

RESOLUTION NO. 02-10-07

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN AGREEMENT BETWEEN THE CITY OF MARATHON AND THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE INSTALLATION AND MAINTENANCE OF TRAFFIC SIGNALS, AUTHORIZING THE MAYOR TO EXECUTE THE TRAFFIC SIGNAL MAINTENANCE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marathon, Florida (the "City") desires to enter into an agreement for the installation and maintenance of traffic signals with the Florida Department of Transportation ("FDOT") as further described on Exhibit " A attached hereto and made a part hereof; and

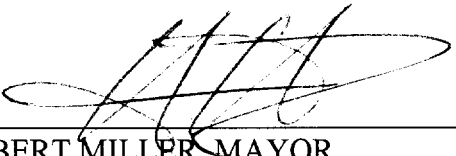
NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:

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

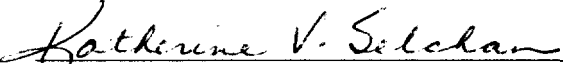
Section 2.     Approval of Agreement. The Agreement between the City and FDOT that is attached as Exhibit " A is approved. The City Manager and City Attorney are authorized to finalize the terms and conditions of the Agreement and the Mayor is authorized to execute said Agreement on behalf of the City

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

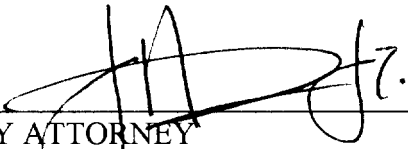
PASSED AND ADOPTED this 23rd day of October, 2001.

  
\_\_\_\_\_  
ROBERT MILLER, MAYOR

ATTEST:

  
\_\_\_\_\_  
KATHERINE V. SILCHAN  
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY

  
\_\_\_\_\_  
CITY ATTORNEY

AGREEMENT

THIS AGREEMENT made this 29th day of January, 2002, by and between the FLORIDA KEYS ELECTRIC COOPERATIVE ASSOCIATION, INC., hereinafter called ("FKEC") and the CITY OF MARATHON, a municipal Florida corporation, hereinafter called ("CITY"):

WHEREAS, FKEC, is a Florida, not-for profit corporation, organized and existing under Chapter 425, Florida Statutes, and is an electric utility providing electric service pursuant to Territorial Agreements approved by the Florida Public Service Commission in its service area in Monroe County, Florida, and

WHEREAS, the CITY, is engaged in the operation and maintenance of street lights and traffic signals within FKEC's service area in Monroe County, and

WHEREAS, the CITY desires FKEC to provide maintenance services for the outdoor lighting and traffic signals (hereinafter sometimes referred to as "facilities") in order that the CITY may limit the costs to its citizens that would be incurred by the expense of additional staff and service vehicles required to perform such maintenance, and

WHEREAS, FKEC, at the direction of the CITY, is willing to provide such maintenance service for which the CITY shall compensate FKEC as provided herein, and

WHEREAS, FKEC and the CITY intend that the CITY shall supply all the necessary replacement parts and other related materials necessary for such maintenance,

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions as stated herein, the parties agree as follows:

1. FKEC shall, at the direction of the CITY, act as the CITY's agent for the maintenance of traffic signals and street lights along roadways and other outdoor Ball Park lighting at CITY Parks that exist on the date of this Agreement. ✓
2. FKEC will endeavor to maintain an adequate inventory of materials, equipment, and replacement parts to maintain the traffic signals. The CITY shall reimburse FKEC for the average cost of such items plus twenty percent (20%) for warehouse costs. ✓
3. FKEC's maintenance responsibilities hereunder shall not include any obligation to construct new facilities, or to assume any liability or responsibility for the control of traffic, except as required to provide the maintenance services hereunder. Neither shall FKEC have any responsibility for making decisions, judgments, or planning, regarding traffic safety, location of traffic signals, the kinds and types of such devices purchased by the CITY, computer hardware and software to operate such equipment, or any other matters that lie within the duties and obligations of the CITY as a

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governmental entity to help protect the health, safety and welfare of the citizens of the City of Marathon and the traveling public. FKEC shall be responsible for compliance with standard traffic safety procedures required by the Florida Department of Transportation while performing maintenance services hereunder.

4. FKEC shall provide the maintenance services in a reasonable, prudent, and timely manner, and with due regard to the fact that the CITY, and not FKEC, has exercised its judgment in the purchase of the facilities to be maintained. ✓
5. The CITY shall pay FKEC its fully allocated costs for labor, materials, and overhead, including, but not limited to, any allocated share of FKEC's administrative and general expenses and insurance costs, following generally accepted utility accounting practices, and such payment shall be invoiced to the CITY on a monthly basis with reasonable detail identifying such costs. All invoices shall be due and payable as consistent with the Florida Prompt Payment Act, Florida Statutes 218.70 and 218.79.
6. Nothing herein contained shall be construed to reduce the obligation of the CITY to provide for the operation of the facilities, and the parties specifically agree that FKEC, by entering into this Agreement, shall neither assume nor be obligated to assume any responsibility for the operation and control of the facilities.

