

## COUNCIL AGENDA STATEMENT



**Meeting Date:** December 14, 2021

**To:** Honorable Mayor and Council Members

**From:** George Garrett, City Manager

**Agenda Item:** **Resolution 2021-124**, Approval Of A Resolution By the City Of Marathon, Florida Adopting An Interlocal Agreement Between Monroe County, Florida, And The City Of Marathon, Florida, For FKRAD Monitoring Services Under DEP Grant MN008; Appropriate Funds and Provide For An Effective Date

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### **BACKGROUND**

The Florida Keys Reasonable Assurance Documentation (FKRAD) was approved by the Florida Department of Environmental Protection (FDEP or Department) for Nutrients in 2008 and provided to the Environmental Protection Agency (EPA) in February 2009. The FKRAD was developed as an alternative to the completion of an extensive, costly, and time-consuming assessment of the sources of water quality impairment for the waters of the Florida Keys, including those in Marathon. The principal causes of impairment include an excessive nutrient load in the nearshore exceeding threshold nutrient standards and a resulting depletion of dissolved oxygen levels. It was understood in the development of the FKRAD that the responsible jurisdictions in the Keys were implementing strategies to offset the impairments, including wastewater and stormwater improvements and the cleanup of Keys' canals.

The FKRAD was developed by the Department in cooperation with local governments, state agencies, and federal agencies within the Florida Keys to set forth and accelerate the actions that have been taken or were planned to be taken to reduce nutrient loadings to near shore waters throughout the Florida Keys so that water quality standards are met, and beneficial uses are restored.

The County and the City are authorized to enter into this Agreement and implement its provisions pursuant to Section 163.01, Florida Statutes, as amended, which permits local government units to make the most efficient use of their powers by enabling them to cooperate with each other for mutual advantage and to provide services and facilities in a manner and pursuant to forms of governmental organization that accords best with geographic, economic, and other factors influencing the needs and development of local communities.

The County received Florida Department of Environmental Protection (FDEP) Grant number MN008 ("Grant") in the amount of \$360,718.00 for RAD monitoring services in unincorporated Monroe County, the City of Marathon, the City of Islamorada, the City of Key West and the City of Layton. The County has an agreement with the University of Miami for \$360,718.00 to conduct the RAD monitoring work; and

The County and municipalities share of the RAD monitoring costs is equal to 50% of the project cost, prorated to each municipality based on the number of monitoring stations within that jurisdiction. The City's portion of the work is \$44,396.06 for 8 monitoring stations located in City limits which shall be paid by the City to the County to reimburse the County for the City's cost share portion and of which 50% (\$22,198.03) shall be reimbursed by the County to the City upon receipt from FDEP.

The City had intended to adopt this ILA some time ago assisting in the compensation for the completion of the project. At this juncture, the City is reimbursing costs incurred by the County for the project for its fair share. The Village has entered into a similar agreement previously is also meeting a similar obligation.

**CONSISTENCY CHECKLIST:**    Yes    No

- |                               |              |               |
|-------------------------------|--------------|---------------|
| 1. Comprehensive Plan         | <u>  X  </u> | <u>      </u> |
| 2. Other – 2010 Sewer Mandate | <u>  X  </u> | <u>      </u> |

**FISCAL NOTE:**

Approval will appropriate funding for this project in the FY21 adopted budget.

**RECOMMENDATION:**

Approval

Sponsored by: Garrett

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2021-124**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, ADOPTING AN INTERLOCAL AGREEMENT BETWEEN MONROE COUNTY, FLORIDA, AND THE CITY OF MARATHON, FLORIDA, FOR FKRAD MONITORING SERVICES UNDER DEP GRANT MN008; APPROPRIATE FUNDS AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the Florida Keys Reasonable Assurance Documentation (FKRAD) was approved by the Florida Department of Environmental Protection (FDEP or Department) for Nutrients in 2008 and provided to the Environmental Protection Agency (EPA) in February 2009; and

**WHEREAS**, The FKRAD was developed as an alternative to the completion of an extensive, costly, and time-consuming assessment of the sources of water quality impairment for the waters of the Florida Keys, including those in Marathon; and

**WHEREAS**, the principal causes of impairment include an excessive nutrient load in the nearshore exceeding threshold nutrient standards and a resulting depletion of dissolved oxygen levels. It was understood in the development of the FKRAD that the responsible jurisdictions in the Keys were implementing strategies to offset the impairments, including wastewater and stormwater improvements and the cleanup of Keys' canals; and

