

RESOLUTION NO. 02-06-80

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE PROJECT AGREEMENT BETWEEN KEITH AND SCHNARS, P.A., AND THE CITY OF MARATHON FOR PREPARATION OF THE CITY'S CONCEPTUAL MASTER PLAN; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF SAID AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Marathon (the "City") has retained the services of Keith and Schnars, P.A., as City engineer for the preparation of the conceptual master plan; and

WHEREAS, the City Council finds that approval of the project agreement between the City and Keith and Schnars, P.A., for preparation of the City's Conceptual Master Plan is in the best interest of the City.

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

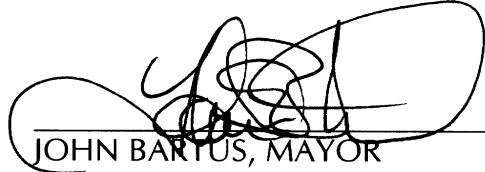
Section 1. Recitals. The above recitals are true and correct and incorporated into this resolution by this reference.

Section 2. The Project Agreement between Keith and Schnars, P.A. and the City of Marathon to prepare the City's Conceptual Master Plan (the "Agreement"), 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 Mayor is authorized to execute the Agreement on behalf of the

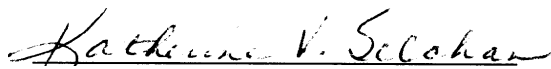
Section 4. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this 11th day of June, 2002



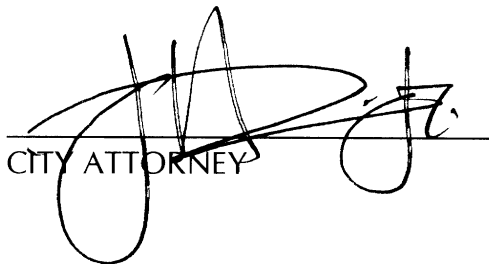
JOHN BARTUS, MAYOR

ATTEST



KATHERINE V. SECHAN
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:



CITY ATTORNEY

#5747v1.ks.061102

PROJECT AGREEMENT

Between

CITY OF MARATHON, FLORIDA

and

KEITH and SCHNARS, P.A.

for

Work Authorization No. 02-01

PREPARATION OF CITY OF MARATHON CONCEPTUAL MASTER PLAN

PROJECT AGREEMENT

Between

THE CITY OF MARATHON, FLORIDA

and

KEITH and SCHNARS. P.A.

For

Work Authorization No. 02-01

PREPARATION OF CITY OF MARATHON CONCEPTUAL MASTER PLAN

Pursuant to the provisions contained in the "Continuing Services Agreement" between the CITY OF MARATHON, FLORIDA (the "CITY") and KEITH and SCHNARS, P.A., ("CONSULTANT") dated June 11, 2002 this Project Agreement authorizes the CONSULTANT to provide the services as set forth below.

The CITY and CONSULTANT agree as follows:

SECTION 1. SCOPE OF SERVICES

1.1 The CONSULTANT shall provide professional planning services to the CITY for the Project as described in the "Project Description" attached as Exhibit "1" to this Project Agreement.

1.2 The "Scope of Services and Project Schedule" and tasks to be provided by the CONSULTANT for this Project are those services and tasks as listed in Exhibit "2" attached to this Project Agreement.

1.3 The CITY may request changes that would increase, decrease, or otherwise modify the Scope of Services. Such changes must be contained in a written change order executed by the parties in accordance with the provisions of the Continuing Services Agreement. prior to any deviation from the terms of the Project Agreement. including the initiation of any extra work.

SECTION 2. DELIVERABLES

2.1 As part of the Scope of Services and Project Schedule, the CONSULTANT shall provide to the CITY the Deliverables for each task set forth in Exhibit "2."

SECTION 3. TERM/TIME OF PERFORMANCE/DAMAGE

3.1 **Term.** This Project Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect, unless otherwise terminated pursuant to Section 4 or other applicable provisions of this Project Agreement. The City Manager, in his sole discretion, may extend the term of this Agreement through written notification to the CONSULTANT. Such extension shall not exceed 30 days. No further extensions of this Agreement shall be effective unless authorized by the CITY Council.

