

RESOLUTION NO. 10-085

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA APPROVING RENEWAL OF THE ATTACHED "LOWER KEYS BUS SERVICE INTERLOCAL AGREEMENT" FOR OPERATION OF THE LOWER KEYS SHUTTLE BUS FOR A TERM OF FIVE (5) YEARS; PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, in Resolution No. 05-120, the City Commission approved and entered into the attached "Lower Keys Bus Service Interlocal Agreement" (Agreement) between Key West, Monroe County, the City of Marathon; and

WHEREAS, as provided in section 2.C. of the Agreement, the parties mutually desire to extend this agreement for an additional term of five (5) years;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the City of Key West agrees to renew the attached Interlocal Agreement among the City of Key West, the City of Marathon and Monroe County for a term of five years commencing April 6, 2010 and ending April 5, 2015.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 2nd day of March, 2010.

Authenticated by the presiding officer and Clerk of the Commission on March 3, 2010.

Filed with the Clerk March 3, 2010.

  
CRAIG C. CATES, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK

## EXECUTIVE SUMMARY

**To:** Jim Scholl, City Manager  
**From:** Myra Wittenberg, Manager / KWDoT  
**Date:** February 10, 2010  
**Subject:** Interlocal Agreement - Renewal of Term  
April 6, 2010, through April 5, 2015



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### **Action Statement:**

This item is an request to approve a resolution extending the term of the Interlocal Agreement between City of Key West, City of Marathon and Monroe County, for the Lower Keys Shuttle Bus Service, for a period of five (5) years from April 6, 2010, through April 5, 2015.

### **Project History:**

In 2004-2005 the City of Key West received notice of award from the Federal Transit Administration (FTA) regarding grant funding for operational start up and continued operating assistance funding of a Job Access Reverse Commute grant program commonly referred to as JARC. JARC programs are intended to provide start up funding to areas where no bus service exists, as a means of enhancing life quality by providing transportation options to those who otherwise may not have transportation. It is intended to provide access to and from areas outside of the immediate neighborhood such as business and commerce opportunities. These services provide individuals a greater level of opportunity of employment, education, and training and other necessary business or service related access points.

With the grant award notice in hand, the City of Key West Transportation Department began communications with Monroe County and the newly formed City of Marathon to develop an equal level of participation for all three (3) agencies to embark on a joint venture that would create and provide public transit services between Key West and Marathon. The first bus ran on September 9, 2005.

From the period of September 2005 - to current period, the City of Key West has realized grant funding which contributes subsidies at 50% match for eligible expenses via a Federal Transit Administration (FTA) grant; 25% match via State of Florida Department of Transportation (FDOT) grant, with the remaining 25% of expenses equal split between the three (3) local agencies. At this time we anticipate the level of funding and match to remain the same.

As a side bar, it should be noted that for Key West City, this is an additional opportunity to secure grant dollars for *capital* items such as fixed assets for everything from new or replacement rolling stock (vehicles) to construction costs for new buildings, renovations or other capital improvement items that otherwise we would not be able to afford to purchase and maintain. This added opportunity will continue as the designated fixed route provider for the Lower Keys service.

The current agreement term of the Interlocal is a five (5) year term which ran from April 6, 2005, and continues through April 5, 2010. In paragraph 2 of the agreement, there is provision to renew the agreement with approval of all agencies. That is the intent of the request today, which will also be brought forward to the Council Members for the City of Marathon and the Board of County Commission for Monroe County.

Attached are two (2) single sheets of compiled data for the months of October to January, fiscal year period 2007, compared by year and same month, through current budget period of 2010? This is a good indicator of the latest trends in public transit use for Monroe County. It appears that while transit use is declining, the greater decline is to the "shorter distance" trip requirement - the Lower Keys bus service continues to be an area of need and demand, which will again see an increase to use in the near future based simply on sheer necessity.

**Option #1: Advantages / Disadvantages / Fiscal Impact**

Option #1 would be to approve the recommended term renewal from April 6, 2010, through April 5, 2015, providing for the Lower Keys Shuttle Bus Services.

