

RESOLUTION NO. 2003- 38

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH BARRETO, CUNNINGHAM, MAY, DUDLEY & MALOY FOR PROFESSIONAL CONSULTING AND LOBBYING SERVICES BEFORE THE LEGISLATURE OF THE STATE OF FLORIDA; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AUTHORIZING THE CITY MANAGER TO EXPEND BUDGETED FUNDS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the “City”) recognizes the importance of monitoring and participating in the legislative process in order to protect the interests of the City and its residents;

WHEREAS, the City Council has determined that the firm of Barreto, Cunningham, May, Dudley & Maloy, (the “Consultant”) is qualified to monitor and participate in the legislative process on behalf of the City; and

WHEREAS, the City Council desires to enter into an Agreement with Consultant to provide professional legislative consulting and lobbying services before the legislature of the State of Florida.

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

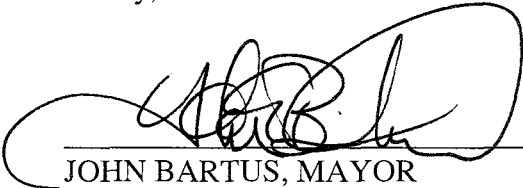
Section 1. **Recitals.** The above recitals are true and correct and incorporated herein by this reference.

Section 2. Approval and Execution of Agreement. The Agreement between the City of Marathon and Barreto, Cunningham, May, Dudley & Maloy (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. Appropriation. The City Manager is authorized to expend budgeted funds to implement the terms and conditions of the Agreement.

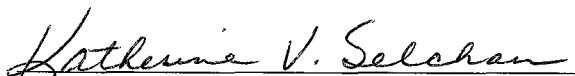
Section 4. Effective Date. This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 4th day of February, 2003.



JOHN BARTUS, MAYOR

ATTEST:



KATHERINE V. SELCHAN
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:



CITY ATTORNEY

CONTRACT FOR LEGISLATIVE CONSULTING SERVICES

THIS AGREEMENT is made and entered into this 4th day of February, 2003, between the City of Marathon, a Florida Municipal Corporation (the "City"), and Barreto, Cunningham, May, Dudley & Maloy, LLC, a Florida Corporation ("Consultant").

THE PARTIES AGREE AS FOLLOWS:

1. SCOPE OF SERVICES.

1.1 Consultant shall provide legislative consulting services on behalf of the City before the Florida Legislature, the executive branch of the Florida government, and various regional and local governments.

1.2 Specifically, Consultant shall provide the following services:

1.2.1 Assist the City in developing a legislative program;

1.2.2 Monitor and report on all state agency programs of interest to the City, including any programs that could be helpful in funding, planning and operating the City;

1.2.3 Represent City's interests before the Florida legislature and any executive branch body and other entity that could be of benefit to the City's interests;

1.2.4 Monitor and track all legislation of interest to the City;

1.2.5 Provide weekly reports during the legislative session and monthly reports during the non-session months to the City Manager and City Attorney on all legislation being tracked. Such reports will be electronically transmitted to the City Manager and City Attorney;

1.2.6 Host City officials during the legislative session in Tallahassee and arrange all appropriate meetings; and

1.2.7 Attend staff meetings, workshops or Council meetings in Marathon at the City Manager's request.

2. COMPENSATION/EXPENSES.

2.1 For all professional services provided by Consultant described in Section 1, the City shall pay Consultant an annual fee of Thirty Thousand Dollars (\$30,000.00) payable in four (4) equal quarterly installments.

2.2 Consultant shall be entitled to reimbursement of expenses incurred as a result of its representation of the City. Such expenses may include long distance phone charges, use of on-line legislative and legal resources, copying and facsimile charges, postage and overnight delivery charges and other expenses related to representation of the City.

2.3 Consultant shall be reimbursed by the City for reasonable travel expenses provided such expenses are pre-approved by the City Manager in writing. If Consultant is travelling on behalf of several clients, the City shall be charged only its pro-rated portion of the costs incurred.

2.4 Reimbursement of travel expenses incurred under Section 2.3 shall be paid by the City to the Consultant upon approval of an invoice, including appropriate receipts and back-up documents.

2.5 The Consultant shall submit an invoice on the first month of each calendar quarter for Seven Thousand Five Hundred Dollars (\$7,500.00).

2.6 Payments and reimbursements due under this section shall be paid by the City pursuant to the Florida Prompt Payment Act.

3. TERM/TERMINATION.

3.1 This Agreement shall be effective immediately upon execution by both parties and shall be for an initial term of one (1) year. The City Manager shall be authorized to extend the term of this Agreement upon the same terms and conditions for one (1) additional year.

