

**CITY OF MARATHON, FLORIDA
RESOLUTION 2009-37**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING LEASE AGREEMENT AND MEMORANDUM OF LEASE BETWEEN THE CITY OF MARATHON AND THE UNITED STATES COAST GUARD FOR A SUB-REGIONAL WASTEWATER TREATMENT PLANT SITE; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the "City") is collaborating with the United States Coast Guard (USCG) to allow installation of wastewater treatment facilities to a section of Service Area 7 where the USCG has purchased property and is planning to build housing for service men and women; and

WHEREAS, the City and the USCG have negotiated a Lease Agreement and Memorandum of Lease, attached hereto as Exhibits A and B; and

WHEREAS, the lease term will be in force until such time as the USCG is able to transfer ownership of the property to the City; and

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

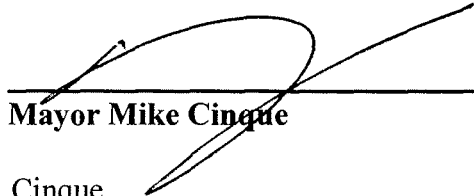
Section 1. The above recitals are true and correct and are incorporated herein

Section 2. The City Council hereby approves the lease agreement and memorandum of lease between the City of Marathon and the US Coast Guard for A Sub-Regional Wastewater Treatment Plant Site, a copy of which lease agreement and memorandum of lease is attached hereto as Exhibit "A" and "B", together with such changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney. The City Manager is authorized to execute the lease agreement and memorandum of lease on behalf of the City.

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 10th day of March, 2009.

THE CITY OF MARATHON, FLORIDA



Mayor Mike Cinque

AYES: Ramsay, Snead, Vasil, Worthington, Cinque
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:



Jimmy Morales, City Attorney

UNITED STATES COAST GUARD
LEASE
CITY OF MARATHON
Upper Keys Housing
FOR PROPERTY LOCATED ON
PORTION OF LOT 9, BLOCK 2
SUNSET KEY, CITY OF MARATHON, COUNTY OF MONROE,
STATE OF FLORIDA

Preamble

THIS LEASE ("Lease") is made between the Commandant of the Coast Guard ("Lessor") and the City of Marathon, a Florida municipal corporation ("Lessee"). The Lessor and Lessee may be referred to jointly as the "Parties," and each separately may be referred to as a "Party." For purposes of this Lease, Lessor includes the United States Coast Guard and the United States. The Commandant of the Coast Guard, under the authority contained in 14 U.S.C. § 93(n), has determined that the property hereby leased is not required for immediate Coast Guard use and that leasing such property will be advantageous to the United States and in the public interest in that the Lessee will be constructing, installing and maintaining on the "Premises" (as hereinafter defined) a wastewater treatment facility which will provide wastewater treatment facilities to homes and businesses in the City of Marathon, including facilities owned by the Lessor and located in the Installation. It is the intent of the Lessor and the Lessee, that as soon as reasonably practical, that fee simple, marketable and insurable title to the Premises will be deeded to the Lessee. Until the title to the Premises can be so transferred, the Commandant of the Coast Guard, for the consideration set out below, hereby leases to Lessee certain premises and property generally referred to as the Upper Keys Housing Project, hereinafter referred to as the "Installation," and more particularly and legally described on the

Sketch and legal description attached hereto as Exhibit "A" ("Premises"). A memorandum of this Lease shall be executed by the Lessee and the Lessor and recorded in the Public Records in Monroe County, Florida.

THIS LEASE is granted subject to the following conditions:

1. Initial Term and Option of the Lessee to Extend the Initial Term of the Lease. This Lease shall be for an initial term of five (5) years (the "Initial Term"), beginning on March 1, 2009 ("Initial Term Commencement Date") and ending on the last day of February, 2014 (the "Initial Term Expiration Date"), and shall expire without further notice unless sooner terminated or extended in accordance with the provisions of this Lease. Should title to the Premises not have been deeded to the Lessee prior to the Initial Term Expiration Date, Lessee shall have the right upon giving to the Lessor ninety (90) days' Notice prior to the expiration of any lease term then in effect, to extend the term of the Lease for successive five (5) year terms. Upon the Lessee's exercise of its option to extend the term of this Lease, all other terms and conditions of the Lease shall continue in full force and effect. Upon the Lessee acquiring marketable and insurable fee simple title to the Premises, this Lease shall automatically terminate and the parties shall be released from all obligations hereunder.

2. Other Uses, Easements, and Rights-of-Way.

a. This Lease is subject to all outstanding uses, easements, and rights-of-way ("outgrants") for any purpose with respect to the Premises. The Lessor shall have the right to grant additional outgrants with respect to the Premises. However, any such additional outgrant shall not be inconsistent with or inhibit the Lessee's use of the Premises under this Lease.

b. The holders of such outgrants, present or future, shall have reasonable rights of ingress and egress over the Premises in order to carry out the purpose of the outgrant, provided, however, any such rights shall not be exercised inconsistent with the Lessee's rights and use of the Premises under this Lease. These rights may also be exercised by workers engaged in the construction, installation, maintenance, operation, repair, or replacement of facilities located on the outgrants and by any Federal, State, or local official engaged in the official inspection thereof.

