

Sponsored by: City Council

**CITY OF MARATHON, FLORIDA
RESOLUTION 2004-147**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A ONE YEAR EMPLOYMENT AGREEMENT BETWEEN MICHAEL H. PUTO AND THE CITY OF MARATHON, FLORIDA FOR CITY MANAGER SERVICES; AUTHORIZING THE CITY ATTORNEY TO FINALIZE THE AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXPEND BUDGETED FUNDS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT

WHEREAS, the Charter of the City of Marathon, Florida (the "City") establishes a Council-Manager form of government pursuant to which the City Manager is the Chief Administrative Office of the City; and

WHEREAS, the City Council desires to employ Michael H. Puto as the City Manager.

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

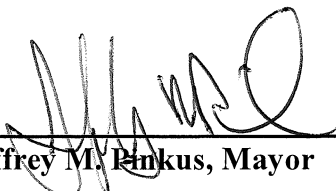
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The one (1) year Employment Agreement between Michael H. Puto and the City of Marathon, Florida (the "Agreement"), attached as Exhibit "A" is approved, together with such non-material changes as may be made by the City Attorney. The Mayor is authorized to execute the Agreement on behalf of the City.

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

PASSED AND APPROVED by the City Council of the city of Marathon, Florida, this 23rd day of November, 2004.

THE CITY OF MARATHON, FLORIDA



Jeffrey M. Pinkus, Mayor

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

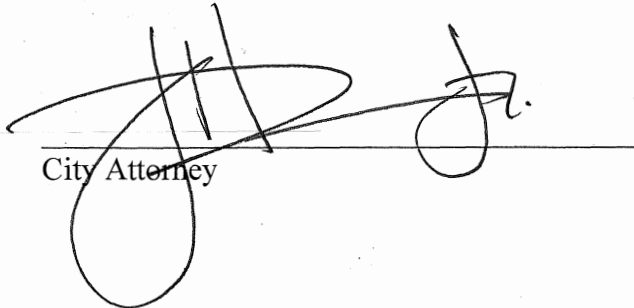
ATTEST:



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

EMPLOYMENT AGREEMENT
CITY MANAGER

This Employment Agreement (the "Agreement") is made and entered into this 23rd day of November, 2004, between the City of Marathon, Florida, a Florida municipal corporation, (the "City") and Michael H. Puto ("Puto" or "City Manager").

RECITALS:

WHEREAS, Section 7 of the City Charter (the "Charter") requires that there shall be a City Manager, who shall be the Chief Administrative Officer of the City; and

WHEREAS, the City desires to employ the services of Puto as City Manager and Puto wishes to accept this employment.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement the parties agree as follows:

Section 1. Duties.

1.1 The City Manager shall have all powers and perform all duties and responsibilities required by this Agreement, prescribed in the Charter and applicable sections of the City Code, Florida and Federal law.

1.2 The City Manager shall carry out the policy directives of the City Council.

1.3 The City Manager shall provide the City Council with a monthly report, which shall include a list of directives from the City Council and the status of achievement of the same.

1.4 The City Manager shall devote the amount of time and energy that is necessary to perform his duties under this Agreement.

1.5 The City Manager shall perform such other duties as may be assigned by the City Council from time to time.

Section 2. Salary.

2.1 The City Manager shall receive an initial annual salary in the amount of \$95,000.00 payable in equal installments in accordance with the City's existing pay periods. This salary shall be adjusted by the City Council as specified in Section 3 of the Agreement.

2.2 On each anniversary date, the City Manager shall receive a cost of living increase in salary equal to the percentage increase in the Consumer Price Index for the South Florida Area, all categories, or four percent (4%), whichever is less.

2.3 For purposes of this Agreement, the City Manager's anniversary date shall be November 1 of each year.

Section 3. Performance Evaluations.

3.1 The City Council shall evaluate the performance of the City Manager after the first 180 days of the term of this Agreement and again after the first 365 days of the Term. If the City Manager receives a positive evaluation from the City Council, the City Manager shall receive a salary increase of \$5,000.00 upon each evaluation. If the City Manager receives a negative evaluation, the City Manager shall receive no salary increase.

3.2 In addition to the evaluations specified in Section 3.1, the City Council shall evaluate the performance of the City Manager at least once annually within 90 days of the City Manager's anniversary date. Based upon the results of the annual evaluation, the City Council may, in its sole discretion, grant a salary increase or grant additional benefits to the City Manager.

3.3 The evaluations specified in Sections 3.1 and 3.2 shall be based upon (i) the City Manager's performance of the duties specified in Section 1 and (ii) the City Manager's achievements of the City Council's policy directives.

Section 4. Deferred Compensation/Retirement Benefits.

4.1 The City shall make a contribution into a deferred compensation program with the International City Management Associations Retirement Corporation (the "ICMA"), or such other deferred compensation program as may be designated by the City Manager, in an amount equal to 10% of the City Manager's salary (the "Retirement Contribution"). The Retirement Contribution shall be made in payments coinciding with each salary payment to the City Manager. City Manager shall not be required to contribute to any retirement or deferred compensation fund.