The advantage of this option is that by the City remaining the designated fixed transit provider in Monroe County, the City is eligible to apply and receive other types of grant program funding, should they so desire from time to time.

There are numerous advantages and opportunities provided whenever fixed route transportation exists in a community such as a choice or alternate mode of transport, ability to reduce traffic, reduces accidents, reduction of dependency on foreign oils, reduction of carbon emissions and carbon footprint of the communities, etc.

There are no disadvantages to this option with regard to providing a fixed route transit service between Key West and Marathon.

The fiscal impact is no greater for Key West than for the City of Marathon and the County of Monroe BOCC. We are all equal partners in this venture.

**Option #2: Advantages / Disadvantages / Fiscal Impact**

Option #2 would be to not approve the renewal of term of the Interlocal Agreement.

There are no advantages to this option.

The disadvantage to this option is that all areas served between Key West and Marathon would be adversely impacted, which would inevitably have an economic impact on individuals and businesses too. Additionally, KWDoT recognizes that visitors are becoming informed about the services available and they too will begin to make choices to use public transit rather than add to the vehicle congestion on US #1 to make day trips to and from Key West or Marathon, daily.

**Recommendation:**

KWDoT staff recommends Option #1, above, to approve renewal of the Interlocal Agreement for a term of five (5) years, from April 6, 2010, through April 5, 2015.

### Annual Comparison - Lower Keys Routes

<b>F/Y 2006 - 2007</b>	<b>FAREBOX RIDERSHIP</b>	<b>FAREBOX REVENUE</b>	<b>AVERAGE FARE</b>	<b>BUS PASSES (MONTHLY)</b>
OCT	6,390	\$11,372.29	\$1.78	\$30.00
NOV	6,094	\$11,689.86	\$1.92	\$300.00
DEC	4,028	\$8,419.19	\$2.09	\$0.00
JAN	6,915	\$13,784.95	\$1.99	\$300.00
<b>Sub Total:</b>	<b>23,427</b>	<b>\$45,266.29</b>	<b>\$1.93</b>	<b>\$630.00</b>

<b>F/Y 2007- 2008</b>	<b>FAREBOX RIDERSHIP</b>	<b>FAREBOX REVENUE</b>	<b>AVERAGE FARE</b>	<b>BUS PASSES (MONTHLY)</b>
OCT	8,434	\$13,360.55	\$1.58	\$680.00
NOV	8,643	\$13,757.69	\$1.59	\$530.00
DEC	9,004	\$11,878.08	\$1.32	\$450.00
JAN	10,029	\$15,824.54	\$1.58	\$230.00
<b>Sub Total:</b>	<b>36,110</b>	<b>\$54,820.86</b>	<b>\$1.52</b>	<b>\$1,890.00</b>

<b>F/Y 2008 - 2009</b>	<b>FAREBOX RIDERSHIP</b>	<b>FAREBOX REVENUES</b>	<b>AVERAGE FARE</b>	<b>BUS PASSES (MONTHLY)</b>
OCT	9,267	\$16,709.00	\$1.80	\$1,160.00
NOV	9,125	\$16,195.93	\$1.77	\$830.00
DEC	9,623	\$15,527.77	\$1.61	\$1,290.00
JAN	10,789	\$21,410.65	\$1.98	\$1,640.00
<b>Sub Total:</b>	<b>38,804</b>	<b>\$69,843.35</b>	<b>\$1.80</b>	<b>\$4,920.00</b>

<b>FY 2009-2010</b>	<b>FAREBOX RIDERSHIP</b>	<b>FAREBOX REVENUES</b>	<b>AVERAGE FARE</b>	<b>BUS PASSES (MONTHLY)</b>
OCT	7,355	\$15,759.13	\$2.14	\$2,140.00
NOV	7,454	\$16,296.68	\$2.19	\$650.00
DEC	8,433	\$18,847.40	\$2.23	\$1,080.00
JAN	8,696	\$19,541.14	\$2.25	\$970.00
<b>Sub Total:</b>	<b>31,938</b>	<b>\$70,444.35</b>	<b>\$2.21</b>	<b>\$4,840.00</b>

- (1) Route changes twice in a 3 year period as well as fare increases transit use has decreased; as has the revenue to offset the operating expense.
- (2) The decrease is greater in the City route areas than it is in the Lower Keys.

