

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2013-76**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING WASTEWATER CONNECTION AGREEMENT BETWEEN THE CITY AND THE SCHOOL BOARD OF MONROE COUNTY, FLORIDA; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND COLLECT FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Marathon, Florida (the "City") and the Monroe County School Board (the "School Board") desire to connect properties owned by the School Board to the City's Wastewater System; and

**WHEREAS**, the City and School Board have negotiated the terms and conditions of the City's standardized Wastewater Connection Agreement (the "Agreement") that provides for an initial annual payment to the City by the School Board in the \$269,283.00 for wastewater utility services with the possibility of an adjustment based upon on actual usage following 16 months commencing on September 1, 2013.

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

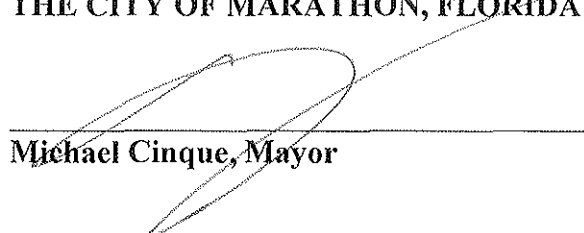
**Section 1.** The above recitals are true and correct and incorporated herein.

**Section 2.** The Wastewater Connection Agreement between the City and the School Board of Monroe County, Florida, 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. The City Manager is authorized to execute the agreement and collect funds 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 10<sup>th</sup> DAY OF SEPTEMBER, 2013.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Michael Cinque, Mayor**

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

**ATTEST:**

*Diane Clavier*

\_\_\_\_\_  
Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

*[Handwritten Signature]*  
\_\_\_\_\_  
City Attorney



(B) Owner or Lessee is responsible for payment of applicable City Connection Costs, as provided below, and shall pay for monthly wastewater service pursuant to the City's duly adopted rates.

(C) The Connection Costs for the Property are \$269,283.00, subject to any revision required by subsection 3(i) of this Agreement.

3. CONNECTION COSTS AS MONTHLY, QUARTERLY, BI-ANNUAL OR ANNUAL CHARGES.

(A) The Owner or Lessee hereby consent and requests to have the Connection Costs, and its proportionate costs related to the administration and collection of the City's wastewater utility program paid in accordance with the selected payment option in paragraph B. The costs related to the administration and collection of the wastewater utility program, include, but are not limited to: (1) costs related to the annual implementation and administration of the assessment program; and (2) all other costs and expenses reasonably related to the wastewater utility program (collectively the "Wastewater Utility Program Costs").

(B) The Connection Costs, Connection Cost Overages, Wastewater Utility Program Costs, plus accrued interest and penalties, if any, shall be collected as a charge paid by the Owner or Lessee as indicated below until the total Connection Costs, Wastewater Utility Program Costs, plus accrued interest and penalties, if any, have been paid to the City in full:

The amount to be paid by the Owner or Lessee to the City shall be \$\_\_\_\_\_ annually for the period of 15 payments beginning September 1<sup>st</sup>, 2013.

-or-

The amount to be paid by the Owner or Lessee to the City shall be \$269,283.00 in advance lump sum on or before September 1<sup>st</sup>, 2013.

(C) The Property will be specially benefited by the provision of wastewater service by the City. The provision of wastewater collection and treatment services will enhance the utilization and enjoyment of the Property by providing: (1) access to wastewater collection and treatment facilities to the Owner or Lessee and occupants of the Property for the proper, safe, and cost effective treatment and disposal of wastewater generated on the Property, which improves the utilization, marketability and development potential of the Property; (2) better, consistent and environmentally compliant service to Owner or Lessee and occupants; (3) the enhancement of environmentally responsible use and enjoyment of the Property, and (4) the protection of property values and the health and safety of the Owner or Lessee and occupants of the Property.

(D) The special benefits provided to the Property by the provision of wastewater services bear a logical relationship to the methods used to calculate and apportion the Connection Costs. The wastewater utility program provides an equitable method of funding the Connection Costs, which costs are fair and reasonable and in proportion to the special benefits received by the Property.

