

RESOLUTION NO. 2009-167

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT WITH MONROE COUNTY, FLORIDA REGARDING CONTRACTOR LICENSING AND DISCIPLINE, AUTHORIZING THE MAYOR TO EXECUTE THE INTERLOCAL AGREEMENT ON BEHALF OF THE CITY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City was created by Chapter 99-427, Laws of Florida, which approved the creation of the City of Marathon effective November 30, 1999; and

WHEREAS, Chapter 99-427 provides that as of November 30, 1999, all contractor licensing and discipline powers and duties within the City's boundaries shall be vested in the City Council until such time as the City Council delegates all or a portion thereof to another entity; and

WHEREAS, the City and the County are interested in insuring continuity in the provision of contractor licensing and discipline functions within the City's corporate limits; and

WHEREAS, the City desires to utilize the services of the County to provide contractor licensing and discipline functions.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, AS FOLLOWS:

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

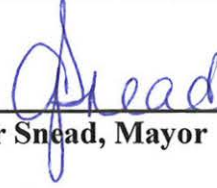
Section 2. The City Council hereby approves the Interlocal Agreement between the City, and the County (the "Agreement"), granting the County the necessary authority to provide contractor licensing and discipline services within the City's boundaries, attached as Exhibit "A" is approved.

Section 3. The Mayor is authorized to execute the Agreement on behalf of the City.

Section 4. This Resolution shall become effective immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida this 10th day of November, 2009.

THE CITY OF MARATHON, FLORIDA



Ginger Snead, Mayor

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

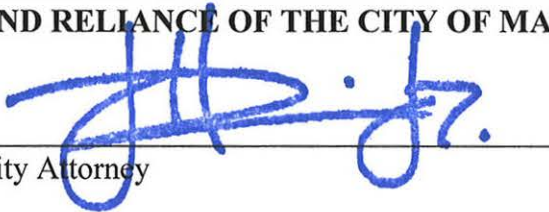
ATTEST:



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

This Interlocal Agreement (the "Agreement") entered into by and between the City of Marathon, a municipal corporation of the State of Florida, whose address is 9805 Overseas Highway, Marathon, Florida, (the "City"); and Monroe County, Florida, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida (the "County").

WHEREAS, the City was created by Chapter 99-427, Laws of Florida, which approved the creation of the City of Marathon effective November 30, 1999; and

WHEREAS, Chapter 99-427 provides that as of November 30, 1999, all municipal powers and duties within the City's boundaries shall be vested in the City Council until such time as the City Council delegates all or a portion thereof to another entity; and

WHEREAS, both the City and County are interested in insuring continuity in the provision of contractor licensing and disciplinary functions within the City's corporate limits; and

WHEREAS, pursuant to Sec. 6-263, Monroe County Code, the County has created a Local Contractor's Examining Board; and

WHEREAS, the City desires to utilize the services of the County's Contractors Examining Board to provide contractor licensing and disciplinary functions as specifically set forth in this Agreement; and

WHEREAS, the City's code enforcement officers will enforce the provisions contained in Article II of Chapter 6 of the City code through the County's Contractors Examining Board; and

WHEREAS, pursuant to 489.127(l), the County shall be responsible for the administration of such citation program and training of the City's code enforcement officer;

WHEREAS, pursuant to Sec. 6-270, Monroe County Code, the Local Contractors Examining Board has the power to oversee the regulation of contractors within the City's corporate limits;

NOW THEREFORE, in consideration of the mutual consideration and promises set forth below, the parties agree as follows:

1. **Authority to Enter Into Agreement and Authority to allow the City to Enforce the Provisions of 489.127(l), F.S.** . This Agreement is entered into pursuant to Section 163.01, Florida Statutes and 489.127(l), Florida Statutes. By entering into this agreement the County authorizes the City and its code inspectors to enforce the provisions of 489.127, Florida Statutes as set forth therein.
2. **Definitions.** For purposes of this Agreement, all definitions are the same as those contained in Article II of Chapter 6 of the City Code. The current Article II of Chapter 6 of the City Code contains the same provisions as did Article II, Division 3 of Chapter 6 of the County Code as of November 30, 1999.
3. **Transfers of Powers Relating to Contractor Licensing.**
 - a. The County shall, through its Contractors Examining Board ("CEB"), have and exercise all of the powers and duties granted to it in Chapter 6 of the City Code. The powers and duties under this agreement shall be performed by the CEB as required and pursuant to Chapter 6 of the City Code.

