

**CITY OF MARATHON, FLORIDA
RESOLUTION 2008-22**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, DECLARING THE INTENTION TO PURCHASE THE LITTLE VENICE WASTEWATER COLLECTION, TRANSMISSION, TREATMENT AND DISPOSAL SYSTEMS AND OTHER ASSETS PERTINENT TO THE PROJECT FROM THE FLORIDA KEYS AQUEDUCT AUTHORITY (“FKAA”); DIRECTING CITY STAFF TO NEGOTIATE AND FINALIZE AN ASSET PURCHASE AGREEMENT WITH THE FKAA; DIRECTING CITY STAFF TO PREPARE SUCH OTHER DOCUMENTS AND TAKE SUCH OTHER ACTIONS AS MAY BE NECESSARY TO ACQUIRE THE LITTLE VENICE SYSTEM; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Little Venice sewer treatment, collection, transmission and disposal system (the “Little Venice System”) is part of service area 5 (60th Street to Vaca Cut) of the City of Marathon’s (the “City”) proposed master wastewater/stormwater sewer system; and

WHEREAS, the Little Venice System is owned and operated by the Florida Keys Aqueduct Authority (the “FKAA”);

WHEREAS, the City’s sewer system as currently designed contemplates the acquisition of the Little Venice Sewage Treatment Plant (the “Plant”) and expansion of the Plant to include the balance of service area 5; and

WHEREAS, the City’s wastewater team has completed due diligence on the Plant and the Little Venice System and the City has received a satisfactory summary report from Weiler Engineering on the technical due diligence of the Plant and the Little Venice System; and

WHEREAS, City staff is recommending to the City Council that the City Council direct staff to work towards the purchase of the Plant and the Little Venice System from the FKAA, subject to approval of the final Asset Purchase Agreement by the City Council pursuant to a public hearing as required by Section 180.301, Florida Statutes..

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. The City Council hereby declares its intention to acquire the Little Venice Sewage Treatment Plant and related collection, transmission and disposal system from the FKAA, subject to appropriate legal documentation and final due diligence and negotiations by the City's wastewater team.

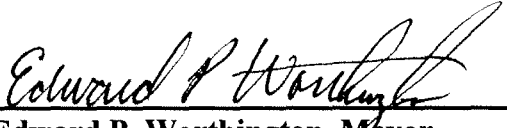
Section 3. The City Council hereby directs staff and the City Attorney to negotiate and finalize an Asset Purchase Agreement, substantially in the form of Exhibit A hereto. The Council further directs staff and the City Attorney to prepare such other documents (including assignment of the underlying ground lease with Monroe County) and take such other actions (including the issuance of a BID/RFP for the expanded portions of Area 5) as may be necessary to consummate the acquisition and expansion of the Little Venice System in Area 5.

Section 4. The City Council directs City staff to bring the final Asset Purchase Agreement and related documents back on the appropriate date for a public hearing and final City Council approval pursuant to the requirements of Section 180.301, Florida Statutes.

Section 5. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 12th day of February, 2008

THE CITY OF MARATHON, FLORIDA



Edward P. Worthington, Mayor

AYES: Vasil, Bull, Tempest, Worthington
NOES: Cinque
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

LITTLE VENICE TRANSFER AGREEMENT

By and between

FLORIDA KEYS AQUEDUCT AUTHORITY

and

THE CITY OF MARATHON

DATED AS OF June 12, 2008

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INTERLOCAL AGREEMENT

THIS LITTLE VENICE TRANSFER AGREEMENT is made and entered into as of the 12 day of June 2008, by and between the **FLORIDA KEYS AQUEDUCT AUTHORITY**, an Independent Special District ("FKAA"), and the **CITY OF MARATHON**, a Florida Municipal Corporation (the "**CITY**").

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration each to the other, receipt of which is hereby acknowledged by each party, FKAA and CITY hereby agree, stipulate and covenant as follows:

**ARTICLE I
DEFINITIONS AND CONSTRUCTION**

SECTION 1.01. DEFINITIONS. As used in this Agreement, the following terms shall have the meanings as defined unless the context requires otherwise:

"Accounts Receivable" - (i) all customer accounts receivable and other rights to payment from customers of FKAA within the System; (ii) all other accounts or notes receivable of FKAA from customers within the System and the full benefit of all security for such accounts or notes; and (iii) any claim, remedy or other right related to any of the foregoing.

"Acquisition Cost" means the Little Venice Wastewater System Debt Defeasance Amount, less any credits pursuant to Section 3.01(F) hereof; provided, however, that the Acquisition Cost shall expressly not include charges, prorations, credits or any similar adjustments for fees, costs, compensation, liquidated damages, demobilization charges or other charges from any vendor for any services which are not actually provided, rendered or otherwise

provide real and substantial value to the customers of the Little Venice Wastewater System on or before the Little Venice Transfer Date.

"Agreement" means this Little Venice Transfer Agreement between FKAA and CITY, including any amendments and supplements hereto executed and delivered in accordance with the terms hereof.

"City" means the City of Marathon, Florida, a Florida Municipal Corporation, created by Special Legislation, Chapter 99-427 Laws of Florida.

"Debt Obligations" means any series of bonds, notes or other evidence of indebtedness issued or incurred by any party hereto, in accrued interest thereon.

"FKAA" means the Florida Keys Aqueduct Authority, an independent Special District created by Special Legislation, Chapter 76-441, Laws of Florida as amended.

"Little Venice Wastewater System" or "System" means the sewer system in the City of Marathon, Florida owned by the FKAA solely to provide wastewater utility service in the City including without limitation the wastewater collection, transmission and treatment disposal owned by the FKAA located in the City of Marathon.

