

Sponsored by: Hernstadt

**CITY OF MARATHON, FLORIDA
RESOLUTION 2011-42**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A LOCAL FUNDING AGREEMENT AND MAST ARM MAINTENANCE AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE INSTALLATION AND MAINTENANCE OF FIFTEEN (15) VERDE GREEN POWDER COATED MAST ARMS AND UPRIGHTS, AT VARIOUS INTERSECTIONS IN THE CITY OF MARATHON; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Florida Department of Transportation (“FDOT”) has jurisdiction over and maintains State Road (S.R.) 5/US-1/Overseas Highway corridor within the corporate limits of the City of Marathon (“City”); and

WHEREAS, the City has requested, and FDOT has agreed, to install or cause to be installed fifteen (15) verde green powder coated mast arms and uprights at various intersections along S.R. 5/US-1/Overseas Highway from Sombrero Beach Road to Key Colony Beach Causeway, in accordance with the terms and conditions detailed in the Local Funding Agreement attached hereto as Exhibit “A,” and incorporated herein by reference (“Project”); and

WHEREAS, the City and FDOT further agree that all maintenance responsibilities for the Project mast arms and uprights installed by FDOT shall be the responsibility of the City in accordance with the terms and conditions detailed in the Maintenance Agreement attached hereto as Exhibit “B,” and incorporated herein 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*, and authorize its officers to do so.

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

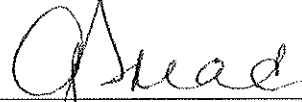
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The Agreements between the City and FDOT, attached hereto as Exhibits “A and B” are hereby approved. The City Manager is authorized to execute the Agreements and expend budgeted funds 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 14th DAY OF JUNE, 2011.

THE CITY OF MARATHON, FLORIDA



Ginger Snead, Mayor

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

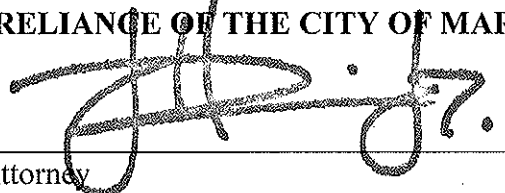
ATTEST:



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

**FLORIDA DEPARTMENT OF TRANSPORTATION
MAST ARMS AND UPRIGHTS
MAINTENANCE MEMORANDUM OF AGREEMENT
WITH
CITY OF MARATHON**

This **AGREEMENT**, entered into this 30th day of June, 2011, by and between the FLORIDA DEPARTMENT OF TRANSPORTATION, a component agency of the State of Florida, hereinafter called the DEPARTMENT, and the CITY OF MARATHON, a municipal corporation of the State of Florida, hereinafter called the CITY.

RECITALS:

WHEREAS, the DEPARTMENT has jurisdiction over State Road (S.R.) 5/US-1, within the limits of the CITY, as part of the State of Florida Highway System; and

WHEREAS, the DEPARTMENT has drafted design plans for improvements on S.R. 5/US-1, from Sombrero Beach Road (M.P. 2.014) to the Key Colony Causeway (M.P. 5.659), in accordance with DEPARTMENT Contract # T-6216 the limits of which, hereinafter PROJECT LIMITS, are described in the attached Exhibit "A", which by reference hereto shall become a part hereof; and

WHEREAS, the DEPARTMENT and the CITY are both committed to improving the aesthetics within the PROJECT LIMITS; and

WHEREAS, the CITY has requested that the DEPARTMENT install verde green powder coated mast arms and uprights, within the PROJECT LIMITS, and the DEPARTMENT is willing to do so subject to the terms and conditions contained herein; and

WHEREAS, the CITY, by Resolution No. 2011-42, dated June 14, 2011, attached hereto as Exhibit "B", which by reference hereto shall become a part hereof, desires to enter into this AGREEMENT and authorizes its officers to do so.

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties covenant and agree as follows:

1. DEPARTMENT RESPONSIBILITIES

1.1. Assignment

The DEPARTMENT and the CITY agree that, by executing this AGREEMENT, all maintenance responsibilities pertaining to the powder coating of the mast arms and uprights installed by DEPARTMENT within the PROJECT LIMITS, pursuant to this AGREEMENT, will be assigned to the CITY in perpetuity.

2. CITY'S MAINTENANCE RESPONSIBILITIES

The CITY shall be solely responsible for the maintenance and preservation of the powder coat of the mast arms and uprights within the PROJECT LIMITS.

2.1. Inspect and maintain powder coat of the mast arms and uprights on a yearly basis.

2.2. For any routine maintenance due to noticeable color scarring on the mast arms and uprights, verde green powder coating shall be applied as per the FDOT Standard Specifications for Road and Bridge Construction. Routine maintenance shall not include the repair of physical damage to the powder coat of the mast arms and uprights resulting from a natural disaster.

3. AMENDMENTS

This AGREEMENT may be amended in writing if mutually agreed to by both parties.

