

**CITY OF MARATHON, FLORIDA
RESOLUTION 2006-125**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN MONROE COUNTY AND THE CITY OF MARATHON FOR THE COUNTY TO ASSIST IN THE DEVELOPMENT OF AERIAL PHOTOGRAPHY FOR USE AS A GIS BASE LAYER; AUTHORIZING THE CITY TO REIMBURSE THE COUNTY IN AN AMOUNT NOT TO EXCEED \$15,000; PROVIDING FOR CONFLICTS; SEVERABILITY; AND EFFECTIVE DATE.

WHEREAS, Monroe County (the "County") and The City of Marathon (the "City") desire to enter into a joint participation agreement for the City to reimburse the County for its preparation of digital true color and color infrared photography of the Florida Keys to be utilized in GIS projects by both parties; and

WHEREAS, pursuant to such agreement, the County will to provide the City with said digital photography as soon as its contractor and sub-contractor (Florida Department of Transportation and Woolpert, Inc. respectively) make said photography available in final form, but in no event later than December 31, 2006; and

WHEREAS, pursuant to Sec. 163.01, Florida Statutes, the parties have the authority to enter into an Interlocal Agreement;

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 Interlocal Agreement between Monroe County and the City of Marathon regarding the development of digital aerial photography for use as GIS base layer imagery, a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the City Manager or his designee 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 10th day of October, 2006.

THE CITY OF MARATHON, FLORIDA



Christopher M. Bull, Mayor

AYES: Mearns, Pinkus, Tempest, Worthington, Bull
NOES: None
ABSENT: None
ABSTAIN: None

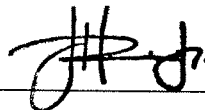
ATTEST:



Diane Clavier, City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:



City Attorney

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (ILA) is entered into this 18th day of October, 2006 between Monroe County, a political subdivision of the State of Florida (hereinafter COUNTY) and the City of Marathon, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter CITY).

WITNESSETH:

WHEREAS, COUNTY and CITY desire to enter into a joint participation agreement to provide assistance to the County in preparation of digital aerial photography for use by both parties in GIS applications; and

WHEREAS, pursuant to Sec. 163.01, Florida Statutes, the parties have the authority to enter into an Interlocal Agreement;

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, it is agreed between COUNTY and CITY as follows:

Section 1. Services. The CITY agrees to provide the COUNTY with \$15,000.00 to assist the County in its preparation of digital true color and color infrared (IR) photography of the Florida Keys to be utilized in GIS projects by both parties. The County agrees to provide the CITY with said digital photography as soon as its contractor and sub-contractor (Florida Department of Transportation and Woolpert, Inc. respectively) make said photography available in final form, no later than December 31, 2006.

Section 2. Payment. The CITY agrees to transfer funds to the County in the amount of \$15,000.00 within 30 days of the execution of this ILA by both parties.

Section 3. Termination and Default.

- 3.1 In the event of any failure of compliance by either party hereto with any of its material obligations to the other party as provided for herein such action shall constitute a default under this Agreement.
- 3.2 Upon any such default, the non-defaulting party shall provide to the defaulting party a written Notice of such default, which Notice (a "Default Notice") shall state in reasonable detail the actions the defaulting party must take to cure the same.
- 3.3 The defaulting party shall cure any such default, within 30 days following the date of the Default Notice.

- 3.4 Notwithstanding the provisions of this Section, if any such default by the defaulting party remains uncured at the conclusion of any specified 30 day cure period, and if the nature of the defaulting party's obligations are such that more than 30 days is required to effect cure, then the defaulting party shall not be in default hereunder and the non-defaulting party shall not have the right to exercise its termination rights granted herein as a result of any such default, if the defaulting party commences cure within the applicable cure period and thereafter diligently pursues cure to completion of performance. This provision does not apply to the payment of funds.
- 3.5 In the event the defaulting party fails to effect any required cure as provided for herein, the defaulting party shall be deemed to be in uncured default hereunder, and the non-defaulting party shall have the right, but shall not be obligated, upon written Notice to the defaulting party, to terminate this Agreement.
- 3.6 If such Notice is given, this Agreement shall terminate on the date set forth in the Notice and the parties shall be relieved of all rights and obligations hereunder, except for any rights and obligations that expressly survive termination.

Section 4. Notices.

- 4.1 All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing (each such, a "Notice") and addressed as follows (or to any other address which either party may designate by Notice):

If to County: George Garrett
Director of Marine Resources and GIS
2798 Overseas Highway, Suite 420
Marathon FL 33050

Tom Willi
County Administrator
1100 Simonton Street
Key West FL 33040

With a copy to: Suzanne Hutton, Esq.
County Attorney
3rd Floor, Rear
502 Whitehead Street
Key West, Florida 33040

If to City: Michael Puto
City Manager
City of Marathon
9803 Overseas Highway
Marathon, Florida 33050

With a copy to: John Herin, Esq.
City Attorney
Stearns Weaver Miller
Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130

Any Notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered; facsimile; or sent by overnight delivery service with proof of delivery.

Section 5. Regulatory Powers.

- 5.1 Nothing contained herein shall be construed as waiving either party's regulatory approval or enforcement rights or obligations as it may relate to regulations of general applicability which may govern the Agreement.
- 5.2 Nothing herein shall be deemed to create an affirmative duty of either party to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with ordinances, rules and regulations, federal laws and regulations and state laws and regulations.

Section 6. Attorneys Fees and Waiver of Jury Trial.

- 6.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs.
- 6.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

Section 7. Governing Law.

- 7.1 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, 16th Judicial Circuit Court. This Agreement shall not be subject to arbitration.

Section 8. Entire Agreement/Modification/Amendment.

- 8.1 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.

- 8.2 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.

Section 9. Access to Records and Audits.

- 9.1 Both parties shall have the right to, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records involving transactions related to this Agreement.
- 9.2 Either party may cancel this Agreement for refusal to allow access to any records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.
- 9.3 The term Records shall refer to any documents, books, data (electronic or hard copy), papers and financial records that result from the CITY or its subcontractors performance of the Services provided in this Agreement.

Section 10. Nonassignability.

- 10.1 This Agreement shall not be assignable by either party unless such assignment is first approved by both parties.
- 10.2 The provisions of this Section shall not prohibit the COUNTY from utilizing the services of subcontractors to perform the Services contemplated in this Agreement.

Section 11. Severability.

- 11.1 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.

Section 12. Waiver.

- 12.1 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.

Section 13. Funding.

- 13.1 The parties agree that the CITY's responsibility under this Agreement is to provide funding only.

Section 14. Survival of Provisions.

14.1 Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

Section 15. Counterparts.

15.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first written above.

BOARD OF COUNTY COMMISSIONERS
MONROE COUNTY, FLORIDA

BY: _____
Mayor/Chairperson

(SEAL)

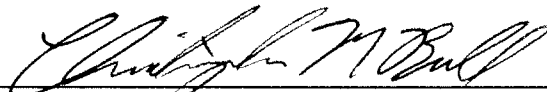
ATTEST: DANNY L. KOLHAGE, CLERK

BY: _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: _____
ATTORNEY'S OFFICE

THE CITY OF MARATHON, FLORIDA



Christopher Bull, Mayor

ATTEST:

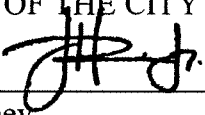
Diane Clavier

Diane Clavier
City Clerk

(City Seal)

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AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:

BY:


City Attorney