

RESOLUTION NO. 00-04-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA (the "CITY"), APPROVING A TRI-PARTY AGREEMENT WITH THE STATE DEPARTMENT OF COMMUNITY AFFAIRS (the "DEPARTMENT") AND MONROE COUNTY, FLORIDA (the "COUNTY"), PERTAINING TO RESIDENTIAL DEVELOPMENT, AUTHORIZING THE MAYOR TO EXECUTE THE TRI-PARTY AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City and County have been declared an Area of Critical State Concern pursuant to Sections 380.05 and 380.0552, Florida Statutes; and

WHEREAS, the County has adopted a comprehensive land use plan and land development regulations, approved by the State as required by law; and

WHEREAS, pursuant to Chapter 99-427, Laws of Florida, the County comprehensive plan and land development regulations are the comprehensive plan and land development regulations of the City; and

WHEREAS, the County is authorized under its comprehensive plan and land development regulations to issue up to one hundred eighty-two (182) new residential ROGO awards per year; and

WHEREAS, a certain number of the new residential ROGO awards allocated annually by the County represent a pro-rata number of new residential development within the boundaries of the City; and

WHEREAS, the City, Department, and County agree that twenty-four (24) new residential ROGO awards represents a good faith estimate of the City's pro-rated number of awards it can issue per year for new residential development within the boundaries of the City.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, AS FOLLOWS:

Section 1. That the Tri-Party Agreement between the City, the Department and the County (the "Agreement"), pertaining to residential development, attached as Exhibit "A" is approved.

Section 2. The Mayor is authorized to execute the Agreement on behalf of the City.

Section 3. That this Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 25 day of April, 2000.



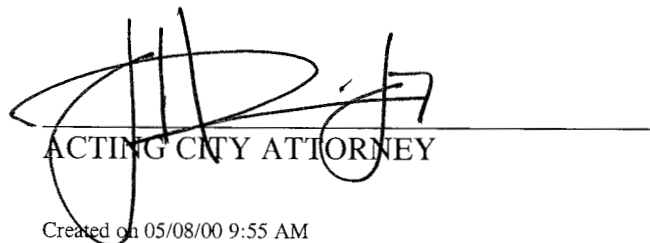
ROBERT MILLER, MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:



ACTING CITY ATTORNEY

**TRI-PARTY AGREEMENT BETWEEN
THE CITY OF MARATHON, FLORIDA,
STATE OF FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS
AND MONROE COUNTY, FLORIDA**

This Tri-Party Agreement ("Agreement") is being entered into by and between the City of Marathon, Florida ("City"), the State of Florida Department of Community Affairs ("Department") and Monroe County, Florida ("County") to allocate the available residential rate of growth ordinance ("ROGO") units between the City and the County as required by the provisions of Chapter 380, Florida Statutes, and the City and County's Comprehensive Plans and Land Development Regulations.

W I T N E S S E T H

WHEREAS, the City and County have been declared an Area of Critical State Concern pursuant to Sections 380.05 and 380.0552, Florida Statutes; and

WHEREAS, the County has adopted a Comprehensive Plan and Land Development Regulations, approved by the State as required by law; and

WHEREAS, pursuant to Chapter 99-427, Laws of Florida, the Comprehensive Plan and Land Development Regulations of Monroe County, as they existed on November 30, 2000, are the transitional Comprehensive Plan and Land Development Regulations of the City; and

WHEREAS, the County is authorized under its Comprehensive Plan and Land Development Regulations to issue up to one-hundred eighty-two (182) new residential ROGO permits per year; and

WHEREAS, a certain number of the new residential ROGO allocation awards allocated annually by the County represent a prorata number of new residential development within the boundaries of the City; and

WHEREAS, the City, Department, and County agree that twenty-four (24) new residential ROGO allocation awards per year through July 2002 represents a good faith estimate of the City's prorated number of permits it can issue per year for new residential development within the boundaries of the City; and

WHEREAS, the City, Department, and County agree that the number of residential ROGO allocation awards that should be distributed between the County and the various cities, including the City, remains to be determined, as recognized by Policy 101.2.5 of the County Comprehensive Plan, and that the twenty-four (24) residential ROGO allocation awards (on an annual basis) distributed to the City by this Agreement is an interim measure; and

WHEREAS, the City and County are required to issue development orders only in conformity with their approved Comprehensive Plans and Land Development Regulations; and

WHEREAS, the Department is the state land planning agency with the power and duty to exercise general supervision of Part I of Chapter 380, and Part II of Chapter 163, Florida Statutes, and to enter into agreements pursuant to Section 380.032(3), Florida Statutes, to effectuate the provisions and purposes of the acts and any rules promulgated thereunder; and

WHEREAS, the Department is authorized by section 380.07, Florida Statutes, to appeal any City or County development order to the Florida Land and Water Adjudicatory Commission if the development order does not comply with the Comprehensive Plan and Land Development Regulations of the City or County, or the Principles for Guiding Development.

NOW, THEREFORE, the City, County and Department do mutually agree as follows:

1. Allocations. Twenty-four (24) residential ROGO allocation awards per year shall be allocated to the City during the term of the Agreement for distribution in accordance with the permit allocation system in the City Comprehensive Plan and Land Development Regulations. These allocations come from the existing allocations of the Middle Keys sub-area. Nineteen (19) of the yearly allocated residential ROGO allocation awards are for market rate, and five (5) are for affordable housing. The County agrees with and has no objection with this allocation. Furthermore, the County specifically acknowledges and recognizes that based upon this Agreement, the total number of new residential ROGO allocation awards allocated per year from the County's Middle Keys sub-area (26 market rate and 7 affordable) will decrease by twenty-four (24) (19 market rate and 5 affordable) during the term of this Agreement.

