



COUNCIL AGENDA STATEMENT

Meeting Date: January 14, 2025
To: Honorable Mayor and Council Members
From: Brian Shea, Planning Director
Through: George Garrett, City Manager

Agenda Item(s): **Resolution 2025-04**, Approving And Accepting A Monetary Donation Agreement With United Way Of Collier And The Keys For The Design And Construction Of A Splash Pad; And Providing An Effective Date.

Resolution 2025-05, Approving And Accepting A Monetary Donation Agreement With United Way Of Collier And The Keys For The Design And Construction Of A Skate Park; And Providing An Effective Date.

BACKGROUND & JUSTIFICATION

The City of Marathon wishes to accept funding from the United Way of Collier and the Keys for the development of a splash pad and a skate park. These projects align with both the United Way's mission and the City's Comprehensive Plan.

The United Way is dedicated to fostering an environment where all residents can thrive, emphasizing the dignity, value, and potential of every person. They aim to develop a culture of philanthropy and collaboration that ignites compassion and generosity, promoting diversity, equity, and inclusion to ensure everyone has the resources, opportunities, and networks they need to succeed. By funding the splash pad and skate park, the United Way supports initiatives that provide safe, accessible recreational facilities, enhancing community well-being and inclusivity.

The City's Comprehensive Plan includes a Recreation and Open Space Element with the goal of providing safe and adequate open space and recreation facilities accessible to all residents. Objectives include planning for new or enhanced recreational facilities, maintaining existing ones, and ensuring accessibility for automobiles, bicycles, and pedestrians. The development of a splash pad and skate park directly supports these objectives by expanding recreational opportunities, ensuring accessibility, and enhancing the quality of life for Marathon residents. These projects have been outlined within the Capital Improvements Plan, and the funding being donated will aid in the implementation.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	<u> X </u>	<u> </u>

FISCAL NOTE:

Approval allows for reimbursement of project costs as noted in the specific agreements.

RECOMMENDATION: Approval of Resolutions

Sponsored by: Garrett

**CITY OF MARATHON, FLORIDA
RESOLUTION 2025-04**

A RESOLUTION OF THE CITY COUNCIL OF MARATHON, FLORIDA, APPROVING AND ACCEPTING A MONETARY DONATION AGREEMENT WITH UNITED WAY OF COLLIER AND THE KEYS FOR THE DESIGN AND CONSTRUCTION OF A SPLASH PAD; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, United Way of Collier and the Keys has submitted a proposal in the form of a monetary donation for the design and construction of a splash pad located within the city limits of Marathon, Florida; and

WHEREAS, United Way of Collier and the Keys desires for the splash pad project to include water features that appeals to toddlers through older children, water conservation measures, benches and/or pavilion(s) for gatherings, age-appropriate equipment, adequate safety provisions, multi-lingual signage, accommodations for the climate and location, and other concepts and considerations necessary for the splash pad to be a functional addition to the recreation options for Middle Keys residents and visitors; and

WHEREAS, the City desires to enrich the public environment for residents and visitors; 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 are incorporated herein.

Section 2. The City of Marathon Monetary Donation Agreement a copy of which is attached as Exhibit “A,” together with such non-material changes as may be acceptable to the City Manager and approved as to form by the City Attorney, is hereby approved.

Section 3. The Mayor is authorized to sign the Agreement.

Section 4. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 14TH DAY OF JANUARY, 2025.

THE CITY OF MARATHON, FLORIDA

Lynn Landry, 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

City of Marathon Monetary Donation Agreement

This AGREEMENT dated the _____ day of _____, 202__, is entered into by and between CITY OF MARATHON, FLORIDA ("CITY"), a Florida municipal corporation, whose address is 9805 Overseas Highway, Marathon, Florida 33050, and United Way of Collier and the Keys, ("DONOR"), whose address is 626 Josephine Parker Road, Suite 201, Key West, Florida 33040.

WHEREAS, DONOR has submitted a proposal in the form of a monetary donation for the design and construction of a splash pad located within the city limits of Marathon, Florida; and

WHEREAS, DONOR desires for the splash pad project to include water features that appeals to toddlers through older children, water conservation measures, benches and/or pavilion(s) for gatherings, age-appropriate equipment, adequate safety provisions, multi-lingual signage, accommodations for the climate and location, and other concepts and considerations necessary for the splash pad to be a functional addition to the recreation options for Middle Keys residents and visitors; and

WHEREAS, the City desires to enrich the public environment for residents and visitors; and

NOW, THEREFORE, in consideration of the mutual covenants and payments contained herein, the parties have entered into this agreement on the terms and conditions as set forth below.

