00; Authorizing The City Manager To Execute The Contract Amendment And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date. This work qualifies and will be submitted for reimbursement through the LP44041 FDEP Grant when the project is complete.....93

***F. Resolution 2019-105**, Awarding contract for the Engineering Design and Permitting for the Service Area 3 Wastewater Treatment Facility Expansion Upgrade To Weiler Engineering Corporation.; Approving Contract in the Amount of \$72,525.00; Authorizing The City Manager To Execute The Contract And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date. This work qualifies and may be submitted for reimbursement through the LP44041 FDEP Grant when the project is complete if funds are available or through ACOE if needed.....98

G. Resolution 2019-106, Opposing The Possibility, As Expressed In Alternatives 3 (Preferred) And 4 Of The Draft Environmental Impact Statement (DEIS), Florida Keys National Marine Sanctuary: A Restoration Blueprint, That The Sombrero Reef Sanctuary Preservation Area (SPA) Would Prohibit Access To Recreational Boaters; And Providing For An Effective Date.116

***H. Resolution 2019-107**, Approving Change Order No. 1 To The Contract Between The City of Marathon and Florida Keys Irrigation In The Original Amount Of \$10,790.00 For The Irrigation Upgrade Of The Soccer Fields At Community Park; Increasing The Contract In An Amount Not To Exceed \$35,555.00 For Additional Repairs To The Soccer Fields And Upgrades To The Baseball Field; Authorizing The City Manager To Execute The Change Order And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.....120

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

The public hearings will commence at 5:30 p.m., or as soon thereafter as business permits, at the Monroe County Government Center, 2798 Overseas Hwy. in Marathon. 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 & 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 at (305) 289-5020 at least two days prior thereto. Please contact the City Clerk at clavierd@ci.marathon.fl.us if you would like to receive any of the items on the agenda by email

CALL TO ORDER - A Meeting of the City Council of Marathon, Florida was held on September 10, 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

Chief John Johnson

Parks and Recreation Director, Paul Davis

Marina Director, Sean Cannon

Captain Don Hiller, Monroe County Sheriff's Office

Approval of Agenda and Consent Agenda

Zieg added expansion of sanctuary discussion, parking at Sombrero Beach and Guidance Clinic discussions. Gonzalez added Hurricane Dorian relief discussion. Senmartin added Aviation Blvd. update, library boxes and Park and Recreation Board discussions. Bartus added City philosophy discussion. Lindsey added 33rd Street discussion as well as request to cancel the second meeting in September.

MOTION: Cook moved to approve the agenda as amended.

SECOND: Gonzalez

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

City Council Items

*** Approval of Minutes**

Patriot Day Proclamation – the proclamation was read and the Council presented the proclamation to the Marathon Fire Rescue Department.

September 11th Remembrance – Chief Johnson gave a timeline of the strikes and tower collapse as well as the plane crashes and read the Fire Rescue mission statement and everyone honored the victims with a moment of silence.

Florida League of Cities Annual Conference (Mayor Bartus) Bartus reported that while he and Lewis were at the conference they attended talks on water usage, social media, sunshine law and gave an overview of proposed legislation regarding home rule and water quality.

Community Announcements - The Clerk read the Community Announcements. Gonzalez informed everyone of the Marathon High School home football game on Friday as well as the ribbon cutting at half time dedicating the new facility.

National Marine Sanctuary Restoration Proposal (Councilmember Zieg) Zieg explained his concerns of the huge changes to the sanctuary proposal, and restrictions to blue star dive/snorkel operators, whereas residents would not be allowed to snorkel using their own vessels, because of this restriction limiting access to only the operator specified. Zieg asked the Council to send a strong message on behalf of the residents opposing this limited restricted access, as our residents are aware of what not to do at the reef to protect it. Cook also agreed it needed to be a strong message, perhaps as a resolution at the next meeting.

MOTION: Gonzalez moved to have staff draft a resolution opposing the restrictions to access.

SECOND: Zieg

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

Beach Parking (Councilmember Zieg) – Zieg explained that Lindsey started this conversation with mentioning instituting parking regulations at the boat ramps at a previous meeting. Zieg explained Key West stopped charging for parking a few years ago, and missed \$300,000 in revenues, so they have resumed charging for parking. Zieg commented he felt that our tourists should help pay for the beach maintenance, and the residents would not have a parking restriction, they could be issued a parking sticker, and we could raise the fine to \$40 instead of \$20 to help maintain the beach and have additional patrols, we could measure the results and consider expanding the program.

Gonzalez agreed this would be a great way to raise revenue and suggested reaching out to Key West to see what their successes have been.

Senmartin commented that he did not agree with paid parking and stated the Sherriff's office does not enforce parking, and he felt the costs of instituting this program would be too high.

Cook commented that he had a conversation with Solis regarding meter enforcement. Solis explained that in other cities if a parking citation is not paid within 30 days, it doubles, and a collection agency would go after the violator, so the City would still get paid, and the collection agency gets paid from the proceeds. Cook suggested adding in the Quay boat ramp to this program. Migut informed everyone he would research to see if there were any restrictions of parking regulations at the beach and bring it back to the Council.

Guidance Clinic Discussion (Councilmember Zieg) Zieg explained the Guidance Clinic has provided much needed care and services for our community for over forty years, treating thousands of patients and it is sadly in need of a great remodeling and have requested our help. Zieg reported that Monroe County had pledged \$200,000 in this year's budget and Ocean Reef had pledged \$50,000. Zieg asked that the City donate \$25,000 for the project. Zieg informed everyone Representative Raschein would be introducing a bill in the next legislative session for the state to pledge double of what has been raised, up to \$500,000, so what we give can be leveraged by two from the State.

Senmartin stated it was a noble idea, and it would be big help, but Monroe County just built a \$300,000 shooting range, and Monroe County has more money than we do; it is Monroe County's clinic and we don't have the funds to put toward the splash park, so he would have to say no on helping them with a \$25,000 donation.

Cook questioned when the clinic was last renovated. Zieg replied over 30 years ago, and it is our clinic, it is located in our City, and our residents benefit from their services. Gonzalez questioned Johnson if the budget could withstand a donation. Johnson explained that the budget is not set, although currently, we do not have any funding set for nonprofit grants line items, but we have time to make a change, that amount will not make or break our budget. Zieg explained the transportation committee meeting he recently attended that he learned that the amount Marathon needs to contribute for the lower keys shuttle has been reduced and questioned if that new amount was reflected in the budget. Zieg reported last year the City portion was \$233,000 and this year will go down to \$157,000 because of the ridership numbers, as he and staff negotiated this change to ridership numbers instead of everyone paying a third. Johnson explained Key West was lagging in their billing, so the number we budgeted needed to be higher (an

increase), although, overall it will be a decrease. Zieg questioned if some of the money could come from this cost reduction. Johnson stated it could, it would be the unappropriated fund balance.

Bartus suggested bringing this up in the budget meeting on Thursday.

Hurricane Dorian Relief Discussion (Councilmember Gonzalez) Gonzalez informed everyone the Lions Club team organized and delivered the collection and delivery of 18 pallets, (approximately 25,000 pounds in supplies) in the Bahamas and the collections are continuing. Gonzalez thanked everyone for the generous contributions and showed a video of the destruction and told everyone that the Bahamian people were grateful for the generosity. Bartus commented that the Rotary clubs were also collecting and distributing donations.

Aviation Boulevard Update (Councilmember Senmartin) Senmartin asked Solis to provide an update to the project. Solis gave a timeline of the project and informed everyone the project started on September 9th, with a completion date of 280 days for final completion. Solis informed everyone the wooden stakes were a construction control point.

Library Boxes (Councilmember Senmartin) Senmartin explained he has had a lot of requests to have a library box at a City Park or the Marina, and questioned what could be done, if a permit was needed, etc. Lewis explained there was no permitting required if it was on private property, but it could not be in a right of way. Senmartin asked for a contact person, and Lindsey informed everyone Lewis would be the staff contact.

Park and Recreation Board (Councilmember Senmartin) Senmartin explained the Park and Recreation Board has not met in three years and he would like the meetings to start up again and a quarterly meeting schedule be set up. Davis informed everyone this was something he had wanted to do again to get the community involved and within the next month he would have a schedule. Migut commented that new board members may need to be appointed.

City Philosophy (Mayor Bartus) Bartus commented that he would like the City Building Department a more user friendly and responsible building and code department. Bartus explained it had been two years since Irma slammed into the Keys and the department has been stretched and stressed beyond belief trying to keep up with demand as we rebuild, they deserve a huge amount of appreciation. Bartus continued, we still have issues, and there are new developments that will make our permitting process easier since the last meeting where Lewis talked about the new software that will streamline the permitting. Likewise, the impact fee and permit fee study is hopefully nearing completion which will give us the information we need to assess and correct the unfair permit fees Bartus explained. Bartus stated he would like to have a workshop to discuss those in the very near future. All this being said explained Bartus, we need to remember, that people are still living in hurricane damaged homes waiting for resolution from various sources. Bartus stated he knew he was not the only one who had heard from homeowners, contractors and builders who were unhappy with the process and sometimes people have felt the City was taking an adversarial position against them, and this cannot continue. If our building department is to be truly user friendly, it should not be perceived to be in an adversarial relationship with the people it serves. We want people to come in and get permits, as opposed to hoping not to get caught and then come in and ask forgiveness reported Bartus. We are bound by the Florida building code and the FEMA fifty percent rule and there is nothing any of us can do to change that, but what I

have said in the past and now is where there are areas open to interpretation, we as the City should rule liberally on the side of the homeowner or builder. I have said this twice up here, and tonight I am making this a formal motion stated Bartus.

MOTION: Bartus moved that where there are areas open to interpretation, the City will rule liberally on the side of our contractors, our homeowners and our residents.

SECOND: Senmartin

Gonzalez questioned when the new software program would be implemented. Lewis explained tonight we are approving the actual budget for this item and we anticipate having the contract signed tomorrow, and all of the data moved over to the new system up and running by the beginning of the year is the goal.

Lindsey explained he wanted to make clear that when there is room for interpretation, we do rule in favor of the homeowner or contractor. From a code perspective, which we get criticized for, we give a written warning first, giving them 30 days to come into compliance and if they do not come into compliance, they would then receive a summons to come before the Code Magistrate. Lindsey explained that the City is bound by certain rules that are the Building Official's duty to determine and Lewis at times is put in a difficult position where he has to make difficult decisions, and no one wants to tell someone they have to knock their home down and build to current standards, it is very difficult, but at some point, we have to make improvements to our City so we don't look like the Bahamas with the damage they had from Dorian; there is a reason for these codes stated Lindsey. Lindsey explained he loves how Little Venice looks, but it will continue to get damaged over and over again, the majority of the residents in town are paying for this with their high flood insurance costs. Lindsey stated he did not want anyone to believe we don't care about our residents. Lindsey stated he knew the Council cared, but all of the staff care about our residents and neighbors as well, but we are put in a position where we are required to enforce certain rules. Lewis has implemented quite a few changes that will help us be proactive to look to the future to document the repetitive damaged property, because as soon as that house is sold, we could devastate the next one to live in the house as FEMA will come back and say they have already paid reported Lindsey. Lewis added that in next month's building report, the fifty percent rule as it relates to Marathon the damages caused by Dorian to the Bahamas will be addressed as a lot of the homes in the Bahamas were built comparable to the sixty, seventy and eighty's Florida building code, and they were destroyed. Lewis compared the rules to the safety options of a new car, as we would not leave the seatbelts and airbags out. The government makes us buy that safety equipment, it is similar to our code to keep people safe. Lewis explained he often agonizes over how he can help people, and staff does try to find ways to help, although we have been promised funding as well, it has been held up. If some of those people could get state and federal funding, they could be out of harm's way and rebuild to code explained Lewis. Lindsey explained following any hurricane, the bulk of the debris is typically 75 percent vegetative; for Irma in Marathon, it was almost 80 percent construction debris; not vegetative, debris costs the City over twelve million dollars. Lindsey stated we have a responsibility to keep people safe and we are doing our best. Bartus stated this was not a reflection on anything staff was doing.

Senmartin explained he wanted to reel things in a bit; you have gone a little too far on what the Mayor was saying, he was not hinting in any way that we cut corners on building code. Senmartin stated he

has had the conversation with all of you separately to try to help the residents, and you do help them I think as best as you can. Senmartin explained he thought the Mayor wanted a softer touch, there is a whole process involved, and it is not one particular thing. Senmartin also stated that he received a phone call from a contractor who called just to tell him how happy he was with the building inspector, who allows the contractor to make adjustments on the fly so they can continue working. Lewis explained the Building and Code Departments are making improvements all of the time, and we have just had some huge projects permitted. Cook commented that we all get calls and there is a process in place that simplifies things, with the new process put in place, it will be better. Cook recalled that when he is contacted, he brings it to staff and it ends up typically as already remedied or something was missing from the contractor. Cook stated he thought staff was doing a great job and he also heard from the contractor, it may be the same one, he was not sure. Cook stated he also gets calls stating we are selective, and that is why he could not vote for a resolution that has a grey line, because he does not know where that grey line is, he is all for being fair, but we cannot have no boundaries. We are trying so hard to make things not selective. Bartus, explained he was not suggesting a grey line, or being selective, but being user friendly, making sure we interpret on the side of the resident and he wanted to set that as the building department policy to make sure we keep the same idea when we incorporated. Cook questioned that this is a Building Department policy and not a resolution. Bartus stated that the Council sets policy. Lindsey suggested that since staff has developed values and our internal mission statements, we could develop an external mission statement for the City as a whole and bring it back to the Council. Senmartin explained he was looking for something more solid, and that this was not being taken the way it was intended. Bartus withdrew the motion.

Citizens Comments:

Charlotte Quinn thanked the Council, staff, Lindsey, Garrett, and Griffin. Quinn explained she really loved the City and Crane Point will be available to the City.

Diane Scott – Spoke about rules being violated.

City Manager Report

Planning Department Report - Draft FEMA Flood Maps and Annual Review of Cash in Lieu Payment (Ordinance 2009-12) Garrett briefed everyone on his written report and outlined the typical changes to the draft FEMA maps. Cook commented that the numbers look variable, and asked why we would not keep a similar height. Garrett replied that would be one way to look at it and it would not be difficult to do. Garrett explained he was waiting on additional data, the majority of properties are going to be affected from six inches to a few feet increase if they are built at flood. Senmartin questioned if we would appeal, to which Garrett replied it may be possible, but he was waiting on the data. Senmartin questioned the reason for the height limit. Garrett replied visual appeal.

Fire Rescue Report – Chief explained the Marathon High School / School Board fire recruit program where the students report to the station 1st and 2nd period (juniors and seniors) which will allow them to start the process of becoming a Firefighter / Paramedic and serve their community. When the students graduate they will come away from this program with an national certification in Emergency Medical Response and Florida certification as a Firefighter 1. Three Marathon High School students were attending.

Homecoming Parade - October 10th 1-2 PM – Lindsey announced the parade.

MOTION: Gonzalez moved to approve.
SECOND: Senmartin

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

33rd Street Project Update – Lindsey explained that after working with County staff and going to the BOCC meeting, it was agreed the property lines would be redrawn. The senior center must stay on site, and there will also be a much needed venue for events.

Cancellation of second meeting in September – Lindsey informed everyone there was nothing for an agenda on September 24th and requested the meeting be cancelled.

MOTION: Gonzalez moved to cancel the second meeting of the month.
SECOND: Cook

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

Quasi-Judicial Public Hearings

Consideration Of A Request To The City Of Marathon By 76 Pelican, LLC To Abandon The Public Right Of Way Located At 57642 Overseas Highway, Known As Flagler Street, Described As Being Adjacent To And Contiguous With Part Of Government Lot 5 Between Blocks 53 To 58, Crains Subdivision, Grassy Key, Having Real Estate Number 00373870-000000. Nearest Mile Marker 58.

The speakers were sworn in, and Council stated they had no exparte communications. Garrett explained the request to abandon a portion of City right-of-way located on Flagler Street, Ocean, in Grassy Key. Garrett recommended approval of the application as it was consistent with state and local law, and the applicants have submitted letters of no objection from the utility companies and will provide an easement. Garrett explained this was the first of the two required public hearings.

Zieg commented that this item had a bonus that they will pay property taxes on this property, and it would be a win-win. Zieg also suggested that staff question the interest for the neighbors on the street to also request the right of way abandonment. Garret agreed that this would be a good idea.

Bartus called for speakers, hearing none public hearing was closed.

MOTION: Cook moved approval based upon the competent substantial evidence presented.
SECOND: Zieg

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 2019-83, Approving The Ranking And Allocations Of The Market Rate And Affordable Residential Building Permit Allocation System (RBPAS) For Period 1, Year 28 (July 14, 2019 To January 13, 2020); And Providing For An Effective Date.

Garrett explained the resolution had been revised, but it did not take anything away from anyone on the list. Garrett reported that there were 16 market rate allocations and 29 affordable allocations that are for private individuals.

Bartus called for speakers, hearing none public hearing was closed.

MOTION: Zieg moved approval of Resolution 2019-83
SECOND: Senmartin

Vote of the Motion:

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

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

Resolutions for Adoption

Resolution 2019-84, Impose And Provide For Collection Of Wastewater Special Assessments For Service Areas 1, 3, 4, 5, 6 And 7 (Including Little Venice And The Supplemental Assessment Program) For Fiscal Year Commencing October 1, 2019; Approving The Assessment Roll; Providing For Collection Of The Assessments; And Providing For An Effective Date.

Saus reported that the resolutions will continue the City's assessment programs for construction of the wastewater collection and treatment facilities. Annually, Government Services Group (GSG) updates the assessment rolls and submits to the Monroe County tax collector on behalf of the City. Saus reported the assessment for Little Venice is \$308.82/EDU and the Supplemental Assessment is \$566 and the assessments for Service Areas 1, 3, 4, 5, 6 and 7 are \$508.

Zieg commented that there had been no increases in the assessments in the last few years. Saus confirmed the assessments have not increased.

Bartus called for speakers, hearing none public hearing was closed.

MOTION: Zieg moved to approve Resolution 2019-84
SECOND: Senmartin

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

Resolution 2019-85, Imposing The Annual Stormwater Utility Special Assessments For Fiscal Year Commencing October 1, 2019; Approving The Assessment Roll; Providing For Collection Of The Assessments; And Providing For An Effective Date.

Saus explained this resolution was the same principal, but there was a typo that was corrected.

Bartus called for speakers, hearing none public hearing was closed.

MOTION: Cook moved to approve Resolution 2019-85.

SECOND: Zieg

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

* **Resolution 2019-86**, Authorizing The City To Extend The Agreement With Ballard Partners Inc. For Professional Consulting And Lobbying Services Before The Legislature Of The State Of Florida; Authorizing The City Manager To Expend Budgeted Funds, And Execute The Extension Agreement; And Providing An Effective Date.

* **Resolution 2019-87**, Approving Professional Services Agreement With Raftelis Financial Consultants, Inc., For The Preparation Of Annual Utility Financial Analysis And Related Services In An Amount Not To Exceed \$50,000; Authorizing The City Manager To Execute All Necessary Documents On Behalf Of The City And Expend Budgeted Funds; And Providing An Effective Date.

* **Resolution 2019-88**, Approving An Amendment To The Contract Between The City And EssentialNet Solutions. For Information Technology Services In An Amount Not To Exceed \$9,645.90 Per Month; Authorizing The City Manager To Execute The Amendment And Expend Budgeted Funds On Behalf Of The City; And Providing An Effective Date.

* **Resolution 2019-89**, Approving a contract with Viewpoint for Software in the amount of \$37,100, plus \$20,300 in Annual Fees; Authorizing the City Manager to Appropriate and Expend Budgeted Funds; Authorizing the City Manager to Execute All Necessary Documents On Behalf Of the City; And Providing an Effective Date.

* **Resolution 2019-90**, Approving A Service Contract with Transpondr, LLC, Authorizing the City Manager to Expend Budgeted Funds; Authorizing The City Manager To Execute All Necessary Documents On Behalf Of The City; And Providing An Effective Date.

* **Resolution 2019-91**, Authorizing The City To Enter Into An Policy Agreement With Public Risk Insurance Agency (PRIA); Brown And Brown, Representing Insurance Carrier Preferred Governmental Insurance Trust For Risk Management And Insurance Services; Authorizing The City Manager To

Execute The Agreement And Expend Budgeted Funds On Behalf Of The City; And Providing An Effective Date.

* **Resolution 2019-92**, Approving Grant Agreement No. 2334 Between The City And The Monroe County Tourist Development Council For Marathon Beach Cleaning/Maintenance, for Fiscal Year 2020; Appropriating Funds; And Providing For An Effective Date.

* **Resolution 2019-93**, Approving A First Amendment to The Contract Between The City And The Monroe County Sheriff's Office For Local Police Services In An Amount Not To Exceed \$1,886,675 For FY 2019-2020; Authorizing The City Manager And City Attorney To Finalize The Terms And Conditions Of The Contract; Authorizing The Mayor To Execute The Contract And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.

* **Resolution 2019-94**, Accepting the Responsive and Responsible Bid and Approving A Contract Between the City And Greentech Group Solutions, LLC. In An Amount Not To Exceed \$268,640.00 For The Installation of Fire Hydrants at Several Locations Throughout Marathon; Authorizing The City Manager To Execute The Contract And Appropriate Funds On Behalf Of The City; And Providing For An Effective Date

Citizens' Comments:

Diane Scott spoke regarding dogs without leashes and rules not being followed, and that there was an incident with a dog at City Hall.

Council Comments

Gonzalez thanked staff and asked everyone to remember September 11th and thanked Chief Johnson. Gonzalez also thanked Baptist Hospital for the partnership and opportunity.

Zieg stated that our thoughts and prayers go out to the residents of the Bahamas that were ravaged by Hurricane Dorian; a few degrees different, and it could have hit here. Zieg thanked the USCG, Masons, Rotary, and thanked the Marathon Lions Club, including Willie Gonzalez, Steve Cook and Dr. Mike Dunn for their great efforts sending 18 pallets of relief supplies, as well as all of the other groups who are contributing. Zieg wished the Marathon Dolphins good luck and reminded everyone of the dedication of the new facility and gave an overview of historical events that happened

Senmartin stated it was election season and gave credit to those running. Senmartin explained he had damage done to his signs and reminded everyone not to touch election signs. Senmartin congratulated his youngest son who started playing golf.

Cook thanked City staff, the Sheriff's office and the trustees. Cook reminded everyone that there were so many efforts going on to assist those affected by Dorian, but they need our help and the amount of support. Cook thanked everyone for keeping them in their prayers. Cook wished his daughter in law a happy birthday.