2. Authority to Issue. The City is authorized to make twenty-four (24) residential ROGO allocation awards per year during the term of this Agreement, commencing with the July - October 1999 through November - January 2000 allocation quarters for ROGO year eight (8), and every quarter thereafter in accordance with the permit allocation system in the City Comprehensive Plan and Land Development Regulations. The Department specifically

acknowledges and recognizes that the City held its first Planning Commission meeting March 2, 2000, for the purpose of making available residential ROGO allocation awards for the first two quarters of ROGO year eight (8). As a result, the number of allocations available for award by the City in the remainder of ROGO year eight (8) is nine (9) market rate and two (2) affordable housing. The City will be the local government agency, which approves and accepts any lot dedications or deed restrictions associated with the City's ROGO allocation process.

3. Department of Health MOU. The City specifically acknowledges and recognizes that a ROGO allocation award does not authorize construction, and that subsequent to receipt of a finalized ROGO allocation award, the applicant must receive a building permit before construction (said building permit must be approved by the DCA pursuant to Chapter 9J-1, F.A.C) may occur. The City also acknowledges and recognizes that a ROGO allocation award cannot be made or building permit cannot be issued without a nutrient credit as required by Policy 101.2.13 of the City Comprehensive Plan, and that all building permits must otherwise comply with the City Comprehensive Plan and Land Development Regulations.

The City acknowledges and recognizes that the residential ROGO allocation awards distributed by this Agreement cannot be awarded until the City enters into a Memorandum of Understanding with the State Department of Health, the State Department of Environmental Protection, and DCA, which satisfies the requirements of Policy 101.2.13 of the City Comprehensive Plan (as described in Task E of Year One of the Work Program).

4. Comprehensive Plan Amendments. The City, Department and County acknowledge and recognize this Agreement is temporary in nature, and the City must adopt its own Comprehensive Plan; and the County must amend its Comprehensive Plan to formalize the actions authorized herein. The City shall ensure the actions required herein are completed no later December 31, 2003. The County shall ensure the actions required herein are completed as soon as practical. All of the foregoing shall be completed in accordance with the provisions of Chapter 163, and Chapter 380, Florida Statutes.

5. Termination of Agreement. This Agreement shall terminate on the earliest date of: 1) December 31, 2003; or 2) the date the City's new Comprehensive Plan and the amendment to the County's Comprehensive Plan, as set forth above, become effective pursuant to sections 163.3189(2), 380.05(6) & (10), and 380.0552(9), Florida Statutes.

6. Notices. All notices must be in writing and addressed as follows (or to any other address which either party may designate by notice):

If to City: Robert Miller
Mayor
City of Marathon
Post Office Box 500430
Marathon, Florida 33050

With a copy to: John R. Herin, Jr., Esq./Nina L. Boniske, Esq.
City Attorney
Weiss Serota Helfman Pastoriza & Guedes, P.A.
2665 South Bayshore Drive, Suite 420
Miami, Florida 33133

If to Department: Growth Management Administrator
Department of Community Affairs
2555 Shumard Oak Boulevard

Tallahassee, Florida 32399-2100

With a copy to:

DCA Keys Field Office
Marathon Regional Service Office
2796 Overseas Highway, Suite 212
Marathon, Florida 33050

If to County: Mayor
Monroe County Board of County Commissioners
500 Whitehead Street
Key West, Florida 33040

With a copy to: Director of Growth Management
2798 Overseas Highway
Suite 400
Marathon, Florida 33050

Any notice shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered; or sent by overnight delivery service.

7. Miscellaneous.

a. If any term or provision of this Agreement shall be invalid or unenforceable to any extent, the remaining terms and provisions shall not be affected thereby; and each remaining term and provision shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms and provisions would prevent the accomplishment of the original intent of the agreement between the parties.

b. Each party represents and warrants to the other that the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate or other organizational action, as required.

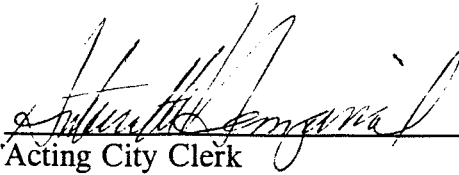
8. Effective Date. This Agreement shall become effective upon execution by all of the parties.

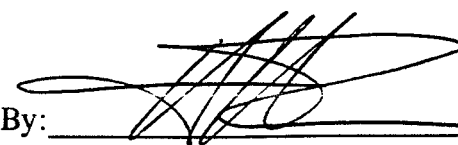
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IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:


CITY OF MARATHON


Acting City Clerk

By: 
Robert Miller, Mayor

Date: 5-10-00

Approved as to form and sufficiency:

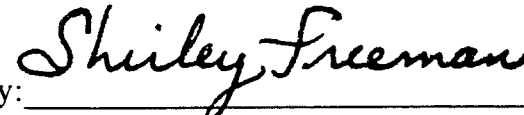

City Attorney



ATTEST: DANNY L. KOLHAGE, Clerk

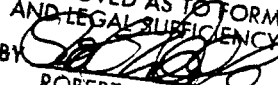

Clerk/Deputy Clerk

BOARD OF COUNTY
COMMISSIONERS OF MONROE
COUNTY, FLORIDA

By: 
Shirley Freeman

Date: MAY 18, 2000

Approved as to form and sufficiency:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
BY: 
ROBERT N. WOLFE
DATE 6-1-00

STATE OF FLORIDA DEPARTMENT
OF COMMUNITY AFFAIRS

By: 

Steven M. Seibert, Secretary

Date: June 19, 2000

Approved as to form and sufficiency:


Assistant General Counsel

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