

Sponsored by: Janke

**CITY OF MARATHON, FLORIDA
RESOLUTION 2004-072**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO CONTRACT WITH CIMA ENGINEERING CORP., IN THE AMOUNT OF \$35,900 FOR COMPLETION OF SIX HANDICAP PARKING SPACES AND RELATED SIGNAGE AT SOMBRERO BEACH

WHEREAS, the City of Marathon (the "City") extended an invitation to bid for six (6) handicap parking spaces at Sombrero Beach which closed on June 17, 2004; and

WHEREAS, two (2) bid packages were received and Homestead Concrete and Drainage submitted a bid of \$37,250 and CIMA Engineering Corp. submitted a bid of \$35,900; and

WHEREAS, the City received a Tourist Development Council grant in the amount of \$13,500 for the Sombrero Beach Handicap Parking project with the funding coming out of the Street Maintenance Fund; and

WHEREAS, CIMA Engineering Corp. is the lowest most responsible and responsive bidder.


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

Section 1. The contract between the City of Marathon and CIMA Engineering Corp. for completion of six (6) handicap parking spaces and signage at Sombrero Beach as delineated on ITB # 05-2004-#2 in the amount of \$35,900, 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. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the city of Marathon, Florida, this 13th day of July, 2004.

THE CITY OF MARATHON, FLORIDA



Jeffrey M. Pinkus, Mayor

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

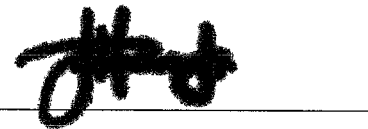
ATTEST:



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

**CONTRACT FOR
HANDICAP PARKING PROJECT**

THIS CONTRACT is made this 13 day of July, 2004 by and between the City of Marathon, Florida (the "City") and CIMA Engineering Corp (the "Contractor").

The parties, for the consideration provided for below, mutually agree as follows:

2.1. **SCOPE OF WORK-** The Contractor shall furnish all labor, materials, supervision, equipment, supplies, and incidentals required to perform the "Scope of Work" in Bid # 05/2004-#2.

2.2. **COMPENSATION/PAYMENT-**

2.2.1. The Contractor shall be compensated for final completion of the Work the total lump sum of Thirty-five thousand, nine hundred dollars and 00/100 (\$35,900).

2.2.2. The City shall make payment of approved amounts due, as required under the Florida Prompt Payment Act. No payments shall be due or payable for Work not performed or materials not furnished.

2.3. **TERM -**

2.3.1 This Contract shall be effective upon execution by both parties and shall continue for 60 days. The City may extend the Contract upon the sole discretion of the City Manager.

2.3.2 The Contractor shall initiate work on the Project upon receipt of a written Notice to Proceed by the City Manager or his designee. The Contractor shall complete the Work within 30 days of the commencement date in the Notice to Proceed.

2.3.3 The Contractor shall not be entitled to seek any damages for delay, whether such damages are caused by the Contractor, the City, an act of God or for any other reason. The term may be extended by the City Manager in the event of an unforeseeable act of God.

2.3.4 The Contractor shall request in writing for an extension of time to complete the Work, provided to the City Manager within seven (7) days of the events giving rise to the delay.

2.4. **CONTRACTOR'S DUTY TO INSPECT-** The Contractor has carefully examined the described areas for the Work contemplated in Section 4 of the Bid documents and has made sufficient tests and other investigations to fully satisfy itself as to site conditions, and assumes full responsibility therefore. The Contractor shall be responsible for the repair or replacement of any property damaged by the Contractor.

2.5. **NON-WAIVER**- The approval or acceptance of any part of the Work by the City shall not operate as a waiver by City of any other terms and conditions of the Contract.

2.6. **PROTECTION OF PROPERTY AND THE PUBLIC**- The Contractor shall continuously maintain adequate protection of all its Work from damage and shall protect public and private property from injury or loss arising in connection with this contract as follows:

2.6.1. The Contractor shall take all necessary precautions for the safety of employees in the performance of the Work on, about or adjacent to the premises where the Work is being performed, and shall comply with all applicable provisions of Federal, State, and local laws, including, but not limited to the requirements of the Occupational Safety and Health Act of 1970, and amendments thereto, the Construction safety Act of 1969, and amendments thereto, and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed.

2.6.2. The Contractor shall erect and properly maintain at all times, all necessary safeguards, including sufficient lights and danger signals on or near the Work, from sunset to sunrise, suitable railings, barricades, or other hazards or other protective devices about unfinished work, open trenches, embankments, or other hazards and obstructions to traffic; provide all necessary security staff on the Work by day or by night for the safety of the public; and take all necessary precautions to prevent accidents and injuries to persons or property on or near the Work.

