

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2018-16**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A FIFTH AMENDMENT TO THE AGREEMENT BETWEEN THE CITY AND BISHOP, ROSASCO AND CO., EXTENDING THE AGREEMENT AT A RATE OF \$356,000 PER YEAR; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, pursuant to Resolution 2010-75, the City and Consultant entered into a contract for professional services, to wit: to perform all services generally provided by the City's Finance Director ("Contract"). A copy of the Contract is attached hereto as Exhibit "B" and incorporated by this reference; and

**WHEREAS**, pursuant to Resolutions 2012-77 and 2013-51, the City and Consultant agreed to extensions of the contract, and pursuant to Resolution 2014-80 the City and Consultant agreed to a reduction in the compensation amounts, and pursuant to Resolution 2015-101 the City and Consultant agreed to a six month extension, and pursuant to Resolution 2016-25 the City and Consultant agreed to a reduction in the compensation amounts, and amended the authorized representatives and pursuant to Resolution 2017-17 the City and Consultant agreed to a year extension and amended the annual rate to a fixed fee for all services; and

**WHEREAS**, the parties wish to document this Fifth Amendment to extend the agreement for one year. All other terms and conditions of the Contract and previous amendments shall remain in full force and effect.

**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 Fifth Amendment to the Agreement between the City and Consultant, attached hereto 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 hereby approved. The City Manager is authorized to sign the amendment and expend budgeted funds on behalf of the City.

**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 13<sup>th</sup> DAY OF FEBRUARY, 2018.**

**THE CITY OF MARATHON, FLORIDA**



**Mayor Michelle Coldiron**

AYES: Zieg, Bartus, Cook, Coldiron  
NOES: Senmartin  
ABSENT: None  
ABSTAIN: None

**ATTEST:**



Diane Clavier, City Clerk

(City Seal)

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



David Migut, City Attorney

**FIFTH AMENDMENT  
TO CONTRACT BETWEEN THE CITY OF MARATHON, FLORIDA AND BISHOP,  
ROSASCO AND COMPANY FOR PROFESSIONAL SERVICES**

This Amendment to the Contract for professional services ("Amendment") is made and entered into this 13<sup>th</sup> day of February, 2018, by and between the City of Marathon, Florida, a municipal corporation of the State of Florida ("City") and Bishop Rosasco and Company ("Consultant").

**WHEREAS**, pursuant to Resolution 2010-75, the City and Consultant entered into a contract for professional services, to wit: to perform all services generally provided by the City's Finance Department ("Contract"). A copy of the Contract is attached hereto as Exhibit "B" and incorporated by this reference; and

**WHEREAS**, the parties wish to document their negotiated agreement in this Fifth Amendment which will amend the term. All other terms and conditions of the Contract and previous amendments not amended herein shall remain in full force and effect.

**NOW THEREFORE**, in consideration of the mutual covenants set forth in this Amendment, the parties agree as follows:

**Section 1. Amendment to Section 6 of the Contract.** The parties hereby amend Section 6 of the Contract to read as follows:

**6. TERM**

**6.1** This Agreement shall continue through March 31, 2019, unless terminated earlier as provided in Section 7.

**6.2** Thereafter, any renewal shall be in writing and executed by both parties. The City Manager shall have the authority to execute any such renewal on behalf of the City.


**EXCEPT AS PROVIDED HEREIN**, all other terms and conditions of the Contract as approved by Resolution 2015-75 and extended by Resolution 2013-51 and amended by Resoluiton 2014-80, 2015-101, 2016-25 and 2017-17 shall remain in full force and effect.

**DATED** this 13<sup>th</sup> day of February, 2018

**WITNESSES:**

**BISHOP, ROSASCO AND COMPANY.**

  
Print Name: Jennifer Johnson

By:   
Peter Rosasco, President

WITNESSES: Verue Davis  
Print Name: VERUE DAVIS

THE CITY OF MARATHON, FLORIDA

Charles Lindsey  
Charles Lindsey, City Manager

ATTEST:  
Diane Clavier  
Diane Clavier, City Clerk

(City Seal)

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

David Migut  
David Migut, City Attorney

# Exhibit B

## CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this 30 day of September, 2010, by and between the City of Marathon, a Florida municipal corporation (the "City"), and Bishop, Rosasco and Company ("Consultant").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

### 1. AUTHORIZATION

1.1 The Consultant shall be designated as the City's Finance Director. In such capacity, the Consultant shall provide the services specified in the Scope of Services to the City, in accordance with the Generally Accepted Governmental Accounting Standards.

