

Sponsored by: Janke

**CITY OF MARATHON, FLORIDA
RESOLUTION 2004-006**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MARATHON GARBAGE SERVICE, INC. FOR SOLID WASTE COLLECTION SERVICES AT CITY FACILITIES

WHEREAS, the City of Marathon (the "City") desires to enter into an agreement with Marathon Garbage Service, Inc. to provide for solid waste collection services for any City operated facilities currently or subsequently under control and ownership of the City.

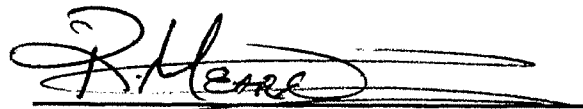
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The agreement between the City of Marathon and Marathon Garbage Service, Inc. for solid waste collection services, a copy of which is attached as Exhibit "A", together with non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is approved.

Section 2. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the city of Marathon, Florida, this 27th day of January, 2004.

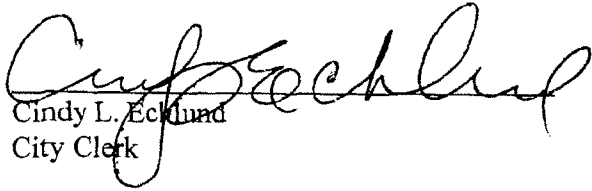
THE CITY OF MARATHON, FLORIDA



Randy Mearns, Mayor

AYES: Bartus, Pinkus, Repetto, Worthington, Mearns
NOES: None
ABSENT: None
ABSTAIN: None

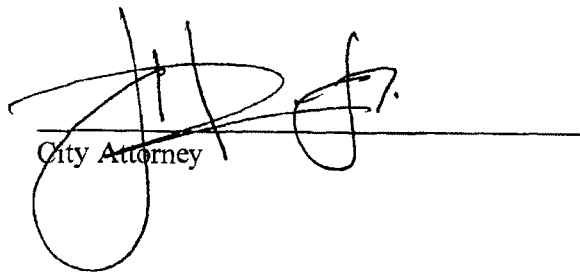
ATTEST:



Cindy L. Ecklund
City Clerk

(City Seal)

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



City Attorney

AGREEMENT BETWEEN
MARATHON GARBAGE SERVICE, INC. &
THE CITY OF MARATHON
FOR SOLID WASTE COLLECTION SERVICES

THIS AGREEMENT (the "Agreement") is dated the ____ day of _____, 2004 by and between the CITY OF MARATHON, a Florida municipal corporation (the "City") and MARATHON GARBAGE SERVICE, INC., a corporation doing business in the State of Florida (the "Contractor").

BACKGROUND

WHEREAS, pursuant to Chapter 99-427, Laws of Florida, the City was incorporated on November 30, 1999, and became operational on February 24, 2000; and

WHEREAS, prior to incorporation, the area included within the City boundaries was part of the unincorporated area of Monroe County and specifically included within the Monroe County Solid Waste Municipal Service Benefit Unit ("MSBU"); and

WHEREAS, from October 1, 2000 to September 30, 2003, the City did not participate in the Monroe County Solid Waste MSBU; and

WHEREAS, as of October 1, 2003, the City has agreed to be included in the Monroe County Solid Waste MSBU; and

WHEREAS, the Contractor previously provided solid waste collection services to the City from the time period of October 1, 2000 through September 30, 2003; and

WHEREAS, an outstanding balance remains from those previously provided solid waste collection services due to Contractor from the City; and

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the City and Contractor agree as follows:

1. Solid Waste Services.

1.1 The Contractor shall provide to the City the collection, transport, and disposal of all solid waste generated from any City operated facilities currently or subsequently under control and/or ownership by the City, as listed in Exhibit "A" at no additional cost to the City.

1.2 At the request of the City Manager, the Contractor shall provide collection services for roll-off containers to the properties identified in Exhibit "A" and the City will cover the tipping fees for these services.

- 1.3 The City Manager shall amend the list in Exhibit "A" as new properties may be acquired or used by the City.
2. **Compensation.**
- 2.1 In exchange for all of the services provided by the Contractor from October 1, 2000 through September 30, 2003, the City shall compensate Contractor in the sum of \$125,000.00.
- 2.2 Payment of the amount specified in Section 2.1 by the City shall constitute a waiver by the Contractor of any claims or any other such causes of action that the Contractor may have against the City for the previously provided services.
3. **Indemnification.**
- 3.1 The Contractor does hereby agree to defend, indemnify and hold the City, its officers, agents, or employees, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the acts, omissions, negligence or malfeasance of the Contractor that may have occurred between October 1, 2000 and September 30, 2003 in the performance of such solid waste services to the City.
4. **Notices.** All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing (each such, a "Notice") and addressed as follows (or to any other address which either party may designate by Notice):

If to Contractor: Marathon Garbage Service, Inc.
4920 Overseas Highway
Marathon, Florida 33050

If to City: William Scott Janke, City Manager
City of Marathon
11045-55 Overseas Highway
Marathon, Florida 33050

With a copy to: Nina Boniske, City Attorney
Weiss, Serota, Helfman, Pastoriza Guedes
Cole & Boniske, P.A.
2665 S. Bayshore Dr., Suite 420
Miami, Florida 33133

Any Notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly

given if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered; facsimile; or sent by overnight delivery service.

5. Severability.

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

6. Attorneys Fees and Waiver of Jury Trial.

- 6.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 6.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

7. Waiver

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

8. Survival of Provisions

- 8.1 Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

9. Counterparts

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

10. Governing Law.


- 10.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this

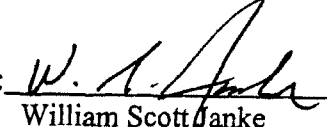
Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court or the Southern District of Florida.

IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature: The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same and by Contractor by and through its authorized agent.

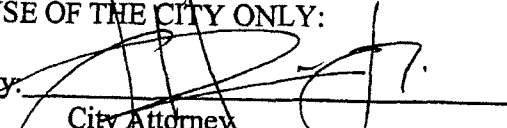
ATTEST:

CITY OF MARATHON, FLORIDA,
a Florida municipal corporation

By: 
Cindy L. Ecklund, City Clerk

By: 
William Scott Janke

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
USE OF THE CITY ONLY:

By: 
City Attorney

ATTEST:

MARATHON GARBAGE SERVICE,
INC.:

By: 
President

1/5/04

Exhibit A

City of Marathon Facilities

Facility	Address	Trash Pickup
Sombrero Beach	2150 Overseas Hwy	Yes
Marathon Community Park	200 36 th Street	Yes
Boot Key Harbor Marina	800 35 th Street	Yes
Jesse Hobbs Park	41 st & US 1	Yes
Teen Center	810 33 rd St	Yes
Fire Station # 1	33 rd St & US 1	Yes
Fire Station # 2	8900 Overseas Hwy	Yes
City Hall	10045 Overseas Hwy	Yes
Coco Plum Beach	Coco Plum Road	Yes
Rotary Park	7575 Overseas Hwy	Yes
33 rd St. Boat Ramp	825 33 rd Street	Yes
Skate Park	3890 Overseas Hwy	Yes
Aviation Boat Ramp	Aviation & Harbor Dr.	Yes