

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2010-122**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT WITH THE FLORIDA KEYS AQUEDUCT AUTHORITY FOR THE DESIGN, PREPARATION OF A REQUEST FOR PROPOSALS AND THE OVERSEEING OF THE CONSTRUCTION AND INSTALLATION OF FIRE HYDRANTS FOR THE CITY OF MARATHON; AUTHORIZING THE MANAGER TO EXECUTE THE AGREEMENT AND EXPEND BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City and the Keys Aqueduct Authority (the "FKAA") recognize that fire hydrant water flow improvements will better ensure the protection of the public health, welfare and safety; and

**WHEREAS**, the FKAA has qualified staff to design, prepare Request for Proposals and oversee the construction and installation of fire hydrants for the City, and

**WHEREAS**, the City and the FKAA are authorized to enter into Interlocal Agreements pursuant to Section 163.01, *Florida Statutes*, which permits local government units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage.

**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 Interlocal Agreement between the City and the FKAA, a copy of which is attached hereto as Exhibit "A", for the design, preparation of a Request for Proposals, and the overseeing of the construction and installation of fire hydrants for the City; together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is hereby approved. The City Manager is authorized to execute the Interlocal Agreement on behalf of the City and expend budgeted funds.

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

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 23<sup>rd</sup> DAY OF NOVEMBER, 2010.**

**THE CITY OF MARATHON, FLORIDA**



**Ginger Snead, Mayor**

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

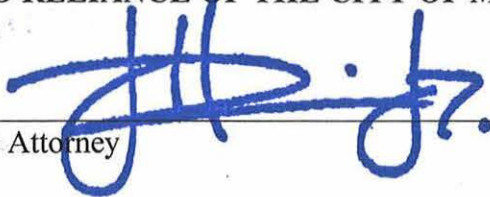
**ATTEST:**



Diane Clavier, City Clerk

(City Seal)

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



City Attorney

**INTERLOCAL AGREEMENT**

**BETWEEN**

**THE FLORIDA KEYS AQUEDUCT AUTHORITY,**

**AND**

**THE CITY OF MARATHON, FLORIDA**

**FOR THE DESIGN AND INSTALLATION OF FIRE HYDRANTS**

October 28, 2010

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## **INTERLOCAL AGREEMENT**

**THIS INTERLOCAL AGREEMENT** is entered into on October 28, 2010 by and between the Florida Keys Aqueduct Authority (the “FKAA”), an independent special district existing as a public agency under the laws of the State of Florida, and the City of Marathon, Florida (the “City”), a Florida municipal corporation.

**WHEREAS**, the FKAA was recreated in 1976 by the Legislature of the State of Florida, Chapter 76-441 Laws of Florida, said law having been amended from time to time, for purposes of obtaining, supplying and distributing an adequate supply of water to the Florida Keys and to purchase, construct, acquire, operate, manage and control wastewater systems; and

**WHEREAS**, the City was formed in 1999 by the Legislature of the State of Florida pursuant to Chapter 99-427 Laws of Florida; and

**WHEREAS**, the City and the FKAA are authorized to enter into this Agreement pursuant to Section 163.01, Florida Statutes, as amended, which permits local government units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage; and

**WHEREAS, the City** and the FKAA recognize that fire flow improvements will better ensure the protection of the public health, welfare and safety; and

**WHEREAS**, the FKAA has qualified staff to design, prepare Request for Proposals and oversee the construction and installation of fire hydrants for the City, and

**WHEREAS**, the City has funding available to construct additional fire hydrants, and

**WHEREAS**, the parties have the legal authority to enter into this Agreement and to implement its provisions;

**NOW, THEREFORE**, in consideration of the mutual covenants, representations and promises set forth in this Agreement and for other good and valuable consideration each to the other, receipt of which is hereby acknowledged by each party, the FKAA and the City hereby agree, stipulate, and covenant as follows:

**ARTICLE I**  
**DEFINITIONS**

**SECTION 1.01**      **WORDS AND TERMS.** Words and terms used herein shall have the meanings set forth below:

“Agreement” means this Interlocal Agreement.

“FKAA” means the Florida Keys Aqueduct Authority.

“Authorized Representative” means the official of the FKAA or the City authorized by ordinance or resolution to sign documents of the nature identified in this Agreement.

“City” means the City of Marathon, Florida.

“Project” means the design and installation of fire hydrants in the City of Marathon.

**SECTION 1.02**      **CORRELATIVE WORDS.** Words of the masculine gender shall be understood to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural and the word “person” shall include corporations and associations, including public bodies, as well as natural persons.

**ARTICLE II**  
**INTERLOCAL AGREEMENT**

**SECTION 2.01**      **PURPOSE OF INTERLOCAL AGREEMENT.** The purpose of this Agreement is to establish procedures whereby the FKAA utilizes its staff to design, award and oversee the construction and installation of fire hydrants for the City, which shall, in turn, provide the necessary funding for the Project.