4. MAINTENANCE DEFICIENCIES

If, at any time while the terms of this AGREEMENT are in effect, it shall come to the attention of the DEPARTMENT'S DISTRICT MAINTENANCE ENGINEER that the CITY'S responsibility as established herein or a part thereof is not being properly accomplished pursuant to the terms of this AGREEMENT, said DISTRICT MAINTENANCE ENGINEER may, at his option, issue a written notice, in care of the CITY MANAGER, to place the CITY on notice regarding its maintenance deficiencies. Thereafter, the CITY shall have a period of thirty (30) days within which to correct the cited deficiency or deficiencies. If said deficiencies are not corrected within this time period, the DEPARTMENT may, at its option, proceed as follows:

4.1. Maintain the powder coat of the mast arms and uprights declared deficient with DEPARTMENT and/or its independent contractor's materials, equipment and personnel. The actual cost for such work will be charged to the CITY.

4.2. The DEPARTMENT reserves the right to replace the mast arms and uprights with conventional mast arms and uprights, and bill the CITY for this cost.

5. NOTICES

All notices, requests, demands, consents, approvals, and other communication which are required to be served or given hereunder, shall be in writing and shall be sent by registered mail or certified U.S. mail, return receipt requested, postage prepaid, addressed to the party to receive such notices as follows:

To the DEPARTMENT: Florida Department of Transportation
1000 Northwest 111 Avenue, Room 6205
Miami, Florida 33172-5800
Attention: District Maintenance Engineer

To the CITY: City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
Attention: City Manager

6. MAST ARM & UPRIGHT INSTALLATION

6.1. It is understood between the parties hereto that the mast arms and uprights covered by this AGREEMENT may be removed at any time in the future, as found necessary by the DEPARTMENT, in order that the adjacent state road be widened, altered or otherwise changed and maintained to meet with future criteria or planning of the DEPARTMENT. All costs associated with such activities will be solely at the expense of the DEPARTMENT.

7. TERMINATION

This AGREEMENT is subject to termination under any one of the following conditions:

7.1. By the DEPARTMENT, if the CITY fails to perform its duties under Section 2, following thirty (30) days written notice.

7.2. In accordance with Section 287.058(1)(c), Florida Statutes, the DEPARTMENT shall reserve the right to unilaterally cancel this AGREEMENT if the CITY refuses to allow public access to any or all documents, papers, letters, or other materials made or received by the CITY pertinent to this AGREEMENT which are subject to provisions of Chapter 119, of the Florida Statutes.

7.3. Only if mutually agreed to by both parties with a six (6) month written notice.

8. TERMS

8.1. The CITY shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of:

- i. all persons employed by the CITY during the term of this AGREEMENT to perform employment duties within Florida; and
- ii. all persons, including subcontractors, assigned by the CITY to perform work pursuant to this AGREEMENT with the DEPARTMENT.

8.2. The term of this AGREEMENT shall only commence upon execution by all parties and after the CITY receives the Notice To Proceed letter from the DEPARTMENT. This AGREEMENT shall continue in perpetuity or until termination as set forth in Section 7.

8.3. This writing embodies the entire AGREEMENT and understanding between the parties hereto and there are not other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein.

8.4. This AGREEMENT is nontransferable and nonassignable in whole or in part without the prior written consent of the DEPARTMENT.

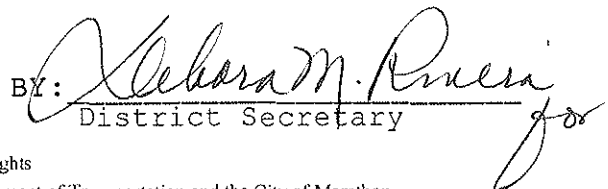
8.5. This AGREEMENT, regardless of where executed, shall be governed by and constructed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

CITY OF MARATHON:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:

BY: 
CITY Manager

BY: 
District Secretary

Mast Arms and Uprights

Maintenance Memorandum of Agreement between Florida Department of Transportation and the City of Marathon

ATTEST: *Diane Clavick*
CITY Clerk

ATTEST: *D. Sob*
Executive Secretary

LEGAL REVIEW:
BY: *[Signature]*
BY: *[Signature]*
CITY Attorney

Alicia [Signature]
District Chief Counsel

EXHIBIT "A"

PROJECT LIMITS

Below are the limits of the mast arms to be maintained under this AGREEMENT.

State Road Number: 5/US-1

Agreement Limits: From Sombrero Beach Road (M.P. 2.014) to the Key Colony Causeway (M.P. 5.659)

County: Monroe

Mast Arms & Uprights Intersections, S.R 5/US-1 &:

- Sombrero Beach Road
- 107th Street
- 109th Street
- 120th Street (Pedestrian crosswalk is 120' north of 120th Street)
- Key Colony Beach Causeway

EXHIBIT "B"

CITY OF MARATHON RESOLUTION

To be herein incorporated once ratified by the CITY Council.

