

RESOLUTION NO. 02-04-54

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE 4TH OF JULY CELEBRATION AGREEMENT FOR FISCAL YEAR 2002; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council hereby approves the 4th of July Celebration Agreement with B. J. Kerlin for the purposes of organizing and running the Community's annual 4th of July celebration on Sombrero Beach, and the associated parade.

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

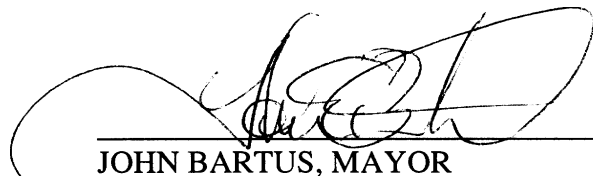
Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Proposal. Said Agreement outlined above and attached hereto as Exhibit "A", is hereby approved.

Section 3. Term. The Agreement is for a total of 3 days. The three days include July 3rd, July 4th and July 5th, 2002, to allow for setup, the event day and a teardown/clean-up day.

Section 4. Effective Date. This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 30th day of April, 2002.



JOHN BARTUS, MAYOR

ATTEST:

Katherine V. Zelcha
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

[Handwritten Signature]
CITY ATTORNEY

#5425v1.ks

MEMORANDUM

City of Marathon

TO: Mayor, City Council and City Manager

FROM: Chuck Adams- Director of Community Services

DATE: 4/12/02

MEETING DATE: 4/30/02

SUBJECT: **Consideration of Contract with BJ Kerlin to organize and implement the Community's 4th of July Celebration**

ITEM:

Consideration of Contract with BJ Kerlin to organize and implement the Community's 4th of July Celebration

STATEMENT OF PURPOSE:

To enter into a contract with BJ Kerlin for the purposes of organizing and running the Community's annual 4th of July celebration on Sombrero Beach and the associated Parade.

ADDITIONAL INFORMATION:

Staff has included the following key points in the contract:

- The contract term is for 3 days. The three days include the 3rd, 4th and 5th. This will allow for a set-up day, the event day and a teardown/clean-up day.
- Local non-profit organizations shall be used for all concessions. (i.e. youth sports organizations, Parent, Teacher, Student Association, Rotary Club, etc.)
- There shall be no expense to the City for the event itself other than, the fireworks display, ongoing garbage collection during the event (part of the City's existing maintenance contract) and security which will be handled under the City's current contract with the Monroe County Sheriff's Department.
- The contract provides for the use of the City's name and logo in conjunction with this event, as provided by law. The use has been restricted to hats and/or t-shirts. None of the items bearing the City's name or logo may be sold.

BUDGET IMPACT:

None, other than those that have already been identified and budgeted for.

AGENCY IMPACT:

None.

STAFF IMPACT:

None.

RECOMMENDATION:

Approve as proposed.

4th of JULY CELEBRATION AGREEMENT

THIS 4th of JULY CELEBRATION AGREEMENT (the "Agreement") is made and entered into as of **April 30, 2002** (the "Effective Date") between the **CITY OF MARATHON**, a Florida municipal corporation (the "City") and B.J. KERLIN, PROPRIETOR, a _____ (the "Company").

RECITALS

City and Company wish to enter into an agreement for Company to provide to City all labor, services and materials necessary and appropriate for Company to operate, manage and maintain a City special event (the "Event") on July 4, 2002 (the "Event Date") at Sombrero Beach Park, which is more particularly described on Exhibit "A" attached hereto and made a part hereof.

NOW THEREFORE, in consideration of the mutual covenants in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, City and Company agree as follows:

1. Agreement to Provide Services. Company agrees to provide to City all labor, services and materials necessary and appropriate for Company to operate, manage and maintain the Event on the Event Date. The services to be provided by Company include, but are not limited to, all labor, equipment, entertainment, concession stands, materials, and other miscellaneous items necessary to provide a first-class Event, including transportation, set-up, maintenance, take-down and clean up of the Property after the Event, and directing traffic and providing security services during the Event (collectively, the "Services").

2. Term. Company's use of the Property for purposes of providing its services under this Agreement shall be from July 3, 2002 (the "Commencement Date") to July 5, 2002 (the "Termination Date"). Any terms or conditions of this Agreement that require actions, rights or obligations beyond the Termination Date shall survive such termination or expiration.

