

**CITY OF MARATHON, FLORIDA
RESOLUTION 2013-39**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, WAIVING SECTION 2-169 OF THE MARATHON CODE REGARDING LOCAL PREFERENCE AS AUTHORIZED BY SECTION 2-170 OF THE MARATHON CODE; RECONFIRMING THE RANKING OF THE PROPOSALS FOR DESIGN AND MANAGEMENT SERVICES FOR THE CONSTRUCTION OF A CITY HALL BUILDING AND APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY AND WILLIAM P. HORN, ARCHITECT, P.A.; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Marathon (the "City") issued a Request for Proposals on February 9, 2013 for the selection of an architect to design and serve as the project manager for the construction of a City Hall building (the "Project"); and

WHEREAS, eight proposals were received and evaluated by the City's evaluation committee, which shortlisted and ranked the firms at a publicly noticed evaluation committee meeting held on March 26, 2013; and

WHEREAS, the City evaluation committee provided its rankings and recommendation to the City Council as set forth on the attached Exhibit A, without local preference as provided for in Section 2-170 of the Marathon Code; and

WHEREAS, the City Council directed the City Manager and City Attorney to negotiate a professional services agreement with William P. Horn, Architect, P.A., and

WHEREAS, the City Council believes it is in the City's best interest to waive the procurement local preference set forth in Section 2-170 of the Marathon Code and enter into a professional services agreement with William P. Horn, Architect, P.A. for the Project.

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 City Council hereby waives Section 2-169 of the Marathon Code and accepts and reconfirms the rankings and recommendations of the selection committee as set forth on Exhibit "A" attached hereto and incorporated herein.

Section 3. The Professional Services Agreement between the City and William P. Horn, Architect, P.A. for the Project, a copy of which is attached hereto and incorporated herein as Exhibit "B;" 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 execute the Professional Services Agreement 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 14th DAY OF MAY, 2013.

THE CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor

AYES: Snead, Ramsay, Bull, Keating, Cinque
NOES: None
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:



City Attorney

**Professional Services Agreement
between
The City of Marathon, Florida
and
William P. Horn, Architect, P.A.
for
Design Services for New City Hall Facility**

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PROFESSIONAL SERVICES AGREEMENT

This is an Agreement between: **The City of Marathon, Florida**, a Florida municipal corporation, hereinafter referred to as "The City", 9805 Overseas Highway, Marathon, Florida 33050,

AND

William P. Horn, Architect, P.A., 915 Eaton St., Key West, FL 33040, a Florida corporation, its successors and assigns, hereinafter referred to as "Architect."

IN CONSIDERATION of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, The City and Architect agree as follows:

ARTICLE 1 DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement, the definitions set forth below apply.

1.1 Agreement: means this document, Articles 1 through 10, inclusive, and the exhibits and documents that are expressly incorporated by reference.

1.2 Architect: means William P. Horn Architect, P.A., the licensed architecture or engineering firm providing design services pursuant to Florida Statutes.

1.3 Architect's Contract Sum: means the guaranteed maximum not to exceed price for the work specified in Article 2.

1.4 The City: means The City of Marathon, Florida, a Florida municipal corporation.

1.5 The City Manager: means the administrative head of The City pursuant to the City Charter.

1.6 Council: means the City Council of The City.

1.7 Construction Contract Documents: means, but is not limited to, the instructions to Bidders, the Agreement between the Contractor and the City, the construction drawings (plans), technical specifications, information and instructions to bidders, general conditions, special conditions, applicable forms and issued addenda for the construction of the Project.

1.8 Construction Contract Price: means the price stated in the construction contract between the City and the Contractor awarded a contract to construct the new Marathon City Hall in accordance with the Architect's design.

1.9 Contractor: means the person(s), firm(s), corporation(s), or other entity(ies) who enter into an agreement with The City to construct the new Marathon City Hall in accordance with the Architect's design.

1.10 Exhibits: means **Exhibits "A-E"** attached hereto and incorporated herein.

1.11 Notice to Proceed: means a written notice to proceed, authorizing the Architect to commence work under this Agreement.

1.12 Optional Services: means the services identified on the attached **Exhibit "E"**.

1.13 Project: means the services described in Article 3, and exhibits to this Professional Services Agreement.

1.14 Project Schedule: means the durations and deadlines assigned to the tasks identified in in **Exhibit "A-1"**.

1.15 Reimbursables: means compensation of direct expenses incurred without mark up as identified in Article 5.4.

1.16 Scope of Services: means the work and services described in Article 3 and the exhibits to this Professional Services Agreement.

1.17 Time for Performance: means the time identified on **Exhibit "A-1"** hereto within which the Architect's work is to be fully complete.

1.18 Work Authorization: means a written directive signed by the City expressly directing the Architect to perform Optional Services and/or additional services outside the scope of services identified in this Professional Services Agreement. Only the forms attached hereto as **Exhibit "D-1"** or **"D-2"** once signed will be recognized as a proper Work Authorization.

ARTICLE 2
ARCHITECT'S CONTRACT SUM

2.1 Architect's Contract Sum. In consideration for the premises and other good and valuable consideration, The City will pay Architect the Reimbursables, plus:

- a) \$358,150 (Three Hundred Fifty Eight Thousand One Hundred Fifty Dollars and no/100) Based on an estimated construction cost of \$4,750,000 (7.54% of construction cost).
- b) Any changes that increase, decrease or otherwise modify the Scope of Services are addressed in Article 6.
- c) Architect shall be paid \$5,000.00 per City Council meeting if the Architect is required to attend more than two meetings with the City Council prior to the start of construction of the Project.

2.2 Budget and Appropriations. The City has budgeted funds for the Project. Award of this Agreement does not guarantee that the contemplated work will be authorized. A failure by The City to authorize work under this Agreement shall not be deemed a breach of this Agreement. If this Agreement extends beyond a single fiscal year of The City, the continuation of this Agreement beyond the end of any fiscal year shall be subject to the appropriation and availability of funds in accordance with Chapter 170, Florida Statutes, as it may be amended from time to time. Payment shall only be from appropriations budgeted on an annual basis by The City. This Agreement shall not expire until the expiration of all warranty periods provided for in the construction contract(s) for the Project, unless it is terminated earlier as provided under applicable provisions of this Agreement.

2.3 Optional Services. The Optional Services identified in **Exhibit "E"**, attached hereto, which are in the total not to exceed amount (including services and expenses), of \$45,000.00 (Forty-Five Thousand Dollars and no/100) are guaranteed maximum amount not to exceed amounts. Such services and expenses with respect thereto, may be authorized in accordance with The City Procurement Policy. If authorized, the prices for the Optional Services will be paid in addition to the Architect's Contract Sum based on **Exhibit "B"** Hourly Rates.

ARTICLE 3
SCOPE OF SERVICES

3.1 Description of the Work. Architect's services shall consist of the tasks identified in **Exhibit "A"**, and shall include all civil, structural, insulated concrete form ICF construction, mechanical and electrical engineering, Closed Circuit Television System (CCTV), architectural, sustainable design concepts for the Project and other

design related services, including Green Building standards as further outlined in 3.2 below. Architect shall provide all services as set forth in **Exhibit "A"**, including all necessary, incidental and related activities and services contemplated by the Scope of Services. If The City determines in its sole and exclusive discretion that additional work may be included in this Agreement, then subject to negotiation and agreement of the parties as to the terms thereof, such additional work shall be reflected in an amendment to this Agreement as appropriate. Architect acknowledges and agrees that only the City Manager and/or the City Council (not their delegates) have authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement that would result in an increase in the cost to the City or additional time to complete the services required under this Professional Services Agreement.

