

Sponsored by: Burnett

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2009-104**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) FOR DEMOLITION OF THE BOOT KEY BRIDGE (CR 931); REMITTING \$400,000 PREVIOUSLY APPROPRIATED BY COUNCIL AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marathon (the "CITY") has requested the State of Florida Department of Transportation (the "DEPARTMENT") demolish the bascule span on County Road (C.R.) 931/Boot Key Bridge; and

**WHEREAS**, the DEPARTMENT has agreed demolish the bascule span on C.R. 931/Boot Key Bridge, subject to the terms and conditions detailed in this Agreement; and

**WHEREAS**, the CITY shall fund the increased costs associated with demolishing the bascule span on C.R. 931/Boot Key Bridge, hereinafter collectively called the 'PROJECT', and as detailed in the agreement; and

**WHEREAS**, the parties are authorized to enter into this Agreement pursuant to Sections 334.044(7) and 339.12 (2006), Florida Statutes (F.S.), and authorize its officers to do so.

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

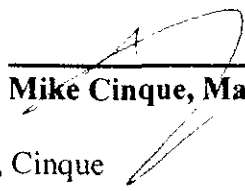
**Section 1.** The above recitals are true and correct and incorporated herein.

**Section 2.** The City Council hereby approves the Locally Funded Agreement between the Florida Department of Transportation and the City, a copy of which is attached hereto as Exhibit "A", 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 is approved.

**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 11th day of August, 2009.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Mike Cinque, Mayor**

AYES: Ramsay, Snead, Vasil, Worthington, Cinque  
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

## LOCALLY FUNDED AGREEMENT

**THIS LOCALLY FUNDED AGREEMENT** (hereinafter 'Agreement') is made and entered into this 9<sup>th</sup> day of September, 2009, between the **CITY OF MARATHON**, a municipal corporation of the State of Florida, hereinafter referred to as the 'CITY', and the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION** a component agency of the State of Florida, hereinafter referred to as the 'DEPARTMENT'.

### RECITALS:

**WHEREAS**, the CITY has requested the DEPARTMENT demolish the bascule span on County Road (C.R.) 931/Boot Key Bridge; and

**WHEREAS**, the DEPARTMENT has agreed demolish the bascule span on C.R. 931/Boot Key Bridge, subject to the terms and conditions detailed in this Agreement; and

**WHEREAS**, the CITY shall fund the increased costs, under Financial Project Numbers 418892-1-32-01 and 418892-1-52-01, associated with demolishing the bascule span on C.R. 931/Boot Key Bridge, hereinafter collectively called the 'PROJECT', and as detailed in the attached Exhibit "A", "Scope of Services", which is herein incorporated by reference; and

**WHEREAS**, the parties are authorized to enter into this Agreement pursuant to **Sections 334.044(7) and 339.12 (2006), Florida Statutes (F.S.)**, and authorize its officers to do so.

**NOW, THEREFORE**, in consideration of the premises, the mutual covenants and other valuable considerations contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. Recitals.** The Recitals to this Agreement are true and correct and are incorporated herein by reference and made a part hereof.

## **2. General Requirements**

- (a) A true and correct copy of the Resolution of the CITY Commission approving this Agreement is attached hereto as Exhibit "C", 'CITY OF MARATHON RESOLUTION', and is incorporated herein by reference.
- (b) The DEPARTMENT will administer and demolish the PROJECT in accordance with the approved PROJECT Specifications prepared by Hardesty and Hanover LLP, herein incorporated by reference, and as detailed in the attached Exhibit "A", 'Scope of Services'. The DEPARTMENT will complete the PROJECT utilizing the funds provided by the CITY.
- (c) The CITY will provide funding to the DEPARTMENT, in the aggregate amount of FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00), for the PROJECT, subject further to the provisions in Section 3 of this Agreement and as outlined in the attachment Exhibit "B", "Financial Summary", which is herein incorporated by reference.
- (d) The DEPARTMENT Contractor will not commence work on the PROJECT until CITY funding for the PROJECT is on deposit with the DEPARTMENT.
- (e) Upon the receipt, authorization and encumbrance of funding received from the CITY as a result of this Agreement, the DEPARTMENT Contractor will commence work on the PROJECT.

