

**CITY OF MARATHON, FLORIDA
RESOLUTION 2006-142**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF MARATHON AND THE CITY OF KEY COLONY BEACH TO PROVIDE FIRE RESCUE AND EMS SERVICES TO KEY COLONY BEACH.

WHEREAS, the City of Marathon (the "City") provides fire rescue and emergency medical services to its residents through the City's own fire rescue department; and

WHEREAS, the City of Key Colony Beach, which neighbors the City, requires the same services but does not itself provide it; and

WHEREAS, the City desires to enter into an interlocal agreement with the City of Key Colony Beach to provide fire rescue and emergency medical services to Key Colony Beach.

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 the City of Marathon and the City of Key Colony Beach for the provision of fire rescue and emergency medical services to Key Colony Beach, a copy of which is attached as Exhibit "A", together with 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 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 12th day of September, 2006.


THE CITY OF MARATHON, FLORIDA



Christopher M. Bull, Mayor

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

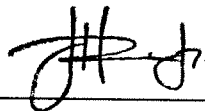
ATTEST:



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 BETWEEN
THE CITY OF MARATHON
AND
THE CITY OF KEY COLONY BEACH
PROVIDING FOR DELIVERY OF
EMERGENCY MEDICAL & FIRE RESCUE SERVICES**

This Interlocal Agreement (hereinafter called the "Agreement") is made by and between THE CITY OF MARATHON, a municipal corporation of the State of Florida (hereinafter called "MARATHON"), and THE CITY OF KEY COLONY BEACH, a municipal corporation of the State of Florida (hereinafter called "KEY COLONY BEACH").

WHEREAS, MARATHON and KEY COLONY BEACH desire to enter into this AGREEMENT to provide for the delivery of fire rescue and emergency medical services within and adjacent to the municipal boundaries of KEY COLONY BEACH; and

WHEREAS, the respective elected bodies of MARATHON and KEY COLONY BEACH find the method of delivery of the fire rescue and emergency medical services set forth in this AGREEMENT is in the interest of the public and can be best accomplished through coordination of the provision of such services as set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms and conditions set forth herein, MARATHON and KEY COLONY BEACH do hereby agree as follows:

ARTICLE I
GENERAL TERMS & CONDITIONS

- 1.1 The effective date of this AGREEMENT is October 1, 2006 (hereinafter, the EFFECTIVE DATE).
- 1.2 The term of this AGREEMENT shall be from October 1, 2006 to September 30, 2007.

ARTICLE 2
FIRE RESCUE & EMERGENCY MEDICAL SERVICES

- 2.1 MARATHON will provide Fire Rescue, Fire Protection and Emergency Medical Services to KEY COLONY BEACH.

- 2.2 MARATHON will provide Fire Rescue, Fire Protection, and Emergency Medical Services to KEY COLONY BEACH on a twenty-four (24) hour, seven (7) days a week basis during the term of this AGREEMENT. The level of service provided to KEY COLONY BEACH shall, at minimum, be equal to the average level of services provided by the applicable departments in other cities in Monroe County that provide their own Fire Rescue, Fire Protection, and Emergency Medical Services and by the applicable departments in the County that serve the unincorporated areas. In no case will the service provided be less than that provided within the City of Marathon.
- 2.3 MARATHON will have the right to inspect all fire hydrants located within KEY COLONY BEACH boundaries. KEY COLONY BEACH will be responsible for maintenance of all fire hydrants within its boundaries in accordance with Florida Keys Aqueduct Authority guidelines.

ARTICLE 3
PAYMENTS AND FEES

- 3.1 KEY COLONY BEACH shall pay MARATHON for Fire Rescue, Fire Protection and Emergency Medical Services the total sum of \$365,000.00. Of this, \$315,000.00 shall be paid from the Operations Budget of Key Colony Beach, and \$50,000.00 from the Infrastructure Budget of Key Colony Beach.
- 3.2 MARATHON shall invoice KEY COLONY BEACH for \$315,000.00 and payment shall be made by KEY COLONY BEACH to MARATHON by January 1, 2007. MARATHON shall invoice KEY COLONY BEACH for the \$50,000.00 of infrastructure funding as needs arise and payment shall be made by KEY COLONY BEACH within thirty (30) days of receipt of the Invoice.

