BOARD OF COUNTY COMMISSIONERS
Agenda Item Summary

Meeting Date January 21, 2004 **Division** **County Attorney**

AGENDA ITEM WORDING

Approval of an Agreement with the City of Marathon and the Monroe County Sheriff's Office to provide police service within the City of Marathon.

ITEM BACKGROUND

PREVIOUS RELEVANT BOCC ACTION

CONTRACT/AGREEMENT CHANGES

STAFF RECOMMENDATIONS

Approval.

TOTAL COST BUDGETED Yes No

COST TO COUNTY SOURCE OF FUNDS

APPROVED BY: County Attorney ■ OMB/Purchasing □ Risk Management □

DIVISION DIRECTOR APPROVAL: JOHN R. COLLINS

DOCUMENTATION: Included □ To Follow □ Not Required □

AGENDA ITEM # P11

AGREEMENT BY AND BETWEEN THE SHERIFF OF MONROE COUNTY, FLORIDA, THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AND THE CITY OF MARATHON FOR POLICE SERVICES

THIS AGREEMENT, by and between the CITY OF MARATHON, a municipal corporation organized as existing under the laws of the State of Florida, (hereinafter referred to as "CITY"), and the Monroe County Sheriff's Office (hereinafter referred to collectively as "MCSO"),

W I T N E S S E T H :

WHEREAS, the CITY is desirous of maintaining a high level of competent professional police service in conjunction and harmony with its fiscal policies of sound, economical management, and

WHEREAS, MCSO has agreed to render to the CITY a continuing high level of professional police service, and the CITY is desirous of Agreeing to receive such services based upon the terms and conditions hereinafter set forth,

WHEREAS, the CITY is desirous of providing its daily police service through an Agreement with MCSO.

NOW THEREFORE, in consideration of the sums hereinafter set forth and for other good and valuable considerations, the receipt and legal sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

ARTICLE I
POLICE SERVICES

MCSO shall provide to CITY for the term hereinafter set forth, as the same may be extended in accordance with the provisions throughout the corporate limits of CITY to the extent and in the manner hereinafter described.

1.1 For the purposes of this Agreement, the following terms shall have the respective meanings hereinafter set forth:

1.1.1 Patrol Unit A patrol unit shall be defined to mean one marked patrol car with one uniformed Deputy Sheriff and all standard support equipment.

1.1.2 Marathon District shall mean within the Municipal boundaries of the City Of Marathon.

1.1.3 Service shall mean comprehensive police protection provided each day of the year on a twenty-four (24) hour per day basis

1.1.4 Shift shall mean and include service provided on a 12 hour basis (except supervisors may be assigned as needed). Unless revised by mutual agreement of the parties, the commencement hour of any shift shall be determined and established from time to time by MCSO.

1.1.5 City Chief assigned to the City of Marathon to serve as liaison between MCSO and the City of Marathon. It is understood that the City Chief functions as a MCSO regional officer.

1.1.6 Unforeseen Catastrophic Event shall mean an occurrence that was not previously contemplated by the parties, such as natural disasters and civil unrest, which requires immediate attention utilizing personnel resources of the MCSO.

1.2 Commencing October 1, 2003, the staffing structure of the Marathon District will be as follows:

01 – City Chief (refer to section 1.1.6)
04 – Sergeants
11 – Deputies (including one near-shore patrol officer)
01 – School Crossing Guard

16 – TOTAL MARATHON PERSONNEL

In order to insure that the services are provided under this agreement, the City Chief will provide the City Manager with reports requested by the City Manager, including but not limited to planned schedules and daily reports which include the names and hours worked of every member of the Marathon District.

1.2.1 The parties recognize that a law enforcement agency requires flexibility in order to meet society's challenge to combat crime and other social conditions. Therefore, the City Chief or his designee shall have the discretion to determine patrol staffing levels and assignments for the above stated personnel to provide adequate police services to the CITY consistent with the spirit and intent of this Agreement.

1.2.2 Utilizing the staffing structure as provided in Section 1.2 above, the City Chief will provide the CITY with a total of (3.5) deputies and (1.5) sergeants during a (24) twenty four hour period based upon MCSO's (28) day staffing cycle. Schedules for personnel assigned to specialized functions will be scheduled at the discretion of the City Chief in consultation with the City Manager in order to achieve maximum effectiveness.

