

**CITY OF MARATHON, FLORIDA
RESOLUTION 2023-07**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE PROFESSIONAL SERVICE AGREEMENT BETWEEN THE CITY AND CUMMINS CEDERBERG COSTAL & MARINE ENGINEERING. FOR MARINE ENGINEERING DESIGN SERVICES ASSOCIATED WITH THE RE-DEVELOPMENT OF THE QUAY PROPERTY IN AN AMOUNT NOT TO EXCEED \$129,400.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND EXPEND FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in October of 2018, the City purchased the Quay property, the property will be re-developed to provide a park as laid out from citizens input in various workshops held; and

WHEREAS, as part of the re-development, the existing seawall and shoreline need to be repaired and or replaced for the continuous safe use of the site; and

WHEREAS, the City will be working with Cummins Cederberg Costal & Marine Engineering, a Continuing Services Contractor to complete the project; and

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

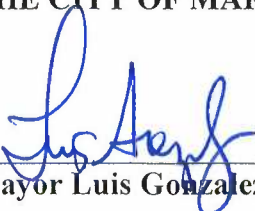
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby authorizes the approval of a Project Specific Agreement between the City of Marathon and the Cummins Cederberg Costal & Marine Engineering attached hereto as Exhibit "A", together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is hereby approved. The City Manager is authorized to execute the Agreement and expend funds on behalf of the City.

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

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 10th DAY OF JANUARY, 2023

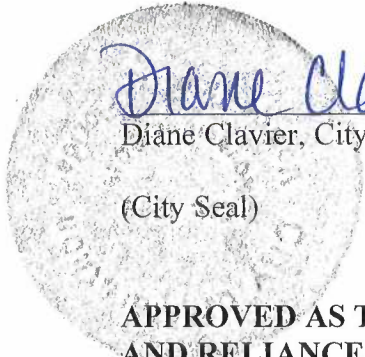
THE CITY OF MARATHON, FLORIDA



Mayor Luis Gonzalez

AYES: Landry, Matlock, Smith, Still, Gonzalez
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier

Diane Clavier, City Clerk

(City Seal)

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

St. Williams

Steven Williams, City Attorney

EXHIBIT A

EXHIBIT "A"
PROJECT SPECIFIC AGREEMENT

PROFESSIONAL ENGINEERING SERVICES

FOR

The Quay Property Seawall and Shoreline Restoration

PROJECT SPECIFIC AGREEMENT
Between
THE CITY OF MARATHON, FLORIDA
And
Cummins Cederberg Costal & Marine Engineering
For
PROFESSIONAL ENGINEERING SERVICES
FOR
THE QUAY PROPERTY Seawall and Shoreline Restoration

Pursuant to the provisions contained in the “Continuing Services Agreement” between the City of Marathon, Florida (the “City”) and Bermello Ajamil & Partners, Inc., (the “Consultant”) dated March 10, 2020; this Project Specific Agreement authorizes the Consultant to provide the services as set forth below:

SECTION 1. SCOPE OF SERVICES

1.1 The CONSULTANT shall provide engineering services to the CITY for the Project as described in the “Project Description” included in 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 included in Exhibit “1”.

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

2.1 As part of the Scope of Services and Project Schedule, the Consultant shall provide to the City the following Deliverables as included in Exhibit “1”.

SECTION 3. TIME OF PERFORMANCE/DAMAGE

3.1 **Commencement.** The CONSULTANT’S services under this Project Agreement and the time frames applicable to this Project Agreement shall commence upon the date provided this agreement. The CONSULTANT shall not incur any expenses or obligations for payment to third parties prior to the execution of the agreement by all parties.

3.2 **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," as noted in Exhibit "1". The number of calendar days from the Commencement Date, through the date set forth in the Project Schedule for completion of the Project or the date of actual completion of the Project, whichever shall last occur, shall constitute the Contract Time.

3.3 **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: \$ N/A 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.