### Annual Comparison - City Routes

<b>FY 2006 - 2007</b>	<b>FAREBOX RIDERSHIP</b>	<b>FAREBOX REVENUE</b>	<b>AVERAGE FARE</b>	<b>BUS PASSES (MONTHLY)</b>
OCT	31,008	\$25,939.18	\$0.84	\$117.50
NOV	30,736	\$25,997.95	\$0.85	\$1,275.00
DEC	22,223	\$18,764.81	\$0.84	\$150.00
JAN	35,055	\$29,533.90	\$0.84	\$1,725.00
<b>Sub Total:</b>	<b>119,022</b>	<b>\$100,235.84</b>	<b>\$0.84</b>	<b>\$3,267.50</b>

<b>FY 2007 - 2008</b>	<b>FAREBOX RIDERSHIP</b>	<b>FAREBOX REVENUE</b>	<b>AVERAGE FARE</b>	<b>BUS PASSES (MONTHLY)</b>
OCT	33,305	\$24,026.61	\$0.72	\$1,220.00
NOV	29,323	\$21,676.22	\$0.74	\$1,140.00
DEC	29,805	\$17,745.84	\$0.60	\$1,140.00
JAN	34,646	\$26,696.39	\$0.77	\$665.00
<b>Sub Total:</b>	<b>127,079</b>	<b>\$90,145.06</b>	<b>\$0.71</b>	<b>\$4,165.00</b>

<b>FY 2008 - 2009</b>	<b>FAREBOX RIDERSHIP</b>	<b>FAREBOX REVENUE</b>	<b>AVERAGE FARE</b>	<b>BUS PASSES (MONTHLY)</b>
OCT	29,754	\$26,079.00	\$0.88	\$1,570.00
NOV	28,989	\$24,613.03	\$0.85	\$1,320.00
DEC	30,925	\$23,938.37	\$0.77	\$1,805.00
JAN	32,335	\$31,058.15	\$0.96	\$1,720.00
<b>Sub Total:</b>	<b>122,003</b>	<b>\$105,688.55</b>	<b>\$0.87</b>	<b>\$6,415.00</b>

<b>FY 2009 - 2010</b>	<b>FAREBOX RIDERSHIP</b>	<b>FAREBOX REVENUE</b>	<b>AVERAGE FARE</b>	<b>BUS PASSES (MONTHLY)</b>
OCT	20,764	\$21,155.36	\$1.02	\$2,155.00
NOV	19,822	\$20,435.75	\$1.03	\$1,970.00
DEC	21,278	\$22,927.66	\$1.08	\$795.00
JAN	21,095	\$23,409.89	\$1.11	\$1,845.00
<b>Sub Total:</b>	<b>82,959</b>	<b>\$87,928.66</b>	<b>\$1.06</b>	<b>\$6,765.00</b>

- (1) Route changes twice in a 3 year period as well as fare increases transit use has decreased; as has the revenue to offset the operating expense.
- (2) The decrease is greater in the City route areas than it is in the Lower Keys.

RESOLUTION NO. 05-120

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA APPROVING THE ATTACHED INTERLOCAL AGREEMENT TO ESTABLISH THE LOWER KEYS SHUTTLE BUS; PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached Interlocal Agreement among the City of Key West, the City of Marathon and Monroe County is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 5 day of April, 2005.

Authenticated by the presiding officer and Clerk of the Commission on April 6, 2005.

Filed with the Clerk April 6, 2005.