4.2 The City shall make a contribution in an amount equal to 5% of the City Manager's salary in the retirement system available to City employees.

4.3 Subject to any legal limitations, and at the direction of the City Manager, the City's percentage contribution to the programs specified in Sections 4.1 and 4.2 shall be reallocated, provided that the total City contribution shall not exceed 15% of the City Manager's salary.

Section 5. Professional Dues and Expenses.

5.1 The City shall pay for all reasonable and customary professional dues and subscriptions necessary for City Manager's membership in municipal associations and organizations, as approved in the City's annual budget.

5.2 The City shall pay for the City Manager's membership in those local civic and non-profit job-affiliated organizations that the City Manager is directed to join by the City Council.

Section 6. Automobile.

6.1 During the term of this Agreement, the City shall lease or purchase an automobile for the City Manager's exclusive use and shall pay all expenses related to the operation of said

vehicle.

Section 7. Insurance Benefits.

7.1 If the City Manager participates in the City insurance plan, the City shall provide at the City's expense, a policy for hospitalization, major medical, and dental insurance for the City Manager, his spouse and his dependents ("Insurance Benefits").

7.2 The City shall at the City Manager's election, either purchase a term life insurance policy for City Manager in the amount equal to 100% of one year's salary or purchase a long-term disability policy for the City Manager. The City Manager shall designate the beneficiary of such policy.

Section 8. Annual Leave, Sick Leave and Holidays.

8.1. The City Manager shall annually receive a total of 15 days of vacation leave. Such leave shall accrue equally per pay period. For the purposes of accrual under this subsection, the first pay period shall commence on October 1, 2004.

8.2. The City Manager shall annually receive a total of 12 days of sick leave. Such leave shall accrue equally per pay period. For the purposes of accrual under this subsection, the first pay period shall commence on October 1, 2004.

8.3. The City Manager shall not use more than five (5) consecutive days of annual leave without prior approval of the City Council. Unless approved by the City Council, any unused annual leave shall expire and not be carried over into the next fiscal year.

8.4. The City Manager's existing balance of accrued and unused vacation leave shall not be affected by the City Manager's execution of this Agreement. It shall be carried forward for fiscal year 2004-2005, and shall be in addition to the vacation and sick leave provided for in subsections 8.1 and 8.2. If at the end of fiscal year 2004-2005 the City Manager has not used the carried forward vacation leave, the City shall pay to City Manager a lump sum within 30 days of October 1, 2005, representing the cash value of the unused carried forward vacation leave. Only the unused carried forward vacation leave shall be paid to the City Manager. All other unused annual leave shall expire as provided for in subsection 8.3. For purposes of this subsection, payment of the carried forward vacation leave shall be based upon the City Manager's previous salary as the Director of Community Development.

8.5. The City Manager shall be entitled to such holidays as are recognized by the City.

8.6. As used in this Section, the word day shall mean business day.

Section 9. Travel.

9.1 The City shall pay for the reasonable and customary travel expenses of City Manager for meetings and seminars as annually budgeted by the City Council or as may be directed by the City Council.

Section 10. Equipment.

10.1 The City shall provide the City Manager with the use of electronic equipment necessary for the City Manager to make himself available to perform his duties. Such equipment shall include a cellular telephone and such other electronic equipment as necessary for the City Manager to utilize the City's computer network at all times and to maintain communication with the City's residents, City Council, and City staff at all times.

Section 11. Days.

11.1 Unless otherwise specified, any reference to days in this Agreement shall mean calendar days.

Section 12. Bonds.

12.1 The City shall pay for the cost of any bonds for the City Manager that may be required pursuant to the City Charter or Florida law.

Section 13. Reduction of Compensation.

13.1 The City Council shall not at any time during the term of this Agreement reduce the salary or benefits provided to the City Manager below the levels provided for in this Agreement.

Section 14. Employment Exclusive.

14.1 The City Manager shall remain in the exclusive employ of the City and shall not accept any other employment during the term of this Agreement without the prior approval of the City Council.

Section 15. Term.

15.1 This Agreement shall commence on October 25, 2004, and shall continue through October 31, 2005 (the "Term"), unless terminated earlier as provided in this Agreement.

15.2 Not less than 120 days prior to the expiration of the Term of this Agreement, the City Council and the City Manager shall meet to discuss the renegotiation or renewal of this Agreement if requested by either party. Such negotiations or renewal shall be completed no later than 90 days prior to the expiration of the Term.

Section 16. Termination.

16.1 In accordance with the City Charter, the City Manager shall serve at the pleasure of the City Council. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of the City Manager at any time.

16.2 In the event the City Council wishes to terminate City Manager, it shall do so in accordance with the provisions of Section 7 of the Charter.

16.3 In the event the City Manager is terminated prior to the expiration of the Term specified in Section 15.1, the City Manager shall receive severance payments as follows: (i) if terminated within the first 90 days of the Term, payment of accrued unused vacation and sick leave only; (ii) if terminated between days 91 and 180 of the Term, 90 days of severance payment; and (iii) if terminated after 180 days of the Term, 180 days of severance payment. For purposes of this Section, “severance payment” shall be based upon the salary specified in Section 2.1, plus accrued and unused vacation and sick leave. All severance payments shall be paid to City Manager in a lump sum upon his termination or within 30 days thereafter at the City Council’s option.

