

Sponsored by: Puto

**CITY OF MARATHON, FLORIDA
RESOLUTION 2004-094**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MARATHON, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT
WITH MONROE COUNTY, FLORIDA, FOR VESSEL WASTEWATER
HAUL-OUT SERVICES IN AN AMOUNT NOT TO EXCEED \$50,000**

WHEREAS, the City of Marathon (the "City") and Monroe County (the "County") desire to enter into a joint participation agreement to provide vessel wastewater haul-out services (the "Interlocal Agreement"); and

WHEREAS, the City agrees to remove vessel generated wastewater utilizing the City's pump-out vessel, at the City's Marina facility or at private vessel pump-out facilities located within the City's limits and adjacent areas (the "Services"); and

WHEREAS, the County agrees to reimburse City for such Services in the annual amount of \$50,000.

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 are incorporated herein by this reference.

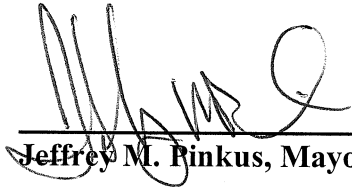
Section 2. The Interlocal Agreement between the City and the County, for the Services in an amount not to exceed \$50,000, a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is approved.

Section 3. The City Manager or his designee is authorized to execute the Agreement on behalf of the City.

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 22nd day of September, 2004.

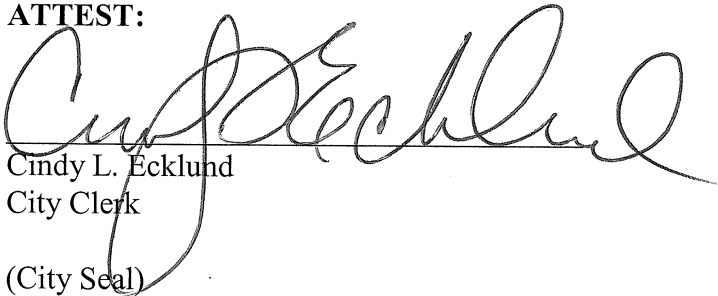
THE CITY OF MARATHON, FLORIDA



Jeffrey M. Pinkus, Mayor

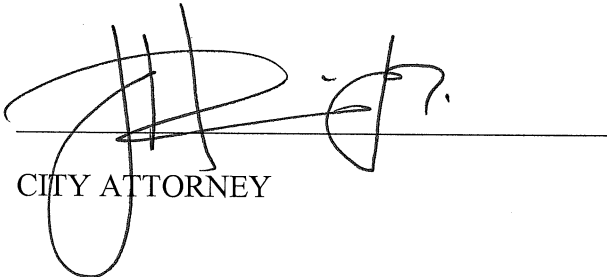
AYES: Bartus, Bull, Mearns, Miller, Pinkus
NOES: None
ABSENT: None
ABSTAIN: None

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

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT is entered into this 15th day of September, 2004 between Monroe County, a political subdivision of the State of Florida (hereinafter COUNTY) and the City of Marathon, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter CITY).

WITNESSETH:

WHEREAS, COUNTY and CITY desire to enter into a joint participation agreement to provide vessel wastewater haul-out services in Marathon, Monroe County, Florida in an amount not-to-exceed \$50,000.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, it is agreed between COUNTY and CITY as follows:

Section 1. Services. The CITY agrees to provide wastewater haul-out services to remove vessel generated wastewater utilizing the CITY's pump-out vessel, at the CITY's Marina facility or at private vessel pump-out facilities located within the CITY's limits and adjacent areas (the "Haul-Out Services"). The CITY may invoice the COUNTY for such service no more frequently than once per month. The invoice shall only include direct costs to the wastewater hauler and shall document the volume hauled and the cost per gallon for wastewater transport and disposal.