**WHEREAS**, the FKRAD was developed by the Department in cooperation with local governments, state agencies, and federal agencies within the Florida Keys to set forth and accelerate the actions that have been taken or were planned to be taken to reduce nutrient loadings to near shore waters throughout the Florida Keys so that water quality standards are met, and beneficial uses are restored; and

**WHEREAS**, the County and the City are authorized to enter into this Agreement and implement its provisions pursuant to Section 163.01, Florida Statutes, as amended, which permits local government units to make the most efficient use of their powers by enabling them to cooperate with each other for mutual advantage and to provide services and facilities in a manner and pursuant to forms of governmental organization that accords best with geographic, economic, and other factors influencing the needs and development of local communities; and

**WHEREAS**, the County received Florida Department of Environmental Protection (FDEP) Grant number MN008 ("Grant") in the amount of \$360,718.00 for RAD monitoring services in unincorporated Monroe County, the City of Marathon, the City of Islamorada, the City of Key West and the City of Layton; and

**WHEREAS**, the County has an agreement with the University of Miami for \$360,718.00 to

conduct the RAD monitoring work; and

**WHEREAS**, the County and municipalities share of the RAD monitoring costs is equal to 50% of the project cost, prorated to each municipality based on the number of monitoring stations within that jurisdiction; and

**WHEREAS**, the City's portion of the work is \$44,396.06 for 8 monitoring stations located in City limits which shall be paid by the City to the County to reimburse the County for the City's cost share portion and of which 50% (\$22,198.03) shall be reimbursed by the County to the City upon receipt from FDEP; and

**WHEREAS**, the City had intended to adopt this ILA some time ago assisting in compensation for the completion of the project. At this juncture, the City is reimbursing costs incurred by the County for the project for its fair share. The Village has entered into a similar agreement previously is also meeting a similar obligation,

**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 Council approves the attached ILA.

**Section 3.** The Clerk is hereby directed to transmit to the County for their approval and signature.

**Section 4.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 14<sup>th</sup> DAY OF DECEMBER, 2021.**

**THE CITY OF MARATHON, FLORIDA**

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**Mayor John Bartus**

AYES:

NOES:

ABSENT:

ABSTAIN:

**ATTEST:**

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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:**

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Steve Williams, City Attorney

**INTERLOCAL AGREEMENT BETWEEN MONROE COUNTY,  
FLORIDA, AND THE CITY OF MARATHON, FLORIDA,  
FOR FKRAD MONITORING SERVICES UNDER DEP GRANT MN008**

THIS INTERLOCAL AGREEMENT (“Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_, 2021, pursuant to Section 163.01, Florida Statutes, between Monroe County, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida 33040 (“County”), and the City of Marathon, Florida, a municipal corporation of the State of Florida, whose address is 9805 Overseas Highway, Marathon, Florida 33050 (“City”) (collectively hereinafter referred to as the “Parties”).

**WITNESSETH:**

**WHEREAS**, the County and the City are authorized to enter into this Agreement and implement its provisions pursuant to Section 163.01, Florida Statutes, as amended, which permits local government units to make the most efficient use of their powers by enabling them to cooperate with each other for mutual advantage and to provide services and facilities in a manner and pursuant to forms of governmental organization that accords best with geographic, economic, and other factors influencing the needs and development of local communities; and

**WHEREAS**, the Florida Keys Reasonable Assurance Documentation (FKRAD) was approved by the Florida Department of Environmental Protection (FDEP or Department) for Nutrients in 2008 and provided to the Environmental Protection Agency (EPA) in February 2009; and

**WHEREAS**, the FKRAD was developed by the Department in cooperation with local governments, state agencies, and federal agencies within the Florida Keys to set forth and accelerate the actions that have been taken or were planned to be taken to reduce nutrient loadings to near shore waters throughout the Florida Keys so that water quality standards are met, and beneficial uses are restored; and

**WHEREAS**, the County received Florida Department of Environmental Protection (FDEP) Grant number MN008 (“Grant”) in the amount of \$360,718.00 for RAD monitoring services in unincorporated Monroe County, the City of Marathon, the City of Islamorada, the City of Key West and the City of Layton; and

**WHEREAS**, the County has an agreement with the University of Miami for \$360,718.00 to conduct the RAD monitoring work; and

**WHEREAS**, the County and municipalities share of the RAD monitoring costs is equal to 50%; and

**WHEREAS**, the City’s portion of the work is \$44,396.06 for 8 monitoring stations located in City limits which shall be paid by the City to the County to reimburse the County for the City’s cost share portion and of which 50% (\$22,198.03) shall be reimbursed by the County to the City upon receipt from FDEP; and

**WHEREAS**, it is necessary for the Parties to enter into this Agreement in order to spell out the rights and responsibilities of the Parties under the Grant and this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which is acknowledged by both of the Parties, and pursuant to Section 163.01, et. seq., Florida Statutes, the Florida Interlocal Cooperation Act of 1969, the Parties hereto agree as follows:

**SECTION 1. RECITALS.** The foregoing recitals are true and correct and are hereby incorporated in this Agreement by reference.

