

RESOLUTION NO. 02-08-101

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE FLORIDA KEYS AQUEDUCT AUTHORITY AND THE CITY OF MARATHON FOR THE CITY TO REIMBURSE IN AN AMOUNT NOT TO EXCEED \$70,000 TO THE FCAA FOR EXPENSES INCURRED BY THE FCAA DURING THE BOND VALIDATION PROCESS REGARDING FINANCING OF THE MARATHON WASTEWATER PROJECTS; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Marathon ("City") desires to enter into an Interlocal Agreement with the Florida Keys Aqueduct Authority ("FCAA") in order for the City to participate in the funding of the FCAA's Bond Validation proceedings pertaining to the financing of the City's Wastewater Projects.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:

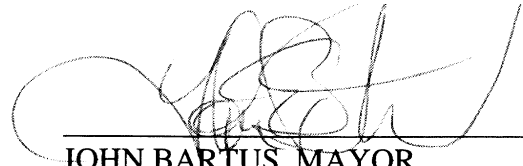
**Section 1.** **Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

**Section 2.** **Agreement.** The Interlocal Agreement between the Florida Keys Aqueduct Authority and the City of Marathon, in substantially the form and substance that is attached as Exhibit "A", is hereby approved. The City Manager and the City Attorney are

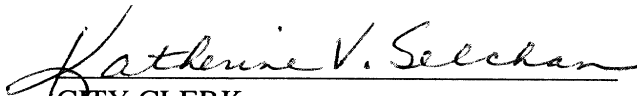
authorized to finalize the terms and conditions of the Agreement, and the Mayor is authorized to execute the Agreement on behalf of the City.

**Section 3.** **Effective Date.** This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 14<sup>th</sup> day of August, 2002.

  
\_\_\_\_\_  
JOHN BARTUS, MAYOR

ATTEST:

  
\_\_\_\_\_  
KATHERINE V. SELCHAN  
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
CITY ATTORNEY

## INTERLOCAL AGREEMENT

**THIS INTERLOCAL AGREEMENT**, is made and entered into this 14 day of August, 2002, by and between the City of Marathon, Florida (the "City"), and the Florida Keys Aqueduct Authority (the "Authority").

### WITNESSETH

**Whereas**, the Authority is authorized by Chapter 76-441, Laws of Florida, as amended and supplemented (the "Act"), to obtain, supply, and distribute an adequate water supply for the Florida Keys and to collect, treat and dispose of wastewater in the Florida Keys, including the City; and

**Whereas**, the City is not currently served by central sewer facilities which would generally be provided and maintained by governmental agencies, and, instead, such areas are served by cesspits, private septic tanks or individually owned on-site disposal systems or package sewage treatment plants; and

**Whereas**, the Florida Keys and the City are in an area of "critical state concern" and are the home to a complex and dynamic ecosystem whose environment is threatened by elevated levels of nutrients in surrounding canals and nearshore waters that are the result of antiquated wastewater disposal systems and facilities which provide only minimal nutrient removal in the treatment of wastewater; and

**Whereas**, the City and the Authority have worked to identify funding sources and grants from local, state and federal sources to advance the provision of central water and wastewater services, facilities and programs within the City and it is imperative to the health, safety and welfare of the citizens of the City that the delivery of such services, facilities and programs be expeditiously advanced; and

**Whereas,** the City and Authority desire to cooperatively advance the development and expansion of the Authority's wastewater system to serve the City. It is the intent and desire of the City and Authority to utilize all immediately available resources and focus the efforts of the City and the Authority to develop an efficient and cooperative approach to delivering central wastewater services, facilities and programs within the City as expeditiously as possible so as not to lose available funding opportunities therefore and to protect the environment; and

**Whereas,** the City adopted Ordinance No. **02-07-12** on July 17, **2002**, (the "Marathon Wastewater Facilities Use Ordinance") requiring connection to the Authority's wastewater facilities by the owners of on-site treatment and disposal systems as such systems are defined in Chapter **99-395**, Laws of Florida; and

**Whereas,** on July 17, **2002**, the Authority adopted Resolution No. **02-24** authorizing the issuance of a **\$83,000,000** Sewer Revenue Note, Series **2003** ("Sewer Revenue Note"), to secure a loan from the State of Florida Department of Environmental Protection to finance the sewer system; and

**Whereas,** on July **24**, **2002**, the Authority filed a Bond Validation proceeding in the Circuit Court for the Sixteenth Judicial Circuit seeking to validate, among other things, the Sewer Revenue Note and the Marathon Wastewater Facilities Use Ordinance (the "Bond Validation"); and

**Whereas,** the City has a vested interest in the outcome of the Bond Validation as the financial viability of the Marathon Central Wastewater project will rely heavily on the success of the validation proceedings; and

**Whereas,** the Authority has requested the City to participate in the financing of the Bond Validation proceedings and the City Council has agreed to do so.

**Now Therefore,** in consideration of the following mutual covenants the parties agree as follows:

**SECTION 1. BOND VALIDATION EXPENSES.**

1.1 The City shall reimburse the Authority for the actual expenses incurred by the Authority in proceeding with the Bond Validation at both the Circuit Court and appellate levels in an amount not to exceed \$70,000.00. Such reimbursement shall be solely for proceedings involving the financing of the Marathon Central Wastewater Project and the Little Venice Wastewater Project.

