

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2012-13**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, ACCEPTING THE RANKINGS AND APPROVING AWARD OF CONTRACT TO JBC PLANNING AND DESIGN, INC., IN AN AMOUNT NOT TO EXCEED \$10,100.00 FOR LANDSCAPE ARCHITECT SERVICES FOR US 1 MEDIANS FROM 107TH STREET TO COCO PLUM DRIVE; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the City of Marathon, Florida (the "City"), published a Request for Proposals for landscape architect services for the preparation of landscape plans for the US1 medians from 107<sup>th</sup> Street to Coco Plum Drive (the "Project"); and

**WHEREAS**, two respondents submitted proposals for the Project, and the City's selection committee evaluated and ranked the proposal received from JBC Planning and Design, Inc., the highest based upon its qualifications, cost proposal, and experience performing similar work; and

**WHEREAS**, the City Council desires to accept the selection committee's ranking of the proposals and to enter into a contract with JBC Planning and Design, Inc. (the "Contractor") for the Project in an amount not to exceed \$10,100.00 (the "Contract"); and

**WHEREAS**, The City Council finds that accepting the selection committee's rankings and approving of the award of Contract for the Project to the Contractor is in the best interest of the City.

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

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

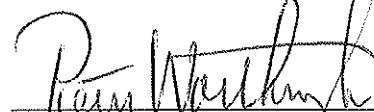
**Section 2.** The ranking of the proposals received and evaluated by the City's selection committee is accepted by the City Council.

**Section 3.** The Contract between the City and Contractor for Landscaping Architect Services in an amount not to exceed \$10,100.00 attached hereto as "Exhibit A," together with such non-material changes as may be acceptable to the City Manager and approved as form and legality by the City Attorney is hereby approved. The City Manager is authorized to execute the Contract and expend budgeted funds on behalf of the City.

**Section 4.** This resolution shall take effect immediately upon its adoption

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 10<sup>th</sup> DAY OF JANUARY, 2012.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Pete Worthington, Mayor**

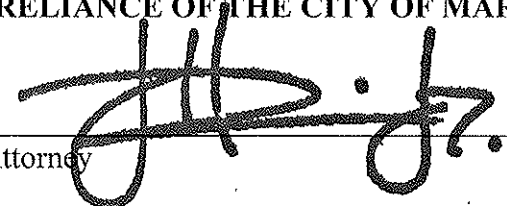
AYES:           Cinque, Keating, Ramsay, Snead, Worthington  
NOES:           None  
ABSENT:       None  
ABSTAIN:      None

**ATTEST:**

  
\_\_\_\_\_  
Diane Clavier, City Clerk

(City Seal)

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

  
\_\_\_\_\_  
City Attorney

**PROFESSIONAL SERVICES AGREEMENT BETWEEN  
THE CITY OF MARATHON  
AND  
JBC PLANNING & DESIGN, INC.**

**THIS AGREEMENT** is made between **JBC Planning & Design, Inc.**, 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 US 1 Medians From 107<sup>th</sup> Street to coco Plum Drive (the "Project"); and

**WHEREAS**, the City desires to engage the Consultant to perform the services specified below.

**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.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through December 31 2012, unless earlier terminated in accordance with Paragraph 8. The City Manager may extend the term of this Agreement up to an additional 180 days by written notice to the Consultant
- 2.2 Consultant agrees that time is of the essence and Consultant shall complete each deliverable for the Project within the timeframes set forth in the Project Schedule, unless extended by the City Manager.

3. **Compensation and Payment.**

- 3.1 The Consultant shall be compensated at Lump Sum Fee of: \$10,100.00.

- 3.2 The Consultant shall invoice the City upon the completion of each task or deliverable in accordance with the Project Schedule or on a monthly basis if the Project Schedule does not otherwise specify.
- 3.3 The City shall pay Consultant in accordance with the Florida Prompt Payment Act.
- 3.4 If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the Consultant the undisputed portion of the invoice. Upon written request of the Finance Director, the Consultant shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

4. **Subconsultants.**

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

5. **City's Responsibilities**

- 5.1 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.
- 5.2 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 under similar circumstances. If at any time during the term of this Agreement or within one year from the completion of the Project, it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the Scope of Services of the Project, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

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 planning 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 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 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, 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.

9.4 Professional Liability: The Consultant shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$500,000 single occurrence and \$1,000,000 aggregate.

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.

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 defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the

Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the City for all its expenses including reasonable attorneys fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Consultant's performance or non-performance of this 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: Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to: John Herin, Jr., Esq  
Stearns Weaver Miller  
Weissler Alhadeff & Sitterson, P.A.  
150 W Flagler St, Suite 2200  
Miami, FL 33130

For The Consultant: Jill B. Cohen, RLA, AICP  
JBC Planning & Design, Inc  
1312 Majesty Terrace  
Weston, FL 33327

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 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 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.

