

**CITY OF MARATHON, FLORIDA
RESOLUTION 2012-21**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE EXPANSION OF THE CITY'S MANAGED AREA OF BOOT KEY HARBOR AS PART OF THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION'S MOORING FIELD PILOT PROGRAM; DIRECTING STAFF TO DRAFT AN ORDINANCE REVISING CHAPTER 36, "WATERWAYS" TO REFLECT THE APPROVED PILOT PROGRAM BOUNDARIES AND ASSOCIATED NEW REGULATIONS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Section 327.4105, *Florida Statutes* authorized the Florida Fish and Wildlife Conservation Commission (the "FWC") to establish a Mooring Field Pilot Program (the "Pilot Program") to explore options for regulating the anchoring or mooring of non-liveaboard vessels outside of legally permitted mooring fields to enhance and promote public access, navigational safety, protect maritime infrastructure, protect the marine environment, and deter improperly stored, abandoned or derelict vessels in the State's near-shore waters; and

WHEREAS, the FWC subsequently solicited the participation of Monroe County (the "County") in the Pilot Program, and the County responded with a Letter of Interest to the FWC to participate in the Pilot Program in partnership with the City of Marathon (the "City"); and

WHEREAS, the City and County entered into an Inter Local Agreement on January 27, 2010 reflecting agreeing to cooperate and participate in the Pilot Program; and

WHEREAS, City Marina staff have reviewed reasonable and prudent options for expanding the City's management boundaries of Boot Key Harbor in order to better manage anchored vessels outside of the Marina's mooring field and anchorage area in Boot Key Harbor; and

WHEREAS, as part of the Pilot Program City Marina staff proposes expanding the City's management of Boot Key Harbor to include the area of Boot Key Harbor extending from U.S. Coast Guard ATON No. 9 at the western entrance to Boot Key Harbor through U.S. Coast Guard ATON No. 4 at the southern entrance to Boot Key Harbor, at Sisters Creek, and excluding the area east of ATON No. 5A.

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.

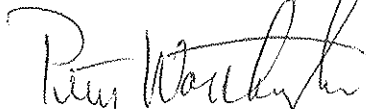
Section 2. The expansion of the City's managed area of Boot Key Harbor as part of the FWC's mooring field pilot program, as reflected in the boundary map attached as Exhibit "A," is hereby approved

Section 3. City staff is directed to prepare an ordinance to reflect the boundaries of the expanded management area and additions, deletions, or modifications to its near-shore waters regulations as currently codified in Chapter 36, of the City of Marathon Code of Ordinances.

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 14th DAY OF FEBRUARY, 2012.

THE CITY OF MARATHON, FLORIDA



Pete Worthington, Mayor

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

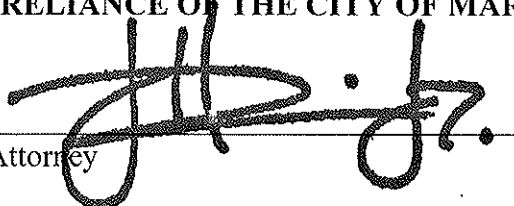
ATTEST:



Diane Clavier, City Clerk

(City Seal)

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



City Attorney

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (Agreement) is entered into as of this 12th day of February, 2010, 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, in 2009 Florida Statute Sec. 327.4105 directed the Florida Fish and Wildlife Conservation Commission (FWC) to establish a Mooring Field Pilot Program (Pilot Program) to explore options for regulating the anchoring or mooring of non-liveaboard vessels outside of legally permitted mooring fields and select two locations off the east coast of the state, two locations off the west coast of the state, and one location within Monroe County to participate in the Pilot Program; and

WHEREAS, the FWC subsequently solicited the COUNTY to participate in the Pilot Program, indicating that the goals of the program are to explore regulatory options that promote public access, enhance navigational safety, protect maritime infrastructure, protect the marine environment, and deter improperly stored, abandoned or derelict vessels; and

WHEREAS, the COUNTY, recognizing the public benefit of addressing impacts associated with the anchoring of vessels anchored or moored outside of established mooring fields, responded with a Letter of Interest to the FWC to participate in the Pilot Program in partnership with the CITY; and

WHEREAS, the CITY, recognizing the public benefit of addressing impacts associated with the anchoring of vessels anchored or moored outside of the CITY owned and operated mooring field located in Boot Key Harbor, has indicated its desire to partner with the COUNTY in the Pilot Program;

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. Benefit of Participation in Pilot Program.

