

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2009-147**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A STIPULATED SETTLEMENT AGREEMENT BETWEEN THE CITY OF MARATHON AND THE STATE DEPARTMENT OF COMMUNITY AFFAIRS (DCA) RESOLVING DOAH CASE NO. 08-1415GM CONCERNING THE ADOPTION OF THE CITY'S 2007 CAPITAL IMPROVEMENT PROGRAM (CIP AKA CIE) COMPREHENSIVE PLAN AMENDMENT BY ORDINANCE 2007-034 WHICH THE DCA FOUND NOT-IN-COMPLIANCE.**

**WHEREAS**, The City of Marathon adopted 2007 Capital Improvements Program Comprehensive Plan Amendment by Ordinance 2007-034; and

**WHEREAS**, the DCA found the Ordinance "not-in-compliance" because the amendment is inconsistent with the statutory requirement for financial feasibility or the adopted Five-Year Schedule of Capital Improvements; and

**WHEREAS**, the City does not dispute the specifics of DCA's Statement of Intent;

**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 by this reference.

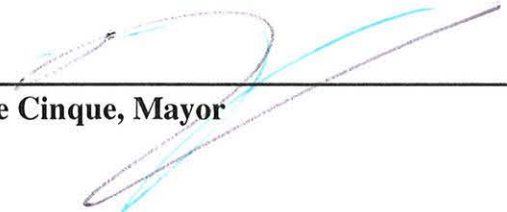
**Section 2.** Council approves the Stipulated Settlement Agreement between the City and the Department of Community Affairs concerning DOAH Case No. 08-1415GM (attached as exhibit A).

**Section 3.** The Mayor is authorized to execute the 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 13th day of October , 2009.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Mike Cinque, Mayor**

AYES: Snead, Ramsay, Worthington, Cinque  
NOES: None  
ABSENT: Vasil  
ABSTAIN: None

**ATTEST:**

  
\_\_\_\_\_  
Hillary H. Harrison, Acting City Clerk

(City Seal)

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

  
\_\_\_\_\_  
John Herrin, City Attorney



STATE OF FLORIDA

# DEPARTMENT OF COMMUNITY AFFAIRS

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

CHARLIE CRIST  
Governor

THOMAS G. PELHAM  
Secretary

August 5, 2009

Mr. Clyde Burnett, City Manager  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050

Re: CIE Stipulated Settlement Agreement

Dear Mr. Burnett:

Please find enclosed a Stipulated Settlement Agreement to bring the City of Marathon's Comprehensive Plan Amendment 07-CIE1 into compliance. The amendment was found to be "not in compliance" because the wastewater and stormwater projects identified for Areas 3 and 7 were not financially feasible and the Boot Key Bridge project did not contain cost estimates.

Please review the enclosures and advertise a public hearing to execute the Stipulated Settlement Agreement followed by a public hearing to adopt Exhibit B by ordinance. The Department appreciates the coordination and cooperation of your staff in preparing the documents. If you need additional guidance regarding the procedure, please telephone Richard Shine at 850 922-1683.

Sincerely,

Michael McDaniel, Chief  
Office of Comprehensive Planning

MM/rj

Enclosure(s)

2555 SHUMARD OAK BOULEVARD ♦ TALLAHASSEE, FL 32399-2100

850-488-8466 (p) ♦ 850-921-0781 (f) ♦ Website: [www.dca.state.fl.us](http://www.dca.state.fl.us)

♦ COMMUNITY PLANNING 850-488-2356 (p) 850-488-3309 (f) ♦ FLORIDA COMMUNITIES TRUST 850-922-2207 (p) 850-921-1747 (f) ♦  
♦ HOUSING AND COMMUNITY DEVELOPMENT 850-488-7956 (p) 850-922-5623 (f) ♦

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF COMMUNITY  
AFFAIRS,

Petitioner,

v.

**DOAH Case No. 08-1415GM**

CITY OF MARATHON,

Respondent.

\_\_\_\_\_ /

**STIPULATED SETTLEMENT AGREEMENT**

THIS STIPULATED SETTLEMENT AGREEMENT is entered into by and between the State of Florida, Department of Community Affairs and the City of Marathon as a complete and final settlement of all claims raised in the above-styled proceeding.

**RECITALS**

WHEREAS, the State of Florida, Department of Community Affairs (DCA or Department), is the state land planning agency and has the authority to administer and enforce the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes; and

WHEREAS, City of Marathon (Local Government) is a local government with the duty to adopt comprehensive plan amendments that are "in compliance;" and

WHEREAS, the Local Government adopted Comprehensive Plan Amendment 07-CIE1 (Plan Amendment) by Ordinance No. 2007-034 on November 13, 2007; and

WHEREAS, the Plan Amendment proposes to identify the annual update of the Five Year Schedule of Capital Improvements within the Capital Improvements Element necessary to achieve and maintain the adopted level of service standards for wastewater, stormwater and transportation facilities; and

WHEREAS, the Department issued its Statement and Notice of Intent regarding the Amendment on March 5, 2008; and

WHEREAS, as set forth in the Statement of Intent, the Department contends that the Amendment is not “in compliance” because the amendment is inconsistent with the statutory requirement for financial feasibility of the adopted Five-Year Schedule of Capital Improvements because it includes uncommitted funding sources for projects in the first three years of the schedule; and does not identify the cost estimates or committed funding for the Boot Key Bridge Replacement Project, and

