

**RESOLUTION NO. 23-09-99**

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING A FIRST AMENDMENT TO WORK AUTHORIZATION NO. 4 BETWEEN PAGE EXCAVATING, INC. AND ISLAMORADA, VILLAGE OF ISLANDS, INCREASING THE NOT-TO-EXCEED AMOUNT; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE FIRST AMENDMENT; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, at its meeting on April 13, 2023, the Village Council of Islamorada, Village of Islands, (the "Village Council") adopted Resolution No. 23-04-41 approving Work Authorization No. 4 with Page Excavating, Inc. ("Page") to provide Wastewater Construction, Installation, and Repair Services to the Village's Wastewater Department for a not-to-exceed fee of Two Million Two Hundred Thousand and no/100 Dollars (\$2,200,000.00); and

**WHEREAS**, the Wastewater Department has identified additional work needed through September 30, 2023, at an increased cost of One Hundred Thousand and no/100 Dollars (\$100,000.00) bringing the total not-to-exceed amount to Two Million Three Hundred Thousand and no/100 Dollars (\$2,300,000.00); and

**WHEREAS**, the Village Council finds that approval of the First Amendment to Work Authorization No. 4 attached as Exhibit "A" with Page is in the best interest of the Village.

**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 First Amendment.** The Village Council hereby approves the First Amendment to Work Authorization No. 4 between Page and the Village for provision of services through September 30, 2023, and increasing the not-to-exceed fee to Two Million Three Hundred and no/100 Dollars (\$2,300,000.00).

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

**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 First Amendment.

**Section 5. Execution of Amendment.** The Village Manager is authorized to execute the First Amendment to Work Authorization No. 4 on behalf of the Village, to execute any required agreements and/or documents to implement the terms and conditions of the Amendment and to execute any extensions and/or amendments to the Amendment, subject to the approval as to form and legality by the Village Attorney.

**Section 6. Effective Date.** This Resolution shall take effect immediately upon adoption.

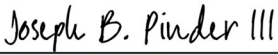
Motion to adopt by Elizabeth Jolin, second by Mark Gregg.

**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>
Councilman Mark Gregg	<u>Yes</u>
Councilwoman Elizabeth Joliin	<u>Yes</u>
Councilman Henry Rosenthal	<u>Yes</u>

**PASSED AND ADOPTED this 7th day of September, 2023.**

DocuSigned by:  
  
F8EB3A68BD794EF...  
JOSEPH B PINDER III, MAYOR

ATTEST:

DocuSigned by:  
  
008BA9A9B2704D5...  
MARNE K. MCGRATH  
KELLY TOTH, VILLAGE CLERK  
MCGRATH

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

DocuSigned by:  
  
362BFAA7FDD417...  
JOHN J. QUICK, VILLAGE ATTORNEY

**NON-EXCLUSIVE  
CONTINUING SERVICES AGREEMENT  
WITH SEPARATE STATEMENTS OF WORK  
BETWEEN  
ISLAMORADA, VILLAGE OF ISLANDS  
AND  
PAGE EXCAVATING, INC.**

**THIS AGREEMENT** (this "Agreement") is made effective as of the \_\_\_\_ day of August, 2023 (the "Effective Date"), by and between the **ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA**, a Florida municipal corporation, (the "Village"), and **PAGE EXCAVATING, INC.**, a Florida corporation (the "Contractor").

**WHEREAS**, on June 29, 2023, the Village issued Request for Qualifications No. 23-10 ("RFQ") for various maintenance and repair services for the Village's central wastewater collection and transmission system ("Services"), on a non-exclusive basis; and

**WHEREAS**, in response to the RFQ, on July 21, 2023 the Contractor submitted a proposal dated July 29, 2023 ("Proposal"), which is attached hereto and incorporated herein by reference, as Exhibit "A," for the Services; and

**WHEREAS**, the Contractor and Village, through mutual negotiation, have agreed upon a rate schedule for the current year as set forth in attached Exhibit "B" to be updated annually as provided by the Contractor and approved by the Village (the "Rate Schedule") in connection with the Services; and

**WHEREAS**, the Village desires to engage the Contractor to perform the Services and provide the deliverables periodically as specified below.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the Contractor and the Village agree as follows:

**1. Scope of Services.**

- 1.1.** The Contractor shall furnish the Services and provide deliverables on an as needed basis during the term of this Agreement, as requested by the Village and detailed in a "Statement of Work" (each a "Project") which the Village will provide the Contractor when engaging the Contractor to work on a specific Project.
- 1.2.** Prior to commencement of work on a specific Project, the Contractor will provide the Village with a fixed lump sum cost for the Services set forth in the Statement of Work calculated using the rates set forth on the Rate Schedule attached hereto as Exhibit "B," as updated, if applicable.
- 1.3.** If the Village approves the fixed lump sum cost for the Project (each a "Contract Price"), the Village will provide the Contractor with a Notice to Proceed to perform the Services set forth in the Statement of Work. Contractor acknowledges that it shall not undertake to perform any



Services on any Project until it has received from the Village the Notice to Proceed on such Project.

- 1.4. Contractor shall furnish all reports, documents, and information obtained pursuant to this Agreement, and recommendations during the term of this Agreement (hereinafter "Deliverables") to the Village.
- 1.5. The Contractor shall abide by the terms and requirements of the RFQ, as though fully set forth herein.
- 1.6. **Non-Exclusive Agreement:** Notwithstanding anything to the contrary, the Village Manager may use any other consultant retained by the Village in connection with providing the Services at any time. Nothing in this Agreement shall be construed to give the Consultant a right to perform Services for any specific Project.