1. **AGREEMENT PERIOD:** This Agreement shall commence upon approval of the Agreement by the City and notification to the DONOR of such approval and shall terminate upon final completion of the Project and relevant maintenance period, unless terminated earlier under Paragraphs 14 and 15 of this Agreement.

2. **SCOPE OF AGREEMENT:** The DONOR shall provide monetary funds in the amount of \$500,000, for the design and construction of the splash pad within the city limits of Marathon, Florida. The timeline for the funding shall be as follows:

50% at the time the Agreement is signed.

25% at the time of the Bid Award.

25% upon successful completion of the project.

The DONOR reserves the right to name, subject to the approval of the CITY, the splash pad in honor of the DONOR, which may, but is not limited to, including a physical recognition such as a plaque, acknowledgment in media and with stakeholders, reference to the splash pad such as TBD name in the City materials.

The CITY shall provide DONOR regular updates, to be provided at least quarterly, which shall include information and documentation on funds utilized and benchmarks achieved. The CITY shall provide to DONOR an outline of the scope of work necessary to complete the Splash Pad and an estimated timeline. The DONOR shall participate throughout the design and execution process. DONOR shall confer with and coordinate communications with Brian Shea, Planning Director for the City of Marathon, in order to ensure that there is as much cooperation and cohesiveness in the incorporation of the splash pad and shall be the least amount of interference between the DONOR and the public and City of Marathon employees.

The DONOR shall participate in the site selection process, including an on-site walk through and discussion with relevant City staff. The DONOR's communications team will work with the City on joint outreach and promotion of the splash pad.

If the CITY is unable to complete the Splash Pad, with the exception of events subject to Paragraph 38 of this Agreement, any unused funds shall be returned to the DONOR.

3. REPAIRS AND RESTORATION. The City reserves the right to determine when and if repairs and restorations to the splash pad will be made after final acceptance. Repairs and restorations to the splash pad occurring five (5) years after the City's final acceptance of the splash pad will be the responsibility and at the expense of the City. City reserves the right to retain the services of DONOR for any future repairs and/or restorations of the splash pad that may become necessary.

4. OWNERSHIP AND RIGHTS: Upon the installation of the splash pad and acceptance by the City, the City shall own the splash pad. Modification to the splash pad resulting from conservation or public presentation is not prohibited modification or considered alteration, distortion, or mutilation of the project. DONOR agrees that the City as owner of the building, structure, and/or property that includes the splash pad may, without the consent or permission of the DONOR, make or authorize the making of alterations and/or destruction of such building, structure, and/or property. DONOR agrees that where the splash pad may be created or conceived in any fashion by more than one author, the DONOR's signature and waiver binds the entire group of donors.

5. MAINTENANCE OF RECORDS: The DONOR shall keep such books, records, and documents directly pertinent to performance under this agreement with generally accepted accounting principles consistently applied. Records shall be retained for a period of seven (7) years from the termination of this Agreement or for a period of three (3) years from the submission of the final expenditure report as per 2 C.F.R. §200.33, if applicable, whichever is greater. Each party to this Agreement or their authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for seven (7) years following the termination of this Agreement.

For Public Records requirements see paragraph 21 below.

6. RIGHT TO AUDIT. Availability of Records. The records of the parties to this Agreement relating to the Project, which shall include but not be limited to accounting records (hard copy, as well as computer readable data if it can be made available; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, bidding instructions, bidders list, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; any other supporting evidence deemed necessary by City to substantiate charges related to this agreement, and all other agreements, sources of information and matters that may in City's reasonable judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any contract document (all foregoing hereinafter referred to as "Records") shall be open to inspection and subject to audit and/or reproduction by City's representative and/or agents. City may also conduct verifications such as, but not limited to, counting employees at the job site, witnessing the distribution of payroll, verifying payroll computations, overhead computations, observing vendor and supplier payments, miscellaneous allocations, special charges, verifying information and amounts through interviews and written confirmations with employees, Subcontractors, suppliers, and contractor's representatives. All records shall be kept for ten (10) years after Final Completion of the Project. The *right to audit provisions* survive the termination or expiration of this Agreement.

7. MODIFICATIONS AND AMENDMENTS: Any and all modifications of the terms of this Agreement shall be only amended in writing and approved by the City. Extensions of time to complete any terms or conditions of this Agreement must be made in writing and may be approved only by the City, which said consent shall not be unreasonably withheld.

