



**City of Marathon City Council Agenda
Council Chambers, 9805 Overseas Hwy., Marathon
Tuesday, November 12, 2019 5:30 P.M.**

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Roll Call**
4. **Passing of the Gavel**
5. **Approval of agenda and consent agenda** [Approval of Consent Agenda passes all routine items indicated by asterisk (*). Consent Agenda items are not considered separately unless a council member so requests. In the event of such a request, the item is returned to the Regular Agenda.]
6. **Resolution 2019-108**, Accepting The Results Of The Municipal General Election Held November 5, 2019 For The Election Of Three At Large City Council Seats; And Providing For An Effective Date.....1
 - A. Swearing in of Council Members
7. **City Council Items**
 - *A. Approval of Minutes4
 - B. Veterans Day Proclamation13
 - C. Marathon Hemp and Arts Festival Request to waive fees January 30th and February 1st, 2020.....14
 - D. Florida Keys Celtic Festival Request to waive fees and sell alcohol January 11th and 12th, 2020.....20
 - E. Community Announcements.....23
8. **City Manager Report**
 - A. Public Works Report.....24
 - B. Marina Report.....27
 - C. Fire Rescue Report.....33
 - D. Cancellation of the second meetings in November and December
9. **Citizens' comments on agenda items not scheduled for public hearing and items other than those appearing on the agenda** [Those who have signed in will be given the first opportunity to speak. Time is limited to 2 minutes per speaker and 30 minutes total time for this agenda item.]
TIME CERTAIN TO 6:30 PM OR AS SOON AS POSSIBLE THEREAFTER OR AFTER THE LAST AGENDA ITEM; WHATEVER COMES FIRST

10. Quasi Judicial Public Hearing

A. Resolution 2019-109, Consideration Of A Request To The City Of Marathon By Jack Carlson To Abandon The Public Right Of Way Located At 11491 1ST Avenue Ocean, Known As Smokes Court AKA 1st Avenue Ocean, Described As Being Adjacent To And Between Lots 161-162 And Lot 3, Little Venice Number 2 Subdivision, Key Vaca, Having Real Estate Numbers 00346890-000000 & 00345350-000000. Nearest Mile Marker 53.....36

11. Ordinances for First Public Hearing

A. Ordinance 2019-11, Amending The City Of Marathon’s Comprehensive Plan Modifying Chapter One, “Future Land Use,” “Table 1-1, Future Land Use Densities And Intensities,” And Intending To Modify Policy 1-3.3.4, “Encourage Redevelopment Of Tourist/Resort/Campground Facilities,” To Allow Uses Designated As “Permanent RVs” To Be Utilized As “Transient Residential Units” (RV Lots), Meeting All Requirements Of Such Uses, And That Hold No Monetary Value As Transient Units, And Cannot Be Transferred As Transient Units, To Be Allowed On Properties Zoned Residential Mobile Home (R-MH) That Also Allows Permanent Florida Building Code Compliant Residences; 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.....48

B. Ordinance 2019-12, Amending The City’s Comprehensive Plan To Modify Comprehensive Plan, Chapter 1, “Future Element, Goal 1-3, “Manage Growth;” Objective 1-3.2, “Regulate Density And Intensity;” Policy 1-3.2.5; “Maximum Height Limitation,” Increasing The Maximum Building Height To Forty-Two Feet (42) For Residential Structures To Provide Compensation For Increases In Required Elevations For The New FEMA Firm Maps; Providing That Residential Structure Shall Not Thereby Exceed Three Stories Above Grade; 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.....69

C. Ordinance 2019-13, Amending The City’s Land Development Regulations, Chapter 103, Table 103.15.2, “Density, Intensity And Dimensions For Zoning Districts, Chapter 107, Article 5, “Setbacks And Height,” Section 107.40, “Maximum Height” And Figure 107.40.1, “Building Height Measurement,” Increasing The Maximum Building Height To Forty-Two Feet (42) For Residential Structures To Provide Compensation For Increases In Required Elevations For The New FEMA Firm Maps; Providing That Residential Structures Shall Not Thereby Exceed Three Stories Above Grade; 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.....80

D. Ordinance 2019-14, Amending The City’s Land Development Regulations To Modify Chapter 103, Article 3, “Use And Intensity Tables,” Table 103.15.1, “Uses By Zoning District” And Adding A Section To Chapter 104, Article 1, To Be Titled “Permitting Of Residential Units Which Exceed Six (6) Bedrooms” As Defined Therein; Amending Chapter 110 To Provide Related Definitions For Bedrooms; 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.....83

12. Resolutions for Adoption

- *A. Resolution 2019-110**, Amending The City’s Fiscal Year 2018-2019 Budget; And Providing For An Effective Date.....99

- *B. Resolution 2019-111**, Accepting The Responsible Bid And Approving A Contract Between The City And LPS Utilities, Inc.; In An Amount Not To Exceed \$288,868.92 For Canal 257 Water Quality Improvement and Culvert Installation Project; Authorizing The City Manager To Execute The Contract And Expending Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.....107

- *C. Resolution 2019-112**, Approving An Interlocal Agreement Between Monroe County, The City Of Marathon, And The City Of Key West To Provide A Public Transit System, Connecting With The Miami-Dade To Marathon Transit System, To Serve The Lower Keys From 50th Street, Marathon, To Key West; And Providing An Effective Date.....125

- *D. Resolution 2019-113**, Approving A “Piggy-Back” Agreement Between The City Of Marathon, Florida And H&R Paving, Inc., For The Re-Paving of the Community Park Asphalt Sidewalk; Approving Contract In An Amount Not To Exceed \$73,900.00; Authorizing The City Manager To Execute The Contract And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.....138

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

14. Council comments

15. Adjournment

The public hearings will commence at 5:30 p.m., or as soon thereafter as business permits, in the Marathon City Council Chambers, 9805 Overseas Highway, Marathon, FL. All interested persons are invited to attend the meeting and participate in the discussion; or, written comments may be sent to the City of Marathon, c/o City Clerk, 9805 Overseas Hwy, Marathon, FL 33050.

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

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-108**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, ACCEPTING THE RESULTS OF THE MUNICIPAL GENERAL ELECTION HELD NOVEMBER 5, 2019 FOR THE ELECTION OF THREE AT LARGE CITY COUNCIL SEATS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in accordance with the City Charter the City of Marathon, Florida scheduled an election for November 5, 2019; and

WHEREAS, the City Council desires to accept the results of November 5, 2019, municipal general election in accordance with the City Charter and the Florida Election Code.

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 accepts that the following are the results of the November 5, 2019, municipal general election:

A. Elected Officials

At Large City Council Seat: John Bartus

At Large City Council Seat: Steven Cook

At Large City Council Seat: Dan “Doc Dan” Zieg

Section 3. Based upon the foregoing results, the City Council hereby declares the following candidates are elected to the office of City Councilmember, as of November 5, 2019, for a term of three (3) years:

At Large City Council Seat: John Bartus

At Large City Council Seat: Steven Cook

At Large City Council Seat: Dan “Doc Dan” Zieg

Section 4. This resolution shall take effect upon the receipt of official election results from the Monroe County Supervisor of Elections.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 12th DAY OF NOVEMBER, 2019.

THE CITY OF MARATHON, FLORIDA

Mayor Steven Cook

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk
(City Seal)

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

David Migut, City Attorney



City of Marathon

Oath of Office

Do You, _____, solemnly swear that you will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that you are duly qualified to hold office under the Constitution of the state; and that you will faithfully perform the duties of **Council Member of the City of Marathon** on which you are now about to enter. So help you God?

CALL TO ORDER - A Meeting of the City Council of Marathon, Florida was held on October 8, 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

Bartus added a Domestic Abuse Awareness Proclamation as item 5F (2), Zieg asked to strike the word presentation on item 5C, Proposed Modification to the Sanctuary Management Plan. Senmartin asked to add Flood Control Test Site under City Council items, and Gonzalez asked to add Cargo Lifts and Trash Can Ordinance under City Council Items. Senmartin asked to remove Resolution 2019-101 from the Consent Agenda.

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**

Tree Dedication in Memory of Alphonso Ornelas - Jeff Smith asked that a tree be dedicated in memory of Alphonso at City Hall or in one of the City's parks. Gonzalez asked that it include a plaque. The Council gave a head nod of approval.

Proposed Modification to the Florida Keys National Marine Sanctuary Management Plan Presentation by Sarah Fangman (Councilmember Zieg) - Zieg presented a video of a Monroe County Commission meeting where Beth Ramsey Vickrey opposed proposed wording of restricted access to Bluestar operators only to Sombrero Reef, Carysfort Reef and Sand Reef. The restrictions would limit locals from going out on their own boat to these areas and would no longer be able to access these reefs. Zieg invited Ms. Fangman to speak on the topic.

Fangman stated private individuals will not be restricted access to the three aforementioned reefs per the proposed language nor are there any plans to do so.

Senmartin encouraged the public to comment on the proposals from the National Marine Sanctuary and Ms. Fangman explained how the public can send in their comments and attend public meetings.

World Habitat Day Proclamation - the Council presented the proclamation to members of Habitat for Humanity of the Middle Keys.

Breast Cancer Awareness Month Proclamation – the Council presented the proclamation to the Strides Team from American Cancer Society including Charlotte Quinn and Susie Curry, amongst other women who spoke about the breast cancer awareness walk on October 26th.

Fire Prevention Week Proclamation – the Council presented the proclamation to Chief Johnson along with his firefighter staff.

Domestic Abuse Awareness Proclamation – the Council presented the proclamation to the Domestic Abuse Shelter staff Sherrie Schwab and Jennifer Powell who spoke about the rebuild efforts for the Marathon Shelter.

Request to Waive the Rules for Use of Meeting Room for Veterinary Hospital Lecture – Lindsey explained the request and that the fees charged would be donated to the local SPCA. The Council gave a head nod approval.

Airport Update (Councilmember Zieg) Zieg provided an update, explaining a selection committee consisting of Roman Gastesi, Richard Strickland, Daniel Samess and Zieg was put together to find a new manager for the airport. Mike Legere was selected and would be starting in the next week.

Lion's Club Dorian Relief (Councilmember Gonzalez) Willie Gonzalez, President of Marathon Lion's Club provided a report of their efforts in the Bahamas providing relief in the form of food, water & hygiene. Gonzalez provided a video and the District Governor of the Lions Club, Adita Vasquez, and Eddie Basutto thanked the City for their support and provided thank you plaques to Vice Mayor Cook and Councilmember Zieg, Marathon Firefighters, Willie Gonzalez, and Dr. Mike Dunn for their assistance in the Dorian Relief efforts.

Design Standards for New Development Task Force (Councilmember Senmartin) - Senmartin spoke regarding the future vision of Marathon's corridor as an attractive place. He proposed the Council agree to improve the US1 corridor appearance and create a non-binding suggestion committee appointed by staff, focused on how they envision the town to look. He suggested setting a design standard for new development and major remodels. He mentioned the City has an envisioning study on record that was prepared years ago. Bartus recalled the envisioning study and spoke on the workshops that took place to discuss the future of the City and felt it was a good idea. Senmartin provided photographs and renderings of buildings in the Keys that have desirable design features. Zieg and Cook stated the private sector has done an excellent job at design recently. Cook spoke against the design standard suggestion committee and explained that he lived in an area in the past that had very strict design standards and it was so expensive to do anything so no one ever did and it made things worse. Bartus spoke for beautifying the US1 corridor by planting more trees and adding more landscaping. The Council was not in agreement for developing a Design Standards Suggestion Committee.

Citizens Comments

Diane Scott spoke in support of a City Police Department.

Community Announcements - The Clerk read the Community Announcements. Gonzalez added the City Birthday celebration on November 2nd at the Marathon Community Park.

Flood Control Test Site (Councilmember Senmartin) Senmartin proposed to designate a site to test flooding prevention measures due to king tides we have been having recently. Senmartin suggested the Aviation Blvd. boat ramp as a test site and would like to construct a wall around the perimeter with aluminum panels to use when we get the extreme king tide surges. Senmartin referred to the flooding on 92nd Ct. as a problem and potential for a site flooding barricade also. Senmartin also suggested

putting a cap on the injection well. Garrett explained the lidar pictures will help us to establish problem areas.

Cook stated the City has been working on the 92nd Ct. project for months and stated no matter what you put there the water will always come in through the injection well that was put in years ago.

Solis explained the same problem with injection wells will occur at the Aviation Blvd. boat ramp. Solis explained that the County had a pilot program and we are looking at what works with that program and what doesn't so that we don't spend a lot of funds on something that doesn't work or is not a permanent solution.

Lindsey spoke on Tuskegee Street that was used as a pilot project site that had flooding issues that Saus and Solis came up with a solution and assured Council that staff will continue to identify problem areas and will be bringing solutions forward in the future.

Cargo Lifts (Councilmember Gonzalez) - Gonzalez explained that several residents have approached him about the need to install a cargo lift, which currently the City does not allow. Many residents were left having to rebuild after Hurricane Irma and now their homes are on stilts and these residents now face difficulties getting their groceries, laundry, etc. upstairs.

Lewis explained the problem with cargo lifts is that they have no safety features and they can be dangerous. Lewis agreed to work with the companies that build the cargo lifts and find out if there is a way to custom build the lifts with safety features. A major concern is that the residents will use the cargo lifts like elevators. Lewis explained that as the building official he has the power to permit these lifts and he will sit down with the manufacturer, installers and residents to fit the needs and make them safe. Gonzalez asked for a timeframe for this to come back to Council and Lewis explained he will need about 90 days. Zieg suggested using a dumb waiter to address the problem.

Trash Can Ordinance (Councilmember Gonzalez) - Gonzalez stated he has received a lot of complaints about people bringing out their trash 3-4 days before pickup and leaving them out 3-4 days after pickup and feels it has become a problem. Lindsey stated a large contributor to the problem comes from the vacation rental homes. The challenge is giving warnings doesn't work with this issue. Lewis stated that if staff drafts an Ordinance, Code Enforcement will need to be given the ability to enforce through ticketing, etc. He stated he will work on drafting an Ordinance and will bring back to Council. Zieg stated that the realtor would be responsible for these cans being left out. Cook commented that in Key Colony they charge a fine of \$25 per can per day. Senmartin opposed a trash can ordinance.

Wastewater Utility Update - Saus congratulated Libby Frazier for over ten years of service to the City. He also stated that the sewer systems have been dealing with a lot of water with the king tides but his staff is working around the clock to get any issues that come up resolved. Zieg questioned if Irie Island Eats, which has become a permanent food truck, receives a grease trap pump-out. Saus stated that a grease trap interceptor was in their plan to do. Zieg questioned why there were 47 call outs and Saus explained that it was because of the king tides.

Park and Recreation Update – Davis commented that he inherited a great staff and remarked that the haunted fest was a big success, spoke on the soccer fields, upcoming events, beautification of the

Community Park and new playground equipment with shade structures for various parks. Senmartin gave Davis kudos for doing a great job and moving in the right direction.

Bartus spoke regarding the City's 20th Birthday celebration. He explained the tentative timeline will be between 4-8pm with a DJ, live music, great stuff for kids, story hour with past councils, free food, water and sodas.

Growth Management Update - Lewis provided a staff report explaining that the Code Department has been short staffed lately. He explained the temporary trailers continue to be addressed and the numbers have increased, on residential lots, the number is up to 54, which does not include the commercial lots. Cook suggested staff should send letters out to the homeowners to address the issue.

Zieg asked for a status update on 2405 Coco Plum Drive, which he said, had no active permit within the last two years and is an eye sore. Lewis explained he gave the builder an ultimatum about a month ago, with the conditions of coming in to get new permits or tear it down and they came in with a game plan which Lewis modified with conditions. He explained the permits on the property have been revoked and they will go to the special magistrate this month. Senmartin asked if the house will have to meet new building code. Lewis, replied yes and stated the builder got a letter from the engineer with new plans to meet code. Cook questioned if the raw concrete is still structurally sound. Lewis stated their engineer said it was okay.

Senmartin requested an update on the golf course flooding issues and provided a slideshow of pictures showing the flooded areas. Lewis agreed to engage in dialogue with the developers on finding solutions to retain the water on the course and keep it off the streets. He will also look into the legalities of the situation.

Cancellation of Second meeting in October – Lindsey explained there were no agenda items for October 22nd to hold a meeting.

Gonzalez verified with Garrett that there were no items on the Planning Commission Meeting in October. Senmartin opposed the cancellation. Cook questioned the Clerk if there were any items to come forward to Council for the next meeting. Clavier confirmed there were no items. Lindsey confirmed there were no items to come before Council and stated staff is becoming more efficient and things had slowed down. Bartus asked for the status on the impact & permit fee study. Lewis stated the engineering firm had not given a completion date yet.

MOTION: Gonzalez moved to cancel the second meeting in October

SECOND: Zieg

Vote of the Motion:

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

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

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.

Garrett explained this was the second hearing of the ordinance. Bartus stated that freeboard should be struck out. Garrett explained the state department has seen the ordinance and had approved it.

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

MOTION: Bartus moved to approve Ordinance 2019-10, striking Freeboard from the Ordinance.

SECOND: Zieg

Vote of the Motion:

Yes: Bartus, Zieg, Gonzalez, Cook, Senmartin

No: None

Absent: None

Abstain: None

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

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.

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.

Senmartin explained this grant was a good thing he wanted to recognize and the bonus that it is for the City for pump-out services and keeping the waters clean. Cannon confirmed the grant is paid for by boater registration funds and stated without the grant it would be tough to keep the program going.

MOTION: Zieg moved to approve 2019-101

SECOND: Cook

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

***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.

***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.

***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.

***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.

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.

Senmartin opposed the Resolution as he felt it did not carry any weight and preferred to attend the meetings in person or comment on the National Marine Sanctuary website. Zieg supported the Resolution and stated it carried an important message to the National Marine Sanctuary that the general public should not be prohibited from these areas. Gonzalez supported moving forward with sending the resolution as a Council and additionally sending personal thoughts as well. Cook supported sending the Resolution as a Council.

Bartus supported the Resolution and volunteered to speak and present the Resolution on behalf of the City at the next Sanctuary meeting in Key West.

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

MOTION: Zieg moved to approve.

SECOND: Cook

Vote of the Motion:

Yes: Zieg, Cook, Gonzalez, Bartus

No: Senmartin

Absent: None

Abstain: None

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

MOTION: Cook moved to support the Mayor to speak at the Sanctuary meeting.

SECOND: Gonzalez

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

***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.

Citizens' Comments:

Diane Scott spoke for putting the sheltered bus stop back up, she encouraged citizens of Marathon to attend the Council meetings, spoke for Council speaking louder at the meetings and spoke for keeping companion dogs at home.

Council Comments

Zieg thanked the Lions Club International for their service work in the Bahamas and the people who donated. He welcomed the new Marathon Airport Manager and congratulated Libby Frazier for ten years of service to the City. He also gave a historical review of events that happened on this day in history.

Gonzalez thanked staff, especially Sean Cannon for his hard work getting the new floating docks in at the Marina. He thanked Saus and Davis for their tireless efforts as leaders in their department.

Senmartin stated October is Mental Health Awareness Month and encouraged people to be aware of those in need, as often time issues can go by undetected. He mentioned Yom Kippur is upcoming and asked for forgiveness if he had wronged anyone. He wished his wife a happy 20th anniversary.

Cook thanked City staff, especially Paul Davis for his hard work. He thanked the Chief for his hard work and took time to remember nationwide firefighters on fallen firefighters day. Cook wished his sister a happy birthday.

Bartus thanked everyone involved with the Lions club and Rotary Club with their work with the relief efforts of Hurricane Dorian. He reminded everyone about the City's 20th Birthday on November 2nd from 4-8pm at the Community Park and thanked Staff for all they do.

ADJOURNMENT

With no further business to come before the Council, Mayor Bartus adjourned the meeting at 8:25 pm by unanimous consent.

I certify the above represents an accurate summary of the regular Council meeting of October 8, 2019.

Diane Clavier, City Clerk

Date

DRAFT



City Council of the City of Marathon, Florida Mayor's Proclamation Veterans Day

WHEREAS, we are blessed as Americans to live in a nation with rights and freedoms envied the world over. We rise every morning in a land of opportunities in a vigorous and open economic, agricultural, and industrial marketplace enjoying bountiful good as no other nation. These rights, freedoms, and opportunities did not come without sacrifices. Our nation's veterans are brave and selfless individuals who, when duty called, were willing to put themselves in harm's way to defend the lives and liberties of others; and

WHEREAS, each November 11, we pause with solemn pride and heartfelt gratitude to honor this special group of Americans who have sacrificed so much that we may reap the rewards of living in a free nation. As we sit down to dinner and fall asleep beneath the comfort of our democracy and realize that we can raise our families under liberty's open skies, we should thank the veterans who have served so gallantly; and

WHEREAS, there are soldiers, sailors, marines, airmen, coastguardsmen, National Guard and Reserve forces based in Florida who are among the United States forces serving in Iraq, Afghanistan and other lands abroad. These American citizens are risking their lives and enduring extreme hardships to preserve our freedom; and

WHEREAS, on Veterans Day, we must take the opportunity to say "thank you" to our veterans and active duty forces, never forgetting their valor and dedication and especially remembering our disabled veterans. They deserve our honor and respect.

NOW THEREFORE, BE IT PROCLAIMED, that the Marathon City Council of Marathon, Florida, does hereby proclaim that on Veterans Day, November 11, 2019, we urge our citizens to commend its observance.

Steven Cook, Mayor

November 12, 2019
Date

Amphitheatre and Field Rental Fee Schedule

Category Definitions / Examples

- **Category I** – City sponsored, co-sponsored or city supported activity where the City plans, conducts and controls or offers some degree of activity participation, i.e. facility, leadership, funds labor etc. This includes all youth sponsored activities and school or community related activities.
 - Additionally, any non-profit group/organization or community function that separates community activities from “for-profit” activities of private enterprise, provide direct positive benefits to the residents of the City of Marathon.
 - Example: non-profit organizations that provides a community function where income to the organization benefits community programs, where a voluntary donation may be received. This would also include all community civic clubs such as Lions, Rotary, etc.
- **Category II** – activities including private parties such as wedding receptions, retirement banquet, class reunions and other private parties of this nature.
- **Category III** – commercial venues and for-profit events.
 - Rental includes the use of the amphitheater, dressing room concession/warming kitchen.

FEES

- **Category I**
 - \$0 fee
 - \$200 – other charges cleaning/damage/key deposit
- **Category II**
 - \$100 per hour
 - \$200 - other charges cleaning/damage/key deposit
- **Category III**
 - \$1500 – daily fee from 8:00 a.m. to 11:00 p.m.
 - \$700 – set up days
 - \$250 – Vendors
 - \$1500 - other charges cleaning/damage/key deposit



CITY OF
MARATHON, FLORIDA

9805 Overseas Highway, Marathon, FL 33050
Phone (305) 743-0033 Fax (305) 743-3667 www.ci.marathon.fl.us

Special Event Permit Application

(During off hours, a \$50.00 refundable key deposit is required)

Public Assemblies are regulated by Section 10.5 of the City Code. A Public Assembly is defined as an outdoor gathering in temporary structures, by individuals of the general public, with or without admission fees, when anticipated daily attendance is expected to exceed 250 people per day, and which occurs on more than one day per calendar month.

Application shall be submitted not less than nine (9) days prior to the commencement date of the event.

APPLICANT: Names and addresses of all corporations, associations or individuals who will be promoting, holding or operating said event/exhibition. Attach additional sheet if necessary.

List local and permanent address of individual and/or corporation and list principal officers

Event Name and Organization: Marathon Hemp & Arts Festival / Southern Atlantic Hemp, Inc.

Address: 250 Pharr Road #1311

Phone: 828-634-1090 Alt Phone: 404-938-4343

Event Contact Person: Donald Pickett

Address: 250 Pharr Road #1311 Atlanta, Ga 30305

Phone: 828-634-1090 Alt Phone: 404-938-4343

Name and Title: Donald Pickett - Director

Address: 250 Pharr Road #1311 Atlanta, Ga 30305

Phone: 828-634-1090 Alt Phone: 404-938-4343

Type of Event

- Music
- Parade
- Art Show
- TV Commercial
- Movie/Filming
- Athletic
- Other (specify):

Extraordinary Uses:

- Animals
- Firearms
- Explosives/Fireworks
- Road Closure
- Cooking
- Tent/Temp Structure
- Aircraft
- Other (specify):

LOCATION: (Exact location where event will be held)

Street Name: 200 Ocean, 36th Street From: 10am To: 10pm
Or

Location Address: 200 Ocean, 36th St, Marathon, FL 33050

If the location(s) utilize private property, proof of ownership permission to utilize the property must be submitted.

Does this event utilize any school zones/property? No Yes (If yes, please list location(s))

Use of School Zones during posted times is not permitted.

Street Closure Required

Times: _____ Location From: _____ To: _____

Staging Area required. Location: Marathon Park Amphitheater

All street closures shall comply with MUTCD standards.

Parking Requirements (specify proposed locations):

DATE AND TIMES: (List all dates and periods of time on each date that event will be held)

1/30 - 4pm until 10pm (11pm)
2/1 - 10am until 10pm (11pm)

Alt/Rain Date: No

SIZE: (Estimated number of performers/participants and spectators)

Participants: 50 Spectators (per day): 1000

FACILITIES: Are adequate facilities available for participants and spectators on premises for:

A. Sanitary? Describe facilities whatever is required

B. Garbage Waste? Describe facilities dumpster and trash barrels

Food will be served or available for purchase Yes No

Type of cooking facilities to be used: Food truck vendors

INSURANCE:
Prior to the event, a Certificate of Liability Insurance must be filed with the Office of the City Clerk. The City shall be named as Certificate Holder and the minimum coverage limits shall be:

| General Liability | | Automobile Liability | Excess Liability | |
|-------------------|-------------|--------------------------|------------------|-------------|
| Gen. Aggregate | \$2,000,000 | All Autos/Combined | Umbrella Form | |
| Products | \$2,000,000 | Single limit \$1,000,000 | Each occurrence | \$1,000,000 |
| Pers/Adv Injury | \$1,000,000 | | Aggregate | \$1,000,000 |
| Each Occurrence | \$1,000,000 | | | |
| Fire damage | \$ 50,000 | | | |

Required Attachments:

1. Plan for traffic management.
2. Plan for crowd control.
3. Plan for waste disposal.
4. List of police and fire protection facilities available at or near site.
5. Certificate(s) of Insurance.
6. Hold Harmless Agreement (approved city form).

