

Sponsored by: Janke

**CITY OF MARATHON, FLORIDA
RESOLUTION 2004-003**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MARATHON, FLORIDA, AUTHORIZING THE CITY MANAGER TO
ENTER INTO AN AGREEMENT WITH CURTIS & KIMBALL COMPANY
IN THE AMOUNT OF \$128,660 FOR THE DEVELOPMENT OF REGIONAL
IMPACT AND MARINA SITING PLAN AND APPROPRIATING FUNDS**

WHEREAS, the City of Marathon, Florida (the "City") wishes to enter into an agreement with Curtis & Kimball Company, (the "Consultant") for Planning and Engineering services based on a rate of \$128,660; and

WHEREAS, the City has successfully negotiated a cost for these services with the consultant; and

WHEREAS, the City Council desires to enter into an agreement with consultant to provide professional planning and engineering services to the City for a term of (1) year; and

WHEREAS, the City must appropriate the funds for these services in the amount of \$128,660.

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

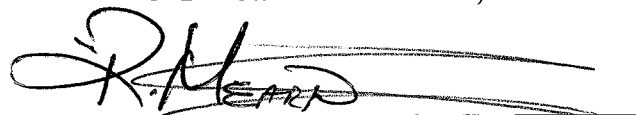
Section 1. Council authorizes the City Manager to enter into an agreement with Curtis & Kimball Company in the amount of \$128,660 for the development of Regional Impact and Marina Siting Plan, of which is attached as Exhibit "A".

Section 2. The City Council appropriates funds from the capital infrastructure fund to implement the terms and conditions of the Agreement.

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 27th day of January, 2004.

THE CITY OF MARATHON, FLORIDA

A handwritten signature in black ink, appearing to read 'R. Mearns', is written over a horizontal line. The signature is stylized and cursive.

Randy Mearns, Mayor

AYES: Bartus, Pinkus, Repetto, Worthington, Mearns
NOES: None
ABSENT: None
ABSTAIN: None

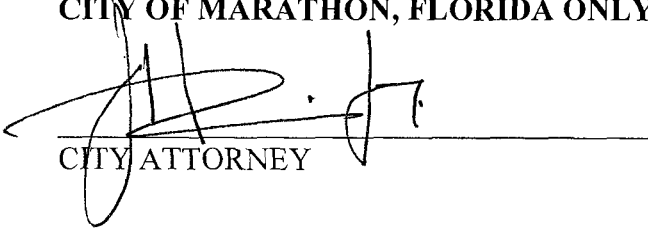
ATTEST:



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

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
CURTIS AND KIMBALL COMPANY**

THIS AGREEMENT is made between the **CURTIS AND KIMBALL COMPANY**, a Florida corporation, (hereinafter the "Consultant"), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, the Consultant and City, through mutual negotiation, have agreed upon a scope of services, schedule, and fee for the development and preparation of a marina DRI/siting plan for the City (the "Project"); and

WHEREAS, the City desires to engage the Consultant to perform the services specified herein; and

WHEREAS, the Consultant is willing and able to perform such professional services for the City within the basic terms and conditions set forth in this agreement (hereinafter referred to as "Professional Services Agreement or Agreement")

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Consultant and the City agree as follows.

1. **Scope of Services/Deliverables.**

- 1.1 The Consultant shall furnish professional planning services to the City as set forth in the Scope of Services for the Project as specified in Exhibit "A," attached to this Agreement.
- 1.2 The "Scope of Services" includes a Project Schedule for the Project which includes a breakdown of tasks, timeline and deliverables to the City.
- 1.3 The professional services to be rendered by the Consultant shall commence subsequent to the execution of this Agreement. Performance of work by Consultant prior to execution of this Agreement shall be at Consultant's sole risk.
- 1.4 Changes in the Scope of Services consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the City by Change Order without invalidating the Agreement.
- 1.5 Change Order shall mean a written order to the Consultant executed by the City, issued after execution of this Agreement, authorizing and directing a change in the Scope of Services or an adjustment in the contract price or

the contract time, or any combination thereof. The contract price and the contract time may be changed only by Change Order.

