



COUNCIL AGENDA STATEMENT

Meeting Date: July 13, 2021  
To: Honorable Mayor & Members of the City Council  
From: Carlos Solis, Public Works Director  
Through: George Garrett, City Manager

Agenda Item: **Resolution 2021-47** Approving An Interlocal Agreement Between The City Of Marathon And Monroe County For The Reimbursement From Boating Improvement Funds For Recreational Boating Related Projects Within The City Of Marathon; Authorizing The Mayor To Execute The Interlocal Agreement On Behalf Of The City; And Providing For An Effective Date

BACKGROUND & JUSTIFICATION:

The City submitted an application for the 2021 Boating Improvement Funding for reimbursement of cost associated with the repair of the grate drainage component at the 33<sup>rd</sup> Street boat ramp. The existing trench drain system has corroded over the years and is beyond repair requiring replacement of the system. The proposed funding of \$35,000 is estimated to cover the majority of the \$44,000 estimated cost of the project.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	<u>XX</u>	___
2. Other –Sewer Mandate	___	___

FISCAL NOTE:

Revenues from this ILA will be included in the FY22 Capital Infrastructure budget.

APPROVED BY FINANCE DIRECTOR:

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RECOMMENDATION: Approval of Resolution

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2021-47**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF MARATHON AND MONROE COUNTY FOR THE REIMBURSEMENT OF RECREATIONAL BOATING RELATED PROJECTS WITHIN THE CITY OF MARATHON FROM THE BOATING IMPROVEMENT FUND; AUTHORIZING THE CITY MANAGER TO EXECUTE THE INTERLOCAL AGREEMENT ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the Boating Improvement Fund (the “BIF”) contains monies that are to be used for recreational boating; and

**WHEREAS**, the City applied to Monroe County (the COUNTY) for reimbursement funding in the total amount of \$35,000 from BIF for costs to be incurred during FY’22 for 33<sup>rd</sup> Street boat ramp drainage repairs; and

**WHEREAS**, the above expenditures are qualified expenditures from the State BIF; and

**WHEREAS**, at the May 19, 2021, regular BOCC meeting the Board of County Commissioners of Monroe County, Florida, approved the selection of the BIF funding request submitted by the CITY and to provide funding in the amount of \$35,000.00; and

**WHEREAS**, the City and COUNTY desire to enter into an Interlocal Agreement to provide for the reimbursement of qualified City expenditures from the BIF.

**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 Interlocal Agreement attached hereto as Exhibit “A”, between the City and County for the reimbursement of qualified City expenditures from the Boating Improvement Fund is hereby approved. The City Manager is authorized to sign the Interlocal Agreement 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 13<sup>th</sup> DAY OF JULY 2021.**

**THE CITY OF MARATHON, FLORIDA**

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**Luis Gonzalez, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

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Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

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Steve Williams, City Attorney

## INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (Agreement) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2021, between the Board of County Commissioners of Monroe County, Florida, a political subdivision of the State of Florida (the “COUNTY” or “BOCC”) and the City of Marathon, a municipal corporation organized and existing under the laws of the State of Florida (the “CITY” or the “CONTRACTOR”).

### WITNESSETH:

**WHEREAS**, the COUNTY routinely uses State Boating Improvement Funds (BIF) for recreational boating related projects within the various municipalities; and

**WHEREAS**, the CITY has requested that the COUNTY provide reimbursement funding in the amount of \$35,000.00 from BIF for costs to be incurred during FY’22 for 33rd Street boat ramp drainage repairs; and

**WHEREAS**, the above expenditures are qualified expenditures from the State BIF; and

**WHEREAS**, at the May 19, 2021, regular BOCC meeting the Board of County Commissioners of Monroe County, Florida, approved the selection of the BIF funding request submitted by the CITY and to provide funding in the amount of \$35,000.00;

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

**Section 1. Payment.** The COUNTY agrees to reimburse the CITY for costs incurred in FY’22 as follows:

- 1.1 The foregoing recitals are true and correct and are hereby incorporated as if fully stated herein.
- 1.2 Payment in an amount not to exceed \$35,000.00 for 33rd Street boat ramp drainage repairs.
- 1.3 To receive payment, the CITY shall submit all requests for payment and applicable invoices to the Senior Administrator of the COUNTY’s Marine Resources Office by September 1, 2022. The invoices must describe the services performed, together with proof that payment has been made to the CITY’S sub-contractor(s). All documentation shall be forwarded to the County Clerk for payment. Any other documentation requested by the Clerk shall be provided.
- 1.4 By submitting a request for payment the CITY represents that it has complied with all of its purchasing requirements.
- 1.5 Funding of this Agreement is contingent upon an annual appropriation by the COUNTY.