3.2 Green Building Requirements. The City has indicated that a Project goal is to achieve Florida Green Building Coalition's ("FGBC") standards. As such, pursuant to Florida Statutes, Section 255.2575, the project shall be designed to satisfy the requirement that the project shall be constructed to comply with a sustainable building rating system or a national model green building.

3.3 Intent Of the Work. Architect and The City acknowledge that the Scope of Services pursuant to this Agreement does not delineate every detail and minor work task required to be performed by Architect to complete the Project. If, during the course of the performance of the services included in this Agreement, Architect determines that work should be performed to complete the Project or work which is in the Architect's opinion outside the level of effort originally anticipated, Architect shall notify City Manager in writing in a timely manner before proceeding with the work. If Architect proceeds with said work without notifying City Manager, said work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to the City does not constitute authorization or approval by The City to perform the work. Performance of work by Architect outside the originally anticipated level of effort without a prior proper Work Authorization is at Architect's sole risk. The Scope of Services and deliverables for each of the tasks and phases for the Project are detailed in **Exhibit "A"**. The Architect must perform all required services for each task of the Project in accordance with the Scope of Services.

3.4 Project Milestones. Architect shall not be permitted to deviate from the milestones indicated on the Project Schedule in **Exhibit "A"**, without a proper Work Authorization.

3.5 Codes/Regulations. Architect represents and acknowledges to The City that Architect is knowledgeable about and will comply with any and all codes, rules and regulations applicable in the jurisdiction in which the Project is located at the time the plans are submitted for permitting, including without limitation, The City's local ordinances and codes, Florida laws, rules, regulations, and Federal laws, rules, regulations, requirements of the Americans with Disabilities Act, and requirements of the Florida Building Code.

3.6 Licensing. Architect represents that it is experienced and fully qualified to perform the services contemplated by this Agreement, and that is properly licensed pursuant to all applicable laws, rules and regulations to perform such services.

3.7 Knowledge and Skills. Architect represents that it has the knowledge and skills, either by training, experience, education, or a combination thereof, to completely and competently perform the duties, obligations, and services to be provided pursuant to this Agreement and to provide and perform such services to The City 's satisfaction for the agreed compensation.

3.7.1 Architect shall perform its duties, obligations, and services under this Agreement in a skillful manner, and shall cause its subconsultant(s) to also perform their duties, obligations and services under this Agreement in a skillful manner.

3.7.2 The quality of Architect's performance and all interim and final product(s) provided to or on behalf of The City shall be in accordance with current government building standards.

3.7.3 Nothing in this Agreement shall relieve the Architect of its prime and sole responsibility for the performance of the work under this Agreement. In addition to all other rights and remedies that The City may have under this Agreement, City Manager may require the Architect to correct any deficiencies which result from Architect's failure to perform in accordance with the above standards.

3.8 Reuse of Information. In order to avoid a duplication of effort or expense, Architect agrees to utilize any City provided information, including but not limited to, plans, specifications, information, data, reports or analyses that may be prepared or generated by other architects retained by The City that may be required in connection with Architect's services hereunder. In addition, The City may provide any plans, specifications or any information, obtained or prepared by Architect, including, but not limited to data, reports or analyses to other architects retained by The City or to any other party. Architect shall perform due diligence in connection with the use of such information.

3.9 Work Review. The City shall have the right at any time and in its sole discretion to submit for review to consulting engineers or consulting architects or other architects engaged by The City, any or all parts of the work performed by the Architect and the Architect shall cooperate fully in such review.

3.10 Work Authorizations – Optional Services and Additional Services.

3.10.1 Architect may, at the City's discretion, be authorized to perform Optional Services as delineated in **Exhibit "E"** up to the maximum fee amounts established for Optional Services. Any Optional Services to be performed by Architect

pursuant to the terms of this Agreement shall first be authorized by the City in writing by a proper Work Authorization.

3.10.2 The City may also direct Architect to perform additional services not currently encompassed by the scope of work. No Optional Services or additional services will be paid for unless the City has provided the Architect with a fully executed Work Authorization. Before any additional services are commenced pursuant to a Work Authorization, Architect shall supply the City Manager with a written estimate for all charges and time extensions to be incurred for the work.

3.10.3 Authorizations for Optional Work and/or additional work shall only be approved as follows:

3.10.3.1 **Exhibit "D-1"**, City Manager Work Authorization (Additional services valued <\$10,000 and/or no additional time awarded), will be issued by the City Manager when Optional Services or additional services are requested by the City that will result in an increase in the cost to the City of less than \$10,000.00 (Ten Thousand Dollars) and there is no increase the Time for Performance.

3.10.3.2 **Exhibit "D-2"**, City Council Work Authorization, will be approved by the City Council and signed by the City Mayor when Optional Services or additional services are requested by the City that will result in an increase in the cost to the City of \$10,000.00 (Ten Thousand Dollars) or more, or there is any increase in the Time for Performance.

3.11 Review Codes for Submittals Appropriate for Design Professionals.
As part of the Architect's responsibilities, the Architect will review each submittal package from the Contractor and indicate one of the following appropriate actions for each item requiring review:

No Exceptions Taken

The mark "No Exceptions Taken" indicates final action and that no changes need to be made to the submittal. The Contractor may proceed with the work for that submittal. Re-submittal is not required.

Exceptions as Noted

The mark "Exceptions as Noted" indicates that the submittal is accepted subject to corrections, comments, or both as noted. The Contractor may proceed with the work for that submittal provided the Contractor incorporates the reviewer's corrections, comments, or both in the work. Re-submittal is not required.

Revise and Resubmit

The mark "Revise and Resubmit" indicates the submittal was reviewed and does not meet all the requirements necessary to proceed with the work associated with the submittal. The Contractor must resubmit in accordance with the reviewer's corrections, comments, or both, regarding the submittal. Submittals

marked in this manner must not be released by the contractor for fabrication, delivery, or construction.

Rejected

The mark "Rejected" indicates that the submittal does not meet requirements set forth in the Contract Documents. The Contractor must resubmit this work in accordance with the Contract requirements and any corrections, or both, made regarding the submittal by the reviewer.

No Action Taken

The mark "No Action Taken" indicates that the Contractor has met the contractual requirement for providing drawings and calculations for equipment, false-work, shoring, bracing, and other temporary structures or temporary services required for the work, designed, signed, and sealed by a Florida licensed engineer employed by that Contractor. The Contractor and the licensed engineer employed by that Contractor will be solely responsible for, including but not limited to, the proper implementation, execution, installation, operation, and construction procedure or methods covered by this submittal.

Void

The mark "Void" indicates that the material covered under this submittal is no longer required for this project.

All reviews shall be stamped and signed by a State of Florida licensed professional Engineer or Architect. No alternative language on a stamp shall be accepted by The City.

ARTICLE 4

TIME FOR PERFORMANCE: CONTRACTOR DAMAGES; LIQUIDATED DAMAGES

4.1 Time For Performance. Architect shall perform the services described in **Exhibit "A"** within the time periods specified in the Project Schedule **Exhibit "A-1"**. Such time periods shall commence from the date of the Notice to Proceed. Time is of the essence in performing the duties, obligations, and responsibilities required by this Agreement.

4.2 Notice to Proceed. Prior to the initial commencement of the services under this Agreement, Architect must receive a written Notice to Proceed from the City Manager.

4.3 Time Extensions. Regardless of the cause for the delay, the Architect shall notify the City Manager promptly in writing whenever a delay is anticipated or experienced and inform the City Manager of all facts and details related to the delay.

4.3.1 Design Delays. The parties acknowledge that, due to the nature and complexity of the Architect's responsibilities set forth in Tasks 1-6, the Project

Schedule may require revision based upon subsequent circumstances. In the event Architect is unable to complete any services included in Tasks 1-6 because of caused by factors outside the control of Architect, The City shall grant a reasonable extension of time for completion of the services and Architect will not be entitled to additional compensation for the delay. However, if the delay exceeds 6 months, then Architect will be entitled to additional compensation for days of delay in excess of 6 months.

