

**CITY OF MARATHON, FLORIDA
RESOLUTION 2004-093**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN AGREEMENT WITH THE FLORIDA KEYS ELECTRIC COOPERATIVE ASSOCIATION, INC., FOR THE REPAIR AND REPLACEMENT OF OUTDOOR LIGHTING AND TRAFFIC SIGNALS IN ACCORDANCE WITH THE FEE SCHEDULE ATTACHED TO THE AGREEMENT

WHEREAS, the City of Marathon, Florida (the "City") is engaged in the operation and maintenance of street lights and traffic signals within the City; and,

WHEREAS, the City desires to enter into an agreement with the Florida Keys Electric Cooperative Association, Inc., ("FKEC") to provide certain repair and replacement services for the outdoor lighting and traffic signals (the "Services") in the City; and

WHEREAS, FKEC agrees to provide the Services to the City and City agrees to reimburse FKEC for the Services in accordance with the fee schedule attached to the Agreement; and

WHEREAS, this expenditure has been budgeted by the City in the Capital Infrastructure Fund.

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 by this reference.


Section 2. The agreement between the City and FKEC, for the Services, a copy of which is attached as Exhibit "A," (the "Agreement") 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 approved.

Section 3. The City Manager or his designee is authorized to execute the Agreement on behalf of the City.

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 22nd day of September, 2004.

THE CITY OF MARATHON, FLORIDA



Jeffrey M. Pinkus, Mayor

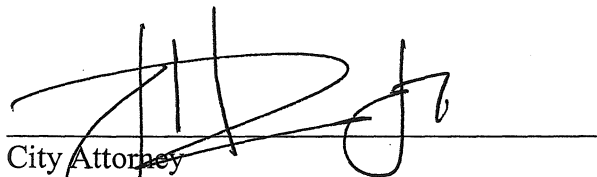
AYES: Bartus, Bull, Mearns, Miller, Pinkus
NOES: None
ABSENT: None
ABSTAIN: None

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

AGREEMENT

THIS AGREEMENT made this ____ day of September, 2004, 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 certain repair and replacement services for the outdoor lighting and traffic signals as described on Schedule "A", attached hereto (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 repair and replacement services, and

WHEREAS, FKEC, at the request and direction of the CITY, is willing to provide such repair and replacement services for which the CITY shall compensate FKEC as provided herein, and

WHEREAS, FKEC and the CITY intend that FKEC will provide the necessary replacement parts and other related materials necessary for such repair and replacement services,

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 request and direction of the CITY, provide repair and replacement services for the facilities described on Schedule "A". Subject to Paragraph 3 hereof, such repair and replacement services shall include the repair of any non-functioning part of any facility, including the total replacement of any facility when requested by the CITY.
2. FKEC will endeavor to maintain an adequate inventory of materials, equipment, and replacement parts to repair the facilities. The CITY shall reimburse FKEC for the average cost of such items plus twenty percent (20%) for warehouse costs.
3. FKEC's repair and replacement responsibilities hereunder shall not include any obligation to construct new facilities, to monitor or inspect the facilities, or to assume any liability or responsibility for the control of traffic. Such responsibilities shall be subject to the availability of replacement parts. FKEC shall not be liable to the CITY for delays or failure in the

carrying out of any duty or responsibility under this Agreement when such delay or failure was by reason of or through any cause reasonably beyond its control, strike, stoppage in labor, failure of contractors or suppliers of materials, riot, fire, flood, weather, order of any court, act of God or public enemies, failure or malfunction of system facilities other than as described in Paragraph 7 herein, unscheduled outage of generating units or transmission facilities, natural disaster or state of emergency; provided, however, that FKEC shall use due and, in its judgments, practicable diligence to remove such causes thereof. Neither shall FKEC have any responsibility for making decisions, judgments, or planning, regarding traffic safety, location of traffic signals, outdoor lighting facilities, 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 governmental entity to 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 repair and replacement services hereunder.