1.2.3 The staffing plan for this Agreement has been developed using a 5.21 staffing ratio. This ratio is used to plan the proper number of deputies and sergeants to maintain shift coverage considering planned and unplanned absences due to injury illness, vacation, training and family and medical leave. The City Chief will make all reasonable efforts to coordinate training, sick, annual and administrative leave to provide optimum service to the City of Marathon

1.3 The uniform patrol force shall respond to and render aid in life saving and in-progress crime scenes, and is required to provide an average response time equal to or better than historical averages over the last 5 years. The time shall be measured from the

incoming time of the call to the time an officer arrives on the scene of the emergency call. While responding to emergency calls, MCSO shall maintain safe operations.

1.4 The uniformed patrol units shall provide vacation-house-check services and premises surveillance not less than once during each twenty-four (24) hour period, for each resident of the CITY who registers for such service, with the exception of staffing shortages, unforeseen catastrophic events, and emergencies which effect the life, health and safety of all served in Marathon. If a staffing shortage should arisé, the Marathon City Chief shall insure the immediate resumption of vacation-house-check services and premises surveillance once the staffing shortages have been addressed. MCSO City Chief shall provide a written report consisting of a listing of each resident that did not receive the vacation-house-check services and premises surveillance within the 24 hour period. Included within this report shall be an explanation of the inability to conduct this service within the prescribed 24 hour period. The uniformed patrol unit shall provide a high profile presence in both residential and business areas. Vacation-house-check services and premises surveillance reports shall be provided to the City Manager upon request.

1.5 At the request of the City Manager, one uniformed Deputy Sheriff shall be available to attend each regular and special City Council meeting at no additional cost to the City. This uniformed officer shall come from the staffing structure provided for in section 1.2. In addition, the City Chief or his/her designee shall attend such other meetings as may be requested by the City Manager.

1.7 The MCSO shall provide such professional police services which shall encompass all those duties and functions of the type coming within the jurisdiction of and customarily rendered by municipal police departments and the Office of the Monroe County Sheriff, in accordance with the Charter of the CITY and the statutes of the State of Florida. Nothing herein is intended to usurp the authority of the MCSO policies and procedures. In addition, nothing herein is intended to usurp the authority of the CITY, its policies, procedures and Charter.

1.8. MCSO shall provide such municipal policing services for the compensation outlined in this Agreement, and as provided in Article I, with the exception of those services enumerated in Article X of this Agreement.

ARTICLE IIANCILLARY SERVICES

2.1 MCSO shall also provide the following services to the City of Marathon on the same terms and at no additional charge or expense as they are provided to all residents of Monroe County:

Aviation

Bailiffs and other court personnel

Bomb Squad

Civil process

Community policing specialists

Crime scene services

Criminal analyst services

Dive team

Disaster/Hurricane Emergency Coordination and Response

Environmental officers

Finance

Hostage negotiation

Human resources

Information technology

Internal investigations

Juvenile officers

Major crimes detective and investigative services, including homicide, arson, sexual crimes, child abuse and neglect, narcotics and coordination of regional , statewide, and national investigation.

Neighborhood and business Crime Watches

Police canine

Police dispatch, including 911 services

Police legal advisor

Prisoner detention and transport

Property and evidence

Public information's officer

Records

Regional administration

School resource officers and DARE instructors

SWAT team

Traffic unit

Training

ARTICLE III
MAINTENANCE OF ABILITY

3.1 MCSO shall furnish to and maintain for the benefit of the CITY, without additional cost therefor, all necessary labor, supervision, equipment, vehicles, communication facilities and supplies necessary and proper for the purpose of performing the services, duties and responsibilities set forth and contemplated herein and as necessary to maintain the level of service to be rendered thereunder.

3.2 MCSO shall ensure that every member of the Marathon District is provided with a marked patrol vehicle and uniforms marked as described on the attached Exhibit B. Moreover, MCSO shall ensure that every member of the Marathon District is provided with the appropriate patch or rocker which clearly identifies the officer as City of Marathon. The Sheriff and the City Manager shall agree to which form of uniform identification is appropriate.

ARTICLE IV
ADDITIONAL SERVICES

4.1 MCSO shall provide to the CITY, upon the request of the City Manager and the availability of resources, such additional services as may from time to time be needed at the discretion of the CITY. The cost of such services shall be borne by the CITY and shall be payable in such amounts and in such a manner as may be determined by mutual agreement, upon each occurrence, by the City Manager.

ARTICLE V
EMPLOYMENT RESPONSIBILITY

5.1 All law enforcement officers, deputy sheriffs and other persons employed by MCSO in the performance of such services, functions and responsibilities as described and contemplated herein for the CITY shall be and remain MCSO employees.

