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**CITY OF MARATHON, FLORIDA
RESOLUTION 2005-026**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH LARUE PLANNING & MANAGEMENT SERVICES, INC., FOR AN EFFICIENCY ANALYSIS SURVEY IN AN AMOUNT NOT TO EXCEED \$43,000

WHEREAS, the City Council of the City of Marathon (the "City") desires to enter into an agreement with a consultant to provide management assessment professional services; and

WHEREAS, the City, after consideration of other firms, wishes to enter into an agreement with LaRue Planning and Management Services, Inc., (the "Consultant") for management assessment services for the Planning/Zoning, Building, Code Compliance, and Engineering/Public Works Departments, and the Ports/Marina Enterprise not to exceed \$43,000; and

WHEREAS, the City must appropriate the funds for these services in the amount of 43,000.

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

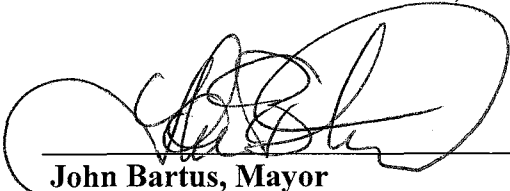
Section 1. The above recitals are true and correct and are incorporated herein.

Section 2. The agreement between the City of Marathon and Larue Planning & Management Services, Inc., for an efficiency management analysis in an amount not to exceed \$43,000.00 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. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 8th day of March, 2005.

THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

AYES: Bull, Mearns, Miller, Pinkus, Bartus
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

Agreement

THIS AGREEMENT entered into on March 8, 2005 between: The City of Marathon hereinafter referred to as the “City” and James G. LaRue, LaRue Planning & Management Services, Inc., hereinafter referred to as “Consultant”.

WHEREAS, the City desires to use the professional services of the Consultant to provide Management assessment professional services for the Planning/Zoning Department, Building Department, Code Compliance, Engineering/Public Works Operations and the Ports/Marina Enterprise Services area and;

WHEREAS, the Consultant is qualified and prepared to provide such professional services;

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, the City and the Consultant agree as follows:

1. **Scope of Services:**

LaRue Planning & Management Services, Inc. will assist the City in meeting the above objective by analyzing and reviewing the current organizational structure and operations of the Planning/Zoning Department, Building Department, Code Compliance, Engineering/Public Works Operations and the Ports/Marina Enterprise Services area (the “Services”). The Services may be provided according to two options, to be selected at the discretion of the City. Upon selection, the City will notify the Consultant in writing of its selection, which writing will be amended to this agreement.

Option 1. The Consultant will review each of the City Departments listed above in a single Management Assessment. The Assessment will include specific findings and preliminary recommendations. At the completion of the Management Assessment, a working meeting to discuss the initial findings will be held with the City Manager and/or Project Director. A formal presentation will be given to the City Council, if requested by the City. Consultant will also hold one or more training sessions with City staff in

order to review the recommendations of the Management Assessment Study and assist the staff in implementing the approved recommendations.

Option 2. The Consultant will conduct a two-phased Management Assessment. Phase I will comprise an Assessment of the City's Departments of Planning and Zoning, Building, and Code Compliance. In Phase II, the Consultant will review the City's Engineering/Public Works Department and Ports/Marina Enterprise Services Department. Upon completion of each Phase, the Consultant will provide specific findings and preliminary recommendations related to the City Departments reviewed in that Phase. The Consultant will also conduct a working meeting with the City Manager and/or Project Director to discuss the initial findings. If requested by the City, the Consultant will formally present the findings to the City Council and will hold training sessions with City staff in the relevant Departments for the purpose of reviewing and implementing the recommendations.

2. **Time for Performance.** The time for performance under this Agreement shall begin upon the date of its formal execution by both the Consultant and the City. The time period of completion will not exceed 120 days.
3. **Compensation and Method of Payment.** Compensation will be Forty-Three thousand dollars \$43,000.00 for the Services. This cost includes professional fees and all Consultant expenses related to the Services. Consultant will not charge for travel to and from the City of Marathon. If the City selects Option 1 as set forth in Paragraph 1, a pro rata portion of the entire sum will be billed in monthly installments during the performance period of the Management Assessment. Should the City select Option 2, compensation will be \$26,500 for Phase I and \$16,500 for Phase II. The pro rata share of \$26,500 will be billed monthly during the performance period of Phase I. The pro rata share of \$16,500 will be billed monthly during the performance period of Phase II.

