

ORDINANCE NO. 377-90

EMERGENCY ORDINANCE AUTHORIZING AMENDMENT OF INTERLOCAL AGREEMENT WITH METROPOLITAN DADE COUNTY (JULY 21, 1987) AS SETFORTH HEREIN; AUTHORIZING THE TOWN TO BORROW ONE MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$1,700,000.00) FROM METROPOLITAN DADE COUNTY, TO BE REPAYED WITHIN TWELVE (12) MONTHS, OR ALTERNATIVELY FROM THE PROCEEDS OF ASSESSMENTS, CHARGES, FEES OR RATES FROM SPECIALLY BENEFITED PROPERTIES OVER A TERM OF TWENTY (20) YEARS AT AN INTEREST RATE OF EIGHT (8%) PERCENT PER ANNUM; THE DECLARATION OF EMERGENCY; EFFECTIVE DATE.

WHEREAS, unique and unanticipated conditions have required additional construction costs and have increased the Sanitary Sewerage Project cost by \$1,700,000.00, and

WHEREAS, it is necessary and proper for the Town to incur the aforementioned additional costs to complete the Project; and

WHEREAS, the Town of Golden Beach has entered into an Interlocal Agreement dated July 21, 1987 with Metropolitan Dade County providing for the administration of the project; and

WHEREAS, the Dade County, Florida Roads Company and the Town of Golden Beach have negotiated Project change orders, numbers 2, 3 and 4 relating to the completion of the Project in the approximate amount of \$1,700,000.00; and

WHEREAS, it is necessary to formally request a loan from Dade County in order to provide sufficient funds for the payment of change orders 2, 3 and 4 for the completion of the project; and

WHEREAS, Dade County and the Town of Golden Beach have entered into, the attached agreement providing for repayment of said loan in less than twelve (12) months, or alternative within twenty (20) years at eight (8%) percent interest from collection of assessments, charges, fees or rates from properties specially benefited by the project in manner permitted by law; and

WHEREAS, the Town Council finds that an emergency exists whereby the health, welfare and safety of the residents of the Town will be benefited by immediate amendment of the Interlocal Agreement with Metropolitan Dade County, in order to complete the Sanitary Sewerage project and obtain funds to pay costs thereof,

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH.

WHEREAS, additional costs in the approximate amount of \$1,700,000.00 will be necessary to complete the Project; and

WHEREAS, Change Orders Number 2, 3 and 4 to the contract between the COUNTY and Florida Roads Company for construction of the Project providing for the additional costs have been negotiated by GOLDEN BEACH, the COUNTY and Florida Roads Company in the total approximate amount of one million seven hundred thousand dollars (\$1,700,000.00); and

WHEREAS, GOLDEN BEACH has by Resolution, No. 609-90, passed and adopted on July 5, 1990, formally requested a loan from the COUNTY to provide sufficient funds for payment of Change Orders No. 2, 3 and 4 to Florida Roads Company for completion of the Project;

NOW, THEREFORE, for and in consideration of the mutual covenants set forth herein, the COUNTY and GOLDEN BEACH hereby agree that the following provisions are hereby added to and made a part of the Agreement and shall state as follows:

1. GOLDEN BEACH warrants and represents the following:
 - a. That GOLDEN BEACH has full power and authority to enter into this Addendum No. Two to the Interlocal Agreement dated July 21, 1987.

b. That GOLDEN BEACH is not subject to bankruptcy, insolvency or reorganization 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 restrain or enjoin it from entering into, or complying with this Addendum No. Two.

c. That 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 GOLDEN BEACH's knowledge, threatened, which seeks to restrain or enjoin GOLDEN BEACH from entering into or complying with this Addendum No. Two.

2. As conditions precedent to the effectiveness of this Addendum No. Two, GOLDEN BEACH shall deliver the following to the COUNTY as of the date of the Addendum:

a. A copy of all resolutions and ordinances authorizing this Addendum No. 2 and establishing GOLDEN BEACH's legal right and authority to undertake the obligations set forth in the Addendum No. Two.

b. An opinion of counsel to GOLDEN BEACH that this Addendum No. Two has been duly authorized and constitutes a legal, valid and binding obligation in accordance with its terms.

3. Based on the foregoing and the mutual considerations provided for herein, the COUNTY agrees to loan GOLDEN BEACH one million seven hundred thousand dollars (\$1,700,000.00) to provide payment of the cost of Change Order Nos. 2, 3 and 4 to Contract No. S-345, entitled "Town of Golden Beach Sanitary Sewerage System".

4. The loan shall be repaid by GOLDEN BEACH within one year from the execution date of this Addendum by both parties at an interest rate of eight percent (8%) per annum or GOLDEN BEACH may provide for payment of the loan including interest by levying and collecting special assessments or charges, fees or rates on specially benefitted property. In connection therewith, GOLDEN BEACH shall establish and pledge sufficient property assessments or charges, fees or rates as permitted by law from real property specially benefitted by the sewerage system for a term of twenty (20) years at an interest rate of eight percent (8%) per annum so that the entire principle amount of the loan plus interest shall be repaid to the COUNTY from the proceeds of the assessments, charges, fees or rates. Within 120 days after execution of this Addendum by both parties, GOLDEN BEACH shall provide the COUNTY with the specific method, terms and conditions for payment of the loan subject to approval of the COUNTY and the Addendum shall be modified in writing accordingly.

5. Both parties acknowledge and agree that the COUNTY will make direct payments of the contract funds due Florida Roads Company and the

principal loan amount shall be for the purpose of repayment to the COUNTY of such sums which the COUNTY has paid or will pay to Florida Roads Company for construction work performed under Contract No. S-345.

