

Sponsored by: Hernstadt

**CITY OF MARATHON, FLORIDA
RESOLUTION NO. 2010-34**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A FIRST AMENDMENT TO CONTRACT FOR THE SALE AND PURCHASE OF REAL PROPERTY FROM DAVID G. & CHARLENE G. JACKSON; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, David G. & Charlene G. Jackson (the “Sellers”) and the City of Marathon, Florida (the “City”) executed that certain Contract for Purchase and Sale of Real Property dated as of January 12, 2010 (the “Contract”), for the sale and purchase of certain real property more particularly described in the Contract (the “Property”).

WHEREAS, because of certain procedural requirements of the Florida Department of Transportation (“FDOT”) relating to the assignment of FDOT leases that are required to provide the Property adequate access to US 1, Seller and City need to amend the terms of the Contract as hereinafter set forth (the “First Amendment to Contract”).

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

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

Section 2. The First Amendment to Contract for the sale and purchase of the Property from Seller to City, a copy of which is attached as Exhibit “A,” together with such non-material changes as may be acceptable to the City Manager and approved as to form by the City Attorney, is hereby approved.


Section 3. The City Manager is authorized to execute the First Amendment to Contract, all appropriate closing documents, and to take all action necessary to close on the purchase of the Property.

Section 4. The City Council finds and determines that the Property shall be held or used for public purposes, specifically for use as a wastewater treatment plant and fire station.

Section 5. This Resolution shall be effective immediately upon adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 23rd DAY OF MARCH, 2010.


CITY OF MARATHON, FLORIDA



Ginger Snead, Mayor

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

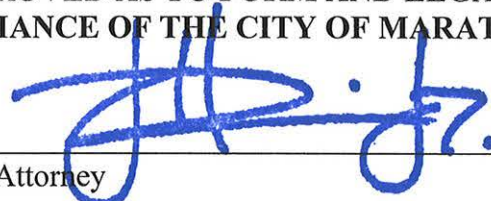
ATTEST:



Diane Clavier, City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON ONLY



City Attorney

**FIRST AMENDMENT TO
CONTRACT FOR PURCHASE AND SALE OF REAL PROPERTY**

This First Amendment to Contract for Purchase and Sale of Real Property (this "Amendment") is made as of the March ____, 2010 by and between David G. Jackson and Charline G. Jackson (collectively, the "Seller"), and **The CITY OF MARATHON**, a Florida Municipal Corporation (the "Buyer").

RECITALS

WHEREAS, Seller and Buyer executed that certain Contract for Purchase and Sale of Real Property dated as of January 12, 2010 (the "Contract"), for the sale and purchase of certain real property more particularly described in the Contract.

WHEREAS, because of certain procedural requirements of the Florida Department of Transportation ("FDOT") relating to the assignment of FDOT leases, Seller and Buyer need to amend the terms of the Contract as hereinafter set forth.

AGREEMENT

NOW THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, as well as the mutual covenants and agreements herein contained, Seller and Buyer agree as follows:

1. The Recitals herein contained are true and correct and are made a part hereof.
2. Section 1.10; Closing Date. Section 1.10 of the Contract is hereby deleted in its entirety and replaced with the following:

"Section 1.10 Closing Date. The date of the Closing, which shall be no later than ten (10) Business Days after the City Council Approval (as defined in Section 8 of this Amendment) has been granted; provided, that if the Closing Date shall fall on a Saturday, Sunday or legal holiday, the date of closing shall be the next date that is not a Saturday, Sunday or legal holiday."

3. Section 1.16; FDOT Lease. Section 1.16 of the Contract is hereby modified by adding "pursuant to FDOT's interpretation of a tenant in possession under a lease which term has expired, Seller is currently a tenant at will" at the end of Section 1.16 of the Contract.

4. Section 1.22; Land. Section 1.22 of the Contract is hereby modified by replacing (i) "which is be subject to the "New FDOT Lease"" as it currently appears in the seventh (7th) line of Section 1.22 of the Contract with "which will be subject to the "Partial Assignment of FDOT

Lease”” and (ii) “New Leased Parcel” as it currently appears in the eighth (8th) and ninth (9th) lines of Section 1.22 of the Contract with “New FDOT Leased Parcel”)

5. Section 2; Purchase and Sale. Section 2 of the Contract is hereby modified by replacing “Leased Parcel” with “New FDOT Leased Parcel” as such term is used in Section 2 of the Contract.

6. Section 7.1.14; FDOT Lease. Section 7.1.14 of the Contract is hereby deleted in its entirety and replaced with the following: “Seller is currently a tenant at will under the FDOT Lease.”