WHEREAS, pursuant to Section 163.3184(10), Florida Statutes, DCA has initiated the above-styled formal administrative proceeding challenging the Amendment; and

WHEREAS, the Local Government does not disputes the allegations of the Statement of Intent regarding the Amendment; and

WHEREAS, the parties wish to avoid the expense, delay, and uncertainty of lengthy litigation and to resolve this proceeding under the terms set forth herein, and agree it is in their respective mutual best interests to do so;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein below set forth, and in consideration of the benefits to accrue to each of the parties, the receipt and sufficiency of which are hereby acknowledged, the parties hereby represent and agree as follows:

#### **GENERAL PROVISIONS**

1. **Definitions.** As used in this agreement, the following words and phrases shall have the following meanings:

a. **Act:** The Local Government Comprehensive Planning and Land Development Regulation Act, as codified in Part II, Chapter 163, Florida Statutes.

b. **Agreement:** This stipulated settlement agreement.

c. Comprehensive Plan Amendment or Plan Amendment: Comprehensive plan amendment 07-CIE1 adopted by the Local Government on November 13, 2007 as Ordinance No. 2007-34.

d. DOAH: The Florida Division of Administrative Hearings.

e. In compliance or into compliance: The meaning set forth in Section 163.3184(1)(b), Florida Statutes.

f. Notice: The notice of intent issued by the Department to which was attached its statement of intent to find the plan amendment not in compliance.

g. Petition: The petition for administrative hearing and relief filed by the Department in this case.

h. Remedial Action: A remedial plan amendment, submission of support document or other action described in the statement of intent or this agreement as an action which must be completed to bring the plan amendment into compliance.

i. Remedial Plan Amendment: An amendment to the plan or support document, the need for which is identified in this agreement, including its exhibits, and which the local government must adopt to complete all remedial actions. Remedial plan amendments adopted pursuant to this Agreement must, in the opinion of the Department, be consistent with and substantially similar in concept and content to the ones identified in this Agreement or be otherwise acceptable to the Department.

j. Statement of Intent: The statement of intent to find the Plan Amendment not in compliance issued by the Department in this case.

k. Support Document: The studies, inventory maps, surveys, data, inventories, listings or analyses used to develop and support the Plan Amendment or Remedial Plan Amendment.

2. Department Powers. The Department is the state land planning agency and has the power and duty to administer and enforce the Act and to determine whether the Plan Amendment is in compliance.

3. Negotiation of Agreement. The Department issued its Notice and Statement of Intent to find the Plan Amendment not in compliance, and filed the Petition in this case to that effect. Subsequent to the filing of the Petition the parties conferred and agreed to resolve the issues in the Petition, Notice and Statement of Intent through this Agreement. It is the intent of this Agreement to resolve fully all issues between the parties in this proceeding.

4. Dismissal. If the Local Government completes the Remedial Actions required by this Agreement, the Department will issue a cumulative Notice of Intent addressing both the Remedial Plan Amendment and the initial Plan Amendment subject to these proceedings. The Department will file the cumulative Notice of Intent with the DOAH. The Department will also file a request to relinquish jurisdiction to the Department for dismissal of this proceeding or for realignment of the parties, as appropriate under Section 163.3184(16)(f), Florida Statutes.

5. Description of Provisions not in Compliance and Remedial Actions; Legal Effect of Agreement. Exhibit A to this Agreement is a copy of the Statement of Intent, which identifies the provisions not in compliance. Exhibit B contains Remedial Actions needed for compliance. Exhibits A and B are incorporated in this Agreement by this reference. This Agreement constitutes a stipulation that if the Remedial Actions are accomplished, the Plan Amendment will be in compliance.

6. Remedial Actions to be Considered for Adoption. The Local Government agrees to consider for adoption by formal action of its governing body all Remedial Actions described in Exhibit B no later than the time period provided for in this Agreement.

7. Adoption or Approval of Remedial Plan Amendments. Within 60 days after execution of this Agreement by the parties, the Local Government shall consider for adoption all Remedial Actions or Plan Amendments and amendments to the Support Documents. This may be done at a single adoption hearing. Within 10 working days after adoption of the Remedial Plan Amendment, the Local Government shall transmit 5 copies of the amendment to the Department as provided in Rule 9J-11.011(5), Florida Administrative Code. The Local Government also shall submit one copy to the regional planning agency and to any other unit of

local or state government that has filed a written request with the governing body for a copy of the Remedial Plan Amendment and a copy to any party granted intervenor status in this proceeding. The Remedial Plan Amendment shall be transmitted to the Department along with a letter which describes the remedial action adopted for each part of the plan amended, including references to specific portions and pages.

8. Acknowledgment. All parties to this Agreement acknowledge that the "based upon" provisions in Section 163.3184(8), Florida Statutes, do not apply to the Remedial Plan Amendment.

9. Review of Remedial Plan Amendments and Notice of Intent. Within 30 days after receipt of the adopted Remedial Plan Amendments and Support Documents, the Department shall issue a Notice of Intent pursuant to Section 163.3184, Florida Statutes, for the adopted amendments in accordance with this Agreement.

a. In Compliance: If the adopted Remedial Actions satisfy this Agreement, the Department shall issue a cumulative Notice of Intent addressing both the Plan Amendment and the Remedial Plan Amendment as being in compliance. The Department shall file this cumulative notice with DOAH and shall move to realign the parties or to have this proceeding dismissed, as may be appropriate.

b. Not in Compliance: If the Remedial Actions do not satisfy this Agreement, the Department shall issue a Notice of Intent to find the Plan Amendment not in compliance and shall forward the notice to DOAH for consolidation with the pending proceeding.

