

**CITY OF MARATHON, FLORIDA
RESOLUTION 2003-139**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MARATHON, FLORIDA, APPROVING A PROJECT AGREEMENT
WITH KEITH & SCHNARS, P.A. FOR A 39TH STREET
STORMWATER IMPROVEMENT PLAN IN THE AMOUNT OF
\$31,300**

WHEREAS, the City Council adopted the 2003-2004 fiscal year budget with an appropriation of funds for a pilot stormwater project (the "Project") in the amount of \$325,000.00; and

WHEREAS, federal grant funding opportunities are available for the Project if engineering plans are submitted to the United States Environmental Protection Agency by December 15, 2003; and

WHEREAS, the City Council finds that the approval of a Project Agreement with Keith and Schnars, P.A. for engineering services for the Project is in the best interests of the City.

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

Section 1. The Project Agreement between Keith and Schnars and the City for engineering services provided on the 39th Street Stormwater Project in the amount of \$31,300.00, 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 approved. The City Manager is authorized to execute the agreement on behalf of the City.

Section 2. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the city of Marathon, Florida, this 10th day of November, 2003.

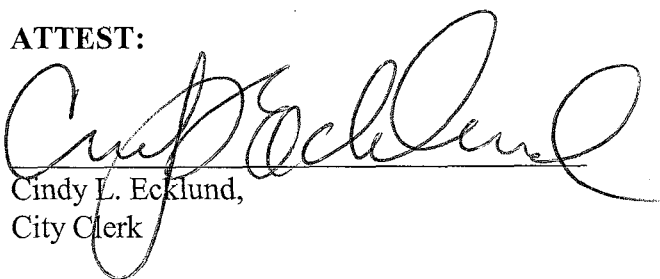
THE CITY OF MARATHON, FLORIDA



Randy Mearns, Mayor

AYES: Bartus, Pinkus, Repetto, Worthington, Mearns
NOES: None
ABSENT: None
ABSTAIN: None

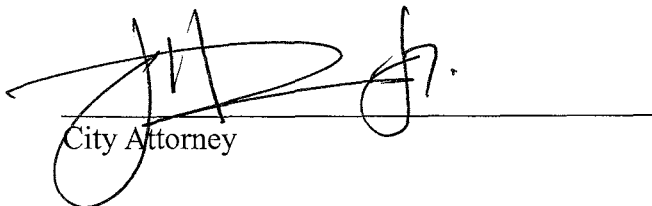
ATTEST:



Cindy L. Ecklund,
City Clerk

(City Seal)

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



City Attorney



KEITH and SCHNARS, P.A.
ENGINEERS - PLANNERS - SURVEYORS

EXHIBIT "A"

PROJECT AGREEMENT


Between

CITY OF MARATHON, FLORIDA

and

KEITH and SCHNARS, P.A.

for

Work Authorization No. 

39TH STREET STORMWATER IMPROVEMENT


PROJECT AGREEMENT
Between

THE CITY OF MARATHON, FLORIDA

and

KEITH and SCHNARS, P.A.

For

Work Authorization No. 

39TH STREET STORMWATER IMPROVEMENT

Pursuant to the provisions contained in the "Continuing Services Agreement" between the CITY OF MARATHON, FLORIDA (the "CITY") and KEITH and SCHNARS, P.A., ("CONSULTANT") dated June 21, 2002, this Project Agreement authorizes the CONSULTANT to provide the services as set forth below.

The CITY and CONSULTANT agree as follows:

SECTION 1. SCOPE OF SERVICES

1.1 The CONSULTANT shall provide services to the CITY for the Project as described in the "Project Description" attached as Exhibit "1."

1.2 The "Scope of Services" and tasks to be provided by the CONSULTANT for this Project are those services and tasks as listed in Exhibit "2."