- b. The County shall, through its CEB, accept, review and process, as appropriate, application for contractor licenses and renewal of licenses for contractors who wish to engage in business in the City and issue or deny County certificates of competency for contractor including, but not limited to masters, journeymen, maintenance personnel and apprentices, including temporary, reciprocal and honorary certificates.
- c. The County shall authorize examinations and review results thereof, determine equivalency of examinations, and issue or deny, as appropriate, certificates of competency.
- d. All of the foregoing functions shall be performed in accordance with County ordinances, rules, and regulations. Nothing in this Agreement prohibits the City from requiring occupational licenses of those contractors who have a place of business in the City.
- e. The City's code enforcement officers will enforce the provisions contained in Article II of Chapter 6 of the City code through the County's Contractors Examining Board. The City will issue its own citations, investigation and inspection all violations and provide any other functions as necessary for prosecution before the County's CEB. The City agrees to provide counsel to represent its inspectors before the CEB, if the City so desires representation for its inspectors. The attorney for the City and the attorney for the CEB shall advise the County's CEB if there are areas of the City code, which differ from the County code.

- f. The City agrees to pay the County an initial fixed fee in the amount of Five thousand dollars (\$5,000.00) on October 1, 2009 to train the City inspectors, hold meetings before the CEB, retain counsel for the CEB and keep the records of the CEB pertaining to City cases, this amount shall be adjusted upwards or downwards in the months of January and June of each year in order to compensate the County for its expenditures. Representatives of the respective building departments of the County and City shall meet in the months of December and May to determine the expenditures made by the County in the prior 6 months to train the City inspectors, hold meetings before the CEB, retain counsel for the CEB and keep the records of the CEB pertaining to City cases, and the amounts awarded in fines by the CEB for City citations. The purpose of the meeting will be to set the amount to be paid by the City to the County for the following six month period. The decision shall be ratified by the governing boards of both the County and the City. Payments shall be made on January 1 and June 1 of each year as reimbursement for County services provided to the City as a result of this agreement
- g. The City will receive one hundred percent of (100%) of all fines, costs, and fees that are awarded and collected from enforcement of City citations before the CEB. The City shall provide a staff member at each meeting of the CEB authorized by the City to collect fines and to give receipts. The City shall provide a report to the County building official of all the fines ordered to be paid and the fines received . Those fines not paid at the

meeting of the CEB on City citations shall be paid to the City at Marathon City offices at 9805 Overseas Highway, Marathon, Florida . County will not act as a collection for City enforcement citations.

- h. The City and County agree that the County presently collects all contractor licensing fees for applications, examinations, certification and renewal, record keeping and record making, as established by the City Code or applicable City resolutions. These fees, plus any other applicable fees collected by any other County department during the term of this Agreement for the provision of specified services listed herein, shall continue to be retained by the County.

- 4. **Transfers of Powers Relating to Contractor Discipline.** The County shall, through the Contractors Examining Board conduct all disciplinary actions and hearings including, but not limited to, administrative suspensions, the imposition of administrative fines, the issuance of letters of reprimand, the ordering of suspensions, the revocation of licenses, investigations, and the appointment of special investigators, and shall adopt guidelines for the imposition of penalties.
 - a. All of the foregoing functions shall be conducted pursuant to the City Code and all discipline will be issued in the City.
 - b. The County CEB shall have complete authority to interpret Chapter 6 of the City Code as it relates to contractor licensing and discipline. Any administrative appeal of any decision or interpreting of Chapter 6 of the City Code made by the County staff, shall be heard by the CEB in accordance with the applicable provisions of the City Code. All appeals of

any decision of the CEB shall be processed and heard in accordance with the procedures set forth in Chapter 6 of the City Code.

5. **Training of Officers/Inspectors.** The County will provide the necessary training to the City's officers/inspectors as in the same manner the County trains its officers/inspectors. All officers appearing before the County's CEB will be subject to the training requirements pursuant to 489.127(1), Florida Statutes. Upon completion of said training by the City's officers/inspectors, the City will keep record of compliance of said training requirement and turn those records over to the CEB as requested. If the CEB determines it is necessary for a City officer/inspector to undergo additional training, the officers/inspector must comply in order to continue to enforce the provisions of Chapter 6 of the City Code and appear before the County's CEB.
6. **Records. The County and City agree to comply with all applicable laws regarding record keeping as it applies to their respective files and documents.**
7. **Activity Reports.** The County will keep a record of the proceedings of the CEB and will provide the City's Manager with a copy of that record after each regular meeting of the CEB. The report may be in written or recorded form, at the discretion of the secretary of the CEB, and shall include the case style, case numbers, inspector assigned to the case and status of the case. When applicable, the report shall also include the next scheduled hearing or event.
8. **Termination.** This Agreement shall have term of two (2) years from the date the last party executes this agreement through the signature of its Mayor, unless earlier terminated or extended in accordance with this agreement.