7. Section 8.6; New FDOT Lease. Section 8.6 of the Contract is hereby deleted in its entirety and replaced with the following:

“Section 8.6 Partial Assignment of FDOT Lease. Seller covenants and agrees to cooperate and facilitate Buyer in Buyer’s efforts to (i) obtain any necessary consent or acknowledgement from FDOT to the Partial Assignment of FDOT Lease and (ii) enter into a new lease by and between FDOT, as lessor, and Buyer, as lessee, in the substantially the same form as the FDOT Lease and affecting the New FDOT Leased Parcel. The obligation of Seller pursuant to this covenant shall expressly survive the Closing.”

8. Condition Precedent. Buyer shall not be bound by or obligated to abide by the terms of this Amendment or Close on the transaction contemplated for under the Contract unless and until Buyer shall have obtained a duly authorized resolution adopted by the City Council of the Buyer approving this Amendment and Buyer’s performance hereunder (the “City Council Approval”).

9. Section 13.1.2; Seller’s No Lien, Gap and FIRPTA Affidavit. Section 13.1.2 of the Contract is hereby modified by replacing “New FDOT Lease” with “FDOT Lease” as such term is used in the sixth (6th) line of Section 13.1.2 of the Contract.

10. Section 13.1.7; FDOT Lease and Section 13.1.8; New FDOT Lease. Sections 13.1.7 and 13.1.8 of the Contract are hereby deleted in their entirety and replaced with the following:

“Section 13.1.7 Escrow Agreement. An escrow agreement executed by and among Buyer, Seller and Closing Agent pursuant to which Closing Agent will hold 10% of the Purchase Price, subject to the terms and conditions more particularly set forth in Section 14.3 of this Contract.

Section 13.1.8 Partial Assignment of FDOT Lease. A Partial Assignment of FDOT Lease assigning Seller’s right, title and interest in the FDOT Lease affecting the New FDOT Leased Parcel to Buyer shall be executed by Seller at Closing. The parties acknowledge that FDOT’s acknowledgement and signature to the Partial Assignment of FDOT Lease shall not be a condition precedent to Closing.”

11. Section 14.3; Disbursement of Funds and Documents. Section 14.3 of the Contract is hereby deleted in its entirety and replaced with the following:

“Section 14.3 Disbursement of Funds and Documents. Once the Title Company has "insured the gap," i.e., endorsed the Title Commitment to delete the exception for matters appearing between the Effective Date of the Title Commitment and the Effective Date of the Title Policy, then Closing Agent shall disburse (i) the Deposit and Cash to Close, less 10% of the Purchase Price, and (ii) Buyer's Closing Documents to Seller, provided, however, that Closing Agent shall record the Deed in the Public Records of Monroe County, Florida.

At Closing, Closing Agent will hold 10% of the Purchase Price pursuant to the Escrow Agreement described in Section 13.7 of this Contract. Closing Agent agrees to release the 10% of the Purchase Price to Seller upon the earlier to occur of (i) the Partial Assignment of FDOT Lease being fully executed and acknowledged by Buyer, Seller and FDOT and delivered to Buyer in final form or (ii) ninety (90) days after the Closing Date.”

12. Exhibits. The Contract is hereby modified by correcting the square footages set forth on the exhibits to the Contract by (i) replacing “30,135,971” with “30,135.971” as such number is used in Exhibit “A” of the Contract and (ii) replacing “7,072,389” with “7,072.389” as such number is used in Exhibit “B” of the Contract.

13. This Amendment may be executed in several counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same Amendment. A facsimile shall serve as an original for all purposes.

14. In the event of any conflict between the terms of the Contract and the terms of this Amendment, the terms of this Amendment shall prevail. All capitalized terms not defined herein shall have the meaning ascribed to them in the Contract.

15. Except as modified herein, the Contract remains unchanged and is hereby ratified and confirmed in all respects.

[Remainder of Page Intentionally Left Blank. Signatures Appear on Following Page.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment on the dates set forth below.

SELLER:


DAVID G. JACKSON

Date: March 19, 2010

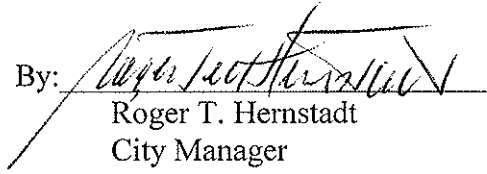

CHARLINE G. JACKSON

Date: March 19, 2010

[Signature of Buyer appears on following page.]

BUYER:

**The CITY OF MARATHON,
a Florida Municipal Corporation**

By: 
Roger T. Hernstadt
City Manager

Date: March 24, 2010