Bartus commented that the City had 32 million in damages and 1.4 million was reimbursed and questioned where the money is. Bartus suggested what happened to the Bahamas could have been us; we have a lot to be thankful for and if you can help them, please do.

ADJOURNMENT

With no further business to come before the Council, Mayor Bartus adjourned the meeting at 7:20 pm by unanimous consent.

I certify the above represents an accurate summary of the regular Council meeting of September 10, 2019.

Diane Clavier, City Clerk

Date

DRAFT

CALL TO ORDER

A Special Call Meeting of the City Council of Marathon, Florida was held on September 12, 2019 in the City Council Chambers, 9805 Overseas Hwy., Marathon, Florida, Mayor Bartus called the Workshop to order at 5:05 p.m.

The Pledge of Allegiance was recited.

ROLL CALL - There were present:

Councilmember Luis Gonzalez

Councilmember Mark Senmartin

Councilmember Dr. Daniel Zieg

Vice Mayor Steve Cook (5:10 pm)

Mayor John Bartus, comprising a quorum

Also in attendance were:

City Manager, Charles Lindsey

Finance Director, Jennifer Johnson

City Clerk, Diane Clavier

Planning Director, George Garrett

Fire Chief John Johnson

Public Works Director, Carlos Solis

Attorney, David Migut

Approval of Agenda

MOTION: Zieg moved to approve the agenda

SECOND: Gonzalez

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

Jennifer Johnson explained the tentative millage rate that we are seeking approval of is for 2.59 mills which is the same millage rate we charged in FY2018/19, although Florida TRIM compliance views this as a tax increase. The tentative rate is 5.89% higher than

our roll-back rate of 2.4459 mills, which will generate about \$6.8 million of revenue for our general fund, about an increase of \$475,000 over the prior year.

Johnson explained the general fund revenues were projected to be approximately 21.2 million and expenditures were about 14.1 million. Johnson remarked that FEMA reimbursements of approximately 12 million between FY 2019-2020, and if these reimbursements came through, we are projected to end FY 2020 with 10 days or \$401,883 over our six month reserve target in the general fund.

Johnson explained we could incorporate a \$25,000 donation in the City Council Budget for the Guidance Care Clinic.

Zieg commented that the Guidance Clinic provides a great service.

Senmartin commented that this would be more of a hurt for us, the County has a lot more money than we do, and he would rather fund the Drama Club or Recreation Center.

Bartus commented that both Zieg and Senmartin make excellent points, the Guidance Clinic is important, and it is not a bad idea to fund them.

MOTION: Zieg moved to approve the \$25,000 donation in the FY 2019/2020 budget.

SECOND: Gonzalez

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

Johnson informed everyone the budget included new appropriations for additional staffing and staff raises as well.

Johnson reviewed the special revenue and enterprise funds, and informed everyone the Capital Infrastructure budget included appropriations for replacement of an ambulance, sunshades and playground equipment, new fire hydrants, funded by impact fees, 33rd Street Community Center/Multi Use Facility, skate park refurbishments, Community Park Office, Coco Plum Beach restoration, Improvements to the Quay property and boat ramp, a kayak dock in Grassy Key that is funded from a private source contribution that is restricted for water access projects, continuing TDC grant funded projects at Community and Ocean Front Parks, installment payment on Quay property purchase, and old Seven Mile Bridge project as well as continued annual transfers to the General and Stormwater funds.

Johnson informed everyone the Stormwater Utility would utilize stewardship funding and grant proceeds for Irma canal cleanup and for canal and culvert restoration work.

Resolution 2019-95, Adopting The Tentative Millage Rate and Levy Of Ad Valorem Taxes For The City Of Marathon, Florida For The Fiscal Year 2019-2020; and Providing For An Effective Date.

The clerk read Section 2 of the Resolution into the record as follows

The FY 2019-2020 tentative millage rate for the City of Marathon is 2.59 mills, which is \$2.59 for each thousand dollars of taxable assessed property value; and the tentative millage rate is greater than the rolled-back rate of 2.4459 mills by 5.89%.

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

MOTION: Gonzalez moved to approve Resolution 2019-95

SECOND: Zieg

Vote on the Motion

Yes: Gonzalez, Zieg, Senmartin, Cook, Bartus

No: None

Abstain: None

Absent: None

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

Resolution 2019-96, Adopting The Tentative Budget For Fiscal Year 2019-2020; and Providing For An Effective Date.

The clerk read into the record:

WHEREAS, the City has set forth the appropriations and revenue estimate for the tentative operating budget for FY 2019-2020 in the amount of \$83,763,914.

Mayor Bartus called for speakers, and hearing none, closed public comment.

MOTION: Cook moved to approve Resolution 2019-96

SECOND: Gonzalez

Vote on the Motion

Yes: Cook, Gonzalez, Senmartin, Zieg, Bartus

No: None

Abstain: None

Absent: None

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

Council Comments:

Gonzalez thanked Johnson for being thorough and staff for their work on the budget.

Zieg wished Marathon High School Football good luck at the game tomorrow and thanked Johnson for her hard work.

Senmartin had no comment.

Cook thanked staff and Jennifer Johnson.

Bartus thanked the staff, Johnson, City Manager and the department heads. Bartus commented that he hoped to see reimbursement from FEMA soon.

ADJOURNMENT

With no further business to come before the Council, Mayor Bartus adjourned the meeting at 5:20 pm by unanimous consent.

I certify the above represents an accurate summary of the Council special call budget meeting of September 12, 2019

Diane Clavier, City Clerk

Date

CALL TO ORDER

A Special Call Meeting of the City Council of Marathon, Florida was held on September 19, 2019 in the City Council Chambers, 9805 Overseas Hwy., Marathon, Florida, Mayor Bartus called the Workshop to order at 5:05 p.m.

The Pledge of Allegiance was recited.

ROLL CALL - There were present:

Councilmember Luis Gonzalez

Councilmember Mark Senmartin

Councilmember Dr. Daniel Zieg

Vice Mayor Steve Cook

Mayor John Bartus, comprising a quorum

Also in attendance were:

City Manager, Charles Lindsey

Finance Director, Jennifer Johnson

City Clerk, Diane Clavier

Planning Director, George Garrett

Fire Chief John Johnson

Public Works Director, Carlos Solis

Dirk Smits, Vernis & Bowling

Approval of Agenda

Senmartin added a Donation Discussion as item 4A, Bartus added Best of Marathon request to use Chambers as item 6B.

MOTION: Zieg moved to approve the agenda

SECOND: Gonzalez

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

Donation Discussion (Senmartin) Senmartin asked that the Council donate \$15,000 to the Marathon Rec Center and \$10,000 to the MHS Drama Club. Senmartin explained the Rec Center has 60 children in attendance every day, payment is by honor system, at this time the costs is \$25 per child and they would have needed to raise the cost to \$70 to cover operator costs without this funding.

Cook commented that he thought this was a fabulous idea. Lindsey stated he would work on bringing back funding nonprofits the next budget cycle.

MOTION: Senmartin moved to add these two items to the budget; \$15,000 donation to the Marathon Recreation Center and \$10,000 donation to the Marathon High School Drama Club

SECOND: Gonzalez

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

Resolution 2019-97, Adopting The Final Millage Rate And Levy Of Ad Valorem Taxes For The City Of Marathon, Florida For Fiscal Year 2019-2020; And Providing For An Effective Date

Jennifer Johnson explained the tentative millage rate that we are seeking approval of is for 2.59 mills which is the same millage rate we charged in FY2018/19, although Florida TRIM compliance views this as a tax increase. The tentative rate is 5.89% higher than our roll-back rate of 2.4459 mills, which will generate about \$6.8 million of revenue for our general fund, about an increase of \$475,000 over the prior year. Johnson informed everyone the budget included new appropriations for additional staffing and staff raises as well.

Bartus called for speakers, hearing none, closed public comment.

MOTION: Cook moved to approve Resolution 2019-97

SECOND: Zieg

Vote on the Motion

Yes: Cook, Zieg, Gonzalez, Senmartin, Bartus

No: None

Abstain: None

Absent: None

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

Resolution 2019-98, Adopting The Final Budget For Fiscal Year 2019-2020; Authorizing The Expenditure Of Funds Established By The Budget; And Providing For An Effective Date.

Bartus called for speakers, hearing none, closed public comment.

MOTION: Cook moved to approve Resolution 2019-98

SECOND: Zieg

Vote on the Motion

Yes: Cook, Zieg, Gonzalez, Senmartin, Bartus

No: None

Abstain: None

Absent: None

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

***A. Resolution 2019-99**, Approving Change Order No. 3 To Contract Between The City And Discount Rock & Sand, Inc. For The Reconstruction of Sombrero Beach From Hurricane Irma Damages; Increasing The Contract Time By 90 Days As A Result Of Delays In The Issuance Of The USACOE Permit 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.

Best of Marathon Request (Bartus) Bartus informed everyone of the request to use the Council chambers for the September 28th Best of Marathon Event, request to waive fees, allow alcohol and allow the event as a fundraiser for the Weekly and Rotary Club to raise funds for Rotary scholarships and Hurricane recovery efforts along the Carolina coast and the Bahamas.

MOTION: Gonzalez moved to approve the request

SECOND: Zieg

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

Citizen Comments:

Bartus called for speakers, hearing none, closed public comment.

Council Comments:

Gonzalez thanked Johnson and staff for their work on the budget.

Zieg thanked Johnson and staff for their hard work.

Senmartin thanked everyone

Cook thanked staff, Marathon fire rescue, the Sherriff's office personnel and Johnson.

Bartus thanked the staff, Johnson, City Manager, Dirk Smits and the department heads.

ADJOURNMENT

With no further business to come before the Council, Mayor Bartus adjourned the meeting at 5:20 pm by unanimous consent.

I certify the above represents an accurate summary of the Council special call budget meeting of September 19, 2019

Diane Clavier, City Clerk

Date



City Council of the City of Marathon, Florida

World Habitat Day Proclamation

October 7, 2019

WHEREAS, our community and communities around the world are recognizing the first Monday of October to be World Habitat Day, as declared more than 30 years ago by the United National General Assembly; and

WHEREAS, this day of recognition focuses on the basic right to affordable housing; and

WHEREAS, 46% of families in our community pay half or more of their income on their housing; and

WHEREAS, this often creates for families, difficult choices between housing or healthcare or nutritious food or school supplies or clothing or creating a savings; and

WHEREAS, Habitat for Humanity of the Middle Keys helps families in Marathon build strength, stability and self-reliance through affordable housing; and

WHEREAS, more than 35 families in Marathon have partnered with Habitat for Humanity of the Middle Keys to build or repair and then purchase their own affordable homes; and

WHEREAS, a decent, affordable place to live will remove barriers to opportunity, health and success; and

WHEREAS, every one of us deserves the opportunity for a better future; and

WE NOW THEREFORE recognize the efforts of Habitat for Humanity of the Middle Keys and families in our area in joining the United Nations Assembly and recognizing the basic right to affordable housing, and hereby declare “World Habitat Day” in the City of Marathon, Florida.

Mayor John Bartus

October 07, 2019

Date



City Council of the City of Marathon, Florida

Breast Cancer Awareness Month Proclamation

WHEREAS, during National Breast Cancer Awareness Month, we honor those we have lost, lend our strength to those who carry on the fight, and pledge to educate ourselves and our loved ones about this tragic disease; and

WHEREAS, there have been great strides in combating the devastating illness of breast cancer, which is the second most commonly diagnosed form of cancer in the United States; and

WHEREAS, death rates from breast cancer have been declining, and this change is believed to be the result of earlier detection and improved treatment; and

WHEREAS, though the exact causes of breast cancer are unknown, understanding its risk factors is essential to prevention; and

WHEREAS, those who have a personal or family history of breast cancer are among those at greater risk of developing the illness; and

WHEREAS, early detection and getting recommended screening mammograms to help to detect breast cancer early is key in the fight against breast cancer; and

WHEREAS, this month, we stand with those who have been affected by breast cancer, and we recognize the ongoing efforts of dedicated advocates, researchers, and health care providers who strive each day to defeat this terrible disease.

NOW THEREFORE, the City of Marathon City Council hereby proclaims the month of October, 2019 be recognized in the City of Marathon as National Breast Cancer Awareness Month and encourage everyone to educate themselves of the risk factors and get the recommended screenings.

October 8, 2019

Date

Mayor John Bartus



City Council of the City of Marathon, Florida

Fire Prevention Week Proclamation

October 6 – 12, 2019

WHEREAS, the City of Marathon, Florida is committed to ensuring the safety and security of all those living in and visiting our state; and

WHEREAS, in 2018, U.S. fire departments responded to an estimated 1.3 million fires, of these fires, an estimated 499,000 were structure fires.

WHEREAS, in 2018, 3,655 civilians died in fires and 15,200 people were injured, according to the latest research from the nonprofit National Fire Protection Association (NFPA); and

WHEREAS, the City of Marathon Fire Rescue first responders are dedicated to reducing the occurrence of home fires and home fire injuries through prevention and protection education; and

WHEREAS, Marathon's residents are responsive to public education measures and are able to take personal steps to increase their safety from fire, especially in their homes; and

WHEREAS, residents who have planned and practiced a home fire escape plan are more prepared and will therefore be more likely to survive a fire; and

WHEREAS, remember, plan ahead for your escape, test smoke alarms and choose an outside meeting place; and

WHEREAS, the 2019 Fire Prevention Week theme, "Not every hero wears a cape. Plan and Practice your Escape" effectively serves to remind everyone to be aware of their surroundings, look for available ways out in the event of a fire or other emergency, and respond when the smoke alarm sounds by exiting the building immediately.

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

October 6-12, 2019 as Fire Prevention Week in Marathon

Mayor John Bartus

October 08, 2019

Date

Diane Clavier

From: Aundria DelPino <draundria@marathonvet.com>
Sent: Friday, September 06, 2019 7:30 AM
To: City Clerk
Subject: reserve a meeting room

Follow Up Flag: Follow up
Due By: Monday, September 16, 2019 4:00 PM
Flag Status: Flagged

Hello I would like to reserve a meeting room in November. I wanted to ensure that our talk would be within the guidelines. The talk would be given by Dr Doug Mader of Marathon Veterinary Hospital and open to the public. There is a fee to the public which will be donated to the Marathon FKSPCA. Is this an appropriate venue for this type of talk?

Thank you
Dr. Aundria

--

Aundria DelPino, DVM
Marathon Veterinary Hospital
5001 Overseas Highway
Marathon, FL 33050

305-743-7099

*Emails will be returned within 48 hours. If you need immediate assistance please call the front desk at 305-743-7099.


<u>SUBJECT:</u>	<u>DATE:</u>	<u>TIME:</u>	<u>LOCATION</u>
Homecoming Parade	10/10	1-2pm	US1 Hwy
Fall Harvest Fun	10/12	4-8pm	Crane Point Hammock, 5550 Overseas Hwy.
City Hall Closed *Columbus Day*	10/14		
Code Compliance Hearing	10/16	2:00pm	Council Chambers, 9805 Overseas Hwy.
Household Hazardous Waste & Ewaste Drop Off	10/19	9:00am-1pm	10600 Aviation Blvd., Marathon
Coral Head Blues Fest	10/19	11am-10pm	Marathon Community Park Amphitheater
Planning Commission Meeting	10/21	5:30pm	Council Chambers, 9805 Overseas Hwy.
City Council Meeting	10/22	5:30pm	Council Chambers, 9805 Overseas Hwy.
Strides Against Breast Cancer Walk	10/26	8:00am	Marathon Fire Station #14, 8900 Overseas Hwy.



Utility Department Monthly Update

MEETING DATE: October 8, 2019

TO: Honorable Mayor and City Councilmembers

FROM: Daniel Saus, Utility Director 

THROUGH: Charles Lindsey, City Manager

SUBJECT: **October 2019 Utility Department Update**

A. Wastewater Treatment Plants

1. General Issues

- a. The king tides are causing increased flows at some of the plants. We have identified a great many damaged air inlets that are likely latent hurricane Irma damage either from the storm or from the ensuing cleanup effort. We have sent many letters to the owners but are struggling to achieve compliance.

2. Odor Complaints / Mitigation

- a. We received two odor complaints for the wastewater treatment facilities at Area 4 plant. I was present at the plant that week and was unable to identify any offensive odors and therefore I ordered a misting unit to mist deodorizing liquid should we receive any more complaints.

3. Effluent Quality Report/Plant Performance

The August 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: AUGUST 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	0.198	2.9	2.52	1.85	1.98	1.36	2.18	0.67	0.88
AREA 4	0.400	0.248	1.0	3.27	2.5	1.53	1.22	1.53	0.347	0.70
AREA 5	0.450	0.328	1.0	1.25	1.6	0.97	1.23	1.96	0.39	0.38
AREA 6	0.200	0.071	3.32	1.92	0.5	0.63	0.613	1.83	0.222	0.140
AREA 7	0.200	0.040	2.44	1.99	0.5	0.72	0.685	1.63	0.136	0.136

B. Collection System

1. In June, we were caught up on the grease trap list and had full compliance at that time. Now grease trap compliance has become an issue again. We may need to revise our ordinance in the future. I am currently discussing with staff and considering our options.
2. Vacuum Station Salinities for June:
 - a. August's vacuum station salinities were at as follows (in parts per thousand): SA3: 3.3; SA4: 3.6; SA5: 5.2; SA6: 1.3 and SA7: 1.4. This indicates a moderate amount of saltwater intrusion into our system from the king tides. I believe it is latent hurricane damage and we are actively pursuing air intake repairs on private property as stated above in in general issues,
3. 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)

4. 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.

5. Call-Outs

- a. From August 1st to August 31st we received 47 documented Call outs for the entire Collections System. Of these, 29 were system generated, typically low vacuum detected at one of our Vacuum Stations. These 29 call outs did not result in any inconvenience to our customers. The problems were detected and remedied by Collections/Maintenance Staff before they became a nuisance to the residents in these areas.

- b. The other call outs were as follows:

- i. 8-1-19: Backup Area 7. 56283 Ocean Dr. The Resident called the manager-on-duty (MOD) phone about a backup at the property. The Tech arrived and found the Grinder Station to be operational. Homeowner issue.
- ii. 8-1-19: Backup Area 5. 11750 2nd Ave. The Resident called the MOD phone about a backup at the property. The Tech arrived and found the Vacuum Pit to be operational. Homeowner issue.
- iii. 8-2-19: Backup Area 5. 1701 6th Ave. The Resident called the MOD phone about a backup at the property. The Tech arrived and found the Vacuum Pit to be overwhelmed with water. he fired the pit manually and cleared the water then put the pit back into operation. No damage to property.
- iv. 8-3-19: Backup Area 6. 1160 Blvd. de Palmas. The Resident called the MOD phone about a backup at the property. The Tech arrived and found the suction tube clogged with grease and debris. He cleared the blockage and put the pit back into service. No damage to property.
- v. 8-4-19: Backup Area 7. 59734 Blue Isle. The Resident called the MOD phone about a backup at the property. The Tech arrived and found the grinder station full of water. He called for the pump truck to pump it down and replaced the stators in the pumps then put the station back into service. No damage to property.
- vi. 8-5-19: Backup Area 3. Knights Key Lift Station. The alarm on the telemetry called the MOD and had the Lift Station Tech checked the station. He found that the VFD's in the control panel had faulted. He reset the VFD's and put the station back into service before residents were impacted.

- vii. 8-9-19: Backup Area 3. 201 22nd Street. The resident called the MOD phone about a backup at the property. The tech arrived and found the controller to be bad. He replaced the controller and put the pit back into service. No damage to property.
- viii. 8-9-19: Backup Area 3. Hyatt Hotel. 1996 O/S hwy. An employee of the Hyatt called the afterhours MOD phone about a backup at the property. The tech arrived and found the Lift Station to be operational. Private property issue.
- ix. 8-9-19: Backup Area 5. 125 Brian Road. The resident called the MOD phone about a backup at the property. The tech arrived and found the Vacuum pit to be overwhelmed with water, he fired the pit manually and cleared the water then put the pit back into operation. No damage to property.
- x. 8-9-19: Backup Area 5. 1590 Marlin Drive. The resident called the MOD phone about a backup at the property. The tech arrived and found the vacuum pit to be overwhelmed with water, he fired the pit manually and cleared the water then put the pit back into operation. No damage to property.
- xi. 8-10-19: Backup Area 5. 8061 Porpoise Drive. The resident called the MOD phone about a backup at the property. The tech arrived and found the vacuum pit to be operational. Homeowner issue.
- xii. 8-11-19: Back up Area 4. 249 Sombrero Bch Rd. The resident called the MOD phone about a backup at the property. The tech arrived and found the vacuum pit to be operational. Homeowner issue.
- xiii. 8-11-19: Backup Area 4. Marlin Bay. The resident called the MOD phone about a backup at the property. The tech arrived and found the controller to be bad, he replaced the controller and put the pit back into service. No damage to property.
- xiv. 8-12-19: Backup Area 4. 250 43rd Street. The resident called the MOD phone about a backup at the property. The tech arrived and found the Controller to be bad, he replaced the Controller and put the pit back into service. No damage to property.
- xv. 8-13-19: Backup Area 5. 1590 Marlin Drive. The resident called the MOD phone about a backup at the property. The tech arrived and found the vacuum pit to be overwhelmed with water. He fired the pit manually and cleared the water then put the pit back into operation. No damage to property.
- xvi. 8-13-19: Backup Area 5. 1590 Marlin Drive. The resident called the MOD phone about a backup at the property. The tech arrived and found that the tech from the previous night had misdiagnosed the problem with the Vac Pit. The problem turned out to be a small hole in the sensor tube hose causing the pit not to fire. He replaced the hose and put the pit back into operation. No damage to property.

xvii. 8-27-19: Backup Area 4. 854 51st Street Gulf. The resident called the MOD phone about a backup at the property. The tech arrived and found the vacuum pit to be operational. Homeowner issue.

xviii. 8-31-19: Backup Area 6. 115 Ave A. The resident called the MOD phone about a backup at the property. The tech arrived and found the suction tube to be clogged with grease and debris. He removed the blockage and put the pit back into service. No damage to property

6. Odor Complaints / Mitigation

b. We received no odor complaint in August for the collection system.

C. Service Plant upgrades & Construction

1. The Service Area 3 WWTP upgrades are completed.
2. The Service Area 3 WWTP wastewater pre-treatment project was also completed.
3. The Area 5 WWTP upgrades are nearly completed. The damaged influent EQ tank repairs are now completed. The final punch list items are being completed at this time..
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 design is 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: We received a grant for \$948,000.00 for the fiscal year 2019-2020!!