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

SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION

4.1 **Compensation.** CITY agrees to pay CONSULTANT as compensation for performance of all services described in Exhibit "1" **\$129,400.00** plus reimbursable expenses not to exceed **\$N/A**. Total not to exceed amount for this Work Authorization is **\$129,400.00**[OR, IF HOURLY, "CITY AGREES TO PAY CONSULTANT COMPENSATION AT CONSULTANT'S HOURLY RATES, UP TO A MAXIMUM AMOUNT NOT TO EXCEED \$].

4.2 **Reimbursable Expenses.** The following expenses are reimbursable at their actual cost: travel and accommodations, long distance telephone calls, facsimile, courier services, mileage (at a rate approved by the CITY), photo and reproduction services. All document reproductions are also reimbursable, at a rate approved by the CITY. N/A

SECTION 5. BILLING AND PAYMENTS TO THE CONSULTANT

5.1 Invoices

5.1.1 **Monthly Billing.** 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 personnel performing the work, the time worked and the total billing in accordance with the work performed during the period. Invoices will show the total amount billed against this work authorization and shall not exceed the not-to-exceed amount without authorization from 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.** N/A

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 subconsultant 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. COMPLIANCE WITH LAW

7.1 **COMPLIANCE WITH LAWS** – The parties shall comply with all applicable local, state and federal laws and guidelines relating to the services that are subject to this Agreement. Federal regulations apply to all of the City of Marathon contracts using Federal funds as a source for the solicitation of goods and services. The following Federal requirements apply to this Emergency Agreement:

7.2 **ACCESS BY THE GRANTEE, SUBGRANTEE, FEDERAL GRANTOR AGENCY AND COMPTROLLER GENERAL:** The Contractor shall allow access by the grantee, subgrantee, Federal grantor agency and Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions.

7.3 **CLEAN AIR AND WATER ACTS:** The Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1386), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), (Contracts and/or subcontracts, and sub grants of amounts in excess of \$100,00.00).

7.4 **CONTRACT WORK HOURS AND SAFETY STANDARDS:** The Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Constructions contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers.)

7.5 **COPELAND ANTI-KICKBACK ACT:** The Contractor shall comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction repair).

7.6 **COPYRIGHTS:** The Grantee is free to copyright original work developed in the course of or under the agreement. FEMA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes. Publication resulting from work performed under this agreement shall include an acknowledgement of FEMA financial support, by granted number, and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA views.

7.7 **DISADVANTAGED BUSINESS ENTERPRISES (DBE) CONTRACTORS:** The contractor agrees to ensure that Disadvantage Business Enterprises as defined in 49 C.F.R. Part 23, as amended, have the maximum opportunity to participate in the performance of contracts and this agreement. In this regard, contractor shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 23, as amended, to ensure that the Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. The contractor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of federal assisted contracts.

7.8 **ENERGY POLICY AND CONSERVATION ACT:** The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

7.9 **EQUAL EMPLOYMENT OPPORTUNITY:** The Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 C.F.R. Chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees).

7.10 **BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352)**—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

SECTION 8 INCORPORATION OF TERMS AND CONDITIONS OF CONTINUING SERVICE AGREEMENT

8.1 This Project Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement dated March 10, 2020 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.

SECTION 9 Term/Time of Performance

9.1 This Project Specific Agreement shall be effective on the date it is fully executed by all parties and shall continue in full force for One year (s) or until completion of the Project, unless otherwise terminated pursuant to the Construction Management Services Agreement or other applicable provisions of this Project Specific Agreement. The City Engineer or Manager, in his sole discretion, may extend the term of this Project Specific Agreement through written notification to the Consultant. Such extension shall not exceed 180 days. No further extensions of this Project Specific Agreement shall be effective unless authorized by the City Engineer or Manager.

9.2 The Consultant's services under this Project Specific Agreement and the time frames applicable to this Project Specific 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 prior to the beginning the performance of services.

- 9.3 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.”

SECTION 10 Project Records

10.1 All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

10.2 After the City’s acceptance of final plans and documents, an electronic copy of the Consultant’s or the subconsultant’s drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

10.3 Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

10.4 The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

10.5 All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of City, and reproducible copies shall be made available upon request to the City.

10.6 All project records shall be maintained by Consultant and made available upon request of the

10.7 City at all times for the duration of this Agreement and during the period stated by Florida Records Retention Schedules. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

SECTION 11 Ownership and Access to Public Records.

