

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2009-164**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY'S FEE SIMPLE ACQUISITION OF PROPERTY AND ACQUISITION OF A NON-EXCLUSIVE PERPETUAL EASEMENT EACH LEGALLY DESCRIBED HEREIN FOR THE PURPOSE OF CONSTRUCTING AND OPERATING A WASTEWATER UTILITY PLANT AND APPURTENANT FACILITIES THEREON; AUTHORIZING THE USE OF THE CITY'S POWER OF EMINENT DOMAIN TO CONDEMN THE PROPERTY AND EASEMENT; SETTING FORTH THE PUBLIC PURPOSE AND NECESSITY OF THE ACQUISITION OF THE PROPERTY AND EASEMENT; 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(s)"] and appurtenant facilities; and

**WHEREAS**, the property upon which one of the Wastewater Plants is to be constructed (the "Property") and the non-exclusive perpetual easement for access to the Property and installing and maintaining portions of the Wastewater System (the "Easement") are more particularly described in this Resolution, and such Property and the land included within the Easement are 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 and Easement, the availability of alternative sites, the cost of the project, and environmental factors associated with the project, has deemed it in the best interests of the City and its residents to acquire the Property and Easement 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 Property and Easement 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 Property and Easement for the public use or purpose described herein; and

**WHEREAS**, the City has determined that the condemnation of such Property and Easement 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 on the Property described herein, and place Wastewater System facilities within the Easement described herein, which together are a public project (the "Project").
- b. The City hereby declares that the Project is for the public purposes of health, safety and welfare of the residents of Marathon and all other persons visiting the City and that construction of the Project will result in the enhancement of the City's near-shore waters.
- c. The Wastewater Plant and the Wastewater System facilities to be placed within the Easement are described in a document referred to as Project Number \_\_\_\_\_ (the "Plans"). Copies of the Plans are on file at City Hall.
- d. The acquisition of the Property and Easement described herein is for a valid public purpose and necessary to construct the Project.
- e. The Easement is for (i) ingress and egress for persons, motor vehicles, trucks, bikes, motorcycles, material, equipment and trailers; (ii) installing, constructing, repairing, removing, and replacing, as necessary, any and all utility services, including, but not limited to, mains, lines, pipes, conduits, poles, wires, lift stations, vacuum stations, and junction boxes for sewer, water, electric, telephone, gas, stormwater and cable and any other communication service; and (iii) installing, constructing, repairing, replacing vacuum mains, force mains and re-use lines reasonably required for the operation, maintenance and renovation of a wastewater treatment plant and appurtenant and related facilities.
- f. The City has surveyed and located its line or area of construction for the Project, and intends in good faith to construct the Project, including the improvements described or referred to herein on, over or under the Property and Easement. Copies of the surveys and legal descriptions showing the Project boundaries are on file at City Hall. The legal descriptions and sketches of the Property and Easement are attached as Composite Exhibit "A", and incorporated herein by this reference.

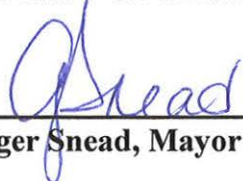
- g. The Property and Easement to be acquired for the Project are located within the City of Marathon, Monroe County, Florida
- h. The City intends to acquire fee simple title to the Property and the Easement to assure its ability to properly construct and operate the Project.
- i. The City has made diligent search and inquiry to discover the names and addresses of affected owners of the Property and Easement and anyone claiming an interest in or to the Property and Easement. Prior to instituting litigation, if necessary, the City will make diligent search and inquiry to discover and update the names and addresses, legal disabilities, if any, and interests of all owners, lessees, mortgagees, judgment creditors, lien holders, persons in possession, and all persons having or claiming to have any interest in the Property and Easement. 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 and Easement.
- j. No mobile home is located on the Property or Easement 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 their designees 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 and Easement described in Composite 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 10<sup>th</sup> day of November, 2009.

**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

