



City of Marathon City Council Agenda
9805 Overseas Hwy., Marathon
Tuesday, July 13, 2021 5:30 P.M.

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Roll Call**
4. **Approval of agenda and consent agenda** [Approval of Consent Agenda passes all routine items indicated by asterisk (*). Consent Agenda items are not considered separately unless a council member so requests. In the event of such a request, the item is returned to the Regular Agenda.]
5. **City Council Items**
 - *A. Approval of Minutes1
 - B. Annual Review of Vacation Rental Fees.....13
 - C. Government TV Station Update (Councilmember Zieg)
 - D. Quay Property Update Discussion (Councilmember Zieg)
 - E. Building Inspections (Councilmember Zieg)
 - F. FY21/22 General Fund Budget Discussion
 1. **Resolution 2021-45**, Determining The Proposed Millage Rate, And The Current Year Rolled-Back Rate, And The Date, Time And Place For The First And Second Budget Public Hearings As Required By Law; Directing The Finance Director To File Said Resolution With The Property Appraiser Of Monroe County Pursuant To The Requirements Of Florida Statutes And The Rules And Regulations Of The Department Of Revenue Of The State Of Florida; And Providing For An Effective Date.....14
6. **City Manager Report**
 - *A. Park and Recreation Report.....17
 - *B. Marathon Fire Rescue Report.....19
 - *C. Building Report.....22
 - *D. Public Works Report23
 - *E. Marina Report.....26
 - *F. MCSO Marathon Substation Report29
 - G. Grants Update.....35
 - H. Wastewater Report.....37
 - I. 2021 Smart Ride Bicycle Miami to Key West Event November 19-20
7. **Citizens' comments on agenda items not scheduled for public hearing and items other than those appearing on the agenda** [Those who have signed in will be given the first opportunity to speak. Time is limited to 2 minutes per speaker.] **TIME CERTAIN TO 6:30 PM OR AS SOON AS POSSIBLE THEREAFTER OR AT THE CONCLUSION OF ALL COUNCIL BUSINESS; WHICHEVER OCCURS FIRST.**
8. **Quasi-Judicial Public Hearings:** Please be advised that the following items on the agenda are quasi-judicial in nature. If you wish to comment upon these items, please inform the Clerk by filling out the available sign-up form. An opportunity for persons to speak on the items will be made available after the applicant and staff has made their presentations on the items. All testimony, including public

testimony and evidence, will be made under oath or affirmation. Additionally, each person who gives testimony may be subject to cross-examination. If you refuse either to be cross-examined or to be sworn, your testimony will not be considered. The general public will not be permitted to cross-examine witnesses, but the public may request the Council to ask questions of staff or witnesses on their behalf. Persons representing organizations must present evidence of their authority to speak for the organization. (Councilmember’s to communicate ex parte communication.)

A. Resolution 2021-35, Consideration Of A Request By Florida Keys Animal Encounters, LLC For A Conditional Use Permit Pursuant To Chapter 102 Article 13 Of The City Of Marathon Land Development Regulations (LDRs) Entitled “Conditional Use Permits”, For The Expansion Of The Previously Approved Sea Life Amusement Park And A Marine Educational Facility, To Include A 15,200 Square Foot Warehouse, Office, And Lab Space, At 11710 Overseas Highway, And Legally Described As Part Of Government Lot 4, Section 5, Township 66 South, Range 33 East, Key Vaccas, Monroe County, Florida, Having Real Estate Number 00104130-000000.43

B. Resolution 2021-46, Approving The Request As Submitted By Season’s, Inc. For A Final Plat Pursuant To Chapter 102, Article 10 Of The City Of Marathon Land Development Regulations (LDRs) Entitled “Subdivision Of Land/Plats And Re-Plats,” Particularly, For A Portion Of 50th Street Gulf, Which Is Described As Thompson And Adams Subdivision Pb2-24, Gov Lot 1 Section 10, Twp 66s, Range 32e; And Pt Lots 5-6, Pt Of Lot 1 Overseas Hwy And Bay Bottom Adj To Lots 5-6, Chancery And Bk 1, Pt Of Lots 1 And 9, All Of Lots 10-11-12 And 13 Vaca Village Pb2-106, Marathon, Monroe County, Florida, Having Real Estate Number 00327150-000100. Nearest Mile Marker 50.....74

9. Ordinances for Second Public Hearing and Enactment

A. Ordinance 2021-16, Amending Chapter 100, Article I (“General”), Chapter 101, Article III (“Planning Commission”), And Chapter 102, Article 17 Of The Code Of Ordinances Of The City Of Marathon By Amending Sections 100.06, 100.09 & 101.02; Amending Section 102, Article 17 In Conformance Therewith Providing For The Repeal Of All Ordinances Or Parts Thereof Found To Be In Conflict; Providing For Severability; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity After Final Adoption By The City Council; Providing For Inclusion In The Code Of Ordinances And Providing For An Effective Date.....86

10. Ordinances For First Public Hearing

A. Ordinance 2021-17, Amending Chapter 36, Article IV, “Water And Mooring Fields,” Modifying Section 36-83 To Prohibit The Launching Of Vessels Twenty-Six (26) Feet Or Longer And Any Vessel Transported On A Trailer Of Three (3) Axles Or More From The Boat Ramp Located At Aviation Boulevard And Harbor Drive; Providing For Severability; Providing For The Repeal All Ordinances Or Parts Of Ordinances Found To Be In Conflict, And Providing For Inclusion In The Code; And Providing For An Effective Date. **SECOND PUBLIC HEARING WILL BE ON WEDNESDAY, JULY 14TH AT 8:30 AM.**.....90

11. Resolutions For Adoption

***A. Resolution 2021-47,** Approving An Interlocal Agreement Between The City Of Marathon And Monroe County For The Reimbursement From Boating Improvement Funds For Recreational Boating Related Projects Within The City Of Marathon; Authorizing The Mayor To Execute The Interlocal Agreement On Behalf Of The City; And Providing For An Effective Date.....94

***B. Resolution 2021-48**, Approving A Contract for Sludge Dewatering and Disposal Services To Synagro South LLC, for the period of two years with a possible one-year extension; Authorizing The City Manager To Execute The Contract And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.....107

***C. Resolution 2021-49**, Approving Contracts for Liquid Sludge Hauling and Disposal Services To Mike Haack Excavating, Inc. and Revinu, Inc. for two years with a possible one-year renewal; Authorizing The City Manager To Execute The Contract And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.....123

***D. Resolution 2021-50**, Approving a Third Amendment to the Agreement between the City of Marathon and James (Jack) Bridges for Code Enforcement Special Magistrate Services and Providing For An Effective Date.149

***E Resolution 2021-51**, Approving A Residential Lease Between The City And A Monroe County Sherriff's Officer For A Period Of Two Years; Authorizing The City Manager To Execute The Lease; And Providing For An Effective Date.....162

***F. Resolution 2021-52**, Approving Amendment Six to the Interlocal Agreement Between The City Of Marathon And Monroe County For Funding Of Ferry Service To Pigeon Key; Authorizing The City Manager To Execute The Inter-Local Agreement And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.....174

***G. Resolution 2021-53**, Accepting The Responsible Bid And Approving A Contract Between The City And Zabatt Engine Services, Inc. In An Amount Not To Exceed \$397,197.02 For The New Generator At The City Marina And Station 14 Generator Replacement; Authorizing The City Manager To Execute The Contract And Appropriate Funds On Behalf Of The City; And Providing For An Effective Date.....179

H Resolution 2021-54, A Request To The City Council Of Marathon By Truman Real Estate Enterprises, LLC To Abandon A Portion Of The Public Right Of Way Known As Flagler Street, Located At And Adjacent To Block 1 Lots 19, 20, And 21 Crains Subdivision, Sub Plat Book 1, Page 51, Having Real Estate Number 00366990-000000, Monroe County Florida, Nearest Mile Marker 59.....197

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

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

CALL TO ORDER - A Meeting of the City Council of Marathon, Florida was held on June 8, 2021, in the Marathon Council Chambers, 9805 Overseas Hwy., Marathon, Florida, Mayor Gonzalez called the meeting to order at 5:30 pm.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

ROLL CALL - There were present:

Councilmember John Bartus

Councilmember Steve Cook

Vice Mayor Mark Senmartin

Councilmember Dr. Daniel Zieg

Mayor Luis Gonzalez, comprising a quorum

Also, in attendance were:

City Manager, George Garrett

City Clerk, Diane Clavier

City Attorney, Steve Williams

Finance Director, Jennifer Johnson

Building Official, Noe Martinez

Planning Director Brian Shea

Parks & Rec Director, Paul Davis

Public Works Director, Carlos Solis

Fire Chief John Johnson

Approval of Agenda & Consent Agenda

Bartus added Planning Commission Appointment as item I under City Manager Report, Senmartin removed items 6A to 6G from the consent agenda. Garrett removed item H (Request From Marathon Youth Club To Sell Beer At Their Softball Tournament/Derby Fundraiser On July 10th At Marathon Community Park) under City Council items and stated they were changing the date and would come back to us. Garrett informed everyone Resolution 2021-35 was postponed by the applicant, staff was removing Resolution 2021-39 from the agenda and adding Resolution 2021-44.

MOTION: Bartus moved to approve the agenda as amended.
SECOND: Cook

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

City Council Items:

* Approval of Minutes

Proclamation Castaways Against Cancer (Vice Mayor Senmartin) - the Council presented the proclamation to Suzy Curry

FIRM Donation Request (Councilmember Zieg) – Zieg introduced Lynny Thompson who asked for a donation to FIRM and explained what efforts FIRM takes to try to lower our insurance rates.

MOTION: Zieg moved to donate \$10,000 to FIRM
SECOND: Bartus

Council thanked Thompson for continuing to fight for the Keys.

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

Two Code Board Appointments (at large) Clavier read the names of the two applicants who submitted by the deadline advertised as Susan McDonald and Vito Giglio. Senmartin asked that this be advertised for another month on Facebook. The Mayor questioned how long it had been advertised. Clavier responded the at-large appointments had advertised for approximately a month. Cook commented that we had been talking about this for the last five or six months.

MOTION: Cook moved to approve the applicants for Code Board
SECOND: Zieg

Vote of the Motion:

Yes: Cook, Zieg, Bartus, Gonzalez

No: Senmartin

Absent: None

Abstain: None

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

Government TV Station Update (Councilmember Zieg) – Zieg commented that the broadcasting has been inadequate, there is one meeting on all the time that is three or four years old. Garrett explained there were two parts, people watching live need to not hear a buzzing noise and Tiki Live/ENS/Brandon Bowman have been fine tuning the system as well as training staff, the next challenge is to bring everything up to date with the videos that air. Zieg asked for a July update as well.

Quay Property Discussion (Councilmember Zieg) – Zieg explained since the property was purchased a few years ago and it is now in disrepair, although the launch ramp looks great. Zieg asked for a discussion if we should sell it, put out an RFP to do something with it, etc. Garrett explained the City was working on a TDC grant for bathrooms at that location and we have closed off the end “T” as a safety precaution and we are purchasing additional signage and looking for funding for improvements. Zieg asked that this be brought back in July for a status update.

Lobster Mini Season Discussion (Councilmember Bartus) Bartus explained the group asked FWC to abolish mini season, but the State will not abolish mini season. The group addressed residents concerns and Monroe County Tourist Development Commission approved a plan to provide advertisement to educate visitors to take care of the environment and let the short lobsters go, etc. Handouts will also be provided for vacation rentals and hotels as well.

Planning Commission Appointment (Bartus) – Bartus thanked Mike Leonard for service and informed everyone that Mary Ann Royse, a real estate attorney would be his appointment, and she would do a great job.

City Manager Report:

Park and Recreation Report – Senmartin questioned how summer camp was going. Davis responded that summer camp participation was capped at 30 children, but weeks four and five were still open, since there is not a school bus available, they are using Avis rental vans to transport the children.

Marathon Fire Rescue Report – Chief commented he received a letter from Monroe County Fire Department thanking the City for helping and stepping up during the line of duty death. Bartus thanked the department personally for what they did for him. Senmartin asked about the school program, Chief responded the last class had eight attendees, one is going to the fire academy and the program is working well.

Building Report – Cook questioned how the software system was doing. Martinez commented on the building software system is getting better.

Public Works Report – Solis commented that the tiki/bus shelter was moving forward, and that the City hired a civil engineer and introduced Jared Weaver. Bartus questioned what the kayak dock status was. Solis reported the project is proceeding without any issues. The Oceanfront Park work is nearly complete, and the work at Sunset Park in Grassy Key should be complete by the end of June. Senmartin asked about the boat ramp parking ordinance. Williams stated the ordinance would be brought forward next month, and we can have a special call the day after the Council meeting for the one item.

Marina Report - Garrett informed the Council Cannon was not available, but he would answer any questions.

MCSO Marathon Substation Report - Garrett informed everyone a deputy was on the way, and any questions could be addressed.

Grants Update – Covelli informed the Council she was working on skate park funding to move the skate park before she could work on funding for a splash park, since the splash park would be constructed where the skate park currently is. Bartus asked about the Federal Recovery Act; Covelli explained in addition to the 3.6 million Federal Recovery Act Direct Funding there were a lot of finger program funding.

Building Software Update – Garrett explained this was already addressed by Martinez.

300 Unit Update – Garrett reported the lawsuit was ongoing, however, the ordinance was in effect, and applications are available online. These units would most likely be coming before the Council in July or August for approval.

Quasi-Judicial Public Hearings

Resolution 2021-34 Consideration Of A Request For A Development Agreement, For Island Homes Of The Keys Inc, Pursuant To Chapter 102, Article 8 Of The City Of Marathon Land Development Regulations (“The Code”) Entitled “Development Agreement” For The Development Of A Single Family Home; Vacant Land; Which Is Legally Described As, Section 32, Township 65, Range 33, Government Lot 1 And Section 05, Township 66, Range 33, Part Of Government Lot 4, Formerly Known As Phase V (The Island) Seawatch At Marathon A Condominium, Marathon, Monroe County, Florida; Having Real Estate Number 00104135-000000, Nearest Mile Marker 53.

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

Shea gave an overview of the request and staff recommendation of approval. Bart Smith, Agent for the applicant asked for approval.

Nick Mulick asked to confirm this was one unit. Shea confirmed it was.

MOTION: Zieg moved approval

SECOND: Bartus

Vote of the Motion:

Yes: Zieg, Bartus, Cook, Senmartin, Gonzalez

No: None

Absent: None

Abstain: None

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

~~**Resolution 2021-35**, Consideration Of A Request By Florida Keys Animal Encounters, LLC For A Conditional Use Permit Pursuant To Chapter 102 Article 13 Of The City Of Marathon Land Development Regulations (LDRs) Entitled “Conditional Use Permits”, For The Expansion Of The Previously Approved Sea Life Amusement Park And A Marine Educational Facility, To Include A 15,200 Square Foot Warehouse, Office, And Lab Space, At 11710 Overseas Highway, And Legally Described As Part Of~~

~~Government Lot 4, Section 5, Township 66 South, Range 33 East, Key Vacaas, Monroe County, Florida, Having Real Estate Number 00104130-000000.~~

Resolution 2021-36, Consideration Of A Request By Circle K Stores, Inc. For A Conditional Use Permit Pursuant To Chapter 102 Article 13 Of The City Of Marathon Land Development Regulations (LDRs) Entitled “Conditional Use Permits” For The Development Of A 5,200 Sq. Ft. Convenience Store With 14 Self-Service Fuel Positions On Property Located At 11100 & 11150 Overseas Highway, Which Is Legally Described As The South 150 Feet Of Lots 1 And 2 In Block 1 And The South 208.85 Feet Of Lots 3 And 4 Block 1 Of Key Colony Subdivision No. 3, Key Vaca, Marathon, Monroe County, Florida; Having Real Estate Numbers 00334560-000000 & 00334600-000000.

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

Shea explained the proposed project is the redevelopment of the existing gas station and convenience store and recommended approval.

MOTION: Cook moved approval

SECOND: Zieg

Damian Bricks, representing the applicant thanked the Council for their approval. Senmartin asked if more trees would be planted than depicted on the site plan. Bricks explained the landscape plan would be submitted as part of the permit, so there would be new landscaping. Senmartin questioned the entry/exit boat traffic may be an issue. Shea explained Currently, the parcel has four access driveways, two along Overseas Hwy, which provided access to an existing abandoned Burger King fast-food restaurant, and two driveways along Overseas Hwy, which currently provide access to the existing Shell gas station and Circle-K convenience store. Proposed access to the site would be provided via one Full Access driveway along Overseas Hwy, one existing, to remain driveway along Overseas Hwy, and from one cross-access driveway which will provide a connection to the adjacent retail.

Vote of the Motion:

Yes: Cook, Zieg, Bartus, Senmartin Gonzalez

No: None

Absent: None

Abstain: None

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

Citizen Comments

Diane Scott commented that someone called her a dog.

Ordinances For Second Public Hearing and Enactment

Ordinance 2021-13, Amending Section 104.62, “Mobile Vendor Food Units”; Providing For The Repeal Of All Code Provisions And Ordinances Inconsistent With This Ordinance; Providing For Severability; Providing For Transmittal To The State Department Of Economic Opportunity; Providing For Inclusion In The Code; And Providing For An Effective Date.

Shea explained Florida Statue 509.102 was adopted preempting regulation of mobile food dispensing vehicles involving licenses, registrations, permits, and fees to the state. The City of Marathon must amend our regulations to align with this preemption.

Mayor Gonzalez called for public comment, hearing none, closed public comments.

MOTION: Zieg moved approval

SECOND: Bartus

Vote of the Motion:

Yes: Zieg, Bartus, Cook, Senmartin Gonzalez

No: None

Absent: None

Abstain: None

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

Ordinances For First Public Hearing

Ordinance 2021-14, Amending The Future Land Use Map (FLUM) From Conservation (C) To Mixed Use-Commercial (MU-C) For The Property Described As Block 1 Lots 4-19, Block 2 Lots 11-15, Section 35, Township 65, Range 33, Crawl Key, Marathon, Monroe County, Florida; Having Real Estate Numbers As Stated In The Ordinance; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity.

Ordinance 2021-15, Amending The Zoning Designation From Conservation Native Area (C-NA) To Mixed Use (MU) For The Property Described As Block 1 Lots 4-19, Block 2 Lots 11-15, Section 35, Township 65, Range 33, Crawl Key, Marathon, Monroe County, Florida; Having Real Estate Numbers As Stated In The Ordinance ; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity.

Resolution 2021-37, Consideration Of A Request For An Annulment Of A Plat, For Floridian Holdings, LLC, Pursuant To Chapter 102, Article 10 Of The City Of Marathon Land Development Regulations (“The Code”) Entitled “Subdivision Of Land/Plats And Replats” For The Abandonment Of A Portion Of Ecstasy Subdivision West Of Banana Boulevard Excluding Block 3 Lot 4 And Adjacent Waterway And

Part Of Vacated Ocean Drive, And The Abandonment Of The Amended Valhalla Island Plat; Located At And Around 56243 Ocean Drive; Which Is Legally Described As Block 1 Lots 1-22, Block 2 Lots 1-20, Lot A, And Waterway Number 1, Block 3 Lots 1-3 And Lots 5-19, Lot A, And Part Of Waterway Number 2, Block 4 Lots 1-4, Block 5 Lots 1-7, Lot A, And Lot B Of Ecstasy Subdivision, As Well As The Entirety Of Valhalla Island Amended Plat Of Ecstasy Subdivision Block A, Bay Bottom Adjacent To Tract A, And Previously Abandoned Right Of Way Of Ocean Drive, Section 35, Township 65, Range 33, Crawl Key, Marathon, Monroe County, Florida; Having Real Estate Numbers As Stated In The Resolution, Nearest Mile Marker 57.

Consideration Of A Request A Conditional Use Permit And A Development Agreement, For Floridian Holdings, LLC, Pursuant To Chapter 102, Articles 8 And 13 Of The City Of Marathon Land Development Regulations (“The Code”) Entitled “Development Agreement” And “Conditional Use Permits” Respectively For The Development Of A Hotel; Located At And Around 56243 Ocean Drive; Which Is Legally Described As Block 1 Lots 1-22, Block 2 Lots 1-20, Lot A, And Waterway Number 1, Block 3 Lots 1-3 And Lots 5-19, Lot A, And Part Of Waterway Number 2, Block 4 Lots 1-4, Block 5 Lots 1-7, Lot A, And Lot B Of Ecstasy Subdivision, As Well As The Entirety Of Valhalla Island Amended Plat Of Ecstasy Subdivision Block A, Bay Bottom Adjacent To Tract A, And Previously Abandoned Right Of Way Of Ocean Drive, Section 35, Township 65, Range 33, Crawl Key, Marathon, Monroe County, Florida; Having Real Estate Numbers As Stated In The Resolution, Nearest

The clerk swore in speakers. Bartus, Senmartin, Cook and Gonzalez stated they had exparte communications, but it would not affect their vote.

Shea explained the zoning, plat, conditional use and development agreement items for Valhalla and recommended approval on all items. Gonzalez asked Shea to confirm that the 100 units currently exist, they are already in place in town, the Council is not giving them new units. Shea confirmed that was the case. Bart Smith for the applicant explained the project was put together with existing rights. Smith introduced the Valhalla Team: Bob Ziehmer, Senior Director of Conservation at Bass Pro Shop, Nicole Emmons, Principal at Hart Howerton Ltd., Jason Robinson, VP of Marketing at Big Cedar Lodge, Tim Mahoney, VP of Strategic Partnerships at Big Cedar Lodge. The team provided PowerPoint presentations outlining Johnny Morris’s commitment to conservation, the landscape, open space, and design portion of the project, the microgrid and other technology that will be used as well as solar energy, water, and fire protection as well as the site plan outlining the infrastructure, roads, and turn lane on Overseas Hwy. Smith addressed the Planning Commission objections. Bartus asked if Smith had been working with Mr. Martin. Smith replied he was working with him, and they had come to an agreement, it just needed to be put to paper. Senmartin questioned if the team had been there on the weekend, the boaters would likely not stop, and it is out of the City’s control to stop them. Zieg thanked Smith for developing the employee housing first. All the Councilmembers commented that the presentation was excellent.

James Lupino – spoke in favor of the project with conditions and reminded everyone the outparcel is a person’s home and suggested noise and lighting buffering, limiting the hours of tennis courts from 8:00 am until 9 pm.

Amedeo D’Ascanio – Spoke for the project

Glen Hewlett – spoke for the project, commenting that this would be the best resort.

John Walton – Spoke for the developer and commented this is our last chance for a resort of this type.

Dave Daniels – spoke for the project

Bart Smith asked for the Council’s support.

MOTION: Zieg moved approval of Ordinance 2021-13

SECOND: Bartus

Vote of the Motion:

Yes: Zieg, Bartus, Cook, Senmartin, Gonzalez

No: None

Absent: None

Abstain: None

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

MOTION: Zieg moved approval of Ordinance 2021-14

SECOND: Bartus

Vote of the Motion:

Yes: Zieg, Bartus, Cook, Senmartin, Gonzalez

No: None

Absent: None

Abstain: None

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

MOTION: Zieg moved approval of Ordinance 2021-15

SECOND: Bartus

Vote of the Motion:

Yes: Zieg, Bartus, Cook, Senmartin, Gonzalez

No: None

Absent: None

Abstain: None

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

MOTION: Bartus moved approval of Resolution 2021-37

SECOND: Cook

Vote of the Motion:

Yes: Bartus, Cook, Senmartin, Zieg, Gonzalez

No: None

Absent: None

Abstain: None

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

MOTION: Zieg moved approval of item 8E, Conditional Use and Development Agreement

SECOND: Senmartin

Vote of the Motion:

Yes: Zieg, Senmartin, Bartus, Cook, Gonzalez

No: None

Absent: None

Abstain: None

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

Ordinance 2021-16, Amending Chapter 100, Article I (“General”), Chapter 101, Article III (“Planning Commission”), And Chapter 102, Article 17 Of The Code Of Ordinances Of The City Of Marathon By Amending Sections 100.06, 100.09 & 101.02; Amending Section 102, Article 17 In Conformance Therewith Providing For The Repeal Of All Ordinances Or Parts Thereof Found To Be In Conflict; Providing For Severability; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity After Final Adoption By The City Council; Providing For Inclusion In The Code Of Ordinances And Providing For An Effective Date.

Williams explained the general cleanup of the code, there were typographical errors as well as outdated and unused sections that were overbroad or otherwise unenforceable.

Mayor Gonzalez called for public comment, hearing none, closed public comments.

MOTION: Bartus moved approval

SECOND: Zieg

Vote of the Motion:

Yes: Bartus, Zieg, Cook, Senmartin, Gonzalez

No: None

Absent: None

Abstain: None

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

Resolutions for Adoption:

Resolution 2021-38 Approving Subject To Conditions, A Request By Andrew Ponnock To Abandon The Public Right Of Way Located At 58090 Overseas Highway, Known As Flagler Street, Described As Being Adjacent To And Contiguous With Block 36, Lot 11, Crains Subdivision, Grassy Key, Having Real Estate Number 00371040-000000. Nearest Mile Marker 58; And Providing For An Effective Date.

Shea explained the applicant will grant a utility easement to the City of Marathon and all utilities for current and future use. Shea informed everyone the majority of properties on the Ocean side

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

Mayor Gonzalez called for public comment, hearing none, closed public comments.

MOTION: Bartus moved approval

SECOND: Cook

Vote of the Motion:

Yes: Bartus, Cook, Senmartin, Zieg, Gonzalez

No: None

Absent: None

Abstain: None

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

~~**Resolution 2021-39**, Approving Change Order #3 To The Contract With Key Honey Contracting LLC In An Amount Not To Exceed \$7,480.00 For The Relocation Of The Emergency Repairs To The Service Area 6 Vacuum Main Near 120th Street And US1; Authorizing The City Manager To Execute The Contract And Appropriate Budgeted Funds On Behalf Of The City; And Providing For An Effective Date~~

* **Resolution 2021-40** Approving A Second Amendment To The Memorandum Of Understanding (MOU) Between The Monroe County School District Division Of Career And Technical Education (MCSD) And The City Of Marathon, Florida, For MCSD's Fire Academy At Marathon High School To Continue To Provide Fire Fighting Training To High School And Adult Students In An Amount of \$50,000 per Year For Each Successive School Year Until Terminated With 60 Days' Notice; and Providing For An Effective Date.

* **Resolution 2021-41**, Approving A Two-Year Extension To The Agreement Between The City Of Marathon And Keefe, McCullough & Co., LLP For Auditing Services; Authorizing The City Manager To Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.

* **Resolution 2021-42**, Accepting The Responsible Bid And Approving A Contract Between The City And Pedro Falcon Construction In An Amount Not To Exceed \$274,867.00 For The Marina Building Improvement Project; Authorizing The City Manager To Execute The Contract And Appropriate Funds On Behalf Of The City; And Providing For An Effective Date

* **Resolution 2021-43**, Approving A Contract With The Firm Of Tetra Tech, Inc. (Contractor) To Manage The City's Agreements With The Florida Department Of Economic Opportunity (DEO) With Which The City Has Two CDBG-DR Grants (I0094 & I019); Said Grants To Be The Subject Of The Contractor's Management Responsibility; Providing For Management Responsibilities Under This Contract; Providing For An Approximate Termination Date; And Providing For An Effective Date Of This Resolution

Resolution 2021-44, Approving Change Order No. 2 To Contract Between The City And Discount Rock & Sand, Inc. In The Current Amount Of \$113,387.50 For Construction Of Sombrero Area Stormwater Improvements; Increasing The Contract In An Amount Not To Exceed \$9,850.50; Authorizing The City

Manager To Execute The Change Order And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.

Solis explained the change order due to conflicts with an existing force main and installation of additional structures for future maintenance of the existing storm sewer for \$9,850.50 could not wait until the next meeting, the costs would be covered by a grant.

Mayor Gonzalez called for public comment, hearing none, closed public comments.

MOTION: Bartus moved approval

SECOND: Cook

Vote of the Motion:

Yes: Bartus, Cook, Senmartin, Zieg, Gonzalez

No: None

Absent: None

Abstain: None

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

Citizen Comments

Diane Scott - commented that Marathon needed its own police department.

Council Comments

Cook commented that it was shameful and sad that it has become toxic to be a white male, Dr. Martin Luther King had a great movement, and it has been abused.

Zieg gave an overview of historical events that happened on this date and thanked staff and welcomed the new staff members.

Bartus thanked Staff, Marathon Fire Rescue and Mike Card for recently helping him and commented that Shea did an incredible job. Bartus reminded everyone of the July 4th celebration at Sombrero Beach and that Rotary would be selling food and drinks for scholarships. Bartus commented that he had a new CD available.

Senmartin wished everyone a good night.

Gonzalez thanked staff, first responders and MCSO welcomed the new staff members Jared Weaver and Maria Covelli.

ADJOURNMENT

With no further business to come before the Council, Mayor Gonzalez adjourned the meeting at 7:57 pm by unanimous consent.

I certify the above represents an accurate summary of the regular Council meeting of June 8, 2021.

Diane Clavier, City Clerk

Date

DRAFT



CITY OF MARATHON, FLORIDA

9805 Overseas Highway, Marathon, Florida 33050
Phone: (305) 743-0033 Fax: (305) 743-3667

EXHIBIT A

City of Marathon Vacation Rental License Fees

Adjusted fees are as follows:

New Licenses: Includes new and upon transfer of ownership/ delinquent/ expired

Agent/Property Owner New License Fees

Includes one (1) Fire-inspection;
*Fire fees are based on occupancy

1. <u>1 bedroom*</u>	\$750.00	<u>\$1000.00</u>
2. <u>2 & 3 bedrooms*</u>	\$750.00	<u>\$1100.00</u>
3. <u>4 bedrooms & over*</u>	\$750.00	<u>\$1200.00</u>

Agent/Property Owner Annual Renewal Fees

Includes one (1) Fire-inspection;
*Fire fees are based on occupancy

1. <u>1 bedroom*</u>	\$500.00	<u>\$650.00</u>
2. <u>2 & 3 bedrooms*</u>	\$500.00	<u>\$750.00</u>
3. <u>4 bedrooms & over*</u>	\$500.00	<u>\$850.00</u>

Fire-re inspection: Each occurrence upon failure of included inspection \$150.00
Transfer of Agent Fee: ~~\$50.00~~ \$75.00

Additions shown by underline
Deletions shown by ~~strikethrough~~

**CITY OF MARATHON, FLORIDA
RESOLUTION 2021-45**

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

WHEREAS, on June 29, 2021, the Honorable Scott P. Russell, Property Appraiser of Monroe County, Florida (the “Property Appraiser”), served upon the City of Marathon (the “City”), a “Certification of Taxable Value” certifying to the City its 2021 taxable value; and

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

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

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

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

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

Section 2. The current year rolled-back millage rate, computed pursuant to Section 200.065, *Florida Statutes*, is 2.4712 mills, which is \$2.4712 per \$1,000.00 of assessed value.

Section 3. The maximum millage rate which may be adopted by a *majority vote* of the governing body, pursuant to Section 200.185, *Florida Statutes*, is 2.5807 mills, which is \$2.5807 per \$ 1,000.00 of assessed value.

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

<u>Date</u>	<u>Time</u>	<u>Place</u>
September 9, 2021	5:05 p.m.	Marathon City Hall 9805 Overseas Highway Marathon, Florida
September 14, 2021	5:05 p.m.	Marathon City Hall 9805 Overseas Highway Marathon, Florida

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

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

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13th DAY OF JULY 2021.

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

Steve Williams, City Attorney

MEMORANDUM

Date: July 6, 2021

To: Honorable Mayor and City Council

From: Paul Davis, Parks and Recreation Director

Through: George Garrett, City Manager

Subject: Parks and Recreation Monthly Report

JULY 2021

PARKS AND RECREATION REPORT

BEACHES

Sombrero Beach

- We continue to sanitize and restock the toilet paper in the restrooms in the afternoons and evening hours.
- There were a couple areas identified on the playground equipment that needs attention before it becomes a hazard. My staff will begin to repair those areas and begin a regular maintenance schedule for the playground area.
- The kayak release area has been repaired by Coral Construction. The area is now open for use.
- I met with the new deputy (Diaz) who will be moving into the house at the beach. We discussed the opening and closing of the beach and how we (Parks and Rec) can assist if need be. She will be moving into the residence on or after the 15th of July.

Coco Plum

- Everything is good at Coco Plum Beach

PARKS

Jesse Hobbs

- No issues at Jesse Hobbs Park

Community Park

- Yoga classes continue to happen at the amphitheater Monday, Wednesday, Thursday, and Friday.
- Summer camp has been a huge success so far even with having to deal with the inconsistent weather these past few weeks. We are averaging 22 – 28 campers a day. So far, we've visited Jacob's Aquatics, Boondock's, Art Studio, Fort Zachary, Rec Center, and City Hall (rainy days).
- NFL Flag Football registration is going on until Friday, July 19th. Tryouts will be July 21st and 22nd. Season will start the week of August 9th and ending September 30th.

- Adult softball season will be coming to an end July 15th for the summer season. There are 8 teams who are participating in this summer season.
- We're looking to move forward with the RFP for the playground structure at the Community Park. The money has already been allocated in this year's budget and will be transferred to next year's budget so it can be completed as soon as possible.
- The batting cage is almost complete. I decided to look into putting a chain-link fence around the batting cage so we can monitor the use of the batting cage and add some longevity to the batting cage. If we allow the batting cage to be used all times of the day and weekend hours there is a strong possibility the batting cage will not last that long and it will need replacing sooner than later.

Rotary Park

- We are still working on the materials list for the playground structure along with filling the committee vacancies for the volunteer board for the playground build.

Ocean front / Events Field

- We are having our annual Fishing Fun Event on Saturday, July 10th at the newly completed fishing dock at Ocean Front Park.



