

**RESOLUTION NO. 23-02-05**

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA,  
VILLAGE OF ISLANDS, FLORIDA, APPROVING WORK  
AUTHORIZATION NO. 11 WITH WSP USA ENVIRONMENT &  
INFRASTRUCTURE, INC. FOR PROFESSIONAL SERVICES FOR  
LOWER MATECUMBE CANALS RESTORATION CULVERT  
PROJECT PERMITTING PHASE; 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"), has initiated a canal restoration project on Lower Matecumbe Key involving the implementation of culvert connections at strategic locations to improve canal and nearshore water quality; and

**WHEREAS**, this project is part of the Village's ongoing effort to make water quality improvements within canals and nearshore waters as outlined in the Village's Canal Management Master Plan; and

**WHEREAS**, the Village is in need of an independent contractor to provide the necessary engineering services to complete the data collection, design, permitting and mitigation requirements needed to move the project to eventual construction; and

**WHEREAS**, the Village has a current Continuing Services Agreement ("CSA") with WSP USA Environment & Infrastructure, Inc. ("WSP") for professional engineering and architectural support services; and

**WHEREAS**, WSP has completed feasibility, data collection, and design phases of the project for the Village and WSP has proposed to complete the permitting with this fourth project phase, as set forth in Exhibit "1" attached hereto; and

**WHEREAS**, WSP is willing to perform these services as outlined in the Scope of Services within Exhibit "1" in an amount not to exceed Ten Thousand Two Hundred Eighty-four Dollars (\$10,284.00); and

**WHEREAS**, Village staff have identified the General Fund, Public Works department as an appropriate funding source for this project; and

**WHEREAS**, the Village Council of Islamorada, Village of Islands (the "Village Council"), has determined that approval of the work authorization with WSP 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. 11 with WSP for completion of the Permitting phase of the Lower Matecumbe Canals Restoration Culvert Project, as set forth in Exhibit "A" attached hereto.

**Section 3. Authorization of Village Officials.** The Village Manager and/or 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 Council Member Mark Gregg, seconded by Council Member Henry Rosenthal

**FINAL VOTE AT ADOPTION**

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

Mayor Joseph B. Pinder III	<u>Yes</u>
Vice Mayor Sharon Mahoney	<u>Yes</u>
Council Member Mark Gregg	<u>Yes</u>
Council Member Elizabeth Jolin	<u>Yes</u>
Council Member Henry Rosenthal	<u>Yes</u>

**PASSED AND ADOPTED THIS 9th DAY OF FEBRUARY, 2023.**

ATTEST:



JOSEPH B. PINDER III, MAYOR



MARNE MCGRATH, VILLAGE CLERK

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



JOHN J. QUICK, VILLAGE ATTORNEY



Exhibit "A"

**PROJECT AGREEMENT**

**Between**

**ISLAMORADA, VILLAGE OF ISLANDS**

**And**

**WSP USA ENVIRONMENT & INFRASTRUCTURE, INC.**

**For**

**Work Authorization No. 11**

**Engineering, Environmental, and Support Services**

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

**WHEREAS**, the VILLAGE and CONSULTANT have entered into a continuing services agreement dated August 14, 2020, pursuant to RFQ #20-03, (the "Continuing Contract") and CONSULTANT has been approved to provide the services contemplated herein; and

**WHEREAS**, the VILLAGE and CONSULTANT desire to enter into this Work Authorization for the CONSULTANT to provide support services to complete local, state, and federal permitting processes for the Lower Matecumbe Canals Culvert Project, and also continue the community outreach as more further described in Exhibit "1" attached hereto (the "Project"), in accordance with the terms and conditions of this Work Authorization.

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" to complete the Permitting Phase of the Lower Matecumbe Canals Culvert Restoration Project.

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 Contract, 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 pre-permitting application meetings;*
- *Completion and submittal of SFWMD, USACE, FKNMS, VILLAGE permit applications;*
- *Responses to requests for additional information from permitting agencies;*
- Coordination of appropriate mitigation if required.

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, **December 31, 2025**, 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 Ten Thousand Two Hundred Eighty-four Dollars (**\$10,284.00**) 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 on a monthly basis 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>
Greg Corning, P.E.	Sr. Project Manager
Stephen Hanks, P.E.	Senior Engineer
Josh Ptomey, Beau Daigneault	Field Coordination
Dustin Atwater	GIS Professional
Soraya Gomez, Maggie Kanakis	Administration

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 CONTRACT

All terms and conditions of the Continuing Contract 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.

#### SECTION 10. MISCELLANEOUS

10.1 Public Records. VILLAGE is a public agency subject to Chapter 119, Florida Statutes. To the extent that CONTRACTOR is acting on behalf of VILLAGE pursuant to Section 119.0701, Florida Statutes, CONTRACTOR shall:

- a. Keep and maintain public records that ordinarily and necessarily would be required to be kept and maintained by VILLAGE were VILLAGE performing the services under this Project Agreement;
- b. Provide the public with access to such public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- c. Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and
- d. Meet all requirements for retaining public records and transfer to VILLAGE, at no cost, all public records in possession of the CONTRACTOR upon termination of this Project Agreement and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the VILLAGE.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS PROJECT AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-664-6412, Clerk@islamorada.fl.us, or by mail: Village Clerk, 868800 Overseas Highway, Islamorada, FL 33036.**

10.2 No Contingent Fees. CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Project Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Project Agreement. For the breach or violation of this

provision, the VILLAGE shall have the right to terminate the Project Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

10.3 E-Verify. CONTRACTOR shall comply with Section 448.095, Fla. Stat., "Employment Eligibility," including the registration and use of the E-Verify system to verify the work authorization status of employees. Failure to comply with Section 448.095, Fla. Stat. shall result in termination of this Contract. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this Project Agreement is terminated for a violation of the statute by CONTRACTOR, CONTRACTOR may not be awarded a public contract for a period of 1 year after the date of termination.

10.4 Scrutinized Companies. CONTRACTOR certifies that it and its subconsultants are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the VILLAGE may immediately terminate this Project Agreement at its sole option if the CONTRACTOR or its subconsultants are found to have submitted a false certification; or if CONTRACTOR, or its subconsultants are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Project Agreement.

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: 

Ted Yates, Village Manager

The 13 day of February, 2023

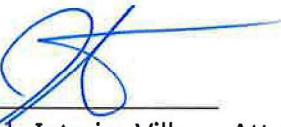
AUTHENTICATION:

Marne McGrath

Marne McGrath, Village Clerk

(SEAL)

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

  
John J. Quick, Interim Village Attorney

**CONSULTANT**

WSP USA ENVIRONMENT & INFRASTRUCTURE,  
INC.

By: Mark Diblin

Print Name: Mark Diblin

Title: Vice President

The 14 day of February, 2023.

AUTHENTICATE:

Secretary

Print Name



Maggie Proenza Kanakis



NEVADA

WITNESSES:

A handwritten signature in blue ink, appearing to read "G. Corning".

Print Name: Greg Corning

A handwritten signature in blue ink, appearing to read "Maggie Kanakis".

Print Name: Maggie Kanakis