"Little Venice Wastewater System Debt Defeasance Amount" means the amount required to redeem, defease or otherwise pay in full any Debt Obligations of the FKAA issued to finance, or which are secured by the pledge of any revenues from, the Little Venice Wastewater System owned by the FKAA. Such amount shall include the reasonable and necessary costs, fees and expenses incurred by the FKAA in connection with the redemption, defeasance or payment of any such Debt Obligations, including, but not limited to (1) fees and disbursements of the FKAA's bond counsel, (2) fees and disbursements of the FKAA's financial advisor, and (3) any other costs of a similar nature reasonably incurred.

"Little Venice Transfer Date" means the date on which FKAA and the City anticipate closing on the conveyance and transfer of the Little Venice Wastewater System to CITY pursuant to this Agreement.

"Overlap Period" means a period of thirty (30) calendar days prior to the Little Venice Transfer Date during which the City's Operations Staff will be afforded the opportunity to observe the FKAA operations staff during routine and non-routine operation of the Wastewater Utility System.

"Plant" means the wastewater treatment plant located at Highway US 1 and 106th Street (Marathon Airport) in the City of Marathon, Florida, which is owned by FKAA and forms part of the System.

"Pre-Paid Assessments" means any assessments or other capital charges paid by Customers to FKAA in connection with the System which are unused and remain in reserve or other accounts of the FKAA.

"Repair and Replacement Reserve" means any funds held in reserve account(s) by the FKAA for purposes of repairs and/or replacement of the infrastructure of the System.

"Transition Project" means any one or more construction projects relating to the Little Venice Wastewater System under contract, including any contract funded by Debt Obligations of the FKAA, and which are not reasonably expected to be completed on the Little Venice Transfer Date.

"Unbilled Customer Revenue" - revenue for services provided to customers of the System prior to Closing that have not yet been billed as of the Closing Date, calculated on a basis consistent with The FKAA's current billing practices.

"Utility Assets" means those assets, business properties, and rights both tangible and intangible, that the FKAA owns or uses in conjunction with the operation of the Little Venice Wastewater System, or which during the term of this Agreement may become available to FKAA, or any ownership interest which FKAA has or hereafter acquires, relating thereto, including the following:

(1) All real property and interests, whether recorded in the public records or not, in real property owned, used or controlled in conjunction with the operation of the Little Venice Wastewater System by the FKAA.

(2) All wastewater treatment plants, wells, collection, transmission, distribution, pumping, effluent and disposal facilities of every kind and description whatsoever including without limitation, all trade fixtures, leasehold improvements, lift stations, pumps, generators, controls, tanks, distribution, collection or transmission pipes or facilities, valves, meters, service connections, and all other physical facilities and property installations used in the operation of the Little Venice Wastewater System, together with an assignment of all existing and assignable third party warranties that relate to completed or in progress construction.

(3) All equipment, inventory, tools, parts, and other personal property owned or used by the FKAA predominantly in connection with the operation of the Little Venice Wastewater System.

(4) All Easements in favor of the FKAA or its predecessors in interest to the Little Venice Wastewater System.

(5) All current customer records and supplier lists, as-built surveys and wastewater plans, plats, engineering and other drawings, designs, blueprints, plans and specifications, maintenance and operating manuals, engineering reports, calculations, computer

models and studies, accounting, budget and business records and all other information controlled by or in the possession of the FKAA that relates to the description and operation of the Little Venice Wastewater System, inclusive of all pertinent computer records and the lawful use of all computer software which is or was used in the operation of the Little Venice Wastewater System for billing or customer record keeping purposes, including but not limited to the lawful use of any licensed software or proprietary software developed for the FKAA during any transition. The parties hereto acknowledge that by separate Interlocal Agreement the FKAA will continue to do the billing for the City.

(6) All necessary regulatory authority or approvals subject to all conditions, limitations or restrictions contained therein; all existing permits and other governmental authorizations and approvals of any kind necessary to operate or provide wastewater utility service or construct, operate, expand, and maintain the Little Venice Wastewater System according to all governmental requirements.

(7) The following Records: (i) all information required by the Florida Department of Environmental Protection (“FDEP”) to be maintained related to the System and Assets; (ii) all information provided through the due diligence process; (iii) engineering project files; (iv) electronic map files; (v) plans, design reports and specifications for engineering projects, construction progress, inspection and testing reports, and signed, sealed record drawings; (vi) environmental files, including reports of spills, effluent violations, equipment failures and other abnormal occurrences; (vii) developer files; (viii) daily operations logs, Discharge Monitoring Reports, annual sludge reports, monitoring well reports and all other reports related to system operations; (ix) operations files; (x) any consents, permits, or administrative orders, including any correspondence or official comments regarding such

consents, permits or orders; (xi) service and warranty records; (xii) equipment logs, preventive maintenance logs, operating guides, and manuals located at each plant; (xiii) database of customer accounts; (xiv) updated fixed asset list not warranted for accuracy (previously provided in due diligence); (xv) copies of the general ledger(s) for the Wastewater Collection, Treatment and Disposal systems; (xvi) developer database extract; and (xvii) list of electronic accounts and telephone accounts.

(8) All rights and obligations of the FKAA as of the Little Venice Transfer Date relating to the Utility Assets or the Little Venice Wastewater System under any existing or proposed agreements and contracts which specifically relate to the Little Venice Wastewater System; and, after the Little Venice Transfer Date, any such rights and obligations specifically relating to any Utility Assets, the Little Venice Wastewater System or Utility Service which the CITY, in its sole discretion, determines to assume or acquire from the FKAA.

(9) All moneys, funds, accounts and intangibles, or an amount equivalent thereto as of the Little Venice Transfer Date, held under or pursuant to any Debt Obligations, indenture of trust, resolution, ordinance, or other instrument by the FKAA, or any third party for the benefit of any ratepayers of the Little Venice Wastewater System, or in connection with the financing or operation of the Little Venice Wastewater System, the Utility Assets or providing Wastewater Utility Services.