1.2 The City Manager shall be responsible for the direction and supervision of the Consultant.

### 2. SCOPE OF SERVICES

Consultant shall provide the following services to the City:

#### 2.1 **Revenue Collection**

2.1.1 Coordinate with local, state and federal agencies charged with collection and disbursement of all City revenues, including taxes, assessments, fees, charges and other impositions.

2.1.2 Administer the fees, charges, and miscellaneous revenues pertaining to utilities, private enterprises and individuals as they interface with City programs.

2.1.3 Apply enforcement actions to induce payment in accordance with City policies and procedures.

2.1.4 Prepare monthly financial reports showing revenues and expenses to date in comparison with budget predictions.

#### 2.2 **Capital Program Administration**

2.2.1 Coordinate with the City Manager and other City staff or consultants as directed by the City Manager on the capital needs of the City.

2.2.2 Assist the City in obtaining financing if necessary and maintain proper fund accounting procedures.

2.2.3 Administer and assist the City Manager in implementing capital program financing.

2.2.4 The scope of work outlined in Sections 2.2.1, 2.2.2, 2.2.3 and 2.5.1 does not include the City's Wastewater and Stormwater Utility projects & Enterprise Funds

### **2.3 Investment Administration**

2.3.1 Prepare investment policies and procedures pursuant to Florida law and the City Charter.

2.3.2 Invest City funds pursuant to approved policies.

2.3.3 Produce timely investment reports stating the effectiveness of the chosen investment policy.

### **2.4 Accounting System**

2.4.1 Establish Accounting System in compliance with Governmental Accounting Standards Board, the Uniform Accounting System prescribed by the Florida Department of Banking, Finance for Government Accounting and the Rules of the Auditor General and any other applicable state and federal regulations.

2.4.2 Prepare Public Depositor's Report and distribute to State Treasurer.

2.4.3 Work with the City's IT Department to recommend accounting software appropriate for the City's accounting needs. The City will purchase any accounting software necessary for implementation of the City's accounting and financial reporting system. Any software purchased by the City under this Agreement will be licensed to the City.

### **2.5 Accounts Payable/Accounts Receivable/Payroll**

2.5.1 Administer the purchase order system and any system maintained for the payment of vendors under contract with the City including payment of invoices of City vendors.

2.5.2 Coordinate sales, use and ad valorem tax collection, including franchise fees, utility taxes, simplified communications service tax and all other City receivables and fees.

### **2.6 General Fixed Asset Accounting**

**2.6 General Fixed Asset Accounting**

2.6.1 Account for assets constructed by or donated to the City for maintenance.

2.6.2 Maintain inventory of City property in accordance with the Rules of the Auditor General.

**2.7 Budget**

2.7.1 Prepare the City's annual operating and capital budgets for the City Manager.

2.7.2 Liaison with all City departments for annual budget categories.

2.7.3 Provide materials for and attend all budget meetings, hearings and workshops.

2.7.4 Submit all required documentation to the Department of Revenue and provide all necessary reports for public advertisements and public hearings.

**2.8 Comprehensive Annual Financial Report and Audit**

2.8.1 Prepare the City's Comprehensive Annual Financial Report for Units of Local Government and distribute to the State Comptroller.

2.8.2 Assist the City's auditors by providing requested information to the auditors including meeting with auditors to ensure that the auditors are provided all necessary documents to prepare the City's annual audit.

**3. COMPENSATION**

3.1 For all services provided by Consultant as described in Section 2 of this Agreement, the City shall compensate Consultant at the annual rate of \$362,736 to be paid in twelve monthly installments. The Consultant shall provide the City with a monthly invoice.

3.2 The Consultant shall be reimbursed for postage (for mailing of correspondence and vendor payments) and copier expenses (for reproduction of documents and reports) at the monthly rate of \$250.