4.3.2 Construction Delays. In the event the Contractor engaged for the Project fails to substantially complete or fully complete the Project on the dates specified in its agreement with The City and Architect's services are extended beyond the substantial completion date or final completion, through no fault of Architect, The City shall grant a reasonable extension of time for completion of the services, and if appropriate, a reasonable increase in compensation for additional services actually performed, but not for delay. Any additional compensation will be paid in accordance with the rates, fees, and overall multipliers established by this Agreement.

4.4 Construction Contract. The Architect is familiar with the City's standard construction contract which the City and Architect anticipate will be utilized for the construction of the New City Hall. Architect acknowledges receipt of and familiarity with such construction contract provisions and Architect accepts and agrees to perform the duties of the "Architect" and/or "Engineer" set forth therein, including participation in mediation when required by such construction contracts. The foregoing obligations are in addition to, independent of, and shall not be construed to limit or affect the rights and obligations of either party as set forth in Subarticle 10.10, "Indemnification of The City.

4.5 City's Delay Damages. The City and Architect recognize that time is of the essence in this Contract and that The City will suffer financial losses, including without limitation, additional rental expenses of \$184.00/day for which the Architect may be liable if the Architect's Work is not completed within the contract time specified by this Agreement through no fault of The City. Monies due to The City under Article 4 shall be deducted from any monies due the Architect, or if no money is due or the amount due is insufficient to cover the amount charged, the Architect shall be liable for said amount.

ARTICLE 5 **COMPENSATION AND METHOD OF PAYMENT**

5.1 Fees. The fee amounts are set forth in Subarticle 2.1 and Exhibit "A" are \$358,150. (Increase or Decrease in Fees - refer to Article 6).

5.2 Hourly Rates. The term Hourly Costs as used in this Agreement for Architect) shall mean the hourly rates as shown on **Exhibit "B"**, attached hereto, which includes fringe benefits, including, but not limited to: sick leave, vacation, holiday, unemployment, excise and payroll taxes, contributions for social security, unemployment compensation insurance, retirement benefits, and medical and insurance benefits. Said Hourly Costs are to be used only for time directly attributable to

the Project or the work and services as applicable and substantiated through time sheets submitted with pay application.

5.3 Reimbursables.

5.3.1 In addition to the Contract Sum identified in Article 2.1, The City agrees to reimburse The Architect up to \$15,000 for business travel expenses incurred as a direct expense in performing the services required by the Professional Services Agreement ("Reimbursables"). Reimbursables will be paid in accordance with City of Marathon Resolution 2003-114 as amended by Resolution 2009-56. Expenses not addressed by City of Marathon Resolution 2003-114 as amended by Resolution 2009-56 will be reimbursed pursuant to Section 112.061, Florida Statutes. (Except as stated in City of Marathon Resolution 2003-114 as amended by Resolution 2009-56 or Section 112.061, Florida Statutes). Notwithstanding anything to the contrary herein, Transportation expenses from locations inside Miami-Dade County or Monroe County area to locations inside The City area will not be reimbursed. Transportation expenses to locations outside The City area or from locations outside the Miami-Dade County or Monroe County area will not be reimbursed unless specifically pre-authorized in writing by the City Manager prior to said costs being incurred. No travel shall be allowed in the performance of the services provided for herein, (including key and core staff members) outside of Miami-Dade County or Monroe County unless the prior approval of the City Manager has been obtained.

5.3.2 It is acknowledged and agreed by Architect that the dollar limitation for Reimbursables is a limitation upon, and describes the maximum extent of, The City 's obligation to reimburse Architect for Reimbursables, but does not constitute a limitation, of any sort, upon Architect's obligation to incur such expenses in the performance of services hereunder.

5.4 Method of Billing

5.4.1 The Architect shall submit pay applications in a format designated by City Manager.

5.4.2 As each task on Exhibit "A" is completed, Architect will provide The City with a schedule identifying the hours spent performing the task (to the nearest 1/10 hour) for the personnel performing the services, the hourly rate assigned to each person on Exhibit "B" and the product of those two factors.

5.4.3 With each application for payment, Architect shall include an electronic copy, as well as the number of hard copies required by the City Manager.

5.4.4 Architect shall also submit with each pay application a Certification of Payments to Subconsultant and Suppliers, using the form attached as **Exhibit "C-1"** for all subconsultants and suppliers. The certification shall be accompanied by a copy

of the notification sent to each subconsultant and supplier listed in item 2 of the form, explaining the good cause why payment has not been made.

5.4.5 External Reimbursables and subconsultant fees must be documented by copies of invoices or receipts which describe the nature of the expenses and contain a project number and project title which clearly indicates the expense is identifiable to the Project.

5.4.6 All pay applications shall show a summary of fees with accrual of the total and credits for portions paid previously.

5.5 Method of Payment.

5.5.1 The City shall pay Architect within thirty (30) business days from receipt of Architect's proper pay application, as required by Florida Local Government Prompt Payment Act, Florida Statutes, Chapter 218.

5.5.2 Notwithstanding any provision of this Agreement to the contrary, the Architect shall not be entitled to payment of any pay application unless the City Manager is satisfied that the pay application reflects a level of effort and stage of completion of the respective deliverables that is in accordance with the schedules previously agreed to by the Architect and the City Manager.

5.5.3 Payment will be made to Architect at:

William P. Horn Architect, P.A.
915 Eaton Street
Key West, FL 33040

5.5.4 Notwithstanding any provision of this Agreement to the contrary, The City may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or from loss due to fraud or reasonable evidence indicating fraud by Architect or failure to comply with this Agreement. When the above reasons for withholding payment are removed or resolved in a manner satisfactory to City Manager, payment may be made. The amount withheld shall not be subject to payment of interest by The City.

ARTICLE 6
ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES

6.1 Changes.

6.6.1 The City or Architect may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement. Such changes must be made in accordance with the provisions of this agreement and must be contained in a proper Work Authorization executed prior to any

deviation from the terms of this Agreement including the initiation of any additional services.

6.6.2 The City may procure additional services from another vendor or architect or The City may negotiate with the Architect for additional scopes of services, compensation, time of performance and other related matters at The City's sole option. The City shall have the right at any time to immediately terminate any negotiations with Architect for additional services at no cost to The City and procure services from another source. Nothing in this Agreement shall in any way obligate The City to procure additional services from Architect. In addition, The City shall have the right, at its sole and exclusive discretion to delete any one or more tasks described in **Exhibit "A"** from this Agreement, and to procure services from another source. In such event: (i) Architect shall be paid for services performed through the date of deletion, subject to other applicable provisions hereof; and (ii) any tasks not deleted by such written notice shall continue to be covered by this Agreement and Architect shall perform the services required by such tasks pursuant to the terms and conditions of this Agreement.

6.6.3 Pricing of Changes. Costs of additional services requested by the City Manager during the life of this agreement and documented in a proper Work Authorization will be compensated on an hourly basis, or an agreed upon lump sum, or as a reimbursable as provided in Article 5.

6.6.4 Disputes. In the event a dispute between the City Manager and Architect arises whether requested services constitute basic services within the Scope of Services within **Exhibit "A"** and such dispute cannot be resolved by the City Manager and Architect, such dispute shall be promptly presented to the City Mayor for resolution, whose written decision shall be final. In the event the Architect does not agree with the City Mayor's written decision, within seven (7) calendar days from the date of the City Mayor's written decision the Architect shall provide the City Manager with a written notice of the Architect's intent to have the matter resolved in a court of competent jurisdiction. Failure to provide the notice within seven calendar days shall be a waiver of the Architect's right to seek further review of the dispute. During the pendency of any dispute, Architect shall continue to promptly perform all services, including the disputed services.