3. Condition of Premises.

a. The Lessee has inspected, knows, and accepts the condition and state of repair of the Premises. It is understood and agreed that the premises are leased in its "as is, where is" condition without any representation or warranty by the Lessor concerning its condition and without obligation on the part of the Lessor to make any alterations, repairs, or additions. Except as provided elsewhere in this Lease, the Lessor shall not be liable for any latent or patent defects in the Premises. The Lessee acknowledges that the Lessor has made no representation or warranty concerning the condition and state of repair of the Premises nor any agreement or promise to alter, improve, adapt, or repair them which has not been fully set forth in this Lease.

b. **Intentionally Deleted**

c. **Intentionally Deleted**

4. Rent.

a. The Lessee in lieu of paying a monthly Rent, shall construct, maintain and operate a wastewater treatment facility on the Premises which shall provide wastewater treatment facilities to homes and businesses in the City of Marathon, including facilities owned by the Lessor located in the Installation.

5. Other Agreements.

a. **Intentionally Deleted**

b. **Intentionally Deleted**

6. Use of Premises. The purposes for which the Premises and any improvements thereon may be used, in the absence of prior written approval of the Lessor for any other use, is for the purpose, but not by limitation of constructing, operating and maintaining a wastewater treatment facility and improvements related to the operation and maintenance thereof.

7. Default and Termination.

a. The following shall constitute a default and breach of this Lease by the Lessee: The failure to comply with any provision of this Lease, where such failure to comply continues for twenty (20) days after delivery of written notice thereof by the Lessor to the Lessee. If, however, the time required to return to compliance exceeds the twenty (20) day period, the Lessee shall not be deemed to be in default if the Lessee within such period shall begin the actions necessary to bring it into compliance with the Lease in accordance with a compliance schedule acceptable to the Lessor.

b. No default or breach shall be deemed to have occurred for any period of time during which the Parties are attempting to resolve a dispute, pursuant to the procedures provided for in Condition 22, in relation to the actions or inaction's which are the subject of the alleged default or breach. If, pursuant to dispute resolution, the default or breach is determined to have occurred, the Lessee's period for cure shall not begin until the day after the final decision on the dispute is issued.

c. This Lease may be terminated as provided in this Condition 7(c). No money or other consideration paid by the Lessee or which may be due up to the effective date of termination will be refunded or waived, as the case may be. The Lessee agrees that, except as provided in Condition 7(a), the Lessor need not state a reason for termination of the lease. The Lessee waives any claims or suits against the Lessor arising out of any termination of the Lease. In the event of any default and breach of the Lease by the Lessee as described in Condition 7(a), the Assistant Commandant for Engineering and Logistics may, subject to the dispute resolution provision in Condition 7(b), terminate this Lease at any time after expiration of the cure period provided for in Condition 7(a). The termination notice shall be effective as of a day to be

specified therein, which shall be at least seven (7) but not more than sixty (60) days after its receipt by the Lessee.

8. Taxes. The Lessee shall pay to the proper authority, when and as the same become due and payable, all taxes, assessments, and similar charges which, at any time during the term of this Lease may be legally imposed upon the Lessee with respect to the Premises.

9. Surrender of Premises. The Lessee shall vacate and surrender the Premises to the Lessor on or before the date of expiration of the Lease, or its earlier termination hereunder. The Lessee shall remove its property from the Premises and restore them to as good order and condition, reasonable wear and tear and damage beyond the control of the Lessee excepted, as that existing on the Initial Term Commencement Date, subject to Condition 17 below. If the Lessee shall fail or neglect to remove its property, then, at the sole option of the Lessor, the property shall either become the property of the United States without compensation therefor, or the Lessor may cause it to be removed and the Premises to be so restored at the expense of the Lessee, and no claim for damages against the United States or its officers, employees, or agents shall be created by or made on account of such removal and restoration work. Restoration by Lessee shall not include any requirement to replace Lessor's facilities demolished by consent of Lessor to make way for construction of Lessee's facilities.

10. Environmental Protection.

a. The Lessee shall at all times promptly comply at its sole cost and expense with all Federal, State, interstate, and local laws, regulations, and standards relating to the regulation and protection of human health, safety, and the environment that are or may become applicable to Lessee's activities. Such regulations include applicable Coast Guard Instructions and regulations of the Department of Homeland Security.

b. The Lessee shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operations under the Lease, independent of any existing permits held by the Lessor.

c. The Lessee shall, to the extent permitted under applicable law, indemnify, save, and hold harmless the Lessor from any damages, costs, expenses, liabilities, fines, or penalties resulting from releases, discharges, emissions, spills, storage, disposal, or any other acts or omissions by the Lessee, its officers, agents, employees, contractors, or the invitees of any of them, that occur on or after the Term Beginning Date, giving rise to Lessor liability, civil or criminal, or responsibility under Federal, State, interstate, or local environmental laws. This Condition shall survive the expiration or termination of the Lease, and the Lessee's obligations hereunder shall apply whenever the Lessor incurs costs or liabilities for the Lessee's actions of the types described in this Condition 10. The Lessor shall give the Lessee notice of any claim against it covered by this indemnity as soon after learning of it as practicable.

