

Sponsored by: City Council

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2007-144**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE SECOND AMENDED AND RESTATED 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 Officer of the City; and

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

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

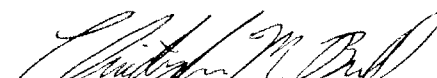
**Section 1.** The above recitals are true and correct and incorporated herein.

**Section 2.** The Second Amended and Restated Employment Agreement between Michael H. Puto and the City of Marathon, Florida (the "Agreement"), attached hereto 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 9<sup>th</sup> day of October, 2007.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
Christopher M. Bull, Mayor

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

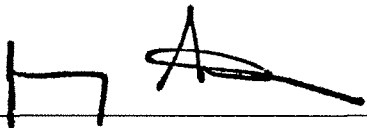
**ATTEST:**



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

**SECOND AMENDED AND RESTATED**  
**EMPLOYMENT AGREEMENT**  
**CITY MANAGER**

This Amended and Restated Employment Agreement (the "Agreement") is effective as of October 1, 2007, between the City of Marathon, Florida, a Florida municipal corporation, (the "City") and Michael H. Puto ("Puto" or "City Manager").

**RECITALS:**

**WHEREAS**, on November 23, 2004, the City and Puto entered into an Employment Agreement for city manager services (the "Initial Agreement"); and

**WHEREAS**, on November 1, 2005 the City and Puto entered into a First Amendment to Employment Agreement (the "First Amendment"); and

**WHEREAS**, on March 9, 2006, the City and Puto entered into a Second Amendment to Employment Agreement (the "Second Amendment"); and

**WHEREAS**, on November 1, 2006, the City and Puto entered into an Amended and Restated Employment Agreement for city manager services (the "Existing Agreement")

**WHEREAS**, the City desires to continue to employ the services of Puto as City Manager and Puto wishes to continue to serve in that capacity; and

**WHEREAS**, the City and Puto wish to amend and restate the Existing Agreement in order to extend the term thereof, and modify certain other conditions and terms thereof.

**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, and 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, including but not limited to accomplishing the specific tasks and benchmarks set forth in Exhibit A attached hereto.

**Section 2. Salary.**

2.1 The City Manager shall receive an annual salary in the amount of \$107,638.00 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 November 1, 2007, 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 May 1 of each year.

**Section 3. Performance Evaluations.**

3.1 The City Council shall evaluate the performance of the City Manager within one hundred twenty (120) days from the date of this Agreement, but in no event later than January 15, 2008. If the City Manager does not receive a positive evaluation, the City Council will determine the appropriate course of action.

3.2 The evaluation specified in Sections 3.1 shall be based upon (i) the City Manager's performance of the duties specified in Section 1 and Exhibit A hereto, 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 accrue vacation time at the rate of 10 days (80 hours) per every six months, with a cap of 320 hours. Once 320 hours is reached, the City Manager will stop accruing vacation time until vacation time is used and the accrual amount goes below 320 hours once again. For the purposes of accrual under this subsection, the first pay period shall commence on October 1, 2004.

8.2. The City Manager shall accrue sick time at the rate of six sick days per every six months and any unused sick days will carry over until a maximum of 560 hours has accrued. 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. At the end of the Term hereof or upon the earlier termination of this Agreement pursuant to Section 16 hereof, any unused sick leave shall expire and any accrued unused vacation leave in excess of 320 hours shall expire.

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

8.5. 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 1, 2007, and shall continue through April 30, 2008 (the "Term"), unless terminated earlier as provided in this Agreement.

15.2 The City Council shall have the option to extend the Term for two one year periods, each option exercisable not later than 30 days prior to the expiration of the Term of this Agreement or the first renewal term, as the case may be. The option must be by motion or resolution of the City Council. If an option is exercised, all other terms and conditions of this Agreement shall remain the same.

15.3 Not less than 60 days prior to the expiration of the Term of this Agreement or any renewal term, 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 30 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 City 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 only receive a severance payment of accrued unused vacation leave up to a maximum of 320 hours. Any such payment shall be paid to City Manager in a lump sum upon his termination and shall be calculated at the City Manager's rate of pay in effect upon the date of termination.

