

**CITY OF MARATHON, FLORIDA
RESOLUTION 2008-148**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY AND ISLAMORADA, VILLAGE OF ISLANDS FOR THE SERVICES OF THE FIRE CHIEF; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE MANAGER TO EXECUTE THE AGREEMENT AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (The City) and Islamorada, Village of Islands (the “Village”) desire to employ the shared services of a fire chief in order to maximize efficiency and conserve municipal funds; and

WHEREAS, Section 112.24 Florida Statutes, authorizes government agencies to enter into Interlocal agreements; and

WHEREAS, both the City and the Village are Monroe County municipalities of comparable size, financial and other conditions; and

WHEREAS, the City is committed to improving the quality and level of service and public safety while balancing costs.

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 City Council hereby approves the Interlocal Agreement between the City of Marathon and Islamorada, Village of Islands, a copy of which is attached hereto as Exhibit “A”, for the services of Fire Chief, together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney; and authorizes the Manager to execute the agreement.

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 23rd day of September, 2008.

THE CITY OF MARATHON, FLORIDA


Edward P. Worthington, Mayor

AYES: Bull, Cinque, Tempest, Vasil, Worthington
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:


Jimmy Morales, City Attorney

INTERLOCAL AGREEMENT

FOR SERVICES OF

FIRE CHIEF

This interlocal agreement (the "Agreement") is entered into on this 23 day of September, 2008, by and between Islamorada, Village of Islands, a Florida municipal corporation (the "Village") and the City of Marathon, a Florida municipal corporation (the "City") for the shared services of a Fire Chief.

WHEREAS, both the Village and the City are Monroe County municipalities of comparable size, financial resources and other conditions; and

WHEREAS, Section 112.24, Florida Statutes, authorizes government agencies to share employees; and

WHEREAS, in order to maximize efficiency and conserve municipal funds, both the Village and the City desire to employ the shared services of a Fire Chief.

NOW THEREFORE, in consideration of the following mutual covenants, the parties agree as follows:

1. **Selection of Fire Chief.**

1.1 The initial selection of the Fire Chief shall be William A. Wagner, III.

2. **Scope of Services.** Effective October 1, 2008, the Fire Chief shall provide the following services to the City:

- 2.1 Under the direction and direct supervision of the City Manager, the Fire Chief will be responsible for overseeing the operations and activities of the Cities' Fire Rescue/Emergency Management Department.
- 2.2 The Fire Chief shall supervise and coordinate the administration of all Fire Rescue and Emergency Management activities.
- 2.3 The Fire Chief shall plan, organize, direct and control Fire Rescue and Emergency Management functions in accordance with applicable federal, state and local laws, codes, rules and regulations.
- 2.4 The Fire Chief shall oversee the City's volunteer Fire/Rescue forces including the development and implementation of appropriate training programs.
- 2.5 The Fire Chief shall plan, organize, direct and coordinate the work of subordinates, including line officers, professionals, volunteers, technical and clerical personnel.
- 2.6 The Fire Chief shall act as a liaison for the Fire Rescue/Emergency Management Division with the City Manager, City Council, other departments, outside agencies, the press and the public.
- 2.7 The Fire Chief shall plan and develop comprehensive programs for fire prevention and life safety.
- 2.8 The Fire Chief shall prepare and coordinate the Emergency Disaster and Hurricane Preparedness Plan for the City.

- 2.9** The Fire Chief shall prepare and administer the Fire Rescue/Emergency Management Department budget.
- 2.10** The Fire Chief shall respond to emergency incidents and assumes direct command and control of the operation where appropriate.
- 2.11** The Fire Chief shall develop and implement departmental policies, procedures, goals and objectives and enforces state, county and municipal fire safety codes.
- 2.12** The Fire Chief shall supervise and participate in the required necessary fire inspections and fire code enforcement within the City, including necessary fire safety plan review.
- 2.13** The Fire Chief shall develop, assign and participate, where applicable, in the City's Public Education programs on fire/life safety.
- 2.14** The Fire Chief shall conduct meetings and assign training sessions with departmental personnel.
- 2.15** The Fire Chief shall supervise and participate, where applicable, in the investigation of all fires in the City that result in substantial loss, death or serious injury to determine origin, cause and circumstances.
- 2.16** The Fire Chief shall oversee EMS for quality assurance, medical control and regulatory compliance.
- 2.17** The Fire Chief shall administer EMS contracts, interlocal and mutual aid agreements.

2.18 The Fire Chief shall perform such other related duties as assigned by the City Manager.

3. Compensation.

3.1 The Fire Chief shall be an employee of the Village, with all benefits enjoyed by Village employees. The salary, leave, travel and transportation status of the Fire Chief shall be governed by Section 112.24(3), Florida Statutes, unless otherwise specified in this Agreement.

3.2 The City shall reimburse the Village for fifty percent (50%) of all costs incurred by the Village for compensation of the Fire Chief. For purposes of this Agreement “compensation” shall mean the Fire Chief’s salary and all related benefits provided by the Village, including but not limited to, employer’s match of Fire Chief’s wages, Social Security payments, FICA, Medicare, health insurance, disability insurance, worker’s compensation, and retirement account contributions.