10. Effect of Amendment. Adoption of any Remedial Plan Amendment shall not be counted toward the frequency restrictions imposed upon plan amendments pursuant to Section 163.3187(1), Florida Statutes.

11. Purpose of this Agreement; Not Establishing Precedent. The parties enter into this Agreement in a spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation and in recognition of the desire for the speedy and reasonable resolution of



disputes arising out of or related to the Plan Amendment. The acceptance of proposals for purposes of this Agreement is part of a negotiated agreement affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances or by any other local government.

12. Approval by Governing Body. This Agreement has been approved by the Local Government's governing body at a public hearing advertised at least 10 days prior to the hearing in a newspaper of general circulation in the manner prescribed for advertisements in Section 163.3184(15)(c), Florida Statutes. This Agreement has been executed by the appropriate officer as provided in the Local Government's charter or other regulations.

13. Changes in Law. Nothing in this Agreement shall be construed to relieve either party from adhering to the law, and in the event of a change in any statute or administrative regulation inconsistent with this agreement, the statute or regulation shall take precedence and shall be deemed incorporated in this Agreement by reference.

14. Other Persons Unaffected. Nothing in this Agreement shall be deemed to affect the rights of any person not a party to this Agreement. This Agreement is not intended to benefit any third party.

15. Attorney Fees and Costs. Each party shall bear its own costs, including attorney fees, incurred in connection with the above-captioned case and this Agreement.

16. Effective Date. This Agreement shall become effective immediately upon execution by the Department and the Local Government.

17. Filing and Continuance. This Agreement shall be filed with DOAH by the Department after execution by the parties. Upon the filing of this Agreement, the administrative proceeding in this matter shall be stayed by the Administrative Law Judge in accordance with Section 163.3184(16)(b), Florida Statutes.

18. Retention of Right to Final Hearing. Both parties hereby retain the right to have a final hearing in this proceeding in the event of a breach of this Agreement, and nothing in this Agreement shall be deemed a waiver of such right. Any party to this Agreement may move to

have this matter set for hearing if it becomes apparent that any other party whose action is required by this Agreement is not proceeding in good faith to take that action.

19. Construction of Agreement. All parties to this Agreement are deemed to have participated in its drafting. In the event of any ambiguity in the terms of this Agreement, the parties agree that such ambiguity shall be construed without regard to which of the parties drafted the provision in question.

20. Entire Agreement. This is the entire agreement between the parties and no verbal or written assurance or promise is effective or binding unless included in this document.

21. Governmental Discretion Unaffected. This Agreement is not intended to bind the Local Government in the exercise of governmental discretion which is exercisable in accordance with law only upon the giving of appropriate public notice and required public hearings.

22. Multiple Originals. This Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which need be produced for any purpose.

23. Captions. The captions inserted in this Agreement are for the purpose of convenience only and shall not be utilized to construe or interpret any provision of this Agreement.

In witness whereof, the parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized.

DEPARTMENT OF COMMUNITY AFFAIRS

By: \_\_\_\_\_  
CHARLES GAUTIER, AICP  
Director, Division of Community Planning

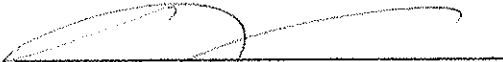
Approved as to form and legality:  
\_\_\_\_\_  
Assistant General Counsel

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

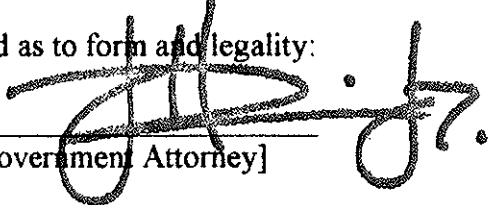
CITY OF MARATHON

By:

  
\_\_\_\_\_  
[Name]  
[Title]

10/14/09  
\_\_\_\_\_  
Date

Approved as to form and legality:

  
\_\_\_\_\_  
[Local Government Attorney]

\_\_\_\_\_  
Date

Exhibit  
A

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS  
NOTICE OF INTENT TO FIND  
CITY OF MARATHON  
COMPREHENSIVE PLAN AMENDMENT  
NOT IN COMPLIANCE  
DOCKET NO. 07-CIE1-NOI-4406-(A)-(N)

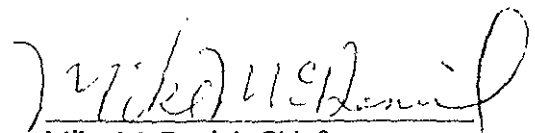
The Department gives notice of its intent to find the Amendment to the Comprehensive Plan for the City of Marathon, adopted by Ordinance No. 2007-34 on November 13, 2007, NOT IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.3189, 380.05, and 380.0552, F.S.

The adopted City of Marathon Comprehensive Plan Amendment and the Department's Objections, Recommendations and Comments Report, (if any), are available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the City of Marathon Planning Department, 9805 Overseas Highway, Marathon, Florida 33050.

This Notice of Intent and the Statement of Intent will be forwarded by petition to the Division of Administrative Hearings (DOAH) of the Department of Management Services for the scheduling of an administrative hearing pursuant to Sections 120.569 and 120.57, F.S. The purpose of the administrative hearing will be to present evidence and testimony on the noncompliance issues alleged by the Department in its Objections, Recommendations, and Comments Report and Statement of Intent in order to secure a recommended order for forwarding to the Administration Commission.