ARTICLE 7

THE CITY'S RESPONSIBILITIES

City Information. The City shall assist Architect by making available upon request the information The City has available that is pertinent to the Project including previous reports and any other data relative to design or construction of the Project. It is understood and agreed that The City, in making reports, site information and documents available to the Architect is in no way certifying as to the accuracy or completeness of such data, and any supporting documentation included therein. Any conclusions or assumptions drawn through examination thereof shall be the sole responsibility of the

Architect and subject to whatever measures it deems necessary to final verification essential to its performance under this Agreement.

ARTICLE 8
EEO COMPLIANCE

Nondiscrimination, Equal Employment Opportunity, and Americans with Disabilities Act. Architect shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin, marital status, political affiliation, or physical or mental disability if qualified. Architect agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. Architect shall comply with Title I of the Americans with Disabilities Act.

ARTICLE 9
INSURANCE

9.1 Coverages. Architect shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverages set forth in below in accordance with the terms and conditions required by this Article.

9.2 Architect shall be responsible to pay for all deductibles.

9.3 All insurance, other than Professional Liability and Workers' Compensation to be maintained by the selected firm(s)/individual(s), shall specifically include the City as an "Additional Named Insured."

9.4 The Selected firm(s)/individual(s) shall submit a certificate evidencing the above named coverage in a form satisfactory to the City prior to, or contemporaneously with, submitting a signed Contract to the City. Any insurance written on a claims-made basis is subject to approval of the City Attorney. Insurance coverage in the minimum amounts set forth shall not be construed to relieve the selected firm(s)/individual(s) of liability in excess of such coverage, nor shall it preclude the City from taking such other actions as are available to it under any other provisions of the law.

9.5 Professional Liability Insurance shall be provided with the limits of liability provided by such policy to be no less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, with a maximum deductible of Fifty Thousand Dollars (\$50,000). Deductible must be indicated on Architect's Certificate of Insurance.

COVERAGE	LIMITS OF LIABILITY	DESCRIPTION
Commercial General Liability*	Bodily Injury, Including Wrongful Death: \$1,000,000 per occurrence. Property Damage: \$1,000,000 per occurrence	To protect the selected firm(s)/individual(s) and City from claims for damages for bodily injury, including wrongful death, as well as from claims of property damage arising from such operations by the selected firm(s) or by anyone directly employed by or contracting with the selected firm(s). Insurance certificate shall indicate "per occurrence."
Commercial Automobile Liability Insurance*	Bodily Injury, Including Wrongful Death: \$500,000 per occurrence Property Damage: \$500,000 per occurrence	To protect the selected firm(s)/individual(s) and City, as an additional named insured, from claims damages for bodily injury, including death as well as from claims for damage, which may arise from the ownership, use or maintenance of owned and non-owned automobiles whether such operations be by the selected firm(s)/individual(s) or by anyone directly or indirectly employed by theselected firm(s)/individual(s).
Worker's Compensation and Statutory Employer's Liability		
Professional Liability Insurance	\$2,000,000	To protect the City from any negligent acts, errors or omissions on the part of the selected firm(s)/individual(s).

9.6 Architect shall maintain the claims made form coverage continuously in force for a minimum of three (3) years following the Completion Date of this Agreement and shall annually provide The City with evidence of renewal coverage. Architect shall be responsible to pay for all deductibles.

9.7 Workers' Compensation Insurance shall be provided to apply for all employees in compliance with Chapter 440, Florida Statutes, as amended, the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy (ies) must include Employer's Liability with a limit of a minimum of One Hundred Thousand Dollars (\$100,000.00) for each accident. Note: Elective exemptions or coverage through an employee leasing arrangement will NOT satisfy this requirement.

9.8 Comprehensive General or Commercial Liability Insurance with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability and One Million Dollars (\$1,000,000.00) per aggregate. 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:

Premises and/or Operations

Independent Contractors

Broad Form Property Damage

Broad Form Contractual Coverage applicable to this specific Agreement.

Personal Injury Coverage with Employee and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

Architect shall be responsible to pay for all deductibles.

9.9 Business Automobile Liability Insurance shall be provided with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include: Owned vehicles, if applicable. Hired and non-owned vehicles, if applicable Employers' non-ownership, if applicable.

ARTICLE 10 **MISCELLANEOUS**

10.1 Ownership of Documents. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared or

provided by Architect in connection with this Agreement are and shall become the property of The City, whether the Project for which they are made is completed or not, and shall be delivered by Architect to The City in the requested form or format within seven (7) calendar days of the earlier to occur of: (i) written request from the City Manager, or (ii) the termination of this Agreement by either party. The City may withhold any payments then due to Architect until Architect complies with the provisions of this Subarticle 10.1.

10.2 Termination.

10.2.1 This Agreement may be terminated for cause by action of The City or by Architect if the party in breach has not corrected the breach within five (5) business days of receipt of written notice from the aggrieved party identifying the breach. Termination of this Agreement for cause shall include, but not be limited to, negligent, intentional, or repeated submission for payment of false or incorrect bills, invoices, or pay applications, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement, or breach of this Agreement which have a material adverse effect on the efficient administration of the Project, notwithstanding whether any such breach was previously waived or cured.

10.2.2 This Agreement may be terminated for convenience by the City upon not less than fourteen (14) calendar days' written notice by the City Mayor to the Architect. In the event this Agreement is terminated for convenience, Architect shall be paid for any services properly performed to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in this Agreement are provided to The City. Upon being notified of The City's election to terminate, Architect shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall The City make payment of profit for services which have not been performed.

10.2.3 This Agreement may also be terminated by The City upon such notice as The City deems appropriate under the circumstances in the event The City determines that termination is necessary to protect the public health, safety, or welfare.

10.2.4 In the event of any termination (whether a termination of the entire Agreement or any task of the Agreement) Architect shall deliver all documents and records, including without limitation, all data, studies, surveys, drawings, maps, models, photographs and reports prepared or provided by Architect in connection with this Agreement (in whatever state they may be in at the date of termination) to The City within seven (7) calendar days following receipt of the written notice of termination. Any compensation due Architect shall be withheld until all documents and records are received by The City as provided herein.

10.3 Deletion or Suspension of Tasks. The City shall have the right, at its sole and exclusive discretion and upon seven (7) calendar days' notice in writing, to delete or terminate any tasks described in **Exhibit "A"**, from this Agreement and either eliminate

the deleted services from the Project to procure services for such services from another source. In such event: (i) Architect shall be paid for services performed through the date of deletion/termination (including all Reimbursables then due or incurred to date); and (ii) any tasks not deleted or terminated by such written notice shall continue to be covered by this Agreement and Architect shall perform the services. The City Manager may suspend work on any task described by this Agreement if Architect fails to provide the requested deliverables.

10.4 Audit Right and Retention of Records. The City shall have the right to audit the books, records, and accounts of Architect and its subconsultants that are related to the Project and this Agreement. Architect shall keep such books, records and accounts and shall require any and all subconsultants to keep such books, records and accounts as may be necessary in order to record complete and correct entries related to the Project and this Agreement, including without limitation, entries as to personnel hours charged to the Project and any expenses for which Architect expects to be reimbursed. All books, records and accounts of Architect and its subconsultants shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Architect and its subconsultants shall make same available at no cost to The City in written form. Incomplete or incorrect entries in such books and records and accounts shall be grounds for The City's disallowance and recovery of any fees or expenses based upon such entries.