3.3 The City shall reimburse the Village for fifty percent (50%) of all costs incurred by the Village for transportation expenses of the Fire Chief. For purposes of this Agreement, “transportation” shall include lease payments or loan payments for a vehicle assigned to the Fire Chief and all vehicle maintenance, insurance, gasoline and other maintenance and operation costs.

3.4 The City shall reimburse the Village for fifty percent (50%) of all costs incurred by the Village for equipment expenses of the Fire Chief. For

purposes of this Agreement, "equipment" shall mean cellular telephone, PDA, computer internet and any other equipment provided by the Village to the Fire Chief.

3.5 The City shall reimburse the Village for fifty percent (50%) of all travel costs of the Fire Chief. For purposes of this Agreement, "travel" shall mean attendance at conferences, training and services related to the services of the Fire Chief.

3.6 The City shall reimburse Village for Village expenses listed in Subsections 3.2 through 3.5 of Fire Chief on a monthly basis. The Village shall provide the City with a monthly invoice. Payment by City to the Village shall be under the provisions of the Florida Prompt Payment Act.

4. Scheduling/Supervision.

4.1 The Village Manager and City Manager shall agree upon a mutually acceptable schedule for Fire Chief, with approximately fifty percent (50%) of the Fire Chief's time afforded to the Village and fifty percent (50%) of the Fire Chief's time afforded to the City.

4.2 While performing services to the City, the Fire Chief shall be supervised by the City Manager. At all other times, the Fire Chief shall be supervised by the Village Manager.

4.3 The scope of services of the Fire Chief to the Village shall be as directed by the Village Manager and not subject to this Agreement.

5. **Meetings/Leave.**

5.1 The Village Manager and City Manager shall coordinate the dates of all meetings relating to emergency preparedness and related training, and any other workshops and all other related meetings so that Fire Chief may attend all such meetings for the Village and the City.

5.2 The Fire Chief shall coordinate scheduled leave between the respective managers to ensure that both parties' needs are met.

6. **Term and Termination.**

6.1 This Agreement shall be effective upon execution by both parties and shall expire on September 30, 2009.

6.2 Notwithstanding the provisions of Subsection 6.1, either party may terminate this Agreement without cause upon thirty (30) days written notice to the other party. Upon notice of termination, the Village and the City shall determine the amounts due to Village for services of Fire Chief performed up to the date of termination.

6.3 At any time during this Agreement, if the current Fire Chief separates his engagement with the Village, the Village Manager and City Manager shall jointly select a replacement of Fire Chief.

6.4 In the event that the Fire Chief position is vacated, the City may terminate this Agreement with seven (7) days written notice to the Village Manager.

6.5 If the Village Manager and City Manager are unable to concur on an individual to serve as the replacement Fire Chief, either party may terminate this agreement immediately upon written notice to the other party.

7. **Liabilities/Indemnification.**

7.1 Neither the City nor the Village warrants the competency or integrity of the Fire Chief.

7.2 To the extent permitted by law and as limited by Section 768.28, Florida Statutes, the City shall defend, indemnify and hold harmless the Village and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which Village or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligence of the Fire Chief while under the control of the City. The City shall promptly notify the Village of each claim, cooperate with the Village in the defense and resolution of each claim and not settle or otherwise dispose of the claim without the Village's participation.

7.3 To the extent permitted by law and as limited by Section 768.28, Florida Statutes, the Village shall defend, indemnify and hold harmless the City and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the City

or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligence of the Fire Chief while under the control of the Village. The Village shall promptly notify the City of each claim, cooperate with the City in the defense and resolution of each claim and not settle or otherwise dispose of the claim without the City's participation.

7.4 Neither party shall be responsible to the other party for conduct of the Fire Chief that involves malfeasance, misfeasance, gross negligence, or illegal acts.

7.5 The indemnification provisions of this agreement shall survive termination of this Agreement for any claims that may be filed after the termination date of the Agreement provided the claims are based upon actions that occurred during the performance of this Agreement.

8. Liability Insurance/Worker's Compensation/Disability.

8.1 Although the official acts of the Fire Chief should be entitled to immunity under Florida Statutes, both the City and the Village provide liability insurance in their respective municipalities that includes coverage and defense for the acts or omissions of their respective employees. Should a claim arise for actions of the Fire Chief occurring within the scope of his employment, the claim shall be made to the insurance company of the

municipality that the Fire Chief was providing services to at the time of the activity.

8.2 Should the Fire Chief suffer a disability or death as a result of personal injury sustained in connection with the performance of Fire Chief's duties hereunder, the responsibility for payment of benefits between the parties shall be as specified in Sections 112.24(3)(d) and (4)(e), Florida Statutes.