"Wastewater Utility Service" means the duty, obligation, power and authority to acquire, obtain, construct, provide, collect, distribute, dispose of, regulate, finance and charge for the supply of wastewater collection, transmission, and treatment disposal facilities and services associated with the Little Venice Wastewater System.

"Wastewater Utility System" means the wastewater collection, transmission, treatment, and disposal systems which comprise the Little Venice Wastewater System owned by the FKAA, including any Utility Assets which may be owned or controlled by FKAA. After the Little Venice Transfer Date, the term shall be construed, when the context reasonably requires, to include any other wastewater collection, transmission, treatment, and disposal facilities which comprise the Little Venice Wastewater System that are acquired by the CITY.

SECTION 1.02 CONSTRUCTION.

(A) Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms and corporations. The terms "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms, shall refer to this Agreement; the term "heretofore" shall mean before the date this Agreement is executed; and the term "hereafter" shall mean after the date this Agreement is executed.

(B) Each recital, covenant, agreement, representation and warranty made by a party herein shall be deemed to have been material and to have been relied on by the other parties to this Agreement. All parties shall be deemed to have participated in the drafting and preparation of this Agreement and the provisions hereof shall not be construed for or against any party by reason of authorship.

SECTION 1.03. SECTION HEADINGS. Any headings preceding the texts of the several Articles and Sections of this Agreement and any table of contents or marginal notes appended to copies hereof shall be solely for convenience of reference and shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

SECTION 1.04. FINDINGS. It is hereby ascertained, determined and declared that:

(A) FCAA presently owns and operates the Little Venice Wastewater System which is located within the City of Marathon, Florida.

(B) FCAA was created in 1976 by Special Act which has been amended from time to time to provide water and wastewater utility systems.

(C) The City of Marathon was created in 1999 to provide local general purpose government to the area known as Marathon, Florida including in said government, services such as planning, designing, constructing, owning and operating a wastewater system within its City limits, as is common in many other municipalities.

[Remainder of page intentionally left blank.]

**ARTICLE II
REPRESENTATIONS**

SECTION 2.01. REPRESENTATIONS OF THE FKAA. The FKAA makes the following representations as the basis for the undertaking on the part of the County herein contained:

(A) FKAA is duly organized and validly existing as an independent special district.

(B) FKAA has full power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(C) FKAA is not in default under any provisions of the laws of the State which are material to the performance of its obligations under this Agreement.

(D) FKAA has duly authorized the execution and delivery of this Agreement and assuming the due authorization, execution and delivery by the City, this Agreement constitutes a valid and legally binding obligation of the FKAA, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(E) The authorization, execution and delivery of this Agreement and the compliance by the FKAA with the provisions hereof will not conflict with or constitute a material breach of, or default under, any existing law, court or administrative regulation, decree, order or any provision of the Constitution or laws of the State relating to the FKAA or its affairs, or any ordinance, resolution, agreement, lease or other instrument to which the FKAA is subject or by which it is bound.

(F) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of the FKAA, threatened against or affecting the FKAA, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated hereby or issuance of Debt Obligations by FKAA, or which, in any way, would materially adversely affect the validity of the FKAA Debt Obligations, this Agreement or any agreement or instrument to which the FKAA is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby.

(G) The FKAA is currently operating the Plant in accordance with Advanced Wastewater Technology (“AWT”) standards mandated by the FDEP, and will continue to operate the Plant in accordance with AWT standards through the Little Venice Transfer Date.

SECTION 2.02. REPRESENTATIONS OF THE CITY. The CITY makes the following representations as the basis for the undertaking on the part of CITY herein contained:

(A) The CITY is a Florida Municipal Corporation.

(B) The CITY has full power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(C) The CITY is not in default under any provisions of the laws of the State which are material to the performance of its obligations under this Agreement.

(D) The CITY has duly authorized the execution and delivery of this Agreement and assuming the due authorization, execution and delivery by FKAA, this Agreement constitutes a valid and legally binding obligation of the CITY, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy,

insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(E) The authorization, execution and delivery of this Agreement and the compliance by the CITY with the provisions hereof will not conflict with or constitute a material breach of, or default under, any existing law, court or administrative regulation, decree, order or any provision of the Constitution or laws of the State relating to the CITY or its affairs, or any ordinance, resolution, agreement, lease or other instrument to which the CITY is subject or by which it is bound.

(F) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of the CITY, threatened against or affecting the CITY, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated hereby, this Agreement or any agreement or instrument to which the CITY is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby.

[Remainder of page intentionally left blank.]

ARTICLE III
TRANSFER OF LITTLE VENICE WASTEWATER SYSTEM

SECTION 3.01. TRANSFER.

(A) Subject to the terms and provisions of this Agreement and for the consideration herein provided, the FKAA agrees to grant, bargain, sell, convey, assign, transfer and vest unto the CITY all of the FKAA's right, title, and interest in the Utility Assets and, to the maximum extent permitted by law, the duty, obligation, authority, power and jurisdiction to operate and provide Wastewater Utility Service within the City of Marathon, Florida, served either now or in the future by the Little Venice Wastewater System.

(B) On the Little Venice Transfer Date, the FKAA shall transfer to the CITY and the CITY shall accept all of the FKAA's right, title, and interest in Utility Assets and undertake to operate and provide Wastewater Utility Service within and throughout the City of Marathon, Florida, and served now or in the future by the Little Venice Wastewater System.

(C) The CITY acknowledges and agrees that it has had ample opportunity to perform such inspections, testing, records review and other investigations of the System and its operational history and, accordingly, agrees to accept the System in its "AS IS, WHERE IS, WITH ALL FAULTS" condition without any representations or warranties by the FKAA whatsoever, except for any representations and warranties in this Agreement, the certificates and schedules prepared and delivered to the CITY pursuant to Sections 3.02(I) and 4.01(B) hereof, the warranties of title in any warranty deed and the Bill of Sale in the forms attached hereto. The CITY waives all claims against FKAA for any defects in the Utility.