3.2 Either party may terminate this Agreement at any time upon thirty (30) days advance written notice to the other. In the event of such termination, the City shall be obligated to pay the Consultant only for approved fees and costs incurred by the Consultant prior to the date of the termination notice. If the Consultant has already received the quarterly fee payment, the Consultant shall refund a pro-rated percentage of the fee back to the City.

3.3 Notwithstanding Section 3.1 above, either party may terminate this Agreement if the other party breaches any material term of this Agreement and fails to cure same within ten (10) days after written notice from the non-breaching party. In the event of such a termination by either party, the City shall pay Consultant only the pro-rated monthly compensation incurred prior to the termination date.

4. CONFLICT OF INTEREST.

4.1 Consultant shall not be prohibited from representing or providing the like services to other persons and entities other than the City, so long as Consultant shall avoid any representation or relation that creates an adversarial conflict of interest, as first determined by the City Attorney and City Council.

4.2 Consultant shall not take on any client or matter which would jeopardize Consultant's ability to devote the time, resources, and effort necessary to fulfill its obligations to the City.

4.3 Consultant shall not represent any other local government, political subdivision or special district located in Monroe County without the prior authorization of the City Council.

5. SERVICES NOT ASSIGNABLE.

5.1 Although this Agreement is with Consultant, the parties understand that the services of Consultant are personal in nature and that the following members of Consultant's firm shall be designated by Consultant to perform services under this Agreement: Charles F. Dudley, Rodney Barreto, Patrick R. Maloy, Loren Rachel and Gail Crisp.

5.2 In the event that any member of the Consultant firm can no longer perform services under this Agreement, Consultant shall immediately notify the City Manager and the City Manager shall have the right to immediately terminate this Agreement.

5.3 This Agreement shall not be subject to assignment by Consultant without written permission of the City Manager.

6. COST AND ATTORNEY'S FEES.

6.1 If either the City or the Consultant is required to enforce the terms of this Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including but not limited to, costs and reasonable attorneys' fees.

7. GOVERNING LAW.

7.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

8. CONSENT TO JURISDICTION.

8.1 The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to the Agreement. Venue of any action to enforce this Agreement shall be in Monroe County, Florida, Middle Keys Division.

9. AMENDMENTS.

9.1 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

10. WAIVER OF JURY TRIAL.

10.1 Both City and the Consultant knowingly, voluntarily, and irrevocably waive their right to a trial by jury in any civil proceedings that may be initiated by either party with respect to any term or condition of this Agreement.

11. INDEPENDENT CONTRACTOR

11.1 It is expressly understood and agreed that, in the performance of services under this Agreement, Consultant shall, at all times, act as independent contractor with respect to the City. Nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship, a partnership relationship, a joint venture relationship or any other type of relationship other than as set forth herein.

12. GOOD FAITH

12.1 Each party hereto agrees to act in good faith with respect to the other party or parties exercising its rights and discharging its obligations under this Agreement. Each party further agrees to use its best efforts to ensure that the purposes of this Agreement are realized and to take all steps as are reasonable and necessary in order to effectuate the intent of this Agreement.

12.2 Each party agrees to execute, deliver and file any document or instrument necessary or advisable to realize the purposes of this Agreement.

13. NOTICE

13.1 Any notice required by this agreement shall be hand delivered, sent by private postal service or sent by certified mail addressed to:

FOR CITY:

Scott Janke, City Manager
City of Marathon
10045-55 Overseas Highway
Marathon, FL 33050
Telephone: (305) 743-0033
Facsimile: (305) 743-3667

With a copy to:

Nina Boniske, City Attorney
Weiss Serota Helfman Pastoriza & Guedes, P.A.
2665 South Bayshore Drive
Suite 420
Miami, FL 33133
Telephone: (305) 854-0800
Facsimile: (305) 854-2323

FOR CONSULTANT:

Mr. Charles F. Dudley
Barreto, Cunningham, May, Dudley & Maloy
315 South Calhoun Street
Suite 300
Tallahassee, FL 32301
Telephone: (305) 444-4648
Facsimile: (305) 444-1128

14. SEVERABILITY

14.1 If any provision of this Agreement or the application thereof to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

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IN WITNESS WHEREOF the undersigned parties have executed this Agreement on the date indicated above.

WITNESSED:

BARRETO, CUNNINGHAM, MAY, DUDLEY & MALOY, LLC

Gail E. Crisp

BY: Charles F. Dudley
Print Name: Charles F. Dudley

[Signature]

THE CITY OF MARATHON

BY: [Signature]
John Bartus, Mayor

ATTEST: Katherine V. Selchan
City Clerk

APPROVED: [Signature]
City Attorney