



Council Communication

To: Mayor and Village Council

Through: Seth Lawless, Village Manager

From: Peter Frezza, Environmental Resources Manager

Date: August 9, 2018

SUBJECT: RESOLUTION APPROVING A PROJECT AGREEMENT WITH THE WEILER ENGINEERING CORPORATION FOR DESIGN OF A NEW BOARDWALK AND PARKING AREA AT THE KEY TREE CACTUS PRESERVE

Background:

In 2009, with Florida Forever grant assistance from the Florida Communities Trust (FCT Project No. 08-028-FF8), Islamorada, Village of Islands (the "Village") partnered with The Conservation Fund to purchase approximately nine (9) acres of uplands and mangrove wetlands with frontage along the Florida Bay on the lower end of Upper Matecumbe Key, known as the Key Tree Cactus Preserve (the "KTCP"). The properties were acquired for the purposes of protecting the parcels from future development and preserving important natural, cultural, and recreational resources for the benefit of Village residents and the public.

In April 2009, in accordance with FCT restrictive covenants and in coordination with the U S Fish & Wildlife Service, the Village developed a Management Plan for the KTCP. Established management objectives for the KTCP include the protection and enhancement of a federally endangered Key Tree Cactus (*Pilosocereus robinii*) population on the property and the design and development of site improvements to support public outdoor recreation and environmental interpretation of the KTCP. Toward meeting the first objective, the Village entered into an Agreement in 2010 with the Fairchild Tropical Botanic Garden, Inc. to monitor and track the health and survival of the Key Tree Cactus at the preserve.

Toward accomplishing the latter objective, the Village completed a conceptual master plan in December 2016 incorporating many of the elements that were outlined in the management plan and restrictive covenants for this preserve, which included nature trails. In 2016 the first phase of the master plan was completed at the preserve and included a parking area (two (2) spaces), picnic pavilion, paver path, benches and playground climbing equipment.

On February 27, 2017, in advancement of the Master Plan for the KTCP, the Village applied to the Florida Department of Environmental Protection (FDEP) Recreational Trails Program requesting \$200,000.00 and committing \$200,000.00 in Village matching funds for the design and construction of five hundred seventy-six (576) linear feet of a recreational/nature boardwalk trail on the southeast portion of the property, related engineering, surveying, permitting activities and project inspection fees. On August 7, 2017, FDEP awarded \$200,000.00 to the Village for the KTCP Project.

The Village also applied for and was awarded Seventy-Seven Thousand Five Hundred Dollars (\$77,500.00) from the Tourist Development Council (the “TDC”) to install 800 linear feet of trail pavers on the southwest section of the property, ten (10) parking spaces at the entrance of the nature center and one (1) pavilion on the northern side of the nature trail. Matching funds are not required for this grant.

Analysis:

The Village is in need of an independent contractor to provide engineering design services which will include surveying and acquisition of necessary permits in order to implement these proposed improvements at the KTCP. This work is incorporated in the second phase of projects to be completed at the KTCP as part of the master plan and includes an improved parking area and a network of boardwalks.

The Village has a current Continuing Services Agreement (“CSA”) with The Weiler Engineering Corporation (“Weiler”) for civil, roadway and structural engineering services and for drainage design services. Staff requested a proposal from Weiler under the current CSA to provide the necessary boardwalk and parking area design services. Weiler’s cost proposal for the services is \$76,875.00 with an additional \$500.00 proposed for other reimburseable expenses.

The construction phase of this project will be bid separately when the design is completed and Weiler would assist the Village in the construction bid process. Completion of this phase of the management plan would assist the Village in satisfying FCT funding requirements for the KTCP, and conforms with policy directives outlined in the Recreation and Open Space Element and the Capital Improvements Element of the Village’s Comprehensive Plan.

Budget Impact:

The total cost of the project is not expected to exceed \$567,500.00. Upon completion of the design and construction of 576 linear feet of boardwalk, FDEP would reimburse the Village up to Two Hundred Thousand Dollars (\$200,000.00) in approved project costs, and the TDC would reimburse the Village Seventy-Seven Thousand Five Hundred Dollars (\$77,500.00). The Village would be required to contribute a minimum of Two Hundred Thousand Dollars (\$200,000.00) plus the remaining project costs in excess of the costs covered by total grant funds (total Village cost approximately Two Hundred Eight-Nine Thousand Five Hundred Dollars (\$289,500.00)).

When the Village acquired the KTCP property, the previous owners provided an endowment to the Village in the amount of Two Hundred Thousand Dollars (\$200,000.00) for the purpose of covering future repair, maintenance and improvements costs. Approximately One Hundred Eight-Three Thousand Dollars (\$183,000.00) remains in this fund, and the Village would utilize these funds to cover remaining projects costs along with Local Government Discretionary Sales Surtax for Infrastructure funds accounted for in the Capital Projects Fund.