Without limiting the generality of the foregoing, the FKAA has not made and does not hereby make (except for those set forth in this Agreement and the certificates and schedules

prepared and delivered to the CITY pursuant to Sections 3.02(I) and 4.01(B) hereof) any express or implied representations or warranties whatsoever with respect to the System including, without limitation, any representation or warranty regarding: (i) the quality of construction, workmanship, merchantability or fitness for any particular purpose of any improvements located on the Plant site or with respect to the System; or (ii) the revenues to be received from operation of the System or the expenses to be incurred with respect thereto.

The City acknowledges and agrees that the FKAA has not made, does not make and specifically disclaims any representations regarding compliance with any environmental protection or pollution laws, rules, regulations, orders or requirements, including solid waste, as defined by the U.S. Environmental Protection Agency regulations at 40 C.F.R., Part 261, as may be amended from time to time, or the disposal or existence, in, on or around the property, of any hazardous substance, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder or the disposal or existence of any petroleum or petroleum based products in, on or around the real property or the condition, status, suitability, suitability or any storage tanks in or on the real property or compliance with provisions of Florida Statute § 376.011 Et Setq. or the Florida Administrative Code. The CITY further acknowledges and agrees that having been given the opportunity to inspect the real property, it is relying solely on its own investigation of the real property and not on any information provided or to be provided by the FKAA.

(D) FKAA shall be entitled to bill, collect and retain all payments received in connection with Accounts Receivable and Unbilled Customer Revenue that accrued prior to the Closing Date. FKAA will promptly pay to CITY any payments received by FKAA in

connection with Accounts Receivable and Unbilled Customer Revenue that accrues on or after the Closing Date.

(E) On or before the Closing Date, FKAA and CITY will execute the Billing Agreement provided in **Exhibit ____**.

(F) FKAA acknowledges that it has received and is currently holding the Repair and Replacement Reserve(s), the Pre-Paid Assessments and other prepayments from Customers as set forth on **Exhibit ____** hereto. FKAA shall furnish to CITY, no sooner than ten (10) days prior to Closing, an updated list of all Repair and Replacement Reserve(s), the Pre-Paid Assessments and other prepayments from Customers. FKAA shall, on the Closing Date, grant CITY a credit against the Acquisition Cost Price for the amount of such Repair and Replacement Reserve(s), Pre-Paid Assessments and other prepayments, such credit to be set forth on the closing statement.

SECTION 3.02. COVENANTS AND CONDITIONS PRECEDENT TO TRANSFER.

(A) FKAA and the CITY acknowledge that substantial discussions concerning the transfer of the Little Venice Wastewater System have been undertaken by the FKAA and the CITY; and, FKAA and the CITY hereby waive any technical deficiencies in notice otherwise required by any interlocal or other agreement concerning the Little Venice Wastewater System.

(B) Prior to any transfer, the FKAA and the CITY shall be provided with a certified copy of a resolution of their respective governing boards which ratifies and confirms the intention of FKAA to transfer to the CITY the Little Venice Wastewater System and the unqualified commitment of CITY to defease, refund and/or retire the FKAA's outstanding Debt Obligations relating to the Little Venice Wastewater System.

(C) Prior to any transfer, the CITY must receive (i) from FKAA, an assignment of the Lease Agreement, dated March 15, 2000, between the FKAA as lessee and Monroe County, Florida, as lessor (as amended, the "Ground Lease"), pursuant to which Monroe County leases the land to the FKAA on which the Plant is located, and (ii) from Monroe County, written consent to the assignment of the Ground Lease.

(D) FKAA waives all notice periods concerning the transfer of the Little Venice Wastewater System and agrees to promptly undertake all procedures and notices to any trustee or insurer required to defease or retire any FKAA outstanding Debt Obligations relating to the Little Venice Wastewater System. Whenever possible FKAA shall request a waiver from any trustee or insurer of any notice period.

(E) At or prior to the Little Venice Transfer Date, the parties shall execute all documents necessary in the reasonable opinion of counsel to the FKAA which shall hold harmless the FKAA from any actions relating to the Little Venice Wastewater System which occur either prior to or subsequent to the transfer. Notwithstanding the foregoing, nothing contained herein shall be construed as an obligation by CITY to assume liability for or hold the FKAA harmless from any negligence of the FKAA or its officers, employees or agents.

(F) At or prior to the Little Venice Transfer Date, FKAA shall execute documents transferring to CITY the Little Venice Wastewater System and all associated assets and property, including the moneys in the funds and accounts held under any indenture of trust between the FKAA and any trustee created in conjunction with the issuance of any Debt Obligations.

(G) At or prior to the Little Venice Transfer Date, each party shall provide evidence that any public hearing required by law for the sale or transfer of the Little Venice Wastewater System has been duly held.

(H) On the Little Venice Transfer Date, the CITY shall assume all operations of the Little Venice Wastewater System.

(I) Approximately thirty (30) days prior to the Little Venice Transfer Date the FKAA shall provide one or more certificates to CITY:

(1) identifying all known regulatory compliance issues and otherwise certifying that the FKAA has not been cited nor notified, and is not, after due inquiry, aware of any violation of any governmental rule, regulation, permitting condition, or other governmental requirement of any type or nature applicable to the ownership, maintenance, construction or operation of the Little Venice Wastewater System, nor is the FKAA aware of any conditions which by reason of the passing of time or the giving of notice by the appropriate governmental agency would constitute such a violation;

(2) identifying all known environmental law violations and otherwise certifying, to the best of the FKAA's knowledge and belief, that the real property and easements to be conveyed are in compliance with, and that the FKAA has not violated, in connection with its ownership, use, maintenance, or operation of the Little Venice Wastewater System, applicable federal, state, county, or local environmental laws relating to pollution or protection of the environment, including but not limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and the Resource Conservation and Recovery Act;

(3) certifying that the FKAA has not authorized the placing or depositing of hazardous substances on the real estate and easements encompassed within the Little Venice Wastewater System except, if at all, in accordance with applicable law, and that the FKAA has no actual knowledge of any hazardous substance having been, or currently being, placed or

deposited on said real property and easements except in a lawful manner (except for matters specifically referenced in any such certificate);

(4) certifying that there are no facts actually known to the FKAA materially affecting the physical condition or operation of the Little Venice Wastewater System which are not readily observable or which have not been disclosed or provided to CITY in connection with the contemplated transaction; and

(5) updating, prior to or at the Little Venice Transfer Date, and reaffirming its representations made herein.

