

**CITY OF MARATHON, FLORIDA
RESOLUTION 2012-43**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN INTER-LOCAL AGREEMENT BETWEEN THE CITY OF MARATHON AND MONROE COUNTY FOR FUNDING OF FERRY SERVICE TO PIGEON KEY; AUTHORIZING THE CITY MANAGER TO EXECUTE THE INTER-LOCAL AGREEMENT 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 the Old Seven-Mile Bridge from the City of Marathon to Pigeon Key in Monroe County; and

WHEREAS, FDOT has deemed the bridge structurally unsafe for vehicular traffic and has closed it, and access to Pigeon Key is restricted to water-based methods of transportation; and

WHEREAS, Pigeon Key is presently occupied by the Pigeon Key Foundation, a non-profit organization devoted to marine education and historic interpretation of the Florida Keys' heritage; and

WHEREAS, in order to maintain traffic between the City of Marathon and Pigeon Key to permit Pigeon Key Foundation to continue its educational and historic functions, FDOT has agreed to provide partial funding for one more year of temporary ferry service with local agency participation; and

WHEREAS, residents of and visitors to the City of Marathon visit Pigeon Key, and the City benefits from having this attraction in close proximity to the City; and

WHEREAS, the City of Marathon will reimburse the County for 7.5% for one year of the cost of the contractor invoiced base (routine) ferry service or \$18,750, whichever is less.

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 Inter-local Agreement ("ILA") between the City, and Monroe County, 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 hereby approved. The City Manager is authorized to sign the ILA 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 24th DAY OF APRIL, 2012.

THE CITY OF MARATHON, FLORIDA



Mayor Pete Worthington

AYES: Keating, Ramsay, Snead, Worthington
NOES: None
ABSENT: Cinque
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 is entered into as of this 16th day of May, 2012, between Monroe County, a political subdivision of the State of Florida (hereinafter, the COUNTY) and the City of Marathon, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter, the CITY).

WITNESSETH:

WHEREAS, the Florida Department of Transportation (FDOT) has jurisdiction over and maintains the Old Seven-Mile Bridge from the City of Marathon to Pigeon Key in the COUNTY; and

WHEREAS, FDOT has deemed the bridge structurally unsafe for vehicular traffic and has closed it, and access to Pigeon Key is restricted to water-based methods of transportation; and

WHEREAS, Pigeon Key is presently occupied by the Pigeon Key Foundation, a non-profit organization devoted to marine education and historic interpretation of the Florida Keys' heritage; and

WHEREAS, in order to maintain traffic between the City of Marathon and Pigeon Key to permit Pigeon Key Foundation to continue its educational and historic functions, FDOT has agreed to provide partial funding for one more year of temporary ferry service with local agency participation; and

WHEREAS, residents of and visitors to the City of Marathon visit Pigeon Key, and the City benefits from having this attraction in close proximity;

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, the parties agree as follows:

1. Monroe County shall execute a contract with the ferry service provider to provide temporary ferry service to Pigeon Key from the City of Marathon for the period from July 1, 2012 until June 30, 2013.
2. The City of Marathon will reimburse the County for 7.5% of the cost of the base ferry service (no special events or overhead costs or charges) or \$18,750, whichever is less.
3. The County will submit a copy of the ferry contract to the City upon execution of the contract. Requests for reimbursement will be submitted on a monthly basis and will include copies of all contractor invoices and evidence of payment by the County.
4. The contract for temporary ferry service will be between the County and its Contractor; the City is not a party to the contract.

5. This Agreement shall become effective immediately upon execution.
6. 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.
7. Upon any such default, the non-defaulting party shall provide to the defaulting party a written Notice of such default, which Notice (a "Default Notice") shall state in reasonable detail the actions the defaulting party must take to cure the same. The defaulting party shall cure any such default, within 30 days following the date of the Default Notice.
8. 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.
9. 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 uncured 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.
10. 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.
11. To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the County does hereby agree to defend, indemnify and hold the City, 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 County or any third party vendor contracted by the County in connection with this Agreement.

12. **Notices.**

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:

<u>If to County:</u>	Roman Gastesi, Jr. County Administrator Monroe County Historic Gato Building 1100 Simonton Street Key West, Florida 33040
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With a copy to: Robert Shillinger, Esq.
Monroe County Attorney's Office
P.O. Box 1026
Key West, Florida 33041-1026

If to City: City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
Attention: City Manager

With a copy to: Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
Museum Tower, Suite 2200
150 West Flagler Street
Miami, Florida 33130
Attention: John Herin, Esq.

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.

13. Attorneys Fees and Waiver of Jury Trial.

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.

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.

14. Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court or the Southern District of Florida. This Agreement is not subject to arbitration.

15. Entire Agreement/Modification/Amendment.

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.

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.

16. **Nonassignability.**

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

17. **Severability.**

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.

18. **Independent Contractor.**

The County and its employees, volunteers, agents, vendors and subcontractors shall be and remain independent contractor and not agents or employees of the City 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.

19. **Waiver.**

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.

20. **Funding.**

The parties agree that the City's responsibility under this Agreement is to provide funding only, which shall not exceed 7.5% of the cost of the base ferry service (no special events or overhead costs or charges) or \$18,750, whichever is less

21. **Survival of Provisions.**

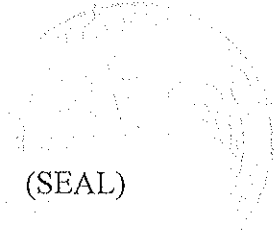
Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

22. **Counterparts.**

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.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day and year first written above.

BOARD OF COUNTY COMMISSIONERS
MONROE COUNTY, FLORIDA



(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

BY: [Signature]
Mayor/Chairperson

BY: [Signature]
Deputy Clerk

[Signature]
BY: 5/21/12
ATTORNEY'S OFFICE

THE CITY OF MARATHON, FLORIDA

[Signature]
Roger Hernstadt, City Manager

ATTEST:

[Signature]
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