Section 2. Payment. The COUNTY agrees to reimburse the CITY for the Haul-Out Services as follows:

- 2.1 Reimbursement on a monthly basis.
- 2.2 To receive payment, the CITY on a monthly basis shall submit an invoice to the Director of the COUNTY's Marine Resources Department (the "Director"). The invoice must describe the services performed, including waste volume hauled and cost per gallon for services, together with proof that payment has been made to the CITY'S contractor(s).
- 2.3 If the invoice is satisfactory to the Director, he/she shall forward the invoice to the County Clerk for payment. If the Director or County Clerk determines that an invoice contains an error or omission, then within fifteen (15) days of receipt of the invoice, the Director or County Clerk (as appropriate) shall return the invoice to the CITY with a written explanation of the error or omission. If the invoice contains no error or omission, then the COUNTY shall pay the CITY within thirty (30) days of the Director's receipt of the invoice. If the invoice is returned for correction, then the payment must be made within thirty (30) days of the date the County official who requested the correction receives the corrected invoice.
- 2.4 The maximum amount the County is obligated to reimburse the City under this Interlocal Agreement is \$50,000.

- 2.5 The parties recognize that the CITY will enter into contractual operations with third parties in order to perform the services required by this Agreement and that the COUNTY shall be the funding source for a significant portion of the CITY's cost of the Haul-Out Services. Accordingly, the County Clerk shall timely process all invoices received from the CITY as provided hereinabove.

Section 3. Term and Renewal.

- 3.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through September 30, 2005 (the "Expiration Date"), unless earlier terminated in accordance with Section 6 herein (the "Term").
- 3.2 Unless the COUNTY notifies the CITY in writing of its intent to terminate this Agreement within sixty (60) days of the Expiration Date or of the expiration of any renewal, the Term of this Agreement shall automatically renew with no further action by the parties so long as the COUNTY has appropriated the necessary funds to reimburse the CITY for the Haul-Out Service. In no event however shall the Term exceed the term of the agreement between the CITY and its vendors/subcontractors performing the Haul-Out Services contemplated under this Agreement.
- 3.3 If such Notice of Termination as specified in Section 5 is given, this Agreement shall terminate upon the expiration of the then current annual Term, and following the last day of the current annual Term, the parties shall be relieved of all rights and obligations hereunder, except for any rights and obligations that expressly survive termination.
- 3.4 The definition of "Term" shall include all renewal terms hereof.

Section 4. Subcontracts.

- 4.1 In providing the Haul-Out Services contemplated by this Agreement, the parties recognize that the CITY may subcontract with a third party(ies) to provide the actual collection, transport and disposal of the collected wastewater.
- 4.2 Any third party contracts entered into between the CITY and any third party vendor shall not create any privity between the COUNTY and the third party, nor shall any third party vendor be considered a third party beneficiary of the rights of the CITY under this Agreement.
- 4.3 The CITY shall be responsible for any violations of applicable state, federal, County or City laws, rules or regulations made by the CITY's vendor(s) in performing any services contemplated in this Agreement.
- 4.4 Any contracts with any subcontractors entered into by the CITY shall include provisions for indemnification, insurance and customer service standards matching those provisions in this Agreement.

Section 5. Termination and Default.

- 5.1 In the event of any failure of compliance by either party hereto with any of its material obligations to the other party as provided for herein such action shall constitute a default under this Agreement.
- 5.2 Upon any such default, the non-defaulting party shall provide to the defaulting party a written Notice of such default, which Notice (a "Default Notice") shall state in reasonable detail the actions the defaulting party must take to cure the same.
- 5.3 The defaulting party shall cure any such default, within 30 days following the date of the Default Notice.
- 5.4 Notwithstanding the provisions of this Section, if any such default by the defaulting party remains uncured at the conclusion of any specified 30 day cure period, and if the nature of the defaulting party's obligations are such that more than 30 days is required to effect cure, then the defaulting party shall not be in default hereunder and the non-defaulting party shall not have the right to exercise its termination rights granted herein as a result of any such default, if the defaulting party commences cure within the applicable cure period and thereafter diligently pursues cure to completion of performance.
- 5.5 In the event the defaulting party fails to effect any required cure as provided for herein, the defaulting party shall be deemed to be in uncured default hereunder, and the non-defaulting party shall have the right, but shall not be obligated, upon written Notice to the defaulting party, to terminate this Agreement.
- 5.6 If such Notice is given, this Agreement shall terminate on the date set forth in the Notice and the parties shall be relieved of all rights and obligations hereunder, except for any rights and obligations that expressly survive termination.