(I) In no event shall any obligation of this Agreement require the FKAA to convey less than all of the Little Venice Wastewater System on the Little Venice Transfer Date. Parties hereto expressly covenant and agree that the obligations of the FKAA hereunder are contingent upon CITY authorizing the issuance of and issuing its Debt Obligations to defease, refund and or retire all of the FKAA's outstanding Debt Obligations relating to the Little Venice Wastewater System, and simultaneously accepting the transfer and assignment of and assuming of all obligations and responsibilities associated with the entire Little Venice Wastewater System on the Little Venice Transfer Date.

SECTION 3.03. CONSIDERATION FOR TRANSFER. As consideration for the transfer of the Little Venice Wastewater System to CITY, CITY shall pay to the FKAA an amount sufficient to fund the Acquisition Cost on the Little Venice Transfer Date.

**ARTICLE IV
CONVEYANCE PROVISIONS**

SECTION 4.01. DEVELOPING DUE DILIGENCE.

(A) FKAA shall timely cooperate with CITY in finalizing the identification of the Utility Assets and associated rights and obligations that comprise the Little Venice Wastewater System.

(B) Upon any request by CITY, FKAA covenants to promptly, fully and reasonably cooperate with any representative or consultant designated by CITY to provide and make available for inspection and copying all information available to the FKAA, or its agents. FKAA also agrees to prepare, complete and deliver to CITY due diligence data and information, including but not limited to, the following schedules without undue qualification:

(1) A schedule providing a complete legal description or recording references of all real property owned and used in the operation of the Little Venice Wastewater System, the Utility Assets or in providing Utility Service.

(2) A schedule identifying all unplatted easements known and available to the FKAA which are used or available for use in connection with the Little Venice Wastewater System, the Utility Assets or in providing Utility Service. Such schedule will include legal descriptions or recording references which will allow for subsequent location and title searches.

(3) A schedule of all plans and specifications in possession of the FKAA which substantially describe the Little Venice Wastewater System's wastewater plants, lift or pump stations, wastewater collection system, and major transmission facilities of the Little Venice Wastewater System.

(4) A schedule of all existing construction contracts and third party warranties that relate to completed or in progress construction.

(5) A schedule of all current or active permits, applications or other documents, together with effective dates and any expiration dates which authorize the operation of the wastewater treatment facilities by all applicable governmental authorities of the Little Venice Wastewater System.

(6) A schedule of any available Little Venice Wastewater System maps.

(7) An inventory of the equipment, tools, parts and other personal property predominantly used by FKAA in connection with the operation of the Little Venice Wastewater System.

(8) A schedule of all operating and vendor contracts affecting the Little Venice Wastewater System.

(9) A schedule of all executory reuse or effluent disposal agreements entered into by FKAA, or its predecessors, for the sale or reuse of effluent delivered through the Little Venice Wastewater System.

(10) A schedule of all existing executory agreements including any developer agreements entered into by the FKAA, or its predecessors and owners or developers of real property for the provision of wastewater disposal services through the Little Venice Wastewater System.

(11) A schedule of all Transition Projects, together with a narrative description of each project, the parties and contractual agreements involved, expected cost, completion date and specific sources of funding.

(12) A schedule, with respect to all executory agreements under which the FKAA as the legal owner of the Little Venice Wastewater System has any continuing or outstanding wastewater service obligations which shows the total number of (a) contractual connections; (b) contractual connections paid for and not yet connected; (c) contractual connections not yet paid for and not yet connected; and (d) any contractual connections for which any party hereto has or expects to begin collecting a periodic minimum or base charge prior to the Little Venice Transfer Date.

(13) A schedule of all other agreements entered into between the FKAA and its predecessors, or third parties which would be reasonably considered to materially affect or be an encumbrance upon the Little Venice Wastewater System including, without limitation, any leasehold agreements or oral agreements, if any. If any oral agreements exist, they shall be so identified together with a narrative of the terms thereof.

(14) A schedule of all current tariffs which represent the most current schedule of rates, fees and charges being imposed in conjunction with the Little Venice Wastewater System.

(15) A schedule, description and estimate of all monies, funds, accounts and intangibles held under any Debt Obligations, indenture of trust, resolution, agreement or other instrument by FKAA, or any third party for the benefit of any ratepayers of the Little Venice Wastewater System or in connection with the operation of the Little Venice Wastewater System or in providing services and facilities to the Little Venice Wastewater System.

(16) A schedule of any actions, arbitrations, audits, hearings, investigations, litigation or suits (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or

before, or otherwise involving, any governmental body or arbitrator, whether actual or threatened.

(17) A schedule of any assets that currently form part of the Little Venice Wastewater System that are not being transferred by the FKAA to the CITY pursuant to this Agreement.

SECTION 4.02. DEVELOPMENT OF TRANSITION PLAN.