CITY OF MARATHON FIRE RESCUE

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

Memorandum

Date: 7/01/21
To: Honorable Mayor and City Council members
From: John A. Johnson, Fire Chief
Through: George Garrett, City Manager
Subject: June Month End Report

ALARM RESPONSES

	June
Fire Incidents	4
Hazardous Condition	5
Public Service	15
False Alarm Fire	16
Good Intent Call	12
EMS	138
Inter-facility Transfers	75
Total for Month:	265
Total Calls for Calendar 2021:	1451

FIRE PREVENTION

	June
Fire Inspections	17
Fire Safety Plan Review	24
Vacation Rental Inspections	123
Occupational License Inspections	0
Annual Life Safety Inspections	0
Event Inspections	0
Annual State Inspections	3
DHR Follow-Up Inspections	0

VACATION RENTALS

	June
Total Applications Processed	90
Vacation Rental Inspections	123
Total VR Fees Collected	\$80,500.00
Agents Trained	12

OPERATIONS:

- **Training:**
 - **Fire Officer Training:** All Fire Officers maintain daily Incident Management continuing education.
 - **EMS Training:** All Firefighters maintain daily BLS and ALS continuing education. New protocol training continues.
 - **Fire Training:** All firefighters continue to conduct daily shift drills.
 - **ARFF:** The department has updated the Emergency Response Plan for the Airport.
 - **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 793 courses were taken which totaled 381.01 hours of training.
 - **Instructors on Staff:** We have a total of six 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. Over the last 6 months the Benevolent has been as active as possible. We had the return of one of our fully vaccinated members resume riding with the department when he is available.

INFORMATION –

The Marathon High School/School Board Fire Recruit Program will start again this August. We have 14 students signed up for the program.

COVID-19 is still a part of our daily lives. We continue to promote vaccinations to all residents and visitors. We still encourage the use of masks when one feels they are needed to protect themselves or family.

As we enter the summer months, we need to be on alert for changing weather patterns and continue to make sure we are protected. Everyone please be smart, prepare, and keep your families safe. Water, food, phone chargers, fuel, and possible evacuation plans are a minimum requirement. The City's staff are here for you, and we wish everyone a safe hurricane season.

PUBLIC OUTREACH IN JUNE:

Benevolent Meeting
Camp Tour at Crane Point

ACTIVITIES ATTENDED IN JUNE:

City Council Meeting - 1
Key Colony Beach Commission Meetings – 2
Active Shooter Training
American Rescue Plan Act – Meeting
Regular Commission Meeting – 2
First There First Care Conference & Gathering of Eagles
Countywide Covid Coordinating Call
Fourth of July Planning Meeting
FY-22 Budget Meeting
Monroe County Hurricane Exercise
Virtual EPCRA & Shelter in Place Presentation

JUNE BREAKDOWN

PERMITS READY FOR PAYMENT: 35

TOTALING: \$113,769

CONTRACTORS REGISTERED: 3,571 ytd

ACTIVE PERMITS: 944

CO'S ISSUED: 11

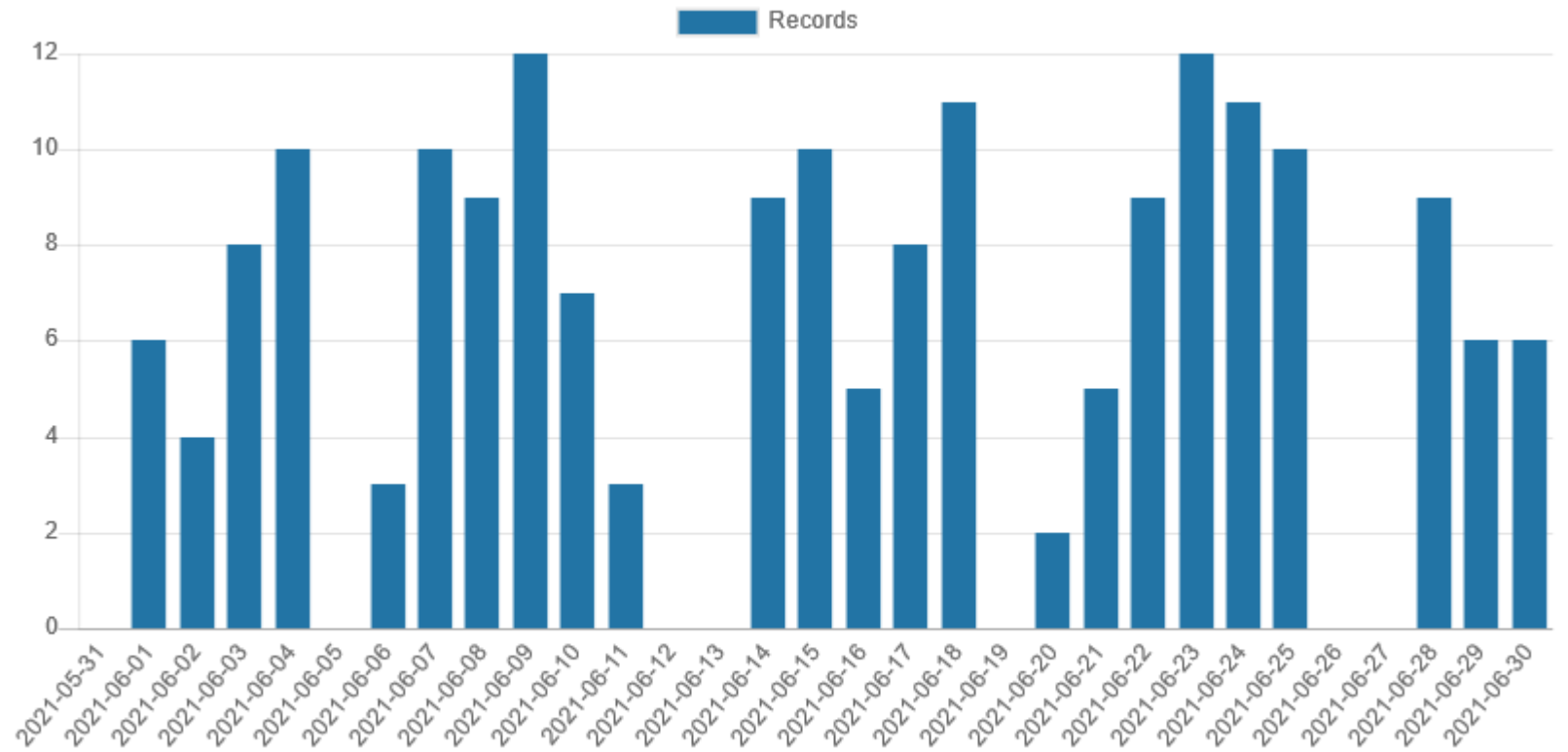
6 REPLACEMENT HOMES

5 BPAS HOMES

0 TBR HOME

REQUESTS FOR PRIVATE PROVIDER: 36


COMPLETED ACTIONS TOTAL: 1792



Totals

 **185**
Records Created

 **939**
Inspections Done

 **\$223,903.27**
Revenue Collected

 **134**
Permits Issued



CITY OF MARATHON PUBLIC WORKS

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

MEMORANDUM

DATE: July 13, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Carlos A. Solis, P.E. Director of Public Works & Engineering
THROUGH: George Garrett, City Manager
SUBJECT: Public Works Update

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

Capital Infrastructure Projects

- **Marina Office Modification and Improvement Project:** The Notice To Proceed has been issued and the project is expected to be completed before the end of December.
- **Marina & Station 14 Generators:** The project was let out to bid, and one bid was received. A resolution for recommendation of award is included in this agenda package.
- **Sombrero Area Stormwater Project:** The project is proceeding. We are waiting for the additional structures requested by the City to be delivered to proceed with the installation and completion of the project.
- **Community Park Office Renovation:** We have all seen the rapid increase in construction material cost, in particular wood, and recently wood production has increased followed by an estimated 41% drop in wood cost. However, the cost reduction has not yet reached the retail sector, which directly affects the bid cost. We are continually monitoring the situation and are ready to re-bid the project once we have confirmation that the price reduction has reached the retail market.
- **Sunset Park Grassy Key Kayak Launch and Oceanfront Park Repair Project:** The work at Oceanfront Park is complete. The dock at Sunset Park is partially complete. The gangway was delivered last week, and the contractor is waiting for

the delivery of additional material to finish the project. We are also in the process of generating a change order to have the contractor repair the existing Kayak dock at Oceanfront Park, which consist of replacing all deteriorating hardware for the platform.

- **Bridge Repair Projects:** We received all required permits, and plans updated based on the most recent FDOT inspection. The project has been placed out to bid and we expect to bring a recommendation of award at the next council meeting for the Coco Plum, 116th Street, and 112th Street bridges repair.

The 117th Street Bridge is also in need of replacement. We are currently on the list with FDOT for funding to replace the bridge decking, which is estimated at approximately \$1,000,000.

Upcoming Projects:

- **Restroom at Sunset Park & Quay Property:** The required tourism study, as required by the TDC as part of the grant, is complete and submitted to the TDC for approval. Upon confirmation, we will begin the restroom project. In the interim, we are providing portable toilets to serve the users of the property.
- **Coco Plum Road Repair:** The plans prepared in-house are complete and the project is being advertised for bid. We expect to bring a resolution for recommendation to award the repair project at the next council meeting.

General Public Works Issues and update:

- **Street R/W Maintenance:** Our crews will continue with vegetation cutbacks, as our tractor needed some repairs and we were waiting for delivery of parts. We will continue the area behind the airport and will continue moving west throughout the city.
- **33rd Street Boat Ramp:** We have applied for a Boating Improvement Fund grant from Monroe County to replace the damaged trench drain at the boat ramp. If approved, funding should be available after October 1 to complete the work

Misc.

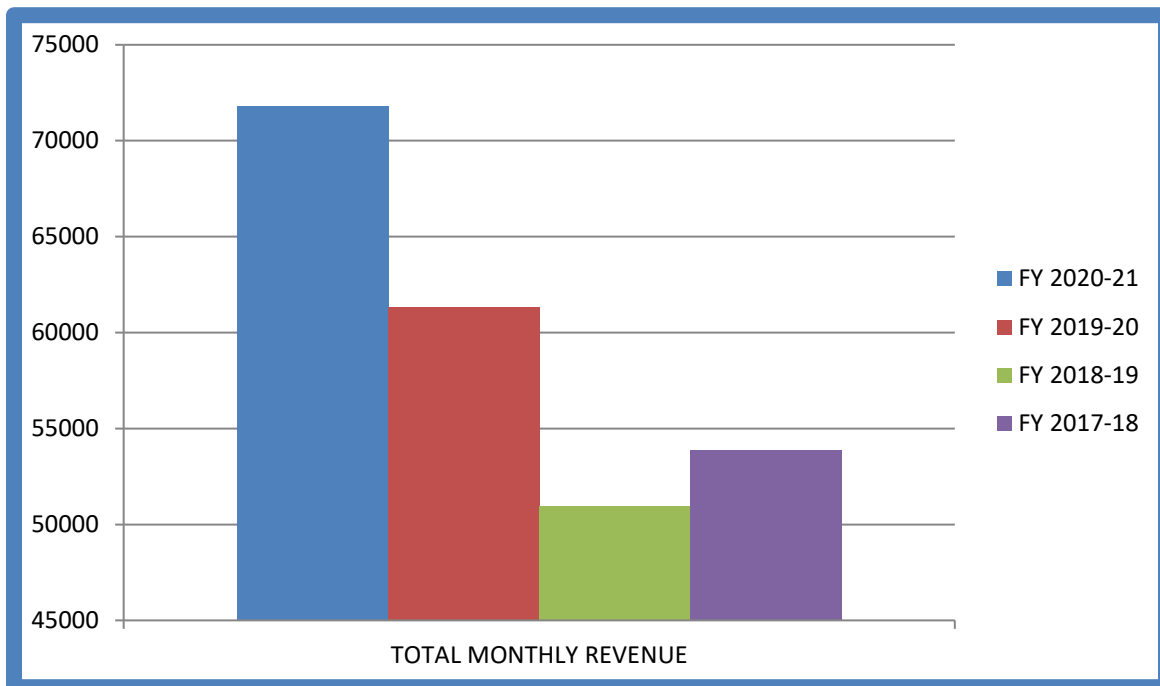
- **Building Plan Review:** The Public Works & Engineering department has processed 31 permits and inspections for projects submitted to the building department.
- **K-Mart Shopping:** We have forwarded the easement agreement to KIMCO, the owners of the shopping center for their review and approval. Upon confirmation of their acceptance, we will proceed with the construction of the shelter.



Memorandum

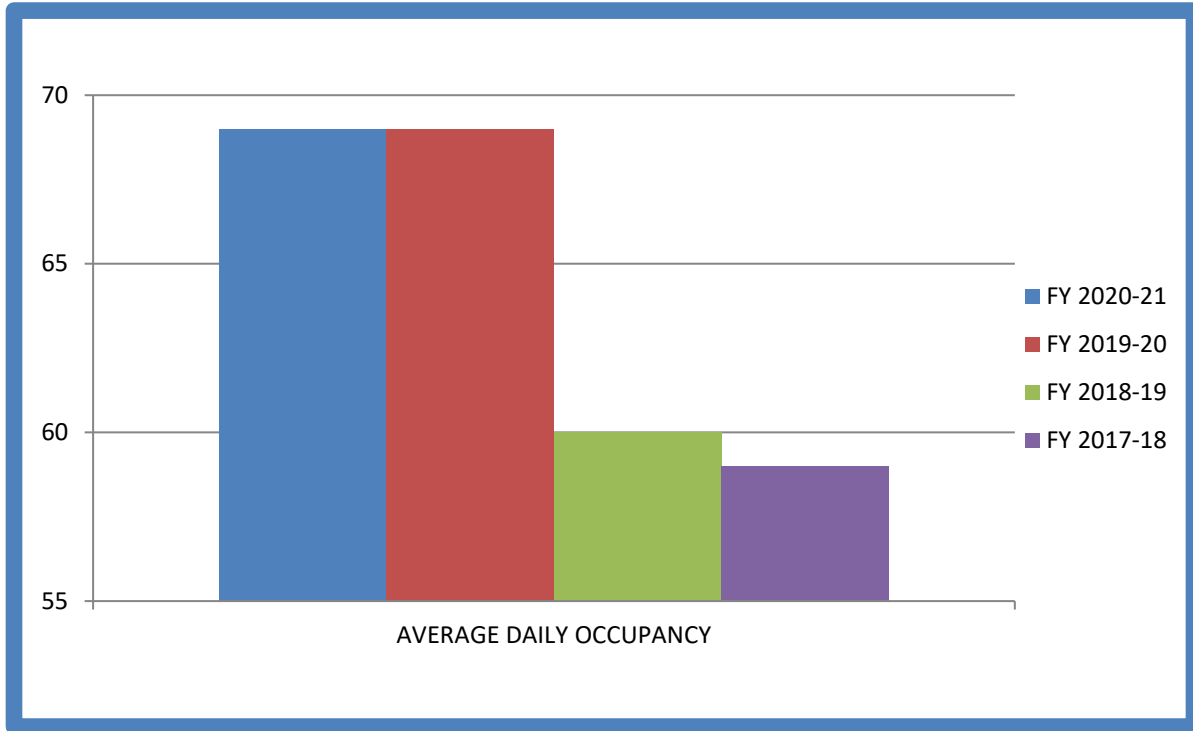
To: Honorable Mayor and City Council Members
Through: George Garrett, City Manager
From: Sean Cannon, Ports Director
Date: July 13, 2021
Re: June Monthly Report

Revenue: City Marina saw \$71,797 in total revenue during the month of June.





Occupancy: June's average daily occupancy was 69%



TOTAL TRANSIENT ARRIVALS

***IN-STATE VESSELS: 52**

***OUT-OF-STATE VESSELS: 26**

***FOREIGN VESSELS: 4**

***TOTAL VESSELS: 82**



CITY OF
MARATHON, FLORIDA
Ports Department

Latitude 24° 42' 33.8" N Longitude 81° 5' 29.1" W

News: The office plans have been approved. Staff anticipates the project will commence around end of July and be completed in about 6 months if all goes well. The office is slated to be elevated and a new second story IT room created. Marina staff will operate out of an office trailer in the parking lot while the office is being renovated.

Projects: Annual bathhouse maintenance and repairs for the off-season. We have been getting numerous reports of people slipping on our ramps. Marina staff has taken initiative to reseal the ramps with non-skid paint to prevent future slips/falls.



MONROE COUNTY SHERIFF'S OFFICE

RICHARD A. RAMSAY, SHERIFF

June 29, 2021

Marathon City Council

Ref: Monroe County Sheriff's Office
City of Marathon
Monthly Report: June 2021

Dear Council,

May continued to be very busy with tourist and traffic. Deputies responded to over 3,938 calls for service this month. Deputies were able to make 107 arrest and Notice to appear cases and 10 DUI arrest investigations. Traffic continues to be heavy and concentration is for vehicle/pedestrian safety. Due to the issues, traffic stops this month were 588.

No significant crimes or crime trends to report.

Gearing up for 4th of July events at the beach and in the City. Extra patrols have been in place for all the boat ramps due to increased activity.

Crime/Arrest Report:

MCSO210FF004047: Auto Theft

Reported: June 12th, 2021

Occurred: 20th Street, Marathon

The victim reported that he let his father borrow his Cadillac a few weeks ago to drive to Marathon. The R/P stated that "Zeek" drove him and Brad Nolan to 20th Street to drop Brad off. "Zeek" then drove away by himself. The R/P had possession of the key FOB. "Zeek's" location and identity are unknown. The vehicle was entered into F/NCIC. Pending patrol follow-



up. Detective Bragg prepared and obtained an arrest warrant for Watkins for grand theft auto. Case pending warrant service.

MCSO21OFF004044: Aggravated Battery

Reported: June 12th, 2021

Occurred: Brass Monkey

Deputies responded to a fight at the Brass Monkey, where they encountered the victim bleeding from a large laceration to his thigh. Witnesses stated that Harlan Pettit stabbed the victim with a broken beer bottle as they wrestled on the ground. Pettit was arrested on scene, charged with aggravated battery.

MCSO21OFF003810: Battery

Reported: June 02, 2021

Occurred: Trailerama

The victim called to report she had been scratched and punched by her roommate, Segunda Moreno, over an argument. The victim had a scratch on her arm and was bleeding. The suspect denied punching her but said she grabbed her wrist. Lourdes stated she did not want to press charges and signed a non-prosecution form.

MCSO21OFF003812: burglary with battery

Reported: June 03, 2021

Occurred: Crystal Cove apartments

The victim, Bartolina Geronimo, called to report her ex-boyfriend, Jesus Borrego Roche, walked into her house without her permission, he slapped her in the face and pulled her hair. The victim had swelling and bruising on her face and dried blood on her ear. The suspect was interviewed about the incident, he first denied the allegations but later admitted to grabbing her and pulling her hair. The suspect was arrested for burglary with a battery.

MCSO21OFF003821: Sexual battery

Reported: June 03, 2021

Occurred: Boot Key Harbor

The victim stated when she was down in Marathon in late May she was drugged and raped by her boyfriend, Lee Del Valle and his friend "Mike". The victim stated this happened during several days but due to her being drugged she did not remember all the events until now. The victim is no longer in the state of Florida, she said she did not report it until now due to her being afraid for her safety. Major crimes is investigating this case.

MCSO21OFF004274: Armed Burglary

Reported: June 20th, 2021

Occurred: Fred's Beds

The victim was confronted by two of his neighbors, Yeovanni Pombo and Diovi Carrillo who asked that he turn down his music. The victim refused. The men left only to return a short time later with a machete. Diovi swung the machete at the victim and stated he would kill him. Yeovanni pushed the victim repeatedly. Both men were arrested, charged with battery, burglary, and assault. Case closed by arrest.

MCSO21OFF004363: Sex Offender Violation

Reported: June 24th, 2021

Occurred: Tavernier

Deputy Douthirt arrested Jesus Rodriguez for VOP, during which time Deputy Douthirt learned that Rodriguez vacated his registered residence on 6/7/21 and had been staying in Key West as a fugitive from the law. Post Miranda, Rodriguez admitted to removing his electronic monitoring device and throwing it in the water. Deputy Douthirt also charged Rodriguez with tampering with his electronic monitoring device and a failure to report vacating his residence.

Man arrested for drugs following traffic stop

A 33-year-old Marathon man was arrested Friday night after a large amount of amphetamines were found during a traffic stop. Jesse Paul Barnett was charged with trafficking in amphetamines. Barnett was driving a black Cadillac sport utility vehicle 75 mph in a 55 mph zone on U.S. 1 near Mile Marker 55.5 at 11:39 p.m. The Cadillac was also swerving and crossing the center line. The Cadillac was stopped near Coco Plum Drive. A U.S. Border Patrol K9 arrived to assist. The following were found:

- 16.2 grams of amphetamines
- A BB gun
- \$4,927 in cash
- 3 pairs of black gloves, a black beanie and a blue beanie
- A pipe containing cocaine residue

Barnett was taken to jail.

Marine Unit



Man cited for illegal lobster

A 37-year-old Naples, Florida man was given a mandatory notice to appear in court citation Sunday for illegally harvesting lobsters. Middle Keys Marine Deputy Willie Guerra was on patrol near Duck Key Sunday when he observed two people on a personal watercraft by a rock jetty. Deputy Guerra observed the passenger enter the water with a speargun. Deputy Guerra contacted the diver and identified him as Rosniel Macia. An inspection of his catch revealed two out-of-season, wrung and speared lobster as well as a parrot fish.

Community involvement



Teaching them young: Deputy Diaz and her little girl prepared care bags to pass out to the less fortunate. The bags include toothbrushes, toothpaste, brush, hats, snacks and much more. Deputy Douthirt assisted in passing out the bags



Working on an Island clean up in front of 41 ST in Marathon Florida. Along with the cleanup, Also looking to trespass subject being that the Island are property of Monroe County which allows no camping

Personnel and Budget:

Currently 4 deputies down. No budget concerns at this time.

Respectfully,

Capt. Don Hiller

MEMORANDUM
Grants Department



MEETING DATE: July 13, 2021

TO: Honorable Mayor and City Councilmembers

FROM: Maria Covelli, Grants Coordinator

THROUGH: George Garrett, City Manager

SUBJECT: **Grants Update**

The Grants Department provides an update to the City Council monthly. The following is provided as an update for Grant Department activities.

NEW GRANTS AWARDED

2022 Capital Project (Bricks and Mortar) Funding Application - TDC

- Received Grant for mitigation of amphitheater roofing/repainting ribs-steel

CURRENT GRANTS STATUS

CDBG-DR Voluntary Home Buyout Program - DEO

- Program Guidelines under review by Tetra Tech
- Program Forms being created for review
- Planning a second application period as many initial apps have been sold.

Quay Restrooms – TDC

- Tourist Impact Study Completed and submitted to TDC
- RFP for Construction of Restroom Facility sent out

CDBG-DR Infrastructure Unmet Needs – DEO

- Contract Documents signed and returned to DEO.
- Engineering is in process.

FKWQIP WWT 3 & 4 – US ACE

- Received updated work plan from engineer.

Hazard Mitigation Grant Generators – DEM

- Permitting is in process.

Invasive Exotics Removal

- FWC grant to address invasive plant species at Coco Plum.

GRANT APPLICATIONS IN PROCESS/SUBMITTED

Community Planning Technical Assistance Grants FY21-22 – DEO - submitted

- Funds to update the Comprehensive Plan to include/update climate change and sea level rise elements.
- Submitted 5/18/21. Awaiting response

National Fitness Campaign - submitted

- Partial funding and assistance with installation of a fitness court at Community Park

CDBG – GIP – Development of the Quay – due 9/17/21

- DEO General Infrastructure Program Grant

CDBG – GIP – Acquisition and Development of Salty’s Property/7Mile Marina - due 9/17/21

- DEO General Infrastructure Program Grant

CDBG – GIP – Mitigation of City Marina Seawall – due 9/17/21

- DEO General Infrastructure Program Grant

National Skatepark Project

- Tony Hawk Foundation – grant opens 8/1/21 – due 10/1/21
- Phone conference with foundation on 7/13/21

Firehouse Sub Foundation

- New Radios and Accessories for Fire Department
- Opened 7/6/21 – closes 8/18/21

Leary Firefighters Foundation

- Opens 8/15 – closes 10/1/21
- Equipment purchase TBD

COMPLETED GRANTS

Economic Development Competitive Grant – DEO

- Final economic development strategy completed and submitted to DEO
- Closeout Documents being submitted to DEO

Resilient Marathon - Phase 2 – DEP


- Adaptation Action Plan Complete
- Closeout Documents being submitted do DEO
- Preparing for Phase 3 grant application



Utility Department Monthly Update

MEETING DATE: July 13, 2021

TO: Honorable Mayor and City Councilmembers

FROM: Daniel Saus, Utility Director 

THROUGH: George Garrett, City Manager

SUBJECT: June 2021 Utility Department Update

A. Wastewater Treatment Plants

1. General Issues

- a. The only large issue in June was the large vacuum pumps at the Area 4 plant keep overheating. We had rebuilt pumps installed and continue to have issues. Details are in the call out report in section 5a.
- b. The work related to the ACOE grant money at the Area 3 plant is going well. Unfortunately, due to COVID related delays it is not yet 100% completed as expected. Jennifer requested that ACOE extend our reimbursement deadline to the end of August, and they approved that new deadline. We should have 90% of the work completed by then barring any further materials issues.

2. Odor Complaints / Mitigation

- a. We received no odor complaints for the wastewater treatment facilities in the last several months.

3. Effluent Quality Report/Plant Performance

The May 2021 wastewater facility performance chart is shown below because the January numbers are just being tabulated. The plant permits now require AWT compliance and the operations staff is doing an amazing job as reflected in our effluent quality as shown below. **(Effluent results are always a month behind due to sampling, shipping, & lab reporting)**

City of Marathon WWTP's Plant Performance Data for:

MAY 2021

Parameters:			CBOD mg/L		TSS mg/L		TN mg/L		TP mg/L	
WWTP	Permit (MGD)	MADF (MGD)	Monthly Average (6.25)	Annual Average (5.0)	Monthly Average (6.25)	Annual Average (5.0)	Monthly Average (3.75)	Annual Average (3.0)	Monthly Average (1.25)	Annual Average (1.0)
AREA 3	0.250	0.200	1.66	1.6	0.5	1.0	1.07	2.72	0.547	0.717
AREA 4	0.400	0.262	1.0	1.7	0.5	1.4	1.69	1.7	0.280	0.192
AREA 5	0.450	0.333	2.94	1.5	1.0	1.3	0.86	1.2	0.36	0.40
AREA 6	0.200	0.088	2.19	1.7	0.5	1.1	0.775	1.36	0.391	0.40
AREA 7	0.200	0.032	1.82	2.1	0.5	0.5	0.08	1.89	0.167	0.287

B. Collection System

1. The month of June was relatively quiet with flows at the normal rate for this time of year.
2. Vacuum Station Salinities for June:
 - a. April's vacuum station salinities were at as follows (in parts per thousand): SA3: 1.85 SA4: 1.97; SA5: 4.39; SA6: 2.28 and SA7: 0.81. This indicates a minimal amount of saltwater intrusion into our system from the king tides except for SA5 where we continue to find issues on the private side of the system.
3. Wastewater System Connections
 - a. The City's wastewater system parcel connection rate is currently standing at approximately 100%. (Only customers that are in code or do not have a certificate of occupancy are not connected)

4. Code Compliance

- a. There are currently 8 open code cases in process for failure to connect to the City's central wastewater system, code violations, or expired permits. Most of them are residential properties at some point in the foreclosure process.

5. Call-Outs

- a. From June 1st to June 30th there were 58 documented call outs for the entire collections system. Of these, 40 were system generated typically a low vacuum detected at one of our vacuum stations. These 40 call outs did not result in any inconvenience to our customers in any way as the problems were detected and remedied by Collections/Maintenance City Staff before these problems could become a nuisance to the homeowners or residents at these locations.

We had a couple of unusual events to report this month. One was a rain event that caused some inflow and intrusion problems for the vacuum system. And the other was a 40 hp vacuum pump that reached the end of its service life. When that vacuum pump was exchanged with what was supposed to be a rebuilt spare from our warehouse, it was discovered that the rebuilt unit was not fully operational from the supplier that did the work. We are no longer using that supplier since Jan. of 2021 because of the same issues in the past and have now been dealing with an OEM supplier since then. That new supplier is in the process of sending the City 2 brand new 40 hp Vacuum Pumps as backups.

- b. The other call outs were as follows:

- i. 6-5-21: Backup Area 3. Porky's 1410 O/S Hwy. The MOD phone received a call about a backup at the property. The Tech responded. He inspected the vac pit and found the controller was bad. He replaced the controller and put the vac pit back into service. No damage to property.

- ii. 6-7-21: Backup Area 7. 57365 Morton Street Ext. The MOD phone received a call about a backup at the property. The Tech responded to troubleshoot the problem. He found bad stators on the pumps at the grinder pump station. He replaced the stators and put the station back into service. No damage to property.

- iii. 6-8-21: Backup Area 4. 237 Sombrero Bch. Blvd. The MOD phone received a call about a backup at the property. The Tech responded and inspected the vacuum pit and the cleanout. He found the Vac Pit to be

overwhelmed with water. He Manually fired the vac pit clearing the water and put the vac pit back into service. No damage to property.

iv. 6-10-21: Backup Area 7. 58346 Morton St. The MOD phone received a call about a backup at the property. The Tech responded to troubleshoot the problem. He found bad stators on the pumps at the grinder pump station. He replaced the stators and put the station back into service. No damage to property

v. 6-10--21: Backup Area 6. 9 Ave. F. The MOD phone received a call about a backup at the property. The Tech responded and inspected the vacuum pit and the cleanout. He found the vac pit to be overwhelmed with water. He manually fired the vac tit clearing the water and put the vac pit back into service. No damage to property.

vi. 6-12 -21: Backup Area 7. 58346 Morton St. The MOD phone received a call about a backup at the property. The Tech responded to troubleshoot the problem. He found bad Flyght Pumps in the station. He replaced both pumps with e-one Metering pumps and put the station back into operation. No damage to property.

vii. 6-13-21: Backup Area 5. 11611 6yj Ave Ocean. The MOD phone received a call about a backup at the property. The Tech responded. He inspected the vac pit and found the surge suppressor was clogged. He cleaned the surge suppressor and put the vac pit back into service. No damage to property.

viii. 6-16-21: Backup Area 7. 39 Treasure Rd. The MOD phone received a call about a backup at the property. The Tech responded and found the station would pump down on hand and did so. The lift station Tech showed up and found the on/off float to be bad and replaced it. He put the station back into service. No damage to property.

ix. 6-17-21: Backup Area 7. The Wreck 58668 O/S Hwy. The MOD phone received a call about a backup at the property. The Tech responded to troubleshoot the problem. He found bad stators on the pumps at the grinder pump station. He replaced the stators and put the station back into service. No damage to property.

x. 6-17-21: Backup Area 4. Skip Jack Resort 19 Sombrero Blvd. The MOD phone received a call about a backup at the property. The Tech responded. He inspected the vac pit and found the surge suppressor, valve and controller were bad. He replaced all three. He then put the vac pit back into service. No damage to property.

xi. 6-18-21: Backup Area 7. 58875 O/S Hwy. The MOD phone received a call about a backup at the property. The Tech responded to troubleshoot the problem. He found bad stators on the pumps at the grinder pump station. He replaced the stators and put the station back into service. No damage to property.

xii. 6-19-21: Backup Area 4: 138 Calle Ensueno. The MOD phone received a call about a backup at the property. The Tech responded and inspected the vacuum pit and the cleanout. He found the vac main to be overwhelmed with water. He Manually cleared the vac main of water. Then put the Buffer Tank back into service. This was the result of the 40 hp Vacuum Pump wearing out at Area 4 Vacuum Station. No damage to property.

xiii. 6-19-21: Backup Area 4. Steak and Lobster 3660 O/S Hwy. The MOD phone received a call about a backup at the property. The Tech responded and inspected the Buffer Tank. He found the Vac Main to be overwhelmed with water. He manually cleared the vac main of water. Then put the Buffer Tank back into service. This was the result of the 40 hp Vacuum Pump wearing out at Area 4 Vacuum Station. No damage to property.

xiv. 6-21-21: Backup Area 3. 306 12th Street. The MOD phone received a call about a backup at the property. The Tech responded. He inspected the vac pit and found the surge suppressor, valve and controller were bad. He replaced all three. He then put the vac pit back into service. He then found the suction tube was clogged with debris. He cleared the debris. He replaced the surge suppressor, valve and controller. He then put the vac pit back into service. No damage to property.

xv. 6-22-21: Backup Area 6. 9 Ave. F. The MOD phone received a call about a backup at the property. The Tech responded and inspected the vac pit and cleanout. He found the vac pit was in good operating condition. Homeowner issue.

xvi. 6-23-21: Backup Area 4. 12 Man-o-War. The MOD phone received a call about a backup at the property. The Tech responded and inspected the vac pit and cleanout. He found the vac pit was in good operating condition. Homeowner issue.

xvii. 6-23-21: Backup Area 4. 42 Treasure Rd. The MOD phone received a call about a backup at the property. The Tech responded. He inspected the vac pit and found the surge suppressor was bad. He replaced the surge suppressor, valve and controller. He then put the vac pit back into service. No damage to property.

xviii. 6-21-21: Backup Area 7. 348 Guava Ave. The MOD phone received a call about a backup at the property. The Tech responded to troubleshoot the problem. He found bad stators on the pumps at the grinder pump station. He replaced the stators and put the station back into service. No damage to property.

6. Odor Complaints / Mitigation

- b. We received no odor complaints in June for the collection system.

C. Plant Upgrades & Construction Projects

1. The design for the sludge facility at Area 6 is getting back on track. The City received about \$3.5 million in Stewardship funding this year and plans to move this project forward.
2. The construction for the Area 3 to 4 force main is completed.
3. The design for the Area 3 WWTP expansion is nearly completed and permitting through FDEP is underway at this time. An unexpected major RAI (request for additional information) was received by FDEP in late October. This will require geotechnical investigations and work from a licensed Geologist for a proper response. That work has been approved and is underway.
4. The design work and engineering is underway to complete the ACOE grant work for this fiscal year. We believe we can make the deadline of the end of July for reimbursement requests.

D. Grants Update Summary

1. We received notification of an award of \$3,500,000 for Stewardship this year!
2. In January we were informed we are receiving \$1,700,000 from ACOE for fiscal year 20/21!
3. Regarding the ACOE PCA: in August we received a reimbursement of \$1,245,000.00 from ACOE for FKWQIP for fiscal year 19/20.

