

**CITY OF MARATHON, FLORIDA
RESOLUTION 2005-151**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MARATHON, FLORIDA, AUTHORIZING THE CITY MANAGER TO
ENTER INTO AN INTERLOCAL AGREEMENT WITH THE FLORIDA
KEYS AQUEDUCT AUTHORITY REGARDING OWNERSHIP AND
CONTROL OF THE CITY OF MARATHON WASTEWATER SYSTEM**

WHEREAS, the City of Marathon (the "City") wishes to construct a wastewater system within City limits (the "Wastewater System"); and

WHEREAS, the Florida Keys Aqueduct Authority (the "FKAA") is an independent special district organized and existing under Chapter 76-441, *Laws of Florida*; and

WHEREAS, pursuant to Chapter 163, *Florida Statutes*, the City and FKAA are permitted to enter into interlocal agreements with each other; and

WHEREAS, the FKAA and the City desire to enter into an interlocal agreement by which the issue of ownership and control of the Wastewater System is dispositively resolved; and

WHEREAS, the City has approved three versions of an interlocal agreement with the FKAA under Resolutions 2005-114, 2005-143 and 2005-143A; and

WHEREAS, the City desires to repeal the previously approved versions of the interlocal agreement and that they have no further force or effect.

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

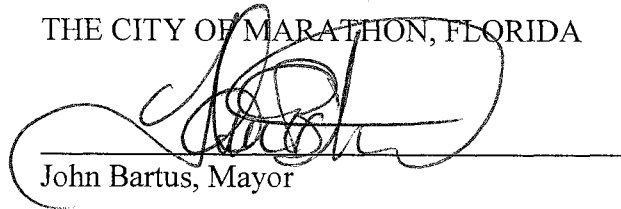
Section 1. The above recitals are true and correct and are incorporated herein.

Section 2. The agreement between the City of Marathon and the Florida Keys Aqueduct Authority regarding ownership and control of the Wastewater System in the City, a copy of which is attached as Exhibit "A", in substantially the same terms together with such changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is approved. Resolutions 2005-114, 2005-143 and 2005-143A and the interlocal agreements approved there in are hereby repealed and of no further force or effect.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the city of Marathon, Florida, this 25th day of October, 2005.

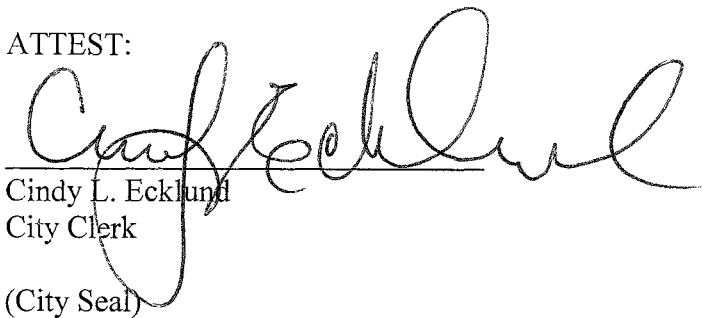
THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

AYES: Mearns, Miller, Pinkus, Bartus
NOES: None
ABSENT: Bull
ABSTAIN: none

ATTEST:



Cindy L. Ecklund
City Clerk

(City Seal)

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



City Attorney

INTERLOCAL AGREEMENT
By and Between The
Florida Keys Aqueduct Authority And The City of Marathon, Florida

THIS AGREEMENT is entered into this 25th day of October, 2005, by and between the Florida Keys Aqueduct Authority (the "FKAA"), an independent special district organized and existing under Chapter 76-441, as amended, Laws of Florida, and the City of Marathon, (the "City"), a political subdivision of the State of Florida (the "Agreement").

