

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2014-21**

**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 TOWARDS THE FIXED ANNUAL CAPITAL OUTLAY COSTS OF THE OLD SEVEN MILE BRIDGE REPAIR AND MAINTENANCE; AUTHORIZING THE MAYOR TO EXECUTE THE INTER-LOCAL AGREEMENT AND AUTHORIZING THE CITY MANAGER TO 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 (“Bridge”) that connects the City of Marathon (“City”) to Pigeon Key – which is in unincorporated Monroe County (“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**, the County and the City have requested that FDOT repair and restore the Bridge to ensure the safety of pedestrians and to allow for limited vehicular capacity of 17 tons (SU 2 Type Truck), which will allow access from Knights Key to Pigeon Key for fire and rescue vehicles, and to preserve the Bridge as a historic and cultural resource; and

**WHEREAS**, FDOT is willing to repair and restore the Bridge contingent upon funding contributions from the City and the County; and

**WHEREAS**, the City and the County have agreed to contribute funding for the repair and annual maintenance of the Bridge and desire to set forth their respective funding obligations.

**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 the 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 Mayor is authorized to sign the ILA on behalf of the City and the City Manager is authorized to 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 11<sup>th</sup> DAY OF MARCH 2014.

THE CITY OF MARATHON, FLORIDA

  
\_\_\_\_\_  
Dick Ramsay, Mayor

AYES: Bull, Senmartin, Keating, Ramsay  
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

**OLD SEVEN MILE BRIDGE FUNDING**  
**INTERLOCAL AGREEMENT**

**THIS INTERLOCAL AGREEMENT** is made and entered into this 19<sup>th</sup> day of March, 2014 by and between MONROE COUNTY, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, FL, 33040, ("COUNTY"), and the CITY OF MARATHON, a municipal corporation of the State of Florida, whose address is 9805 Overseas Highway, Marathon, Florida 33050 (the "CITY").

WHEREAS, the Florida Department of Transportation (FDOT) has jurisdiction over and maintains the Old Seven-Mile Bridge (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, the County and the City of Marathon have requested that FDOT repair and restore the Bridge to ensure the safety of pedestrians and to allow for limited vehicular capacity of 17 tons (SU 2 Type Truck), which will allow access from Knights Key to Pigeon Key for fire and rescue vehicles, and to preserve the Bridge as a historic and cultural resource; and

WHEREAS, FDOT is willing to repair and restore the Bridge contingent upon funding contributions from the City and the County; and

WHEREAS, the City and the County have agreed to contribute and desire to set forth their respective funding obligations;

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

1. Monroe County shall execute an agreement with FDOT to establish design, repair, maintenance and funding obligations for repair and restoration of the Bridge sufficient to allow pedestrian and limited vehicular access from Knights Key to Pigeon Key.
2. Beginning in Year 0 (as defined in the agreement between Monroe County and FDOT for Rehabilitation of the Old Seven Mile Bridge), and continuing for 30 years the City of Marathon will annually pay the County \$177,833.00 towards the fixed capital outlay costs of the bridge.



The City's performance and obligation to pay under this agreement, is contingent upon annual appropriation by the City Council.

3. The County will submit a copy of the FDOT Agreement to the City upon execution of the Agreement. Requests for payment will be submitted on an annual basis. The County will invoice the City on October 1<sup>st</sup> of each year with payment due within 30 calendar days. Funds collected pursuant to this Agreement will be held by the Monroe County Clerk of Courts and may only be used for the purpose set forth in this Agreement. In the event the agreement for Rehabilitation Of The Old Seven Mile Bridge between the County and FDOT is terminated, the County shall return any payments made by the City that were not obligated towards payment of Fixed Capital Expenses prior to the date of termination of the agreement between FDOT and County unless otherwise agreed to by the parties.

4. The agreement for the repair, restoration and maintenance of the bridge will be between the County and FDOT; the City is not a party to the contract.

5. This Agreement shall become effective immediately upon execution.

6. The City and County previously entered into an Interlocal Agreement dated May 16, 2012 providing for ferry service from the City of Marathon to Pigeon Key. The City and County hereby acknowledge that this Interlocal Agreement will impose additional financial obligations on the parties and the duties, rights and obligations of the May 16, 2012, and any future Interlocal Agreement for ferry service shall remain in full force and effect.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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:

If to County:

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

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:  
GrayRobinson, P.A.  
401 East Las Olas Blvd., Suite 1850  
P.O. Box 2328  
Fort Lauderdale, Florida 33301  
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.

14. 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.

15. 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.

16. Public Access.

Pursuant to Florida Statute §119.0701, the City and County shall comply with all public records laws of the State of Florida, including but not limited to:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by Monroe County in the performance of this Agreement.
- (b) Provide the public with access to public records on the same terms and conditions that Monroe County would provide the records and at a cost that does not exceed the cost provided in Florida Statutes, Chapter 119 or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.



(d) Meet all requirements for retaining public records and transfer, at no cost, to Monroe County all public records in possession of the contractor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to Monroe County in a format that is compatible with the information technology systems of Monroe County.

17. 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.

18. Nonassignability.

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

19. 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.

20. 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.

21. 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.

22. Funding.

The parties agree that the City's responsibility under this Agreement is to provide funding only, which shall not exceed \$177,833.00 annually.

23. 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.

24. 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.



ATTEST: AMY HEAVILIN, CLERK  
FLORIDA

By: [Signature]  
Clerk

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY

By: [Signature]  
Mayor Sylvia Murphy

(SEAL)

ATTEST:

By: [Signature]  
Diane Clavier, City Clerk

CITY OF MARATHON

By: [Signature]  
Mayor Dick Ramsay

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM  
[Signature]  
PEDRO J. MERCADO  
ASSISTANT COUNTY ATTORNEY  
Date 3/18/14