8. ASSIGNMENT/SUBCONTRACT. DONOR shall not assign or subcontract its obligations under this Agreement to others, except in writing and with the prior written approval of the City Council for the City of Marathon, which approval shall be subject to such conditions and provisions as the City Council may deem necessary. This paragraph shall be incorporated by reference into any assignment or subcontract and any assignee or subcontractor shall comply with all of the provisions of this Agreement. Unless expressly provided for therein, such approval shall in no manner or event be deemed to impose any additional obligation upon the City Council.

9. INDEPENDENT PARTY: At all times and for all purposes hereunder, the DONOR is an independent party and not an employee of the City of Marathon. No statement contained in this agreement shall be construed as to find the DONOR or any of its employees, contractors, servants, or agents to the employees of the City of Marathon, and they shall be entitled to none of the rights, privileges, or benefits of employees of the City.

10. NON-WAIVER OF IMMUNITY: Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the CITY and DONOR 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 Agreement entered into by the CITY be required to contain any provision for waiver.

11. COMPLIANCE WITH LAW: In carrying out its obligations under this agreement, the DONOR shall abide by all laws of the Federal and State government, statutes, ordinances, rules, and regulations pertaining to or regulating the provisions of this agreement, including those now in effect and hereafter adopted. Compliance with all laws includes, but is not limited to, the immigration laws of the Federal and State government. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this agreement and shall entitle the City to terminate this agreement immediately upon delivery of written notice of termination to the DONOR.

12. HOLD HARMLESS/INDEMNIFICATION: The DONOR hereby agrees to indemnify and hold harmless the City Council and the City of Marathon and any of their officers and employees from and against any and all claims, liabilities, litigation, causes of action, damages, costs, expenses (including but not limited to fees and expenses arising from any factual investigation, discovery or preparation for litigation), and the payment of any and all of the foregoing or any demands, settlements or judgments arising directly or indirectly under this agreement. The DONOR shall immediately give notice to the City of any suit, claim or action made against the City that is related to the activity under this Agreement and will cooperate with the City in the investigation arising as a result of any suit, action or claim related to this Agreement. DONOR will, at DONOR's own cost and expense, defend and protect the City against any and all such claims or demands which may be claimed to have arisen as a result of or in connection with the Splash Pad. This indemnification shall survive the termination or expiration of this Agreement.

13. ANTI-KICKBACK: The DONOR warrants that no person has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the City has any interest, financially or otherwise, in the said funded project, except for general membership. For breach or violation of this warranty, the City shall have the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

14. TERMINATION: This agreement shall terminate pursuant to Paragraph #1.

15. **TERMINATION FOR BREACH:** The City may immediately terminate this agreement for any breach of the terms contained herein. Such termination shall take place immediately upon receipt of written notice of said termination. Any waiver of any breach of covenants herein contained to be kept and performed by DONOR shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the City from declaring a forfeiture for any succeeding breach either of the same conditions or of any other conditions. For Contracts of any amount, if the City determines that the Contractor/Consultant has submitted a false certification under Section 287.135(5), Florida Statutes or has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, the City shall have the option of (1) terminating the Agreement after it has given the Contractor/Consultant written notice and an opportunity to demonstrate the agency's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or (2) maintaining the Agreement if the conditions of Section 287.135(4), Florida Statutes, are met.

16. **ETHICS CLAUSE:** DONOR warrants that she/he has not employed, retained, or otherwise had act on his behalf any former City officer or employee or any City officer or employee. For breach or violation of the provision the City may, at its discretion terminate this agreement without liability and may also, at its discretion, deduct from the agreement or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former or present City officer or employee.

17. **PUBLIC ENTITY CRIME STATEMENT:** "A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under an agreement with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list." DONOR represents that DONOR is not on the Convicted Vendor list.

18. **DISCLOSURE AND CONFLICT OF INTEREST.** DONOR represents that it, its directors, principals and employees, presently have no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required by this contract, as provided in Sect. 112.311, et. seq., Florida Statutes. CITY agrees that officers and employees of the CITY recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

Upon execution of this contract, and thereafter as changes may require, the DONOR shall notify the CITY of any financial interest it may have in any and all programs in the City of Marathon which the DONOR sponsors, endorses, recommends, supervises, or requires for counseling, assistance, evaluation, or treatment. This provision shall apply whether or not such program is required by statute, as a condition of probation, or is provided on a voluntary basis.