Affected persons may petition to intervene in this proceeding. A petition for intervention must be filed at least twenty (20) days before the final hearing and must include all of the information and contents described in Uniform Rule 28-106.205, F.A.C. Pursuant to Section 163.3184(10), F.S., no new issues may be alleged as a reason to find a plan or plan amendment not in compliance in a petition to intervene filed more than twenty one (21) days after publication of this notice unless the petitioner establishes good cause for not alleging such new issues within the twenty one (21) day time period. The petition for intervention shall be filed at DOAH, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, and a copy mailed or delivered to the local government and the Department. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing pursuant to Sections 120.569 and 120.57, F.S., or to participate in the administrative hearing.

After an administrative hearing petition is timely filed, mediation is available pursuant to Subsection 163.3189(3)(a), F.S., to any affected person who is made a party to the proceeding by filing that request with the administrative law judge assigned by the Division of Administrative Hearings. The choice of mediation shall not affect a party's right to an administrative hearing.



Mike McDaniel, Chief  
Office of Comprehensive Planning  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: CITY OF MARATHON  
COMPREHENSIVE PLAN AMENDMENT  
ADOPTED BY ORDINANCE NO. 2007-34  
NOVEMBER 13, 2007

Docket No. 07-CIE1-NOI-4406-(A)-(N)

STATEMENT OF INTENT TO FIND  
COMPREHENSIVE PLAN AMENDMENT  
NOT IN COMPLIANCE

The Florida Department of Community Affairs, pursuant to Section 163.3184(10), Florida Statutes, and Rule 9J-11.012(6), Florida Administrative Code, hereby issues this Statement of Intent to find the Comprehensive Plan Amendment ("Amendment") adopted by the City of Marathon in Ordinance No. 2007-34 on November 13, 2007, not in compliance. The Department finds the Amendment not "in compliance," as defined in Section 163.3184(1)(b), Florida Statutes, because it is not consistent with Chapter 163, Part II, Florida Statutes, Rule 9J-5, Florida Administrative Code ("F.A.C."), and the State Comprehensive Plan, Chapter 187, Florida Statutes, for the following reasons:

I. CHANGES RELATED TO THE CAPITAL IMPROVEMENTS ELEMENT

A. Inconsistent provisions. The City of Marathon 07-CIE1 adopted amendment consists of the required annual update of the Five Year Schedule of Capital Improvements within the Capital Improvements Element. The schedule includes capital improvements projects that are necessary to achieve and maintain the adopted level of service standards for wastewater, stormwater and transportation facilities. The adopted schedule indicates that the City-wide stormwater and

wastewater projects for Service Areas 3 and 7 are to be funded through State Revolving Fund financial assistance within the first three years. However, the City has not applied nor received State Revolving Fund financial assistance for wastewater and stormwater projects for Service Areas 3 and 7 that would ensure that the adopted schedule is financially feasible. Additionally, the adopted schedule indicates a Boot Key Bridge Replacement project for fiscal year 2008/2009 but does not identify a cost estimate for the project (it is identified as "tbd," i.e. to be determined) and the Department cannot establish if the identified funding of \$3,860,490 is sufficient.

Chapter 163.3164(32), Florida Statute, requires that the five-year schedule of capital improvements be financially feasible. To be financially feasible, there must be sufficient revenues

"currently available or will be available from committed funding sources for the first 3 years, or will be available from committed or planned sources for years 4 and 5, of a 5-year capital improvement schedule for financing capital improvements, such as ad valorem taxes, bonds, state and federal funds, tax revenues, impact fees, and developer contributions, which are adequate to fund the projected costs of the capital improvements identified in the comprehensive plan necessary to ensure that adopted level-of-service standards are achieved and maintained within the period covered by the 5-year schedule of capital improvements."

The amendment is inconsistent with the statutory requirement for financial feasibility of the adopted Five-Year Schedule of Capital Improvements because it includes uncommitted funding sources for projects in the first three years of the schedule.

Authority: Section 163.3177(2), (3), Florida Statute, Section 163.3164(32), Florida Statute, Section 163.3180(2)(a), Florida Statute, and Rule 9J-5.003(29), Florida Administrative Code, and Rule 9J-5.016(1),(2), (3)(b)1,3,4,5, (3)(c)4,5,6,8, and (4), Florida Administrative Code.

B. Recommended remedial actions: Provide an updated Five-Year Schedule of Capital Improvements identifying the cost estimates and committed funding sources for the Boot Key Bridge Replacement project. Identify the committed funding sources for the wastewater and stormwater projects for Service Areas 3 and 7 to ensure the financial feasibility of the adopted schedule.

## II. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

A. Inconsistent provisions. The Amendment is inconsistent with the State Comprehensive Plan goals and policies set forth in Section 187.201, Florida Statutes, including the following provisions:

Public Facilities (17)-Goal (a) Policies (b)3, 6, and 9

B. Recommended remedial action. These inconsistencies may be remedied by revising the Amendment as described above in Section I.