5.2 MCSO and Monroe County shall be responsible for all insurance benefits, civil service benefits, compensation and/or other employee rights during the course of employment with MCSO. Accordingly, the CITY shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers compensation benefits under Chapter 441, F.S. or any other amenities of employment to and MCSO personnel performing services, duties and responsibilities hereunder for the benefit of said CITY and the residents thereof of any other liabilities whatsoever, unless otherwise specifically provided herein. MCSO is, and shall be in the performance of all work, services and activities under this Agreement, an independent agent and not an employee, agent or servant of the CITY.

ARTICLE VI
EMPLOYMENT; RIGHT OF CONTROL

6.1 MCSO shall have and maintain the responsibility for and control of the rendition of the services, the standards of performance, the discipline of personnel and other matters incident to the performance of the services, duties and responsibilities as described and contemplated herein.

6.2 The parties acknowledge that it is important for the City to have MCSO personnel who are acquainted with the general make-up of the CITY and are familiar with the geography, its industrial, business and residential composition, and its crime problems.

6.3 The City Manager shall have the right to require MCSO to transfer up to 20% of personnel, not to exceed 2 uniformed deputy sheriff(s), out of the City of Marathon on an annual basis, for any reason whatsoever. The removal of officers described in this section may be dependent upon a sufficient number of regional officers/sergeants available. In addition the City Manager shall have the right to remove additional uniformed deputy sheriff(s) from the Marathon District under the terms of the removal procedures outlined in section 6.4 below.

6.4 In the event the City Manager becomes dissatisfied with the performance of the additional personnel assigned to the Marathon District by MCSO, the City Manager shall provide written notice to the MCSO. Thereafter, representatives of MCSO and the City shall meet to discuss possible remedies of the problems experienced by the CITY. MCSO agrees to act in good faith in resolving any problems experienced by the CITY, and MCSO agrees to transfer said personnel within 35 days of notification by the CITY, and replacement personnel will be assigned to the CITY in accordance with this Agreement.

6.5 The transfer of any additional personnel shall be only by a joint agreement between MCSO and the City Manager. The rights of the City Manager to transfer personnel out of the City of Marathon, pursuant to this paragraph and section 6.3 and 6.4, do not include the Chief, which may be transferred by the City Manager pursuant to Article XII.

6.6 The MCSO shall have the discretion to transfer or reassign any personnel out of the City of Marathon for the following reasons :

1. Situations where a deputy/sergeant requests a transfer in order to accept a promotion or special assignment which has been offered to him or her by MCSO based upon his or her special education qualifications or career path.
2. Disciplinary reasons.
3. Failure of a deputy/sergeant or employee to meet MCSO performance standards.
4. At the request of the employee.

In the event MCSO transfers or reassigns any deputy or employee for the above-stated reasons, MCSO shall provide the City Manager with prompt written notice of such transfer or reassignment and explain the basis of the reassignment.

6.7 In any case not specified above, the City Manager must concur prior to any transfer of personnel out of the City of Marathon; which concurrence shall not be unreasonably withheld.

6.8 With the exception of disciplinary transfers and resignations, any personnel transferred or reassigned out of the CITY, pursuant to this Article, shall not occur without first filling the vacated position. In the event of the disciplinary transfer MCSO will make every effort possible to fill this position as to be consistent with Article I.

6.9 Nothing in this Agreement will require MCSO to take any action contrary to any collective bargaining agreement to which MCSO is a party, to the collective bargaining rights of any MCSO employee, or federal, state, or local employment or civil rights law.

ARTICLE VII
EMPLOYMENT; AUTHORITY TO ACT

The City does hereby vest in each sworn officer of MCSO who, from time to time, may be assigned to the Marathon District of MCSO, to the extent allowed by law, the police powers of the CITY which are necessary to implement and carry forth the services, duties, and responsibilities imposed upon MCSO hereby, for the sole and limited purpose of giving official and lawful status and validity to the performance thereof by such sworn officers. Every sworn officer of MCSO so empowered hereby and engaged in the performance of the services, duties and responsibilities described and contemplated herein shall be deemed to be a sworn officer of the CITY while performing such services, duties and responsibilities which constitute municipal functions and are within the scope of this Service Agreement. Accordingly, such sworn officers of MCSO are hereby vested with the power to enforce the ordinances of the CITY, to make arrests incident to the enforcement thereof and to do such other things and perform such other acts as are necessary with respect thereto.