4. FKEC shall provide the repair and replacement services when requested in a reasonable, prudent, and timely manner, as outlined in Exhibit "1", and with due regard to the fact that the CITY, and not FKEC, has exercised its judgment in the purchase of the facilities. By undertaking the repair and replacement services hereunder FKEC shall not be deemed to have made any assessment, determination or inspection of the facilities, nor shall FKEC be deemed to have approved of the adequacy, sufficiency or appropriateness of the facilities for any purpose, including, but not limited to, safety, security and level of illumination.
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, including costs incurred by FKEC in the training/certification of its employees assigned to the repair and replacement services, 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 through §218.79.
6. Nothing herein contained shall be construed to reduce the obligation of the CITY to provide for the monitoring, inspection and 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 monitoring, inspection, operation and control of the facilities. The CITY shall have the duty to notify FKEC, as hereinafter provided, of the necessity for any repair or replacement services.

7. 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 services 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 other than the failure to operate as a result of intentional acts or gross negligence by FKEC, its agents, and employees. Further, FKEC shall, to the extent permitted by law, indemnify and save harmless the CITY of and from all losses, claims, suits, damages to persons and property, and reasonable attorney's fees that may arise due to FKEC's intentional failure to properly repair any of the facilities when requested to do so by the CITY, or due to its gross negligence in undertaking such repairs.
8. No additional facilities may be added to the scope of this Agreement without FKEC's prior written approval, and if such approval is granted, such additional facilities shall be identified as to location, kind and type in a written schedule to be attached to Schedule "A", and dated and signed by both parties.
9. Notwithstanding any provision herein to the contrary, FKEC shall have no duty or obligation to monitor or inspect the facilities at any time. FKEC's repair and replacement responsibilities are understood to be "on call" following practices and procedures as specified in Exhibit "1". It shall be the duty and responsibility of the CITY to notify FKEC of a need to provide repair and replacement services to a particular facility, and upon such notification, FKEC shall respond as provided in Exhibit "1".
10. Either party shall have the right to terminate this Agreement upon 60 days written notice to the other.
11. 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.
12. 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.
13. Any notice, request, demand, instruction or other communication to be given to either party hereunder other than requests for repair and replacement services as indicated on Exhibit "1", shall be in writing and shall be hand delivered; United States mail (registered or certified, postage prepaid with return receipt request); courier service such as Federal Express or United Parcel Service or some other comparable

overnight mail service provided the courier service provides a written receipt; or by facsimile (fax) for which a confirmation notice of delivery is provided, to CITY, FKEC, CITY's Attorney, and FKEC's Attorney at their respective addresses set forth below. Notice shall be deemed to have been given upon receipt or refusal of delivery of said notice or upon hand delivery to the address indicated. The addressees and their addresses for the purpose of this paragraph may be changed by giving notice in the same fashion as described herein.

Notices for FKEC:

Florida Keys Electric Cooperative Association, Inc.
Post Office Box 377
91605 Overseas Highway
Tavernier, Florida 33070
Attention: Timothy E. Planer, Chief Executive Officer
Telephone: (305) 852-2431
Facsimile: (305) 852-4794

With Copy to:

John H. Haswell, Esquire
Chandler, Lang, Haswell & Cole, P.A.
Post Office Box 23879 (32602)
211 NE 1st Street (32601)
Gainesville, Florida
Telephone: (352) 376-5226
Facsimile: (352) 372-8858

Notices for City:

Mike Puto
Acting City Manager
City of Marathon
11045-55 Overseas Highway
Marathon, Florida 33050
Telephone:
Facsimile:

With Copy to:

John R. Herin, Jr.
City Attorney
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
Museum Tower
150 West Flagler Street
Miami, Florida 33130-1530
Telephone: (305) 789-3200
Facsimile: (305) 789-3395

14. The prevailing party shall be entitled to recover its reasonable attorney's fees, costs and expenses incurred by it arising out of any litigation under this Agreement, including all such fees, costs and expenses at any appellate proceeding.
15. Neither party may assign any of its rights or obligations under this Agreement without the express written consent of the other party, provided, however, that FKEC may assign its rights and obligations under this Agreement to a subsidiary of FKEC without the consent of the City.
16. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court or the Southern District of Florida.
17. This writing contains the entire Agreement of the parties and supercedes 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. 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 this document.
18. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.
19. 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.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal this _____ day of September, 2004.

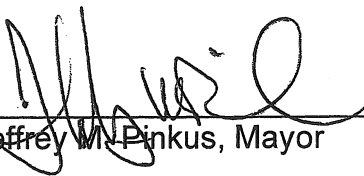
FLORIDA KEYS ELECTRIC COOPERATIVE
ASSOCIATION, INC.