LOCALLY FUNDED AGREEMENT

THIS LOCALLY FUNDED AGREEMENT (hereinafter 'Agreement') is made and entered into this 30 day of June, 2011, 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 DEPARTMENT has jurisdiction over and maintains State Road (S.R.) 5/US-1 corridor within the corporate limits of the CITY; and

WHEREAS, the CITY has requested the DEPARTMENT to install fifteen (15) mast arms and uprights, and coat them with verde green powder coating at various locations along S.R. 5/US-1 from Sombrero Beach Road to the Key Colony Beach Causeway; and

WHEREAS, the DEPARTMENT has agreed to install the fifteen (15) mast arms and uprights, and coat them with verde green powder coating at various locations along S.R. 5/US-1, from Sombrero Beach Road to the Key Colony Beach Causeway, subject to the terms and conditions detailed in this Agreement; and

WHEREAS, the CITY shall fund the increased costs, under Financial Project Number 419854-1-52-02, associated with the verde green powder coating on the fifteen (15) mast arms and uprights at various locations on S.R. 5/US-1, from Sombrero Beach Road to the Key Colony Beach Causeway, 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**, 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 Council approving this Agreement is attached hereto as Exhibit "C", 'CITY OF MARATHON RESOLUTION', and is incorporated herein by reference.

(b) The CITY shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of:

i. all persons employed by the CITY during the term of this Agreement to perform employment duties within Florida; and

ii. all persons, including subcontractors, assigned by the CITY to perform work pursuant to this Agreement with the DEPARTMENT.

(c) The DEPARTMENT will administer and construct the PROJECT in accordance with the signed and sealed PROJECT plans and as detailed in the attached Exhibit "A", 'Scope of Services'. The DEPARTMENT will complete the PROJECT utilizing the funds provided by the CITY.

(d) The CITY will provide funding to the DEPARTMENT, in the aggregate amount of THIRTY THREE THOUSAND FOUR HUNDRED EIGHTY DOLLARS

(\$33,480.00), 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.

- (e) The DEPARTMENT Contractor will not commence work on the PROJECT until CITY funding for the PROJECT is on deposit with the DEPARTMENT.
- (f) 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 THIRTY THREE THOUSAND FOUR HUNDRED EIGHTY DOLLARS (\$33,480.00) for full payment of the estimated PROJECT cost for Locally Funded Project Number 419854-1-52-02. 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, Florida Statutes (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 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.

- (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 virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.
6. **Amendment of Agreement.** This Agreement may only be amended by mutual agreement of the DEPARTMENT and the CITY, expressed in writing and executed and delivered by each.
7. **Notices.** All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made

and received when delivered (personally, by courier service such as Federal Express, or by other messenger) against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below:

- (a) If to the CITY: City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
Attention: Carlos Solis, P.E., Public Works Manager
Ph.: 1-305-289-5008

- (b) If to the Department: Florida Department of Transportation
1000 NW 111 Avenue, Room 6202B
Miami, Florida 33172
Attention: Michelle L. Meaux, JPA Coordinator
Ph.: 305-470-5112

Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

- 8. **Entire Agreement.** This Agreement, including its attached Exhibits, contain the sole and entire Agreement between the parties with respect to such subject matter and supersede any and all other prior written or oral agreements between them with respect to such subject matter.

- 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.

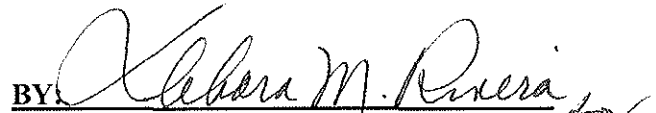
11. **Captions.** The captions contained in this Agreement are inserted only as a matter of convenience or reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.
12. **Absence of Third Party Beneficiaries.** Nothing in this Agreement, 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 CITY Council, 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, the City of Marathon, signing by and through its City Manager, and the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, signing by and through its District Secretary, each duly authorized to execute same.

CITY OF MARATHON:

BY: 
CITY MANAGER

STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION:

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 coating fifteen (15) mast arms and uprights with verde green powder at various intersections along S.R. 5/US-1 from Sombrero Beach Road to the Key Colony Causeway in the CITY. The CITY has requested that the mast arms and uprights be of certain color that is consistent CITYwide.

Mast Arms & Uprights Intersections, S.R 5/US-1 &:

- Sombrero Beach Road
- 107th Street
- 109th Street
- 120th Street (Pedestrian crosswalk is 120' north of 120th Street)
- Key Colony Beach Causeway

PROJECT LIMITS: S.R. 5/US-1 from Sombrero Beach Road to the Key Colony Causeway

DEPARTMENT Financial Project Number: 419854-1-52-02

COUNTY: Monroe

**DEPARTMENT Project Manager: Design: Heidi Solaun-Dominguez, P.E. 305-470-5282
Construction: Charlie Phinizy 1-305-289-6107**

CITY Project Manager: Carlos Solis, P.E., Public Works Manager 1-305-289-5008

EXHIBIT 'B'
FINANCIAL SUMMARY

The DEPARTMENT's Work Program allocates the following funding, programmed under Financial Project Number 419854-1-52-02, for PROJECT completion:

<u>Fiscal Year:</u>	<u>Amount:</u>	<u>Fund Type:</u>
2011/2012	\$33,480.00	Local Funds (LF)

CITY OF MARATHON FINANCIAL RESPONSIBILITY: \$ 33,480.00

EXHIBIT 'C'

CITY OF MARATHON RESOLUTION

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