

**CITY OF MARATHON, FLORIDA
RESOLUTION 2007-129**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON,
FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO
SECOND AMENDMENT TO INTERLOCAL AGREEMENT DATED
OCTOBER 25, 2005, AND AMENDED SEPTEMBER 22, 2006, WITH
FLORIDA KEYS AQUEDUCT AUTHORITY, FOR DUE DILIGENCE
INSPECTIONS OF BOTH PLANT AND RECORDS OF THE LITTLE
VENICE WASTEWATER TREATMENT PLANT**

WHEREAS, service Area 5 of the City wide wastewater system has in its plan obtaining the Little Venice sewage treatment plant and expanding to the west onto Florida Department of Transportation (FDOT) property for increased capacity; and

WHEREAS, this amendment to the Interlocal Agreement with Florida Keys Aqueduct Authority provides the City of Marathon (the "City") access to the plant and records thereof to perform due diligence leading up to eventual purchase; and

WHEREAS, this Agreement insures Florida Keys Aqueduct Authority has no liability resulting from the City's due diligence inspections.

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. Council authorizes the City Manager to enter into a second amendment to the Interlocal Agreement dated October 25, 2005, and amended September 22, 2006, with Florida Keys Aqueduct Authority, a copy of which is attached hereto as "exhibit A" for due diligence inspections of both plant and records of the Little Venice Wastewater Treatment Plant

Section 3. The City Council authorizes the City Manager to execute the Interlocal Agreement on behalf of the City.

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 11th day of September, 2007.

THE CITY OF MARATHON, FLORIDA



Christopher M. Bull, Mayor

AYES: Cinque, Tempest, Vasil, Worthington, Bull
NOES: None
ABSENT: None
ABSTAIN: None


ATTEST:



Diane Clavier, City Clerk

(City Seal)

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



City Attorney

SECOND AMENDMENT TO INTERLOCAL AGREEMENT

By and Between

The Florida Keys Aqueduct Authority and The City of Marathon, Florida

THIS SECOND AMENDMENT TO INTERLOCAL AGREEMENT is entered into this 11th day of September, 2007, 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 Florida municipal corporation (the "Amendment").

WHEREAS, on October 25, 2005, the parties entered into an Interlocal Agreement whereby the City was granted the authority to proceed with the administration, maintenance, development and operation of a wastewater system for the City of Marathon, excepting that area served by the "Little Venice" Wastewater project (the "Interlocal Agreement"); and

WHEREAS, the parties, on September 22, 2006, amended the Interlocal Agreement of October 25, 2005 to provide wastewater treatment services to certain properties located outside the Little Venice Wastewater Service District; and

WHEREAS, the parties continue to negotiate the disposition of the Little Venice Wastewater Project;

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

1. The parties are entering into this Amendment pursuant to Chapter 163, *Florida Statutes*.
2. All capitalized terms used herein but not defined herein shall have the meaning ascribed to them in the Interlocal Agreement
3. Section 3 of the Interlocal Agreement dated October 25, 2005 between the FKAA and the City is hereby amended by adding the following Paragraphs:
 - a. The City and its agents and consultants may undertake, at City's expense, any and all physical inspections and other investigations of and concerning the Little Venice Wastewater System (System) as FKAA, in its sole and absolute discretion, may deem appropriate or necessary for the determination by City as to the sufficiency and desirability of the System and its assets for the purposes and uses intended by City, including, without limitation, obtaining and reviewing zoning approvals or regulations, surveys, percolation tests, engineering studies, soil and environmental test, utilities, title, licenses, permits, easements, parking availability and capacity, equipment data and maintenance history, process performance, and leases and test relating to the condition and structural soundness of improvements.

- b. The FKAA upon reasonable advance notice received from City and subject to any applicable confidentiality obligations, shall: (a) afford City and its Representatives reasonable access, during regular business hours, to FKAA's personnel, properties (including subsurface testing), contracts, Governmental Authorizations, books and Records and other documents and data, such rights of access to be exercised in a manner that does not unreasonably interfere with the operations of FKAA; (b) furnish City with copies of all contracts, Governmental Authorizations, books and Records and other existing documents and data; (c) furnish City with financial, operating and other relevant data and information; and (d) otherwise cooperate, to the extent reasonably requested by City, with City's investigation of the properties, the assets and financial condition related to the System. City, on its own behalf and on behalf of its Representatives and as a condition precedent to the exercise of such right of entry, specifically agrees to defend, indemnify and save and hold FKAA harmless from and against any loss, damage, Liability, suit, claim, cost or expense (including reasonable attorneys' fees) arising from the exercise by City or its Representatives of such right of entry and inspection.
- c. City also agrees that should it cause any physical damage to the Real Property occasioned as a result of the exercise of the right of entry and inspection, including any soil borings or similar physical tests or examinations, then City shall repair such property to substantially the condition that existed prior to such test or examination promptly upon the completion of any such entry or inspection.
4. The FKAA and the City agree that this Amendment shall be deemed to be effective on the date signed by the parties.
5. This Amendment may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original and all of which shall together constitute one and the same agreement. Signature pages may be detached from the various counterparts and attached to a single copy of this document to physically form one document.
6. The foregoing terms and conditions are hereby incorporated into the Interlocal Agreement. Except as modified herein, the Interlocal Agreement remains in full force and effect. In the event of any conflict or ambiguity between the Interlocal Agreement and this Amendment, this Amendment shall control.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date set forth above.

(SEAL)

THE FLORIDA KEYS AQUEDUCT
AUTHORITY

By:  12/1/07
James C. Reynolds, Executive Director



FKAA RECORDS CLERK

ATTEST:


Clerk

FKAA Board Approved September 27, 2007

THE CITY OF MARATHON, FLORIDA


Christopher M. Bull, Mayor


ATTEST:


Diane Clavier

Diane Clavier
City Clerk

(City Seal)

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


City Attorney