**SECTION 2.02**      **TERM OF INTERLOCAL AGREEMENT.** The term of this Agreement shall be for a period of one (1) year (the “Term”), or until such time as the Project, as defined in the Scope of Work, has reached final completion.

**SECTION 2.03**      **TERMINATION.**

(1) Either party may terminate this Agreement without cause upon thirty (30) day written notice to the other party. Upon notice by the City of intent to terminate the agreement, the FKAA shall not initiate any additional fire hydrants installations. However the cancellation

of this Agreement shall not affect the responsibility of the City for payment of outstanding invoices or the completion of any work in progress.

**SECTION 2.04** SCOPE OF WORK. The FKAA will perform the following services for the City:

(1) The FKAA will prepare engineered drawings, prepare and publish an Invitation to Bid for the construction and installation of fire hydrants, will award a contract after receipt of bids and authorization from the City to proceed with the Project, and will provide the inspection and construction management services for the Project. Prior to the preparation of drawings and the Invitation to Bid, the City shall provide to the FKAA the exact number and location of the fire hydrants to be included in this Project. Prior to entering into a contract for the construction and installation of the fire hydrants, the FKAA shall present the Project budget to the City on a timely basis for approval by the City Manager or the City Council, as may be required by the City's purchasing policies.

(2) The parties hereto acknowledge that the Invitation to Bid described above may also include fire hydrants to be installed in the City of Key Colony Beach ("KCB") pursuant to a separate interlocal agreement between KCB and the FKAA. In such an instance, KCB, and not the City, would be responsible for providing the funding to the FKAA for any hydrants installed in KCB.

**SECTION 2.05** CHARGES FOR SERVICE. The City will provide the funding for the Project, which shall include an administration fee of five (5) percent to be paid to the FKAA for its services. The exact budget for the Project will be determined at the time the City approves the contract pursuant to Section 2.04(1) above.

### **ARTICLE III**

#### **WARRANTIES, REPRESENTATIONS AND COVENANTS**

**SECTION 3.01** BY FKAA. The FKAA warrants, represents, and covenants that:

(1) The FKAA has full power and FKAA to enter into this Agreement and to comply with the provisions hereof.



(2) The FKAA currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement.

(3) There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, before any court or public body, pending or, to the best of the FKAA's knowledge, threatened, which seeks to restrain or enjoin the FKAA from entering into or complying with this Agreement.

**SECTION 3.02** BY CITY. The City warrants, represents, and covenants that:

(1) The City has full power and FKAA to enter into this Agreement and to comply with the provisions hereof.

(2) The City currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement.

(3) There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, before any court or public body, pending or, to the best of the City's knowledge, threatened, which seeks to restrain or enjoin the City from entering into or complying with this Agreement.

(4) The City Council has budgeted adequate funds in Fiscal Year 2010-2011 to fund the Project and has full legal authority to budget additional funds if necessary.

**ARTICLE IV**

**INSURANCE AND HOLD HARMLESS**

**SECTION 4.01** The parties to this agreement stipulate that each is a state governmental agency as defined by Florida Statutes and represents to the other that it has purchased suitable Public Liability, Vehicle Liability, and Workers' Compensation insurance, or is self-insured, in amounts adequate to respond to any and all claims under federal or state actions for civil rights violations, which are not limited by Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes Section

768.28 and Chapter 440, arising out of the activities governed by this agreement.

**SECTION 4.02** To the extent allowed by law, each party shall be responsible for any acts, or omissions, of negligence on the part of its employees, agents, contractors and subcontractors and shall defend, indemnify and hold the other party, its officers and employees, agents and contractors, harmless from all claims demands, causes of action, losses, costs and expenses of whatever type – including investigation and witness costs and expenses and attorneys’ fees and costs – that arise out of or are attributable to arising out of such actions or omissions. The purchase of the insurance does not release or vitiate either party’s obligations under this paragraph.

**SECTION 4.03** Notwithstanding the provisions of Sec. 286.28, Florida Statutes, the participation of the City and the FKAA in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the City or FKAA be required to contain any provision for waiver.

## **ARTICLE V**

### **GENERAL PROVISIONS**

**SECTION 5.01** **ASSIGNMENT OF RIGHTS UNDER AGREEMENT.** Neither the FKAA nor the City shall have the power to assign rights or obligations created by this Agreement to any third party without the prior written consent of the other party.

**SECTION 5.02** **AMENDMENT OF AGREEMENT.** This Agreement may be amended only in a writing signed by an Authorized Representative of each of the parties hereto.

