

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: November 14, 2007

Division: Growth Management

Bulk Item: Yes X No    

Department: Planning & Environmental Resources

Staff Contact: Richard Jones , 289-2805

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**AGENDA ITEM WORDING:**

Approval of an Interlocal Agreement (ILA) between Monroe County and the City of Marathon to facilitate construction and upgrades to the MM54 boat ramp

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**ITEM BACKGROUND:**

The City of Marathon is seeking transfer of ownership of the MM54 boat ramp from the Florida DOT and would like funding assistance from the County for construction and upgrades at the facility. The construction will take place in phases, with the County reimbursing the City once a year for three years as construction elements are completed. Ramp construction in the first year will allow the facility to become operational.

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**PREVIOUS RELEVANT BOCC ACTION:**

July 2003- Board approval of a Joint Participation Agreement with DOT for design, engineering and construction of the MM54 boat ramp.

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**CONTRACT/AGREEMENT CHANGES:**

N/A

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**STAFF RECOMMENDATIONS:**

Approval

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**TOTAL COST:** \$375,000

**BUDGETED:** Yes X No    

**COST TO COUNTY:** \$375,000

**SOURCE OF FUNDS:** BIF fund 157

**REVENUE PRODUCING:** Yes     No X

**AMOUNT PER MONTH**     **Year**    

**APPROVED BY:** County Atty X OMB/Purchasing X Risk Management X

**DOCUMENTATION:** Included X Not Required    

**DISPOSITION:**    

**AGENDA ITEM #**



## INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007 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**, Chapter 163, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969" ("Act"), specifically provides that its purpose is to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of the local community. (Sec. 163.01(2), F.S.); and

**WHEREAS**, County and City, pursuant to this Act, desire to enter into this Interlocal Agreement ("the Agreement") for the purposes, and upon the terms and conditions, described below, believing that this Agreement will allow each agency to make more efficient use of facilities, personnel, and services necessary to, common to, or available to each agency; and

**WHEREAS**, the County and City desire to enter into a joint participation agreement to rebuild the MM54 boat ramp; and

**WHEREAS**, the County is assisting in the coordination of the transfer of ownership of the MM54 Boat Ramp from the State of Florida to the City; and

**WHEREAS**, the County will provide funding to reimburse the City for construction costs for rebuilding and upgrading the MM54 Boat Ramp in a total amount not to exceed \$375,000.00 over a period of three years; and

**WHEREAS**, this Agreement will benefit and be in the best interests of the citizens of both City and County;

**NOW THEREFORE**, in consideration of the mutual promises and covenants herein contained, it is agreed between County and City as follows:

**Section 1. Services.** The City agrees to apply for transfer of ownership of the MM54 boat ramp property located within the City of Marathon from the State Department of Transportation and subsequently assume all maintenance costs and responsibilities for the launching facility. In the event ownership is transferred to the City, the City agrees to rebuild and upgrade the MM54 boat ramp in a phased approach beginning with the reconstruction of the boat ramp surface in the first year rendering the facility operational, and rebuild and upgrade bulkheads, parking and other amenities as necessary in the two following years (the

"Construction"). The City may invoice the County for reimbursement of Construction costs no more frequently than once per year for three consecutive years. In the event City does not obtain ownership of the boat ramp, City has no obligations under this Agreement. City may avail itself of the funds provided under this Agreement as long as such funds are allocated by County, and contingent upon such funding. City shall coordinate its improvement plans with County to assure that expenses are those which may be reimbursed.

**Section 2. Payment.** The County agrees to reimburse the City for Construction costs as follows:

- 2.1 Year 1 - not to exceed \$150,000.00  
Year 2 - not to exceed \$125,000.00  
Year 3 - not to exceed \$100,000.00
- 2.2 To receive payment, the City on an annual basis shall submit an invoice to the Administrator of the County's Marine Resources Office ("Administrator"). The invoice must describe the services performed, together with proof that payment has been made to the City's contractor(s). Compensation in any one year shall not exceed the amount allocated annually.
- 2.3 If the invoice is satisfactory to the Administrator, he/she shall forward the invoice to the County Clerk for payment. If the Administrator or County Clerk determines that an invoice contains an error or omission, then within thirty (30) days of receipt of the invoice, the Administrator or County Clerk (as appropriate) shall return the invoice to the City with a written explanation of the error or omission. If the invoice contains no error or omission, then the County shall pay the City within thirty (30) days of the Clerk's receipt of the invoice. If the invoice is returned for correction, then the payment must be made within thirty (30) days of the date the County official who requested the correction receives the corrected invoice.
- 2.4 The maximum amount the County is obligated to reimburse the City under this Interlocal Agreement is \$375,000.00.
- 2.5 The parties recognize that the City will enter into contractual operations with third parties in order to perform the services required by this Agreement and that the County shall be the funding source for a significant portion of the City's cost of facility construction. Accordingly, the County Clerk shall timely process all invoices received from the City as provided hereinabove.
- 2.6 This Agreement is contingent upon an annual appropriation by the Monroe County Board of County Commissioners. The City's obligation to rebuild and upgrade the MM54 boat ramp shall be contingent on the Monroe County Board of County Commissioners appropriating the full amount of the reimbursement in each year.