d. The Lessor's rights under this Lease specifically include the right for Lessor officials to inspect upon reasonable notice the Premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not the Lessor is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted

enforcement officials to make such inspections. The Lessor normally will give the Lessee twenty-four (24) hours prior notice of its intention to enter the Premises unless it determines the entry is required for safety, environmental, operations, or security purposes. The Lessee shall have no claim against the United States or any officer, agent, employee, or contractor thereof on account of any such entries.

e. **Intentionally Deleted**

f. Notwithstanding any other provision of the Lease, the Lessee does not assume any liability or responsibility for environmental impacts and damage caused by the Lessor's use of toxic or hazardous wastes, substances, or materials, or by any events, conditions, or acts attributable to the operations or activities of the Lessor (or any of its officers, employees, agents, contractors, subcontractors, or licensees). The Lessee has no obligation to indemnify or to undertake the defense of any claim, demand or action, whether in existence now or brought in the future, arising out of the presence of any toxic or hazardous wastes, substances or materials at, on or under the Premises prior to the Term Commencement Date. In the event contaminants of the same composition located in the same area of contamination are attributable to both the operations or activities of the Lessor and the operations or activities of the Lessee occurring on or after the Term Beginning Date, responsibility for the contribution of each Party to the cost of any resulting actions necessary to address the contamination as required by applicable laws or regulations shall be based on the portion of the contamination attributable to the operations or activities of such Party.

g. The Lessee expressly acknowledges that it fully understands that some or all of the response actions to be undertaken with respect to a Federal Facility Agreement (FFA) may impact Lessee's quiet use and enjoyment of the Premises. The Lessee agrees that notwithstanding any other provision of the Lease, the Lessor assumes no liability to the Lessee should implementation of an FFA, or other hazardous waste cleanup requirements, whether imposed by law, regulatory agencies, the Lessor, or the United States Government, interfere with the Lessee's use of the Premises. The Lessee shall have no claim against the United States or any officer, agent, employee, or contractor thereof on account of any such interference, whether due to entry, performance of remedial or removal investigations, or exercise of any right with respect to the FFA or under this Lease or otherwise.

h. The Lessee agrees to comply with the provisions of any health or safety plan in effect under the FFA or any hazardous substance remediation or response agreement with environmental regulatory authorities during the course of any of the above described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by the Lessee. The Lessee and its invitees shall have no claim on account of such entries against the United States or any officer, agent, employee, or contractor thereof.

i. The Lessee shall not bring upon, store, nor treat any hazardous or toxic materials, wastes, or substances on the Installation; provided, however, Lessee may store hazardous materials on the installation in furtherance of the purposes of this Lease with the prior written consent of said officer, which consent of Lessor is hereby acknowledged by Lessor's execution

of this Lease. The Lessee shall not treat, store, nor dispose of any hazardous waste under, pursuant to, or in reliance upon any permit issued to the Lessor.

j. The Lessee must maintain and make available to the Lessor all records, inspection logs, and manifests that track the generation, handling, storage, treatment, and disposal of hazardous waste, as well as all other records required by applicable laws and requirements relating to the regulation and protection of human health, safety, and the environment. The Lessor reserves the right, as provided under Condition 13, to inspect the Premises and Lessee records for compliance with Federal, State, interstate, and local laws, regulations, and other requirements relating to the generation, handling, storage, treatment, and disposal of hazardous waste, as well as to the discharge or release of hazardous substances. Violations will be reported by the Lessor to appropriate regulatory agencies, as required by applicable law. The Lessee will be liable for the payment of any fines and penalties which may accrue as a result of the actions of Lessee.

k. The Lessee shall have a completed and approved plan prior to commencement of operations on the Premises for responding to hazardous material, fuel, and other chemical spills. Such plan shall comply with all applicable requirements and shall be updated from time to time as may be required to comply with changes in site conditions or applicable requirements and shall be approved by all agencies having regulatory jurisdiction over such plan, if agency approvals are required by applicable laws or regulations. The plan shall be independent of Lessor spill prevention and response plans. The Lessee shall not rely on use of Installation personnel or equipment in execution of its plan, except as may be agreed to in the Support Agreement. The Lessee shall file a copy of the plan and any amendments thereto with the said officer within fifteen (15) days of approval. Notwithstanding the foregoing, should the Lessor provide any personnel or equipment, whether for initial fire response and/or spill containment or otherwise on request of the Lessee, or because the Lessee was not, in the opinion of the Lessor, conducting timely cleanup actions, the Lessee agrees to reimburse the Lessor for its costs in accordance with all applicable laws and regulations.

l. Lessor hazardous waste storage facilities will not be available to the Lessee.

m. Lessor accumulation points for hazardous and other wastes will not be used by the Lessee. Lessee will not permit its hazardous waste to be commingled with hazardous waste of the Lessor.