9. Notices. Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail, private postal service or hand delivery to:

Village:

Kenneth Fields, Village Manager
Islamorada, Village of Islands
81990 Overseas Highway, Second Floor
P.O. Box 568
Islamorada, FL 33036
Telephone: (305) 664-6410
Facsimile: (305) 664-6464

With a Copy to:

Nina Boniske, Village Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, FL 33134
Telephone: (305) 854-0800
Facsimile: (305) 854-2323

City:

Clyde Burnett, City Manager
City of Marathon
9805 Overseas Highway
Marathon, FL 33050
Telephone: (305) 289-4130
Facsimile: (305) 289-4123

With a copy to:

Jimmy Morales, City Attorney
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, FL 33130-1536
Telephone: (305) 789-3200
Facsimile: (305) 789-3395

10. Records, Retention, Audit

10.1 Each party shall keep records with respect to the expenditure of funds paid by it under this Agreement. All such records shall be retained for a minimum of three (3) years from the date of expiration of this Agreement.

10.2 The Village Manager or the City Manager or their respective designee may inspect and/or audit the financial records of the other party upon reasonable notice. Reasonable notice should include a written request of a minimum of seven (7) working days prior to the intended site visit and the specific records to be inspected.

10.3 Either municipality shall provide the other party's manager or his, her designee access to the records during regular business hours. If in any audit of the municipality's records relating to this Agreement, either party finds a discrepancy between the actual amount of funds paid and the requirements of the Agreement, then the party shall within thirty (30) days of receipt of written notification from the other party, either credit/debit the party the amount of the discrepancy or refund the same. If either party disagrees with the other's audit, the party shall notify the other party's Manager within fifteen (15) days of the receipt of the audit findings requesting an independent audit. The City Manager and the Village Manager shall select a mutually agreed upon independent auditor to review the audit and resolve the discrepancies. The auditor's fee will be paid by both parties equally.

11. **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.

12. **Waiver of Jury Trial.** The parties irrevocably, knowingly agree to waive their rights to a trial by jury in any action to enforce the terms or conditions of this Agreement.

13. Counterparts. This Agreement may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

14. Choice of Law. This Agreement shall be governed by the laws of the State of Florida. Venue shall lie in Monroe County.

15. Attorney's Fees/ Dispute Resolution.

15.1 In the event either party to this Agreement is required to retain legal counsel to enforce any of its rights under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party together with court costs incurred in any litigation at any trial and appellate proceedings. However, neither party shall be responsible for or subject to pre-judgment interest.

15.2 The parties reserve all available remedies afforded by law to enforce any term or condition of this Agreement. Provided that prior to the filing of any legal proceeding, the parties shall submit to the dispute resolution procedures of Chapter 164, Florida Statutes.

16. Assignment and Amendment. No assignment by either party of this Agreement or any part of it, or any monies due or to become due, shall be made. This Agreement may only be amended, by the parties, with the same formalities as this Agreement.

17. Employment Responsibility.

17.1 The Fire Chief in the performance of such services, functions and responsibilities as are described and contemplated herein for the City and the Village shall remain a Village employee.

17.2 Village shall be responsible for all employee insurance benefits and compensation during the course of employment with the Village. Accordingly, the City shall not be called upon to assume any liability for or direct payment of any salaries, wages, compensation benefits under Chapter 441, Florida Statutes or any other amenities of employment to Fire Chief for performing services, duties and responsibilities hereunder for the benefit of the City, unless otherwise specifically provided herein.


18. Authority To Execute; No Conflict Created.

18.1 The Village Manager by execution of this Agreement does hereby represent to the City that the Village Manager has full power and authority to make and execute this Agreement on behalf of the Village, pursuant to the resolution of the Village Council.

18.2 The City Manager by execution of this Agreement does hereby represent to Village that he has full power and authority to make and execute this Agreement on behalf of the City, pursuant to the resolution of the City Council.


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

Approved as to form and legal sufficiency for the use and benefit of the City of Marathon only



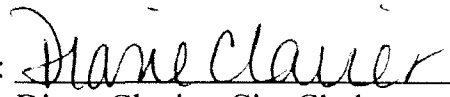
Jimmy Morales, City Attorney

CITY OF MARATHON, a political subdivision of the State of Florida



Clyde Burnett, City Manager

ATTEST:

By: 

Diane Clavier, City Clerk

Approved as to form and legality for the use and benefit of the Islamorada, Village of Islands only:

ISLAMORADA, VILLAGE OF ISLANDS, a political subdivision of the State of Florida

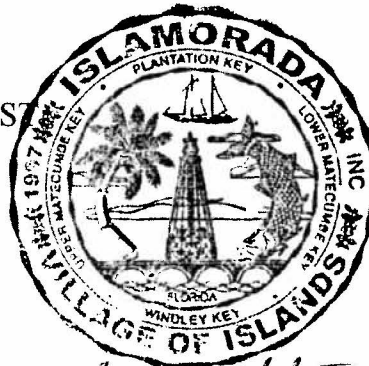


Weiss Serota Helfman Pastoriza
Cole & Boniske, P.L.
Village Attorney



Kenneth Fields, Village Manager

ATTES



Beverly Raddatz, Village Clerk