CONSUMPTION AND/OR SALE OF ALCOHOLIC BEVERAGES ON PUBLIC PROPERTY IS EXPRESSLY PROHIBITED UNLESS A VALID TEMPORARY PERMIT FROM THE STATE OF FLORIDA DIVISION OF ALCOHOL AND TOBACCO HAS BEEN ISSUED FOR THE EVENT.

The signature below acknowledges receipt of the Policy and Procedures for events that has been attached at the end of this document.

Donald Pickett

10/22/19

Name and Title

Date

Donald Pickett

Digitally signed by Donald Pickett
DN: cn=Donald Pickett, o, ou, email=don@sahae.org, c=US
Date: 2019.09.12 14:05:41 -04'00'

Signature

Officer of Corporation with Corporate Resolution Authorizing execution and Binding Corporation

The City Manager or his designees shall have the authority to determine if police and/or fire/EMS personnel will be required to be in attendance during this event. In such instance, the applicant will be solely responsible for the hiring of off-duty Monroe Sheriff office personnel and/or The City of Marathon Fire Department personnel only. Waste (garbage) receptacle collection shall be provided.

Applicant covenants and agrees that it will indemnify and hold harmless the City and all of the City's officer's, agents, and employees from claim, loss, damage, costs, charge or expense arising out of any act, action, neglect or omission by applicant during the performance of the event, whether direct, or indirect, and whether to any person or property to which the City of said parties may be subject.

Donald Pickett

10/22/2019

Name and Title

Date

Donald Pickett

Digitally signed by Donald Pickett
DN: cn=Donald Pickett, o, ou, email=don@sahae.org, c=US
Date: 2019.10.22 15:08:33 -04'00'

Signature

Officer of Corporation with Corporate Resolution Authorizing execution and Binding Corporation

CITY OF MARATHON

9805 Overseas Hwy Marathon, FL 33050
Phone (305) 743-0033 | Fax (305) 743-3667 | www.ci.marathon.fl.us



CITY OF MARATHON, FLORIDA

Request For Use of City of Marathon Property

1. Name Southern Atlantic Hemp & Arts Expo
Address 250 Pharr Road #1311 Atlanta, Ga 30305
Phone Number 404-634-1090 Alt Phone Number: 404-938-4343

2. Specific City property and/or specific part of requested area for use:
Amphitheater & vending area

3. Requested Date(s): January 30 - February 1st
Start Time: 4 pm Friday 10am Saturday Finish Time: 10pm

4. Alternate Date(s): 2/8 - 2/0
5. Name and brief description of event:
A free festival focusing on the new Hemp industry with boutique CBD companies from the Southeast showcasing their products. Also an arts festival, with some music.

6. Expected number of Participants: 1000 - 1500 patrons through the event

7. Plans for alcohol consumption: Open but not required

8. Utilization of BBQ Grill: [] Yes [x] No

9. Are you going to use electricity? [x] Yes If yes, for what purpose: Vendor Booths [] No
* Music shall be maintained at sound levels as not to interfere with other park patrons and surrounding neighborhoods.

10. Will there be a bounce house: [] Yes [x] No

11. Clean up provisions, assurances and state if any improvements are to me made to the facility:
Clean up team within our staff to provide constant policing for trash

12. Previous history of holding similar events:
The is new industry, however we have produced over 15 music festivals over 20 years

****The City is not responsible for any equipment and/or food stored in City facilities ****

Large Groups or Organizations please complete additional information below:

13. Name of Organization: Southern Atlantic Hemp & Arts Expo Phone Number: 828-634-1090

Address of organization: 250 Pharr Road #1311

14. Coordination with: Sheriff's Department: TBD

Overnight Security: TBD

Trash Service: TBD

Please attach copy of proof of insurance in the amount of \$1,000,000.00 naming City of Marathon as certificate

15. Holder. (Large Groups and Organizations Only)

FOR CITY USE

Hold Harmless: Request Insurance
Approved: Yes No Remarks

9805 Overseas Highway, Marathon, FL 33050

Phone (305) 743-6598 | park@ci.marathon.fl.us | www.ci.marathon.fl.us



CITY OF
MARATHON, FLORIDA

Indemnification and Hold Harmless Agreement

This Use, Indemnification and Hold Harmless Agreement (the "Agreement") dated this 22 day of October 2019, executed by Donald Pickett (the "Indemnitor") in favor of The City of Marathon, Florida (the "City").

WITNESSETH

WHEREAS, the Indemnitor has applied to the City for a Permit to hold an event on City property located at 200 Ocean, 36th St, Marathon, FL 33050 (the "Property"); and

WHEREAS, as a condition of approval of the Permit, the Indemnitor has agreed to provide this indemnification and Hold Harmless to the City, including the insurance provisions.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and such other valuable consideration the receipt and sufficiency of which is hereby acknowledged, Indemnitor agrees:

- Indemnification and Hold Harmless** The Indemnitor covenants and agrees that it will indemnify, defend and hold harmless the City, its elected officials, its employees, agents consultants, legal counsel, and volunteers from any and all claims including bodily injury or property damage, liabilities, losses, damages, fines, costs, fees, and expenses including attorney's fees and costs (at both the trial and appellate levels) arising out of or in any way relating to the Indemnitor's activities upon the Property, including, without limitation claims of third parties for property damage or for bodily injuries and any and all expenses or obligations including reasonable attorneys' fees and costs.
- Insurance** The Indemnitor hereby represents to the City that it has obtained the required insurance naming the City as an additional insured for the minimum coverage amounts specified by the City Manager and has provided the City with a Certificate of Insurance. The Indemnitor further represents that the Insurance Certificates delivered to the City are in full force and effect and shall not be cancelled prior to the event.
- Clean-up** The Indemnitor shall be responsible for maintenance of the Property during the event period. The Indemnitor shall remove all trash and debris accumulated during the event period from the Property and shall return the Property to the Contractor in the same condition as received. If the Property is not returned in the same condition, Indemnitor agrees to pay actual costs of clean up.
- Personal Property** All personal property placed at the Property by the Indemnitor shall be at the risk of the Indemnitor and the City shall not be liable for any loss or damage to the Indemnitor's personal property located thereon for any reason whatsoever. The Indemnitor agrees and understands that the City does not and shall not carry liability, theft or fire insurance on said property to cover the Indemnitor's interest therein.
- Survival of Terms** The hold harmless and indemnifications provided in this Agreement shall survive termination of the event.
- Release** The Indemnitor shall additionally hold harmless and release the City Manager or his designee from any claims for damages, including but not limited to economic consequential or other monetary damages suffered by the Indemnitor, in the event that the City Manager or his designee revokes the Permit or otherwise stops the event due to the Indemnitor's violations of any conditions of the Permit, applicable laws or City regulations.
- Successors or Assigns.** This Agreement shall be binding on the Indemnitor's successors, assigns or heirs and run in favor of City's successors and assigns.

IN WITNESS WHEREOF, Indemnitor has executed this Agreement.

INDEMNITOR:

Donald Pickett 10/22/19
 Signature Date
Donald Pickett
 Print Name

 Signature Date

 Print Name

NOTARY STATE OF Georgia
 COUNTY OF Forsyth
 Before me, this 23 day of Oct, 2019, Donald Pickett personally appeared
 Who executed this foregoing instrument, and acknowledged before me that the same was executed for the purposes therein expresses.
 Personally Known or Produced ID: 0522
Susan D Soinski
 Signature of Notary Public - State of GA 054
 My Commission Expires: 8/11/2020

9805 Overseas Highway, Marathon, FL 33050
Phone (305) 743-6598 | park@ci.marathon.fl.us | www.ci.marathon.fl.us



CITY OF
MARATHON, FLORIDA

9805 Overseas Highway, Marathon, FL 33050
Phone (305) 743-0033 Fax (305) 743-3667 www.ci.marathon.fl.us

Special Event Permit Application

(During off hours, a \$50.00 refundable key deposit is required)

Public Assemblies are regulated by Section 10.5 of the City Code. A Public Assembly is defined as an outdoor gathering in temporary structures, by individuals of the general public, with or without admission fees, when anticipated daily attendance is expected to exceed 250 people per day, and which occurs on more than one day per calendar month.

Application shall be submitted not less than nine (9) days prior to the commencement date of the event.

APPLICANT: Names and addresses of all corporations, associations or individuals who will be promoting, holding or operating said event/exhibition. Attach additional sheet if necessary.

List local and permanent address of individual and/or corporation and list principal officers

Event Name and Organization: St. Columba Episcopal Church/The Florida Keys Celtic Festival

Address: 451 W. 52nd St. Marathon, FL 33050

Phone: 305-743-6412 Alt Phone: 201-966-6257

Event Contact Person: Cathy Walters

Address: 451 W. 52nd St. Marathon, FL 33050

Phone: 305-743-6412 Alt Phone: 201-966-6257

Name and Title: The Reverend Debra Maconaughey

Address: _____

Phone: _____ Alt Phone: _____

Type of Event

- Music
- Parade
- Art Show
- TV Commercial
- Movie/Filming
- Athletic
- Other (specify): _____

Extraordinary Uses:

- Animals
- Firearms
- Explosives/Fireworks
- Road Closure
- Cooking
- Tent/Temp Structure
- Aircraft
- Other (specify): _____

LOCATION: (Exact location where event will be held)

Street Name: Marathon Community P From: January 11, 2020 To: January 12, 2020
Or

Location Address: 200 36th St. Marathon, FL 33050
If the location(s) utilize private property, proof of ownership permission to utilize the property must be submitted.

Does this event utilize any school zones/property? No Yes (If yes, please list location(s))

Use of School Zones during posted times is not permitted.

Street Closure Required
Times: _____ Location From: _____ To: _____

Staging Area required. Location: _____

All street closures shall comply with MUTCD standards.

Parking Requirements (specify proposed locations):

DATE AND TIMES: (List all dates and periods of time on each date that event will be held)

January 9 10:00 am - 3:00 pm Set up and marking the field
January 10 9:00 am - 5:00 pm Set up Vendor set up
January 11 9:00 am - 8:00 pm Festival

Alt/Rain Date: no rain date

SIZE: (Estimated number of performers/participants and spectators)

Participants: 200 Spectators (per day): 3000

FACILITIES: Are adequate facilities available for participants and spectators on premises for:

A. Sanitary? Describe facilities existing restrooms and 6 portalets

B. Garbage Waste? Describe facilities Marathon Garbage Service & Trustees

Food will be served or available for purchase Yes No

Type of cooking facilities to be used: Food Vendors

INSURANCE:
 Prior to the event, a Certificate of Liability Insurance must be filed with the Office of the City Clerk. The City shall be named as Certificate Holder and the minimum coverage limits shall be:

| General Liability | | Automobile Liability | Excess Liability | |
|-------------------|-------------|----------------------|------------------|-------------|
| Gen. Aggregate | \$2,000,000 | All Autos/Combined | Umbrella Form | |
| Products | \$2,000,000 | Single limit | Each occurrence | \$1,000,000 |
| Pers/Adv Injury | \$1,000,000 | | Aggregate | \$1,000,000 |
| Each Occurrence | \$1,000,000 | | | |
| Fire damage | \$ 50,000 | | | |

Required Attachments:

1. Plan for traffic management.
2. Plan for crowd control.
3. Plan for waste disposal.
4. List of police and fire protection facilities available at or near site.
5. Certificate(s) of Insurance.
6. Hold Harmless Agreement (approved city form).

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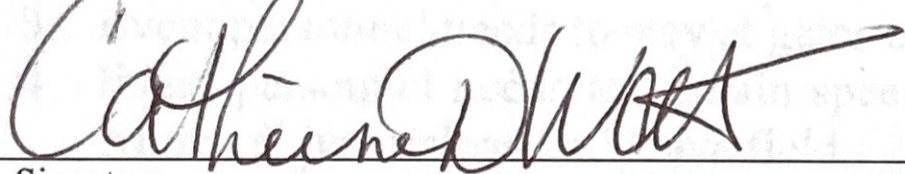
The signature below acknowledges receipt of the Policy and Procedures for events that has been attached at the end of this document.

Catherine Walters - FKCF Coordinator

8/21/2019

Name and Title

Date



Signature

Officer of Corporation with Corporate Resolution Authorizing execution and Binding Corporation

The City Manager or his designees shall have the authority to determine if police and/or fire/EMS personnel will be required to be in attendance during this event. In such instance, the applicant will be solely responsible for the hiring of off-duty Monroe Sheriff office personnel and/or The City of Marathon Fire Department personnel only. Waste (garbage) receptacle collection shall be provided.

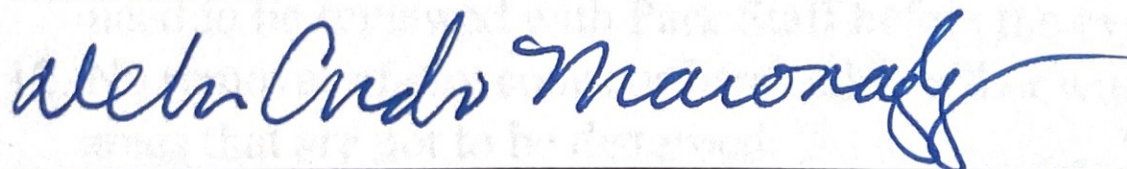
Applicant covenants and agrees that it will indemnify and hold harmless the City and all of the City's officer's, agents, and employees from claim, loss, damage, costs, charge or expense arising out of any act, action, neglect or omission by applicant during the performance of the event, whether direct, or indirect, and whether to any person or property to which the City of said parties may be subject.

Reverend Debra Maconaughey, *Rector*

8/21/2019

Name and Title

Date



Signature

Officer of Corporation with Corporate Resolution Authorizing execution and Binding Corporation

CITY OF MARATHON

9805 Overseas Hwy Marathon, FL 33050

Phone (305) 743-0033 | Fax (305) 743-3667 | www.ci.marathon.fl.us

| <u>SUBJECT:</u> | <u>DATE:</u> | <u>TIME:</u> | <u>LOCATION</u> |
|--|---------------------|---------------------|---|
| 19 th Annual (not-so) Annual Spelling Bee to Benefit Habitat for Humanity | 11/15 | 7:00pm | Key Colony Beach City Hall |
| Planning Commission Meeting | 11/18 | 5:30pm | Council Chambers, 9805 Overseas Hwy. |
| Code Compliance Meeting | 11/20 | 2:00pm | Council Chambers, 9805 Overseas Hwy. |
| Schools closed for Thanksgiving Break | 11/25-11/29 | | |
| City Hall Closed *Thanksgiving Holiday* | 11/28 & 11/29 | | |
| Marathon Garden Club Holiday Bazaar | 11/30 | 9am-3pm | MM 50 Bayside across from |
| Zonta Festival of Trees | 12/4-12/7 | | |
| Marathon Lighted Bike Ride | 12/6 | 7pm | Begins at the Frontage Road at Marathon Airport |
| City Council Meeting | 12/10 | 5:30pm | Council Chambers, 9805 Overseas Hwy. |



CITY OF MARATHON PUBLIC WORKS

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

MEMORANDUM

DATE: November 12, 2019
TO: Honorable Mayor and City Councilmembers
FROM: Carlos A. Solis, P.E. Director of Public Works & Engineering
THROUGH: Chuck Lindsey, City Manager
SUBJECT: Public Works Update

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

Capital Infrastructure Projects

- **Community Park Office Renovation:** We has a local consultant re-design the foundation resulting in \$20K to \$30K savings. The project is ready for bid and will likely bring to council for award of the project in January
- **Aviation Blvd. Bike Trail:** The project is proceeding and on schedule. All demolition is complete and the conduit for the future decorative lighting installed. The contractor is beginning the base work for the new path.
- **Sombrero Beach:** Construction is near complete, and we expect to be complete with the improvements by the third week of November, except for the beach re-nourishment, and plan for a ribbon cutting ceremony by the end of the month.
- **Quay Boat Ramp and Property:** Plans for the repaving of the boat ramp and Quay property are complete. We will use a piggy back contract from the Aviation project to perform the similar type work in the boat ramp. The project will also include the addition of stormwater water quality improvements for the entire parking area. We will be presenting information for a parking meter system at the December meeting to meter the boat trailer parking at this location and the 33rd St boat ramp.
- **Community Park Baseball Fields:** Irrigation upgrades are complete and the contractor has mobilized for the re-sodding of the baseball fields. The project is slated to be complete by the beginning of December in anticipation of an upcoming softball tournament in January.

- **Marina Dingy Dock Project:** We have completed the dingy dock re-construction at the Marina, and is now open for the use of the marina patrons. The second marina project to re-construct portions of the other service dock and gangway is out to bid and we expect that project to be complete by April.
- **Canal 257 Restoration:** Plans are complete and the project was let to bid. A recommendation for award is being presented at this meeting. The project consist of replacing an old metal culvert with a concrete box culvert, removal of siltation, and opening up a berm at the end of the canal to allow flow for enhanced water quality.
- **Grassy Key Kayak Docks:** Plans and permitting are complete for the proposed kayak docks at Sunset Park in Grassy Key. The project will soon be put out to bid, and the project is expected to begin mid to late February, and take approximately two month to complete.
- **Oceanfront Park Dog Park:** The installation of the irrigation system has begun in the enclosed dog run, and the area will be re-sodded by the contractor installing the sod at the baseball fields, using the same type of celebration grass. The turf is a hardy grass and should hold up to the traffic, and irrigation system will maintain the grass healthy. The project is funded 100% by TDC funds. Restoration of the exercise station will be complete by years end, also funded by the TDC.

Hurricane Irma Assessment:

- **Street Signs:** We have ordered the first round of aluminum post to replace the older u-channel post providing a hardened sign assembly to better withstand future storms. FEMA approved the mitigation funding for the new post, however as with most FEMA funding, the City will bear the cost until the reimbursement is proved. New and missing signs will be installed once the new post are up. The installation will take several weeks as our public works staff will perform this work along with the normal other maintenance activities performed.
- **Sombrero Beach Road Lights:** After several trial and error in an effort to prove an alternative to the standard underground connection typically installed for street lights, we have come up with a plan and method to protect the underground connection from future corrosion due to saltwater. The project is out to bid, and will be brought to council to replace all underground connection, and replace the LED drivers in most of the light fixtures.

Misc:

- **Marathon High School Crossing Beacon:** Public Works crews replaced the high school crossing lights at a new locations. The controller for the old lights was unresponsive when the new school year started, and the new location reflects the recently completed improvements to the school access. The new lights are solar powered, and the entire assembly can be removed and stored if a major storm threatens the area.

- **ADA Accessibility:** Public Work staff has recently completed the construction of ADA accessible sidewalk at Jessie Hobbs Park and Rotary Park. The Jessie Hobbs sidewalk provides ADA access to the bleachers and basketball courts, and the Rotary Park sidewalk provides ADA access from the parking area to the dog park.
- **Marina Parking Area:** Public Works staff completed the restoration of the gravel parking lot at the marina. Prior to the spreading of gravel, all depression and pot holes were repaired.
- **FKAA Sombrero Beach Road/Blvd. Project:** Beginning in February, the FKAA will begin a project to replace the 12” water main on Sombrero Beach Road up to the high school, and the 8” water main on Sombrero Blvd. The water main is being installed in the lane of SBR, and there will be lane closures during the project. Upon completion, per our request, the entire southbound travel lane will be re-paved so as not to have a trench line in the road and leave a smooth surface for the entire lane. There will be no lane closures during the morning and afternoon school drop off and pick-up hours.



Memorandum

To: Honorable Mayor and City Council Members

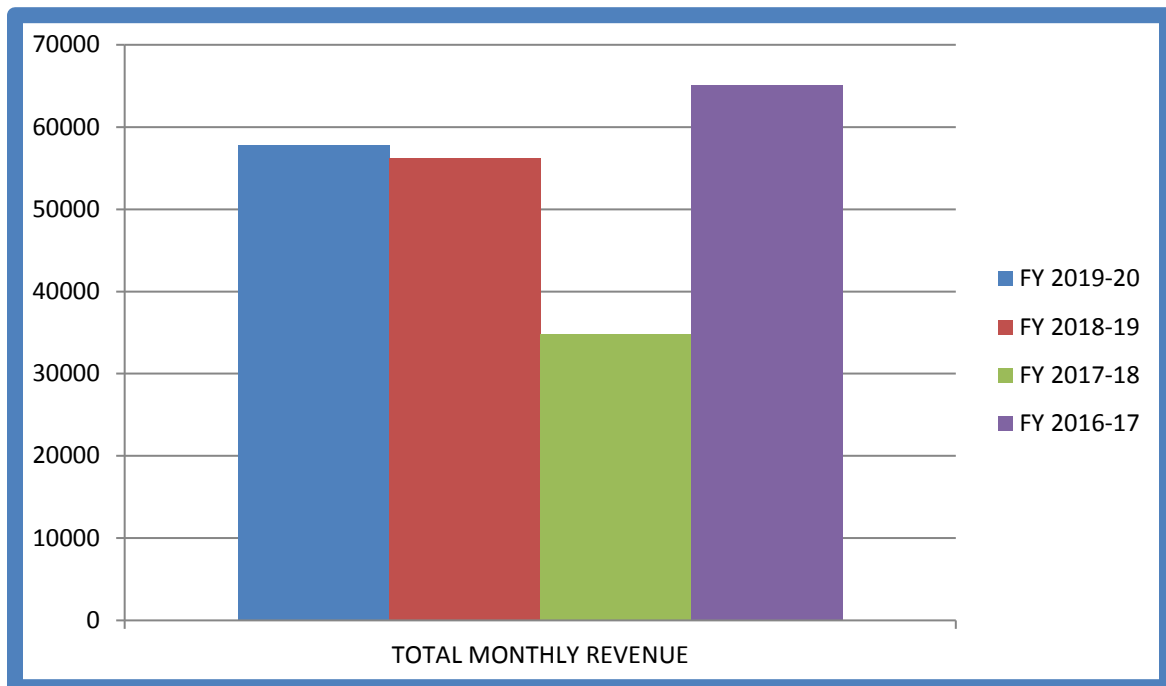
Through: Chuck Lindsey, City Manager

From: Sean Cannon, Ports Director

Date: November 12, 2019

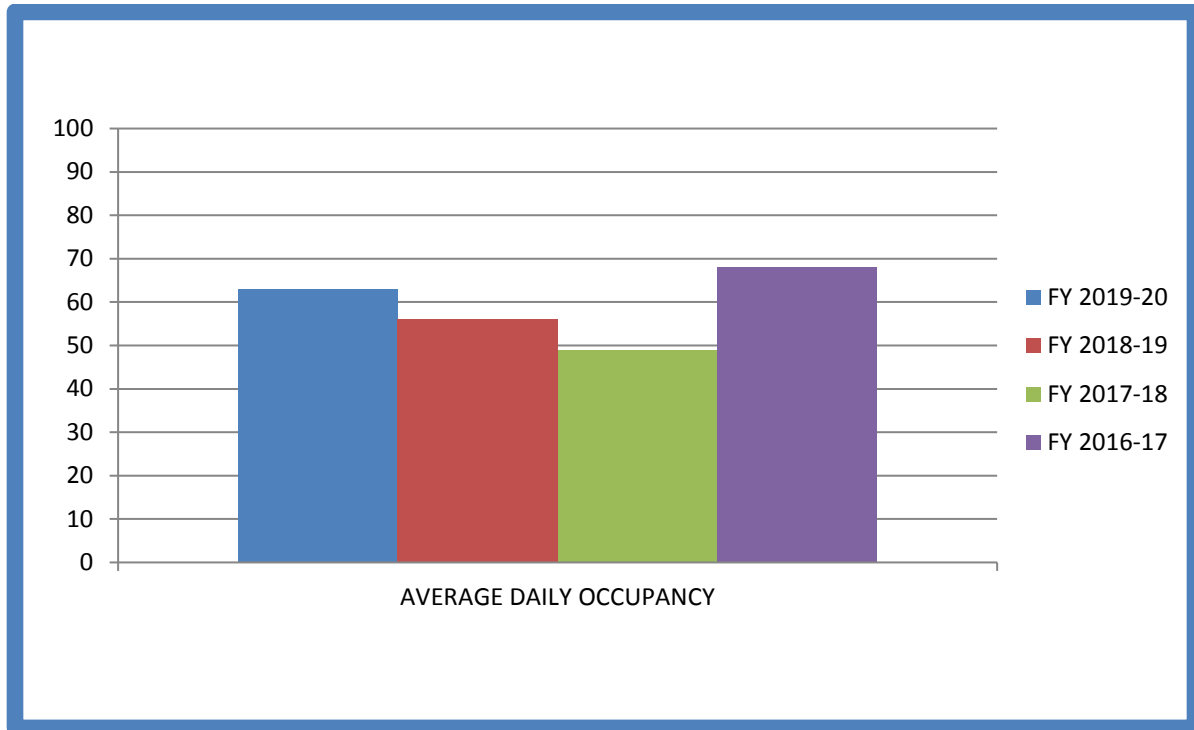
Re: October Monthly Report

Revenue: City Marina saw \$57,793 in total revenue during the month of October.





Occupancy: October's average daily occupancy was 63%.



TOTAL TRANSIENT ARRIVALS

***IN-STATE VESSELS: 21**

***OUT-OF-STATE VESSELS: 6**

***FOREIGN VESSELS: 2**

***TOTAL VESSELS: 29**



News: The outer dinghy docks were completed and opened on Customer Appreciation Day, October 5th, for all customers to use. The marina hosted several events last month including Customer Appreciation Day, Blowhard Regatta, the Kids' Pumpkin Carving, and for the very first time, the Marina staff participated in the City's Employee Costume Contest (pictures of events below). All the events were successful and enjoyed by all. A seasonal front desk clerk has been hired for the winter months.

Projects: Thanks to Public Works, the gravel parking lot was graded and had new crushed limestone added to the lot. The marina is researching and developing better floats for the mooring field to avoid barnacle growth.