n. The Lessee shall not discharge or allow the discharge of any dredged or fill material into any waters or wetlands on the Premises except in compliance with Condition 24 and with the express written consent of the said officer.

o. **Intentionally Deleted**

p. Prior to the storage, mixing, or application of any pesticide, as that term is defined under the Federal Insecticide, Fungicide, and Rodenticide Act, the Lessee shall prepare a plan for storage, mixing, and application of pesticides ("Pesticide Management Plan"). The Pesticide Management Plan shall meet all applicable Federal, State, interstate, and local pesticide requirements.

q. The Lessee shall comply with all requirements of the Federal Water Pollution Control Act, the National Pollutant Discharge Elimination System ("NPDES"), and any applicable State or local requirements. If the Lessee discharges wastewater other than domestic sewage to a publicly-owned treatment works, the Lessee must submit an application for its discharge ("Pretreatment Permit Application") prior to commencing such discharge. The Lessee will be responsible for meeting all wastewater discharge permit standards applicable to its discharge. The Lessee will not discharge wastewater other than domestic sewage under the authority of any NPDES permit, pretreatment permit, or any other permit issued to the Installation. The Lessee shall make no use of any septic tank installed on the Installation, except as may be agreed to in the Support Agreement. To the extent Lessee's facility is connected to the Installation wastewater system, Lessee will discharge only domestic sewage into the installation wastewater system; such domestic sewage shall not include any hazardous wastes, substances, or materials that would violate the Installation's permits for operation of a wastewater treatment system.

r. The Lessee must notify the said officer of Lessee's intent to possess, store, or use any licensed or licensable source or byproduct materials, as those terms are defined under the Atomic Energy Act and its implementing regulations; of Lessee's intent to possess, use, or store radium; and of Lessee's intent to possess or use any equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulations, at least sixty (60) days prior to the entry of such materials or equipment. Upon notification, the said officer may impose such requirements, including prohibition of possession, use, or storage, as deemed necessary to adequately protect health and the human environment. Thereafter, the Lessee must notify the said officer of the presence of all licensed or licensable source or byproduct materials, of the presence of all radium, and of the presence of all equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulation; provided, however, that the Lessee need not make either of the above notifications to the said officer with respect to source and byproduct material which is exempt from regulation under the Atomic Energy Act. The Lessee shall not, under any circumstances, use, own, possess, or allow through its actions the presence of special nuclear material on the Premises.

s. **Intentionally Deleted**

11. Maintenance of Premises. In regard to its activities on the Premises, the Lessee, at no expense to the Lessor, shall at all times protect, preserve, and maintain the Premises, including any improvements and Lessor-owned personal property located thereon, in good order and condition, and exercise due diligence in protecting the Premises against damage or destruction by fire and other causes, subject to the applicable provisions of Conditions 4, 15, 17, and 24. The Lessee shall comply with the provisions of Conditions 10, 17, and 24 in conducting any maintenance activities required to be performed hereunder.

12. Damage to Lessor Property. Any real or personal property of the United States damaged or destroyed by the Lessee incident to the Lessee's use and occupation of the Premises shall be repaired within a commercially-reasonable time by Lessee to the reasonable satisfaction of said officer.

13. Lessor Access and Inspection. Any agency of the United States, its officers, agents, employees, invitees, and contractors, may enter upon the Premises at all times for any purposes not inconsistent with Lessee's quiet use and enjoyment of them under this Lease, including but not limited to the purpose of inspection. The Lessor normally will enter the Premises during regular business hours and give the Lessee at least twenty-four (24) hours prior notice of its intention to do so, unless it determines the entry is required for safety, environmental, operations, or security purposes. The Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee, invitee, or contractor thereof.

14. General Indemnification by Lessee.

a. The United States shall not be responsible for damages to property or injuries or death to persons which may arise from or be attributable or incident to the condition or state of repair of the Premises, or the use and occupation of them, or for damages to the property of the Lessee, or for damages to the property or injuries or death to the person of the Lessee's officers, agents, servants, or employees, or others who may be on the Premises at their invitation or the invitation of any one of them.

b. The Lessee agrees to assume all risks of loss or damage to property and injury, or death to persons by reason of or incident to the possession and/or use of the Premises, or the activities conducted by the Lessee under this Lease. The Lessee expressly waives all claims against the Lessor for any such loss, damage, personal injury, or death caused by or occurring as a consequence of such possession and/or use of the Premises or the conduct of activities or the performance of responsibilities under this Lease. The Lessee further agrees to the extent permitted by applicable law to indemnify, save, and hold harmless the Lessor, its officers, agents, and employees, from and against all suits, claims, demands, actions, liabilities, judgments, costs, and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death, or property damage resulting from, related to, caused by, or arising out of the possession and/or use of the Premises or any activities conducted or services furnished in connection with or pursuant to this Lease. The agreements contained in this Condition 14 do not extend to claims for damages to the extent caused by the gross negligence or willful misconduct of officers, agents, or employees of the United States, without contributory fault on the part of any person, firm, or corporation. The Lessor will give the Lessee notice of any claim against it covered by this indemnity as soon after learning of it as practicable.

