

**CITY OF MARATHON, FLORIDA
RESOLUTION 2007-103**

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; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE

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 Council of Marathon and the City Commissioners of Key Colony Beach held a joint workshop on June 27, 2007 and desires to enter into the attached 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.

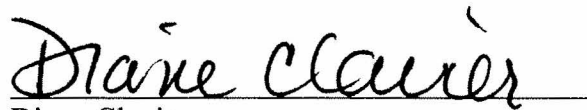
PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 24th day of July, 2007.

THE CITY OF MARATHON, FLORIDA


Christopher M. Bull, Mayor

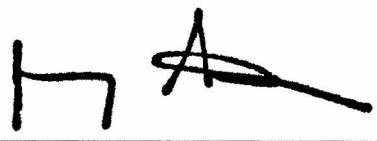
AYES: Cinque, Tempest, Vasil, Bull
NOES: Worthington
ABSENT: None
ABSTAIN: None

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, 2007 (hereinafter, the EFFECTIVE DATE).
- 1.2 The term of this AGREEMENT shall be from October 1, 2007 to September 30, 2010. The AGREEMENT may be extended up to an additional two (2) terms of three (3) years each, by mutual agreement of the parties.

ARTICLE 2
FIRE RESCUE & EMERGENCY MEDICAL SERVICES

- 2.1 MARATHON will provide Fire Rescue, Fire Protection Medical Services to KEY COLONY BEACH. The fee for this service will be figured annually per Article 3.
- 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 Beginning October 1, 2007 KEY COLONY BEACH shall pay MARATHON for Fire Rescue, Fire Protection and Emergency Medical Services. The percentage of the KEY COLONY BEACH contribution toward the budget for these services shall be the same percentage as the percentage of the just value of KEY COLONY BEACH real property (as determined by the Monroe County Property Appraiser's Office) to the total of just values for all real property located in KEY COLONY BEACH and MARATHON combined. The dollar amount of the contribution of KEY COLONY BEACH shall be calculated by multiplying the total Fire/EMS proposed operating (General Fund) budget (less the estimated amount of other revenues received by the CITY OF MARATHON for fire rescue services (including Fire Premium Tax revenues and EMS revenues), transfers from the Fire/EMS operating (General Fund) budget to the Vehicle and Equipment Replacement Fund, and the costs of salary, employer taxes and benefits associated with the fire safety inspector of the MARATHON fire department) by the percentage contribution for KEY COLONY BEACH.
- 3.2 Payment of the contribution shall be made by KEY COLONY BEACH directly to MARATHON on a quarterly basis on October 1, January 1, April 1 and July 1 of each year for services to be provided in that coming fiscal year. MARATHON's Finance Department will provide timely invoices to KEY COLONY BEACH on a quarterly basis.
- 3.3 At the end of each fiscal year, the actual revenues and expenses-for Fire Rescue, Fire Protection and Emergency Medical Services will be reconciled with the estimated amounts utilized in Section 3.1 above to determine KEY COLONY BEACH's final contribution. MARATHON's Finance Department will determine the final balance based on its annual financial audit no later than December 31 following the close of each fiscal year. To the extent that the actual total contribution in a given fiscal year is less than the estimated total budget utilized in Section 3.1, then KEY COLONY BEACH shall be entitled, at the end of such fiscal year, to a reimbursement from MARATHON for its pro rata share of any such surplus. KEY COLONY BEACH has the option to apply such a

surplus to the payment of its next quarterly invoice. To the extent that the actual total budget in a given fiscal year exceeds the estimated total budget utilized in Section 3.1, then KEY COLONY BEACH shall be obligated to pay to MARATHON, at the end of such fiscal year, its pro rata share of any such excess.

- 3.4 In addition to the foregoing, KEY COLONY BEACH will also contribute \$20,000.00 per year of infrastructure funds for Fire/EMS-related infrastructure expenditures. The infrastructure contribution shall be made by KEY COLONY BEACH directly to MARATHON upon the presentation of an invoice from the Finance Department of MARATHON. Invoices presented by the Finance Department of MARATHON will include sufficient backup to demonstrate that funds in this amount were expended for legitimate purposes of Local Discretionary Sales Surtax revenues (i.e. one cent infrastructure surtax) as per Florida Statutes.

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.
- 4.4 Either party may terminate this AGREEMENT effective on September 30 of any year with not less than ninety (90) days written notice to the other party.

ARTICLE 5
DEFAULT

- 5.1 Notwithstanding a party's right to terminate this AGREEMENT as set forth in Article 4 above, 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 of 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. Each party shall provide the other party with a Certificate of Insurance evidencing said program. In the event the insurance program is modified by either party, said party shall notify the other party 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 City Manager 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. Any claim, objection or dispute arising out of the terms of this AGREEMENT shall be litigated in the Sixteenth Judicial Circuit in and for Monroe County, Florida.
- 8.6 Attorney's Fees: If either MARATHON or KEY COLONY BEACH is required to enforce the terms of this AGREEMENT by 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.
- 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

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

A copy to:

Jimmy L. Morales
City Attorney
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 W. Flagler Street, Suite 2200
Miami, Florida 33130

KEY COLONY BEACH

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
Post Office Box 500309
Marathon, FL 33050

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this ___ day of _____, 2007.

MARATHON

ATTEST:

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

By: Diane Clavier
City Clerk

By: Christopher M. Bull
Christopher M. Bull, Mayor

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

By: [Signature]
City Attorney

KEY COLONY BEACH

ATTEST:

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

By: Lidiah Ballenger
City Clerk

By: Clyde Burnett
Clyde Burnett, Mayor

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

By: Thomas D. O'Keefe
City Attorney