CITY COUNCIL AGENDA STATEMENT



Meeting Date: July 13, 2021

To: Honorable Mayor & Council Members

From: Brian Shea, Planning Director

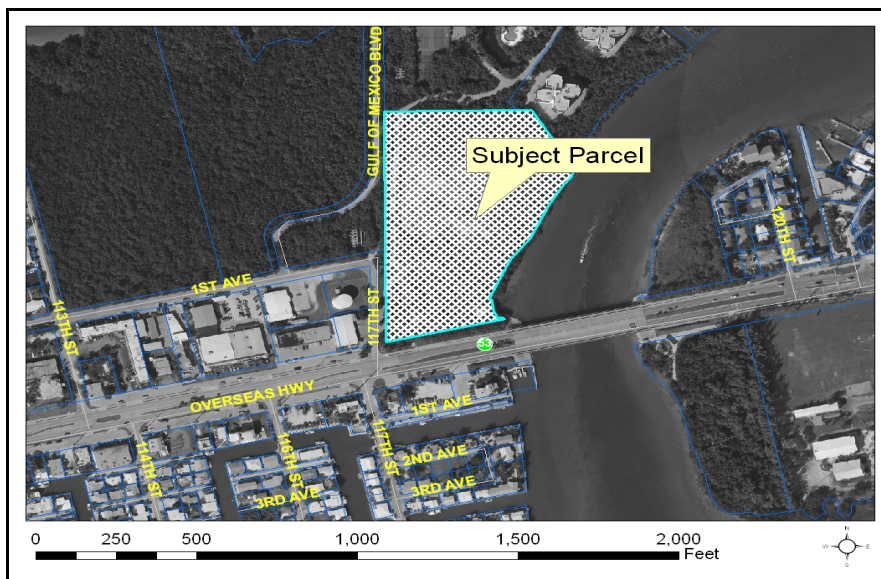
Through: George Garrett, City Manager

Agenda Item: **Resolution 2021-35** Consideration Of A Request By Florida Keys Animal Encounters, LLC For A Conditional Use Permit Pursuant To Chapter 102 Article 13 Of The City Of Marathon Land Development Regulations (LDRs) Entitled “Conditional Use Permits”, For The Expansion Of The Previously Approved Sea Life Amusement Park And A Marine Educational Facility, To Include A 15,200 Square Foot Warehouse, Office, And Lab Space, At 11710 Overseas Highway, And Legally Described As Part Of Government Lot 4, Section 5, Township 66 South, Range 33 East, Key Vaccas, Monroe County, Florida, Having Real Estate Number 00104130-000000.

RECOMMENDATION: Planning Department staff recommends conditional approval of this amendment request.

APPLICANT/OWNER: Florida Keys Animal Encounters, LLC

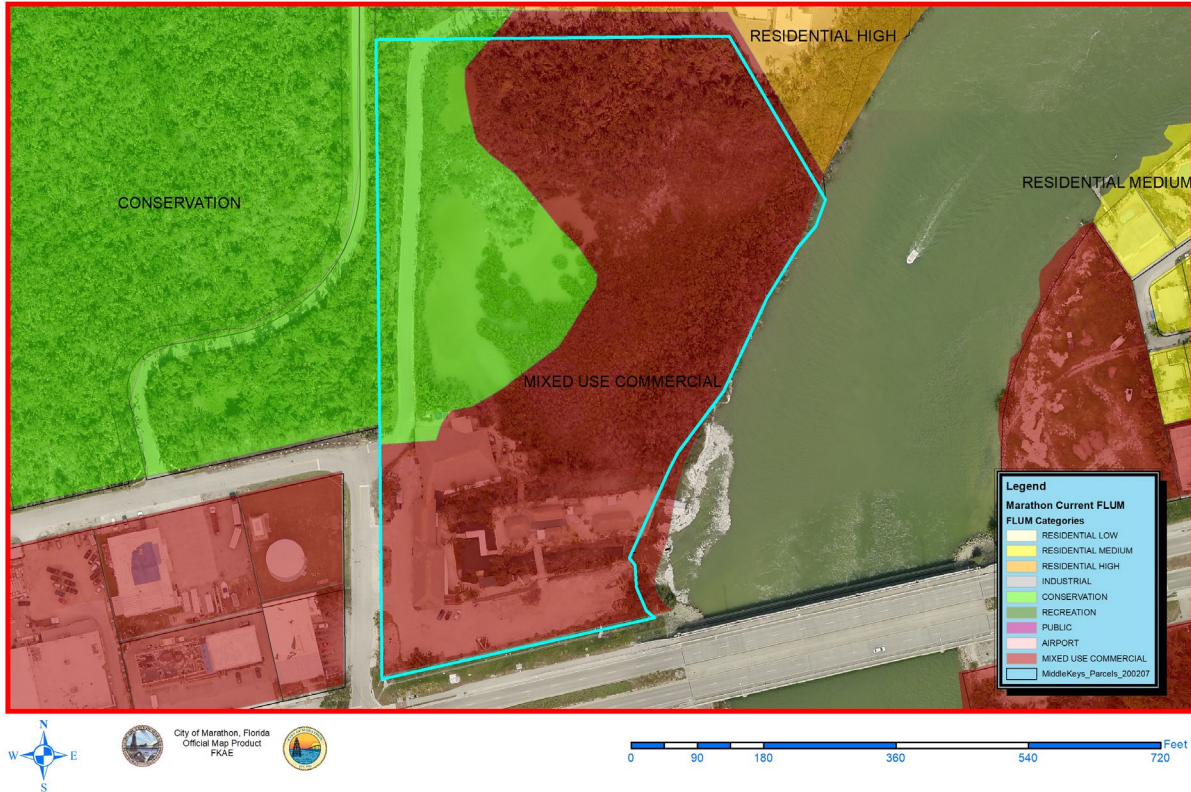
LOCATION: The subject property is located on the northeastern corner of the intersection of Overseas Highway and 117th Street, Gulf, near Mile Marker 53 and is legally described as Part of Government Lot 4, Section 5, Township 66 South, Range 33 East, Key Vaccas, having Real Estate Number 00104130-000000



REQUEST: Amendment to a Conditional Use Variance Approval for the Development of the Florida Keys Animal Encounter Center.

FUTURE LAND USE MAP DESIGNATION: Mixed Use Commercial and Conservation
See Figure 2.

Figure 2 - Future Land Use Map



ZONING MAP DESIGNATION: Mixed Use (MU) and Native Area (C-NA) See Figure 3.

Figure 3 – Zoning Map



LOT SIZE: 1.7 acres (area proposed for development)
8.99 acres (entire site)

SURROUNDING ZONING AND USES:

	<u>Zoning</u>	<u>Use</u>
North	Residential High (RH) and Native Area (C-NA)	Vacant land and Seawatch Condominiums
East	n/a	Vaca Cut
South	Mixed Use (MU)	Captain Hook’s, Fish Tails Restaurant, Marathon Lady Charters
West	Mixed Use (MU) and Native Area (C-NA)	Auto Store, State-owned vacant property

EXISTING CONDITIONS:

The project site consists of one parcel that has been previously developed as an amusement and sea life park known as Aquarium Encounters.

PROPOSED REDEVELOPMENT:

Office, laboratory, warehouse: 15,200 sq. ft.

BACKGROUND:

On November 8, 2005, City Council passed Resolution 2005-159 (Exhibit A), approving a Major Conditional Use permit for Florida Keys Animal Encounters, LLC. The Florida Keys Animal Encounter Center will be a marine educational facility that provides visitors the opportunity to learn about marine animals. The project included a 2,800 square foot Animal Encounter Center, a 6,000 square foot office building for the Dynasty Marine corporate office, an encounter tank, and various accessory uses. The original approval also consisted of a total of five (5) affordable/workforce housing units to be located above the two buildings onsite.

The site also includes a “U” shaped canal with an island in the center. The project was approved with new bridges to the island, a number of view platforms through the mangroves and onto the canal, and a new dock into Vaca Cut. The site will also feature walking paths and information kiosks throughout. The remainder of the site, which is primarily a tidal estuary, will be undisturbed and undeveloped.

The applicant went through an amendment to the conditional use approval to allow the following changes in 2010. Resolution 2010-40 approved the following changes:

- The project would no longer include any workforce housing units on site. The applicant built a deed restricted affordable duplex located on 7th Avenue, Gulf that

is used to house the employees of the company. There is no Land Development Regulation based requirement for the project to provide workforce housing onsite. Consequently, the approval of this amendment will return the two affordable housing allocations that were awarded to the project under Resolution 2005-159 back to the City.

- The main 2,800 square foot Animal Encounter Center would be a tiki hut, thatch roof style building.
- The parking area would be permeable, reducing the amount of fill required for the project.
- Other minor changes to the site plan include: the encounter tank would be constructed of fiberglass instead of concrete, the proposed office building would be slightly larger (6030 sq/ft vs. 6000 sq/ft), and the location of the food concession area had been changed.

The applicant is now proposing an amendment to increase the institutional area to 15,200 square feet and locate it within the uplands near the northern end of the property.

EVALUATION FOR COMPLIANCE WITH THE LAND DEVELOPMENT REGULATIONS:

The criteria for evaluating a Conditional Use Approval are outlined in Chapter 102, Article 13, Conditional Use Permits, in the City of Marathon Land Development Regulations.

CRITERIA

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

This site is located within the Mixed Use Commercial and Conservation Future Land Use District.

Policy 1-3.1.4 of the City of Marathon Comprehensive Plan states that the “principal purpose of the Mixed-Use Commercial land use category is to provide for the establishment of mixed-use development patterns and to recognize established mixed use development patterns within the City.”

Policy 1-3.1.4 also states that the “principal purpose of the Conservation land use category is to provide for the preservation of natural and historic resources and passive resource-based recreational uses.” Development on the site will not disturb the Conservation area of the parcel. However, a small portion is proposed to be disturbed to provide access to the MU portion of the site.

The area of development on the parcel included in the proposed project has a Mixed Use (MU) zoning designation. The purpose of the district is described below:

- Section 103.09 Mixed Use Districts of the Land Development Regulations (LDRs) states, “The MU zoning district is designed to accommodate a wide variety of commercial and

retail activities that will result in the most efficient and attractive use of the City's historic business district and the US 1 corridor... The MU district also provides for large-scale retail and commercial business opportunities in other areas, including larger shopping centers, specialty shopping centers, individual multi-tenant commercial buildings, automobile services and sales, fast food restaurants, affordable housing residential uses, transient lodging and other retail establishments that serve the community at large”.

Conditional Use approval is required pursuant to Table 103.15.1. In the Mixed-Use District, the specific use of, “Amusement or Sea life parks” requires Conditional Use approval.

The first building of 2,800 square feet was developed using existing commercial floor area credited to the site. The remaining ~~6,030~~ 15,200 square feet of commercial floor area proposed under phase II of the project must be applied for and allocated through the Commercial Building Permit Allocation System (CBPAS).

The project acreage is adequate for the proposed development. The following table assesses required acreage for the proposed use.

Type of Use	Amount	Square Feet Required	Site Utility
Commercial Retail – medium intensity (Encounter Center)	2,800 sf	6,222 sf	8.4%
Institutional (office, laboratory)	6,030 15,200 sf	20,100 50,667 sf	68.0 %
Total	-	-	76.4%

Therefore, it is staff’s opinion that the request is *in compliance* with the requirements of these sections.

B. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;

This site is located within the Mixed-Use Commercial Future Land Use District. Policy 1-3.1.4 of the City of Marathon Comprehensive Plan states that the “principal purpose of the Mixed-Use Commercial land use category is to provide for the establishment of mixed-use development patterns and to recognize established mixed use development patterns within the City.” The proposed project is compatible with adjacent uses and consistent with the overall land use pattern, which is heavily focused on retail sales and service and commercial activity along the U.S. 1 corridor. The development of the site will result in significant improvement to the site development quality, including landscaping and stormwater management. These improvements are expected to have a positive benefit on the surrounding uses and the City of Marathon.

Therefore, it is staff's opinion that the request is *in compliance* with the requirements of these sections.

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

The proposed use is the development of new commercial buildings which are not expected to have any adverse impact on the health, safety, and welfare of the public.

The City Fire Marshal has reviewed the project plans and provided comments at the Technical Review Committee Meeting outlining minimum requirements for the project, including the following:

- Must comply with NFPA 1 and NFPA 101 must provide access for Firefighting and Rescue equipment.
- Must be able to supply appropriate water supply for structure.

Plans submitted with the project are suitable for the Conditional Use Approval as they relate to Chapter 107, Article 12, 100 Year Floodplain. Final evaluation of floodplain compliance will occur as part of building permit review.

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

- Must meet all conditions of the Fire Marshal prior to permit issuance.

D. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment;

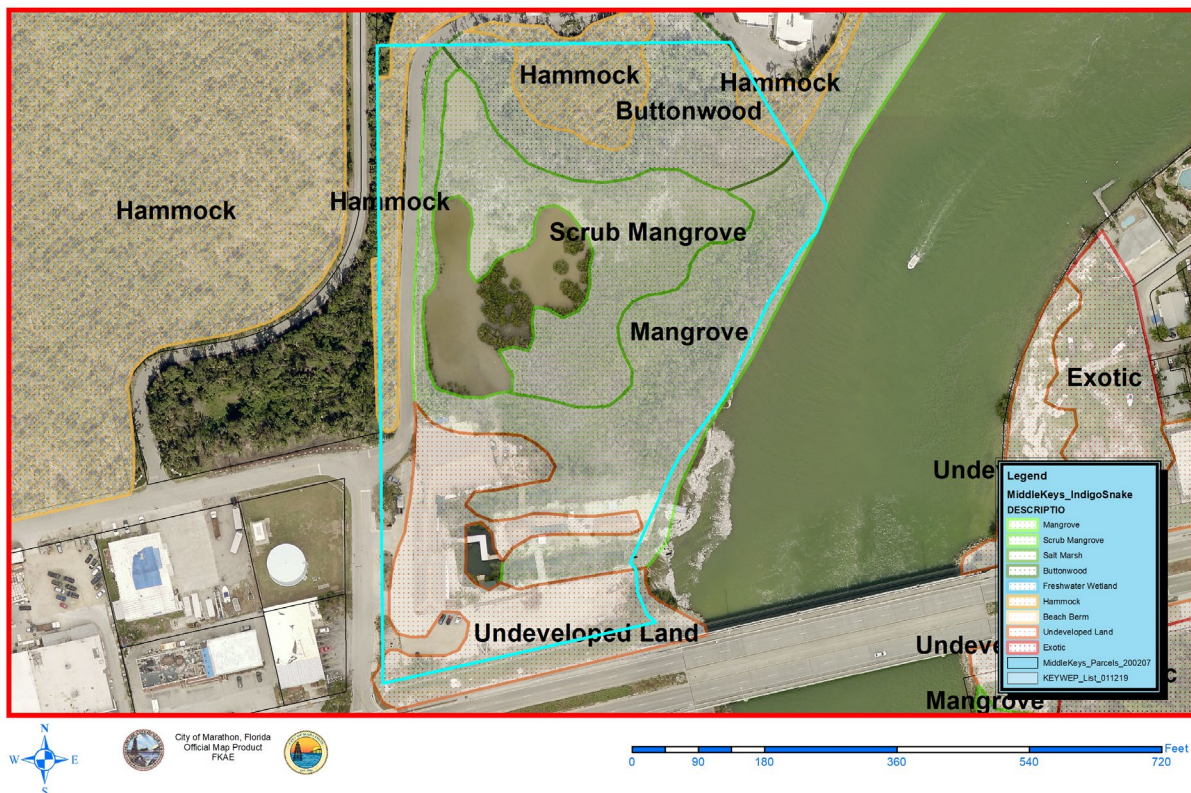
The proposed development footprint is within the MU portion of the parcel. The structure is proposed in the upland area that is classified as low-quality hardwood hammock. According to table 106.16.1 low quality hammock has a 50% open space ratio. The applicant is proposing an wetland setback of 25', which is less than the code required 50' as noted in E. 6 below, but was approved by the Planning Commission for the variance.

Previous approval included restoration activities and a subsequent Conservation Easement are proposed within areas of the parcel zoned C-NA as required by the South Florida Water Management District permit. The above noted conservation easement can be expanded to line up with the neighboring properties conservation easement. Therefore, a conservation easement in a form approved by the City Attorney must be provided for the wetland area. Transplantation of native vegetation on site will be the priority. Such vegetation must survive for one year after transplantation. Any native vegetation that does not survive or is not a type that handles transplantation well will be mitigated in a ration of three trees for every one tree removed.

The applicant has submitted updated preliminary stormwater/drainage plans as required by the Conditional Use permit. City approval is required for the stormwater management system prior to building permit approval.

Figure 4 shows that this area falls under the category of mangroves. Should any development necessitate the removal of existing native vegetation within these areas an impact determination will be made using the Species Assessment Guides.

Figure 4
Species Focus Area Habitat



Site landscaping will consist of 75% native species, per Chapter 107, Article 8. The native vegetation will improve the environmental quality of the site and reduce irrigation needs.

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

- A conservation easement in a form approved by the City Attorney must be provided for the wetland area.
- City approval is required for the stormwater management system prior to building permit approval.
- Protection of the wetland area shall be assured through a conservation easement recorded in the public records of Monroe County, Florida, pursuant to Chapter 106, Article 8 – “Conservation Management Areas”.
- To reduce further impact potential to the wetlands for this setback reduction Staff is recommending a six-foot-high fence or wall, between the development and the wetlands. The height of the wall as measured from the improved grade would ensure that human

encroachment is less likely to occur.

- Transplantation shall be the priority mitigation plan for the native vegetation in the low-quality hammock per Section 106.09.
- Staff requires that upon planning review, if the redevelopment is found to have any effect on the Eastern Indigo Snake Habitat, then the prescribed protection measures must be undertaken, and the information poster posted on site.

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

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

Access to the site is via Richard Street (aka 117th Street Gulf) which intersects with US 1.

The applicant submitted a Level III traffic study, prepared by Carter & Burgess Inc., in conjunction with the original approval in 2005. The study reported that while more trips would be added to this section of U.S. 1, there was adequate reserve capacity to absorb these new trips. With the proposed elimination of the five (5) workforce housing units in 2010, that amendment generated a less intense use than the original submittal. With this amendment the additional 9,170 square feet would generate 46 additional daily trips. At the peak demand hours, there would be 6 trips at the peak morning traffic (4 entering & 2 leaving), 6 trips at the peak evening traffic (5 leaving & 1 entering).

The Assistant City Fire Marshal has reviewed the proposed development plans and circulation is acceptable. Planning Commission recommended that the applicant work towards expanding the access road to Seawatch to provide greater access.

Therefore, with the below conditions, it is staff's opinion that the request is *in compliance* with the requirements of these sections.

- Applicant will expand the width of the access road to the greatest extent practicable. Should the expansion be denied by any agency, the denial shall be documented, and the condition shall be severable and not affect any other term or condition of the conditional use approval.

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

Parking requirements are outlined in Sections 107.46 (Parking Schedule).

Use	Code Citation	Requirement	Spaces Required	Spaces Provided
Retail Sales and Service	107.46.1	3 per 1,000 sf of GFA, plus 1 per	21	36

		employee at the largest shift		
Warehouse/Storage	107,461	3 per 1,000 sf of GFA	16	8
Total			37	45

Section 107.52 includes a requirement that one handicapped space be provided for every 25 spaces required. For 37 required spaces, 2 handicapped spaces are required. Two additional spaces are provided for this area that in addition to the two that are previously provided.

Per Section 107.48, the Code also requires bicycle parking to be provided at a rate of one space for every ten parking spaces or two spaces for each public and employee entrance, whichever is greater. A bicycle rack is provided.

Therefore, it is staff’s opinion that the request is *in compliance* with the requirements of these sections.

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

No detrimental noise, glare or odors are expected to be generated by any of the uses.

Therefore, it is staff’s opinion that the request is *in compliance* with the requirements of these sections.

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

Section 107.39 requires that all dumpsters and recycling bins be fully enclosed and screened. The existing development meets this criterion. The site plan does not indicate that the dumpsters are screened and located for easy access and waste removal.

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

- Final site plan must show screened dumpster enclosure prior to permit issuance.

5. Utilities, with reference to location and availability;

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

- Water: The Florida Keys Aqueduct Authority (FKAA) will provide potable water for the facility.
- Wastewater: This site is located in Service Area 5 of the City’s Wastewater Treatment Project and will connect to the City Wastewater system when available.
- Solid Waste: Marathon Garbage Service will provide solid waste disposal.

- Electric: Florida Keys Electric Cooperative Association, Inc. (FKEC) will provide power to the development.
- Surface Water: The applicant has provided stormwater design information suitable for the Conditional Use application review which demonstrates compliance with City standards.
- Roadways: The applicant has submitted a traffic study which meets the requirements for the Conditional Use.

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

- City approval is required for the stormwater management system prior to building permit approval.
- City approval of the connection to the city wastewater utility will be required.
- The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.

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

Section 107.71 requires that parcels with an MU zoning designation provide a Type 1 Streetscape Treatment for all parcels along US 1. The proposed Streetscape Treatment Type 1 is in compliance.

The portion of the property that is zoned Conservation Native Area (C-NA) is bordered by a portion of Conservation Native Area (C-NA) to the north and west, which requires no buffer. The portion of the property that is zoned Mixed Use (MU) is bordered to the north by Residential High (RH) which requires a Medium Type buffer. This portion of the parcel is primarily natural habitat which creates an effective natural buffer. This buffer will be further increased by the relocation of the native vegetation within the building footprint. The applicant is proposing a native transition buffer between the developed and the native area portion of the parcel.

An area of the property zoned Mixed Use (MU) is adjacent to 1stAvenue which requires a Streetscape Type 3 Buffer. The proposed Streetscape Type 3 Buffer is in compliance.

Section 107.66 requires that parking areas be landscaped with canopy trees positioned to provide, at maturity, 50% canopy coverage of the paved parking areas or with canopy trees located within landscaped islands every ten (10) spaces and within linear landscaped islands between head-to-head parking. The proposed site plan shows the correct quantity of landscape material.

At the time of permitting, the applicant will provide the City with a list of all native trees that will be impacted by development with a mitigation and/or transplantation plan to be approved by the biologist. Additionally, all landscape plans, including parking lot landscaping, must be approved by the biologist at time of permitting.

The submitted plans show use of 75% native vegetation, as required by Code. All invasive exotic vegetation, including Brazilian Pepper and Australian Pine, must be removed from the site as a condition of approval.

The minimum setback requirements for structures in the MU district are as follows:

Front (Richard Street)	30 feet
Side (U.S. 1)	10 feet
Shoreline	20 feet from Mean High Water Line (MHWL) or landward edge of the mangroves
Wetlands	50 feet

The proposed site plan shows that the structures will meet the required setbacks, excluding the wetland setback. Thus, the applicant is seeking the variance noted above.

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

- A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
- A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.

7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding uses;

A review of sign requirements at this stage in development approval is not necessary; however, signs for the project will be reviewed prior to issuance of a building permit according to Chapter 107, Article 7, Signs.

Article 107.54 establishes criteria for lighting, including light pole light limitations and other technical criteria. The applicant will be required to submit a detailed lighting plan for approval prior to Building Permit issuance.

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

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

8. Required yards and other open space;

The open space requirement for the Mixed Use (MU) land use district is 20%, as per Table 103.15.2 of the Code. According to table 106.16.1 low quality hammock has a 50% open space ratio. Previous calculations provided by the applicant show that site had 242,299 square feet of open space. The portion of the site zoned C-NA will not be developed, thus having a 100% open space ratio.

Therefore, it is staff's opinion that the request is **in compliance** with the requirements of these sections.

9. General compatibility with surrounding properties; and

The character of the immediate vicinity of the parcel can be described as a mix of uses, with vacant native area to the north and northwest, residential to the north on the other side of the native area, and commercial to the west and south. As this property is along U.S. 1, where the majority of commercial activities occur, developing the site to include the large commercial operation at the front and preserved native area to the middle, and further commercial within the upland area is consistent with the character of the area.

Section 107.40 restricts the height of buildings to 42’ as measured from the crown of the roadway or unimproved grade. The site plan shows that the proposed buildings are below 42’.

Therefore, it is staff’s opinion that the request is *in compliance* with the requirements of these sections.

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

There are no special requirements set forth in the LDRs for this particular use, other than those reviewed above.

Therefore, it is staff’s opinion that the request is *in compliance* with the requirements of these sections.

CONCLUSION:

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

The proposed development is an amendment to a previously approved Conditional Use permit. The applicant is proposing changes to the site plan, most notably the increase beyond the previously approved second phase. As such the development, including the overall upgrading and improvement of the site, furthers the policies for development in the City and is consistent with the Comprehensive Plan and Land Development Regulations. The project is compatible with surrounding uses, and is not expected to create a nuisance, traffic congestion or threat to public, health, safety, or welfare.

RECOMMENDATION:

The Planning staff recommended conditional approval of the commercial redevelopment of Florida Keys Aquarium Encounters to the Planning Commission. The Planning Commission voted 4-0 to recommend conditional approval of the development to City Council. The proposed conditions of approval are listed below.

Conditions of Approval

- 1) A CBPAS allocation for 15,200 square feet must be obtained prior to development of the second building;
- 2) Must meet all conditions of the Fire Marshal prior to permit issuance.
- 3) A conservation easement in a form approved by the City Attorney must be provided for the wetland area.
- 4) City approval is required for the stormwater management system prior to building permit approval.
- 5) A conservation easement in a form approved by the City Attorney must be provided for the wetland area.
- 6) Protection of the wetland area shall be assured through a conservation easement recorded in the public records of Monroe County, Florida, pursuant to Chapter 106, Article 8 – “Conservation Management Areas”.
- 7) To reduce further impact potential to the wetlands for this setback reduction Staff is recommending a six-foot-high fence or wall, between the development and the wetlands. The height of the wall as measured from the improved grade would ensure that human encroachment is less likely to occur.
- 8) Transplantation shall be the priority mitigation plan for the native vegetation in the low-quality hammock per Section 106.09.
- 9) Staff requires that upon planning review, if the redevelopment is found to have any effect on the Eastern Indigo Snake Habitat, then the prescribed protection measures must be undertaken, and the information poster posted on site.
- 10) Applicant will expand the width of the access road to the greatest extent practicable. Should the expansion be denied by any agency, the denial shall be documented, and the condition shall be severable and not affect any other term or condition of the conditional use approval.
- 11) The applicant will meet all floodplain related requirements as part of the building permit process.
- 12) Final site plan must show screened dumpster enclosure prior to permit issuance.
- 13) City approval is required for the stormwater management system prior to building permit approval.
- 14) City approval of the connection to the city wastewater utility will be required.
- 15) The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.
- 16) A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
- 17) A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.
- 18) All signs will be reviewed and approved for compliance with the City of Marathon LDR’s.
- 19) A final lighting plan must be submitted prior to permit issuance.
- 20) The applicant will obtain any required permits from SFWMD, DEP, and ACOE prior to building permit issuance.

Exhibit A

Sponsored by: Puto

CITY OF MARATHON, FLORIDA RESOLUTION 2005-159

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY FLORIDA KEYS ANIMAL ENCOUNTERS, LLC FOR A MAJOR CONDITIONAL USE PERMIT, PURSUANT TO SECTION 9.5-69 OF THE CITY OF MARATHON CODE, AUTHORIZING THE DEVELOPMENT OF COMMERCIAL BUILDINGS AND RESIDENTIAL DWELLING UNITS TO OPERATE AS A SEA LIFE AMUSEMENT PARK AND A MARINE EDUCATIONAL FACILITY, AT PROPERTY LOCATED ON THE NORTHEASTERN CORNER OF THE INTERSECTION OF OVERSEAS HIGHWAY AND 117TH STREET, GULF, AND LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 4, SECTION 5, TOWNSHIP 66 SOUTH, RANGE 33 EAST, KEY VACCAS, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00104130-000000

WHEREAS, on the 17th day of October, 2005, the City of Marathon Planning Commission and on the 8th day of November, 2005, the City of Marathon City Council, conducted properly advertised public hearings regarding the request submitted by Florida Keys Animal Encounters, LLC (the "Applicant"), for a major conditional use permit pursuant to Sections 9.5-69 of the City Code (the "Code"); and

WHEREAS, the purpose of the major conditional use permit is to allow the Applicant to develop commercial buildings and affordable residential dwelling units for a sea life amusement park and marine educational facility (the "Proposed Use") at the Property.

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


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

Section 2. The City Council hereby approves Development Order Number 2005-15, a copy of which is attached hereto as Exhibit "A", granting a major conditional use to the Applicants for the Proposed Use. The Director of Planning is authorized to sign the Development Order on behalf of the City.

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

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 22nd day of November, 2005.


THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

AYES: Bull, Mearns, Miller, Pinkus, Bartus
NOES: None
ABSENT: None
ABSTAIN: None


ATTEST:



Cindy L. Ecklund
City Clerk

(City Seal)

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



City Attorney



**CITY OF MARATHON, FLORIDA
MAJOR CONDITIONAL USE
DEVELOPMENT ORDER # 2005-15**

A DEVELOPMENT ORDER APPROVING THE MAJOR CONDITIONAL USE APPLICATION SUBMITTED BY FLORIDA KEYS ANIMAL ENCOUNTERS, LLC, FOR A MAJOR CONDITIONAL USE PERMIT, PURSUANT TO SECTION 9.5-69 OF THE CITY OF MARATHON CODE, AUTHORIZING THE DEVELOPMENT OF COMMERCIAL BUILDINGS AND RESIDENTIAL DWELLING UNITS TO OPERATE AS A SEA LIFE AMUSEMENT PARK AND A MARINE EDUCATIONAL FACILITY, AT PROPERTY LOCATED ON THE NORTHEASTERN CORNER OF THE INTERSECTION OF OVERSEAS HIGHWAY AND 117TH STREET, GULF, AND LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 4, SECTION 5, TOWNSHIP 66 SOUTH, RANGE 33 EAST, KEY VACCAS, MONROE COUNTY, FLORIDA (THE "PROPERTY"), HAVING REAL ESTATE NUMBER 00104130-000000; PROVIDING FOR A TERM OF THE APPROVAL; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Florida Keys Animal Encounters, LLC (the "Applicant") owns the Property and applied for a Major Conditional Use approval to redevelop the existing commercial floor area and residential units on the Property which is located in the Suburban Commercial (SC) land use districts (the "Application"); and

WHEREAS, the City of Marathon Planning Commission (the "Commission"), in accordance with the provisions of Sections 9.5-22 and 9.5-69 of the City of Marathon Land Development Regulations (the "LDR's"), met to review the Application to determine its compliance with the applicable regulations on October 17, 2005; and

WHEREAS, the Commission recommended conditional approval of the Application to the City of Marathon City Council (the "Council"); and

WHEREAS, the Council in accordance with the provisions of Sections 9.5-21 and 9.5-69 of the LDR's, met to review the Application to determine its compliance with the applicable regulations on November 8, 2005; and

WHEREAS, the Council has duly considered the recommendation of the Commission, and the information and documentary evidence submitted by the Applicant and does hereby find and determine as provided below.

FINDINGS OF FACT:

1. Based on the submitted site plan, the entire Property is 8.99 acres, but the portion to be developed is 1.7 acres. Currently the site includes 2,800 square feet of commercial floor area. The Applicant is proposing one 2,800 square foot commercial building with two (2) affordable

dwelling units, one 6,000 square foot commercial building with three (3) affordable dwelling units, and several accessory structures for the sea life amusement park, including an animal encounter tank.

2. In accordance with Section 9.5-65 of the Code, the Commission and Council considered and determined the Applicants met the following criteria:
 - a. The Proposed Use is consistent with goals, objectives and policies of the City Comprehensive Plan (the "Plan") and Chapter 9.5 of the Code; and
 - b. The Proposed Use is consistent with the character of the immediate vicinity of the parcel proposed for development; and
 - c. The design of the Proposed Use minimizes adverse effects, including visual impacts, of the proposed use on adjacent properties; and
 - d. The Proposed Use will not have an adverse effect on the value of surrounding properties; and
 - e. The public facilities and services, including but not limited to roadways, park facilities, police and fire protection, hospital and medical services, hurricane shelter, drainage systems, refuse disposal, water and sewers, and schools are adequate; and
 - f. The Proposed Use complies with all additional standards imposed on it by the particular provisions of Chapter 9.5 of the Code, authorizing such use and by all other applicable requirements of the Code.

CONDITIONS IMPOSED:

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

1. The handicap spaces must be 21 feet long.
2. Prior to issuance of building permits, the Applicant must submit stormwater management plans demonstrating the redeveloped Property will comply with the applicable City and State stormwater regulations. Additionally, no direct outfalls to Outstanding Florida Waters shall be permitted.
3. The Applicants will be required to install three (3) fire hydrants on the Property, upon the recommendation of the Fire Department. All new buildings shall require the installation of sprinkler systems and otherwise comply with all Fire Alarm System and Life Safety Code Requirements prior to issuance of any building permits.
4. Two (2) 120% Affordable ROGO allocations have been awarded to the project out of the City's bank of Affordable ROGO allocations. The units shall be for rental and employee housing only and the applicant shall record a restrictive covenant prior to the issuance of any building permits for such units. The restrictive covenant shall be for a minimum of fifty (50) years and shall be renewable for two (2) fifty (50) year periods. The developer will enter into an agreement with the Middle Keys Community Land Trust (MKCLT) or other similar organization to provide services for both the initial and annual income qualifications of tenants of the affordable/workforce housing. This agreement shall be in place and approved by the City prior

to the issuance of a CO for the affordable/working force housing units. The remaining three (3) employee units must obtain Affordable ROGO allocations prior to development.

5. The affordable/workforce housing units must obtain a CO concurrent or prior to the CO for the commercial floor area of the respective building they are to be built in.
6. An NROGO allocation for 6,000 square feet must be obtained prior to development of the second building.
7. The applicant shall submit an application for a building permit(s) within one (1) year of the date of approval of the conditional use. Should the applicant fail to submit an application for building permit(s) prior to the expiration of this conditional use approval, the two (2) 120% Affordable ROGO allocations awarded under this conditional use approval shall be returned to the City.

VIOLATION OF CONDITIONS:

The Applicants understand and acknowledge that they must comply with all of the terms and conditions herein, and all other applicable requirements of the City or other governmental agencies applicable to the use of the Property. In accordance with the Code, the Council may revoke this approval upon a determination that the Applicants or their successor or designee is in non-compliance with this Development Order or Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed therein.