15. Insurance.

a. The Lessee shall in any event and without prejudice to any other rights of the Lessor bear all risk of loss or damage or destruction to the Premises, including any buildings, improvements, fixtures, or other property thereon, arising from any causes whatsoever, with or without fault by the Lessor but exclusive of force majeure.

b. During the entire period this Lease shall be in effect, the Lessee, at no expense to the Lessor, will carry and maintain:

- (1) **Intentionally Deleted**

(2) Lessee shall maintain a commercial general liability policy in connection to and related to this Lease in an amount not less than One Million Dollars (\$1,000,000). The Lessee shall cause the Lessor to be named as an additional insured under said policy. Such insurance shall be issued by an insurance company authorized to do business in the State of Florida and in good standing in Florida. An insurance certificate evidencing such insurance coverage and that the Lessor is named as an additional insured shall be delivered to the Lessor within five (5) business days from the Term beginning date.

c. Intentionally Deleted

d. The Lessee shall deliver or cause to be delivered upon execution of this Lease (and thereafter not less than fifteen (15) days prior to the expiration date of each policy furnished pursuant to this Condition 15) to said officer a certificate of insurance evidencing the insurance required by this Lease.

e. In the event that any item or part of the Premises shall be damaged or destroyed, the risk of which is assumed by the Lessee under Condition 15(a) above ("damaged or destroyed property"), the Lessee shall promptly give notice thereof to the Lessor. The Lessee shall as soon as practicable after the casualty either repair or replace in a commercially reasonable time the part of the Premises so damaged or destroyed or at Lessee's option use another waster water treatment facility to replace the services previously provided by the subject waste water treatment facility. All repair and restoration work under this Condition shall comply with the provisions of Conditions 10, 17, and 24 applicable to alterations and any other work subject to the notice and approval requirements imposed by Condition 17.

16. Compliance with Applicable Laws.

a. The Lessee shall at all times during the existence of this Lease promptly observe and comply, at its sole cost and expense, with the provisions of all applicable Federal, State, interstate, and local laws, regulations, and standards, and in particular those provisions concerning the protection of the environment and pollution control and abatement and occupational safety and health.

b. The Lessee shall comply with all applicable State and local laws, ordinances, and regulations with regard to construction, sanitation, licenses or permits to do business, and all other matters. The Lessee shall be responsible for determining whether it is subject to local building codes or building permit requirements, and for compliance with them to the extent they are applicable.

c. Nothing in this Lease shall be construed to constitute a waiver of Federal Supremacy or Federal or State sovereign immunity.

d. Responsibility for compliance as specified in this Condition 16 rests exclusively with the Lessee. The United States Coast Guard assumes no enforcement or supervisory responsibility except with respect to matters committed to its jurisdiction and authority. The Lessee shall be liable for all costs associated with compliance, defense of enforcement actions or suits, payment of fines, penalties, or other sanctions, and remedial costs to the extent related to Lessee's use of the Premises.

e. The Lessee shall have the right to contest by appropriate proceedings diligently conducted in good faith, without cost or expense to the Lessor, the validity or application of any law, ordinance, order, rule, regulation, or requirement of the nature referred to in this Condition 16, The Lessor shall not be required to join in or assist the Lessee in any such proceedings.

17. Construction and Alterations.

a. Lessee shall have the right to construct or cause to be constructed, placed and maintained on the Premises, such improvements which are to be used for or related to the operation of a wastewater treatment facility.

b. **Intentionally Deleted**

c. **Intentionally Deleted**

d. **Intentionally Deleted**

e. **Intentionally Deleted**

f. The said officer is authorized to grant approvals and consents under this Condition 17.

18. Utilities and Services.

The Lessee will be responsible for all utilities, janitorial services, building maintenance, and grounds maintenance for the Premises without cost to the Lessor. Utility services will be provided through meters, if possible. The Lessee will purchase, install, and maintain all such meters at its own cost and without cost and expense to the Lessor. Unless the utility services are not metered and charged directly to the Lessee, the Lessee will pay the charges for any utilities and services furnished by the Lessor, if any, which the Lessee may require in connection with its use of the Premises. The charges and the method of payment for each utility or service will be determined by the appropriate supplier of the utility or service in accordance with applicable laws and regulations, on such basis as the appropriate supplier of the utility or service may establish. It is expressly understood and agreed that the Lessor in no way warrants the continued maintenance or adequacy of any utilities or services furnished by it to the Lessee.

