

**CITY OF MARATHON, FLORIDA
RESOLUTION 2015-87**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A CONTRACT BETWEEN THE CITY AND VERNIS AND BOWLING OF THE FLORIDA KEYS TO SERVE AS THE PRIMARY ALTERNATIVE COUNSEL OTHER THAN THE CITY ATTORNEY FOR LITIGATION AND CONFLICT REPRESENTATION AS WELL AS ANY SPECIAL PROJECTS REQUESTED BY THE CITY, AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY, EXPEND BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on February 24, 2015 the City Council approved an agreement for legal representation as the City Attorney with the Firm of Vernis and Bowling of the Florida Keys; and

WHEREAS, the City has hired their own in house legal counsel, however some items will need to be closed out; and

WHEREAS, the City from time to time may need additional litigation and alternative representation.

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 by this reference.

Section 2. The Agreement between Vernis and Bowling of the Florida Keys and the City To Serve As The Primary Alternative Counsel Other Than The City Attorney For Litigation And Conflict Representation As Well As Any Special Projects Requested By The City, a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the City Council and approved as to form and legality by the City Attorney, is approved.

Section 3. The Mayor is authorized to sign the agreement on behalf of the City and expend budgeted funds.

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 11th DAY OF AUGUST, 2015.

THE CITY OF MARATHON, FLORIDA



Chris Bull, Mayor

AYES: Keating, Senmartin, Zieg, Bull
NOES: None
ABSENT: Kelly
ABSTAIN: None

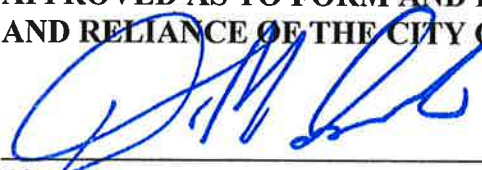
ATTEST:




Diane Clavier, City Clerk

(City Seal)

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



City Attorney

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


David M. Orney

CITY OF MARATHON
Contract for Legal Services

This Contract entered into this 25 day of August, 2015, between VERNIS & BOWLING OF THE FLORIDA KEYS, a law firm operating under the laws of the State of Florida, whose principal place of business is located at 81990 Overseas Hwy, 3rd Floor, Islamorada, FL 33036 (herein called "The Firm"), DIRK M. SMITS, Esq. (Managing Attorney of The Firm), and the CITY OF MARATHON (herein called "City" or "the City").

In consideration of the mutual covenants and benefits hereinafter set forth, the parties herein covenant and agree as follows:

1. **TERM**

The term of this Contract is annual and shall automatically renew unless cancelled within the 30 days preceding the anniversary date of approval.

2. **THE FIRM'S SERVICES**

The Firm agrees to provide the following services and serve as primary alternative counsel other than the city attorney for litigation and conflict representation as well as any special projects requested by the City. In further consideration the Firm and Smits agree to attend any City meetings, without charge, in the event the City attorney is unavailable. Currently, Smits and the firm represents, and will continue to represent, the City in the following matters:

- A. Derrick Martin Vegue and Wanda Brock v. The City of Marathon Case number 15-CA-00049-m,
- B. Grassy Key Subdivision, Inc., v. The City of Marathon, case number 14-CA-000056-M,
- C. Grassy Key Subdivision, Inc., v. The City of Marathon, case number 15-CA-000038-M,
- D. Casa Cayo Condominium Association v. The City of Marathon, case number 13-CA-227-M,
- E. Richard Warner and John Parente v. The City of Marathon, case number 2013-CA-222-M and 2013-CA-223-M.

The City shall pay The Firm the Firm's hourly rate of \$135 per hour for junior associate attorney at The Firm and \$145 per hour for work performed by senior attorneys having 5 or more years of experience handling government legal matters. Paralegals shall be paid at \$85.00 per hour. These hourly charges are to be made without regard to any overtime charges that must be paid by The Firm to its employees. The Firm will provide billing statements to the City on a monthly basis. No payment shall be due until the City verifies that all services for which payment has been requested have been fully and satisfactorily performed.

4. COMPLIANCE WITH LAWS AND POLICIES

The Firm shall comply with all current City Policies, Florida Bar Rules, and all applicable local, state and federal laws, including laws pertaining to the confidentiality.

5. TERMINATION

Both parties reserve the right to terminate this contract at any time and for any reason, upon giving ~~sixty~~ (30) days' notice to the other party during which time services will be maintained.

6. ASSIGNMENT

Neither The Firm nor the City may assign or transfer any interest in this Agreement without the prior written consent of both parties.

7. AMENDMENT

This Agreement may be amended only with the mutual consent of the parties. All amendments must be in writing and must be approved by City Council.

8. INDEMNIFICATION, GOVERNING LAW & VENUE

The Firm shall indemnify and hold harmless the City from and against any and all claims, liabilities, damages, and expenses, including, without limitation, reasonable attorneys' fees, incurred by the City in defending or compromising actions brought against it arising out of or related to the acts or omissions of The Firm, its agents, employees or officers in the provision of services or performance of duties by The Firm pursuant to this Agreement.

This Agreement shall be construed in accordance with the laws of the State of Florida. Any dispute arising hereunder is subject to the laws of Florida, venue being in Monroe County, Florida. The prevailing party shall be entitled to reasonable attorney's fees and costs incurred as a result of any action or proceeding under this Agreement.

9. REPRESENTATIONS & WARRANTIES

The Firm represents and warrants to the City, upon execution and throughout the term of this Agreement that;

1) The Firm is not bound by any agreement or arrangement which would preclude it from entering into, or from fully performing the services required under the Agreement;

2) None of The Firm's agents, employees or officers has ever had his or her professional license or certification in the State of Florida, or any jurisdiction, denied, suspended, revoked, terminated and/or voluntarily relinquished under threat of disciplinary action, or restricted in any way.

3) The Firm and The Firm's agents, employees and officers have, and shall maintain throughout the term of this Agreement, all appropriate federal and state licenses and certifications which are required in order for The Firm to perform the functions, assigned to him or her in connection with the provisions of the Agreement.

10. **CONFIDENTIALITY**

The Firm recognizes and acknowledges that by virtue of entering into this Agreement and providing services hereunder, The Firm, its agents, employees and officers may have access to certain confidential information. The Firm agrees that neither it nor any of The Firm's agents, employees or officers will at any time, either during or subsequent to the term of this Agreement, disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by the City in writing, any confidential information, personal health information or other confidential information, and The Firm, its agents, employees and officers shall comply with all Federal and State laws and regulation and all City policies regarding the confidentiality of such information.


11. **INSURANCE**

The Firm agrees to secure and maintain at all times during the term of this Agreement, at The Firm's expense, professional liability insurance covering The Firm for all acts or omissions which may give rise to liability for services under this Agreement. All of The Firm's staff are to be insured in minimum amounts acceptable to the City and with a reputable and financially viable insurance carrier. Such insurance shall not be cancelled except upon thirty (30) days written notice to the City. The Firm shall provide the City with a certificate evidencing such insurance coverage within five (5) days after obtaining such coverage. The Firm agrees to notify the City immediately of any material change in any insurance policy required to be maintained by The Firm.

12. This agreement supercedes all prior agreements of the parties.

IN WITNESS WHEREOF, the parties have executed this Contract on this 25th day of August, 2015.

CITY OF MARATHON

BY: 
Chris Bull
PRINT NAME

8/18/15
DATE

Mayor
TITLE



SIGNATURE OF VERNIS & BOWLING REPRESENTATIVE

8/25/15
DATE

Vernon Simmons
PRINT NAME

Attorney
TITLE

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

City Attorney