- 3.3 The Consultant shall additionally be compensated at the hourly rates set forth in the attached Exhibit "A" for such services as, but not be limited to, capital program financial consulting for the City's wastewater and stormwater utility projects. The Consultant shall provide the City with a monthly invoice for these additional services with sufficient detail of hours worked and tasks performed by the Consultant.
- 3.4 Payments and reimbursements due under this section shall be paid by the City in accordance with the Florida Prompt Payment Act.

4. **RECORDS/RIGHT TO INSPECT AND AUDIT**

- 4.1 All records, books, documents papers and financial information (the "Records") that result from Consultant providing services to the City under this Agreement shall be the property of the City.
- 4.2 Upon termination or expiration of this Agreement, or at any time upon the written request of the City Manager, any and all such Records shall be delivered to the City by Consultant within 15 calendar days from the date of the request.
- 4.3. Consultant shall maintain records, books, documents, papers and financial information pertaining to work performed under this Agreement during the term of this Agreement and for a period of three (3) years following termination of this Agreement.
- 4.4. 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 Consultant involving transactions related to this Agreement.
- 4.5. The City may cancel this Agreement for refusal by 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.



5. **INDEMNIFICATION**

5.1. 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 in 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 attorney 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.

5.2. Consultant shall indemnify, defend and hold the City harmless from all losses, injuries or damages and wages or overtime compensation due its employees in rendering services pursuant to this Agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act or any employment related litigation brought under federal or state law.

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

6. **TERM**

6.1. This Agreement shall become effective October 1, 2010 and shall continue through September 30, 2012, unless earlier terminated as provided in Section 7.

6.2. The City shall have the option to renew this Agreement for two one (1) year periods upon the same terms and conditions contained herein upon 30 calendar days written notice to Consultant. Thereafter, any renewal shall be in writing and executed by both parties. If this Agreement is renewed under this Article 6, Consultant shall be entitled to a cost of living increase in compensation provided for in Section 3.1 of this Agreement based upon the consumer price index for each subsequent, which increase may be waived at Consultant's discretion.

7. **TERMINATION**

7.1. The City may elect to terminate this Agreement by giving Consultant written notice at least 90 days prior to the effective date of termination. Upon receipt of a written notice of termination, Consultant shall not enter into any third party agreements or incur any financial obligations or expenses unless such expenses are specifically approved or directed in writing by the City Manager.

- 7.2. Consultant may terminate this Agreement by giving the City written notice at least 90 calendar days prior to the effective date of termination.
- 7.3. In the event of termination or expiration of this Agreement, Consultant and the City shall cooperate in good faith in order to effectuate a smooth and harmonious transition from Consultant to any other person or entity the City may designate, and to maintain during such period of transition the same services provided to the City pursuant to the terms of this Agreement.
- 7.4. Consultant will take all reasonable and necessary actions to transfer all books, records and data of the City in its possession in an orderly fashion to either the City or its designee in a hard copy and computer format.
- 7.5. Subsequent to the termination of this Agreement, Consultant shall continue to provide all necessary services to assist the City Auditors with the preparation of the annual audit for the fiscal year in which this Agreement is terminated. Consultant shall be compensated for any such post-termination services on an hourly basis not to exceed \$150.00 per hour.

**8. ENTIRE AGREEMENT/MODIFICATION/AMENDMENT**

- 8.1. 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.
- 8.2. 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.

**9. INSURANCE**

- 9.1 Consultant shall maintain at its sole cost and expense all times, in addition to any other insurance the City may reasonably require, professional liability insurance, employee dishonesty insurance, employer's liability insurance, comprehensive general liability insurance and automotive liability insurance with minimum policy limits for each coverage in the amount of One Million Dollars (\$1,000,000.00) per occurrence, single limit for property damage and bodily injury, including death. The City shall be named as an additional insured in the above policies, unless prohibited by law, and Consultant shall provide the City with a certificate evidencing same. Each policy shall also state that it is not subject to cancellation, modification, or reduction in coverage without thirty (30) days written notice to the City prior to the effective date of cancellation, modification, or reduction in coverage.
- 9.2 Consultant shall maintain Worker's Compensation insurance at the statutory minimums required by Chapter 440, Florida Statutes.

