

**CITY OF MARATHON, FLORIDA
RESOLUTION 2018-103**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, ACCEPTING THE SOLE SUBMITTED PROPOSAL FOR BEACH CLEANING SERVICES FOR COCOPLUM AND SOMBRERO BEACH PARKS; AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH W.D. THOMPSON, INC. D/B/A BEACH RAKER IN AN AMOUNT NOT TO EXCEED \$143,637.24; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, City staff published a Request for Proposals for beach cleaning, maintenance and restoration services for CocoPlum and Sombrero Beaches; and

WHEREAS, the proposal submitted by Beach Raker, LLC. with a cost proposal of \$143,637.24 per year was the sole submitted proposal; and

WHEREAS, the City receives reimbursement from Monroe County Tourist Development Council in the amount of \$117,420 annually for beach maintenance costs, which will cover the majority cost of this award as well as other beach maintenance costs; and

WHEREAS, staff is recommending the City Council accept the submitted proposal for beach cleaning services for CocoPlum and Sombrero Beach parks and enter into a three (3) year agreement with Beach Raker, LLC with two (2) one year renewal options.

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 City Council accepts the submitted proposal for beach cleaning services for CocoPlum and Sombrero Beach parks from W.D. Thompson, Inc. D/B/A Beach Raker.

Section 3. The Agreement between the City and Beach Raker, LLC. to provide beach cleaning services at CocoPlum and Sombrero Beach parks in an amount not to exceed \$143,637.24, a copy of which is attached as Exhibit "A," 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. 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 SEPTEMBER, 2018.

THE CITY OF MARATHON, FLORIDA



Michelle Coldiron, Mayor

AYES: Zieg, Cook, Senmartin, Coldiron
NOES: None
ABSENT: Bartus
ABSTAIN: None

ATTEST:



Diane Clavier, City Clerk

(City Seal)

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



David Migul, City Attorney

SECTION 00500

CONTRACT

THIS CONTRACT is made this 28 day of September, 2018 by and between the City of Marathon, Florida (the "City") and **Beach Raker, LLC**(the "Contractor").

The parties, for the consideration provided for below, mutually agree as follows:

- 4.1. **SCOPE OF WORK** -The Contractor shall furnish all labor, materials, supervision, equipment, supplies, and incidentals required to perform the scope of work as outlined in – Exhibit A
- 4.2. **COMPENSATION/PAYMENT**
- 4.2.1 . Contractor shall provide the City with an invoice on a monthly basis within ten (10) days of the end of each month stating the services provided in the preceding month as stipulated in Exhibit B.
- 4.2.2. The City shall make payment on said invoices of approved amounts due, that are not subject to set off, as required under the Florida Prompt Payment Act. No payments shall be due or payable for Work not performed or materials not furnished.
- 4.2.3. The Contractor shall be compensated at the unit prices specified in the Proposal Schedule based upon the actual Work completed for the month.
- 4.3. **TERM-** This Agreement shall be effective October 1, 2018 and shall continue for a term of 3 years. The City may, at its sole option, extend this Agreement on the same terms and conditions for an additional term of TWO (2), ONE (1) year extensions. Such extension shall be effective upon receipt of a written notice from the City to the Contractor received no later than 30 days prior to the date of termination.
- 4.4. **CONTRACTOR'S DUTY TO INSPECT** -The Contractor has carefully examined the described rights of way, water management areas and similar planting areas and has made sufficient tests and other investigations to fully satisfy him self as to site conditions, and he assumes full responsibility therefore. The Contractor shall be responsible for the repair or replacement of any facility damaged by the Contractor.
- 4.5. **NON-WAIVER-** The approval, and/or acceptance of any part of the Work by the City shall not operate as a waiver by City of any other terms and conditions of the Agreement.
- 4.6. **PROTECTION OF PROPERTY AND THE PUBLIC-** The Contractor shall continuously maintain adequate protection of all his Work from damage and shall protect public and private property from injury or loss arising in connection with this contract as follows:

4.6. 1. The Contractor shall take all necessary precautions for the safety of employees in the performance of the Work on, about or adjacent to the premises, and shall comply with all applicable provisions of Federal, State, and local laws, including, but not limited to the requirements of the Occupational Safety and Health Act of 1970, and amendments thereto, the Construction safety Act of 1969, and amendments thereto, and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed.