19. Notices.

a. Whenever the Lessor or the Lessee shall desire to give or serve upon the other any notice, demand, order, direction, determination, requirement, consent, approval, request, or other communication with respect to this Lease or with respect to the Premises, each such notice, demand, order, direction, determination, requirement, consent, approval, request, or other communication shall be in writing and shall not be effective for any purpose until receipt or refusal of delivery is served by either personal delivery to the other Party, by mailing the same to the other Party by certified mail, postage prepaid, return receipt requested or by FedEx or any other nationally recognized overnight courier, addressed as follows:

If to the Lessee:

City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
Attention: City Manager

with a copy to:

Jimmy L. Morales, Esquire
c/o Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler Street
Miami, Florida 33130

If to the Lessor:

U.S. Coast Guard
Civil Engineering Unit Miami
15608 S.W. 117th Avenue
Miami, Florida 33177-1630
Attention: Commanding Officer

or at such other address or addresses as the Lessor or the Lessee may from time to time designate by Notice.

b. Every notice, demand, order, direction, determination, requirement, consent, approval, request, or communication hereunder shall be deemed to have been given or served only upon receipt or refusal of delivery.

20. Transfers.

a. Lessee shall not transfer, permit, license, assign, lease, or dispose of in any way including, but not limited to, voluntary or involuntary sale, merger, consolidation, receivership, or other means (all referred to in this Condition 20 as "transfer"), this Lease or any interest therein or any property on the Premises, or otherwise create any interest therein, without the prior written consent of said officer. Such consent shall not be unreasonably withheld or delayed, subject to the provisions of Conditions 20(b) through 20(d).

b. Any transfer by Lessee shall be subject to all of the terms and conditions of this Lease and shall terminate immediately upon the expiration or any earlier termination of this Lease, without any liability on the part of Lessor to Lessee or any transferee. Under any transfer made with or without consent, the transferee shall be deemed to have assumed all of the obligations of Lessee under this Lease. No transfer shall relieve Lessee of any of its obligations hereunder, except, in the case of an assignment, if Lessor explicitly agrees to relieve Lessee of its obligations hereunder; provided, however, that in the case of an assignment, Lessor may, in its sole discretion, withhold consent to the assignment.

c. Lessee shall furnish said officer, for his prior written consent, a copy of each transfer Lessee proposes to execute. Such consent by said officer may include the requirement to delete, add, or change provisions in the transfer instrument as Lessor shall deem necessary to protect its interests. Consent to or rejection of any transfer shall not be taken or construed to alter, diminish, or enlarge any of the rights or obligations of either of the Parties under this Lease, not form a basis for any cause of action against or liability of Lessor.

d. Any transfer instrument must expressly provide that—(1) the transfer and transferee are subject to all of the terms and conditions of this Lease; (2) the transfer shall terminate with the expiration or earlier termination of this Lease; and (3) in case of any conflict between this Lease and the transfer instrument, this Lease shall control. A copy of this Lease must be attached to the transfer instrument. Subject to the consent of the Lessor under this Condition 20, a transfer may provide that the transferee may cure a breach or default of the Lessee under Condition 7.

21. Disputes.

a. Except as otherwise provided in this Lease, any dispute concerning a question of fact arising under this Lease which is not disposed of by agreement shall be decided by the said officer. The said officer shall reduce the decision to writing and mail or otherwise furnish a copy to the Lessee. The decision of the said officer shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Lessee mails or otherwise furnishes to the said officer a written appeal addressed to the Commandant of the Coast Guard. The decision of the Commandant or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this Condition, the Lessee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Lessee shall proceed diligently with the performance of the Lease in accordance with the decision of the said officer.

b. This Condition does not preclude consideration of questions of law in connection with decisions provided for in Condition 22(a) above. Nothing in this Condition, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

22. Covenant against Contingent Fees. The Lessee warrants that no person or agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the Lessor shall have the right to annul this Lease without liability or in its discretion to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

23. Officials Not to Benefit. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit to arise

therefrom, but this provision shall not be construed to extend to this Lease if made with a corporation for its general benefit.

24. Non-Discrimination.

a. As used in this Condition, the term "facility" means lodgings, stores, shops, restaurants, cafeterias, restrooms, and any other facility of a public nature in any building covered by, or built on land covered by, this Lease.

b. The Lessee agrees not to discriminate against any person because of race, color, religion, sex, or national origin in furnishing or refusing to furnish to such person the use of any facility, including all services, privileges, accommodations, and activities provided on the Premises except as required by applicable law. This does not require the furnishing to the general public the use of any facility customarily furnished by the Lessee solely to tenants or to Coast Guard military and civilian personnel, and the guests and invitees of any of them.

25. Gratuities. The Lessor may, by written notice to the Lessee, terminate this Lease if it is found after notice and hearing, by the Commandant of the Coast Guard, or his duly authorized representative, that gratuities in the form of entertainment, gifts, or otherwise, were offered or given by the Lessee, or any agent or representative of the Lessee, to any officer or employee of the Lessor with a view toward securing an agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such agreement: provided that the existence of the facts upon which the Commandant of the Coast Guard or his duly authorized representative makes such finding, shall be an issue and may be reviewed in any competent court. In the event this Lease is so terminated, the Lessor shall be entitled to pursue the same remedies against the Lessee as it could pursue in the event of a breach of the Lease by the Lessee, and as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount as determined by the Commandant of the Coast Guard or his duly authorized representative which shall be not less than three nor more than ten times the costs incurred by the Lessee in providing any such gratuities to any such officer or employee. The rights and remedies of the Lessor provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Lease.