New Outer Dinghy Docks





Customer Appreciation Day



Blowhard Regatta





Pumpkin Carving





Gravel Parking Lot



Halloween Employee Costume Contest





CITY OF MARATHON FIRE RESCUE

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

Memorandum

Date: November 12, 2019
To: Honorable Mayor and City Councilmembers
From: John A. Johnson, Fire Chief
Through: Chuck Lindsey, City Manager
Subject: September and October Month End Reports

ALARM RESPONSES

| | September | October |
|--------------------------------|-----------|---------|
| Fire Incidents | 3 | 2 |
| Hazardous Condition | 3 | 2 |
| Public Service | 10 | 13 |
| False Alarm Fire | 10 | 8 |
| Good Intent Call | 15 | 8 |
| EMS | 69 | 106 |
| Inter-facility Transfers | 42 | 49 |
| Total for Month: | 152 | 188 |
| Total Calls for Calendar 2019: | 1,853 | 2,041 |

FIRE PREVENTION

| | September | October |
|----------------------------------|-----------|---------|
| Fire Inspections | 10 | 13 |
| Fire Safety Plan Review | 5 | 4 |
| Vacation Rental Inspections | 59 | 111 |
| Occupational License Inspections | 4 | 1 |
| Annual Life Safety Inspections | 6 | 22 |
| Event Inspections | 0 | 1 |
| Annual State Inspections | 2 | 0 |
| DHR Follow-Up Inspections | 0 | 3 |

VACATION RENTALS

| | September | October |
|-----------------------------------|-------------|-------------|
| New VR Applications Processed | 12 | 27 |
| Renewal VR Applications Processed | 18 | 43 |
| Total Applications Processed | 30 | 70 |
| Vacation Rental Inspections | 59 | 111 |
| Application Fees Collected | \$23,752.94 | \$69,153.75 |
| Agent Fees Collected | \$1,500.00 | \$9,516.13 |
| Total VR Fees Collected | \$25,252.94 | \$69,153.75 |
| New Agents Trained | 3 | 4 |

OPERATIONS:

- **Training:**
 - **Fire Officer Training:** All Fire Officers continue daily Incident Management continuing education.
 - **EMS Training:** All Firefighters continue daily BLS and ALS continuing education. New protocol training continues.
 - **Fire Training:** All firefighters continue to conduct daily shift drills.
 - **ARFF:** Personnel conducted unit inventory and operation.
 - **Tactical Medic Program:** the department continues to support MCSO in the swat medic program.
 - **Combined Training:** Target Solution software for all shifts, a total of 568 Courses were taken which totaled 305.49 hours of training.
 - **Instructors on Staff:** We have a total of five fire instructors with live fire certifications and seven EMS instructors

BENEVOLENT FIREFIGHTER SERVICES

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

INFORMATION –

The Marathon High School / School Board a 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. It has been received by the school and department with great enthusiasm. When the students graduate they will come away from this program with a national certification in Emergency Medical Response and Florida certification as a Firefighter 1.

The department is going through the process of hiring 3 new firefighters to serve the City. The process consists of a physical ability exam, practical exam both fire and ems, and a swimming test. We hope to provide the citizens with the highest level of service possible.

PUBLIC OUTREACH IN SEPTEMBER:

Benevolent Meeting
Leadership Monroe County
FFPB Meeting
Monroe County Emergency Management Meeting at Station 14
Keys Health Coalition Board Meeting at Station 14

ACTIVITIES ATTENDED IN SEPTEMBER:

Key Colony Beach Commission Meetings – 2
Marathon High School Football Game
Keels & Wheels at Faro Blanco
COPCN Hearing in Key West

PUBLIC OUTREACH IN OCTOBER:

Benevolent Meeting
Switlik Kindergarten Station Visit
MCSO IAFK (Individual First Aid Kit Training)
Monroe County Long-Term Recovery Group
Leadership Monroe County
Station Tour for Marathon Playgroup
American Cancer Society Making Strides Walk

ACTIVITIES ATTENDED IN OCTOBER:

Key Colony Beach Commission Meetings – 2
MHS Homecoming Parade
MHS Football Game
MHS JV Football Game
Visit to Stanley Switlik for Fire Prevention Month – 2
Home Depot Fire Safety Day
Crew visit to Grace Jones

CITY COUNCIL AGENDA STATEMENT



Meeting Date: November 12, 2019
To: Honorable Mayor and City Councilmembers
From: George Garrett, Planning Director
Through: Chuck Lindsey, City Manager

Agenda Item: **Resolution 2019-109, Public Right-Of-Way Abandonment**, Request To The City Council Of The City Of Marathon By Jack Carlson To Abandon The Public Right Of Way Located At 11491 1st Avenue Ocean, Known As Smokes Court Aka 1st Avenue Ocean, Described As Being Adjacent To And Between Lots 161-162 And Lot 3, Little Venice Number 2 Subdivision, Key Vaca, Having Real Estate Numbers 00346890-000000 & 00345350-000000. Nearest Mile Marker 53.

Recommendation:

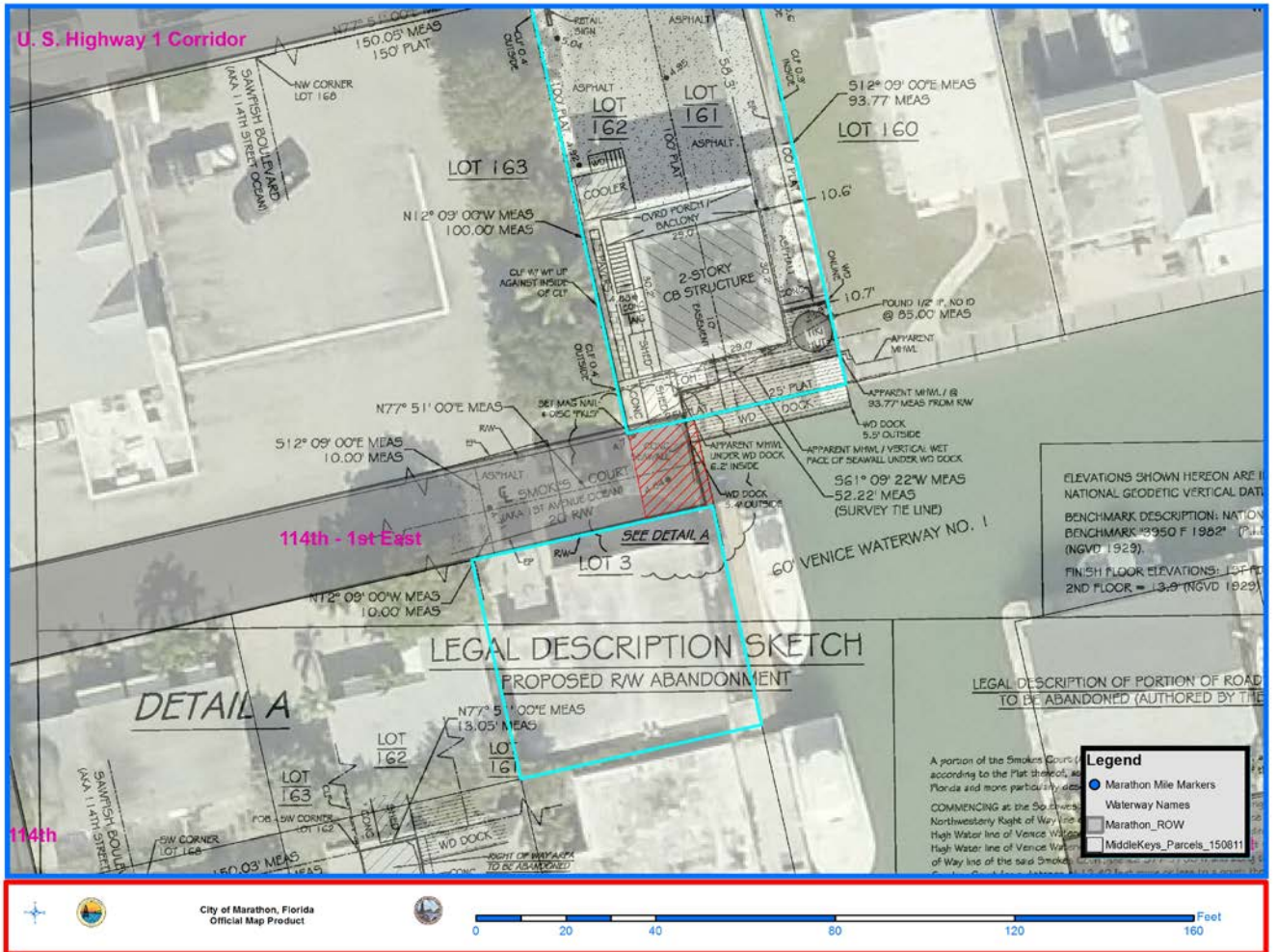
Based on review of the application, Staff is recommending **Approval** of the request to abandon a portion of City right-of-way located on Smokes Court Aka 1st Avenue Ocean. The application is consistent with state and local law, and the applicants have submitted letters of no objection from the utility 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.
2. The applicants will convey a public access easement (in a form acceptable to the City Attorney) to the City.

Applicant: Jack Carlson
Request: To abandon a portion of the right-of-way at 11491 1st Avenue Ocean.
Project Location: 11491 1st Avenue Ocean, Little Venice Number 2 Subdivision, Key Vaca.
Legal Description: Adjacent To And Between Lots 161-162 And Lot 3, Little Venice Number 2 Subdivision, Key Vaca, Having Real Estate Numbers 00346890-000000 & 00345350-000000. (See Exhibit A for entire legal description)

**Figure 1
Location Map**



Background:

This is a request presented by Jack Carlson for the abandonment of the City’s right-of-way located at 11491 1st Avenue Ocean, Described As Smokes Court aka 1st Avenue Ocean, described as being adjacent to and between lots 161-162 and lot 3, Little Venice Number 2 subdivision, Key Vaca, nearest mile marker 53, Monroe County, Florida. The applicant states they would like Council to abandon a portion of Smokes Court 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. The applicant has agreed to grant a public access easement for the abondend ROW.

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 (Ordinance 2015-08), 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.

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

Staff Assessment: Public access to water is not available for the launching of vessels. However pedestrian public access exists on site. The applicant proposes a public access easement to meet the criteria of this section in lieu of donating comparable land with access to water.

- 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 will not be hindered. The granting of the public access easement would allow pedestrians to still walk to the canal edge.

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

Staff Assessment: No impact to a public view corridor is proposed.

- 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. The applicant has indicated they agree to also provide to the City a public access easement.

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. With the above considerations and conditions the application 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 Smokes Court. 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.
2. The applicants will convey a public access easement (in a form acceptable to the City Attorney) to the City.

EXHIBIT A

MAP OF BOUNDARY SURVEY

BEARING BASE:
ALL BEARINGS ARE BASED
ON THE RECORDED PLAT BEARING OF
N77°51'00"E ALONG THE CENTERLINE
OF U.S. HIGHWAY NO. 1

ALL ANGLES DEPICTED
ARE 90 DEGREES UNLESS
OTHERWISE INDICATED

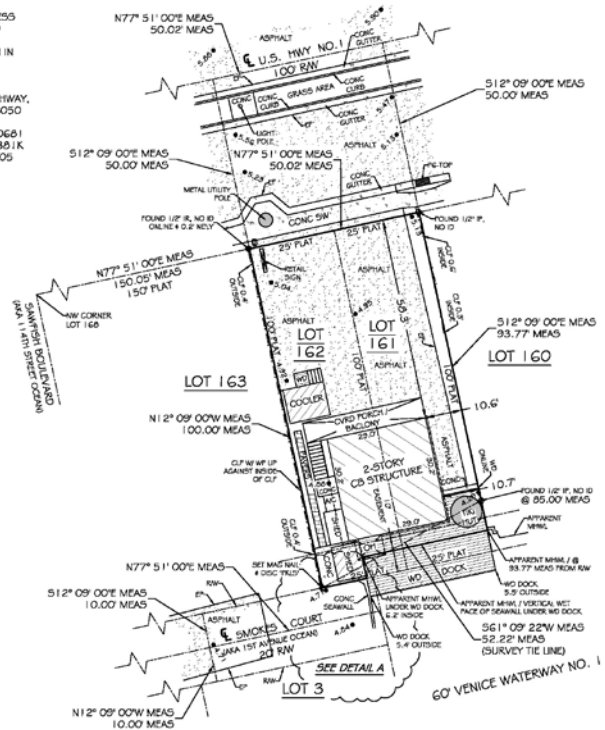
ALL UNITS ARE SHOWN IN
U.S. SURVEY FEET

ADDRESS:
1455 OVERSEAS HIGHWAY,
MARATHON KEY, FL 33050

COMMUNITY NO.: 120681
MAP NO.: 12067C-1381K
MAP DATE: 02-10-2005
FLOOD ZONE: AC
BASE ELEVATION: 7

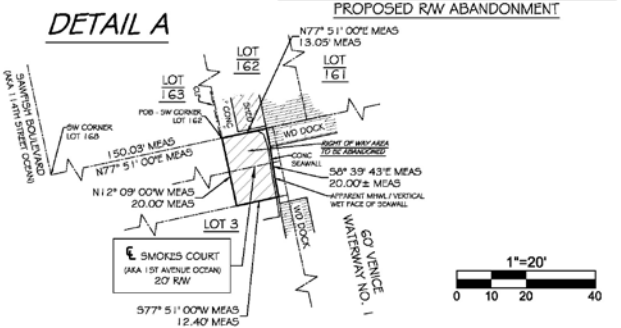


LOCATION MAP - NTS
SEC. 05-1665-R33E



ELEVATIONS SHOWN HEREON ARE IN FEET AND BASED ON THE NATIONAL GEODETIC VERTICAL DATUM OF 1929 (NGVD 1929).
BENCHMARK DESCRIPTION: NATIONAL GEODETIC SURVEY BENCHMARK '8950 F 1982' (P.I.D. A40886), ELEVATION= 5.71' (NGVD 1929).
FINISH FLOOR ELEVATIONS: 1ST FLOOR = 5.1' (NGVD 1929)
2ND FLOOR = 13.9' (NGVD 1929)

LEGAL DESCRIPTION SKETCH



LEGAL DESCRIPTION OF PORTION OF ROADWAY RIGHT OF WAY TO BE ABANDONED (AUTHORIZED BY THE UNDERSIGNED)

A portion of the Smokes Court (SEA 1st Avenue Ocean) Right of Way, adjacent to Lot 162, LITTLE VENICE #2, according to the Plat thereof, as recorded in Plat Book 3, Page 26 of the Public Records of Monroe County, Florida and more particularly described as follows:

COMMENCING at the Southwest corner of the said Lot 162 and running thence N77°51'00"E and along the Northeastly Right of Way line of the said Smokes Court for a distance of 13.05 feet more or less to the Mean High Water line of Venice Waterway No. 1; thence a Southwesterly direction, meandering along the said Mean High Water line of Venice Waterway No. 1 for a distance of 20.00 feet more or less to the Southwesterly Right of Way line of the said Smokes Court; thence S77°51'00"W and along the said Southwesterly Right of Way line of Smokes Court for a distance of 12.40 feet more or less to a point; thence N12°09'00"W for a distance of 20.00 feet back to the Point of Beginning. Said parcel CONTAINS 254.59 SQFT. +/-.

LEGAL DESCRIPTION -

Lots 161 and 162 of LITTLE VENICE #2, according to the Plat thereof, as recorded in Plat Book 3, Page 26 of the Public Records of Monroe County, Florida.

NOTE: FOUNDATIONS BENEATH THE SURFACE ARE NOT SHOWN. MEASURED DIMENSIONS EQUAL PLATTER OR DISCREPANT DIMENSIONS UNLESS NOTICED OTHERWISE.

THE FOLLOWING IS A LIST OF ABBREVIATIONS THAT MAY BE FOUND ON THIS SHEET:

| | | | |
|---------------------------|-----------------|-----------------|-----------------------|
| HW = HIGHWAY RIGHT-OF-WAY | SW = SW CORNER | NE = NE CORNER | PL = PORT OF LANTANA |
| SE = SE CORNER | WC = WATER CURB | NS = NORTH SIDE | NSW = NORTH SIDE WEST |
| CS = CONCRETE SIDEWALK | WC = WATER CURB | NS = NORTH SIDE | NSW = NORTH SIDE WEST |
| CS = CONCRETE SIDEWALK | WC = WATER CURB | NS = NORTH SIDE | NSW = NORTH SIDE WEST |
| CS = CONCRETE SIDEWALK | WC = WATER CURB | NS = NORTH SIDE | NSW = NORTH SIDE WEST |

- LEGEND**
- - WATER METER
 - - SANITARY SEWER CLEAN OUT
 - - MAILBOX
 - - WOOD POWER POLE
 - - CONCRETE POWER POLE
 - - GUY WIRE
 - - DIRT BASE
 - - SPOT GRADE ELEVATION (TYPICAL)

CERTIFIED TO -

Jack Carlson

NOTE: LEGAL DESCRIPTIONS HAVE BEEN FURNISHED BY THE CLIENT OR PROPER REPRESENTATIVE. PUBLIC RECORDS HAVE NOT BEEN REEXAMINED BY THE SURVEYOR TO DETERMINE THE ACCURACY OF THESE DESCRIPTIONS. FOR FURTHER INFORMATION, PLEASE REFER TO THE ORIGINAL PLAT THEREOF. ADDITIONAL COPIES OF THIS PLAT MAY BE OBTAINED BY OTHER THAN THE DRAWING PARTY BY REQUESTING WITHOUT CHARGE OF THE DRAWING PARTY. THE SURVEYOR'S OFFICE RECOMMENDS THE SURVEYOR'S OPINION OF THE DEEDS. THE MEAN HIGH WATER LINE WAS NOT DETERMINED FOR THIS SURVEY. IF ANY INSTRUMENTS ARE ON FILE IN THE PUBLIC RECORDS, THEY ARE SHOWN FOR REFERENCE ONLY.

SCALE: 1"=20'

FIELD WORK: 11/03/2017

INSTRUMENT: 1322 (12017)

SHEET: 1 OF 1

DRAWN BY: MTD

CHECKED BY: EAU

DATE: 17-366

FLORIDA KEYS LAND SURVEYING

19560 OVERSEAS HIGHWAY
SUCCASUNN KEY, FL 33042
PHONE: (305) 394-3690
EMAIL: FLS@aol.com

NOT VALID WITHOUT THE SIGNATURE AND THE SEALED SEAL OF A FLORIDA SURVEYOR AND MAPPER.

BIG A. BAAS, FLS 76788, PROFESSIONAL SURVEYOR AND MAPPER, 02/17/2017

TOTAL UPLAND AREA = 4,771.57 SQFT ±

REVISION (1) - REVISED TO ADD AUTHORIZED LEGAL DESCRIPTION OF PROPOSED RW ABANDONMENT AREA

REVISION (2) - REVISED TO REMOVE TUDY CARLSON FROM CERTIFICATIONS

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-109**

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 JACK CARLSON TO ABANDON THE PUBLIC RIGHT OF WAY LOCATED AT 11491 1ST AVENUE OCEAN, KNOWN AS SMOKES COURT AKA 1ST AVENUE OCEAN, DESCRIBED AS BEING ADJACENT TO AND BETWEEN LOTS 161-162 AND LOT 3, LITTLE VENICE NUMBER 2 SUBDIVISION, KEY VACA, HAVING REAL ESTATE NUMBERS 00346890-000000 & 00345350-000000. NEAREST MILE MARKER 53; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, there presently exists a certain public right-of-way within the City of Marathon, Florida, Located At 11491 1st Avenue Ocean, Described As Smokes Court aka 1st Avenue Ocean, described as being adjacent to and between lots 161-162 and lot 3, Little Venice Number 2 subdivision, Key Vaca, nearest mile marker 53, Monroe County, Florida and as particularly described in the attached survey (Exhibit “A”); and

WHEREAS, Jack Carlson 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 November 12, 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 possible through this Right-Of-Way and therefore there an access agreement must be recorded to ensure 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 Smokes Court Right-of Way described in Exhibit "B."
- (2) The Applicant will convey a public access easement to Smokes Court Right-of Way described in Exhibit "C."
- (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 sixty (60) 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 12TH DAY OF NOVEMBER, 2019.

THE CITY OF MARATHON, FLORIDA

Mayor Steven Cook

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

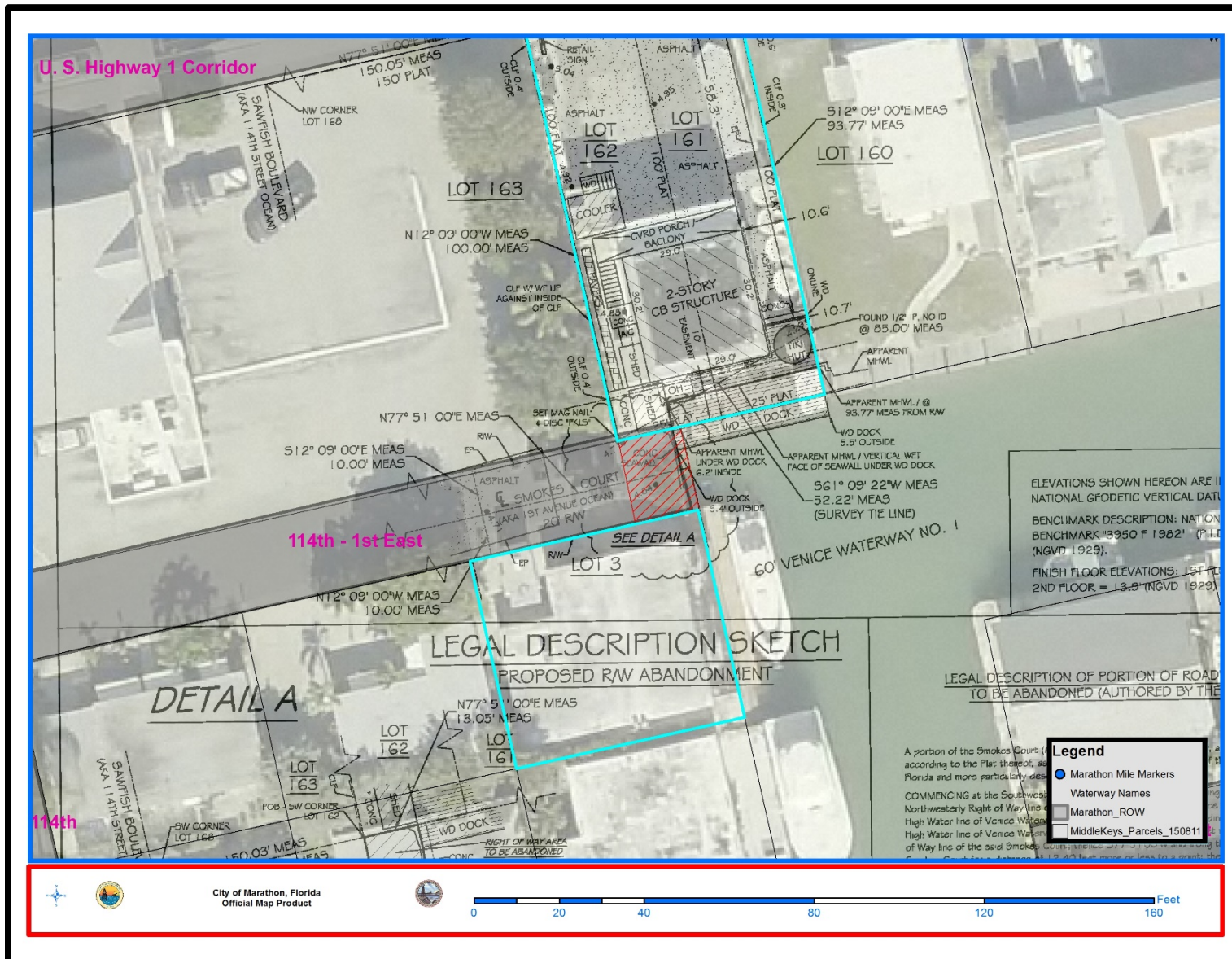


Exhibit B
Copy – Original to be Provided by Applicant to
Clerk of Court for Recordation

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

COUNCIL AGENDA STATEMENT



Meeting Date: November 12, 2019
To: Honorable Mayor and Council Members
From: George Garrett, Planning Director
Through: Chuck Lindsey, City Manager

Agenda Item: **Ordinance 2019-11**, Amending The City Of Marathon, Florida's Comprehensive Plan, Modifying Chapter one, "Future Land Use," Table 1-1, "Future Land Use Densities and Intensities," To Allow Transient Rights That Hold No Monetary Value To Be Allowed In An RV Park That Also Allows Permanent Code Compliant Residences; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date.

RECOMMENDATION:

The City of Marathon Planning Department staff recommend approval WITH SUGGESTED REVISIONS of this proposed amendment to the City of Marathon Comprehensive Plan. In review, at a properly noticed public hearing, the City of Marathon Planning Commission approved adoption of the staff's recommendation with Planning Commission modifications, moving the Ordinance forward to the City Council for potential adoption. The Planning Commission vote was unanimous (4/0 with one absence).

APPLICANT: Trailer Ranch By The Sea / Bob Young, Association President

REQUEST: Amend City of Marathon Comprehensive Plan by amending Chapter One, "Future Land Use," Table 1-1, "Future Land Use Densities and Intensities," allowing RVs to utilize Permanent RV Sites, with Conditions.

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 proposed Comprehensive Plan Amendment is intended to allow fully operable RVs to utilize properties or RV/Mobile Home Park spaces that were previously occupied by “Permanent RVs” as identified elsewhere in the Comprehensive Plan, Policy 1-3.2.8. Permanent RVs are identified as “Market Rate” building rights which are retained on site as “Market Rate” units if rebuilt and transfer as a Transferable Building Rights (TBRs) as Affordable Building Rights. The intent of the proposed amendment is to allow Permanent RVs (as structures) to be demolished and to allow RVs, under RV regulations, to occupy the site. If a Permanent RV property or site is ever re-built, the reconstructed units would be required to meet the Florida Building Code and would be designated as a Market Rate residential unit. While being used as an RV site, the Site would NOT be assumed to have a Transient Residential Unit (TRU) development right and COULD NOT be transferred to another site as a TRU.