CONCLUSIONS OF LAW:

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

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

RECORDING:

The Applicants shall at their sole cost and expense, record a certified copy this Development Order in the Public Records of Monroe County, Florida within five (5) days of receipt of same from the City.

The Applicants shall provide the City with proof of the recording of the Development Order in accordance with the provisions of this paragraph.

EFFECTIVE DATE:

The Director of Planning shall sign this Development Order, and it shall not take effect for thirty (30) days following the date it is rendered/filed with the City Clerk. During that time, the major conditional use approval granted herein shall be subject to appeal as provided in the City Code. An appeal shall stay the effectiveness of this Development Order until said appeal is resolved.

23 Nov 05
Date


Gail E. Kenson, AICP
Planning Director

This Development Order was filed in the Office of the City Clerk of this 23 day of Nov, 2005.


Cindy L. Ecklund, City Clerk

NOTICE

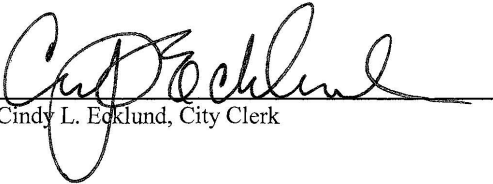
Section 9.5-72 (a) of Marathon City Code states that a conditional use permit shall not be transferred to a successive owner without notification to the Development Review Coordinator within five (5) days of the transfer.

Under the authority of Section 9.5-72(a) of the City of Marathon Land Development Regulations, this Development Order shall become null and void with no further notice required by the City, unless a complete building permit application for site preparation and building construction with revised plans as required herein is submitted to the City of Marathon Building Official within six (6) months of the expiration of the Department of Community Affairs appeal period or the date when the Department of Community Affairs waives its appeal and all required certificates of occupancy are procured with three (3) years of the date of this Development Order is approved by the City Council.

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

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to Florida Keys Animal Encounters, LLC, 10602 7th Avenue, Marathon, Florida 33050, this 23 day of November, 2005.



Cindy L. Ecklund, City Clerk

**CITY OF MARATHON, FLORIDA
RESOLUTION 2021-35**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY FLORIDA KEYS ANIMAL ENCOUNTERS, LLC FOR A CONDITIONAL USE PERMIT PURSUANT TO CHAPTER 102 ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS ENTITLED “CONDITIONAL USE PERMITS”, FOR THE EXPANSION OF THE PREVIOUSLY APPROVED SEA LIFE AMUSEMENT PARK AND A MARINE EDUCATIONAL FACILITY, TO INCLUDE A 15,200 SQUARE FOOT WAREHOUSE, OFFICE, AND LAB SPACE, AT 11710 OVERSEAS HIGHWAY, AND LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 4, SECTION 5, TOWNSHIP 66 SOUTH, RANGE 33 EAST, KEY VACCAS, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00104130-000000.

WHEREAS, Florida Keys Animal Encounters LLC. (The “Applicant”) filed an Application on March 22, 2021 for a Conditional Use Permit pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS; the Applicant has proposed redevelopment of a Marine Life facility to include warehouse, office space and laboratory; and

WHEREAS, City staff reviewed the Applicant’s request for a Conditional Use Permit determining that the Applicant’s project proposal was in compliance with the City’s Comprehensive Plan and LDRs and further that there was no substantial impact on the City’s Level of Service (LOS); and

WHEREAS, on the 17th day of May, 2021, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 8 of the LDRs; and

WHEREAS, on the 17th day of May, 2021, the City of Marathon Planning Commission conducted a properly advertised public hearing regarding the request submitted by the Applicant, for a Variance pursuant to Chapter 102, Article 20 of the LDRs; and

WHEREAS, the City of Marathon Planning Commission approved the request submitted by the Applicant, for a Variance pursuant to Chapter 102, Article 20 of the LDRs; and

WHEREAS, on the 8th day of June, 2021, the City Council (the “Council”) conducted a properly advertised public hearing regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 8 of the LDRs; and

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

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

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

Section 2. The City Council hereby approves Development Order 2021-06, a copy of which is attached hereto as Exhibit “A”, granting a Conditional Use Permit to Florida Keys Animal Encounters LLC, subject to the Conditions imposed. The Director of Planning is authorized to sign the Development Order on behalf of the City.

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

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13TH DAY OF JULY 2021.

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk
(City Seal)

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

Steven T. Williams, City Attorney



**CITY OF MARATHON, FLORIDA
CONDITIONAL USE
DEVELOPMENT ORDER # 2021-06**

A DEVELOPMENT ORDER APPROVING THE REQUEST BY FLORIDA KEYS ANIMAL ENCOUNTERS, LLC FOR A CONDITIONAL USE PERMIT PURSUANT TO CHAPTER 102 ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS ENTITLED “CONDITIONAL USE PERMITS”, FOR THE EXPANSION OF THE PREVIOUSLY APPROVED SEA LIFE AMUSEMENT PARK AND A MARINE EDUCATIONAL FACILITY, TO INCLUDE A 15,200 SQUARE FOOT WAREHOUSE, OFFICE, AND LAB SPACE, AT 11710 OVERSEAS HIGHWAY, AND LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 4, SECTION 5, TOWNSHIP 66 SOUTH, RANGE 33 EAST, KEY VACCAS, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00104130-000000..

WHEREAS, Florida Keys Animal Encounters LLC (The “Applicant”) filed an Application on March 22, 2021 for a Conditional Use Permit pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS; the Applicant has proposed redevelopment of a Marine Life facility to include warehouse, office space and laboratory; and

WHEREAS, City staff reviewed the Applicant’s request for a Conditional Use Permit determining that the Applicant’s project proposal was in compliance with the City’s Comprehensive Plan and LDRs and further that there was no substantial impact on the City’s Level of Service (LOS); and

WHEREAS, on the 17th day of May, 2021, the City of Marathon Planning Commission conducted a properly advertised public hearing regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 8 of the LDRs; and

WHEREAS, on the 17th day of May, 2021, the City of Marathon Planning Commission conducted a properly advertised public hearing regarding the request submitted by the Applicant, for a Variance pursuant to Chapter 102, Article 20 of the LDRs; and

WHEREAS, the City of Marathon Planning Commission approved the request submitted by the Applicant, for a Variance pursuant to Chapter 102, Article 20 of the LDRs; and

WHEREAS, and on the 8th day of June, 2021, the City Council conducted a properly advertised public hearing regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 8 of the LDRs; and

WHEREAS; the City Council made a determination that the Applicant’s request for a Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, was in

Compliance with the City's Comprehensive Plan and LDRs, is consistent with its policy to encourage the development of residential properties in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

WHEREAS, the Council has duly considered the recommendation of the PC, and the information and documentary evidence submitted by the applicant and does hereby find and determine as provided below.

FINDINGS OF FACT:

1. The Applicant has proposed redevelopment of the Marine Life facility to include warehouse, office space and laboratory; on developed land as shown in Exhibit 1.
2. In accordance with Section 102.77 of the Code, the Commission and Council considered and determined the Applicant met the following criteria:
 - a. The proposed use is consistent with the Comprehensive Plan and LDRs;
 - b. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;
 - c. The proposed use shall not adversely affect the health, safety, and welfare of the public; and
 - d. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment; and
 - e. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:
 1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;
 2. Off-street parking and loading areas where required, with particular attention to item 1 above;
 3. The noise, glare or odor effects of the conditional use on surrounding properties;
 4. Refuse and service areas, with particular reference to location, screening and Items 1 and 2 above;
 5. Utilities, with reference to location and availability;
 6. Screening and buffering with reference to type, dimensions and character;
 7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding properties;
 8. Required yards and other open space;
 9. General compatibility with surrounding properties; and

CONDITIONS IMPOSED:

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

Conditions of Approval

1. A CBPAS allocation for 15,200 square feet must be obtained prior to development of the second building;
2. Must meet all conditions of the Fire Marshal prior to permit issuance.
3. A conservation easement in a form approved by the City Attorney must be provided for the wetland area.
4. City approval is required for the stormwater management system prior to building permit approval.
5. A conservation easement in a form approved by the City Attorney must be provided for the wetland area.
6. Protection of the wetland area shall be assured through a conservation easement recorded in the public records of Monroe County, Florida, pursuant to Chapter 106, Article 8 – “Conservation Management Areas”.
7. To reduce further impact potential to the wetlands for this setback reduction Staff is recommending a six-foot-high fence or wall, between the development and the wetlands. The height of the wall as measured from the improved grade would ensure that human encroachment is less likely to occur.
8. Transplantation shall be the priority mitigation plan for the native vegetation in the low-quality hammock per Section 106.09.
9. Staff requires that upon planning review, if the redevelopment is found to have any effect on the Eastern Indigo Snake Habitat, then the prescribed protection measures must be undertaken, and the information poster posted on site.
10. Applicant will expand the width of the access road to the greatest extent practicable. Should the expansion be denied by any agency, the denial shall be documented, and the condition shall be severable and not affect any other term or condition of the conditional use approval.
11. The applicant will meet all floodplain related requirements as part of the building permit process.
12. Final site plan must show screened dumpster enclosure prior to permit issuance.
13. City approval is required for the stormwater management system prior to building permit approval.
14. City approval of the connection to the city wastewater utility will be required.
15. The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.
16. A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
17. A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.
18. All signs will be reviewed and approved for compliance with the City of Marathon LDR’s.
19. A final lighting plan must be submitted prior to permit issuance.

20. The applicant will obtain any required permits from SFWMD, DEP, and ACOE prior to building permit issuance.

VIOLATION OF CONDITIONS:

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

CONCLUSIONS OF LAW:

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

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

EFFECTIVE DATE:

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

Date

Brian Shea
Director of Planning

This Development Order was filed in the Office of the City Clerk of this ____ day of _____, 2021.

Diane Clavier, City Clerk

NOTICE

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

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

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to Florida Keys Animal Encounters LLC, 11710 Overseas Hwy Marathon FL, 33050, this ___ day of _____, 2021.

Diane Clavier, City Clerk

City Council Staff Report



Meeting Date: July 13, 2021
To: City Council
From: Brian Shea, Planning Director
Through: George Garrett, City Manager

Agenda Item: **Resolution 2021-46**, A Request By Season's Inc For A Re-Plat Pursuant To Chapter 102, Article 10 Of The City Of Marathon Land Development Regulations (LDRs) Entitled "Subdivision Of Land/Plats And Re-Plats," Particularly, For A Portion Of 50th Street Gulf, Which Is Described As Thompson And Adams Subdivision PB2-24, Gov Lot 1 Section 10, Twp 66S, Range 32E; And Pt Lots 5-6, Pt Of Lot 1 Overseas Hwy And Bay Bottom Adj To Lots 5-6, Chancery And Bk 1, Pt Of Lots 1 And 9, All Of Lots 10-11-12 And 13 Vaca Village Pb2-106, Marathon, Monroe County, Florida, Having Real Estate Numbers 00327150-000100. Nearest Mile Marker 47.5.

RECOMMENDATION:

Council previously approved the Conditional use and preliminary Plat. The documents were rendered to the State, who had no Objections, Recommendations, or Comments. This report addresses the adoption of the Final Plat.

The proposed conditions follow:

Conditions of Approval

1. Final plat shall include language regarding owner-signed consent and acknowledgement for wastewater and stormwater assessment for future development of the properties.
2. All utility and right-of-way permits shall be obtained as part of building permit process.
3. Applicant shall provide form of guarantee for necessary utility construction.
4. Reductions shall be noted in the plat and a complete accounting of acreage respective of allowed densities shall be made in the plat document.
5. Plat documents shall clearly indicate that no future subdivision shall be allowed of any area accounted for in density calculations.
6. All conditions of the Conditional Use must be met prior to building permit issuance.

APPLICANT/ OWNER: Season's Inc.

AGENT: Season's Inc. / Mike Aranda Sr. & Jr.

LOCATION: The project site is located at 881 50th Street, Marathon – Nearest Mile Marker 47.5. **See Figure 1.**

Figure 1
Project Site



LOT SIZE:

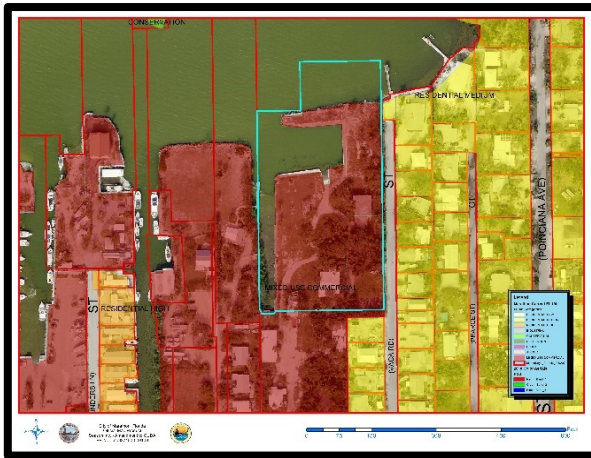
Total acreage	4.15 Acres (Ac.)	180,774 Square Feet (Sq. Ft.)
Upland	2.71 Ac.	117,893 Sq. Ft.
Submerged	1.44 Ac.	62,726 Sq. Ft.

REQUEST: A Conditional Use Permit to authorize the preliminary plat of the parcel into seven lots for single family residences.

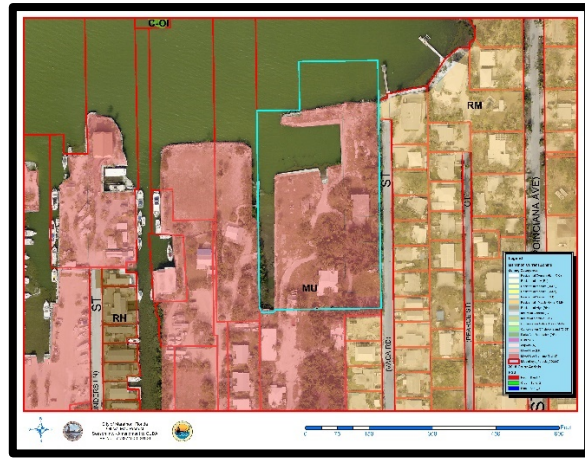
FUTURE LAND USE AND ZONING MAP DESIGNATIONS:

Mixed Use Commercial (MUC) and Mixed Use (MU). See Figure 2 A. and B.

2.A FLUM Map



2.B Zoning Map



SURROUNDING ZONING AND USES:

	<u>Zoning</u>	<u>Use</u>
North	Gulf of Mexico	NA
East	Mixed Use, Residential Medium	Sea Dell Motel, Hall's Scuba, Residential homes of 50 th street
South	Mixed Use, Residential Medium	Maramede Amended Subdivision, Marathon Vet, Cracked Conch, Island Tire, Sandal Factory
West	Mixed Use, Residential High	Vacant land, Residential homes, Residential homes of 47 th street

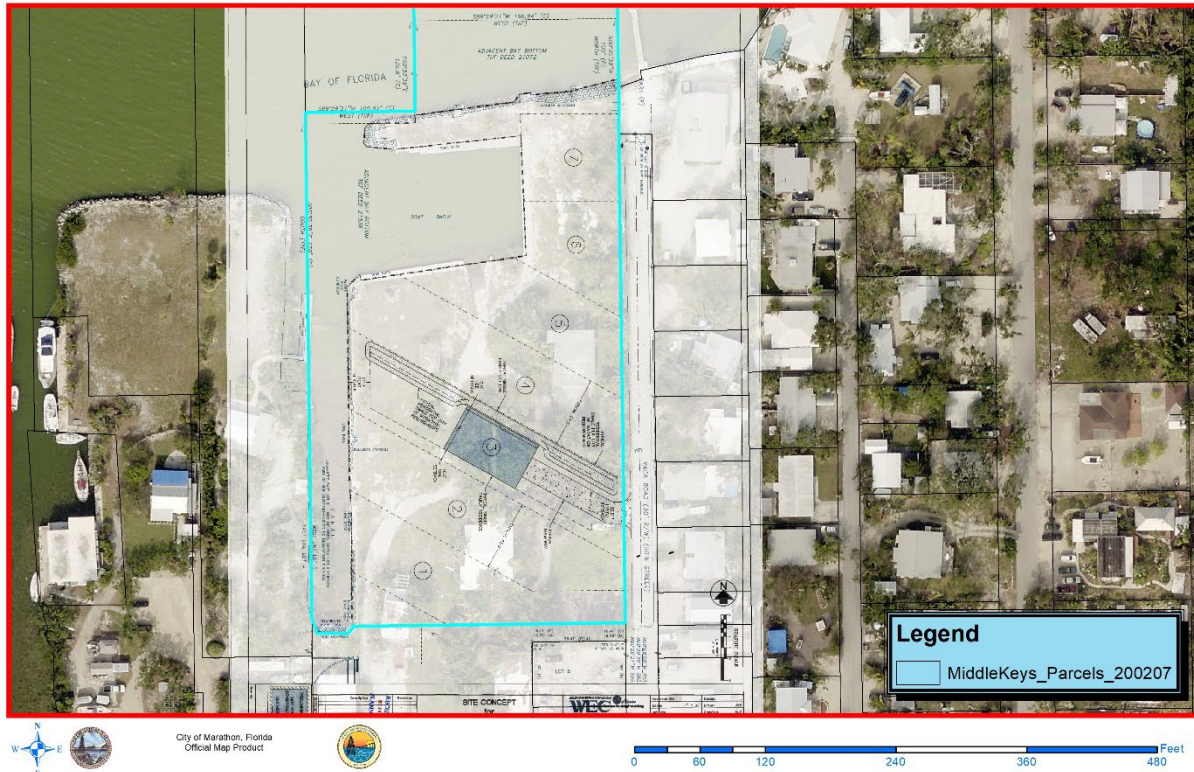
EXISTING CONDITIONS:

The project site consists of the remains of 1950-60s era resort, including several residences, a marina, and amenities. Most of these features have been demolished at this juncture.

PROPOSED REDEVELOPMENT:

The proposed development is seven single family homes on individually platted lots. See Figure 3 for Site Plan layout.

Figure 3
Proposed Redevelopment Site Plan



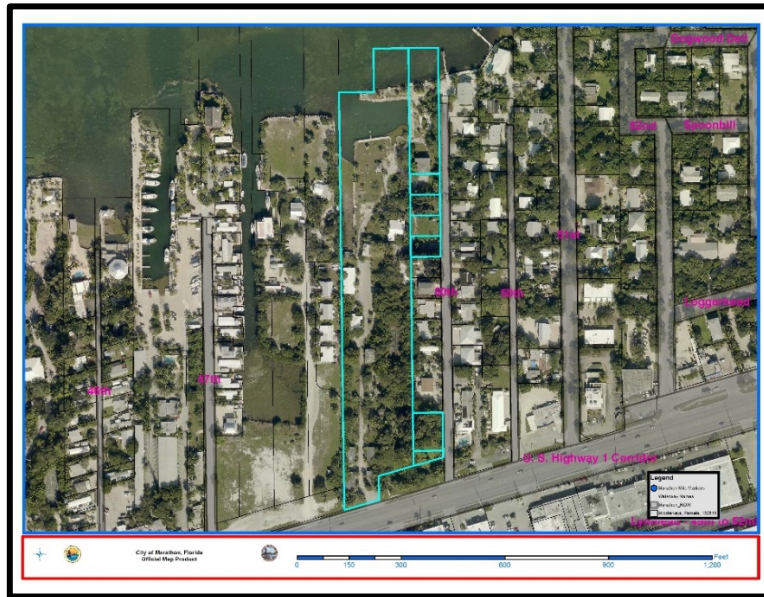
BACKGROUND:

Seasons Inc. proposes to redevelop the waterfront portion of the property formerly known as the Crystal Cove Resort and Marina. The resort was located on a 5.98 acre site that stretched from US 1 north to Florida Bay. The first motel was established on this site in the 1950's. The business has been closed in excess of ten years.

In 2016, City Council has approved a redevelopment plan for the property that proposed a workforce housing community (46 units) and 28 Recreational Vehicles (RV) sites in an RV Park located adjacent to the open water (Resolutions 2016-71 & 2016-72). In 2020, City Council has approved a redevelopment plan for the property that proposed twenty-six (26) transient residences (two & three bedroom) and eighteen (18) one-bedroom hotel style transient units with amenities (Resolutions 2020-82 & 2020-83). Construction has commenced on 3.68 acres slated originally for workforce affordable multi-family housing.

This application requests approval to subdivide the parcel into seven parcels. The hotel project will be abandoned towards ultimate approval of this project proposal. See **Figures 4 and 5**.

**Figure 4
Original Project Boundaries**



**Figure 5
Original Project Site Plan**



Upon approval and final adoption of the plat, the development agreement for the transient development may be rescinded.

ANALYSIS OF PLAT APPROVAL REQUEST:

The standards for re-plat approval are established in Chapter 102, Article 10 of the Land Development Regulations. The application for the preliminary plat approval is being simultaneously reviewed per Section 102.45.D.2. through the Conditional Use process. Pursuant to the Code, the Planning Commission and City Council shall give due consideration to the evaluation criteria addressed within this report as well as the Conditional Use when rendering a decision to grant or deny the requested permit.

Per code streets, internal park and open space areas, recreation space, protected habitat areas requiring conservation easements may all be the basis for density reductions in the platted lot area if they are included in the overall density calculations for the subdivision and subsequent plat. Such reductions shall be noted in the plat and a complete accounting of acreage respective of allowed densities shall be made in the plat document. Equally, if lot area reductions are allowed as part of the subdivision and platting process, the plat documents shall clearly indicate that no future subdivision shall be allowed of any area accounted for in density calculations. The applicant is proposing no such reductions.

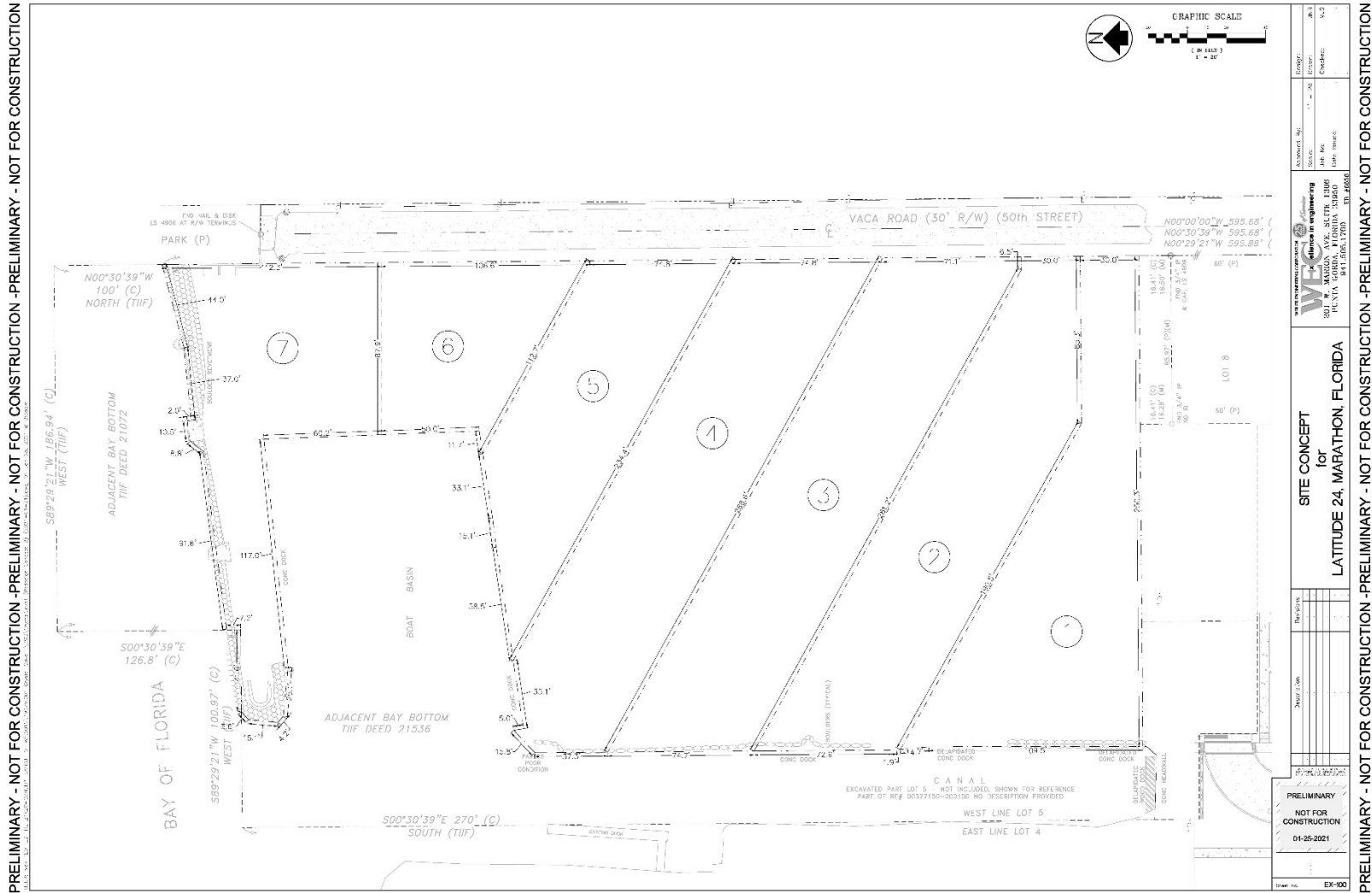
RECOMMENDATION:

With the following conditions, the Planning staff recommends approval of the proposed final plat.

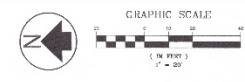
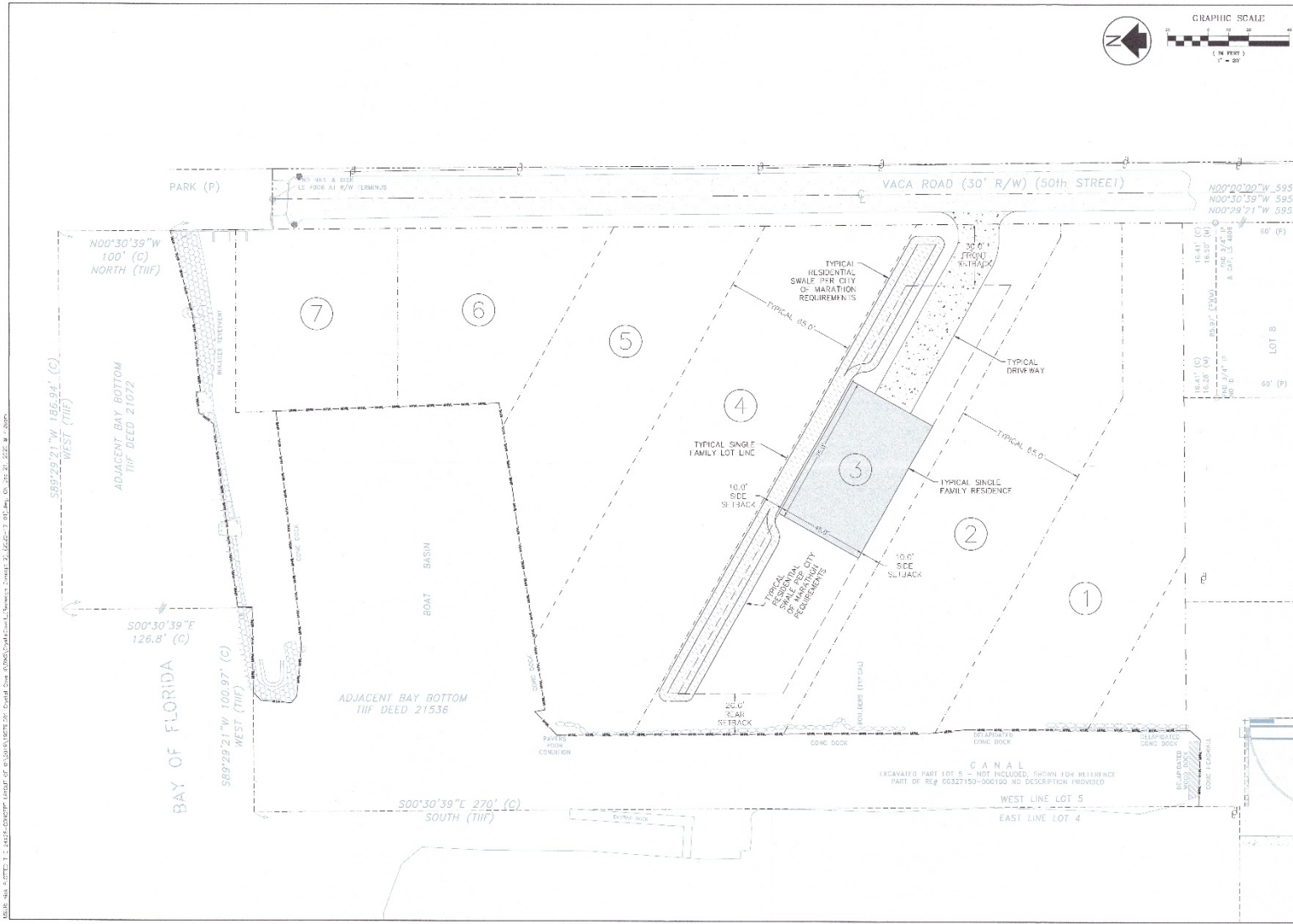
Conditions:

7. Final plat shall include language regarding owner-signed consent and acknowledgement for wastewater and stormwater assessment for future development of the properties.
8. All utility and right-of-way permits shall be obtained as part of building permit process.
9. Applicant shall provide form of guarantee for necessary utility construction.
10. Reductions shall be noted in the plat and a complete accounting of acreage respective of allowed densities shall be made in the plat document.
11. Plat documents shall clearly indicate that no future subdivision shall be allowed of any area accounted for in density calculations.
12. All conditions of the Conditional Use must be met prior to building permit issuance.

Attachments:



PRELIMINARY - NOT FOR CONSTRUCTION - PRELIMINARY - NOT FOR CONSTRUCTION - PRELIMINARY - NOT FOR CONSTRUCTION - PRELIMINARY - NOT FOR CONSTRUCTION



<p>W.H. CHANCE ENGINEERING</p> <p>201 W. WARDEN AVE., SUITE 1300 PINTA CORRAL, FLORIDA 33950 941.995.1700</p>		<p>Scale: 1" = 20'</p> <p>Drawn: []</p> <p>Checked: []</p> <p>Date: []</p>
<p>SITE CONCEPT</p> <p>for</p> <p>LATITUDE 24, MARATHON, FLORIDA</p>		
<p>RECEIVED</p> <p>Oct 28 2021</p> <p>PLANNING</p>		<p>PRELIMINARY</p> <p>NOT FOR CONSTRUCTION</p> <p>12-21-2020</p>
<p>Sheet no. EX-100</p>		

PRELIMINARY - NOT FOR CONSTRUCTION - PRELIMINARY - NOT FOR CONSTRUCTION - PRELIMINARY - NOT FOR CONSTRUCTION - PRELIMINARY - NOT FOR CONSTRUCTION

**CITY OF MARATHON, FLORIDA
RESOLUTION 2021-46**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY SEASON'S INC FOR A RE-PLAT PURSUANT TO CHAPTER 102, ARTICLE 10 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED "SUBDIVISION OF LAND/PLATS AND RE-PLATS," PARTICULARLY, FOR A PORTION OF 50TH STREET GULF, WHICH IS DESCRIBED AS THOMPSON AND ADAMS SUBDIVISION PB2-24, GOV LOT 1 SECTION 10, TWP 66S, RANGE 32E; AND PT LOTS 5-6, PT OF LOT 1 OVERSEAS HWY AND BAY BOTTOM ADJ TO LOTS 5-6, CHANCERY AND BK 1, PT OF LOTS 1 AND 9, ALL OF LOTS 10-11-12 AND 13 VACA VILLAGE PB2-106, MARATHON, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00327150-000100. NEAREST MILE MARKER 47.5.

WHEREAS, Season's Inc. filed an Application on January 8th, 2021 for approval to Re-Plat property located on 50th Street, having Real Estate Number 00327150-000100, into seven (7) single family residential lots pursuant to Chapter 177, Florida Statutes and Chapter 102, Article 10, of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS, on the 16th day of February 2021 the City of Marathon Planning Commission (the "Commission") reviewed and recommended approval of the final re-plat with several conditions; and

WHEREAS, on the 9th day of March 2021, the City Council (the "Council") reviewed the Applicant's proposal finding that the preliminary Re-plat documents were compliant with the terms of Chapter 177, Florida Statutes and the Chapter 102, Article 10 of the City LDR's; and

WHEREAS, on the 13th day of July 2021, the City Council (the "Council") reviewed the Applicant's proposal finding that the final Re-plat documents were compliant with the terms of Chapter 177, Florida Statutes and the Chapter 102, Article 10 of the City LDR's; and

WHEREAS, due process was afforded to the parties, the essential requirements of law were adhered to and competent and substantial evidence was presented, the Council voted to approve the Final Re-Plat; and

WHEREAS, the purpose of the Final Plat assures that Season's Inc. has complied with all subdivision and plat filing requirements of Chapter 102, Articles 10 and Florida Statutes Chapter 177.

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 final plat, an unsigned copy of which is attached hereto as Exhibit “A”, is hereby approved for signature and recordation and otherwise has complied with or must meet all conditions of the re-Plat as follows:

1. Final plat shall include language regarding owner-signed consent and acknowledgement for wastewater and stormwater assessment for future development of the properties.
2. All utility and right-of-way permits shall be obtained and issued prior to final plat approval.
3. Applicant shall provide form of guarantee for necessary utility construction.
4. Reductions shall be noted in the plat and a complete accounting of acreage respective of allowed densities shall be made in the plat document.
5. Plat documents shall clearly indicate that no future subdivision shall be allowed of any area accounted for in density calculations
6. All conditions of the Conditional Use must be met prior to building permit issuance.

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 13th DAY OF JULY, 2021.