26. No Joint Venture. Nothing contained in this Lease will make, or will be construed to make, the Parties hereto partners or joint venturers with each other, it being understood and agreed that the only relationship between the Lessor and the Lessee is that of landlord and tenant. Neither will anything in this Lease render, or be construed to render, either of the Parties hereto liable to any third Party for debts or obligations of the other party hereto.

27. Records and Books of Account. The Lessee agrees that the Comptroller General of the United States or the Auditor General of the United States or the Inspector General of the Department of Homeland Security or any of their duly authorized representatives shall, until the expiration of three (3) years after the expiration or earlier termination of this Lease, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Lessee involving transactions related to this Lease.

28. Failure of Lessor to Insist on Compliance. The failure of the United States to insist in any one or more instances, upon strict performance of any of the terms, covenants or Conditions of this Lease shall not be construed as a waiver or a relinquishment of the Lessor's rights to the future performance of any such terms, covenants, or conditions, but the obligations of the Lessee with respect to such future performance shall continue in full force and effect.

29. Entire Agreement. It is expressly agreed that this written instrument embodies the entire agreement between the Parties regarding the use of the Premises by the Lessee, and there are no understandings or agreements, verbal or otherwise, between the Parties except as expressly set forth herein. This instrument may only be modified or amended by mutual agreement of the Parties in writing and signed by each of the Parties' duly authorized representatives.

30. Restrictions on Use of Premises.

a. The Lessee shall not install any new drinking water or other wells in any location on the Premises without the prior written approval of the Lessor.

b. Intentionally Deleted

c. **Intentionally Deleted**

d. The Lessee acknowledges that lead-based paint may be present in and on facilities and equipment within the leased area. The Lessor may conduct surveys to determine the existence and extent of any possible lead-based paint. The Lessee will be notified if the Lessor determines there is lead-based paint in or on the leased facilities or equipment. Prior to beginning any alterations, the Lessee must test any paint which would be disturbed unless a conclusive determination has been made that lead-based paint is not present. If the paint is lead-based, the Lessee is required to handle it in accordance with all applicable Federal, State, interstate, and local laws and regulations at its own expense. The Lessee is required to ensure that any lead-based paint is otherwise maintained in good condition.

e. No part of the Premises or any buildings, facility, or other improvement on them, shall be used (or allowed to be used) for residential habitation or by children under seven (7) years of age unless and until all of the requirements imposed by Part 35 of Title 24, Code of Federal Regulations, have been met by the Lessee for that property and the prior written approval of the Lessor has been obtained for such proposed use.

f. The Lessee will minimize the destruction, loss, or degradation of wetlands within the Premises. Before locating new construction in wetlands, the Lessee shall, in addition to obtaining any consents required by this Lease, contact the United States Army Corps of Engineers and obtain any required permits or waivers under Section 404 of the Clean Water Act. For purposes of this Condition, the term "new construction" includes structures, facilities, draining, dredging, channelizing, filling, diking, impounding, and related activities.

31. Lessor Representatives and Successors.

Except as otherwise specifically provided, any reference herein to Commander shall include the Commander's duly authorized representatives.

32. Amendments. This Lease may be amended at any time by mutual agreement of the Parties in writing and signed by a duly authorized representative of each Party.

33. Lessee Access.

a. The use, operation, and occupation of the Premises shall be without cost or expense to the United States Coast Guard, and are subject to the general supervision and control of the Installation Commander.

b. In accepting the privileges and obligations established hereunder, Lessee recognizes that the Installation serves homeland security and that Lessor will not permit Lessee activities to interfere with the Installation's military mission. Access to the Installation is subject to the control of its commanding officer and is governed by such regulations and orders as have been lawfully promulgated or approved by the Secretary of Homeland Security, the Commandant of the Coast Guard, or by any designated military commander. Any access granted to Lessee, its officers, employees, contractors of any of its agents and invitees is subject to such regulations and orders. This Lease is subject to all regulations and orders currently promulgated or which may be promulgated by lawful authority as well as all other conditions contained in this Lease. Violation of any such regulations, orders, or conditions will constitute a breach of this Lease. Such regulations and orders may, by way of example and not by way of limitation, include restrictions on who may enter, how many may enter at any one time, when they may enter, and what areas of the Installation they may visit. Lessee is responsible for the actions of its officers, employees, contractors of any tier, agents, and invitees while on the Installation and acting under this Lease. Lessee is responsible for the costs of complying with these regulations and orders, including, if necessary, background investigations of its employees required to obtain a security clearance.

c. **Intentionally Deleted**

34. Liens and Mortgages. The Lessee shall not engage in any financing or other transaction creating any mortgage upon the Premises; place or suffer to be placed upon the Premises any lien or other encumbrance; or suffer any levy or attachment to be made on the Lessee's interest in the Premises. Any such mortgage, encumbrance, or lien shall be deemed to be a violation of this Condition and constitute a failure to comply with the terms of the Lease on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