- 1.6 The execution of a Change Order by the City and the Consultant shall constitute conclusive evidence of the Consultant's agreement to the ordered changes in the Scope of Services or an adjustment in the contract price or the contract time, or any combination thereof. The Consultant, by executing the Change Order, waives and forever releases any claim against the City for additional time or compensation for matters relating to or arising out of or resulting from the services included within or affected by the executed Change Order.
- 1.7 The City Manager is authorized to negotiate and execute Change Orders, in an amount not to exceed \$20,000.00 per charge. Changes, which exceed \$20,000.00, shall be approved by the City Council.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain and continue in effect for one (1) year unless extended in accordance with Paragraph 1, or earlier terminated in accordance with Paragraph 8 of this Agreement.
- 2.2 Consultant shall begin work upon receipt of written Notice to Proceed from the City Manager (the "Commencement Date").
- 2.3 Consultant agrees that time is of the essence and Consultant shall complete each deliverable and the Project within the timeframes mutually agreed to by Consultant and the City Manager as set forth in the "Project Schedule" attached as Exhibit "A". The timeframes set forth in the Project Schedule may only be modified through written Change Order.
- 2.4 Unless otherwise excused by the City in writing, in the event that the Consultant fails to meet the contract time for completion of services as determined by the Project Schedule, the Consultant shall pay to the City the sum of \$100.00 per day for each and every calendar day of unexcused delay beyond the completion date, plus approved time extensions, until completion of the Project. 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. 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. **Compensation and Payment.**

- 3.1 The Consultant shall receive a total fee of \$111,660.00 (the "Contract Price") for all services set forth in Exhibit "A," relative to the Marina Siting Plan. The Contract Price shall constitute full payment and includes all sub-consultant fees, labor, overhead, reproduction costs, review fees, travel, mileage, telephone expenses, other costs, and profit.
- 3.2 At the sole option of the City Manager, the City will pay Consultant up to \$17,000.00 for additional time and materials necessary in preparation of a comprehensive plan amendment, as approved by City Manager.
- 3.3 The Consultant shall invoice the City upon the completion of each task or deliverable in accordance with the Project Schedule. Invoices for each phase of the Project shall not exceed the amount allocated to each phase of work and deliverable. The invoice shall show a summary of fees which accrual of the total credits for portions previously paid by the City.
- 3.4 The City shall pay Consultant in accordance with the Florida Prompt Payment Act. 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. If a dispute should occur regarding an invoice submitted, 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.
- 3.5 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 this Agreement.
- 3.6 Consultant shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from the City for direct, indirect, consequential, impact of other costs, expenses or damages including but not limited to costs of acceleration or inefficiency or extended overhead, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. Consultant shall be entitled only to an extension of the contract time as the sole and exclusive remedy for delay. All extensions

of time must be approved in writing by the City Manager by Change Order.

4. **Sub consultants.**

- 4.1 The Consultant shall be responsible for all payments to any sub-consultants and shall maintain responsibility for all work related to the Project.
- 4.2 Any sub-consultants used on the Project must have the prior written approval of the City Manager.

5. **City's Responsibilities**

- 5.1 Assist Consultant by placing at its disposal all available information as may be requested in writing by the Consultant and allow reasonable access to all pertinent information relating to the services to be performed by Consultant.
- 5.2 Furnish to Consultant, at the Consultant's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Consultant, in possession of the City.
- 5.3 Arrange for access to and make all provisions for Consultant to enter upon real property as required for Consultant to perform services as may be requested in writing by the Consultant.

6. **Consultant's Responsibilities**

- 6.1 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the Project as is ordinarily provided by a professional planner, engineer, architect, surveyor or mapper under similar circumstances. If at any time during the term of this Agreement for which the Consultant has provided planning, engineering, architectural surveying or mapping services, it is determined that the Consultant's documents are incorrect, defective or fail to conform to the Scope of Services of the Project, upon written notification from the City, the Consultant shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the City for any other services and expenses made necessary thereby, save and except any costs and expenses which the City would have otherwise paid absent the Consultant's error or omission. Furthermore, all final plans submitted by Consultant shall be permissible. The City's rights and remedies under this section are in addition to, and are

cumulative of, any and all other rights and remedies provided by this Agreement, by law, equity or otherwise.

