

**CITY OF MARATHON, FLORIDA
RESOLUTION 2009-28**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING TEXT OF LETTER FROM THE CITY OF MARATHON TO PACKAGE PLANT OWNERS IN THE CITY OF MARATHON AND THE FORM OF AGREEMENT TO BE ENTERED INTO WITH THE PACKAGE PLANT OWNERS AS REQUESTED BY THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION IN ORDER TO EXTEND WASTEWATER COMPLIANCE DEADLINES; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Chapter 99-395, Laws of Florida, requires that all onsite sewage treatment and disposal systems within the corporate limits of the City be compliant with regulations for effluent discharge by July 1, 2010; and

WHEREAS, pursuant to Section 381.00655, Florida Statutes, properties with on-site sewage treatment and disposal systems (OSTDS, also described herein as “package plants”) must hook up to centralized sewerage systems within one year of such a system becoming available for connection; and

WHEREAS, on June 11, 2002, the City enacted Ordinance No 02-07-12 requiring such connection within thirty days of such a system becoming available for connection; and

WHEREAS, the Property Owner is an owner of an OSTDS/Package Plant which either needs to be upgraded to BAT or which property needs to be connected to a centralized sewerage system by July 1, 2010; and

WHEREAS, the costs of installing centralized sewerage systems in the Florida Keys is considerably higher than the cost to provide such systems in other parts of Florida; and

WHEREAS, the lack of funding from the Federal and State governments to reduce the costs to the residents of Monroe County, coupled with the high costs of the treatment and collection systems, has impeded the ability of local governmental agencies to complete most of the systems by the July 1, 2010 statutory deadline; and

WHEREAS, the parties desire a solution which allows the package plant owner to wait for the centralized sewer system rather than expend the cost to upgrade the plant by July, 2010, and then, within a year or two thereafter, have to expend a commensurate and substantial sum for connection to the centralized system, rendering the plant upgrade a redundant and prohibitive expense; and

WHEREAS, the form of agreement with the package plant owners as requested by the Florida Department of Environmental Protection will solve the dilemma by extending wastewater compliance deadlines.

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

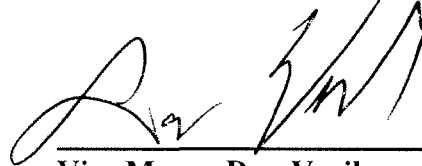
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. Council approves the text of letter from the City of Marathon to package plant owners in the City and the form of agreement attached as exhibit A together with such changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney.

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 24th day of February, 2009.

THE CITY OF MARATHON, FLORIDA



Vice Mayor Don Vasil

AYES: Ramsay, Snead, Worthington, Vasil,
NOES: None
ABSENT: None
ABSTAIN: Cinque

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:


Jimmy Morales, City Attorney

January __, 2009

Marathon, Florida 33050

RE: Wastewater Package Plants

Dear _____:

By now you should have received a letter from the Florida Department of Environmental Protection (“DEP”) informing you that all sewage treatment facilities in Monroe County are required to meet certain state mandated effluent standards by July 1, 2010. You are also probably aware of the fact that the City is currently designing and constructing a wastewater collection and treatment system throughout the entire City. It is our hope at the City that the system will be in place in most of Marathon by July 1, 2010, but we certainly cannot guarantee that date.

The letter you received from DEP should have informed you that since DEP recognizes that many areas of the City may not be served by a central sewer system by July 1, 2010, DEP will enter into a consent order with the owner of any package plant to establish a legally-binding schedule for connection to the system within a reasonable period of time after July 1, 2010. One of the requirements cited by DEP was a legally binding agreement between the package plant owner and the City which includes a commitment by the plant owner to connect to the new City sewer system and a date certain for such connection.

The purpose of this letter is let you know that the City is prepared to enter into such an agreement with any package plant owner that wants to take advantage of DEP’s offer of a consent order. If you are interested, please do hesitate to contact the City at 305-743-0033. We can provide you with a copy of the form of Agreement the City is willing to execute with you, as well as answer any questions you might have about the construction of the City’s wastewater sewer system.

The City remains committed to completing this important project as quickly as possible and thereby afford some relief to our residents and businesses in meeting the effluent standards imposed by the legislature. As always, I welcome your comments and input.