16.4 Notwithstanding the provisions of Section 16.3, in the event City Manager is terminated for cause, the City shall have no obligation to pay City Manager any severance payment. For the purposes of this Section “for cause” shall be defined as: (i) breach of any material term or condition of this Agreement, (ii) violation of any applicable laws or codes, (iii) misconduct, (iv) gross insubordination or (v) willful neglect of duty.

16.5 Upon payment of the severance payment specified in Section 16.3, or upon termination as provided for in Sections 16.4 or 16.8, the City shall have no further financial obligations to City Manager. The severance pay shall constitute agreed, stipulated, and liquidated damages and constitute the maximum amount of financial liability for which the City may be liable in the event of termination or breach of contract.

16.6 In the event that the City Manager voluntarily resigns during the Term of this Agreement, the City Manager shall provide the City with 60 days advance written notice, unless the parties agree in writing to a different period of time. In the event of resignation by the City Manager under this Section, the City Manager shall not be entitled to receive the severance package specified in Section 16.3, but the City shall pay the City Manager all accrued sick and vacation leave calculated at the City Manager’s rate of pay in effect upon the date of termination.

16.7 In the event that the City Manager voluntarily resigns with less than 60 days advance written notice, the City Manager shall not be entitled to receive the severance package specified in Section 16.3 nor shall the City Manager receive payment of any accrued sick or vacation leave.

16.8 If the City Manager is unable to perform his duties as specified in Section 1 of this Agreement due to disability, sickness, accident, injury or death, as certified by a physician, this Agreement shall be deemed terminated 60 days from the date of the physician’s certification. If the Agreement is terminated under this Section, the severance payment specified in Section 16.3 shall not be applicable, however, the City Manager’s designated beneficiary shall be paid all accrued unused vacation and sick leave.

Section 17. Conflict of Interest Prohibition.

17.1 City Manager shall not without the express prior approval of the City Council, individually, as a partner, joint venturer, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City, except for the purchase

of real property and stock ownership in any company whose capital stock is publicly held and regularly traded.

17.2 The City Manager shall abide by the provisions of Chapter 112, Florida Statutes, and the Code of Ethics pertaining to public employees.

Section 18. Miscellaneous Provisions.

18.1 Complete Agreement. It is understood and agreed that this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and that the parties agree that there are no commitments, agreement, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

18.2 Amendment. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by the City Council with the same formality and with equal dignity herewith.

18.3 Severability. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, illegal, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

18.4 No Waiver. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

18.5 Non-Assignment. The rights and obligations herein granted are personal in nature and cannot be transferred or assigned by the City Manager.

18.6 Governing Law. Florida law shall govern this Agreement and any litigation, which may arise from this Agreement, shall be filed and litigated in Monroe County, Florida.

18.7 Waiver of Jury Trial. Both the City and the City Manager knowingly, voluntarily, and irrevocably waive their right to a trial by jury in any civil proceedings that may be initiated by either party with respect to any term or condition of this Agreement.

18.8 Notice. Notice to either party shall be deemed given if sent by certified mail, return receipt requested, by recognized public or private postal facilities, by hand delivery or delivered at a

City Council meeting. Notice shall be sent as follows:

For the City: Jeffrey M. Pinkus, Mayor
City of Marathon
10045-55 Overseas Highway
Marathon, FL 33050
Telephone: (305) 743-0033
Facsimile: (305) 289-4123

With a copy to: John R. Herin, Jr.
City Attorney
City of Marathon
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
Museum Tower, Suite 2200
150 W. Flagler Street
Miami, Florida 33130
Telephone: (305) 789-3200
Facsimile: (305) 789-3395

For the City Manager: Michael H. Puto
City Manager
City of Marathon
10045-55 Overseas Highway
Marathon, FL 33050
Telephone: (305) 743-0033
Facsimile: (305) 289-4123

IN WITNESS WHEREOF, the City, by signature of the Mayor as authorized by Resolution No. 2004-148 adopted November 23, 2004, and City Manager have signed and executed this Agreement the day and year first above written.

THE CITY OF MARATHON, FLORIDA



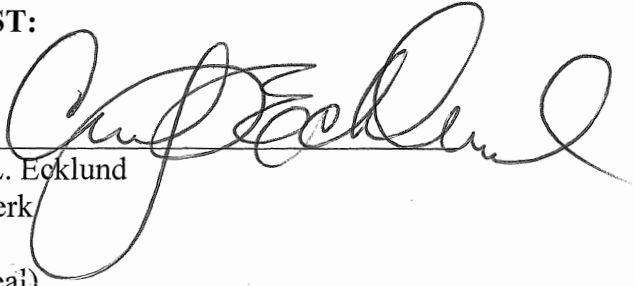
Jeffrey M. Pinkus, Mayor

CITY MANAGER



Michael H. Puto

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