3.2 **Commencement.** The CONSULTANT'S services under this Project Agreement and the time frames applicable to this Project Agreement shall commence upon the date provided in a written Notification of Commencement ("Commencement Date") provided to the CONSULTANT from the CITY. The CONSULTANT shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. CONSULTANT must receive written notice from the City Manager prior to the beginning the performance of services.

3.3 **Contract Time.** Upon receipt of the Notification of Commencement, the CONSULTANT shall commence services to the CITY on the Commencement Date, and shall continuously perform services to the CITY, without interruption, in accordance with the time frames set forth in the "Project Schedule," a copy of which is attached and incorporated into this Agreement as Exhibit "3." The number of calendar days from the Commencement Date, through the date set forth in the Project Schedule for completion of the Project shall constitute the Contract Time.

3.4 **Liquidated Damages.** Unless otherwise excused by the CITY in writing, in the event that the CONSULTANT fails to meet to the contract time for completion of services as determined by the Project Schedule, the CONSULTANT shall pay to the CITY the sum of dollars identified below per day for each and every calendar day unexcused delay beyond the completion date, plus approved time extensions, until completion of the project: \$100.00 per day. The CONSULTANT may claim extension if the factors involved are not under their direct control.

Any sums due and payable hereunder by the CONSULTANT shall be payable, not as a penalty, but as liquidated damages representing and estimate at or before the time of executing this Agreement. When the CITY reasonably believes that completion will be inexcusably delayed, the CITY shall be entitled, but not required, to withhold from any amounts otherwise due the CONSULTANT an amount then believed by the CITY to be adequate to recover liquidated damages applicable to such delays. If and when the CONSULTANT overcomes the delay in achieving completion, or any part thereof, for which the CITY has withheld payment, the CITY shall promptly release to the CONSULTANT those funds withheld, but no longer applicable, as liquidated damages.

3.5 All limitations of time set forth in this Agreement are of the essence.

SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION

4.1 **Lump Sum Compensation.** CITY agrees to pay CONSULTANT as compensation for performance of all services described in Exhibit "1" an amount of not more than \$300,000.00 for Tasks 1 through 4 and an amount not more than \$160,000.00 for Task 5.

4.2 **Reimbursable Expenses.** The following expenses are reimbursable at their actual cost: travel and accommodations outside of Miami-Dade County, Broward County, or Monroe County; long distance telephone calls; facsimile; courier services; mileage (at a rate approved by the CITY); photo and reproduction services. All document reproductions are also reimbursable, at a rate approved by the CITY.

SECTION 5. BILLING AND PAYMENTS TO THE CONSULTANT

5.1 Invoices

5.1.1 **Lump Sum Compensation and Reimbursable Expenses.** CONSULTANT shall submit invoices which are identified by the specific project number 02-01 on a monthly basis in a timely manner. These invoices shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished in accordance with the Payment Schedule set forth in Exhibit "3" to this Project Agreement. Invoices for each phase shall not exceed amounts allocated to each phase of the Project plus reimbursable expenses accrued during each phase. The statement shall show a summary of fees with accrual of the total and credits for portions previously paid by the CITY. The CITY shall pay CONSULTANT within thirty (30) calendar days of approval by the City Manager of any invoices submitted by CONSULTANT to the CITY.

5.2 **Disputed Invoices.** In the event that all or a portion of an invoice submitted to the CITY for payment to the CONSULTANT is disputed, or additional backup documentation is required, the CITY shall notify the CONSULTANT within fifteen (15) working days of receipt of the invoice of such objection, modification or additional documentation request. The CONSULTANT shall provide the CITY with additional backup documentation within five (5) working days of the date of the CITY'S notice. The CITY may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CONSULTANT. The CITY, at its sole discretion, may pay to the CONSULTANT the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

5.3 **Suspension of Payment.** In the event that the CITY becomes credibly informed that any representations of the CONSULTANT, provided pursuant to Subparagraph 5.1, are wholly or partially inaccurate, or in the event that the CONSULTANT is not in compliance with any term or condition of this Project Agreement, the CITY may withhold payment of sums then or in the future otherwise due to the CONSULTANT until the inaccuracy, or other breach of Project Agreement, and the cause thereof, is corrected to the CITY's reasonable satisfaction.

5.4 **Retainage.** The CITY reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due to the CONSULTANT until the project is completed. Said retainage may be withheld at the sole discretion of the CITY Manager and as security for the successful completion of the CONSULTANT'S duties and responsibilities under the Project Agreement.