1.3. The CITY may request changes that would increase, decrease, or otherwise modify the Scope of Services. Such changes must be contained in a written change order executed by the parties in accordance with the provisions of the Continuing Services Agreement, prior to any deviation from the terms of the Project Agreement, including the initiation of any extra work.

SECTION 2. DELIVERABLES

As part of the Scope of Services, the CONSULTANT shall provide to the CITY the following Deliverables: The CONSULTANT is to provide professional services associated with providing engineering plans for Drainage Improvements for 39th Street (Second Street).

SECTION 3. TERM/TIME OF PERFORMANCE/DAMAGE

3.1 **Term.** This Project Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect, unless otherwise terminated pursuant to Section 4 or other applicable provisions of this Project Agreement. The City Manager, in his sole discretion, may extend the term of this Agreement through written notification to the CONSULTANT. Such extension shall not exceed 30 days. No further extensions of this Agreement shall be effective unless authorized by the City Council.

3.2 **Commencement.** The CONSULTANT'S services under this Project Agreement and the time frames applicable to this Project Agreement shall commence upon the date provided in a written Notification of Commencement ("Commencement Date") provided to the CONSULTANT from the CITY. The CONSULTANT shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. CONSULTANT must receive written notice from the City Manager prior to the beginning the performance of services.

3.3 **Contract Time.** Upon receipt of the Notification of Commencement, the CONSULTANT shall commence services to the CITY on the Commencement Date, and shall continuously perform services to the CITY, without interruption, in accordance with the time frames set forth in the "Project Schedule," a copy of which is attached and incorporated into this Agreement as Exhibit "3". The number of calendar days from the Commencement Date, through the date set forth in the Project Schedule for completion of the Project shall constitute the Contract Time.

3.4 **Liquidated Damages.** Unless otherwise excused by the CITY in writing, in the event that the CONSULTANT fails to meet the contract time for completion of services as determined by the Project Schedule, the CONSULTANT shall pay to the CITY the sum of dollars identified below per day for each and every calendar day unexcused delay beyond the completion date, plus approved time extensions, until completion of the project: \$ 100 per day. The CONSULTANT may claim extension if the factors involved are not under their direct control.

Any sums due and payable hereunder by the CONSULTANT shall be payable, not as a penalty, but as liquidated damages representing and estimate at or before the time of executing this Agreement. When the CITY reasonably believes that completion will be inexcusably delayed, the CITY shall be entitled, but not required, to withhold from any amounts otherwise due the CONSULTANT an amount then believed by the CITY to be adequate to recover liquidated damages applicable to such delays.

If and when the CONSULTANT overcomes the delay in achieving completion, or any part thereof, for which the CITY has withheld payment, the CITY shall promptly release to the CONSULTANT those funds withheld, but no longer applicable, as liquidated damages.

3.5 All limitations of time set forth in this Agreement are of the essence.

SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION

4.1 **Lump Sum Compensation.** CITY agrees to pay CONSULTANT as compensation for performance of all services described in Exhibit "2" \$ 31,300.00

4.2 **Reimbursable Expenses.** The following expenses are reimbursable at their actual cost: travel and accommodations outside of Miami-Dade County, Broward County or Monroe County; long distance telephone calls; facsimile; courier services; mileage (as outlined in the Continuing Services Agreement); photo and reproduction services. All document reproductions are also reimbursable, at a rate approved by the CITY. CONSULTANT must obtain approval from the City Manager prior to incurring any expenditure under this sub-section. Travel time shall not be billed to the CITY unless written approval has been received by the City Manager.

SECTION 5. BILLING AND PAYMENTS TO THE CONSULTANT

5.1 **Invoices**

5.1.1 **Lump Sum Compensation and Reimbursable Expenses.** CONSULTANT shall submit invoices which are identified by the specific project number on a monthly basis in a timely manner. These invoices shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished in accordance with the Payment Schedule set forth in Exhibit "3" to this Project Agreement. Invoices for each phase shall not exceed amounts allocated to each phase of the Project plus reimbursable expenses accrued during each phase. The statement shall show a summary of fees with accrual of the total and credits for portions previously paid by the CITY. The CITY shall pay CONSULTANT within thirty (30) calendar days of approval by the City Manager of any invoices submitted by CONSULTANT to the CITY.