ATTEST:

Cheryl Smith  
CHERYL SMITH CITY CLERK

Jimmy Weekley  
JIMMY WEEKLEY, MAYOR

STATE OF FLORIDA, COUNTY OF MONROE,  
CITY OF KEY WEST

This copy is a true copy of the public record on file in this office. Witness my hand and official Seal this 12 day of April, 2005

By Lillian Perez  
Deputy City Clerk

**LOWER KEYS BUS SERVICE**  
**INTERLOCAL AGREEMENT**

This Agreement is made and entered into by Monroe County ("COUNTY"), a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, FL 33040, the City of Marathon ("MARATHON"), a municipal corporation of the State of Florida whose address is 10045-55 Overseas Highway, Marathon, FL 33050, and the City of Key West ("KEY WEST"), a municipal corporation of the State of Florida whose address is 525 Angela Street, Key West, FL 33040.

**WITNESSETH:**

WHEREAS, there is an agreement in effect between Miami-Dade County and a private bus company to provide a limited public transit system between Miami-Dade County and 50<sup>th</sup> Street, Marathon; and

WHEREAS, COUNTY is authorized by Section 125.01(1)(I), F.S. to provide public transportation; and

WHEREAS, MARATHON and KEY WEST are each authorized by Section 166.021(1), F.S. to provide public transportation; and

WHEREAS, there is no regularly scheduled public transit system for local use between Marathon and Key West; and

WHEREAS, KEY WEST currently operates a public transit system, has experience in the operation of a public transportation system, public transportation grant processes and management as well as compliance with other Federal and State mandates, regulations and processes including Florida Statutes and the Code of Federal Regulations; and

WHEREAS, there are many reasons for implementing public transit between Marathon and Key West, including but not limited to:

- a) local residents who could work outside the immediate vicinity of their residence if public transportation through a commuter bus system was available;
- b) the need for safety by reducing traffic on U.S. Highway 1, the single highway between Marathon and Key West;
- c) the desire of many travelers, particularly Europeans as determined by the COUNTY'S Tourist Development Council, to use public transit systems to travel from Miami to Key West;
- d) the need to provide inter-island travel with a commuter bus public transit system upon establishment of commercial airline service to the Marathon Airport; and
- e) the considerable number of local residents with leisure time for travel between the Keys who either cannot or do not want to cope with traffic or parking problems; and

WHEREAS, KEY WEST, through its grant application experience, anticipates obtaining one or more Federal or State grants to initiate a commuter bus public



transit system between Marathon and Key West, thereby keeping the start-up costs as low as possible to the parties; and

WHEREAS, the parties are authorized by Section 163.01(4), Florida Statutes, to enter into an Interlocal Agreement to carry out their independent powers; and

WHEREAS, the parties desire to provide a public transit system, connecting with the Miami-Dade to Marathon transit system to serve the Lower Keys from 50<sup>th</sup> Street, Marathon, to Key West;

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

**1. SCOPE.** The parties shall provide a limited schedule commuter bus public transit system between 50<sup>th</sup> Street, Marathon, and Key West (hereinafter "MARATHON-KEY WEST TRANSIT SYSTEM"). KEY WEST shall provide the equipment and drivers using its own transit service or by subcontracting the service if it is determined that subcontracting is more cost effective for all the parties. The initial route shall include a turn-around stop at 50<sup>th</sup> Street, Marathon, and one designated bus stop each on the islands of Big Pine Key, Cudjoe Key, Sugarloaf Key, Saddlebunch Keys, and Big Coppitt Key, as well as a turn-around stop on College Road, Stock Island, Key West. The parties shall use their best efforts to schedule at least one trip in the early morning and one trip near the hour of 5:00 PM to loop around the island of Key West. Detailed scheduling shall be accomplished by KEY WEST transit staff with approval in writing by COUNTY's Administrator and MARATHON's City Manager. As long as the scheduling and operational changes do not affect the maximum funding committed by each party under this agreement, and as long as there are regularly scheduled bus stops on the specified islands, and the designated stops on Marathon and Stock Island, the chief administrative officer of each party may agree in writing to changes to the program, including additional bus stops, without requiring further approval by their respective governing bodies. Upon commencement of bus service under this Agreement, the parties shall have a study conducted to further determine the actual use by residents and visitors in order to provide for additional or changed scheduled stops, costs and fares. The parties shall make adjustments to the services and funding to achieve the greatest benefit possible as indicated by the results of the study.