By: _____
Greg Goebel, President

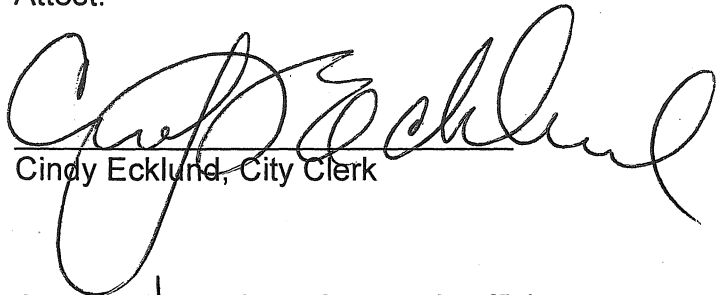
Attest:

Michael H. Puto, Secretary

CITY OF MARATHON

By: 
Jeffrey M. Pinkus, Mayor

Attest:


Cindy Ecklund, City Clerk

Approved as to legal form and sufficiency:

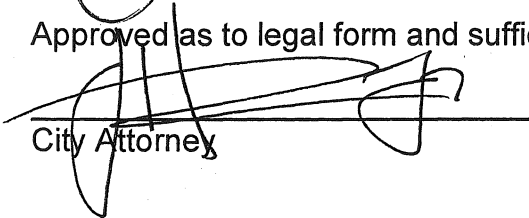

City Attorney

Exhibit "1"

**to the Agreement for Repair and Replacement Services for
Traffic Signals and Outdoor Lighting**

between

**Florida Keys Electric Cooperative Association, Inc. ("FKEC") and
the City of Marathon, a municipal Florida corporation ("CITY")**

At the request and direction of the CITY, FKEC shall provide repair and replacement services for the outdoor lighting facilities identified on Schedule "A" to this Exhibit "1" and for the traffic signals identified on Schedule "B" to this Exhibit "1". After notification of the need for repair and replacement services, FKEC shall use reasonable and prudent efforts to send appropriately equipped personnel to the designated location within 2 days of a request as to outdoor lighting facilities, and within 2 hours of a request as to traffic signals, to assess the nature of repair and replacement services required.

The individuals authorized by the CITY to request repair and replacement services from FKEC hereunder, and their respective telephone and fax numbers are listed as follows:

CITY Authorized Personnel:

- 1.
- 2.
- 3.

The individuals at FKEC who are designated by FKEC to receive requests from the CITY and their respective telephone and fax numbers are set forth as follows:

FKEC Designated Personnel:

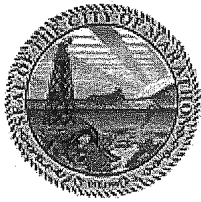
1. Carl R. Paul
Special Projects Manager
Phone: (305) 743-5344 ext. 115
Fax: (305) 743-9191
Mobile: (305) 522-6327

2. Ernest H. Neubauer
Marathon District Manager
Phone: (305) 743-5344 ext. 131
Fax: (305) 743-9191
Mobile: (305) 522-0001

3. Craig Rabito
Line Foreman
Phone: (305) 743-5344 ext. 24
Fax: (305) 743-9191
Mobile: (305) 481-4921

4. Richard Norton
Service Supervisor
Phone: (305) 743-5344 ext. 20
Fax: (305) 743-9191
Mobile: (305) 481-0250

All requests for repair and replacement services shall be in writing and either hand delivered to FKEC's designated personnel or faxed to them; provided, however, that as to the traffic signals, the CITY may telephonically request repair and replacement services and shall follow up such telephonic request with a written request submitted by facsimile.



CITY OF MARATHON, FLORIDA

10045-55 Overseas Highway, Marathon, Florida 33050
Phone: (305) 743-0033 Fax: (305) 743-3667

September 27, 2004

Mr. James Roberts
County Administrator
Monroe County
Public Service Building, Wing II
5100 College Road, Stock Island
Key West, FL 33040

Dear Mr. Roberts,

Enclosed you will find a copy of the City of Marathon's Resolution 2004-094. In addition you will find 4 interlocal agreements that have been signed by the City's mayor, clerk and attorney.

Please have the agreements signed and executed, and return one fully executed agreement to my attention at the City.

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

Sincerely,

Clara Perrine
Administrative Assistant to
City Clerk/HR Officer