ARTICLE VIII
CONSIDERATION

8.1 The CITY shall pay 1/12 of the total contract price to the Clerk of Court no later than October 15, 2003, and on the fifteenth day of every month thereafter until the total contract price is paid. The total contract price is $1,201,310.00.

8.1.1 Application of FY 2003 contract surplus: On or before October 30, 2003, MCSO will provide the City a written estimate of surplus funds remaining after payment of the City's obligations under the previous contract. The estimated surplus will be credited against the October 2003 payment due MCSO. The credit will be adjusted as necessary when the county's auditors complete their audit of MCSO. Any adjustment will be made in the month after the audit is finished.

8.2 The analysis of the total costs enumerated herein for MCSO to provide municipal policing services in the City of Marathon, has been attached as Exhibit 'A'. Any additional costs for municipal policing services may only be approved by the City Manager and shall not exceed 5% ($60,065.50) of the aforementioned Agreement amount of $1,201,310.00. Municipal Policing Service levels shall not fall below those levels described in Article I with the exception of those services provided in Article X and an unforeseen catastrophic event.

8.3 In the event the City requires municipal policing services beyond those outlined within this agreement, the costs associated with this increased service shall be consistent with those costs outlined in Exhibit 'A'.

8.4 At the end of each fiscal year, incurred costs will be reconciled with total payments made by the CITY. MCSO external auditors will determine the final balance. If incurred costs exceed total payments, the CITY will reimburse MCSO for the excess costs. If total payments exceed incurred costs, MCSO will reimburse the CITY for the excess payment amount.

8.5 The CITY and MCSO will negotiate payment for the second and third years of this Agreement in time sufficient for preparation of budgets and tax rolls. When agreement is reached, the City Manager will prepare a memorandum stating the new terms and acknowledging the City's acceptance of them. A resolution of the Monroe County Board of County Commissioners, sponsored by the Sheriff and acknowledging the new terms, shall be sufficient to amend the financial terms of this Agreement. If the parties are unable to agree on payments for future years on a timely basis, then and in that event this Agreement shall terminate on September 30th of the then current Agreement period.

ARTICLE IX
FINES, FOREITURES/SEIZURES

9.1 All law enforcement education funds levied and collected by the Clerk of the Court and earmarked for CITY pursuant to Section 943.25, Florida Statutes, may be assigned over to The MARATON DISTRICT and used by the MARATHON DISTRICT for the law enforcement education purposes authorized in said statute. Apart from such funds, The MARATHON DISTRICT shall have no claim or right to any other monies or things of value which CITY receives or may hereinafter receive by way of entitlement programs, grants or otherwise in connection with police or law enforcement activities.

9.2 CITY and MCSO do hereby acknowledge, one to the other, that nothing contained herein shall in anyway be construed to impair the CITY's right to the disposition of fines and forfeitures to which the CITY would be entitled, pursuant to Section §318.21, Fla. Stat. (2002) Florida Statutes, as the same may be amended from time to time, or as to net proceeds and forfeitures (as shown by actual costs provided by the Sheriff to the City) arising under the sale or disposition of unclaimed property or under any statutory or common law proceeding to which the CITY would otherwise be entitled, except as limited herein.

9.3 MCSO agrees that any currency seized within the CITY, through active participation of the Marathon District's personnel, pursuant to this agreement and Chapter 932 of the Florida Statutes, and subsequently forfeited to the MARATHON DISTRICT, shall be deposited into the City's Law Enforcement Trust Fund established by the City of Marathon in an amount which represents the Marathon District's share, as defined in paragraph 9.7, of such currency. Said funds shall be and shall always remain in the ownership of the CITY and the MARATHON DISTRICT shall not have any right to ownership and control of such funds. During the term of this Agreement, such currency may be earmarked for the MARATHON DISTRICT's use within the confines of the City, upon approval of the CITY.

9.4 Upon concurrence of the City Chief and the City Manager, the MARATHON DISTRICT may apply to the CITY for the use of such funds, within the boundaries of the CITY, if such application is in compliance with Florida Statutes. Said request shall first be submitted to the MCSO legal advisor for a determination of the legality of the request. The MCSO legal advisor shall render such opinion within 15 days of written request of the CITY. The MARATHON DISTRICT agrees to submit such application to the City Council for appropriation accompanied by a written certification that the request complies with the provisions of §932.7055 (4) Florida Statutes. Upon appropriation, such funds shall be made available to the MARATHON DISTRICT for its designated use within the confines of the City.