All payments will be made pursuant to monthly invoices submitted by the Consultant, and will be paid within fourteen (14) days after receipt and approval by the City.

The Consultant shall be responsible for all payments to any subconsultants and shall maintain responsibility for all work related to the Services. Any subcontractors used must have the prior written approval of the City Manager.

4. **Project Management.** The Project Manager for the Consultant under this Agreement is James G. LaRue, of LaRue Planning & Management Services, located at 1375 Jackson Street, Suite 206, Fort Myers, Florida 33901. The Project Manager for the City shall be the City Manager or designee, 10045-55 Overseas Highway, Marathon, FL 33050.
5. **Ownership of Documents.** All materials, reports, data and other documents developed by Consultant or otherwise generated pursuant to this Agreement shall remain the exclusive property of the City and Consultant shall surrender them to the City upon termination of this Agreement.
6. **Nondiscrimination.** The Consultant warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, sex, age, or national origin and that Consultant shall abide by all Federal and state laws regarding nondiscrimination.
7. **Independent Contractor.** The City and the Consultant intend that an independent contractor relationship is created by this Agreement. The Consultant shall not be considered an agent or employee of the City for any purpose, and the City shall not be liable to carry unemployment compensation insurance or worker's compensation insurance on the Consultant, or his employees. The City shall not withhold any taxes or social security from compensation paid to the Consultant. The City shall not use the Consultant exclusively, and the Consultant shall be free to contract with other persons for similar or other services while under contract with the City.
8. **Insurance.** The Contractor 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. As

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:

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. Contractors with Worker's Compensation exemption shall not hold City liable for employee injury or claims.

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 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.

Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.

Professional Liability. The company shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.

Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Certificates of Insurance shall include the City as additional insured or certificate holder. 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. **Conflict of Interest.** The Consultant represents to the City that it does not presently have any clients or other interests, and that it will not acquire any such clients or interests, which conflict in any manner, either directly or indirectly, with the performance of services required under this Agreement. The Consultant shall promptly notify the City in writing by certified mail of all potential conflicts of interest for any prospective business associations.

10. **Attorney's Fees And Costs.** In connection with any litigation, including appellate proceedings, arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs including the fees and expenses of any paralegals, law clerks and legal assistants.
11. **Termination.** This Agreement may be terminated for any reason by the Consultant or by the City upon thirty (30) days prior written notice. Notice to be sent Certified Mail, Return Receipt Requested.
12. **Indemnification.** The Consultant hereby indemnifies and holds harmless the City, and its officers, agents and employees, from any claim, loss, suits, liability or demand arising out of or relating to any negligent act, omission or misconduct by the Consultant in the performance or non-performance of services under this Agreement. This indemnification of the City by the Consultant shall not constitute a waiver of sovereign immunity by the City.

The provisions of this Paragraph shall survive termination of this Agreement.

13. **Governing Law.** 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.
14. **Entire Agreement/Modification/Amendment.** 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.

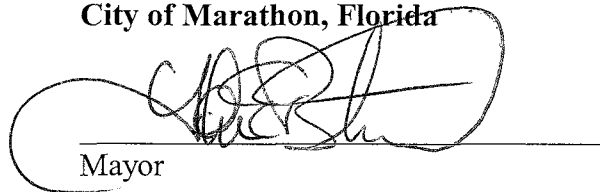
No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.
15. **Non-Assignability.** This Agreement shall not be assignable by Consultant unless such assignment is first approved by the City Manager. 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.

16. **Prohibition of Contingency Fees.** 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.

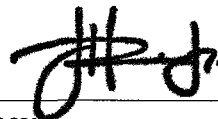
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date above first written.

Witness:

City of Marathon, Florida



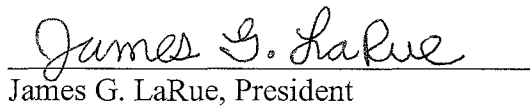
Mayor



City Attorney

Witness:

LaRue Planning & Management Services, Inc.



James G. LaRue, President