**Section 3. Term and Renewal.**

- 3.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through November 30, 2010 ("Term"), unless earlier terminated in accordance with Section 5 herein.
- 3.2 Unless the County notifies the City in writing of its intent to terminate this Agreement within sixty (60) days of the expiration date, this Agreement shall remain in effect. However, in no event shall the Term exceed the term of the agreement between the City and its vendors/subcontractors performing the Construction contemplated under this Agreement.
- 3.3 If such Notice of Termination as specified in Section 5 is given, this Agreement shall terminate and the parties shall be relieved of all rights and obligations hereunder, except for any rights and obligations that expressly survive termination.
- 3.4 The definition of "Term" shall include all renewal terms hereof.

**Section 4. Subcontracts.**

- 4.1 In providing the Construction contemplated by this Agreement, the parties recognize that the City may subcontract with third parties to provide the actual Construction.
- 4.2 Any third party contracts entered into between the City and any third party vendor shall not create any privity between the County and the third party, nor shall any third party vendor be considered a third party beneficiary of the rights of the City under this Agreement.
- 4.3 The City shall be responsible for any violations of applicable state, federal, County or City laws, rules or regulations made by the City's vendor(s) in performing any services contemplated in this Agreement.
- 4.4 Any contracts with any subcontractors entered into by the City shall include provisions for indemnification of City and County, as well as insurance and customer service standards matching those provisions in this Agreement and as provided in this Agreement.

**Section 5. Termination and Default.**

- 5.1 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.
- 5.2 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.

- 5.3 The defaulting party shall cure any such default, within 30 days following the date of the Default Notice.
- 5.4 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 thirty (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.
- 5.5 In the event the defaulting party fails to effect 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.
- 5.6 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.

**Section 6. Indemnification.**

- 6.1 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, and 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 or any third party vendor contracted by the City in connection with this Agreement. This provision shall survive the termination or earlier expiration of this Agreement.

**Section 7. Notices.**

- 7.1 All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing (each such, a "Notice") and addressed as follows (or to any other address which either party may designate by Notice):

If to County: Tom Willi  
County Administrator  
Monroe County  
Gato Building  
1100 Simonton Street  
Key West, Florida 33040

With a copy to: Suzanne Hutton, Esq.  
County Attorney  
Professional Building  
1111 12<sup>th</sup> Street, Suite 408  
Key West, Florida 33040

If to City: Mike Puto  
City Manager  
City of Marathon  
10045-55 Overseas Highway  
Marathon, Florida 33050

With a copy to: Jimmy Morales, Esq.  
City Attorney  
Stearns Weaver Miller Weissler Alhadeff and 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 with signed receipt.

**Section 8. Insurance.**

- 8.1 The City and County agree to insure or self insure their respective interests in connection with personal injury, death and personal property damage to the extent each deems necessary or appropriate.
- 8.2 The City shall require any contractor and subcontractor performing the Construction contemplated in this Agreement to maintain throughout the duration of this Agreement the following insurance:
  - 8.2.1 Commercial general liability in the amount of \$1,000,000 per occurrence for bodily injury and property damage. This policy must include coverage for contractual liability and specifically cover the indemnity set forth in this Agreement. The City must be named as an additional insured on this policy.
  - 8.2.2 Automobile and marine liability in the amount of \$1,000,000 per occurrence for bodily injury and property damage, covering all vehicles owned, leased or used by the contractor/s within the limits of the County. The City must be named as an additional insured on this policy.

- 8.2.3 Workers compensation and employer's liability, as required by Florida Statutes.
- 8.2.4 All companies providing insurance shall be authorized to do business in the State of Florida and rated A-:VI or better by Best's Key Rating Guild, latest edition.
- 8.2.5 No change or cancellation of this insurance shall be made without 30 days prior written notice to the City.
- 8.3 The City shall require any subcontractor to name the County as an additional insured on any policies.

**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 Monroe County, Florida, and subject to the rules of the 16<sup>th</sup> Judicial Circuit. 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 supercedes 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 The County Administrator or his designee shall, during the term of this Agreement and for a period of four (4) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the City or its subcontractors involving transactions related to this Agreement.
- 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.
- 14.2 The provisions of this Section shall not prohibit the City from utilizing the services of contractors or subcontractors to perform the Services contemplated in this Agreement, as long as the City follows its purchasing policies for such procurement.

**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. Funding.**

18.1 The parties agree that the County's responsibility under this Agreement is to provide funding only. Accordingly, all subcontractors providing the Construction are in privity with the City only and may not seek direct payment from the County, and that the County has no duty, liability or other obligation to such persons. The City agrees to include a sentence similar to the foregoing in all contracts entered into by the City for the Project.

**Section 19. Applicable Laws.**

19.1 In awarding contracts for the Construction, the City agrees to abide by all applicable City ordinances and state and federal laws.

**Section 20. Survival of Provisions.**

20.1 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 21. Counterparts.**

21.1 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 set their hands and seals the day and year first written above.

BOARD OF COUNTY COMMISSIONERS  
MONROE COUNTY, FLORIDA

BY: \_\_\_\_\_  
Mayor/Chairperson

(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

BY: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

BY: *D. J. Simms* 10 29 07  
Asst. County Attorney

THE CITY OF MARATHON, FLORIDA

\_\_\_\_\_  
Chris Bull, Mayor

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:

BY: \_\_\_\_\_  
City Attorney