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**CITY OF MARATHON, FLORIDA  
RESOLUTION 2004-069**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A PROJECT AGREEMENT WITH KEITH & SCHNARS, P.A. IN THE AMOUNT OF \$8,000 TO PROVIDE ENGINEERING SERVICES RELATED TO A PRE-APPLICATION CONFERENCE FOR MAINTENANCE DREDGING AT THE ENTRANCE TO SISTER CREEK**

**WHEREAS**, the City of Marathon (the "City") has a continuing services agreement with Keith and Schnars, P.A. (the "Consultant") to provide design and engineering services to the City from time to time under individual project agreements; and

**WHEREAS**, in order to correct shoaling damage caused by Hurricane Georges in 1998, the entranceway at Sister Creek needs maintenance dredging in an area approximately 280 feet long by 50 feet wide to restore the historical water depth; and

**WHEREAS**, City residents and visitors to the City's waters utilize the channel for primary egress and ingress of Boot Key Harbor and many City residential sub-divisions; and

**WHEREAS**, a hydrographic survey, followed by a pre-application conference with the relevant permitting agencies, will be required to get approval for the dredging.

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

**Section 1.** The project agreement between the City of Marathon and Keith and Schnars, P.A. in an amount not to exceed \$8,000, 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.

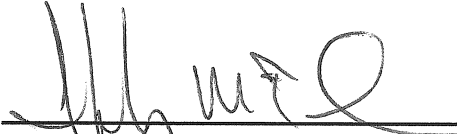
**Section 2.** The City Manager is authorized to execute the agreement on behalf of the City.

**Section 3.** Funds for this project shall be appropriated from the Infrastructure Fund.

**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 22<sup>rd</sup> day of June, 2004.

**THE CITY OF MARATHON, FLORIDA**



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**Jeffrey M. Pinkus, Mayor**

AYES: Bartus, Bull, Mearns, Miller, Pinkus  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

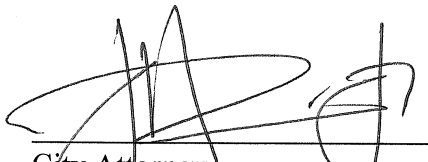


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Cindy L. Ecklund  
City Clerk

(City Seal)

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



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City Attorney



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

**EXHIBIT "A"**

Between

CITY OF MARATHON, FLORIDA

and

KEITH and SCHNARS, P.A.

for

Work Authorization No. \_\_\_\_\_

SISTER'S CREEK MITIGATION RESTORATION

**PROJECT AGREEMENT**

Between

**THE CITY OF MARATHON, FLORIDA**

and

**KEITH and SCHNARS, P.A.**

For

Work Authorization No. \_\_\_\_\_

**SISTER'S CREEK MITIGATION RESTORATION**

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 Project Schedule" 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 a work product of the Scope of Services, the CONSULTANT shall provide to the CITY the following Deliverables: results of the bathymetric survey.

### **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 to 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: \$ 100.00 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" \$8,000.00.

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 subsection. 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.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.]



ATTEST:

CITY OF MARATHON, FLORIDA

City Clerk

By:

Scott Janke, City Manager

Date:

6/23/04

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  
Environmental and Government Affairs

Please type name of Secretary

Date:

6/16/07

(CORPORATE SEAL)

WITNESSES:

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_



## Exhibit "1"

### **Project Description**

The CONSULTANT is to provide professional services to determine agency support for a potential dredging project in the Sister's Creek boat channel. The CONSULTANT will assist the CLIENT by attending a joint pre-application meeting with the applicable regulatory and advisory agencies. The CONSULTANT will provide an ocean bottom survey to identify the mean water depth and extent of silting within the boat channel to the point where the boat channel reaches a mean water depth of seven feet.



Exhibit "2"

**Scope of Services**

**1.0 ENVIRONMENTAL SERVICES**

1.1. Pre-application Meeting

The CONSULTANT will assist the CLIENT by attending a joint pre-application meeting with representatives from the Florida Department of Environmental Protection, the U.S. Army Corps of Engineers, the Florida Keys National Marine Sanctuary, and the Monroe County Marine Resources. In preparation for this meeting the CONSULTANT will prepare graphical materials illustrating the location of proposed area to be dredged for Sisters Creek. Results of a bathymetric survey completed under task 2.0 will be available for this meeting

CONSULTANT'S Lump Sum Fee for this service shall be .....\$2,500.00

**2.0 SURVEYING SERVICES**

2.1. Hydrographic Survey

The CONSULTANT shall perform a Hydrographic Survey which includes the bottom contours of a portion of **Sister's Creek, lying adjacent to Sombrero Beach. The approximate limits of the subject site shall extend offshore +/- 1500 feet southwest of the shoreline of Sombrero Beach** and westerly approximately 300 feet across the mouth of Sister's Creek. Elevations shall be relative to the National Geodetic Vertical Datum of 1929(NGVD1929). This fee is based on limited mobilization cost in light of CONSULTANT'S undertaking of similar work with the Sombrero Beach Project.

CONSULTANT'S Lump Sum Fee for this service shall be.....\$5500.00

**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**

CONSULTANT shall commence work from the time of receipt of Notice to Proceed. Completion date from the commencement date is estimated as 60 calendar days.

**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.)

## EXHIBIT B

Direct Expenses	Cost per Unit
Photographic Copies	
<ul style="list-style-type: none"> <li>• Color Copies               <ul style="list-style-type: none"> <li>a). 8.5" x 11" <span style="float: right;">\$ 1.00</span></li> <li>b). 8.5" x 14 or 11"x 17" <span style="float: right;">\$ 2.00</span></li> <li>c). 24"x 36" <span style="float: right;">\$18.00</span></li> </ul> </li>   <li>• Black &amp; White Copies               <ul style="list-style-type: none"> <li>a). Any Size up to 11"x17" <span style="float: right;"><del>\$ 0.15</del> \$0.00</span></li> <li>b). 24"x 36" Blackline <span style="float: right;">\$ 2.00</span></li> <li>c). 30" x 42" Blackline <span style="float: right;">\$ 2.00</span></li> <li>d). 24" x 36" Sepia <span style="float: right;">\$ 8.00</span></li> <li>e). 24"x 36" Mylar <span style="float: right;">\$15.00</span></li> </ul> </li> </ul>	
Laminating/Transparency Film Covers	\$ 2.00
Display Boards	
<ul style="list-style-type: none"> <li>• Mounted (Foam) 30"x 40" <span style="float: right;">\$42.00</span></li> <li>• Mounted (Foam) 40"x 60" and larger <span style="float: right;">\$70.00</span></li> </ul>	
3 Ring Binders 1"	\$ 1.00
Dividers (Tabs) Set of 10	\$ 0.80
Acco/GBC Binding	\$ 1.50
Facsimiles	<del>\$ 2.00</del> \$0.00
Overnight Packages/Courier & Delivery Services	\$20.00
Postage: 1 <sup>st</sup> Class	<del>Current US Postal rate</del> \$0.00
Mileage:	<del>\$ 0.37/mile</del> \$0.00

*Any other expenses will be billed at cost plus 10% carrying charge.*

**\*\*NOTE:** Typical other reimbursable expenses include travel, lodging, and meals when traveling on the CLIENT'S behalf, identifiable communication expenses, all reproduction costs, and special accounting expenses not applicable to general overhead.