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 Contractor.**

19.1 The Consultant and its employees, volunteers and agents shall be and remain independent contractor 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.

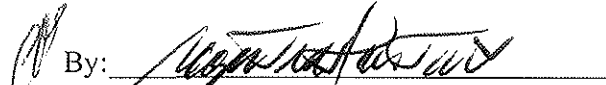
[SIGNATURES APPEAR ON NEXT PAGE]

**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 President, whose representative has been duly authorized to execute same.

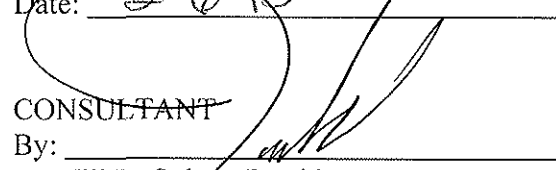
Attest:

CITY OF MARATHON

  
Diane Clavier, City Clerk

By:   
Roger Hernstadt, City Manager

Date: 2/6/12

CONSULTANT  
By:   
Jill B. Cohen, President

Date: 2/2/12

EXHIBIT "A"

**SCOPE OF SERVICES**

1. **Project. US1 Median Landscaping From 107<sup>th</sup> Street to Coco Plum and enhancement from 107<sup>th</sup> Street to Aviation**

2. **Project Schedule.**

| <b><u>Task</u></b>                   | <b><u>Due Date</u></b> | <b><u>Deliverable.</u></b> |
|--------------------------------------|------------------------|----------------------------|
| a. Preliminary Design                | 3-1-12                 | Proposed Landscape Concept |
| b. Final Design                      | 4-15-12                | Final Plans and Specs      |
| c. Bidding Assistance                | As Determined by City  |                            |
| d. Construction Engineering Services | As Determined by City  |                            |

## **Scope of Work**

The City of Marathon is requesting proposal for Professional Landscape Architecture Services for the design of street landscaping within the medians of the US 1 corridor from 107<sup>th</sup> Street to Coco Plum Drive. Additional landscaping enhancement within the recent median project on US 1 from Aviation Blvd to 107<sup>th</sup> Street is also requested. The will meet with City staff, recommend plant species, attend a pre-submittal meeting with FDOT, and generate plans and specifications for the project.

### **Scope of Services and Project Schedule**

#### **3.01 Preliminary Design**

1. The consultant shall meet with city staff and FDOT and provide recommendation of proposed landscaping along the corridor based on site constraint and FDOT requirements.

#### **3.02 Final Design**

After meeting with the City of Marathon and incorporation of any changes requested from preliminary design, and upon written authorization from CITY, ENGINEER shall:

1. On the basis of the above acceptance, direction and authorization, prepare final Drawings and specifications indicating the scope, extent, and character of the Work to be performed and furnished by Consultant.
2. Provide the City with a cost estimate for the construction of the proposed improvement.
3. Prepare and furnish Bidding Documents, including technical specifications, for review and approval by CITY, its legal counsel, and other advisors, as appropriate, and assist CITY in the preparation of other related documents.
4. Consultant's services under the Final Design Phase will be considered complete on the date when the final bidding/construction plan sets, specifications, upfront contract documents and final construction cost estimates have been delivered to CITY.
5. The City will provide a base electronic file of the project route in CAD format for use by the consultant.

#### **3.03 Bidding Assistance**

After acceptance by CITY of the Bidding Documents and the final opinion of probable Construction Costs as determined in the Final Design Phase and upon written authorization by CITY to proceed, ENGINEER, shall:

1. Be available for a pre-bid meeting during the bidding process.
2. Provide necessary documentation for Addenda on technical matters as appropriate to clarify, correct, or change the Bidding Documents and to respond to questions from prospective bidders.
3. Consult with CITY as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by Bidding Documents.
6. Develop a tabulation of bids, review all submitted bids for responsiveness,
7. Review the low bidder for responsibility and review their references until a bidder is selected. With the review of the CITY's legal council, the consultant will provide a written Recommendation of Award to the CITY.

The bidding Phase will be considered complete upon the CITY receiving the written recommendation of an award.

### **3.04 Construction Engineering Services**

The construction project shall be administered by the CITY. Pre-construction meetings, construction progress meetings, review of shop drawings and applications for payment and other construction phase services will be the sole responsibility of the CITY. The consultant will provide assistance as needed in the preparation of responses to requests for information or clarification in relation to the project documents and will provide general advice to the CITY regarding the construction project. Project close-out and certifications will be performed by the CITY.