**SECTION 2. TERM AND TERMINATION.**

The term of this Agreement shall run from the date on which the Agreement is executed by both the Parties (“Effective Date”) and shall continue in full force and effect until the Parties have satisfied all of their obligations under this Agreement, unless terminated sooner as provided herein (“Term”).

In the event that funding from FDEP or any other source is withdrawn, reduced, or limited in any way after the Effective Date of this Agreement but prior to completion of the Agreement, the County may terminate the Agreement, subject to renegotiation under new funding limitations and conditions.

**SECTION 3. RESPONSIBILITIES OF THE PARTIES.**

A. Each party to this Agreement shall designate an individual who may be designated by title or position to oversee and administer the party’s participation in this Agreement. The Parties’ initial Administrators shall be the following individuals:

For the County:

Rhonda Haag  
Director Sustainability and Projects  
102050 Overseas Highway, Ste. 246  
Key Largo, FL 33037  
Bus: (305) 453-8774  
[Haag-rhonda@monroecounty-fl.gov](mailto:Haag-rhonda@monroecounty-fl.gov)

For the City:

Maria Covelli  
Grants Coordinator  
9805 Overseas Highway  
Marathon, FL 33050  
Tel: 305 289  
[lindseyc@ci.marathon.fl.us](mailto:lindseyc@ci.marathon.fl.us)

Either party may change its Administrator at any time by delivering written notice of such party’s new Administrator to the other party.

B. The Scope of Services for work to be performed under this Grant is as shown in the Notice of Grant and Agreement Award (“Award”) for the Grant, attached hereto as **Exhibit A** to this Agreement, and also as shown in the University of Miami agreement, attached hereto as **Exhibit B**, both incorporated herein by reference. By entering into this Agreement, each party agrees that it will comply with all terms and conditions imposed on the Sponsor in the Award.

C. Monroe County and DEP have overall responsibility for direction of any work performed by the University of Miami under the Grant, including work performed in Islamorada. If at any

time the City directs work to be performed by the University of Miami that is not covered under the DEP Award document, the City shall be responsible for full payment of that work to the County for such work. The County shall provide the deliverables from the University of Miami to the County indicating the work that has been performed. The County shall have sole responsibility for direction of work performed by the University of Miami.

D. For the County, the contract project period was August 15, 2018 through February 15, 2021. The City is ageing through this ILA to offset the costs of the project for the RAD Monitoring Station surrounding the city, known as the “Halo Zone” or and area within 500 meters of the shoreline of the City. The total project budget for the City is \$44,396.06, which includes 8 RAD monitoring stations located in the City, as shown on the map in **Exhibit C** to this Agreement.

E. The County has hired the University of Miami to perform the work covered by the DEP Grant N008. Thereafter, throughout the Term of this Agreement, the University will submit invoices to the County, with copies to the City, for the work performed, up to the amounts shown in Exhibit B. Within ten (10) calendar days following receipt of the invoice from the University of Miami, the City shall provide an electronic funds transfer (EFT) to deposit funds with the County in an amount necessary to pay 100% of amount of the invoice for services performed in the City.

F. Following receipt of the invoice from the University of Miami, the County shall make payment to the University of Miami in accordance with the Florida prompt payment Act and shall submit a reimbursement claim to FDEP for reimbursement of 50% of the eligible invoice costs in accordance with DEP grant N008.

G. Within 10 days of receipt by the County of the eligible reimbursement costs from FDEP, the County will issue the approved reimbursement amount to the City by electronic funds transfer.

H. The City understands that only work covered in the Grant Agreement is allowable work. All amendments to the Award require the prior written approval of both the County and FDEP.

#### **SECTION 4. RECORDS – ACCESS AND AUDITS.**

A. Both Parties shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Records shall be retained for a period of seven (7) years from the termination of this agreement or for a period of three (3) years from the date of submission of the final expenditure report in accordance with 2 CFR § 200.333, whichever is greater. Each party to this Agreement or its authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for four (4) years following the termination of this Agreement. If an auditor employed by the County determines that monies paid to the City pursuant to this Agreement were spent for purposes not authorized by this Agreement, the City shall repay the monies together with interest calculated pursuant to Sec. 55.03, of the Florida Statutes, running from the date the monies were paid by the County.