The Village included the project in its approved and adopted FY 2017-2018 Capital Projects Fund budget for \$567,500.00; however, no costs associated with the project have been incurred to date in the current fiscal year. Therefore, the project would be included again in the FY 2018-2019 Capital Projects Fund budget.

Staff Impact:

The Village's Environmental Resources Manager and Public Works staff would continue to work with Weiler to assist with any environmental or engineering questions or issues that arise during this design phase.

Recommendation:

Staff recommends that the Village Council approve and adopt the attached resolution authorizing a project agreement with Weiler for design services and approving the related expenditure in an amount not to exceed \$77,500.00.

RESOLUTION NO. 18-

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING A PROJECT AGREEMENT WITH THE WEILER ENGINEERING CORPORATION FOR DESIGN OF A NEW BOARDWALK AND PARKING AREA AT 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, the Islamorada, Village of Islands (the "Village") owns a nine (9)-acre tract of land on Upper Matecumbe Key known as the Key Tree Cactus Preserve ("KTCP") that was purchased with grant assistance from the Florida Communities Trust in 2009 under FCT Project No. 08-028-FF8 for the purposes of environmental preservation and recreational development; and

WHEREAS, restrictive covenants pursuant to the acquisition of the KTCP required the development of a Management Plan for the property, which includes the design and construction of a nature trail/ boardwalk to support public outdoor recreation and environmental interpretation of the park as a main objective; and

WHEREAS, in December 2016, through a work authorization with Bermello Ajamil & Partners, Inc. a proposed master plan was created for KTCP which included a new parking area and a roughly 600' long boardwalk; and

WHEREAS, on August 7, 2017, the Village was awarded Two Hundred Thousand Dollars (\$200,000.00) from the Florida Department of Environmental Protection for the Key Tree Cactus Preserve Boardwalk Project (the "Project"); and

WHEREAS, the Village's adopted FY 2017-2018 Capital Projects Fund budget included Five Hundred Sixty-Seven Thousand Five Hundred Dollars (\$567,500.00) for the Project; and

WHEREAS, the Village is in need of an independent contractor to provide engineering design services for the implementation of these proposed improvements at the KTCP as required by the management plan and in accordance with the master plan; and

WHEREAS, through recommendation of the Village Manager, the Village sought the expertise of the Weiler Engineering Corporation ("Weiler") to develop an "Engineering Scope of Services" for this project; and

WHEREAS, the Village Council, upon recommendation of the Village Manager, desires to approve Work Authorization No. 1 under a Continuing Services Agreement dated June 4, 2015, for Weiler, to provide the “Scope of Services” for the design of the KTCP Project, at a cost not to exceed Seventy-seven thousand dollars (\$77,500.00), as set forth in Exhibit “A” attached hereto.

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 herein by reference.

Section 2. Approval of Work Authorization. The Village Council hereby approves Work Authorization No. 1 for Weiler to provide the Engineering Scope of Services for the design of the KTCP Boardwalk and Parking Area Improvements, at a cost not to exceed Seventy-Seven Thousand Five Hundred Dollars (\$77,500.00), as set forth in Exhibit “A” attached hereto.

Section 3. Authorization of Village Officials. The Village Manager and/or his designee and the Village Attorney are hereby 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 Village Manger 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 its adoption.

Motion to adopt by _____, seconded by _____.

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

Mayor Chris Sante _____

Vice Mayor Deb Gillis _____

Councilman Mike Forster _____

Councilwoman Cheryl Meads _____

Councilman Jim Mooney _____

PASSED AND ADOPTED ON THIS ___ DAY OF _____, 2018.

CHRIS SANTE, MAYOR

ATTEST:

KELLY TOTH, VILLAGE CLERK

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

ROGET V. BRYAN, VILLAGE ATTORNEY

PROJECT AGREEMENT

Between

ISLAMORADA, VILLAGE OF ISLANDS

and

THE WEILER ENGINEERING CORPORATION

for

Work Authorization No. 1

**Key Tree Cactus Preserve
Boardwalk & Parking Area Design, Permitting and
Project Representation Services**

This Project Agreement between ISLAMORADA, VILLAGE OF ISLANDS (hereinafter referred to as the "VILLAGE") and THE WEILER ENGINEERING CORPORATION (hereinafter referred to as the "CONSULTANT"), hereby authorizes the CONSULTANT to provide the services as set forth below.