10.5 Public Entity Crimes Act. Architect represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes).

10.6 No Contingent Fee. Architect warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Architect, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Architect any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

10.7 Subconsultants. Upon a showing of reasonable justification, the Architect will remove and replace any subconsultants to the Architect that the City deems objectionable. Architect shall not remove or replace any of the subconsultants listed on **Exhibit "C"** absent good cause or without first obtaining the City Manager's written consent. Architect shall bind each and every subconsultant to the terms stated in this Agreement, provided that this provision shall not, in and of itself, impose the insurance requirements set forth in Article 9 on Architect's subconsultants. Architect shall be responsible for recommending to The City the insurance coverages it will require of each of its subconsultants, after taking into consideration the services to be provided by each of its subconsultants. The City may either (i) accept the recommendation(s) of the Architect or (ii) require any coverages that The City determines are necessary to protect The City's interests. Architect shall require the proper licensing of each of its

subconsultants and shall provide the insurance coverage's as finally determined in the sole discretion of the City.

10.8 Architect Certification. The Architect hereby certifies that this Agreement is made in good faith, and without fraud, collusion of any kind with any other Architect for the same work, and that the Architect is acting solely on its own behalf without connection with, or obligation to, any undisclosed person or firm.

10.9 Assignment. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by Architect without the prior written consent of The City. Architect shall not subcontract any portion of the work required by this Agreement except to those subconsultants identified in **Exhibit "C"**, without the prior written consent of the City

10.10 Indemnification of the City. Architect shall indemnify and hold harmless The City, its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of Architect, and other persons employed or utilized by Architect in the performance of this Agreement.

10.11 Representative of the City and Architect. The City's representative for daily communications with the Architect will be the Project Manager. Architect shall inform the City Manager in writing of Architect's representative to whom matters involving the conduct of the Project shall be addressed.

10.12 No Conflicts. The employees and officers of Architect, its subconsultants, and the subsidiaries of Architect and its subconsultants shall not, during the term of this Agreement, serve as an expert witness against The City in any legal or administrative proceeding in which he or she or Architect is not a party. Further, Architect agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of The City or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this Article 10.12 shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

10.13 All Prior Agreements Superseded/Amendments. This document incorporates and includes and supersedes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and represents the final and complete understanding of the parties. The parties agree that there is no commitment, agreement or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement whether oral or written. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in a written document prepared with the same or similar formality as this Agreement and executed by the parties hereto.

10.14 Notices. Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, postage prepaid, return receipt requested, or by overnight courier with delivery confirmation, or by hand delivery with a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place specified. The place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

FOR The City of Marathon, Florida:

Roger T. Hernstadt, City Manager
9805 Overseas Highway
Marathon, FL 33056

with a copy to:

City Attorney
John Herin, Jr., Esq.
401 E. Las Olas Blvd.
Suite 1850
Fort Lauderdale, 33301
Phone: 954-761-8111
Fax: 954-761-8112

FOR Architect:
William P. Horn, Architect, P.A.,
915 Eaton St.
Key West, FL 83040

10.15 Truth-In-Negotiation Certificate. Signature of this Agreement by Architect shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.

10.16 Interpretation. The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

10.17 Architect's Staff. Upon good cause shown, the Architect will remove and replace from this project any employee the City Manager finds objectionable. If City Manager desires the removal of any of Architect's staff or a subconsultant, the City Manager shall first meet with Architect and provide reasonable justification for said removal.

10.18 Independent Contractor; Third Party Beneficiaries; No Joint Relationship. Architect is an independent contractor under this Agreement. Services provided by Architect shall be subject to the supervision of Architect. In providing the services, Architect or its agents shall not be acting and shall not be deemed as acting as officers, employees or agents of The City. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement. Neither Architect nor The City intend to directly or substantially benefit a third party by this Agreement.

10.19 Incorporation by Reference. Exhibits "A-E" attached are incorporated into and made a part of this Agreement by this reference. In the event of conflict between the terms contained in this Agreement and the terms contained in any of the documents attached or incorporated herein, the terms of this Agreement shall control and shall be given full effect.

10.20 Representation of Authority. Each individual executing this Agreement on behalf of a party hereto does hereby represent that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party.

10.21 Compliance with Laws. Throughout the term of this Agreement, the Architect shall keep fully informed of and comply with all federal, state, The City and local laws, ordinances, codes, rules, and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which, in any manner, affect work authorized under the terms of this Agreement.

10.22 Agreement Severable, Waiver of Breach and Materiality. In the event any portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective. Failure by The City to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. The City and Architect agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

10.23 Joint Preparation. The parties acknowledge that they have sought and received whatever competent advice and counsel necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

10.24 Priority Of Provisions: Order Of Precedence. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document

incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 10 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 10 of this Agreement shall prevail and be given effect.

10.25 No Interest. Unless required by The Local Government Prompt Payment Act, any monies which are the subject of a dispute regarding this Agreement and which are not paid by The City when claimed to be due shall not be subject to interest.

10.26 Jurisdiction, Applicable Law, Venue, WAIVER OF JURY TRIAL. The City and Architect knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract, arising out of, under, or in connection with the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party. The venue for any lawsuit arising out of this Contract shall be Monroe County, Florida.

10.27 Attorneys' Fees. If either the City or Contractor is required to enforce the terms of the Contract by court proceedings or otherwise, whether or not formal legal action is required, the parties shall bear their own attorney fees, costs and expenses, at the trial and appellate level.

10.28 Multiple Originals. This Agreement may be fully executed in up to three (3) counterparts by all parties, each of which, bearing original signatures, shall be deemed to be an original.

[Signature page follows.]

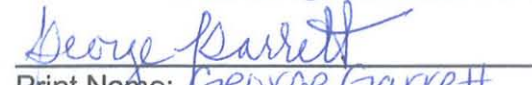
IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature:

Witnesses:

THE CITY OF MARATHON, FLORIDA



Print Name: Diane Clavier



Print Name: George Garrett

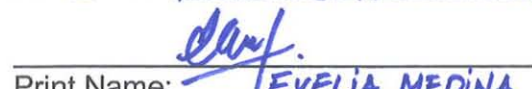
By: 

Print Name: Mayor Cinque

Title: Mayor or Vice Mayor



Print Name: FRANK J. HERDLISKA



Print Name: EVELIA MEDINA

ARCHITECT:

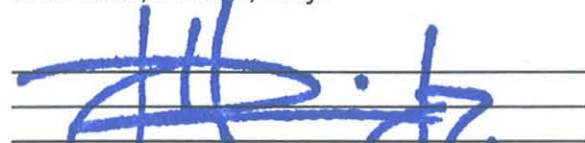
William P. Horn, Architect, P.A.

By: 

Print Name: WILLIAM P. HORN

Title: PRINCIPAL

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



City Attorney

(Date)

Exhibit "A"
PROJECT SERVICES

The Project consists of the design and construction of a new City Hall for the City of Marathon, Florida. This project shall be designed and constructed to meet the Florida Green Building Coalition's ("FGBC") standards" pursuant to Florida Statutes, Section 255.2575 and the elements to achieve these standards shall be incorporated into the building design and the construction documents. The City desires to use the foam block construction method, to the extent feasible and deemed appropriate by the Architect. Architect acknowledges receipt of 5 existing drawings for the City Hall which specify preliminary plans and receipt of 5.7.13 email of City Council meeting minutes with comments on such plans.

