

**CITY OF MARATHON, FLORIDA
RESOLUTION 2017-108**

A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, APPROVING A MEMORANDUM OF UNDERSTANDING (MOU) AS A FORM OF MUTUAL AID AGREEMENT REQUESTED BY THE CITY AND CARRIED OUT BY THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (FDEP), AND THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION (FWC); WHEREIN FDEP AGREES TO ASSIST THE CITY WITH THE CLEARING, REMOVAL, AND DISPOSAL OF DEBRIS FROM PRIVATE AND PUBLIC WATERWAYS AND THE FWC BY AND THROUGH THIS AGREEMENT AGREES TO CLEAN UP DERELICT VESSEL DEBRIS ONLY IN PRIVATE WATERWAYS WHICH FOR THE PURPOSES OF THIS MOU WILL BE DEFINED AS AN ARTIFICIAL WATERWAY CONSTRUCTED TO ALLOW THE PASSAGE OF VESSELS. FOR THE PURPOSES OF THIS AGREEMENT DESCRIBED IN EXHIBIT "A"; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on September 10, 2017, Hurricane Irma made landfall in the Florida Keys and the City as a Category 4 with maximum sustained winds of approximately 130 m.p.h.

WHEREAS, Hurricane Irma caused significant and widespread damage throughout the City of Marathon.

WHEREAS, because of the impact of Hurricane Irma, the City of Marathon has expended all its resources and revenues in preparation, mitigation, and cleanup actions.

WHEREAS, the City now has no funds or resources available to clear non-hazardous, hazardous and derelict vessel debris from private and public waterways (including canals).

WHEREAS, debris, including, but not limited to vegetation, hazardous waste, construction and demolition debris, propane tanks, partially and completely submerged vehicles, white goods, e-waste, docks, seawalls, houses or portions of houses pose a direct threat to the health, safety, and welfare of the residents of the City and the State of Florida. These same threats are posed by the presence of derelict vessel debris.

WHEREAS, pursuant to Sections 166.021, 252.40, and 403.061(21), Florida Statutes, and Section 9, Article IV of the Constitution of Florida, by and through this agreement, the Department of Environmental Protection ("DEP") agrees to assist the City with the clearing, removal, and disposal of debris from private and public waterways. While, the Florida Fish and Wildlife Conservation Commission ("FWC"), by and through this agreement agrees to clean up derelict vessel debris only in private waterways which for the purposes of this MOU will be defined as an artificial waterway constructed to allow the passage of vessels. For the purposes of this agreement, vessels will be defined in accordance with Section 823.11(b), Florida Statutes.

WHEREAS, the City has adopted Ordinance 2017-08 on December 19, 2017 (incorporated herein as Exhibit 1). This ordinance details that debris and derelict vessel debris removal from public and private property (including waterways and canals) is necessary to protect the public health and safety in a declared emergency. Furthermore, that the City has the legal authority to remove the debris and derelict vessel debris, and that it is necessary for the public interest to eliminate an immediate threat to life, public health and safety. Finally, federal and state governments are held harmless and indemnified for all claims or loss or damages resulting from the work.

WHEREAS, the Federal Emergency Management Agency in its Public Assistance Program and Policy Guide 2.0 (2017) provides debris and derelict vessel debris on private property may be removed and eligible under the doctrine of public assistance. Though this debris and derelict vessel debris removal on private property must be in the public interest to qualify according to the Public Assistance Program and Policy Guide 2.0 (2017). There also must be a written request to the Federal Emergency Management Agency for this doctrine to go into use. Accordingly, the City has adopted Ordinance 2017-08 to comply with the Federal Emergency Management Agency's Public Assistance Program and Policy Guide 2.0 (2017). This ordinance, upon verbal consent of FEMA's attorneys, should fulfill the requirement for a written request and authorization.

WHEREAS, as a result of the passage of Ordinance 2017-08, the City is empowered for cleaning up private and public waterways.

WHEREAS, the City is also permitted to ask for additional assistance under the auspices of Federal Emergency Management Agency's Public Assistance Program, specifically the "Mutual Aid" procedure. This procedure allows a government body, who does not have sufficient resources to respond to an incident to request "mutual aid" from another jurisdiction. The jurisdiction providing the aid is eligible for reimbursement by the Federal Emergency Management Agency.

WHEREAS, the State agrees to enter into this MOU after being asked by City and under auspices of the "Mutual Aid" program.

WHEREAS, in the present case, the entities providing aid will be DEP and the FWC. Therefore, reimbursement from FEMA for work done under this agreement in the City will be paid directly back to the Florida Division of Emergency Management and then transferred to DEP and FWC,

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 City approves the following Memorandum of Understanding (MOU), provided as Attachment 1 and as provided below:

- a. The City Council approves this MOU as a draft and hereby authorizes the Mayor to sign the document and/or any revisions thereto proving that the City Attorney determines that any modifications can be considered as non-substantive;
- b. In the event that said modifications are substantive in the determination of the City Attorney, the Mayor is authorized to sign the document as provided in her authority as one of the Executive Policy Group members pursuant to the City's police powers under the Declaration of Emergency for Hurricane Irma.

Section 3. The City Clerk shall forward a certified copy of this Resolution with all attachments to appropriate and responsible individuals at FDEP and FWC.

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

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 19TH DAY OF DECEMBER, 2017.

THE CITY OF MARATHON, FLORIDA



Michelle Coldiron, Mayor

AYES: Cook, Senmartin, Zieg, Bartus
NOES: None
ABSENT: Coldiron
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:



David Migut, City Attorney