3. Event Services and Plans. Company agrees to provide all Services at the Event on the Event Date. Company shall hire not-for-profit entities to provide and operate all concession stands and entertainment during the Event. Within thirty (30) days of the Effective Date, Company shall provide to City, for its review and approval, a plan for the set-up, programming, traffic, security, take-down and clean-up for during and after the Event (the "Plans"). The City shall provide its written approval or disapproval (specifying the basis for disapproval and/or comments), in its sole and absolute discretion, to the Plans within fifteen (15) days of receipt of request for same. Once the Plans receive the written approval of the City, such Plans shall be deemed "Approved Plans." The approval by the City of the Plans or other documents submitted to City pursuant to the terms and conditions of this Agreement shall not constitute (a) a representation or warranty that such comply with all applicable laws, ordinances, rules, regulations and procedures of all applicable governmental authorities, it being expressly understood that the responsibility therefore shall at all times remain with Company; and (b) the approval of City in its capacity as a governmental authority, it being expressly understood that

approval of City in its capacity as a governmental authority, it being expressly understood that Company is subject to all applicable ordinances, rules, regulations and procedures of the City of Marathon and other applicable governmental entities, and that Company shall have the responsibility, at its sole cost and expense, to obtain all governmental approvals applicable to the Event. No changes or alterations shall be made to any Approved Plans, without the prior written approval of the City, which approval shall not be unreasonably withheld or delayed.

4. Event Cost. Company shall be responsible for all costs associated with the Services provided at the Event.

5. License. During the Event, in accordance with Section 165.043, Florida Statutes, the City hereby grants to Company a limited license to use the City's seal and logo only for promotional advertisements of the Event and on t-shirts and hats for the Event (the "License"). Such promotional advertisements shall only be allowed for advertising the Event and not for any fee or profit generating activities. The use of the City's seal and logo is expressly conditioned upon the Company not charging a fee for the t-shirts and hats on which the City's seal and logo appear. The License is solely limited to the Event and the Company shall have no further rights to use the City's seal and logo after the Event. Additionally, the City shall have no obligation in the future to grant to Company a similar license.

6. Condition of Property. Company acknowledges and agrees that the Property shall be in substantially the same condition on the Termination Date as it is on the Effective Date. Company shall be responsible for any and all repairs to the Property due to the Event, and shall promptly complete such repairs without demand or delay.

7. Compliance with Government Regulations. Company shall comply with all applicable federal, state, county and municipal laws, ordinances, resolutions and governmental rules, regulations and orders as may be in effect now or at any time during the Term of this Agreement, all as may be amended, which are applicable to Company, the Property, or the operations conducted at the Property during the Event. A violation of any of such laws, ordinances, resolutions, rules, regulations or orders, as amended, shall constitute a material breach of this Agreement, and in such event City shall be entitled to exercise any and all rights and remedies hereunder and at law and in equity.

8. Insurance.

8.1. Liability Insurance. Company will provide City with the following insurance coverages for the Event:

8.1.1. General Liability. Commercial general liability insurance in amounts not less than \$1,000,000 per occurrence/\$1,000,000 general aggregate with a \$2,000,000 each occurrence excess, issued by an insurance carrier acceptable to City.

8.1.2. Automobile Liability. Automobile liability insurance in amounts not less than \$2,000,000 combined single limit, issued by an insurance carrier acceptable to City.

8.2. Insurance Requirements. All insurance policies provided by Company will be issued by companies licensed to do business in Florida and rated at least A VII by Best's Key Rating Guide. All policies provided will be on Occurrence forms, and not Claims Made forms. All liability policies must be endorsed to add City as an Additional Insured. Each insurance policy provided by Company must state that its coverage is primary over any insurance or self-insurance program available to City. Company will be responsible for all deductibles and self-insured retentions on its liability policies. All insurance policies required by this Agreement will contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or not renewed until at least thirty (30) days after written notice of such cancellation, change or non-renewal has been given to the City by certified mail. Company will provide City with appropriate Certificates of Insurance showing City as an Additional Insured. City reserves the right to make changes or additions to the insurance requirements set forth in this Agreement during the term of the Agreement, if City believes such changes are appropriate. The insurance required by this Agreement shall in no way limit the liability of the Company.

8.3. Workers' Compensation Insurance. Throughout the term of this Agreement, to the extent that Company is monetarily compensated during the Event, Company will maintain in full force and effect Workers' Compensation insurance covering all employees who render services under this Agreement. Company will require all subcontractors who are monetarily compensated and who render services under this Agreement to maintain Workers' Compensation insurance. Company will indemnify the City and hold the City harmless from any liability arising out of the failure of Company or any subcontractor of Company to maintain Worker's Compensation insurance.