The design should reflect at a minimum:

- Insulated concrete form (ICF) construction
- Office space of 7,775 sq. ft. including 2 sets of adjacent flexible conference rooms of: 144 sq.ft. plus 192 sq. ft. for combined total of 336 sq.ft. and 277 sq.ft. plus 288 sq. ft. for combined total of 565 sq.ft.
- Hurricane hardened 565 sq. ft. conference room (described above) plus additional hurricane hardened area of 605 sq.ft. for a total of approximately 1,170 sq. ft. hurricane hardened area
- Flexible space for Community Room/Cultural Event Room/Council Chamber combined to accommodate up to 200 persons dining at tables
- Closed Circuit Television System (CCTV)
- Catering capabilities to including refrigeration and warmers
- Shower facilities in one of each gender restrooms
- US1 landscape buffer of 5 times current code requirements
- Stable, pervious surface for parking lot to accommodate 250 vehicles, parking may include open area below building
- Elevated structure
- Upper floor balconies to view Oceanside to accommodate 200 people
- Green building attributes
- Keys style exterior building

- Design components as adds or deducts to facilitate value engineering at the time of final design and on receipt of bids.
- Provide estimated per square foot price for key components

The project will include the following service tasks within the time frames listed on Exhibit "A-1". The total number of days allowed to complete the design and have complete bid and construction documents ready is 120 calendar days (not including City review and approval). Time will stop between phases for the City to review and approve the work. The City will then approve the start of each subsequent phase.

BASIC PROJECT SERVICES – Task Orders 1 Through 7:

Task Order	Scope	Not to Exceed Fee Amount
1	Programming	\$12,000
2	Pre and Schematic	\$95,000
3	Design Development	\$86,000
4	Construction Documents	\$105,150
5	Bidding and Permitting	\$5,000
6	Construction Administration	\$50,000
7	Project Closeout	\$5,000
	Total	\$358,150

Task Order 1: Programming

Architect shall develop Planning Studies for space requirements and program to establish the following detailed requirements for the project: design objectives, limitations and criteria, space relations, functional responsibilities of personnel, flexibility and expansibility, and special equipment and systems.

Deliverables: Report containing written description of programming phase and task undertake, written description of program areas, building program, space relationship diagrams, and space data sheets.

Schedule: 15 days

Fee: \$ 12,000

Task Order 2: Pre-Design and Schematic Design

2.1 Architect shall analyze the City's building program with respect to the area required for building based on Task Order 2 deliverables.

- 2.2 Site Development Planning: Architect shall prepare conceptual site development drawings, which may include land utilization, structure placement, facility development, development phasing, access and circulation of vehicles and pedestrians, parking facilities, and utility systems. Analyze surface and subsurface conditions, ecological requirements, deeds, zoning, and other legal restrictions, landscape concepts, and features.
- 2.3 Utility Development Planning: Architect shall establish requirements and prepare initial designs for the on-site utilities, which may include electrical service and distribution, propane service and distribution, water supply and distribution, site drainage, sanitary sewer collection and disposal, process waste water treatment, storm water collection and disposal, central-plant mechanical systems, fire systems, emergency systems, security, pollution control, site illumination, and communications systems. Analyze the availability of existing utility mains, transmission and distribution lines.
- 2.4 Structural System Analysis: Architect shall identify and research applicable building construction typologies. Present to the City for selection.
- 2.5 Parking and Circulation Analysis: Architect shall determine parking requirements for the Project, including the number of parking spaces required by governing agencies and the City.
- 2.6 Estimate of the Cost of the Work: Architect shall prepare a preliminary estimate of the cost of the work for the development of the site based on the design approved by the City.
- 2.7 Planning, Zoning, and Code Analysis: Architect shall identify and research applicable planning and zoning ordinances and Florida Building Code requirements. Develop and present to the City.
Meetings and Presentations: Architect shall attend meetings, public hearings, and citizen information meetings as directed by the City. Architect shall represent the City in presenting the proposed development to the governing agencies for approval. Architect shall prepare presentation materials for selected options and present to the governing agencies at public meetings and hearings.
- 2.8 Architect shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, preliminary building plans, elevations, building sections, and outline specifications. The Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings and / or described in writing.

- 2.9 Architect shall review with the City alternative approaches to design and construction of the Project. The Architect shall review, with the City, site use and improvements and alternative approaches to selection of materials, building systems, and equipment. Architect shall provide general recommendations on construction feasibility, availability of materials and labor, time requirements for construction, and factors related to Project cost, including costs of alternative designs or materials, preliminary budgets, and possible economies of scale. Information will be presented in a Schematic Design report.
- 2.10 Architect shall provide any necessary further evaluation or refinement of the program, schedule and budget requirements, shall identify and analyze requirements of governmental authorities having jurisdiction to approve the Project design, and shall participate in consultations with such authorities.
- 2.11 Architect shall schedule and conduct meetings to present, confirm, and finalize design elements with facility users / departments / administration. Architect shall distribute meeting minutes and record all decisions.
- 2.12 Architect shall coordinate and attend meetings with appropriate zoning and code officials. (State and Local building code officials, planning, fire marshal, water, energy, accessibility, health, pollution control, environmental). Architect shall distribute meeting minutes and record all decisions.
- 2.13 Upon completion of the Schematic Design phase, the Architect shall provide copies of the Schematic Design Documents to the City for review and written approval.

Deliverables:

Schematic Drawings shall include:

- Cover sheet with drawing index
- Site plan noting all major building and site features, zoning, parking, and preliminary material considerations
- Preliminary life safety plans / code plans
- Preliminary floor plans
- Principal building elevations (noting materials)
- Major building sections (transverse and longitudinal)

Schematic Design Report shall include:

- Statement of project concept
- Statement of key project issues as they relate to project scope, cost and schedule, including identification of risk factors, quality control and salient project features.
- Building area tabulation showing comparison to Program

- Statement of building systems including building envelope, structural system, mechanical systems, preliminary energy analysis summary, alternative energy uses and associated systems, and preliminary life cycle cost comparisons of major systems.
- Sustainable design goals and strategies
- Outline project specifications
- Order of Magnitude cost estimate – square footage estimate
- Statement of value engineering
- Primary materials being considered

Schedule: 45 days

Fee: \$ 95,000

Task Order 3: Design Development

- 3.1 Architect shall provide Design Development Documents based on the approved Schematic Design Documents and updated budget for the Cost of the Work. The Design Development Documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size, appearance, finishes and color schedule (exterior and interior) of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major materials and systems and establish in general their quality levels.
- 3.2 Architect shall be compensated for level of effort expended if design elements are subsequently deleted from the design through value engineering.
- 3.3 Architect shall provide program reconciliation on a space-by-space tabulated comparison. City shall confirm this program as FINAL in writing.
- 3.4 Architect shall include a final completed code analysis for inclusion in the Project Manual.
- 3.5 Architect shall provide that the site design is refined, the plans, sections, elevations, etc. are drawn to scale, principle dimensions are noted, the structural system is laid out, and major mechanical, plumbing, and electrical components and distribution routes are located. Architect shall provide that critical interior spaces are drawn and elevated for review.
- 3.6 Architect shall schedule and conduct meetings to present, confirm, and finalize material and finish selections with facility users / departments / administration. Architect shall distribute meeting minutes and record all decisions.

- 3.7 Architect shall incorporate all sustainable design elements / products proposed for certification.
- 3.8 Upon completion of the Design Development phase, the Architect shall provide copies of the Design Development documents to the City for review and written approval.
- 3.9 Upon completion of the Design Development phase the Architect shall prepare and submit, for the City's approval, a detailed estimate of the Cost of the Work. In establishing the detailed estimate of the Cost of the Work, the Architect shall include reasonable contingencies for design, bidding, and price escalation and determine, in conjunction with the City, the materials, equipment, component systems, and types of construction to be included in the Contract Documents. Architect shall review any difference between the Construction Budget and the detailed estimate of the Cost of the Work, identify reasons for any difference, and recommend means to eliminate the difference.