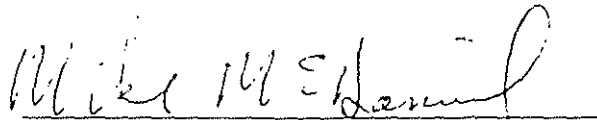
### CONCLUSION

1. The Amendment is not consistent with the State Comprehensive Plan;
2. The Amendment is not consistent with Chapter 9J-5, Florida Administrative Code;
3. The Amendment is not consistent with the requirements of Chapter 163, Part II, Florida Statutes;
4. The Amendment is not "in compliance," as defined in Section 163.3184(1)(b) Florida Statutes; and



5. In order to bring the Amendment into compliance, the City may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 5<sup>th</sup> day of March 2008, in Tallahassee, Florida.

A handwritten signature in cursive script that reads "Mike McDaniel". The signature is written in black ink and is positioned above a horizontal line.

Mike McDaniel  
Chief, Office of Comprehensive Planning  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399

Exhibit  
B

The City of Marathon hereby agrees to adopt the attached Capital Improvement Schedule as a remedial amendment in settlement of the not in compliance finding relating to amendment 07-CIE1

**City of Marathon  
Five Year Capital Improvement Program  
Fiscal Year 2009-2013**

Un-Appropriated Subsequent Years

CATEGORY/PROJECT TITLE	SOURCE OF FUNDING	Appropriated To Date	FY 2009 Adopted	FY 2010	FY 2011	FY 2012	FY 2013	5 Year Total	CIP Total
<b><u>Buildings &amp; Other Improvements</u></b>									
City Hall	Capital Infrastructure/Rev Bonds	-	-	200,000	200,000	200,000	200,000	800,000	800,000
ADA Compliance	Capital Infrastructure		50,000					50,000	50,000
Fire Safety Program	Capital Infrastructure	100,000	100,000	100,000	100,000	100,000	100,000	500,000	600,000
<b>Total Buildings &amp; Other Imprvmnts</b>		<b>100,000</b>	<b>150,000</b>	<b>300,000</b>	<b>300,000</b>	<b>300,000</b>	<b>300,000</b>	<b>1,350,000</b>	<b>1,450,000</b>
<b><u>Economic Development</u></b>									
Land Acquisition	Grants/Other	10,709,960	750,000	750,000	750,000	750,000	750,000	3,750,000	14,459,960
<b>Total Economic Development</b>		<b>10,709,960</b>	<b>750,000</b>	<b>750,000</b>	<b>750,000</b>	<b>750,000</b>	<b>750,000</b>	<b>3,750,000</b>	<b>14,459,960</b>
<b><u>Vehicles</u></b>									
Vehicle Replacement Program	General Fund	<i>annual</i>	-	30,000	15,000	30,000	15,000	90,000	90,000
Tanker	Vehicle Replacement Fund	300,000	-	-	-	-	-	-	300,000
Utility Trucks (2)	Capital Infrastructure		44,000					44,000	44,000
Ambulance	Vehicle Replacement Fund			200,000	200,000	200,000		600,000	600,000
Telesquirt Pumper	Vehicle Replacement Fund						450,000	450,000	450,000
<b>Total Vehicles</b>		<b>300,000</b>	<b>44,000</b>	<b>230,000</b>	<b>215,000</b>	<b>230,000</b>	<b>465,000</b>	<b>1,184,000</b>	<b>1,484,000</b>
<b><u>Parks/Beaches</u></b>									
Community Park Improvements	Capital Infrastructure/Grants			200,000		200,000		400,000	400,000
Cocoplum Recreation Trail	Capital Infrastructure/Grant		415,000					415,000	415,000
Beautification Master Plan	Capital Infrastructure/Grant		36,450					36,450	36,450
Amphitheater Lighting and Sound System	Capital Infrastructure/Grant		28,000					28,000	28,000
Cocoplum Beach Improvements	Capital Infrastructure/Grant	150,000							150,000
Events Field Amenities	Capital Infrastructure/Grants		70,000					70,000	70,000
Kayak Dock	Impact Fees		20,000					20,000	20,000
Sombrero Beach Improvements	Capital Infrastructure			20,000		20,000		40,000	40,000
<b>Total Parks/Beaches</b>		<b>150,000</b>	<b>569,450</b>	<b>220,000</b>	<b>-</b>	<b>220,000</b>	<b>-</b>	<b>1,009,450</b>	<b>1,159,450</b>
<b><u>Marina, Near Shore Waters and Boat Ramp Improvements</u></b>									
33rd Street Boat Ramp Improvements	Capital Infrastructure/Grants		997,501					997,501	997,501
City Boat Ramps	Capital Infrastructure	285,000							285,000
Marina Boardwalk	Capital Infrastructure/Grants	130,000							130,000
Marina Service Building	Capital Infrastructure/Grants	222,000	600,000	200,000	200,000	200,000	200,000	1,400,000	1,622,000
Mooring Field Boundary Markers	Capital Infrastructure	10,000	10,000					10,000	20,000
Mooring Service Docks	Capital Infrastructure/Grants		350,000					350,000	350,000
Washers & Dryers, Furniture & Fixtures	Capital Infrastructure		26,727						
Marina Parking Improvements	Capital Infrastructure/Grants								
<b>Total Marina and Boat Ramp Improvements</b>		<b>647,000</b>	<b>1,984,228</b>	<b>200,000</b>	<b>200,000</b>	<b>200,000</b>	<b>200,000</b>	<b>2,757,501</b>	<b>3,404,501</b>
<b><u>Stormwater Projects</u></b>									
Little Venice Project Phase I	SRF/Grants/Stormwater Fees		1,000,000					1,000,000	1,000,000
Little Venice Project Phase II	State Revolving Fund/Grants/Stormwater Fees	520,000	1,007,756					1,007,756	1,527,756
City Wide Stormwater CIP	State Revolving Fund/Grants/Stormwater Fees	8,142,258	10,841,654	3,784,077	1,568,838			16,194,569	24,336,827
<b>Total Stormwater Projects</b>		<b>8,662,258</b>	<b>12,849,410</b>	<b>3,784,077</b>	<b>1,568,838</b>	<b>-</b>	<b>-</b>	<b>18,202,325</b>	<b>26,864,583</b>