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

Steve Williams, City Attorney

EXHIBIT A
Final Plat of Property
(Original Re-plat to be attached at final adoption & signature)

Sponsored By: Council
City Council Public Hearing Date: June 8, 2021
July 13, 2021
Enactment Date:

**CITY OF MARATHON, FLORIDA
ORDINANCE 2021-16**

AN ORDINANCE BY THE CITY OF MARATHON, FLORIDA, AMENDING CHAPTER 100, ARTICLE I (“GENERAL”), CHAPTER 101, ARTICLE III (“PLANNING COMMISSION”), AND CHAPTER 102, ARTICLE 17 OF THE CODE OF ORDINANCES OF THE CITY OF MARATHON BY AMENDING SECTIONS 100.06, 100.09 & 101.02; AMENDING SECTION 102, ARTICLE 17 IN CONFORMANCE THEREWITH PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS THEREOF FOUND TO BE IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY AFTER FINAL ADOPTION BY THE CITY COUNCIL; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Local Government Comprehensive Planning and Land Development Regulations 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, pursuant to Sections 380.05 and 380.0552, Florida Statutes; and

WHEREAS, Florida 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, the City of Marathon (“City”) is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes, and

WHEREAS, there exists within the Marathon Code of Ordinances certain typographical errors as well as certain outdated or unused sections that are overbroad or are otherwise unenforceable; and

WHEREAS, it is in the best interest of the citizens of the City of Marathon to remedy and/or clarify these identified code sections.

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. Chapter 100, Article 1, Section 100.06 “Interpretation and Administration” is hereby amended to read as follows:

Section 100.06. – Interpretation and Administration.

In the interpretation and administration of the LDR’s, all provisions shall be:

- A. *Generally:* In the interpretation and application of the LDRs all provisions shall be liberally construed in favor of the objectives and purposes of the City and deemed neither to limit nor repeal any other powers granted under State Statutes.
- ~~B. *Responsibility:* In the event that any question arises concerning the application of regulations, performance standards, definitions, development criteria, or any other provision of the LDRs, the Director shall be responsible for interpretation and shall look to the Plan for guidance. Responsibility for interpretation by the Director shall be limited to standards, regulations and requirements of the LDRs, but shall not be construed to include interpretation of any technical codes adopted by reference in the LDRs, and shall not be construed as overriding the responsibilities given to any commission, board or official named in other sections or Articles of the LDRs.~~
- ~~C. *Delegation of Authority:* Unless otherwise specified in the LDRs, the identification of certain officials, including the City Manager, Planning Director, City Attorney or any other Department Director or City Official to perform a task or carry out a specific responsibility, shall also include the designee of such official. Unless otherwise specified in the LDR, the term “Director” shall mean the Planning Director and the term “Department” shall mean the Planning Department.~~
- B. *Delegation of Authority:* Unless otherwise specified in the LDRs, the identification of certain officials, including the City Manager, Planning Director, City Attorney or any other Department Director or City Official to perform a task or carry out a specific responsibility, shall also include the designee of such official. Unless otherwise specified in the LDR, the term “Director” shall mean the Planning Director and the term “Department” shall mean the Planning Department.**
- C. *Responsibility:* In the event that any question arises concerning the application of regulations, performance standards, definitions, development criteria, or any other provision of the LDRs, the Director shall be responsible for interpretation and shall look to the Plan for guidance. Responsibility for interpretation by the Director shall be limited to standards, regulations and requirements of the LDRs, but shall not be construed to include interpretation of any technical codes adopted by reference in the LDRs, and shall not be construed as overriding the responsibilities given to any commission, board or official named in other sections or Articles of the LDRs.**

SECTION 3. Chapter 100, Article 1, Section 100.09 “Other Regulatory Authority” is hereby amended to read as follows:

Section 100.09. – Other Regulatory Authority.

The issuance of a permit or approval by a federal or state agency, water management district, or other governing body shall not obligate City of Marathon to grant approval, and shall not be deemed to satisfy the requirements of the LDRs.

Where applicable, pursuant to Fla. Stat. ch. 380, the ~~Department of Community Affairs~~ **State Land Planning Agency** has appeal authority over actions taken by the City.

SECTION 4. Chapter 101, Article 3, Section 101.02 “Powers and Duties” is here amended to read as follows:

Section 101.02 – Powers and Duties.

The Planning Commission (PC) shall have the powers and duties as provided in Fla. Stat. 163.3174, including, but not limited to:

- A. *Appeals:* The PC shall hear and decide appeals where it is alleged that an error has been committed in any order requirement, decision or determination made by ~~any administrative official~~ **the Director or the Department** made pursuant to the LDRs, except where state or City LDRs specifically provide otherwise as provided in Article 17 “Appeals” of Chapter 102.

SECTION 5. Chapter 102, Article 17

Article 17. – Appeals

An action ~~by any administrative official or body made pursuant to the provisions of the LDRs may be appealed in accordance with the provisions of this article.~~ **or interpretation made by the Director or the Department made pursuant to the provisions of the LDRs may be appealed to the Planning Commission in accordance with the provisions of this article. An action or interpretation made by the building official or other administrative official may be appealed to the City Council in accordance with the provisions of this article.**

Section 102.94. – Application and Contents of Appeal.

An application for appeal shall be filed ~~on a form provided by the City, with the City Manager, and the body, office or department whose action is the basis for appeal~~ accompanied by a filing fee, **on a form provided by the Department.** The appeal shall be in writing and state the basis of the appeal by citing the inadequacy of the findings made by the ~~administrative officer~~ **appropriate person or body.** Such reasons shall be based upon the evidence presented to the administrative officer or body prior to the original decision. Failure of the appellant to present such reasons shall be deemed cause for denial of the appeal.

SECTION 6. Any provisions of the Code of Ordinances of the City of Marathon, Florida or Ordinances or parts of Ordinances that are in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 7. 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, or 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 8. It is the intention of the City Council and it is hereby ordained that 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 “Ordinance” shall be changed to “Section” or other appropriate word.

SECTION 9. 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 Section 380.05(6) and (11), Florida Statutes.

SECTION 10. This Ordinance shall become effective immediately upon approval.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA,
THIS 13 DAY OF JULY, 2021.**

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk
(City Seal)

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

Steven Williams, City Attorney



COUNCIL AGENDA STATEMENT

Meeting Date: July 13, 2021
To: Honorable Mayor and Council Members
Through: George Garrett, City Manager

Agenda Item: **Ordinance 2021-17**, Amending Chapter 36, Article IV, “Water And Mooring Fields,” Modifying Section 36-83 To Prohibit The Launching Of Vessels Twenty-Six (26) Feet Or Longer And Any Vessel Transported On A Trailer Of Three (3) Axles Or More From The Boat Ramp Located At Aviation Boulevard And Harbor Drive; Providing For Severability; Providing For The Repeal All Ordinances Or Parts Of Ordinances Found To Be In Conflict, And Providing For Inclusion In The Code; And Providing For An Effective Date.

Ordinance 2020-03 was adopted by the City Council on August 11, 2020 restricting, among other things, the length of vessels that are allowed to launch at the Harbor Drive City Boat Ramp. After a year of operations pursuant to Ordinance 2020-03, it has been determined by staff and the Monroe County Sheriff’s Office that additional restrictions should be imposed to include a limitation the number of axles associated with trailers and boats launching at this ramp.

CONSISTENCY CHECKLIST:

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

FISCAL NOTE:

APPROVED BY FINANCE DIRECTOR:

RECOMMENDATION:

Approval of Ordinance

Sponsored by: Garrett
Introduction Date: July 13, 2021
Public Hearing Dates: July 13, 2021
July 14, 2021
Enactment date: July 14, 2021

**CITY OF MARATHON, FLORIDA
ORDINANCE 2021-17**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING CHAPTER 36, ARTICLE IV, “WATER AND MOORING FIELDS,” MODIFYING SECTION 36-83 TO PROHIBIT THE LAUNCHING OF VESSELS TWENTY-SIX (26) FEET OR LONGER AND ANY VESSEL TRANSPORTED ON A TRAILER OF THREE (3) AXLES OR MORE FROM THE BOAT RAMP LOCATED AT AVIATION BOULEVARD AND HARBOR DRIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL ALL ORDINANCES OR PARTS OF ORDINANCES FOUND TO BE IN CONFLICT, AND PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Ordinance 2020-03 was adopted by the City Council on August 11, 2020 restricting, among other things, the length of vessels that are allowed to launch at the Harbor Drive City Boat Ramp; and

WHEREAS, after a year of operations pursuant to Ordinance 2020-03, it has been determined by staff and the Monroe County Sheriff’s Office that additional restrictions should be imposed to include a limitation the number of axles associated with trailers and boats launching at this ramp; and

WHEREAS, the City Council reviewed the proposed Ordinance at public hearings heard on July 13, 2021 and again on July 14, 2024, listened to staff input, and accepted testimony from the public; 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 regulations for the protection of the public,

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

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

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

Section 2. Modify Sec. 36-83. – “Anchorage areas, and mooring fields”, as follows:

Sec. 36-83. - Anchorage areas, ~~and~~ mooring fields, City docks, and City boat ramps.

(m) No vessel twenty-six (26) feet or longer in length, bow to stern, **or any vessel transported on a boat trailer of three (3) axles or more,** shall **be allowed** to utilize and launch at the City boat ramp located at Aviation Boulevard and Harbor Drive. Identified use of said boat ramp by such vessels shall be a violation of this Subsection and shall be subject to penalties set out in Section 36-89 of this Chapter. Enforcement shall be carried out using protocols acceptable to the Monroe County Sheriff’s Office with potential assistance from citizen volunteers.

Section 3. The Provisions of the Code of Ordinances, City of Marathon, Florida and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

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

Section 5. It is the intention of the City Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Marathon 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 6. This Ordinance shall be effective immediately upon final adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 14th DAY OF JULY, 2021.

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

Steve Williams, City Attorney



COUNCIL AGENDA STATEMENT

Meeting Date: July 13, 2021
To: Honorable Mayor & Members of the City Council
From: Carlos Solis, Public Works Director
Through: George Garrett, City Manager

Agenda Item: **Resolution 2021-47** Approving An Interlocal Agreement Between The City Of Marathon And Monroe County For The Reimbursement From Boating Improvement Funds For Recreational Boating Related Projects Within The City Of Marathon; Authorizing The Mayor To Execute The Interlocal Agreement On Behalf Of The City; And Providing For An Effective Date

BACKGROUND & JUSTIFICATION:

The City submitted an application for the 2021 Boating Improvement Funding for reimbursement of cost associated with the repair of the grate drainage component at the 33rd Street boat ramp. The existing trench drain system has corroded over the years and is beyond repair requiring replacement of the system. The proposed funding of \$35,000 is estimated to cover the majority of the \$44,000 estimated cost of the project.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	<u>XX</u>	___
2. Other –Sewer Mandate	___	___

FISCAL NOTE:

Revenues from this ILA will be included in the FY22 Capital Infrastructure budget.

APPROVED BY FINANCE DIRECTOR:

RECOMMENDATION: Approval of Resolution

**CITY OF MARATHON, FLORIDA
RESOLUTION 2021-47**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF MARATHON AND MONROE COUNTY FOR THE REIMBURSEMENT OF RECREATIONAL BOATING RELATED PROJECTS WITHIN THE CITY OF MARATHON FROM THE BOATING IMPROVEMENT FUND; AUTHORIZING THE CITY MANAGER TO EXECUTE THE INTERLOCAL AGREEMENT ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Boating Improvement Fund (the “BIF”) contains monies that are to be used for recreational boating; and

WHEREAS, the City applied to Monroe County (the COUNTY) for reimbursement funding in the total amount of \$35,000 from BIF for costs to be incurred during FY’22 for 33rd Street boat ramp drainage repairs; and

WHEREAS, the above expenditures are qualified expenditures from the State BIF; and

WHEREAS, at the May 19, 2021, regular BOCC meeting the Board of County Commissioners of Monroe County, Florida, approved the selection of the BIF funding request submitted by the CITY and to provide funding in the amount of \$35,000.00; and

WHEREAS, the City and COUNTY desire to enter into an Interlocal Agreement to provide for the reimbursement of qualified City expenditures from the BIF.

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

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

Section 2. The Interlocal Agreement attached hereto as Exhibit “A”, between the City and County for the reimbursement of qualified City expenditures from the Boating Improvement Fund is hereby approved. The City Manager is authorized to sign the Interlocal Agreement 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 13th DAY OF JULY 2021.

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

Steve Williams, City Attorney

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (Agreement) is entered into as of this ____ day of _____, 2021, between the Board of County Commissioners of Monroe County, Florida, a political subdivision of the State of Florida (the “COUNTY” or “BOCC”) and the City of Marathon, a municipal corporation organized and existing under the laws of the State of Florida (the “CITY” or the “CONTRACTOR”).

WITNESSETH:

WHEREAS, the COUNTY routinely uses State Boating Improvement Funds (BIF) for recreational boating related projects within the various municipalities; and

WHEREAS, the CITY has requested that the COUNTY provide reimbursement funding in the amount of \$35,000.00 from BIF for costs to be incurred during FY’22 for 33rd Street boat ramp drainage repairs; and

WHEREAS, the above expenditures are qualified expenditures from the State BIF; and

WHEREAS, at the May 19, 2021, regular BOCC meeting the Board of County Commissioners of Monroe County, Florida, approved the selection of the BIF funding request submitted by the CITY and to provide funding in the amount of \$35,000.00;

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, it is agreed between the COUNTY and the CITY as follows:

Section 1. Payment. The COUNTY agrees to reimburse the CITY for costs incurred in FY’22 as follows:

- 1.1 The foregoing recitals are true and correct and are hereby incorporated as if fully stated herein.
- 1.2 Payment in an amount not to exceed \$35,000.00 for 33rd Street boat ramp drainage repairs.
- 1.3 To receive payment, the CITY shall submit all requests for payment and applicable invoices to the Senior Administrator of the COUNTY’s Marine Resources Office by September 1, 2022. The invoices must describe the services performed, together with proof that payment has been made to the CITY’S sub-contractor(s). All documentation shall be forwarded to the County Clerk for payment. Any other documentation requested by the Clerk shall be provided.
- 1.4 By submitting a request for payment the CITY represents that it has complied with all of its purchasing requirements.
- 1.5 Funding of this Agreement is contingent upon an annual appropriation by the COUNTY.

Section 2. Term.

- 2.1 This Agreement shall become effective upon execution by both parties.
- 2.2 If such Notice of Termination as specified in Section 3 is given, this Agreement shall terminate within five (5) days thereof.

Section 3. Termination and Default.

- 3.1 In the event of any failure of compliance by either party hereto with any of its material obligations to the other party as provided for herein such action shall constitute a default under this Agreement.
- 3.2 Upon any such default, the non-defaulting party shall provide to the defaulting party a written Notice of such default, which Notice (Default Notice) shall state in reasonable detail the actions the defaulting party must take to cure the same.
- 3.3 The defaulting party shall cure any such default, within 30 days following the date of the Default Notice.
- 3.4 Notwithstanding the provisions of this Section, if any such default by the defaulting party remains uncured at the conclusion of any specified 30 day cure period, and if the nature of the defaulting party's obligations are such that more than 30 days is required to effect cure, then the defaulting party shall not be in default hereunder and the non-defaulting party shall not have the right to exercise its termination rights granted herein as a result of any such default, if the defaulting party commences cure within the applicable cure period and thereafter diligently pursues cure to completion of performance.
- 3.5 In the event the defaulting party fails to affect any required cure as provided for herein, the defaulting party shall be deemed to be in uncured default hereunder, and the non-defaulting party shall have the right, but shall not be obligated, upon written Notice to the defaulting party, to terminate this Agreement.
- 3.6 If such Notice is given, this Agreement shall terminate on the date set forth in the Notice and the parties shall be relieved of all rights and obligations hereunder, except for any rights and obligations that expressly survive termination.

Section 4. Indemnification.

- 4.1 To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the CITY, to the extent of the COUNTY'S potential liability pursuant to section 768.28, Florida Statutes, does hereby agree to defend, indemnify and hold the COUNTY, its officers, agents, or employees, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at

both the trial and appellate levels) arising from the acts or omissions of the CITY or any third party vendor contracted by the CITY in connection with this Agreement.

Section 5. Notices.

5.1 All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing and addressed as follows, or to any other address which either party may designate to the other party by mail:

If to Monroe County: Roman Gastesi, Jr.
County Administrator
Monroe County
Historic Gato Building
1100 Simonton Street
Key West, Florida 33040

With a copy to: Robert B. Shillinger, Esq.
Monroe County Attorney's Office
1111 12th Street, Suite 408
P.O. Box 1026
Key West, Florida 33041-1026

If to City: George Garrett
City Manager
City of Marathon
9805 Overseas Highway
Marathon, FL 33050

With a copy to: Steven Williams, Esq.
City Attorney
City of Marathon
9805 Overseas Highway
Marathon, FL 33050

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

Section 6. Regulatory Powers.

6.1 Nothing contained herein shall be construed as waiving either party's regulatory approval or enforcement rights or obligations as it may relate to regulations of general applicability, which may govern the Agreement.

- 6.2 Nothing herein shall be deemed to create an affirmative duty of either party to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with ordinances, rules and regulations, federal laws and regulations and state laws and regulations.

Section 7. Attorneys Fees and Waiver of Jury Trial.

- 7.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 7.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

Section 8. Governing Law.

- 8.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation or mediation arising out of this Agreement shall be in the 16th Judicial Circuit in and for Monroe County, Florida. This Agreement is not subject to arbitration.

Section 9. Access to Records and Audits.

- 9.1 The CITY shall comply with all public records and records retention requirements mandated by Section 24, Article I, of the Florida Constitution, and Chapter 119, Florida Statutes, and 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 COUNTY, the State of Florida, the Federal Government, or authorized agents and representatives of said government bodies. CITY shall also provide access to the personal property reports, permits, and equipment purchased or utilized under this Agreement. It is the responsibility of CITY to maintain appropriate records in accordance with generally accepted accounting principles consistently applied to insure a proper accounting of all funds and expenditures. Records shall be kept for a period of five (5) years following execution of this Agreement. CITY understands that it shall be responsible for repayment of any and all audit exceptions which are identified by the Auditor General for the State of Florida, the Clerk of Court for Monroe County, the Board of County Commissioners for Monroe County, or their agents and representatives. COUNTY shall bill CITY for the amount of the audit exception and CITY shall promptly repay any audit exception. However, COUNTY warrants and represents that it has full authority to fund the Project under the terms and conditions specified herein. The COUNTY and CITY shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its

possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the COUNTY and CITY in conjunction with this Agreement; and the COUNTY shall have the right to unilaterally cancel this Agreement upon violation of this provision by CITY.

- 9.2 The COUNTY may cancel this Agreement for refusal by the CITY, or the CITY's subcontractor, to allow access by the County Administrator or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.
- 9.3 The term "public records" and "records" shall be the same as such term has been defined in Chapter 119, Florida Statutes, including but not limited to any documents, books, data (electronic or hard copy), papers and financial records that result from the CITY or its subcontractors performance of the Services provided in this Agreement.
- 9.4 If the inspection or audit discloses that COUNTY funds paid to the CITY under this Agreement were used for a purpose not authorized by this Agreement, then the CITY must refund the funds improperly spent with interest calculated pursuant to Section 55.03, Florida Statutes, with interest running from the date the COUNTY paid the improperly spent funds to the CITY. This paragraph will survive the termination of this Agreement.
- 9.5 The COUNTY and CONTRACTOR shall allow and permit reasonable access to, and inspection of, all documents, records, papers, letters, or other "public record" materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the COUNTY and CONTRACTOR in conjunction with and in connection with this Agreement and related to Agreement performance. The COUNTY shall have the right to unilaterally cancel this Agreement upon violation of this provision by the CONTRACTOR. Failure of the CONTRACTOR to abide by the terms of this provision shall be deemed a material breach of this Agreement and the COUNTY may enforce the terms of this provision in the form of a court proceeding and shall, as a prevailing party, be entitled to reimbursement of all attorney's fees and costs associated with that proceeding. This provision shall survive any termination or expiration of the Agreement.
- 9.6 The CONTRACTOR is encouraged to consult with its advisors about Florida Public Records Law in order to comply with this provision. Pursuant to F.S. 119.0701 and the terms and conditions of this Agreement, the CONTRACTOR is required to:
 - (1) Keep and maintain public records that would be required by the COUNTY to perform the service.
 - (2) Upon receipt from the COUNTY's custodian of records, provide the COUNTY 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 this chapter 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 Agreement term and following completion of the Agreement if the CONTRACTOR does not transfer the records to the COUNTY.
- (4) Upon completion of the Agreement, transfer, at no cost, to the COUNTY all public records in possession of the CONTRACTOR or keep and maintain public records that would be required by the COUNTY to perform the service. If the CONTRACTOR transfers all public records to the COUNTY upon completion of the Agreement, 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 Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the COUNTY, upon request from the COUNTY's custodian of records, in a format that is compatible with the information technology systems of the COUNTY.
- (5) A request to inspect or copy public records relating to a COUNTY Agreement must be made directly to the COUNTY, but if the COUNTY does not possess the requested records, the COUNTY shall immediately notify the CONTRACTOR of the request, and the CONTRACTOR must provide the records to the COUNTY or allow the records to be inspected or copied within a reasonable time.

If the CONTRACTOR does not comply with the COUNTY's request for records, the COUNTY shall enforce the public records Agreement provisions in accordance with the Agreement, notwithstanding the COUNTY's option and right to unilaterally cancel this Agreement upon violation of this provision by the CONTRACTOR. A CONTRACTOR who fails to provide the public records to the COUNTY or pursuant to a valid public records request within a reasonable time may be subject to penalties under Chapter 119, Florida Statutes.

The CONTRACTOR shall not transfer custody, release, alter, destroy or otherwise dispose of any public records unless or otherwise provided in this provision or as otherwise provided by law.

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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, BRIAN BRADLEY AT PHONE# 305-292-3470 BRADLEY-BRIAN@MONROECOUNTY-FL.GOV, MONROE COUNTY ATTORNEY'S OFFICE 1111 12TH Street, SUITE 408, KEY WEST, FL 33040.

Section 10. Non-Assignability

- 10.1 This Agreement shall not be assignable by either party unless such assignment is first approved by both parties.

Section 11. No Third-Party Beneficiaries.

- 11.1 Nothing contained herein shall create any relationship, contractual or otherwise, with or any rights in favor of, any third party. No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the CITY and the COUNTY agree that neither the CITY nor the COUNTY or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

Section 12. Non-Waiver of Immunity.

- 12.1 Notwithstanding the provisions of Section 768.28, Florida Statutes, the participation of the CITY and the COUNTY in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the CITY or COUNTY be required to contain any provision for waiver.

Section 13. Privileges and Immunities.

- 13.1 All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the COUNTY, when performing their respective functions under this Agreement within the territorial limits of the COUNTY shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the COUNTY.

Section 14. Independent Contractor.

14.1 The CITY and its employees, volunteers, agents, vendors and subcontractors shall be and remain independent contractor and not agents or employees of the COUNTY with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

Section 15. Severability.

15.1 If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The COUNTY and CITY agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

Section 16. Survival of Provisions.

16.1 Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

Section 17. Waiver.

17.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

Section 18. Funding.

18.1 The parties agree that the COUNTY's responsibility under this Agreement is to provide funding only.

Section 19. Authority.

19.1 Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.

Section 20. Section Headings.

- 20.1 Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

Section 21. Execution in Counterparts.

- 21.1 This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart..

Section 22. Entire Agreement/Modification/Amendment.

- 22.1 This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.
- 22.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as the parties' preceding duly-executed Agreement.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as indicated below.

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

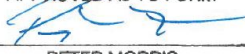
BY: _____
Michelle Coldiron, Mayor

(SEAL)

ATTEST: Kevin Madok, Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY BY:

BY: _____
As Deputy Clerk

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM

PETER MORRIS
ASSISTANT COUNTY ATTORNEY
Date: 6/8/21

Assistant Monroe County Attorney

CITY OF MARATHON, FLORIDA

George Garrett, City Manager
Date: _____

(SEAL)

ATTEST: Diane Clavier, City Clerk

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

BY: _____
Clerk

BY: _____

Printed Name: _____

COUNCIL AGENDA STATEMENT



Meeting Date: July 13, 2021
To: Honorable Mayor & Members of the City Council
From: Dan Saus, Utilities Manager
Through: George Garrett, City Manager

Agenda Item: **Resolution 2021-48**, Approving A Contract for Sludge Dewatering and Disposal Services To Synagro South LLC, for the period of two years with a possible one year extension; 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 of Marathon (the “City”) issued an Invitation to Bid (ITB-04192021LF-0-2021LF) for “Sludge Dewatering and Disposal Services,” (the “Project”) on April 19, 2021, with sealed bids opened and publicly read on June 10, 2021 at 3:00 PM at City Hall.

The Bid Tabulation attached as Exhibit “A-1” lists the responses from Bidder. Only one bidder responded, Synagro South LLC. They were determined to be both responsive and a responsible for the work as shown on Exhibit “A-1” Their bid was of \$1,565.00 per dry ton. The proposed bid award and subsequent contract will provide the City with sludge dewatering and disposal services. The recommended annual contract amount for is \$500,000.00.

CONSISTENCY CHECKLIST:

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

FISCAL NOTE:

Funding for FY22 will be included in the proposed wastewater utility budget. Funding for future years will have to be appropriated during the annual budget processes.

RECOMMENDATION: Approval of Resolution.

EXIHIBT "A-1"

Sludge Dewatering, Bid results June 10, 2021, 3:00 PM

[REDACTED] = unresponsive

	Item #1 Price	bid form	addendums	qual statement	Anti Kickback	Non-Collusion	Public Entinty Crimes	licenses	Certified Corp. Resolution	Drug-Free Workplace	Spill Response
Synagro South, LLC	\$ 1,565.00	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

**CITY OF MARATHON, FLORIDA
RESOLUTION 2021-48**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A CONTRACT FOR SLUDGE DEWATERING AND DISPOSAL SERVICES, TO SYNAGRO SOUTH, LLC FOR A PERIOD OF TWO YEARS WITH A POSSIBLE ONE YEAR RENEWAL; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the “City”) issued an Invitation to Bid (ITB-04192021LF-0-2021LF) on April 19, 2021 for “Sludge Dewatering and Disposal Services,” (the “Project”); and

WHEREAS, the lowest bid that was found to be responsive and responsible was received from Synagro South, LLC in the amount of \$1,565.00 per dry ton with the contractor’s equipment; and

WHEREAS, the City staff wishes to approve a two (2) year contract for the Sludge Hauling and Disposal Services Agreement in an annual amount not to exceed \$500,000; and

WHEREAS, the City staff wish to enter into a new Sludge Dewatering and Maintenance Contract, which will enable the City to have its waste sludge dewatered, hauled, and properly disposed of.

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

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

Section 2. The contract attached hereto as Exhibit “A”, together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is hereby approved. The City Manager is authorized to sign the 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 13th DAY OF JULY, 2021**

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

Steve Williams, City Attorney

EXHIBIT "A"

CITY OF MARATHON DEWATERING SERVICES

THIS CONTRACT (the "Contract") is dated this XXXX day of July 2021 by and between the CITY OF MARATHON, FLORIDA (hereinafter called the "CITY") and Synagro South, LLC (hereinafter called "Contractor") located at: 435 Williams Court, Suite 100 Baltimore, MD 21220.

The City and Contractor in consideration of the mutual covenants hereinafter set forth, and subject to the terms and conditions herein stated, the parties agree as follows:

1. Effect/Scope of Work.

The Contractor shall furnish all Work as specified in the Contract Documents. The work is generally described as complete on-site dewatering services for each of the City's wastewater facilities or remote sites as requested using City's mobile centrifuge equipment including operation, transportation, and maintaining the equipment. Therefore, all work and associated compensation shall be made under the terms, conditions and prices of this Contract and with the Contractor's bid as specified herein.

2. Contractor Performance.

If Contractor fails to perform according to the requirements of this Contract, City shall notify Contractor in writing. Should the Contractor fail to correct the problem within three (3) calendar days, the City may take further action up to termination.

3. Compensation/Payment.

- a. Contractor shall submit copies of all receipts and other documentation supporting lawful disposal of sludge / cake for each deposit. Contractor shall provide City the name and location of the final destination and disposal facility prior to commencement of Work and within five (5) calendar days of any changes. The City shall be provided with copies of receipts from the disposal facility for each deposit.
- b. Contractor shall provide the City with an invoice on a monthly basis within ten (10) days of the end of each month stating the services provided in the preceding month. Invoice shall contain copies of documentation for all solid waste disposal, sludge disposal and preventative maintenance log.
- c. The Contractor shall be compensated at the unit prices specified on Exhibit 1 based upon the actual Work completed for the month.
- d. The City shall make payment of said invoices of approved amounts due, as required under the Florida Prompt Payment Act. No payments shall be due or payable for Work not performed or materials not furnished.

4. Contract Amendment.

Change Order means a document, which is signed by Contractor and City, and authorizes an addition, deletion or revision in the Scope of Work, or an adjustment in compensation or contract time, issued on or after the effective date of the Contract.

5. Term.

This Contract shall be effective upon execution by both parties. This Contract shall remain in effect for two years from the date of execution unless terminated earlier in accordance with this Contract. The City Manager may, at his/her sole option, extend this Contract on the same terms and conditions for one additional one year term extension by written notice delivered at least sixty (60) days prior to termination of this Contract.

6. Contractor's Responsibilities.

- a. The Contractor has carefully examined the Scope of Work; the area for the Work contemplated on the Invitation to Bid and has made sufficient investigations to fully satisfy himself as to site conditions, and assumes full responsibility for all related Scope of Work.
- b. The Contractor agrees to coordinate all Work with City's wastewater plant operator.
- c. The Contractor shall maintain registration with the City Building Department and renew registration as applicable.
- d. The Contractor shall maintain applicable license(s) and provide City with all license renewals within ten (10) calendar days of expiration date.
- e. The Contractor shall be present for on-site training and start-up of the City's centrifuge equipment. A list of employees attending the training shall be provided to the City within three (3) calendar days following training.
- f. Contractor shall secure and pay for all tipping fees, licenses, insurances and inspections necessary for the execution of the Work. Upon termination of this Contract for any reason, Contractor shall transfer such permits, if any, and if allowed by law, to the City.
- g. The Contractor shall be responsible for conducting all services necessary to maintain warranties on the centrifuge equipment and trailer.
- h. The Contractor hereby certifies its capability of performing all required Work including clean-up from City premises in a neat and timely manner immediately following completion of Work. Contractor agrees to leave City premises in the same or better condition as provided. Each wastewater facility shall be cleaned daily to the satisfaction of the City.

- i. The Contractor shall operate the centrifuge equipment using methods that will minimize odor and noise within the limits and capabilities of the City's wastewater facilities. The Contractor agrees that the Work shall be performed in such a manner as to provide a minimum of inconvenience and odors to any neighboring community residing in the area. Any debris or other material spilled shall be immediately removed, cleaned and treated with hydrated lime or other method including the area and surrounding area acceptable to the City.
- j. The Contractor shall report to the City within two (2) hours all odor complaints received and respond in a timely manner to remedy any odor complaints. Complaint data shall be maintained and log submitted to the City with each monthly invoice containing complainant name, address, phone number, date and time of said complaint. Contractor shall provide written details regarding nature of odor, probable origin of odor and the actions taken to remedy and/or mitigate odor.
- k. The Contractor shall continuously maintain adequate protection of all his Work from damage and shall protect public and private property from injury or loss arising in connection with this contract as follows:
 - 1. The Contractor shall take all necessary precautions for the safety of employees in the performance of the Work on, about or adjacent to the premises, and shall comply with all applicable provisions of Federal, State, and local laws, including, but not limited to the requirements of the Occupational Safety and Health Act of 1970, and amendments thereto, the Construction safety Act of 1969, and amendments thereto, and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed.
 - 2. The Contractor shall provide on-going training and education for appropriate personnel in all necessary areas for operation and maintenance of the centrifuge equipment.
 - 3. The Contractor shall provide City with written safety program for employees including regularly scheduled safety training sessions, standard operating procedures for chemical handling, and emergency response. Contractor agrees to ensure that employees take all necessary work precautions for handling chemicals. Contractor shall provide employees appropriate personal protective equipment and other appropriate equipment to ensure safe operations, maintenance and chemical handling. Contractor agrees to comply with all applicable **Occupational Safety and Health Administration (OSHA)** standards and regulations.
 - 4. The Contractor shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by him, on the Work

Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this contract.

5. The Contractor shall erect and properly maintain at all times, all necessary safeguards, including sufficient lights, protective devices and danger signals on or near the Work, signage, barricades, or indication of other hazards and obstructions to traffic, and take all necessary precautions to prevent accidents and injuries to persons or property on or near the Work.
 6. The Contractor shall be completely responsible for, and shall replace and make good all loss, injury, or damage to any property (including landscaping, walks, drives, or structures of the City and of any land adjoining any work sites, which may be caused by Contractor. The Contractor shall, at all times while the Work is in progress, use extraordinary care to see that adjacent property, whether real or personal, is not endangered in any way by reason of fire, water, or sludge, and shall take all necessary or directed steps, to protect all property. The same care shall be exercised by all Contractor's and subcontractor's employees.
 7. Buildings, sidewalks, fences, shade trees, lawns and all other improvements shall be duly protected from damage by Contractor. Property obstructions, such as sewers, drains, water or gas lines, conduits, railroads, poles, walls, posts, galleries, bridges, manholes, valve boxes, meter boxes, street monuments, etc., shall be carefully protected from injury and shall not be displaced. The Contractor shall give due notice to any department or public service corporation controlling such items as manholes, valve boxes, meter boxes, street monuments, etc., prior to impacting and shall be held strictly liable to the affected utility if any such appurtenances are disturbed, damaged or covered up during the course of the Work.
- l. Contractor agrees that the Work will be primarily performed between the hours of 7:00 A.M. and 6:00 P.M., Monday through Friday. The Utility Director may require the work to be performed during alternative times as may be required depending upon conditions at the facilities. 72 hour notice will be given to the Contractor for this work.
 - m. The Contractor agrees to supply a backup **Dewatering Equipment** to the City owned Centrisys CS21-4HC 2PH to complete the work within 72 hours if the City owned centrifuge is inoperative.