City Planning staff believes that the proposed Amendment to the Comprehensive Plan generally “hits the mark” and can be supported by the City and can meet the Goals, Objectives, and Policies of the Comprehensive Plan and the regulations for the Land Development Regulations (LDRs). The proposed amendment does need some “word smithing” in order to have staff support. Those considerations are provided below in the analysis section.

ANALYSIS

Natural Resources

No Significant Impact would result from the proposed change.

Historical and Cultural Resources

No Significant Impact would result from the proposed change.

Infrastructure

No Significant Impact would result from the proposed change.

Wastewater infrastructure

No Significant Impact would result from the proposed change.

Stormwater infrastructure

No Significant Impact would result from the proposed change.

Potable Water

No Significant Impact would result from the proposed change.

Solid Waste

No Significant Impact would result from the proposed change.

Transportation

No Significant Impact would result from the proposed change.

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

No Significant Impact would result from the proposed change.

Hurricane Evacuation

No Significant Impact would result from the proposed change. All Early Evacuation units (tenants) 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 at 24 hours before the impacts of Tropical Storm Force Winds in the Keys.

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

No Significant Impact would result from the proposed change.

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;

There may be no absolute need for this amendment, but Permanent RVs are recognized as affordable housing within the City of Marathon (See quoted sections of the Comprehensive Plan referenced below). Many of these units are nearly or entirely paid for and are generally not insurable. Many of the owners of these units are seasonal residents living on fixed incomes. Others are renters, equally living on limited incomes. Thus, the suggested amendment does continue the existing Permanent RV properties and sites as affordable.

The important thing to note in the proposed amendment and the revisions suggested by staff, though operable Road Ready RVs would be allowed to occupy Permanent RV sites, the property or site itself would only retain its Market Rate residential units status for the sake of a “Determination of Building Rights” and could not be transferred as a Transient Residential Unit.

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

Permanent RVs are recognized in the City’s Comprehensive Plan and LDRs. They are allowed to continue under our Ordinances. Equally, operable Road Ready RVs are allowed in the Residential High Future Land Use category. Thus, the proposed amendment is simply “marrying” the two concepts while insuring that a Permanent RV property or site Development Right shall not transfer to another property as a Transient Residential Unit.

With modifications to the proposed Ordinance noted immediately below, the Ordinance meets the Goals, Objectives and Policies of the City of Marathon Comprehensive Plan (see **Bold Type underlined** below). A number sequential Objectives and Policies are reproduced in order to allow a full review of the importance of Permanent RVs to the City’s Comprehensive Plan. Most notably, Permanent RVs may be maintained with the ultimate goal that they be replaced with Florida Building Code compliant residential structures. This Ordinance provides an interim or even long term alternative for the elimination of these Permanent RV residents.

Citations from the City of Marathon Comprehensive Plan

Objective 1-3.2 Regulate Density and Intensity

The City shall direct and regulate density and intensity to maintain the character of the community, protect the natural resources and provide for the compatible distribution of land uses. §163.3177(6)(a)3, 4 and 9. F.S.

Policy 1-3.2.8 Permanent RVs

Permanent RVs are recreational vehicles that, as of the effective date of the Plan, meet all of the following criteria:

- a. have been tied down or otherwise affixed to the property on which they are located, and
- b. have permanent attachments such as carports, porches, screened rooms, or similar improvements, and
- c. are continuously occupied for more than six months and are being used as a permanent dwelling unit,
- d. are no longer capable of traveling on the public roadways of the state, and
- e. no new additions shall be added to a permanent RV.

At such time as the City establishes a Transfer of Building Rights (TBR) process, the building right for a permanent RV may be transferred to an approved site by the owner of the property on which the TBR is located and the TBR shall be considered and deed restricted as an affordable dwelling unit.

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

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

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

Note:

1. See Objective 1-3.9 and subsequent policies.
2. The allocated and maximum net densities for submerged lands shall be 0.
3. For properties consisting of hammocks or disturbed wetlands within the Mixed Use Commercial future land use categories, the floor area ratio shall be 0.10 and the maximum net residential density shall be 0.
4. Open space shall be increased based upon the requirement for a habitat evaluation and shall conform to Table 4-1 of the Coastal and Conservation Element.
5. The FAR in Mixed Use developments may be increased to .75 if mitigated by the development of affordable/workforce housing is provided.
6. Residential Densities found in this Table are subject to the provisions of Policy 1-3.5.16
7. **This Footnote applies ONLY to properties and/or developed RV or Mobile Home sites which have been or would be recognized as having a Permanent RV structure, as defined in Policy 1-3.2.8, which are located in the Residential High Land Use Category. Operable Road Ready RVs may be placed on the site of a Permanent RV once the Permanent RV structure is demolished and ONLY if it is determined that the property or site has retained its Transferable Building Right and the Right hasn't been previously transferred to another location within the City. Otherwise, said Permanent RV properties or sites will retain their Market Residential Building Right or allocation. Said Market Rate Building Rights may be retained on-site as Market Rate residential units with the redevelopment of a Florida Building Code compliant residential structure. If the Development Right is transferred, it shall only be transferred as an Affordable Building Right. Though an operable Road Ready RV may utilize Permanent RV properties or sites, it shall not be assumed that the site has a Transient Residential Unit which can be transferred as such.**

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

Objective 1-3.3 Encourage Redevelopment

The City shall evaluate potential redevelopment areas and prepare redevelopment plans or Land Development Regulations for areas determined to be in need of redevelopment. §163.3177(6)(a)3, 4 and 9 and §163.330 F.S.

Policy 1-3.3.1 General Redevelopment Criteria

The City shall investigate commonly used planning strategies and identify available funding sources to address the revitalization of areas in need of redevelopment. The City shall strive to utilize the most appropriate and creative mechanisms available to address such issues. Additionally, the City shall analyze existing development patterns, property values, structural conditions, renter/owner ratios, commercial vacancy rates, and other indicators of economic vitality and physical living conditions as part of the preparation of redevelopment plans or Land Development Regulations. Such redevelopment plans or Land Development Regulations shall:

- a. Prevent negative impacts on the fragile coastal ecosystem by directing development away from environmentally sensitive lands and critical habitat;
- b. Revitalize existing commercial areas;
- c. Promote safe and efficient vehicular, bicycle, and pedestrian movement;
- d. Prevent or minimize the City's cost to provide infrastructure;
- e. Mitigate incompatible commercial activity where commercial activity is adjacent to established residential neighborhoods;
- f. Enhance the unique character of the City's commercial land uses through incentives for bufferyards and landscaping; and
- g. Facilitate within the City, the creation of aesthetically pleasing commercial spaces outdoors, as places for social leisure and interaction, while limiting light industrial uses, outdoor storage and sales as a primary use of land, and outdoor retail sales as an accessory use of land; and
- h. Provide for affordable/workforce housing.

Policy 1-3.3.2 Removal of Hazard Structures

The City shall ensure that its code compliance process identifies and requires removal or rehabilitation of structures that are a hazard to the public health, safety and welfare.

Policy 1-3.3.3 Encourage Redevelopment of Aging Mobile Homes and Permanent RVs

The City shall continue to maintain Land Development Regulations that provide incentives and encourage the redevelopment of lawfully established mobile home and permanent RV parks. However, the City recognizes that existing mobile homes and permanent RVs in lawfully established mobile home and RV parks provide a critical source of affordable/workforce housing in the City. Accordingly, the redevelopment of lawfully established mobile home and RV parks shall incorporate development techniques which integrate the maintenance and promotion of affordable/workforce housing as part of the redevelopment project.

Policy 1-3.3.4 Encourage Redevelopment of Tourist/Resort/Campground Facilities

The City shall continue to maintain Land Development Regulations that provide incentives and encourage the redevelopment of existing resort and tourist facilities in the City. These Regulations shall include, but not be limited to:

- a. Mandatory hurricane evacuation.
 - i. **All operable Recreational Vehicles (RVs) shall be “Road Ready. Road Ready means that such units shall be fully licensed, shall have wheels on, be on an internal jacking system. And only be affixed to the site by quick disconnect-type utilities commonly utilized in campgrounds and trailer parks and shall not have any permanent attachments such as Florida rooms or porches.**
 - ii. **In the event of a mandatory evacuation, all RVs shall be removed from their location and evacuate as required under a Monroe County and City of Marathon emergency declaration whether or not the RV is being used as a dwelling at the time of the emergency declaration. If the RV is not removed, the owner of the property or RV/Mobile Home site will be subject to a potential fine of \$250.00 per day by the City of Marathon, from the day after the evacuation order is given through the day that RVs are allowed to return to the City.**
- b. Provision of on-site/off-site employee housing
- c. Transportation
- d. Services/Amenities
- e. Protection of habitat
- f. Establish a motel/hotel/campground equivalency ratio
- g. Ensure compliance with 2010 wastewater standards
- h. Ensure that transient units remain transient through various mechanisms such as:
 - 1. Use of Development Agreements
 - 2. Deed restrictions prohibiting the use of Homestead Exemptions;
 - 3. Provision of a lobby/front desk; or
 - 4. Limiting the tenancy of each unit.

Objective 1-3.4 Protect Established Uses, Densities, and Intensities

The City shall recognize and protect lawfully established uses, lawfully established transient, non-transient, and permanent RV residential densities and intensities within the City and shall encourage the rehabilitation and maintenance of all residential and non-residential structures within the community. §163.3177(6)(a)9. F.S.

Policy 1-3.4.1 Protect Established Residential Densities

Notwithstanding Table 1-1, herein all lawfully established transient, non-transient, or permanent RV residential dwelling units in existence in 1996 shall be entitled to a density of one dwelling unit as follows: a transient dwelling unit, such as a campground space, recreational vehicle space or a motel/hotel unit, shall only be entitled to redevelop as a transient dwelling unit and a non-transient dwelling unit or **permanent RV** shall be entitled to redevelop as a non-transient dwelling unit. If any such residential dwelling unit is a legal nonconformity as a condition of redevelopment the developer/property owner shall:

- a. bring their property into compliance with the Plan and Land Development Regulations; or
- b. if it is physically impossible to bring the site into compliance with the Plan and Land Development Regulations due to the size of the site and physical layout of the structure, the site shall be brought into compliance to the maximum extent practical but at a minimum the site shall meet a fifteen percent open space ratio, and all applicable FEMA/floodplain, wastewater, and stormwater requirements, however the size of the structure shall not be increased unless it complies with all of the provision of this Plan and the Land Development Regulations.

The reestablishment of any such transient, non-transient, or permanent RV dwelling unit shall not adversely impact the existing inventory of affordable/workforce housing in the City, by decreasing the number of affordable housing units within the City. Any new parks must comply with density standards established in Table 1-1.

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 preserve Permanent RV sites, while demolishing Permanent RV structures, until permanent Market Rate and Florida Building Code compliant structures are built on these properties or sites.

CONCLUSION:

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

RECOMMENDATION:

The City of Marathon Planning Department staff recommend approval WITH SUGGESTED REVISIONS of the proposed amendment to the City of Marathon Comprehensive Plan. In addition, the Planning Commission recommended and unanimous approved their own revisions which would extend this Ordinance to include Permanent RVs that exist within the Mixed Use Commercial Future Land Use Map category. In review, ay a properly noticed public hearing, the City of Marathon Planning Commission approved adoption of the staff's recommendation moving their language forward to the City Council for potential adoption. Their vote was unanimous (4/0 with one absence).

The Planning Staff recommended approval of the proposed amendment to the Comprehensive Plan as follows:

1. Amend Table 1-1 as follows (bold and underlined verbiage):

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

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

Note:

1. See Objective 1-3.9 and subsequent policies.
2. The allocated and maximum net densities for submerged lands shall be 0.
3. For properties consisting of hammocks or disturbed wetlands within the Mixed Use Commercial future land use categories, the floor area ratio shall be 0.10 and the maximum net residential density shall be 0.
4. Open space shall be increased based upon the requirement for a habitat evaluation and shall conform to Table 4-1 of the Coastal and Conservation Element.
5. The FAR in Mixed Use developments may be increased to .75 if mitigated by the development of affordable/workforce housing is provided.
6. Residential Densities found in this Table are subject to the provisions of Policy 1-3.5.16
7. **This Footnote applies ONLY to properties and/or developed RV or Mobile Home sites which have been or would be recognized as having a Permanent RV structure, as defined in Policy 1-3.2.8 which are located in the Residential High or Mixed Use Commercial Land Use Categories, Operable Road Ready RVs may be placed on the site of a Permanent RV once the Permanent RV structure is demolished and ONLY if it is determined that the property or site has retained its Transferable Building Right and the Right hasn't been previously transferred to another location within the City. Otherwise, said Permanent RV properties or sites will retain their Market Residential Building Right or allocation. Said Market Rate Building Rights may be retained on-site as Market Rate residential units with the redevelopment of a Florida Building Code compliant residential structure. If the Development Right is transferred, it shall only be transferred as an Affordable Building Right. Though an operable Road Ready RV may utilize Permanent RV properties or sites, it shall not be assumed that the site has a Transient Residential Unit which can be transferred as such.**

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

2. Amend Policy 1-3.3.4 as follows(bold and underlined verbiage):

Policy 1-3.3.4 Encourage Redevelopment of Tourist/Resort/Campground Facilities

The City shall continue to maintain Land Development Regulations that provide incentives and encourage the redevelopment of existing resort and tourist facilities in the City. These Regulations shall include, but not be limited to:

- a. Mandatory hurricane evacuation.
 1. **All operable Recreational Vehicles (RVs) shall be “Road Ready. Road Ready means that such units shall be fully licensed, shall have wheels on, be on an internal jacking system. And only be affixed to the site by quick disconnect-type utilities commonly utilized in campgrounds and trailer parks and shall not have any permanent attachments such as Florida rooms or porches.**
 2. **ii. In the event of a mandatory evacuation, all RVs shall be removed from their location and evacuate as required under a Monroe County and City of Marathon emergency declaration whether or not the RV is being used as a dwelling at the time of the emergency declaration. If the RV is not removed, the owner of the property or RV/Mobile Home site will be subject to a potential fine of \$250.00 per day by the City of Marathon, from the day after the evacuation order is given through the day that RVs are allowed to return to the City.**
- b. Provision of on-site/off-site employee housing
- c. Transportation
- d. Services/Amenities
- e. Protection of habitat
- f. Establish a motel/hotel/campground equivalency ratio
- g. Ensure compliance with 2010 wastewater standards
- h. Ensure that transient units remain transient through various mechanisms such as:
 1. Use of Development Agreements
 2. Deed restrictions prohibiting the use of Homestead Exemptions;
 3. Provision of a lobby/front desk; or
 4. Limiting the tenancy of each unit.

Sponsored By: Lindsey
Planning Commission Public Hearing Date: October 21, 2019
City Council Public Hearing Date: November 12, 2019
tbd
Enactment Date: tbd

**CITY OF MARATHON, FLORIDA
ORDINANCE 2019-11**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING THE CITY’S COMPREHENSIVE PLAN; MODIFYING CHAPTER ONE, “FUTURE LAND USE,” TABLE 1-1, “FUTURE LAND USE DENSITIES AND INTENSITIES,” TO ALLOW TRANSIENT RIGHTS THAT HOLD NO MONETARY VALUE TO BE ALLOWED IN AN RV PARK THAT ALSO ALLOWS PERMANENT CODE COMPLIANT RESIDENCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE.

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, there may be no absolute need for this amendment, but Permanent RVs are recognized as affordable housing within the City of Marathon. Many of these units are nearly or entirely paid for and are generally not insurable. Many of the owners of these units are seasonal residents living on fixed incomes. Others are renters, equally, living on limited incomes. Thus, the suggested amendment does continue the existing Permanent RV properties and sites as affordable; and

WHEREAS, the important thing to note in the proposed amendment and the revisions suggested by staff and the Planning Commission, is that the location of the Permanent RV property or site would retain its Market Rate residential unit status for the sake of a “Determination of Building Rights” and Transferable Building Right could not be transferred as a Transient Residential Unit, and

WHEREAS, a number of Objectives and Policies allow a full review of the importance of Permanent RVs to the City’s Comprehensive Plan. Most notably, Permanent RVs may be maintained with the ultimate goal that they be replaced with Florida Building Code compliant residential structures. This Ordinance provides an interim or even long term alternative for the elimination of these Permanent RV residents; and

WHEREAS, the Ordinance meets the Goals, Objectives and Policies of the City of Marathon Comprehensive; 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 1, “Future Land Use Element,” Table 1-1 as follows:

| TABLE 1-1 Future Land Use Densities and Intensities* | | | | | | |
|---|--|------------|----------------------------------|--|--------------------------------------|--------------------------|
| Future Land Use Category | Permitted Residential Density (Units per acre) | | | Hotel/Motel/RV Spaces (Units per acre) | Maximum Intensity (floor area ratio) | Minimum Open Space Ratio |
| | Market Rate | Affordable | Licensed Mobile Home or RV Parks | | | |
| Airport (AD) | 0 | | 0 | N/A | 0.15 - 0.50 | 0.2 |
| Conservation (C) | 0.1- 0.25 | 0.1- 0.25 | 0 | N/A | 0.05 - 0.10 | 0.5 |
| Industrial (I) | 0 | 5-10 | 0 | N/A | 0.85 | 0.2 |
| Mixed Use Commercial (MUC) | 2 – 6 | 10 – 15 | 10-25 | 5 - 25 | 0.15 - 0.60 ⁴ | 0.2 |
| Public Uses (PU) | 0 | 15-25 | 0 | 3 – 25 | 0.15 - 0.75 | 0.2 |
| Recreation (R) | 0.25 | 0.25 | 0 | 5 – 15 | 0.15 - 0.50 | 0.2 |
| Residential High (RH) ² | 8 | 15 - 25 | 15-25 | 0 | 0 | 0.2 |
| Residential Medium (RM) | 5 | 10 | 0 | 0 | 0 | 0.2 |
| Residential Low (RL) | 0.5 | 0.5 | 0 | 0 | 0 | 0.5 |
| Note: | | | | | | |
| 1. See Objective 1-3.9 and subsequent policies. | | | | | | |

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

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

| Future Land Use Category | Permitted Residential Density (Units per acre) | Hotel/Motel/RV Spaces (Units per acre) | Maximum Intensity (floor area ratio) | Minimum Open Space Ratio |
|--|--|--|--------------------------------------|--------------------------|
| <p>2. The allocated and maximum net densities for submerged lands shall be 0.</p> <p>3. For properties consisting of hammocks or disturbed wetlands within the Mixed Use Commercial future land use categories, the floor area ratio shall be 0.10 and the maximum net residential density shall be 0.</p> <p>4. Open space shall be increased based upon the requirement for a habitat evaluation and shall conform to Table 4-1 of the Coastal and Conservation Element.</p> <p>5. The FAR in Mixed Use developments may be increased to .75 if mitigated by the development of affordable/workforce housing is provided.</p> <p>6. Residential Densities found in this Table are subject to the provisions of Policy 1-3.5.16</p> <p>7. <u>This Footnote applies ONLY to properties and/or developed RV or Mobile Home sites which have been or would be recognized as having a Permanent RV structure, as defined in Policy 1-3.2.8 which are located in the Residential High or Mixed Use Commercial Land Use Categories. Operable Road Ready RVs may be placed on the site of a Permanent RV once the Permanent RV structure is demolished and ONLY if it is determined that the property or site has retained its Transferable Building Right and the Right hasn't been previously transferred to another location within the City. Otherwise, said Permanent RV properties or sites will retain their Market Residential Building Right or allocation. Said Market Rate Building Rights may be retained on-site as Market Rate residential units with the redevelopment of a Florida Building Code compliant residential structure. If the Development Right is transferred, it shall only be transferred as an Affordable Building Right. Though an operable Road Ready RV may utilize Permanent RV properties or sites, it shall not be assumed that the site has a Transient Residential Unit which can be transferred as such.</u></p> <p>*All development and redevelopment shall comply with this Plan and the Land Development Regulations</p> | | | | |

SECTION 3. Amend the Comprehensive Plan, Chapter 1, “Future Land Use Element,” Policy 1-3.3.4, “Encourage Redevelopment of Tourist/Resort/Campground Facilities” to read as follows:

Policy 1-3.3.4 Encourage Redevelopment of Tourist/Resort/Campground Facilities

The City shall continue to maintain Land Development Regulations that provide incentives and encourage the redevelopment of existing resort and tourist facilities in the City. These Regulations shall include, but not be limited to:

- a. Mandatory hurricane evacuation.
 - 1. **All operable Recreational Vehicles (RVs) shall be “Road Ready. Road Ready means that such units shall be fully licensed, shall have wheels on, be on an internal jacking system. And only be affixed to the site by quick disconnect-type utilities commonly**

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

utilized in campgrounds and trailer parks and shall not have any permanent attachments such as Florida rooms or porches.

2. ii. In the event of a mandatory evacuation, all RVs shall be removed from their location and evacuate as required under a Monroe County and City of Marathon emergency declaration whether or not the RV is being used as a dwelling at the time of the emergency declaration. If the RV is not removed, the owner of the property or RV/Mobile Home site will be subject to a potential fine of \$250.00 per day by the City of Marathon, from the day after the evacuation order is given through the day that RVs are allowed to return to the City.

- b. Provision of on-site/off-site employee housing
- c. Transportation
- d. Services/Amenities
- e. Protection of habitat
- f. Establish a motel/hotel/campground equivalency ratio
- g. Ensure compliance with 2010 wastewater standards
- h. Ensure that transient units remain transient through various mechanisms such as:
 - 1. Use of Development Agreements
 - 2. Deed restrictions prohibiting the use of Homestead Exemptions;
 - 3. Provision of a lobby/front desk; or
 - 4. Limiting the tenancy of each unit.

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

SECTION 5. The 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 6. 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 __ DAY OF _____, 2020.**

THE CITY OF MARATHON, FLORIDA

Mayor Steven Cook

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

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

David Migut, City Attorney

Sponsored By: George Garret, Planning Director

Planning Commission Public Hearing Date: XXX

City Council Public Hearing Dates: XXX

Enactment Date: XXX

CITY OF MARATHON, FLORIDA

ORDINANCE 2019-xx

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA,

AMENDING THE CITY OF MARATHON'S COMPREHENSIVE PLAN MODIFYING CHAPTER ONE, "FUTURE LAND USE," TABLE 1-1, FUTURE LAND USE DENSITIES AND INTENSITIES," TO ALLOW TRANSIENT RIGHTS THAT HOLD NO MONITARY VALUE TO BE ALLOWED IN AN RV PARK THAT ALSO ALLOW PERMANENT CODE COMPLIANT RESIDENCES; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY.

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

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

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

WHEREAS, pursuant to the provisions of Chapters 163, 166 and 380 Florida Statutes, the City of Marathon, Florida (the "City") proposes to amend Chapter 1, "Future Land Use element," of the Comprehensive Plan; and

WHEREAS, the purpose of the proposed Ordinance is to allow a state recognized RV park the ability to allow their owners the ability to use their plot as a transient unit or permanent residence. Transient units will not be sellable and all permanent residences must meet all Florida Building Code regulations.

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

~~Strikethrough~~ = deletion

bold underline = addition

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

SECTION 2. Amend the Comprehensive Plan, Chapter 1, Table 1-1 to read as follows:

| TABLE 1-1 Future Land Use Densities and Intensities* | | | | |
|--|--|--|--------------------------------------|--------------------------|
| Future Land Use Category | Permitted Residential Density (units per acre) | Hotel/Motel/RV Spaces (units per acre) | Maximum Intensity (floor area ratio) | Minimum Open Space Ratio |
| <p>Note:</p> <ol style="list-style-type: none"> See Objective 1-3.9 and subsequent policies The allocated and maximum net densities for submerged lands shall be 0. For properties consisting of hammocks or disturbed wetlands within the Mixed Use Commercial future land use categories, the floor area ration shall be 0.10 and the maximum net residential density shall be 0. Open space shall be increased based upon the requirements for a habitat evaluation and shall confirm to Table 4-1 of the Coastal and Conservation Element. The FAR in Mixed Use developments may be increased to .75 if mitigated by the development of affordable/workforce housing is provided. Residential Densities found in this Table are subject to the provisions of Policy 1-3.5.16. <u>For properties recognized as RV parks located in Residential High Land Use Category, an agreed upon portion of those RV units may be treated as Transient Units that conform with Policy 1-3.3.4. These Transient Rights cannot be sold and transferred out of the RV park.</u> | | | | |

SECTION 3. Amend the Comprehensive Plan, Chapter 1, Policy 1-3.3.4 to read as follows:

Policy 1-3.3.4 Encourage Redevelopment of Tourist/Resort/Campground Facilities

The City shall continue to maintain Land Development Regulations that provide incentives and encourage the redevelopment of existing resort and tourist facilities in the City. These Regulations shall include, but not be limited to:

- a. Mandatory hurricane evacuation;
 1. **All Recreational Vehicles must be “Road Ready”. Road Ready, means that such units will be fully licensed, will have wheels on, be on internal jacking system, and only be affixed to the site by quick disconnect-type utilities commonly utilized in campgrounds and trailer parks, and shall have no permanent attachments such as Florida rooms or porches.**
 2. **In the event of a mandatory evacuation, all Recreational Vehicles must be removed from the Park and evacuate as required under the County’s emergency declaration whether or not they are currently being used as a dwelling. If the RV is not removed the owner of the lot and/or RV will be fined \$250.00 per day by the City of Marathon, from the day after the evacuation order is given to the day that RV’s are allowed to return.**
- b. Provisions of on-site/off-site employee housing
- c. Transportation
- d. Services/Amenities
- e. Protection of habitat
- f. Establish a motel/hotel/campground equivalency ration
- g. Ensure compliance with 201 wastewater standards
- h. Ensure that transient units remain transient through various mechanisms such as:
 1. Use of Development Agreements
 2. Deed restrictions prohibiting the use of Homestead Exemptions;
 3. Provisions of a lobby/front desk; or
 4. Limiting the tenancy of each unit.

SECTION 4. The Provisions of the Code of Ordinances, City of Marathon, Florida and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 5. The Provisions of this Ordinance are declared to be severable, and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the Ordinance, by the shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 6. It is the intention of the City Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Marathon Comprehensive Plans, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changes to "Section" or other appropriate word.