Deliverables:

A drawing package that defines and describes the design of the project including:

- Title Sheet
- Site survey
- Civil plans – building location plan, grading, material indications, utilities, storm water, fire protection, sanitary, and preliminary details
- Landscape plans including planting plan and schedules
- Architectural site plan
- Life safety / code plans and details
- Floor, ceiling, and roof plans
- Furniture, fixtures, and equipment plans / schedules
- Building elevations
- Building sections and wall sections
- Enlarged plans and interior elevations
- Millwork plans and elevations
- Door and window schedules
- Room finish schedules indicating materials
- Materials / finish color schedule
- Vertical circulation plans and sections
- Plan and enlarged details – interior and exterior
- Structural engineering – foundation design, framing plans, non-typical framing details, column schedule, preliminary details
- Mechanical, plumbing, and electrical – systems floor plans (duct layout, sanitary and water piping, power and lighting), major equipment indications, penetration locations, chases established, roof plans, site utility coordination, site lighting plans, fixture schedules, riser diagrams, general notes, preliminary details of major and unique conditions

- Technology and data/communication plan(s)
- Fire protection - performance based design

A preliminary project manual that includes bidding requirements, contract forms, general conditions of the project, general requirements, and specifications including:

- Table of contents
- Drawing index
- Building code study
- General and supplemental conditions (AIA based documents)
- Comprehensive, abbreviated methods, materials, and systems descriptions in tune with drawings.
- Catalog cut sheets of finish equipment and fixtures

Exterior and interior material finish boards

Schedule: 30 days

Fee: \$ 86,000

Task Order 4: Construction Documents

- 4.1 Architect shall provide Construction Documents based on the approved Design Development Documents and updated budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.
- 4.2 Architect shall identify construction-testing needs and communicate to City. Quality assurance testing shall be indicated in each specification division; defining the type of test and method; test frequency; test pass/fail tolerance; and action required for failed tests.
- 4.3 Architect shall schedule and conduct meetings to present, confirm, and finalize project details / selections with facility users / departments / administration. Architect shall distribute meeting minutes and record all decisions.
- 4.4 Architect shall incorporate all sustainable design elements / products proposed for certification.
- 4.5 Upon request, the Architect shall edit the City's standard construction documents (advertisement for Bids, Bid Proposal Forms, Addendum, etc.) relative to the following:

- Bid date, time, place
 - Substantial and final completion date / liquidated or actual damages
 - Alternates and unit pricing
 - Targeted group percentages (MBE, FBE, DBE, SBE – if applicable)
 - Security requirements for contractors working at facility
 - Builders Risk insurance requirements
 - Advertise for bids – edited only
- 4.6 Architect shall provide for coordination / documentation of City supplied Furniture, Fixtures, and Equipment including items to be relocated from existing facilities and new items.
- 4.7 During the development of the Construction Documents, Architect shall review and approve the City's front end bid documents and the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall compile the Project Manual that includes the Conditions of the Contract for Construction and Specifications (performance based) and may include bidding requirements and sample forms.
- 4.8 Architect shall revise the detailed estimate of the Cost of the Work, as applicable, based upon the completed Construction Document submission. This estimate shall be the basis for the overall project Cost of Work.

Deliverables:

- 100% construction documents detailing the scope of work to be performed. A
- 100% complete project manual that includes bidding requirements, contract forms, conditions of the project, general requirements, and specification

Schedule: 30 days

Fee: \$ 105,150

Task Order 5: Bidding and Permitting

- 5.1 Competitive Bidding
- 5.1.1 Bidding Documents shall consist of bidding requirements, proposed contract forms, General Conditions and Supplementary Conditions, Prevailing Wage determinations, Specifications and Drawings, or as specifically designated by City in accordance with their lawfully applicable standards.
- 5.1.2 Architect shall review and approve the bid package uploaded in Demand Star bidding service.

- 5.1.3 Architect shall consider requests for substitutions, permitted by the Bidding Documents, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.
- 5.1.4 Architect shall participate in at the City's direction and conduct a pre-bid conference for prospective bidders.
- 5.1.5 Architect shall prepare responses to questions from prospective bidders and provide clarifications and interpretations of the Bidding Documents to the City for upload in Demand Star in the form of addenda.
- 5.1.6 Architect shall assist the City in bid validation or proposal evaluation and determination of the successful bid or proposal.
- 5.2 Permitting
Architect shall submit to jurisdictional authorities such sets of the Drawings and Specifications as they may require for approval, together with any necessary completed applications. Submission includes all signed and sealed documents.

Deliverables: Written responses to jurisdictional / legal reviews or inquiries (i.e. state and local building code officials, planning, fire marshal, water, energy, accessibility, health, pollution control, environmental)

Schedule: 30 days

Fee: \$ 5,000

Task Order 6: Construction Administration

- 6.1 General Administration
 - 6.1.1 Architect shall provide administration of the Contract between the City and the Contractor(s) as set forth below. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the City.
 - 6.1.2 The Architect's responsibility to provide Contract Administration Services under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to the City of the final Certificate for Payment. However, the Architect may be entitled to a Change in Services when Contract Administration Services extend 60 days after the date of Substantial Completion of the Work.
 - 6.1.3 Architect shall be a representative of and shall advise and consult with the City during the provision of the Contract Administration Services. The Architect shall

have authority to act on behalf of the City only to the extent provided in the Agreement unless otherwise modified by written amendment.

- 6.1.4 Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the City and the Architect with consent of the Contractor, which consent will not be unreasonably withheld.
- 6.1.5 Architect shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.
- 6.1.6 Architect shall on the City's behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.
- 6.1.7 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both City and Contractor, shall not show partiality to either.
- 6.1.8 Architect shall expeditiously render initial decisions on claims, disputes or other matters in question between the City and Contractor as provided in the Contract Documents. However, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.
- 6.2 Evaluations Of The Work
 - 6.2.1 Architect, as a representative of the City, shall visit the site on a weekly basis at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the City and the Architect:
 - (1) to become generally familiar with and to keep the City informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the City against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods or techniques, or for safety precautions and

programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

- 6.2.2 Architect shall record the progress of the Project and provide written reports to the City on a bi monthly basis, unless otherwise agreed in writing. Such reports shall include, but are not limited to, information on each Contractor's Work, as well as completion status on the entire Project, showing percentages of completion, workers on site at time of visit, weather conditions, conditions of the site, and with whom deficiencies were communicated to.
- 6.2.3 Architect shall call special meetings to report to the City known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.
- 6.2.4 Architect shall at all times have access to the Work wherever it is in preparation or progress.
- 6.2.5 Except as otherwise provided in the Agreement or when direct communications have been specially authorized, the City shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents.
- 6.2.6 Architect shall have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.
- 6.3 Certification Of Payments To Contractor
 - 6.3.1 Architect shall review and certify the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The Architect's certification for payment shall constitute a representation to the City, based on the Architect's evaluation of the Work and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the

best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the City to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

6.3.3 Architect shall maintain a record of the Contractor's Applications for Payment.

6.4 Submittals

6.4.1 Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall document each submittal with the appropriate status stamp and/or notations. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the City, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods or techniques. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

6.4.2 Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

6.4.3 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other

submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

6.5 Changes In The Work

6.5.1 Architect shall prepare Change Orders and Construction Change Directives for the City's approval and execution in accordance with the Contract Documents. The Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time, which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified.

6.5.2 Architect shall review properly prepared, timely requests by the City or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may issue an order for a minor change in the Work or recommend to the City that the requested change be denied.

6.5.3 If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the City, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the Architect. With the City's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the City's execution or negotiation with the Contractor.

6.5.4 Architect shall maintain records relative to changes in the Work.

Deliverables: As required by aforementioned Scope of Work

Schedule: Duration of the construction phase of the project.