4.6.2. The Contractor shall erect and properly maintain at all times, all necessary safeguards, including sufficient lights and danger signals on or near the Work, from sunset to sunrise, suitable railings, barricades, or other hazards or other protective devices about unfinished work, open trenches, embankments, or other hazards and obstructions to traffic; provide all necessary security staff on the Work by day or by night for the safety of the public; and take all necessary precautions to prevent accidents and injuries to persons or property on or near the Work.

4.6.3. The Contractor shall be completely responsible for, and shall replace and make good all loss, injury, or damage to any property (including landscaping, walks, drives, or structures of the City) and of any land adjoining any work sites, which may be caused by Contractor. The Contractor shall, at all times while the Work is in progress, use extraordinary care to see that adjacent property, whether real or personal, is not endangered in any way by reason of fire, water, or construction operations, and shall take all necessary or directed steps, to protect the property. The same care shall be exercised by all Contractor's and subcontractor's employees.

4.6.4. Buildings, sidewalks, fences, shade trees, lawns and all other improvements shall be duly protected from damage by Contractor. Property obstructions, such as sewers, drains, water or gas lines, conduits, railroads, poles, walls, posts, galleries, bridges, manholes, valve boxes, meter boxes, street monuments, etc., shall be carefully protected from injury and shall not be displaced. The Contractor shall give due notice to any department or public service corporation controlling such items as manholes, valve boxes, meter boxes, street monuments, etc., prior to adjusting them to grade and shall be held strictly liable to the affected utility if any such appliances are disturbed, damaged or covered up during the course of the Work.

4.7 . INDEMNIFICATION

4.7.1 . The Contractor shall indemnify and hold harmless the City, its officers, agents and employees from and against all liability, claims, damages, losses and expenses, including reasonable attorney's fees and costs at both trial and appellate levels arising out of or resulting from the performance of Work under this contract, caused by any act or omission of the Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable.

4.7.2. This indemnification obligation shall survive the termination of this Agreement.

4.7.3. The Contractor shall defend the City or provide for such defense, at the City's option.

4.7.4. The Contractor shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by him, on the Work. Contractor shall give all notices and comply with

all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this contract. Contractor shall secure and pay for all permits, fees, licenses, and inspections necessary for the execution of the Work, and upon termination of this contract for any reason, Contractor shall transfer such permits, if any, and if allowed by law, to the City.

4.8. **CONTRACT DOCUMENTS** -The following documents shall, by this reference, be considered part of this Contract:

RFP Package

All Addendums;

Contract Agreement;

Request For Proposal Document;

Proposal;

Detailed Specifications;

Qualification Statement;

Insurance Certificates;

Licenses;

4.9. **CONTRACTOR'S EMPLOYEES**

4.9.1. Contractor's employees shall serve the public in a courteous, helpful, and impartial manner.

4.9.2. Contractor shall, upon receipt of a written request from the City, immediately exclude any employee of Contractor from providing Work under this Agreement.

4.9.3. The Work contemplated in this Agreement is on public property, accordingly no alcoholic beverages shall be allowed.

4.10. **VEHICLES AND EQUIPMENT** -Contractor shall have on hand at all times and in good working order such vehicles, machinery, tools, accessories, and other items necessary to perform the Work under this Agreement. All vehicles used by Contractor to provide services under this agreement shall be painted uniformly with the name of Contractor, business telephone number, and the number of the vehicle in letters legible by the public. The City may require the repair or replacement of equipment as reasonably necessary. No other advertising shall be permitted on the vehicles.

4.11. **INSURANCE**-The Contractor shall provide and maintain during the life of this Agreement the following coverages.

4.11.1. "Worker's Compensation Insurance" in amounts as specified by Florida Law.

4.11.2. Comprehensive and general liability insurance shall be provided with a limit of \$1,000,000.00 each:

a. Comprehensive Auto Liability Insurance shall be provided with a limit of \$1,000,000.00 and the City shall be named as an additional insured.

b. Contractual Liability Insurance. The City shall be named as additional insured.

4.11.3. All insurance shall be obtained from companies that are licensed and authorized to do business in the State of Florida.

4.11.4. At the time of execution of this Agreement, the Contractor will file with the City certificates of such insurance that are acceptable to the City. These certificates shall contain a provision that the coverage afforded under the policies will not be canceled or materially changed until at least thirty (30) days prior written notice has been given to the City.

4. 12. **ASSIGNMENT AND AMENDMENT** -No assignment by the Contractor of this contract or any part of it, or any monies due or to become due, shall be made, nor shall the Contractor hire a sub-contractor to perform its duties under this Agreement without prior written approval of the City. This Agreement may only be amended by the parties with the same formalities as this Agreement.