6.2 The Consultant's obligations under Paragraph 6.1 of this Agreement shall survive termination of this Agreement.

7. **Conflict of Interest.**

7.1 To avoid any conflict of interest or any appearance thereof, Consultant shall not, for the term of this Agreement, represent any private sector entities (developers, corporations, real estate investors, etc.), with regard to any adversarial issues in the City. For the purposes of this section "adversarial" shall mean any development application where staff is recommending denial or denied the application; administrative appeal or court action wherein the City is a party.

8. **Termination.**

8.1 The City Manager without cause may terminate this Agreement upon thirty (30) days written notice to the Consultant, or immediately with cause.

8.2 Upon receipt of the City's written notice of termination, Consultant shall stop work on the Project unless directed otherwise by the City Manager.

8.3 In the event of termination by the City, the Consultant shall be paid for all work accepted by the City Manager up to the date of termination, provided that the Consultant has first complied with the provisions of Paragraph 8.4.

8.4 The Consultant shall transfer all plans, drawings, books, records, reports, working drafts, documents, maps, and data pertaining to the Project to the City, in a hard copy and electronic format within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

9. **Insurance.**

The Consultant shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by the City Manager. The underwriter of such insurance shall be qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida. If requested by the City Manager, the insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers. The insurance coverages shall include a minimum of:

- 9.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.
- 9.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 9.3 Commercial General Liability. If applicable, this insurance shall be written in comprehensive form and shall protect the Consultant and the City against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the Consultant or any of its agents, employees, or sub-consultants. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- (a) Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent Consultants and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.
 - (b) The City is to be specifically included as an Additional Insured for the liability of the City resulting from operations performed by or on behalf of Consultant in performance of this Agreement. Consultant's insurance, including that applicable to the City as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the City shall be in excess of and shall not contribute to Consultant's insurance. Consultant's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.
- 9.4 Professional Liability: The Consultant shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.00, with a deductible of no more than \$100,000.00 per claim.

The Consultant shall be responsible for maintaining this professional liability insurance for a minimum of five (5) years from the date of execution of this Agreement. Upon request of the City, the Consultant shall make available for inspection copies of any claims filed or made against the policy during the policy term. The Consultant shall additionally notify the City, in writing, within thirty (30) calendar days of any claims filed or made against this policy in excess of \$50,000.00 during the policy term.

9.5 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9.6 All deductibles or self-insured retentions must be declared to and be approved by the City Manager. The Consultant shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The City Manager may at any time require the Consultant, to provide a bond or other monetary consideration to cover the Consultant's deductible for Professional Liability Insurance.

10. **Nondiscrimination.**

10.1 During the term of this Agreement, Consultant shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination

11. **Attorneys Fees and Waiver of Jury Trial.**

11.1 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.

11.2 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.

12. **Indemnification.**

12.1 Consultant shall indemnify and hold harmless the City and its officers and employees, from liabilities, damages, losses, and costs, including, but not

limited to, reasonable attorneys' fees, to the extent such liabilities, damages, losses, and costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant or any persons employed or utilized by the Consultant in the performance of this Agreement or any Project Agreement. This provision shall be subject to the limitations set forth in Section 725.08, Florida Statutes, to the extent applicable to the performance of this Agreement or any Project Agreement.

12.2 The provisions of this section shall survive termination of this Agreement.

13. **Notices/Authorized Representatives.**

13.1 Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the City:

Scott Janke, City Manager
City of Marathon, Florida
10045-55 Overseas Highway
Marathon, Florida 33050

With a copy to:

Weiss Serota Helfman Pastoriza, Guedes
Cole & Boniske, P.A., City Attorneys
Attention: John R. Herin, Esq.
2665 South Bayshore Drive
Suite 420
Miami, Florida 33133
Telephone: (305) 854-0800
Facsimile: (305) 854-2323

For The Consultant:
Rob Curtis, Principal
7520 Red Road
Suite M
South Miami, Florida 33143
Telephone: (305) 669-3172
Facsimile: (305) 669-3174

14. **Governing Law.**

14.1 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.

15. **Entire Agreement/Modification/Amendment.**

15.1 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.

15.2 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.

16. **Ownership and Access to Records and Audits.**

16.1 All plans, drawings, records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City.

16.2 The City Manager 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 Consultant involving transactions related to this Agreement.

16.3 The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

17. **Nonassignability.**

17.1 The City is relying upon the apparent qualifications and personal expertise of the Consultant, and such firm's familiarity with the City's area, circumstances and desires. This Agreement shall not be assignable by Consultant unless such assignment is first approved by the City Manager.