9.3 Consultant shall maintain each of the above insurance policies throughout the term of this Agreement and any extensions of this Agreement.

9.4 Consultant shall provide City with a current copy of each of the above insurance policies, and any renewals.

**10. SEVERABILITY**

10.1. 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.

**11. GOVERNING LAW**

11.1. 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.

**12. WAIVER**

12.1. 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.

**13. NOTICES/AUTHORIZED REPRESENTATIVES**

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

For the City:  
City of Marathon  
Attention: Roger T. Hernstadt, City Manager  
9805 Overseas Highway  
Marathon, Florida 33050  
Telephone: (305) 743-0033  
Facsimile: (305) 743-3667

With a copy to:  
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A..  
Attention: John Herin, Esq.  
150 W. Flagler Street, Suite 2200  
Miami, FL 33130  
Telephone: (305) 789-3532  
Facsimile: (305) 789-3395

For Consultant:  
Bishop, Rosasco and Company  
Attention: Peter Rosasco, CPA  
8085 Overseas Highway  
Marathon, Florida 33050  
Telephone: (305) 743-6586  
Facsimile: (305) 743-0726

Either party shall have the right to change its address for notice purposes by sending written notice of such change of address to the other party in accordance with the provisions hereof.

14. **INDEPENDENT CONTRACTOR**

- 14.1. Consultant is and shall remain an independent contractor and is not an employee or agent of the City. Services provided by Consultant shall be by employees of Consultant working under the supervision and direction of Consultant and nothing in this Agreement shall in any way be interpreted or construed to deem said employees to be agents, employees, or representatives of the City. Consultant agrees that it is a separate and independent enterprise from the City.
- 14.2. Consultant shall be responsible for all compensation, tax responsibilities, insurance benefits, other employee benefits, and any other status or rights of its employees during the course of their employment with Consultant. This Agreement shall not be construed as creating any joint employment relationship between Consultant and the City, and the City will not be liable for any obligation incurred by Consultant, including but not limited to, unpaid minimum wages and/or overtime payments.

15. **ASSIGNMENT**

15.1. The parties agree that the professional services of Bishop, Rosasco and Company are personal in nature and are considered material to the performance of Consultant's obligation under this Agreement. Accordingly, this Agreement shall not be assignable by Consultant unless such assignment is first approved by the City Council at the City's sole discretion.

16. **PROHIBITION AGAINST CONTINGENT FEES**

16.1. Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for 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 Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

17. **WARRANTIES OF CONSULTANT**

17.1. Consultant warrants and represents that at all time during the term of this Agreement it shall maintain in good standing all licenses and certificates required under federal, state and local laws necessary to perform the Scope of Services specified in this Agreement, including but not limited to maintaining any required software registration and licensing.

17.2. Consultant warrants and represents that its employees providing services to the City under this Agreement will abide by the applicable Code of Ethics for Public Officers and employees, Chapter 112 Florida Statutes, as it may be amended from time to time.

18. **ATTORNEYS FEES**

18.1. 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.

19. **WAIVER OF JURY TRIAL**

19.1. 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.

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

**WITNESSES:**

Liliby Frazier

Print Name: Liliby Frazier

Diane Clavie

Print Name: Diane Clavie

**BISHOP, ROSASCO AND COMPANY**

By: P R P

Print Name: Peter Rosasco, CPA

Date: 8-3-10

**ATTEST:**

Diane Clavie

City Clerk

**CITY OF MARATHON**

By: G Sneed

Mayor Ginger Sneed

Date: 7-29-10

**APPROVED SET FORM:**

[Signature]  
City Attorney

## **Exhibit "A"**

### **Hourly Rates for Bishop, Rosasco and Company**

|                           |                      |
|---------------------------|----------------------|
| <b>Partner</b>            | <b>\$200.00/hour</b> |
| <b>Manager</b>            | <b>\$150.00/hour</b> |
| <b>Professional Staff</b> | <b>\$100.00/hour</b> |
| <b>Administrative</b>     | <b>\$ 45.00/hour</b> |