MEMORANDUM

Date: October 8, 2019

To: Honorable Mayor and City

From: Paul Davis, Parks and Recreation Director

Through: Chuck Lindsey, City Manager

Subject: Parks and Recreation Monthly Report

PARKS AND RECREATION REPORT

AUGUST 2019

Summer camp ended August 8. There were 121 kids who signed up for summer camp. The weekly average attendance was 34 kids. The weekly attendance dropped after the 5th week of camp. The majority of the kids showed up on the field trip days (Tuesday and Thursday). We are looking to modify the summer camps for next summer.

Community Outreach – Ali Adams visited local pre-schools (COOP, Grace Jones, and Kreative Kids) in the community and work with the student to create farewell cards for Jimmy Schmidt’s retirement party. Over 90 cards were made for Jimmy.

Tie Dye - Kyrstyn Ransom did a Tie Dye event on Saturday morning, August 10, 2019 at the Community Park from 9:00 am to 11:00 am. There were 43 kids who participated in the event and 12 adults who brought their own t-shirts to participate in the event.

Roller Night - Ali Adams did a roller night event on Friday, August 23, 2019 at the Community Park basketball/hockey courts from 7:30 to 9:30 pm for children ages 3-12 and their parents. There was deserts donated by Publix and music. There were approximately 52 children who showed up to skate.

Back to School Bash - Kyrstyn Ransom coordinated with other staff members to have a Back to School Bash on Thursday, August 29, 2019 from 6:00 – 8:00 pm at the Community Park main pavilion. We had to battle the elements, but we were able to have the event. There were nearly 100 -120 parents and children in attendance. We were able to give away backpacks and school supplies.

Start Smart Tennis – Genesis Villatoro started a Start Smart Tennis program on Saturday, August 31 for ages 5-7 year olds. The program was limited to 20 participants for a \$50 fee for the 6-week program.

Start Smart Move and Play – Genesis Vilatoro started a new Start Smart Move and Play program on Thursday, August 22 for ages 2-3 years of age for 8 weeks starting from 9:30 a.m. to 10:30 a.m. The program teaches children from ages 2-3 basic fine motor skills in a safe and fun environment. This is a FREE program.

Adult basketball and volleyball – Andre Garvey (basketball) and Kyrstyn Ransom (volleyball) started at adult basketball and volleyball at Marathon High School gymnasium the week of August 19 on Monday and Wednesday nights from 7:30 to 9:30 p.m., Cost per person for the fall season is \$5 per night or \$30 for the fall season. Adult basketball had 30 adults (18+) signed up and has been averaging around 10 people each Wednesday night. Adult volleyball has been averaging eight people each Monday night with 16 adults signed up for the fall season at the beginning of the season.

SEPTEMBER

Home School PE - Jaymie Robinson and Austin Tubbs collaborated to start home school PE on September 3, 2019 for ages 5 – 18 who are being home-schooled. The program is every Tuesday from 2:00 p.m. – 3:00 p.m. for the entire school year. This free program had 37 students registered at the beginning of the program. We are now at 60 students registered for the program with an average of 46 students each Tuesday. The students are separated into two groups' ages 5-8 and 9 and up. Each group participates in a variety of different activities and games.

Home School Tennis – is a free instructional tennis program for home school students' ages 7 – 18 years of age done by Austin Tubbs. The program is held each Tuesday from 3:30 – 4:30 p.m. at the Community Park tennis courts. There are 17 students registered for the program with an average attendance of 14 students.

Fun in the Sun Obstacle Course – was a one-day activity done by Genesis Vilatoro for children ages 4-9 years old on Saturday, September 7, 2019 from 10:30 a.m. to 11:30 a.m. at the Community Park soccer fields.

AYSO Soccer had its opening ceremony September 6, 2019 on the newly sodded soccer fields. There were approximately 300 people in attendance. There was food, music and games enjoyed by all. The season has begun with no issues to report about the playing surface. Practices are held Monday – Thursday with games being played on Saturday.

Fly a Kite on Friday Night - was done by Ali Adams on Friday, September 20, 2019 at the Community Park Soccer Fields. Over 100 kids and their parents participated in the event. Kites were constructed, decorated, and flown. Ice Cream and juice was handed out to all participants at this FREE event.

Art Outreach with the Parks – is a new program done by Ali Adams to visit pre-school and after-care programs. Schools included in this program are Hammock House, Kreative Kids, Grace Jones, and COOP. Ali visits these schools on a monthly basis to teach a variety of art techniques and about famous artist. This program will go the entire school year.

Intro to Pickle Ball – is a new six-week program done by Austin Tubbs each Wednesday night at the Community Park tennis courts from 6:00 – 7:00 p.m. The program introduces the participants to the game of

pickle ball at the beginners' level. The goal is to have a pickle ball league at the Community Park in the near future.

UPCOMING PROGRAMS / SPECIAL EVENTS

Youth Basketball (ages 7-14)

- early registration (Oct. 1 – 12)
- regular registration (Oct. 13 – 25)
- late registration (Oct. 26 – Nov. 1)
- Player evaluation – Nov. 5-6
- Practice twice a week with a game being played on Sunday's
- 10-week season with eight games for the season.

Start Smart Basketball (ages 3-4) / Basketball Clinics (ages 5-6)

- Season starts Saturday, January 11, 2020
- Meet every Saturday for six weeks
- Start Smart from(3-4) 9:00 – 10:00 am
- Basketball clinics (5-6) 10:00 – 11:00 am

Pet Parade

- October 26
- Community Park main Pavilion – 10:00 a.m.
- Costume contest
- Games and Prizes

Coral Head Blues Fest / American Legion Riders 150

- Event day October 19, 2019
- Set-up Friday, October 18
- Clean-up Sunday, October 20
- Anticipated attendance – 3000 spectators

20th Anniversary – City Celebration

- Saturday, November 2, 2019 (time TBD)
- Food, drink, live music, DJ
- Games, prizes

Taste of the Islands (BPW)

- November 10, 2019
- Event time – 11:00 a.m. to 5:00 p.m.
- Food & drink, live music

OPERATIONAL

- **Staff Schedule** – created staff schedule with set days and hours for each Rec Specialist workweek. There is flexibility with the schedule due to the special events and activities we do at the Parks.
- **Updated Special Events Application** – an updated version of the special events application was created to give more detailed instruction for special events to take place at the Community Park. Will present to council for approval once reviewed and approved by City Manager and Legal.
- **Updated Forms**
 - **Updated Facility/Park Inspection Forms** – Inspection forms more detailed to our particular parks and beaches. Inspections will occur on a monthly basis starting the month of October.
 - **Updated City Property Use Application (Pavilions)** – more detailed to our parks and beaches.
 - **Updated City Property Use Application (Athletic Fields)** – more detailed to our athletic fields and what purpose for the use of the fields.
- In the process of getting quotes for playground equipment for Jesse Hobbs and Community Park (including shading).
- Purchased a pressure washer and began pressure-washing areas (sidewalks, picnic tables (concrete), etc.) to beautify park areas.
- Met with USTA to discuss ways to get more tennis participation in the City of Marathon for all ages. Free resources available for the Park.
- Soccer fields were opened September 5th, just in time for the AYSO soccer opening ceremony. Minor repairs have been made to the irrigation system to make sure the fields are watered daily (or as needed). The first major event (Coral Head) on the fields will be the weekend of October 19-20. I've met with Richie Anderson to discuss the layout, rules and regulations about the event, so we are all on the same page for the event and taking care of the fields.
- The skate park attendant recently resigned from this position. There has been discussion to have the skate park "unsupervised" and post new skate park rules stating the park unsupervised and to skate at your own risk. This was discussed with risk management, legal and the City Manager to see what effect those changes would have on the City liability insurance.

CITY OF MARATHON

Memorandum



Meeting Date: October 8, 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
July and August, 2019

Code Compliance Department

The Code Department sent 6 notices for Hearing before the Special Magistrate scheduled on August 21, 2019. Prior to the meetings, a total of 4 cases were withdrawn after coming into compliance.

The Code Department sent 8 notices for Hearing before the Special Magistrate scheduled on September 18, 2019. Prior to the meetings, a total of 5 cases were withdrawn after coming into compliance.

The remaining cases went before the Special Magistrate and the rulings are as follows;

Respondents were found in non-compliance: 1
Respondents were present and admitted to the violation: 3
Continued to the next meeting by the Special Magistrate: 1

The next Code Hearing before the Special Magistrate is October 16, 2019 at 2:00 PM at Marathon City Hall Council chambers, 9805 Overseas Highway, Marathon FL. There are currently 8 cases noticed for this Hearing.

Staff Changes

The Code Department has been functioning with an administrative assistant and one code officer. Although short staffed, the department continues to work hard to provide service to the community while we continue to search for an appropriate candidate to fill the second code officer position.

The Code Department continues to work with the City Marina staff to resolve issues with abandoned/derelict vessels, vessels being wet stored in the managed anchorage area and other violations within the City Marina. They also continue to work with Public Works and the Utility Department to resolve violations involving the City right of way as well as any activities that may impact the functioning of the central waste water and storm drainage systems.

The Code Department continues to work with Building and Planning staff to monitor storm damaged properties that have been deemed unsafe and/or Pre-Firm structures that are being reviewed for substantial damage.

Temporary RV Inventory

Since Hurricane Irma, Code Staff has conducted quarterly surveys of RV's deemed to be inhabited by being connected to water, electric and sewer service. City Council had been extending the temporary trailer permits in 90 day increments. Those extensions have expired. The previous inventory completed in May revealed 25 RV's connected to utilities. The most recent survey has increased to 54 RV's connected to utilities.

We believe that the Councils generosity to help our storm affected residents is now being abused. Code proposes to send registered letters to call property owners that have RVs requiring them to contact staff to either state a hardship that requires the short term use of the RV or that it will be removed within 30 days of the notice.

We know that a few of these are people still rebuilding their homes after Irma. We also know that many of these are not home owners affected by the storm. The city should evaluate each originally permitted temporary trailer to see if progress is being made to get back into compliance. If progress is being made, a time frame can be established for compliance. All others should be given a time deadline to remove the units from the property.

<u>Code Cases:</u>	<u>July 2019</u>	<u>August 2019</u>
Cases opened:	27	15
Cases closed:	19	15
Total open cases:	271*	

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

Total payments received in May and June: \$1,000.00.

Code Department staff responded to 69 complaints either by telephone, email, online or in person. A total of 42 new cases were opened. The remaining were either quickly resolved, unfounded, civil in nature, or subsequent complaints on an existing code case

Case Type	July	August
Abandoned boat	4	0
Building Code	5	8
Environmental	1	0
Nuisance	1	0
Multiple violations	1	0
Property Standards	5	3
RV	0	2
Unsafe	2	0
Vacation Rental	3	2
Zoning	1	0
Total	27	15

July and August 2019 Case Actions

Notice of Violation: 29

Citations: 6

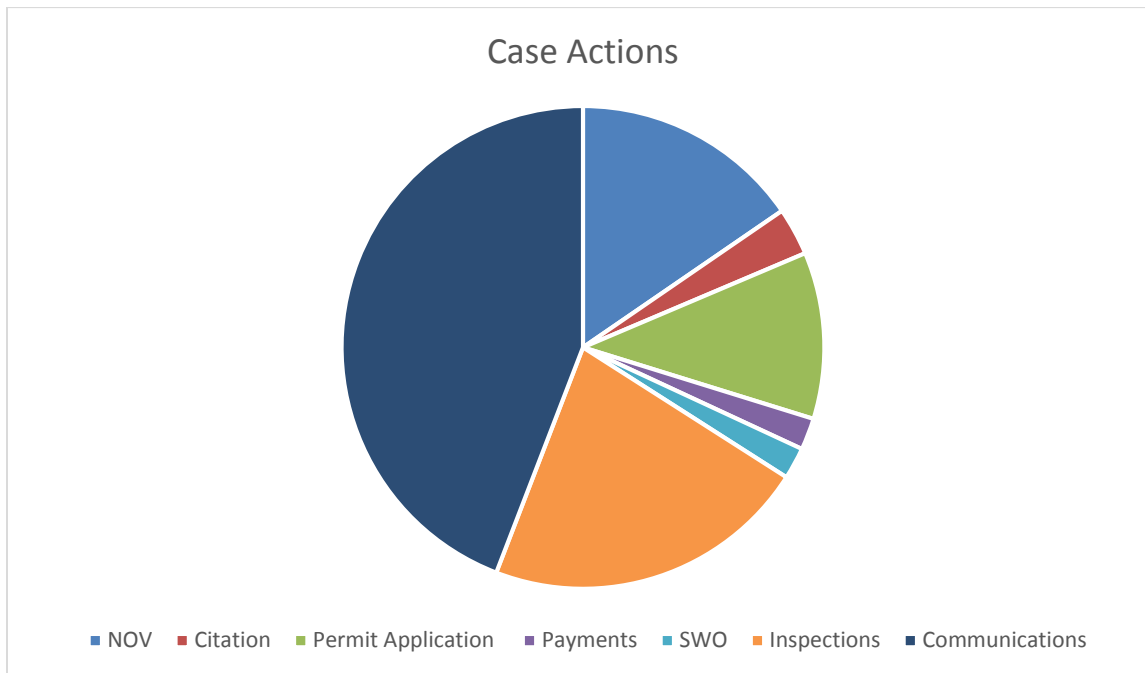
Building permit applications received on code cases: 21

Payments (administrative fees and citations): 4

Stop work orders: 4

Initial/re-inspections: 41

Communication in person, via telephone or email regarding open cases: 83

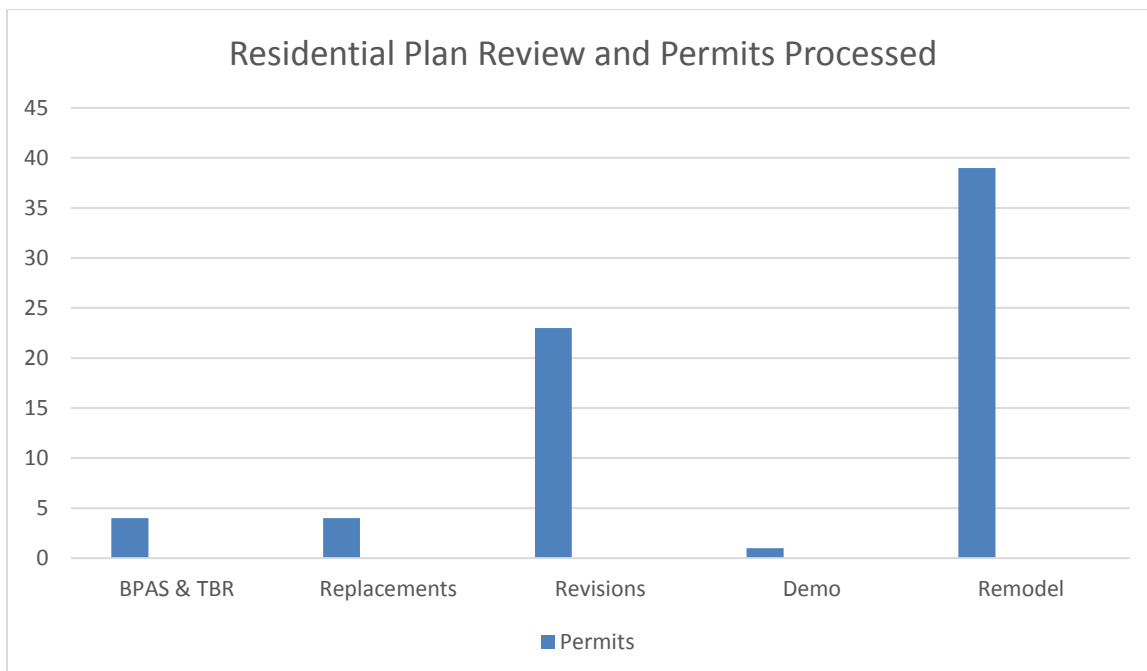
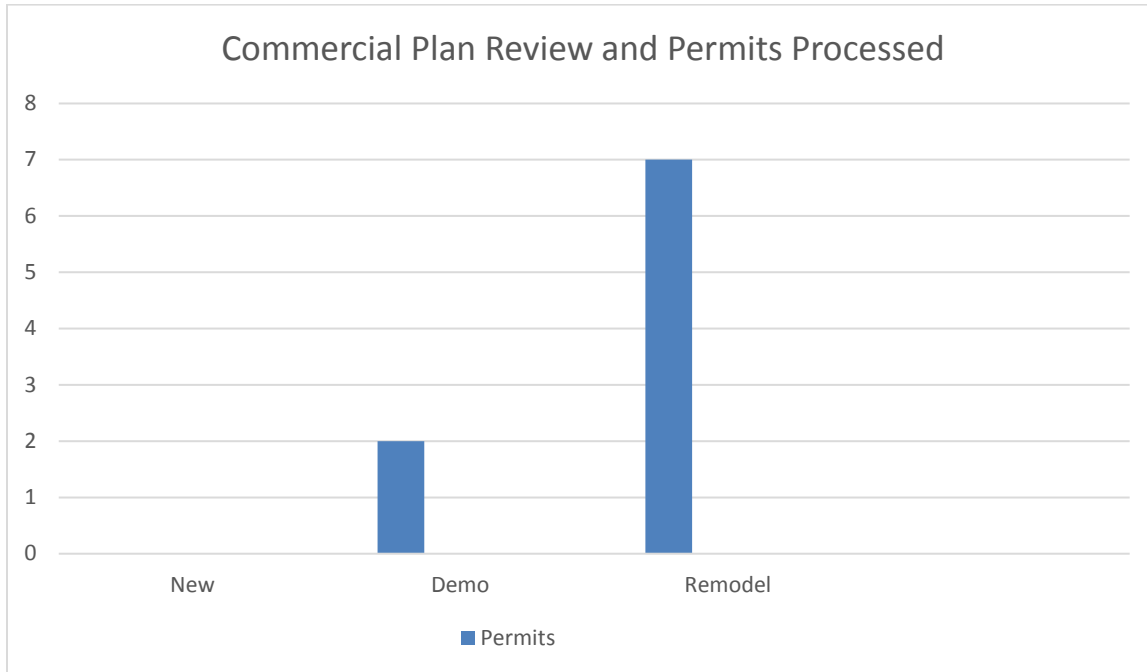


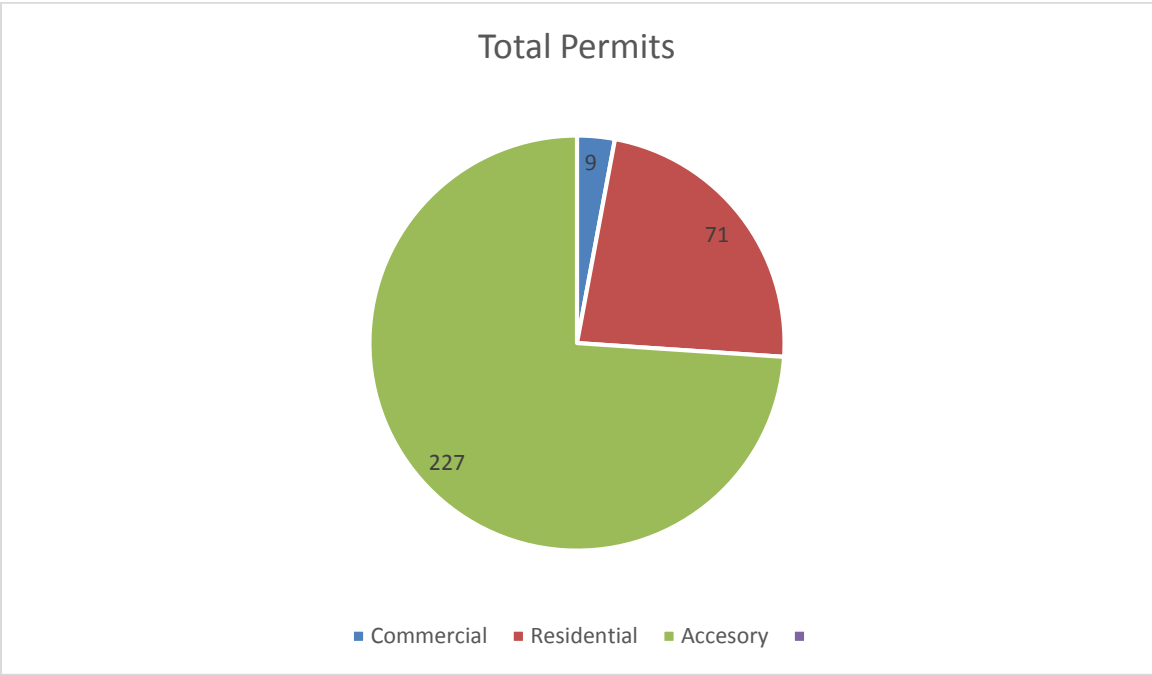
Building Department Report – July and August 2019

July 2019

Permit Totals

Permit Intake	307
Permits Issued	399
Permits Picked Up	357





Total Inspections: 836

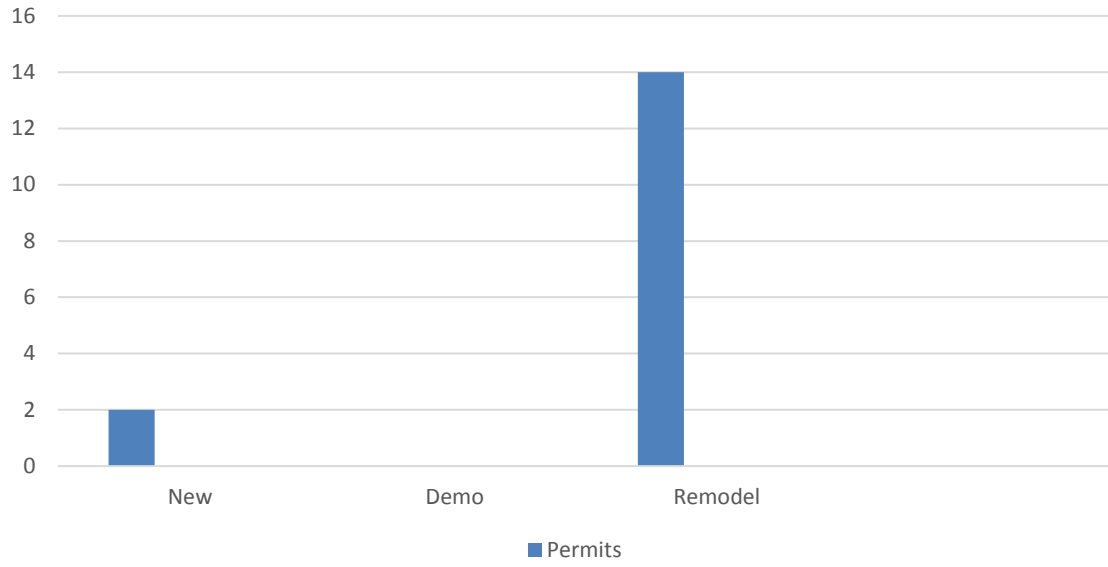
Total Revenue for Building for July: \$165,444.13