18. **Severability.**

18.1 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.

19. **Independent Consultant.**

19.1 The Consultant and its employees, volunteers and agents shall be and remain independent Consultant and not agents or employees of the City 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.

20. **Compliance with Laws.**

20.1 The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

21. **Waiver**

21.1 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.

22. **Survival of Provisions**

22.1 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.

23. **Prohibition Of Contingency Fees.**

23.1 The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

24. **Counterparts**

24.1 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.


[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature: The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same and by Consultant by and through its Principal, whose representative has been duly authorized to execute same.

Attest:

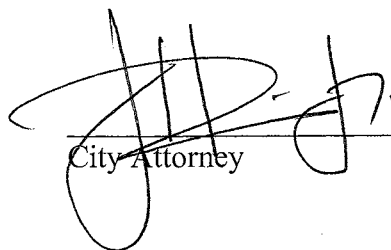

Cindy L. Ecklund, City Clerk

CITY OF MARATHON


By: 
W. Scott Janke, City Manager

Date: 1/27/04

Approved as to form and legality for the use and reliance of the City of Marathon, Florida only:


City Attorney

CURTIS & KIMBALL COMPANY

By: 
Robert Curtis, Principal

Date: January 21, 2004

EXHIBIT "A"

SCOPE OF SERVICES

Background

Florida Statutes require any proposed marina construction since 1973 with wet storage or moorings of 150 or more; or dry storage of 200 or more water craft used exclusively for sport, pleasure, or commercial are subject to undergo development-of-regional-impact review (DRI).

AN ALTERNATIVE TO THE DRI PROCESS WAS INTRODUCED ON MAY 31, 2002 WITH THE PASSAGE OF SB 1906, "LEGISLATURE HAS ESTABLISHED A PROCESS FOR AN OPTIONAL EXEMPTION OF MARINAS FROM THE DRI REVIEW PROCESS. MARINAS MAY BE EXEMPT FROM DRI REVIEW PROVIDED THE LOCAL GOVERNMENT HAS ADOPTED A "BOATING FACILITY PLAN OR POLICY" AS PART OF ITS COMPREHENSIVE PLAN. THE SITING PLAN OR POLICY MUST ESTABLISH CRITERIA TO PROTECT MANATEES AND OTHER NATURAL RESOURCES AND ADDRESS RECREATION AND ECONOMIC DEMANDS.

In 2003 the City of Marathon (the "City"), Florida Department of Community Affairs (DCA) and the Florida Department of Environmental Protection (DEP) entered into a section 380.032, Florida Statutes, Preliminary Development Agreement (PDA) for Boot Key Managed Harbor (the "Harbor"). In the agreement the City agreed not to exceed the 100 percent DRI threshold for the Harbor until the City had an effective DRI development order in place for the Harbor.

The scope of services presented below is designed to eliminate the DRI requirement for the Harbor through development and approval of a marina siting plan for the City. This process will require data gathering, analysis, assembly of information into reports and presentations, drafting of the marina siting plan, public workshops, agency negotiations, modifications to the PDA, adoption and approval of the Marina Siting Plan

TASK 1. KICK-OFF MEETING

The Curtis and Kimball Consulting team (CKC) will prepare for and conduct a kick-off meeting with City of Marathon staff to review and finalize task assignments, schedule and communication mechanisms. In order to proceed quickly, it will be important that City staff provide all appropriate and available base information to the CKC team. The consultants will outline a strategy to eliminate the DRI requirements for Boot Key Harbor. A date for meeting with DCA and DEP in Tallahassee will be established. Other items to be discussed at the kick-off meeting are:

- Status on the 380.032 Agreement required actions

- Construction schedule at Boot Key Harbor
- Initial inventory of marinas

Deliverables: Project Management Plan

TASK 2. DRI NEGOTIATION

The goal of this task is to convince the DCA and DEP that the Marina Siting Plan and environmental permitting processes are the most effective regulatory mechanisms to ensure appropriate development of marinas in the City - not the DRI process. The subtasks to fulfill this goal are listed below.