9.5 The parties agree that the decision to dispose of or use personal property seized within the CITY through active participation of Marathon District personnel shall be in the sole discretion of CITY. The MARATHON DISTRICT may apply to CITY to use such personal property outside of the CITY, and, if approved by the CITY, the MARATHON DISTRICT shall allocate funds to the City's Law Enforcement Trust Fund equivalent to the Marathon district's share, as defined in paragraph 9.7, of the mutually agreed upon fair market value of such personal property less any lien on such property. In the event the MARATHON DISTRICT decides to use such personal property within the CITY, such property will be used within the CITY until the earlier of disposition of such property or termination of this Agreement. In the event the property is disposed of prior to termination of this Agreement, the MARATHON DISTRICT shall allocate the net proceeds from said disposition to the City's Law Enforcement Trust Fund. In the event that this Agreement is terminated prior to the disposition of the property, said property shall be turned over to the CITY. During the term of this Agreement, such funds shall be earmarked for the MARATHON DISTRICT's use within the confines of the CITY.

9.6 The parties agree that the decision to use or dispose of real property seized within the CITY, through active participation of Marathon personnel, and subsequently forfeited to the MARATHON DISTRICT, shall be in the absolute and sole discretion of the CITY. The MCSO/ MARATHON DISTRICT may request the CITY's approval to dispose of such real property, The MARATHON DISTRICT shall allocate funds to the City's Law Enforcement Trust Fund equivalent to the Marathon District's share, as defined in paragraph 9.7, of the mutually agreed upon fair market value of such real property less any loans, mortgages, liens, or any other encumbrance on such property. During the term of this Agreement, such allocated funds shall be earmarked for the MARATHON DISTRICT's use within the confines of the CITY. In the event the MARATHON DISTRICT decides to use such real property and the property is subsequently disposed of prior to termination of this Agreement, The MARATHON DISTRICT shall allocate the net proceeds from said disposition to the City" Law Enforcement Trust Funds. During the term of this Agreement, such funds shall be earmarked for the MARATHON DISTRICT's use within the confines of the CITY.

9.7 The Marathon District's share shall be based upon the ratio that the Marathon District's personnel's participation bears to the participation of all law enforcement agencies' and units' participating in the seizure of the property.

9.8 MCSO shall, on a monthly basis, supply the CITY with a written report of the above-descried fines and forfeitures. Such report (s) shall include a description and estimate of value of properties seized under the laws of the State of Florida, whether or not disposition thereof has been adjudicated. Moreover, such report (s) shall be

amended, from time to time, by reflecting the ultimate disposition of property described in an earlier report (s), and such amendatory report (s) shall be submitted to the CITY within ten (10) days of the ultimate adjudication with regard to the seizure of such property.

ARTICLE X
MUTUAL AID

10.1 The parties recognize their obligation to provide assistance to other jurisdictions (including without limitation the Cities of Key West, Islamorada, Key Colony Beach, Layton, the Ocean Reef Public Safety District and the municipalities incorporated in Monroe County after the effective date of this Agreement) pursuant to the Florida Mutual Aid Act and the event of catastrophe. MCSO may direct officers assigned to Marathon to render aid in either case in a manner consistent with the deployment by MCSO of other MCSO offices without financial set-off or deduction by Marathon. Should the City of Marathon require assistance pursuant to the Florida Mutual Aid Act and the event of catastrophe, MCSO shall direct officers assigned outside the municipal boundaries of Marathon to render aid in a manner consistent with the deployment by MCSO of other MCSO offices at no additional cost to the City of Marathon. The City Manager will be given all possible notice of such deployment and written reports of the actions of officers so deployed.

ARTICLE XI
SPECIAL DETAILS

11.1 Any and all special details performed for the CITY shall be paid based upon the terms and conditions of the CITY's permit filed with MCSO Special Details Unit.

11.2 MCSO Marathon District personnel will be assigned to CITY Special Event details within the City of Marathon, unless interested personnel from the Marathon District cannot be identified. MCSO agrees that personnel assigned to the Marathon District will be offered the opportunity to work special details so designated by the City manager. The City Manager will use his/her best efforts to notify the MCSO Special Detail Office in writing at least five (5) days prior to an event in which Marathon District personnel are requested. All such personnel shall be assigned by MCSO's Special Detail Office in accordance with MCSO's policies and procedures and subject to approval of the City Manager.