(E) The terms, conditions, and assumptions of the wastewater utility program, which are contained in the Initial Assessment Resolution adopted by the City, including but not limited to: (1) assignment of Connections and EDUs to the Property; (2) assignment of the Connection Costs to the Property; (3) computation of the assessment amounts; and (4) reallocation of the annual assessments upon subdivision of the Property are fair and reasonable and in proportion to the special benefits to be provided to the Property.

(F) The implementation of the City's wastewater utility program, policies, procedures and rules are an integral component of the utility service provided to the Owner or Lessee's Property by the City.

(G) In the event of non-payment of the Connection Costs, Connection Cost Overages, Wastewater Utility Program Costs, plus accrued interest and penalties, if any, the City shall have the right to collect any and all amounts due in accordance with the City's established utility billing practices; including the cessation of all utility services, or to initiate a mandamus or other appropriate action to compel payment subject to the provisions of Chapter 164, Florida Statutes. All costs, fees, and expenses, including reasonable attorney's fees and title search expenses, related to any mandamus or other action as described herein, shall be included in any judgment or decree rendered therein and the Owner or Lessee shall be liable for all such costs incurred by the City to collect the special assessment and the same shall be collectible as a part of or in addition to, the costs of the action.

(H) Commencing on September 1<sup>st</sup>, 2013, and continuing for a 16 month time period, the monthly EDU water usage shall be measured. Upon the expiration of the 16 month period, the estimated EDUs set forth in Exhibit "A" shall be adjusted to reflect the actual EDUs used at the properties. In accordance with F.S. 1013.51, the Owner or Lessee EDU/assessment of the Wastewater Utility Program Costs may not exceed the Owner or Lessee's proportionate share of the cost of the system improvements. In the event that the Owners or Lessee has undertaken or undertakes during the 16 month time period, water conservation measures, including separate meters for irrigation, such measures shall be used in the calculation of the EDU usage, less irrigation usage, following the 16 month time period. Following the 16 month time period, should the Parties not agree upon the revised EDUs or other Wastewater Utility Program Costs, the

Parties agree to utilize the provisions of Chapter 164, Florida Statutes to resolve any dispute.

(I) OWNER OR LESSEE'S OBLIGATION TO PAY UNDER THIS AGREEMENT' IS CONTINGENT UPON AN ANNUAL APPROPRIATION BY THE SCHOOL BOARD OF MONROE COUNTY, FLORIDA. OWNER OR LESSEE'S FAILURE TO PAY UNDER THIS AGREEMENT, HOWEVER, SHALL ENTITLE THE CITY TO IMMEDIATELY CEASE ALL WASTEWATER UTILITY SERVICES TO THE PROPERTY.

4. ENTIRE AGREEMENT.

(A) This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein.

(B) No amendment, supplement, modification, or waiver of this Agreement shall be binding unless executed in writing by both parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided.

5. **BINDING EFFECT.** This Agreement shall be recorded in the Public Records of Monroe County and, to the extent provided herein, shall be binding upon the City, Owner or Lessee and the Owner or Lessee's successors in interest to the Property.

6. **CONSTRUCTION.**

(A) This Agreement shall not be construed against any party based on it being the drafter of the Agreement. The parties agree that the parties herein played an equal part in reciprocity in drafting this Agreement.

(B) Capitalized terms contained herein shall have no more force or effect than uncapitalized terms.

(C) Captions and section headings in this Agreement are provided for convenience only and shall not be deemed to explain, modify, amplify, or aid in the interpretation, construction, or meaning of this Agreement.

(D) There are no third party beneficiaries to this Agreement. This

Agreement IS entered into exclusively for the benefit of the parties herein.

(E) It is understood by the parties that this Agreement is a unified Agreement and if any provision hereof or application thereof to any person shall be held invalid or unenforceable, such holding shall invalidate and render unenforceable all other provisions hereof.