- a. City or County may terminate this Agreement in whole or in part prior to the termination date by giving the other party (30) days written notice of such termination. Upon receipt of such notice, the parties shall promptly meet to negotiate and finalize the terms and conditions for a smooth transfer of the licensing functions, records, and appropriate fees.
- b. Should the City wish to continue to utilize the County's contractor licensing services, in whole or in part, after the termination date, the city will notify the County in writing of its intention as soon as practical, but no later than thirty (30) days before the termination date. Upon receipt of such notice, the parties shall immediately meet to negotiate and finalize the terms and conditions of such extension.
- c. Any terms or conditions of this Agreement or any subsequent extension or amendment to this Agreement that require acts beyond the term of the Agreement, shall survive the termination of this Agreement and remain in full force and effect unless and until the terms or conditions are completed, and shall be fully enforceable by either party.

9. **Notices.** All notices hereunder must be in writing and shall be deemed validly given if hand delivered; sent by certified mail, return receipt requested, or overnight delivery addressed as follows (or any other address that the party notified may have designated to the sender by proper notice):

For the County: Roman Gastesi
County Administrator
1100 Simonton Street
Key West, FL 33040

Andrew Trivette
Growth Management Director
Marathon Government Center
2798 Overseas Hwy.
Marathon, FL 33050

County Attorney
P.O. Box 1026
Key West, FL 33041-1026

For the City:

Clyde Burnett
City Manager
9805 Overseas Highway
Marathon, FL 33050

Jimmy Morales, City Attorney
Stearns Weaver Miller Weissler Alhadeff &
Sitterson, P.A.
150 Flagler Street, Suite 2200
Miami, FL 33103

- a. Unless otherwise required by law, any notice sent hereunder shall
(subject to proof or receipt or refusal of same) be deemed to have been
delivered on the same day if hand delivered, on the next business day
if sent by overnight courier, or on the day of receipt or refusal, if sent
by certified or registered mail.

10. **Amendments.** This Agreement may be modified only by an agreement in writing
authorized by the City Council of the City of Marathon and the Board of County
Commissioners of Monroe County.

11. **Indemnification.** To the extent allowed by law, each party hereto shall be
indemnify and save the other harmless from any and all claims, liability, losses
and causes of action which may arise out of the other's actions in fulfillment of
this Agreement.

12. **Governing Law, Venue, Interpretation, Costs, and Fees.** This Agreement shall be construed in accordance with the laws of the State of Florida. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the parties agree that the venue shall lie in the 16th Judicial Circuit, Monroe County, Florida in the appropriate court or before the appropriate administrative body. This Agreement shall not subject to arbitration. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.
13. **Adjudication of Disputes and Disagreements.** The City and County agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each parties. If no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law. This provision does not negate the provisions regarding termination.
14. **No personal Liability.** No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of Monroe County in his or her individual capacity, and non member, officer, agent, or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

15. **Severability.** Should any provision, paragraph, sentence word, or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the law of the State of Florida, such provisions, paragraph, sentence, word, or phrase shall be deemed modified to the extent necessary in order to conform with such laws, then shall be deemed severable, and in this Agreement, shall remain unmodified and in full force and effect, unless the enforcement of the remaining terms would prevent accomplishment of the original intent of this Agreement.
16. **Remedies.** If any when any default of this Agreement occurs, the non-defaulting party may avail itself of any legal or equitable remedies that may apply, including but not limited to, actual damages and specific performance.
- a. Such remedies may be exercised in the sole discretion of the non-defaulting party.
 - b. Nothing contained in this Agreement shall limit either party from pursuing any legal or equitable remedies that may apply.
17. **Non-Waiver.** No waiver by the City or the County of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.
- a. No delay or omission in the exercise of any right or remedy accruing to the City or County upon breach under this Agreement shall impair such right to remedy or be construed as a waiver of any such breach.
 - b. No waiver of any covenant or condition or of the breach of any covenant or condition of this Agreement shall constitute a waiver of any subsequent

breach of such covenant or condition, or justify or authorize the nonobservance on any other occasion of the same or of any other covenant or condition of this Agreement.

18. Effective Date and Termination of Prior Agreement. Upon execution of this Agreement, the Interlocal Agreement entered into on September 18, 2002 between the parties, with an effective date of October 11, 2002 will be terminated. This agreement will become effective upon execution by both parties, it being understood that training of City inspectors shall begin as soon as it can be scheduled by mutual agreement of the parties and that the City shall not formally appear before the CEB until January 1, 2010.

(SEAL)

ATTEST: DANNY L. KOLHAGE, clerk

By: _____
Deputy Clerk

BOARD OF COUNTY
COMMISSIONERS
OF MONROE COUNTY,
FLORIDA

By: _____
George Neugent, Mayor
Date: _____

(SEAL)

ATTEST:

By: Diane Clavre
City Clerk
Date: 11-12-09

CITY OF MARATHON

By: A. Head
Mayor
Date: 11-12-09

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
Natileene W. Cassel
NATILEENE W. CASSEL
ASSISTANT COUNTY ATTORNEY
Date: _____