11.3 MSCO shall continue to provide special details within the City, which have been historically provided, at no extra cost to the City.

ARTICLE XII
CITY CHIEF

12.1 The City Chief shall, among other specified duties, act as liaison between the CITY and MCSO.

12.2 The City Manager shall conduct quarterly evaluations of the City Chief and this evaluation shall remain in the Chief's permanent personnel file. In the event the City Manager becomes dissatisfied with the performance of the District Chief, the CITY shall provide notification to MCSO. Thereafter, representatives of MCSO and the CITY

shall meet to discuss possible remedies of the problems experienced by the CITY. MCSO agrees to act in good faith in resolving any problems experienced by the CITY.

12.4 The CITY may, at its own expense, elect to select a new City Chief from among MCSO personnel holding the rank of captain or higher. To exercise this option:

a. The CITY must give reasonable notice to MCSO and the County,

b. The CITY, MCSO, and the County must agree on the additional costs, and

c. The selection procedure described in Section 12.5 will be used.

12.5 MCSO shall select no more than three (3) officers with a rank of Captain or higher, who, in accord with MCSO standards and regulations, are qualified to serve in the desired capacity.

a. The names of these officers, together with their personnel files, training records, and disciplinary record will be presented to the City Manager.

b. The City Manager may interview each candidate, separately or together. Each candidate must be given identical opportunities for interviews and presentations.

c. MCSO will appoint the candidate selected by the Manager to fill the vacancy.

12.6 The City Chief and City Manager will collectively be responsible for all emergency management duties of the CITY.

ARTICLE XIII
DISTRICT OFFICE

13.1 MCSO shall maintain a division headquarters in the CITY, which division headquarters shall be referred to and known as "City of Marathon, Monroe County Sheriff's Office". As of the date of the commencement of this agreement, MCSO and the City of Marathon recognize that the Monroe County Sheriff's office in the City of Marathon is currently located at 3130 Overseas Highway, Marathon, Florida, which is owned by Monroe County.

ARTICLE XIV
INSURANCE

MCSO shall maintain, in addition to those policies of insurance required and contemplated in Article VI hereof, policies of liability, automobile, excess automobile, in the amounts hereinafter described:

14.1	General Liability	$1,000,000/$2,000,000
14.2	Automobile Liability	$1,000,000/$2,000,000

14.3 MCSO shall maintain the respective policies of liability, automobile, and excess automobile throughout the term of this Service Agreement, as the same may be extended in accordance with the provisions hereof.

14.4 MCSO shall provide CITY with a copy of current respective policies of insurance required hereunder, and renewals thereof, in order that the CITY, through the office of the City Clerk, may keep such copies on file for the benefit of the public inspection of the citizens of the CITY. In the event MCSO maintains a self-insurance fund, MCSO agrees to provide CITY with a Certificate of Insurance regarding such funds.

14.5. The costs of all policies of insurance required hereunder shall be the obligation of MCSO and Monroe County shall in no way be responsible therefor.

14.6 MCSO shall provide CITY with a Certificate of Insurance listing CITY as a certificate holder for the respective insurance required hereunder.

14.7 Should any of the required insurance policies be modified before the expiration date of this agreement, MCSO will provide at least thirty (30) days prior written notice to the CITY.

14.8 MCSO reserves the right to provide the above-described insurance through a self-insurance program.

14.9 CITY shall pay for and maintain its own comprehensive general liability insurance or maintain a self-insuring fund for the term of this Agreement in the amount determined by CITY to adequately insure the CITY's liability assumed herein, but in no event shall such coverage be less than the amount of statutory waiver of sovereign immunity. In the event such coverage is modified, in any regard, before the expiration date of this agreement, CITY will provide at least thirty- (30) days prior written notice to MCSO.

ARTICLE XV
HOLD HARMLESS

15.1 To the extent permitted by law, CITY shall indemnify defend, and hold MCSO, its officials, agents, servants and employees, harmless from any and all liability, actions, causes of action, suits, trespasses, damages, judgments, executions, claims and demands of any kind whatsoever, in law or in equity, which results from or arises out of the intentional or negligent acts or omissions of the CITY, its employees, agents, or servants and the CITY shall indemnify the MCSO, its officials, agents, servants and employees, for damages, judgments, claims, costs, expenses, including reasonable attorney's fees, which MCSO, its officials, agents, servants and employees, might suffer in connection with or as a result of the intentional or negligent acts of the CITY, its employees, agents, or servants. For purposes of this provision, CITY employees shall not be deemed agents or servants of MCSO and MCSO employees shall not be deemed agents or servants of CITY.