Fee: \$ 50,000

Task Order 7 – Project Closeout

7.1 Project Completion

7.1.1 Architect shall conduct inspections to determine punch list items after request from Contractor for Substantial Completion and dates of Substantial Completion and the date of Final Completion, shall receive from the Contractor and forward to the City, for the City's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, (including as built drawings) and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

7.1.2 Architect shall certify substantial and final completion of Contractor work.

7.1.3 Architect shall Coordinate systems training sessions and provide all O & M manuals with the user's facility maintenance staff and departments within 30 days of Final Completion of Contractor's Work. .

7.1.4 The Architect's inspection shall be conducted with the City's Designated Representative to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

7.1.5 When the Work is found to be substantially complete, the Architect shall inform the City about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work.

7.1.6 Architect shall receive from the Contractor and forward to the City: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the City against liens.

7.1.7 Architect shall receive from the contractor the marked up as-built set of construction documents, scan them electronically as a pdf file to a compact disk and provide the marked up set of construction documents as a pdf electronically to the City. The Architect shall also give the City a cd with all of the final construction documents that were used for permit and construction in auto cad file format (.dwg files).

7.2 Post Occupancy

7.2.1 Substantial Completion

Architect shall meet with the City or the City's Designated Representative no later than 30 days after Substantial Completion to review the need for facility operation services.

7.2.2 Warranty Period

Upon request of the City and/or prior to the expiration of Contractor's Warranty Period, the Architect shall conduct a meeting with the City or the City's Designated Representative to review the facility operations and performance and to make appropriate recommendations to the City regarding warranty issues. A total of three (3) visits are included.

7.2.3 Final Deliverables

No later than 30 days from Final Completion of Contractor Work, all contract deliverables shall be delivered to The City.

Deliverables:

As required by aforementioned Scope of Work

Schedule: Beginning at the completion of construction with a duration of one (1) year.

Fee: \$ 5,000

Exhibit "A-1"
Project Schedule (in Calendar Days)

Project Title: City of Marathon City Hall

The required project schedule milestones for this project are presented below. The time will stop between phases for City Council review/approvals and for City Manager to authorize to proceed to next phase.

Activity	Duration to Complete Task
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Design Phase

Task Order 1: Programming	15 Days
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Task Order 2: Schematic Design	45 Days
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Construction Phase

Task Order 3: Design Development	30 Days
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Task Order 4: Construction Documents	30 Days
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Phase III: Bidding, Permitting and Award of Contract

Task Order5: Bidding and Permitting	30 Days
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Administration of the Construction Contract Phase

Substantial Completion Date:	150 Days from Construction NTP
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Final Completion Date:	30 Days from Substantial Completion
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Phase: Warranty	365 Days from Construction Final Completion
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Exhibit "B"
HOURLY RATES

ARCHITECT				
Job Position Title	Maximum Raw Hourly Rate	Overhead / Fringe	Profit	Total Hourly Rate
Principal Architect	\$112.50	\$90.00	\$22.50	\$225.00
Architect	\$75.00	\$60.00	\$15.00	\$150.00
Director	\$75.77	\$128.81	\$20.42	\$225.00
Project Manager	\$75.00	\$60.00	\$15.00	\$150.00
Architect	\$75.00	\$60.00	\$15.00	\$150.00
Intern Architect	\$62.50	\$50.00	\$12.50	\$125.00
Draft Person	\$47.50	\$38.00	\$9.50	\$95.00
Interior Designer	\$45.46	\$77.28	\$12.26	\$135.00
Project Coordinator	\$42.08	\$71.54	\$11.38	\$125.00
Admin	\$20.20	\$34.33	\$5.47	\$60.00

ENGINEER				
Job Position Title	Maximum Raw Hourly Rate	Overhead / Fringe	Profit	Total Hourly Rate
Principal	\$65.00	\$42.13	\$22.87	\$130.00
Sr. Staff	\$55.00	\$41.49	\$23.51	\$120.00
Staff	\$45.00	\$40.52	\$19.48	\$105.00
Drafter	\$30.00	\$40.39	\$14.61	\$85.00
Admin	\$17.00	\$39.68	\$3.32	\$60.00

LANDSCAPE ARCHITECT				
Job Position Title	Maximum Raw Hourly Rate	Overhead / Fringe	Profit	Total Hourly Rate
Landscape Architect	\$75.00	\$60.00	\$15.00	\$150.00
Drafter	\$50.00	\$40.00	\$10.00	\$100.00

Exhibit "C"
SCHEDULE OF PRIME/SUBCONSULTANT PARTICIPATION

William P. Horn Architect P.A.
Solaria
Mbi/k2m
Elizabeth Newland
Technology and Fire Protection - tdb

Exhibit "C-1"
CERTIFICATION OF PAYMENTS TO SUBCONSULTANTS AND SUPPLIERS

Project: City of Marathon City Hall

The undersigned Architect hereby swears under penalty of perjury that:

1. Architect has paid all subconsultants and suppliers all undisputed contract obligations for labor, services, or materials provided on this project through____, 20____.
2. The following subconsultants and suppliers have not been paid because of disputed contractual obligations; a copy of the notification sent to each, explaining in reasonably specific detail the good cause why payment has not been made, is attached to this form:

Subconsultant/supplier_____

Disputed Amount _____.

Dated: _____, 201____

ARCHITECT:

William P. Horn Architect, P.A.

By:_____

Print Name:_____

Title:_____

STATE OF Florida)

COUNTY OF Monroe)

The foregoing instrument was sworn to before me this _____ day of _____, 20__, by _____, who is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal, this _____ day of _____, 20__.

(NOTARY SEAL)

Notary Public

Print Name:_____

My Commission Expires:_____

Serial Number:_____

Exhibit "D-1"
City Manager Work Authorization
(Additional services valued < \$10,000 and no additional time)

Architect: WP Horn WA # _____ Project: Marathon City Hall

This Work Authorization authorizes the Architect to perform additional services pursuant to the Professional Services Agreement dated _____. The work encompassed by this Work Authorization is attached hereto.

There is **no additional time** granted for these additional services.

The Contract Sum is increased by \$_____.

Payment(s) for such services shall be in accordance with the Professional Services Agreement and the compensation for these additional services shall not exceed \$10,000.00, or this document is void.

Fee Determination: Payment for services under this Work Authorization shall be as follows:

Maximum Not-to-Exceed \$_____

Reimbursable Expenses \$_____

Total Maximum Cost: \$_____

The City

Recommended by:

Project Manager Date

City Manager Date

City Attorney Date

City Clerk attest Date

Architect:

William P. Horn Architect, P.A.

By: _____

Print Name: _____

Title: President/Vice President

Exhibit "D-2"

City Council Work Authorization

(Additional services valued \$10,000 or more and/or additional time awarded)",

Architect: WP Horn WA # _____ Project: Marathon City Hall

This Work Authorization authorizes the Architect to perform additional services pursuant to the Professional Services Agreement dated _____. The work encompassed by this Work Authorization is attached hereto.

There is **no additional time** granted for these additional services.

The Contract Sum is increased by \$ _____.

Payment(s) for such services shall be in accordance with the Professional Services Agreement and the compensation for these additional services shall not exceed \$10,000.00, or this document is void.

Fee Determination: Payment for services under this Work Authorization shall be as follows:

Maximum Not-to-Exceed	\$ _____
Reimbursable Expenses	\$ _____
Total Maximum Cost:	\$ _____

The City

Recommended by:

Project Manager Date

City Manager Date

Mayor or Vice Mayor Date

City Attorney Date

City Clerk attest Date

Architect:

William P. Horn Architect, P.A.

By: _____

Print Name: _____

Title: President/Vice President

Exhibit E
OPTIONAL SERVICES (if required - including both labor and expenses)

Surveying - Guaranteed Maximum not to Exceed	\$8,000.
Geotechnical Soils Testing - Guaranteed Maximum not to Exceed	\$12,000.
Green Building Requirements, exclusive of FGBC fees- Guaranteed Maximum not to Exceed	\$25,000.