**City of Marathon  
Five Year Capital Improvement Program  
Fiscal Year 2009-2013**

CATEGORY/PROJECT TITLE	SOURCE OF FUNDING	Un-Appropriated Subsequent Years					5 Year Total	CIP Total	
		Appropriated To Date	FY 2009 Adopted	FY 2010	FY 2011	FY 2012			FY 2013
<u>Street Transportation Improvements</u>									
Avenue K Road Installation	Street Maint / Impact Fees / Assessments	-	300,000	-	-	-	-	300,000	300,000
Sombrero Beach Road Improvement	Street Maintenance (Gas Tax)	-	42,310	-	-	-	-	42,310	42,310
Lynn Mead Road Improvement	Street Maintenance (Gas Tax)	-	142,377	-	-	-	-	142,377	142,377
Asphalt Leveling	Street Maintenance (Gas Tax)	-	37,125	-	-	-	-	37,125	37,125
Sombrero Blvd Bike Path Project	Street Maintenance (Gas Tax)	-	107,800	-	-	-	-	107,800	107,800
122nd St. Oceanside Road Bed Replacem	Street Maintenance (Gas Tax)	-	250,000	-	-	-	-	250,000	250,000
42nd St. Bayside Road Bed Replacement	Street Maintenance (Gas Tax)	-	25,000	-	-	-	-	25,000	25,000
104th St. Project	Street Maint / Impact Fees	-	250,000	-	-	-	-	250,000	250,000
New LED Traffic Signals	Street Maintenance (Gas Tax)	-	36,000	-	-	-	-	36,000	36,000
Little Venice Project Phase I	Street Maint (Gas Taxes) / Grants	-	1,000,000	-	-	-	-	1,000,000	1,000,000
US1 Median Beautification Project Phase	Street Maintenance (Gas Tax)	-	50,000	-	-	-	-	50,000	50,000
Little Venice Project Phase II	Street Maint (Gas Taxes) / Grants	101,844	678,156	-	-	-	-	678,156	780,000
<b>Total Street/Transportation Improvements</b>		<b>101,844</b>	<b>2,918,768</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>2,918,768</b>	<b>3,020,612</b>
<u>Wastewater Projects</u>									
City-Wide Wastewater Treatment Project	MSTU/SRF/Grants/Capital Infrastructure	34,126,986	34,477,404	11,286,930	5,894,330	-	-	51,658,664	85,785,650
Manna Wastewater Improvements	Capital Infrastructure/Grants	-	490,820	-	-	-	-	490,820	490,820
<b>Total Wastewater Projects</b>		<b>34,126,986</b>	<b>34,968,224</b>	<b>11,286,930</b>	<b>5,894,330</b>	<b>-</b>	<b>-</b>	<b>52,149,484</b>	<b>86,276,470</b>
<b>Grand Total</b>		<b>54,798,048</b>	<b>54,234,080</b>	<b>16,771,007</b>	<b>8,928,168</b>	<b>1,700,000</b>	<b>1,715,000</b>	<b>83,321,628</b>	<b>138,119,576</b>

# FLORIDA RURAL UTILITY FINANCING COMMISSION

2970 Wellington Circle West, Suite 101, Tallahassee, Florida 32309-6885

(850) 668-2746 \* Email: [Gary.Williams@frwa.net](mailto:Gary.Williams@frwa.net)

September 4, 2008

Mr. Peter Rosasco  
Finance Director  
City of Marathon  
9805 Overseas Highway  
Marathon, FL 33050

**Re: Florida Utility Financing Commission**

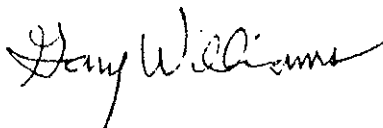
Dear Peter:

~~The Florida Utility Financing Commission ("the Commission") has recently created its Flexible Term Finance Program (the "Program") to finance water and sewer projects throughout the State of Florida, specifically for projects on the Department of Environmental Protection's ("DEP") contingency list.~~

Through its Program, the Commission is able to provide a funding commitment to the City of Marathon's project in the approximate amount of \$60,000,000. This commitment is subject to the review and acceptability of the City's audits and financial statements by the Commission and its finance team, the availability of funds, as well as documents acceptable to both the Commission and the City. The Commission expects to issue bonds to fund loans to the initial borrowers in December 2008.

If you have any questions, please do not hesitate to call me.