1.2 If the Bond Validation is upheld by a court of last resort, the Authority shall take all steps necessary to secure payment of the Bond Validation expenses from the users of the wastewater system. If the expenses are subsequently paid to the Authority by the users, the Authority shall repay the City those funds initially provided by the City in Subsection 1.1.

1.3 The Authority shall on a monthly basis provide the City with a copy of any invoices for costs and expenses for the processing of the Bond Validation proceeding.

1.4 The City Manager shall be authorized to review and approve payment of invoices received from the Authority provided that such amounts do not exceed the total dollars specified in Subsection 1.1. Upon request of the City Manager, the Authority shall provide additional documentation of costs and expenses,

1.5 Payment by the City to the Authority for approved reimbursable expenses shall be made within 45 days of approval by the City Manager.

1.6 Reimbursement to the City by the Authority as specified in Subsection 1.2 shall be made within 45 days of receipt by the Authority of user funding.

**SECTION 2. BOND VALIDATION.**

2.1 The Authority shall utilize all available resources to diligently prosecute the Bond Validation proceeding.

2.2 The Authority shall defend the Bond Validation proceedings through appellate proceedings before the Florida Supreme Court.

2.3 The Authority's legal counsel shall keep the City's legal counsel informed as to the progress of the proceedings and when necessary confer with the City's legal counsel.

2.4 The City shall make available the appropriate City officials to provide testimony as may be necessary during the Bond Validation proceedings.

2.5 The Authority shall provide an update of the proceedings to the Wastewater Task Force at each Task Force meeting.

**SECTION 3. RECORDING; EFFECTIVE DATE.**

3.1 This Agreement shall be filed with the Clerk of the Circuit Court for Monroe County, Florida, as required by Section 163.01(11), Florida Statutes.

3.2 This Agreement shall become effective upon execution hereof by the City and the Authority.

**SECTION 4. TERMINATION.**

4.1 Unless otherwise terminated earlier under this Section, this Agreement shall continue in full force and effect until either of the following actions occur: the Bonds are validated and such validation is upheld by the Florida Supreme Court and the City is reimbursed by the Authority the total funds initially provided under Subsection 1 or the Bond Validation is

not supported by the Florida Supreme Court and the City has provided payment to the Authority as specified in Subsection 1.

4.2 The City may terminate this Agreement by written notice to the Authority if the Authority unilaterally determines to stop prosecution of the validation proceedings prior to the issuance of an opinion by the Florida Supreme Court unless the Bond Validation is approved by the Circuit Court and not timely appealed by any aggrieved party.

4.3 If the Agreement is terminated as specified in Subsection 4.2, the City shall not be obligated to reimburse the Authority for any expenses incurred by the Authority beyond the date of the City's Notice of Termination.

**SECTION 5. MISCELLANEOUS PROVISIONS.**

5.1 This Agreement shall not be modified or altered except by another written agreement executed by the City and the Authority.

5.2 No waiver of any provision of this Agreement shall be considered a waiver of any other provisions of this Agreement.

5.3 This Agreement shall be construed in accordance with the laws of the State of Florida. Venue for any proceeding arising out of the terms or conditions of this Agreement shall lie in Monroe County, Florida.

5.4 The provisions of this Agreement are severable. Should any provision of this Agreement be deemed unenforceable by a court of competent jurisdiction, the balance of the Agreement shall remain in full force and effect.

**SECTION 6. NOTICES.**

Any Notices required under this Agreement shall be considered delivered if sent to the other party by hand delivery, private mail service, or certified mail return receipt requested as follows:

**FOR CITY:**

Craig Wrathell, City Manager  
City of Marathon  
10045-55 Overseas Highway  
Marathon, FL 33050  
Telephone: (305) 743-0033  
Facsimile: (305) 743-3667


**FOR AUTHORITY:**

Roger Braun, Executive Director  
Florida Keys Aqueduct Authority  
1100 Kennedy Drive  
P.O. Box 1239  
Key West, FL 33041-1239  
Telephone: (305) 296-2454  
Facsimile: (305) 296-3521

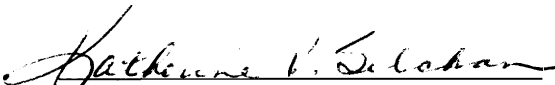
**IN WITNESS WHEREOF**, the City and the Authority have caused this Interlocal Agreement to be duly executed and entered into on the date first above written.

**CITY OF MARATHON, FLORIDA**


(SEAL)

By:  \_\_\_\_\_  
Mayor

**ATTEST:**

  
Clerk

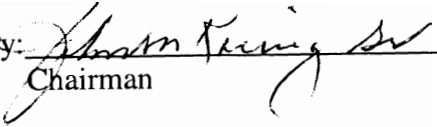
**APPROVED AS TO LEGAL FORM AND SUFFICIENCY:**

  
\_\_\_\_\_  
City Attorney



**FLORIDA KEYS AQUEDUCT  
AUTHORITY**

(SEAL)

By:   
Chairman

ATTEST:

  
Secretary