7. **APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
8. **JUR.ISDICTION AND VENUE.** The parties to this Agreement expressly consent to the jurisdiction of and agree to suit in any court of general jurisdiction in the State, whether state, local or federal, and further agrees that venue shall lie in Monroe County, Florida.
9. **RECORDING.** This Agreement shall be recorded, at Owner or Lessee's expense in the Public Records of Monroe County, Florida.


THIS AGREEMENT SHALL BE RECORDED IN THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA. THE ACKNOWLEDGMENTS CONTAINED HEREIN SHALL RUN WITH THE PROPERTY AND SHALL BE BINDING ON THE OWNER OR LESSEE AND ON ALL PERSONS (INCLUDING CORPORATIONS, ASSOCIATIONS, TRUSTS, AND OTHER LEGAL ENTITIES) TAKING TITLE TO, OR POSSESSION OF ALL OR ANY PART OF THE PROPERTY, AND THEIR SUCCESSORS IN INTEREST. BY TAKING TITLE OR POSSESSION SUCH PERSONS SHALL BE DEEMED TO HAVE CONSENTED AND AGREED TO THE PROVISIONS OF THIS AGREEMENT TO THE SAME EXTENT AS IF THEY HAD EXECUTED IT AND BY TAKING SUCH TITLE OR POSSESSION SUCH PERSONS SHALL BE ESTOPPED FROM CONTESTING, IN COURT OR OTHERWISE, THE VALIDITY, LEGALITY, AND ENFORCEABILITY OF THIS AGREEMENT OR THE COLLECTION COSTS.

IN WITNESS WHEREOF, the parties have executed this Agreement the date and year first above written.

CITY OF MARATHON, FLORIDA

  
\_\_\_\_\_  
Roger T. Hernstadt, City Manager


ATTEST:

  
\_\_\_\_\_  
Diane Clavier  
City Clerk

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

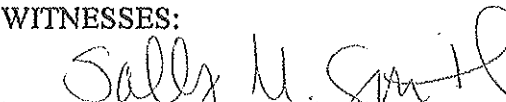
  
\_\_\_\_\_  
City Attorney

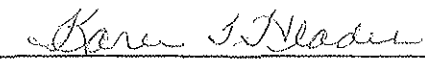
OWNER OR LESSEE (SCHOL BOARD OF MONROE COUNTY, FLORIDA

By:   
\_\_\_\_\_  
Print Name: Andy Entkins

Its: Chairman  
\_\_\_\_\_

WITNESSES:

  
\_\_\_\_\_  
Print Name: Sally M. Smith

  
\_\_\_\_\_  
Print Name: Karen T. Hladik



CITY OF MARATHON

Exhibit A

Wastewater Assessment for Monroe County School District

NO	PARCEL	DESCRIPTION	ADDRESS	WATER METER NO.	EDUS	CONNECTION	AMOUNT
1	00104800-000000	Marathon High School <i>Credit for payment of prior Agreement</i>	350 Sombrero Beach Rd	1830966728	42		\$ 196,602.00 \$ (60,000.00)
						1	\$ 1,049.00
2	00103430-000000	Stanley Switlik Elementary	3400 Overseas Hwy	1831803251	22		\$ 102,982.00
				1831803254	0	1	\$ 1,049.00
3	00102310-000300	Maintenance Building	3300 Overseas Hwy	1832061337	1		\$ 4,681.00
						1	\$ 1,049.00
4	00103500-000000	Adult Education Center	3490 Overseas Hwy	1831826061	2		\$ 9,362.00
						1	\$ 1,049.00
5	00104600-000000	Vacant (Manor)	Vacant	None	1		\$ 4,681.00
						1	\$ 1,049.00
6	00104620-000000	Vacant (Manor) formerly Manor	320 Sombrero Beach Rd	None	1		\$ 4,681.00
						1	\$ 1,049.00
<b>TOTAL AMOUNT DUE PER AGREEMENT</b>							<b>\$ 269,283.00</b>