Sincerely,



Gary Williams  
Florida Utility Financing Commission

Cc: Mr. Nick Roederer – Morgan Keegan – via email: [nick.roederer@morgankeegan.com](mailto:nick.roederer@morgankeegan.com)  
Ms. Kristen Millard – Morgan Keegan – via email: [kristen.millard@morgankeegan.com](mailto:kristen.millard@morgankeegan.com)  
Ms. Jolinda Herring – Bryant Miller Olive – via email: [jherring@bmlolaw.com](mailto:jherring@bmlolaw.com)  
Ms. Julie Santamaria – RBC Capital Markets – via email: [julie.santamaria@rbc.com](mailto:julie.santamaria@rbc.com)

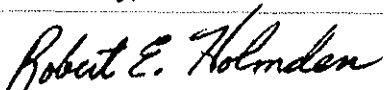
Mr. Michael Smith  
September 3, 2008  
Page Two

Following the formal adoption of the fundable list which elevates these contingency list projects, the City should submit the assistance application to the Department. Funds will then be available to the City upon execution of the agreement. The first installment of these funds is expected to be available on or about December 2011. Actual closing for the Clean Water State Revolving Fund assistance agreement is conditioned upon receipt of executed loan documents in a form satisfactory to the Department. In addition, the Department may require confirmation that information provided through final plans and specifications have not changed nor has the financial position of the sponsor changed adversely. The loan will be closed when construction is substantially complete or at a date mutually agreed to by the Department, and the City.

We appreciate your assistance and look forward to working with you on the Project.

Sincerely,

---



Robert E. Holmden, P.E., Chief  
Bureau of Water Facilities Funding

RH/tb

cc: Clyde Burnett – City of Marathon  
Peter Rosasco – Bishop Rosasco & Co  
Gary Williams – Florida Rural Water Association



# Florida Department of Environmental Protection

Bob Martinez Center  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

Charlie Crist  
Governor

Jeff Kottkamp  
Lt. Governor

Michael W. Sole  
Secretary

September 3, 2008

Mr. Michael C. Smith  
BB&T Governmental Finance  
Florida Sales Officer  
255 S. Orange Avenue, 10th floor  
Orlando, Florida 32801

RE: **Funding Commitment for City of Marathon**  
**WW63706 Collection, Transmission, Treatment & Reuse Facilities (Service Area 5)**  
**SW63707 Stormwater Management Facilities (Service Areas 1 & 5)**

Dear Mr. Smith:

This letter is to confirm funding commitments made by the Department of Environmental Protection's, Bureau of Water Facilities Funding (the "Department") to the City of Marathon (the "City") for the construction of new wastewater and storm water facilities in the City's service area 5. We have given the City written authority to incur costs for the construction of Clean Water State Revolving Fund (CWSRF) projects WW63706 and SW63707 based on the approved facilities plan and plans and specifications. Additionally, the City has submitted all required permits, the site certificate, and all required bid documents.

It has been determined by the Department that conditions for executing the assistance agreements can be reasonably achieved. As such, funds will be obligated for the City by the Department, as they become available. The above referenced projects, WW63706 and SW63707, were added to the contingency portion of the CWSRF priority list on July 9, 2008 in the amounts of \$16,321,000 and \$8,442,000 respectively. These funds will be available upon execution of the loan agreements.

We understand that BB&T expects to make a loan to the City for interim financing and that such loan will be made in accordance with standard terms and conditions stated in the loan agreement for the interim financing. BB&T is permitted to advance construction funds to the in the City for the Project in the amount up to \$10,000,000. These funds have been approved and will be available to the City upon completion of the above referenced project and upon execution of a loan agreement between the City and the Department.

BB&T will require a provision (acceptable to BB&T) be provided in the loan documents in the event that at any time this transaction is determined to be taxable in accordance with the State of Florida Statutes or the Internal Revenue Service Code.

**(4) Financing Documents:**

It shall be the responsibility of the City to retain and compensate counsel to appropriately structure the loan. BB&T shall also require the City to provide an unqualified bond counsel opinion. BB&T and its counsel reserve the right to review and approve all documentation before closing.

**(5) Security:**

The loan shall be secured by the permanent financing proceeds that have been committed in writing to the City by the Florida Department of Environmental Protection.

In addition, if for any reason the Florida Department of Environmental Protection fails to provide the permanent financing, the City will use reasonable efforts to obtain other temporary or permanent financing, or to repay the loan from any other legally available non-ad valorem funds of the City on the loan maturity date.

\* \* \* \* \*

BB&T shall have the right to cancel this offer by notifying the City of its election to do so (whether or not this offer has previously been accepted by the City) if at any time prior to the closing there is a material adverse change in the City's financial condition, if we discover adverse circumstances of which we are currently unaware, if we are unable to agree on acceptable documentation with the City or if there is a change in law (or proposed change in law) that changes the economic effect of this financing to BB&T. We reserve the right to negotiate and/or terminate our interest in this transaction should we be the successful proposer.

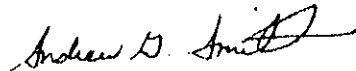
Please call me at (803) 251-1328 with your questions and comments or contact Michael C. Smith in our Orlando, FL office at:

255 South Orange Avenue  
Orlando, FL 32801  
Phone: 407.241.3570  
Fax: 877.320.4453  
Email: [mesmith@bbandt.com](mailto:mesmith@bbandt.com)

We look forward to hearing from you.

Sincerely,

BRANCH BANKING AND TRUST COMPANY



Andrew G. Smith  
Senior Vice President





P.O. Box 714  
Columbia, S.C. 29202  
(803) 251-1328  
Fax (803) 251-1329

August 19, 2008  
(Revised September 11, 2008)

Ms. Julie Santamaria  
Director  
RBC Capital Markets  
100 2<sup>nd</sup> Avenue South, Suite 800  
St. Petersburg, Florida 33701

Dear Ms. Santamaria:

Branch Banking and Trust Company ("BB&T") is pleased to offer this proposal for the financing requested by the City of Marathon, FL ("City").