5.2 **Disputed Invoices.** In the event that all or a portion of an invoice submitted to the CITY for payment to the CONSULTANT is disputed, or additional backup documentation is required, the CITY shall notify the CONSULTANT within fifteen (15) working days of receipt of the invoice of such objection, modification or additional documentation request. The CONSULTANT shall provide the CITY with additional backup documentation within five (5) working days of the date of the CITY'S notice. The CITY may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CONSULTANT. The CITY, at its sole discretion, may pay to the CONSULTANT the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

5.3 **Suspension of Payment.** In the event that the CITY becomes credibly informed that any representations of the CONSULTANT, provided pursuant to Subparagraph 5.1, are wholly or partially inaccurate, or in the event that the CONSULTANT is not in compliance with any term or condition of this Project Agreement, the CITY may withhold payment of sums then or in the future otherwise due to the CONSULTANT until the inaccuracy, or other breach of Project Agreement, and the cause thereof, is corrected to the CITY'S reasonable satisfaction.

5.4 **Retainage.** The CITY reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due to the CONSULTANT until the project is completed. Said retainage may be withheld at the sole discretion of the City Manager and as security for the successful completion of the CONSULTANT'S duties and responsibilities under the Project Agreement.

5.5 **Final Payment.** Submission of the CONSULTANT'S invoice for final payment and reimbursement shall constitute the CONSULTANT'S representation to the CITY that, upon receipt from the CITY of the amount invoiced, all obligations of the CONSULTANT to others, including its consultants, incurred in connection with the Project, shall be paid in full. The CONSULTANT shall deliver to the CITY all documents requested by the CITY evidencing payments to any and all subcontractors, and all final specifications, plans, or other documents as dictated in the Scope of Services and Deliverable. Acceptance of final payment shall constitute a waiver of any and all claims against the CITY by the CONSULTANT.

SECTION 6. TERMINATION/SUSPENSION

6.1 **For Cause.** This Project Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONSULTANT abandons this Project Agreement or causes it to be terminated by the CITY, the CONSULTANT shall indemnify the CITY against any loss pertaining to this termination. In the event that the CONSULTANT is terminated by the CITY for cause and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 6.2 of this Project Agreement and the provision of Section 6.2 shall apply.

6.2 **For Convenience.** This Project Agreement may be terminated by the CITY for convenience upon fourteen (14) calendar days' written notice to the CONSULTANT. In the event of termination, the CONSULTANT shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding sub consultant obligations. The CONSULTANT shall be compensated for all services performed to the satisfaction of the CITY and for reimbursable expenses incurred prior to the date of termination. The CONSULTANT shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of Paragraph 5.1 of this Project Agreement. Under no circumstances shall the CITY make any payment to the CONSULTANT for services which have not been performed.

6.3 **Assignment upon Termination.** Upon termination of this Project Agreement, a copy of all of the CONSULTANT's work product shall become the property of the CITY and the CONSULTANT shall, within ten (10) working days of receipt of written direction from the CITY, transfer to either the CITY or its authorized designee, a copy of all work product in its possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the CONSULTANT pertaining to this Project Agreement. Further, upon the CITY'S request, the CONSULTANT shall assign its rights, title and interest under any subcontractor's agreements to the CITY.

6.4 **Suspension for Convenience.** The CITY shall have the right at any time to direct the CONSULTANT to suspend its performance, or any designated part thereof, for any reason whatsoever or without reason, for a cumulative period of up to thirty (30) calendar days. If any such suspension is directed by the CITY, the CONSULTANT shall immediately comply with same. In the event the CITY directs a suspension of performance as provided for herein through no fault of the CONSULTANT, the CITY shall pay to the CONSULTANT its reasonable costs, actually incurred and paid, of demobilization and remobilization, as full compensation for any such suspension.