Subtask 2.1 Meeting Preparation

The consultant team will work closely with city staff to complete the following tasks:

- Develop and refine a strategy for the negotiations
- Develop meeting agenda detailing the issues, proposed approach, schedule and milestones
- Draft and finalize a presentation of the proposed approach. The CKC team often uses Powerpoint presentations to communicate the information quickly and effectively.

Subtask 2.2 Meeting with Agencies

This meeting will be held in Tallahassee and include appropriate staff from DCA and DEP, members of the CKC team and City staff.

Subtask 2.3 Meeting Follow-up

Provide agency staff with necessary information and assurances to obtain their concurrence and support to revise the 380.032 Agreement to use the Marina Siting Plan and eliminate the DRI requirement.

Deliverables: Agency concurrence to substitute Marina Siting Plan for DRI

Task 3 Draft New 380.032 Agreement

The CKC team will work with the City's legal counsel and draft a new agreement focusing on the Marina Siting Plan as the vehicle to approve marina development in the City. The CKC team will submit drafts of the agreement to DCA and DEP and coordinate resolution of comments and/or concerns.

Subtask 3.1 City Approval of Draft Agreement

This task includes presentations of the Agreement to the City Planning Board and Council for their approval, as necessary.

Subtask 3.2 Execute Agreement

The final agreement will be circulated for execution.

Deliverables: Executed Agreement

TASK 4. MARINA SITING FRAMEWORK

It is important that the CKC team define the framework and context in which the Marina Siting Plan will be developed. This will help establish existing parameters and identify opportunities and constraints.

SubTask 4.1 Review Existing Information

The CKC team will obtain all available relevant inventory information from the City and from other sources such as Monroe County, the Florida Keys National Marine Sanctuary, and the Florida Department of Environmental Protection. Existing organized data from these and other sources will be obtained where available including marina inventory, manatee survey data, natural resource maps, submerged resource maps, special management area coverages, and aerial photographs and zoning maps. This information will be consolidated and summarized in order to characterize the existing marinas in the City. No collection of new resource data is included in this task. This task includes one trip to Marathon, if necessary, to obtain existing data from the City or other agencies.

Deliverables: Summary of existing information

SubTask 4.2 Marina Development Potential

Using the existing information obtained the CKC team will provide a preliminary evaluation of the potential for development of marinas within the City including new construction and expansion. For this task the CKC team will use the analysis of existing information to identify opportunities and limitations. This will be a gross analysis based on existing information and analysis of existing aerial photography. The analysis will primarily focus on the potential for any site to exceed DRI thresholds. This task includes one trip to Marathon to meet with marina operators/owners and other stakeholders. A summary of these findings will be presented to the City.

Deliverables: Summary of marina development potential

SubTask 4.3 Conduct Preliminary Agency Coordination

The CKC team will conduct a conference coordination meeting with Department of Community Affairs (DCA) staff assigned to the project. The purpose of the meeting will be to identify, early in the process, DCA's primary issues of concern with respect to marina siting in the City of Marathon. Key CKC team members as well as DCA staff and City staff (as desired) will participate in the meeting. A summary of the existing resource inventory information will be included in the agenda package for the meeting. A memorandum summarizing meeting results will be distributed to all meeting participants afterwards.

The CKC team will coordinate marina siting parameters, opportunities and constraints with other agencies that may have jurisdiction over marina development. These agencies include the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the Florida Keys National Marine Sanctuary, the U.S. Coast Guard, the Florida Department

of Environmental Protection, and the South Florida Water Management District and the Florida Fish and Wildlife Conservation Council. The CKC team will present summaries of these discussions to the City.

Deliverables: Agenda package for DCA meeting, Minutes of DCA meeting, Summary of agency discussions

TASK 5. REFINEMENT OF PLAN GOALS

The purpose of this task is to set final plan parameters with the City utilizing the analysis of existing inventories and the input from state and federal agencies.

Task 5.1 Set Plan Parameters

The CKC team will coordinate with the City and present a summary of development potential for marinas in Marathon (see Sub Task 4.2 above). The agency input will also be presented for the City's consideration. The team will then assist the City in refining exactly what the marina siting plan should accomplish. This will give the team the final direction it needs to prepare an efficient and focused plan. This task includes one trip to Marathon to meet with the City. At the conclusion of this coordination, the CKC team will produce a summary memorandum identifying the key elements to be addressed in the plan. If further data collection is needed to meet the City's goals, those needs will be enumerated in the summary.

