

RESOLUTION NO. 02-11-09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY TO ENTER INTO A TRI-PARTY AGREEMENT WITH THE STATE DEPARTMENT OF COMMUNITY AFFAIRS AND MONROE COUNTY REGARDING TEMPORARILY NUTRIENT REDUCTION CREDIT EXEMPT ROGO ALLOCATIONS; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF SAID AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marathon ("City") desires to enter into a Tri-party Agreement between the State of Florida Department of Community Affairs ("Department"), and Monroe County, Florida ("County"), and the City of Marathon ("City") to allocate a portion of the pre-earned eighty-eight (88) nutrient credits identified in Rule 28-20.100 F.A.C. (approved by the Administration Commission on June 11, 1999) between the City and the County.

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.

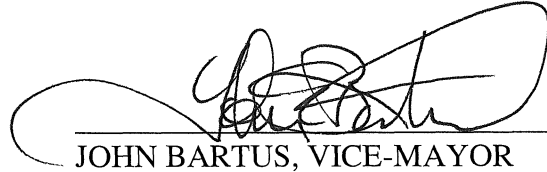
Section 2. Term. This Tri-party Agreement shall terminate on the earliest date of: 1) December 31, 2003; or 2) the date of the City's new Comprehensive Plan becomes effective pursuant to Sections 163.3189(2), 380.05(6) & (10), and 380.0552(9), *Florida Statutes*.

Section 3. Agreement. The Tri-party Agreement, in substantially the form and substance that is attached hereto as Exhibit "A", is hereby approved. The City Manager and the

City Attorney are authorized to finalize the terms and conditions of said Agreement, if necessary, and the Mayor is authorized to execute said Agreement on behalf of the City.

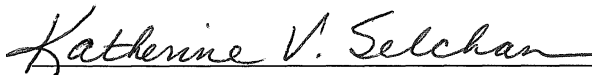
Section 3. Effective Date. This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 14th day of November, 2001.



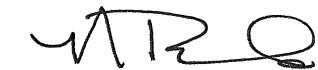
JOHN BARTUS, VICE-MAYOR

ATTEST:



KATHERINE V. SELCHAN
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:



CITY ATTORNEY

#4459v1

SCANNED

11/21/01 #4554 KSV



STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

"Dedicated to making Florida a better place to call home"

JEB BUSH
Governor

STEVEN M. SEIBERT
Secretary

December 19, 2001

Katey Selchan, City Clerk
City of Marathon
210 N. University Drive
Suite 702
Coral Springs, FL 33071.

Dear Ms Selchan:

Enclosed is the executed Tri-Party Agreement for Marathon. I have mailed Monroe County's directly to them and have retained one original for ow files. I have also sent a copy to the Field Office.

Sincerely,

Mike McDaniel



2555 SHUMARD OAK BOULEVARD • TALLAHASSEE, FLORIDA 32399-2100

Phone: 850.488.8466/Suncom 278.8466 FAX: 850.921.0781/Suncom 291.0781

Internet address: <http://www.dca.state.fl.us>

CRITICAL STATE CONCERN FIELD OFFICE
2796 Overseas Highway, Suite 212
Marathon, FL 33050-2227
(305) 289-2402

COMMUNITY PLANNING EMERGENCY MANAGEMENT
2555 Shumrd Oak Boulevard
Tallahassee, FL 32399-2100
(850) 488-2356

HOUSING & COMMUNITY DEVELOPMENT
2555 Shumrd Oak Boulevard
Tallahassee, FL 32399-2100
(850) 488-7956

**TRI-PARTY AGREEMENT BETWEEN
THE CITY OF MARATHON, FLORIDA, STATE
DEPARTMENT OF COMMUNITY AFFAIRS,
AND MONROE COUNTY, FLORIDA**

This Agreement ("Agreement") is entered into by and between the City of Marathon, Florida ("City"), the State of Florida Department of Community Affairs ("Department"), ~~and~~ Monroe County, Florida ("County;") to allocate a portion of the eighty-eight (88) new residential permits identified in Rule 28-20.100 F.A.C. (approved by the Administration Commission on June 11, 1999) between the City and the County.

WITNESSETH

WHEREAS, the City and County have been declared an Area of Critical State Concern pursuant to Sections 380.05 and 380.0552, Florida Statutes; and

WHEREAS, the County has adopted a Comprehensive Plan and Land Development Regulations. approved by the State as required by law; and

WHEREAS, pursuant to Chapter 99-427, Laws of Florida, the Comprehensive Plan and Land Development Regulations of Monroe County, as they existed on November 30, 3000, are the transitional Comprehensive Plan and Land Development Regulations of the City; and

WHEREAS, the County is authorized under its Comprehensive Plan and Land Development Regulations to issue up to one-hundred eighty-two (182) new residential, ROGO permits per year; and

WHEREAS, the County is authorized by Rule 28-20.100 F.A.C. (the "Rule") to issue eighty-eight (88) new residential permits (the "Temporarily Exempt ROGO Allocations") in Year five (5) of the Monroe County Work Plan; and

WHEREAS, the City and County are required to issue development orders only in conformity with their approved Comprehensive Plans and Land Development Regulations: and

WHEREAS, the Department is the state land planning agency with the power and duty to exercise general supervision of Part I of Chapter 380, and Part 11 of Chapter 163, Florida Statutes, and to enter into agreements pursuant to Section 380.032(3), Florida Statutes, to effectuate the provisions and purposes of the acts and any rules promulgated thereunder: and

WHEREAS, the Department is authorized by section 380.07, Florida Statutes, to appeal any City or County development order to the Florida Land and Water Adjudicatory Commission if the development order does not comply with the Comprehensive Plan and Land Development Regulations of the City or County, or the Principles for Guiding Development.

