



CITY COUNCIL AGENDA STATEMENT

Meeting Date: February 11, 2025
To: Honorable Mayor and City Council
From: George Garrett, City Manager

Agenda Item: **Resolution 2025-08**, Approving Amendment No. 2 To The Agreement Between The Department Of The Army And The City Of Marathon, Florida For Planning Design And Construction Of The Florida Keys Water Quality Improvement Program Marathon Project In Monroe County, Florida; And Providing For An Effective Date..

BACKGROUND

The Florida Keys National Marine Sanctuary includes over 3,800 square miles of nearshore waters that are a part of a complex ecosystem that includes seagrass meadows, mangrove islands and the only living barrier coral reef in North America.

Congress has directed the Army Corps Of Engineers (ACOE) to assist with implementation of infrastructure improvements in the Florida Keys to improve nearshore water quality within the Florida Keys National Marine Sanctuary. Congress has authorized the ACOE to provide technical and financial assistance to carry out projects for the planning, design and construction of treatment facilities to improve water quality in the Florida Keys National Marine Sanctuary. The primary purpose of this effort is to improve water quality in the Florida Keys by implementing several wastewater and storm water master plans previously prepared for Monroe County and various municipalities within Monroe County.¹

This assistance program is known as the Florida Keys Water Quality Improvement Program ("FKWQIP"). There are at least seven (7) parties which are logical Local Sponsors of water quality improvement projects in the Florida Keys under the FKWQIP to help improve stormwater and wastewater treatment. The Parties have been engaged for the past approximately twenty years in efforts to provide centralized wastewater treatment plants and collection systems, to operate, upgrade, and improve existing wastewater treatment systems, or to create stormwater treatment systems to protect the fragile ecosystem of the Florida Keys and to improve water quality in the Florida Keys National Marine Sanctuary.

In its original authorization, Congress provided for the potential appropriation of \$100,000,000.00. Congress has to date appropriated nearly 100 percent of the authorized amount to six (6) entities, three of which have received the largest proportion; City of Marathon, Islamorada, the Village of Islands, and the Key Largo Wastewater Treatment District. In 2022, Congress extended FKWQIP to a \$200,000,000.00 authorization and expanded the use of the funds to improve canal water quality.

Under FKWQIP Local Sponsors have worked to create Project Partnership Agreements (PPA) with the Army Corps of Engineers under a Program Management Plan (PMP) developed by the ACOE for FKWQIP. The attached document, Exhibit "A," to this Resolution provides Amendment No. 2 to the City

of Marathon PPA which establishes the additional ACOE authorization for Marathon to utilize FKWQIP funds for the City's deep well project,

CONSISTENCY CHECKLIST:

Yes

No

- 1. Comprehensive Plan
- 2. Other – 2010 Sewer Mandate

 X
 X

FISCAL NOTE:

Approval of this amendment will allow the City to submit for reimbursement of funds for future work completed that is included in this amended scope of work (i.e. deep well, transmission lines, pumping stations and work in Service Areas 3 and 6)

RECOMMENDATION:

Approval

**CITY OF MARATHON, FLORIDA
RESOLUTION 2025-08**

**A RESOLUTION OF THE CITY OF MARATHON, FLORIDA
APPROVING AMENDMENT NO. 2 TO THE AGREEMENT BETWEEN
THE DEPARTMENT OF THE ARMY AND THE CITY OF MARATHON,
FLORIDA FOR PLANNING DESIGN AND CONSTRUCTION OF THE
FLORIDA KEYS WATER QUALITY IMPROVEMENT PROGRAM
MARATHON PROJECT IN MONROE COUNTY, FLORIDA; AND
PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Florida Keys National Marine Sanctuary includes over 3,800 square miles of nearshore waters that are a part of a complex ecosystem that includes seagrass meadows, mangrove islands and the only living barrier coral reef in North America; and

WHEREAS, Congress has directed the Army Corps Of Engineers (ACOE) to assist with the implementation of infrastructure improvements in the Florida Keys to improve nearshore water quality within the Florida Keys National Marine Sanctuary; and