**(1) Project:** Interim financing to fund a portion of the City's Wastewater and Stormwater improvements.

**(2) Amount To Be Financed:** Not to exceed \$10,000,000.00

**(3) Interest Rates, Financing Terms and Corresponding Payments:**

<u>Maturity Date</u>	<u>Rate</u>
January 1, 2012	3.31 %

Interest payments shall be due semi-annually and principal payments shall be due in one bullet payment at maturity of the loan, January 1, 2012. An amortization schedule must be mutually agreed upon between the City and BB&T.

The interest rate stated above is valid for a closing not later than 45 days after today (the original date of proposal, August 19, 2008). Closing of the financing is contingent upon completing documentation acceptable to BB&T and its counsel.

Remuneration for our legal review expenses and underwriting for this financing transaction shall be \$3,300. All applicable costs of counsel for the City and any other costs shall be the City's responsibility and separately payable by the City.

The financing documents shall allow for the prepayment of the principal balance in part on any scheduled payment date and in whole at anytime with 15 days notice without prepayment penalty.

The stated interest rate assumes that the City expects to borrow less than \$10,000,000 in calendar year 2008 and that the financing shall comply with the IRS Code Sections 141, 148, 149(c) and Section 265(b)(3). The loan shall comply with all Florida State statutes. BB&T reserves the right to terminate its interest in this bid or to negotiate a mutually acceptable rate if the financing is not a qualified tax-exempt financing.



## CITY OF MARATHON, FLORIDA

---

9805 Overseas Highway, Marathon, Florida 33050  
Phone: (305) 743-0033 Fax: (305) 743-3667

Thank you in advance for your review of these materials. Should you have any questions about the proposed amendment, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "George Garrett".

George Garrett  
Planning Director



## CITY OF MARATHON, FLORIDA

---

9805 Overseas Highway, Marathon, Florida 33050  
Phone: (305) 743-0033 Fax: (305) 743-3667

Monroe County  
Growth Management Division  
Attn: Andrew Trivette  
2798 Overseas Highway  
Marathon, Florida 33050

Department of Environmental Protection (DEP)  
Attn: Lindy McDowell, Environmental Manager  
Office of Intergovernmental Programs  
3900 Commonwealth Boulevard, Mail Station 47  
Tallahassee, FL 32399-3000

Department of Transportation (FDOT), District Six  
Attn: Karen McGuire, Office of Planning and Public Transportation  
1000 NW 111 Avenue  
Miami, FL 33172

---

South Florida Water Management District (SFWMD)  
Attn: P.K. Sharma, Lead Planner  
Post Office Box 24680  
West Palm Beach, Florida 33416-4680

Department of State (DOS)  
Attn: Susan Harp, Historic Preservation Planner  
Bureau of Historic Preservation  
500 South Bronough Street  
Tallahassee, Florida 32399-0250

Florida Department of Education  
Attn: Tracy D. Suber  
Office of Educational Facilities  
325 W. Gaines Street  
Tallahassee, Florida 32399-0400

The Department should publish the Notice of Intent in the Key West Citizen. Questions regarding these amendments should be addressed to:

George Garrett, Planning Director  
9805 Overseas Highway  
Marathon, Florida 33050  
Phone: (305) 289-4111  
Fax: (305) 743-3667  
Email: [garrettg@ci.marathon.fl.us](mailto:garrettg@ci.marathon.fl.us)



## CITY OF MARATHON, FLORIDA

9805 Overseas Highway, Marathon, Florida 33050  
Phone: (305) 743-0033 Fax: (305) 743-3667

MAR 27 2009

March 19, 2009

Ray Eubanks, Administrator Plan Review & Processing  
Division of Community Planning  
Florida Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

Subject: City of Marathon Comprehensive Plan – Five-Year Schedule of Capital Improvements Ordinance 2008-31

Dear Mr. Eubanks:

Pursuant to Chapter 163 and Florida Statutes 380.05(6) and (11), the City of Marathon hereby transmits Ordinance 2008-31 amending Table 6-1 "Capital Improvements Program" of the City of Marathon Comprehensive Plan for your review. This Ordinance was adopted by City Council on March 10, 2009.

This amendment supercedes City Ordinance 2007-034 and provides a more up to date adopted five-year capital budget. This amendment further responds to the issues identified in the Department's Statement of Intent to Find Comprehensive Plan Amendment Not In Compliance (Docket No. 07-CIE1-NOI-4406-(A)-(N). The City's Capital Budget is fully funded for wastewater and stormwater within the minimum period of three (3) years required under Chapter 163. In addition to providing Ordinance 2008-31 I am including documentation of funding commitments for both wastewater and stormwater improvements as provided by several relevant funding sources.

Further, in continuing deliberations concerning the future of improvements to the Boot Key Bridge, a previous budget line item, the City Council has determined that they will not fund any improvements to the bridge.

Pursuant to Section 163.180(6), F.S. and Rule 9J-11.011(8)(b), the City of Marathon's roadways operate below 100% of the maximum service volume and therefore does not track or maintain a record of de minimis impacts to public facilities with adopted level of service (LOS) standards.

Copies of the Plan amendment were sent to the following agencies:

South Florida Regional Planning Council (SFRPC)  
Attn: Terry Manning, Senior Planner  
3440 Hollywood Boulevard, Suite 140  
Hollywood, Florida 33021