**2. TERM.**

A. Subject to and upon the terms and conditions set forth herein, this Agreement shall continue in force for a term of five (5) years commencing as of the 10 day of April, 2005 and ending on the 5 day of April, 2010.

B. It is anticipated that the activities of the parties during the first year shall be primarily devoted to the acquisition of one or more grants for federal and state funding, start-up of the transit service, as well as contributing the initial local funding commitment reflected in this Agreement.

C. The parties may extend this agreement upon expiration of the term herein upon mutual agreement of the parties according to such terms and conditions as may be agreed to at the time of the extension.

**3. MANAGEMENT.** KEY WEST shall act as the operations manager of the commuter bus transit program, including but not limited to submitting grant applications to federal and state agencies, administering all grants for the service to be provided, providing the buses, drivers, maintenance and scheduling, and billing COUNTY and MARATHON for their share of costs pursuant to Paragraph 4.

**4. FUNDING AND PAYMENT.** Each party shall pay one third of the expenses incurred as required in order to meet the match ratio for the Federal and State Grant Assistance Programs. Funding in the first year is limited to no more than Fifty Thousand Dollars (\$50,000.00) for each party. Funding in the years remaining under this agreement shall continue to be shared by the parties equally, contingent upon annual appropriation by the respective parties. Payment shall be made as follows:

Payment for expenditures permissible by law shall be made pursuant to the Florida Prompt Payment Act, Section 218.70 F.S. *et seq*, through reimbursement to KEY WEST upon presentation of invoices, canceled checks and other documentation necessary to support a claim for reimbursement. The application for payment documents to COUNTY and MARATHON must be presented as a certified statement signed by KEY WEST's transportation manager and notarized, declaring that representations in the invoice are true and correct.

KEY WEST may elect to have vendors and contractors paid through the direct vendor method, upon submission of appropriate documentation as outlined above and a specific request that payment be made directly to the vendor or contractor rather than to KEY WEST.

**5. IN-HOUSE RESOURCES AND OUTSOURCE SUPPLIERS of MARATHON and COUNTY.** COUNTY and MARATHON shall provide reasonable assistance with their own employees and equipment, as well as procurement processes, as requested by KEY WEST, to reduce costs. This may include but not be limited to matches with in-kind services for expenses for administrative and/or operational costs under the control of MARATHON and COUNTY as allowable by grant funding programs. COUNTY shall include in its Tourist Development Marketing activities a component of advertising and promotion of the new service, particularly to the European market.

**6. SIGNAGE.** Portable or temporary advertising signs are prohibited. It is expected that permanent signage and signage which includes changing messages using lighting or magnetic letters will be permitted on the bus(es). All bus stop signs shall be based on fixed route or demand route service and shall be mounted permanently in approved locations.

**7. RECORDS - ACCESS AND AUDITS.** All parties shall maintain adequate and complete records for a period of four years after termination of this Agreement. Each party, its officers, employees, agents and auditors shall have access to the other parties' books, records, and documents, including those of

contractors providing MARATHON-KEY WEST TRANSIT SYSTEM services, related to this Agreement upon request. The access to and inspection of such books, records, and documents by the parties shall occur during regular office hours or as agreed.

**8. RELATIONSHIP OF PARTIES.** The parties to this Agreement are independent of each other and shall at no time be legally responsible for any negligence on the part of the other parties, their employees, agents or volunteers resulting in either bodily or personal injury or property damage to any individual, property or corporation.

**9. TAXES.** The parties are not subject to taxes and assessments.

**10. INSURANCE.** The parties to this agreement stipulate that each is a state governmental entity as defined by Florida Statutes and represents to the other that it has purchased suitable Public Liability, Vehicle Liability, and Workers' Compensation insurance, or is self-insured, in amounts adequate to respond to any and all claims under federal or state actions for civil rights violations, which are not limited by Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes arising out of the activities governed by this agreement.

Each party agrees to keep in full force and effect the required insurance coverage during the term of this Agreement. If the insurance policies originally purchased which meet the requirements of this agreement are canceled, terminated or reduced in coverage, then the respective party must immediately substitute complying policies so that no gap in coverage occurs. Copies of current policy certificates shall be filed with the other parties whenever acquired or amended.