SECTION 7. The provisions of this Ordinance constitutes a "land development regulations" as state law defines that term, Accordingly, the City Clerk is authorized and directed to forward a copy of this Ordinance to the State Department of Economic Opportunity for approval pursuant to Section 380.05(6) and (11), Florida Statutes.

SECTION 8. This Ordinance shall be effective immediately upon approval by the Department of Economic Opportunity pursuant to Chapters 163 and 380, Florida Statutes.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA,

THIS ___ TH DAY OF ___, 2019

THE CITY OF MARATHON, FLORIDA

John Bartus, Mayor

COUNCIL AGENDA STATEMENT



Meeting Date: November 12, 2019

To: Honorable Mayor and Council Members

From: George Garrett, Planning Director

Through: Chuck Lindsey, City Manager

Agenda Items: **Ordinance 2019-12**, Amending The City’s Comprehensive Plan To Modify Comprehensive Plan, Chapter 1, “Future Element”; Goal 1-3, “Manage Growth”; Objective 1-3.2, “Regulate Density And Intensity”; Policy 1-3.2.5 “Maximum Height Limitation”, Increasing The Maximum Building Height To Forty-Two Feet (42) For Residential Structures To Provide Compensation For Increases In Required Elevations For The New FEMA FIRM Maps; Providing That No Structure Shall Thereby Exceed Three Stories Above Grade; 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.

Ordinance 2019-13, Amending The City’s Land Development Regulations, Chapter 103, Table 103.15.2, “Density, Intensity And Dimensions For Zoning Districts”; Chapter 107, Article 5, “Setbacks And Height”; Section 107.40, “Maximum Height” And Figure 107.40.1, “Building Height Measurement”, Increasing The Maximum Building Height To Forty-Two Feet (42) For Residential Structures To Provide Compensation For Increases In Required Elevations For The New FEMA Firm Maps; Providing That No Structure Shall Thereby Exceed Three Stories Above Grade; 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.

RECOMMENDATION:

The Planning Commission reviewed the proposed Ordinances, both Comprehensive Plan and LDRS, on October 21, 2019 at a regularly schedule Planning Commission meetings and unanimously (4/0 with an excused absence) recommends approval of both Ordinances modifying provisions concerning the maximum height of any structure.

APPLICANT: City of Marathon

REQUEST: Amend City of Marathon Comprehensive Plan and Land Development Regulations in order to ensure that the City is able to comply with the proposed Working Draft FEMA NFIP FIRMs, while not significantly impacting the construction industry’s ability to build structures up to three (3) stories.

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.

DRAFT FEMA NFIP MAPS:

The Draft FEMA NFIP Maps were release on August 22, 2019 at meetings held in both Key West and Marathon. The Maps should be considered “Working Maps” at this juncture, but little significant change is expected upon their anticipated official release in December of this year (2019). An official appeal period of the maps will begin when the maps are released through a Legal Notice in the Federal Register, expected sometime in late January or February.

BACKGROUND

To emphasize that flood risks are changing and to make sure property owners are aware that new FEMA FIRM maps will be adopted in the near future, the City of Marathon Building Department will be requiring Owner’s to sign a form with permits that acknowledges the issuance of these new DRAFT coastal flood maps and the fact that these maps may indicate a future change to the required elevation of a building currently in the permit process. This is intended to help homeowners understand that what they are proposing to build today, under the existing flood maps, could become non-conforming after the new draft maps are formally adopted. This could make their flood risk and insurance costs greater. Owners should think about designing their improvements to meet the proposed draft maps to assure they are addressing potential future risk.

As the DRAFT maps are rolled out, the City is considering its options to hire a consultant that would be charged with analyzing how flood risks are changing within its municipal boundaries based on the new DRAFT FIRMs and the best available science and technology. If hired, the technical consultant would also be reviewing the maps and modeling conducted by FEMA and would be prepared to appeal any of the maps that do not appear to be correct.

To view the City’s DRAFT FIRM maps, please click on the following link [DRAFT Marathon coastal flood maps](#). This link will open to an Index map of the Florida Keys which you can then utilize to navigate to individual specific maps concerning your area of the City. In order to view other DRAFT FIRM maps outside of the City of Marathon, but within Monroe County, please click the following link [HERE: DRAFT coastal flood maps](#). This link will open a FEMA FIRM Draft Maps mapping tool. Simply click in the FIRM Panel section where property is located to view the popup containing a link to the Draft Map (PDF).

IMPORTANT: These maps don't show an additional difference in elevation due to a change in mapping standards between the old and new proposed flood maps (datum NGVD29 to datum NAVD88). This means that all NGVD29 elevations (e.g., BFE, Lowest Floor Elevation) need to be converted to NAVD88. While there is no set conversion factor, as it varies throughout Monroe County, on average there is -1.5 foot conversion factor. To account for this change, ON AVERAGE you should add +1.5-feet to any apparent increase. For example: If your building was in an AE-8 flood zone and is still shown in an AE-8 zone, then it actually experienced an increase of 1.5 feet. Another example: If your building was in an AE-6 flood zone and is proposed to be in

an AE-9 zone, the increase appears to be three-feet. However, the actual increase would be 4.5'-feet.

Immediate Concerns - The Draft maps show some immediate and obvious difference from the old maps. Account for the change in datum, many homes in Marathon will see an increase in their FEMA NFIP Flood Zone of from 0.5 feet to as many as 5.5 feet (See Table below)

The City is already recognizing that the release of the DRAFT Working Maps will influence current construction and the construction that we see in the coming months BEFORE the maps actually reach final adoption.

For instance, a residential permit issued today at BFE – AE 7 or 8 may become an AE 10. At that juncture, it will be 3.5 to 4.5 feet below the necessary flood level when the draft maps are adopted. Permits issued in the future will be advised that the owners should consider meeting the new flood zones NOW.

Considerations & Suggestions - The new map provisions are going to strain the City’s maximum height restriction as required base elevations go up. Staff is proposing that we look at the maximum height restrictions, rather than creating a “free board” provision or enact a combination of the two so that home builders will not be constrained by the additional elevation requirements of the new maps. We would also suggest that no addition habitable floors be allowed as part of any new Code modifications (No more than three levels & more likely two levels are achievable now).

Relative Flood Zones / Conversion from NGVD29 to NAVD88

| | NAVD88 | 7 | 8 | 9 | 10 | 11 | 12 | NE W |
|---|--------|-------|-------|-------|-------|-------|-------|------|
| NGVD 29 | | | | | | | | |
| 6 | | 2.43 | 3.43 | 4.43 | 5.43 | 6.43 | 7.43 | |
| 7 | | 1.43 | 2.43 | 3.43 | 4.43 | 5.43 | 6.43 | |
| 8 | | 0.43 | 1.43 | 2.43 | 3.43 | 4.43 | 5.43 | |
| 9 | | 0.57 | 0.43 | 1.43 | 2.43 | 3.43 | 4.43 | |
| 10 | | 1.57 | 0.57 | 0.43 | 1.43 | 2.43 | 3.43 | |
| 11 | | 2.57 | 1.57 | 0.57 | 0.43 | 1.43 | 2.43 | |
| 12 | | 3.57 | 2.57 | 1.57 | 0.57 | 0.43 | 1.43 | |
| 13 | | 4.57 | 3.57 | 2.57 | 1.57 | 0.57 | 0.43 | |
| 14 | | Water | Water | Water | Water | Water | Water | |
| 15 | | Water | Water | Water | Water | Water | Water | |
| OLD | | | | | | | | |
| NAVD88 = NGVD29 - 1.43' (Avg. Marathon) (Conversion Range = -1.39' to -1.47') | | | | | | | | |

ANALYSIS

Natural Resources - No Significant Impact would result from the proposed change.

Historical and Cultural Resources - No Significant Impact would result from the proposed change.

Infrastructure - No Significant Impact would result from the proposed change.

Wastewater infrastructure - No Significant Impact would result from the proposed change.

Stormwater infrastructure - No Significant Impact would result from the proposed change.

Potable Water - No Significant Impact would result from the proposed change.

Solid Waste - No Significant Impact would result from the proposed change.

Transportation - No Significant Impact would result from the proposed change.

Affordable Housing - The proposed amendment will not affect the construction of affordable housing appreciably. As with other types of structures and uses, the proposed amendment will provide maximum flexibility in meeting the new FEMA NFIP flood map base elevations while still allowing for the construction of up to three functional stories above grade.

Hazard Mitigation - No Significant Impact would result from the proposed change.

Coastal High Hazard Areas - Implementation of the proposed Ordinance 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.

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 - No Significant Impact would result from the proposed change.

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 Draft maps show some immediate and obvious difference from the old maps. Account for the change in datum, many homes in Marathon will see an increase in their FEMA NFIP Flood Zone of from 0.5 feet to as many as 5.5 feet (See Table below)

The City is already recognizing that the release of the DRAFT Working Maps will influence current construction and the construction that we see in the coming months BEFORE the maps actually reach final adoption.

For instance, a residential permit issued today at BFE – AE 7 or 8 may become an AE 10. At that juncture, it will be 3.5 to 4.5 feet below the necessary flood level when the draft maps are adopted. Permits issued in the future will be advised that the owners should consider meeting the new flood zones NOW.

The new map provisions are going to strain the City’s maximum height restriction as required base elevations go up. Staff is proposing that we look at the maximum height restrictions, rather than creating a “free board” provision or enact a combination of the two so that home builders will not be constrained by the additional elevation requirements of the new maps. We would also suggest that no addition habitable floors be allowed as part of any new Code modifications (No more than three levels & more likely two levels are achievable now).

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

The proposed Ordinance meets three principle areas of concern reflected in the City’s Comprehensive Plan. First, the proposed amendment seeks to meet all of the necessary requirements of the FEMA Floodplain management program and the City’s standing in the Community Rating System (CRS while at the same time continuing to allow development consistent with that allowed in the past, particularly, structures of up to three (3) stories. Second, The Ordinance does not allow any additional stories above what could have been reasonably or potentially permitted under the current Planning guidelines and regulations. Third, the proposed amendment seeks to maintain the traditional community character of Marathon by limiting the potential to turn the additional height allowance into something more than that ability to meet new FEMA regulations while maintaining current standards for the number of stories typically allowed.

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 regulations does further the basic goals and premises outlined in the introductory to the City’s Comprehensive Plan as follows:

“With the knowledge that the City needs redevelopment and new development to provide the necessary improvements to guarantee the residents of the City a clean, healthy environment and a sound economy in which to live and enjoy their families, it is the desire and intent of the City through the Goals, Objectives and Policies of the adopted Comprehensive Plan and Land Development Regulations implementing the Plan to protect our character, environment and viability through:

- Protection of the small town family feel of the community
- Continued utilization of the established mixed-use pattern of the community
- Protection of the heritage of the commercial fishing industry
- Acknowledgement and protection of a character that is unique to the Keys
- Protection of existing and increased affordable housing opportunities
- Implementation of effective surface water management strategies
- Systematic removal of failing and inadequate on-site wastewater disposal systems
- Maintenance and management of central wastewater and stormwater facilities
- Protection and enhancement of sensitive upland, wetland and submerged land habitat
- Protection for the existing uses, densities and intensities
- Providing new investment and reinvestment opportunities
- Ensuring new development and redevelopment protects the environment
- Ensuring new and redevelopment compliments and enhances community character
- Implementation of thoughtful, managed growth.”

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 Ordinances, both Comprehensive Plan and LDRS, on October 21, 2019 at a regularly schedule Planning Commission meetings and unanimously (4/0 with an excused absence) recommends approval of both Ordinances modifying provisions concerning the maximum height of any structure.

Sponsored By: Lindsey
Planning Commission Public Hearing Date: October 21, 2019
City Council Public Hearing Date: November 12, 2019
tbd
Enactment Date: tbd

**CITY OF MARATHON, FLORIDA
ORDINANCE 2019-12**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING THE CITY'S COMPREHENSIVE PLAN TO MODIFY COMPREHENSIVE PLAN, CHAPTER 1, "FUTURE ELEMENT", GOAL 1-3, "MANAGE GROWTH;" OBJECTIVE 1-3.2, "REGULATE DENSITY AND INTENSITY;" POLICY 1-3.2.5; "MAXIMUM HEIGHT LIMITATION," INCREASING THE MAXIMUM BUILDING HEIGHT TO FORTY-TWO FEET (42) FOR RESIDENTIAL STRUCTURES TO PROVIDE COMPENSATION FOR INCREASES IN REQUIRED ELEVATIONS FOR THE NEW FEMA FIRM MAPS; PROVIDING THAT ANY STRUCTURE SHALL NOT THEREBY EXCEED THREE STORIES ABOVE GRADE; 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, FEMA has recently released National Flood Insurance Program (NFIP), Working Draft Flood Insurance Rate Maps (FIRM) which in some areas may significantly alter the currently adopted Base Flood Elevations (BFE); and

WHEREAS, it is the City's intent to raise the height limitations to provide some flexibility in building construction under the constraint that many Base Flood Elevations have increased from the current adopted maps; and

WHEREAS, the City does not want to unduly constrain construction in the City so long as the proposed increase in maximum building height does not allow additional building stories and said construction does not exceed three (3) stories; 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 1, Conservation and Coastal Element, “Purpose:”

Policy 1-3.2.5 Maximum Height Limitation

The maximum height of any structure **permitted for maintenance, repair, expansion or new construction within the City of Marathon** shall be **forty-two feet (42)** ~~thirty-seven (37)~~ feet with the exception of permitted projections, unless further restricted by the Land Development Regulations. **No structure shall exceed three (3) stories whether a story is utilized for building entry, parking, storage, habitation or a valid commercial or industrial use. The purpose of this provision is to allow some flexibility in meeting the City’s Floodplain regulations and revised FEMA Floodplain Maps. Government Facilities are exempt with the approval of the City Council. Nonconforming structures may be repaired, maintained or expanded as long as any alterations to the structure does not increase the nonconformity.**

SECTION 3. 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 4. 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 DEO and other state agencies for review and approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

SECTION 5. This Ordinance shall be scheduled for a second hearing immediately upon approval by the Florida Department of Economic Opportunity as a part of their Objections, Recommendations, and Comments (ORC) review, pursuant to Chapters 163 and 380, Florida Statutes.

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

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, this
___ day of _____, 2020.

THE CITY OF MARATHON, FLORIDA

Mayor Steven Cook

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

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

David Migut, City Attorney

Sponsored By: Lindsey
Planning Commission Public Hearing Date: October 21, 2019
City Council Public Hearing Date: November 12, 2019
tbd
Enactment Date: tbd

**CITY OF MARATHON, FLORIDA
ORDINANCE 2019-13**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING THE CITY'S LAND DEVELOPMENT REGULATIONS, CHAPTER 103, TABLE 103.15.2, "DENSITY, INTENSITY AND DIMENSIONS FOR ZONING DISTRICTS, CHAPTER 107, ARTICLE 5, "SETBACKS AND HEIGHT," SECTION 107.40, "MAXIMUM HEIGHT" AND FIGURE 107.40.1, "BUILDING HEIGHT MEASUREMENT," INCREASING THE MAXIMUM BUILDING HEIGHT TO FORTY-TWO FEET (42) FOR RESIDENTIAL STRUCTURES TO PROVIDE COMPENSATION FOR INCREASES IN REQUIRED ELEVATIONS FOR THE NEW FEMA FIRM MAPS; PROVIDING THAT NO STRUCTURE SHALL THEREBY EXCEED THREE STORIES ABOVE GRADE; 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, FEMA has recently released National Flood Insurance Program (NFIP), "Working Draft Flood Insurance Rate Maps (FIRM) which in some areas may significantly alter the currently adopted Base Flood Elevations (BFE); and

WHEREAS, it is the City's intent to raise the height limitations to provide some flexibility in building construction under the constraint that many Base Flood Elevations have increased from the current adopted maps; and

WHEREAS, the City does not want to unduly constrain construction in the City so long as the proposed increase in maximum building height does not allow additional building stories and said construction does not exceed three (3) stories; and

WHEREAS, the City Council finds it necessary, desirable, and proper to adopt the amendments to the Land Development Regulations corresponding to a similar amendment to the City's 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 second reading, shall be transmitted to DEO for review and approval,

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.

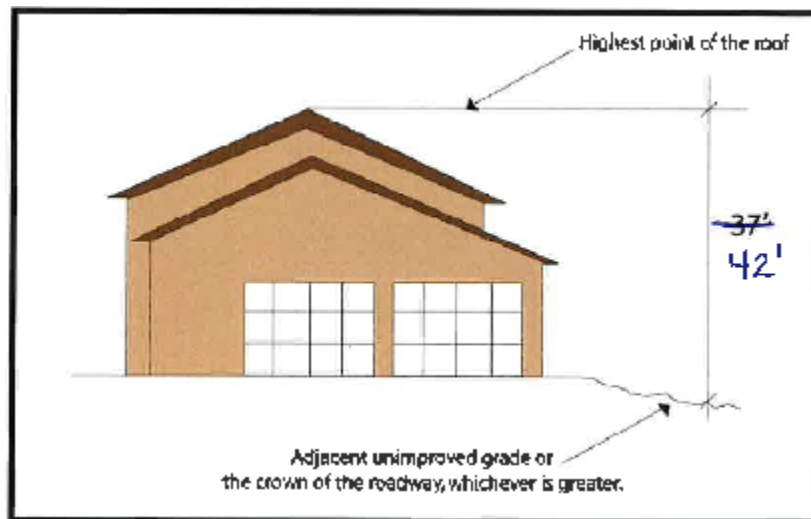
SECTION 2. Amend the Comprehensive Plan, Chapter 107, “General Development Standards,” Article 5, “Setbacks and Height,” Section 107.40:

Section 107.40. - Maximum Height.

A. Unless provided for elsewhere in the LDRs, the maximum height of any structure **permitted for maintenance, repair, expansion or new construction within the City of Marathon** shall be **forty-two feet (42)** ~~(37)~~ feet, as measured from the unimproved grade directly adjacent to the structure or from the crown of the roadway, whichever is greater. . **No structure shall exceed three (3) stories whether a story is utilized for building entry, parking, storage habitation or a valid commercial or industrial use. The purpose of this provision is to allow some flexibility in meeting the City’s Floodplain regulations and revised FEMA Floodplain Maps. Nonconforming structures may be repaired, maintained or expanded as long as any alterations to the structure does not increase the nonconformity. Government Facilities are exempt with the approval of the City Council.**

B. Building height shall be measured to the highest point of the roof. The height measurement shall be to the roof peak for structures with pitched roofs and the roof slab for structures with flat roofs.

Figure 107.40.1
Building Height Measurement



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

SECTION 3. 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 4. The provisions of this Ordinance constitute an amendment to the Land Development Regulations as defined by State law. Accordingly, the City shall forward a copy of this Ordinance to the Department of Economic Opportunity for review and approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

SECTION 5. This Ordinance shall be scheduled for a second hearing immediately upon approval by the Florida Department of Economic Opportunity as a part of their Objections, Recommendations, and Comments (ORC) review for the corresponding Comprehensive Plan amendment, pursuant to Chapters 163 and 380, Florida Statutes.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS __ DAY OF _____, 2020.

THE CITY OF MARATHON, FLORIDA

Mayor Steven Cook

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

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

David Migut, City Attorney

COUNCIL AGENDA STATEMENT



Meeting Date: November 12, 2019
To: Honorable Mayor and Council Members
From: George Garrett, Planning Director
Through: Chuck Lindsey, City Manager

Agenda Item: **Ordinance 2019-14**, Amending The City’s Land Development Regulations To Modify Chapter 102, Article 13, Conditional Use Permits, Section 102.74, “Application Process;” Chapter 103, Article 3, “Use And Intensity Tables,” Table 103.15.1, “Uses By Zoning District;” And Adding A Section To Chapter 104, Article 1, To Be Titled “Permitting Of Residential Units Which Exceed Six (6) Bedrooms” As Defined Therein; Amending Chapter 110 To Provide Related Definitions For Bedrooms, Dwelling Units, And Kitchens; 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.

RECOMMENDATION

Planning Commission provided an unanimous (4/0 with an absence) recommendation of approval

BACKGROUND AND REQUEST:

Single-family residential structures which exceed six (6) bedrooms in number have a greater impact on the community than a more typical residence of six (6) or less bedrooms. Therefore, the City wishes to require the permission of such structures be considered in the wider context of a Conditional Use Permit review and approval. Particularly, the City needs to understand the greater impacts of the size of the property in question, the parking requirements, the traffic impacts, and the impacts on infrastructure such as water, sewer, electricity, and solid waste. We also need to understand the impacts of larger residential development and the larger number of individuals likely to reside there, on the community character of surrounding neighborhoods.

The Planning Commission reviewed the proposed text amendment, offering some useful comments to clarify the proposed Ordinance, and voted unanimously to forward a recommendation of approval to the City Council.

APPLICANT: City of Marathon

REQUEST: To modify the Land Development Regulations to require that proposed residential development which has more than six (6) bedrooms must be approved through a

Conditional Use Permit review and approval.

Particularly, the City is requesting to change Chapter 103, Article 3, Table 103.15.1 to require a Conditional Use Permit review and to change Chapter 110, "Defined Terms," to modify or add necessary terms related to a change requiring Conditional Use permit approval.

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.

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(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.

ANALYSIS

Natural Resources

No Significant Impact would result from the proposed change.

Historical and Cultural Resources

No Significant Impact would result from the proposed change.

Infrastructure

Single-family residential structures which exceed six (6) bedrooms in number have a greater impact on the community than a more typical residence of six (6) or less bedrooms. Therefore, the City wishes to require the permission of such structures be considered in the wider context of a Conditional Use Permit review and approval. Particularly, the City needs to understand the greater impacts of the size of the property in question, the parking requirements, the traffic impacts, and the impacts on infrastructure such as water, sewer, electricity, and solid waste. We also need to understand the impacts of larger residential development and the larger number of individuals likely to reside there, on the community character of surrounding neighborhoods.

Wastewater infrastructure

Single-family residential structures which exceed six (6) bedrooms in number have a greater impact on the community than a more typical residence of six (6) or less bedrooms. Therefore, the City wishes to require the permission of such structures be considered in the wider context of a Conditional Use Permit review and approval. Particularly, the City needs to understand the greater impacts of the size of the property in question, the parking requirements, the traffic impacts, and the impacts on infrastructure such as water, sewer, electricity, and solid waste. We also need to understand the impacts of larger residential development and the larger number of individuals likely to reside there, on the community character of surrounding neighborhoods.

Stormwater infrastructure

No Significant Impact would result from the proposed change.

Potable Water

Single-family residential structures which exceed six (6) bedrooms in number have a greater impact on the community than a more typical residence of six (6) or less bedrooms. Therefore, the City wishes to

require the permission of such structures be considered in the wider context of a Conditional Use Permit review and approval. Particularly, the City needs to understand the greater impacts of the size of the property in question, the parking requirements, the traffic impacts, and the impacts on infrastructure such as water, sewer, electricity, and solid waste. We also need to understand the impacts of larger residential development and the larger number of individuals likely to reside there, on the community character of surrounding neighborhoods.

Solid Waste

Single-family residential structures which exceed six (6) bedrooms in number have a greater impact on the community than a more typical residence of six (6) or less bedrooms. Therefore, the City wishes to require the permission of such structures be considered in the wider context of a Conditional Use Permit review and approval. Particularly, the City needs to understand the greater impacts of the size of the property in question, the parking requirements, the traffic impacts, and the impacts on infrastructure such as water, sewer, electricity, and solid waste. We also need to understand the impacts of larger residential development and the larger number of individuals likely to reside there, on the community character of surrounding neighborhoods.

Transportation

Single-family residential structures which exceed six (6) bedrooms in number have a greater impact on the community than a more typical residence of six (6) or less bedrooms. Therefore, the City wishes to require the permission of such structures be considered in the wider context of a Conditional Use Permit review and approval. Particularly, the City needs to understand the greater impacts of the size of the property in question, the parking requirements, the traffic impacts, the transportation impacts, and the impacts on infrastructure such as water, sewer, electricity, and solid waste. We also need to understand the impacts of larger residential development and the larger number of individuals likely to reside there, on the community character of surrounding neighborhoods.

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

No Significant Impact would result from the proposed change.

Hurricane Evacuation

No Significant Impact would result from the proposed change.

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

No Significant Impact would result from the proposed change.

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;

Single-family residential structures which exceed six (6) bedrooms have a greater impact on the community than a more typical residence of six (6) or less bedrooms. Therefore, the City wishes to require the permission of such structures be considered in the wider context of a Conditional Use Permit review and approval. Particularly, the City needs to understand the greater impacts of the size of the property in question, the parking requirements, the traffic impacts, and the impacts on infrastructure such as water, sewer, electricity, and solid waste. We also need to understand the impacts of larger residential development and the larger number of individuals likely to reside there, on the community character of surrounding neighborhoods.

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

The proposed amendment does not change any of the basic purposes of the Comprehensive Plan. This proposal acts to provide more detail to requirements for proposed developments which request single-family residences of seven (7) bedrooms or more.

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 regulation does further the basic goals and premises outlined in the introductory to the City's Comprehensive Plan as follows:

“With the knowledge that the City needs redevelopment and new development to provide the necessary improvements to guarantee the residents of the City a clean, healthy environment and a

sound economy in which to live and enjoy their families, it is the desire and intent of the City through the GOALS, OBJECTIVES AND POLICIES OF THE ADOPTED COMPREHENSIVE PLAN AND LAND DEVELOPMENT REGULATIONS IMPLEMENTING THE PLAN TO PROTECT OUR CHARACTER, ENVIRONMENT AND VIABILITY THROUGH:

- Protection of the small town family feel of the community
- Continued utilization of the established mixed-use pattern of the community
- Protection of the heritage of the commercial fishing industry
- Acknowledgement and protection of a character that is unique to the Keys
- Protection of existing and increased affordable housing opportunities
- Implementation of effective surface water management strategies
- Systematic removal of failing and inadequate on-site wastewater disposal systems
- Maintenance and management of central wastewater and stormwater facilities
- Protection and enhancement of sensitive upland, wetland and submerged land habitat
- Protection for the existing uses, densities and intensities
- Providing new investment and reinvestment opportunities
- Ensuring new development and redevelopment protects the environment
- Ensuring new and redevelopment compliments and enhances community character
- Implementation of thoughtful, managed growth.”