- 1.1 The COUNTY and CITY recognize the importance of the Pilot Program in providing local authority for both parties to develop regulatory options to address the anchoring or mooring of non-liveaboard vessels outside of established mooring fields.
- 1.2 Participating and partnering in the Pilot Program will be mutually beneficial to the COUNTY and the CITY by providing the public benefit of promoting public access, protecting the marine environment, and deterring improperly stored, abandoned or derelict vessels.

Section 2. General Coordination

- 2.1 The COUNTY will act as liaison between the CITY and the FWC.
- 2.2 The COUNTY and CITY will work cooperatively to fulfill the requirements and objectives of the Pilot Program.
- 2.3 The COUNTY and CITY will coordinate prior to the start of the Pilot Program and throughout the Pilot Program to ensure uniformity and consistency in the data collection and documentation processes, and to meet the timelines established by the Pilot Program (Exhibits A and B).

Section 3. CITY's Responsibilities.

- 3.1 The CITY will complete the Anchoring and Pilot Program Questionnaire and provide it to the COUNTY for submission to the FWC in accordance with the established timelines (Exhibit A).
- 3.2 The CITY will complete the required survey forms (Exhibit B) each month for twelve months starting no later than March 1, 2010. The survey forms will be completed for vessels moored inside the mooring field and anchored or moored up to one mile outside the mooring field. The survey forms will be provided to the COUNTY each month for submission to FWC in accordance with the established timelines (Exhibit B).
- 3.3 The CITY will develop regulatory options, as it sees fit, to address issues related to anchoring and mooring activity outside of the CITY's Boot Key Harbor mooring field.

Section 4. COUNTY's Responsibilities.

- 4.1 The COUNTY will submit all FWC required documentation, including surveys and questionnaires, to FWC according to the established timelines (Exhibits A and B).
- 4.2 The COUNTY will provide limited technical staff support to the CITY as necessary to ensure the proper completion of surveys and questionnaires, and the development of regulatory options to benefit the CITY and COUNTY.

Section 5. Term.

- 5.1 This Agreement shall become effective upon execution by both parties and shall expire on July 1, 2014, concurrently with the expiration of the Pilot Program.

Section 6. Termination and Default.

- 6.1 This agreement may be terminated by either party upon thirty (30) days notice to the other party.

Section 7. Indemnification and Non-Waiver of Immunity.

- 7.1 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.
- 7.2 Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the Parties in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by a party be required to contain any provision for waiver.

Section 8. Notices.

- 8.1 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: Peter Rosasco
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 9. Regulatory Powers.

- 9.1 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.
- 9.2 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 10. Attorneys Fees and Waiver of Jury Trial.

- 10.1 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.
- 10.2 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 11. Governing Law.

- 11.1 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 12. Entire Agreement/Modification/Amendment.

- 12.1 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.

- 12.2 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 13. Access to Records and Audits.

- 13.1 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.
- 13.2 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.
- 13.3 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.
- 13.4 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 14. Nonassignability.

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

Section 15. Severability.

15.1 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 16. Independent Contractor.

16.1 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 17. Waiver.

17.1 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 18. Survival of Provisions.

18.1 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 19. Counterparts.

19.1 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.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

SIGNATURE PAGE TO FOLLOW

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

BOARD OF COUNTY COMMISSIONERS
MONROE COUNTY, FLORIDA



BY: _____
Mayor/Chairperson

(SEAL)

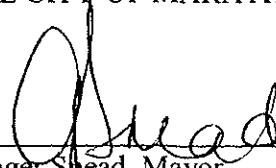
ATTEST: DANNY L. KOLHAGE, CLERK

BY: Isabel C. De Santis
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: Susan M. Grimsley
Assistant County Attorney
2-17-10

THE CITY OF MARATHON, FLORIDA



Ginger Shead, Mayor
Date: 1-27-10

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: [Handwritten Signature]
John Herin, Esq.
City Attorney

FILED FOR RECORD
2010 MAR -3 PM 12:41
DANNY L. KOLHAGE
CLERK DIST. CT.
MONROE COUNTY, FL.



Legend
City of Marathon, Florida

- Marathon Mile Markers
- ▭ Pilot Project Boundaries
- ▭ Marathon_ROW
- ▭ City of Marathon Properties December 28, 2011



City of Marathon, Florida
 Official Map Product
Baybottom Lease Area - Harbour House Condominium