- 11.1 All records, books, documents, maps, data, deliverables, papers and financial information (the “Records”) that result from the Consultant providing services to the City under this Agreement shall be the property of the City.
- 11.2 The Consultant is a “Contractor” as defined by Section 119.0701(1)(a), Florida Statutes, and shall comply with the public records provisions of Chapter 119, Florida Statutes, including the following:
1. Keep and maintain public records required by the City to perform the service.
 2. Upon request from the City Clerk, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Consultant does not transfer the records to the City.
 4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City Clerk, in a format that is compatible with the information technology systems of the City.
- 11.3 “Public Records” is defined in Section 119.011(12), Florida Statutes, and includes all documents, papers, letters, photographs, data processing software, or other material, regardless of physical form, made or received in connection with this Agreement.
- 11.4 Should the Consultant assert any exemption to the requirements of Chapter 119 and related law, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the Consultant.
- 11.5 The Consultant consents to the City’s enforcement of the Consultant’s Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the Consultant shall pay all court costs and reasonable attorney’s fees incurred by the City.

- 11.6 The Consultant's failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by the Consultant shall be grounds for immediate unilateral cancellation of this Agreement by the City.
- 11.7 **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-743-0033, CITYCLERK@CI.MARATHON.FL.US, OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.**

PAYMENT UNDER THIS PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.

IN WITNESS WHEREOF, the parties have executed this instrument on this _____ day of _____, 20__.

CONSULTANT:

CITY:

By: _____

By: _____

George Garrett, City Manager

Its: _____

ATTEST:

Diane Clavier, City Clerk

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

Steven T. Williams, City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

EXHIBIT 1

CUMMINS | CEDERBERG
Coastal & Marine Engineering

December 28, 2022

118600

City of Marathon

Attn: Mr. Carlos A. Solis

98005 Overseas Highway

Marathon, FL 33050

Sent via email: solisc@ci.marathon.fl.us

RE: Proposal for Marine Engineering and Environmental Consulting Services

For the proposed The Quay Project in Marathon, FL

Dear Mr. Solis,

Pursuant to our recent discussion, Cummins Cederberg, Inc. (Cummins Cederberg) is pleased to present this proposal to the City of Marathon (City) for our marine engineering and environmental consulting services in support of The Quay located at 12650 Overseas Highway, Marathon, Monroe County, Florida (Project).

Project Introduction

It is our understanding that the City would like to enhance The Quay Project site to improve water access and create an improved public space. The existing shoreline consists of multiple construction types, including rock revetment, coral rock walls, and concrete seawalls. The shoreline retains a vegetated upland area and paved parking. Existing marine structures also include a rock revetment groin with an overlay of concrete pavement on the north tip of the Project site and a concrete kayak launch on the eastern shoreline.

Cummins Cederberg will provide marine engineering and environmental consulting services relative to shoreline stabilization, resiliency from sea level rise, and enhanced kayak launch access.

Scope of Services

The following section outlines the scope of services to be provided by Cummins Cederberg for the City.

Task 1 – Field Investigations

Task 1.1 Marine Engineering Inspection: A team of engineer-divers will perform an above- and below-water inspection of the approximately 1,650 linear feet of shoreline consisting generally of

rock revetment and concrete/coral rock wall construction along the Project site, see attached map. The inspection will include visual assessment of the structural components (e.g., cap, panels, piles, rock slope, rock size) to identify forms of deterioration (e.g., cracking, spalling, displacement, undermining, unstable slope) and methods for repair and/or replacement, as needed. Field notes will be collected to document observed damage or deterioration, which will be referenced to stationing established along the shoreline. Above- and below-water photographs will also be obtained to document the assessment and will be included in the engineering report. The inspection will be conducted generally following methods provided in Standard Practice Manual for Underwater Investigations, ASCE Manual No. 101.

A report will be prepared to summarize the engineering observations and results of the inspection. The report will include an assessment of the existing marine structures and recommendations for repairs and/or replacement. Color copies of photographs to reference observations will be included. The report will be signed and sealed by a Florida Registered Professional Engineer.