The VILLAGE and CONSULTANT hereby 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 (the "CSA") between the VILLAGE and CONSULTANT dated June 4, 2015, 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:

- *Site Planning & Architectural Plans and related site plan review;*
- *Design and Permitting of specified amenities as requested by Village.*

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 **September 30, 2019**, 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 with completion expected by December 31, 2018.

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 Thirty-Eight Thousand Dollars (**\$77,500.00**) 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, nonsalary 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 task number, and the estimated percent of work accomplished in accordance with the fee schedule as shown on page 3 of 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.

5.2 Disputed Invoices. In the event that 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.

5.3 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.

5.4 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.

5.5 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>
Robin Palmer, E.I.	Environmental Engineer

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 June 4, 2015, 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.

FLORIDA

VILLAGE
ISLAMORADA, VILLAGE OF ISLANDS,

By: _____
Seth Lawless, Village Manager

The ____ day of _____, 2018.

AUTHENTICATION:

Kelly Toth, Village Clerk

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

Roget V. Bryan, Village Attorney

CONSULTANT

THE WEILER ENGINEERING CORPORATION

By: _____

Print Name: _____

Title: _____

The ____ day of _____, 20__.

AUTHENTICATION:

Secretary

Print Name

(CORPORATE SEAL)

WITNESSES:

Print Name: _____

Print Name: _____

Scope of Services

Key Tree Cactus Preserve – Boardwalk and Parking Area Improvements

PROJECT DESCRIPTION

Design of and construction plans for a recreational trail (approximately 600 feet long) and parking area at the Key Tree Cactus Preserve (KTCP). The project limits will include the areas indicated on the master plan for the boardwalk and parking area. The boardwalk will be designed as low to the ground as possible and constructed of composite, structural lumber. This proposal assumes no impacts to protected species, and the improvements will only be constructed within the designated areas.

SCOPE OF SERVICES

Task 1.1 Special Purpose Survey

A special purpose survey of the areas indicated on the master plan for the boardwalk and parking area (project limits)

Task 1.2 Environmental Investigation

Consultation and coordination with an Environmental sub-consultant to identify the location of any protected species within the project limits or within 50 feet of the proposed improvements

Task 1.3 Preliminary Design

Weiler Engineering will complete a preliminary investigation and, prepare preliminary plans of the boardwalk and parking area. Services will include:

- Preapplication meeting with the associated State and Local permitting authorities
- Coordination with FDEP on grant/work with existing Master Plan
- Preparation of a preliminary site plan indicating the location of the boardwalk and parking area and proposed stormwater treatment and attenuation areas.
- Opinion of probable cost

Task 1.4 Final Design

Upon approval to proceed, Engineer will incorporate comments from preliminary design and complete plans and documentation necessary for regulatory approval and construction. Services will include:

- Construction plans including:
 - Cover Sheet
 - Survey
 - Existing Conditions Best Management Plan Demolition Plan Site/Grading Plan Structural Notes Framing Plan
 - Profile Plan
 - Sections & Elevations
 - Details
 - Specifications

Task 1.5 Permits

Engineer will prepare applications for Client's execution for permits from the South Florida Water Management District (SFWMD) or FDEP and the Village. Application fees provided by Client and are not included in WEC fees.

Task 1.6 Meetings

Engineer shall prepare for and attend meetings associated with the development of the construction plans. Meeting shall include the following:

- Initial site visit and progress meetings with Village Staff during Task 1.1 and 1.2 – 3 meetings.
- Client meeting to present final design - 1 meeting.

FEES

Task 1.1	Survey	\$ 9,500.00
Task 1.2	Environmental	12,500.00
Task 1.3	Preliminary Design	15,470.00
Task 1.4	Final Design	25,510.00
Task 1.5	Permits	10,215.00
Task 1.6	Project Representation	<u>3,680.00</u>

TOTAL FEES \$ 76,875.00

Estimated reimbursable expenses
(printing, postage) \$ 500.00

EXCLUSIONS / OWNER REQUIREMENTS

This proposal assumes that the following will not be required, will be provided by the Client or will be negotiated under a separate work authorization and, as such, are not included in the scope of services herein:

- a. All permit processing fees or utilities capacity fees are not included.
- b. Permitting through agencies not listed above.
- c. Costs incurred as a result of manipulation or encroachment into easements, alleys or rights-of-ways.
- d. Assistance in obtaining any easements required for construction.
- e. Costs incurred as a result of non-compliance.
- f. Changes requested which are not required to meet regulatory requirements.
- g. Any costs related to the design and construction of improvements not specifically indicated in this proposed.
- h. Construction phase services will be negotiated separately.

Proposed Master Plan Components