**Section 2. Term.**

- 2.1 This Agreement shall become effective upon execution by both parties.
- 2.2 If such Notice of Termination as specified in Section 3 is given, this Agreement shall terminate within five (5) days thereof.

**Section 3. Termination and Default.**

- 3.1 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.
- 3.2 Upon any such default, the non-defaulting party shall provide to the defaulting party a written Notice of such default, which Notice (Default Notice) shall state in reasonable detail the actions the defaulting party must take to cure the same.
- 3.3 The defaulting party shall cure any such default, within 30 days following the date of the Default Notice.
- 3.4 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 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.
- 3.5 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.
- 3.6 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 4. Indemnification.**

- 4.1 To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the CITY, to the extent of the COUNTY'S potential liability pursuant to section 768.28, Florida Statutes, does hereby agree to defend, indemnify and hold the COUNTY, 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 CITY or any third party vendor contracted by the CITY in connection with this Agreement.

**Section 5. Notices.**

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

With a copy to: Robert B. Shillinger, Esq.  
Monroe County Attorney's Office  
1111 12<sup>th</sup> Street, Suite 408  
P.O. Box 1026  
Key West, Florida 33041-1026

If to City: George Garrett  
City Manager  
City of Marathon  
9805 Overseas Highway  
Marathon, FL 33050

With a copy to: Steven Williams, Esq.  
City Attorney  
City of Marathon  
9805 Overseas Highway  
Marathon, FL 33050

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.

**Section 6. Regulatory Powers.**

6.1 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.

- 6.2 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 7. Attorneys Fees and Waiver of Jury Trial.**

- 7.1 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.
- 7.2 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 8. Governing Law.**

- 8.1 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 the 16<sup>th</sup> Judicial Circuit in and for Monroe County, Florida. This Agreement is not subject to arbitration.

**Section 9. Access to Records and Audits.**

- 9.1 The CITY shall comply with all public records and records retention requirements mandated by Section 24, Article I, of the Florida Constitution, and Chapter 119, Florida Statutes, and 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 COUNTY, the State of Florida, the Federal Government, or authorized agents and representatives of said government bodies. CITY shall also provide access to the personal property reports, permits, and equipment purchased or utilized under this Agreement. It is the responsibility of CITY to maintain appropriate records in accordance with generally accepted accounting principles consistently applied to insure a proper accounting of all funds and expenditures. Records shall be kept for a period of five (5) years following execution of this Agreement. CITY understands that it shall be responsible for repayment of any and all audit exceptions which are identified by the Auditor General for the State of Florida, the Clerk of Court for Monroe County, the Board of County Commissioners for Monroe County, or their agents and representatives. COUNTY shall bill CITY for the amount of the audit exception and CITY shall promptly repay any audit exception. However, COUNTY warrants and represents that it has full authority to fund the Project under the terms and conditions specified herein. The COUNTY and CITY shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its

possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the COUNTY and CITY in conjunction with this Agreement; and the COUNTY shall have the right to unilaterally cancel this Agreement upon violation of this provision by CITY.

- 9.2 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.
- 9.3 The term "public records" and "records" shall be the same as such term has been defined in Chapter 119, Florida Statutes, including but not limited 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.
- 9.4 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.
- 9.5 The COUNTY and CONTRACTOR shall allow and permit reasonable access to, and inspection of, all documents, records, papers, letters, or other "public record" materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the COUNTY and CONTRACTOR in conjunction with and in connection with this Agreement and related to Agreement performance. The COUNTY shall have the right to unilaterally cancel this Agreement upon violation of this provision by the CONTRACTOR. Failure of the CONTRACTOR to abide by the terms of this provision shall be deemed a material breach of this Agreement and the COUNTY may enforce the terms of this provision in the form of a court proceeding and shall, as a prevailing party, be entitled to reimbursement of all attorney's fees and costs associated with that proceeding. This provision shall survive any termination or expiration of the Agreement.
- 9.6 The CONTRACTOR is encouraged to consult with its advisors about Florida Public Records Law in order to comply with this provision. Pursuant to F.S. 119.0701 and the terms and conditions of this Agreement, the CONTRACTOR is required to:
  - (1) Keep and maintain public records that would be required by the COUNTY to perform the service.
  - (2) Upon receipt from the COUNTY's custodian of records, provide the COUNTY with a copy of the requested records or allow the records to be



inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the CONTRACTOR does not transfer the records to the COUNTY.
- (4) Upon completion of the Agreement, transfer, at no cost, to the COUNTY all public records in possession of the CONTRACTOR or keep and maintain public records that would be required by the COUNTY to perform the service. If the CONTRACTOR transfers all public records to the COUNTY upon completion of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the COUNTY, upon request from the COUNTY's custodian of records, in a format that is compatible with the information technology systems of the COUNTY.
- (5) A request to inspect or copy public records relating to a COUNTY Agreement must be made directly to the COUNTY, but if the COUNTY does not possess the requested records, the COUNTY shall immediately notify the CONTRACTOR of the request, and the CONTRACTOR must provide the records to the COUNTY or allow the records to be inspected or copied within a reasonable time.

If the CONTRACTOR does not comply with the COUNTY's request for records, the COUNTY shall enforce the public records Agreement provisions in accordance with the Agreement, notwithstanding the COUNTY's option and right to unilaterally cancel this Agreement upon violation of this provision by the CONTRACTOR. A CONTRACTOR who fails to provide the public records to the COUNTY or pursuant to a valid public records request within a reasonable time may be subject to penalties under Chapter 119, Florida Statutes.

The CONTRACTOR shall not transfer custody, release, alter, destroy or otherwise dispose of any public records unless or otherwise provided in this provision or as otherwise provided by law.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO**

**PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, BRIAN BRADLEY AT PHONE# 305-292-3470 BRADLEY-BRIAN@MONROECOUNTY-FL.GOV, MONROE COUNTY ATTORNEY'S OFFICE 1111 12TH Street, SUITE 408, KEY WEST, FL 33040.**

**Section 10. Non-Assignability**

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

**Section 11. No Third-Party Beneficiaries.**

- 11.1 Nothing contained herein shall create any relationship, contractual or otherwise, with or any rights in favor of, any third party. No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the CITY and the COUNTY agree that neither the CITY nor the COUNTY or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

**Section 12. Non-Waiver of Immunity.**

- 12.1 Notwithstanding the provisions of Section 768.28, Florida Statutes, the participation of the CITY and the COUNTY in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the CITY or COUNTY be required to contain any provision for waiver.

**Section 13. Privileges and Immunities.**

- 13.1 All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the COUNTY, when performing their respective functions under this Agreement within the territorial limits of the COUNTY shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the COUNTY.

**Section 14. Independent Contractor.**

14.1 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 15. Severability.**

15.1 If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The COUNTY and CITY agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

**Section 16. Survival of Provisions.**

16.1 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 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.

**Section 19. Authority.**

19.1 Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.

**Section 20. Section Headings.**

- 20.1 Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

**Section 21. Execution in Counterparts.**

- 21.1 This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart..

**Section 22. Entire Agreement/Modification/Amendment.**

- 22.1 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.
- 22.2 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 the parties' preceding duly-executed Agreement.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as indicated below.

**BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA**


BY: \_\_\_\_\_  
Michelle Coldiron, Mayor

(SEAL)

ATTEST: Kevin Madok, Clerk

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY BY:**

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

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM  
  
PETER MORRIS  
ASSISTANT COUNTY ATTORNEY  
Date: 6/8/21

\_\_\_\_\_  
Assistant Monroe County Attorney

**CITY OF MARATHON, FLORIDA**

\_\_\_\_\_  
George Garrett, City Manager  
Date: \_\_\_\_\_

(SEAL)

ATTEST: Diane Clavier, City Clerk

**APPROVED AS TO FORM AND  
LEGALITY FOR THE USE AND  
RELIANCE OF CITY OF MARATHON,  
FLORIDA ONLY:**

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

BY: \_\_\_\_\_

Printed Name: \_\_\_\_\_