CONCLUSION:

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

RECOMMENDATION:

Planning Commission provided an unanimous (4/0 with an absence) recommendation of approval

Sponsored by: Lindsey
Introduction Date: October 21, 2019
Public Hearing Dates: November 12, 2019
tbd
Enactment date: tbd

CITY OF MARATHON, FLORIDA
ORDINANCE 2019-14

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING THE CITY'S LAND DEVELOPMENT REGULATIONS TO MODIFY CHAPTER 102, ARTICLE 13, CONDITIONAL USE PERMITS, SECTION 102.74, "APPLICATION PROCESS;" CHAPTER 103, ARTICLE 3, "USE AND INTENSITY TABLES," TABLE 103.15.1, "USES BY ZONING DISTRICT;" AND ADDING A SECTION TO CHAPTER 104, ARTICLE 1, TO BE TITLED "PERMITTING OF RESIDENTIAL UNITS WHICH EXCEED SIX (6) BEDROOMS" AS DEFINED THEREIN; AMENDING CHAPTER 110 TO PROVIDE RELATED DEFINITIONS FOR BEDROOMS, DWELLING UNITS, AND KITCHENS; 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 Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Florida Statutes, provides for comprehensive plan implementation through the enactment of certain ordinances; and

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

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

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

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

WHEREAS, the purpose of the proposed Ordinance is to manage growth and development in residential neighborhoods and zoning categories when large single family residential development are proposed (greater than six (6) bedrooms, thus requiring a Conditional Use Permit review and approval,

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

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

SECTION 2. Amend Chapter 102, Article 13. Section 102.74, "Application Requirements" to add language identifying minimum application requirements as follows:

Section 102.74. - Application Requirements.

An application for a Conditional Use permit shall be submitted in accordance with Article 2, "Common Development Application Elements" and shall include any other information that may be required by the City in order for the Department, the TRC, PC and Council to make informed decisions. **At a minimum, the specific application requirements follow:**

MINIMUM APPLICATION REQUIREMENTS
CONDITIONAL USE PERMITS

These requirements are not to be considered ALL inclusive of the requirements for the proposed work. The Planning Department may require additional drawings, specifications or information in order to complete the review of the application. Equally, not all items noted below may be required at the discretion of the Planning Director based his or her review of a project proposal and the requirements of the City's Comprehensive Plan and Land Development Regulations (LDRs).

THE FOLLOWING MUST BE PROVIDED IN ORDER TO BE A COMPLETE APPLICATION:

1. **Application Completed in Full**
2. **Proof of ownership (copy of deed or tax statement)**
3. **Agent authorization (as applicable)**
4. **Vegetation Survey or Habitat Evaluation Index (as applicable)**
5. **Location Map and Photographs of site from the main adjacent road and/ or aerial photograph.**
6. **Five (5) copies and 1 digital set (CD of DVD, No Flash Drives) of the following plans, drawn to scale, signed and sealed by a Florida registered Surveyor, Architect or Engineer:**

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7. Property Survey no older than two years from date of application.

8. Site Plans. Including but not limited to:

- Property lines, Mean High Water Line (MHWL), and dimensions of the parcel
- Areas and dimensions of existing and proposed structures
- Adjacent roadways and uses of adjacent property
- Setbacks and Buffers
- Parking (including handicap parking) and loading zone locations and dimensions
- Calculations for open space ratios, floor area ratios, density and parking
- Outdoor lighting location, type, power and height
- Extent and area of wetlands, open space areas, and landscape areas
- Location of solid waste separation, storage and removal
- Type of ground cover such as asphalt, grass, pea rock
- Sewage treatment facilities
- Location of bike racks (if required)
- Flood zones pursuant to the Flood Insurance Rate Map (FIRM)
- Show Fire hydrants per following schedule:
- Commercial Non-Fire Sprinkler Protected Buildings:
- 350 feet between hydrants
- No building further than 175 feet from a fire hydrant.
- No building further than 250 feet from a hydrant.
- Provide location of fire lanes (marked fire apparatus roads) and fire lane marking details on plans. NFPA 1 (2012) 18.2.3.5.1
- Provide a minimum 42 ft curb radius at driveways. Reference City of Marathon Turning Radius requirements NFPA 1 (2012) 18.2.3.4.3.1
- Provide minimum 13' 6" vertical clearance for all canopies and road overhangs. NFPA 1 (2012) 18.2.3.4.1.2.
- Fire department access roads shall have an unobstructed width of not less than 20'. NFPA 1 (2012) 18.2.3.4.1.1
- Dead-end fire department access roads in excess of 150ft in length shall be provided with approved provisions for the fire apparatus to turn around. NFPA 1 (2012) 18.2.3.4.4
- Marine areas shall comply with NFPA 303

9. Landscape Plans. Including but not limited to:

- Open space preservation areas
- Size and type of buffer yards including the species, size, and number of plants
- Parking lot landscaping including the species, size and number of plants
- Existing natural features
- Specimen trees, or threatened and endangered plants to be retained and those to be relocated or replaced
- Transplantation plan (if required)

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bold underline = addition

10. Floor Plans and Elevations of all proposed structures with the elevations of the following features referenced to NAVD 88: Existing grade, finished grade, finished floor elevations (lowest supporting beam for V-zone development), roofline and highest point of the structure.

11. Drainage Plans with drainage calculations. The plan must show existing and proposed topography, all drainage structures, retention areas and drainage swales, and existing and proposed permeable and impermeable areas.

12. Wastewater Flow Calculations.

- Residences with six (6) six bedrooms or less will be assumed to equate to one (1) Equivalent Dwelling Unit (EDU) at 167 gallons per day. System development and connection charges, as well as monthly base and flow charges will accrue and be billed as a single-family residence.

- Residences with seven (7) bedrooms or more will be assessed based on a calculation of average wastewater flows developed and provided by a qualified wastewater engineer. Such wastewater flow will be calculated into the one time System Development and Connection charges and be billed accordingly.

13. Residential Allocations: Any Dwelling Unit or Single-family Residence which supports seven (7) or more bedrooms, shall be required to obtain one (1) Transferable Building Right for each additional six (6) bedrooms greater than six (6) bedrooms. No more than three (3) residential allocations shall be required for any Dwelling Unit or Single-family Residence. Such additional allocations shall not be available through the BPAS system as provided for in Chapter 107, Article 1. Therefore, each additional allocation must be obtained as a Transferable Building Right (TBR) and shall be subject to the provisions of Chapter 107, Article 2, particularly TBR transfer fees.

14. Construction Management Plan: (State how impacts on near-shore water and surrounding property will be managed - i.e. erosion control, construction barriers, hay bales, flagging. etc.).

15. Construction Phasing Plan (as applicable)

16. A Traffic Study prepared by a licensed traffic engineer.

Letters of Coordination may be required. The applicant must check with the Planning Department to identify other agencies expected to review the project. These may include:

- City of Marathon, City Fire Marshall's Office
- City of Marathon, Utilities Manager
- Florida Department of Environmental Protection (FDEP)
- Florida Department of State, Division of Historic Resources
- Florida Department of Transportation (FDOT)
- Florida Keys Aqueduct Authority (FKAA)
- Florida Keys Electric Cooperative (FKEC)
- Monroe County Department of Health
- South Florida Water Management District (SFWMD)
- U.S. Army Corps of Engineers (ACOE)
- U.S. Fish and Wildlife Service (USFWS)
- Other, as applicable to the project

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SECTION 3. Amend Chapter 103, Article 3, Table 103.15.1 to add a use to be titled “Single-Family dwellings; 6 Bedrooms or less and More than 6 Bedrooms to read as follows:

Table 103.15.1
Uses By Zoning District

| Uses in bold have specific conditions listed in Chapter 104 | | | | | | | | | | | | | | | | |
|---|------|------|------|----|----------|----------|----------|------|----------|----|------|-----|-----|---|---|----|
| ZONING DISTRICTS | C-NA | C-OI | RL-C | RL | RM | RM-1 | RM-2 | R-MH | RH | MU | MU-M | I-G | I-M | A | P | PR |
| *** | | | | | | | | | | | | | | | | |
| Sexually Oriented Business | | | | | | | | | | | | | | | | |
| Single-family dwellings <u>(6 Bedrooms or less)</u> | P | P | P | P | P | P | P | P | P | P | P | P | P | | | A |
| <u>Single-family dwellings (7 Bedrooms or more)</u> | | | | | <u>C</u> | <u>C</u> | <u>C</u> | | <u>C</u> | | | | | | | |
| Small animal shelters/boarding kennels | | | | | | | | | | | C | C | C | C | | C |
| *** | | | | | | | | | | | | | | | | |

SECTION 3. Amend Chapter 104, Article 1, “General Provisions,” to add Section 104.52, “Single-family dwellings (7 Bedrooms or more),” and renumber subsequent sub-sections as will follow:

Section 104.52

The approval of Single-family dwellings (Seven (7) Bedrooms or more) requires a Conditional Use Permit review and approval pursuant to Chapter 102, Article 13 of the Land Development Regulations.

Single-family residential structures which include seven (7) or more bedrooms in number have a greater impact on the community than a more typical residence of six (6) bedrooms or less. Therefore, the City requires that the permission of such structures be considered in the wider context of a Conditional Use Permit. Particularly, the City must understand at a minimum, the greater impacts of the project related to the size of the property in question, the parking requirements, the traffic impacts, and the impacts on infrastructure such as water, sewer, electricity, and solid waste. However, as noted in the application submittal requirements below,

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other considerations and additional review areas may be considered and additional information may be requested.

SPECIFIC APPLICATION REQUIREMENTS
CONDITIONAL USE PERMITS

These requirements are to be met in addition to those requirements of Chapter 102, Article 13, Section 102.75. The Planning Department may require additional drawings, specifications or information in order to complete the review of the application.

1. **Wastewater Flow Calculations.**
 - **Residences with six (6) bedrooms or less will be assumed to equate to one (1) Equivalent Dwelling Unit (EDU) at 167 gallons per day. System development and connection charges, as well as monthly base and flow charges will accrue and be billed as a single-family residence.**
 - **Residences with seven (7) bedrooms or more will be assessed based on a calculation of average wastewater flows developed and provided by a qualified wastewater engineer. Such wastewater flow will be calculated into the one time System Development and Connection charges and be billed accordingly.**
2. **Parking space needs analysis. The City will require a minimum of one (1) parking space per bedroom unless otherwise justified and validated by the Conditional Use Permit applicant.**
3. **A Traffic Study prepared by a licensed traffic engineer.**
4. **Residential Allocations: Any Dwelling Unit or Single-family Residence which supports seven (7) or more bedrooms, shall be required to obtain one (1) Transferable Building Right for each additional six (6) bedrooms greater than six (6) bedrooms. No more than three (3) residential allocations shall be required for any Dwelling Unit or Single-family Residence. Such additional allocations shall not be available through the BPAS system as provided for in Chapter 107, Article 1. Therefore, each additional allocation must be obtained as a Transferable Building Right (TBR) and shall be subject to the provisions of Chapter 107, Article 2, particularly TBR transfer fees.**

SECTION 4. Amend Chapter 110, Article 3, “Defined Terms” to add the following term, “bedroom:”

Bedroom: a room generally intended for sleeping in, typically for one or two individuals and perhaps a small child. A bedroom typically is defined on the basis of the following conditions, but may vary:

- **Doors: Typically contains at least one door for entry, though may not have a door in open living plans**
- **Minimum square footage: 60 to 70 square feet.**
- **Minimum horizontal footage: A minimum of at least 7 feet in any horizontal direction.**
- **Two means of egress: There have to be two ways out of a bedroom.**

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- Minimum ceiling height: At least half of the bedroom ceiling has to be at least 7 feet tall and meet the Florida Building Code (FBC).
- Minimum window size: The window opening must be a minimum size, usually 5.7 square feet and must meet the Florida Building Code (FBC).
- A heating/cooling element:
- May have a closet, an associated bathroom, small refrigerator, and/or a microwave.

For the sake of calculating the number of bedrooms, the City may count an office, den, game/recreation room, alcove, or similar room or semi-enclosed space as a bedroom dependent on the apparent purpose and use for the space.

SECTION 5. Amend Chapter 110, Article 3, “Defined Terms” to modify the following terms:

Dwelling, Apartment: A multi-family building in which units share common ~~entrances~~ or accesses to individual units.

Dwelling, Attached: ~~A residential dwelling unit consisting of more than one (1) residential unit that area development without open yards on all sides of the dwelling unit.~~ Means a dwelling unit that is located on a separate lot and shares a wall on one or both sides with a neighboring dwelling unit. Townhomes and duplexes are attached dwelling units.

Dwelling, Detached: A residential dwelling unit that is developed with open yards on all sides of the dwelling unit, but not including mobile homes or recreational vehicles. A stand-alone house (also called a Dwelling Unit or Single-family Residence, detached residence or detached house) is a free-standing residential building. Sometimes referred to as a single-family home, as opposed to a duplex or multi-family residential dwelling.

Dwelling, Duplex: Two-family dwelling units with the units either side-by side or in any over-under configuration. In the side-by side configuration, the units share a common wall, while in the over-under configuration, they are stacked.

Dwelling, Townhouse: An attached dwelling with only one (1) dwelling unit from ground to roof attached to its neighbors on no more than two (2) sides.

Dwelling Unit (Single-family residence): A single unit providing complete and independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, cooking (~~meaning a food preparation area larger than a one (1) bin wet bar, that was is intended or designed to be used for cooking or the preparation of food and a range, oven or utility connections for such~~) and sanitation. The term is applicable to both permanent ~~and transient~~ or rental residential development and living.

Dwelling units with seven (7) or more bedrooms are subject to Conditional Use Permit review and approval (see Chapter 104, Article 13). Dwelling units with seven (7) or more bedrooms shall not be set up in the fashion of a hotel or motel, so defined herein, to provide common area facilities for reservations, cleaning services, site management, and reception.

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bold underline = addition

For the purposes of calculation within the Building Permit Allocation System (BPAS), any Dwelling Unit or Single-family Residence which supports more than one complete kitchen shall be considered a Duplex (at least), must meet the minimum residential density requirements, and shall be required to obtain one (1) additional Residential allocation for each additional kitchen.

SECTION 6. Amend Chapter 110, Article 3, “Defined Terms” to add the following term, “kitchen:”

Kitchen, complete: For residential purposes typically and for the sake of calculating allocation requirements in BPAS, a complete kitchen shall be defined as a room for preparing and cooking meals to include a sink (or multiple sinks), a stove, a refrigerator, kitchen cabinets, and a kitchen work surface or surfaces. A kitchen may include a microwave, a dishwasher, and a garbage disposal. Outdoor, non air conditioned cooking facilities are excepted. Indoor wet bars are generally excepted unless, in design or at the discretion of the Planning Director and/or Building Official, the wet bar, as shown in construction plans, constitutes a complete kitchen as described herein.

SECTION 7. The Provisions of the Code of Ordinances, City of Marathon, Florida and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

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

SECTION 9. It is the intention of the City Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Marathon Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

SECTION 10. The provisions of this Ordinance constitute a “land development regulation” as state law defines that term. Accordingly, the City Clerk is authorized and directed to forward a copy of this Ordinance to the State Department of Economic Opportunity for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

SECTION 11. This Ordinance shall be effective immediately upon approval by the State Department of Economic Opportunity pursuant to Chapter 380, Florida Statutes.

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**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON,
FLORIDA, THIS XXth DAY OF XXXXX, 2019.**

THE CITY OF MARATHON, FLORIDA

Mayor Steven Cook

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

David Migut, City Attorney

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COUNCIL AGENDA STATEMENT



Meeting Date: November 12, 2019

To: Honorable Mayor and City Councilmembers

From: Jennifer Johnson, Finance Director

Through: Chuck Lindsey, City Manager

Agenda Item: **Resolution 2019-110**, Amending The City's Fiscal Year 2018-2019 Budget;
And Providing For An Effective Date.

BACKGROUND & JUSTIFICATION:

In accordance with Florida Statutes, it is necessary for the City Council to adjust the Fiscal Year 2018-2019 budget to reflect anticipated changes in year-end revenues and expenditures. The primary purpose of this budget amendment is to reflect adjustments to the revenues and expenditures to support completion of the City's Comprehensive Annual Financial Report (CAFR). Below is a brief summary of the increases to budgeted expenditures.

General Fund Revenue and Expenditure Increases & Decreases:

Revenues are being adjusted to bring the budget in line with actual results. The most notable changes include the increase in revenues for the fire insurance premium taxes. These monies are received from the State and must be contributed to the firefighters chapter 175 pension plan within 3 days of receipt of the funds. The City historically doesn't budget for this pass thru of funds and amends the budget at year-end to include the appropriations for the revenues and retirement expenses to the fire department. Other notable changes include the increases in; EMS Services, building permit fees, insurance recoveries, fire inspection fees, vacation rental fees and planning fees are all also being increased to account for the increase in activity in those departments from FY18. The budget amendment also includes the true up of anticipated grant reimbursements that were or were not received during the year.

Departments in need of expenditure increases are as follows:

Fire Department: The increase to the Fire Department budget is due to the retirement contribution being greater than what was budgeted. The pass through funds from the State fire insurance premiums was not budgeted. There was also an unanticipated increase in overtime, due to staffing shortages, and vehicle repairs and maintenance costs. Note EMS service revenues are also being increased in this budget amendment to help offset the increased fire department staffing costs.

Legal Department: The increase is due to the increased professional services for outside counsel due to the 300 unit challenge.

City Council: The increase is due to the increased expenditures for the Lower Keys Shuttle (LKS). Traditionally the LKS has been one to two quarters in arrears for billing. This fiscal year the City was billed for March – September of 2018 in January of 2019. The budget increase will cover anticipated expenses from March 2018- September 2019

Capital Infrastructure & Street Maintenance Funds (Special Revenue funds), Increases & Decreases: Revenues and expenditures increases and decreases are being made to bring the budget in line with actual events that took place during fiscal year 2019.

CONSISTENCY CHECKLIST:

| | Yes | No |
|-------------------------|-------|-------|
| 1. Comprehensive Plan | _____ | _____ |
| 2. Other _____ | _____ | _____ |
| 3. Not applicable __X__ | | |

FISCAL NOTE:

Approval of the resolution will formally amend the FY18-19 Adopted Budget.

RECOMMENDATION: Council Approve Resolution

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-110**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MARATHON, FLORIDA, AMENDING THE CITY'S FISCAL
YEAR 2018-2019 BUDGET; AND PROVIDING FOR AN
EFFECTIVE DATE**

WHEREAS, the City of Marathon (the "City") adopted a budget for Fiscal Year 2018-2019 via Resolution 2018-97;

WHEREAS, in accordance with Florida Statutes it is necessary for the City Council to adjust the budget to reflect unanticipated year end revenues and expenditures for Fiscal Year 2018-2019.

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

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

Section 2. The budget amendment for Fiscal Year 2018-2019, beginning October 1, 2018 and ending September 30, 2019, attached as Exhibit 'A' 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 12th DAY OF NOVEMBER, 2019.**

THE CITY OF MARATHON, FLORIDA

Mayor Steven Cook

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

David Migut, City Attorney

**City of Marathon
Budget Amendment
Fiscal Year 2018-2019**

EXHIBIT A

| Fund | Adopted Budget FY 18/19 | Budget Amendment | Final Amended Budget FY 18/19 |
|---|-------------------------------|---------------------|--|
| General Fund | | | |
| Revenues | | | |
| Ad Valorem Taxes (97% collection rate) | \$ 6,319,806 | \$ 28,600 | \$ 6,348,406 |
| Ad Valorem Taxes - Delinquent | 3,400 | - | 3,400 |
| Fire Insurance Premium Tax | - | 150,075 | 150,075 |
| Communications Tax | 515,335 | (42,000) | 473,335 |
| Total Taxes | 6,838,541 | 136,675 | 6,975,216 |
| Local Business Tax (County Occupational Licenses) | 44,000 | | 44,000 |
| Building Permit Fees | 800,000 | 2,002,720 | 2,802,720 |
| Building Training Fees | 11,200 | 9,600 | 20,800 |
| Dog Friendly Permits | 500 | - | 500 |
| Taxi Permits | 1,100 | - | 1,100 |
| Vacation Rental Permit & Agent Fees | 345,000 | 87,225 | 432,225 |
| FEMA FWS Review & Processing Fees & Inspection Fees | 4,800 | | 4,800 |
| Planning & Zoning Fees | 90,000 | 36,500 | 126,500 |
| Fire Inspection Fees (including vacation rentals) | 215,000 | 370,600 | 585,600 |
| Total License and Permits | 1,511,600 | 2,506,645 | 4,018,245 |
| Sales Tax Revenue - State Revenue Sharing | 264,891 | | 264,891 |
| Fuel and Motor Fuel Tax | 35 | - | 35 |
| Mobile Home License | 5,410 | - | 5,410 |
| FEMA Grant Revenue (Federal and State) | 11,575,252 | (9,959,765) | 1,615,487 |
| Alcoholic Beverage License | 19,700 | - | 19,700 |
| Department of Environmental Protection Grant | - | 55,350 | 55,350 |
| Half Cent Sales Tax | 1,526,116 | 203,625 | 1,729,741 |
| Firefighter Supplemental Comp | 6,300 | - | 6,300 |
| Tourist Development Council Grant | 117,420 | - | 117,420 |
| Department of Economic Opportunity Grant | - | - | - |
| Payment in Lieu of Taxes-Local Units | 10,950 | - | 10,950 |
| Total Intergovernmental Revenue | 13,526,074 | (9,700,790) | 3,825,284 |
| Key Colony Beach Fire/EMS | 550,000 | - | 550,000 |
| EMS Services | 650,000 | 187,138 | 837,138 |
| Start Smart Youth Sports | 2,650 | - | 2,650 |
| Camp Fees | 41,500 | - | 41,500 |
| Miscellaneous Recreation Program Revenue | 6,000 | - | 6,000 |
| Miscellaneous Event Fees | 900 | - | 900 |
| Adult Sports Programs | 3,400 | - | 3,400 |
| Mangrove Trimming Program | 125,000 | - | 125,000 |
| Total Charges for Services | 1,379,450 | 187,138 | 1,566,588 |
| Traffic Court Fines | 70,000 | - | 70,000 |
| Code Enforcement Fines | 50,000 | - | 50,000 |
| Local Ordinance Parking Fines | 2,450 | - | 2,450 |
| Fines - Local Training | 4,550 | - | 4,550 |
| Total Fines and Forfeits | 127,000 | - | 127,000 |
| Interest Income | - | - | - |
| Rents & Other | 12,000 | - | 12,000 |
| Private Source Contributions | - | 4,380 | 4,380 |
| Insurance Recovery | - | 870,615 | 870,615 |
| Miscellaneous Revenue | 25,000 | - | 25,000 |
| Total Miscellaneous Revenues | 37,000 | 874,995 | 911,995 |

**City of Marathon
Budget Amendment
Fiscal Year 2018-2019**

EXHIBIT A

| Fund | Adopted Budget FY 18/19 | Budget Amendment | Final Amended Budget FY 18/19 |
|---|-------------------------------|------------------------|--|
| General Fund (continued) | | | |
| Transfer from Stormwater Utility Fund | 60,000 | - | 60,000 |
| Transfer from Capital Infrastructure Fund | 333,334 | 285,194 | 618,528 |
| Transfer from Wastewater Enterprise Fund | 250,000 | - | 250,000 |
| Transfer from Impact Fee Fund | 50,000 | - | 50,000 |
| Proceeds from Interfund Borrowings and Line of Credit | - | - | - |
| Administrative Fee-Marina | 50,000 | - | 50,000 |
| Total Other Sources | 743,334 | 285,194 | 1,028,528 |
| Unappropriated Surplus (Fund Balance), October 1 | 2,892,366 | (9,420,799) | (6,528,433) |
| Reserved Fund Balance, October 1 | 399,939 | (73,808) | 326,131 |
| Total Fund Balance, October 1 | 3,292,305 | (9,494,607) | (6,202,302) |
| Total General Fund Revenues & Reserves BOY | \$ 27,455,304 | \$ (15,204,750) | \$ 12,250,554 |
| General Fund Expenditures | | | |
| Building | \$ 868,174 | \$ (175,000) | \$ 693,174 |
| City Clerk | 255,154 | (12,000) | 243,154 |
| City Manager | 230,823 | (15,000) | 215,823 |
| Code | 413,652 | (140,000) | 273,652 |
| Council | 480,072 | 75,600 | 555,672 |
| Finance | 370,352 | (5,000) | 365,352 |
| Fire/EMS | 3,892,471 | 400,000 | 4,292,471 |
| General Services | 972,943 | (260,000) | 712,943 |
| Information Technology | 361,214 | (62,000) | 299,214 |
| Legal | 369,442 | 95,000 | 464,442 |
| Nearshore Waters Management-Ports | 37,300 | (2,000) | 35,300 |
| Non-Departmental | 10,444,767 | (10,299,000) | 145,767 |
| Parks and Recreation | 1,478,400 | (150,000) | 1,328,400 |
| Planning | 965,839 | (430,000) | 535,839 |
| Police Services | 1,797,924 | (82,380) | 1,715,544 |
| Public Works | 344,729 | (55,000) | 289,729 |
| Total Expenditures | 23,283,256 | (11,116,780) | 12,166,476 |
| Reserved Fund Balance @ September 30 | 399,939 | (73,808) | 326,131 |
| Unreserved Fund Balance @ September 30 | 3,772,109 | (4,014,162) | (242,053) |
| Total Fund Balance, Sept 30 | 4,172,048 | (4,087,970) | 84,078 |
| Total General Fund Expenditures & Reserves EOY | \$ 27,455,304 | \$ (15,204,750) | \$ 12,250,554 |