2.6.3. The Contractor shall be completely responsible for, and shall replace and make good all loss, injury, or damage to any property (including landscaping, walks, drives, or structures of the City and of any land adjoining any work sites) which may be caused by Contractor. The Contractor shall, at all times while the Work is in progress, use extraordinary care to see that adjacent property, whether real or personal, is not endangered in any way by reason of fire, water, or construction operations, and shall take all necessary or directed steps, to protect the property. The same care shall be exercised by all Contractor's and subcontractor's employees.

2.6.4. Buildings, sidewalks, fences, shade trees, lawns and all other improvements shall be duly protected from damage by Contractor. Property obstructions, such as sewers, drains, water or gas lines, conduits, railroads, poles, walls, posts, galleries, bridges, manholes, valve boxes, meter boxes, street monuments, etc., shall be carefully protected from injury and shall not be displaced. The Contractor shall give due notice to any department or public service corporation controlling such items as manholes, valve boxes, meter boxes, street monuments, etc., prior to adjusting them to grade and shall be held strictly liable to the affected utility if any such appliances are disturbed, damaged or covered up during the course of the Work.

2.7. **INDEMNIFICATION-**

2.7.1. The Contractor shall indemnify and hold harmless the City, its officers, agents and employees from and against all liability, claims, damages, losses and expenses, including reasonable attorney's fees and costs at both trial and appellate levels arising out of or resulting from the performance of Work under this contract, caused by any act or omission of the Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable.

2.7.2. This indemnification obligation shall survive the termination of this Contract.

2.7.3. The Contractor shall defend the City or provide for such defense, at the City's option.

2.7.4. The Contractor shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by him, on the Work. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this contract. Contractor shall secure and pay for all permits, fees, licenses, and inspections necessary for the execution of the Work, and upon termination of this contract for any reason, Contractor shall transfer such permits, if any, and if allowed by law, to the City.

2.8. **CONTRACT DOCUMENTS-** The following documents shall, by this reference, be considered part of this Contract:

Instructions to Bidders;
All Addendums;
Contract;
Bid Form;
Scope of Work/Specifications;
Qualification Statement;
Insurance Certificates; and
Bonds.

2.9. **CONTRACTOR'S EMPLOYEES-**

2.9.1. The Contractor shall at all times have a competent supervisor on site who thoroughly understands the Work, who shall, as the Contractor's agent, supervise, direct and otherwise conduct the Work. Contractor's employees shall serve the public in a courteous, helpful, and impartial manner.

2.9.2. Contractor's employees shall wear a clean uniform that provides identification of both the Contractor's company and the name of the employee.

2.9.3. Contractor shall, upon receipt of a written request from the City Manager, immediately exclude any employee of Contractor from providing Work under this Contract.

2.9.4. The Work contemplated in this Contract is on public property, accordingly no alcoholic beverages shall be allowed.

2.9.5. The same care shall be exercised by all Contractor's and subcontractor's employees.

2.10. **VEHICLES AND EQUIPMENT-** Contractor shall have on hand at all times and in good working order such vehicles, machinery, tools, accessories, and other items necessary to perform the Work under this Contract. All vehicles used by Contractor to provide services under this Contract shall be painted uniformly with the name of Contractor, business telephone number, and the number of the vehicle in letters legible by the public. The City Manager may require the repair or replacement of equipment as reasonably necessary. No other advertising shall be permitted on the vehicles.

2.11. **INSURANCE-** Contractor shall secure and maintain throughout the duration of this Contract, insurance of such type and in such amounts necessary to protect its interest and the interest of the City against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida, be rated AB or better, and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers, and naming the City as an additional insured. Any insurance maintained by the City shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include a minimum of:

2.11.1 **Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$500,000.00 each accident.

2.11.2 **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the Contractor and the City against claims for injuries to members of the public and/or damages to property of others arising from the Contractor's use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000.00 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 endorsement, as filed by the Insurance Services Office.

2.11.3 **Commercial General Liability.** This insurance shall be written in comprehensive form and shall protect the Contractor and the City against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the Contractor or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000.00 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 Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

2.11.4 **Certificate of Insurance:** Contractor shall provide the City Manager with Certificates of Insurance for all required policies. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Contract and shall state that such insurance is as required by this Contract. The City reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the City. If a policy is due to expire prior to the completion of the services, renewal Certificates of Insurance or policies shall be furnished thirty (30) calendar days prior to the date of their policy expiration. 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. Acceptance of the Certificate(s) is subject to approval of the City Manager.

2.11.5 **Additional Insured** - The City is to be specifically included as an Additional Insured for the liability of the City resulting from operations performed by or on behalf of Contractor in performance of this Contract. Contractor's insurance, including that applicable to the City as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the City shall be in excess of and shall not contribute to Contractor's insurance. Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

2.11.5 All deductibles or self-insured retentions must be declared to and be approved by the City Manager. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

2.12. **ASSIGNMENT AND AMENDMENT-** No assignment by the Contractor of this contract or any part of it, or any monies due or to become due, shall be made, nor shall the Contractor hire a subcontractor to perform its duties under this Contract without prior written approval of the City Manager. This Contract may only be amended by the parties with the same formalities as this Contract.