B. The Parties shall allow public access to all records subject to the provisions of Chapter 119, Florida Statutes, and the Constitution of the State of Florida and which have been made or received by either party in conjunction with this Interlocal Agreement.



## **SECTION 5. NONDISCRIMINATION.**

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 patient 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 may be amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Chapter 14, Article II, which prohibits discrimination on the basis of race, color, sex, religion, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; 11) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

## **SECTION 6. GOVERNING LAW, VENUE.**

The laws of the State of Florida shall govern this Agreement. Any lawsuit to enforce the terms and conditions of this Agreement must be brought in Monroe County, Florida.

## **SECTION 7. SEVERABILITY.**

If any provision or part of a provision of this Agreement is found by a court or other authority of competent jurisdiction to be void or unenforceable, that provision or part of a provision is to be deemed deleted from this Agreement and the remaining provisions to continue in full force and effect. The Parties shall, in this event, seek to agree upon a valid and enforceable provision or part of a provision to replace the provision or part of a provision found to be void and unenforceable.

## **SECTION 8. CODE OF ETHICS.**

The Parties agree that officers and employees of the City and County required to comply with the standards of conduct for public officers and employees as delineated in Section 112.311, et seq., Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

The County and City each warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. Each party further warrants 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 as amended by Ordinance 020-1990 or any county officer or employee in violation of Section 3 of Ordinance No. 010-1990. For the breach or violation of the provision, each party shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration

**SECTION 9. AUTHORITY TO EXECUTE, EXECUTION IN COUNTERPARTS, EXECUTION BY ELECTRONIC SIGNATURES.**

The persons signing below represent and warrant that each possesses the requisite authority to execute this Agreement and to bind his respective entity through his signature. This Agreement may be signed in counterparts. In accordance with Monroe County Ordinance No. 005-2018, an electronic signature is equally valid as a hard copy or wet signature.

**SECTION 10. NOTICE.**

Whenever any party desires to give notice to the other, it must be given by written notice, either by registered first class U.S. mail, return receipt requested, or by certified mail, and sent to:

For the County:

Monroe County Administrator  
1100 Simonton St.  
Key West, FL 33040

For the City:

City Manager  
City of Marathon  
9805 Overseas Highway  
Marathon, FL 33050

**SECTION 11. OTHER FEDERAL CLAUSES.**

The Parties understand that the subject matter of this Agreement is work that will be paid for by a federal award, as that term is defined in 2 C.F.R. part 200, and therefore, the following federal contract clauses apply:

**A. Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b).

**B. Clean Air Act** (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the

Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**C. Debarment and Suspension** (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**D. Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**E. NRCS Regulations.** NRCS administers the Emergency Watershed Protection (EWP) program through the following authorities:

- Section 216, Public Law 81-516 (33 U.S.C. Section 701b);
- Section 403 of Title IV of the Agricultural Credit Act of 1978, Public Law 95-334; and
- Section 382, Title III, of the 1996 Farm Bill Public Law 104-127.
- Codified rules for administration of the EWP program are set forth in 7 CFR 624.

The Parties understand agree that they will comply with the aforementioned statutes and regulations.

**SECTION 12. ENTIRETY OF AGREEMENT.** This Agreement constitutes the entire agreement between the County and the City, and supersedes all proposals, prior agreements, and all other communication between the Parties in relation to the subject matter covered by this Agreement. Except as otherwise provided herein, no revision, amendment or modification of this Agreement shall be effective unless reduced to writing and executed by both Parties.

**IN WITNESS WHEREOF**, the Parties hereto have caused these presents to be executed by their Authorized Officers and have affixed their corporate seals hereon.

(SEAL)  
Attest: KEVIN MADOK, CLERK

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

By:

\_\_\_\_\_  
As Deputy Clerk

By: \_\_\_\_\_  
David Rice, Mayor

Date:

**APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND RELIANCE OF MONROE COUNTY BOARD OF  
COUNTY COMMISSIONERS ONLY:**

\_\_\_\_\_  
**CYNTHIA HALL, ASSISTANT COUNTY ATTORNEY**

(SEAL)  
Attest: DIANE CLAVIER, CITY  
CLERK

**CITY OF MARATHON**

By:

\_\_\_\_\_

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

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

\_\_\_\_\_  
**STEVEN T. WILLIAMS, CITY ATTORNEY**

Exhibit A

DEP GRANT AGREEMENT FOR  
RAD MONITORING SERVICES  
MN008

EXHIBIT B

UNIVERSITY OF MIAMI AGREEMENT WITH  
MONROE COUNTY FOR  
RAD MONITORING SERVICES

# EXHIBIT C

## MAP OF RAD MONITORING SERVICES PERFORMED IN EACH MUNICIPALITY