15.2 To the extent permitted by law, MCSO shall indemnify, defend, and hold CITY, its officials, agents, servants and employees, harmless from any and all liability, actions, causes of action, suits, trespasses, damages, judgments, executions, claims and demands of any kind whatsoever, in law or in equity, which results from or arises out of the intentional or negligent acts or omissions of MCSO, its employees, agents, or servants and MCSO shall indemnify the CITY, its officials, agents, servants and employees, for damages,

judgements, claims, costs, expenses, including reasonable attorney's fees, which CITY, its officials, agents, servants and employees, might suffer in connection with or as a result of the intentional or negligent acts of MCSO, its employees, agents, or servants. For purposes of this provision, CITY employees shall not be deemed agents or servants of MCSO and MCSO employees shall not be deemed agents or servants of CITY.

ARTICLE XVI
INDEPENDENT CONTRACTOR

MCSO, for the purposes of this Service Agreement, is and shall remain an Independent Contractor; provided, however, such Independent Contractor status shall not diminish the power and authority vested in MCSO and its sworn officers pursuant to Article VII.

ARTICLE XVII
TERM

This Service Agreement shall remain in full force and effect commencing October 1, 2003 and ending September 30, 2006, all dates inclusive, unless this Service Agreement shall be otherwise extended or terminated in accordance with the terms hereof.

ARTICLE XVIII
OPTION TO RENEW

This Agreement may be renewed for a one- (1) year period upon mutual agreement of the parties. The CITY agrees to furnish MCSO notice of its intent to renew this Agreement no less than ninety (90) days prior to the expiration of this Agreement.

ARTICLE XIX
TERMINATION

MCSO does hereby acknowledge that CITY is making this Agreement in reliance upon MCSO's fulfillment of the obligations herein imposed for the full term contemplated herein. Accordingly, MCSO does hereby acknowledge that the CITY shall have the right of termination and the CITY does hereby acknowledge that MCSO shall have the right of termination as outlined in the sections below.

19.1 CITY and MCSO may terminate this Service Agreement at its discretion either with or without cause, by giving written notice thereof to MCSO; provided, however, that such termination shall not be effective until the ninety-first (91) day after the receipt thereof by MCSO.

19.2 In the event of termination by either party, the other party shall render such aid, coordination and cooperation as might be required for an expeditious and efficient termination of service.

19.3 Upon termination of this Agreement, the City shall have no obligation to pay MCSO beyond the date of termination.

ARTICLE XX

TRANSITION

20.1 In the event of the termination or expiration hereof, MCSO and CITY shall cooperate in good faith in order to effectuate a smooth and harmonious transition from MCSO to a CITY police department and to maintain during such period of transition the same high quality of police protection otherwise afforded to the residents of the CITY pursuant to the terms hereof. In the event of such termination or expiration and in the further event that the CITY is unable to provide the same level of police protection through its own police force at the time of such termination or expiration, the then pending term of this Agreement shall be deemed automatically extended for a period of ninety (90) days or until CITY is capable of rendering such police service, whichever occurs sooner.

20.2 The remuneration's to be paid to MCSO during the transition period shall be based upon the actual cost of providing such services during the transition period, but shall not exceed the pro rata monthly cost of the most recent Agreement, provided service levels remain the same.

ARTICLE XXI
EQUIPMENT APPRAISAL AND TRANSFER PROVISION

21.1 In the event of termination or upon the expiration of this Agreement, CITY shall have the option to purchase from MCSO any piece of equipment, including police vehicles, directly attributable to or in use by the Marathon District at the time of such termination in connection with the services contemplated herein.

21.2 The purchase price for such equipment shall be determined by mutual agreement of the parties as to their fair market value of such equipment.

21.3 MCSO will provide Marathon, annually upon request of the City Manager, with a list of all equipment, including patrol cars, assigned to the Marathon District, and provide updated lists on quarterly basis. The list will contain a fair market value for each item. Marathon will have the option to purchase any or all items on the list upon the termination or expiration of this Contract. Marathon must exercise this option by delivery of written notice to MCSO no later than ninety (90) calendar days before the expiration of any term of this Contract. The purchase price will be the then current depreciated value of the item. Depreciation will be based on a five-year, straight-line schedule.