**City of Marathon
Budget Amendment
Fiscal Year 2018-2019**

EXHIBIT A

| Fund | Adopted Budget FY 18/19 | Budget Amendment | Final Amended Budget FY 18/19 |
|--|-------------------------------|------------------------------|--|
| Capital Infrastructure Fund | | | |
| <u>Revenues & Other Funding Sources</u> | | | |
| Discretionary Sales Surtaxes | \$ 3,333,344 | \$ - | \$ 3,333,344 |
| State Land Acquisition Grants | 500,000 | (500,000) | - |
| Curry Hammock Park Surcharge | 25,000 | 22,313 | 47,313 |
| Key Colony Beach Infrastructure Funds | 25,000 | - | 25,000 |
| Boater Improvement Fund (BIF) Grant | 30,000 | - | 30,000 |
| Tourist Development Council Grants | 790,400 | (617,375) | 173,025 |
| FEMA Grant Revenue (Federal and State) | 2,146,014 | (823,055) | 1,322,959 |
| Interest Income | 12,000 | 5,655 | 17,655 |
| Private Source Contributions | 100,000 | (100,000) | - |
| Transfer from Vehicle Replacement Fund | 155,543 | 28,946 | 184,489 |
| Transfer from Impact Fee Fund | 350,000 | (237,005) | 112,995 |
| Unappropriated Surplus | 1,338,645 | 1,095,597 | 2,434,242 |
| Total Revenues & Other Funding Sources | <u>\$ 8,805,946</u> | <u>\$ (1,124,924)</u> | <u>\$ 7,681,022</u> |
| <u>Expenditures and Reserves for Future Appropriations</u> | | | |
| Vehicles | \$ 155,543 | \$ 28,946 | \$ 184,489 |
| Equipment | 95,000 | - | 95,000 |
| Equipment - Marathon Fire Rescue | 140,800 | 10,000 | 150,800 |
| Buildings & Improvements - Marathon Fire Rescue | 294,000 | (263,855) | 30,145 |
| Parks/Beaches Improvements | 1,686,755 | (128,900) | 1,557,855 |
| Hurricane Irma Recovery Projects | 2,302,588 | (1,000,000) | 1,302,588 |
| Land Acquisitions | 1,087,213 | (1,087,213) | - |
| Grants/Contributions-Other Government Agencies | 177,833 | (177,833) | - |
| Transfer to Debt Service Fund | 847,436 | - | 847,436 |
| Transfer to General Fund | 333,334 | 285,194 | 618,528 |
| Transfer to Stormwater Utility Fund | 650,000 | - | 650,000 |
| Reserve for Future Appropriation | 1,035,444 | 1,208,737 | 2,244,181 |
| Total Expenditures and Reserves for Future Appropriations | <u>\$ 8,805,946</u> | <u>\$ (1,124,924)</u> | <u>\$ 7,681,022</u> |

**City of Marathon
Budget Amendment
Fiscal Year 2018-2019**

EXHIBIT A

| Fund | Adopted Budget FY 18/19 | Budget Amendment | Final Amended Budget FY 18/19 |
|--|-------------------------------|-----------------------|--|
| Street Maintenance Fund | | | |
| Revenues & Other Funding Sources | | | |
| Local Option Gas Tax | \$ 273,733 | \$ - | \$ 273,733 |
| New Local Gas Tax | 188,425 | - | 188,425 |
| 8th Cent Motor Fuel Tax | 82,279 | - | 82,279 |
| Gas Tax ILA with Monroe County | 94,987 | - | 94,987 |
| Traffic Signal Maintenance Agreement | - | - | - |
| Traffic Light Agreement | - | - | - |
| Interest Income | 5,000 | - | 5,000 |
| FEMA Grant Revenue (Federal and State) | 805,000 | (805,000) | - |
| FDOT LAP agreements | 3,000,000 | (2,800,000) | 200,000 |
| Transfer in from Other Funds | 30,000 | - | 30,000 |
| Transfer from Vehicle & Equipment Replacement Fund | 57,000 | - | 57,000 |
| Unappropriated Surplus | 1,018,252 | 333,940 | 1,352,192 |
| Total Revenues & Other Funding Sources | \$ 5,554,676 | \$ (3,271,060) | \$ 2,283,616 |
| Expenditures and Reserves for Future Appropriations | | | |
| Personnel Costs | \$ 471,908 | \$ - | \$ 471,908 |
| Materials, Supplies & Services | 238,000 | - | 238,000 |
| Capital Outlay: | | | |
| Equipment | 15,000 | (12,000) | 3,000 |
| Vehicles | 57,000 | 26,400 | 83,400 |
| Building- Facilities Yard | 20,000 | (18,000) | 2,000 |
| Street/Sidewalk/Bridge Improvements | 3,419,000 | (2,900,000) | 519,000 |
| Hurricane Irma Recovery Projects | 920,000 | (910,000) | 10,000 |
| Transfer to Vehicle Replacement Fund | 28,000 | - | 28,000 |
| Transfer to Road Paving Reserve | 50,000 | - | 50,000 |
| Reserve for Future Road Paving | 150,000 | - | 150,000 |
| Reserve for Future Appropriation | 185,768 | 542,540 | 728,308 |
| Total Expenditures and Reserves for Future Appropriations | \$ 5,554,676 | \$ (3,271,060) | \$ 2,283,616 |



COUNCIL AGENDA STATEMENT

Meeting Date: November 12, 2019
To: Honorable Mayor and Councilmembers
From: Carlos A. Solis, P.E. Director of Public Works
Through: Chuck Lindsey, City Manager

Agenda Item: **Resolution 2019-111**, Accepting The Responsible Bid And Approving A Contract Between The City And LPS Utilities, Inc.; In An Amount Not To Exceed \$288,868.92 For Canal 257 Water Quality Improvement and Culvert Installation Project; Authorizing The City Manager To Execute The Contract And Expending Budgeted Funds On Behalf Of The City; And Providing For An Effective Date

BACKGROUND & JUSTIFICATION:

The City has acquired Grant funding from the FDEP for restoration of Canal 257, Sunrise Isle, projects, within the City of Marathon. On October 8, 2019 an Invitation to Bid was let for this project, and four companies responded. LPS Utilities, Inc. was the lowest responsive bidder. The bids received are as follows:

- 1. LPS Utilities, Inc - \$288,868.92
- 2. Coral Construction Company - \$978,754.00
- 3. Adventure Environmental, Inc. - \$993,274.00
- 4. Charlie Toppino & Sons, Inc. - \$1,267,557.00

After review of the submitted bids, staff recommends that the contract be awarded to LPS Utilities, Inc., the lowest responsive bidder. While the low bid is substantially lower than the other bids, staff has carefully reviewed the unit pricing and feels that the cost are adequate for the work. The contractor has also successfully completed other work in the vicinity for the City and has current projects in the work area.

CONSISTENCY CHECKLIST:

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

FISCAL NOTE:

The FY20 adopted Stormwater Utility budget includes appropriations of \$832,208 for stormwater canal and culver restoration construction projects.

RECOMMENDATION:

Approval of Resolution

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-111**

A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, ACCEPTING THE RESPONSIBLE BID AND APPROVING A CONTRACT BETWEEN THE CITY AND LPS UTILITIES, INC.; IN AN AMOUNT NOT TO EXCEED \$288,868.92 FOR CANAL 257 WATER QUALITY IMPROVEMENT AND CULVERT INSTALLATION PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND EXPENDING BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, canal restoration, along with wastewater and stormwater improvements, are among the top three areas of impact where water quality improvements can be made in the Keys; and

WHEREAS, the City published an Invitation To Bid on October 8th and received four bids with LPS Utilities Inc. being the lowest responsive and responsible bidder with a bid of \$288,868.92; and

WHEREAS, the Florida Department of Environmental Protections has awarded the City a grant in the amount of \$100,000 to complete a canal restoration project within the City of Marathon (Canal No 257); and

WHEREAS, it is the City's desire to accept the lowest bid, in furtherance of its desire to improve water quality in the water surrounding the islands of the City and those of the Florida Keys.

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

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

Section 2. The Contract between the City and the Contractor for service, a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form by the City Attorney, is hereby approved. The City Manager is authorized to execute the Contract and 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 12TH DAY OF NOVEMBER, 2019.

THE CITY OF MARATHON, FLORIDA

Mayor Steven Cook

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

David Migut, City Attorney

SECTION 00500
CONSTRUCTION CONTRACT

This Contract (the “Contract”) is dated as of the _____ day of _____ 20__ by and between the City of Marathon (hereinafter called the “CITY”) and LPS Utilities, Inc., DBA LPS Contracting (hereinafter called “CONTRACTOR”) located at:

5701 Overseas Hwy, Marathon, FL 33050.

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

ARTICLE 1. WORK

Project/Work: CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as the following: The Project consists of CITY OF MARATHON, Canal #257 Culvert Installation and Berm Break consisting of the installation of of a new culvert, cleaning of an existing culvert, and break-down of a berm to create a southerly exist for the waters of the Canal # 257 basin. Project shall include all restoration inclusive of all labor supplies, material required for a complete project as indicated and in accordance in the contract and construction documents.

ARTICLE 2. CITY’S REPRESENTATIVE, ARCHITECT AND ENGINEER

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

2.2 The CITY’s ENGINEER OF RECORD referred to in any of the Contract Documents designated herein is Wood Environmental & Infrastructure Solutions, Inc. 5845 NW 158th Street Miami, FL 33014.

ARTICLE 3. TERM

3.1 Contract Term. The Work shall be substantially completed within Seventy Five (75) calendar days after the date specified in the Notice to Proceed (“Substantial Completion”), and fully completed and ready for final payment in accordance with the Contract Documents within Ninety (90) calendar days after the date specified in the Notice to Proceed (“Final Completion”).

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

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

3.4 Liquidated Damages. CITY and CONTRACTOR recognize that time is of the essence in this Contract and that the CITY will suffer financial loss if the Work is not completed within the contract times specified in Section 3.1 for the Work above, plus any approved extensions thereof allowed in accordance with the General Conditions. The CONTRACTOR also recognizes that the damages which the City will incur if the Work is not substantially completed on time and/or fully completed on time are not readily ascertainable at the time this Agreement is entered into, and the Contractor recognizes the difficulties involved in proving the actual loss suffered by CITY if the Work is not substantially completed on time and/or fully completed on time. Accordingly, instead of requiring any such proof, CITY and CONTRACTOR agree that as liquidated damages to compensate the City and not as a penalty for delay or as an incentive to complete on time, CONTRACTOR shall pay CITY **(\$1,000.00)** for each calendar day that expires after the time specified in Section 3.1 for Substantial Completion of the Work. After Substantial Completion, if CONTRACTOR fails to fully complete the Work within the time specified in Section 3.1 for completion and readiness for final payment or any proper extension thereof granted by CITY, CONTRACTOR shall pay CITY **(\$750.00)** for each calendar day that expires after the time specified in Section 3.1 for full completion and readiness for final payment. Contractor agrees that the liquidated damage amounts specified in the Contract Documents bear a reasonable relationship to the actual damages to be suffered due to public inconvenience and damage to the City’s reputation if the Contractor fails to substantially complete and/or fully complete the Work on time. The liquidated damages are not in compensation for any other damages, and expressly exclude damages for completion contractor expenses, lost/unrealized revenue, financing costs, professional services, attorney fees, and/or additional City staffing that may be incurred if the work is not substantially completed on time and/or fully completed on time. All liquidated damages amounts will continue to be charged if the Contractor abandons the Work, or is terminated, and the Work is completed by another party.

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

3.6 Monies due to the CITY under Sections 3.4 and 3.5 shall be deducted from any monies due the CONTRACTOR, or if no money is due or the amount due is insufficient to cover the amount charged, the CONTRACTOR shall be liable for said amount.

ARTICLE 4. CONTRACT PRICE

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

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

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

ARTICLE 5. PAYMENT PROCEDURES

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

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

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

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

5.2.3

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

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

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

5.5 The Final Application for Payment by CONTRACTOR shall not be made until the CONTRACTOR delivers to the City complete original final releases of all liens and claims signed by all Subcontractors, materialmen, suppliers, and vendors on a form approved by the CITY, and an affidavit that so far as the CONTRACTOR has knowledge or information, the releases include and cover all Materials and Work for which a lien or claim could be filed. The CONTRACTOR may, if any Subcontractor, materialmen, supplier or vendor refuses to furnish the required Final Waiver of Lien, furnish a bond satisfactory to City to defend and indemnify City and any other property owner, person or entity City may be required to indemnify against any lien or claim.

ARTICLE 6. INSURANCE/INDEMNIFICATION.

6.1 Insurance. The CONTRACTOR shall secure and maintain throughout the duration of this Contract, insurance of such type and in such amounts necessary to protect its interest and the interest of the CITY against hazards or risks of loss as specified in the General Conditions of the Contract Documents.

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

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

ARTICLE 7. CONTRACTOR'S REPRESENTATIONS.

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

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

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

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

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

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

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

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

7.8 The CONTRACTOR warrants the following:

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

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

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

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

ARTICLE 8. CONTRACT DOCUMENTS.

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

8.1.1 Change Orders.

8.1.2 Field Orders.

8.1.3 Contract for Construction.

8.1.4 Exhibits to this Contract.

8.1.5 Supplementary Conditions.

8.1.6 General Conditions.

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

8.1.8 Specifications bearing the title: **City of Marathon Canal Restoration Water Quality Improvement Project Canal #257 Culvert Installation and Berm Break.**

8.1.9 Drawings consisting of a cover sheet and inclusive of all sheets bearing the following general titles: **CITY OF MARATHON 2019 CANAL RESTORATION WATER QUALITY IMPROVEMENT PROJECT**

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

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

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

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

8.1.14 The Contract Documents shall remain the property of the CITY. The CONTRACTOR shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided; however, that in no event shall the CONTRACTOR use, or permit to be used, any or all of such Contract Documents on other projects without the City's prior written authorization.

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

ARTICLE 9. Public Records

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

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

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

contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City Clerk, in a format that is compatible with the information technology systems of the City.

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

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

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

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

9.7 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-743-0033, CITYCLERK@CI.MARATHON.FL.US, OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.

ARTICLE 10. MISCELLANEOUS.

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

10.2 Except as otherwise provided in the Contract Documents with respect to subcontractors, no assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party thereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this

restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

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

10.4 Severability. Should any provision, paragraph, sentence, word, or phrase contained in this Contract be determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word, or phrase shall be deemed modified to the extent necessary in order to conform with such laws, then shall be deemed severable, and in this Contract, shall remain unmodified and in full force and effect.

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

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

10.7 Counterparts. This contract may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

10.8 Notices. Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to:

FOR CONTRACTOR:

LPS Utilities, Inc..

Jennifer Wilson, President

3509 Lily Pond Road

Woodstock, IL 60098

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

WITH COPY TO:

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

10.9 WAIVER OF JURY TRIAL AND VENUE. The CITY and CONTRACTOR knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract, arising out of, under, or in connection with the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party. The venue for any lawsuit arising out of this Contract shall be Monroe County, Florida.

10.10 Attorneys' Fees. If either the CITY or CONTRACTOR is required to enforce the terms of the Contract by court proceedings or otherwise, whether or not formal legal action is required, the parties shall bear their own attorney fees, costs and expenses, at the trial and appellate level.

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

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

CONTRACTOR

WITNESS

By: _____
By: _____

By _____
(Signature and Title)
(Corporate Seal)

(Type Name/Title signed above)

____ day of _____, 20____.

CITY

CITY OF MARATHON, FLORIDA

ATTEST

City Clerk

City Manager

____ day of _____, 20____.

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

By: _____
City Attorney

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

CERTIFICATE AS TO CORPORATE PRINCIPAL

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

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

(SEAL) _____
Signature

Typed w/Title

STATE OF FLORIDA
COUNTY OF _____

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

My Commission Expires:

Notary Public

EXHIBIT A

BID

Canal #257 Culvert Installation and Berm Break

Details as described on the attached Plans and Specifications

| Item No. | Estimated Quantity | Unit | Description | Unit Price | Line Total Price |
|----------|--------------------|-------|--|------------|------------------|
| 1 | 1 | LS | Mobilization and Demobilization | 3,900.00 | 3,900.00 |
| 2 | 1 | LS | Erosion and Sediment Control | 14,300.00 | 14,300.00 |
| 3 | 1 | LS | Maintenance of Traffic | 6,500.00 | 6,500.00 |
| 4 | 50 | LF | Removal of Existing 64" Corrugated Metal Pipe | 130.00 | 6,500.00 |
| 5 | 300 | LF | Remove existing Guardrail | 10.47 | 3,141.00 |
| 6 | 50 | LF | Clean out of Existing 64" Corrugated Metal Pipe by means of suction dredging | 65.00 | 3,250.00 |
| 7 | 60 | LF | Installation of Class IV Reinforced 6' x 6' Box Culvert | 1,583.05 | 94,983.00 |
| 8 | 164 | CY | Removal of accumulated sediment around proposed culvert | 100.04 | 16,406.56 |
| 9 | 253 | CY | Removal of a portion of an earthen berm | 100.04 | 25,310.12 |
| 10 | 231 | CY | Installation of D50 of 12" rock riprap at culvert and berm break | 199.56 | 46,098.36 |
| 11 | 1 | LS | Restoration of Staging Area and Spoonbill Drive | 1,300.00 | 1,300.00 |
| 12 | 300 | LF | New Guardrail | 89.21 | 26,763.00 |
| 13 | 30 | SY | Pavement restoration | 150.00 | 4,500.00 |
| 14 | 2 | EA | 2' x 2' High Reflective Signage at Berm Break | 650.00 | 1,300.00 |
| 15 | 3,916 | SQ FT | Mangrove Trimming & Removal at culvert and berm break | 7.18 | 28,116.88 |
| 16 | 1 | LS | As-Built Surveys | 6,500.00 | 6,500.00 |

COUNCIL AGENDA STATEMENT



Meeting Date: November 12, 2019
To: Honorable Mayor & Members of the City Council
From: David Migut, City Attorney
Copy: Charles Lindsey, City Manager

Agenda Item: **Resolution 2019-112**, Approving an Interlocal Agreement between Monroe County, the City of Marathon, and the City of Key West to provide a public transit system, connecting with the Miami-Dade to Marathon Transit System, to serve the Lower Keys from 50th Street, Marathon, to Key West; and providing an effective date.

BACKGROUND & JUSTIFICATION:

The City of Marathon has a current Interlocal Agreement with the City of Key West and Monroe County for the Lower Keys Shuttle. The current Interlocal Agreement will expire in 2020, and this new Interlocal Agreement is being proposed to replace it. Public transportation helps to lower the number of vehicles on the US-1 corridor, thus reducing traffic and increasing the margin of safety on the single highway between the City and Key West.

The City of Key West has proposed adding one more daily bus to the Lower Keys Shuttle schedule. While this will increase the total expenses, the parties have tentatively agreed to change the funding setup so that instead of each party paying 1/3 of the total expenses (the current setup), each party will pay a share of the expenses based upon the past year’s ridership share. Based on the most recent numbers, Marathon’s expenses will decrease, as detailed below.

The proposed Interlocal Agreement is for a 10 year term, commencing on March 1, 2020.

CONSISTENCY CHECKLIST:

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

FISCAL NOTE:

Under the current agreement, the costs are split equally at 33 1/3% each to Monroe County, Marathon & Key West at \$193,400.00 each. Under the new expanded agreement, taking into account percentage of ridership, Marathon’s share drops to 24%, or \$157,681.00, adjusted annually. The FY20 adopted City Council budget includes appropriations of \$189,922 for this agreement.

RECOMMENDATION:

Approval of Resolution

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-112**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN MONROE COUNTY, THE CITY OF MARATHON AND THE CITY OF KEY WEST TO PROVIDE A PUBLIC TRANSIT SYSTEM, CONNECTING WITH THE MIAMI-DADE TO MARATHON TRANSIT SYSTEM, TO SERVE THE LOWER KEYS FROM 50TH STREET, MARATHON, TO KEY WEST; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the “City”) wishes to enter into an Interlocal Agreement with Monroe County (the “County”) and the City of Key West (hereafter “Key West”) for the purpose of providing public transportation between the City and Key West; and

WHEREAS, the parties are authorized by Section 163.01(4), Florida Statutes, to enter into an Interlocal Agreement to carry out their independent powers; and

WHEREAS, there already exists an agreement between Miami-Dade County and a private bus company which provides limited public transit between Miami-Dade County and the City; and

WHEREAS, the Interlocal Agreement with the County and Key West is in the best interest of all parties for the purposes of providing a continuous system of public transit from Miami-Dade throughout the entirety of the Florida Keys.

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 incorporated herein.

Section 2. The Interlocal Agreement (ILA) attached hereto as Exhibit “A”, between Monroe County, The City of Marathon and the City of Key West providing a public transit system, connecting with the Miami-Dade to Marathon transit system to serve the Lower Keys from 50th Street, Marathon, to Key West is hereby approved. The Mayor is authorized to sign the ILA on behalf of the City, and the City Manager is authorized to expend budgeted funds on behalf of the City.

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

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 12 DAY OF NOVEMBER, 2019.

THE CITY OF MARATHON

Mayor Steven Cook

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

LOWER KEYS BUS SERVICE
INTERLOCAL AGREEMENT

This agreement is made and entered into by Monroe County ("County"), a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, FL 33040, the City of Marathon ("MARATHON"), a municipal corporation of the State of Florida whose address is 9805 Overseas Highway, Marathon, FL 33050, and the City of Key West ("KEY WEST") whose address is 1300 White Street, Key West, FL 33040.

WITNESSETH:

WHEREAS, there is an agreement in effect between Miami-Dade County and a private bus company to provide a limited public transit system between Miami-Dade County and Marathon.

WHEREAS, COUNTY is authorized by Florida Statute Section 125.01(1)(l) to provide public transportation; and

WHEREAS, MARATHON and KEY WEST are each authorized by Florida Statute Section 166.021(1) to provide public transportation; and

WHEREAS, the parties desire to allocate the financial share of the public transportation costs in proportion to their jurisdictions ridership; and

WHEREAS, KEY WEST currently operates a public transit system and has experience in the operation of a public transportation system, public transportation grant processes and management as well as compliance with other Federal and State mandates, regulations and processes including Florida Statutes and the Code of Federal Regulations; and

WHEREAS, there are many reasons for implementing continuing public transit between Marathon and Key West, including but not limited to:

- a) Local residents who could work outside of the immediate vicinity of their residence if public transportation through a commuter bus system was available;
- b) The need for safety by reducing traffic on U.S. Highway 1, the single highway between Marathon and Key West;
- c) The desire of many travelers, particularly Europeans as determined by the COUNTY's Tourist Development Council, to use public transit systems to travel from Miami to Key West;
- d) The need to provide inter-island travel with a commuter bus public transit system upon establishment of commercial airline service to Marathon; and
- e) The considerable number of local residents with leisure time for travel between the keys who either cannot or do not want to cope with traffic or parking problems; and

WHEREAS, KEY WEST, through its grant application experience, anticipates obtaining one or more Federal or State grants to initiate a commuter bus public transit system between Marathon and Key West, thereby keeping the costs as low as possible to the parties; and

WHEREAS, the parties are authorized by Section 163.01(4), Florida Statutes, to enter into an Interlocal Agreement to carry out their independent powers, and;

WHEREAS, the parties desire to provide a public transit system, connecting with the Miami-Dade to Marathon transit system to serve the Lower Keys from 50th Street, Marathon, to Key West;

NOW, THEREFORE, in consideration of the mutual promises and conditions contained herein, the parties agree as follows:

1. SCOPE.

The parties shall provide a limited schedule commuter bus public transit system between 50th Street, Marathon, to Key West (hereinafter “MARATHON-KEY WEST TRANSIT SYSTEM”). KEY WEST shall provide the equipment and drivers using its own transit service or by subcontracting the service if it is determined that subcontracting is more cost effective for all the parties. The initial route shall include a turn-around stop at 50th Street, Marathon and one designated bus stop each on the islands of Big Pine Key, Cudjoe Key, Sugarloaf Key, Saddlebunch Keys, and Big Coppitt Key, as well as a turn-around stop on College Road, Stock Island, Key West. The parties shall use their best efforts to schedule at least one trip in the early morning and one trip near the hour of 5:00 p.m. to loop around the island of Key West. Detailed scheduling shall be accomplished by KEY WEST transit staff with approval in writing by COUNTY’s Administrator and MARATHON’s City Manager. As long as the scheduling and operational changes do not affect the maximum funding committed by each party under this agreement, and as long as there are regularly scheduled bus stops on the specified islands, and the designated stops on Marathon and Stock Island, the chief administrative officer of each party may agree in writing to changes to the program, including additional bus stops, without requiring further approval by their respective governing bodies. During the term of this Agreement, the parties may have a study conducted periodically to further determine the actual use by residents and visitors in order to provide for additional or changed scheduled stops, costs and fares. The parties shall make adjustments to the services and funding to achieve the greatest benefit possible as indicated by the results of the study.

2. TERM.

- a. Subject to and upon the terms and conditions set forth herein, this Agreement shall continue in force for a term of 10 years commencing as of the 1st day of March, 2020 and ending on the 28th day of February 2030.
- b. The parties may extend this agreement upon the expiration of the term herein upon mutual agreement of the parties according to such terms and conditions as may be agreed to at the time of the extension

3. MANAGEMENT.

KEY WEST shall act as the operations manager of the commuter bus program, including but not limited to submitting grant applications, to federal and state agencies, administering all grants for the service to be provided providing the buses, drivers, maintenance, scheduling, and billing COUNTY and MARATHON for their share of costs pursuant to Paragraph 4.

4. FUNDING AND PAYMENT.

Each party shall pay a percentage of the expenses incurred equal to the past year's ridership share of all stops in their jurisdiction and as required in order to meet the match ratio for Federal and State Grant Assistance Programs. Each year, on the date of this agreement's enactment, the parties will reallocate the share of expenses based upon the past years ridership share contingent upon annual appropriation by respective parties. The parties share of expenses for the initial year of this agreement shall be as shown in Exhibit A.

Payment shall be made as follows; payment for expenditures permissible by law shall be made pursuant to the Florida Prompt Payment Act, Section 218.70 F.S. et seq, through reimbursement to KEY WEST upon presentation of invoices, cancelled checks, and other documentation necessary to support a claim for reimbursement. The application for payment documents to the COUNTY and MARATHON must be presented as a certified statement signed by KEY WEST's Director of Transportation and notarized, declaring that the representation(s) in the invoice are true and correct.