Section 6. Indemnification.

- 6.1 To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the COUNTY does hereby agree to defend, indemnify and hold the CITY 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 or omissions of the COUNTY, its officials, agents or employees, in connection with this Agreement.
- 6.2 To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the CITY does hereby agree to defend, indemnify and hold the COUNTY, 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 or omissions of the CITY or any third party vendor contracted by the CITY in connection with this Agreement.

Section 7. Notices.

7.1 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 County: Mr. James Roberts
County Administrator
Monroe County
Public Service Building, Wing II
5100 College Road, Stock Island
Key West, Florida 33040

With a copy to: John R. Collins, Esq.
County Attorney
310 Fleming Street
Key West, Florida 33040

If to City: Mike Puto
Acting City Manager
City of Marathon
11045-55 Overseas Highway
Marathon, Florida 33050

With a copy to: John Herin, Esq.
City Attorney
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130

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.

Section 8. Insurance.

8.1 The CITY and COUNTY agree to insure or self-insure their respective interests in connection with personal injury, death and personal property damage to the extent each deems necessary or appropriate.

8.2 The CITY shall require any subcontractor performing the Haul-Out Services contemplated in this Agreement to maintain throughout the duration of this Agreement the following insurance:

- 8.2.1 Commercial general liability in the amount of \$1,000,000 per occurrence for bodily injury and property damage. This policy must include coverage for contractual liability and specifically cover the indemnity set forth in this Agreement. The CITY must be named as an additional insured on this policy.
 - 8.2.2 Automobile and marine liability in the amount of \$1,000,000 per occurrence for bodily injury and property damage, covering all vehicles owned, leased or used by the wastewater hauler within the limits of the County. The CITY must be named as an additional insured on this policy.
 - 8.2.3 Workers compensation and employer's liability, as required by Florida Statutes.
 - 8.2.4 All companies providing insurance shall be authorized to do business in the State of Florida and rated B+ or better by Best's Key Rating Guild, latest edition.
 - 8.2.5 No change or cancellation of this insurance shall be made without 30 days prior written notice to the City.
- 8.3 The CITY shall require any subcontractor to name the COUNTY as an additional insured on any policies.

Section 9. Regulatory Powers.

- 9.1 Nothing contained herein shall be construed as waiving either party's regulatory approval or enforcement rights or obligations as it may relate to regulations of general applicability, which may govern the Agreement.
- 9.2 Nothing herein shall be deemed to create an affirmative duty of either party to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with ordinances, rules and regulations, federal laws and regulations and state laws and regulations.

Section 10. Attorneys Fees and Waiver of Jury Trial.

- 10.1 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.
- 10.2 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.

Section 11. Governing Law.

- 11.1 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.

Section 12. Entire Agreement/Modification/Amendment.

- 12.1 This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.
- 12.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

Section 13. Access to Records and Audits.

- 13.1 The County Administrator or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the CITY or its subcontractors involving transactions related to this Agreement.
- 13.2 The COUNTY may cancel this Agreement for refusal by the CITY, or the CITY's subcontractor, to allow access by the County Administrator or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.
- 13.3 The term Records shall refer to any documents, books, data (electronic or hard copy), papers and financial records that result from the CITY or its subcontractors performance of the Services provided in this Agreement.
- 13.4 If the inspection or audit discloses that County funds paid to the City under this Agreement were used for a purpose not authorized by this agreement, then the City must refund the funds improperly spent with interest calculated pursuant to Section 55.03, Florida Statutes, with interest running from the date the COUNTY paid the improperly spent funds to the CITY. This paragraph will survive the termination of this Agreement.

Section 14. Nonassignability.

- 14.1 This Agreement shall not be assignable by either party unless such assignment is first approved by both parties.
- 14.2 The provisions of this Section shall not prohibit the CITY from utilizing the services of subcontractors to perform the Services contemplated in this Agreement.