4.13. **TERMINATION**

4.13.1 . Either party may terminate this Agreement without cause upon 30 days written notice to the other party.

4.13.2. Upon notice of such termination, the City shall determine the amounts due to the Contractor for services performed up to the date of termination. The Contractor shall not be entitled to payment of any lost profits or for Work performed after the date of termination.

4.13.3 . After receipt of a notice of termination, and except as otherwise directed, the Contractor shall stop all Work under this Agreement, and shall do so on the date specified in the notice of termination.

4.13.4. The City may terminate this Agreement upon five (5) days written notice if the Contractor defaults on any material term of this Agreement.

4.14. **CHOICE OF LAW** -This contract shall be governed by the laws of the State of Florida. Venue shall lie in Monroe County.

4.15. **ATTORNEY'S FEES** -In the event either party to this Agreement is required to retain legal counsel to enforce any of its rights under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party together with court costs incurred in any litigation at any trial and appellate proceedings.

4.16. **ACCESS TO PUBLIC RECORDS-** The Contractor shall comply with the applicable provisions of Chapter 1 19, Florida Statutes. The City shall have the right to immediately terminate this contract for the refusal by the Contractor to comply with Chapter 1 19, Florida Statutes. If the contractor has questions regarding the application of Chapter 119, Florida Statutes, to the contractor's duty to provide public records relating to this contract, contact the custodian of public records at Cityclerk@ci.marathon.fl.us or 305-743-0033.

4.17. **INSPECTION AND AUDIT-** During the term of this Agreement and for three (3) years from the date of Termination the Contractor shall allow City representatives access during reasonable business hours to Contractor's records related to this Agreement for the purposes of inspection or audit of such records. If upon audit of such records, the City determines the Contractor was paid for services not performed, upon receipt of written demand by the City, the Contractor shall remit such payments to the City.

4.18. **SEVERABILITY** -If a term, provision, covenant, contract or condition of this contract is held to be void, invalid, or unenforceable, the same shall not affect any other portion of this contract and the remainder shall be effective as though every term, provision, covenant, contract or condition had not been contained herein.

4.19. **WAIVER OF JURY TRIAL-** The parties irrevocably, knowingly agree to waive their rights to a trial by jury in any action to enforce the terms or conditions of this Agreement.

4.20. **COUNTERPARTS-** This contract may be signed in one or more counterparts, each of which, when executed shall be deemed an original and together shall constitute one and the same instrument.

4.21. **NOTICES** -Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to:

City:

City of Marathon
9805 Overseas Highway
Marathon, FL 33050
Attention: Chuck Lindsey, City Manager

City Attorney:

David Migut
9805 Overseas Hwy
Marathon, FL 33050

Contractor:

Beach Raker, LLC
220 NE 13th Street
Pompano Beach, FL 33060

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]

IN WITNESS WHEREOF the parties hereto have executed this agreement on the day and date first above written.

Attest: CITY OF MARATHON

By: Diane Clavier
Diane Clavier, City Clerk

By: Michelle Coldiron
Mayor Michelle Coldiron

By: David Migut
David Migut, City Attorney

Signed, sealed and witnessed in the presence of:

As to Contractor:

By: [Signature]

By: [Signature] **GEORGE C JAMES JR**
PRESIDENT BERKIN ZAKER, LLC

(*) In the event that the Contractor is a corporation, there shall be attached to each counterpart a certified copy of a resolution of the board of the corporation, authorizing the officer who signs the contract to do so in its behalf.

EXHIBIT "A"

DETAILED SPECIFICATIONS

3.1 SCOPE OF WORK – The contractor shall furnish all labor, materials, supervision, equipment, supplies, tools, services, and all other necessary incidentals required to perform complete Beach Cleaning, and Maintenance Services for City of Marathon Sombrero and Cocoplum beaches.