KEY WEST may elect to have vendors, and contractors paid through the direct vendor method, upon submission of appropriate documentation as outlined above and a specific request that payment be made directly to the vendor or contractor rather than to KEY WEST.

5. IN-HOUSE RESOURCES AND OUTSOURCE SUPPLIERS.

COUNTY and MARATHON shall provide reasonable assistance with their own employees and equipment, as well as procurement processes, as requested by KEY WEST, to reduce costs. This may include, but not be limited to, matches with in-kind services for expenses for administrative and/or operational costs under the control of MARATHON and COUNTY as allowable by grant funding programs. COUNTY shall include in its Tourist Development Marketing activities a component of advertising and promotion of the service, particularly to the European and Asian markets.

6. SIGNAGE.

Portable or temporary advertising signs are prohibited. It is expected that permanent signage and signage which includes changing messages using lighting or magnetic letters will be permitted on bus(es). All bus stop signs shall be based on fixed route or demand route service and shall be mounted permanently in approved locations.

7. RECORDS – ACCESS AND AUDITS.

All parties shall maintain adequate and complete records for a period of four years after termination of this Agreement. Each party, its officers, employees, agents and auditors shall have access to the other parties' books, records, and documents, including those of contractors providing MARATHON-KEY WEST TRANSIT SYSTEM services, related to this Agreement upon request. The access to and inspection of such books, records, and documents by the parties shall occur during the regular office hours or as agreed.

8. RELATIONSHIP OF PARTIES.

The parties to the Agreement are independent of each other and shall at no time be legally responsible for any negligence on the part of the other parties, their employees, agents of

volunteers resulting in either bodily or personal injury or property damage to any individual, property or corporation.

9. TAXES.

The parties are not subject to taxes and assessments.

10. INSURANCE.

The parties to this agreement stipulate that each is a state of governmental entity as defined by the Florida Statutes and represents to the other that it has purchased suitable Public Liability, Vehicle Liability, and Workers' Compensation insurance, or is self-insured, in amounts adequate to respond to any and all claims under federal or state actions for civil rights violations, which are not limited by Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes Sections 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes arising out of the activities governed by this agreement.

Each party agrees to keep in full force and effect the required insurance coverage during the term of the Agreement. If the Insurance policies originally purchased which meet the requirements of this agreement are cancelled, terminated or reduced in coverage, then the respective party must immediately substitute complying policies so that no gap in coverage occurs. Copies of current policy certificates shall be filed with the other parties whenever acquired or amended.

11. RESTRICTIONS ON AGREEMENTS ENTERED PURSUANT TO THIS AGREEMENT.

KEY WEST shall include, in all contracts funded under this agreement, the following terms:

a. Anti-discrimination. Contractor agrees that it will not discriminate against employees or applicants for employment or against persons for any other benefit or service under this agreement because of their race, color, religion, sex, sexual-orientation, national origin, or physical or mental handicap where the handicap does not affect of an individual to perform in a position or employment, and to abide by all federal and state law regarding non-discrimination.

b. Anti-kickback. Contractor warrants that no person has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of KEY WEST, MARATHON, or COUNTY has any interest, financially or otherwise, in contractor. For breach or violation of this warranty KEY WEST shall have the right to annul this agreement without liability, or in its discretion, to deduct from the agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee. Contractor acknowledges that it is aware that funding for this agreement is available through KEY WEST, MARATHON and COUNTY and that violation of this paragraph may result in KEY WEST, MARATHON or COUNTY withdrawing funding for the Project

c. Hold harmless/indemnification. Contractor acknowledges that this agreement is funded at least in part by Monroe County and the City of Marathon and agrees to indemnify and hold harmless COUNTY, MARATHON and KEY WEST and any of their officers and employees from and against any and all claims, liabilities, litigation, causes of action, damages, costs, expenses (including but not limited to fees and expense arising from any factual investigation, discovery or preparation for litigation), and the payment of any and all of the foregoing or any demands, settlements or judgements (collectively claims) arising directly or indirectly from any negligence or criminal conduct on the part of Contractor in performance of the terms of this agreement. The Contractor shall immediately give notice to COUNTY, MARATHON and KEY WEST of any suit, action or claim related this agreement.

d. Insurance. Contractor agrees that it maintains in force as part of the operating expenses of this bus route extension, a liability insurance policy which will insure and indemnify the Contractor, COUNTY, MARATHON, and KEY WEST from any suits, claims or actions brought by any person or person and from all costs and expenses of litigation brought against the Contractor for such injuries to person or damage to property occurring during the agreement or thereafter that results from performance by Contractor of the obligations set forth in this agreement. At all times during the term of this agreement and for one year after the acceptance of the project, Contractor shall maintain on file with KEY WEST a certificate of the insurance of the carriers showing that the aforesaid insurance policy is in effect. The following coverage's shall be provided.

- i. Workers Compensation insurance as required by Florida Statutes
- ii. Commercial General Liability Insurance with minimum limits of \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage
- iii. Comprehensive Auto/Vehicle Liability Insurance with minimum limits of \$1,000,000.00 combined single limit per occurrence

KEY WEST, COUNTY, and MARATHON shall be named as additional insureds, except on Workers Compensation insurance policies. The policies shall provide no less than 30 days notice of cancellation, non-renewal or reduction of coverage.

At all times during the term of this agreement and for one year after acceptance of the project, Contractor shall maintain on file with KEY WEST a certificate of insurance showing that the aforesaid insurance coverage's are in effect.

e. Licensing and Permits. Contractor warrants that it shall have, prior to commencement of work under this agreement and at all times during said work, all required licenses and permits whether required by federal or state law, or Monroe County or any applicable municipal ordinance.

f. Right to Audit. The Contractor shall keep such records as are necessary to document the performance of the agreement and expenses as incurred, and give access

to these records at the request of KEY WEST, MARATHON, or the COUNTY, the State of Florida or authorized agents and representatives of said government bodies.

12. HOLD HARMLESS.

COUNTY, as a state agency or subdivision defined in Section 768.28, Florida Statutes, agrees to be fully responsible to the limits set forth in such statute for its own negligent acts or omissions, or intentional tortuous actions, which result in claims or suits against either COUNTY, MARATHON or KEY WEST, and agrees to be liable to the statutory limits for any damages proximately caused by said acts or omissions, or intentional tortious acts.

MARATHON, as a political sub-division of the State of Florida, as defined in Section 768.28, Florida Statutes, agrees to be fully responsible to the limits set forth in such statute for its own negligent acts or omissions, or intentional tortuous acts, which result in claims or suits against either the MARATHON, KEY WEST or COUNTY and agrees to be liable to the statutory limits for any damages proximately caused by said acts or omissions, or intentional tortious acts.

KEY WEST, as a political sub-division of the State of Florida, as defined in Section 768.28, Florida Statutes, agrees to be fully responsible to the limits set forth in such statute for its own negligent acts or omissions, or intentional tortuous acts, which result in claims or suits against either the KEY WEST, COUNTY or MARATHON, and agrees to be liable to the statutory limits for any damages proximately caused by said acts or omissions, or intentional tortious acts.

Nothing contained in this Section shall be construed to be a waiver by either party of any protections under sovereign immunity, Section 768.28 Florida Statutes, or any other similar provision of law. Nothing contained herein shall be construed to be a consent by either party to be sued by third parties in any matter arising out of this or any other Agreement.

13. NON-DISCRIMINATION.

The parties, each for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that no person shall be discriminated against in the provision of services or award of contracts under this Agreement as provided under Federal and State law, and applicable local ordinance on the grounds of race, color, or national origin.

The Parties agree that there will be no discrimination against any person, and it is expressly understood that upon determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The Parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VII of the Civil Rights Act of 1964 (PL 88-352), which prohibit discrimination in employment on the basis of race, color, religion, sex, and national origin; 2) The title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on

the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss, 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to the nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 12101), as amended from time to time, relating to nondiscrimination in employment on the basis of disability; 10) Monroe County Code Chapter 14, Article II, which prohibits discrimination on the basis of race, color, sex, religion, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; (11) Code of Ordinance of the City of Key West Section 38-191 et set and Section 38-260 and (12) any other nondiscrimination provision in any Federal or state statutes which may apply to the parties to, or the subject matter of, the Agreement.

14. TERMINATION.

KEY WEST may terminate this agreement at any time upon thirty days notice to the other parties sent by certified mail to addresses of the parties previously stated above. MARATHON and COUNTY may terminate this Agreement at any time upon sixty days notice to the other parties.

15. ASSIGNMENT.

No Party may assign this Agreement or assign or subcontract any of its obligations under this Agreement other than as specified without the approval of the governing boards of the other Parties. All the obligations of this Agreement will extend to and bind the legal representatives, successors and assigns of the Parties.

16. SUBORDINATION.

This Agreement is subordinate to the laws and regulations of the United States, the State of Florida, COUNTY, MARATHON, and KEY WEST whether in effect on the commencement of this Agreement or adopted after that date.

17. GOVERNING LAWS/VENUE.

This Agreement is governed by the laws of the State of Florida and the United States. Venue for any dispute arising under this Agreement must be in Monroe County, Florida. In the event of any litigation, the prevailing party is entitled to a reasonable attorney's fee and costs.

18. ETHICS CLAUSE.

KEY WEST and MARATHON each warrant that is has not employed, retained or otherwise had act on its behalf any former COUNTY officer or employee subject to the prohibition of Section 2 of Ordinance No. 010-1990 or any COUNTY officer or employee in violation of Section 3 of Ordinance No. 010-1990. For breach or violation of this provision the COUNTY may, in its discretion, from the agreed payments or otherwise recover the full amount of any

fee, commission, percentage, gift or consideration paid to the former COUNTY officer or employee.

19. CONTRUCTION.

This Agreement has been carefully reviewed by each of the parties. Therefore, this Agreement is not to be construed against any party on the basis of authorship.

20. NOTICES.

Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the following:

COUNTY:
County Administrator
1100 Simonton Street
Key West, FL 33040

CITY OF MARATHON:
City Manager
9805 Overseas Highway
Marathon, Florida 33050

CITY OF KEY WEST
City Manager
P.O. Box 1409
Key West, Florida 33041

21. FULL UNDERSTANDING.

This Agreement is the parties' final mutual understanding. It replaces any earlier agreements or understanding, whether written or oral. This Agreement Cannot be modified or replaced except by another written or signed agreement.

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

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

(SEAL)
ATTEST: KEVIN MADOK, CLERK

By: _____
Deputy Clerk

Approved as to form:

Assistant County Attorney

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Mayor Sylvia Murphy

Date: _____

(SEAL)
ATTEST: DIANE CLAVIER

By: _____
Deputy Clerk

Approved as to form:

City Attorney

CITY OF MARATHON

By: _____
Mayor John Bartus

Date: _____

(SEAL)
ATTEST: CHERI SMITH

By: _____
Deputy Clerk

Approved as to form:

City Attorney

CITY OF KEY WEST

By: _____
Mayor Teri Johnston

Date: _____

Lower Keys Shuttle Costs

EXHIBIT A.

Cost of Lower Keys Shuttle for 8 hours per day = \$114.29

| Current Service, by Current Agreement | | | Current Payment Ratio | | |
|---------------------------------------|-------------|--------------|-----------------------|--------------|----------------|
| Current Service | New Service | Total | FDOT 50% | Jurisdiction | \$ each |
| \$ 1,160,400 | \$ - | \$ 1,160,400 | \$ 580,200 | Key West | 33% \$ 193,400 |
| | | | | Monroe | 33% \$ 193,400 |
| | | | | Marathon | 33% \$ 193,400 |

| LKS Ridership | |
|---------------|-----|
| Key West | 34% |
| Monroe | 42% |
| Marathon | 24% |

| Expanded Service, by Current Agreement | | | Current Payment Ratio | | |
|--|-------------|--------------|-----------------------|--------------|----------------|
| Current Service | New Service | Total | FDOT 50% | Jurisdiction | \$ each |
| \$ 1,160,400 | \$ 458,800 | \$ 1,619,200 | \$ 809,600 | Key West | 33% \$ 219,001 |
| | | | | Monroe | 33% \$ 219,001 |
| | | | | Marathon | 33% \$ 219,001 |

| Expanded Service, by New Ratio Agreement | | | Current Payment Ratio | | |
|--|-------------|--------------|-----------------------|--------------|----------------|
| Current Service | New Service | Total | FDOT 50% | Jurisdiction | \$ each |
| \$ 1,160,400 | \$ 152,606 | \$ 1,313,006 | \$ 657,003 | Key West | 34% \$ 223,381 |
| | | | | Monroe | 42% \$ 275,941 |
| | | | | Marathon | 24% \$ 157,681 |

| Difference from Current Agreement, Current Service | | |
|--|------|--|
| \$ | % | |
| \$ 29,981 | 16% | |
| \$ 82,541 | 43% | |
| \$ (36,719) | -18% | |



COUNCIL AGENDA STATEMENT

Meeting Date: November 12, 2019
To: Honorable Mayor and Councilmembers
From: Carlos A. Solis, P.E. Director of Public Works & E
Through: Chuck Lindsey, City Manager

Agenda Item: **Resolution 2019-113**, Approving A “Piggy-Back” Agreement Between The City Of Marathon, Florida And H&R Paving, Inc., For The Re-Paving of the Community Park Asphalt Sidewalk; Approving Contract In An Amount Not To Exceed \$73,900.00; Authorizing The City Manager To Execute The Contract And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date

BACKGROUND & JUSTIFICATION:

The city has acquired Grant funding from the TDC for improvements to the asphalt sidewalk at Community Park. The project is funded by the TDC as part of the overall improvement to the Amphitheater improvement project, including the re-sodding of the soccer fields.

In order to expedite project costs and delivery it is recommended piggy-backing an existing competitively bid construction contract, utilizing negotiated, and line item unit pricing to complete the City’s project. According to Section 2-184(3) of the Purchasing Policy, the City may waive competitive bidding procedures to be made under state general service administration contracts, federal, county or other governmental contracts or competitive bids with other governmental agencies with a substantially similar competitive bidding process (a “Piggy-Back” Agreement). We recently received bids for the Aviation Blvd. Multi-Use Trail Project, and only two respondents provided bids for this work. Therefore, this is a request to piggy-back the existing construction contract between the City and H&R Paving, Inc., in an amount not to exceed \$73,900 as specified in Exhibit “A.”

ATTACHMENTS

Proposed Contract

CONSISTENCY CHECKLIST:

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

FISCAL NOTE:

The adopted F20 Capital Infrastructure budget includes appropriations of \$394,975 for the TDC funded Community Park Complex project.

RECOMMENDATION:

Approval of Resolution

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-113**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A “PIGGY-BACK” AGREEMENT BETWEEN THE CITY OF MARATHON, FLORIDA AND H&R PAVING, INC., FOR THE RE-PAVING AND OTHER IMPROVEMENTS FOR THE COMMUNITY PARK ASPHALT SIDEWALK; APPROVING CONTRACT IN AN AMOUNT NOT TO EXCEED \$73,900.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, pursuant to Ordinance 2015-14, the City Council of the City of Marathon, Florida (the “City”), adopted Purchasing Policies and Procedures after determining that it was fiscally prudent and in the best interests of the City’s residents for the City to adopt policies and procedures for City employees and officials regarding the purchasing and acquisition of contractual services, equipment, goods, professional services and other similar types of services; and

WHEREAS, in accordance with Section 2-184(3), the City may waive competitive bidding procedures to made under state general service administration contracts, federal, county or other governmental contracts or competitive bids with other governmental agencies with a substantially similar competitive bidding process (a “Piggy-Back” Agreement); and

WHEREAS, the City requires expedited completion of improvements to the asphalt sidewalk at Community Park; and

WHEREAS, H & R Paving, Inc. as reflected by its existing contract with the City for the Aviation Boulevard Multi Use Trail Project, is duly qualified to provide the services sought by the City; and

WHEREAS, the City desires to engage H & R Paving, Inc. (“Contractor”) for such services to the City of Marathon and Contractor desires to provide such services to the City under the same terms as provided in the existent contract approved by Resolution 2019-69.

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 City Council hereby approves a “Piggy-Back” Agreement between the City of Marathon, Florida and H & R Paving, Inc., for improvements to the asphalt sidewalk at Community Park in an amount not to exceed \$73,900. The City Manager is authorized to execute the 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 12TH DAY OF NOVEMBER, 2019.

THE CITY OF MARATHON, FLORIDA

Mayor Steven Cook

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

David Migut, City Attorney

**AGREEMENT
FOR
PAVING SERVICES**

This Agreement, made as of this _____ day of _____ 2019, (Effective Date) by and between the CITY OF MARATHON, a municipal corporation organized and existing under the laws of the State of Florida, with its permanent post office address at 9805 Overseas Highway, Marathon, Florida, 33050 (hereinafter referred to as "CITY") and H&R Paving, Inc., a Florida limited liability company, with its permanent post office address at 1955 NW 110th Ave. Miami, Florida 33172 (hereinafter referred to as "CONTRACTOR"):

WITNESSETH:

WHEREAS, the CITY has the need paving re-construction services; and

WHEREAS, The City, Florida competitively bid for Paving Services as part of the Aviation Blvd Multi-Use Trail Project (Bid No. 2018-008) which is attached hereto and incorporated herein as Exhibit A; and

WHEREAS, CONTRACTOR submitted a Bid in response to the City; and

WHEREAS, after receipt of said Bid from CONTRACTOR, the City entered into a Contract with CONTRACTOR to provide Paving Services; and

WHEREAS, said Contract is dated August 9, 2019 and is attached hereto and incorporated herein as Exhibit B; and

WHEREAS, the CITY has reviewed the Scope of Services of the competitively bid in the Contract and has determined that it is an Agreement that can be utilized by CITY to provide paving services; and

WHEREAS, CONTRACTOR has agreed to honor the prices, terms and conditions of The City's Contract in performing paving services for the CITY; and

WHEREAS, the CITY desires to retain the services of CONTRACTOR established in this Agreement based on the Contract developed and executed by the City; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

Section 1. The foregoing recitals are true and correct and are hereby incorporated into this Agreement.

Section 2. Attached hereto and made a part hereof by reference as Exhibits A & B are the City's Contract referred to above, and Invitation to Bid 2019-008. The prices,

terms and conditions of the City's Contract shall govern the relationship between CITY and CONTRACTOR, except as amended below:

- a. The Scope of Services to be performed under this Agreement shall be as set forth in the Contract and the Invitation to Bid, except said services shall be performed in and for CITY.
- b. CONTRACTOR shall perform the services in and for CITY as detailed in the City's Aviation Blvd. Contract utilizing the prices as set forth in the Contract.
- c. The Contract Administrator shall be the Public Works Director of the CITY or his designee.
- d. The Scope of Services of invitation to Bid 2019-008 is amended as follows:
 - i. Contractor shall be paid in accordance with the Schedule of Values in Exhibit C.
 - ii. The detail areas and work are indicated the Sketch for Community Park Asphalt sidewalk replacement Exhibit D.
 - iii. 1.6.19. Contractor is responsible for providing all safety equipment, protective closing, transportation, and all other cost to accomplish the work.
- e. This Agreement is for a term of Ninety Days beginning the Effective Date.
- f. Notice to CITY shall be sent to: Director of Public Works, City of Marathon, at 9805 Overseas Highway, Marathon, Florida, 33050, with a copy to the City Manager at the same address.
- g. Regarding governing law and venue, the validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida. Any claim, objection, dispute or otherwise arising out of the terms of this Agreement shall be litigated in the Sixteenth Judicial Circuit in and for Monroe County, Florida.

Section 3. In all other respects, the terms and conditions of the City of Marathon Contract for Aviation Blvd. Multi-Use Trail" are hereby ratified and shall remain in full force and effect under this Agreement as provided by their terms.

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

CITY MANAGER

APPROVED AS TO FORM:

CITY ATTORNEY

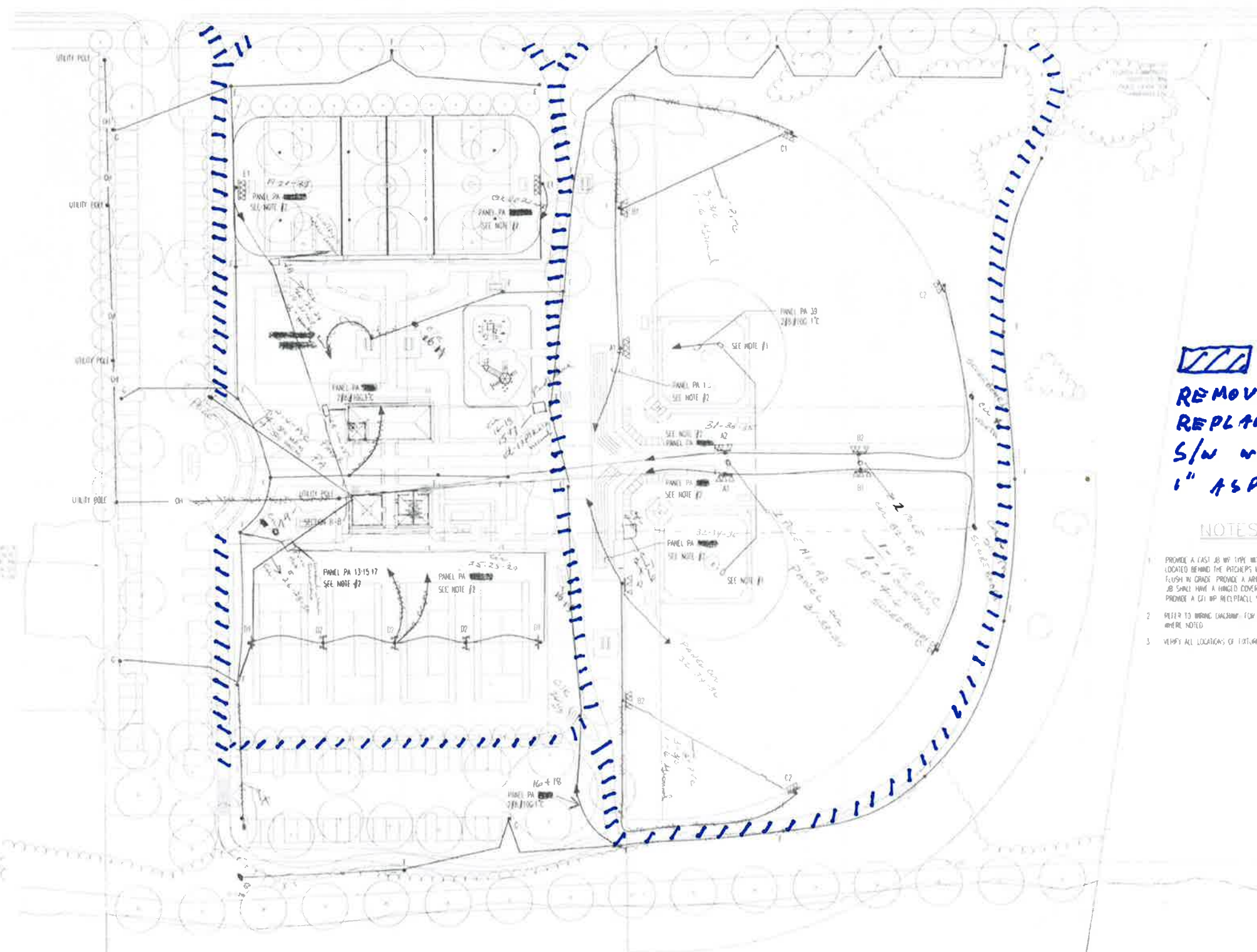
H&R PAVING, INC.

Printed Name: _____

Title: _____

Dated: _____

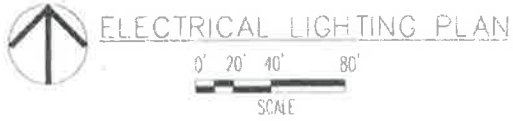
Asbuilt's Received From Rowdy's Electric 5-3-01
 U S H I G H W A Y



REMOVE AND REPLACE ASPHALT S/W w/4" BASE 1" ASPHALT

NOTES

1. PROVIDE A CAST IRON W/ TYPE WITH EASSED COVER LOCATED BEHIND THE PITCHER'S MOUND IN THE CROSS AREA FLUSH TO GRADE. PROVIDE A ARTIFICIAL GRASS PATCH APPLIED TO BOX COVER. JOB SHALL HAVE A HINGED COVER WITH SCREWDRIVER TIGHT ACCESS. PROVIDE A 12" HP RECPACELL SECURITY MOUNTED INSIDE BOX.
2. REFER TO BIDDING DRAWING FOR CONDUIT AND CONDUIT SIZES WHERE NOTED.
3. VERIFY ALL LOCATIONS OF FEATURES WITH ARCHITECT.



Hedley and Associates
 Engineering & Construction Consultants
 120 Venetian Way, Suite 16
 Merritt Island, FL 32953 • (407)452-2173

Marathon Community Park
 Overseas Highway
 Marathon, Florida

110 Angela Street
 Key West, Florida 33040
 Telephone (305) 296-1342
 Facsimile (305) 296-2722
 Florida License AKC0002022

Bender & Associates
ARCHITECTS
 p.a.

Project No. 9824
 PHASE 1
 ELECTRICAL
 SITE PLAN
 Date: 8/13/99

E2

November 2019 - December 2019

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

| MONDAY | TUESDAY | WEDNESDAY | THURSDAY | FRIDAY | SATURDAY | SUNDAY |
|---|--|---|---|--------|----------|--------|
| Nov 11 Veteran's Day-City Hall Closed | 12 5:30pm City Council Meeting (City Hall Council Chambers, 9805 Overseas Hwy.) | 13 | 14 | 15 | 16 | 17 |
| 18 5:30pm Planning Commission Meeting (City Hall Council Chambers, 9805 Overseas Hwy.) - | 19 | 20 2:00pm Code Compliance Hearing (Council Chambers, 9805 Overseas Hwy.) | 21 | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 Thanksgiving Holiday-City Hall Closed | 29 | 30 | Dec 1 |
| 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 9 | 10 5:30pm City Council Meeting (City Hall Council Chambers, 9805 Overseas Hwy.) | 11 | 12 | 13 | 14 | 15 |