(A) The parties agree to promptly work together to develop and prepare a transition plan to effect the administrative and operational aspects of the transfer of the Little Venice Wastewater System to CITY. Immediately following execution and within thirty (30) days of entering into this Agreement, the parties shall cooperate to promptly develop and prepare a transition plan relating to the administrative and operational aspects of the transfer of the Little Venice Wastewater System to CITY. The parties agree that such transition plan will include, if timing requires, a time period during which the FKAA may need to collect assessments on behalf of the CITY until such time as the CITY can take over the assessment rolls pursuant to Florida statutes. On or before the closing date, the parties shall execute an agreement providing that the City will pay the FKAA a reasonable fee for preparing the assessment roll and collecting assessments on behalf of the City. The parties further agree that the transition plan will include the Overlap Period.

(B) It is the express intention of the parties to use the existing capabilities, resources and personnel of the CITY and FKAA to transition the Utility Assets, Little Venice Wastewater System and Utility Service to the CITY and any transition plan developed and prepared by the CITY shall be reasonably reflective of such intent.

SECTION 4.03. CONVEYANCE DOCUMENTATION. On the Little Venice Transfer Date the parties shall execute, deliver and accept a bill of sale and a transfer, assignment and assumption agreement together with any other necessary and reasonable documents to effect the conveyance of record of the Little Venice Wastewater System and the Utility Assets.

(A) From time to time after closing, each party hereto shall, upon the request to the other, execute, acknowledge and deliver, or shall cause to be executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers or other documentation for (1) confirming or correcting title in the name of the CITY or perfecting undisputed possession by the CITY of the Little Venice Wastewater System or any or all of the Utility Assets, including the establishment of record of easements reasonably capable of enforcement by the CITY without resort to litigation or other extraordinary means for any wastewater utility facilities which are a part of the Little Venice Wastewater System in existence or in use at the time of closing, or (2) otherwise fulfilling the obligations of the parties hereunder.

(B) The CITY hereby acknowledges that the FKAA cannot provide any warranties or assurances regarding any real or personal property interests in the Little Venice Wastewater System or the Utility Assets; provided, however, the FKAA affirmatively represents to the CITY, that FKAA has not been notified of any claims or disputes with respect to the Little Venice Wastewater System or any Utility Assets.

(C) The FKAA shall, not less than ten (10) days prior to the Little Venice Transfer Date, deliver to the CITY all drawings, surveys, as-built plans and similar documents in the possession of the FKAA that depict and describe in detail the System, the Plant, and any components thereof.

SECTION 4.04. TRANSFER DATE. It is anticipated that the transactions contemplated by this Agreement will be closed on a mutually agreed upon date on or before September 30, 2008 or as soon as practicable thereafter. The closing shall be held at such place or offices convenient and mutually agreeable to the parties.

SECTION 4.05. TRANSFER OF PERMITS. It shall be the obligation and responsibility of each of the parties hereto to timely cooperate with each other to commence all requisite action to apply for and cause the transfer of all necessary permits and governmental approvals, including but not limited to the procedures referenced in Rule 62-4.120, Florida Administrative Code, 40 C.F.R. § 122.63(d) (1980) and 47 C.F.R. § 73(1980) and shall use all reasonable efforts to obtain the timely transfer of such permits. Each party shall cooperate and provide all reasonably necessary assistance in this endeavor. Upon transfer, the CITY shall assume all obligations under the permits and governmental approvals necessary for continued operation of the Little Venice Wastewater System.

SECTION 4.06. EXECUTION OF LONG TERM AGREEMENTS.

(A) The FKAA hereby represents to CITY that it has not entered into any agreement for administration, operation, billing or the provision of any services that can not be terminated at will, except for the following: **[list to come]**

(B) The Authority shall not enter into any agreement for administration, operation, billing or the provision of any services for a term exceeding one (1) year, or enter into or extend any agreement, which does not include a provision that such agreement is terminable by CITY without penalty within one hundred twenty (120) days of the Little Venice Transfer Date.

SECTION 4.07. RISK OF LOSS. At all times prior to and through the Little Venice Transfer Date, the FKAA shall self-insure or maintain adequate fire and extended

insurance coverage for the cost of any repairs to the Little Venice Wastewater System or Utility Assets that may be required by casualty damage. The risk of loss during this said period of time shall fall upon the FKAA. The risk of loss shall pass to CITY on the Little Venice Transfer Date.

SECTION 4.08. HOLD HARMLESS.

The Parties to this Agreement understand and agree that all revenues produced by the Little Venice Wastewater System are generated by wastewater service provided to customers through rates and fees. That upon the transfer of the Little Venice Wastewater System to the CITY the FKAA will receive no revenue other than as provided in Section 3.01(D). The FKAA is retaining no other funds to satisfy any unknown obligations, liabilities or actions that may have occurred prior to the transfer of the Little Venice Wastewater System but was not known to the FKAA until subsequent of the transfer date.

Therefore, the CITY shall hold the FKAA harmless from any liabilities, obligations or actions relating to the Little Venice Wastewater System which were incurred or occurred either prior to or subsequent to the transfer date. Notwithstanding the foregoing, however, nothing contained herein shall be construed as an obligation by CITY to assume liability for or hold the FKAA harmless from any negligence of the FKAA or its officers, employees or agents.

SECTION 4.09. REGULATORY APPROVAL CONTINGENCY. The parties acknowledge and agree that the FDEP has the power and jurisdiction to approve or disapprove the transactions contemplated herein. The sale and transfer of the System and the Utility Assets pursuant to this Agreement is contingent, as a post-Closing matter, upon receipt of the FDEP approval. In the event that the FDEP denies such approval or imposes conditions on such approval that would have a material adverse effect on either the CITY or the FKAA, then the

System shall be repurchased by the FKAA via the same means the System was purchased by the CITY pursuant to this Agreement, and the obligations of the FKAA and the CITY under this Agreement shall be reversed for purposes of such repurchase. FKAA agrees that in the event of such repurchase, the FKAA will only reimburse the CITY for the original Acquisition Cost . From and after the Little Venice Transfer Date, and until the FDEP approval is issued, or the repurchase of the System by the FKAA, whichever occurs first, the CITY shall operate the System in the ordinary course of business and in compliance with all applicable agreements, laws, rules and regulations with due care such that the System, if repurchased by the FKAA, shall be in as good a condition as it was on the Little Venice Transfer Date, ordinary wear and tear excepted. Damage to the System above and beyond the foregoing shall be deducted from the repurchase price to be paid by the FKAA in the event of a repurchase of the System by the FKAA.