All mechanical beach cleaning activities designed to remove debris from the beach or redistribute debris on the beach through the use of motorized vehicles or other mechanical means shall comply with the following standards:

- (1) **Timing.** Beach cleaning shall be confined to daylight hours during the sea turtle nesting season which lasts from April 15 to October 31.
- (2) **Mode of operations. (During the sea turtle nesting season):**
 - a. Beach cleaning operators shall be educated to identify a sea turtle crawl (turtle tracks), recognize and avoid a sea turtle nest and report nests and/or crawls immediately to the City.
 - b. Beach cleaning operations shall be conducted in a manner that does not disturb sea turtle nests.
 - c. Beach cleaning operations shall be conducted using light-weight motorized vehicles having wide, low-profile, low-pressure tires, or hand raking.
 - d. Beach cleaning devices used for removing debris from the beach shall be designed and/or operated such that they do not penetrate beach substrate by more than two (2) inches.
 - e. Beach cleaning operations shall be conducted so that all excess raked material that cannot be buried must be removed from the beach and disposed of properly. Contractor may be required to obtain special approval from the Florida Department of Environmental Protection, for incorporating limited quantities of organic material into the substrate in order to enhance the beach/berm system.
- (3) **Coordination of beach cleaning operations with State-sanctioned scientific studies.** All beach cleaning operations shall be coordinated through the State to ensure that these operations do not interfere with State-sanctioned scientific studies or surveys of sea turtle nesting activities.
- (4) **Authorization.** Any person performing mechanical beach cleaning operations must have a current permit from the Florida Department of Environmental Protection for the area being cleaned.

Each bidder shall submit one bid encompassing all proposal areas. Bids to be submitted in accordance with the specifications of the enclosed bids forms.

3.2 EXISTING FACILITIES

Exhibit "A" is the map showing the locations of the facilities to be maintained by this contract.

3.3 MAINTENANCE SPECIFICATIONS

- A. Contractor shall provide beach cleaning services on Mondays, Thursday and Saturday prior to 9:30 a.m. Schedule may be revised with written City approval in cases of sea turtle nesting activity; adverse weather conditions; or other conditions. Contractor shall call into a specified number daily during sea turtle nesting season to obtain clearance for activities that day.
1. Sombrero Beach – Contractor shall clean and maintain the entire length of beach including the sand volleyball courts (approximately 1,400 feet beach frontage). Contractor shall not damage or remove the volleyball court boundaries.
 2. Coco Plum Beach – Contractor shall clean and maintain the entire length of beach from the mean high water line to the sustained turf line (approximately 2,000 feet beach frontage).
- B. The contractor shall incorporate the following points within its beach cleaning and maintenance program within the maintenance areas identified above.
1. In order to comply with the Florida Department of Environmental Protection, beach cleaning permit conditions (pursuant to subsection 62B-33.00511 Florida Administrative Code), the City will require removal and proper disposal of accumulated debris (biotic or abiotic) from the beach immediately after cleaning has been performed. Incorporating existing seaweed or sea grass into the beach dune system for purposes of erosion control, to promote vitality to the dune vegetation or for any other reasons, will require approval from the City prior to commencement of the work.
 2. The wrack line area may be raked with the tractor and seaweed rake; Barber Surf Rake or equivalent equipment, depending on the beach conditions. Regardless of the method used, the Contractor shall bury all seaweed at or below the wrack line (also referred to as the Mean High-Water Line) to a minimum depth of 12", as allowable by current regulations and permit. Any debris or garbage in these areas shall be handpicked and removed from the beach prior to burial of the seaweed. The Contractor shall make as many passes with the Rake Tractor, Barber Surf Rake or equivalent equipment and will be required to clean the area from the high tide line to the water's edge.
 3. Beach cleaning operations shall be conducted so that all excess raked material that cannot be buried must be removed from the beach and disposed of properly. The City will be responsible for the fees at the designated disposal facility. Any raked material exceeding 30 CY in one cleaning period will be compensated at the established unit cost. Contractor shall coordinate with the City prior to removal of seaweed for the purpose of verifying such activities. No additional compensation shall be made without coordinating with the City.
 4. Contractor will be responsible for removal and disposal of all waste and recyclables removed from the Beach from the wrack line to the dune line in the areas described

above. Contractor will also be responsible for removal and disposal costs of any debris, trash, and man-made items removed with the Barber Surf Rake, Cherrington Sifter, or equivalent.