Task 1.2 Marine Resource Survey: Cummins Cederberg will conduct a marine resource survey to identify potential seagrasses, corals, oysters, or other marine resources of significance within the proposed Project boundaries. As the Project site is located within the Florida Keys National Marine Sanctuary (FKNMS), the FKNMS Benthic Survey Protocols will be adhered to. Cummins Cederberg possesses the required FKNMS permit to conduct surveys within the Sanctuary. The survey may be conducted during the federally recognized seagrass growing season, June 1 through September 30, to ensure it will be accepted by all environmental regulatory agencies.

The existing structures and submerged bottom will be surveyed via snorkel or SCUBA, to be determined on site based on water conditions and water depths. Data (e.g., species, percent coverage, location of marine resources observed) will be collected on prepared underwater paper and representative photographs will be taken. The data will be processed and illustrated on a basemap. The basemap will include location and coverage of documented marine resources. An Environmental Site Report, including representative photographs, will be prepared summarizing the investigations.

Task 1.3 Bathymetric Survey: Cummins Cederberg will conduct bathymetric surveying to provide bathymetric data for engineering analyses, relative to coastal resilience assessment, shoreline stabilization, and kayak launch design. The survey will be conducted along the proposed Project shoreline and will extend waterward approximately 50 feet. The bathymetric and tidal data collected in the field will be compiled and reduced to the horizontal coordinate system and vertical datum established for the Project and utilized to create a base map. Contours reflecting bottom elevations at 1-foot intervals will be reflected on the base map. The bathymetric data will be collected in areas accessible by boat with varying spacing to obtain representative data.

Deliverables: Marine Engineering Inspection Report in PDF-format, Environmental Survey Report in PDF-format, Bathymetric Survey in PDF-format

Fees for Task 1 are lump sum: **\$29,300.00**

Task 2 – Water Levels

Task 2.1 Water Levels and Projections: Cummins Cederberg will apply the latest Sea Level Rise Projections produced by the National Oceanic and Atmospheric Administration (NOAA) for the region to determine projected future water levels. Cummins Cederberg will also obtain published water level data from local NOAA tidal stations and analyze the present-day seasonal King Tide water levels. A qualitative review of potential storm surge levels will be performed to consider sensitivity of the Project site's exposure to extreme events based on published FEMA Flood Insurance Studies and Flood Insurance Rate Maps for the area.

Deliverables: Table with Water Levels in PDF-format

Fees for Task 2 are lump sum:..... **\$4,700.00**

Task 3 – Conceptual Design

Task 3.1 Conceptual Design: Cummins Cederberg will develop a conceptual design for the waterfront portion of the Project in coordination with the Client and the Project team. The design will consider reuse of existing structures, permit feasibility, water access, potential phasing of future adaptation, service life, and construction cost. One (1) iteration of the design is included following discussion with the City.

Task 3.2 Preliminary Cost Estimate: A preliminary Opinion of Probable Cost (OPC) will be developed for the waterfront elements depicted on the conceptual design at an order-of-magnitude level. The OPC will be based on Cummins Cederberg's best judgment as an experienced and qualified professional generally familiar with the industry.

Deliverables: Conceptual Design and Preliminary Cost Estimate (PDF).

Fees for Task 3 are lump sum:..... **\$12,100.00**

Task 4 – Marine Engineering Design

Task 4.1 Shoreline Stabilization Design: Cummins Cederberg will develop bulkhead, rock revetment, and/or living shoreline designs for the Project area's shoreline. It is anticipated that the shoreline will integrate different stabilization types based on site conditions and expected use. If feasible based on findings in Task 1.1, repairs to the existing shoreline stabilization structures will be incorporated into the design. Design elevations specified for shoreline structures will consider the findings from Task 2 to include coastal resilience throughout the design life of the structures. Geotechnical data will be evaluated for the design of the shoreline stabilization. Lateral loads, due to potential mooring, surcharges, and hydrostatic pressures, will be calculated for conventional sections with bulkhead design, as applicable. Cummins Cederberg's design responsibility will be limited to the shoreline area, thus upland civil works such as paving, grading,

and drainage are not included herein. Cummins Cederberg will coordinate with the upland design (by others) in regard to design elevations and placement to provide a seamless solution.