[Remainder of page intentionally left blank.]

ARTICLE V
TRANSITION PROJECTS

SECTION 5.01. IDENTIFICATION OF TRANSITION PROJECTS. Upon execution hereof and as soon as practicable prior to the Little Venice Transfer Date, the FKAA shall provide a certificate to CITY identifying all potential Transition Projects, and update such certificate on the Little Venice Transfer Date. The FKAA agrees that it shall not commence or initiate any new Transition Projects at any time after the execution hereof.

SECTION 5.02. ASSUMPTION OF WORK IN PROGRESS.

(A) Prior to the Little Venice Transfer Date, CITY and FKAA shall hold a project status conference to determine all Transition Projects, if any, which will not be completed prior to the Little Venice Transfer Date and to reconcile the accounts for each such project. FKAA shall provide thirty (30) days prior to closing a Transition Projects Status and Schedule Report, together with estoppel information from each affected party, for each Transition Project, with each such report being updated by the FKAA on the Little Venice Transfer Date. The FKAA shall use its best efforts to require and provide estoppel information in a form or manner requested by CITY.

(B) Any Transition Project not completed on the Little Venice Transfer Date shall be assigned to CITY in writing and CITY shall assume all of the FKAA's rights and obligations with regard to the construction, contracts, sub-contracts and material supply agreements for each such Transition Project.

(C) FKAA shall identify and transfer to CITY all moneys, funds or accounts for any unearned fees for contract administration of capital projects as of the Little Venice Transfer Date. Earned fees for contract administration of capital projects shall be determined prorata

based on the percentage of construction actually completed and shall, after consultation with the CITY, be disbursed for any Transition Project to any contractor as of the Little Venice Transfer Date.

SECTION 5.03. OPERATION OF THE SYSTEM. Except as otherwise expressly approved by the CITY in writing, between the date of this Agreement and the Little Venice Transfer Date, the FKAA:

(A) shall operate the System in the ordinary course of business and in accordance with AWT standards;

(B) shall use its best efforts to preserve intact its current business organization, and maintain its relations with suppliers, customers, landlords, creditors, employees, agents and others having business relationships with it;

(C) shall confer with the CITY prior to implementing operational decisions of a material nature which are not in the ordinary course of business;

(D) shall keep in full force and effect all rights relating to the System and the Utility Assets other than those rights, the absence of which would not have a material adverse effect on the System;

(E) shall comply with all legal requirements and contractual obligations applicable to the operation of the System for which the failure to comply would have a material adverse effect on the System; and

(F) shall maintain all books and records of the FKAA relating to the System in the ordinary course of business.

**ARTICLE VI
GENERAL PROVISIONS**

SECTION 6.01. INTERLOCAL AGREEMENT PROVISIONS. Portions of this Agreement constitute a joint exercise of power, privilege or authority by and among CITY and FKAA and shall be deemed to be an "interlocal agreement" within the meaning of the Florida Interlocal Cooperation Act of 1969, as amended.

SECTION 6.02. CONTINUING DISCLOSURE OBLIGATIONS. The FKAA agrees to cooperate with CITY in the preparation of disclosure information relating to the Little Venice Wastewater System for inclusion in any bond offering documents and will provide a certificate executed by an authorized officer of the FKAA at the closing of bonds purchased in reliance upon such offering documents that, to the knowledge of such officer, the information does not contain any material mis-statements or omissions. CITY shall pay the reasonable costs and expenses incurred by the FKAA to comply with the provisions of this section.

SECTION 6.03. PROFESSIONAL FEES; COSTS.

(A) Except as expressly provided otherwise in this Agreement, each party shall be responsible for securing its own counsel for representation relative to the negotiation, preparation and implementation of this Agreement, and all other matters associated with the implementation or performance hereunder; unless otherwise specified herein, and each party shall be responsible for the payment of all costs and expenses, including the fees of its own attorneys, engineers, accountants and other professional advisors or consultants, in connection therewith.

(B) In any litigation arising out of this Agreement, the prevailing party in such litigation shall, subject to the limitation imposed by Section 768.28, Florida Statutes, be entitled to recover reasonable attorneys' fees and costs.

SECTION 6.04. TERM OF AGREEMENT.

(A) The term of this Agreement shall commence on the date of execution of this Agreement by all the parties hereto, and shall continue until closing on the Little Venice Transfer Date or upon termination by a written agreement between all parties hereto. The covenants contained herein shall survive any closing and this Agreement shall be deemed in full force and effect until same have been fully executed.

(B) By notice given prior to or at the Little Venice Transfer Date, but subject to a five (5) day opportunity for the party receiving notice to cure, this Agreement may be terminated as follows:

(1) by the CITY, if a breach of any material provision of this Agreement has been committed by the FKAA and such breach has not been waived by the CITY;

(2) by the FKAA, if a breach of any material provision of this Agreement has been committed by the CITY and such breach has not been waived by the FKAA;

(3) by the CITY, if any condition in Article III has not been satisfied as of the date specified for the Little Venice Transfer Date or if satisfaction of such a condition by such date is or becomes impossible (other than through the failure of the CITY to comply with its obligations under this Agreement), and the CITY has not waived such condition on or before such date;

(4) by the FKAA, if any condition in Article III has not been satisfied as of the date specified for the Little Venice Transfer Date or if satisfaction of such a condition by such date is or becomes impossible (other than through the failure of the FKAA to

comply with its obligations under this Agreement), and the FKAA has not waived such condition on or before such date;

(5) by mutual consent of the CITY and the FKAA;

(6) by the CITY, if the closing has not occurred on or before October 31, 2008, or such later date as the parties may agree upon, unless the CITY is in material breach of this Agreement; or

(7) by the FKAA, if the closing has not occurred on or before October 31, 2008, or such later date as the parties may agree upon, unless the FKAA is in material breach of this Agreement.