Sincerely,

Clyde Burnett
City Manager

**AGREEMENT
(PROPERTY OWNER) & CITY**

THIS AGREEMENT is entered into as of this ___ day of _____, 2009 between The City of Marathon, a Florida municipal corporation (the "City"), and (name of package plant owner) (the "Property Owner").

WITNESSETH:

WHEREAS, Chapter 99-395, Laws of Florida, requires that all onsite sewage treatment and disposal systems within the corporate limits of the City be compliant with regulations for effluent discharge by July 1, 2010; and

WHEREAS, pursuant to Section 381.00655, Fla. Sta., properties with on-site sewage treatment and disposal systems ("OSTDS" or "package plants") must hook up to centralized sewerage systems within one year of such a system becoming available for connection; and

WHEREAS, on May 27, 2008, the City enacted Ordinance 2008-10, which established Wastewater Utility Service Rules and Regulations, including the rules governing mandatory connection to the system once available; and

WHEREAS, the Property Owner is an owner of a package plant which either needs to be upgraded to BAT or connected to a centralized sewerage system by July 1, 2010; and

WHEREAS, the parties hereto desire a solution which allows the plant owner to wait for the centralized sewerage system rather than expend the cost to upgrade the plant by July, 2010, and then still have to expend a substantial sum for connection to the centralized system; and

WHEREAS, Ch. 2001-337, Laws of Florida, allows the use of interim sewerage systems after July 1, 2004, only upon certain conditions, but was amended by Ch. 2004-455 to extend through July 1, 2010, with such conditions being:

- a. an enforceable contract with the applicable wastewater sewer authority to provide the central sewage facility and collection system has been signed;
- b. the contract contains a binding schedule for connecting the OSTDS to the central sewage facility; and
- c. there is an enforceable requirement for abandonment of the OSTDS; and

WHEREAS, the Department of Environmental Protection has indicated that a Consent Order to continue to operate the Package Plant may be available, allowing the Property Owner to wait until connection to a central sewage system is available, instead of having to both upgrade their existing plant & connect shortly thereafter to the central sewage system; and

WHEREAS, it is deemed in the best interests of the parties to enter an agreement setting forth the understanding that the City will provide centralized sewerage collection at (location) for transmission to the (Name) Treatment Plant, and that the Property Owner) will connect to that sewerage system, rather than upgrade its package plant;

NOW THEREFORE, IN CONSIDERATION of the mutual promises and covenants herein contained, it is agreed between the parties as follows:

Section 1. Construction.

The City shall provide for the construction and operation of a sewerage system which shall have sufficient capacity and proximity to service the (#) EDU's of the Property Owner. The City will notify in writing the Property Owner at least one year prior to the expected date of the planned availability of the system. It is expected that the system shall be available for connection by individual property owners no later than _____

Section 2. Property Owner's Connection.

The Property Owner commits to connect to the centralized sewerage system in accordance with the Wastewater Utility Service Rules and Regulations adopted by the City, provided that notice of the planned availability is made one year in advance of the date of planned availability.

Section 3. Term of Agreement.

- (a) The term of this Agreement shall be for__ years from the date first above written.
- (b) Nothing herein abrogates the City's right to issue citations, levy fines, and otherwise enforce its Code of Ordinances against the Property Owner for any delay in the required connection to the centralized sewerage system.
- (c) Notwithstanding anything to the contrary herein, the City shall have no financial liability to the Property Owner if it fails to meet the estimated deadline of completion and availability of the sewerage system, or if it otherwise does not build a sewerage system in the applicable area.

Section 4. Notices.

- (a) All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing (each such, a "Notice") and addressed as follows (or to any other address which either party may designate by Notice):

If to the City: Clyde Burnett, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

If to Property Owner:

Any Notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered; facsimile; confirmed electronic delivery; or sent by overnight delivery service.

Section 5. Governing Law and Waiver of Jury Trial.

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court or the Southern District of Florida. In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

Section 6. Entire Agreement/Modification/Amendment.

This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No modification or amendment to the terms of this Agreement shall be effective unless executed with the same formality as this document.

Section 7. Severability.

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent of the law.

Section 8. Waiver.

The failure of any party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

Section 9. Counterparts.

This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day and year first written above.

Attest:

CITY OF MARATHON

Diane Clavier, City Clerk

By: _____
Clyde Burnett, City Manager

Date: _____

Approved by City Attorney
for legal sufficiency for City
use only:

City Attorney

(Property Owner):

WITNESS:
