

Sponsored by: Hernstadt

CITY OF MARATHON, FLORIDA  
RESOLUTION 2013-65

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH BALLARD PARTNERS, INC. FOR PROFESSIONAL CONSULTING AND LOBBYING SERVICES BEFORE THE LEGISLATURE OF THE STATE OF FLORIDA; AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the City of Marathon (the "City") recognizes the importance of monitoring and participating in the State legislative process in order to protect the interests of the City and its residents; and

**WHEREAS**, the Consultant and City, through mutual negotiation, have agreed upon a scope of services and fee for legislative consulting services on behalf of the City before the Florida Legislature, the executive branch of the Florida government, and various regional and local governments; and

**WHEREAS**, the firm of Ballard Partners, Inc. (the "Consultant"), wishes to provide professional legislative consulting and lobbying services before the legislature of the State of Florida on behalf of the City.

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

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

**Section 2.** The professional services agreement between the City and Consultant, a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is hereby approved.

**Section 3.** This resolution shall take effect immediately upon its adoption.


PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON,  
FLORIDA, THIS 27<sup>th</sup> DAY OF AUGUST, 2013.

THE CITY OF MARATHON, FLORIDA

  
\_\_\_\_\_  
Mayor Mike Cinque

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

**ATTEST:**

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

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  
AND  
BALLARD PARTNERS, INC**

**THIS AGREEMENT** is made and entered into between Ballard Partners, Inc., a Florida corporation, (hereinafter the “Consultant”), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

**WHEREAS**, the Consultant and City, through mutual negotiation, have agreed upon a scope of services and fee for legislative consulting services on behalf of the City before the Florida Legislature, the executive branch of the Florida government, and various regional and local governments; and

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

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the Consultant and the City agree as follows.

1. **Scope of Services/Deliverables.**
- 1.1 Consultant shall provide legislative consulting services on behalf of the City before the Florida Legislature, the executive branch of the Florida government, and various regional and local governments.
- 1.2 Specifically, Consultant shall provide the following services:
  - 1.2.1 No less than once a year meet with the City Council and staff to assist the City in developing a legislative program.
  - 1.2.2 Monitor and report on all state agency programs of interest to the City, including any programs that could be helpful in funding, planning and operating the City.
  - 1.2.3 Represent City’s interests before the Florida legislature and any executive branch body and any other entity that could be of benefit to the City’s interests.
  - 1.2.4 Monitor and track all legislation of interest to the City.
  - 1.2.5 Provide monthly reports during the legislative session and quarterly reports during the non-session months to the City Manager and City Attorney on all legislation being tracked. Such reports will be electronically transmitted to the City Manager and City Attorney.

1.2.6 Host City officials during the legislative session in Tallahassee and arrange all appropriate meetings.

1.2.7 Attend staff meetings, workshops or Council meetings in Marathon at the City Manager's request.

2. Term/Commencement Date.

2.1 This Agreement is effective upon execution by both parties. The term is from September 1, 2013 through September 1, 2015 unless earlier terminated in accordance with Paragraph 8.

3. Compensation and Payment.

3.1 For all professional services provided by Consultant described in Section 1, beginning September 1, 2013, the City shall pay Consultant an annual fee of \$60,000.00, payable in four (4) equal quarterly installments of \$15,000.

3.2 Consultant shall be entitled to reimbursement of expenses incurred as a result of its representation of the City. Such expenses may include long distance phone charges, use of on-line legislative and legal resources, copying and facsimile charges, postage and overnight delivery charges and other expenses related to representation of the City.

3.3 Consultant shall be reimbursed by the City for reasonable travel expenses provided such expenses are pre-approved by the City Manager in writing. If Consultant is traveling on behalf of several clients, the City shall be charged only its pro-rated portion of the costs incurred.

3.4 Reimbursement of costs and travel expenses shall be paid by the City to the Consultant upon approval of an invoice, including appropriate receipts and back-up documents.

3.5 Payments and reimbursements due under this section shall be paid by the City pursuant to the Florida Prompt Payment Act.

3.6 If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the Consultant the undisputed portion of the invoice. Upon written request of the Finance Director, the Consultant shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

4. **No Subconsultants or Assignment.**

4.1 Although this Agreement is with Consultant, the parties understand that the services of Consultant are personal in nature and that the following members of Consultant's firm shall be designated by Consultant to perform services under this Agreement is Brian D. Ballard.

4.2 In the event that any member of the firm can no longer perform services under this Agreement, Consultant shall immediately notify the City Manager and the City Manager shall have the right to immediately terminate this Agreement.

4.3 This Agreement shall not be subject to assignment by Consultant without prior written consent of the City.

5. **City's Responsibilities**

5.1 Furnish to Consultant, at the Consultant's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Consultant, in possession of the City.

6. **Consultant's Responsibilities**

6.1 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the work under this Agreement as is ordinarily provided by a professional under similar circumstances.

7. **Conflict of Interest.**

7.1 Consultant shall not be prohibited from representing or providing the like services to other persons and entities other than the City, so long as Consultant shall avoid any representation or relation that would create a conflict of interest, as determined by the City Attorney and City Council.

7.2 Consultant shall not take on any client or matter, which would jeopardize Consultant's ability to devote the time, resources, and effort necessary to fulfill its obligations to the City.

8. **Termination.**

8.1 Either party may terminate this Agreement without cause upon thirty (30) days written notice to the other.

8.2 The City may terminate this Agreement immediately with cause.

- 8.2 Upon receipt of the City's written notice of termination, Consultant shall stop all work on behalf of the City unless directed otherwise in writing by the City Manager.
- 8.3 In the event of termination, the City shall be obligated to pay the Consultant only for approved fees and costs incurred by the Consultant prior to the date of termination. If the Consultant has already received the quarterly fee payment, the Consultant shall refund a pro-rated percentage of the fee back to the City.

9. **Insurance.**

The Contractor shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by the City Manager. The underwriter of such insurance shall be qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida. If requested by the City Manager, the insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers. The insurance coverages shall include a minimum of:

- 9.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law. Consultants with Worker's Compensation exemption shall not hold City liable for employee injury or claims.
- 9.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$100,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 9.3 Professional Liability. The Consultant shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 9.4 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Certificates of Insurance shall include the City as additional insured or certificate holder. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

10. **Nondiscrimination.**

10.1 During the term of this Agreement, Consultant shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination

11. **Attorneys Fees and Waiver of Jury Trial.**

11.1 In the event of any litigation arising out of this Agreement each party shall be responsible for its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

11.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

12. **Indemnification.**

12.1 Consultant shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's performance or non-performance of any provision of this Agreement. Consultant shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Consultant's performance or non-performance of this Agreement.

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

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13. Notices/Authorized Representatives.

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

For the City: Roger T. Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, FL 33050  
305-289-4130

With a Copy to: John Herin, Jr., Esq.  
GrayRobinson, P.A.  
401 East Las Olas Boulevard, Suite 1850  
P.O. Box 2328 (33303-9998)  
Fort Lauderdale, FL 33301  
954-761-8111

For The Consultant: Mr. Brian D. Ballard, President  
Ballard Partners, Inc.  
403 East Park Avenue  
Tallahassee, FL 32301  
850-577-0444

14. Governing Law.

14.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court or the Southern District of Florida.

15. Entire Agreement/Modification/Amendment.

15.1 This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

15.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.



16. **Ownership and Access to Records and Audits.**

- 16.1 All records, books, documents, papers and financial information (the "Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City.
- 16.2 The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Consultant involving transactions related to this Agreement.
- 16.3 The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

17. **Severability.**

- 17.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor.**

- 18.1 The Consultant and its employees, volunteers and agents shall be and remain independent contractor and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

19. **Compliance with Laws.**

- 19.1 The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

20. **Waiver**

- 20.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

21. Survival of Provisions

21.1 Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

22. Prohibition Of Contingency Fees.

22.1 The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

23. Counterparts

23.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature: The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same and by Consultant by and through Brian D. Ballard, who has been duly authorized to execute same.

ATTEST:

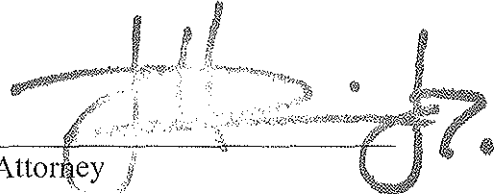
CITY OF MARATHON:

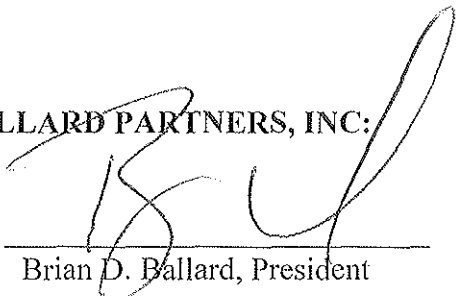
  
\_\_\_\_\_  
Diane Clavier, City Clerk

By:   
\_\_\_\_\_  
Roger T. Hernstadt, City Manager

Date: August 28, 2013

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

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

BALLARD PARTNERS, INC:  
By:   
\_\_\_\_\_  
Brian D. Ballard, President

Date: AUGUST 30, 2013