Section 15. Severability.

15.1 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.

Section 16. Independent Contractor.

16.1 The CITY and its employees, volunteers, agents, vendors and subcontractors shall be and remain independent contractor and not agents or employees of the COUNTY with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

Section 17. Waiver.

17.1 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.

Section 18. Funding.

18.1 The parties agree that the COUNTY's responsibility under this Agreement is to provide funding only. Accordingly, all subcontractors providing the Haul-Out Services are in privity with the CITY only and may not seek direct payment from the COUNTY, and that the COUNTY has no duty, liability or other obligation to such persons. The CITY agrees to include a sentence similar to the foregoing in all contracts entered into by the CITY for the Project.

Section 19. Applicable Laws.

19.1 In awarding contracts for the Haul-Out Services, the CITY agrees to abide by all applicable CITY ordinances and state and federal laws.

Section 20. Survival of Provisions.

20.1 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.

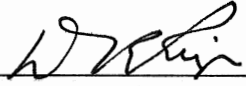
Section 21. Counterparts.

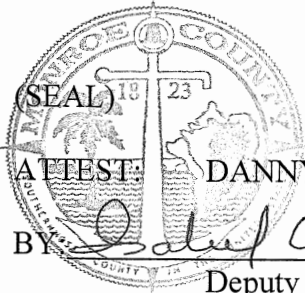
21.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

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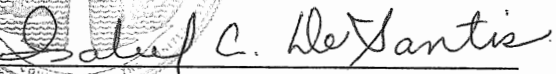
IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day and year first written above.

BOARD OF COUNTY COMMISSIONERS
MONROE COUNTY, FLORIDA

BY: 
DAVID P. RICE
MAYOR PRO TEM



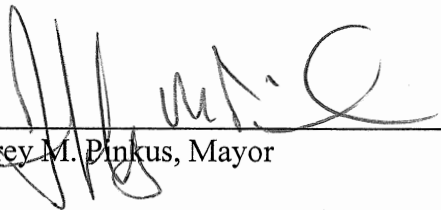
ATTEST: **DANNY L. KOLHAGE, CLERK**

BY: 
Deputy Clerk 09-21-04


APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: _____
ATTORNEY'S OFFICE

THE CITY OF MARATHON, FLORIDA

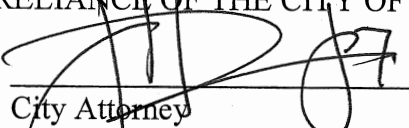

Jeffrey M. Pinkus, Mayor

ATTEST:


Cindy L. Ecklund
City Clerk

(City Seal)

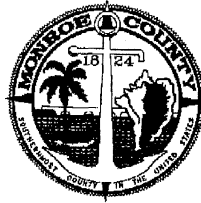
APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:

BY: 
City Attorney

NOV 29 2004

DR

Growth Management Division
2798 Overseas Highway
Suite 400
Marathon, Florida 33050
Voice: (305) 289-2500
FAX: (305) 289-2536



Board of County Commissioners
Mayor Dixie Spehar, Dist. 1
Mayor Pro Tem Murray Nelson Dist. 5
Comm. Charles "Sonny" McCoy, Dist. 3
Comm. George Neugent, Dist. 2
Comm. David Rice, Dist. 4

Received

DEC 01 2004

City Clerk

November 23, 2004

Mr. Mike Puto
City Manager
City of Marathon
11045-55 Overseas Highway
Marathon, Florida 33050

RE: Inter-Local Agreement with the City of Marathon for vessel waste pump-out

Dear Mr. Puto:

Enclosed please find a fully executed original of the above referenced Inter-Local Agreement with your City for your file.

If you have any questions, please contact our offices at (305) 289-2517.

Sincerely,

Mayra Tezanos
Executive Assistant
Growth Management Division

/mt
Enclosures

cc: Timothy J. McGarry, AICP, Director of Growth Management (w/o encl.)
George Garrett, Sr. Director Marine Resources