## **3. Financial Provisions.**

- (a) The CITY agrees that it will, no later than fourteen (14) calendar days after the DEPARTMENT's execution of this Agreement, furnish the DEPARTMENT an advance deposit in the amount of FOUR HUNDRED THOUSAND DOLLARS

(\$400,000.00) for full payment of the estimated PROJECT cost for Locally Funded Project Numbers 418892-32-01 and 418892-1-52-01. The advance deposit shall be the total estimated PROJECT cost plus allowances. The DEPARTMENT may utilize this deposit for payment of the costs of the PROJECT.

- (b) If the accepted bid amount plus allowances is in excess of the advance deposit amount, the CITY will provide an additional deposit within fourteen (14) calendar days of notification from the DEPARTMENT or prior to posting the accepted bid, whichever is earlier, so that the total deposit is equal to the bid amount plus allowances. The DEPARTMENT will notify the CITY as soon as it becomes apparent the accepted bid amount, plus allowances, is in excess of the advance deposit amount. However, failure of the DEPARTMENT to so notify the CITY shall not relieve the CITY from its obligation to pay for its full participation on final accounting as provided herein below. If the CITY cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to and approved by the DEPARTMENT's PROJECT manager indicating when the deposit will be made. The CITY understands the request and approval of the additional time could delay the PROJECT, and additional costs may be incurred due to a delay of the PROJECT.
- (c) If accepted bid amount plus allowances is less than the advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit exceeds the bid amount plus allowances if such refund is requested by the CITY in writing.
- (d) Should PROJECT modifications or changes to bid items occur that increase the CITY's share of total PROJECT costs, the CITY will be notified by the

DEPARTMENT accordingly. The CITY agrees to provide, without delay, in advance of additional work being performed, adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund its share of the PROJECT. The DEPARTMENT shall notify the CITY as soon as it becomes apparent the actual costs will overrun the award amount. However, failure of the DEPARTMENT to so notify the CITY shall not relieve the CITY from its obligation to pay for its full participation during the PROJECT and on final accounting as provided herein below. Funds due from the CITY during the PROJECT not paid within forty (40) calendar days from the date of the invoice are subject to an interest charge at a rate established pursuant to **Section 55.03, F.S.**

- (e) The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred and sixty (360) days of final payment to the Contractor. The DEPARTMENT considers the PROJECT complete when final payment has been made to the Contractor, not when the construction work is complete. All PROJECT cost records and accounts shall be subject to audit by a representative of the CITY for a period of three (3) years after final close out of the PROJECT. The CITY will be notified of the final cost. Both parties agree that in the event final accounting of total PROJECT costs pursuant to the terms of this agreement is less than the total deposit to date, a refund of the excess will be made by the DEPARTMENT to the CITY. If the final accounting is not performed within three hundred and sixty (360) days, the CITY is not relieved from its obligation to pay.

- (f) In the event the final accounting of total PROJECT costs is greater than the total CITY deposits to date, the CITY will pay the additional amount within forty (40) calendar days from the date of the invoice from the DEPARTMENT. The CITY agrees to pay interest at a rate as established pursuant to **Section 55.03, F.S.**, on any invoice not paid within forty (40) calendar days until the invoice is paid.
- (g) The payment of funds under this Locally Funded Agreement will be made directly to the DEPARTMENT for deposit and as provided in the attached Memorandum of Agreement (**MOA**) between the Participant(s), Department and the State of Florida, Department of Financial Services, Division of Treasury.
- (h) Nothing in this Agreement shall be construed to violate the provisions of Section 339.135(6)(a), Florida Statutes, which provides as follows:

“The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the Comptroller of the Department that such funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) and which have a term for a period of more than one year.”