Task 4.2 Kayak Launch Design: Cummins Cederberg will develop a kayak launch design in an appropriate location along the shoreline. The design is anticipated to consist of a gravel surface or articulated concrete mat. The kayak launch may require additional fill material to facilitate ADA water access.

Task 4.3 Construction Drawings: Cummins Cederberg will prepare drawings in sufficient detail for submittal to the regulatory agencies, as well as ultimate construction. The plans will be prepared in CAD format using industry standards for this type of construction. Specifications and details for materials will be developed for various components as part of the design process. Cummins Cederberg will provide structural calculations for the design and subsequent building permit processing as appropriate. The plans and calculations will be signed and sealed by a Florida registered Professional Engineer. The following drawing sheets are anticipated:

- Cover Sheet – Location maps, titles
- General Notes – Specifications, materials, list of abbreviations
- Site Plan – Existing conditions, bathymetric survey, marine resources
- Proposed Plan – Shoreline stabilization layout, kayak launch, turbidity curtains
- Sections – Cross sections of rock revetment, living shorelines, and/or bulkhead, structural details

*Deliverables: Signed/sealed construction plans (11x17 or 22x34)
Signed/sealed structural calculations*

Fees for Task 4 are lump sum:..... **\$49,500.00**

Task 5 – Environmental Permitting

Task 5.1 Pre-Application Meetings & Coordination: Cummins Cederberg will coordinate meetings with the environmental regulatory agencies [i.e., Florida Department of Environmental Protection (FDEP) or South Florida Water Management District (SFWMD) and the U.S. Army Corps of Engineers (USACE)] prior to submitting permit applications. In preparation for the pre-application meetings, Cummins Cederberg will conduct desktop due diligence of the Project site as it relates to previous permits issued and available environmental information (e.g., submerged land ownership, benthic resources, ESA listed species).

Task 5.2 SWERP Application & Processing: Cummins Cederberg will prepare and process a Statewide Environmental Resources Permit (SWERP) with the FDEP or SFWMD, requesting authorization of the proposed shoreline stabilization and kayak launch pursuant to Chapter 62-330., FAC and proprietary authorization for use of sovereign submerged lands. Cummins Cederberg will maintain contact with FDEP or SFWMD to review plans and provide additional

information. The Client will provide Cummins Cederberg with a signed application form, ownership information and a processing fee (estimated at \$420).

Task 5.3 USACE Application & Processing: Cummins Cederberg will prepare and process a Department of the Army Application with USACE requesting authorization of the proposed waterfront portions of the Project, pursuant to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. Cummins Cederberg will maintain contact with the USACE to review plans and provide additional information (e.g., checklists, additional forms). The Client will provide Cummins Cederberg with a signed application form.

Fees for Task 5 are lump sum (including expenses): **\$19,000.00**

Task 6 – Waterfront Grant Application Support

Task 6.1 Grant Support: Cummins Cederberg will research and evaluate grant funding opportunities, timing, and budget for potentially available funds to assist in the design and construction of the waterfront improvements.

Deliverables: Summary Letter in PDF-format

Fees for Task 6 are: **hourly not to exceed \$4,800.00**

Part 7 – Meetings and Project Management

Task 7.1 Project Management: Cummins Cederberg will provide Project management services for the marine components included under this proposal for a period of one (1) year. This task may include:

- Kick off meeting (1)
- Monthly Project updates via email or zoom (12)
- Participation in two (2) Project meetings in Marathon

Fees for Task 7 are **hourly not to Exceed \$10,000.00**

Conditions/Assumptions

- City shall notify Cummins Cederberg of any known conditions related to the Project that may affect the scope of services.
- City shall provide safe access to the Project site as needed by Cummins Cederberg to complete the scope of services.
- City to provide a recent (within one year) property survey in CAD and PDF format, tied to the State Plane Coordinate System. Survey shall contain topographic elevations in the vicinity of proposed improvements (along the shoreline and minimum 50 ft upland from the existing shoreline).
- City to provide geotechnical information, including reports with soil parameters sufficient for bulkhead design and boring logs.

- City or Contractor to secure building permits.
- City shall provide any available background information, such as as-built drawings, historical photographs, permits, or other documentation.
- Scope does not include construction administration services or bidding support services. Cummins Cederberg can provide under a separate scope of services.
- It is assumed there will be no legal encumbrance, historical, archaeological resource issues.
- In-water work will only be conducted pending determination of safe working conditions for the area. Cummins Cederberg maintains the right to make its own determination on safe working conditions for its divers.
- This scope assumes no marine resource impacts and no mitigation requirements. If it is determined that impacts to marine resources cannot be avoided, an addendum scope of work may be provided for Client approval. This addendum scope may provide mitigation research, design, and negotiations with the environmental agencies.

Fees

Fees for services are noted above. Cummins Cederberg shall invoice the Client on a percent complete basis each month and/or completion of tasks. Hourly tasks will be invoiced in accordance with attached rate schedule.

General

We appreciate the opportunity to prepare a proposal for our marine engineering and environmental consulting services and look forward to working together. This proposal is valid for 60 days and was prepared based on the information provided by the Client to date. If you wish us to provide the services detailed above, please sign this agreement, which includes the Cummins Cederberg's General Terms & Conditions attached herein, and return a signed copy to us, which will serve as our Authorization to Proceed. Should you have any questions or require additional information, please do not hesitate to contact me at 305-741-6155 or jcederberg@CumminsCederberg.com.

Sincerely,
CUMMINS CEDERBERG, INC.



Jannek Cederberg, M.Sc., P.E.
Principal

Florida Professional Engineering No. 69839
Florida Certificate of Authorization No. 29062

Read and Accepted by **Client**:

The Quay
December 28, 2022

118600
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By: _____

Name: _____

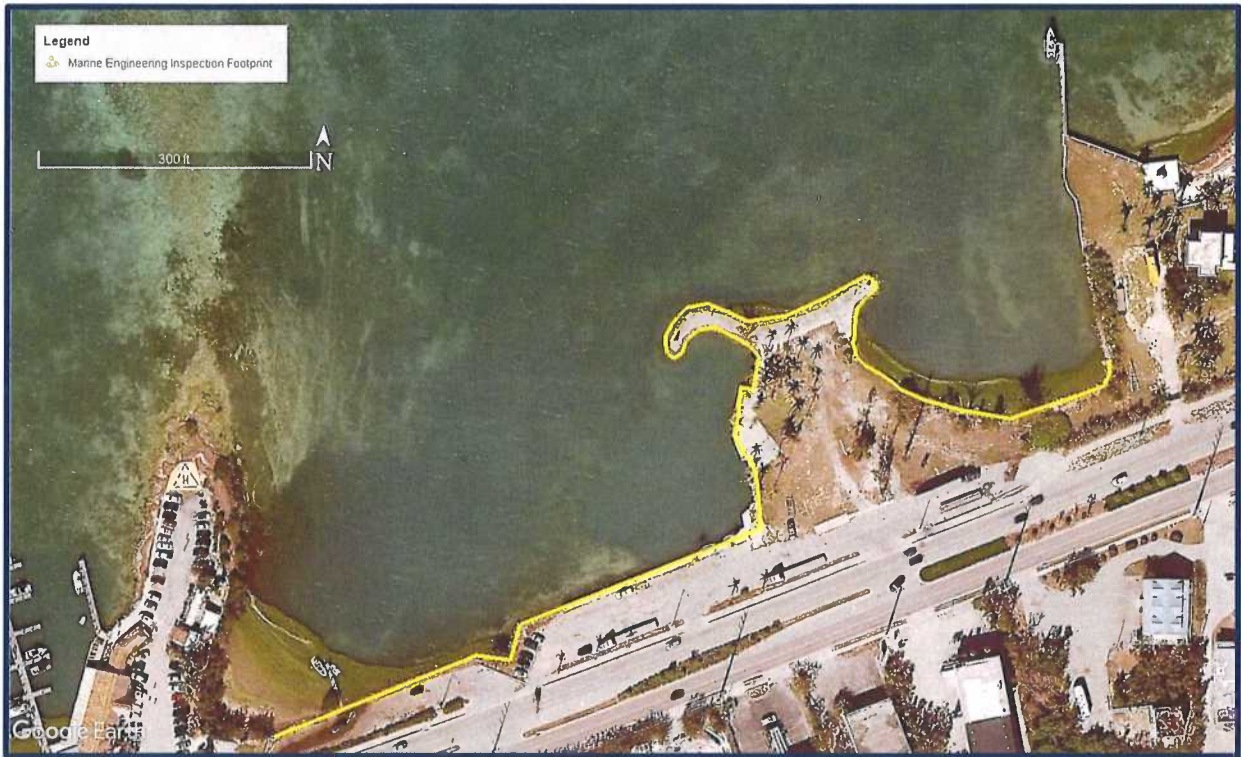
Title: _____

Date: _____

Enclosures:

Project Inspection Footprint
Rate Schedule
General Terms & Conditions

Marine Engineering Inspection Footprint



CUMMINS CEDERBERG, INC. 2022 RATE SCHEDULE¹

Title	Hourly Rate
Principal	\$275.00
Senior Director	\$240.00
Project Director	\$220.00
Senior Project Manager	\$200.00
Project Manager	\$175.00
Chief Scientist	\$200.00
Senior Scientist	\$175.00
Project Scientist	\$140.00
Associate Scientist II	\$125.00
Associate Scientist I	\$105.00
Chief Engineer	\$220.00
Senior Engineer	\$200.00
Project Engineer	\$165.00
Associate Engineer II	\$145.00
Associate Engineer I	\$125.00
Senior Designer	\$130.00
Designer	\$110.00
Technician	\$80.00
Clerical	\$70.00

Reimbursable Expenses

Professional Supplies, Standard Expenses and Direct Reimbursable Expenses will be billed at cost plus 10 percent. Professional supplies and standard expenses include standard office supplies, plots and photocopies, mail and courier delivery services, domestic and international travel, and related travel expenses. Direct reimbursable expenses include field equipment rental, field supplies, research materials, permit fees, and other expenses not included in Professional Supplies and Standard Expenses.

¹ Rates are subject to change at one-year intervals from date of proposal execution.

General Terms & Conditions

1 – Definitions:

"Cummins Cederberg, Inc." (hereinafter referred to as "CC") shall include said company, and its individual professional or professionals, performing the "Work."

"Work" means the specific engineering or other service to be performed by CC as set forth in CC's proposal.

"Client" refers to the person or business entity ordering the Work to be done by CC.

"Agreement" refers to CC's proposal, the client's acceptance, and CC's Terms and Conditions. The Client's acceptance of the proposal includes acceptance of these general conditions. The proposal and acceptance are hereby incorporated by reference herein.

2 – Authorization of Work: If the Client is ordering the Work on behalf of another, the Client represents and warrants that the Client is the duly authorized agent of said party for the purpose ordering and directing said Work. Client agrees that CC's professional duties are specifically limited to the Work set forth in CC's proposal. CC's Work is for the exclusive use of the Client. In no event shall CC have any duty or obligation to any third party.

3 – Payment: Invoices shall be submitted either upon completion of tasks or on a monthly basis. Invoices are to be paid in full within thirty (30) days of receipt of the invoice by the Client. Invoices not paid in full within thirty (30) days shall incur interest at a rate of 1.5 percent per month (or the maximum rate of interest permitted by law, if less). If an invoice is not paid within sixty (60) days, CC may, without waiving any claim or right against the Client and without any liability whatsoever to the Client, terminate the performance of Work. The written notice requirement of Section 9 below does not apply to a termination of work under this paragraph.

4 – Indemnification and Mutual Waiver: To the fullest extent permitted by Laws and Regulations, CC shall indemnify and hold harmless Client, and Client's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of CC or CC's officers, directors, members, partners, agents, employees, or Consultants. This indemnification provision is subject to and limited by the provisions in Section 5 below. Further, this indemnification does not apply if the Client, and Client's officers, directors, members, partners, agents, consultants, and employees cause or contribute to the loss.

Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless CC and its officers, directors, members, partners, agents, employees, and Consultants from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising out of or connected with the Agreement or performance by any of the parties above-named, of the services performed under this Agreement, except those damages, liabilities or costs attributed to the negligent acts by CC specifically in the performance of the Agreement..

To the fullest extent permitted by Laws and Regulations, Client and CC waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and Consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

5 – Warranty and Limit of Liability: CC shall perform services for Client in a professional manner, using the degree of care and skill ordinarily exercised by and consistent with the standards of competent consultants practicing at the same time and in the same or a similar locality as the project. CC makes no warranties, express or implied, under this Agreement or otherwise, in connection with the services provided.

To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of CC and CC's officers, directors, members, partners, agents, employees, and Consultants, to Client and anyone claiming by, through, or under Client for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of CC or CC's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total compensation received by CC under this Agreement.

To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the

other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Client, CC, and all other negligent entities and individuals.

PURSUANT TO SECTION 558.0035, FLORIDA STATUTES, AN INDIVIDUAL EMPLOYEE OR AGENT OF CC MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.

6 – Use of Documents: All Documents prepared by CC are instruments of service, and CC shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the CC) whether or not the Project is completed. Instruments of service by CC are for the sole use of Client and are not to be copied or distributed, in any manner, to a third party, without the express written permission of CC. Any reuse by the Client or others of documents and plans that result from CC's services under this Agreement shall be at Client's or others' sole risk without liability to CC. Electronic information and files are for the informational purposes only. It is the responsibility of Client to verify the accuracy of the information therein and to hold CC harmless for any damages that may result from the use of the information.

7 – Cost Estimates: CC opinions of probable construction cost are made based on experience, qualifications, and general knowledge of the construction industry. However, CC has no control over the cost of labor, materials, equipment, or services furnished by others, or methods of determining prices, or market conditions. Client hereby acknowledges that CC cannot warrant that estimates of probable construction or operating costs provided by CC will not vary from actual cost incurred by the Client.

8 – Construction Services: CC shall not be responsible for or have control over means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the construction of the Project; nor shall CC be responsible for the Contractor's failure to carry out the work in accordance with the contract documents or for Contractor's failure to comply with applicable laws, ordinances, rules or regulations.

9 – Termination of Services: The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days written notice to the other party. The written notice requirement of this paragraph does not apply to CC's termination of work under section 3 above. In the event of termination, the Client shall pay CC for all services rendered and costs incurred through the effective date of termination. Neither party may assign, sublet or transfer any rights under or interest (including, but not without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law.

10 – Mediation/Dispute Resolution: Client and CC agree to negotiate all disputes or conflicts between them in good faith for a period of 30 days from the date of notice. If said dispute or conflict is not resolved within 30 days, Client and CC agree to then submit any and all unsettled disputes or other matters in question between them arising out of or relating to this Agreement to non-binding mediation. The fees and/or costs of mediation shall be equally borne by the parties to the Agreement. The process shall be conducted on a confidential basis. If such mediation is unsuccessful in resolving a dispute, then the parties may seek to have the Dispute resolved in circuit court.

In the event of litigation, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable attorney fees, taxable court costs, expert witness fees and costs, demonstrative evidence costs, and such other reasonable fees and/or costs generally associated with the litigation of such matters, as determined upon hearing, post-trial, by the court.

Irrespective of any contract provision or obligation of either party hereunder pursuant to contract or agreement with person(s) and/or entity(ies) not specifically named herein, CC shall not be obligated to participate in, nor be a named party in, any arbitration proceeding without the express written consent of CC.

11 – Legal Jurisdiction: This Agreement is to be governed by and interpreted according to the laws of the State of Florida. The parties agree that any actions brought to enforce any provision of this Agreement shall only be brought in a State court of competent jurisdiction located in Miami-Dade County, Florida.

12 – Notice: Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended.

13 – Agreement: This Agreement constitutes the entire agreement between Client and CC and supersedes all prior written or oral understandings. This Agreement may only be amended or modified in writing and duly executed by both parties.