August 2019

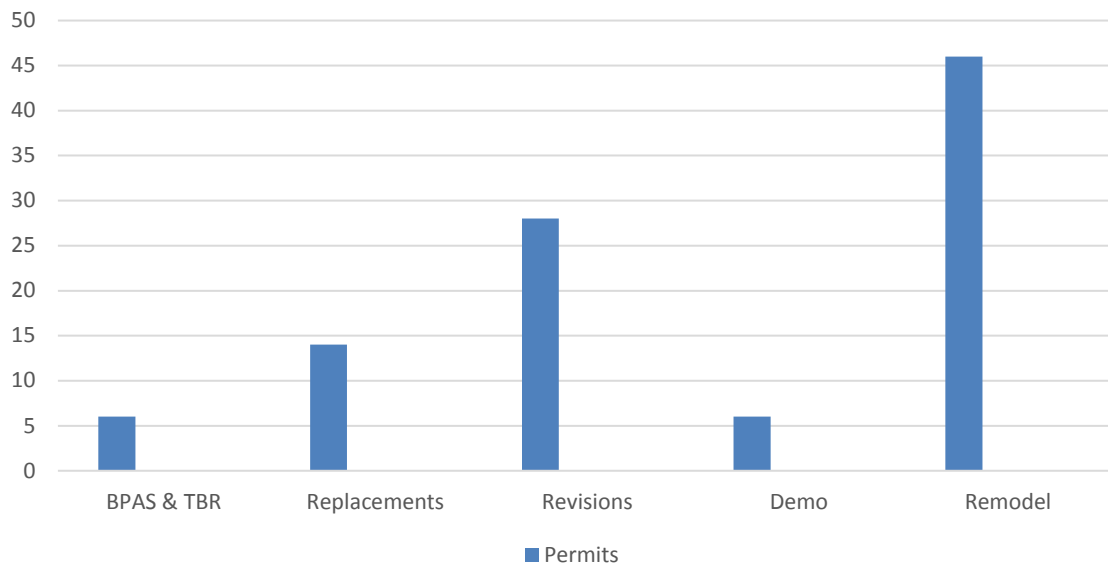
Permit Totals

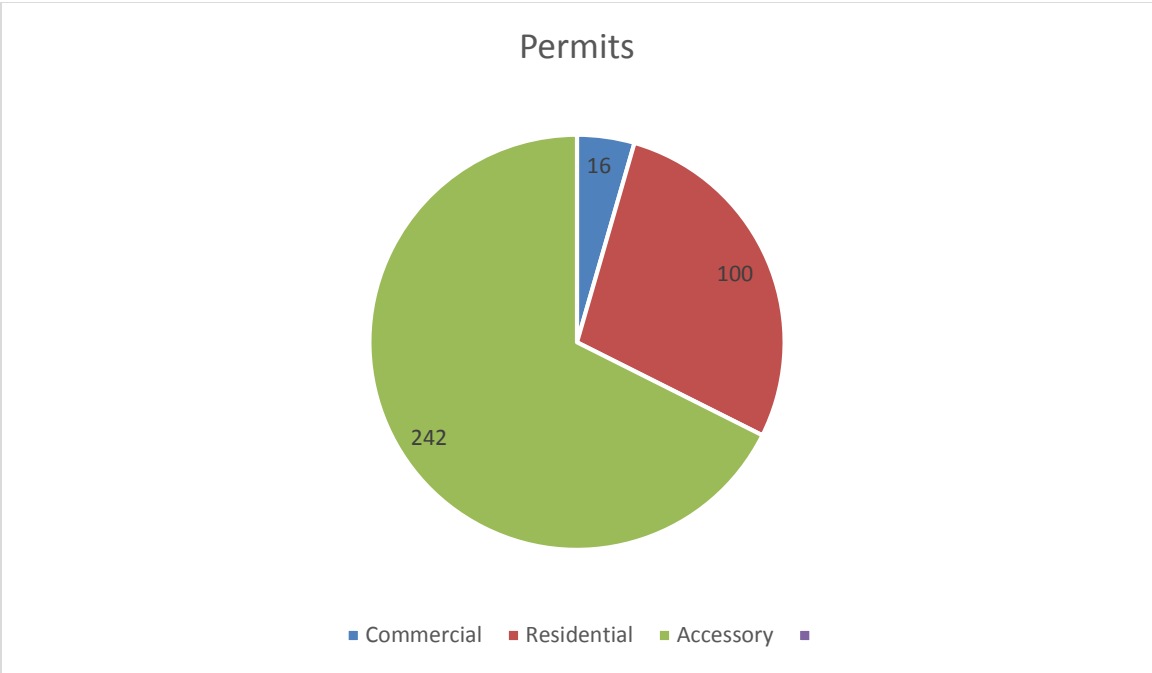
Permit Intake	358
Permits Issued	582
Permits Picked Up	611

Commercial Plan Review and Permits Processed



Residential Plan Review and Permits Processed





Total Inspections: 986

Total Building Revenue for August, 2019: \$242,848.87

Total YTD Revenue: \$2,197,559.98

COUNCIL AGENDA STATEMENT



Meeting Date: October 8, 2019
To: Honorable Mayor and Council Members
From: George Garrett, Planning Director
Through: Chuck Lindsey, City Manager

Agenda Item: **Ordinance 2019-10**, Amending The City’s Comprehensive Plan To Modify Or Add To Its Conservation And Coastal Element, Goals Objectives, And Policies To Comply With Florida Statute 163.3178(2)(F) “Peril of Flood”; Intending To Modify, “Purpose;” Goal 4-1, “Conserve, Manage, Use, And Protect Natural And Environmental Resources;” Policy 4-1.3.3, “Surface Water Management And Flood Damage Prevention;” And Objective 4-1.17, “Minimum Coastal Hazards;” And Intending To Add Policies To Include Policy 4-1.17.8, “Strategies For Responding To Sea Level Rise;” Policy 4-1.17.9, “Flood-Resistant Development Requirements;” Policy 4-1.17.10, “Extreme Weather Event Mitigation;” And Policy 4-1.17.11, “Best Practices And Mitigation Strategies;” And Finally, Intending To Modify Objective 4-1.22, “Reduce Exposure To Natural Hazards,” Policy 4-1.22.5, “Manage Redevelopment Activities; And Policy 4-1.22.8, “Regulate Redevelopment Of Non-Conforming Structures To The Required Base Flood Elevation;” Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity After The First Hearing By The City Council; And Providing For An Effective Date.

RECOMMENDATION:

The Planning Commission reviewed the proposed Comprehensive Plan amendment on May 20, 2019 and recommends Approval in order to meet the minimum standards of the Perils of Flood requirements promulgated in Section 163.3178(2)(f), Florida Statutes.

APPLICANT: City of Marathon

REQUEST: Amend City of Marathon Comprehensive Plan in order to bring it into compliance with recent legislative amendments to Section 163.3178(2)(f), Florida Statutes (commonly referred to as the “Peril of Flood” statute).

ANALYSIS OF COMPREHENSIVE PLAN CHANGE REQUEST:

Preface

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

Section 102.19 simply states:

Section 102.19. Standards for Review.

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

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

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

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

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

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

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

Compliance Discussion

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

- Natural Resource Protection
 - Wetlands
 - Estuaries
 - Living marine resources
 - Beaches / Dunes
 - Unique wildlife habitat
 - Water Quality
- Historical Resources
- Infrastructure / Concurrency Management
 - Wastewater
 - Stormwater
 - Potable Water
 - Solid Waste
 - Transportation
- Affordable Housing
- Hazard Mitigation
 - CHHA
 - Hurricane Evacuation
- Ports
 - Marina Siting
- Public Use
 - Shoreline use and Access
 - Water dependent and independent activity
- Land Acquisition
 - Conservation
 - CHHA
 - Public Services

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

SUMMARY

The University Of Florida Levin College Of Law Conservation Clinic in partnership with Florida land use and environmental attorney Byron Flagg have examined the City of Marathon's Comprehensive Plan for compliance with the Florida "Peril of Flood" statute. As a result, the reviewers recommend that the City of Marathon make minor amendments to its Comprehensive Plan to comply with recent legislative amendments to Section 163.3178(2)(f), Florida Statutes (commonly referred to as the "Peril of Flood" statute). The reviewers recommend minor additions to the City's Conservation and Coastal Element of its Comprehensive Plan to comply with Section 163.3178(2)(f), Florida Statutes. This report and attached draft ordinance (Exhibit B) constitute Deliverables 3.2 and 3.3 of Task 3 under the City's Grant # 1816 from the Florida DEP's Florida Coastal Office, Florida Resilient Coastlines Program.

The short review provided by the University of Florida explains the Background & Legislative History of statutory changes to Section 163.3178(2)(f) and the new statutory requirements coastal local governments must now implement. This report also provides the recommended text changes that will bring the City's Comprehensive Plan into compliance and brief legal analysis for each change. The report identifies which sections of the City's current Conservation and Coastal Element already satisfy the new statutory requirements and the report provides additional resources in "Exhibit 3.1" regarding resiliency planning, best practices, and FEMA guidelines for communities that participate in the National Flood Insurance Program's (NFIP) Community Rating System (CRS), as well as a draft ordinance as "Exhibit 3.2" implementing the recommended text changes to the City's Comprehensive Plan.

BACKGROUND & LEGISLATIVE HISTORY

A. *The Comprehensive Plan's "Coastal Management" Element*

All of Florida's counties and municipalities are required to adopt local government comprehensive plans that guide future growth and development pursuant to Chapter 163, Florida Statutes, which comprise Florida's *Community Planning Act* and growth management policies. Each local government comprehensive plan must include at least two planning periods (one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period). Comprehensive plans contain chapters or "elements" that address future land use, housing, transportation, water supply, drainage, potable water, natural groundwater recharge, coastal management, conservation, recreation and open space, intergovernmental coordination, capital improvements, and public schools. Comprehensive Plans are developed through a public participatory visioning process and then articulated through specific Goals, Objectives, and Policies under each Element.

In addition to these general comprehensive planning requirements under state law, local governments in coastal areas must include a *coastal management element* in their comprehensive plan pursuant to Section 163.3177(6)(g), Florida Statutes. The coastal management element must set forth the principles, guidelines, standards, and strategies that shall guide the local government's decisions and adoption of land development regulations and special issues related to coastal development. In addition, Section 163.3178, Florida Statutes, (entitled *Coastal Management*) requires coastal management comprehensive plan policies to be based on studies, surveys, and

data but also requires coastal planning elements to include a “redevelopment component” which outlines the principles used to eliminate inappropriate and unsafe development in coastal areas.

During the 2015 Florida Legislative Session, the Legislature passed Senate Bill 1094 which was signed into law by the Governor in May, 2015. That law is now commonly referred to as the “Peril of Flood” statute because it addressed new requirements related to flood insurance provisions under Florida Law, required record keeping for certain flood elevation certificates, and also required coastal local governments to include in their comprehensive plans (if they had not already done so), new “development and redevelopment principles, strategies, and engineering solutions” focused on reducing flood risks and flood losses within coastal areas. In general, the statute requires coastal communities to more specifically consider future flood risk in the coastal management element of the comprehensive plan, including consideration of sea level rise.

But prior to Senate Bill 1094 going into effect, Section 163.3178, Florida Statutes was not specific about what aspects of coastal planning a “redevelopment component” must address. Senate Bill 1094 changed that lack of specificity by adding new language aimed at reducing flood risk from natural events including consideration of sea level rise by adding six requirements to a local government’s “redevelopment component.”

The City of Marathon’s coastal management element is combined with its conservation element in Chapter Four of the City’s Comprehensive Plan and is named the “Conservation & Coastal Element.”

B. Senate Bill 1094’s “Redevelopment Component” Requirements

As a result of Senate Bill 1094’s amendments to Section 163.3178(2)(f), the City of Marathon’s Conservation and Coastal Management Element must include a redevelopment component that now meets the following statutory criteria. Section 163.3178(2)(f) states:

(f) A redevelopment component that outlines the principles that must be used to eliminate inappropriate and unsafe development in the coastal areas when opportunities arise. The component must:

- 1. Include development and redevelopment principles, strategies, and engineering solutions that reduce the flood risk in coastal areas which results from high-tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea-level rise.*
- 2. Encourage the use of best practices development and redevelopment principles, strategies, and engineering solutions that will result in the removal of coastal real property from flood zone designations established by the Federal Emergency Management Agency.*
- 3. Identify site development techniques and best practices that may reduce losses due to flooding and claims made under flood insurance policies issued in this state.*
- 4. Be consistent with, or more stringent than, the flood-resistant construction requirements in the Florida Building Code and applicable flood plain management regulations set forth in 44 C.F.R. part 60.*
- 5. Require that any construction activities seaward of the coastal construction control lines established pursuant to s. 161.053 be consistent with chapter 161.*
- 6. Encourage local governments to participate in the National Flood Insurance Program*

Community Rating System administered by the Federal Emergency Management Agency to achieve flood insurance premium discounts for their residents.

C. Florida DEO's, Bureau of Community Planning and Growth Guidance

The DEO's Bureau of Community Planning has broken the criteria listed above into two parts for consideration:

- 1.) Subsections (1)-(3) above are strategies for implementing a redevelopment component that include programs, activities and land development regulations. According to the Department of Economic Opportunity, it is up to local governments to establish policies that comply with these requirements. The statutory language does not direct explicitly what those requirements are; rather, it is up to communities to determine appropriate plan policy.
- 2.) Subsections (4)-(6) above are easily adoptable as policies that incorporate these requirements in the text of the Coastal Management Element.

Subsections (1)-(3) can be implemented in many ways. At the minimum, language related to all of the six components must appear in the Coastal Management Element with slight tailoring to (1)-(3) to apply to the City of Marathon. As stated in DEO's break down, Subpolicies (4)-(6) can mimic the statutory language without much tailoring to comply with Florida law. The most thorough amendment would go beyond DEO's analysis and not only alter the Coastal Management Element, but also incorporate amendments throughout the entire Comprehensive Plan as appropriate. At this time, the City of Marathon does not require such an elaborate approach and can safely satisfy the statutory requirements by limiting changes to the Coastal Management Element.

Subsection (5), regarding Coastal Construction Control Lines, need not be addressed in the City of Marathon's Comprehensive Plan because no Control Line has been set for this area of Monroe County. Thus, Subsection (5) will not be addressed in this report. However, the recommended changes to the text of the City's Conservation & Coastal Element does mirror the the language in subsection (5) so that it exists in the event coastal construction control lines are established later on.

D. PURPOSE OF PROPOSED AMENDMENTS TO CITY OF MARATHON'S CONSERVATION & COASTAL ELEMENT

E.

- To bring the City of Marathon into compliance with Florida law, specifically the new statutory requirements codified in Section 163.3178(2)(f).
- To maintain the high-level direction-setting goals, objectives and policies of the City of Marathon's Comprehensive Plan while complying with the specific requirements set forth in §163.3178(2)(f)(1).
- In 2017, Hurricane Irma devastated the City of Marathon, causing tens of millions of dollars in damage. The requirements of the Peril of Flood statute, if implemented throughout the City's Comprehensive Plan and land development regulations and consistently enforced, could lessen the impact on real property and structures from flood-related natural disasters over time.

- The sixth criterion of §163.3178(2)(f) encourages communities to participate in the National Flood Insurance Program Community Rating System (CRS). While Marathon has participated in the program since incorporating in 1999, its current Community Rating is a 6. As a result, this community rating allows residents to currently save 20% on their flood insurance premiums. If the City is able to improve its CRS rating under the National Flood Insurance Program, property owners in Marathon could be eligible for even more savings on flood insurance – the maximum discount reaching up to 45% for communities that implement and enforce land development regulations that reduce flood risk. The highest score in the CRS is 1. Link to: FEMA publication FEMA B 575/2018; *National Flood Insurance Program, Community Rating System, A Local Official’s Guide to Saving Lives, Preventing Property Damage, and Reducing the Cost of Flood Insurance:* https://www.fema.gov/media-library-data/1535126505943-439b296e7778b037d05f698f65c7891b/2018NFIP_CRS_Brochure_June_2018_508OK.pdf

ANALYSIS

Natural Resources

The City of Marathon Comprehensive Plan places significant emphasis on the protection of its environmental resources while protecting the property rights of its citizens. The proposed amendment through the implementation of the existing and these modified Comprehensive Plan and Land Development Regulations has the potential to enhance the protection of natural resources through continued land acquisition and/or development of conservation easements, .

Historical and Cultural Resources

No Significant Impact would result from the proposed change.

Infrastructure

Implementation of the Perils of Flood Goals, Objectives, and Policies will lead to the review of the potential to enhance the protection of all of the City’s infrastructure. This will require review of potential threats to the City’s infrastructure, primarily from hurricanes and sea level rise, consider options, prioritize those options, and develop or seek the funding to implement infrastructure improvements.

Wastewater infrastructure

Implementation of the Perils of Flood Goals, Objectives, and Policies will lead to the review of the potential to enhance the protection of all of the City’s wastewater infrastructure. This will require review of potential threats to the City’s infrastructure, primarily from hurricanes and sea level rise, consider options, prioritize those options, and develop or seek the funding to implement infrastructure improvements.

Stormwater infrastructure

Implementation of the Perils of Flood Goals, Objectives, and Policies (GOPs) will lead to the review of the potential to enhance the protection of all of the City's stormwater infrastructure. This will require review of potential threats to the City's infrastructure, primarily from hurricanes and sea level rise, consider options, prioritize those options, and develop or seek the funding to implement infrastructure improvements.

Potable Water

The City will work with the Florida Keys Aqueduct Authority to insure that its infrastructure is well protected from the potential impacts of hurricanes and sea level rise through implementation of the modified GOPs proposed herein.

Solid Waste

No Significant Impact would result from the proposed change.

Transportation

The City will work with the Florida Department of Transportation and review the threats to its own streets to insure that its infrastructure is well protected from the potential impacts of hurricanes and sea level rise through implementation of the modified GOPs proposed herein.

Affordable Housing

No Significant Impact would result from the proposed change.

Hazard Mitigation

No Significant Impact would result from the proposed change.

Coastal High Hazard Areas

Implementation of the Perils of Flood revisions will have some, but limited, impact on the City's current enforcement of regulations regarding the Coastal High Hazard Areas (CHHAs as we already heavily regulate development in what are otherwise known as Category 1 surge zones or VE Zones.

Hurricane Evacuation

No Significant Impact would result from the proposed change. All transient residents would be required to evacuate within the first 24 hours of a 48 hour evacuation window. The City's (and County) obligation is to be prepared to evacuate its permanent population at 24 hours before the impacts of Tropical Storm Force Winds in the Keys.

As sea level rise begins to impact the Florida Keys, the City and County will be required to ensure that roads will not be inundated with tidal waters. This may require elevating collector roads and U.S. Highway 1.

Ports – Marina Siting

No Significant Impact would result from the proposed change.

Public Use – Access to Water

No Significant Impact would result from the proposed change.

Land Acquisition

The proposed amendment will utilize existing land acquisition mechanisms to further the purposes of providing green buffers and shoreline protection from the immediate impacts of high tides, storm surge, and approaching hurricanes..

Alternate Compliance Review Criteria

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

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

A. The need and justification for the change;

The University Of Florida Levin College Of Law Conservation Clinic in partnership with Florida land use and environmental attorney Byron Flagg have examined the City of Marathon's Comprehensive Plan for compliance with the Florida "Peril of Flood" statute. As a result, the reviewers recommend that the City of Marathon make minor amendments to its Comprehensive Plan to comply with recent legislative amendments to Section 163.3178(2)(f), Florida Statutes (commonly referred to as the "Peril of Flood" statute). The reviewers recommend minor additions to the City's Conservation and Coastal Element of its Comprehensive Plan to comply with Section 163.3178(2)(f), Florida Statutes. This report and attached draft ordinance (Exhibit B) constitute Deliverables 3.2 and 3.3 of Task 3 under the City's Grant # 1816 from the Florida DEP's Florida Coastal Office, Florida Resilient Coastlines Program.

This report briefly explains the Background & Legislative History of statutory changes to Section 163.3178(2)(f) and the new statutory requirements coastal local governments must now implement. This report also provides the recommended text changes that will bring the City's Comprehensive Plan into compliance and brief legal analysis for each change. The report

identifies which sections of the City's current Conservation and Coastal Element already satisfy the new statutory requirements and the report provides additional resources in "Exhibit 3.1" regarding resiliency planning, best practices, and FEMA guidelines for communities that participate in the National Flood Insurance Program's (NFIP) Community Rating System (CRS), as well as a draft ordinance as "Exhibit 3.2" implementing the recommended text changes to the City's Comprehensive Plan.

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

Statutory modifications to Section 163.3178(2)(f), Florida Statutes require that all Comprehensive Plans for coastal Counties include amendments in compliance with the statutory changes. The City has reviewed its Comprehensive Plan which largely meets the requirements of the Perils of Flood Statute, to create the minimum necessary changes while retaining complete internal consistency of all GOPs.

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

The proposed text amendments furthers the purposes of the LDRs and other City Codes, regulations and actions designed to implement the Comprehensive Plan by providing the mechanism to carry out the requirements of the Perils of Flood Statute.

CONCLUSION:

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

RECOMMENDATION:

The Planning Commission reviewed the proposed Comprehensive Plan amendment on May 20, 2019 and recommends Approval in order to meet the minimum standards of the Perils of Flood requirements promulgated in Section 163.3178(2)(f), Florida Statutes. The Council heard this ordinance at the May 28, 2019 Council meeting where it was unanimously approved by the Council.