Deliverables: Summary memorandum of plan goals

Task 5.2 Final Data Collection

This task will be an add-on item to the contract in the event that the CKC team needs to conduct new data collection for completion of the plan based on City needs and/or agency requirements. The consultant team will make every effort to satisfy agency requirements with existing, available data. In the event review agencies require additional data, the scope of this task will be based on the identified data needs, if any, listed in the summary document produced pursuant to Task 5.1 above and will be negotiated as an add-on contract item in accordance with the City's needs.

Deliverables: To be defined if necessary

TASK 6. BMPS/PERFORMANCE MEASURES

The CKC team will research and develop best management practices (BMPs) and performance measures that may be applied to marina developments within the City. The aim of BMPs will be to prevent or minimize impacts of the marina operation on the natural and human environment. The CKC team will organize BMPs according to issues of concern (e.g., water quality protection, manatee protection, etc.), provide a brief listing and summary description of each BMP and provide a summary of mechanisms that may be used to implement various BMPs. Performance measures can be used by the marina

operator and the City to evaluate the effectiveness of various BMPs. The CKC team will research and develop suggested performance measures for evaluating BMPs. One complete draft of the BMPs and performance measures will be transmitted to City staff for comment before these items are incorporated into the final draft marina siting plan.

Deliverables: Draft BMPs and performance measures

TASK 7. FIRST DRAFT PLAN

SubTask 7.1 Delivery of First Draft

A first draft of portions of the plan will be produced which includes all the existing relevant information and basic framework for marina siting in the City of Marathon. An analysis of opportunities and limitations will also be presented with respect to natural resource protection, manatee protection, water quality protection, existing regulations and other key elements identified during previous meetings and coordination. A preliminary draft set of marina siting criteria will be included in the first draft plan. One digital copy, one copy-ready paper original and 25 hard copies of the first draft plan will be made available to the City along with a cover letter inviting any interested party to comment. Copies will also be sent separately to interested state and federal agencies.

Deliverables: First draft of plan

SubTask 7.2 Summary of Comments

Comments may be relayed to the City or directly to CKC during a specified comment period to be set by the City and CKC team and not anticipated to exceed 30 days. After the comment period has expired, the CKC team will collect and summarize the comments and deliver them to the City.

Deliverables: Summary of comments on first draft of plan

TASK 8. APPLICATION PROCESS/PERMITTING MODEL

The City and marina developers need to be able to envision the process by which new and expanded marinas will be permitted. The CKC team will develop a detailed description of the proposed application process including submittal requirements and processing procedures. A model summarizing the permitting process for new and expanding marinas will also be developed including illustrative flow charts where appropriate. One complete draft of the application process and permitting model will be transmitted to City staff for comment before these items are incorporated into the final draft marina siting plan.

Deliverables: Draft application process and permitting model

TASK 9. FINAL DRAFT PLAN

Based on comments received on the first draft plan, the final draft will include the final siting criteria. It will also include mechanisms for implementation including zoning, marina performance measures and BMPs, a recommended application process and a permitting model for the City. The final draft plan will be presented to the City Council for adoption. One digital copy, one copy-ready paper original and 25 hard copies of the first draft plan will be made available to the City along with a cover letter informing interested parties of the City Council meeting date and time during which the draft plan will be discussed.

Deliverables: Final draft plan.

TASK 10. PUBLIC INVOLVEMENT

The CKC team will conduct one public workshop if desired by the City to inform the public and obtain input with regard to marina siting in the City. The team recommends that the workshop be conducted after production of the first draft plan. The CKC team will conduct the workshop in Marathon including presentation of materials and a public comment period. The City will be responsible for advertising the workshop and arranging the logistics. Input from the public will be summarized for the City along with all other comments and used in revising the draft plan.

Deliverables: Workshop distribution materials

TASK 11. DELIVERY OF FINAL PLAN

The CKC will make any changes to the final draft plan as directed by the City Council during the transmittal hearing. One digital copy, one copy-ready paper original and 25 hard copies of the final plan will be delivered to the City.

Deliverables: Final draft plan

TASK 12. AMENDMENTS TO COMPREHENSIVE PLAN

The Marina Siting Plan must be adopted as part City's Comprehensive Plan to be effective. The subtasks to complete this task are listed below.