NOW, THEREFORE, the City and County do mutually agree as follows:

I. Allocations. During year five (5) of the Work Plan set forth in the City Comprehensive Plan, twelve (12) Temporarily Exempt ROGO Allocation awards shall be allocated to the City for distribution in accordance with the permit allocation system in the City Comprehensive Plan and Land Development Regulations. Furthermore, the County specifically acknowledges and recognizes that based upon this Agreement, the total number of Temporarily Exempt ROGO Allocations apportioned to it in the Rule shall decrease by twelve (12). The City, however, in Year six (6) of the Work Plan must make up the twelve (12) nutrient reduction credit deficit, or reduce the number of ROGO allocations it may issue in year six (6) of the Work Plan by the remaining number of unearned nutrient reduction credits.

2. In recognition of the value of these twelve (12) permits and in acknowledgement of the fact that these permits were not tied to any geographic area, the City will pass to the County in return for this transfer twelve (12) nutrient credits from those earned from the construction of the Little Venice Wastewater Facility within thirty (30) days of the effective date of the DCA proposed Monroe County and City of Marathon Rules. The City of Marathon intends to continue to share these nutrient reduction credits for affordable housing, which are in excess of those required by the Marathon community until construction of the Marathon Central Wastewater System occurs.

3. Comprehensive Plan Amendments. The City and County acknowledge and recognize this Agreement is temporary in nature, and the City must adopt its own Comprehensive Plan. The City shall ensure the actions required herein are completed no later December 31, 2003.

4. Termination of Agreement. As the eighty-eight (88) residential permits will only be available in the fifth (5th) year of the Monroe County Work Plan, this Agreement shall terminate upon the issuance of the twelve (12) residential permits to Marathon and the subsequent passage of twelve (12) earned nutrient credits from the Little Venice wastewater treatment facility to unincorporated Monroe County,

5. Notices. All notices must be in writing and addressed as follows (or to any other address which either party may designate by notice):

If to City: Robert Miller
Mayor
City of Marathon
Post Office Box 500430
Marathon, Florida 33050

With a copy to: John R. Herin, Jr., Esq./Nina L. Boniske, Esq.
City Attorney
Weiss Serota Helfman Pastoriza & Guedes, P.A.
2665 South Bayshore Drive, Suite 320
Miami, Florida 33133

If to Department: Growth Management Administrator
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

With a copy to: DCA Keys field Office
Marathon Regional Service Office
2796 Overseas Highway, Suite 212
Marathon, Florida 33050

If to County: Mayor
Monroe County Board of County Commissioners
500 Whitehead Street
Key West, Florida 33040

With a copy to: Director of Growth Management
2738 Overseas Highway
Suite 300
Marathon, Florida 33050

Any notice 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.

6. Miscellaneous.

a. If any term or provision of this Agreement shall be invalid or unenforceable to any extent, the remaining terms and provisions shall not be affected thereby; and each remaining term and provision shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms and provisions would prevent the accomplishment of the original intent of the agreement between the parties.

b. Each party represents and warrants to the other that the execution, deliver; and performance of this Agreement has been duly authorized by all necessary corporate or other organizational action. as required.

7. Effective Date. This Agreement shall become effective upon execution by all of the parties.

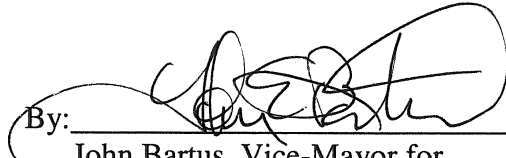
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IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF MARATHON

Katherine V. Selchan
City Clerk

By: 
John Bartus, Vice-Mayor for
Robert Miller, Mayor

Date: November 14, 2001

Approved as to form and sufficiency:

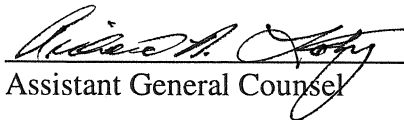
Nina Boniles
City Attorney

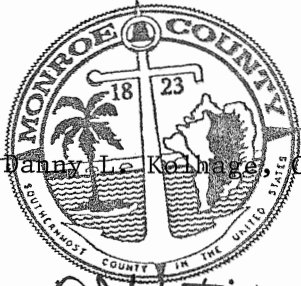
STATE OF FLORIDA DEPARTMENT OF
COMMUNITY AFFAIRS

By: 
Steven M. Seibert, Secretary

Date: 12.18.01

Approved as to form and sufficiency:


Assistant General Counsel



ATTEST: Danny L. Kelhage, Clerk

Daniel C. DeSantis D.C.
Clerk/Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: [Signature]
Charles "Sonny" McCoy

Date: November 21, 2001

Approved as to form and sufficiency:

County Attorney

4516v2 Tri-Party Agmt. for allocation of new residential permits (DCA, COM and MC) (without revision marks)

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY.
BY [Signature]
ROBERT N. WOLFE
DATE 12-1-01

SCANNED
1/8/02 #4806 KSV