5. Outside of Turtle Nesting season, November 1st up to April 14th, the area from the tide line west to within 10 ft. of the Vegetation lines shall be cleaned once per week using mechanical beaching cleaning equipment, such as, a Barber Surf Rake, Cherrington Sand Sifter or equivalent beach equipment.
6. During Turtle Nesting season, April 15th up to October 31st., only the areas designated and authorized by FWC and FDEP can be mechanically cleaned above the wrack line. These areas can be mechanically cleaned from the tide line west to within 10 ft. of the Vegetation line daily using a Barber Surf Rake, Cherrington Beach Cleaner or equivalent beach cleaning equipment.
7. During Turtle Nesting season, from March 1st to October 31st the Contractor must work with the City's Planning Department, FDEP, and FWC to ensure all special permit conditions are in compliance, in order to avoid (65) day suspension of mechanical beach cleaning by these departments to the City of Marathon.
8. Provide erosion control and beach repair with existing seagrass to stabilize the profiles and enhance the dune system to promote vitality to the dune vegetation and sustain the contour of the beach against wave action upon request.
9. Pick up, haul and dispose of debris and litter encountered on the beach.
10. Provide tilling service (except during sea turtle nesting season). The beaches are to be tilled a minimum of once a year to a minimum depth of 24" from south of the dune line to the mean high water line with sufficient overlapping and crisscrossing as to ensure complete coverage throughout. All debris, rocks, etc. brought to the surface as a result of the tilling are to be removed and properly disposed of. This event should be coordinated with the City.
11. In the event of a major storm or act of nature, deposits of excessive amounts of sand or seaweed on the beach, Contractor may need to cease cleaning services until the City determines requirements for Intergovernmental Agency assistance.
12. There may be additional costs for Hurricane, Severe Storm debris, and large items that wash onshore, such as boats. All additional costs shall be verified and approved by the City prior to removal, and based on the established unit cost.
13. Contractor shall provide an hourly rate table listing operators and standard equipment for use in special cases as described in 5. above. Contractor may be required to provide a proposed change order based on these defined hourly rates for City approval for the removal or grading of the excessive sand or seaweed deposits as may be required to return the beach to its normal condition as soon as possible. Contractor shall be reimbursed at cost for approved debris removal dump site fees with corresponding dump site tickets.

14. Contractor shall use its best efforts to observe and immediately notify the City of any sea turtle nesting, attempted nesting or crawl activity in the contract areas. The Contractor shall further coordinate and cooperate with State agencies and sea turtle conservation organizations in nest removal or relocation (if necessary or allowed) and in monitoring any nest hatching and reschedule work activities (if necessary) for such purposes.

EXHIBIT B
COMPENSATION

Yearly Cost Coco Plum Beach Cleaning 3 Days / Wk	\$ 84,480.00	
Yearly Cost Sombrero Beach Cleaning 3 Days /Wk	\$ 59,157.24	
Total Yearly cost	\$ 143,637.24	
Removal of raked material in excess of 30 CY	<u>\$ 10.00</u>	<u>/CY</u>

Beach Raker Hourly Rate Table –

For Additional Cleaning (in addition to the three days specified in the contract) & Emergency Response

Equipment Type	Hourly Rate	Travel Time
*Tractor 108HP w/front blade and seaweed rake	\$105.00	On-site
*Tractor 108 HP w/Barber Surf Rake	\$165.00	On-site
Equipment Type	Hourly Rate	Travel Time
Equipment Operator	\$35.00	3.5 Hours
*Tractor 108HP w/front blade and seaweed rake	\$105.00	3.5 Hours
*Tractor 108 HP w/Barber Surf Rake	\$165.00	3.5 Hours
*Sandman 850	\$150.00	3.5 Hours
*Cherrington 3000	\$250.00	3.5 Hours
*Cherrington 740 XL	\$250.00	3.5 Hours
*Ford 550/650 Truck	\$145.00	3.5 Hours
*Skid steer	\$250.00	3.5 Hours

*Please Note: Hourly rate includes operator and equipment costs.

*Please Note: There is a \$150.00 mobilization cost for bringing the equipment in the second tier to the project, as the equipment will not be stored on site.

We will store the Tractor and one Barber Surf Rake onsite for this project.

EXHIBIT "C"
COCO PLUM BEACH



City of Marathon, Florida
Official Map Series
Aerial Photography



0 0.020.040.060.08 0.10.120.140.16
Miles

City of Marathon, Florida
Legend
● Marathon Mile Markers
— Marathon Roads
□ Marathon Parcels October 2008

EXHIBIT "D"
SOMBRERO BEACH



City of Marathon, Florida
Legend
● Marathon Mile Markers
— Marathon Roads
□ Marathon Parcels: October 2008



City of Marathon, Florida
Official Map Series
Aerial Photography



0 0.01 0.02 0.04 0.06 0.08 0.1 0.12 0.14 0.16
Miles