

**CITY OF MARATHON, FLORIDA
RESOLUTION 2009-149**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN INTER-LOCAL AGREEMENT WITH MONROE COUNTY TO REIMBURSE THE CITY OF MARATHON IN THE AMOUNT OF \$29,832.00 FROM BOATING IMPROVEMENT FUNDS FOR COSTS PREVIOUSLY INCURRED BY THE CITY FOR MOORING INSPECTIONS AND MAINTENANCE DURING THE PAST FISCAL YEAR; 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, Monroe County (the "County") routinely uses Boating Improvement Funds for recreational boating related projects within the various municipalities; and

WHEREAS, the City is requesting that the County provide reimbursement in the amount of \$29,832.00 from Boating Improvement Funds for costs previously incurred by the City for mooring inspections and maintenance during the past fiscal year; and

WHEREAS, the above expenditures are qualified expenditures from the Boating Improvement Fund;

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 are incorporated herein by this reference.

Section 2. The inter-local agreement between Monroe County and the City, a copy of which is attached hereto as Exhibit "A", for reimbursement for costs previously incurred by the City for mooring inspections and maintenance during the past fiscal year in the amount of \$29,832.00 from Boating Improvement Funds, 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. 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 13th day of October, 2009.


THE CITY OF MARATHON, FLORIDA



Mayor Mike Cinque

AYES: Snead, Vasil, Worthington, Ramsay, Cinque
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Hillary H. Harrison, Acting City Clerk

(City Seal)

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



John Herrin, City Attorney

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT is entered into as of this 18th day of Nov., 2009, 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, the COUNTY routinely uses Boating Improvement Funds for recreational boating related projects within the various municipalities; and

WHEREAS, the CITY is requesting that the COUNTY provide reimbursement in the amount of \$29,832.00 from Boating Improvement Funds for costs previously incurred by the City for mooring inspections and maintenance during the past fiscal year; and

WHEREAS, the above expenditures are qualified expenditures from the Boating Improvement Fund;

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

Section 1. Payment. The COUNTY agrees to reimburse the CITY for previously incurred costs for mooring inspections and maintenance during the past fiscal year as follows:

- 1.1 Payment in the amount of \$29,832.00 for scheduled inspections and maintenance of moorings in the Boot Key Harbor mooring field.
- 1.2 To receive payment, the CITY shall submit all requests for payment and applicable invoices to the Senior Administrator of the COUNTY's Marine Resources Office. The invoices must describe the services performed, together with proof that payment has been made to the CITY'S contractor(s). All documentation shall be forwarded to the County Clerk for payment. Any other documentation requested by the Clerk shall be provided.
- 1.3 By submitting a request for payment, CITY represents that it has complied with all of its purchasing requirements.

Section 2. Term.

- 2.1 This Agreement shall become effective upon execution by both parties.
- 2.2 If such Notice of Termination as specified in Section 3 is given, this Agreement shall terminate within five (5) days thereof.

Section 3. Termination and Default.

- 3.1 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.
- 3.2 Upon any such default, the non-defaulting party shall provide to the defaulting party a written Notice of such default, which Notice (Default Notice) shall state in reasonable detail the actions the defaulting party must take to cure the same.
- 3.3 The defaulting party shall cure any such default, within 30 days following the date of the Default Notice.
- 3.4 Notwithstanding the provisions of this Section, if any such default by the defaulting party remains uncured at the conclusion of any specified 30 day cure period, and if the nature of the defaulting party's obligations are such that more than 30 days is required to effect cure, then the defaulting party shall not be in default hereunder and the non-defaulting party shall not have the right to exercise its termination rights granted herein as a result of any such default, if the defaulting party commences cure within the applicable cure period and thereafter diligently pursues cure to completion of performance.
- 3.5 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 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.
- 3.6 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 4. Indemnification.

- 4.1 To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the CITY does hereby agree to defend, indemnify and hold the COUNTY, its officers, agents, or employees, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the acts or omissions of the CITY in connection with this Agreement. This provision shall survive the expiration or earlier termination of this Agreement.

Section 5. Notices.

- 5.1 All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing and addressed as follows, or to any other address which either party may designate to the other party by mail:

If to County: Roman Gastesi, Jr.
County Administrator Monroe County
Historic Gato Building
1100 Simonton Street
Key West, Florida 33040

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

If to City: City Manager
City of Marathon
9805 Overseas Highway
Marathon, Fl 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

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; or sent by overnight delivery service.

Section 6. Regulatory Powers.

- 6.1 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.
- 6.2 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 7. Attorneys Fees and Waiver of Jury Trial.

- 7.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 7.2 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 8. Governing Law.

- 8.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation or mediation arising out of this Agreement shall be in the 16th Judicial Circuit in and for Monroe County, Florida. This Agreement is not subject to arbitration.

Section 9. Entire Agreement/Modification/Amendment.

- 9.1 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.
- 9.2 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 10. Access to Records and Audits.

- 10.1 CITY shall keep such records as are necessary to document the performance of the Agreement and expenses as incurred, and give access to these records at the request of COUNTY, the State of Florida, the Federal Government, or authorized agents and representatives of said government bodies. CITY shall also provide access to the personal property reports, permits, and equipment purchased or utilized under this Agreement. It is the responsibility of CITY to maintain appropriate records in accordance with generally accepted accounting principles consistently applied to insure a proper accounting of all funds and expenditures. Records shall be kept for a period of five (5) years following execution of this Agreement. CITY understands that it shall be responsible for repayment of any and all audit exceptions which are identified by the Auditor General for the State of Florida, the Clerk of Court for Monroe County, the Board of County Commissioners for Monroe County, or their agents and representatives. COUNTY shall bill CITY for the amount of the audit exception and CITY shall promptly repay any audit exception. However, COUNTY warrants and represents that it has full authority to fund the Project under the terms and conditions specified herein.

The COUNTY and CITY shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the COUNTY and CITY in conjunction with this Agreement; and the COUNTY shall have the right to unilaterally cancel this Agreement upon violation of this provision by CITY.

- 10.2 The COUNTY may cancel this Agreement for refusal by the CITY, or the CITY's subcontractor, to allow access by the County Administrator or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.
- 10.3 The term Records shall refer to any documents, books, data (electronic or hard copy), papers and financial records that result from the CITY or its subcontractors performance of the Services provided in this Agreement.
- 10.4 If the inspection or audit discloses that COUNTY funds paid to the CITY under this Agreement were used for a purpose not authorized by this Agreement, then the 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 the CITY. This paragraph will survive the termination of this Agreement.

Section 11. Nonassignability.

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

Section 12. Severability.

- 12.1 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 13. Independent Contractor.

- 13.1 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 14. Waiver.

- 14.1 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 15. Funding.

- 15.1 The parties agree that the COUNTY's responsibility under this Agreement is to provide funding only.

Section 16. Survival of Provisions.

- 16.1 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 17. Counterparts.

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

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IN WITNESS WHEREOF, the parties hereto have executed this agreement below.

BOARD OF COUNTY COMMISSIONERS
MONROE COUNTY, FLORIDA

BY: George L. Neugeb
Mayor/Chairperson

(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

BY: Isabel C. DeSantis
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: Susan G. Summley
Assistant County Attorney

THE CITY OF MARATHON, FLORIDA

[Signature]
Mike Cinque, Mayor
Date: 10-27-09

ATTEST:

Diane Clavier
Diane Clavier
City Clerk

(City Seal)

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

BY: [Signature]
City Attorney