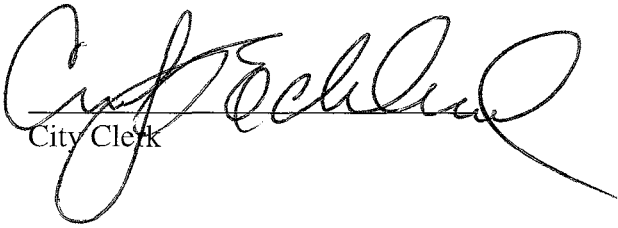
SECTION 7. INCORPORATION OF TERMS AND CONDITIONS OF CONTINUING SERVICE AGREEMENT

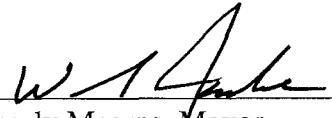
7.1 This Project Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement dated June 21, 2002 between the parties as though fully set forth herein. In the event that "any terms or conditions of this Project Agreement conflict with the Continuing Services Agreement, the provisions of this specific Project Agreement shall prevail and apply.

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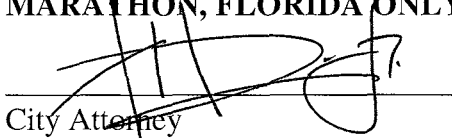
ATTEST:

CITY OF MARATHON, FLORIDA


City Clerk

By: 
Randy Mearns, Mayor
SCOTT JANICE, CITY MANAGER
Date: 11/13/03

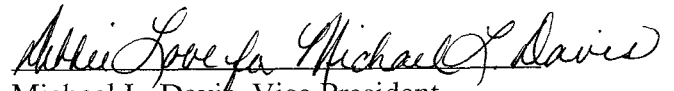
APPROVED AS TO FORM AND
LEGALITY FOR THE USE AND
RELIANCE OF THE CITY OF
MARATHON, FLORIDA ONLY.


City Attorney

ATTEST:

KEITH and SCHNARS, P.A.

Secretary


Michael L. Davis, Vice President
For Environmental and Planning

Please type name of Secretary

Date: 11/3/03

(CORPORATE SEAL)

WITNESSES:

Print Name: _____

Print Name: _____

N:\DATA\CIVIL\P2112.MK Marathon Drainage\P2112 Stormwater Improvement Agreement 10-24-03.rtf

Exhibit "1"

Project Description

39TH STREET STORMWATER IMPROVEMENT

The CONSULTANT is to provide professional services associated with providing engineering plans for Drainage Improvements for 39th Street (Second Street). The project site is situated, within the City of Marathon, Monroe County, Florida.

The CLIENT will provide CONSULTANT with; As-builts and right-of-way plats for the project. Obtaining all environmental surveys and permits are the responsibility of the CLIENT and are not part of this agreement.

Exhibit "2"

Scope of Services

39TH STREET STORMWATER IMPROVEMENT

1. PRELIMINARY DRAINAGE ANALYSIS

The CONSULTANT will meet with the CLIENT to clarify and define the CLIENT'S requirements for the project and review the available data. Based on the data collected, we will evaluate the existing site conditions in order to establish a viable design solution to correct the existing drainage deficiencies. The CONSULTANT will also perform the necessary hydraulic testing to properly size the stormwater management system for the project. We will also meet with the South Florida Water Management District and the City engineer in order to review the proposed improvements associated with the stormwater management system.

Following all preliminary drainage analysis, the CONSULTANT will make recommendations to the CLIENT as to the most economical solution to handle the site drainage requirements and prepare a preliminary cost estimate.

Based upon our findings and in effort to conform to the requirements of the City of Marathon, preliminary engineering plans for the above-referenced project will be prepared and forwarded to the CLIENT for review.

CONSULTANT'S lump sum fee for this service shall be\$6,200.00

2. FINAL CONSTRUCTION PLANS

The CONSULTANT will prepare detailed design plans necessary to facilitate the construction of the storm drainage system elements of the project. Services provided under this task will include:

- Design of the grading and drainage system, including catch basins, and storm drainage swales;
- Design of the stormwater management system, including drainage wells and any retention areas, if required;
- Preparation of engineering cost estimate.

CONSULTANT'S lump sum fee for this service shall be\$7,000.00

Exclusions: 1) The work items noted above do not include any work required for; roadway improvements, utility extensions, relocation of existing utilities if necessary to accommodate proposed design, or pump station design. If any site work is required, an additional services agreement will be prepared once the scope of service is identified. 2) Existing condition information, including utility locations are collected from various sources and are provided for

informational purposes only. The CLIENT has the option to request the CONSULTANT to provide locations through the use of a utility location sub-consultant prior to design or have the contractor verify utility locations prior to construction and provide the utility information to the CONSULTANT to verify the final utility design. The CONSULTANT shall not accept liability for utility misalignment unless this information is provided prior to construction.

3. K&S SURVEYING & MAPPING SERVICES

Issue Base Topographic Survey for Design and Permitting use:
Consultant shall prepare a Design Survey of 39th Street, also known as 2nd Street including a 100' intersection portion of Louisa Street. Services include the location of; roadway edge of pavement, drainage structures, as-builts of gravity utilities, trees, pavement markings and signage, and the location of permanent above ground improvements. Also, elevations shall be obtained along the roadway pavement edge and through the swales of the right-of-way, on a 50' interval with the high and low areas also obtained. Survey to be prepared in Auto CAD Format.

All Survey work shall conform to the Minimum Technical Requirements as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 61G17-6 of the Florida Administrative Code, pursuant to Section 472.027 Florida Statutes.

CONSULTANT’S Lump Sum fee for this service shall be.....\$10,500.00

4. PERMITTING SERVICES

Based on the approved construction plans, develop the permit application packages and process the permits as follows:

State Permits

South Florida Water Management District (SFWMD) – An *Environmental Resource Permit* will be required (ERP) for approval of constructed or modified Surface Water Management Systems and for dredging, filling, wetland mitigation and/or draining of any surface water feature during construction of the project. The ERP is a joint permit reviewed by the US Army Corp of Engineers (USACOE) and Florida Department of Environmental Protection (FDEP).

Florida Department of Environmental Protection (FDEP) – An *FDEP Class V Drainage Well Permit* will be required for stormwater drainage systems that incorporate drainage wells. Each drainage well requires a separate permit.

- Attend a pre-application meeting with SFWMD to review and discuss the proposed improvement design.
- Prepare one (1) application for SFWMD and submit with the applicable construction drawings and supporting documentation.

- Prepare one (1) application for City of Marathon permit and submit with the applicable construction drawings and supporting documentation.
- Respond to one (1) round of government and regulatory agency review comments and requests for additional information during the permit approval process.

CONSULTANT’S Lump Sum Fee for these services shall be \$1,600.00

5. CONSTRUCTION PHASE SUPPORT SERVICES

The CONSULTANT shall provide construction observation services necessary to certify to the regulatory agencies that the construction work has been completed in substantial compliance with the approved documents and permits.

Services included in this item are described as follows:

- Shop drawings: The CONSULTANT will review shop drawings, samples, other data and reports which the selected contractor is required to submit to the City for review, but only for the conformance with design concept of the project and compliance with the information given on the design drawings. Such review shall not extend to means, methods, techniques, sequence or procedures of construction or to safety precautions and programs incident thereto.
- Site Visits: CONSULTANT shall make visits to the site at intervals appropriate to the various stages of construction as CONSULTANT deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of the contractor(s)'s work. Minimum observations shall include:
 - Drainage well injectivity report observation;
 - Periodic storm sewer installation;
 - Final stormwater collection system inspection;
 - Final grading inspection.

