

**CITY OF MARATHON, FLORIDA
RESOLUTION 2007-80**

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 REIMBURSEMENT FROM THE COUNTY FOR A NEW PUMP OUT VESSEL AND REFURBISHMENT OF AN EXISTING PUMP OUT VESSEL; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; PROVIDING FOR CONFLICTS; SEVERABILITY; AND AN EFFECTIVE DATE

WHEREAS, the CITY intends to purchase a new pump out vessel and refurbish an existing pump out vessel; and

WHEREAS, the CITY has proposed, and the COUNTY has agreed, to reimburse the CITY for the cost of purchasing one new pump out boat and for refurbishing the City's existing pump out boat in an amount not to exceed a cost of thirty-two thousand dollars (\$32,000.00). The COUNTY funding serves to reimburse the cost of a grant match required of the CITY for two separate grants to the CITY under the State's Clean Vessel Act grant program.

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 by this reference.

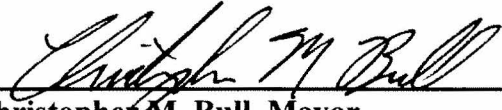
Section 2. The Interlocal Agreement between Monroe County and the City of Marathon regarding the reimbursement of a new pump out vessel and refurbishment of an existing pump out vessel, a copy of which is attached as Exhibit "A", together with such non-material changes as may be acceptable to the City 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 12th day of June, 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

**INTERLOCAL AGREEMENT BETWEEN MONROE COUNTY
AND THE CITY OF MARATHON FOR PURCHASE OF AND
REFURBISHMENT OF PUMP OUT VESSELS**

THIS INTERLOCAL AGREEMENT is entered into as of this 15th day of ~~June~~ ^{August} 2007 between Monroe County, a political subdivision of the State of Florida ("COUNTY") and the City of Marathon, a municipal corporation organized and existing under the laws of the State of Florida ("CITY").

WITNESSETH:

WHEREAS, CITY intends to purchase a new pump out vessel and refurbish an existing pump out vessel; and

WHEREAS, CITY hereby proposes, and COUNTY hereby agrees, to reimburse the CITY for a portion of the cost of purchasing one new pump out boat and for a portion of refurbishing the City's existing pump out boat in an amount not to exceed a cost of Thirty-Two Thousand Dollars and No Cents (\$32,000.00). COUNTY funding will serve to reimburse the cost of a grant match required of the CITY for two separate grants to the CITY under the State's Clean Vessel Act grant program.

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

Section 1. Pump out vessel purchase and refurbishment of existing vessel. CITY agrees that it shall have primary responsibility for purchasing one new pump out vessel and for refurbishing its existing pump out vessel. The CITY's responsibilities shall include carrying out any necessary bid requirements and for selection of the new boat purchased. CITY will also have primary responsibility for refurbishing its existing pump out vessel through the original builder. COUNTY hereby agrees that, while COUNTY may provide input on these decisions, the final decisions shall be made by CITY.

Section 2. Payment. COUNTY agrees to reimburse CITY for costs for the purchase of a new pump out vessel and for refurbishing the CITY's existing pump out vessel in an amount not to exceed a cost of Thirty-Two Thousand Dollars and No Cents (\$32,000.00) as follows:

- 2.1 Reimbursement upon completion of the Projects.
- 2.2 To receive payment, CITY shall submit an invoice to the Director of the COUNTY's Marine Resources ("Director"). The invoice must describe the services performed, together with proof that payment has been made to the CITY'S contractor(s).
- 2.3 If the invoice is satisfactory to the Director, he/she shall forward the invoice to the County Clerk for payment. If the Director or

County Clerk determines that an invoice contains an error or omission, the Director or County Clerk (as appropriate) shall return the invoice to CITY with a written explanation of the error or omission.

- 2.4 The parties recognize that the CITY will enter into contractual operations with third parties in order to perform the services required by this Agreement and that COUNTY shall be the funding source for a sum of not more than Thirty-Two Thousand Dollars and No Cents (\$32,000.00) of CITY's cost of the Project. Accordingly, the County Clerk shall timely process all invoices received from CITY as provided hereinabove and pursuant to applicable statutes and county code sections.

Section 3. Term.

- 3.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through the final completion of the Project, unless earlier terminated in accordance with Section 5 herein (the "Term").
- 3.2 If such Notice of Termination as specified in Section 5 is given, this Agreement shall terminate within five (5) days thereof, and following such five-day period, the parties shall be relieved of all rights and obligations hereunder, except for any rights and obligations that expressly survive termination.

Section 4. Subcontracts.

- 4.1 In performing the construction of the Project as contemplated by this Agreement, the parties recognize that the CITY may subcontract with a third party(ies) to provide the actual design and construction services.
- 4.2 Any third party contracts entered into between the CITY and any third party vendor shall not create any privity between the COUNTY and the third party, nor shall any third party vendor be considered a third party beneficiary of the rights of the CITY under this Agreement.
- 4.3 The CITY shall be responsible for any violations of applicable state, federal, County or City laws, rules or regulations made by the CITY's vendor(s) in performing any services contemplated in this Agreement.
- 4.4 Any contracts with any subcontractors entered into by CITY shall include provisions for indemnification, insurance, and customer service standards matching those provisions in this Agreement.

Section 5. Termination and Default.

- 5.1 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.
- 5.2 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.
- 5.3 The defaulting party shall cure any such default, within 30 days following the date of the Default Notice.
- 5.4 In the event the defaulting party fails to affect 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.
- 5.5 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 6. Indemnification.