Subtask 12.1 Transmittal Hearings

Present the Marina Siting Plan to the Planning Board for recommendation to City Council to approve for transmittal to the South Florida Regional Planning Council (SFRPC), DCA and other review agencies.

Subtask 12.2 Review SFRPC Recommendations

Meet with SFRPC staff to review their preliminary recommendation and address outstanding issues regarding the transmitted Plan.

Subtask 12.3 Attend SFRPC Hearing

Attend SFRPC meeting for transmittal of their recommendations to DCA. Respond to any questions or concerns raised at the meeting.

Subtask 12.4 Coordinate with DCA

Conference call with DCA staff to review their preliminary recommendation and address outstanding issues regarding the transmitted Plan.

Subtask 12.5 Respond to DCA ORC

Following the issuance of DCA's "Objectives, Recommendations and Comments Report" (ORC), draft and submit responses to issues raised in the report.

Subtask 12.6 Adoption Hearings

Attend, present and respond to questions at the following hearings; Planning Advisory Board City Council Adoption Hearing SFRPC review of adopted Plan hearing

Subtask 12.7 Final Coordination with DCA

Contact DCA and respond to questions or concerns raised regarding adopted amendment.

Deliverables: Adopted plan

Cindy Ecklund

From: Harry Delashmutt
Sent: Wednesday, January 28, 2004 4:36 PM
To: 'John R. Herin'
Cc: Cindy Ecklund
Subject: Amendment to Resolution on Curtis and Kimball Contract - Scope of work

At last nights meeting, the resolution 2004-003 passed with the provision that a kickoff meeting be held with the marinas be added in addition to a single meeting post draft form of the marina siting plan. Can you please add a page to the resolution amending the orig. scope of work as signed by the contractor. Thanks

Cindy Ecklund

From: John R. Herin [JHerin@wsh-law.com]
Sent: Friday, January 30, 2004 8:05 AM
To: Cindy Ecklund; Harry Delashmutt
Subject: RE: Amendment to Resolution on Curtis and Kimball Contract - Scope of work

It would be an amendment to the agreement, and can be done simply by modifying the scope of services attached as Exhibit "A" to the agreement. The modification should not affect the pagination/signature page of the agreement. I will forward you a revised Exhibit "A" later today.

John R. Herin, Jr., Esq.
Telephone: (305) 854-0800
Facsimile: (305) 854-2323
E-Mail: jherin@wsh-law.com

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-----Original Message-----

From: Cindy Ecklund [mailto:ecklundc@ci.marathon.fl.us]
Sent: Wednesday, January 28, 2004 4:38 PM
To: Harry Delashmutt; John R. Herin
Subject: RE: Amendment to Resolution on Curtis and Kimball Contract - Scope of work

Wouldn't that be an amendment to the agreement?

-----Original Message-----

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Cindy Ecklund

From: John R. Herin [JHerin@wsh-law.com]
Sent: Monday, February 02, 2004 12:35 PM
To: Cindy Ecklund
Cc: Harry Delashmutt
Subject: RE: Amendment to Resolution on Curtis and Kimball Contract - Scope of work

I amended subtask 4.2 to specify CKC needed to come to Marathon for at least one meeting with marina operators/owners and other stakeholders. Also, I formatted exhibit A to be a stand alone document; just attach it to the agreement already signed by everyone. Call me if you have any questions.

John R. Herin, Jr., Esq.
Telephone: (305) 854-0800
Facsimile: (305) 854-2323
E-Mail: jherin@wsh-law.com

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From: Cindy Ecklund [mailto:ecklundc@ci.marathon.fl.us]
Sent: Friday, January 30, 2004 8:22 AM
To: John R. Herin
Subject: RE: Amendment to Resolution on Curtis and Kimball Contract - Scope of work

Thank you

-----Original Message-----

From: John R. Herin [mailto:JHerin@wsh-law.com]
Sent: Friday, January 30, 2004 8:05 AM
To: Cindy Ecklund; Harry Delashmutt
Subject: RE: Amendment to Resolution on Curtis and Kimball Contract - Scope of work

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John R. Herin, Jr., Esq.
Telephone: (305) 854-0800
Facsimile: (305) 854-2323
E-Mail: jherin@wsh-law.com

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