5.5 **Final Payment.** Submission of the CONSULTANT'S invoice for final payment and reimbursement shall constitute the CONSULTANT'S representation to the CITY that, upon receipt from the CITY of the amount invoiced, all obligations of the CONSULTANT to others, including its consultants, incurred in connection with the Project, shall be paid in full. The CONSULTANT shall deliver to the CITY all documents requested by the CITY evidencing payments to any and all subcontractors, and all final specifications, plans, or other documents as dictated in the Scope of Services and Deliverable. Acceptance of final payment shall constitute a waiver of any and all claims against the CITY by the CONSULTANT.

SECTION 6. TERMINATION/SUSPENSION

6.1 **For Cause.** This Project Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONSULTANT abandons this Project Agreement or causes it to be terminated by the CITY, the CONSULTANT shall indemnify the CITY against any loss pertaining to this termination. In the event that the CONSULTANT is terminated by the CITY for cause and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 6.2 of this Project Agreement and the provision of Section 6.2 shall apply.

6.2 **For Convenience.** This Project Agreement may be terminated by the CITY for convenience upon fourteen (14) calendar days' written notice to the CONSULTANT. In the event of termination, the CONSULTANT shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding subconsultant obligations. The CONSULTANT shall be compensated for all services performed to the satisfaction of the CITY and for reimbursable expenses incurred prior to the date of termination. The CONSULTANT shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of Paragraph 5.1 of this Project Agreement. Under no circumstances shall the CITY make any payment to the CONSULTANT for services which have not been performed.

6.3 **Assignment upon Termination.** Upon termination of this Project Agreement, a copy of all of the CONSULTANT'S work product shall become the property of the CITY and the CONSULTANT shall, within ten (10) working days of receipt of written direction from the CITY, transfer to either the CITY or its authorized designee, a copy of all work product in its possession, including but not limited to designs, specifications, drawings, studies, reports and all

other documents and data in the possession of the CONSULTANT pertaining to this Project Agreement. Further, upon the CITY'S request, the CONSULTANT shall assign its rights, title and interest under any subcontractor's agreements to the CITY.

6.4 **Suspension for Convenience.** The CITY shall have the right at any time to direct the CONSULTANT to suspend its performance, or any designated part thereof, for any reason whatsoever or without reason, for a cumulative period of up to thirty (30) calendar days. If any such suspension is directed by the CITY, the CONSULTANT shall immediately comply with same. In the event the CITY directs a suspension of performance as provided for herein through no fault of the CONSULTANT, the CITY shall pay to the CONSULTANT its reasonable costs, actually incurred and paid, of demobilization and remobilization, as full compensation for any such suspension.

SECTION 7. INCORPORATION OF TERMS AND CONDITIONS OF CONTINUING SERVICE AGREEMENT

7.1 This Project Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement dated 6/1/2002 between the parties as though fully set forth herein. In the event that any terms or conditions of this Project Agreement conflict with the Continuing Services Agreement, the provisions of this specific Project Agreement shall prevail and apply.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.]

ATTEST:

CITY OF MARATHON, FLORIDA

V. Selcha
City Clerk

By: [Signature]
John Bartus, Mayor

Date: June 11, 2002

APPROVED AS TO FORM:

[Signature]
City Attorney

ATTEST:

KEITH and SCHNARS, P.A.

Secretary

By: Michael J. Davis

Please type name of Secretary

Print Name: MICHAEL L. DAVIS

(CORPORATE SEAL)

Date: June 21 2002

WITNESSES:

Print Name: _____

Print Name: _____

SCANNED

7/8/02 #5961 KS✓

Exhibit 1
City of Marathon
Master Plan and Land Development Regulations
Project Description

The Consultant shall prepare for the City a Conceptual Master Plan and associated Land Development Regulation (LDR) in accordance with Exhibit 2, Scope of Services.

The City of Marathon Master Plan and LDR process will be citizen-based with a focus on local priorities, functions, services and economic development opportunities. The Master Plan will evaluate current conditions; determine the desires of the community and provide options for the future revitalization of the City. The Master Plan and LDR will address issues related to the aesthetics, economic activities, capital programs, natural resources, recreational amenities and other quality of life issues as determined by the City and the residents of Marathon.

