

Sponsored by: Janke

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2004-073**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH KEITH AND SCHNARS, P. A., IN THE AMOUNT OF \$13,600 TO PROVIDE ENGINEERING SERVICES AND CONSTRUCTION DESIGN OF SOMBRERO BEACH SWIMMING BUOY INSTALLATION**

**WHEREAS**, the Sombrero swimming beach requires a delineation of an area on the water in order to provide a safe boat free area for users of the beach; and

**WHEREAS**, marker buoys and line floats with permanent anchors need to be installed in the State Sovereign Submerged ocean bottom; and

**WHEREAS**, a permit is necessary for this installation from several State and Federal agencies; and

**WHEREAS**, the permit requires surveys, engineering and design of the installation prior to construction; and

**WHEREAS**, Keith and Schnars, P.A. has proposed to conduct the necessary surveys, engineering and design for the permits within 60 days of commencement; and

**WHEREAS**, a City Ordinance for this swim area and boater exclusionary zone has been enacted previously; and

**WHEREAS**, the City wishes to enter into an agreement with Keith and Schnars for the amount of \$13,600 to provide the professional services required for the permits.

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

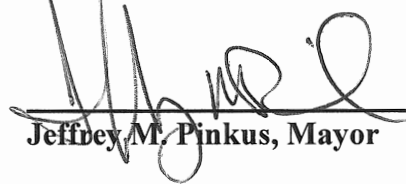
**Section 1.** The Agreement between the City of Marathon and Keith and Schnars, P.A. for professional services surrounding the installation of swim buoys at Sombrero Beach, a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is approved.

**Section 2.** The City Council has appropriated matching funds for a grant from the Monroe County Tourist Development Council for implementing the terms and conditions of the Agreement.

**Section 5.** 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**



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**Jeffrey M. Pinkus, Mayor**

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

**ATTEST:**

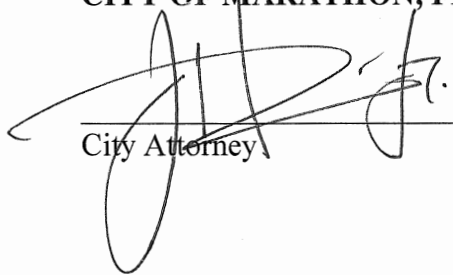


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Cindy L. Ecklund, City Clerk

(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. \_\_\_\_\_

SOMBRERO BEACH SWIM BUOY INSTALLATION

**PROJECT AGREEMENT**

Between

**THE CITY OF MARATHON, FLORIDA**

and

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

For

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

**SOMBRERO BEACH SWIM BUOY INSTALLATION**

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 part of the Scope of Services and Project Schedule, the CONSULTANT shall provide to the CITY the following Deliverables: Civil Plans, copy of the Environmental Joint Resource Permit Application, and other pertinent written materials.

## **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.

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" \$13,600 .00.

4.2 **Estimate Fee Compensation.** CITY agrees to pay CONSULTANT'S estimated fee for civil design coordination services up to \$1,500.00 as invoiced on an hourly basis. Fees incurred beyond this estimate will require a supplement with the CITY.

4.3 **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.

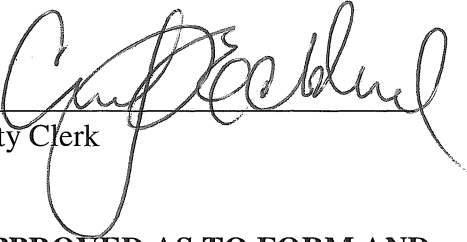
6.4 **Suspension for Convenience.** The CITY shall have the right at any time to direct the CONSULTANT to suspend its performance, or any designated part thereof, for any reason whatsoever or without reason, for a cumulative period of up to thirty (30) calendar days. If any such suspension is directed 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.

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ATTEST:

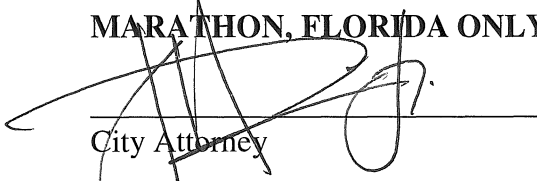
  
\_\_\_\_\_  
City Clerk

CITY OF MARATHON, FLORIDA

By:   
\_\_\_\_\_  
Scott Janke, City Manager

Date: 7/19/04

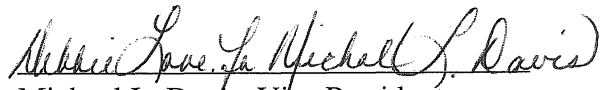
APPROVED AS TO FORM AND  
LEGALITY FOR THE USE AND  
RELIANCE OF THE CITY OF  
MARATHON, FLORIDA ONLY:

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

ATTEST:

\_\_\_\_\_  
Secretary

KEITH and SCHNARS, P.A.