**11. RESTRICTIONS ON AGREEMENTS ENTERED PURSUANT TO THIS AGREEMENT.** KEY WEST shall include in all contracts funded under this Agreement the following terms:

A. Anti-discrimination. Contractor agrees that it will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this agreement because of their race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

B. Anti-kickback. Contractor warrants that no person has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of KEY WEST, MARATHON, or COUNTY has any interest, financially or otherwise, in contractor. For breach or violation of this warranty, KEY WEST shall have the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee. Contractor acknowledges that it is aware that funding for this agreement is available through KEY WEST,

MARATHON and COUNTY and that violation of this paragraph may result in KEY WEST, MARATHON or COUNTY withdrawing funding for the Project.

C. Hold harmless/indemnification. Contractor acknowledges that this agreement is funded at least in part by Monroe County and the City of Marathon and agrees to indemnify and hold harmless COUNTY, MARATHON and KEY WEST and any of their officers and employees from and against any and all claims, liabilities, litigation, causes of action, damages, costs, expenses (including but not limited to fees and expenses arising from any factual investigation, discovery or preparation for litigation), and the payment of any and all of the foregoing or any demands, settlements or judgments (collectively claims) arising directly or indirectly from any negligence or criminal conduct on the part of Contractor in the performance of the terms of this agreement. The Contractor shall immediately give notice to COUNTY, MARATHON and KEY WEST of any suit, claim or action made against the Contractor that is related to the activity under this agreement, and will cooperate with COUNTY, MARATHON and KEY WEST in the investigation arising as a result of any suit, action or claim related this agreement.

D. Insurance. Contractor agrees that it maintains in force as part of the operating expenses of this bus route extension, a liability insurance policy which will insure and indemnify the Contractor, COUNTY, MARATHON and KEY WEST from any suits, claims or actions brought by any person or persons and from all costs and expenses of litigation brought against the Contractor for such injuries to persons or damage to property occurring during the agreement or thereafter that results from performance by Contractor of the obligations set forth in this agreement. At all times during the term of this agreement and for one year after acceptance of the project, Contractor shall maintain on file with KEY WEST a certificate of the insurance of the carriers showing that the aforesaid insurance policy is in effect. The following coverage's shall be provided:

1. Workers Compensation insurance as required by Florida Statutes.
2. Commercial General Liability Insurance with minimum limits of \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage.
3. Comprehensive Auto/Vehicle Liability Insurance with minimum limits of \$1,000,000.00 combined single limit per occurrence.

KEY WEST, COUNTY and MARATHON shall be named as additional insureds, except on Workers Compensation insurance policies. The policies shall provide no less than 30 days notice of cancellation, non-renewal or reduction of coverage.

At all times during the term of this agreement and for one year after acceptance of the project, Contractor shall maintain on file with KEY WEST a certificate of insurance showing that the aforesaid insurance coverage's are in effect.

e) Licensing and Permits. Contractor warrants that it shall have, prior to commencement of work under this agreement and at all times during said work, all required licenses and permits whether required by federal or state law, or Monroe County or any applicable municipal ordinance.

f) Right to Audit. The Contractor 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 KEY WEST, MARATHON or the COUNTY, the State of Florida or authorized agents and representatives of said government bodies.

**12. HOLD HARMLESS.** To the extent allowed by law, each party shall be responsible for any acts of negligence on the part of its employees, agents, contractors, and subcontractors and shall defend, indemnify and hold the other parties harmless from all claims arising out of such actions.

To the extent allowed by law, each party shall defend, release, discharge, indemnify and hold harmless the other parties, the members of their governing boards, officers and employees, agents and contractors, from and against any and all claims, demands, causes of action, losses, costs and expenses of whatever type, including investigation, witness costs and expenses, and attorneys' fees and costs that arise out of or are attributable to the activities under this agreement except for those claims, demands, damages, liabilities, actions, causes of action, losses, costs and expenses that are the result of the sole negligence of one of the other parties. The purchase of the insurance required under this Agreement does not release or vitiate any party's obligations under this paragraph. This does not constitute a waiver of any party's sovereign immunity rights including but not limited to those expressed in Section 768.28, Florida Statutes.

