

**CITY OF MARATHON, FLORIDA
RESOLUTION 2006-109**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY'S FEE SIMPLE ACQUISITION OF PROPERTY (THE "PROPERTY") LEGALLY DESCRIBED HEREIN FOR THE PURPOSE OF CONSTRUCTING AND OPERATING A WASTEWATER UTILITY PLANT THEREON; AUTHORIZING THE USE OF THE CITY'S POWER OF EMINENT DOMAIN TO CONDEMN THE PROPERTY; SETTING FORTH THE PUBLIC PURPOSE AND NECESSITY OF THE ACQUISITION OF THE PROPERTY; AUTHORIZING AND DIRECTING APPROPRIATE STAFF TO COMMENCE GOOD-FAITH PRE-LITIGATION ACQUISITION NEGOTIATIONS; AUTHORIZING THE CITY ATTORNEY TO INSTITUTE EMINENT DOMAIN PROCEEDINGS IF PRE-SUIT NEGOTIATIONS ARE UNSUCCESSFUL AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Marathon (the "City") currently is developing and constructing a wastewater system for the use of the City's residents (the "Wastewater System"); and

WHEREAS, in order for the Wastewater System to properly operate the City must locate and construct one or more wastewater plants throughout the City (the "Wastewater Plant"); and

WHEREAS, the property upon which the Wastewater Plant is to be constructed, is more particularly described in this Resolution, and such property is owned by a private (i.e., non-governmental) party; and

WHEREAS, the City after having considered and evaluated the merits of the location of the Wastewater Plant, the availability of alternative sites, the cost of the project, environmental factors associated with the project, has deemed it in the best interests of the City and its residents to acquire such private property as described herein for the project by gift, purchase or eminent domain (condemnation); and;

WHEREAS, as part of pre-litigation negotiations, the City may take reasonable steps to acquire such private property by gift or purchase, but the City is willing, and hereby evidences its intent, to exercise the City's power of eminent domain to acquire such private property for the public use or purpose described herein; and

WHEREAS, the City has determined that the condemnation of such property is necessary for such public use or purpose.

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 City hereby finds as follows:

- a. It is necessary for the public health, safety and welfare to perform and construct a Wastewater Plant, which is a public project (the “Project”).
- b. The City hereby declares that the Project is for the public purposes of safety, health and welfare of the residents of Marathon and all other persons visiting the City and that construction of the Wastewater Plant will result in the enhancement of the City’s near-shore waters.
- c. The Wastewater Plant is described/depicted in a document referred to as Project Number 05100.040 (the “Plans”). Copies of the Plans are on file at City Hall.
- d. The acquisition of the property described below is for a valid public purpose and necessary to construct the Project.
- e. The City has surveyed and located its line or area of construction (i.e., the “Project Area”), and intends in good faith to construct the Project, including the improvements described or referred to herein on, over or within the described property. Copies of the survey indicating the Project Area are incorporated herein and are on file at City Hall. A copy of the legal description showing the Project boundaries is attached as Exhibit “A”, and incorporated herein by this reference.
- f. The property to be acquired for the Project is located within the City of Marathon, Monroe County, Florida
- g. The City intends to acquire fee simple title to the property to assure its ability to properly construct and operate the Project.
- h. The City has made diligent search and inquiry to discover the names and addresses of affected property owners and, prior to instituting litigation, if necessary, will make diligent search and inquiry to discover and update the names and addresses, legal disabilities, if any, and interests in the property of owners, lessees, mortgagees, judgment creditors, lien holders, persons in possession, and all persons having or claiming to have any interest in the property. Prior to instituting eminent domain litigation, if necessary, the City will determine that those listed, or to be listed, are the only persons having or claiming to have any interest in the property.
- i. No mobile home is located on the property sought to be acquired.

Section 3. By virtue of the authority granted to the City by Article 10, Sec. 6 of the *Florida Constitution* and by Chapters 73, 74, 166.401 and 166.411, *Florida Statutes*, and all other statutory or common law which may grant to the City the power to institute and proceed with acquiring property under the exercise of the power of eminent domain, the City hereby exercises its power of eminent domain and authorizes and directs the City Manager or City Attorney or designee to issue the necessary pre-litigation notice, to enter into the required good faith pre-litigation negotiation process, to commence and prosecute any and all proceedings, including condemnation proceedings, necessary to acquire the property described in Exhibit "A", in the form of fee simple ownership for the above described public use or purpose, to provide a good faith estimate of value, to provide a declaration of taking in accordance with Chapter 74, Florida Statutes and to seek an order of taking as soon as practicable.

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 5th day of July, 2006.


THE CITY OF MARATHON, FLORIDA



Chris Bull, Mayor

AYES: Mearns, Pinkus, Tempest, Bull
NOES: None
ABSENT: Worthington
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

LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF GOVERNMENT LOT 2, SECTION 11, TOWNSHIP 66 SOUTH, RANGE 32 EAST, AT MARATHON, KEY VACA, MONROE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF US HIGHWAY NO. 1 (STATE ROAD NO. 5) AND THE EASTERLY LINE OF SAID GOVERNMENT LOT 2, SECTION 11, TOWNSHIP 66 SOUTH, RANGE 32 EAST FOR A POINT OF REFERENCE; THENCE SOUTH $73^{\circ}48'37''$ WEST, ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, 581.45 FEET TO THE NORTHEASTERLY CORNER OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 659, PAGE 254, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA; THENCE SOUTH $16^{\circ}11'23''$ EAST, PERPENDICULAR TO SAID SOUTHERLY RIGHT-OF-WAY LINE AND ALONG THE EASTERLY LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 659, PAGE 254, 300.00 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE CONTINUE SOUTH $16^{\circ}11'23''$ EAST, ALONG SAID EASTERLY LINE, 200.00 FEET TO THE SOUTHERLY LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 659, PAGE 254; THENCE SOUTH $73^{\circ}48'37''$ WEST, PARALLEL WITH SAID SOUTHERLY RIGHT-OF-WAY LINE AND ALONG THE SOUTHERLY LINE OF SAID LANDS, 200.02 FEET TO THE SOUTHWEST CORNER OF SAID DESCRIBED LANDS; THENCE NORTH $16^{\circ}11'23''$ WEST, ALONG THE WESTERLY LINE OF SAID DESCRIBED LANDS, 200.00 FEET; THENCE NORTH $73^{\circ}48'37''$ EAST 200.02 FEET TO THE POINT OF BEGINNING.

CONTAINING 40,000 SQUARE FEET (0.918 ACRES) MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS, AND RESERVATIONS OF RECORD.

BEARINGS ARE GRID BEARINGS REFERENCED TO THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, BASED UPON THE NORTH AMERICAN DATUM OF 1983, 1999 ADJUSTMENT (NAD 83/99).