ARTICLE 4
TERMINATION

- 4.1 This AGREEMENT shall be deemed automatically terminated and of no further force and effect if MARATHON has filed or consented to the filing of a petition for reorganization or bankruptcy or is otherwise adjudicated insolvent. In the event that MARATHON becomes bankrupt or insolvent, KEY COLONY BEACH shall be entitled to reimbursement, on a pro-rate basis, of funds paid to MARATHON for the remaining year(s) of this AGREEMENT.

- 4.2 This AGREEMENT provides in Article 5 "Default" for the judicial remedy of specific performance to cause either party to perform its obligations in accordance with the terms and conditions herein. In the event a court was to determine that either party was in default in the performance of its obligations pursuant to this AGREEMENT and that specific performance was not any adequate remedy to cause the other party to perform its obligations herein, in addition to all other remedies available to the parties, the parties shall be entitled to request a judicial order seeking rescission of this AGREEMENT.
- 4.3 In the event of termination of this AGREEMENT, MARATHON and KEY COLONY BEACH shall cooperate in good faith in order to effectuate a smooth and harmonious transition of service to a new provider as necessary and to maintain during such period of transition the same high quality of Fire Rescue, Fire Protection and Emergency Medical Services as contemplated by this AGREEMENT.

ARTICLE 5
DEFAULT

- 5.1 If MARATHON or KEY COLONY BEACH fails to perform or observe any of the material terms and conditions of this AGREEMENT for a period of ten (10) days after receipt of written notice of such default for the other party, the party giving notice of default may be entitled, but is not required, to seek specific performance of this AGREEMENT on an expedited basis, as the performance the material terms and conditions contained herein relate to health, safety, and welfare of the residents subject to this AGREEMENT. The parties acknowledge that money damages or other legally available remedies may be inadequate for the failure to perform, and that the party giving notice is entitled to obtain an order requiring specific performance by the other party. Failure of any party to exercise its rights in the event of any breach by the other party shall not constitute a waiver of such rights. No party shall be deemed to have waived any failure to perform by the other party unless such waiver is in writing and signed by the waiving party. Such waiver shall be limited to the terms specifically contained herein. This Article shall be without prejudice to the rights of any party to seek a legal remedy for any breach of the other party as may be available to it in law or equity.

ARTICLE 6
INSURANCE

- 6.1 MARATHON shall maintain a qualified insurance program in the limits specified in Florida Statute 768.28. Said insurance program shall provide coverages for general and automobile and Workers Compensation and Employers Liability. MARATHON shall provide KEY COLONY BEACH with a Certificate of Insurance evidencing said program. In the event the insurance program is modified, MARATHON shall notify KEY COLONY BEACH with at least thirty (30) days prior written notice.

ARTICLE 7
INDEMNIFICATION/LIABILITY

- 7.1 To the extent permitted by law, MARATHON shall indemnify defend, and hold KEY COLONY BEACH, its officials, agents, servants and employees, harmless from any and all liability, actions, causes of action, suits, trespasses, damages, judgments, executions, claims and demands of any kind whatsoever, in law or in equity, which results from or arises out of the intentional or negligent acts or omissions of MARATHON, its employees, agents, or servants and MARATHON shall indemnify KEY COLONY BEACH, its officials, agents, servants and employees, for damages, judgments, claims, costs, expenses, including reasonable attorney's fees, which KEY COLONY BEACH, its officials, agents, servants and employees, might suffer in connection with or as a result of the intentional or negligent acts of MARATHON, its employees, agents, or servants. For purposes of this provision, MARATHON employees shall not be deemed agents or servants of KEY COLONY BEACH and KEY COLONY BEACH employees shall not be deemed agents or servants of MARATHON.
- 7.2 To the extent permitted by law, KEY COLONY BEACH shall indemnify, defend, and hold MARATHON, its officials, agents, servants and employees, harmless from any and all liability, actions, causes of action, suits, trespasses, damages, judgments, executions, claims and demands of any kind whatsoever, in law or in equity, which results from or arises out of the intentional or negligent acts or omissions of KEY COLONY BEACH, its employees, agents, or servants and KEY COLONY BEACH shall indemnify MARATHON, its officials, agents, servants and employees, for damages, judgments, claims, costs, expenses, including reasonable attorney's fees, which MARATHON, its officials, agents, servants and employees, might suffer in connection with or as a result of the intentional or negligent acts of KEY COLONY BEACH, its employees, agents, or servants. For purposes of this provision, MARATHON employees shall not be deemed agents or servants of KEY COLONY BEACH and KEY COLONY BEACH employees shall not be deemed agents or servants of MARATHON.
- 7.3 The parties shall individually maintain throughout the term of this AGREEMENT any and all applicable insurance coverage as required by Florida law for government entities.