The CITY, recognizing the inherent risks and likelihood of damage to persons and property, should the facilities fail to operate properly, and further recognizing that FKEC's primary mission is to provide electric service to its members and not to engage in activities that could place its members' assets at risk, does hereby covenant and agree to indemnify and save FKEC harmless of and from all losses, claims, suits, damages to persons and property, and reasonable attorneys' fees that may arise due to the failure of the facilities to operate for any reason.

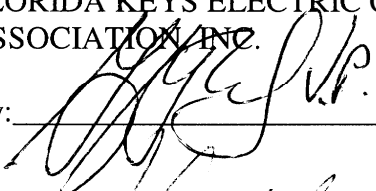
8. As the CITY adds additional facilities to be maintained hereunder, the CITY shall notify FKEC in writing as the location, type, and kind of additional facilities, Unless FKEC has received such notice, it shall have no obligation to maintain such new facilities.
9. Either party shall have the right to terminate this Agreement upon 60 days/ written notice to the other.
10. This is the entire agreement between the parties, superseding all prior oral or written agreements or negotiations, and no alteration, modification, or amendment to this Agreement shall be valid unless the same be reduced to writing and signed by the parties hereto.

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11. This Agreement shall be binding on the successors and assigns of the respective parties, and shall be construed in accordance with the laws of the State of Florida, and shall be interpreted without regard to the party or parties deemed to have drafted it.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal this 29<sup>th</sup> day of January, 2002.

FLORIDA KEYS ELECTRIC COOPERATIVE  
ASSOCIATION, INC.

By:  \_\_\_\_\_, President

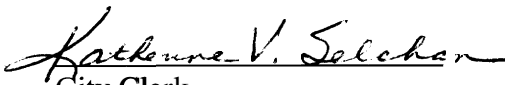
Attest:  \_\_\_\_\_, Secretary

CITY OF MARATHON

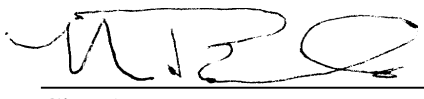
By:  \_\_\_\_\_  
Craig Wrathell, City Manager

By:  \_\_\_\_\_  
John Bartus, Vice Mayor

Attest:

  
Katherine V. Salcher  
City Clerk

Approved as to legal form and sufficiency:

  
\_\_\_\_\_  
City Attorney

#4882v1.ks

Originals Katerly (FEDS)  
cc: Susan  
2/28



# FLORIDA KEYS ELECTRIC COOPERATIVE ASSOCIATION, INC. - FKEC

91605 OVERSEAS HIGHWAY PO. BOX 377, TAVERNIER, FL 33070-0377 PHONE (305) 852-2431 FAX (305) 852-4794

February 28, 2002

MAR 4 2002

Chuck Adams  
Director of Community Services  
City of Marathon, Florida  
10045-55 Overseas Highway  
Marathon, Florida 33050

Re: FKEC/City of Marathon Agreement  
For Maintenance of Traffic Signals and Outdoor Lighting

Dear Mr. Adams:

Enclosed please find two fully executed originals of the Maintenance of Traffic Signals and Outdoor Lighting Agreement between Florida Keys Electric Cooperative Association, Inc. (FKEC) and the City of Marathon.

Please be advised that I have replaced the redline and strikeout pages with a clean copy (page 1 of 3 and page 2 of 3) of which I have initialed on the bottom. Upon receipt, please fully execute one original (by also initialing pages 1 and 2) and return back to me for my records, keeping the other original for your files.

Should you have any questions, please do not hesitate to call me.

Very truly yours,

Charles A. Russell  
Chief Executive Officer  
and General Manager

Enclosure(s)



Received by Katerly Salcha  
City Clerk, on March 7, 2002



March 7, 2002

Transmitted via Certified Mail

70012510000106034061

Florida Keys Electric Cooperative Association, Inc.  
91605 Overseas Highway  
P.O. Box 377  
Tavernier, FL 33070-0377

Attention: Mr. Charles A. Russell  
Chief Executive Officer and General Manager

Subject: **City of Marathon - Monroe County, Florida  
Agreement for Maintenance of Traffic Signals  
and Outdoor Lighting**

Dear Mr. Russell:

I am in receipt of the two (2) fully executed originals of the Maintenance of Traffic Signals and Outdoor Lighting Agreement between the Florida Keys Electric Cooperative Association, Inc. (FKEC) and the City of Marathon.

I have reviewed the clean copy pages (page 1 of 3 and page 2 of 3), which you had replaced the redlined and strikeout pages, and have initialed the pages indicating acceptance on behalf of the City.

Therefore, enclosed please find one (1) fully executed original that I am returning back to your attention for your records.

Thank you and if you have any further comments or concerns, please do not hesitate to contact me directly.

Sincerely,

Katherine V. Selchan  
City Clerk  
City of Marathon

:ks  
Enclosures

**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
*(Domestic Mail Only; No Insurance Coverage Provided)*

1905 5090 1000 0752 1002

[Redacted area]

Postage	\$ .57	
Certified Fee	2.10	
Return Receipt Fee (Endorsement Required)	1.50	
Restricted Delivery Fee (Endorsement Required)		
<b>Total Postage &amp; Fees</b>	<b>\$ 4.17</b>	

Sent To: *Charles, Ius...@FKEC*  
 Street, Apt. No. or PO Box No. *91605 Overseas Hwy, P.O. Box 377*  
 City, State *Tavernier, FL 33070-0377*