- n. **NOTE: CURRENTLY THE CITY'S CENTRIFUGE IS AT THE FACTORY BEING REFURBISHED FROM HURRICANE IRMA DAMAGE. AT THIS TIME WE HAVE NO DATE FOR WHEN IT WILL BE COMPLETED AND RETURNED FOR USE BY THE CONTRACTOR.**

7. Contractor's Employees.

- a. The Contractor shall at all times have a competent supervisor on site who thoroughly understands the Work, who shall, as the Contractor's agent, supervise, direct and otherwise conduct the Work. Contractor's employees shall respond to the public in a courteous, helpful, and impartial manner.
- b. Contractor's employees shall wear a clean uniform that provides identification of both the Contractor's company and the name of the employee.
- c. Contractor shall, upon receipt of a written request from the City Manager, immediately exclude any employee of Contractor from providing Work under this Contract.
- d. The Work contemplated in this Contract is on public property, accordingly no alcoholic beverages shall be allowed.

8. Vehicles and Equipment.

Contractor shall have on hand at all times and in good working order such vehicles, machinery, tools, accessories, and other items necessary to perform the Work under this Contract. All vehicles used by Contractor to provide services under this Contract shall be painted uniformly with the name of Contractor, business telephone number, and the number of the vehicle in letters legible by the public. The City Manager may require the repair or replacement of equipment as reasonably necessary. No other advertising shall be permitted on the vehicles.

9. Insurance.

- a. The Contractor shall secure and maintain throughout the duration of this Contract, insurance of such type and in such amounts necessary to protect its interest and the interest of the City against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida, be rated AB or better, and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers, and naming the City as an additional insured.
- b. Contractor shall secure and maintain throughout the duration of this Contract insurance of such types and in such amounts as specified herein.
- c. A Certificate(s) of Insurance shall be provided to show the City of Marathon, Florida as a certificate holder and the certificate shall be provided to the City at the

time of execution of the Contract. Insurance shall be underwritten by a firm qualified to do business in the State of Florida.

- d. Contractor shall provide copy of commercial driver's license(s) for personnel that will be responsible for transportation of centrifuge equipment and trailer appropriate to weights provided herein. Copies of any changes in personnel shall be supplied to the City within three (3) calendar days.
- e. Contractor shall provide copies of certificates of insurance for Comprehensive General Liability and Business Automobile Liability insurance with limits as follows:
 - 1. Comprehensive general liability insurance with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
 - 2. Business Automobile Liability with minimum limits of \$1,000,000.00 per person, per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability each. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include Owned Vehicles, Hired and Non-Owned Vehicles and Employers' Non-Ownership.
 - 3. Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws.
 - 4. Contractors Pollution Liability Insurance with minimum limits of \$1,000,000.00 per person, per occurrence, to cover operations and any resulting pollution incidents.

10. Certificate of Insurance.

Contractor shall provide the City Manager with Certificates of Insurance for all required policies. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Contract and shall state that such insurance is as required by this Contract. The City reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the City. If a policy is due to expire prior to the completion of the services, renewal Certificates of Insurance or policies shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the City Manager.

11. Additional Insured.

- a. The City is to be specifically included as an Additional Insured for the liability of the City resulting from operations performed by or on behalf of Contractor in performance of this Contract. Contractor's insurance, including that applicable to the City as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the City shall be in excess of and shall not contribute to Contractor's insurance. Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.
- b. All deductibles or self-insured retentions must be declared to and be approved by the City Manager. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

12. Assignment and Amendment.

No assignment by the Contractor of this Contract or any part of it, or any monies due or to become due, shall be made, nor shall the Contractor hire a subcontractor to perform its duties under this Contract without prior written approval of the City Manager. This Contract may only be amended by the parties with the same formalities as this Contract.

13. Non-Waiver.

The approval, and/or acceptance of any part of the Work by the City shall not operate as a waiver by City of any other terms and conditions of the Contract.

14. Indemnification.

- a. Contractor hereby agrees to indemnify, defend and hold harmless the City, and City's officers and employees from liabilities, damages, losses and costs (including, but not limited to, reasonable attorney's fees at any level) on account of or relating to the Work, the bid, any resulting contract or acts related thereto, and whether caused in whole or part by the negligence or fault of City, or otherwise.
- b. The provisions of this INDEMNIFICATION are solely for the benefit of the Contractor and City and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- c. This indemnification obligation shall survive the termination of this Contract.

15. Ownership and Access to Public Records.

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

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

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

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

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

- 15.5 The Consultant consents to the City's enforcement of the Consultant's Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the Consultant shall pay all court costs and reasonable attorney's fees incurred by the City.
- 15.6 The Consultant's failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by the Consultant shall be grounds for immediate unilateral cancellation of this Agreement by the City.
- 15.7 **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-743-0033, CITYCLERK@CI.MARATHON.FL.US, OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.**

16. Inspection and Audit.

During the term of this Contract and for three (3) years from the date of Termination, 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 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.

17. No Assignment.

Contractor shall not sell, assign, transfer or convey this Contract, in whole or in part, without the prior written consent of the City Manager. Any such assignment without prior approval shall be void ab initio.

18. Applicable Law.

Contractor shall be solely responsible for and shall comply with all federal, state and local laws regarding the Work required hereunder.

19. Termination.

- a. Either party may terminate this Contract without cause upon 30 days written notice to the other party.
- b. Upon notice of such termination, the City shall determine the amounts due to the Contractor for services performed up to the date of termination. The Contractor shall not be entitled to payment of any lost profits or for Work performed after the date of termination.

- c. After receipt of a notice of termination, and except as otherwise directed, the Contractor shall stop all Work under this Contract, and shall do so on the date specified in the notice of termination.
- d. The City may terminate this Contract upon five (5) days written notice if the Contractor defaults on any material term of this Contract.

20. Choice of Law.

This Contract shall be governed by the laws of the State of Florida. Venue shall lie in Monroe County. This Contract and all actions thereunder shall in all respects be governed by and interpreted and enforced pursuant to the laws of the State of Florida. Any suit arising out of this Contract shall be brought in Monroe County, Middle Keys Division, Florida or U.S. Southern District Court.

21. Waiver of Jury Trial and Venue.

The City and Contractor knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon this Contract and arising out of, under, or in connection with the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party.

22. Attorneys' Fees.

If either the City or Contractor is required to enforce the terms of this Contract by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including, but not limited to, court costs, and reasonable attorneys' fees together with court costs incurred in any litigation at any trial and appellate proceedings.

23. Severability.

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

24. 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.

25. Notices.

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

For City:

George Garrett
City Manager
City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
Telephone: (305) 743-0033
Facsimile: (305) 289-4123

For Contractor:

Name / Title	Elizabeth Grant, Synagro Southeast, LLC, Contracts Administrator
Firm	Synagro South, LLC
Address	435 Williams Court, Suite 100
City, State Zip	Baltimore, MD 21220
Telephone:	813-285-0680
Facsimile:	

IN WITNESS WHEREOF the parties hereto have executed this Contract on the day and date first above written.

Attest:

CITY OF MARATHON

By: _____
Diane Clavier, City Clerk

By: _____
George Garrett, City Manager

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

By: _____
Steve Williams, City Attorney

Signed, sealed and witnessed in the presence of:

As to Contractor:

By: _____
Witness

By: _____
Elizabeth Grant, Synagro Southeast, LLC,
Contracts Administrator

COUNCIL AGENDA STATEMENT



Meeting Date: July 13, 2021
To: Honorable Mayor & Members of the City Council
From: Dan Saus, Utilities Manager
Through: George Garrett, City Manager

Agenda Item: **Resolution 2021-49**, Approving Contracts for Liquid Sludge Hauling and Disposal Services To Mike Haack Excavating, Inc. and Revinu, Inc. for two years with a possible one year renewal; 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 of Marathon (the “City”) issued an Invitation to Bid (ITB-04222021LF-0-2121-LF) for “Liquid Sludge Hauling and Disposal Services,” (the “Project”) on April 22, 2021, with sealed bids opened and publicly read on June 10, 2021 at 3:30 PM at City Hall.

The Bid Tabulation attached as Exhibit “A-1” lists the responses from Bidders. City staff, recommends approval of both responsive and responsible bidders; Mike Haack Excavating Inc. and Revinu Inc., Mike Haack Excavating submitted the lowest responsive and a responsible bid for the work as shown on Exhibit “A” in the amounts of \$0.22 per gallon for Item #1 and \$.045 per gallon for Item #2. Revinu submitted a bid for item # 1 at \$0.242 per gallon and a no bid on item#2. The proposed bid awards and subsequent contracts will provide the City with liquid sludge disposal services when required. The recommended total annual contract amount is \$90,000.00 each.

CONSISTENCY CHECKLIST:

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

FISCAL NOTE:

Funding for FY22 will be included in the proposed wastewater utility budget. Funding for future years will have to be appropriated during the annual budget processes.

RECOMMENDATION: Approval of Resolution.

EXIHIBT "A-1"

Sludge Hauling, Bid results June 10, 2021, 3:30 PM

[REDACTED] = unresponsive

	Item #1 Price	Item #2 Price	bid form	addendums	qual statement	Anti Kickback	Non-Collusion	Public Entinty Crimes	licenses	Certified Corp. Resolution	Drug-Free Workplace
Mike Haack Excavating, Inc.	\$ 0.22	\$ 0.45	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Revinu	\$ 0.24	no bid	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

**CITY OF MARATHON, FLORIDA
RESOLUTION 2021-XX**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A CONTRACT FOR “LIQUID SLUDGE HAULING AND DISPOSAL SERVICES” TO MIKE HAACK EXCAVATING INC. AND REVINU INC. FOR A PERIOD OF TWO YEARS WITH A POSSIBLE ONE YEAR RENEWAL; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the “City”) issued an Invitation to Bid (ITB-04222021LF-0-2021LF) on April 22, 2021 for “Liquid Sludge Hauling and Disposal Services”, (the “Project”); the bids were unsealed and read aloud at City Hall on June 10, 2021 at 3:30 PM; and

WHEREAS, two bidders, Mike Haack Excavating and Revinu Inc. were both found to be responsive and responsible, and the bid documents allow us to award multiple contracts. Mike Haack Excavating bid in the amount of \$0.22 per gallon for bid item #1 & \$0.45 for bid item #2, Revinu Inc. bid \$0.242 per gallon for bid item #1 and provided no bid for bid item #2.

WHEREAS, the City staff wish to enter into a new Liquid Sludge Hauling and Disposal Services Contracts with both bidders, which will enable the City to have its liquid sludge hauled and properly disposed of for FY 21/22;

WHEREAS, the City staff wishes to approve a two (2) year contract for the Sludge Hauling and Disposal Services agreement in an annual amount not to exceed \$90,000; and

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

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

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

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

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13th DAY OF JULY, 2021

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

Steve Williams, City Attorney

EXHIBIT “A”

**CITY OF MARATHON
LIQUID SLUDGE HAULING AND DISPOSAL SERVICES**

THIS CONTRACT (the “Contract”) is dated this XXXX day of July 2021 by and between the CITY OF MARATHON, FLORIDA (hereinafter called the “CITY”) and Mike Haack Excavating, Inc. (hereinafter called “Contractor”) located at: PO Box 430725 Big Pine Key, Florida 33043.

The City and Contractor in consideration of the mutual covenants hereinafter set forth, and subject to the terms and conditions herein stated, the parties agree as follows:

1. Effect/Scope of Work.

The Contractor shall furnish all Work as specified in the Contract Documents. The work is generally described as liquid sludge hauling and disposal services. Therefore, all work and associated compensation shall be made under the terms, conditions and prices of this Contract and with the Contractor’s bid as specified herein.

2. Contractor Performance.

If Contractor fails to perform according to the requirements of this Contract, City shall notify Contractor in writing. Should the Contractor fail to correct the problem within three (3) calendar days, the City may take further action up to termination.

3. Compensation/Payment.

- a. Contractor shall submit copies of all receipts and other documentation supporting lawful disposal of sludge / cake for each deposit. Contractor shall provide City the name and location of the final destination and disposal facility prior to commencement of Work and within five (5) calendar days of any changes. The City shall be provided with copies of receipts from the disposal facility for each deposit.
- b. Contractor shall provide the City with an invoice on a monthly basis within ten (10) days of the end of each month stating the services provided in the preceding month. Invoice shall contain copies of documentation for all solid waste disposal, sludge disposal and preventative maintenance log.
- c. The Contractor shall be compensated at the unit prices specified on Exhibit 1 based upon the actual Work completed for the month.
- d. The City shall make payment of said invoices of approved amounts due, as required under the Florida Prompt Payment Act. No payments shall be due or payable for Work not performed or materials not furnished.

4. Contract Amendment.

Change Order means a document, which is signed by Contractor and City, and authorizes an addition, deletion or revision in the Scope of Work, or an adjustment in compensation or contract time, issued on or after the effective date of the Contract.

5. Term.

This Contract shall be effective upon execution by both parties. This Contract shall remain in effect for two years from the date of execution unless terminated earlier in accordance with this Contract. The City Manager may, at his/her sole option, extend this Contract on the same terms and conditions for two additional one year term extensions by written notice delivered at least sixty (60) days prior to termination of this Contract.

6. Contractor's Responsibilities.

- a. The Contractor has carefully examined the Scope of Work; the area for the Work contemplated on the Invitation to Bid and has made sufficient investigations to fully satisfy himself as to site conditions, and assumes full responsibility for all related Scope of Work.
- b. The Contractor agrees to coordinate all Work with City's wastewater plant operator.
- c. The Contractor shall maintain registration with the City Building Department and renew registration as applicable.
- d. The Contractor shall maintain applicable license(s) and provide City with all license renewals within ten (10) calendar days of expiration date.
- e. Contractor shall secure and pay for all tipping fees, licenses, insurances and inspections necessary for the execution of the Work. Upon termination of this Contract for any reason, Contractor shall transfer such permits, if any, and if allowed by law, to the City.
- f. The Contractor shall be responsible for conducting all services necessary to maintain warranties on the centrifuge equipment and trailer.
- g. The Contractor hereby certifies its capability of performing all required Work including clean-up from City premises in a neat and timely manner immediately following completion of Work. Contractor agrees to leave City premises in the same or better condition as provided. Each wastewater facility shall be cleaned daily to the satisfaction of the City.
- h. The Contractor shall report to the City within two (2) hours all odor complaints received and respond in a timely manner to remedy any odor complaints. Complaint data shall be maintained and log submitted to the City with each monthly invoice

containing complainant name, address, phone number, date and time of said complaint. Contractor shall provide written details regarding nature of odor, probable origin of odor and the actions taken to remedy and/or mitigate odor.

- i. The Contractor shall continuously maintain adequate protection of all his Work from damage and shall protect public and private property from injury or loss arising in connection with this contract as follows:

1. The Contractor shall take all necessary precautions for the safety of employees in the performance of the Work on, about or adjacent to the premises, and shall comply with all applicable provisions of Federal, State, and local laws, including, but not limited to the requirements of the Occupational Safety and Health Act of 1970, and amendments thereto, the Construction safety Act of 1969, and amendments thereto, and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed.
2. The Contractor shall provide on-going training and education for appropriate personnel in all necessary areas for operation and maintenance of the centrifuge equipment.
3. The Contractor shall provide City with written safety program for employees including regularly scheduled safety training sessions, standard operating procedures for chemical handling, and emergency response. Contractor agrees to ensure that employees take all necessary work precautions for handling chemicals. Contractor shall provide employees appropriate personal protective equipment and other appropriate equipment to ensure safe operations, maintenance and chemical handling. Contractor agrees to comply with all applicable **Occupational Safety and Health Administration (OSHA)** standards and regulations.
4. The Contractor shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by him, on the Work

Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this contract.

5. The Contractor shall erect and properly maintain at all times, all necessary safeguards, including sufficient lights, protective devices and danger signals on or near the Work, signage, barricades, or indication of other hazards and obstructions to traffic, and take all necessary precautions to prevent accidents and injuries to persons or property on or near the Work.

6. The Contractor shall be completely responsible for, and shall replace and make good all loss, injury, or damage to any property (including landscaping, walks, drives, or structures of the City and of any land adjoining any work sites, which may be caused by Contractor. The Contractor shall, at all times while the Work is in progress, use extraordinary care to see that adjacent property, whether real or personal, is not endangered in any way by reason of fire, water, or sludge, and shall take all necessary or directed steps, to protect all property. The same care shall be exercised by all Contractor's and subcontractor's employees.
7. Buildings, sidewalks, fences, shade trees, lawns and all other improvements shall be duly protected from damage by Contractor. Property obstructions, such as sewers, drains, water or gas lines, conduits, railroads, poles, walls, posts, galleries, bridges, manholes, valve boxes, meter boxes, street monuments, etc., shall be carefully protected from injury and shall not be displaced. The Contractor shall give due notice to any department or public service corporation controlling such items as manholes, valve boxes, meter boxes, street monuments, etc., prior to impacting and shall be held strictly liable to the affected utility if any such appurtenances are disturbed, damaged or covered up during the course of the Work.
- j. Contractor agrees that the Work will be primarily performed between the hours of 7:00 A.M. and 6:00 P.M., Monday through Friday. The Utility Director may require the work to be performed during alternative times as may be required depending upon conditions at the facilities. 72 hour notice will be given to the Contractor for this work.

7. Contractor's Employees.

- a. The Contractor shall at all times have a competent supervisor on site who thoroughly understands the Work, who shall, as the Contractor's agent, supervise, direct and otherwise conduct the Work. Contractor's employees shall respond to the public in a courteous, helpful, and impartial manner.
- b. Contractor's employees shall wear a clean uniform that provides identification of both the Contractor's company and the name of the employee.
- c. Contractor shall, upon receipt of a written request from the City Manager, immediately exclude any employee of Contractor from providing Work under this Contract.

- d. The Work contemplated in this Contract is on public property, accordingly no alcoholic beverages shall be allowed.

8. Vehicles and Equipment.

Contractor shall have on hand at all times and in good working order such vehicles, machinery, tools, accessories, and other items necessary to perform the Work under this Contract. All vehicles used by Contractor to provide services under this Contract shall be painted uniformly with the name of Contractor, business telephone number, and the number of the vehicle in letters legible by the public. The City Manager may require the repair or replacement of equipment as reasonably necessary. No other advertising shall be permitted on the vehicles.

9. Insurance.

- a. The Contractor shall secure and maintain throughout the duration of this Contract, insurance of such type and in such amounts necessary to protect its interest and the interest of the City against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida, be rated AB or better, and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers, and naming the City as an additional insured.
- b. Contractor shall secure and maintain throughout the duration of this Contract insurance of such types and in such amounts as specified herein.
- c. A Certificate(s) of Insurance shall be provided to show the City of Marathon, Florida as a certificate holder and the certificate shall be provided to the City at the time of execution of the Contract. Insurance shall be underwritten by a firm qualified to do business in the State of Florida.
- d. Contractor shall provide copy of commercial driver's license(s) for personnel that will be responsible for transportation of centrifuge equipment and trailer appropriate to weights provided herein. Copies of any changes in personnel shall be supplied to the City within three (3) calendar days.
- e. Contractor shall provide copies of certificates of insurance for Comprehensive General Liability and Business Automobile Liability insurance with limits as follows:
 - 1. Comprehensive general liability insurance with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
 - 2. Business Automobile Liability with minimum limits of \$1,000,000.00 per person, per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability each. Coverage must be afforded on a form

no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include Owned Vehicles, Hired and Non-Owned Vehicles and Employers' Non-Ownership.

3. Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws.
4. Contractors Pollution Liability Insurance with minimum limits of \$1,000,000.00 per person, per occurrence, to cover operations and any resulting pollution incidents.

10. Certificate of Insurance.

Contractor shall provide the City Manager with Certificates of Insurance for all required policies. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Contract and shall state that such insurance is as required by this Contract. The City reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the City. If a policy is due to expire prior to the completion of the services, renewal Certificates of Insurance or policies shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the City Manager.

11. Additional Insured.

- a. The City is to be specifically included as an Additional Insured for the liability of the City resulting from operations performed by or on behalf of Contractor in performance of this Contract. Contractor's insurance, including that applicable to the City as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the City shall be in excess of and shall not contribute to Contractor's insurance. Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.
- b. All deductibles or self-insured retentions must be declared to and be approved by the City Manager. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

12. Assignment and Amendment.

No assignment by the Contractor of this Contract or any part of it, or any monies due or to become due, shall be made, nor shall the Contractor hire a subcontractor to perform its duties under this Contract without prior written approval of the City Manager. This Contract may only be amended by the parties with the same formalities as this Contract.

13. Non-Waiver.

The approval, and/or acceptance of any part of the Work by the City shall not operate as a waiver by City of any other terms and conditions of the Contract.

14. Indemnification.

- a. Contractor hereby agrees to indemnify, defend and hold harmless the City, and City's officers and employees from liabilities, damages, losses and costs (including, but not limited to, reasonable attorney's fees at any level) on account of or relating to the Work, the bid, any resulting contract or acts related thereto, and whether caused in whole or part by the negligence or fault of City, or otherwise.
- b. The provisions of this INDEMNIFICATION are solely for the benefit of the Contractor and City and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- c. This indemnification obligation shall survive the termination of this Contract.

15. Ownership and Access to Public Records.

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

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

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

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

- 15.3 “Public Records” is defined in Section 119.011(12), Florida Statutes, and includes all documents, papers, letters, photographs, data processing software, or other material, regardless of physical form, made or received in connection with this Agreement.
- 15.4 Should the Consultant assert any exemption to the requirements of Chapter 119 and related law, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the Consultant.
- 15.5 The Consultant consents to the City’s enforcement of the Consultant’s Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the Consultant shall pay all court costs and reasonable attorney’s fees incurred by the City.
- 15.6 The Consultant’s failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by the Consultant shall be grounds for immediate unilateral cancellation of this Agreement by the City.
- 15.7 **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-743-0033, CITYCLERK@CI.MARATHON.FL.US, OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.**

16. Inspection and Audit.

During the term of this Contract and for three (3) years from the date of Termination, 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 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.

17. No Assignment.

Contractor shall not sell, assign, transfer or convey this Contract, in whole or in part, without the prior written consent of the City Manager. Any such assignment without prior approval shall be void ab initio.

18. Applicable Law.

Contractor shall be solely responsible for and shall comply with all federal, state and local laws regarding the Work required hereunder.

19. Termination.

- a. Either party may terminate this Contract without cause upon 30 days written notice to the other party.
- b. Upon notice of such termination, the City shall determine the amounts due to the Contractor for services performed up to the date of termination. The Contractor shall not be entitled to payment of any lost profits or for Work performed after the date of termination.
- c. After receipt of a notice of termination, and except as otherwise directed, the Contractor shall stop all Work under this Contract, and shall do so on the date specified in the notice of termination.
- d. The City may terminate this Contract upon five (5) days written notice if the Contractor defaults on any material term of this Contract.

20. Choice of Law.

This Contract shall be governed by the laws of the State of Florida. Venue shall lie in Monroe County. This Contract and all actions thereunder shall in all respects be governed by and interpreted and enforced pursuant to the laws of the State of Florida. Any suit arising out of this Contract shall be brought in Monroe County, Middle Keys Division, Florida or U.S. Southern District Court.

21. Waiver of Jury Trial and Venue.

The City and Contractor knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon this Contract and arising out of, under, or in connection with the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party.

22. Attorneys' Fees.

If either the City or Contractor is required to enforce the terms of this Contract by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including, but not limited to, court costs, and reasonable attorneys' fees together with court costs incurred in any litigation at any trial and appellate proceedings.

23. Severability.

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

24. 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.

25. Notices.

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

For City:

George Garrett
City Manager
City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
Telephone: (305) 743-0033
Facsimile: (305) 289-4123

For Contractor:

Name / Title	<u>Mike Haack</u>
Firm	<u>Mike Haack Excavating, Inc.</u>
Address	<u>PO Box 430725</u>
City, State Zip	<u>Big Pine Key, FL 33043</u>
Telephone:	<u>305-872-8945</u>
Facsimile:	<u></u>

IN WITNESS WHEREOF the parties hereto have executed this Contract on the day and date first above written.

Attest:

CITY OF MARATHON

By: _____

Diane Clavier, City Clerk

By: _____

George Garrett, City Manager

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

By: _____

Steve Williams, City Attorney

Signed, sealed and witnessed in the presence of:

As to Contractor:

By: _____

Witness

By: _____

Mike Haack, President
Mike Haack Excavating, Inc.

EXHIBIT "B"

CITY OF MARATHON LIQUID SLUDGE HAULING AND DISPOSAL SERVICES

THIS CONTRACT (the "Contract") is dated this XXXX day of July 2021 by and between the CITY OF MARATHON, FLORIDA (hereinafter called the "CITY") and Revinu, Inc. (hereinafter called "Contractor") located at: 4050 Dundee Road Winter Haven, Florida 33884.

The City and Contractor in consideration of the mutual covenants hereinafter set forth, and subject to the terms and conditions herein stated, the parties agree as follows:

1. Effect/Scope of Work.

The Contractor shall furnish all Work as specified in the Contract Documents. The work is generally described as liquid sludge hauling and disposal services. Therefore, all work and associated compensation shall be made under the terms, conditions and prices of this Contract and with the Contractor's bid as specified herein.

2. Contractor Performance.

If Contractor fails to perform according to the requirements of this Contract, City shall notify Contractor in writing. Should the Contractor fail to correct the problem within three (3) calendar days, the City may take further action up to termination.

3. Compensation/Payment.

- a. Contractor shall submit copies of all receipts and other documentation supporting lawful disposal of sludge / cake for each deposit. Contractor shall provide City the name and location of the final destination and disposal facility prior to commencement of Work and within five (5) calendar days of any changes. The City shall be provided with copies of receipts from the disposal facility for each deposit.
- b. Contractor shall provide the City with an invoice on a monthly basis within ten (10) days of the end of each month stating the services provided in the preceding month. Invoice shall contain copies of documentation for all solid waste disposal, sludge disposal and preventative maintenance log.
- c. The Contractor shall be compensated at the unit prices specified on Exhibit 1 based upon the actual Work completed for the month.
- d. The City shall make payment of said invoices of approved amounts due, as required under the Florida Prompt Payment Act. No payments shall be due or payable for Work not performed or materials not furnished.

4. Contract Amendment.

Change Order means a document, which is signed by Contractor and City, and authorizes an addition, deletion or revision in the Scope of Work, or an adjustment in compensation or contract time, issued on or after the effective date of the Contract.

5. Term.

This Contract shall be effective upon execution by both parties. This Contract shall remain in effect for two years from the date of execution unless terminated earlier in accordance with this Contract. The City Manager may, at his/her sole option, extend this Contract on the same terms and conditions for two additional one year term extensions by written notice delivered at least sixty (60) days prior to termination of this Contract.

6. Contractor's Responsibilities.

- a. The Contractor has carefully examined the Scope of Work; the area for the Work contemplated on the Invitation to Bid and has made sufficient investigations to fully satisfy himself as to site conditions, and assumes full responsibility for all related Scope of Work.
- b. The Contractor agrees to coordinate all Work with City's wastewater plant operator.
- c. The Contractor shall maintain registration with the City Building Department and renew registration as applicable.
- d. The Contractor shall maintain applicable license(s) and provide City with all license renewals within ten (10) calendar days of expiration date.
- e. Contractor shall secure and pay for all tipping fees, licenses, insurances and inspections necessary for the execution of the Work. Upon termination of this Contract for any reason, Contractor shall transfer such permits, if any, and if allowed by law, to the City.
- f. The Contractor shall be responsible for conducting all services necessary to maintain warranties on the centrifuge equipment and trailer.
- g. The Contractor hereby certifies its capability of performing all required Work including clean-up from City premises in a neat and timely manner immediately following completion of Work. Contractor agrees to leave City premises in the same or better condition as provided. Each wastewater facility shall be cleaned daily to the satisfaction of the City.
- h. The Contractor shall report to the City within two (2) hours all odor complaints received and respond in a timely manner to remedy any odor complaints. Complaint data shall be maintained and log submitted to the City with each monthly invoice

containing complainant name, address, phone number, date and time of said complaint. Contractor shall provide written details regarding nature of odor, probable origin of odor and the actions taken to remedy and/or mitigate odor.

- i. The Contractor shall continuously maintain adequate protection of all his Work from damage and shall protect public and private property from injury or loss arising in connection with this contract as follows:

1. The Contractor shall take all necessary precautions for the safety of employees in the performance of the Work on, about or adjacent to the premises, and shall comply with all applicable provisions of Federal, State, and local laws, including, but not limited to the requirements of the Occupational Safety and Health Act of 1970, and amendments thereto, the Construction safety Act of 1969, and amendments thereto, and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed.
2. The Contractor shall provide on-going training and education for appropriate personnel in all necessary areas for operation and maintenance of the centrifuge equipment.
3. The Contractor shall provide City with written safety program for employees including regularly scheduled safety training sessions, standard operating procedures for chemical handling, and emergency response. Contractor agrees to ensure that employees take all necessary work precautions for handling chemicals. Contractor shall provide employees appropriate personal protective equipment and other appropriate equipment to ensure safe operations, maintenance and chemical handling. Contractor agrees to comply with all applicable **Occupational Safety and Health Administration (OSHA)** standards and regulations.
4. The Contractor shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by him, on the Work

Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this contract.

5. The Contractor shall erect and properly maintain at all times, all necessary safeguards, including sufficient lights, protective devices and danger signals on or near the Work, signage, barricades, or indication of other hazards and obstructions to traffic, and take all necessary precautions to prevent accidents and injuries to persons or property on or near the Work.

6. The Contractor shall be completely responsible for, and shall replace and make good all loss, injury, or damage to any property (including landscaping, walks, drives, or structures of the City and of any land adjoining any work sites, which may be caused by Contractor. The Contractor shall, at all times while the Work is in progress, use extraordinary care to see that adjacent property, whether real or personal, is not endangered in any way by reason of fire, water, or sludge, and shall take all necessary or directed steps, to protect all property. The same care shall be exercised by all Contractor's and subcontractor's employees.
7. Buildings, sidewalks, fences, shade trees, lawns and all other improvements shall be duly protected from damage by Contractor. Property obstructions, such as sewers, drains, water or gas lines, conduits, railroads, poles, walls, posts, galleries, bridges, manholes, valve boxes, meter boxes, street monuments, etc., shall be carefully protected from injury and shall not be displaced. The Contractor shall give due notice to any department or public service corporation controlling such items as manholes, valve boxes, meter boxes, street monuments, etc., prior to impacting and shall be held strictly liable to the affected utility if any such appurtenances are disturbed, damaged or covered up during the course of the Work.
- j. Contractor agrees that the Work will be primarily performed between the hours of 7:00 A.M. and 6:00 P.M., Monday through Friday. The Utility Director may require the work to be performed during alternative times as may be required depending upon conditions at the facilities. 72 hour notice will be given to the Contractor for this work.

7. Contractor's Employees.

- a. The Contractor shall at all times have a competent supervisor on site who thoroughly understands the Work, who shall, as the Contractor's agent, supervise, direct and otherwise conduct the Work. Contractor's employees shall respond to the public in a courteous, helpful, and impartial manner.
- b. Contractor's employees shall wear a clean uniform that provides identification of both the Contractor's company and the name of the employee.
- c. Contractor shall, upon receipt of a written request from the City Manager, immediately exclude any employee of Contractor from providing Work under this Contract.

- d. The Work contemplated in this Contract is on public property, accordingly no alcoholic beverages shall be allowed.

8. Vehicles and Equipment.

Contractor shall have on hand at all times and in good working order such vehicles, machinery, tools, accessories, and other items necessary to perform the Work under this Contract. All vehicles used by Contractor to provide services under this Contract shall be painted uniformly with the name of Contractor, business telephone number, and the number of the vehicle in letters legible by the public. The City Manager may require the repair or replacement of equipment as reasonably necessary. No other advertising shall be permitted on the vehicles.

9. Insurance.

- a. The Contractor shall secure and maintain throughout the duration of this Contract, insurance of such type and in such amounts necessary to protect its interest and the interest of the City against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida, be rated AB or better, and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers, and naming the City as an additional insured.
- b. Contractor shall secure and maintain throughout the duration of this Contract insurance of such types and in such amounts as specified herein.
- c. A Certificate(s) of Insurance shall be provided to show the City of Marathon, Florida as a certificate holder and the certificate shall be provided to the City at the time of execution of the Contract. Insurance shall be underwritten by a firm qualified to do business in the State of Florida.
- d. Contractor shall provide copy of commercial driver's license(s) for personnel that will be responsible for transportation of centrifuge equipment and trailer appropriate to weights provided herein. Copies of any changes in personnel shall be supplied to the City within three (3) calendar days.
- e. Contractor shall provide copies of certificates of insurance for Comprehensive General Liability and Business Automobile Liability insurance with limits as follows:
 - 1. Comprehensive general liability insurance with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
 - 2. Business Automobile Liability with minimum limits of \$1,000,000.00 per person, per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability each. Coverage must be afforded on a form

no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include Owned Vehicles, Hired and Non-Owned Vehicles and Employers' Non-Ownership.

3. Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws.
4. Contractors Pollution Liability Insurance with minimum limits of \$1,000,000.00 per person, per occurrence, to cover operations and any resulting pollution incidents.

10. Certificate of Insurance.

Contractor shall provide the City Manager with Certificates of Insurance for all required policies. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Contract and shall state that such insurance is as required by this Contract. The City reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the City. If a policy is due to expire prior to the completion of the services, renewal Certificates of Insurance or policies shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the City Manager.

11. Additional Insured.

- a. The City is to be specifically included as an Additional Insured for the liability of the City resulting from operations performed by or on behalf of Contractor in performance of this Contract. Contractor's insurance, including that applicable to the City as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the City shall be in excess of and shall not contribute to Contractor's insurance. Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.
- b. All deductibles or self-insured retentions must be declared to and be approved by the City Manager. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

12. Assignment and Amendment.

No assignment by the Contractor of this Contract or any part of it, or any monies due or to become due, shall be made, nor shall the Contractor hire a subcontractor to perform its duties under this Contract without prior written approval of the City Manager. This Contract may only be amended by the parties with the same formalities as this Contract.

13. Non-Waiver.

The approval, and/or acceptance of any part of the Work by the City shall not operate as a waiver by City of any other terms and conditions of the Contract.

14. Indemnification.

- a. Contractor hereby agrees to indemnify, defend and hold harmless the City, and City's officers and employees from liabilities, damages, losses and costs (including, but not limited to, reasonable attorney's fees at any level) on account of or relating to the Work, the bid, any resulting contract or acts related thereto, and whether caused in whole or part by the negligence or fault of City, or otherwise.
- b. The provisions of this INDEMNIFICATION are solely for the benefit of the Contractor and City and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- c. This indemnification obligation shall survive the termination of this Contract.