WHEREAS, Chapter 76-441, as amended, Laws of Florida, provides that the FKAA shall have exclusive jurisdiction over the administration, maintenance, development, and provision of wastewater system services in the City of Marathon, Florida; and

WHEREAS, the City desires to plan, design, construct, own and operate a wastewater system within it's city limits, as is common in many other municipalities; and

WHEREAS, the FKAA and the City have been unable to form a partnership for the development of a wastewater service system for the City of Marathon (the "Wastewater System"); and

WHEREAS, the FKAA and the City agree that it is necessary to proceed immediately with the planning, design, construction, operation and maintenance of the Wastewater System in order to take advantage of available Federal and State funding, financing and grant money; and

WHEREAS, obtaining Federal and State funding, financing and grant money will lessen the cost the residents of Marathon will be required to pay for the design, construction, operation and maintenance of the Wastewater System; and

WHEREAS, the FKAA and the City have already entered into an interlocal agreement whereby the FKAA has agreed to seek reimbursement from Monroe County for the City from City of Marathon MSTU funds for certain costs incurred by the City's staff and consultants for the planning and design of the Wastewater System; and

WHEREAS, the FKAA and the City desire to enter into an interlocal agreement in order that construction commence on the Wastewater System within the time constraints set by the Florida Legislature; and

WHEREAS, Chapter 76-441 (9) (p), Laws of Florida, provides that no franchise or grant of power for the administration, maintenance, development, and provision of wastewater system services to any other entity or provider shall be lawful unless preapproved by the FKAA; and

WHEREAS, the FKAA and the City agree that this interlocal agreement shall grant the City the authority to proceed with the administration, maintenance, development and operation of the Wastewater System;

NOW THEREFORE, in consideration of the mutual consideration and promises set forth below, the parties agree as follows:

Section 1. Authority to enter into Agreement. The parties are entering into this Agreement pursuant to Chapter 163, *Florida Statutes*.

Section 2. Ownership and Control. During the term of this Agreement, the FKAA shall grant the City the authority to exercise exclusive ownership and control over the administration, maintenance, development and provision of wastewater system services within the City of Marathon, Florida, with the sole exception being the area served by the "Little Venice" wastewater project, which shall remain under the exclusive jurisdiction of the FKAA. The parties further agree that:

- A. The FKAA shall not retain any oversight, responsibility, or liability for the administration, maintenance, development and provision of the Wastewater System.
- B. The City shall have the duty and responsibility to insure that the Wastewater System shall at all times comply with all City, County, State and Federal laws and regulations.

Section 3. Continued Cooperation. The FKAA and the City agree to continue their negotiations to put in place an interlocal agreement as to the disposition of the Little Venice wastewater project.

Section 4. City of Marathon Municipal Service Taxing Units. The parties shall request the County of Monroe to amend the City of Marathon Municipal Service Taxing Unit Ordinance to provide that funds obtained pursuant to that ordinance be authorized to be disbursed to the City of Marathon rather than directly to the FKAA. However, any amendment or change to the existing ordinance shall provide that the FKAA will be fully reimbursed for any authorized expenditures incurred prior to said amendment or change.

Section 4. Indemnification and Hold Harmless. To the extent allowed by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the City is liable for and must fully defend, release, discharge, indemnify, and hold harmless the FKAA, the members of the FKAA Board of Directors, FKAA officers and employees, and FKAA agents and contractors, from and against any and all liability, damages, costs or expenses of whatever type- including investigation and witness costs and expenses and attorneys fees and costs at both trial and appellate levels- that arise out of or are attributable to the City's operations in connection with this Agreement.

Section 5. Term. This Agreement shall remain in effect for a period of not less than fifty (50) years, with an automatic renewal of an additional two (2) fifty (50) year periods. This Agreement may only be amended or terminated if both parties agree to such amendment or termination in writing, and as approved by each parties respective governing bodies.

Section 6. Full Understanding. This Agreement is the parties' final mutual understanding with respect to any wastewater systems constructed in the future within the City of Marathon. It replaces any earlier agreements or understandings, whether written or oral, with respect to any wastewater systems constructed in the future within the City of Marathon.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement on the dates opposite their names.

THE FLORIDA KEYS AQUEDUCT
AUTHORITY

(SEAL)

By: Mary L. Rice
Mary L. Rice, Chairman

ATTEST:

Clerk

THE CITY OF MARATHON, FLORIDA

John Bartus
John Bartus, Mayor

ATTEST:

Cindy L. Ecklund
Cindy L. Ecklund
City Clerk

(City Seal)

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

[Signature]
City Attorney