**SECTION 5.03** **SEVERABILITY.** If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms,

covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The FKAA and City agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

**SECTION 5.04** ATTORNEY'S FEES AND COSTS. The FKAA and City agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, court costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the Circuit Court of Monroe County.

**SECTION 5.05** ADJUDICATION OF DISPUTES OR DISAGREEMENTS. The parties agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within thirty (30) days after the first meet and confer session, the issue or issues shall be discussed at a joint public meeting of the governing bodies of the parties. If the issue or issues are still not resolved to the satisfaction of both parties, then either shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law; provided, however, the unresolved issue or issues shall be submitted to mediation prior to the institution of any administrative or legal proceeding.

**SECTION 5.06** NONDISCRIMINATION. The parties agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race,

color or national origin; (2) Section 504 of the Rehabilitation Act of 1973, as amended (20 U.S.C. s. 794), which prohibits discrimination on the basis of handicap; (3) The Age Discrimination Act of 1975, as amended (42 U.S.C. ss. 6101-6107), which prohibits discrimination on the basis of age; (4) The Drug Abuse Office And Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (5) The Comprehensive Alcohol Abuse And Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (6) The Public Health Service Act of 1912, ss. 523 and 527, (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (7) The Americans With Disabilities Act of 1990 (42 U.S.C. s. 1201 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; (8) The Florida Civil Rights Act of 1992, (Chapter 760, Florida Statutes, and Section 509.092, Florida Statutes), as may be amended from time to time, relating to nondiscrimination; and (9) any other nondiscrimination provisions in any federal or state statutes or local ordinances which may apply to the parties to, or the subject matter of, this Agreement.

**SECTION 5.07** COOPERATION. In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, the parties agree to participate, to the extent reasonably required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. The parties specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement or any Attachment or Addendum to this Agreement.

**SECTION 5.08** COVENANT OF NO INTEREST. The Parties covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

**SECTION 5.09** CODE OF ETHICS. The parties agree that their officers and employees recognize and will be required to comply with the standards of conduct relating to public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but

not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

**SECTION 5.10 NO SOLICITATION/PAYMENT.** The Parties warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the each party agrees that the other party shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

**SECTION 5.11 PUBLIC ACCESS TO RECORDS.** The parties shall allow and permit members of the public reasonable access to, and inspection of, all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the parties in conjunction with this Agreement.

**SECTION 5.12 NON-WAIVER OF IMMUNITY.** Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the parties in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by a party be required to contain any provision for waiver.

**SECTION 5.13 LEGAL OBLIGATIONS; NON-DELEGATION OF DUTIES.** This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any other participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of either party, except to the extent permitted by law.

**SECTION 5.14** NON-RELIANCE BY NON-PARTIES. No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the parties agree that neither the FKAA nor the City or any agent, officer, or employee of each shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

**SECTION 5.15** NO PERSONAL LIABILITY. No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of a party in his or her individual capacity, and no member, officer, agent or employee of a party shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

**SECTION 5.16** SECTION HEADINGS. Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

**SECTION 5.17** GOVERNING LAW; VENUE. This Agreement shall be governed by and construed in accordance with the Laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the parties agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.

## **ARTICLE VI**

### **EXECUTION OF AGREEMENT**

**SECTION 6.01** COUNTERPARTS. This Agreement shall be executed in three or more counterparts, any of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

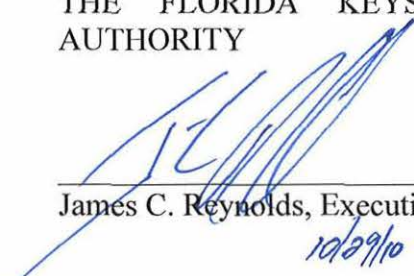
**SECTION 6.02** SUPERSEDES OTHER AGREEMENTS. The parties agree that this Agreement represents their mutual agreement and replaces and supersedes any prior agreements, understandings, or communications on the subject of the Agreement, whether written or oral. However, this Agreement is not intended to replace and supersede the Interlocal Agreement entitled “ Agreement Between the City of Marathon And the Florida Keys Aqueduct Authority For Installation And Maintenance Of Fire Hydrants” approved by the FKAA Board of Directors September 27, 2007.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on their behalf by the FKAA Executive Director and the City Mayor.

**FKAA Board Approved: October 28, 2010**

(SEAL)


THE FLORIDA KEYS AQUEDUCT  
AUTHORITY

  
\_\_\_\_\_  
James C. Reynolds, Executive Director  
10/29/10

ATTEST:


  
\_\_\_\_\_  
Clerk

THE CITY OF MARATHON, FLORIDA

  
\_\_\_\_\_  
Mayor

(CITY SEAL)

ATTEST:

  
\_\_\_\_\_  
Diane Clavier  
City Clerk

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

  
\_\_\_\_\_  
City Attorney