CONSULTANT'S fee for these services will be invoiced on an hourly basis in accordance with the attached Professional Fee Schedule with an estimated fee of\$5,000.00.

6. FINAL CERTIFICATION

The CONSULTANT will prepare the final certification and process record drawings for the design from the survey and as-built information supplied by the contractor or by other means agreed to by both CONSULTANT and CLIENT and certified to the appropriate agencies.

NOTE: It is the contractor’s responsibility to schedule regulatory authorities for inspections and to notify the CONSULTANT of all inspections and testing. The CONSULTANT shall represent

the CLIENT to observe construction and to advise if the construction is in accordance with the approved plans. The contractor must obtain regulatory agency approval and forward this information to the CONSULTANT for final certification. The CLIENT and contractor shall process and prepare documents for dedication of improvements to regulatory authorities.

We anticipate the following items requiring as-built certification:

- Storm drainage system

CONSULTANT'S lump sum fee for this service shall be.....\$1,000.00

NOTE: Please be advised no construction certifications will be issued unless accounts receivables are current.

The undertaking by the CONSULTANT to perform professional services defined within this Agreement extends only to those services specifically described herein. If upon request of the CLIENT, the CONSULTANT agrees to perform additional services hereunder, the CLIENT shall be obligated to pay the CONSULTANT for the performance of such additional services an amount (in addition to all other amounts payable under this Agreement) based on an hourly fee in accordance with the CONSULTANT'S current professional fee schedule, plus reimbursable expenses as incurred by the CONSULTANT, unless a lump sum addendum to Agreement is executed by the parties to this Agreement which addresses the additional services.

Additional services shall include revisions to work previously performed that are required due to a change in the data or criteria furnished to the CONSULTANT, a change in the scope or concept of the project initiated by the CLIENT, or services that are required by changes in the requirements of public agencies after work under this Agreement has commenced.

If the preceding scope of services includes public agency permitting, our quoted fees/hours include services to respond to the agency's first RAI (Request for Additional Information). Additional agency requests or requirements shall be considered an increase to our scope of services.

ADDITIONAL SERVICES

Additional services will be provided upon the written request of the City Manager or his designee. CONSULTANT shall not be compensated for any services performed by CONSULTANT without the prior written approval of the CITY.

Exhibit "3"

Project Schedule

This Scope of Services does not include a Project Schedule.

EXHIBIT B
Professional Fee Schedule

CODE	JOB CLASSIFICATION	HOURLY RATE
02	Administrative Assistant.....	\$40.00
04	Community Liaison... ..	\$60.00
08	Economic/Financial Analyst	\$75.00
06	CADD Operator	\$65.00
11	Graphic Designer.....	\$60.00
29	Technician I.....	\$55.00
25	Technician II	\$65.00
36	Permit Coordinator.....	\$65.00
09	Scientist I.....	\$60.00
07	Scientist II	\$75.00
03	Scientist III	\$85.00
16	Associate Planner	\$60.00
12	Landscape Architect (RLA)/Chief Planner (AICP)	\$85.00
14	Landscape Designer	\$65.00
15	Planner (AICP).....	\$75.00
30	Transportation Planner	\$70.00
13	Field Representative	\$55.00
32	Senior Field Representative	\$65.00
19	Professional Engineer (PE)	\$95.00
17	Project Engineer/Designer.....	\$75.00
23	Senior Project Engineer.....	\$85.00
18	Project Manager I.....	\$90.00
24	Project Manager 11	\$100.00
26	Project Manager III	\$115.00
21	Senior Project Manager.....	\$135.00
22	Senior Member	\$200.00
	Vice President	\$275.00
20	Professional Land Surveyor (PSM).....	\$80.00
42	Survey Party	\$85.00
43	Specialized Survey Party.....	Call for quotation
	(Hydrographic/GPS/4 person, etc.)	