

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2008-63**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN EMPLOYMENT AGREEMENT BETWEEN CLYDE BURNETT 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 Office of the City; and

**WHEREAS**, the City Council desires to retain Clyde Burnett 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 Employment Agreement between Clyde Burnett 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 29<sup>th</sup> day of April, 2008.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
Edward P. Worthington, Mayor

AYES: Cinque, Tempest, Vasil, Bull, 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:**



City Attorney

**EMPLOYMENT AGREEMENT**  
**CITY MANAGER**

This Employment Agreement (the "Agreement") is made and entered into this 29<sup>th</sup> day of April, 2008, between the City of Marathon, Florida, a Florida municipal corporation, (the "City") and Clyde Burnett ("Burnett" or "City Manager").

**RECITALS:**

WHEREAS, Section 7 of the City Charter (the "Charter") requires that there shall be a City Manager, who shall be the Chief Administrative Officer of the City; and

WHEREAS, the City desires to employ the services of Burnett as City Manager and Burnett wishes to accept this employment.

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, 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.

**Section 2. Salary.**

2.1 The City Manager shall receive an initial annual salary in the amount of \$90,000.00, payable in equal installments in accordance with the City's existing pay periods. If, and only if, the City Manager receives a positive evaluation from the City Council after the 180 day evaluation described in Section 3.1 of this Agreement, the annual salary shall increase to \$100,000.00. This salary may be adjusted by the City Council as specified in Section 3.2 of this Agreement.

2.2 On each anniversary date, 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 eighty (180) days from the date of this Agreement. If the City Manager does not receive a positive evaluation, the City Council will determine the appropriate course of action.

3.2 The City Council shall evaluate the performance of the City Manager at least once annually within sixty (60) days of the City Manager's anniversary date. Based upon the results of the annual evaluation, the City Council may, in its sole discretion, grant a salary increase or grant additional benefits to the City Manager.

3.3 The evaluations specified in Sections 3.1 and 3.2 shall be based upon (i) the City Manager's performance of the duties specified in Section 1 and (ii) the City Manager's achievements of the City Council's policy directives.

**Section 4. 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 5. Insurance Benefits.**

The City shall provide, at the City's expense, policies for dental and vision insurance for the City Manager and his spouse ("Insurance Benefits").

**Section 6. Annual Leave, Sick Leave and Holidays.**

6.1 The City Manager shall accrue vacation time at the rate of fifteen days (120 hours) per year, with a cap of 240 hours. Once 240 hours is reached, the City Manager will stop accruing vacation time until vacation time is used and the accrual amount goes below 240 hours once again. For the purposes of accrual under this subsection, the first pay period shall commence on May 1, 2008.

6.2 The City Manager shall initially receive five sick days (40 hours) and shall accrue sick time at the rate of twelve sick days (96 hours) per year. Any unused sick days will carry over year-to-year until a maximum of 384 hours has accrued. For the purposes of accrual under this subsection, the first pay period shall commence on October 1, 2008.

6.3 The City Manager shall not use more than five (5) consecutive days of vacation 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 14 hereof, any unused sick leave shall expire and any accrued unused vacation leave in excess of 240 hours shall expire.

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

6.5 As used in this Section, the word day shall mean business day.

**Section 7. Automobile and Travel.**

7.1 The City Manager, at his discretion, may use a City vehicle in the performance of his duties and responsibilities as the City Manager for the City of Marathon.

7.2 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 8. Equipment.**

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 9. Days.**

Unless otherwise specified, any reference to days in this Agreement shall mean calendar days.

**Section 10. Bonds.**

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 11. Reduction of Compensation.**

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 12. Employment Exclusive.**

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 13. Term.**

13.1 This Agreement shall commence on May 1, 2008, and shall continue through April 30, 2009 (the "Term"), unless terminated earlier as provided in this Agreement.

13.2 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; provided, however, that any such extension is contingent upon agreement by the parties hereto upon salary and annual leave for the extension period.

13.3 Not less than 60 days prior to the expiration of the Term of this Agreement, 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 14. Termination.**

14.1 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.

14.2 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 Charter.

14.3 In the event the City Manager is terminated prior to the expiration of the Term specified in Section 13.1, the City Manager shall receive severance payments as follows: (i) if terminated within the first 180 days of the Term, payment of accrued unused vacation leave up to a maximum of 240 hours; and (ii) if terminated after 180 days of the Term, 90 days of severance payment. For purposes of this Section, "severance payment" shall be based upon the salary specified in Section 2.1, plus accrued and unused vacation leave up to a maximum of 240 hours. All severance payments shall be paid to City Manager in a lump sum upon his termination or within 30 days thereafter at the City Council's option.

14.4 Notwithstanding the provisions of Section 14.3, 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.

14.5 Upon payment of the severance payment specified in Section 14.3, or upon termination as provided for in Sections 14.4 or 14.8, 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.

14.6 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 Manager shall not be entitled to receive the severance package specified in Section 14.3, but the City shall pay the City Manager all accrued unused vacation leave, up to a maximum of 240 hours, calculated at the City Manager's rate of pay in effect upon the date of termination.

14.7 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 the severance package specified in Section 14.3 nor shall the City Manager receive payment of any accrued vacation leave.

14.8 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 severance payment specified in Section 14.3 shall not be applicable; however, the City Manager's designated beneficiary shall be paid all accrued unused vacation leave up to a maximum of 240 hours.

**Section 15. Conflict of Interest Prohibition.**

15.1 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.

15.2 The City Manager shall abide by the provisions of Chapter 112, Florida Statutes, and the Code of Ethics pertaining to public employees.

**Section 16. Miscellaneous Provisions.**

16.1 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.

16.2 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.

16.3 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.

16.4 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.

16.5 Non-Assignment. The rights and obligations herein granted are personal in nature and cannot be transferred or assigned by the City Manager.

16.6 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.

16.7 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.

16.8 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: Edward P. Worthington, Mayor  
City of Marathon  
9805 Overseas Highway  
Marathon, FL 33050  
Telephone: (305) 743-0033  
Facsimile: (305) 743-3667

With a copy to: Jimmy L. 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

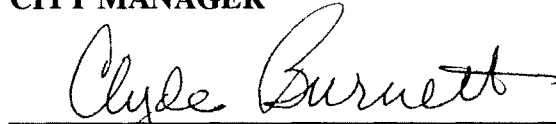
For the City Manager: Clyde Burnett  
City Manager  
City of Marathon  
9805 Overseas Highway  
Marathon, FL 33050  
Telephone: (305) 743-0033  
Facsimile: (305) 743-3667

IN WITNESS WHEREOF, the City, by signature of the Mayor as authorized by Resolution No. 2008-63 adopted April 29, 2008, and City Manager have signed and executed this Agreement the day and year first above written.


**THE CITY OF MARATHON, FLORIDA**

  
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Edward P. Worthington, Mayor

**CITY MANAGER**

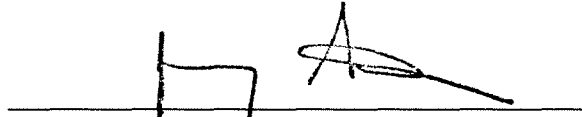
  
\_\_\_\_\_  
Clyde Burnett

**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