2.13. **TERMINATION-**

2.13.1. The City may terminate this Contract without cause upon 5 days written notice to the Contractor.

2.13.2. Upon notice of such termination, the City shall determine the amounts due to the Contractor for services performed up to the date of termination. The Contractor shall not be entitled to payment of any lost profits or for Work performed after the date of termination.

2.13.3. After receipt of a notice of termination, and except as otherwise directed, the Contractor shall stop all Work under this Contract, and shall do so on the date specified in the notice of termination.

2.13.4. The City may terminate this Contract upon five (5) days written notice if the Contractor defaults on any material term of this Contract.

2.14. **CHOICE OF LAW-** This Contract shall be governed by the laws of the State of Florida. Venue shall lie in Monroe County.

2.15. **ATTORNEY'S FEES-** In the event either party to this Contract is required to retain legal counsel to enforce any of its rights under this Contract, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party together with court costs incurred in any litigation at any trial and appellate proceedings.

2.16. **ACCESS TO PUBLIC RECORDS-** Contractor shall comply with the applicable provisions of Chapter 119, Florida Statutes. The City shall have the right to immediately terminate this contract for the refusal by the Contractor to comply with Chapter 119, Florida Statutes. The Contractor shall retain all records associated with this Contract for a period of three (3) years from the date of Termination.

2.17. **INSPECTION AND AUDIT-** During the term of this Contract and for three (3) years from the date of Termination the Contractor shall allow City representatives access during reasonable business hours to Contractor's records related to this Contract for the purposes of inspection or audit of such records. If upon audit of such records, the City determines the Contractor was paid for services not performed, upon receipt of written demand by the City, the Contractor shall remit such payments to the City.

2.18. **SEVERABILITY-** If a term, provision, covenant, contract or condition of this contract is held to be void, invalid, or unenforceable, the same shall not affect any other portion of this contract and the remainder shall be effective as though every term, provision, covenant, contract or condition had not been contained herein.

2.19. **WAIVER OF JURY TRIAL.** The parties irrevocably, knowingly agree to waive their rights to a trial by jury in any action to enforce the terms or conditions of this Contract.

2.20. **COUNTERPARTS**- This Contract may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

2.21. **NOTICES**- Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to:

For City:

City of Marathon
10045-55 Overseas Highway
Marathon, Florida 33050
Attention: Scott Janke, City Manager
Telephone: (305) 743-0033
Facsimile: (305) 743-3667

For Contractor

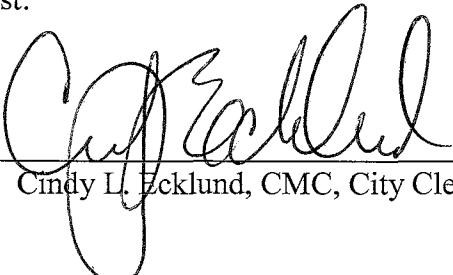
CIMA Engineering Corp.
7420 SW 33 Street
Miami, Florida 33155
Jose A. Gonzalez

IN WITNESS WHEREOF the parties hereto have executed this Contract on the day and date first above written.

Attest:

CITY OF MARATHON

By:

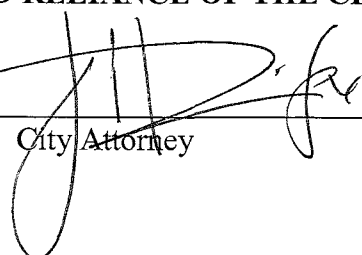

Cindy L. Ecklund, CMC, City Clerk

By:

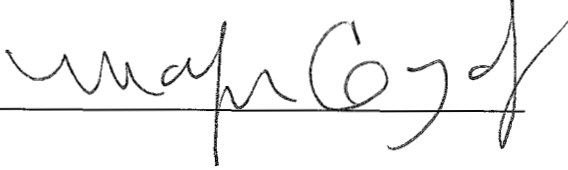

W. Scott Janke, City Manager

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

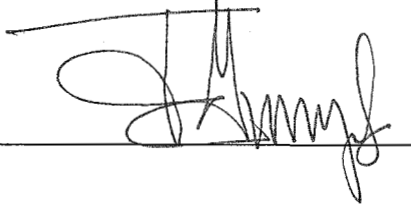
By:


City Attorney

Signed, sealed and witnessed in the presence of:

By: 

As to Contractor:

By: 

(* In the event that the Contractor is a corporation, there shall be attached to each counterpart a certified copy of a resolution of the board of the corporation, authorizing the officer who signs the contract to do so in its behalf.