- 6.1 To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, CITY does hereby agree to defend, indemnify and hold COUNTY, its officers, agents, or employees, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, and costs at the trial and level) arising from the acts or omissions of CITY or any third party vendor contracted by CITY in connection with this Agreement.

Section 7. Notices.

- 7.1 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: Mr. Thomas J. Willi
County Administrator
Monroe County
Historic Gato Building
1100 Simonton Street
Key West, Florida 33040

With a copy to: Suzanne Hutton, Esq.
Monroe County Attorney's Office
P.O. Box 1026
Key West, Florida 33041-1026

If to City: Mike Puto
City Manager
City of Marathon
11045-55 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

- 7.2 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.

Section 8. Insurance.

- 8.1 The CITY and the COUNTY agree to insure or self-insure their respective interests in connection with personal injury, death, and personal property damage to the extent each deems necessary or appropriate.
- 8.2 The CITY shall require any subcontractor performing work during the construction of the Project to maintain throughout the duration of such construction the following insurance:
- 8.3 Commercial general liability in the amount of \$1,000,000 per occurrence for bodily injury and property damage. This policy must include coverage for contractual liability and specifically cover the indemnity set forth in this Agreement. The CITY must be named as an additional insured on this policy.

- 8.4 Automobile and marine liability in the amount of \$1,000,000 per occurrence for bodily injury and property damage, covering all vehicles owned, leased or used by the subcontractor as part of the construction. The CITY must be named as an additional insured on this policy.
- 8.5 Workers compensation and employer's liability, as required by Florida Statutes.
- 8.6 All companies providing insurance shall be authorized to do business in the State of Florida and rated B+:VI or better by Best's Key Rating Guild, latest edition.
- 8.7 No change or cancellation of this insurance shall be made without 30 days prior written notice to the City.
- 8.8 The CITY shall require any subcontractor to name the COUNTY as an additional insured on any policies.

Section 9. Regulatory Powers.

- 9.1 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.
- 9.2 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 10. Attorneys Fees and Waiver of Jury Trial.

- 10.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, for representation at the trial level.
- 10.2 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 11. Governing Law.

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, Lower Keys Division of the Circuit Court or the Southern District of Florida.

Section 12. Entire Agreement/Modification/Amendment.

- 12.1 This writing contains the entire Agreement of the parties and supersedes 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.
- 12.2 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 13. Access to Records and Audits.

- 13.1 The County Administrator, his designee, or the Clerk of County shall, during the term of this Agreement and for a period of four (4) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of CITY or its subcontractors involving transactions related to this Agreement.
- 13.2 The COUNTY may cancel this Agreement for refusal by CITY, or CITY's subcontractor, to allow access by the County Administrator, his designee, or the County Clerk to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.
- 13.3 The term Records shall refer to any documents, books, data (electronic or hard copy), papers, and financial records that result from CITY or its subcontractor's performance of the Services provided in this Agreement.
- 13.4 If the inspection or audit discloses that County funds paid to City under this Agreement were used for a purpose not authorized by this Agreement, then CITY must refund the funds improperly spent with interest calculated pursuant to Section 55.03, Florida Statutes, with interest running from the date the COUNTY paid the improperly spent funds to CITY. This paragraph will survive the termination of this Agreement.

Section 14. Nonassignability.

- 14.1 This Agreement shall not be assignable by either party unless such assignment is first approved by both parties.

14.2 The provisions of this Section shall not prohibit CITY from utilizing the services of subcontractors to perform the Services contemplated in this Agreement.

Section 15. Severability.

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 16. Independent Contractor.

The CITY and its employees, volunteers, agents, vendors and subcontractors shall be and remain independent contractor and not agents or employees of the COUNTY with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

Section 17. Waiver.

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 18. Funding.

The parties agree that the COUNTY's responsibility under this Agreement is to provide funding only. Accordingly, all subcontractors are in privity with CITY only and may not seek direct payment from COUNTY, and that COUNTY has no duty, liability or other obligation to such persons. CITY agrees to include a sentence similar to the foregoing in all contracts entered into by CITY for the Project.

Section 19. Applicable Laws.

In awarding contracts for the design and construction of the Project, CITY agrees to abide by all applicable CITY ordinances and state and federal laws.

Section 20. Survival of Provisions.

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 21. Counterparts.

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

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

(SEAL)

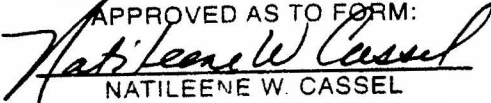
ATTEST: DANNY L. KOLHAGE, CLERK

BY: 
Deputy Clerk

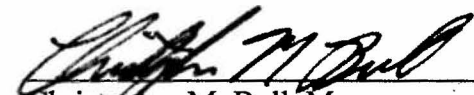
BOARD OF COUNTY COMMISSIONERS
MONROE COUNTY, FLORIDA

BY: 
Mayor Mario Di Gennaro

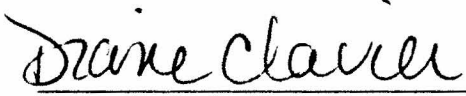
MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:


NATILEENE W. CASSEL
ASSISTANT COUNTY ATTORNEY
Date 7-11-07

THE CITY OF MARATHON, FLORIDA

BY: 
Christopher M. Bull, Mayor

ATTEST:


Diane Clavier
City Clerk

(City Seal)

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

BY: 