21.4 If Marathon does not agree that the depreciated value of any item is reasonable, it shall so inform MCSO in writing and provide a written signed appraisal prepared by a competent appraiser. This notice must be delivered contemporaneously with Marathon's notice of exercise of its purchase option. If MCSO does not agree with the appraised figure, it shall so inform Marathon in writing and provide a written signed appraisal prepared by a competent appraiser. This notice must be provided no later than thirty (30) days after receipt of Marathon's notice of objection to the depreciated price. If Marathon does not agree with MCSO's appraisal, and the parties cannot agree upon a purchase price, Marathon must give MCSO written notice of this fact no later than ten (10) days after receipt of MCSO's appraisal. The parties shall then select a third appraiser, whose opinion shall be final. The parties will pay an equal share of the fees of the third appraiser.

21.5 Upon the exercise by the CITY of its option to possess the subject equipment, MCSO shall convey all of its rights, title and interest, thereto, including police vehicles, to the CITY by Bill of Sale Absolute or Certificate of Title, as applicable.

ARTICLE XXII
AUTHORITY TO EXECUTE; NO CONFLICT CREATED; PREVAILING PARTY

22.1 The Sheriff by execution hereof does hereby represent to CITY that the Sheriff has full power and authority to make and execute this Service Agreement pursuant to the power so vested in him under Article VIII of the Constitution of the State of Florida and the Statutes of the State of Florida, to the effect that:

22.1.1 His making and execution hereof shall create a legal obligation upon the Sheriff's Office of Monroe County, Florida, which shall be legally binding upon the Sheriff's Office of Monroe County;

22.1.2 The same shall be enforceable by the CITY according and to the extent of the provision hereof.

22.2 Nothing herein contained or no obligation on the part of MCSO to be performed hereunder shall in any way be contrary to or in contravention of any policy of insurance or surety bond required of the MCSO pursuant to the laws of the State of Florida.

22.3 The City Manager, Mayor and City Clerk, by their respective executions hereof, do each represent to MCSO that they, collectively, have full power and authority to make and execute this Service Agreement on behalf of the City of Marathon, pursuant to the Resolution of the City Council of the CITY.

22.4 Nothing herein contained is in any way contrary to or in contravention of the Charter of the City of Marathon and the laws of the State of Florida.

22.5 If any litigation arises out of this agreement (including appellate proceedings), the prevailing party is entitled to recover its Attorney fee's and costs.

ARTICLE XXIII
NOTICE

All notice required hereunder shall be by first class mail, except that any Notice of Termination shall be mailed via U.S. Mail, return receipt requested and any notice required hereunder shall be addressed to the party intended to receive same at the following addresses:

23.1 CITY: W. Scott Janke, City Manager
City of Marathon
10045-55 Overseas Highway
Marathon, Florida 33050

and Nina Boniske, City Attorney
John R. Herin, City Attorney
Weiss, Serota, Helfman, Pastoriza, Guedes,
Cole & Boniske, P.A.

2665 South Bayshore Drive, Suite 420
Miami, Florida 33133

23.2 MCSO: Sheriff Rick Roth
Monroe County Sheriff's Office
5525 College Road
Key West, Florida 33040

and Mark L. Willis
Attorney, Monroe County Sheriff's Office
5525 College Road
Key West, Florida 33040

ARTICLE XXIV
NON-ASSIGNABILITY

MCSO shall not assign any of the obligations or benefits imposed hereby or contained herein, unless upon the written consent of the City Council of the CITY, which consent must be evidenced by a duly passed Resolution.

ARTICLE XXV
ENTIRE AGREEMENT; AMENDMENT

The parties acknowledge one to the other, that the terms hereof constitute the entire understanding and agreement of the parties with respect hereof. No modification hereof shall be effective unless in writing, executed with the same formalities as this Agreement is executed.

ARTICLE XXVI
BINDING EFFECT

This Agreement shall inure to the benefit of and be binding upon the respective parties' successors.

Agreed to on _____

Monroe County Sheriff's Office

By: _____
Sheriff Richard D. Roth

Approved for legal sufficiency for the Monroe County Sheriff Office

By: _____
Mark L. Willis, General Counsel

S E A L

Approved as to form and legality for the sole use of the City of Marathon:

Marathon, City of

By: _____
Mayor Randy Mearns

By: _____
City Attorney

ATTEST:

_____
City Clerk

Danny L. Kohlage, Clerk of Court

Board of County Commissioners Of Monroe County, Florida

_____
Deputy Clerk

By: _____
Mayor/Chairman

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
_____
ROBERT N. WOLFE