19. INSURANCE: DONOR agrees that it maintains in force at its own expense a liability insurance policy which will insure and indemnify the DONOR and the City from any suits, claims or actions brought by any person or persons and from all costs and expenses occurring during the agreement or thereafter that results from performance by DONOR of the obligations set forth in this agreement.

20. NON-WAIVER OF IMMUNITY: Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of CITY and DONOR 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 Agreement entered into by the CITY be required to contain any provision for waiver.

21. PUBLIC RECORDS COMPLIANCE: DONOR must comply with Florida public records laws, including but not limited to Chapter 119, Florida Statutes and Section 24 of Article I of the Constitution of Florida. The City and DONOR 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 City and DONOR in conjunction with this contract and related to contract performance. The City shall have the right to unilaterally cancel this contract upon violation of this provision by the DONOR. Failure of the DONOR to abide by the terms of this provision shall be deemed a material breach of this contract and the City 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 contract.

The DONOR 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 contract, the DONOR is required to:

- (1) Keep and maintain public records that would be required by the City to perform the service.
- (2) Upon receipt from the City's custodian of records, 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 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 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 DONOR or keep and maintain public records that would be required by the City to perform the service. If the DONOR transfers all public records to the City upon completion of the contract, the DONOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the DONOR keeps and maintains public records upon completion of the contract, the DONOR 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 records, in a format that is compatible with the information technology systems of the City.
- (5) A request to inspect or copy public records relating to a City contract must be made directly to the City, but if the City does not possess the requested records, the City shall immediately notify the DONOR of the request, and the DONOR must provide the records to the City or allow the records to be inspected or copied within a reasonable time.

If the DONOR does not comply with the City's request for records, the City shall enforce the public records contract provisions in accordance with the contract, notwithstanding the City's option and right to unilaterally cancel this contract upon violation of this provision by the DONOR. An DONOR who fails to provide the public records to the City or pursuant to a valid public records request within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes.

The DONOR 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 DONOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DONOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, DIANE CLAVIER AT PHONE NO. 305-289-4130, CITYCLERK@CI.MARATHON.FL.US, CITY OF MARATHON, 9805 OVERSEAS HIGHWAY, MARATHON, FLORIDA 33050.

22. NONDISCRIMINATION: CITY and DONOR agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. CITY or DONOR agrees to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of disability; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91- 616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 12101 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; and 10) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

23. NO SOLICITATION/PAYMENT. CITY and DONOR warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, the DONOR agrees that the CITY shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

24. NO PLEDGE OF CREDIT: DONOR 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. DONOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this contract.

25. TAXES: CITY is exempt from payment of Florida State Sales and Use taxes. DONOR shall not be exempted by virtue of the CITY'S exemption from paying sales tax to its suppliers for materials used to fulfill its obligations under this contract, nor is DONOR authorized to use the CITY's Tax Exemption Number in securing such materials. DONOR shall be responsible for any and all taxes, or payments of withholding, related to services rendered under this Agreement.

26. NOTICE: All written correspondence to the CITY shall be dated and signed by an authorized representative of the DONOR. Any written notices or correspondence required or permitted under this Agreement shall be sent by United States Mail, certified, return receipt requested, postage pre-paid, or by courier with proof of delivery. The place of giving Notice shall remain the same as set forth herein until changed in writing in the manner provided in this paragraph. Notice is deemed received by DONOR when hand delivered by national courier with proof of delivery or by U.S. Mail upon verified receipt or upon the date of refusal or non-acceptance of delivery. Notice shall be sent to the following persons:

For DONOR

For City

Brian Shea, Planning Director
9805 Overseas Highway
Marathon, Florida 33050

and

Steven Williams, City Attorney
9805 Overseas Highway
Marathon, Florida 33050

27. AUTHORITY: DONOR warrants that it is authorized by law to engage in the performance of the activities encompassed by the project herein described. Each party represents and warrants to the other that the execution, delivery, and performance of this Agreement have been duly authorized by all necessary CITY and corporate action, as required by law. Each party agrees that it has had ample opportunity to submit this Contract to legal counsel of its choice and enters into this Agreement freely, voluntarily, and with advice of counsel.

28. CLAIMS FOR FEDERAL OR STATE AID: DONOR and CITY agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission. Any conditions imposed as a result of funding that affect the Project will be provided to each party.

29. PRIVILEGES AND IMMUNITIES: 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 CITY, when performing their respective functions under this Agreement within the territorial limits of the CITY 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 CITY.