9. Indemnification; Liability.

9.1. Indemnification. Company agrees to indemnify, defend (with counsel selected by City) and hold harmless City, its officers, agents, and employees, against any loss, damage or expense (including all costs and reasonable attorneys' fees at both the trial and appellate levels) suffered by City as a result of (a) any breach by Company of this Agreement; or (b) any claims, suits, actions, damages or causes of action arising out of any personal injury, loss of life or property damage in connection with, related to, or arising out of the Event, the Services or this Agreement, its execution or Company's performance or failure to perform under this Agreement.

9.2. Liability. Company hereby assumes all financial, administrative and legal responsibility in connection with, related to, or arising out of the Event. City shall have no liability in connection with the Event except to the extent of any gross negligence or willful misconduct of City. Nothing in this Agreement will be construed to affect in any way the City's rights, privileges, and immunities, including the monetary limitations of liability set forth therein, under the doctrine of "sovereign immunity" and as set forth in Section 768.28 of the Florida Statutes. The provisions of this section will survive the termination or expiration of this Agreement.

10. Designation of City's Contact. The City Manager, or his designee, will be the City's agent and contact for purposes of answering questions, addressing problems, and otherwise dealing with Company in implementing the terms of this Agreement.

11. Conflict Between Documents. If there is any conflict or inconsistency between this Agreement or its exhibits, the provisions of this Agreement will prevail.

12. Notices. Any notice, request, demand, instruction or other communication to be given to either City or Company will be in writing and will either be (a) hand-delivered; (b) sent by Federal Express or a comparable overnight mail service; (c) mailed by U.S. registered or certified mail, return receipt requested, postage prepaid; or (d) sent by telephone facsimile transmission with an original copy of the transmission delivered by (a), (b) or (c), to City or Company, as applicable, at the following addresses:

City: City of Marathon
11045-55 Overseas Highway
Marathon, Florida 33050
Attn: Craig Wrathell, City Manager

With Copy to: Nina L. Boniske, Esq.
City Attorney
Weiss Serota Helfman Pastoriza & Guedes, P.A.
2665 South Bayshore Drive, Suite 420
Miami, Florida 33133

Company: BT KERLIN
427 CALLE LIMON
MARATHON FL 33050

Notice will be effective upon delivery or refusal of delivery of notice. Either party may change its address for notice by sending to the other party written notice of the change. Until delivery of written notice of a change in address, the last addressee and address stated in this Agreement continues in effect for all purposes.

13. Miscellaneous Provisions.

13.1. Amendment. No modification or amendment of this Agreement will be of any force or effect unless in writing and executed by both City and Company.

13.2. Attorneys' Fees. If any litigation arises out of this Agreement, the prevailing party is entitled to recover its Attorneys' fees and costs at both the trial and appellate levels.

13.3. Computation of Time. Any time period referenced in this Agreement which ends on a Saturday, Sunday or legal holiday will extend to 5:00 p.m. on the next full day that the City is open for business.

13.4. Construction of Contract. Both parties to this Agreement have participated freely in its negotiation and preparation. Accordingly, this Agreement will not be more strictly construed against any one of the parties.

13.5. Counterparts. This Agreement may be signed in any number of counterparts, each of which constitutes the contract of the parties and each of which will be treated as an original.

13.6. Gender. In this Agreement, the masculine includes the feminine and neuter, the singular includes the plural, and the plural includes the singular, as the context requires.

13.7. Governing Law. This Contract will be interpreted and enforced in accordance with Florida law.

13.8. Section and Paragraph Headings. The section and paragraph headings contained in this Agreement are for purposes of identification only and are not to be considered in construing this Agreement.

13.9. Time is of the Essence. Time is of the essence in the performance of all obligations by Company under this Agreement.

13.10. Assignment. Company shall not assign, delegate, transfer or otherwise encumber any rights, obligations, materials or services provided by or resulting from this Agreement without the written consent of City, which consent may be withheld in the City's sole and absolute discretion.

13.11. Waiver. No express or implied consent or waiver by a party to or of any breach or default by the other party in the performance by such other party of its obligations under this Contract will be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such other party hereunder. Failure by a party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, will not constitute a waiver by such party of its rights hereunder. The giving of consent by a party in any one instance will not limit or waive the necessity to obtain such party's consent in any future instance.

The parties have signed this Agreement on the dates shown below their respective signatures.

ATTEST:

By: Katherine V. Selchan
City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: [Signature]
City Attorney

CITY:

CITY OF MARATHON, FLORIDA,
a municipal corporation of the State of
Florida

By: [Signature]
John Bartus, Mayor

COMPANY:

By: [Signature]
Name: B J Merlin
Its: Proprietor
Date: 6/5/2002