ARTICLE 8
MISCELLANEOUS

- 8.1 Merger/Amendments: This AGREEMENT incorporates and includes all prior negotiations, correspondence, agreements, or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this AGREEMENT that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no change, amendment, alteration or modification in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith by all parties to this AGREEMENT.
- 8.2 Assignment: The respective obligations of the parties set forth in this AGREEMENT shall not be assigned, in whole or in part, without the written consent of the other party.
- 8.3 Records: MARATHON and KEY COLONY BEACH shall each maintain their own respective records and documents associated with this AGREEMENT, for three (3) years following the termination of this AGREEMENT, in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.
- 8.4 Contract Administrator: The Contract Administrators for this AGREEMENT are the City Manager or designee for MARATHON, and the Mayor or designee for KEY COLONY BEACH. In the implementation of the terms and conditions of this AGREEMENT, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the respective Contract Administrator.
- 8.5 Law and Venue: This AGREEMENT shall be governed, construed and controlled according to the laws of the State of Florida. The parties agree that any dispute under this AGREEMENT shall be submitted to mediation, and if not settled at that level, to binding arbitration.
- 8.6 Attorney's Fees: If either MARATHON or KEY COLONY BEACH is required to enforce the terms of this AGREEMENT by mediation, arbitration, court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including but not limited to, costs and reasonable attorney's fees.
- 8.7 Waiver of Jury Trial: Both MARATHON and KEY COLONY BEACH 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. In entering into this provision, the parties are mindful that this AGREEMENT has a mandatory mediation/arbitration clause in Paragraph 8.5.

- 8.8 Severability: In the event a portion of this AGREEMENT is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.
- 8.9 Independent Contractor: MARATHON, for the purposes of this AGREEMENT, is and shall remain an Independent Contractor.

ARTICLE 9
NOTICES

- 9.1 All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, or overnight delivery addressed as follows:

MARATHON

Michael Puto, City Manager
City of Marathon
10045-55 Overseas Highway
Marathon, Florida 33050

A copy to:

John R, Herin, Jr. or
Jimmy Morales, City Attorneys
Stearns, Weaver, Miller, Weissler,
Alhadeff & Sitterson, P.A.
Museum Tower, Suite 2200
150 W. Flagler Street
Miami, FL 33130

KEY COLONY BEACH

Clyde Burnett, Mayor of Key Colony Beach
Key Colony Beach City Hall
Post Office Box 510141
Key Colony Beach, FL 33051

A copy to:

Thomas D. Wright, City Attorney
Post Office Box 500309
Marathon, FL 33050

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ATTEST:

By: Diane Clavier
City Clerk, City of Marathon

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

By: [Signature]
_____, City Attorney

MARATHON

CITY OF MARATHON
A municipal corporation of
the State of Florida.

By: Michael Puto
Michael Puto, City Manager

ATTEST:

By: Vickie L. Bollinger
Vickie Bollinger, City Clerk

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

By: Thomas D. Wright
Thomas D. Wright, City Attorney

KEY COLONY BEACH

CITY OF KEY COLONY BEACH
a municipal corporation of the
State of Florida.

By: Clyde Burnett
Clyde Burnett, Mayor