Sponsored By: Lindsey
Planning Commission Public Hearing Date: May 20, 2019
City Council Public Hearing Date: May 28, 2019
October 8, 2019
Enactment Date:

**CITY OF MARATHON, FLORIDA
ORDINANCE 2019-10**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING THE CITY'S COMPREHENSIVE PLAN TO MODIFY OR ADD TO ITS CONSERVATION AND COASTAL ELEMENT, GOALS OBJECTIVES, AND POLICIES TO COMPLY WITH FLORIDA STATUTE 163.3178(2)(F), "PERIL OF FLOOD;" INTENDING TO MODIFY, "PURPOSE;" GOAL 4-1, "CONSERVE, MANAGE, USE, AND PROTECT NATURAL AND ENVIRONMENTAL RESOURCES;" POLICY 4-1.3.3, "SURFACE WATER MANAGEMENT AND FLOOD DAMAGE PREVENTION;" AND OBJECTIVE 4-1.17, "MINIMUM COASTAL HAZARDS;" AND INTENDING TO ADD POLICIES TO INCLUDE POLICY 4-1.17.8, "STRATEGIES FOR RESPONDING TO SEA LEVEL RISE;" POLICY 4-1.17.9, "FLOOD-RESISTANT DEVELOPMENT REQUIREMENTS;" POLICY 4-1.17.10, "EXTREME WEATHER EVENT MITIGATION;" AND POLICY 4-1.17.11, "BEST PRACTICES AND MITIGATION STRATEGIES;" AND FINALLY, INTENDING TO MODIFY OBJECTIVE 4-1.22, "REDUCE EXPOSURE TO NATURAL HAZARDS;" POLICY 4-1.22.5, "MANAGE REDEVELOPMENT ACTIVITIES; AND POLICY 4-1.22.8, "REGULATE REDEVELOPMENT OF NON-CONFORMING STRUCTURES TO THE REQUIRED BASE FLOOD ELEVATION;" PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY AFTER FINAL ADOPTION BY THE CITY COUNCIL; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the "City") has adopted a Comprehensive Plan which has been found to be in compliance by the State Department of Economic Opportunity ("DEO"), pursuant to Chapters 163 and 380, Florida Statutes; and

WHEREAS, Florida Senate Bill 1094, also known as the "Peril of Flood Act," was signed into law and became effective in 2015 as Section 163.3178(2)(f), Florida Statute; and

WHEREAS, the Peril of Flood Act requires each coastal local government to include a redevelopment component in the coastal management element of its comprehensive plan, and

WHEREAS, the Peril of Flood Act specifies six aspects of redevelopment that a coastal management element must address to reduce the risk of flood and encourage a local government's

participation in the FEMA Community Rating System; and

WHEREAS, the Peril of Flood Act included sea level rise as one of the causes of flood risk that must be addressed in the Coastal Management Element of a Comprehensive Plan; and

WHEREAS, the City desires to address the Peril of Flood requirements using the findings and recommendations from Bermello, Ajamil, and Partners and the University of Florida, Levin College of Law Conservation Clinic provided to the City as deliverables under Florida DEP’s Coastal Office “Resilient Coastlines Program Funding” Grant #1816; and

WHEREAS, this ordinance addresses the Peril of Flood requirements within the “Conservation and Coastal Element” of the City’s Comprehensive Plan; and

WHEREAS, the City Council finds it necessary, desirable, and proper to adopt the amendments to the Goals, Objectives and Policies of the Comprehensive Plan in order to reflect changing conditions, pursuant to Sections 163.3191 and 163.3178(2)(f) Florida Statute.; and

WHEREAS, this Ordinance, thus passed at its first reading, shall be transmitted to DEO and sister State Agencies for their coordinated Comprehensive Plan review so as to obtain and receive the DEO Objections, Recommendations, and Comments (ORC) prior to final adoption,

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

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

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

SECTION 2. Amend the Comprehensive Plan, Chapter 4, Conservation and Coastal Element, “Purpose:”

PURPOSE

Pursuant to ~~Chapter~~ Sections 163.3177(6)(d)&(g), and 163.3178, F.S., the purpose of the Conservation and Coastal Element is to promote the conservation, use and protection of natural resources as well as to plan for, and where appropriate, restrict development and redevelopment activities where such activities would damage or destroy coastal resources, and protect human life and property ~~and~~ while limiting public expenditures in ~~areas~~ locations that are subject to destruction by natural disaster, high tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea level rise. The Conservation and Coastal Element also includes a redevelopment component that outlines the broad Goals, Objectives and Policy principles that must be used to eliminate inappropriate and unsafe development in the coastal areas when opportunities arise as mandated by Section 163.3178(2)(f), Florida Statutes.

SECTION 3. Amend the Comprehensive Plan, Chapter 4, Conservation and Coastal Element, to include Goal 4-1:

¹Additions to existing text are shown by underline/red print; deletions are shown as ~~strikethrough~~

GOAL 4-1 CONSERVE, MANAGE, USE AND PROTECT NATURAL AND ENVIRONMENTAL RESOURCES

It is the goal of the City to conserve, manage, use and protect the natural and environmental resources within the City to ensure continued resource availability and environmental quality and to manage development and redevelopment activities to protect coastal resources, protect human life and property and limit public expenditures in areas subject to destruction by natural disasters, flooding, and sea level rise. §163.3177(6)d.2, §163.3177(6)(g) F.S. & 163.3178(2)(f).

SECTION 4. Amend the Comprehensive Plan, Chapter 4, Conservation and Coastal Element, to include Policy 4-1.3.3:

Objective 4-1.3 Protect, Conserve, and Enhance Coastal Resources

The City shall protect, conserve and enhance coastal resources, wetlands, water resources, living marine resources, wildlife habitats and other natural resources and the environmental health of Florida Bay, the Atlantic Ocean and all surface and ground waters within its jurisdiction, in order to maintain the economic and social well being of its citizens. The City shall help ensure that the ambient water quality of near shore waters meets or exceeds State standards for Class II Outstanding Florida Waters. §163.3177(6)(d)2.; §163.3177(6)(g)1. And §163.3178(2)(e). F.S.

Policy 4-1.3.3 Surface Water Management and Flood Damage Prevention

The City shall continue to maintain surface water management and flood damage prevention regulations. New development and all redevelopment encroaching into the 100 year floodplain shall incorporate elevation and flood protection measures sufficient to protect against the 100 year flood. The City shall maintain consistency with program policies of the National Flood Insurance Program to ensure that it maintains the highest possible rating within the National Flood Insurance Program's Community Rating System. The City shall monitor and implement new cost effective ~~programs~~ development and redevelopment principles, strategies, and engineering solutions for minimizing flood damage resulting from high tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea level rise. Such ~~programs~~ principles, strategies, and engineering solutions may include modifications to construction setback requirements, ~~or~~ othersite design techniques, as well as upgraded building and construction techniques which include resilient construction techniques and increasing "Freeboard" elevation requirements.

SECTION 5. Amend the Comprehensive Plan, Chapter 4, Conservation and Coastal Element, to include Objective 4-1.13 and Policy 4-1.13.1:

Objective 4-1.13 Prioritize and Limit Shoreline Uses

The City shall prioritize shoreline uses to limit the specific and cumulative impacts of

¹Additions to existing text are shown by underline/red print; deletions are shown as ~~strikethrough~~

development and redevelopment, enhance coastal resources and ensure the continued economic viability of the City. §163.3177(6)(g), §163.3178(2)(f) F.S. and §163.3178(2)(g) F.S.

Policy 4-1.13.1 Shoreline Uses

The City shall continue to maintain Land Development Regulations to establish shoreline land use priorities. These regulations shall categorize water-dependent and water-related land uses, establish permitting criteria and use priorities. Priority shall be given to water dependent uses over water related. Water-dependent and water-related uses shall take priority over uses that are not water-dependent or -related. In conjunction with the development of these regulations, the City shall:

- a. Identify environmentally suitable waterfront areas, using the most up to date data on sea level rise, and recommend strategies for reserving such areas for water-dependent and water-related development sites consistent with estimated need;
- b. Analyze conflicts among existing shoreline uses and recommend strategies for reducing or eliminating such conflicts;
- c. Identify strategies for encouraging appropriate mixed use development that includes water-dependent and water-related uses and is compatible with existing land uses;
- d. Develop strategies to protect the waterfront sites exhibiting Keys Unique Character;
- e. Complete a survey of all other water-dependent uses; and
- f. Complete an inventory of public access points to the beach or shoreline through public and through private lands.

SECTION 6. Amend the Comprehensive Plan, Chapter 4, Conservation and Coastal Element, to include Objective 4-1.17 and adding Policies 4-1.17. 8 through 4-1.17.11:

Objective 4-1.17 Minimum Coastal Hazards

The City shall continue to maintain Land Development Regulations which regulate development and redevelopment activities in a manner that minimizes the danger to life and property occasioned by hurricane events, high tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea level rise. §163.3178(2)(f) & §163.3178(2)(h) F.S.

Policy 4-1.17.8 Strategies for Responding to Sea-level rise

The City will develop strategies for responding to sea-level rise, including consideration of the effects of sea-level rise on potable water sources, saltwater intrusion, septic systems, wastewater treatment facilities and associated systems, the water table, public infrastructure, redevelopment strategies, and affordable housing policies. The City's planning decisions shall consider and utilize the 1-Foot, 2-Foot, and 3-Foot Sea Level Rise planning horizon projections as established by the Southeast Florida Climate Change Compact's "Unified Seal Level Rise Projection" report published in October 2015. Those planning horizons are: 1) short term, by 2030, sea level is projected to rise 6 to 10 inches above 1992 mean sea level, 2) medium term, by 2060, sea level is projected to rise 14 to 34 inches above 1992 mean sea level, 3) long term, by 2100, sea level is projected to rise 31 to 81 inches above 1992 mean sea level.

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Policy 4-1.17.9 Flood-resistant Development Requirements

All development and redevelopment in the City will be consistent with or more stringent than the flood-resistant construction requirements in the Florida Building Code and applicable floodplain management regulations set forth in 44 C.F.R. part 60. All new development and redevelopment shall incorporate freeboard of at least three feet over minimum Base Flood Elevation as depicted on current FEMA Flood Insurance Rate Maps. The City shall develop and adopt regulations in its Land Development Code to implement this requirement.

Policy 4-1.17.10 Extreme Weather Event Mitigation

The City shall document and maintain maps depicting the extent of flood inundation from extreme high tides (“king tides”), more frequent severe rainfall events, and newly revealed areas at risk of flooding to efficiently target mitigation efforts.

Policy 4-1.17.11 Best Practices and Mitigation Strategies

The City shall utilize best practices and initiate mitigation strategies to reduce the flood risk in coastal areas that result from high tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea level rise by incorporating into its land development regulations where practical and economically feasible, resilient construction technique requirements, promotion of living shorelines, protection of coastal marsh and mangroves, and use of innovative natural material breakwaters to reduce wave energy.

SECTION 7. Amend the Comprehensive Plan, Chapter 4, Conservation and Coastal Element, to include Objective 4-1.22, Policy 4-1.22.5 and Policy 4-1.22.8:

Objective 4-1.22 Reduce Exposure to Natural Hazards

The City shall reduce or eliminate exposure of human life and public and private property to natural hazards resulting from high-tide events, storm surge, flash floods, nuisance flooding, stormwater runoff, and the related impacts of sea-level rise, through establishment and update of a Post Disaster Redevelopment Plan. In addition, the City shall develop local plan components including policies for managing recovery operations through a Recovery Task Force. §163.3178(2)(f) F.S.

Policy 4-1.22.5 Manage Redevelopment Activities

The City shall manage unanticipated future redevelopment activities necessitated by hurricane events, high-tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea-level rise or other natural disasters through this Plan, the adopted Land Development Regulations and the City Master Plan. Redevelopment in the City will be consistent with or more stringent than the flood-resistant construction requirements in the Florida Building Code and applicable floodplain management regulations set forth in 44 C.F.R. part 60. Furthermore, in the event that coastal construction control lines become established within the City’s jurisdiction pursuant to Section 161.053, F.S., all construction activities seaward of established coastal construction control lines shall be consistent with Chapter 161, Florida Statutes.

¹Additions to existing text are shown by underline/red print; deletions are shown as ~~strikethrough~~

Policy 4-1.22.8 Regulate Redevelopment of Non-Conforming Structures ~~Non-Conforming~~ to the Required Base Flood Elevation

If an existing structure which is non-conforming to the required base flood elevation is substantially damaged (based on the definition in Chapter 161, F.S.) or abandoned, it shall be rebuilt ~~only to the extent that complies with the current Flood Plain Management standards for the affected property.~~ to add freeboard at least three feet over minimum Base Flood Elevation as depicted on current FEMA Flood Insurance Rate Maps. The City shall develop and adopt regulations in its Land Development Code to implement this requirement.

SECTION 8. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 9. The provisions of this Ordinance constitute a “Comprehensive Plan amendment” as defined by State law. Accordingly, the City Clerk is authorized to forward a copy of this Ordinance to the DCA and other state agencies for review and approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

SECTION 10. This Ordinance shall be effective immediately upon approval by Department of Economic Opportunity pursuant to Chapters 163 and 380, Florida Statutes.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA,
THIS 8TH DAY OF OCTOBER, 2019.**

THE CITY OF MARATHON, FLORIDA

John Bartus, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

¹Additions to existing text are shown by underline/red print; deletions are shown as ~~strikethrough~~

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

David Migut, City Attorney

CITY COUNCIL AGENDA STATEMENT



Meeting Date: September 10, 2019
To: Honorable Mayor and City Councilmembers
From: George Garrett, Planning Director
Through: Chuck Lindsey, City Manager

Agenda Item: **Resolution 2019-100, Public Right-Of-Way Abandonment**, A Request To The City Council Of The City Of Marathon By 76 Pelican, LLC To Abandon The Public Right Of Way Located At 57642 Overseas Highway, Known As Flagler Street, Described As Being Adjacent To And Contiguous With Part Of Government Lot 5 Between Blocks 53 To 58, Crain’s Subdivision, Grassy Key, Having Real Estate Number 00373870-000000. Nearest Mile Marker 58.

Recommendation:

Based on review of the application, Staff is recommending **Approval** of the request to abandon a portion of City right-of-way located on Flagler Street, Ocean, Crain’s Subdivision, Grassy Key. The application is consistent with state and local law, and the applicants have submitted letters of no objection from the utility companies.

Conditions:

1. The applicants will convey a utility easement (in a form acceptable to the City Attorney) to the City and all utilities on and under all of the abandoned right-of-way.

Applicant: 76 Pelican, LLC
Agent: Thomas D. Wright
Request: To abandon a portion of the right-of-way at 57642 Overseas Highway.
Project Location: 57642 Overseas Highway, Cranes Subdivision, Grassy Key.
Legal Description: Crain’s Sub Plat Book 1, Page 51, Grassy Key, South Side of Flagler ST to Ocean PT Between Bks 53-58. (See Exhibit A for entire legal description)

**Figure 1
Location Map**



Background:

This is a request presented by 76 Pelican, LLC (Agent, Thomas D. Wright) for the abandonment of the City's right-of-way located on 57642 Overseas Highway, Crain's Subdivision Grassy Key. The applicant states they would like Council to abandon a portion of Flagler Street as shown in the location graphic above and in the survey of the area to be abandoned. The applicant states they will grant a utility easement to the City of Marathon and all utilities for current and future use.

Flagler Street, is a 30 foot wide platted road in Crain's Subdivision of Grassy Key (See Figures 2 & 3). Flagler Street traverses the width of Crain's Subdivision from approximately Kyle Avenue to the area across from Grassy Key RV Park landward of and contiguous to the Crain's Subdivision properties lying to the south of U.S. Highway 1. As platted, it is approximately 1.25 miles long. The road would appear to be a part of the U.S. Highway 1 Right-Of-Way as it is contiguous to and runs parallel with the state road. However, it is a part of the Crain's Subdivision plat. The majority of properties on the

Ocean side of U.S. 1 which are a part of Crain's subdivision have sought an abandonment previously or have occupied Flagler Street for more than thirty (30) years, particularly, the resorts.

Municipalities derive their power to vacate municipally owned rights-of-way from Section 166.042, Florida Statutes that provides that former Section 167.09, Florida Statutes (1972) remains effective. Former Section 167.09, Florida Statutes provides that municipalities may "...discontinue any public park, public square, street, avenue, highway or any other way..."

Section 26-3 (1) & (2) of the City Code restricts the City's authority to abandon rights-of-way, as provided by state law, by imposing the following conditions:

Section 26-3 General Provisions

(1) Approval of Abutting Property Owners

As part of the submittal process, documentation is required that there are no objections from abutting property owners. In the event that such an objection occurs, then the Petitioner may further petition to be heard by the City Council in a review which would require a super majority vote if approved.

(2) Access to Water.

No right of way, road, Street, or public access way giving access to any publicly accessible waters in the City of Marathon, Florida, shall be closed, vacated or abandoned unless:

- a. the City Council determines at a public hearing that the petitioner meets all of the review criteria of this Article; and
- b. only in those instances wherein the Petitioner(s) offers to trade or give to the City comparable land or lands for a right of way, road, street or public access way to give access to the same body of water, such access to be of such condition as not to work a hardship to the users thereof, the reasonableness of the distance and comparable land being left to the discretion of the City.

Analysis

Section 26-7 of the Code establishes criteria the City must consider when reviewing applications for right-of-way abandonment as follows:

Section 26-7 Review of Petition.

- (1) Review by Technical Review Committee - each petition shall be reviewed by the City and any governmental agency or City department deemed affected by the petitioner's request. Upon receipt of receipt of a complete and sufficient petition, the City shall distribute the petition to appropriate reviewing departments and agencies. Within thirty (30) days, the City will hold a meeting of the Technical Review Committee (TRC) meeting pursuant to Chapter 101, Article 4 of the City's Land Development Regulations (LDRs). Within fifteen (15) days of the date of the TRC meeting, a report of objections, recommendations, or conditions shall be forwarded to the Petitioner for their review and action as may then be necessary. Within ninety (90) days of

receipt of notification from the TRC the Petitioner shall comply with, agree and commit in writing to' the conditions, or disagree in writing to the conditions. Failure to respond to Notification from the TRC shall result in a recommendation to deny the petition to the City Council.

(2) Review Criteria - Upon review of the application, and prior to a public hearing before City Council the chairperson of the TRC shall submit to City Council a written report recommending approval, approval with conditions or denial of the proposed right-of-way abandonment. This report shall take into consideration the following criteria:

- a. Whether the proposed abandonment will adversely affect the operations and functions of the City;

Staff Assessment: The abandonment of this right-of-way will not adversely affect the functions of the City. Crain's Subdivision of Grassy Key was platted in 1908. Apparently, Flagler Street has never functioned for its platted purpose as a parallel access road. The subdivision began to develop in the 50s and 60s and then again with more intensity in the late 80's and 90s. During that period, Flagler Street has not been improved or used as a road.

The applicant has requested the abandonment in part because there are structural encroachments extending from their property onto the Flagler Street Right-Of-Way. They include a paver block driveway and a wall and fence. The current owner purchased the property in 2019. The encroachments from the applicants property have existed on Flagler Street since 1975 (See Figure 4).

Figure 4
Visible Encroachments in 1975



There are ninety-one (91) individual properties along the oceanfront shore of Crain's Subdivision (See Figure 5). Of these properties, sixty-one (61) are developed (See Figure 6). There are twenty-one (21) similar encroachments along Flagler Street, including the contiguous properties to the east and west. Of the twenty-one (21) encroachments, fifteen (15) involve structural encroachments (walls or buildings). The remaining six (6) encroachments involve landscape or parking encroachments (semi-circular driveways integral to the developed property). There is one area where a similar abandonment was granted in the past involving 19 contiguous properties on the ocean front shore of the subdivision. In addition, many of the improvements on properties adjoining Flagler Street have zero (0) or near zero front setbacks (See Figure 7).

Based on this portion of the analysis the Council should consider undertaking an abandonment of the entire Flagler Street Right-Of-Way (ROW) except for those two area of ROW which led to open water.

Figure 5
Crain's Subdivision of Grassy Key – Oceanfront Shoreline Properties



Figure 6
Crain's Subdivision of Grassy Key – Developed Oceanfront Shoreline Properties



Figure 7
 Crain's Subdivision of Grassy Key – Developed Oceanfront Shoreline Properties
 Structural Encroachments, Landscape & Drive Circle Encroachments, and Previous Abandonments



- b. Whether the proposed abandonment will adversely affect public access to and from the water;

Staff Assessment: Public access to water is not available from this section of Flagler Street. There, are two unnamed streets in Crain's Subdivision that lead from Flagler Street to open water on the ocean. One ocean access point lays fifteen lots away from the proposed abandonment. The second ocean access point lies at the northeastern end of the shoreline properties. Therefore this proposed abandonment will not adversely affect public access to and from the water (See Figure 8).

Figure 8
Right-Of-Way Providing Ocean Access



- c. Whether the proposed abandonment will adversely affect pedestrian or vehicular traffic, or the commercial viability of business within 300 feet of the right-of-way to be abandoned;

Staff Assessment: Vehicular and pedestrian traffic do not currently utilize Flagler Street Ocean; thus, Criterion #3 is rendered moot.

- d. Whether the proposed abandonment will adversely affect a public view corridor;

Staff Assessment: The property has been improved with a residential compound and a concrete block front wall since the 70s. No further disruption of the view corridor is possible.

- e. Whether the proposed abandonment will deprive other property owners of access to and from their property; and

Staff Assessment: The applicants own all of the properties adjacent to and abutting the right-of-way; therefore, this criterion does not apply.

- f. Whether the proposed abandonment will interfere with utility services being provided, or unreasonably affect any utility easement.

Staff Assessment: The applicant submitted non-objection letter from AT&T, Comcast, FKAA, and FKEC without objection.

Provided that the owners comply with the conditions stated above the abandonment would not interfere with the utility services being provided currently or in the future.

The City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Approve the application for the abandonment of public right-of-way;
2. Approve the application for the abandonment of public right-of-way with conditions;
or
3. Deny the application for the abandonment of public right-of-way.

Based on the above criteria, City Staff is therefore forwarding a recommendation of **approval** of this application.

Stakeholders

The Planning Department held a Technical Review Committee meeting to receive input from all affected City departments. The Public Works Department requested that the applicant grant the City a utility easement for all existing and future utilities. Currently, there are no utilities within the requested area of abandonment. The applicant has indicated they agree to provide to the City an easement for existing and future utilities.

Consistency With Adopted Plans And Policies

In addition to the above discussion in the Analysis section, this application complies with the requirements of Chapter 26 of the City of Marathon City Code and with the requirements of the City of Marathon Comprehensive Plan. This application specifically complies with

comprehensive plan policies discouraging the abandonment of rights-of-way that provide public access to water bodies.