Exhibit 2

City of Marathon Master Plan and Land Development Regulations Scope of Services and Project Schedule

Introduction

This scope of services outlines the steps and process that will be followed to prepare and implement the City of Marathon Master Plan, land development regulations, and general planning and engineering services associated with the Request for Qualifications for Planning and Engineering Services issued on April 13, 2002.

Description of the Master Plan and Land Development Regulation Services

The City of Marathon Master Plan and Land Development Regulation (LDR) process will be a citizen-based focus on local priorities, functions, services and economic development opportunities. The Master Plan will evaluate current conditions; determine the desires of the community and provide options for the future revitalization of the City. The Master Plan and LDRs will address issues related to the aesthetics, economic activities, capital programs, natural resources, recreational amenities and other quality of life issues as determined by the residents of Marathon.

Master Plan

Task 1 – Public Outreach & Communications

The CONSULTANT will involve the residents and business owners of Marathon in the research and development of the Master Plan through the following methods:

- Initial Community meeting to explain the project, process and establish action groups;
- Stakeholder interviews with key residents, business owners, community leaders and City officials;
- A series of Action group meetings;
- Steering Committee meetings;
- City Council workshops;
- Neighborhood workshops;
- Project website;
- Newsletters, mailings and notifications; and
- Continued one-on-one interaction with the residents and business owners of Marathon through the planning process.

The public involvement program will be continuous so that the public can stay involved, provide input at key milestones, and monitor the progress of the project and assist in future planning efforts. The concepts, ideas, designs and plans defined as the result of this task will be the basis of subsequent efforts in the preparation and completion of the Master Plan and Land Development Regulations.

The City will work with the CONSULTANT to develop invitation lists for all meetings and will assume responsibility for the postage by mailing the letters or notifications prepared for each of the public meetings. The City shall be responsible for securing the facilities for public meetings. The CONSULTANT will prepare the notices, invitations, flyers or posters for each of the meetings, reproduce all materials to be sent to the public and will prepare and reproduce all graphics and support material needed for public meetings. The CONSULTANT will provide notices and pre-read materials prior to a scheduled meeting or event, as required by adopted City policies.

The CONSULTANT's fee for the scope of **services** described herein for Task 1 shall be billed hourly according to the rates in Exhibit B of the Continuing Services Agreement and shall not exceed \$56,000.00 plus reimbursable expenses as outlined in Section 4 of this agreement.

Task 2 – Existing Conditions and Regulatory Analysis

The CONSULTANT will conduct an analysis of existing conditions and regulatory mechanisms applicable to the City of Marathon. Existing reports and studies, such as the City's draft Comprehensive Plan, existing land development regulations, public facility studies, and county, regional, state and federal documents will be reviewed and analyzed. The CONSULTANT will prepare new studies related to:

- Economics and marketing;
- Mobility and transportation; and
- Urban design.

The CONSULTANT's fee for the scope of services described herein for Task 2 shall be billed hourly according to the rates in Exhibit B of the Continuing Services Agreement and shall not exceed \$32,000.00 plus reimbursable expenses as outlined in Section 4 of this agreement.

Task 3 – Coordination with local, county, regional, state and federal agencies

The CONSULTANT will participate on the local planning advisory committees, for issues related to the Florida Keys Carrying Capacity Study, the Rate of Growth Ordinance (ROGO) and any other issue, which may affect the Master Plan, land development regulations and implementation programs. The CONSULTANT will attend local, county, regional, state and federal workshops and meetings, which may affect the Master Plan. land development regulations and implementation programs.

The CONSULTANT's fee for the scope of services described herein for Task 3 shall be billed hourly according to the rates in Exhibit B of the Continuing Services Agreement and shall not exceed \$31,000.00 plus reimbursable expenses as outlined in Section 4 of this agreement.

Task 4 – Master Plan Document

The CONSULTANT will prepare a Master Plan document, which will incorporate the goals, ideas and priorities of the residents, business owners, City staff and the City Council. At a minimum the Master Plan document will address the following topics:

- Citywide master development plan alternatives;
- A final citywide master development plan as determined by the public, City staff and the City Council;
- Action group activities;
- Description of public involvement activities;
- Community priorities;
- Market study;
- Urban form and design;
- Housing;
- Natural resources;
- Land use;
- Recreation and open space;
- Mobility and transportation plan;

- Capital improvements program;
- Economic development and revitalization;
- Implementation plan; and
- Associated plans and illustrations.