WHEREAS, Congress has authorized the ACOE to provide technical and financial assistance to carry out projects for the planning, design and construction of treatment facilities to improve water quality in the Florida Keys National Marine Sanctuary; and

WHEREAS, the primary purpose of this effort is to improve water quality in the Florida Keys by implementing several wastewater and storm water master plans previously prepared for Monroe County and various municipalities within Monroe County; and

WHEREAS, this assistance program is known as the Florida Keys Water Quality Improvement Program ("FKWQIP"); and

WHEREAS, there are at least seven (7) parties which are logical Local Sponsors of water quality improvement projects in the Florida Keys under the FKWQIP to help improve stormwater and wastewater treatment; and

WHEREAS, the Parties have been engaged for the past approximately twenty years in efforts to provide centralized wastewater treatment plants and collection systems, to operate, upgrade, and improve existing wastewater treatment systems, or to create stormwater treatment systems to protect the fragile ecosystem of the Florida Keys and to improve water quality in the Florida Keys National Marine Sanctuary; and

WHEREAS, in its original authorization, Congress provided for the potential appropriation of \$100,000,000.00; and

WHEREAS, Congress has to date appropriated nearly 100 percent of the authorized amount to six (6) entities, three of which have received the largest proportion; City of Marathon, Islamorada, the Village of Island, and the Key Largo Wastewater Treatment District; and

WHEREAS, in 2022, Congress extended FKWQIP to a \$200,000,000.00 authorization and expanded the use of the funds to improve canal water quality; and

WHEREAS, under FKWQIP Local Sponsors have worked to create Project Partnership Agreements (PPA) with the Army Corps of Engineers under a Program Management Plan (PMP) developed by the ACOE for FKWQIP; and

WHEREAS, the attached document, Exhibit "A," provides Amendment No. 2 to the City of Marathon PPA which establishes the additional ACOE authorization for Marathon to utilize FKWQIP funds for the City's deep well project,

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 hereby incorporated into this Agreement.

Section 2. That approves Amendment No. 2 to the City of Marathon Project Partnership Agreement with the ACOE as provided in Exhibit "A."

Section 3. The City Council directs staff to provide original executed copies of this Resolution with Exhibit A attached to the ACOE.

Section 4. This resolution shall be effective upon adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 11TH DAY OF FEBRUARY, 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

AMENDMENT NO. 2
TO
AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF MARATHON, FLORIDA
FOR
PLANNING DESIGN AND CONSTRUCTION
OF THE
FLORIDA KEYS WATER QUALITY IMPROVEMENT PROGRAM
MARATHON PROJECT
IN MONROE COUNTY, FLORIDA

This Amendment No. 2 is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the District Commander for Jacksonville District, and the City of Marathon, Florida (hereinafter the “Non-Federal Sponsor”), represented by its Mayor.

WITNESSETH, THAT:

WHEREAS, the Government and the Non-Federal Sponsor entered into an agreement on October 14, 2008 (hereinafter the “Agreement”) for design and construction of the Florida Keys Water Quality Improvement Program Regional Wastewater Treatment and Collection Facilities Marathon Project, Monroe County, Florida (hereinafter the “Project”);

WHEREAS, on November 27, 2009 the Government and the Non-Federal Sponsor amended the Agreement to include additional documentation requirements in accordance with the American Recovery and Reinvestment Act of 2009, Public Law 11-5, to the Project.

WHEREAS, work was evaluated in a Letter Report consistent with the statutory requirements for the Florida Keys Water Quality Improvement Program and consistent with the requirements of the National Environmental Policy Act and other applicable environmental statutes; and

WHEREAS, the Government and the Non-Federal Sponsor desire to amend further the Agreement to add work.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree to amend further the Agreement as follows:

1. Throughout the Agreement, all occurrences of the term “District Engineer” are replaced with “District Commander”.

2. Delete the second Whereas clauses and replace them with the following:

“WHEREAS, Section 109, as amended, provides that \$200,000,000 in Federal funds are authorized to be appropriated for assistance for the Section 109 Program;”

3. Delete Article I.A. and replace it with the following:

“A. The term “*Project*” shall mean:

1. A Service Area 1 (Knight’s Key) the construction of a best achievable treatment plant and a collection system with effluent disposal through Class V shallow injection wells; for Service Area 2 (Boot Key) the construction of a small best achievable treatment on-site unit with gravity flow with appropriate effluent disposal; for Service Area 3 the construction from 11th Street to 39th Street with a .250 MGD nutrient removal wastewater treatment plant; improvements to the Wastewater Treatment Facility in Service Area 4, including the addition of a sand filtration system on top of existing equipment within an existing impacted footprint; the Service Area 5 Area work consisting of the expansion of the existing Little Venice advanced wastewater treatment plant and construction of a vacuum collection system from 60th Street through Vaca Cut; expansion of the Wastewater Infrastructure in Service Area 6 at Coco Plum; and the construction of the Service Area 7 system including the provision of relocation of two best available technology wastewater treatment plants (possibly through relocation of existing plants) to serve commercial areas along US 1, as well as the construction of on-site and cluster treatment systems to serve residential customers. This *Project* is generally described in the Decision Document for the Florida Keys Water Quality Improvement Program (FKWQIP), Marathon Project, dated May 9, 2008 and approved by the District Engineer, U.S. Army Corps of Engineers, Jacksonville District, on May 21, 2008; and

2. Constructing and expanding effluent storage tanks and pumping stations at the wastewater treatment facility’s Service Areas 3, 4, 5, 6 and 7 and constructing effluent transmission mains that will transport the effluent from the effluent pumping stations to the Deep Injection Well site as generally described in the Letter Report dated _____ and approved by the Division Commander for South Atlantic Division on _____.”

4. Delete Article I.J. and replace it with the following:

“J. The term “*Section 109 Program Limit*” shall mean the amount of Federal funds authorized to be appropriated for the Section 109 Program. As of the effective date of this Agreement, such amount is \$200,000,000.”

5. Delete Article II.E.1. and replace it with the following:

“1. As of the effective date of this Amendment Number 4, \$72,000,000 of Federal funds have been provided by the Congress of the United States (hereinafter the “Congress”) for the Section 109 Program. The total authorized Federal share of the Section 109 Program is \$100,000,000, of which \$29,560,000 is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the Section 109 Program or the *Project*. Further, the Government’s financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.”

6. Delete Article IV.A.1. and replace it with the following:

“As of the effective date of this Amendment Number 2, *total project costs* are projected to be \$45,477,000; the Government’s share of *total project costs* is projected to be \$29,560,000; the Non-Federal Sponsor’s share of *total project costs* is projected to be \$15,917,000; *total project costs* to be incurred by the Government are projected to be \$1,309,000; *total project costs* to be incurred by the Non-Federal Sponsor are projected to be \$44,208,000; total reimbursements in accordance with paragraph B.2. of this Article are projected to be \$28,251,000 (\$29,560,000 minus administration); the costs included in *total project costs* for the *pre-Agreement planning and design work* determined in accordance with Article II.K. of this Agreement are projected to be \$0; the Government’s share of financial obligations for data recovery activities pursuant to Article XV.E. of this Agreement is projected to be \$0; and the Non-Federal Sponsor’s share of financial obligations for data recovery activities pursuant to Article XV.E. of this Agreement is projected to be \$0. These amounts are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.”

7. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number 2, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

CITY OF MARATHON, FLORIDA

BY: _____
Brandon L. Bowman.
Colonel, U.S. Army
District Commander

BY: _____
Lynn Landry
Mayor

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, Steven Williams, do hereby certify that I am the principal legal officer for the City of Marathon, Florida, that the City of Marathon, Florida is a legally constituted public body with full authority and legal capability to perform the terms of the Amendment Number 2 to the Agreement Between the Department of the Army and the City of Marathon, Florida for Planning, Design and Construction of the Florida Keys Water Quality Improvement Program Marathon Project in Monroe County, Florida, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Amendment, and that the person who executed this Amendment on behalf of the City of Marathon, Florida acted within her statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
_____ day of _____ 20__.

Steven Williams
City Attorney

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Lynn Landry
Mayor
City of Marathon, Florida

DATE: _____