30. LEGAL OBLIGATIONS AND RESPONSIBILITIES: Non-Delegation of Constitutional or Statutory Duties. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the CITY, except to the extent permitted by the Florida constitution, state statute, and case law.

31. NON-RELIANCE BY NON-PARTIES: 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 DONOR agree that neither the CITY nor the DONOR 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.

32. ATTESTATIONS: DONOR agrees to execute such documents as the CITY may reasonably require, to include, but not limited to, a Scrutinized Companies Affidavit, Public Entity Crime Statement, an Ethics Statement, Non-Collusion Statement, a Drug-Free Workplace Statement attached hereto as Exhibit A.

33. NO PERSONAL LIABILITY: No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent, or employee of the City of Marathon in his or her individual capacity, and no member, officer, agent or employee of the City of Marathon shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

34. SECTION HEADINGS: 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.

35. E-VERIFY SYSTEM: Beginning January 1, 2021, in accordance with Fla. Stat., Sec. 448.095, if applicable, the DONOR and any subcontractor shall register with and shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees hired by the DONOR during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees hired by the subcontractor during the Contract term. Any subcontractor shall provide an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The DONOR shall comply with and be subject to the provisions of Fla. Stat., Sec. 448.095.

36. CONSTRUCTION OF AGREEMENT: This Agreement shall not be construed more strictly against one party than against another merely by virtue of the fact that it may have been prepared by one of the parties, it being acknowledged that both the DONOR and the CITY have substantially and materially contributed to the preparation thereof.

37. COVENANT OF NO INTEREST: CITY and DONOR covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

38. UNCONTROLLABLE CIRCUMSTANCE/FORCE MAJEURE: Any delay or failure of either Party to perform its obligations under this Agreement will be excused to the extent that the delay or failure was caused directly by an event beyond such Party's control, without such Party's fault or negligence and that by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable: (a) acts of God; (b) flood, fire, earthquake, explosion, tropical storm, hurricane or other declared emergency in the geographic area of the Project; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest in the geographic area of the Project; (d) government order or law in the geographic area of the Project; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority prohibiting work in the geographic area of the Project; (each, a "Uncontrollable Circumstance"). DONOR's financial inability to perform, changes in cost or availability of materials, components, or services, market conditions, or supplier actions or contract disputes will not excuse performance by DONOR under this Section. DONOR shall give CITY written notice within seven (7) days of any event or circumstance that is reasonably likely to result in an

Uncontrollable Circumstance, and the anticipated duration of such Uncontrollable Circumstance. DONOR shall use all diligent efforts to end the Uncontrollable Circumstance, ensure that the effects of any Uncontrollable Circumstance are minimized and resume full performance under this Agreement. The CITY will not pay additional cost as a result of an Uncontrollable Circumstance. The DONOR may only seek a no cost Change Order for such reasonable time as the City's Representative may determine.

39. FURTHER ASSURANCES: The parties shall promptly execute all documents reasonably required and take such other steps in addition to the execution of this Agreement to effectuate the intent and purpose of this Agreement.

40. ADJUDICATION OF DISPUTES OR DISAGREEMENTS; MEDIATION: CITY and DONOR agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law. This Agreement is not subject to arbitration. This provision does not negate or waive the provisions of Paragraphs 14 and 15 of this Agreement concerning termination or cancellation.

The CITY and DONOR agree that, in the event of conflicting interpretations of the terms or a term of this Agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

41. GOVERNING LAW, VENUE, AND INTERPRETATION: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to Agreements made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the CITY and DONOR agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida. The Parties waive their rights to trial by jury.

42. ATTORNEY FEES AND COSTS: The CITY and DONOR agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, at all levels of the court system, and shall including in appellate proceedings.

43. SEVERABILITY: 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 CITY and DONOR 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.

44. ENTIRE AGREEMENT: This agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements with respect to such subject matter between the CITY and the DONOR.

45. EXECUTION IN COUNTERPARTS. 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 authorized representative of CITY and DONOR hereto may execute this Agreement by signing any such counterpart.

46. EFFECTIVE DATE: This Agreement shall become effective ("Effective Date") upon the date this Agreement is approved by the City Council.

[SIGNATURES ON NEXT PAGE]

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed on the day and date first above written.

