

**RESOLUTION NO. 2021- 2778**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A PROJECT AGREEMENT WITH KEITH AND ASSOCIATES, INC. FOR STORMWATER ENGINEERING RETAINER SERVICES PURSUANT TO THE CONTINUING SERVICES AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES; PROVIDING FOR AUTHORIZATION AND IMPLEMENTATION; AUTHORIZING THE EXPENDITURE OF FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Section 287.055, Florida Statutes (also known as the Consultants' Competitive Negotiation Act), the Town of Surfside (the "Town") has retained the services of Keith and Associates, Inc. ("Consultant") for professional engineering services, in accordance with the Continuing Services Agreement effective February 16, 2021, for such services executed by the parties (the "CSA"); and

**WHEREAS**, in accordance with the provisions of the CSA, Consultant and the Town have agreed to enter into a specific Project Agreement ("Agreement"), authorizing the Consultant to provide stormwater engineering retainer services ("Services"); and

**WHEREAS**, the Agreement, attached hereto as Exhibit "A," provides for a scope of services detailing the Services to be provided by the Consultant, as well as a schedule for performance and compensation for the Services in an amount not to exceed approximately \$2,000.00 per month, for a total of \$24,000.00 per year; and

**WHEREAS**, pursuant to the CSA, the Town Commission wishes to approve the Agreement, in substantially the form attached hereto as Exhibit "A", and authorize the expenditure of such funds; and

**WHEREAS**, the Town Commission finds that this Resolution is in the best interest and welfare of the Town and its residents.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** Each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

**Section 2. Approval of Agreement.** The Agreement for the Services with the Consultant, in substantially the form attached hereto as Exhibit "A", is hereby approved.

**Section 3. Authorization.** The Town Manager is hereby authorized to execute the Agreement attached hereto as Exhibit "A" with the Consultant for the Services, in accordance with the CSA and subject to final approval by the Town Manager and Town Attorney as to form, content, and legal sufficiency.

**Section 4. Implementation.** The Town Manager and Town Officials are authorized to take any and all necessary action to implement the Agreement and the purposes of this Resolution.

**Section 5. Effective Date.** This Resolution shall be effective immediately upon adoption.

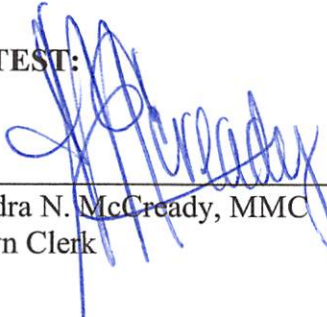
PASSED AND ADOPTED this 13<sup>th</sup> day of April, 2021.

Motion By: Commissioner Velasquez  
Second By: Commissioner Kesl

**FINAL VOTE ON ADOPTION:**

Commissioner Charles Kesl	<u>Yes</u>
Commissioner Eliana R. Salzhauer	<u>Yes</u>
Commissioner Nelly Velasquez	<u>Yes</u>
Vice Mayor Tina Paul	<u>Yes</u>
Mayor Charles W. Burkett	<u>Yes</u>

ATTEST:

  
\_\_\_\_\_  
Sandra N. McCready, MMC  
Town Clerk

  
\_\_\_\_\_  
Charles W. Burkett, Mayor

**APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**

A handwritten signature in blue ink, appearing to read "L. Serota", is written over a horizontal line.

Weiss Serota Helfman Cole & Bierman, P.L.  
Town Attorney

# **PROJECT AGREEMENT**

Between

**TOWN OF SURFSIDE, FL**

And

**Keith and Associates, Inc.**

Project Name: Stormwater Engineering Retainer Services

**PROJECT AGREEMENT**

Between

TOWN OF SURFSIDE, FL

And

Keith and Associates, Inc.

Project Name: Stormwater Engineering Retainer Services

Subject to the provisions contained in the “Continuing Services Agreement for Professional Engineering Services” (hereinafter referred to as the “Continuing Services Agreement”) between the TOWN OF SURFSIDE, FL (hereinafter referred to as “Town”) and KEITH AND ASSOCIATES, INC., (hereinafter referred to as “Consultant”) dated \_\_\_\_\_, which Continuing Services Agreement was competitively procured through Request For Qualifications (RFQ) No. 2020-06 in accordance with Section 287.955, Florida Statutes, this Project Agreement is made effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021, and authorizes the Consultant to provide the services as set forth below:

**SECTION 1. SCOPE OF SERVICES**

1.1 Consultant shall provide **STORMWATER ENGINEERING RETAINER SERVICES** and complete the tasks that are identified and described in the Project Scope of Services and Schedule, attached hereto as Exhibit “1,” for the Town (the “Services”).

1.2 The Town may request changes that would increase, decrease, or otherwise modify the scope of services outlined under the Project Scope of Services and Schedule, attached hereto as Exhibit “1.” 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 the Town the Deliverables identified in the Project Scope of Services and Schedule, attached hereto as Exhibit “1.”

**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 until terminated pursuant to Section 6 or other applicable provisions of this Project Agreement. The Town Manager, in his sole discretion, may extend the term of this Agreement through written notification to the Consultant. Such extension shall not exceed 90 days. No further extensions of this Agreement shall be effective unless authorized by the Town Manager.

3.2 Commencement. Services provided by the Consultant under this Project Agreement and the time frames applicable to this Project Agreement shall commence upon the date provided in a written Notice to Proceed (“Commencement Date”) provided to the Consultant by the Town. The Consultant shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notice to Proceed. Consultant must receive written notice from the Town Manager prior to the beginning the performance of services.

3.3 Contract Time. Upon receipt of the Notice to Proceed, the Consultant shall provide services to the Town on the Commencement Date, and shall continuously perform services to the Town, without interruption, in accordance with the time frames set forth in the "Scope of Services and Project Schedule", a copy of which is attached and incorporated into this Agreement as 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.

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

#### SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION

4.1 Compensation. Consultant shall be compensated for the provision of the Services in accordance with Exhibit "1" attached hereto. Consultant shall receive a monthly lump sum of \$2,000.00, for a total lump sum fee of \$24,000.00 for the first year of this Project Agreement.

4.2 Reimbursable Expenses. The following expenses are reimbursable and will be billed at actual cost: Travel and accommodations (requires prior written approval), long distance telephone calls, facsimile, courier services, mileage (at a rate approved by the Town), photo and reproduction services. All document reproductions are also reimbursable, at a rate approved by the Town.

#### SECTION 5. BILLING AND PAYMENTS

##### 5.1 Invoices

5.1.1. 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 attached hereto as Exhibit "1", attached hereto and made part of this Agreement. Invoices for each phase shall not exceed amounts allocated to said phase plus reimbursable expenses accrued during each phase. The statement shall show a summary of fees with accrual of the total and credits for portions paid previously.

5.1.2. Florida Prompt Payment Act. The Town shall pay the Contractor in accordance with the Florida Prompt Payment Act after approval and acceptance of the Services by the Town Manager.

5.2 Disputed Invoices. In the event that all or a portion of an invoice submitted to the Town for payment to the Consultant is disputed, or additional backup documentation is required, the Town 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 Town within five (5) working days of the date of the Town's notice. The Town may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. The Town, 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 Town 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 Town 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 Owner's reasonable satisfaction.

5.4 Retainage. The Town 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 Town and as security for the successful completion of the Consultant's duties and responsibilities under the Project Agreement.

5.5 Final Payment. Submission to the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the Town that, upon receipt from the Town 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 Town all documents requested by the Town 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 all claims against the Town by the Consultant.

## SECTION 6. TERMINATION/SUSPENSION

6.1 For Cause. This Agreement may be terminated by either party upon five (5) calendar days written notice to the other should such 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 Agreement or causes it to be terminated by the Town, the Consultant shall indemnify the Town against any loss pertaining to this termination. In the event that the Consultant is terminated by the Town for cause and it is subsequently determined by a court 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 and the provision of Section 6.2 shall apply.

6.2 For Convenience. This Agreement may be terminated by the Town for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of such termination a termination, the Consultant shall incur no further obligations in connections with the Project and shall, to the extent possible terminate any outstanding subconsultant obligation. The Consultant shall be compensated for all services performed to the satisfaction of the Town and reimbursable expenses incurred prior the date of termination. In such event, the Consultant shall promptly submit to the Town its invoice for final payment and reimbursement which invoice shall comply with the provisions of Section 5.1. Under no circumstances shall the Town make payment of profit 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 work product of the Consultant shall become the property of the Town and the Consultant shall within ten (10) working days of receipt of written direction from the Town, transfer to either the Town 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. Upon the Town's request, the Consultant shall additionally assign its rights, title and interest under any subcontractor's agreements to the Town.

6.4 Suspension for Convenience. The Town 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 Town the Consultant shall immediately comply with same. In the event the Town directs a suspension of performance as provided herein, through no fault of the Consultant, the Town shall pay the Consultant as full compensation for such suspension the Consultant's reasonable cost, actually incurred and paid, of demobilization and remobilization.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS.]

**IN WITNESS WHEREOF**, the parties hereto have caused this Project Agreement to be executed the day and year as first stated above

**TOWN:**

**TOWN OF SURFSIDE, FLORIDA, a  
Florida Municipal Corporation**

**ATTEST:**

\_\_\_\_\_  
**TOWN CLERK**

By: \_\_\_\_\_  
**Andrew Hyatt, Town Manager**

Date: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY:**

\_\_\_\_\_  
**TOWN ATTORNEY**

**CONSULTANT:**

**KEITH AND ASSOCIATES, INC.**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**WITNESSES:**

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

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



**EXHIBIT "1"**

**PROJECT SCOPE OF SERVICES AND SCHEDULE AND  
PAYMENT SCHEDULE**



**Town of Surfside**  
Public Works Department  
Engineering Firms Evaluation Rankings

	Short-listed Firms for Retainer					Existing Retainer
	Keith Engineering	Nova Consulting	300 Engineering	Kimley-Horn	Alvarez Engineering	Calvin Giordano & Asc.
<b>Geographical Information Systems</b>						
<b>Ranking (1 being Staff Recommendation)</b>	NA	2	3	1	4	
Obtain current Data from current holder (Calvin Giordano and Associates) and store in provided system by firm		x	x	x	x	x
System Update		x	x	x	x	x
Monthly Data Hosting and Storage		x	x	x	x	x
Maps and Reports		x	x	x	x	x
Emergency Recovery and Response		x	x	x	x	
Periodic Updates		x	x	x	x	x
<b>Stormwater</b>						
<b>Ranking (1 being Staff Recommendation)</b>	1	NA	NA	2	NA	
National Pollutant Discharge Elimination Systems (NPDES) and Stormwater Regulatory Monitoring and Compliance Reporting	x			x		x
Illicit Discharges and Illegal Connections Reporting	x			x		x
Stormwater GIS	x			x		x
<b>Water &amp; Sewer (Utilities)</b>						
<b>Ranking (1 being Staff Recommendation)</b>	NA	1	2	NA	NA	
Documentation and Reporting Required by Consent Decree; Documentation and Reporting Required by Consent Agreement		x	x			x
Certification of Nominal Average Pump Operating Time (NAPOT) Report Review		x	x			x
Certification of Adequate Treatment and Transmission Capacity		x	x			x
Analysis and Graphing of Sewage Flow v Rainfall; Inflow & Infiltration Analysis; Analysis of Water v Sewer		x	x			x
Billing Review for Utilities		x	x			
Water Distribution and Consumption Duties		x	x			x
Compose and Submit Annual Capacity, Management, Operation, and Maintenance (CMOM) Plan Report		x	x			x
Monthly Operation Report (MOR)		x	x			x
Fats, Oils, and Greases (FOG) Report		x	x			x
Sanitary Sewer Evaluation Survey (SSES) Report		x	x			x
Public Records Request		x	x			
Utilities GIS		x	x	x	x	x