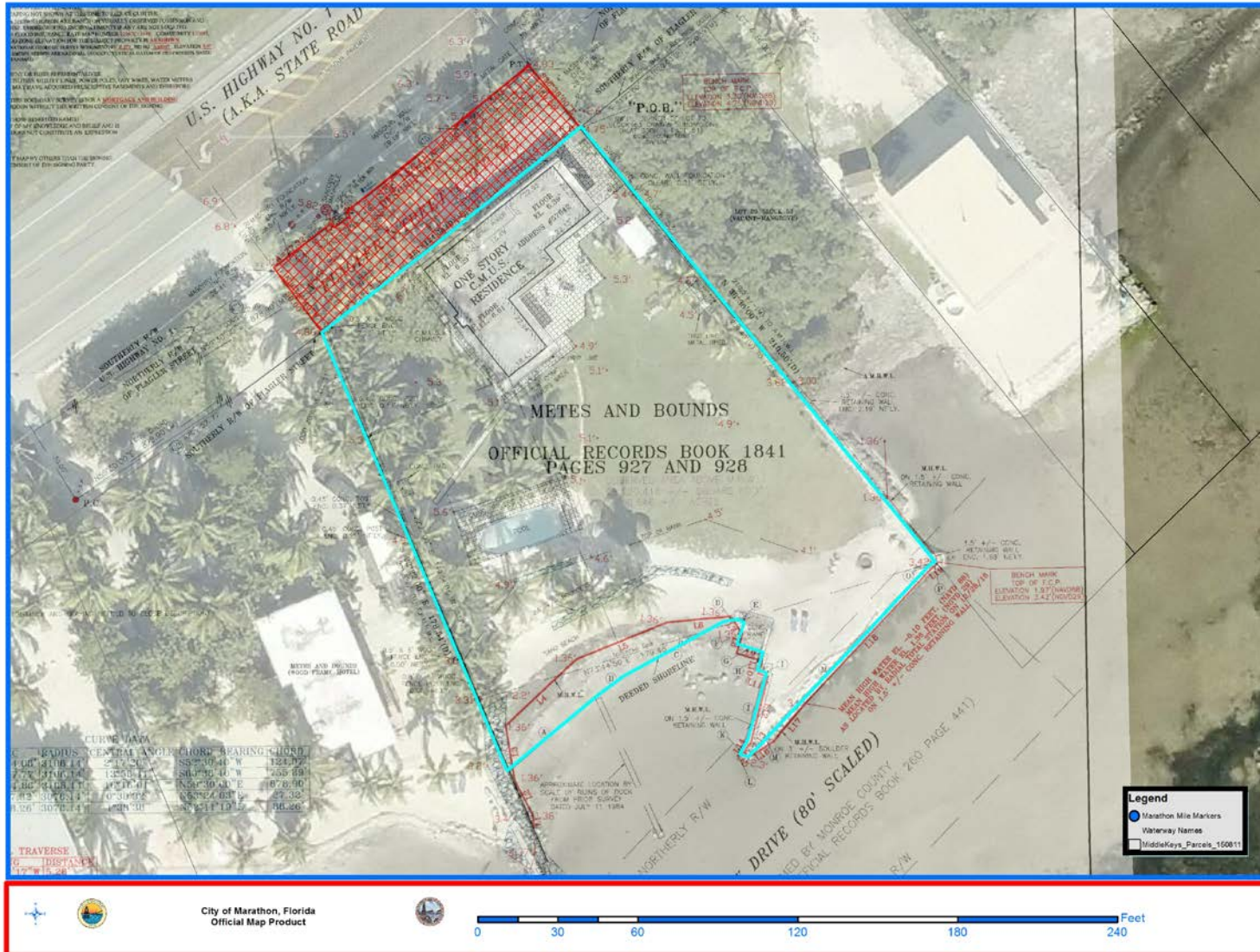
Recommendation:

Based on review of the application, Staff is recommending **Approval** of the request to abandon a portion of City right-of-way located on Flagler Street, Ocean, Crain's Subdivision, Grassy Key. The application is consistent with state and local law, and the applicants have submitted letters of no objection from the utility companies.

Conditions:

1. The applicant will convey a utility easement (in a form acceptable to the City Attorney) to the City and all utilities on and under all of the abandoned right-of-way.

EXHIBIT A



**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-100**

A RESOLUTION OF THE CITY COUNCIL OF MARATHON, FLORIDA, APPROVING SUBJECT TO CONDITIONS, A REQUEST TO THE CITY COUNCIL OF THE CITY OF MARATHON BY 76 PELICAN, LLC TO ABANDON THE PUBLIC RIGHT OF WAY LOCATED AT 57642 OVERSEAS HIGHWAY, KNOWN AS FLAGLER STREET, DESCRIBED AS BEING ADJACENT TO AND CONTIGUOUS WITH PART OF GOVERNMENT LOT 5 BETWEEN BLOCKS 53 TO 58, CRAINS SUBDIVISION, GRASSY KEY, HAVING REAL ESTATE NUMBER 00373870-000000. NEAREST MILE MARKER 58; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, there presently exists a certain public right-of-way within the City of Marathon, Florida, Located At 57642 Overseas Highway, Described As Crains Subdivision, Plat book 1, Page 51, South Side of Flagler Street to Ocean PT Between Blocks 53-58, Grassy Key, Nearest Mile Marker 58, Monroe County, Florida and as particularly described in the attached survey (Exhibit “A); and

WHEREAS, 76 Pelican, LLC (Agent Thomas D. Wright) has requested that the City of Marathon, Florida (the “City”), in accordance with Section 26-1 of the City Code, abandon the Right-of-Way; and

WHEREAS, the City Council finds that the Right-of-Way is not needed and may be abandoned without adversely affecting the public interest; and

WHEREAS, the Right-of-Way lies wholly within the corporate boundaries of the City and within the City’s ownership and authority to abandon; and

WHEREAS, a public hearing to vacate the Right-of-Way was held on September 10, 2019 the City has determined that no federal, state or county rights-of-way are involved or affected, and that granting the request for abandonment of the Right-of-Way subject to conditions will not be detrimental to the public health, safety and welfare; and

WHEREAS, the City has determined the Applicant’s request meets all of the requirements of Section 26-1 of the City Code for the abandonment of the Right-of-Way.

WHEREAS, THE City Council has made the following findings of fact pursuant to Section 26-9 of the Code of the City of Marathon:

- a) The abandonment of this right-of-way will not adversely affect the operations and functions of the City because with a grant of utility easement to continue maintenance of its sewer facilities.
- b) Public access to water is not possible through this Right-Of-Way and therefore there is no impact to public access to the water.
- c) There will no adverse affect on surrounding traffic circulation or patterns.
- d) The abandonment will not adversely affect a public view corridor.
- e) The applicants own all of the properties adjacent to and abutting the right-of-way; therefore, this criterion does not apply.
- f) The proposed abandonment will not interfere with utility services being provided, or unreasonably affect any utility easement.

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 they and all conditions required of Applicants are hereby incorporated as if fully stated herein.

Section 2. Pursuant to the request by the Applicant to vacate the Right-of-Way, the City releases, vacates, abandons, discontinues, renounces and disclaims all rights of the City and the public in and to the Right-of-Way, as legally described on Exhibit "A", subject to the following conditions:

- (1) The Applicant will convey a utility easement to all utilities on, under Flagler Street Right-of Way described in Exhibit "B."
- (2) Said conditions as promulgated above shall be met by the applicant within sixty (60) days of the effective date of this Resolution.
- (3) Said conditions as promulgated above shall be met by the applicant within sixty (60) days of the effective date of this Resolution.

Section 3. The City Clerk shall forward a certified copy this Resolution to the Applicant, who shall be responsible for all costs incurred in recording this instrument in the public records of Monroe County, Florida. The Applicant shall provide the City evidence of the recording of this Resolution and the Easement within thirty (30) days of the effective date of this Resolution.

Section 4. The City reserves all rights to itself for the placement, operation and maintenance of all necessary City roads, structures and utilities including, but not limited to, stormwater and wastewater improvements and appurtenant facilities above and below that portion of the Right-of-Way not vacated by this Resolution.

Section 5. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8TH DAY OF OCTOBER, 2019.

THE CITY OF MARATHON, FLORIDA

John Bartus, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

David Migut, City Attorney

Exhibit A
Copy – Original to be Provided by Applicant to
Clerk of Court for Recordation



PLUMBING NOT SHOWN AT THE TIME TO REDUCE CLITTER.
 A SHOWN BURIED AREAS OF UTILITY LINES OBSERVED POSSESSION AND
 THE UNDERGROUND ENCROACHMENTS IF ANY ARE NOT LOCATED
 A CLEARANCE SHALL BE MAINTAINED IN THE COMMUNITY (12504),
 TO ZONE ELEVATION FOR THE SUBJECT PROPERTY AS SHOWN
 NATIONAL GEODETIC SURVEY MONUMENT NO. 2271, NO. 2262, ELEVATION 3.20
 BROWN SURVEY AREA IS A CONCEPTUAL DRAFT OF THE PROPERTY BASED
 STANDARD.

FENCE OR OTHER REPRESENTATION
 FILTERS UTILITY LINES, POWER POLES, OIL WELLS, WATER METERS
 MAY HAVE ACCURATE POSITIVE BASEMENTS AND THEREFORE
 THIS BOUNDARY SURVEY IS FOR A MORTGAGE AND BUILDING
 INTENT WITHOUT THE WRITTEN CONSENT OF THE SIGNING
 PARTY.

FROM BENCHMARK NAMED
 TOP OF MY KNOWLEDGE AND BELIEF AND IS
 PRESUMPT CONSTITUTE AN EXPRESSION
 OF OPINION.

I HAVE MADE OTHER THAN THE SIGNING
 PARTY OF THIS SURVEY.

CURVE DATA

C	RADIUS	CENTRAL ANGLE	CHORD BEARING	CHORD
4.06'	3106.14'	2°17'20"	S52°30'40" W	124.07'
7.77'	3106.14'	13°53'41"	S60°30'40" W	755.89'
1.86'	3106.14'	16°16'01"	N58°30'00" E	878.90'
7.82'	3076.14'	0°30'32"	S53°24'03" E	27.32'
8.26'	3076.14'	1°38'38"	N52°11'19" E	86.26'

TRAVERSE
 G DISTANCE
 177° W 15.28'

City of Marathon, Florida
Official Map Product

0 30 60 120 180 240 Feet

Legend

- Marathon Mile Markers
- Waterway Names
- MiddleKeys_Parcel_150811

Exhibit B
Copy – Original to be Provided by Applicant to
Clerk of Court for Recordation

**THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:**

George Garrett
**CITY OF MARATHON
PLANNING DIRECTOR**
9805 Overseas Hwy
Marathon, FL 33050
(305) 289-4100

Folio No. DP2019-0124

UTILITY EASEMENT

THIS UTILITY EASEMENT (this “Easement”) is made this ____ day of _____, 2019, by **76 Pelican, LLC**, whose address is **57642 Overseas Highway**, Marathon, Florida 33050 (hereinafter referred to as the “GRANTOR”), to and in favor of the **CITY OF MARATHON, a Florida municipal corporation**, having an address at 9805 Overseas Highway, Marathon, Florida 33050 (hereinafter referred to as the “GRANTEE”).

RECITALS:

GRANTOR owns fee simple title to certain real property located in Monroe County, Florida, as more particularly described in Exhibit “A” attached hereto and by this reference made a part hereof (the “Property”).

GRANTOR has agreed to grant to GRANTEE a non-exclusive, perpetual utility easement as well as ingress and egress in, over, under, and upon the Property for the purpose of installing, constructing, maintaining, operating, repairing and replacing overhead and underground utility facilities on the Property, subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises and the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. Recitals. The parties acknowledge that the foregoing recitals are true and correct and hereby incorporated into this Easement as if fully set forth herein.

2. Grant of Easement. GRANTOR does hereby grant and convey to the GRANTEE and its licensees, successors and assigns, the non-exclusive, perpetual right, power,

privilege and easement to regularly or at any time and for any length of time to install, construct, maintain, operate, repair and replace overhead and underground electric utility facilities on the Property (including wires, poles, guys, raceways, cables, conduits and appurtenant equipment) to be installed from time to time; with the right to reconstruct, improve, add to, enlarge, change the voltage, as well as, the size of and remove such facilities or any of them. This Easement also includes the right to permit any other person, firm or corporation to attach wires to any facilities hereunder and lay cable and conduit within the Easement and to operate the same for communications purposes; the right of ingress and egress to said Property at all times; the right to clear the land and keep it cleared of all trees, undergrowth and other obstructions within the Property; to trim and cut and keep trimmed and cut all dead, weak, leaning or dangerous tress or limbs outside of the Property which might interfere with or fall upon the lines or systems of communications or power transmission or distribution; and further grants, to the fullest extent the undersigned has the power to grant, if at all, the rights hereinabove granted on the land heretofore described, over, along, under and across the roads, streets or highways adjoining or through said Property.

3. Warranties and Representations. GRANTOR does hereby covenant with the GRANTEE, that (a) it is lawfully seized and possessed of the Property; (b) it has good and lawful right to enter into this Easement and convey said Easement; (c) all applicable required authorizations, approvals or consents have been obtained and no other authorizations, approvals or consents are required to effectuate GRANTOR's execution and delivery of this Easement; and (d) it acknowledges that GRANTEE is materially relying on the representations as herein expressed.

4. Covenants Running with the Land. This Easement, and the rights and interests created herein shall run with the land and shall be binding upon and inuring to the benefit of the parties hereto and their respective successors and assigns.

5. Miscellaneous. This Easement shall be construed under the laws of the State of Florida. GRANTOR shall, at its cost and expense, record this Easement and any amendments hereto in the Public Records of Monroe County, Florida. This Easement may assigned in whole or in part by the GRANTEE for use in connection with any of the purposes authorized herein. This Easement may only be modified, supplemented or revised in writing signed by both parties, or their successors or assigns, and any modification shall be effective only upon recordation in the Public Records of Monroe County, Florida.

[Acknowledgments on following page]

IN WITNESS WHEREOF, GRANTOR has caused these presents to be executed by its duly authorized officer or representative as of the day and year first above written.

WITNESSES:

GRANTOR:

Print Name: _____

Print Name: _____

Print Name: _____

STATE OF FLORIDA)
 SS:
COUNTY OF MONROE)

THIS IS TO CERTIFY, that on this ____ day of _____, 2019, before me, an officer duly authorized to take acknowledgements in the State and County aforesaid, personally appeared _____, who is personally known to me or produced _____ as identification.

NOTARY PUBLIC
Print Name: _____
My Commission Expires:

COUNCIL AGENDA STATEMENT



Meeting Date: October 8, 2019
To: Honorable Mayor and City Councilmembers
From: Sean Cannon, Ports Manager
Through: Charles Lindsey, City Manager

Agenda Item: **Resolution 2019-101**, Approving Agreement No. MV361 For CVA 19-955 With The Department Of Environmental Protection Clean Vessel Act Grant Program And Authorizing Acceptance Of \$78,773.33 In Grant Funding For Pump Out Operations, Equipment Maintenance and Repair and Educational Materials; Authorizing The City Manager To Execute The Agreement; Providing For Conflicts; Severability; And An Effective Date.

BACKGROUND & JUSTIFICATION:

The waters surrounding Marathon are part of the Florida Keys National Marine Sanctuary (FKNMS). The biological resources of the FKNMS depend upon clear, low nutrient waters. The treatment provided by marine sanitation devices disinfects waste but does not remove nutrients. It has been documented that nutrients that are being introduced into near shore waters have resulted in water quality degradation. To protect water quality, FKNMS waters have been designated by the U.S. Environmental Protection Agency as a "No Discharge Zone." This designation prohibits boats from discharging treated or untreated sewage into the waters.

To protect water quality and reduce pollution from vessel sewage discharges, the City of Marathon provides pumpout services to the vessels moored or anchored in Boot Key Harbor. The equipment used requires repair, maintenance, and occasional replacement to continue this service.

The Florida Department of Environmental Protection manages the Clean Vessel Act Grant Program which provides funding for public and private recreational boating pumpout and waste dump reception facilities. The Department of Environmental Protection awarded the City of Marathon \$78,773.33 from this program for operations of the pumpout program, maintenance and repairs of this equipment, and educational materials. This amount of grant funding is a reimbursement of 75% of the total project costs and a 25% match (\$26,257.77) is required for a total project costs of \$105,031.10.

CONSISTENCY CHECKLIST:

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

FISCAL NOTE:

Approval of this agreement will allow the Marina to collect reimbursement for replacement of pump-out equipment, operations, maintenance and repairs of pump-out equipment, and educational materials.

RECOMMENDATION: Approve Resolution.

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-101**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AGREEMENT NO. MV361 FOR CVA 19-955 WITH THE DEPARTMENT OF ENVIRONMENTAL PROTECTION CLEAN VESSEL ACT GRANT PROGRAM AND AUTHORIZING ACCEPTANCE OF \$78,773.33 IN GRANT FUNDING FOR PUMP OUT OPERATIONS, MAINTENANCE AND REPAIR AND EDUCATION MATERIALS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; PROVIDING FOR CONFLICTS; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the Florida Department of Environmental Protection (the “DEP”) administers the Clean Vessel Act (CVA) Grant Program for pumpout and waste dump reception facilities.

WHEREAS, the City of Marathon (the “City”) submitted a grant application to the DEP for funds to apply towards pump out operations, maintenance and repairs as well as educational materials; and

WHEREAS, the DEP awarded the City a grant of \$78,773.33 from the CVA Program, which is seventy five percent of the total project costs; and

WHEREAS, the CITY has determined that it is in the best interest of the City to enter into Agreement No. MV361 for CVA 19-955 with the DEP CVA Grant Program to set forth the terms and conditions of the grant funding.

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

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

Section 2. The City Council hereby approves Agreement No. MV361 for CVA 19-955 between the City and the DEP that is attached as Exhibit “A” hereto.

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

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8TH DAY OF OCTOBER, 2019.

THE CITY OF MARATHON, FLORIDA

Mayor John Bartus

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

David Migut, City Attorney

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Standard Grant Agreement**

This Agreement is entered into between the Parties named below, pursuant to Section 215.971, Florida Statutes:

1. Project Title (Project) Agreement Number
 Clean Vessel Act Grant; CVA19-955, City of Marathon dba Boot Key Harbor City MV361
 Marina

2. Parties **State of Florida Department of Environmental Protection**
3900 Commonwealth Boulevard (Department)
Tallahassee, Florida 32399-3000

Grantee Name: City of Marathon dba Boot Key Harbour Entity Type: Public - City
 City Marina
 Grantee Address: 800 35th Street Ocean, FEID: 65-0984873
 Marathon, Florida 33050 (Grantee)

3. Agreement Begin Date: Date of Expiration:
 August, 1 2019 February 3, 2021

4. Project Number: Project Location(s):
 CVA19-955 800 35th Street Ocean, Marathon, FL, 33050
 Project Description:
 for operations of equipment, maintenance & repair, and educational material

5. Total Amount of Funding:	Funding Source?	Award #'s or Line Item Appropriations:	Amount per Source(s):
\$78,773.33	<input type="checkbox"/> State <input checked="" type="checkbox"/> Federal	CVC17	\$78,773.33
	<input type="checkbox"/> State <input type="checkbox"/> Federal		
	<input checked="" type="checkbox"/> Grantee Match		\$26,257.77
Total Amount of Funding + Grantee Match: \$105,031.10			

6. Department's Grant Manager Grantee's Grant Manager
 Name: Deneka Smith Name: Danielle Na-o
or successor or successor

 Address: 3900 Commonwealth Boulevard MS#235 Address: 800 35th St. Ocean
 Tallahassee, Florida, 32399 Marathon, Florida 33050
 Phone: 850-245-2171 Phone: 305-289-8877
 Email: deneka.smith@dep.state.fl.us Email: naod@ci.marathon.fl.us


- The Parties agree to comply with the terms and conditions of the following attachments and exhibits which are hereby incorporated by reference:
- Attachment 1: Standard Terms and Conditions Applicable to All Grants Agreements
 - Attachment 2: Special Terms and Conditions
 - Attachment 3: Grant Work Plan
 - Attachment 4: Public Records Requirements
 - Attachment 5: Special Audit Requirements
 - Attachment 6: Program-Specific Requirements
 - Attachment 7: CVC17 Grant Award Terms (Federal)* Copy available at <https://facts.fldfs.com>, in accordance with §215.985, F.S.
 - Attachment 8: Federal Regulations and Terms (Federal)
 - Additional Attachments (if necessary):
 - Exhibit A: Progress Report Form
 - Exhibit B: DEP Property Reporting Form
 - Exhibit C: Payment Request Summary Form
 - Exhibit D: Quality Assurance Requirements


- Exhibit E: Advance Payment Terms and Interest Earned Memo
- Additional Exhibits (if necessary):

The following information applies to Federal Grants only and is identified in accordance with 2 CFR 200.331(a)(1):

Federal Award Identification Number(s) (FAIN):	F17AP00795
Federal Award Date to Department:	October 01, 2017
Total Federal Funds Obligated by this Agreement:	\$78,773.33
Federal Awarding Agency:	US Fish & Wildlife Service
Award R&D?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A

IN WITNESS WHEREOF, this Agreement shall be effective on the date indicated by the Agreement Begin Date above or the last date signed below, whichever is later.

<input checked="" type="checkbox"/> City of Marathon	GRANTEE
Grantee Name	
By 	9/11/2019
(Authorized Signature)	Date Signed
Danielle Na-o	Admin Assistant to Ports Director
Print Name and Title of Person Signing	

10. State of Florida Department of Environmental Protection	DEPARTMENT
By 	9/11/2019
Secretary or Designee	Date Signed
Brenda Leonard	Program Administrator
Print Name and Title of Person Signing	

Additional signatures attached on separate page.

COUNCIL AGENDA STATEMENT



Meeting Date: October 8, 2019
To: Honorable Mayor & Members of the City Council
From: Staff
Through: Chuck Lindsey, City Manager

Agenda Item: **Resolution 2019-102**, Approving And Authorizing The City Manager To Extend the Agreement With Culver’s Cleaning Company For Cleaning Services At Marathon City Hall, Fire Station And Utility/Public Works Building In An Amount Not To Exceed \$53,300 Per Year; And Providing For An Effective Date

BACKGROUND & JUSTIFICATION:

In 2018 the City of Marathon published an RFQ for cleaning services for the City Hall Offices, the Fire Station public areas and the Utility/Public Works building office area. The contractor submitted the lowest bid and as the current contractor, has performed to the City’s satisfaction. The contract has a provision for two extensions of one year each and this is the first extension.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	_____	_____
2. Other – 2010 Sewer Mandate	_____	_____
3. Not applicable	x_____	_____

FISCAL NOTE:

Funding for this contract is included in the FY20 adopted budget.