**13. NON-DISCRIMINATION.** The parties, each for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that no person shall be discriminated against in the provision of services or award of contracts under this Agreement as provided under Federal and State law, and applicable local ordinance on the grounds of race, color, or national origin.

The Parties agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The Parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101- 6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating

to confidentiality of alcohol and drug abuse patent records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Ch. 13, Art. VI, prohibiting discrimination on the bases of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; (11) Code of Ordinances of the City of Key West Section 38-191 *et seq* and Section 38-260 and (12) any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

**14. TERMINATION.** KEY WEST may terminate this agreement at any time upon thirty days notice to the other parties sent by certified mail to the addresses of the parties previously stated above. MARATHON and COUNTY may terminate this Agreement at any time upon sixty days notice to the other parties.

**15. ASSIGNMENT.** No Party may assign this Agreement or assign or subcontract any of its obligations under this Agreement other than as specified without the approval of the governing boards of the other Parties. All the obligations of this Agreement will extend to and bind the legal representatives, successors and assigns of the all Parties.

**16. SUBORDINATION.** This Agreement is subordinate to the laws and regulations of the United States, the State of Florida, COUNTY, MARATHON and KEY WEST whether in effect on commencement of this Agreement or adopted after that date.

**17. GOVERNING LAWS/VENUE.** This Agreement is governed by the laws of the State of Florida and the United States. Venue for any dispute arising under this Agreement must be in Monroe County, Florida. In the event of any litigation, the prevailing party is entitled to a reasonable attorney's fee and costs.

**18. ETHICS CLAUSE.** KEY WEST and MARATHON each warrant that it has not employed, retained or otherwise had act on its behalf any former COUNTY officer or employee subject to the prohibition of Section 2 of Ordinance No. 010-1990 or any COUNTY officer or employee in violation of Section 3 of Ordinance No. 010-1990. For breach or violation of this provision, the COUNTY may, in its discretion, terminate this Agreement without liability and may also, in its discretion, deduct from the agreed payments or otherwise recover the full amount of any fee, commission, percentage, gift or consideration paid to the former COUNTY officer or employee.

**19. CONSTRUCTION.** This Agreement has been carefully reviewed by the parties. Therefore, this Agreement is not to be construed against any party on the basis of authorship.

**20. NOTICES.** Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the following:

COUNTY:  
County Administrator  
1100 Simonton Street  
Key West, FL 33040

CITY OF MARATHON:  
City Manager  
10045-55 Overseas Highway  
Marathon, Florida 33050

CITY OF KEY WEST:  
City Manager  
P.O. Box 1409  
Key West, Florida 33041

**21. FULL UNDERSTANDING.** This Agreement is the parties' final mutual understanding. It replaces any earlier agreements or understandings, whether written or oral. This Agreement cannot be modified or replaced except by another written and signed agreement.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

(SEAL)  
ATTEST: DANNY L. KOLHAGE, CLERK  
By: *Gamela Hancock*  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA  
By: *Legia M. Spelman*  
Mayor/Chairman

Approved for form:

*Samuel A. Smith*  
County Attorney

Date: *March 16, 2005*

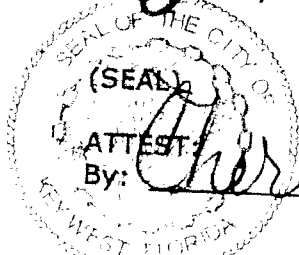
(SEAL)  
ATTEST:  
By: *Carla DeChamund*  
Clerk

CITY OF MARATHON  
By: *Mark E. Smith*  
Mayor

Approved for form:

*[Signature]*  
City Attorney

Date: *03/24/05*



(SEAL)  
ATTEST:  
By: *Cheryl Smith*

CITY OF KEY WEST  
By: *Jimmy Wakley*  
Mayor

Approved for form:

*Robert Bernstein*  
City Attorney

Date: *4/6/05*