

Sponsored by: Janke

**CITY OF MARATHON, FLORIDA
RESOLUTION 2004-052**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE MONROE COUNTY SCHOOL DISTRICT FOR USE OF A SCHOOL BUS FOR THE CITY'S SUMMER CAMP.

WHEREAS, the City of Marathon's ("City's") summer camp is scheduled to begin on Monday, June 7, 2004; and

WHEREAS, the Monroe County School District ("MCSD") has agreed to permit the City to use one of its school buses for transporting participants of the summer camp throughout the summer; and

WHEREAS, pursuant to Section 1006.261, Florida Statutes, the City and MCSD are required to enter into an agreement for use of the school bus.

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

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


Section 2. The agreement between the City of Marathon and the Monroe County School District for use of a school bus, a copy of which is attached as Exhibit "A", in substantially the same terms together with such changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is approved.

Section 3. The City Manager is authorized to sign the agreement.

Section 4. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the city of Marathon, Florida, this 25th day of May, 2004.

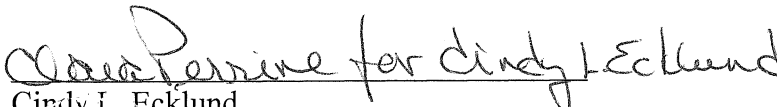
THE CITY OF MARATHON, FLORIDA



Jeffrey M. Pinkus, Mayor

AYES: Bartus, Bull, Mearns, Miller, Pinkus
NOES: None
ABSENT: None
ABSTAIN: None

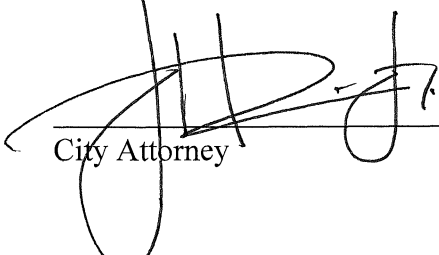
ATTEST:



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

PRE-INCIDENT RELEASE, WAIVER OF LIABILITY
AND
INDEMNITY AGREEMENT

In consideration of being permitted to utilize THE MONROE COUNTY SCHOOL DISTRICT's (hereinafter referred to as "MCSD") School Bus, for the purpose of conducting all activities necessary and inherent in transporting children and/or people by the CITY OF MARATHON (hereinafter referred to as "MARATHON"), MARATHON to pay MCSD 50 cents per mile for School Bus while in use, MARATHON to provide licensed certified driver, and for valuable and good consideration not specifically contained herein, the undersigned, on behalf of MARATHON hereby:

1. expressly acknowledges and agrees that transporting, and/or repairing or servicing a School Bus and/or conducting operations and activities associated with operating, driving, servicing and/or repairing a School Bus are potentially dangerous activities which involve the risk of serious injury and/or death and/or property damage. In light of this danger, the undersigned hereby voluntarily assumes full responsibility for and all risk of bodily injury, death and property damage while driving, riding, transporting, and conducting operations/activities associated with operating, servicing and/or repairing MCSD's School Bus, or while on or about MCSD's premises and/or facilities or while the School Bus is being operated by, or in the possession, custody, or care of MARATHON.
2. irrevocably and unconditionally releases, acquits, waives and forever discharges MCSD their assigns, successors in interest, officers, directors, employees, agents, attorneys, or any person, persons, or entity who may be responsible or liable for the actions of MARATHON of any and all charges, complaints, claims, liabilities, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including reasonable attorneys' fees and costs actually incurred) of any nature whatsoever, whether known or unknown, suspected or unsuspected, arising out of or in any way related to any personal injury (including, but not limited to, bodily injury and death) or property damage suffered by either the undersigned, MARATHON, or any third party in connection with MARATHON utilizing MCSD's School Bus, property and/or facilities.
3. agrees to (to the fullest extent allowed by law, including, but not limited to Florida Statute §768.28 (18)) indemnify, defend and hold MCSD their assigns, successors in interest, officers, directors, employees, agents, attorneys, or any person, persons, or entity who may be responsible or liable for the actions of the MCSD harmless from and against any loss, liabilities, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses, including reasonable attorneys' fees and costs actually incurred of any nature whatsoever, whether known or unknown, suspected or unsuspected, arising out of or in connection with MARATHON's utilizing MCSD's School Bus, property and/or facilities.
4. MARATHON's obligation to indemnify, defend and pay for the defense or at MCSD's

option, to participate and associate with MCSD in the defense and trial of any damage claim or suit, and any related settlement negotiations, arises within seven days of MARATHON's receipt of MCSD's notice of claim for indemnification to MARATHON. MCSD will serve the notice of claim for indemnification by certified mail. MARATHON's obligation to defend and indemnify MCSD within twenty-one days of receipt of such notice is not excused because of MARATHON's inability to evaluate liability, or because MARATHON denies liability or determines MCSD is negligent. Only a final adjudication or judgment finding MCSD negligent excuses MARATHON from the performance of this provision. If a judgment finding MCSD negligent is appealed and the finding of negligence is reversed, then MARATHON is obligated to indemnify MCSD for the cost of the appeal(s), pay all costs and fees related to this obligation and to MCSD's enforcement of this obligation.

This agreement shall be governed by and construed in accordance with the laws of the State of Florida and the undersigned agrees that the venue for any dispute arising out of or dealing with the construction or interpretation of this agreement or any of the activities discussed herein shall be Monroe County Florida. If any provision of this agreement should conflict with applicable law, said conflict shall not affect other provisions that can be given effect without the conflicting provision, and to this end, the provisions of this agreement are hereby declared to be severable.

The undersigned acknowledges that he/she has executed this agreement as a material inducement to MCSD to allow MARATHON to utilize MCSD's School Bus, property and/or facilities. The undersigned has read and voluntarily signed this agreement and further agrees that no representations, statements or inducements, whether written or oral, apart from the foregoing have been made.

Date of AGREEMENT: executed this 25 day of May, 2004.

(Signature)

W. Scott Janke

As (title City Manager) for:
City of Marathon

(Print Name)

W. Scott Janke

Witnessed By:

Diane Clavier

Name:

Diane Clavier

City of Marathon

Address: 10045-55 Overseas Hwy.
Marathon, FL 33050