RECOMMENDATION: Approval

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-102**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXTEND THE AGREEMENT WITH CULVER'S CLEANING COMPANY FOR ONE YEAR FOR CLEANING SERVICES AT MARATHON CITY HALL, FIRE STATION AND UTILITY/PUBLIC WORKS BUILDING IN AN AMOUNT NOT TO EXCEED \$53,300 PER YEAR; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, On October 9, 2018, the City of Marathon, Florida (the "City") and Culver's Cleaning Company (the "Contractor") entered into an agreement to provide cleaning services at City Hall, Utility/Public Works Building and Marathon Fire Station (the "Services"); and

WHEREAS, the agreement allows for two additional term extensions of one year each; and

WHEREAS, the City and the Contractor wish to utilize the first one year extension to October 9, 2020 to provide the Services in an amount not to exceed \$53,300 per year.

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

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

Section 2. The agreement between the City and Culver's Cleaning Company is hereby extended one year to October 9, 2020 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 approved.

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

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8TH DAY OF OCTOBER, 2019.

THE CITY OF MARATHON, FLORIDA

Mayor John Bartus

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

David Migut City Attorney

COUNCIL AGENDA STATEMENT



Meeting Date: October 8, 2019
To: Honorable Mayor and City Council
From: Chuck Lindsey, City Manager

Agenda Item: **Resolution 2019-103** Authorizing The City To Extend The Agreement With Ronald L. Book, P.A. For Professional Consulting And Lobbying Services Before The Legislature Of The State Of Florida; Authorizing The City Manager To Expend Budgeted Funds, And Execute The Extension Agreement; And Providing An Effective Date

BACKGROUND & JUSTIFICATION:

The City has contracted with Ronald L. Book, P.A. for lobbying and professional consulting services before the State of Florida since 2013. Ronald L. Book, P.A. has been very effective on the City’s behalf before the Florida Legislature, the executive branch of the Florida government and various regional and local governments. Ronald L. Book, P.A. has also kept the City informed on budget and policy differences, funding on items affecting the Florida Keys, including economic development incentives, and the State’s tourism marketing activities.

The yearly rate of \$60,000 is included in the City’s proposed budget for FY 2019 and millage rate set by the City Council. The contract extension otherwise does not otherwise change from the language in the previous version of the contract; other than the term.

CONSISTENCY CHECKLIST:

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

FISCAL NOTE:

Funding for this contract is included in the adopted FY20 City Council and Wastewater budgets.

Council approve Resolution

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-103**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA AUTHORIZING THE CITY TO EXTEND THE AGREEMENT WITH RONALD L. BOOK, P.A. FOR PROFESSIONAL CONSULTING AND LOBBYING SERVICES BEFORE THE LEGISLATURE OF THE STATE OF FLORIDA; AUTHORIZING THE CITY MANAGER TO EXPEND BUDGETED FUNDS, AND EXECUTE THE EXTENSION AGREEMENT; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Marathon (the “City”) recognizes the importance of monitoring and participating in the State legislative process in order to protect the interests of the City and its residents; and

WHEREAS, the Consultant and City, through mutual negotiation, have agreed upon a scope of services and fee for legislative consulting services on behalf of the City before the Florida Legislature, the executive branch of the Florida government, and various regional and local governments; and

WHEREAS, the firm of Ronald L. Book, P.A., (the “Consultant”), wishes to extend the term of the agreement for one year in order to continue to provide professional legislative consulting and lobbying services before the legislature of the State of Florida on behalf of the City.

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

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

Section 2. The extension to the professional services agreement between the City and Consultant, a copy of which is attached as Exhibit “A,” together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is hereby approved.

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

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON,
FLORIDA, THIS 8th DAY OF OCTOBER, 2019.**

THE CITY OF MARATHON, FLORIDA

Mayor John Bartus

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

David Migut, City Attorney

**EXTENSION TO CONTRACT
FOR
LOBBYING SERVICES**

This extension to the Contract for Lobbying Services (the “Extension”) made and entered into this ___ day of October, 2019 between the City of Marathon, Florida, a municipal corporation organized and existing under the laws of the State of Florida, with its address at 9805 Overseas Highway, Marathon, Florida, 33050 (hereinafter referred to as “City”) and Ronald L. Book P.A., a Florida corporation, with its address at 18851 NE 29th Ave. Ste. 1010, Aventura, FL 33180, (hereinafter referred to as “Consultant”).

WITNESSETH:

WHEREAS, on November 16, 2017, the City and Consultant entered into a Contract for Lobbying Services (the “Contract”); and

WHEREAS, the City and the Consultant desire to extend the term for one year to expire in 2020.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth in this Extension and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby amend the Agreement to read as follows:

Section 2. Term/Commencement Date

2.1 TERM:

This Contract shall continue through November 1, 2020 unless terminated earlier in accordance with Section 8.

[THE REMAINDER OF THIS PAGE SHALL REMAIN BLANK]

IN WITNESS WHEREOF, City and Contractor have set their hands and seals, as of the day and year first above written.

Attest:

City Of Marathon, Florida

Diane Clavier,
City Clerk

Charles Lindsey,
City Manager

Approved As To Form And Legality For The Use
And Reliance Of The City Of Marathon, Florida Only:

David Migut, City Attorney

Ronald L. Book, PA.

Mr. Ronald L. Book, President
President

COUNCIL AGENDA STATEMENT



Meeting Date: October 8, 2019
To: Honorable Mayor & Members of the City Council
From: Dan Saus, Utilities Manager
Through: Charles Lindsey, City Manager

Agenda Item: **Resolution 2019-104**, Awarding Change Order #2 to the Work Authorization 2017-05B for the Engineering Design and Construction Management Services for the Service Area 5 Wastewater Treatment Facility Emergency Repairs and Upgrades To Weiler Engineering Corporation.; Increasing the Contract in the Amount of \$11,510.00; Authorizing The City Manager To Execute The Contract Amendment And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date. This work qualifies and will be submitted for reimbursement through the LP44041 FDEP Grant when the project is complete.

BACKGROUND & JUSTIFICATION:

The City of Marathon (the “City”) pursuant to the provisions contained in the Continuing Services Agreement dated February 7, 2013 between the City of Marathon and Weiler Engineering Corporation entered into an agreement for engineering services and as approved by Resolution 2018-22 and approved March 13, 2018 for the “Engineering Design and Construction Management Services for the Service Area 5 Wastewater Treatment Facility Emergency Repairs and Upgrades

The Proposal attached as Exhibit “A” details the Scope of Work and cost breakdown for the additional construction management services to be provided for finishing the project which has been extended several times due to unforeseen circumstances at the facility. City staff, consisting of the Utility Director and the Utility Staff, has reviewed the proposal of Weiler Engineering Corporation., and the proposal is reasonable for the work as shown on Exhibit “A” in the amount of \$11,510.00. Weiler Engineering Corporation, has completed other projects for the City in the past. The proposal and subsequent contract will provide additional CEI services for the inspections and closeout of the project during construction completion.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	<u>X</u>	___
2. Other – 2010 Sewer Mandate	<u>X</u>	___
3. Not applicable	<u>X</u>	___

FISCAL NOTE:

The FY20 adopted Wastewater utility budget includes appropriations of \$1,625,000 for Wastewater Improvements, although this specific project was not budgeted.

RECOMMENDATION

Approval of Resolution

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-104**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AWARDED A CONTRACT AMENDMENT, CO#2, FOR THE DESIGN AND CONSTRUCTION MANAGEMENT OF EMERGENCY REPAIRS AND UPGRADES AT WASTEWATER TREATMENT PLANT #5. TO WEILER ENGINEERING CORPORATION; APPROVING CHANGE ORDER #2 IN THE NOT TO EXCEED A TOTAL AMOUNT OF \$11,510.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the “City”) and Weiler Engineering Corporation. (the “Engineer”) have entered into a continuing services agreement for Professional Engineering Services in February of 2013; and

WHEREAS, work authorization No. 2017-05B,” (the “Project Agreement”) contains the scope of work to for the Engineering Design and Construction Management Services for the Service Area 5 Wastewater Treatment Facility Emergency Repairs and Upgrades (the “Project”). The Work Authorization also includes CEI services for construction inspections and closeout of the project. Dated March 13, 2108; and

WHEREAS, the City staff wish to enter into this agreement, which will enable the City to complete the emergency repairs at the Service Area 5 wastewater treatment facility; and

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

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

Section 2. The Change Order #2 attached hereto as Exhibit “A”, together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is hereby approved. The City Manager is authorized to sign the Change Order 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 8th DAY OF OCTOBER 2019.

THE CITY OF MARATHON, FLORIDA

John Bartus, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

David Migut, City Attorney

EXHIBIT "A"
CHANGE ORDER

CHANGE ORDER NO. 2

TO: City of Marathon

PROJECT: Work Authorization 2017-05B (Resolution 2018-22, Approved 3/13/18)

CONTRACTOR: Weiler Engineering Corporation

DATE: 9/23/19

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

The Work as set forth in the Agreement is hereby amended to include the items set forth on **Exhibit "1"** attached hereto and by this reference made a part hereof.

This Change Order constitutes full, final, and complete compensation to the Contractor for all costs, expenses, overhead, and profit, and any damages, and/or time adjustments of every kind that the Contractor may incur in connection with the above referenced changes in the Work, and any other effect on any of the Work under the Agreement. The Contractor acknowledges and agrees that (a) the Contract Price of \$232,225.00 under the Agreement will be [~~unchanged~~] [**changed**] by this Change Order, and (b) the schedule for performance of Work will be [~~unchanged~~] [**changed**] by this Change Order. Contractor expressly waives any claims for any additional compensation, damages or time extensions in connection with the above-referenced changes. Except as herein or heretofore expressly modified, all terms of the Agreement shall remain in full force and effect and shall cover the performance of, and payment for, any work authorized hereunder. Any defined terms not defined in this Change Order shall have the meanings set forth in the Agreement.

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

CONSENT OF SURETY TO CHANGE ORDER

The Surety Agrees that this change order is not a cardinal change and if the Change Order includes an increase in the Contract amount, then the penal amount of the payment and performance bond issued for this Contract is increased by the dollar amount of this Change Order.

_____ (Seal)
Surety's Name and Corporate Seal

By: _____
Signature and Title
City of Marathon

Attest: _____
Signature and Title
Contractor

By: _____
Name: Daniel Saus
Title: Utilities Director

By: Edward R. Castle, PE
Name: Edward R. Castle
Title: Vice President

Exhibit "1"

CHANGE ORDER SUMMARY

This Change Order is necessary to cover changes in the Work to be performed under this Agreement. Except as may be modified herein all of the provisions of the Agreement apply to and govern all Work under this Change Order.

THE FOLLOWING CHANGES ARE MADE TO THE AGREEMENT DOCUMENTS:

(1)	Original Contract Price	\$197,600.00
(2)	Current Contract Price (Adjusted by Previous Change)	\$232,225.00
(3)	Total Proposed Change in Contract Price	\$11,510.00
(4)	New Contract Price (Item 2 + Item 3)	\$243,735.00
(5)	Original Contract Time	365 Days
(6)	Proposed Change in Contract Time	175 Days
(6.1)	Current Contract Time (Adjusted by Previous Change)	455 Days
(7)	Total Proposed Change in Contract Time	175 Days
(8)	New Contract Time (Item 6.1 ± Item 7)	630 Days
(9)	Original Contract Substantial Completion Date	February 9, 2019
(10)	New Contract Substantial Completion Date	November 1, 2019

CHANGE ORDER HISTORY						
Item No.	Description	Current Contract Amount	Additive Change	Deductive Change	Net Change Contract Price	Net Change Contract Time
1.	Total Contract Price	\$197,600.00	\$34,625.00	\$	\$34,625.00	90 Days
2.	Project Completion and Closeout	\$232,225.00	\$11,510.00	\$	\$11,510.00	175 Days
Total					\$46,135.00	265 Days

COUNCIL AGENDA STATEMENT



Meeting Date: October 8, 2019
To: Honorable Mayor & Members of the City Council
From: Dan Saus, Utilities Manager
Through: Charles Lindsey, City Manager

Agenda Item: **Resolution 2019-105**, Awarding contract for the Engineering Design and Permitting for the Service Area 3 Wastewater Treatment Facility Expansion Upgrade To Weiler Engineering Corporation.; Approving Contract in the Amount of \$72,525.00; Authorizing The City Manager To Execute The Contract And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date. This work qualifies and may be submitted for reimbursement through the LP44041 FDEP Grant when the project is complete if funds are available or through ACOE if needed.

BACKGROUND & JUSTIFICATION:

The City of Marathon (the “City”) pursuant to the provisions contained in the Continuing Services Agreement dated February 14, 2017 between the City of Marathon and Weiler Engineering Corporation wished to obtain engineering services as described in Exhibit “A” Project specific Agreement for the “Service Area 3 Expansion Design and Permitting” for (the “Project”).

The Proposal attached as Exhibit “A” details the Scope of Work and cost breakdown for the engineering design services and permitting for the “Service Area 3 Wastewater Treatment Facility Expansion Design and Permitting”. City staff, consisting of the Utility Director and the Utility Staff, has reviewed the proposal of Weiler Engineering Corporation., and the proposal is reasonable for the work as shown on Exhibit “A” in the amount of \$72,525.00. Weiler Engineering Corporation, has completed other projects for the City in the past. The proposal and subsequent contract will provide an engineering design and permitting services for the “Service Area 3 Expansion Design and Permitting”.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	<u>X</u>	___
2. Other – 2010 Sewer Mandate	<u>X</u>	___
3. Not applicable	<u>X</u>	___

FISCAL NOTE:

The FY20 adopted Wastewater utility budget includes appropriations of \$1,625,000 for Wastewater Improvements, and this specific project was budgeted for \$1,050,000.

RECOMMENDATION:

Approval of Resolution

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-105**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AWARDED A CONTRACT FOR THE “ENGINEERING DESIGN AND PERMITTING FOR THE SERVICE AREA 3 WASTEWATER TREATMENT FACILITY EXPANSION” TO WEILER ENGINEERING CORPORATION; APPROVING THE PROJECT AGREEMENT IN THE NOT TO EXCEED A TOTAL AMOUNT OF \$72,525.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the “City”) and Weiler Engineering Corporation. (the “Engineer”) have entered into a continuing services agreement for Professional Engineering Services in February of 2017; and

WHEREAS, the work specific agreement (the “Project Agreement”) contains the scope of work to provide professional engineering services required for “Service Area 3 Wastewater Treatment Facility Expansion Design and Permitting” the “Project”); and

WHEREAS, the City staff wish to enter into this agreement, which will enable the City to complete the “Service Area 3 Wastewater Treatment Facility Expansion Design and Permitting”; and

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

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

Section 2. The Project Agreement attached hereto as Exhibit “A”, together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is hereby approved. The City Manager is authorized to sign the Project Agreement and expend budgeted funds on behalf of the City.

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

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8th DAY OF OCTOBER 2019.

THE CITY OF MARATHON, FLORIDA

John Bartus, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

David Migut, City Attorney

EXHIBIT "A"
PROJECT SPECIFIC AGREEMENT

Service Area 3 Expansion Design & Permitting

PROJECT SPECIFIC AGREEMENT
Between
THE CITY OF MARATHON, FLORIDA
And
Weiler Engineering Corporation.
For
Service Area 3 Expansion Design & Permitting

Pursuant to the provisions contained in the “Continuing Services Agreement” between the City of Marathon, Florida (the “City”) and Weiler Engineering Corporation, (the “Consultant”) dated February 14, 2017; this Project Specific Agreement authorizes the Consultant to provide the services as set forth below:

SECTION 1. SCOPE OF SERVICES

1.1 The CONSULTANT shall provide engineering services to the CITY for the Project as described in the “Project Description” included in Exhibit “1.”

1.2 The “Scope of Services and Project Schedule” and tasks to be provided by the CONSULTANT for this Project are those services and tasks as included in Exhibit “1”.

1.3 The CITY may request changes that would increase, decrease, or otherwise modify the Scope of Services. Such changes must be contained in a written change order executed by the parties in accordance with the provisions of the Continuing Services Agreement, prior to any deviation from the terms of the Project Agreement, including the initiation of any extra work.

SECTION 2. DELIVERABLES

2.1 As part of the Scope of Services and Project Schedule, the Consultant shall provide to the City the following Deliverables as included in Exhibit “2”.

- Signed Sealed civil plans
- Signed sealed structural plans
- Signed sealed electrical plans
- Signed sealed technical specifications
- Bid package including agreement and contract documents

SECTION 3. TIME OF PERFORMANCE/DAMAGE

3.1 **Commencement.** The CONSULTANT'S services under this Project Agreement and the time frames applicable to this Project Agreement shall commence upon the date provided in a written Notification of Commencement ("Commencement Date") provided to the CONSULTANT from the CITY. The CONSULTANT shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. CONSULTANT must receive written notice from the City Manager prior to the beginning the performance of services.

3.2 **Contract Time.** Upon receipt of the Notification of Commencement, the CONSULTANT shall commence services to the CITY on the Commencement Date, and shall continuously perform services to the CITY, without interruption, in accordance with the time frames set forth in the "Project Schedule," a copy of which is attached and incorporated into this Agreement as Exhibit "3". The number of calendar days from the Commencement Date, through the date set forth in the Project Schedule for completion of the Project or the date of actual completion of the Project, whichever shall last occur, shall constitute the Contract Time.

3.3 **Liquidated Damages.** Unless otherwise excused by the CITY in writing, in the event that the CONSULTANT fails to meet to the contract time for completion of services as determined by the Project Schedule, the CONSULTANT shall pay to the CITY the sum of dollars identified below per day for each and every calendar day unexcused delay beyond the completion date, plus approved time extensions, until completion of the project: \$ N/A per day. The CONSULTANT may claim extension if the factors involved are not under their direct control.

Any sums due and payable hereunder by the CONSULTANT shall be payable, not as a penalty, but as liquidated damages representing and estimate at or before the time of executing this Agreement. When the CITY reasonably believes that completion will be inexcusably delayed, the CITY shall be entitled, but not required, to withhold from any amounts otherwise due the CONSULTANT an amount then believed by the CITY to be adequate to recover liquidated damages applicable to such delays. If and when the CONSULTANT overcomes the delay in achieving completion, or any part thereof, for which the CITY has withheld payment, the CITY shall promptly release to the CONSULTANT those funds withheld, but no longer applicable, as liquidated damages.

3.4 All limitations of time set forth in this Agreement are of the essence.

SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION

4.1 **Compensation.** Total not to exceed amount for this Work Authorization is \$ [OR, IF HOURLY, "CITY AGREES TO PAY CONSULTANT COMPENSATION AT CONSULTANT'S HOURLY RATES, UP TO A MAXIMUM AMOUNT NOT TO EXCEED **\$ 72,525.00.**

4.2 **Reimbursable Expenses.** The following expenses are reimbursable at their actual cost: travel and accommodations, long distance telephone calls, facsimile, courier services, mileage (at a rate approved by the CITY), photo and reproduction services. All document reproductions are also reimbursable, at a rate approved by the CITY.

SECTION 5. BILLING AND PAYMENTS TO THE CONSULTANT

5.1 Invoices

5.1.1 **Hourly Not To Exceed Rate.** CONSULTANT shall submit invoices which are identified by the specific project number on a monthly basis in a timely manner. These invoices shall identify the nature of the work performed, the personnel performing the work, the time worked and the total billing in accordance with the Payment Schedule set forth in Exhibit "3", to this Project Agreement. Invoices will show the total amount billed against this work authorization and shall not exceed the not-to-exceed amount without authorization from the City. The CITY shall pay CONSULTANT within thirty (30) calendar days of approval by the City Manager of any invoices submitted by CONSULTANT to the CITY.

5.2 **Disputed Invoices.** In the event that all or a portion of an invoice submitted to the CITY for payment to the CONSULTANT is disputed, or additional backup documentation is required, the CITY shall notify the CONSULTANT within fifteen (15) working days of receipt of the invoice of such objection, modification or additional documentation request. The CONSULTANT shall provide the CITY with additional backup documentation within five (5) working days of the date of the CITY'S notice. The CITY may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CONSULTANT. The CITY, at its sole discretion, may pay to the CONSULTANT the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

5.3 **Suspension of Payment.** In the event that the CITY becomes credibly informed that any representations of the CONSULTANT, provided pursuant to Subparagraph 5.1, are wholly or partially inaccurate, or in the event that the CONSULTANT is not in compliance with any term or condition of this Project Agreement, the CITY may withhold payment of sums then or in the future otherwise due to the CONSULTANT until the inaccuracy, or other breach of Project Agreement, and the cause thereof, is corrected to the CITY's reasonable satisfaction.

5.4 **Retainage.** The CITY reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due to the CONSULTANT for the design until the design is completed. Said retainage may be withheld at the sole discretion of the City Manager or his/her designee and as security for the successful completion of the CONSULTANT'S duties and responsibilities under the Project Agreement.

5.5 **Final Payment.** Submission of the CONSULTANT'S invoice for final payment and reimbursement shall constitute the CONSULTANT'S representation to the CITY that, upon

receipt from the CITY of the amount invoiced, all obligations of the CONSULTANT to others, including its consultants, incurred in connection with the Project, shall be paid in full. The CONSULTANT shall deliver to the CITY all documents requested by the CITY evidencing payments to any and all subcontractors, and all final specifications, plans, or other documents as dictated in the Scope of Services and Deliverable. Acceptance of final payment shall constitute a waiver of any and all claims against the CITY by the CONSULTANT.

SECTION 6. TERMINATION/SUSPENSION

6.1 **For Cause.** This Project Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONSULTANT abandons this Project Agreement or causes it to be terminated by the CITY, the CONSULTANT shall indemnify the CITY against any loss pertaining to this termination. In the event that the CONSULTANT is terminated by the CITY for cause and it is subsequently determined by a court by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 6.2 of this Project Agreement and the provision of Section 6.2 shall apply.

6.2 **For Convenience.** This Project Agreement may be terminated by the CITY for convenience upon fourteen (14) calendar days' written notice to the CONSULTANT. In the event of termination, the CONSULTANT shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding subconsultant obligations. The CONSULTANT shall be compensated for all services performed to the satisfaction of the CITY and for reimbursable expenses incurred prior to the date of termination. The CONSULTANT shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of Paragraph 5.1 of this Project Agreement. Under no circumstances shall the CITY make any payment to the CONSULTANT for services which have not been performed.

6.3 **Assignment upon Termination.** Upon termination of this Project Agreement, a copy of all of the CONSULTANT's work product shall become the property of the CITY and the CONSULTANT shall, within ten (10) working days of receipt of written direction from the CITY, transfer to either the CITY or its authorized designee, a copy of all work product in its possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the CONSULTANT pertaining to this Project Agreement. Further, upon the CITY'S request, the CONSULTANT shall assign its rights, title and interest under any subcontractor's agreements to the CITY.