SECTION 6.05. FAILURE OF PERFORMANCE.

(A) A breach of this Agreement shall mean a material failure to comply with any of the provisions of this Agreement. If any party breaches any obligation herein, then, upon receipt of written notice by the non-breaching party, the breaching party shall proceed diligently and in good faith to take all reasonable actions to cure such breach and shall continue to take all such actions until such breach is cured.

(B) Unless otherwise provided herein, the parties to this Agreement may proceed at law or in equity to enforce their rights under this Agreement.

SECTION 6.06. DISPUTE RESOLUTION.

(A) The parties agree to resolve any dispute related to the interpretation or performance of this Agreement in the manner described in this section. Either party may initiate the dispute resolution process by providing written notice to the other party.

(B) After transmittal and receipt of a notice specifying the area or areas of disagreement, the parties agree to meet at reasonable times and places, as mutually agreed upon, to discuss the issues.

(C) If discussions among the parties fail to resolve the dispute within sixty (60) days of the notice described in subsection (A) hereof, the parties shall appoint a mutually acceptable neutral third party to act as a mediator. The mediation contemplated by this subsection (C) is intended to be an informal and non-adversarial process with the objective of helping the parties reach a mutually acceptable and voluntary agreement. The decision-making shall rest solely with the parties. The mediator shall assist the parties in identifying issues, fostering joint problem-solving and exploring settlement alternatives. It is understood that any settlement may require approval of the City Council of the CITY and the Board of Directors of the FCAA.

(D) If the parties are unable to reach a mediated settlement within sixty (60) days of the mediator's appointment, any party may terminate the settlement discussions by written notice to the other party. In such event, either party may initiate litigation within sixty (60) days of the notice terminating the settlement discussions.

SECTION 6.07. AMENDMENTS AND WAIVERS. No amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by all parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided. Neither the failure nor any delay by any party hereto in exercising any right or power under this Agreement nor any course of dealing between or among the parties will operate as a waiver of such right or power, and no single or partial

exercise of any such right or power will preclude any other or further exercise of such right or power or the exercise of any other right or power.

SECTION 6.08. NOTICES.

(A) All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, or sent by nationally recognized overnight courier (with delivery instructions for "next business day" service) to the parties at the following addresses:

FKAA: 1100 Kennedy Drive
Key West, Florida 33040
Attention: Executive Director
(305)296-2454

MANDATORY COPY: FKAA
1100 Kennedy Drive
Key West, Florida 33040
Attention: Kirk C. Zuelch, General Counsel
(305)296-2454

CITY: 9805 Overseas Highway
Marathon, Florida 33050
Attention: City Manager
(305)743-3367

MANDATORY COPY: Stearns Weaver Miller Weissler Alhadeff
& Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Attn: Jimmy L. Morales, Esquire
(305)789-3200

(B) Any of the parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand (or facsimile transmission) or three days after the date mailed.

SECTION 6.09 BINDING EFFECT. To the extent provided herein, this Agreement shall be binding upon the parties, their respective successors and assigns and shall inure to the benefit of the parties, their respective successors and assigns.

SECTION 6.10. ASSIGNMENT. No assignment of this Agreement may be made in whole or in part to another governmental entity.

SECTION 6.11. SEVERABILITY. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 6.12. EXECUTION IN COUNTERPARTS. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 6.13. APPLICABLE LAW AND VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any action or proceeding to construe or enforce the provisions of this Agreement shall be in the Circuit Court in and for Monroe County, Florida.

SECTION 6.14. TIME IS OF THE ESSENCE. Time is of the essence in this Agreement. The time period specified in this Agreement shall expire at midnight on the date stated unless the parties agree in writing to a different date or time. Any time period provided for herein which ends on a Saturday, Sunday or legal holiday shall extend to 5 P.M. on the next business day.

SECTION 6.15 ENTIRE AGREEMENT. This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties,

whether oral or written, and there are no warranties, representations or other agreements among the parties in connection with the subject matter hereof, except as specifically set forth herein.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, FCAA and CITY have caused this Transfer Agreement to be duly executed and entered into as of the date first above written.

FCAA Board Approved: May 22, 2008

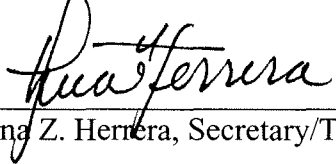
FLORIDA KEYS AQUEDUCT AUTHORITY

(SEAL)

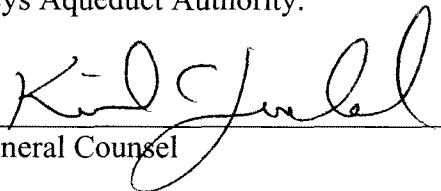
By: 
J. Robert Dean, Chairman

Date: 5-22-08, 2008

ATTEST:


Elena Z. Herrera, Secretary/Treasurer

Approved as to form and legal sufficiency solely for the use and reliance of the Florida Keys Aqueduct Authority.


General Counsel

IN WITNESS WHEREOF, FKAA and CITY have caused this Transfer Agreement to be duly executed and entered into as of the date first above written.

CITY OF MARATHON

(SEAL)

By: Edward P. Worthington
Edward P. Worthington, Mayor

Date: 6/12/08, 2008

ATTEST:

Diane Clavier
Clerk

Approved as to form and legal sufficiency solely for the use and reliance of the City of Marathon, Florida.

[Signature]
City Attorney