15. Ownership and Access to Public Records.

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

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

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

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

- 15.3 “Public Records” is defined in Section 119.011(12), Florida Statutes, and includes all documents, papers, letters, photographs, data processing software, or other material, regardless of physical form, made or received in connection with this Agreement.
- 15.4 Should the Consultant assert any exemption to the requirements of Chapter 119 and related law, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the Consultant.
- 15.5 The Consultant consents to the City’s enforcement of the Consultant’s Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the Consultant shall pay all court costs and reasonable attorney’s fees incurred by the City.
- 15.6 The Consultant’s failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by the Consultant shall be grounds for immediate unilateral cancellation of this Agreement by the City.
- 15.7 **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-743-0033, CITYCLERK@CL.MARATHON.FL.US, OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.**

16. Inspection and Audit.

During the term of this Contract and for three (3) years from the date of Termination, 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 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.

17. No Assignment.

Contractor shall not sell, assign, transfer or convey this Contract, in whole or in part, without the prior written consent of the City Manager. Any such assignment without prior approval shall be void ab initio.

18. Applicable Law.

Contractor shall be solely responsible for and shall comply with all federal, state and local laws regarding the Work required hereunder.

19. Termination.

- a. Either party may terminate this Contract without cause upon 30 days written notice to the other party.
- b. Upon notice of such termination, the City shall determine the amounts due to the Contractor for services performed up to the date of termination. The Contractor shall not be entitled to payment of any lost profits or for Work performed after the date of termination.
- c. After receipt of a notice of termination, and except as otherwise directed, the Contractor shall stop all Work under this Contract, and shall do so on the date specified in the notice of termination.
- d. The City may terminate this Contract upon five (5) days written notice if the Contractor defaults on any material term of this Contract.

20. Choice of Law.

This Contract shall be governed by the laws of the State of Florida. Venue shall lie in Monroe County. This Contract and all actions thereunder shall in all respects be governed by and interpreted and enforced pursuant to the laws of the State of Florida. Any suit arising out of this Contract shall be brought in Monroe County, Middle Keys Division, Florida or U.S. Southern District Court.

21. Waiver of Jury Trial and Venue.

The City and Contractor knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon this Contract and arising out of, under, or in connection with the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party.

22. Attorneys' Fees.

If either the City or Contractor is required to enforce the terms of this Contract by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including, but not limited to, court costs, and reasonable attorneys' fees together with court costs incurred in any litigation at any trial and appellate proceedings.

23. Severability.

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

24. 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.

25. Notices.

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

For City:

George Garrett
City Manager
City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
Telephone: (305) 743-0033
Facsimile: (305) 289-4123

For Contractor:

Name / Title	<u>Donna Birt, Chief Financial Officer</u>
Firm	<u>Revinu, Inc</u>
Address	<u>4050 Dundee Rd</u>
City, State Zip	<u>Winter Haven Florida 33884</u>
Telephone:	<u>239-842-6400</u>
Facsimile:	<u></u>

IN WITNESS WHEREOF the parties hereto have executed this Contract on the day and date first above written.

Attest:

CITY OF MARATHON

By: _____
Diane Clavier, City Clerk

By: _____
George Garrett, City Manager

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

By: _____
Steve Williams, City Attorney

Signed, sealed and witnessed in the presence of:

As to Contractor:

By: _____
Witness

By: _____
Donna Birt, CFO
Revinu, Inc.



COUNCIL AGENDA STATEMENT

Meeting Date: July 13, 2021
To: Honorable Mayor and City Council Members
From: George Garrett, City Manager

Agenda Item: **Resolution 2021-50**, Approving a Third Amendment to the Agreement between the City of Marathon and James (Jack) Bridges for Code Enforcement Special Magistrate Services and Providing For An Effective Date.

BACKGROUND & JUSTIFICATION:

The current agreement with James (Jack) Bridges expires on July 14, 2021. James (Jack) Bridges was ranked by the selection committee as the top respondent and has performed well throughout the agreement.

Staff is seeking approval for a one-year extension to the agreement under the same terms and conditions.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	_____	_____
2. Other _____	_____	_____
3. Not Applicable	_____	_____

FISCAL NOTE:

The adopted FY21 and the proposed FY22 Code Department budgets include appropriations of \$6,000 for this service.

RECOMMENDATION: Approve Resolution

**CITY OF MARATHON, FLORIDA
RESOLUTION 2021-50**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A THIRD AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF MARATHON AND JAMES (JACK) BRIDGES FOR CODE ENFORCEMENT SPECIAL MAGISTRATE SERVICES AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Resolution 2018-62, the City of Marathon (“City”) and James (Jack) Bridges entered into a contract for professional services, to wit: to perform all services generally associated with presiding over Code Compliance Hearings as a Code Compliance Special Magistrate (“Contract”). A copy of the Contract is attached hereto as Exhibit “B” and incorporated by this reference; and

WHEREAS, pursuant to Resolution 2019-52, the City entered into a first amendment to extend the term for one year; and

WHEREAS, pursuant to Resolution 2020-40, the City entered into a second amendment to extend the term for one year; and

WHEREAS, the City continues to require the services of a Code Compliance Special Magistrate; and

WHEREAS, the current Contract with James (Jack) Bridges for Code Compliance Special Magistrate services expires on July 14, 2021; and

WHEREAS, the parties wish to document this Third Amendment to extend the Contract for an additional one (1) year. All other terms and conditions of the Contract shall remain in full force and effect.

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 Third Amendment to the Contract between the City and James (Jack) Bridges, attached hereto as Exhibit “A,” together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is hereby approved. The City Manager is authorized to sign the Amendment and expend budgeted funds on behalf of the City.

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

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13th DAY OF JULY, 2021.

THE CITY OF MARATHON, FLORIDA

Mayor Luis Gonzalez

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:

Steve Williams, City Attorney

EXHIBIT "A"

THIRD AMENDMENT

**TO CONTRACT BETWEEN THE CITY OF MARATHON AND JAMES (JACK)
BRIDGES FOR CODE COMPLIANCE SPECIAL MAGISTRATE SERVICES**

This Third Amendment to the Contract for professional services ("Amendment") is made and entered into this ___ day of July, 2021, by and between the City of Marathon, Florida, a municipal corporation of the State of Florida ("City") and James (Jack) Bridges.

WHEREAS, pursuant to Resolution 2018-62, The City of Marathon ("City") and James (Jack) Bridges entered into a contract for professional services, to wit: to perform all services generally associated with presiding over Code Compliance Hearings as a Code Compliance Special Magistrate ("Contract"). A copy of the Contract is attached hereto as Exhibit "B" and incorporated by this reference; and

WHEREAS, the parties wish to document their negotiated agreement in this Third Amendment which will amend the Term. All other terms and conditions of the Contract shall remain in full force and effect.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Amendment, the parties agree as follows:

Section 1. Amendment to Section 1 of the Contract. The parties hereby amend Section 1 of the Contract to read as follow:

1.0 Term

1.1 This Agreement shall take effect on the date of its execution by the Mayor.

1.2 The term of this Agreement shall ~~be for one (1) year, commencing upon the effective date,~~ continue for one (1) additional year, through July 14, 2022, unless otherwise terminated as provided for herein.

EXCEPT AS PROVIDED HEREIN, all other terms and conditions of the Contract as approved by Resolution 2018-62 shall remain in full force and effect.

DATED this ___ day of _____, 2021.

WITNESSES:

JAMES (JACK) BRIDGES

By: _____

Print Name: _____

Print Name: _____

THE CITY OF MARATHON, FLORIDA

George Garrett, City Manager

ATTEST:

Diane Clavier, City Clerk

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

Steve Williams, City Attorney

CODE COMPLIANCE SPECIAL MAGISTRATE AGREEMENT

THIS AGREEMENT is entered into this ^{12th} day of June, 2018, between the CITY OF MARATHON, a Florida municipal corporation, located at 9805 Overseas Highway, Marathon, Florida 33050 (the "CITY"), and JAMES (JACK) BRIDGES, located at Post Office Box 1714, Tavernier, Florida 33070 (the "SPECIAL MAGISTRATE").

WHEREAS, the CITY recently passed an ordinance establishing a special magistrate code compliance process; and

WHEREAS, the CITY subsequently solicited special magistrates via RFQ 122217DC; and

WHEREAS, the CITY chose SPECIAL MAGISTRATE as the top ranked respondent to the RFQ; and

WHEREAS, the SPECIAL MAGISTRATE represents that he is capable and prepared to provide such services.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the CITY and the SPECIAL MAGISTRATE agree as follows:

1.0 Term

1.1 This Agreement shall take effect on the date of its execution by the Mayor.

1.2 The term of this Agreement shall be for one (1) year, commencing upon the effective date, unless otherwise terminated as provided herein.

1.3 The CITY shall have the option to renew the Agreement for additional one-year periods, as approved by the City Council, at the same terms and conditions, by giving the SPECIAL MAGISTRATE written notice not less than thirty (30) days prior to the expiration of the term then in effect. There shall be no limit on the number of terms a person may serve as a special magistrate.

2.0 Services to Be Performed by the SPECIAL MAGISTRATE

2.1 The SPECIAL MAGISTRATE shall perform the services as generally described in the Scope of Work Exhibit "A".

3.0 Compensation

3.1 General

3.1.1 The CITY shall pay SPECIAL MAGISTRATE on an hourly basis at a rate of \$125.00 per hour for all of SPECIAL MAGISTRATE's time, inclusive of all costs incurred to provide said services. There will be no additional charges for office overhead to include administrative assistants/secretaries and other support personnel. The CITY will not provide reimbursement for travel, meals or mileage.

3.1.2 The hourly rate, as set out in Section 3.1.1 may be adjusted by an Amendment to this Agreement, after mutual written agreement of the parties, annually beginning

one year from the effective date of the Agreement. Approval by the CITY may only be granted by action of City Council, at its sole discretion.

3.1.3 Each individual invoice shall be due and payable forty-five (45) days after receipt by the CITY of a correct, fully-documented invoice, in form and substance satisfactory to the CITY. All invoices shall be delivered to:

City of Marathon
Attn: City Clerk
9805 Overseas Highway
Marathon, Florida 33050

4.0 Insurance

4.1 SPECIAL MAGISTRATE shall carry and provide proof of \$1,000,000 professional/malpractice insurance.

4.2 SPECIAL MAGISTRATE shall not commence work under this Agreement until the required insurance as stated herein has been obtained and proof of such insurance has been provided to the CITY.

5.0 Standard of Care

5.1 SPECIAL MAGISTRATE has represented to the CITY that he has the experience necessary to perform the work in a professional and workmanlike manner.

5.2 SPECIAL MAGISTRATE shall exercise the same degree of care, skill, and diligence in the performance of the services as is provided by a professional of like experience, knowledge, and resources, under similar circumstances.

6.0 Indemnification

6.1 SPECIAL MAGISTRATE shall indemnify and hold harmless the CITY, its council members, officers, employees, and agents from all actions, claims, penalties, judgments, liabilities, losses, and causes of action which may arise out of its fulfillment of this Agreement.

6.2 SPECIAL MAGISTRATE shall defend the CITY, and shall pay all reasonable expenses incurred by the CITY in defending itself, with regard to all damages and penalties the CITY may legally be required to pay as a result of the negligence of the SPECIAL MAGISTRATE as aforesaid. Expenses shall include all incidental reasonable expenses including attorney fees, and shall include a reasonable value of any services rendered by the CITY's Legal Department.

6.3 Nothing in this indemnification is intended to constitute a waiver of the CITY's limitation on liability as set forth in section 768.28, Florida Statutes.

6.4 This covenant shall survive the expiration or termination of this Agreement.

6.5 This provision shall not be construed to require SPECIAL MAGISTRATE to indemnify the CITY in situations wherein their rulings are appealed in the ordinary course as provided by law.

7.0 Independent Contractor

7.1 SPECIAL MAGISTRATE undertakes performance of the services as an independent contractor and shall be wholly responsible for the methods of performance.

7.2 CITY shall have no right to supervise the methods used, but CITY shall have the right to observe such performance.

7.3 SPECIAL MAGISTRATE shall work closely with CITY in performing services under this Agreement

7.4 SPECIAL MAGISTRATE shall not pledge the CITY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and shall have no right to speak for or bind the CITY in any manner.

7.5 SPECIAL MAGISTRATE further warrants and represents that he has no obligation or indebtedness that would impair his ability to fulfill the terms of this Agreement.

8.0 Authority to Practice

8.1 SPECIAL MAGISTRATE hereby represents and warrants that he has and will continue to maintain all licenses and approvals required to conduct his business, and that he will at all times conduct his business activities in a reputable manner.

9.0 Compliance with Laws

9.1 In performance of the services, SPECIAL MAGISTRATE will comply with applicable regulatory requirements, including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards.

10.0 Conflicts and Unavailability

10.1 SPECIAL MAGISTRATE acknowledges that this Agreement is non-exclusive, that the CITY has an Alternate Special Magistrate, and consents to the CITY assigning any matter for which SPECIAL MAGISTRATE has or may have a conflict of interest, or for which SPECIAL MAGISTRATE is unavailable, to an Alternate Special Magistrate.

10.2 In the event that SPECIAL MAGISTRATE determines that a conflict of interest may arise or has arisen in reference to any matter that SPECIAL MAGISTRATE is handling for the CITY, SPECIAL MAGISTRATE shall notify the City Attorney and the City's Code Compliance Director no later than fourteen (14) days prior to the scheduled hearing. If a conflict arises or is first determined less than fourteen (14) days prior to the scheduled hearing, then the SPECIAL MAGISTRATE shall notify the CITY no later than 48 hours after such conflict arises or is first determined.

10.3 SPECIAL MAGISTRATE acknowledges that the CITY's code compliance hearing schedule will generally follow a set pattern and further agrees to inform CITY of any hearing dates that he will miss due to vacation or other planned absence at least thirty (30) days in advance.

10.4 In all other instances where the SPECIAL MAGISTRATE is unavailable, he agrees to give the CITY thirty (30) day notice, or if the unavailability arises less than thirty (30) days before a hearing date, SPECIAL MAGISTRATE agrees to provide notice of unavailability to the CITY within one (1) business day of when it arises.

11.0 CITY's Responsibilities

11.1 CITY shall be responsible for providing information in the CITY's possession that may reasonably be required by SPECIAL MAGISTRATE to provide the services described in Section 2.0.

12.0 Termination of Agreement

12.1 This Agreement may be terminated by the SPECIAL MAGISTRATE upon ninety (90) days prior written notice to the CITY.

12.2 This Agreement may be terminated by the CITY with or without cause upon ninety (90) days prior written notice to the SPECIAL MAGISTRATE.

12.3 Unless the SPECIAL MAGISTRATE is in breach of this Agreement, the SPECIAL MAGISTRATE shall be paid for services rendered to the CITY's satisfaction through the date of termination.

13.0 Governing Law and Venue

13.1 This Agreement shall be governed in all respects by the laws of the State of Florida, and any litigation with respect thereto shall be brought only in the courts of Monroe County, Florida or the United State District Court, Southern District of Florida, Key West Division.

14.0 Non-Discrimination

14.1 SPECIAL MAGISTRATE warrants and represents that all of his employees are treated equally during employment without regard to race, color, religion, gender, age, or national origin.

15.0 Waiver

15.1 A waiver by either the CITY or SPECIAL MAGISTRATE of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

16.0 Severability

16.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement.

16.2 Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.

16.3 The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

16.4 The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement to be determined to be void.

17.0 Entirety of Agreement

17.1 The CITY and the SPECIAL MAGISTRATE agree that this Agreement sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein.

18.0 Modification

18.1 The Agreement may not be modified unless such modifications are evidenced in writing signed by both CITY and SPECIAL MAGISTRATE. Such modifications shall be in the form of a written Amendment executed by both parties.

19.0 Successors and Assigns

19.1 CITY and SPECIAL MAGISTRATE each binds itself/himself and its/his partners, successors, assigns, and legal representative to the other party to this Agreement and to their partners, successors, executors, administrators, assigns, and legal representatives.

19.2 SPECIAL MAGISTRATE shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement, or of any or all of its rights, title or interest therein, or the SPECIAL MAGISTRATE's power to execute this Agreement, to any person, company, or corporation without prior written consent of the CITY. Such consent may be withheld for any reason in the sole discretion of the City Council.

20.0 Public Records

20.1 The SPECIAL MAGISTRATE shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the CITY as provided under Section 119.011(2), Florida Statutes, specifically agrees to:

(1) Keep and maintain public records required by the CITY to perform the service.

(2) Upon request from the CITY's custodian of public records or designee, 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 and following completion of the contract if the SPECIAL MAGISTRATE does not transfer the records to the CITY.

(4) Upon completion of the contract term, transfer, at no cost, to the CITY, all public records in possession of the SPECIAL MAGISTRATE or keep and maintain public records required by the CITY to perform the service. If the SPECIAL MAGISTRATE transfers all public records to the CITY upon the completion of this Agreement, the SPECIAL MAGISTRATE shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the SPECIAL MAGISTRATE keeps and maintains public records upon completion of the contract, the SPECIAL MAGISTRATE shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records or designee, in a format that is compatible with the information technology of the CITY.

20.2 IF THE SPECIAL MAGISTRATE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SPECIAL MAGISTRATE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT 305-743-0033, cityofmarathon@ci.marathon.fl.us, OR BY MAIL AT 9805 OVERSEAS HIGHWAY, MARATHON, FLORIDA 33050.

21.0 Notice

21.1 Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by overnight courier service or by Certified Mail, postage prepaid as follows:

As to CITY:
City of Marathon
Attention: City Manager
9805 Overseas Highway
Marathon, Florida 33050

With a copy to:
City of Marathon
Attention: City Attorney
9805 Overseas Highway
Marathon, Florida 33050

As to SPECIAL MAGISTRATE:
Jack Bridges, Esquire
Post Office Box 1714
Tavernier, Florida 33070-1714

22.0 Contract Administration

22.1 Except as otherwise provided in this Agreement, services of SPECIAL MAGISTRATE shall be under the general direction of the City Council, or their designee, who shall act as the CITY's representative during the term of the Agreement.

Remainder of Page Intentionally Left Blank

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first written above.

THE CITY OF MARATHON, FLORIDA


Michelle Coldiron, Mayor

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

JAMES (JACK) BRIDGES

Witnesses:



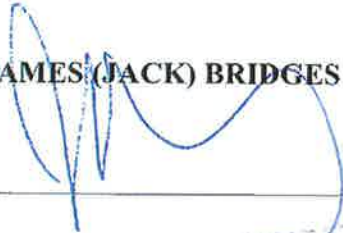

By: 

EXHIBIT "A"
SCOPE OF WORK

The CITY requires the services of a Code Compliance Special Magistrate to preside over Code Compliance Hearings, which are quasi-judicial proceedings. Hearings are tentatively scheduled to be held on the 3rd Wednesday of the month at 2:00 pm in City Council Chambers located at 9805 Overseas Highway, Marathon, Florida 33050.

Specific duties include, but are not limited to:

1. Hearing and deciding alleged violations of the City of Marathon Code of Ordinances.
2. Assessing fines against violators of city codes and ordinances.
3. Consistent with Chapter 162, Florida Statutes, adopting rules for the conduct of hearings; subpoenaing alleged violators, witnesses, and evidence to hearings; taking testimony under oath; and issuing orders having the force of law to command whatever steps are necessary to bring a violation into compliance.
4. Issue findings of fact based on evidence of record, and conclusions of law, and issue an order affording the proper relief consistent with powers granted in the City of Marathon Code of Ordinances and in accord with Chapter 162, Florida Statutes.

**CITY OF MARATHON, FLORIDA
RESOLUTION 2021-51**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A RESIDENTIAL LEASE BETWEEN THE CITY AND A MONROE COUNTY SHERRIFF'S OFFICER FOR A PERIOD OF TWO YEARS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE LEASE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Marathon (the "City") and A Monroe County Sherriff's officer ("Tenant") desire to enter into a residential lease agreement to lease certain City owned property to Tenant ("the Residential Lease"); and

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

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

Section 2. The Residential Lease between the City and Tenant, attached hereto as Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is hereby approved. The City Manager is authorized to sign the amendment 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 13th DAY OF JULY, 2021

THE CITY OF MARATHON, FLORIDA

Mayor Luis Gonzalez

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:**

Steve Williams, City Attorney

RESIDENTIAL LEASE

THIS RESIDENTIAL LEASE (the "Lease") made and entered into this 15th day of July, 2021, by and between the CITY OF MARATHON, a Florida municipal corporation (the "Landlord" or the "City") and Imalay Diaz, an individual (the "Tenant").

RECITALS:

1. Landlord owns the property described on Exhibit "A" attached hereto (the "Property"); and

2. Tenant desires to lease from Landlord, and Landlord is willing to lease to Tenant, that certain residential home located on the Property, and upon and subject to all terms, covenants, conditions and provisions set forth below.

3. In an effort to ensure the Tenant's ability to meet the requirements of this lease, the Landlord at its sole cost may request a credit report on any potential tenant prior to Landlord or City approval of this lease.

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

ARTICLE 1. Demise; Term; Commencement Date.

1.1 Landlord hereby leases to Tenant and Tenant hereby leases from Landlord for the Term (as herein defined), that certain residential structure as shown on Exhibit "B" attached hereto and made a part hereof (the "Premises") located on a portion of the Property, together with the right to use certain portions of the Property as set forth herein, and subject to the obligation to patrol the Property as set forth herein.

1.2 The term (the "Term") of this Lease shall be twenty-four (24) months commencing on July 15, 2021 (the "Commencement Date") and expiring on July 15, 2023 (the "Expiration Date").

1.3 Landlord shall have the option to either:

(a) renew the Term of this Lease for one (1) additional consecutive period of one (1) year ("Renewal Term"). Landlord shall exercise renewal option by giving Tenant prior written notice (a "Renewal Notice") on before the date that is three (3) months prior to the expiration of the then-current Term. If Landlord exercises a renewal option then said additional one (1)-year period (a "Renewal Period") shall be under the same terms and conditions as provided herein; or

(b) extend the term of the Lease on a month-to-month basis by mutual agreement between the Tenant and Landlord.

1.4 Upon the expiration of the Term or any earlier termination of this Lease, Tenant shall quit and surrender to Landlord the Premises in the condition required under this Lease, excepting ordinary wear and tear.

ARTICLE 2. Rent.

2.1 Tenant agrees to pay Landlord fixed rent, plus any applicable sales taxes (collectively hereinafter referred to as the "Rent") for the Term in the amount of Twelve Thousand and 00/100 Dollars (\$12,000.00) payable in monthly installments commencing on the Commencement Date and continuing to and including the Expiration Date in the amount of One Thousand and 00/100 Dollars (\$1,000.00) each.

2.2 Each monthly installment of Rent shall be paid, in advance, on or before the 15th day of the month for which such monthly installment of Rent shall be due. In addition to Rent, Tenant shall pay a late charge in the amount of \$50.00 for each Rent payment made more than four (4) days after the day it is due.

2.3 Tenant shall pay all Rent to Landlord at the following address: City of Marathon, 9805 Overseas Highway, Marathon, FL 33050, or at such other place as Landlord may designate. All Rent shall be paid in lawful money of the United States by unendorsed check drawn to Landlord's order, on a Florida bank. If Landlord receives any check from Tenant which is returned by Tenant's bank for insufficient funds, Landlord shall have the right (without limiting any other right or remedy of Landlord) to require that all checks thereafter be bank certified or cashier's checks. All bank service charges resulting from any returned checks shall be borne by Tenant and payable upon demand (not to exceed the amount prescribed by Florida Statutes section 68.065).

ARTICLE 3. Condition of Premises. Tenant has inspected the Premises, knows the condition thereof, accepts the Premises in its "as is" condition, and acknowledges that Landlord has made no warranties or representations with respect to the condition Premises or legal status thereof, except as expressly set forth in this Lease.

ARTICLE 4. Utilities.

4.1 Water, sewer, electricity and trash collection. Landlord shall pay for electricity, water and sewer service and trash collection serving the Premises during the Term of this Lease, and Tenant shall reimburse Landlord, as additional Rent, within fifteen (15) days following Landlord's delivery to Tenant of a copy of such utility bills.

4.2 Other Utilities. All other utilities and services to be provided to, or which shall be necessary for the conduct of, Tenant's occupancy of the Premises, including, but not limited to, cleaning, telephone, Internet, cable television, facsimile, alarm service and mail shall be separately arranged and paid for by Tenant and Tenant shall be responsible for maintaining all such utilities and services. Tenant shall be responsible for any deposits required in connection with any utilities or services provided to the Premises.

ARTICLE 5. Use, Certain Representations.

5.1 The Premises shall be used for single-family residential purposes by Tenant and his/her immediate family. Overnight guests of Tenant are limited to a maximum of 72 hours. In addition to the Premises, during the Term hereof, Tenant shall be authorized to utilize the parking spaces and land as depicted on Exhibit "B" attached hereto and made a part hereof.

5.2 Tenant acknowledges and agrees that the ground level enclosure (Storage Garage) contained on the Premises will be utilized by the City and shall not be deemed a portion of the Premises for purposes of this Lease. Access must not be blocked to the ground level enclosure and the City shall have access to this enclosure without notice.

5.3 Tenant agrees that during the Term of this Lease, Tenant is, and will remain, certified as a regular, full time law enforcement officer by the Florida Criminal Justice Standards and Training Commission and a deputy employed by the Monroe County Sheriff's office assigned to the City of Marathon and empowered to make arrests under the laws of the State of Florida. The foregoing shall be a material obligation of Tenant hereunder and the termination of Tenant's employment by the Monroe County Sheriff's office, or termination of assignment to the City of Marathon shall immediately terminate this Lease (notwithstanding any notice, grace and cure periods set forth in Article 12 hereof); or

5.4 As additional consideration for the lease of the Premises by Landlord to Tenant, during the Term of this Lease, Tenant shall, at least once each night, conduct an inspection throughout the Property, Sombrero Beach Park and the surrounding Sombrero Beach property, including the restroom facilities, and check for any signs of theft or vandalism and question, and if necessary, remove any unauthorized or suspicious persons found on site. The Tenant shall also note any safety hazards observed during his/her inspection and inform Landlord of any such hazards as soon as possible. Additionally, Tenant must open and close the park on a daily basis, each and every day of the year, including, but not limited to, all gates, entrances, restrooms and fences, and open and close turtle gates during turtle season. Tenant further agrees to use its best efforts to patrol the beach during peak hours provided the same does not conflict with Tenant's full-time work schedule as a deputy for the Monroe County Sherriff's Office. Tenant represents the foregoing shall not interfere or conflict with his/her current employment and that such duties and responsibilities are known and acceptable to his/her employer. In the event the tenant is not available to fulfill the duties due to vacation or other absence, the officer on duty for the time duration that tenant is unavailable may respond or report.

ARTICLE 6. Compliance with Laws. Except as set forth herein, Tenant, at Tenant's sole cost and expense, shall promptly comply with all Laws relating to Tenant's use and occupancy of the Premises of any Government Entity or anybody which shall impose any violation, order or duty upon Tenant. "Law" or "Laws" as used in this Lease means each and every law, regulation, order, ordinance, statute or requirement of any kind whatsoever, present or future, issued by any Government Entity applicable to or affecting the Premises, "Government Entity" as used in this Lease means the United States, the State of Florida, Monroe County, City of Marathon, and any and every political subdivision of government of any kind whatsoever, now existing or hereafter created, now or hereafter having jurisdiction over the Premises

ARTICLE 7. Tenant's Property.

7.1 All furniture and furnishings on the Premises provided by Tenant or at Tenant's expense and any other movable property of Tenant shall also be and remain property of Tenant, and shall be removed from the Property at the end of the Term.

7.2 If any property, which Tenant must remove, under Section 7.1, is not removed from the Premises or the Property within five (5) days after the Expiration Date or earlier termination of this Lease, Landlord may remove and dispose of the same at Tenant's expense. This obligation shall survive the Expiration Date or earlier termination of the Lease.

7.3 Tenant shall bear the risk of loss of the personal property of Tenant and its respective agents, guests and invitees which may from time-to-time be located on the Premises or the Property.

ARTICLE 8. Maintenance, Repairs.

8.1 Tenant shall, throughout the Term of this Lease, keep and maintain the premises, fixtures and appurtenances therein in good order, condition and repair, normal wear and tear excepted.

ARTICLE 9. Damage, Restoration.

9.1 If the Premises or any part thereof shall be damaged or destroyed by fire, hurricane, flood or other casualty ("Damage") and Tenant gives prompt Notice thereof to Landlord and this Lease is not terminated pursuant to any provision of this Article, then Landlord, at its sole and absolute option and discretion, may proceed with reasonable diligence to repair or cause to be repaired the Damage to the Premises. In the alternative, Landlord may terminate this Lease by giving fifteen (15) days' Notice to Tenant at which time the parties hereto shall be relieved of all other rights and obligations hereunder as of the date set forth in Landlord's Notice.

9.2 If the Lease terminates pursuant to Section 9.1, this Lease shall expire as of the date on which such termination shall be effective under that Section, as if such date were the Expiration Date.

ARTICLE 10. Landlord's Access to Demised Premises. Tenant authorizes Landlord, his/her agents, employees and representatives to enter the Premises upon 24 hours' notice and during normal business hours to inspect the Premises to ensure Tenant is complying with the terms of this Lease provided that Landlord shall use its best efforts not to interfere with 'Tenant's use and occupancy of the Premises.

ARTICLE 11. Quiet Enjoyment. Upon paying Rent and keeping and performing the terms, covenants, conditions and provisions of this Lease, Tenant may lawfully and quietly hold and enjoy the Premises during the Term without hindrance, ejection, molestation, or interruption.

ARTICLE 12. Defaults, Conditional Limitations, Remedies. The following shall be a "Default" under this Lease:

(i) Tenant fails to pay any installment of Rent by the fifth (5th) day of the month for which such installment of Rent is due; or

(ii) Tenant fails to keep or perform any other material term, covenant, condition, or provision of this Lease, and such failure continues for fifteen (15) days after written Notice from Landlord; unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot be performed, done or removed within such fifteen (15) days, in which case the Default shall not be deemed to exist as long as Tenant:

- (a) advises Landlord by written Notice within fifteen (15) days after Landlord's Notice that Tenant intends to take all steps necessary to remedy such failure with due diligence; and
- (b) duly commences and diligently and continuously prosecutes completion of all steps necessary to cure and remedy the same;

If and whenever any Default occurs, at Landlord's option, Landlord may, after the expiration of any applicable grace, Notice and cure period, give written Notice to Tenant (the "Termination Notice"), terminating this Lease on the date specified in such Termination Notice, In such event, this Lease and the Term shall expire and terminate on the date specified in the Termination Notice and Tenant shall pay Landlord all Rent due under this Lease to the date of termination as set forth in the Termination Notice and the parties hereto shall be relieved of all other rights and obligations hereunder.

ARTICLE 13. Indemnification. Tenant shall indemnify and defend Landlord (including Landlord's elected officials, officers, directors, employees, consultants and agents) and save Landlord harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from negligence or misconduct of Tenant, its agents, guests and invitees in connection with this Lease, Nothing in this Lease shall be construed or interpreted to waive Landlord's sovereign immunity as established by Law.

ARTICLE 14. Assignment and Subletting. Tenant shall not sublet, assign or otherwise transfer this Lease, or any part of Tenant's right, title or interest therein, or permit the occupancy of the Premises by any person other than as set forth in Section 5.1 above, keep roomers or boarders, or mortgage, pledge or otherwise encumber this Lease without Landlord's prior written consent, which consent may be withheld in Landlord's sole and absolute discretion.

ARTICLE 15. Notices. All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing (each such, a "Notice") and addressed as follows (or to any other address which either party may designate by Notice):

If to Landlord:

City of Marathon
George Garrett, City Manager
9805 Overseas Highway
Marathon, Florida 33050
(305) 289-4130

With a copy to:

Steve Williams
City Attorney
9805 Overseas Highway
Marathon, FL 33050

If to Tenant:

Officer
2150 Sombrero Beach Road
Marathon, FL 33050

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

ARTICLE 16, Insurance,

16.1 Landlord shall secure and keep in force at all times during the Term insurance policies insuring the Premises against loss of damage by fire or other casualty in an amount equal to its full insurable value.

16.2 Tenant, at its cost and expense, shall secure and maintain comprehensive general liability insurance with respect to injuries and death to persons and damage to property, written on the "occurrence" basis, naming Landlord an additional insured, with a combined limit of Three Hundred Thousand Dollars (\$300,000). If Tenant elects to obtain renter's insurance, such election shall be Tenant's sole responsibility at its sole cost and expense.

ARTICLE 17. Miscellaneous.

17.1 This Lease shall be governed by and construed in accordance with the Laws of the State of Florida applicable to contracts made and to be performed entirely in the State.

17.2 The terms, covenants, conditions, and provisions of this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective legal representatives, successors, and assigns.

17.3 If any term, covenant, condition or provision of this Lease (or the application thereof to any circumstance or person) shall be invalid or unenforceable to any extent, the remaining terms, covenants, conditions and provisions of this Lease shall not be affected thereby; and each remaining term, covenant, condition and provision of this Lease shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Lease would prevent the accomplishment of the original intent of the agreement between the parties.

17.4 As required by Florida law, Landlord hereby includes the following notification as part of this Lease:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

17.5 No waiver of any covenant or condition or of the breach of any covenant or condition of this Lease shall constitute a waiver of any subsequent breach of such covenant or condition, or justify or authorize the nonobservance on any other occasion of the same or of any other covenant or condition hereof.

17.6 The parties hereby waive trial by jury in any legal proceeding brought with respect to any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant or Tenant's use or occupancy of the Premises.

17.7 To the extent applicable, Tenant shall pay all taxes levied against Tenant's personal property, of every description, maintained on and used by Tenant in connection with the Premises.

17.8 Landlord cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations of general applicability which may govern the Premises, any improvements thereon, or any operations at the Premises. Nothing in this Lease shall be deemed to create an affirmative duty of Landlord to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances, rules and regulations, federal laws and regulations, state laws and regulations, and grant agreements. In addition, nothing herein shall be considered zoning by contract.

17.9 The relationship of Landlord and Tenant hereunder is the relationship of landlord and tenant. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship between the parties hereto.