35. **Intentionally Deleted.**

36. Exhibits. Two (2) exhibits are attached to and made a part of this Lease, as follows:

Exhibit A – Legal Description and Sketch of Premises

Exhibit B – Combined with Exhibit A

Exhibit C - Intentionally Deleted

Exhibit D - Intentionally Deleted

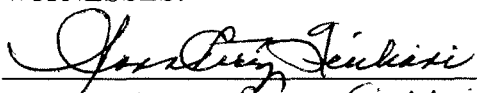
Exhibit E - Intentionally Deleted

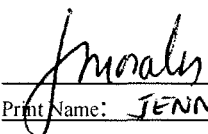
Exhibit F - Intentionally Deleted

Exhibit G - Intentionally Deleted

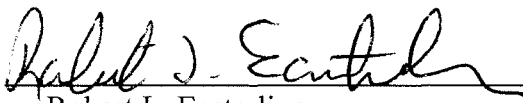
IN WITNESS WHEREOF I have hereunto set my hand by authority of the
Commandant of the Coast Guard this day 21 day of ~~March~~^{April}, 2009.

WITNESSES:


Print Name: Anna Perez-Giuliani



Print Name: JENNY MORALES

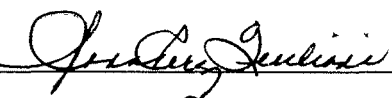
U.S. COAST GUARD

By: 
Robert L. Easterling
for the United States

STATE OF FLORIDA)
)SS:
COUNTY OF MIAMI-DADE)

The foregoing Lease was acknowledged before me this 21 day of April,
2009 by Robert L. Easterling as the Realty Specialist on behalf of the U.S. Coast Guard, who is
personally known to me or has produced _____ as identification.

NOTARY PUBLIC-STATE OF FLORIDA
 Anna Perez-Giuliani
Commission # DD474940
Expires: SEP 22, 2009
Bonded Thru Atlantic Bonding Co., Inc.
[NOTARIAL SEAL]

Notary: 
Print Name: Anna Perez-Giuliani
Notary Public, State of Florida
My commission expires: Sept. 22, 2009

THIS LEASE is also executed by the Lessee this 17th day of ~~February~~^{MARCH}, 2009.

Witness:

Hillary Harrison

Print Name HILLARY HARRISON

Maria Thorley

Print Name MARIA THORLEY.

CITY OF MARATHON

By: Clyde Burnett

Clyde Burnett
its City Manager

STATE OF FLORIDA)
) SS:
COUNTY OF MONROE)

The foregoing Lease was acknowledged before me this 17 day of March, 2009 by Clyde Burnett, as City Manager, of the City of Marathon, a Florida municipal corporation, who is personally known to me or has produced _____, as identification.

Diane Clavier
Notary Public, State of Florida

My Commission Expires:
7/29/2011

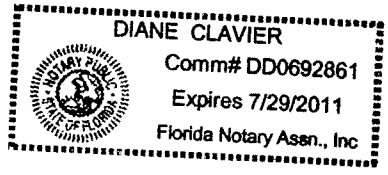


EXHIBIT A

Legal Description and Sketch of Premises

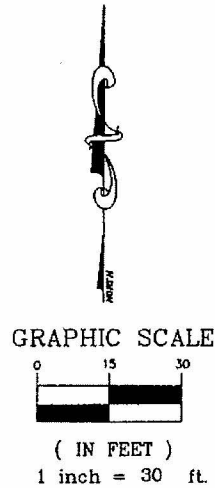
**SKETCH OF DESCRIPTION
OF A PART OF LOT 9, BLOCK 2, SUNSET BAY,
LYING IN SECTION 25, TOWNSHIP 65 SOUTH, RANGE 33 EAST,
CITY OF MARATHON, MONROE COUNTY, FLORIDA**

LEGAL DESCRIPTION

A PART OF LOT 9, BLOCK 2, SUNSET BAY, AS RECORDED IN PLAT BOOK 5, PAGE 46 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE THE SOUTHWEST CORNER OF SAID LOT 9, BLOCK 2, SUNSET BAY;
THENCE N0°40'00"W, ALONG THE WESTERLY LINE OF SAID LOT 9, BLOCK 2, FOR 71.42 FEET;
THENCE LEAVING SAID WESTERLY LINE OF LOT 9, BLOCK 2, N50°45'11"E FOR 25.46 FEET;
THENCE S39°14'49"E FOR 55.83 FEET TO THE SOUTHERLY LINE OF SAID LOT 9, BLOCK 2;
THENCE S50°45'11"W, ALONG THE SAID SOUTHERLY LINE OF LOT 9, BLOCK 2, FOR 70.00 FEET TO THE POINT OF BEGINNING.
CONTAINING 2,665 SQUARE FEET MORE OR LESS.

SURVEYOR'S NOTES

1. BEARINGS SHOWN HEREON ARE BASED THE WESTERLY LINE OF LOT 9, BLOCK 2, SUNSET BAY AS HAVING A RECORD BEARING OF N0°40'00"W AS SHOWN ON THE PLAT OF RECORD.



***** THIS IS NOT A SURVEY *****