- 4. Effective Date of this Agreement.** This Agreement shall become effective upon execution by the CITY and the DEPARTMENT and as of the date set forth on page one (1) hereof.
- 5. Provisions Separable.** The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by





9. **Binding Effect.** This Agreement shall be binding upon the parties and their respective representatives, successors and assigns.
10. **Waiver.** Waiver by either party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.
11. **Captions.** The captions contained in this Agreement are inserted only as a matter of convenience or reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.
12. **Absence of Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to (a) confer upon any entity or person other than the parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third party beneficiary or otherwise except as specifically provided in this Agreement; or (b) authorize anyone not a party to this Agreement to maintain an action pursuant to or based upon this Agreement.
13. **Other Documents.** The parties shall take all such actions and execute all such documents which may be reasonably necessary to carry out the purposes of this Agreement, whether or not specifically provided for in this Agreement; provided that the parties further acknowledge that certain additional actions by the CITY may require approval by the Board of CITY Commission, and, to the extent such approval is required by applicable law, obtaining such approval shall be a condition to the obligations of the CITY under this Section.
14. **Governing Law.** This Agreement and the interpretation of its terms shall be governed by the laws of the State of Florida, without application of conflicts of law principles. Venue for any judicial, administrative or other action to enforce or construe any term of this Agreement or

arising from or relating to this Agreement shall lie exclusively in Miami-Dade County, Florida.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the day and year first above written, CITY OF MARATHON, signing by and through its CITY Mayor, and the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, signing by and through its District Secretary, each duly authorized to execute same.

**CITY OF MARATHON:**

**STATE OF FLORIDA,  
DEPARTMENT OF TRANSPORTATION:**

**BY:**

  
\_\_\_\_\_  
**CITY MAYOR**

**BY:**

  
\_\_\_\_\_  
**DISTRICT SECRETARY**

**ATTEST:**

(SEAL)

  
\_\_\_\_\_  
**CITY CLERK**

**ATTEST:**

(SEAL)

  
\_\_\_\_\_  
**EXECUTIVE SECRETARY**

**LEGAL REVIEW:**

  
\_\_\_\_\_  
**CITY ATTORNEY**

  
\_\_\_\_\_  
**DISTRICT CHIEF COUNSEL**

## **EXHIBIT 'A'**

### **SCOPE OF SERVICES**

The PROJECT work consists of the demolition of the bascule span steel girders and framing, decking, counterweight and counterweight blocks. The demolition shall be completed in accordance with the PROJECT Specifications prepared by Hardesty and Hanover LLP.

**PROJECT LIMITS: C.R. 931/Boot Key Bridge**

**DEPARTMENT Financial Project Numbers: 418892-1-32-01 and 418892-1-52-01**

**COUNTY: Monroe**

**DEPARTMENT Project Manager: Luis Amigo 305-470-5436**

**CITY Project Manager: Susie Thomas, Community Services Director 1-305-289-4130**

**EXHIBIT 'B'**

**FINANCIAL SUMMARY**

The DEPARTMENT's Work Program allocates the following funding, programmed under Financial Project Numbers 418892-1-32-01 and 418892-1-52-01, for PROJECT completion:

418892-1-32-01

<b><u>Fiscal Year:</u></b>	<b><u>Amount:</u></b>	<b><u>Fund Type:</u></b>
<b>2009/2010</b>	<b>\$20,000.00</b>	<b>Local Funds (LF)</b>

418892-1-52-01

<b><u>Fiscal Year:</u></b>	<b><u>Amount:</u></b>	<b><u>Fund Type:</u></b>
<b>2009/2010</b>	<b>\$304,865.00</b>	<b>Earmark Funds (S117)</b>
<b>2009/2010</b>	<b>\$380,000.00</b>	<b>Local Funds (LF)</b>

**CITY OF MARATHON FINANCIAL RESPONSIBILITY:** **\$ 400,000.00**

**EXHIBIT 'C'**

**CITY OF MARATHON RESOLUTION**

To be attached hereto and incorporated herein once ratified by the CITY Commission.