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: (A) dishonesty with respect to the business and operation of the City of Marathon; (B) confirmed violation of the City's drug policy; (C) refusal to cooperate in an investigation regarding any aspect of the business or operation of the City of Marathon, which investigation is conducted by or at the express direction of the City Council; (D) conviction for committing a crime which is classified as a felony or a crime involving moral turpitude; (E) gross neglect or willful and intentional misconduct; (F) conviction for committing a crime directly relating to the powers, duties, or privileges of City Manager; (G) violation of a provision of the City of Marathon Code or any applicable state or federal law; (H) gross insubordination, and (I) breach of any material term or condition of this Agreement by the City Manager.

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 shall pay the City Manager all accrued unused vacation leave, up to a maximum of 320 hours, 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 payment of any accrued 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 City Manager's designated beneficiary shall be paid all accrued unused vacation leave up to a maximum of 320 hours.

**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: Christopher M. Bull, Mayor  
City of Marathon  
10045-55 Overseas Highway  
Marathon, FL 33050  
Telephone: (305) 743-0033  
Facsimile: (305) 289-4123

With a copy to: Jimmy Morales  
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. 2007-~~144~~ adopted October 9, 2007, and City Manager have signed and executed this Agreement the day and year first above written.


**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
Christopher M. Bull, Mayor

**CITY MANAGER**


  
\_\_\_\_\_  
Michael H. Puto

**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

Specific Tasks and Benchmarks for the City Manager

- I. Immediately:
  - a. Spend more time in the office for staff, resident and City Council access, and to work on City Manager tasks (including regularly scheduled office hours).
  - b. Ensure communication with media, staff, City Council and others is informed and accurate.
  - c. Improve intergovernmental cooperation when acting as the City's participant or representative with county, state, federal, and local municipal agencies.
  - d. Ensure that all appropriate measures are taken to qualify for funding assistance on City projects.
  - e. Ensure that City ordinances and code are enforced equitably.
  - f. Insist on clear City Council direction, and move forward promptly based on that direction.
  
- II. Within 30 days from the date of the Agreement:
  - a. Present a plan to City Council for the City Manager's further education including enrollment in college accredited courses or comparable curricula in public administration and management, including but not limited to budget, contracts, business law, and public speaking.
  - b. Rearrange and organize the City Manager's office so that any visitor or business person may sit and have a reasonable meeting with the City Manager.
  - c. Develop a plan of organization designed to ensure that each component of the City government within the City Manager's jurisdiction is a logical, separable, integral part of the whole.
  - d. Establish (or report on those in place) internal controls to safeguard assets against loss through dishonesty or negligence.
  - e. Present written report to City Council on Vacation Rentals, including history.
  - f. Present brief written report on Lessons Learned regarding Hurricane Wilma.
  
- III. Within 60 days from the date of the Agreement:
  - a. Review City Council's policy directives for the current term. Report status in writing on the progress of these policy issues.
  - b. Provide to City Council a report giving the inventory of all real property owned or leased by the City, its cost and current use.
  - c. Provide report regarding Affordable Housing. Identify builder or complex, and include numbers of deed-restricted homes occupied by owner, occupied by tenants, not currently occupied, and under construction.

- d. Report on recent customer service initiative including phone and desk protocols, standard permitting times, interdepartmental work-flow, web site strategies, resident/tourist/vendor communication methodologies, etc.

IV. Within 90 days from the date of the Agreement:

- a. Put together a list of required reports covering the City's business, and determine an appropriate frequency and appropriate distribution, i.e. online, City Council, staff, and media. Examples of existing reports are Finance (Quarterly); Legal (Monthly); Fire Station project (Monthly); and Wastewater (Monthly).
- b. Develop (or resurrect and defend) a long-range plan (5 years) of civic development and improvement.
- c. Develop (or resurrect and defend) a long-range plan (5 years) for public works programs.

V. Within 120 days from the date of this Agreement:

Submit to the City Council, and make available to the public, a complete report on finances and administrative activities of the City as of the end of the fiscal year. Report status of this report not later than 90 days from the date of this Agreement.