

CITY OF MARATHON, FLORIDA
RESOLUTION 2014-50

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING SETTLEMENT AGREEMENT FOR FRDAP PROJECT GRANT AGREEMENT NO. F5252- PROJECT NO. F50252 IN THE AMOUNT OF \$200,000 BETWEEN THE CITY OF MARATHON AND THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION; AUTHORIZING THE ACTING CITY MANAGER TO EXECUTE THE SETTLEMENT AGREEMENT; AUTHORIZING THE FINANCE DIRECTOR TO EXPEND FUNDS FOR THE SETTLEMENT IN THE AMOUNT OF \$200,000; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on July 21, 2004, the City received a Florida Recreational Development Assistance Program (FRDAP) project grant agreement in the amount of \$200,000 toward the land purchase of a parcel now known as Community Park Phase 3 in the total purchase amount of \$400,000; and

WHEREAS, the grant required that the parcel be used for an outdoor recreational purpose and specifically for a swimming pool complex; and

WHEREAS, due to the revised boundary “footprint” of the site as a result of installation of Wastewater Treatment Plant 3, the possible future need to expand the plant and not proceed with an outdoor recreational amenity on the site, and the City is not able to acquire a conversion property to replace the parcel used for the plant; and

WHEREAS, the City has determined that it is in the best interest of the City to enter into Settlement Agreement with the Florida Department of Environmental Protection, and pay back the grant principal for the land purchase in the amount of \$200,000; and

WHEREAS, the Florida Department of Environmental Protection, has complied with the City’s request to waive the interest penalties in the amount of \$64,182.61 and therefore the City will only be responsible to pay back the \$200,000 principal.

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

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

Section 2. The Council hereby approves the Settlement Agreement between the City and the Florida Department of Environmental Protection that is attached as Exhibit "A" hereto. The Acting City Manager is authorized to execute said Agreement on behalf of the City and to issue a refund to the State of the grant principal in the amount of \$200,000.

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 13th day of May, 2014.

THE CITY OF MARATHON, FLORIDA



Dick Ramsay, Mayor

AYES: Bartus, Bull, Senmartin, Keating, Ramsay
NOES: None
ABSENT: None
ABSTAIN: None

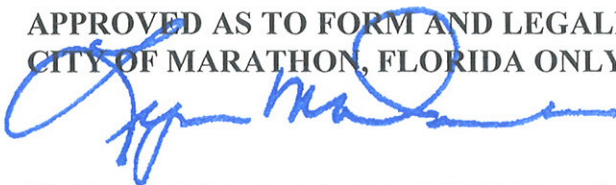
ATTEST:



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

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,
OFFICE OF OPERATIONS
Land and Water Recreation Grants,
As staff to the Board of Trustees of the
Internal Improvement Trust Fund of the
State of Florida, Trustees of the
Land Acquisition Trust Fund

OGC No. 14-0171

In re: CITY OF MARATHON, Grantee of the
Florida Recreation Development Assistance Program,
PROJECT AGREEMENT (FY 2004-2005)
DEP Agreement F50252

_____ /

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the Florida Department of Environmental Protection ("Department") and the City of Marathon ("Grantee") to resolve certain matters of non-compliance between the Department and Grantee.

WHEREAS, the Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources, and to administer certain grant programs including the Florida Recreation Development Assistance Program ("FRDAP"), pursuant to Section 375.075, F.S., and certain rules within Chapter 62D-5, F.A.C., with jurisdiction over matters addressed herein;

WHEREAS, Grantee is a local government in The Florida Keys, Monroe County, Florida, which acquired title to a parcel of real property for a Department approved outdoor recreation project using \$200,000.00 from the Land Acquisition Trust Fund in State Fiscal Year 2004-2005 (the "Grant");

WHEREAS, after a competitive-selection process, Grantee entered into Project Agreement Number F50252 on July 21, 2004 (the "Agreement"), in order to acquire land and construct improvements thereon consisting of an aquatic center including a public pool, but has been unable to fully realize the project due to intervening circumstances, and would like to resolve the non-compliance with certain terms of the Agreement;

WHEREAS, Chapter 99-395, Laws of Florida, mandated the construction of sewer projects throughout The Florida Keys which required Grantee to design and construct a wastewater treatment plant by July 1, 2010, and due to the shortage of land in the city, Grantee had to use part of the real property intended for the aquatic center;

WHEREAS, the Department determined, in part, Grantee's compliance with Chapter 99-395, Laws of Florida, and to facilitate the construction of the mandated wastewater treatment plant and infrastructure, agreed to allow a conversion by the Grantee pursuant to Rule 62D-5.059, F.A.C., because Grantee planned to substitute an adjacent parcel for the original project parcel;

WHEREAS, after the wastewater treatment facility was fully-operational, it became apparent that that industrial use was entirely incompatible with the use of the land as a public swimming pool, and the Grantee determined that it was not feasible to move forward nor expend any further public funds for the aquatic center project;

WHEREAS, paragraph 24 of the Agreement provides that the Department shall have the right to demand a refund, either in whole or in part, of the FRDAP funds provided to Grantee for any non-compliance with the material terms of the project, and that Grantee shall refund and shall forthwith pay the Department the amount of money demand by the Department, with interest thereon, until such refund is paid in full; and

WHEREAS, the Department has requested repayment of \$200,000.00 from Grantee and the Department agrees to waive the estimated interest due of \$64,182.61 because Grantee performed in good faith until the above-described intervening circumstances created an impossibility of performance of the material terms of the Agreement, and the paramount environmental exigencies of sewers and wastewater treatment, as well as the legislative mandate, prevented Grantee from completing the intended project under the terms of the Agreement.

NOW THEREFORE, having reached an understanding to satisfactorily resolve this matter, the Department and Grantee mutually agree that,

The Grantee shall pay, within thirty (30) days, the sum of Two-Hundred Thousand and No/100 Dollars (\$200,000.00), to the "Florida Department of Environmental Protection" and shall include on the check the notations: "Land Acquisition Trust Fund, FRDAP Project Number F50252" and "OGC No. 14-0171"; and


In exchange for prompt payment, the Department will accept Two-Hundred Thousand and No/100 Dollars (\$200,000.00), as payment in full, thereby waiving any and all default interest accrued, and hereby releases any and all claim thereto; however, reserving the right to make further demand if such refund amount is not promptly paid


within thirty (30) days of execution of this Settlement Agreement by the Department, and further reserving all rights to any remedies available under Florida law.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed on the day and year last written below.

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

CITY OF MARATHON

By: 
Katy Fenton
Deputy Secretary
Land and Recreation Grants

By: 
Michael H. Puto
Acting City Manager

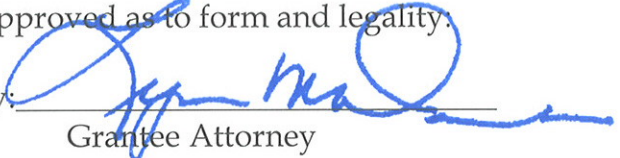
5-15-14
DATE

4/24/14
DATE

Approved as to form and legality:

Approved as to form and legality:

By: 
Agency Attorney

By: 
Grantee Attorney

Copy furnished to:
Florida Department of Environmental Protection
Office of Operations
Attention: A. Diane Langston
Operations Management Consultant Manager
Land and Recreation Grants, Mail Station 103
3900 Commonwealth Blvd, Tallahassee, FL 32399-3000