

**RESOLUTION NO. 22-02-14**

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING WORK AUTHORIZATION NO. 2 WITH K2M DESIGN INC. FOR PERMITTING OF FINAL DEVELOPMENTS AT THE KEY TREE CACTUS PRESERVE; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE PROJECT AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Islamorada, Village of Islands (the "Village"), is in need of an independent contractor to provide the necessary engineering and architectural services to bring the final recreational developments at the Village owned Key Tree Cactus Preserve ("KTCP") to shovel ready construction status; and

**WHEREAS**, the Village has a current Continuing Services Agreement ("CSA") with K2M DESIGN, Inc. ("K2M") for professional engineering and architectural services; and

**WHEREAS**, the Village sought the expertise of K2M to develop a "Scope of Services" for this project, as detailed in Exhibit "1" attached hereto; and

**WHEREAS**, K2M has offered to perform these services as outlined in the Scope of Services within Exhibit "1" in an amount not to exceed Fifty-Eight Thousand Five-hundred Sixty Dollars (\$58,560.00); and

**WHEREAS**, Village staff have identified the Parks and Recreation Impact Fees as an appropriate funding source for this service; and

**WHEREAS**, the Village Council of Islamorada, Village of Islands (the "Village Council") has determined that approval of the project agreement with K2M is in the best interest of the

Village and its residents.

**NOW THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA,  
VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:**

**Section 1.**     **Recitals.** The above recitals are true and correct and incorporated into this Resolution by this Reference.

**Section 2.**     **Approval of Work Authorization.** The Village Council hereby approves Work Authorization No. 2 with K2M for completion of design components for Key Tree Cactus Preserve development, as set forth in Exhibit "A" attached hereto.

**Section 3.**     **Authorization of Village Officials.** The Village Manager and/or her designee and the Village Attorney are authorized to take all actions necessary to implement the terms and conditions of the Work Authorization.

**Section 4.**     **Authorization of Fund Expenditure.** Notwithstanding the limitations imposed upon the Village Manager pursuant to the Village's Purchasing Procedures Ordinance, the Village Manager is authorized to expend budgeted funds to implement the terms and conditions of the Work Authorization.

**Section 5.**     **Effective Date.** This Resolution shall take effect immediately upon adoption.

Motion to adopt by Councilman David Webb, seconded by Councilman Buddy Pinder.

**FINAL VOTE AT ADOPTION**

**VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS**

Mayor Pete Bacheler	YES
Vice Mayor Henry Rosenthal	YES
Councilman Mark Gregg	YES
Councilman Joseph B. Pinder III	YES
Councilman David Webb	YES

**PASSED AND ADOPTED THIS 17<sup>th</sup> DAY OF FEBRUARY, 2022.**



PETE BACHELER, MAYOR

ATTEST:



STEPHANIE CONDE, ACTING VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND BENEFIT OF  
ISLAMORADA, VILLAGE OF ISLANDS:



ROGET V. BRYAN, VILLAGE ATTORNEY

## **PROJECT AGREEMENT**

Between

ISLAMORADA, VILLAGE OF ISLANDS

And

K2M DESIGN, INC.

For

Work Authorization No. 2

### **Engineering & Architectural Services**

This Project Agreement between ISLAMORADA, VILLAGE OF ISLANDS (hereinafter referred to as "VILLAGE"), and K2M DESIGN, INC. (hereinafter referred to as "CONSULTANT"), hereby authorizes the CONSULTANT to provide the services as set forth below:

The VILLAGE and CONSULTANT agree as follows:

#### **SECTION 1. SCOPE OF SERVICES**

1.1 The CONSULTANT shall provide engineering services to the VILLAGE for the Project as described in the "Project Description" attached as Exhibit "1."

1.2 The "Scope of Services" and tasks to be provided by the CONSULTANT for this Project are those services and tasks as listed in Exhibit "1."

1.3 The VILLAGE 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 between the VILLAGE and CONSULTANT, dated September 14, 2020, 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 the CONSULTANT shall provide to the VILLAGE the following Deliverables:

- *Completion of SFWMD Environmental Resources Individual & General Permitting (Permit Numbers 44-101374 & 44-101381-P).*
- *Completion of USACE permitting*
- *Additional Permitting Coordination with Village staff as needed for miscellaneous documentation*
- *Site visit to certify as-built conditions*

Unless otherwise stated, the CONSULTANT will provide draft and site plans, and other materials prepared for the PROJECT in both paper and electronic formats as appropriate, excluding material that is available only as photocopy to the VILLAGE. The VILLAGE shall be provided copies of all correspondence from CONSULTANT to any public or private entity or individual and all correspondence received by the CONSULTANT for the PROJECT.

### SECTION 3. TERM/TIME OF PERFORMANCE/DAMAGES

3.1 Term. This Project Agreement shall commence on the date this Agreement is fully executed by all parties and shall continue in full force and effect through, **July 31, 2023**, unless otherwise terminated pursuant to Section 6 or other applicable provisions of this Project Agreement. The Village Manager 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 Village 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 Notice to Proceed ("Commencement Date") provided to the CONSULTANT from the Village Manager. The CONSULTANT shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notice to Proceed of Commencement.

3.3 Contract Time. Upon receipt of the Notice to Proceed, the CONSULTANT shall commence services to the VILLAGE on the Commencement Date, and shall continuously perform services to the VILLAGE, 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 "1." 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 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. VILLAGE agrees to pay CONSULTANT an amount not to exceed Fifty-Eight Thousand Five-hundred Sixty Dollars (\$58,560.00) as compensation for performance of all services related to the Project. It is understood that the method of compensation is that of lump sum which means that CONSULTANT shall perform all services set forth for total

compensation in the amount stated above. Said lump sum includes but is not limited to, compensation for all fees, expenses, and out-of-pocket costs of the CONSULTANT.

4.2 Reimbursables. It is acknowledged and agreed to by CONSULTANT that the lump sum amount set forth in Section 4.1 includes Direct Expenses and describes the maximum extent of, VILLAGE'S obligation to reimburse CONSULTANT for direct, non-salary expenses, but does not constitute a limitation, of any sort, upon CONSULTANT'S obligation to incur such expenses in the performance of services hereunder.

## SECTION 5. BILLING AND PAYMENTS TO THE CONSULTANT

### 5.1 Invoices.

5.1.1 Lump Sum Compensation. CONSULTANT shall submit invoices which are identified by the specific project number monthly and 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 as shown on Exhibit "1", attached hereto and made a part of this Agreement. Invoices for each phase shall not exceed the amounts allocated to said phase. The statement shall show a summary of fees with accrual of the total and credits for portions paid previously.

5.1.2 Disputed Invoices. In the event all or a portion of an invoice submitted to the VILLAGE for payment to the CONSULTANT is disputed, or additional backup documentation is required, the Village Manager 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 VILLAGE with a written response and any additional information requested by the VILLAGE within five (5) working days of the date of the VILLAGE'S notice. The VILLAGE may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CONSULTANT. The VILLAGE, at its sole discretion, may pay to the CONSULTANT the undisputed portion of the invoice.

5.2 Suspension of Payment. In the event that the VILLAGE 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 VILLAGE 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 VILLAGE'S reasonable satisfaction.

5.3 Retainage. The VILLAGE 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, as applicable. Said retainage may be withheld at the sole discretion of the VILLAGE and as security

for the successful and timely completion of the CONSULTANT'S duties and responsibilities under this Project Agreement.

5.4 Final Payment. Submission of the CONSULTANT'S invoice for final payment and reimbursement shall constitute the CONSULTANT'S representation to the VILLAGE that, upon receipt from the VILLAGE of the amount invoiced, all obligations of the CONSULTANT to others, including its Subconsultants, incurred in connection with the Project, shall be paid in full. The CONSULTANT shall deliver to the VILLAGE all documents and computer files requested by the VILLAGE evidencing payment to any and all subcontractors, and all final specifications, plans or other documents as dictated in the Scope of Services and Deliverables. Acceptance of final payment shall constitute a waiver of all claims against the VILLAGE by the CONSULTANT.

## SECTION 6. TERMINATION/SUSPENSION

6.1 For Cause. This Agreement may be terminated by either party upon three (3) calendar days written notice to the other for breach of any material term or condition of this Agreement. In the event that CONSULTANT abandons this Agreement or causes it to be terminated by the VILLAGE, the CONSULTANT shall indemnify the VILLAGE against any loss pertaining to this termination. In the event that the CONSULTANT is terminated by the VILLAGE 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 and the provisions of Section 6.2 shall apply.

6.2 For Convenience. This Agreement may be terminated by the VILLAGE for convenience upon five (5) calendar days written notice to the CONSULTANT. In the event of such a 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 VILLAGE and reimbursable expenses incurred prior to the date of termination. In such event, the CONSULTANT shall promptly submit to the VILLAGE its invoice for final payment and reimbursement which invoice shall comply with the provisions of Paragraph 5.1. Under no circumstances shall the VILLAGE 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, the work product of the CONSULTANT shall become the property of the VILLAGE and the CONSULTANT shall, within ten (10) working days of receipt of written direction from the VILLAGE, transfer to either the VILLAGE or its authorized designee, all work product in its possession, including but not limited to, designs, specifications, drawings, studies, reports and all other documents and digital data in the possession of the CONSULTANT pertaining to this Project Agreement. Upon the VILLAGE'S request, the CONSULTANT shall additionally assign its rights, title and interest under any subcontractor's agreements to the VILLAGE.

6.4 Suspension for Convenience. The VILLAGE 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 five (5) calendar days. If any such suspension is directed by the VILLAGE, the CONSULTANT shall immediately comply with same. In the event the VILLAGE directs a suspension of performance as provided herein, through no fault of the CONSULTANT, the VILLAGE shall pay the CONSULTANT as full compensation for such suspension the CONSULTANT'S reasonable costs, actually incurred and paid, of demobilization and remobilization.

#### SECTION 7. PERSONNEL ASSIGNED TO PROJECT

7.1 The CONSULTANT shall assign only qualified personnel to perform any services concerning this Project. At the time of execution of this Agreement, the parties anticipate that the following named individuals will perform those supervisory or primary functions indicated:

<u>NAME</u>	<u>FUNCTION</u>
<u>Devon Ayers</u>	<u>Sr. Project Manager</u>
<u>Scott Maloney</u>	<u>President</u>
<u>George Neugent</u>	<u>Business Development</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

So long as the individuals named above remain actively employed or retained by the CONSULTANT, they shall perform the functions indicated next to their names. Furthermore, the VILLAGE reserves the right to reject any proposed substitution for any of the above-named individuals, and the VILLAGE shall have the further right to require that any individual assigned to the Project by the CONSULTANT be removed from the Project and reassigned for good cause.

#### SECTION 8. INCORPORATION OF CONTINUING SERVICES AGREEMENT

All terms and conditions of the "Continuing Service Agreement" between the VILLAGE and CONSULTANT, dated September 14, 2020, not specifically modified by this Project Agreement shall remain in full force and effect and are incorporated into and made a part of this Project Agreement by this reference as though set forth in full.

#### SECTION 9. SEVERABILITY

If any provision of this Project Agreement or its application to any person or situation shall to any extent, be invalid or unenforceable, the remainder of this Project Agreement, and the application of such provisions to persons or situations other than those to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.



IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates under each signature: The VILLAGE, signing by and through its Village Manager, attested to by its Village Clerk, duly authorized to execute same, and by CONSULTANT, by and through its President, duly authorized officer to execute same.

**VILLAGE**

ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA

By: Maria J Bassett  
Maria Bassett, Acting Village Manager / Finance Director

The 22<sup>nd</sup> day of February, 2022.

**AUTHENTICATION:**

Stephanie Conde  
Stephanie Conde, Acting Village Clerk

(SEAL)

APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND BENEFIT OF ISLAMORADA,  
VILLAGE OF ISLANDS, FLORIDA, ONLY

  
Roget V. Bryan, Village Attorney

**CONSULTANT**

K2M DESIGN, INC.

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

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

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

The 23 day of FEBRUARY, 2022.

AUTHENTICATE:

NB

Secretary

Natalie Bielawski

Print Name



NATALIE ROSE BIELAWSKI  
NOTARY PUBLIC  
STATE OF OHIO  
Recorded in Summit County  
My Commission Expires Aug. 30, 2025

(CORPORATE SEAL)

WITNESSES:

SA

Print Name: SCOTT A ROSS

Nic Olechnowicz

Print Name: NIC OLECHNOWICZ