The CONSULTANT's fee for the scope of services described herein for Task 4 shall be billed hourly according to the rates in Exhibit B of the Continuing Services Agreement and shall not exceed **\$181,000.00** plus reimbursable expenses as outlined in Section 4 of this agreement.

Land Development Regulations

Task 5 – Land Development Regulations

The CONSULTANT will draft land development regulations, processes and illustrations specific to the City of Marathon and satisfy the requirements of the City's comprehensive plan and to implement the Master Plan. The CONSULTANT will be responsible for formatting the adopted land development regulations and coordinating publication with the Municipal Code Corporation.

The CONSULTANT's fee for the scope of services described herein for Task 5 shall be billed hourly according to the rates in Exhibit B of the Continuing Services Agreement and shall not exceed **\$160,000.00** plus reimbursable expenses as outlined in Section 4 of this agreement.

Deliverables

The CONSULTANT will provide the following items in accordance with the time frames established by the City's Project Manager:

- Ten (10) copies and one (1) electronic copy of a Monthly Status Report;
- An Existing Conditions Report, which will include a market study and economic analysis, mobility and transportation study, urban design inventory, land use study and an analysis of regulatory conditions;
- Twenty (20) color copies and one (1) electronic copy of the Master Plan Document; and
- Twenty (20) color copies and one (1) electronic copy of the Land Development Regulations.

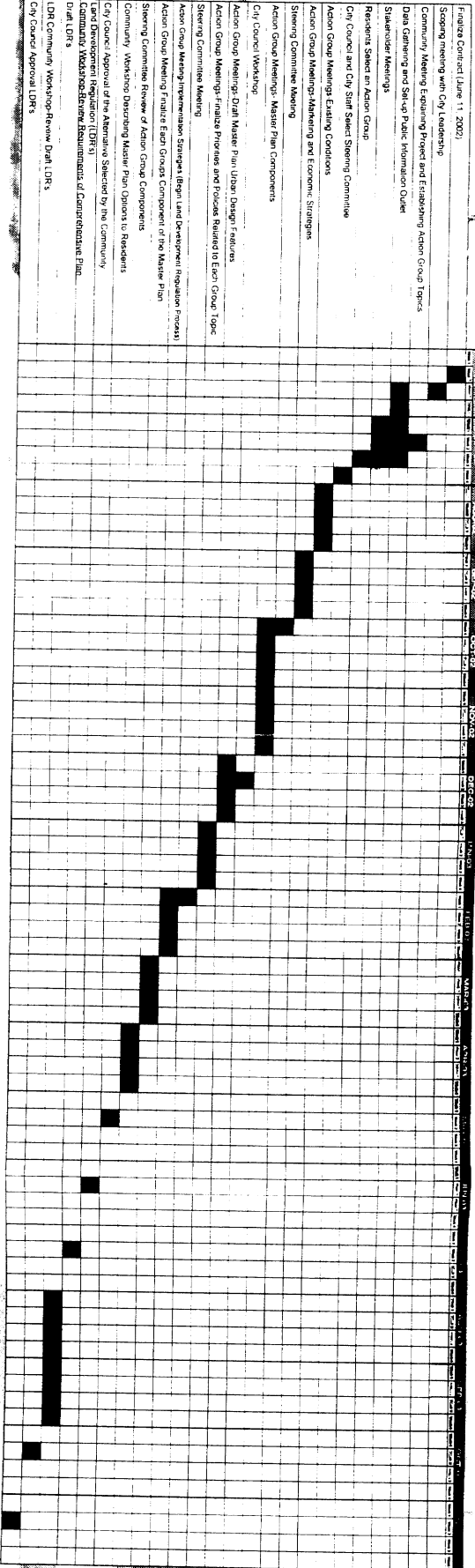
Project Completion and Completion Time

The work outlined in this scope of services for the Master Plan and Land Development Regulations shall commence upon issuance of a Notice to Proceed from the City of Marathon. Work is expected to be completed within eighteen (18) months of the Notice to Proceed. In addition, the Consultant shall work with the City's Project Manager before beginning the work outlined in this scope of services to develop a detailed project schedule. The Consultant shall not commence work on any of the tasks contained in this scope of services without a Notice to Proceed.

EXHIBIT 3

INSERT PROJECT SCHEDULE

Project Schedule



KEITH and SCHNARRS, P.A.
ENGINEERS, PLANNERS, SURVEYORS