17.10 In the event of any litigation arising out of this Lease or to enforce the Lease, the prevailing party is entitled to recover its reasonable attorneys' fees and costs at both the trial and appellate levels.

17.11. Tenant may keep for the term of the lease, an elderly dog in possession at the time of lease. Otherwise, Tenant may not keep pets or animals in or upon the Premises at any time during the Term of the Lease.

17.12 Tenant shall not make any changes or alterations in and upon the Premises or any part of the Property of any nature whatsoever, including specifically, but not limited to, installation of additional or substituted locks or bolts in or upon any door, and the alteration or installation of any lighting fixture, without Landlord's prior written consent, which consent may be withheld in Landlord's sole discretion. Door locks will be changed after every tenant.

17.13 Upon execution hereof, Tenant shall deposit with Landlord the sum of One Thousand Five Hundred Dollars (\$1,500.00) representing the security deposit for the full and faithful performance of the terms and covenants of this Lease including, without limitation, the reimbursement by Tenant to Landlord of all utility payments in accordance with Section 4.1 hereof.

[Remainder of Page Intentionally Blank – Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have made and executed this Lease on the respective dates under each signature,

LANDLORD:

TENANT:

CITY OF MARATHON,
a Florida municipal corporation

Print Name: _____

Date: _____

By: _____
George Garrett, City Manager

Date: _____

Attest:

Witnesses as to Tenant:

Diane Clavier, City Clerk

Print Name: _____

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

Steve Williams, City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

15 66 32 BOOT KEY PT LOT 7 OR544-210/14 OR1682-446/47QC(CW)

EXHIBIT "B"

LAND AND PARKING SPACES



COUNCIL AGENDA STATEMENT



Meeting Date: July 13, 2021
To: Honorable Mayor and City Councilmembers
From: George Garrett, City Manager

Agenda Item: **Resolution 2021-52**, Approving Amendment Six Of The Inter-Local Agreement Between The City Of Marathon And Monroe County For Funding Of Ferry Service To Pigeon Key; Authorizing The City Manager To Execute The Inter-Local Agreement And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date

BACKGROUND & JUSTIFICATION:

Since 2007, the old Seven Mile Bridge has been closed to vehicular traffic due to deterioration. Because the bridge needs to be rebuilt or significantly renovated, the Florida Department of Transportation (FDOT), the owner, has taken certain steps to limit use of the structure to pedestrian and bicycles. As a result of the current accessibility limitations, a ferry service mode of transportation to Pigeon Key, an island owned by Monroe County and a popular tourist destination was established in December of 2007.

Monroe County received a request from the ferry service contractor to increase the base ferry price, the City portion of the increase would be \$5,736.15

This sixth amendment will reimburse Monroe County 7.5% of the base ferry service (no special events or overhead costs or charges) up to \$24,880.05, whichever is less, beginning July 1, 2021 for one (1) year or until the Old Seven Mile Bridge is re-opened to the public (est. March 2022).

CONSISTENCY CHECKLIST:

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

FISCAL NOTE:

The proposed FY22 General Fund budget for the City Council includes appropriations of \$24,880 for this service. Funding for future years will have to be appropriated during the annual budget processes.

RECOMMENDATION: Approve Resolution

**CITY OF MARATHON, FLORIDA
RESOLUTION 2021-52**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A SIXTH AMENDMENT OF THE INTER-LOCAL AGREEMENT BETWEEN THE CITY OF MARATHON AND MONROE COUNTY FOR FUNDING OF FERRY SERVICE TO PIGEON KEY; AUTHORIZING THE CITY MANAGER TO EXECUTE THE INTER-LOCAL AGREEMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Florida Department of Transportation (FDOT) has jurisdiction over and maintains the Old Seven-Mile Bridge from the City of Marathon (City) to Pigeon Key in Monroe County (County); and

WHEREAS, Pigeon Key is presently occupied by the Pigeon Key Foundation, a non-profit organization devoted to marine education and historic interpretation of the Florida Keys' heritage; and

WHEREAS, on the 16th day of May, 2012 the parties executed an Interlocal Agreement (ILA) outlining the City's reimbursement payment for the ferry service to Pigeon Key at a rate of 7.5% for one year of the cost of the contractor invoiced base (routine) ferry service or \$18,750, whichever is less; and

WHEREAS, on the 15th day of May 2013, the parties executed Amendment 1 to the ILA extending the funding of the ferry service for another year until June 30, 2014; and

WHEREAS, on the 22nd day of April, 2014, the parties executed Amendment II to the ILA extending the funding of the ferry service for another year until June 30, 2015; and

WHEREAS, on the 15th day of May, 2015, the parties executed Amendment III to the ILA extending the funding of the ferry service for three years until June 30, 2018; and

WHEREAS, on the 12th day of June 2018, the parties executed Amendment IV to the ILA extending the funding of the ferry service for three years until June 30, 2021; and

WHEREAS, on the 14th Day of May, 2019, the parties executed Amendment V to the ILA increasing the funding of the ferry service to \$19,143.90 for three years until June 30, 2022; and

WHEREAS, the FDOT, the County and the Pigeon Key Foundation have obligated partial funds for three more one year terms of ferry service in order to maintain traffic between the City and Pigeon Key to permit Pigeon Key Foundation to continue its educational and historic functions;

WHEREAS, Monroe County received a request from the ferry service contractor to increase the base ferry price, the City's portion to the increase in the base ferry price is 7.5% of the base ferry service (no special events or overhead costs or charges) up to \$24,880.05, whichever is less, on an

annual term beginning July 1, 2021 for one year or until the Old Seven Mile Bridge is reopened to the public (estimated March, 2022).

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 Sixth Amendment to the ILA between the City, and the County, a copy of which is attached hereto as Exhibit “A”, together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is hereby approved. The City Manager is authorized to sign the Amendment and expend budgeted funds on behalf of the City.

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

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13th DAY OF JULY, 2021.

THE CITY OF MARATHON, FLORIDA

Mayor Luis Gonzalez

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:

Steve Williams, City Attorney

**AMENDMENT 6 TO THE INTERLOCAL AGREEMENT
BETWEEN CITY OF MARATHON AND MONROE COUNTY**

THIS AMENDMENT 6 to the INTERLOCAL AGREEMENT (ILA) is entered into this _____ day of _____ 2021 between Monroe County, a political subdivision of the State of Florida (hereafter, the COUNTY) and the City of Marathon, a municipal corporation organized and existing under the laws of the State of Florida (hereafter, the CITY)

WHEREAS, on the 16th day of May, 2012 the parties executed an ILA outlining reimbursement for the ferry service to Pigeon Key at a rate of 7.5% of the cost of the base service or \$18,750, whichever is less, for one year; and

WHEREAS, on the 15th day of May, 2013 the parties executed Amendment 1 to the ILA extending the funding of the ferry service for another year until June 30, 2014; and

WHEREAS, on the 21st day of May, 2014 the parties executed Amendment 2 to the ILA extending the funding of the ferry service for another year until June 30, 2015; and

WHEREAS, on the 20th day of May, 2015 the parties executed Amendment 3 to the ILA extending the funding of the ferry service for an additional 3 years until June 30, 2018; and

WHEREAS, on the 20th day of June, 2018 the parties executed Amendment 4 to the ILA extending the funding of the ferry service for an additional 3 years until June 30, 2021; and

WHEREAS, on the 19th day of June 2019 the parties executed Amendment 5 to the ILA increasing reimbursement for the ferry service to Pigeon Key at a rate of 7.5% of the base ferry service (no special events or overhead costs or charges) up to \$19,143.90, whichever is less, on an annual term beginning July 1, 2019; and

WHEREAS, Monroe County received a request from the ferry service contractor to increase the base ferry price, if the increase is approved by the County, the City agrees to increase their contribution towards the base ferry price; and

WHEREAS, the City agrees to the increase in the base ferry price:

NOW THEREFORE, in consideration of the mutual promises contained herein, the COUNTY and the CITY agree to amend the ILA as follows:

1. **The City of Marathon will reimburse Monroe County 7.5% of the base ferry service (no special events or overhead costs or charges) up to \$24,880.05, whichever is less, beginning July 1, 2021 for one (1) year or until the Old Seven Mile Bridge is re-opened to the public (est. March 2022).**
2. **All other terms and conditions of the ILA, as amended, are in effect and remain unchanged.**

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BOARD OF COUNTY COMMISSIONERS OF
MONROE COUNTY, FLORIDA

CITY OF MARATHON:

BY: _____
Mayor/Chairperson

BY: _____
TITLE: _____

(SEAL)
Attest: KEVIN MADOK, CLERK

(SEAL)

BY: _____
As Deputy Clerk

ATTEST: _____

DATE: _____

DATE: _____



COUNCIL AGENDA STATEMENT

Meeting Date: July 13, 2021
To: Honorable Mayor and Councilmembers
From: Carlos A. Solis, P.E. Director of Public Works
Through: George Garrett, City Manager

Agenda Item: **Resolution 2021-53**, Accepting The Responsible Bid And Approving A Contract Between The City And Zabatt Engine Services, Inc. In An Amount Not To Exceed \$397,197.02 For The New Generator At The City Marina And Station 14 Generator Replacement; Authorizing The City Manager To Execute The Contract And Appropriate Funds On Behalf Of The City; And Providing For An Effective Date

BACKGROUND & JUSTIFICATION:

The City applied for and received a Hazard Mitigation Grant for a new Generator for the City Marina, and replacement of the Station 14 generator. As such, the City, through one of our consultants, prepared plans for the projects were let out to bid. One bid was received, and the bid summary is as follows.

1. Zabatt Engine Services, Inc. - \$397,197.02

After review of the bids, staff recommends that the contract be awarded Zabatt Engine Services, Inc. the sole bidder in the amount of \$397,197.02

CONSISTENCY CHECKLIST:

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

FISCAL NOTE:

This contract is grant reimbursable, and any amounts not anticipated to be completed prior to 9/30/21 will be included in the FY22 proposed budgets for the Marina and Capital Infrastructure Funds.

RECOMMENDATION: Approval of Resolution

**CITY OF MARATHON, FLORIDA
RESOLUTION 2021-53**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, ACCEPTING THE RESPONSIBLE BID AND APPROVING A CONTRACT BETWEEN THE CITY AND ZABATT ENGINE SERVICES, INC. IN AN AMOUNT NOT TO EXCEED \$397,197.02 FOR THE NEW GENERATOR AT THE CITY MARINA AND STATION 14 GENERATOR REPLACEMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND APPROPRIATE FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City applied for and received a Hazard Mitigation Grant for a new Generator for the City Marina, and replacement of the Station 14 generator; and

WHEREAS, the City published an Invitation to Bid for the generators (the “Project”) on May 28, 2021 and one bid was received and opened on July 7, 2021; and

WHEREAS, the City desires to accept the bid of Zabatt Engine Services, Inc., the sole responsive and responsible bidder, and enter into a contract with Zabatt Engine Services, Inc. (the “Contractor”).

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

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

Section 2. The City Council hereby accepts the bid of Zabatt Engine Services, Inc. for the Project and authorizes the City Manager to enter into and execute an agreement with the Contractor and appropriate 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 13TH DAY OF JULY, 2021.

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

Steve Williams, 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") **Zabatt Engine Services, Inc.** (hereinafter called "CONTRACTOR") located at:

XXXXXXXXXXXXXXXXXX

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

ARTICLE 1. WORK

ARTICLE 2. Project/Work: CONTRACTOR shall complete all Work as specified or indicated in the plans, Contract Documents and detailed in Scope of work. The Work is generally described as the following:

Install New Generator and all supporting Equipment and Materials, and Replace the existing Generator at fire Station 14.

ARTICLE 3. CITY'S REPRESENTATIVE, ARCHITECT AND ENGINEER

3.1 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.

3.2 The CITY'S ENGINEER OF RECORD referred to in any of the Contract Documents designated herein is K2M Design

ARTICLE 4. TERM

4.1 **Contract Term.** The Work shall be substantially completed within **Ninety (90)** calendar days after the date specified in the Notice to Proceed ("Substantial Completion"), and fully completed and ready for final payment in accordance with the Contract Documents within **One Five Days (105)** calendar days after the date specified in the Notice to Proceed ("Final Completion").

4.2 **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.

4.3 **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.

4.4 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.

4.5 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.

4.6 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 5. CONTRACT PRICE

5.1 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.

5.1.1 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, as listed in the bid form, are provided to assist the contractor, and determination of actual quantities and classification are to be verified by CONTRACTOR prior to submittal of the bid as provided in the Contract Documents.

5.2 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 6. PAYMENT PROCEDURES

6.1 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.

6.2 Progress Payments, Retainage. CITY shall make progress payments, deducting the amount from the Contract Price above, based on 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.

6.2.1 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.

6.2.2 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.

6.3 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.

6.3.1 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.

6.4 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.

6.5 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 7. INSURANCE/INDEMNIFICATION.

7.1 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.

7.2 Indemnification. The CONTRACTOR shall indemnify, defend and hold harmless the CITY, their officials, agents, employees, and volunteers from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of this Contract and as set forth in General Conditions of the Contract Documents.

7.3 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 8. CONTRACTOR'S REPRESENTATIONS.

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

8.1 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."

8.2 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.

8.3 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.

8.4 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.

8.5 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.

8.6 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.

8.7 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.

8.8 The CONTRACTOR warrants the following:

8.8.1 Equal Employment: During the performance of this contract, the CONTRACTOR agrees as follows:

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment,

upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

3. The CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONTRACTOR's legal duty to furnish information.

4. In the event of the CONTRACTOR's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

8.8.2 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.

8.8.3 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.

8.8.4 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.

8.8.5 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 9. CONTRACT DOCUMENTS.

9.1 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:

9.1.1 Change Orders.

9.1.2 Field Orders.

9.1.3 Contract for Construction.

9.1.4 Exhibits to this Contract.

9.1.5 Supplementary Conditions.

9.1.6 General Conditions.

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

9.1.8 Specifications bearing the title: Contract Documents for **Marina Building Remodel for City of Marathon Marina**.

9.1.9 Drawings consisting of a cover sheet and inclusive of all sheets bearing the following general titles: **Marina Building Remodel for City of Marathon Marina**

9.1.10 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, and all other provisions and sections of the Bid Documents.

9.1.11 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.

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

9.1.13 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.

9.1.14 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.

9.1.15 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 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.

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

CITY. The CITY may apply the proceeds from any contract between CONTRACTOR and the CITY to satisfy amounts owed by the CONTRACTOR to the CITY under any other contract.

10.6 Access to Public Records. The CONTRACTOR shall comply with the applicable provisions of Chapter 119, Florida Statutes.

10.6.1 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. The Records are not intended or represented to be suitable for use, partial use, or reuse by the City or others on extensions of this project or on any other project. Any such use, reuse, or modifications made by the City to any of Consultant's Records will be at City's sole risk and without liability to Consultant, and City shall, to the extent allowable by Florida law, and subject to Section 768.28, Florida Statute, and all monetary limits listed therein, indemnify, defend and hold Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom.

10.6.2 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.

10.6.3 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.

10.6.4 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.

10.6.5 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.

10.6.6 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.

10.6.7 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.

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

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

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

FOR CONTRACTOR:

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

WITH COPY TO:

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

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

10.11 Attorneys' Fees. If either the CITY or CONTRACTOR is required to enforce the terms of the Contract by court proceedings or otherwise, whether formal legal action is required, the parties shall bear their own attorney fees, costs and expenses, at the trial and appellate level.

10.12 Amendments. This Contract may only be amended by the prior written approval of the parties or by execution of a Change Order in the form as provided by the City.

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: _____

Name & Title

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”

END OF SECTION

CITY COUNCIL AGENDA STATEMENT



Meeting Date: July 13th 2021
To: Honorable Mayor and City Councilmembers
From: Brian Shea, Planning Director
Through: George Garrett, City Manager

Agenda Item: **Resolution 2021-54**, A Request To The City Council Of Marathon By Truman Real Estate Enterprises, Inc. To Abandon A Portion Of The Public Right Of Way Known As Flagler Street, Located At And Adjacent To, Block 1 Lots 19, 20 and 21 Crains Subdivision, Sub Plat Book 1, Page 51, Having Real Estate Number 00366990-000000, Monroe County Florida, Nearest Mile Marker 59.

Recommendation:

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

Conditions:

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

Applicant: Truman Real Estate Enterprises, Inc.

Agent: Island Construction Management Inc

Request: To abandon a portion of the right-of-way at 58458 Overseas Highway.

Project Location: Between Vacant Land and 58438 Overseas Highway, Cranes Subdivision, Grassy Key.

Legal Description: Crain's Sub Plat Book 1, Page 51, Grassy Key, South Side of Flagler St to Ocean PT Lots 19, 20 and 21, Block 1

(See Exhibit A for entire legal description)

**Figure 1
Location Map**



Background:

This is a request presented by Dr Michael Ryan (Agent, Island Construction Management Inc) for the abandonment of the City's right-of-way located on 58458 Overseas Highway, Crain's Subdivision Grassy Key. The applicant states they would like Council to abandon a portion of Flagler Street as shown in the location graphic above and in the survey of the area to be abandoned. The applicant states they will grant a utility easement to the City of Marathon and all utilities for current and future use.

Flagler Street, is a 30 foot wide platted road in Crain's Subdivision of Grassy Key (See Figures 2 & 3). Flagler Street traverses the width of Crain's Subdivision from approximately Kyle Avenue to the area across from Grassy Key RV Park landward of and contiguous to the Crain's Subdivision properties lying to the south of U.S. Highway 1. As platted, it is approximately 1.25 miles long. The road would appear to be a part of the U.S. Highway 1 Right-Of-Way as it is contiguous to and runs parallel with the state road. However, it is a part of the Crain's Subdivision plat. The majority of properties on the Ocean side of U.S. 1 which are a part of Crain's subdivision have sought an abandonment previously or have occupied Flagler Street for more than thirty (30) years, particularly, the resorts.

Municipalities derive their power to vacate municipally owned rights-of-way from Section 166.042, Florida Statutes that provides that former Section 167.09, Florida Statutes (1972) remains effective.

Former Section 167.09, Florida Statutes provides that municipalities may "...discontinue any public park, public square, street, avenue, highway or any other way..."

Section 26-3 (1) & (2) of the City Code (Ordinance 2015-08, not codified as of this date), restricts the City's authority to abandon rights-of-way, as provided by state law, by imposing the following conditions:

Section 26-3 General Provisions

(1) Approval of Abutting Property Owners

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

(2) Access to Water.

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

- a. the City Council determines at a public hearing that the petitioner meets all of the review criteria of this Article; and

- b. only in those instances wherein the Petitioner(s) offers to trade or give to the City comparable land or lands for a right of way, road, street or public access way to give access to the same body of water, such access to be of such condition as not to work a hardship to the users thereof, the reasonableness of the distance and comparable land being left to the discretion of the City.

Analysis

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

Section 26-7 Review of Petition.

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

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

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

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

There are ninety-one (91) individual properties along the oceanfront shore of Crain's Subdivision. Many of these have previously abandoned the ROW of Flagler Street. It is recommended that eventually all of Flagler Street be abandoned adjacent to these parcels subject to easements.

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

Figure 2
Crain's Subdivision of Grassy Key – Oceanfront Shoreline Properties

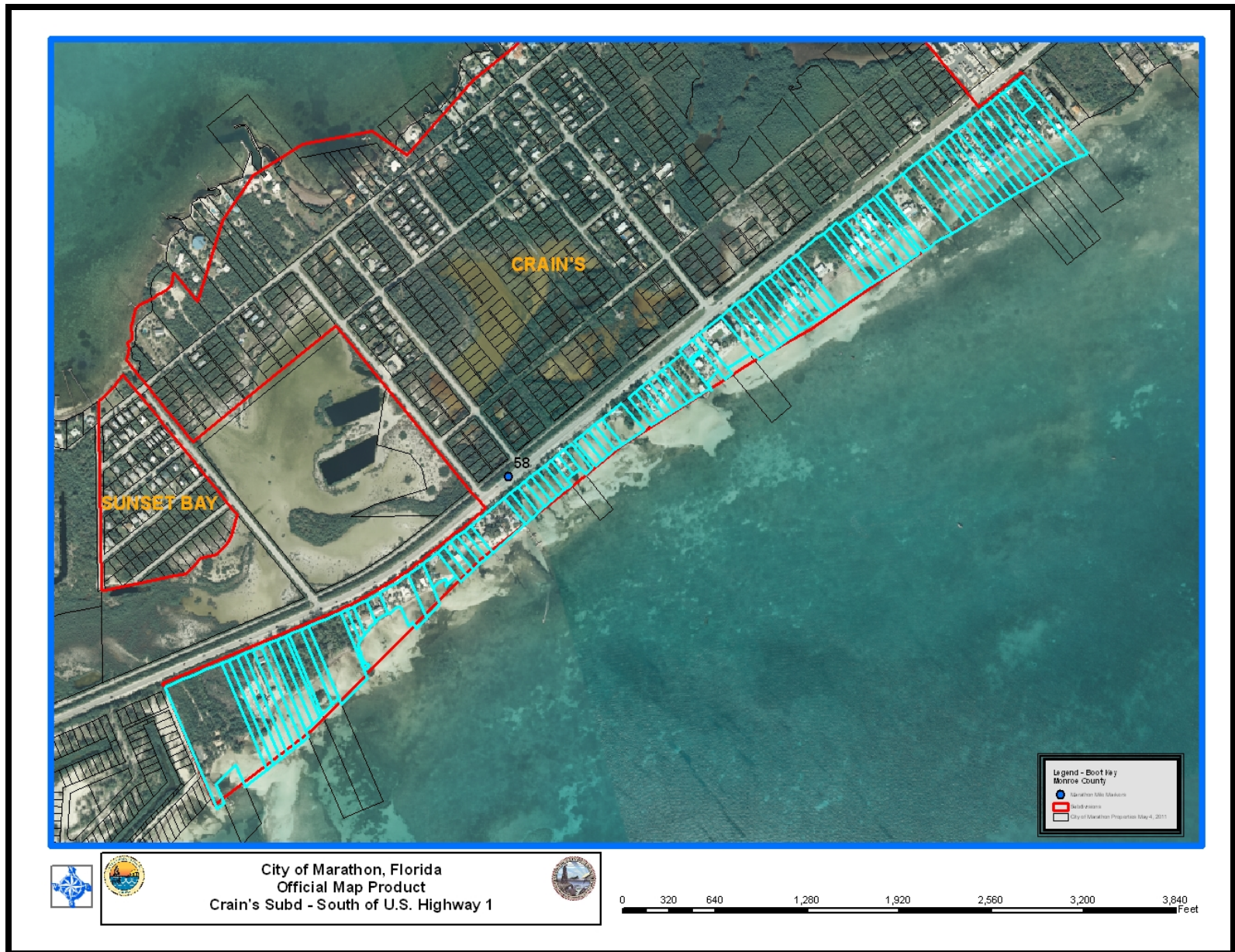


Figure 3
Crain's Subdivision of Grassy Key – Developed Oceanfront Shoreline Properties



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

Staff Assessment: Public access to water is not available from this section of Flagler Street. There, are two unnamed streets in Crain's Subdivision that lead from Flagler Street to open water on the ocean.

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

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

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

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

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

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

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

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

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

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

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

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

Stakeholders

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

Consistency With Adopted Plans And Policies

In addition to the above discussion in the Analysis section, this application complies with the requirements of Chapter 26 of the City of Marathon City Code and with the requirements of the City of Marathon Comprehensive Plan. This application specifically complies with comprehensive plan policies discouraging the abandonment of rights-of-way that provide public access to water bodies.

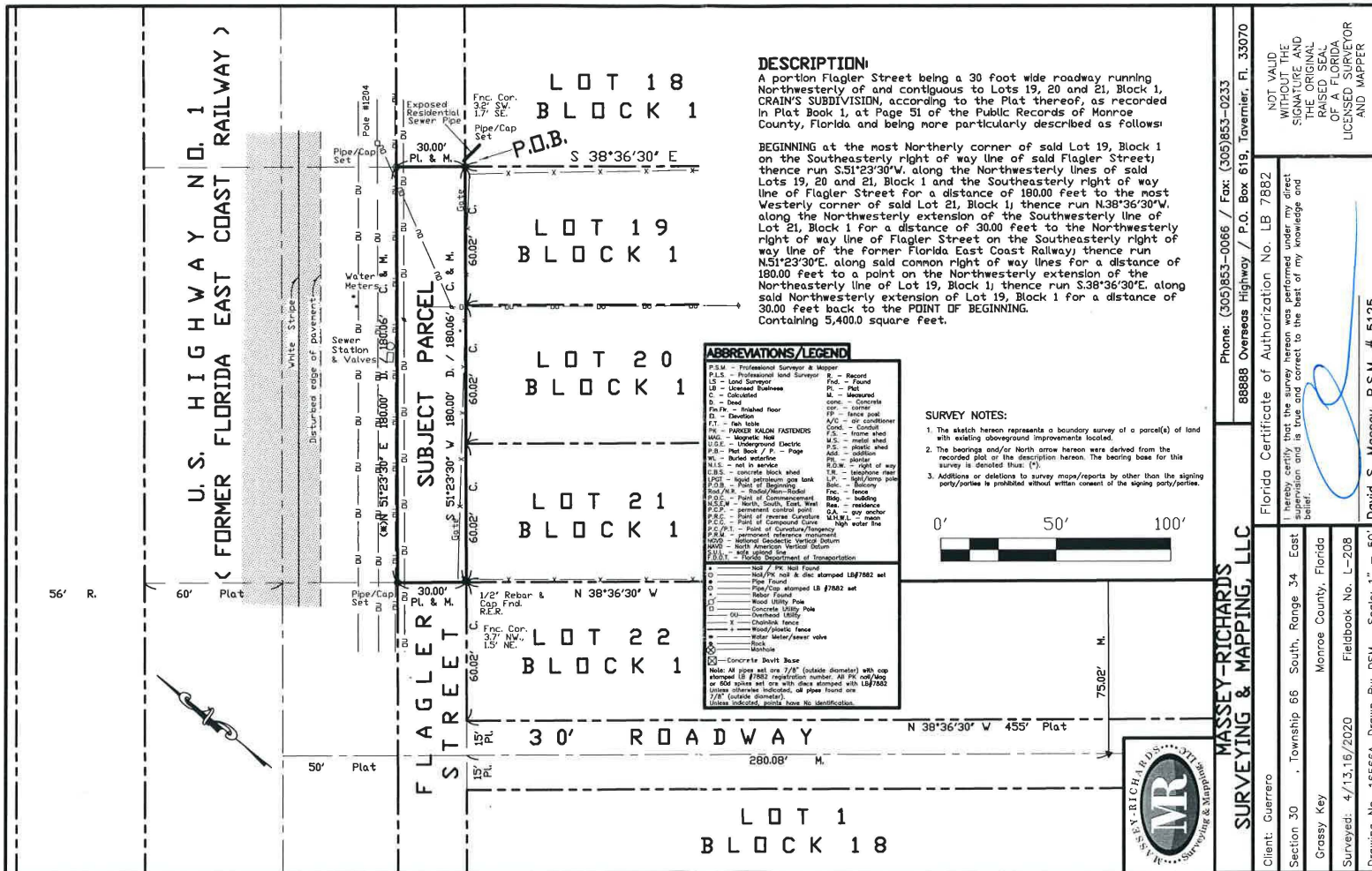
Recommendation:

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

Conditions:

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

EXHIBIT A



**CITY OF MARATHON, FLORIDA
RESOLUTION 2021-54**

A RESOLUTION OF THE CITY COUNCIL OF MARATHON, FLORIDA, APPROVING SUBJECT TO CONDITIONS, A REQUEST TO THE CITY BY TRUMAN REAL ESTATE ENTERPRISES, LLC TO ABANDON THE PUBLIC RIGHT OF WAY LOCATED AT 58458 OVERSEAS HIGHWAY, KNOWN AS FLAGLER STREET, DESCRIBED AS BEING ADJACENT WITH BLOCK 1, LOTS 19, 20 AND 21, CRAINS SUBDIVISION, GRASSY KEY, HAVING REAL ESTATE NUMBER 00366990-000000, NEAREST MILE MARKER 59; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, there presently exists a certain public right-of-way within the City of Marathon, Florida, Located At 58458 Overseas Highway, Described As Crains Subdivision, Plat book 1, Page 51, South Side of Flagler Street to Ocean, Lots 19, 20 and 21, Block 1, Grassy Key, Nearest Mile Marker 59, Monroe County, Florida and as particularly described in the attached survey (Exhibit “A); and

WHEREAS, Truman Real Estate Enterprises, Inc. (Agent, Island Construction Management) 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 July 13th 2021 the City has determined that no federal, state or county rights-of-way are involved or affected, and that granting the request for abandonment of the Right-of-Way subject to conditions will not be detrimental to the public health, safety and welfare; and

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

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

- a) The abandonment of this right-of-way will not adversely affect the operations and functions of the City because with a grant of utility easement to continue maintenance of its sewer facilities.

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

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

Section 1. The above recitals are true and correct and they and all conditions required of Applicants are hereby incorporated as if fully stated herein.

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

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

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

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

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

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13TH DAY OF JULY , 2021.

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

Steven T. Williams, City Attorney

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

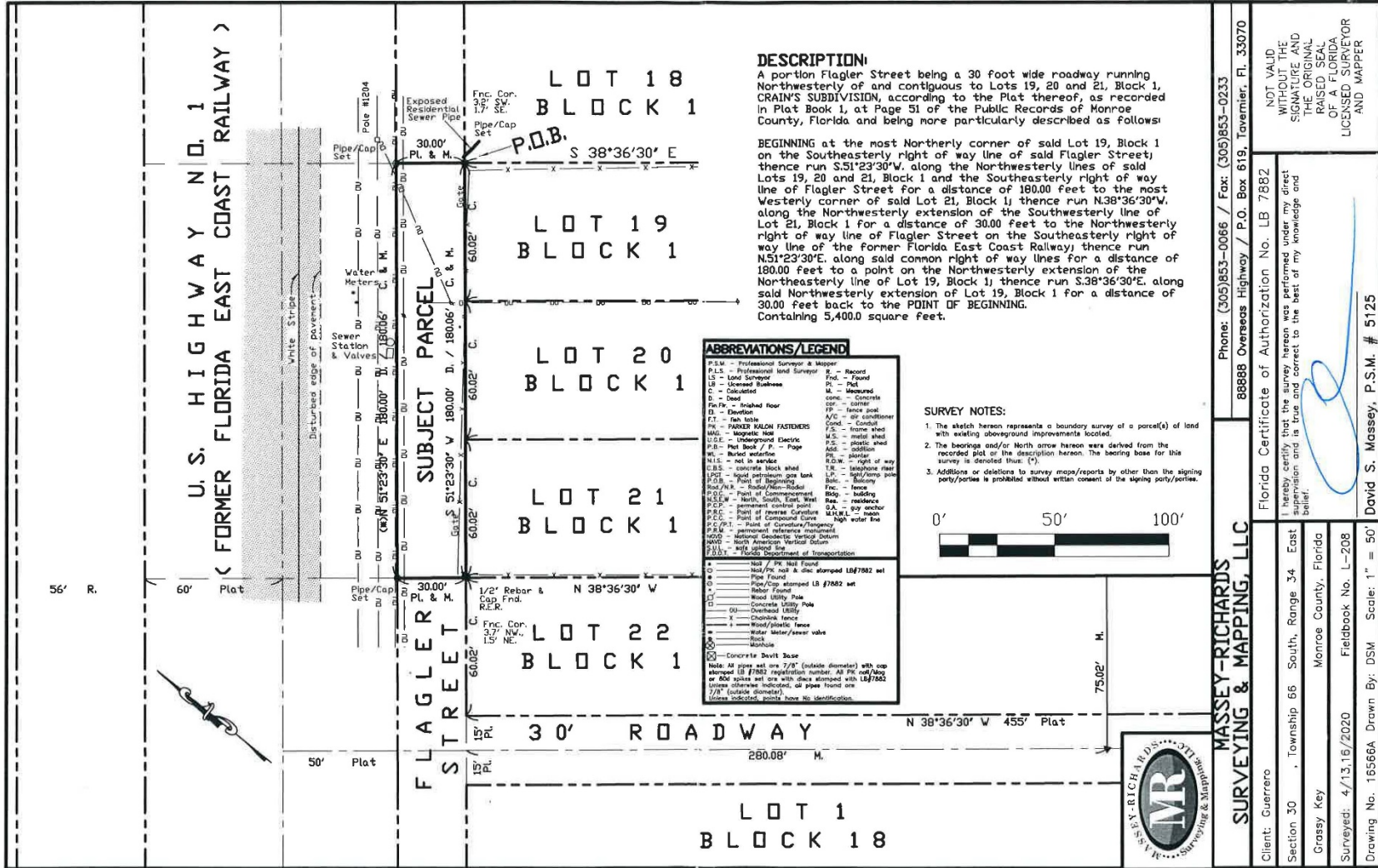


Exhibit B
Copy – Original to be Provided by Applicant to
Clerk of Court for Recordation

Utility Easement

EXHIBIT "B"
UTILITY EASEMENT

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

Brian Shea
CITY OF MARATHON
PLANNING DIRECTOR
9805 Overseas Hwy
Marathon, FL 33050
(305) 289-4100

Folio No. 00366990-000000

UTILITY EASEMENT

THIS UTILITY EASEMENT (this "Easement") is made this ____ day of _____, 2021, by **Truman Real Estate Enterprises, Inc.** whose address is **58458 Overseas Highway**, Marathon, Florida 33050 (hereinafter referred to as the "GRANTOR"), to and in favor of the **CITY OF MARATHON, a Florida municipal corporation**, having an address at 9805 Overseas Highway, Marathon, Florida 33050 (hereinafter referred to as the "GRANTEE").

RECITALS:

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

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

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

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

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

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

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

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

[Acknowledgments on following page]

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

WITNESSES:

GRANTOR:

Print Name: _____

Print Name: _____

Print Name: _____

STATE OF FLORIDA)
 SS:
COUNTY OF MONROE)

THIS IS TO CERTIFY, that on this _____ day of _____, 2021, before me, an officer duly authorized to take acknowledgements in the State and County aforesaid, personally appeared _____, who is personally known to me or produced _____ as identification.

NOTARY PUBLIC
Print Name: _____
My Commission Expires: _____