6.4 **Suspension for Convenience.** The CITY shall have the right at any time to direct the CONSULTANT to suspend its performance, or any designated part thereof, for any

reason whatsoever or without reason, for a cumulative period of up to thirty (30) calendar days. If any such suspension is directed by the CITY, the CONSULTANT shall immediately comply with same. In the event the CITY directs a suspension of performance as provided for herein through no fault of the CONSULTANT, the CITY shall pay to the CONSULTANT its reasonable costs, actually incurred and paid, of demobilization and remobilization, as full compensation for any such suspension.

SECTION 7. COMPLIANCE WITH LAW

7.1 **COMPLIANCE WITH LAWS** – The parties shall comply with all applicable local, state and federal laws and guidelines relating to the services that are subject to this Agreement. Federal regulations apply to all of the City of Marathon contracts using Federal funds as a source for the solicitation of goods and services. The following Federal requirements apply to this Emergency Agreement:

11.7 **ACCESS BY THE GRANTEE, SUBGRANTEE, FEDERAL GRANTOR AGENCY AND COMPTROLLER GENERAL:** The Contractor shall allow access by the grantee, subgrantee, Federal grantor agency and Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions.

11.7 **CLEAN AIR AND WATER ACTS:** The Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1386), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), (Contracts and/or subcontracts, and sub grants of amounts in excess of \$100,00.00).

7.4 **CONTRACT WORK HOURS AND SAFETY STANDARDS:** The Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Constructions contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers.)

7.5 **COPELAND ANTI-KICKBACK ACT:** The Contractor shall comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction repair).

7.6 **COPYRIGHTS:** The Grantee is free to copyright original work developed in the course of or under the agreement. FEMA reserves a royalty-free, nonexclusive and

irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes. Publication resulting from work performed under this agreement shall include an acknowledgement of FEMA financial support, by granted number, and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA views.

7.7 DISADVANTAGED BUSINESS ENTERPRISES (DBE) CONTRACTORS:

The contractor agrees to ensure that Disadvantage Business Enterprises as defined in 49 C.F.R. Part 23, as amended, have the maximum opportunity to participate in the performance of contracts and this agreement. In this regard, contractor shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 23, as amended, to ensure that the Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. The contractor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of federal assisted contracts.

7.8 ENERGY POLICY AND CONSERVATION ACT: The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

7.9 EQUAL EMPLOYMENT OPPORTUNITY: The Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 C.F.R. Chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees).

7.10 REPORTING:

7.10.1 Reports Submission: Per 44 CFR 13.50, when the appropriate grant award performance period expires, the Grantee shall submit the following documents within 90 days: (1) Financial performance or Progress Report; (2) Financial status Report (SF 269) or outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable); (3) Final request for payment (SF-270) (if applicable); (4) Invention disclosure (if applicable); and (5) Federally-owned property report.

7.10.2 Reports Acceptance: FEMA shall review the Grantee reports, perform the necessary financial reconciliation, negotiate necessary adjustments between the Grantee's and FEMA's records, and close grant in writing.

7.11 RETENTION OF ALL RECORDS: The Contractor is required to retain all records for three (3) years after grantees or subgrantees make final payments and all other pending matters are closed.

7.12 BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352)— Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

SECTION 8 INCORPORATION OF TERMS AND CONDITIONS OF CONTINUING SERVICE AGREEMENT

8.1 This Project Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement dated February 14, 2017 between the parties as though fully set forth herein. In the event that any terms or conditions of this Project Agreement conflict with the Continuing Services Agreement, the provisions of this specific Project Agreement shall prevail and apply.

PURSUANT TO F.S. 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR ANY NEGLIGENCE.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.]

SECTION 9 Term/Time of Performance

9.1 This Project Specific Agreement shall be effective on the date it is fully executed by all parties and shall continue in full force for 3 year (s) or until completion of the Project, unless otherwise terminated pursuant to the Construction Management Services Agreement or other applicable provisions of this Project Specific Agreement. The City Engineer or Manager, in his sole discretion, may extend the term of this Project Specific Agreement through written notification to the Consultant. Such extension shall not exceed 180 days. No further extensions of this Project Specific Agreement shall be effective unless authorized by the City Engineer or Manager.

9.2 The Consultant's services under this Project Specific Agreement and the time frames applicable to this Project Specific Agreement shall commence upon the date provided in a written Notification of Commencement ("Commencement Date") provided to the Consultant from the City. The Consultant shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. Consultant must receive written notice from the City prior to the beginning the performance of services.

9.3 Upon receipt of the Notification of Commencement, the Consultant shall commence services to the City on the Commencement Date, and shall continuously perform services to the City, without interruption, in accordance with the time frames set forth in the Project Schedule."

SECTION 10 Project Records

10.1 All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

11.7 After the City's acceptance of final plans and documents, an electronic copy of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

10.3 Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

- 10.4 The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.
- 10.5 All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of City, and reproducible copies shall be made available upon request to the City.
- 10.6 All project records shall be maintained by Consultant and made available upon request of the
- 10.7 City at all times for the duration of this Agreement and during the period stated by Florida Records Retention Schedules. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

SECTION 11 Ownership and Access to Public Records.

- 11.1 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.
- 11.2 The Consultant is a "Contractor" as defined by Section 119.0701(1)(a), Florida Statutes, and shall comply with the public records provisions of Chapter 119, Florida Statutes, including the following:
1. Keep and maintain public records required by the City to perform the service.
 2. Upon request from the City Clerk, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Consultant 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 Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or

confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant 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.

- 11.3 “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.
- 11.4 Should the Consultant assert any exemption to the requirements of Chapter 119 and related law, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the Consultant.
- 11.5 The Consultant consents to the City’s enforcement of the Consultant’s Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the Consultant shall pay all court costs and reasonable attorney’s fees incurred by the City.
- 11.6 The Consultant’s failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by the Consultant shall be grounds for immediate unilateral cancellation of this Agreement by the City.
- 11.7 **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, OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.**

PAYMENT UNDER THIS PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.

IN WITNESS WHEREOF, the parties have executed this instrument on this _____ day of _____, 20__.

CONSULTANT:

CITY:

By: Edward R. Castle, PE

By: _____

Its: Vice President

Its: _____

ATTEST:

Diane Clavier, City Clerk

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

City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

EXHIBIT “1”
PROJECT DESCRIPTION

The City wishes to expand the treatment capacity at the Area 3 WWTP. More specifically, the City wishes to convert the existing digester into an SBR treatment unit and to build a stand-alone digester where the reuse water storage tank is currently located. Consultant proposes to provide design and permitting service for the expansion of the Area 3 WWTP. More specifically, the services shall include:

- Prepare Preliminary Design Report for new digester and SBR units
- Design of a new digester tank including ACIP foundation
- Demolition plans for existing reclaimed water tank
- Design of conversion of existing digester into an SBR treatment tank
- Electrical design for both treatment unit processes
- Design of yard piping and aeration system for both treatment tanks
- Assist City with FDEP permitting
- Assist City with Environmental Resources Permitting (if applicable)
- Prepare contract documents, technical specifications and bid package
- Attend pre-bid meeting, evaluate proposals and prepare recommendation of award

**EXHIBIT “2”
SCOPE OF SERVICES AND PROJECT SCHEDULE**

EXHIBIT A

Date:

SCOPE OF SERVICES

For Service Area 3 Expansion Design & Permitting

GENERAL UNDERSTANDING

The City intends to expand the permitted capacity and the treatment capacity at the Area 3 WWTP by converting the existing digester tank into an SBR treatment unit. The City also intends to remove the existing reuse water tank and pumping system and install a new digester and associated appurtenance.

SCOPE OF WORK

The scope of work includes the following tasks:

- Preparation of a Preliminary Design Report, including process calculations and other technical data as needed.
- Prepare concept design of demolition of existing reclaimed water tank
- Prepare concept design of conversion of existing digester to an SBR treatment system
- Prepare concept design of new digester
- Review concepts and PDR with City
- Prepare 30%, 60%, 90% and Final Design after reviews with the City
- Prepare bidding and contract documents
- Attend pre-bid meeting
- Review bids and prepare Recommendation of Award

PROJECT SCHEDULE

Preparation of PDR and conceptual site layout	Week 1 - 2
Structural design of foundations & tanks	Weeks 3 - 10
Civil design of piping and unit treatment process appurtenance	Weeks 3 - 10
Electrical design	Weeks 4 - 8
Technical Specifications	Week 8 - 10
Prepare signed and sealed final sets with bid documents	Week 11

**EXHIBIT “3”
CONSULTANT’S HOURLY RATES**

Company: The Weiler Engineering Corporation	
Job Position Title	Total Hourly Rate \$/Hour
Principal in Charge	\$195.00
Expert Witness	\$250.00
Registered Professional Engineer (P.E.)	\$145.00
Environmental Scientist	\$145.00
Registered Structural Professional Engineer (P.E.)	\$145.00
Project Manager	\$145.00
Senior Planner	\$125.00
Registered Engineer Intern (E.I.)	\$115.00
Plans Examiner	\$115.00
Senior Construction Inspector	\$105.00
Senior Engineering Designer	\$100.00
Engineering Designer	\$90.00
Construction Inspector	\$90.00
Engineering Technician	\$80.00
Field Technician	\$80.00
Clerical	\$55.00
Reimbursable Expenses - Cost plus 15%	

CITY COUNCIL AGENDA STATEMENT



Meeting Date: October 8, 2019
From: George Garrett, Planning Director
Through: Chuck Lindsey, City Manager

Agenda Item: Resolution 2019-106, Opposing The Possibility, As Expressed In Alternatives 3 (Preferred) And 4 Of The Draft Environmental Impact Statement (DEIS), Florida Keys National Marine Sanctuary: A Restoration Blueprint, That The Sombrero Reef Sanctuary Preservation Area Would Prohibit Access To Recreational Boaters; And Providing For An Effective Date.

BACKGROUND & JUSTIFICATION:

The DEIS for the proposed Florida Keys National Marine Sanctuary revision to their management plan has developed four alternative management scenarios for review by the public:

- Alternative 1 (no action),
Alternative 2 (slightly more environmentally protective),
Alternative 3 (preferred alternative, with many actions identical to Alternative 2 or progressively more environmentally protective), and
Alternative 4 (many actions identical to alternatives 2 and 3 or progressively more environmentally protective); and

The DEIS has proposed the following in Alternatives 3 (Preferred) which is repeated in Alternative 4:

Sanctuary preservation areas (Alternative 3, preferred)

A total of 26 SPAs are proposed (seven additional compared to the no action alternative and one more than Alternative 2). Differences in regulations from Alternative 2 include three SPA (Carysfort, Sombrero, and Sand Key) that would be limited use areas, accessible by Blue Star Dive Operators only (see Section 3.4.5). All other proposed regulations included in Alternative 2 would apply;" and

The language of this portion of the DEIS proposal has been interpreted to exclude ALL vessels and users, but those vessels, owners, and clients of commercial "Blue Star Operators." The FKNMS has made a number of statements to indicate that they intended the language to only apply to commercial operators and NOT to the general recreational public. The City Council expressed its concerned that until this language is changed to clarify the intent of the Sanctuary, the language will continue to be misinterpreted,

CONSISTENCY CHECKLIST:

Table with 2 columns: Yes, No. Row 1: 1. Comprehensive Plan, Yes: X, No: . Row 2: 2. Other - 2010 Sewer Mandate, Yes: ., No: X

FISCAL NOTE: N/A

RECOMMENDATION: Approval of Resolution

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-106**

A RESOLUTION OF THE CITY OF COUNCIL OF THE CITY OF MARATHON, FLORIDA OPPOSING THE POSSIBILITY, AS EXPRESSED IN ALTERNATIVES 3 (PREFERRED) AND 4 OF THE DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS), FLORIDA KEYS NATIONAL MARINE SANCTUARY: A RESTORATION BLUEPRINT, THAT THE SOMBRERO REEF SANCTUARY PRESERVATION AREA WOULD PROHIBIT ACCESS TO RECREATIONAL BOATERS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on November 16, 1990, Congress designated the Florida Keys National Marine Sanctuary (FKNMS) to be protected under the management of the National Oceanographic and Atmospheric Administration (NOAA); and

WHEREAS, NOAA's current management of the sanctuary is based on its 1997 final environmental impact statement and a 2007 revised management plan.; and

WHEREAS, the 1997 environmental impact statement and management plan implemented sanctuary-wide regulations and established the nation's first comprehensive network of marine zones in the FKNMS after years of planning, design, and public input; and

WHEREAS, the FKNMS marine zones have differing levels of use and protection for each area and are designed to protect and preserve sensitive parts of the ecosystem while allowing activities that are compatible with resource protection. FKNMS marine zones include

- Wildlife management areas (WMAs) that protect shallow water habitats and dependent wildlife,
- Sanctuary preservation areas (SPAs) that separate conflicting uses and protect the reef structure,
- Special use areas (SUAs) that support specific targeted activities such as research and restoration,
- Ecological reserves (ERs) that protect large contiguous habitats, and
- Existing management areas (EMAs) that provide for the continued management of areas that were established prior to sanctuary designation in 1997 and are subject to their own protections and restrictions in addition to sanctuary-wide regulations; and

WHEREAS, toward the development of the current DEIS, on April 19, 2012, NOAA and the U.S. Department of the Interior's (DOI) U.S. Fish and Wildlife Service (USFWS) – a cooperating agency for this DEIS – published a notice of intent in the Federal Register. The notice informed the public of the proposed action, announced five scoping meetings, and solicited public comment.

ONMS and USFWS held public scoping meetings in Marathon on June 19, 2012; Key Largo on June 20, 2012; Key West on June 21, 2012; Miami on June 26, 2012; and Fort Myers on June 27, 2012; and

WHEREAS, several hundred people participated in these meetings and provided input on specific issues to be analyzed or addressed as part of the marine zoning and regulatory review; and

WHEREAS, in addition to public scoping meetings, ONMS and USFWS accepted written comments from April 19, 2012, to June 29, 2012. Comments were provided in emails, letters, faxes, and electronic submission; and

WHEREAS, after many ensuing years of work, the DEIS – “Florida Keys National Marine Sanctuary: A Restoration Blueprint” was released officially at the August 20, 2019 meeting of the FKNMS Sanctuary Advisory Council meeting held at Isla Bella Resort in Marathon; and

WHEREAS, the DEIS has developed four alternative management scenarios for review by the public:

- Alternative 1 (no action),
- Alternative 2 (slightly more environmentally protective),
- Alternative 3 (preferred alternative, with many actions identical to Alternative 2 or progressively more environmentally protective), and
- Alternative 4 (many actions identical to alternatives 2 and 3 or progressively more environmentally protective); and

WHEREAS, the DEIS has proposed the following in Alternatives 3 (Preferred) which is repeated in Alternative 4:

“Sanctuary preservation areas (Alternative 3, preferred)

A total of 26 SPAs are proposed (seven additional compared to the no action alternative and one more than Alternative 2). Differences in regulations from Alternative 2 include three SPA (Carysfort, Sombrero, and Sand Key) that would be limited use areas, accessible by Blue Star Dive Operators only (see Section 3.4.5). All other proposed regulations included in Alternative 2 would apply;” and

WHEREAS, the language of this portion of the DEIS proposal has been interpreted to exclude ALL vessels and users, but those vessels, owners, and clients of commercial “Blue Star Operators;” and

WHEREAS, the FKNMS has made a number of statements to indicate that they intended the exclusion language to only apply to commercial operators and NOT to the general recreational public;

WHEREAS, the City Council of the City of Marathon Florida is concerned that until this language is changed to clarify the intent of the Sanctuary, the language will continue to be misinterpreted,

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. Alternative recommendation language associated with Section 3.3.3 (Pages 50-51) of the DEIS concerning limiting entry to three SPAs, specifically, Carysfort, Sombrero, and Sand Key, should be clarified to ensure that the general public shall not be prohibited from entry into those areas.

Section 3. The City Clerk shall forward a certified copy of this Resolution to the staff and Administrators of the Florida Keys National Marine Sanctuary, and to equivalent individuals within the Florida Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission.

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

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8TH DAY OF OCTOBER, 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



COUNCIL AGENDA STATEMENT

Date: October 8, 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 2019-107, Approving Change Order No. 1 To The Contract Between The City of Marathon and Florida Keys Irrigation In The Original Amount Of \$10,790.00 For The Irrigation Upgrade Of The Soccer Fields At Community Park; Increasing The Contract In An Amount Not To Exceed \$35,555.00 For Additional Repairs To The Soccer Fields And Upgrades To The Baseball Field; 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:

The City entered into a contract with Florida Keys Irrigation on April 15, 2019 for the irrigation upgrade of the soccer Fields at Community Park. The upgrade consisted of increasing the pressure in the system and replacing all the heads to increase the coverage to the fields. We were aware that upon increasing the pressure, we would experience breaks in the line and some old fittings, but could not estimate this work. Subsequent to the installation it was evident that other upgrades would be required to complete the system. An hourly rate was established in the initial contract for this work. The total cost of \$32,175.00, which includes \$21,385.00 of additional work on the soccer fields, is 100% reimbursable from the TDC

The City also decided to re-sod the baseball fields, and upgrades to that irrigation system is also needed to insure proper coverage. The same unit pricing is used for this work. The total cost of this work is \$14,170, which is not TDC reimbursable, is paid for out of the City's maintenance budget. Staff therefore recommends approval of the change order.

CONSISTENCY CHECKLIST:

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

FISCAL NOTE:

Finance Director: _____

RECOMMENDATION:

Approval of Resolution

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-107**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING CHANGE ORDER NO. 1 TO CONTRACT BETWEEN THE CITY OF MARATHON AND FLORIDA KEYS IRRIGATION IN THE ORIGINAL AMOUNT OF \$10,790.00 FOR THE IRRIGATION UPGRADE OF THE SOCCER FIELDS AT COMMUNITY PARK; INCREASING THE CONTRACT IN AN AMOUNT NOT TO EXCEED \$35,555.00 FOR ADDITIONAL REPAIRS TO THE SOCCER FIELDS AND UPGRADES TO THE BASEBALL FIELD; 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”) entered into contract with Florida Keys Irrigation for irrigating the soccer fields at Community Park (the “Project”) in April of 2019; and

WHEREAS, the City wishes to upgrade the system to have a complete system, which is reimbursable from the Tourist Development Commission Grant; and

WHEREAS, the City recommends that the Council authorize the City to enter into a change order with Keys Irrigation, and expend and appropriate funds in the amount of \$35,555.00

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 8TH DAY OF OCTOBER, 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: Community Park Amphitheater/Fields Irrigation
ENGINEER: City of Marathon
CONTRACTOR: Florida Keys irrigation.
DATE: October 2, 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 **Florida Keys Irrigation** for all costs, expenses, overhead, and profit, and any damages of every kind that **Florida Keys Irrigation** may incur in connection with the above referenced changes in the Construction Work under this Agreement. **Florida Keys Irrigation** acknowledges and agrees that (a) the Guaranteed Maximum Price of \$10,790.00 under the Agreement will be **changed** by this Change Order. **Florida Keys Irrigation** 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

Florida Keys Irrigation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit "A"

CHANGE ORDER SUMMARY

Change Order No. 1
Project Title **Community Park Amphitheater/Fields Irrigation**
Bid No. _____
Owner: City of Marathon
Contractor: **Florida Keys Irrigation**
Agreement Date: April 15, 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>\$10,790.00</u>
(2)	Current Contract Price (Adjusted by Previous C.O.)	<u>\$10,790.00</u>
(3)	Total Proposed Change in Contract Price	<u>\$ 35,555.00</u>
(4)	New Contract Price (Item 2 + Item 3)	<u>\$46,345.00</u>
(5)	Original Contract Time	<u>180 Days</u>
(6)	Proposed Change in Contract Time	<u>90 Days</u>
(6)	Current Contract Time (Adjusted by Previous C.O.)	<u>180 Days</u>
(7)	Total Proposed Change in Contract Time	<u>90 Days</u>
(8)	New Contract Time (Item 6 + Item 7)	<u>270 Days</u>
(9)	Original Contract Final Completion Date	<u>October 12, 2019</u>
(10)	New Contract Final Completion Date	<u>January 10, 2020</u>

**COMMUNITY PARK AMPHITHEATER/FIELDS IRRIGATION
CHANGE ORDER HISTORY**

Item No.	Description	Current Contract Amount	Additive Change	Deductive Change	Net Change Contract Price	Net Change Contract Time
1.		<u>\$10,790.00</u>	<u>\$35,555.00</u>	\$0	<u>\$35,555.00</u>	90 Days
Total		\$10,790.00	\$35,555	\$48,600.00	\$35,555	90 Days

Exhibit "B"

CHANGE ORDER JUSTIFICATION

As part of the re-sodding of the Amphitheater/Soccer Fields, the irrigation system was revised and repaired to insure proper coverage of the fields. We were aware that once the pressure in the system was upgraded, several repairs would be required. We could not estimate these prior to the work, so the initial contract established an hourly rate for the repairs. As part of the repair several more heads were replaced, and repairs were also required in the secondary supply cross connection from Phase 1 of the park to insure we had sufficient water supply. The total for the additional repairs is \$21,385.00. This cost along with the original estimate is 100% reimbursable from the TDC

The City also decided to re-sod the two baseball fields. Prior to re-sodding these fields, the irrigation system also needs to be upgraded to insure proper coverage. The cost for this work is based on the established unit cost to replace the heads and add new ones. The \$14,170.00 cost is not TDC reimbursable, and covered under the City's maintenance cost.

October 2019 - November 2019

October 2019							November 2019						
Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su
	1	2	3	4	5	6					1	2	3
7	8	9	10	11	12	13	4	5	6	7	8	9	10
14	15	16	17	18	19	20	11	12	13	14	15	16	17
21	22	23	24	25	26	27	18	19	20	21	22	23	24
28	29	30	31				25	26	27	28	29	30	

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
Oct 7	8 5:30pm City Council Meeting (City Hall Council Chambers, 9805 Overseas Hwy.)	9	10	11	12	13
14 Columbus Day-City Hall Closed	15	16 2:00pm Code Compliance Hearing (Council Chambers)	17	18	19 9:00am HHW & Ewaste Drop Off (10600 Aviation Blvd.)	20
21 5:30pm Planning Commission Meeting (City Hall Council Chambers, 9805 Overseas Hwy.) -	22 5:30pm City Council Meeting (City Hall Council Chambers, 9805 Overseas Hwy.)	23	24	25	26	27
28	29	30	31	Nov 1	2	3
4	5 Election Day	6	7	8	9	10