Execution by the DONOR must be by a person with authority to bind the entity. **Signature of the person executing the document must be notarized and witnessed by another officer of the entity, or by two other witnesses.**

(SEAL)
ATTEST: DIANE CLAVIER, CLERK

CITY OF MARATHON, FLORIDA

By: _____
City Clerk

By: _____
Mayor

DATE:

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

Steve Williams, City Attorney

DONOR:

WITNESSES:

Signature

Signature

Print Name

Print Name

DATE:

DATE:

Signature

Print Name

DATE: _____

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me by means of [] physical presence, or [] online notarization, this _____ day of _____, 2024, by _____, authorized person of _____ on behalf of the Company.

Signature of Notary Public-State of Florida

Personally Known or Produced Identification
Type of Identification Produced

Name of Notary

EXHIBIT A

NON-COLLUSION AFFIDAVIT

I, _____ of the city of _____
according to law on my oath, and under penalty of perjury, depose and say that:

1. I am _____
the proposer making the Proposal for the project described in the notice for calling for proposals for:

_____ and that I executed the said proposal with full authority to do so;

2. The prices in this proposal have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor; and
3. Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to proposal opening, directly or indirectly, to any other proposer or to any competitor; and
4. No attempt has been made or will be made by the proposer to induce any other person, partnership or corporation to submit, or not to submit, a proposal for the purpose of restricting competition; and
5. The statements contained in this affidavit are true and correct and made with full knowledge that City relies upon the truth of the statements contained in this affidavit in awarding contracts for said project.

(Signature of Proposer)

(Date)

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of [] physical presence or [] online notarization this ____ day of _____, 2024, by

Signature of Notary Public-State of Florida

Name of Notary

My Commission Expires: _____

Personally Known _____

Type of Identification

Produced

OR Produced Identification _____

LOBBYING AND CONFLICT OF INTEREST CLAUSE

ETHICS CLAUSE

" _____ "
(Company)

" warrants that he/she/it has not employed, retained or otherwise had act on his/her/its behalf any former City officer or employee or any City officer or employee. For breach or violation of this provision the City may, in its discretion, terminate this contract without liability and may also, in its discretion, deduct from the contract or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former City officer or employee".

(Signature)

Date: _____

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of [] physical presence or [] online notarization this ____ day of _____, 2024, by

Signature of Notary Public-State of Florida

Name of Notary

My Commission Expires: _____

Personally Known _____

Type of Identification

Produced

OR Produced Identification _____

DRUG-FREE WORKPLACE FORM

The undersigned vendor in accordance with Florida Statute, Sec. 287.087 hereby certifies that:

(Name of Proposer)

1. Publishes a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Informs employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Gives each employee engaged in providing the commodities or contractual services that are under proposal a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notifies the employees that, as a condition of working on the commodities or contractual services that are under proposal, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 (Florida Statutes) or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Imposes a sanction on or requires the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, for any employee who is so convicted.
6. Makes a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Proposer's Signature

Date

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of [] physical presence or [] online notarization this ____ day of _____, 2024, by

Signature of Notary Public-State of Florida

Name of Notary
My Commission Expires: _____

Personally Known _____
Type of Identification
Produced

OR Produced Identification _____

PUBLIC ENTITY CRIME STATEMENT

"A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list."

I have read the above and state that neither _____
(Proposer's name) nor any Affiliate has been placed on the convicted vendor list within the last thirty-six (36) months.

(Signature)

Date: _____

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of [] physical presence or [] online notarization this ____ day of _____, 2024, by

Signature of Notary Public-State of Florida

Name of Notary

My Commission Expires: _____

Personally Known _____
Type of Identification _____
Produced _____

OR Produced Identification _____

VENDOR CERTIFICATION REGARDING SCRUTINIZED COMPANIES LISTS

Project Description(s): _____
Respondent Vendor Name: _____
Vendor FEIN: _____
Vendor's Authorized Representative Name and Title: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone Number _____ Email Address: _____

Section 287.135, Florida Statutes prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a Boycott of Israel.

As the person authorized to sign on behalf of Respondent, I hereby certify that the company identified above in the Section entitled "Respondent Vendor Name" is not listed on the Scrutinized Companies that Boycott Israel List.

I understand that pursuant to Section 287.135, Florida Statutes, the submission of a false certification may subject company to civil penalties, attorney's fees, and/or costs. I further understand that any contract with the CITY may be terminated, at the option of the CITY, if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel.

Certified By: _____, who is authorized to sign on behalf of the above referenced company.

Authorized Signature: _____

Print Name: _____

Title: _____

Note: The List are available at the following Department of Management Services Site:

http://www.dms.myflorida.com/businessoperations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendorlists

