

RESOLUTION NO. 23-08-89

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA,
VILLAGE OF ISLANDS, FLORIDA, APPROVING WORK
AUTHORIZATION NO. 1 WITH AVALON GARDENS INC. FOR
COMPLETION OF PLANTING PROJECT AT SOUTHWINDS PARK;
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 WORK
AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, Islamorada, Village of Islands (the "Village"), continues to enhance general community appearance and promote natural landscapes and habitat through native tree plantings within open spaces within the Village; and

WHEREAS, the Village has proposed a native plant planting project at Southwinds Park, a Village owned conservation property on Upper Matecumbe Key; and

WHEREAS, the Village is in need of an independent contractor to provide the services to complete the planting project; and

WHEREAS, the Village requested a proposal from Avalon Gardens, Inc. ("Avalon Gardens") for the planting project services, as detailed in Exhibit "B" attached hereto; and

WHEREAS, pursuant to RFQ 23-03, the Village entered into a current Continuing Services Agreement with Avalon Gardens for landscaping, tree trimming and mangrove trimming services; and

WHEREAS, Avalon Gardens is willing to perform these services as outlined in the Scope of Services attached as Exhibit "B" in an amount not to exceed Twenty-six Thousand Seven Hundred Sixty-five and no/100 Dollars (\$26,765.00); and

WHEREAS, the Village Council of Islamorada, Village of Islands, (the "Village Council") has determined that approval of the Work Authorization No. 1 with Avalon Gardens 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. 1 with Avalon Gardens, attached as Exhibit "A", for completion of the Project.

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 Elizabeth Jolin, seconded by Mark Gregg.

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

Mayor Joseph B. Pinder III	YES
Vice Mayor Sharon Mahoney	NO
Councilman Mark Gregg	YES
Councilwoman Elizabeth Jolin	YES
Councilman Henry Rosenthal	NO

PASSED AND ADOPTED THIS 17th DAY OF AUGUST, 2023.



JOSEPH B. PINDER III, MAYOR

ATTEST:



STEPHANIE CONDE, VILLAGE CLERK

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



JOHN J. QUICK, INTERIM VILLAGE ATTORNEY

PROJECT AGREEMENT

Between

ISLAMORADA, VILLAGE OF ISLANDS

And

AVALON GARDENS INC

For

Work Authorization No. 1

Professional Landscaping Services

This Project Agreement between ISLAMORADA, VILLAGE OF ISLANDS (hereinafter referred to as "VILLAGE") and AVALON GARDENS 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 May 2, 2023, pursuant to RFQ #23-03, (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 landscaping services to remove non-native vegetation and plant native trees and shrubs within Southwinds Park as more further described in Exhibit "B" 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 Professional Landscaping services to the VILLAGE for the Project as described in the "Project Description" attached as Exhibit "B" to complete the Southwinds Park tree planting 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 "B."

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:

- *Removal of non-native vegetation*
- *Planting of 39 canopy trees, 226 shrubs, and 50 understory plants*
- *Planting Soil*
- *Mulch*
- *Irrigation*

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 Project Agreement is fully executed by all parties and shall continue in full force and effect through, **December 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 Project Agreement through written notification to the CONSULTANT. Such extension shall not exceed (30) days. No further extensions of this Project Agreement shall be effective unless authorized by the Village Manager.

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 through the issuance of a Purchase Order. 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.

3.4 All limitations of time set forth in this Project 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 Twenty-six Thousand Seven Hundred Sixty-five and no/100 Dollars (**\$26,765.00**) 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 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 Work Authorization 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. 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 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 Project 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 Project Agreement. In the event that CONSULTANT abandons this Project 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 Project 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 Project Agreement, the parties anticipate that the following named individuals will perform those supervisory or primary functions indicated:

<u>NAME</u>	<u>FUNCTION</u>
Brian and Tina Rogers	Owners

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 Project 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: 

Bryan Cook, Interim Village Manager

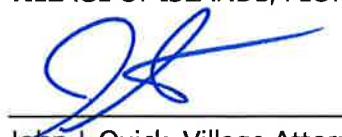
The 23 day of August, 2023

AUTHENTICATION:


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, Village Attorney

CONSULTANT

AVALON GARDENS INC.

By: 

Print Name: Brian Rogers

Title: President

The 18 day of August, 2023.

AUTHENTICATE:

Secretary

Print Name

WITNESSES:

Print Name: _____

Print Name: _____

Avalon Gardens



Exhibit "B"

122 Mockingbird Road, Islamorada, Florida 33070
786.252.3901 avalon-gardens.net

PROPOSAL

July 31, 2023

Client: Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036

Project: Southwinds Park, 82201 Overseas Highway, Islamorada, FL 33036

Scope of Work:

Avalon Gardens will perform the following at Southwinds Park:

Quantity	Description	Unit	Total
<u>Removal of non-native trees and shrubs:</u>			
	Remove Sapodilla tree and haul off debris		1,500
	Remove Poinciana tree and haul off debris		1,500
	Remove non-native shrubs and remove debris		925
<u>Install the following native trees and shrubs along the East perimeter:</u>			
20	Trees 15g	150	3,000
20	Shrubs 7g	75	1,500
50	Shrubs 3g	20	1,000
<u>Install the following native trees and shrubs along the West perimeter:</u>			
7	Trees 15g	150	1,050
12	Shrubs 7g	75	900
50	Shrubs 3g	20	1,000
<u>Install the following native trees and shrubs along the South perimeter:</u>			
7	Trees 15g	150	1,050
9	Shrubs 7g	75	675
25	Shrubs 3g	20	500
<u>Install the following understory plants under the existing Gumbo Limbo trees:</u>			
30	Wild Coffee 3g	15	450
10	Coontie 3g	17.50	175
60	Shrubs 3g	20	1,200

10	Peperomia 1g	9	90
<u>Native Trees to be used in all areas:</u>			
5	Trees 15g	150	750
<u>List of 15g Trees to be used:</u>			
Black Ironwood, Crabwood, Green Buttonwood, White Ironwood, Myrtle-of-the-River, Jamaica Caper, Soldierwood, Lancewood			
<u>List of 7g and 3g Shrubs to be used:</u>			
	Locustberry, Wild Coffee, Pearl Berry (2), Horizontal Cocoplum, Bay Cedar, Marlberry, Redberry Stopper, White Stopper, Darling Plum, Florida Boxwood, Florida Privet, Pineland Croton		
	Install irrigation system including valves to provide coverage for all new plants		5,000
20	cy Planting Soil Mix	75	1,500
50	cy Recycled Mulch	60	3,000
Estimated Cost:			\$26,765.00

* Does not include permits and related fees.

* Avalon Gardens is not responsible for damage to any underground utilities, wires or pipes
that have not been marked unless a detailed plan with their locations is provided.

Client Signature:

Terms of Payment: 50% due prior to beginning of project. Balance due upon completion.
Proposal valid for 30 days.