6. Both parties hereto recognize and acknowledge that the final costs of the Project may be greater or less than the original contract amount plus the amount of Change Orders No. 2, 3 and 4. Accordingly, the principal amount of the loan shall be modified in writing by the parties as may be necessary subject to determination of the final costs of the Project.

7. In the event of default by GOLDEN BEACH in the payment of any installment of principal or interest or both for thirty (30) days from the due date, the whole of said principal amount and interest shall become immediately due and payable at the option of the COUNTY.

8. If, as a result of default by GOLDEN BEACH, the COUNTY commences any action or proceeding to enforce its rights hereunder, the prevailing party shall be entitled to recover from the other party its costs and expenses and reasonable attorney's fees incurred.

9. GOLDEN BEACH shall have the right to prepay the loan without penalty.

10. GOLDEN BEACH shall have the right as may be allowed by law to refund the loan at any time during the term of said loan.

11. The COUNTY will make a reasonable effort to obtain additional federal grant funds from U.S. Environmental Protection Agency which may be credited to the loan principal. However, the COUNTY does not represent or warrant that any additional federal funds will be available for this purpose.

12. The COUNTY, by execution of this Addendum No. Two and by approval of Change Orders No. 2, 3 and 4 does not waive or release any rights it may have arising from the Agreement and Addendum No. One including but not limited to its rights pursuant to the provisions of Section 7, Section 10(c) and Section 13 of the Agreement. Likewise, execution of Addendum No. Two shall not relieve or extinguish any obligations of GOLDEN BEACH pursuant to the Agreement including but not limited to the obligations in Section 7, Section 10(c) and Section 13 of the Agreement.

13. Nothing expressed or implied herein is intended or shall be construed to confer upon or to give any person, firm, corporation or other entity other than the parties hereto, any right, remedy or claim under or by reason of this Addendum or by reason of any term, covenant, condition, promise and agreement contained herein and shall be for the

sole and exclusive benefit of the parties hereto and their successors and assigns. No Third-Party beneficiary rights are intended or implied.

14. GOLDEN BEACH shall not assign any rights or obligations created by this Addendum No. Two or the Agreement and Addendum No. One without the express written consent of the COUNTY.

15. If any provision of this Addendum No. Two shall be held invalid or unenforceable, the remaining provisions shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

16. This document embodies the entire agreement and understanding between the parties hereto as to the subject matter of this Addendum and any other agreements and understandings whether oral or written with reference to the subject matter of this Addendum are merged herein.

17. All terms and conditions of the Agreement including Addendum No. One which are not expressly modified or revised herein shall remain in full force and effect.

18. This Addendum No. Two shall be binding upon the parties hereto and their successors and assigns.

IN WITNESS WHEREOF the parties have executed this Addendum No. Two
on the day and year first written above.

Attest:

By: _____
Clerk

METROPOLITAN DADE COUNTY

By: _____
County Manager

Attest:

By: Paul Quica
Clerk

TOWN OF GOLDEN BEACH

By: [Signature]
Mayor

Approved as to form and
legal sufficiency.

By: _____
C. Jan Strayhorn
Assistant County Attorney

Approved as to form and
legal sufficiency.

By: [Signature]
Albert Weintraub
Town Attorney

SECTION 1: That the proper officers of the City be and they are hereby directed to enter into the attached amendment to the Interlocal Agreement (heretofore entered into between the County and the Town of Golden Beach dated July 21, 1987) said agreement being attached hereto and made apart hereof

SECTION 2: That the Town be and it is hereby authorized to borrow the sum of \$1,700,000.00 from Metropolitan Dade County.

SECTION 3: That the Town of Golden Beach agrees to repay the County the sum of \$1,700,000.00 within twelve (12) months from the date hereof, or alternatively over the period of twenty (20) years at eight (8%) percent interest from the collection of the assessment, charges, fees, or rates from properties specially benefited by the project, the repayment method thereof to be determined by ordinance or resolution of this Council

SECTION 4: That this ordinance is an emergency ordinance and shall take effect upon adoption pursuant to Florida Statute Chapter 166.041(4)

PASSED AND ADOPTED by the Town Council of the Town of Golden Beach, Florida this 15th day of August, 1990.

The motion to adopt the foregoing ordinance was offered on second reading by:

Councilman Fried

seconded by:

Councilman Sorota

and on roll call, the following vote ensued

Mayor Tobin	<u>Aye</u>
Vice Mayor Fried	<u>Aye</u>
Councilmember Duffner	<u>Aye</u>
Councilmember Mena	<u>Aye</u>
Councilmember Sorota	<u>Aye</u>

Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

TOWN ATTORNEY

TOWN CLERK

ATTEST

ADDENDUM NUMBER TWO
TO THE
INTERLOCAL AGREEMENT
BETWEEN
METROPOLITAN DADE COUNTY, FLORIDA
AND
THE TOWN OF GOLDEN BEACH, FLORIDA

8/15/90

This Addendum, made and entered into this ____ day of _____,
1990, by and between Metropolitan Dade County, a political subdivision
of the State of Florida, hereinafter referred to as "COUNTY", and the
Town of Golden Beach, a municipal corporation of the State of Florida,
hereinafter referred to as "GOLDEN BEACH";

WHEREAS, the COUNTY and GOLDEN BEACH entered into an Interlocal
Agreement on July 21, 1987 for construction of a sanitary sewerage
system in the Town of Golden Beach, hereinafter referred to as the
"Agreement"; and

WHEREAS, pursuant to the Agreement, the COUNTY executed a contract
with Florida Roads Company on November 3, 1988 for construction of the
sewerage system, the original contract amount being \$2,684,402.90; and

WHEREAS, in accordance with the Agreement, GOLDEN BEACH is
responsible for all costs of construction of the Project as defined in
the Agreement, including additional costs, change orders and extra work;
and