  
\_\_\_\_\_  
Michael L. Davis, Vice President  
Environmental and Government Affairs

\_\_\_\_\_  
Please type name of Secretary

Date: 7/1/04

(CORPORATE SEAL)

WITNESSES:

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

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

## Exhibit "1"

### **Project Description**

The CONSULTANT is to provide professional services to prepare civil plans and to provide environmental services for the installation of swim buoy markers for the swim area of Sombrero Beach in the City of Marathon. Permitting assistance will be provided and civil plans will be prepared to identify the improvements needed to construct an open water swim area located approximately 400' offshore with buoy markers located 50' to 75' apart. This project will require environmental services for permitting, ocean bottom survey services to identify the mean water depth and average tide ranges for buoy placement, and civil engineering services to create design plans for construction.

Exhibit "2"

**Scope of Services**

**1.0 ENVIRONMENTAL SERVICES**

**1.1 Site Investigation**

The CONSULTANT will perform one underwater site inspection to inspect along the swim buoy line established under task 2.0 to determine the presence any endangered benthic resources.

Services for Task 1.1 can be provided on Lump Sum basis with a cost of .....2,400.00. In addition, the CLIENT will be billed for reimbursable expenses such as equipment rentals.

**1.2. Permit Application Assistance**

The CONSULTANT will assist the CLIENT in preparation of a Joint Application for Environmental Resource Permit/Authorization to use State Owned Submerged Lands (ERP) It is anticipated that the project will qualify for an Exception (Florida Department of Environmental Protection), a Nationwide Permit #1 (U.S. Army Corps of Engineers), and a Consent of Use for Submerged Lands (Florida Department of Environmental Protection). The CLIENT will submit the ERP and will respond to Requests for Additional Information (RAI) from each agency. The CLIENT will also provide copies of the permit to the U.S. Fish and Wildlife Service and the Florida Keys Marine Sanctuary agencies for review of the proposed project for an issuing of 'Letter of Review'.

Services for Task 1.2 can be provided on a Lump Sum basis with a cost of .....\$1,200.00. Permit application fees are not included in this cost.

**2.0 SURVEYING SERVICES**

Consultant shall perform a survey approximately 1700 feet along Sombrero Beach, extending approximately 400 feet out from the swimming beach shoreline. Services shall include a depth contour survey with GPS coordinates, along the designated swim buoy lane. Services include the location of the Mean High Water Line elevation as determined by the Florida Department of Environmental Protection. Elevations shall be relative to the National Geodetic Vertical Datum of 1929(NGVD 1929).

Consultant's Lump Sum Fee for this service shall be.....\$7,000.00

**3.0 CIVIL ENGINEERING SERVICES**

**3.1 DESIGN OF CIVIL PLANS FOR A BUOYED SWIM AREA**

Civil engineering services will include preparation of plans for the installation of marker buoys as defined by survey under task 2.0. The plans will include a layout of buoy anchor sites and corresponding coordinates (GPS) and existing buoy line bottom topography as provided with survey portion of this proposal, and detailed information for installation of the buoys. Engineering specifications will emphasize Sea Turtle friendly design. Site specific information such as sounding depths and survey will be provided through acceptance of survey services included in this proposal.

CONSULTANT’S Lump Sum Fee for this service shall be .....\$3,000.00.

**3.2 CIVIL DESIGN COORDINATION SERVICES**

The CONSULTANT proposes to provide services for coordinating with client and permitting agencies, to be billed hourly, based upon an estimated budget amount. If the actual hours exceed the amount budgeted, the CONSULTANT reserves the right to request additional fees for extended services.

CONSULTANT’S hourly budgeted fee for these services shall be .....\$1,500.00.

.....

**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 60 calendar days for Tasks 1.1, 2.0, 3.1, and 3.2. The completion date for Task 1.2 (Permitting Services) shall be fifteen working days after the completion of the above listed tasks.





**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	
• Color Copies	
a). 8.5" x 11"	\$ 1.00
b). 8.5" x 14 or 11"x 17"	\$ 2.00
c). 24"x 36"	\$18.00
• Black & White Copies	
a). Any Size up to 11"x17"	\$ 0.00
b). 24"x 36" Blackline	\$ 2.00
c). 30" x 42" Blackline	\$ 2.00
d). 24" x 36" Sepia	\$ 8.00
e). 24"x 36" Mylar	\$15.00
Laminating/Transparency Film Covers	\$ 2.00
Display Boards	
• Mounted (Foam) 30"x 40"	\$42.00
• Mounted (Foam) 40"x 60" and larger	\$70.00
3 Ring Binders 1"	\$ 1.00
Dividers (Tabs) Set of 10	\$ 0.80
Acco/GBC Binding	\$ 1.50
Facsimiles	\$ 0.00
Overnight Packages/Courier & Delivery Services	\$20.00
Postage: 1 <sup>st</sup> Class	\$ 0.00
Mileage:	\$ 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 outside of Monroe, Dade or Broward counties, identifiable communication expenses, all reproduction costs, and special accounting expenses not applicable to general overhead.