## 2. Term/Commencement Date.

- 2.1. This Agreement shall become effective upon the Effective Date and shall remain in effect for five (5) years thereafter, unless earlier terminated in accordance with Paragraph 8. Additionally, the Village Manager may renew this Agreement for up to five (5) additional one (1) year period on the same terms as set forth herein upon written notice to the Contractor.
- 2.2. Contractor agrees that time is of the essence for each Project and Contractor shall complete the Services within the timeframes set forth in the Statement of Work and the Notice to Proceed for each Project in the manner provided in this Agreement, unless extended by the Village Manager.
- 2.3. Village and Contractor recognize that time is of the essence with respect to the completion of each Project and Village would suffer financial loss if the Services for each Project are not completed within the time specified in the timetable for completion set forth in the Statement of Work as mentioned above, subject to adjustments of such timetable as approved by the Village as provided in the RFQ and Proposal. Village and Contractor also recognize the expense and difficulties involved in proving with reasonable certainty the actual loss or damage suffered by Village if each Project is not completed on time. Accordingly, in lieu of requiring any such proof, Village and Contractor agree that, as liquidated damages for delays, or early termination of the Agreement, Contractor shall pay Village, in addition to any other damages and/or remedies to which Village may be entitled, the dollar amount equal to six one hundredths of a percent (0.06%) per day of total Contract Price for such Project for each calendar day within the first fifteen (15) days after the final completion date set forth in the timeline where the Contractor fails to reach final completion in accordance with the Statement of Work or in the event of early termination of the Agreement, for each calendar day within the first fifteen (15) days from termination to the stated completion date for such Project. For each calendar day after the first fifteen days following the final completion date for such Project provided in the timetable where the Contractor fails to reach final completion as stated in the Statement of Work, the Village shall

be entitled to the dollar amount equal to one percent (0.1%) per day of total Contract Price until the Contractor achieves final completion with respect to a delay or in the event of earlier termination of the Agreement, for each calendar day after the first fifteen days from termination to the stated final completion date for such Project, the Village shall be entitled to the dollar amount equal to one percent (0.1%) per day of total Contract Price, for such Project. Contractor further agrees that the amount of liquidated damages assessed pursuant to this paragraph is reasonable and does not constitute a penalty. Although the parties recognize the difficulty of proving the loss or damage suffered by the Village due to delay or early termination, the Contractor acknowledges and agrees that the amount of liquidated damages approximate the loss anticipated at the time of execution of each Statement of Work.

### **3. Compensation and Payment.**

- 3.1.** Compensation for Services provided by Contractor for each Project shall be in accordance with the approved fixed lump sum set forth in the Statement of Work or the Notice to Proceed for such Project, which shall be based on the Rate Schedule attached hereto as Exhibit "B," as updated annually as provided by the Contractor and approved by the Village.
- 3.2.** During the course of each Project, Contractor shall deliver an invoice to Village no more than once per month detailing Services completed since the date of the previous invoice period or the commencement of such Project and the amount due to Contractor under the Statement of Work for such Project. Fees shall be paid in arrears each month, pursuant to Contractor's invoice, which shall be based upon the percentage of work completed for such Project. The Village shall pay the Contractor in accordance with the Florida Prompt Payment Act after approval and acceptance of the Services by the Village Manager.
- 3.3.** Contractor's invoices must contain the following information for prompt payment:
  - 3.3.1. Name and address of the Contractor;
  - 3.3.2. Purchase Order number;
  - 3.3.3. Date of invoice;
  - 3.3.4. Invoice number (Invoice numbers cannot be repeated. Repeated invoice numbers will be rejected);
  - 3.3.5. Name and type of Services;
  - 3.3.6. Timeframe covered by the invoice; and
  - 3.3.7. Total value of invoice.

Failure to include the above information will result in the delay of payment or rejection of the invoice. All invoices must be submitted electronically to [ap@islamorada.fl.us](mailto:ap@islamorada.fl.us).

### **4. Subcontractors.**

- 4.1.** The Contractor shall be responsible for all payments to any approved subcontractors and shall maintain responsibility for all work related to the Services and/or any Project.

- 4.2. Contractor may only utilize the services of a particular subcontractor with the prior written approval of the Village Manager, which approval shall be granted or withheld in the Village Manager's sole and absolute discretion.

**5. Village's Responsibilities.**

- 5.1. Village shall make available any maps, plans, existing studies, reports, staff and representatives, and other data pertinent to the Services and in possession of the Village, and provide criteria requested by Contractor to assist Contractor in performing the Services.
- 5.2. Upon Contractor's request, Village shall reasonably cooperate in arranging access to public information that may be required for Contractor to perform the Services.

**6. Contractor's Responsibilities; Representations and Warranties.**

- 6.1. The Contractor shall exercise the same degree of care, skill and diligence in the performance of the Services for each Project as is ordinarily provided by a contractor under similar circumstances. If at any time during the term of this Agreement or within two (2) years from the completion of any Project pursuant to this Agreement, it is determined that the Contractor's Deliverables or Services are incorrect, not properly rendered, defective, or fail to conform the Scope of Work, the Contractor shall at Contractor's sole expense, immediately correct its Deliverables or Services.
- 6.2. The Contractor hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws applicable to and necessary to perform the Services for Village as an independent contractor of the Village. Contractor further warrants and represents that it has the required knowledge, expertise, and experience to perform the Services and carry out its obligations under this Agreement in a professional and first class manner.
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- 6.3. The Contractor represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Contractor have been duly authorized, and this Agreement is binding on Contractor and enforceable against Contractor in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

7. **Conflict of Interest.** To avoid any conflict of interest or any appearance thereof, Contractor shall not, for the term of this Agreement, provide any consulting services to any private sector entities (developers, corporations, real estate investors, etc.), with any current, or foreseeable, adversarial issues in the Village.

**8. Termination.**

- 8.1. The Village Manager, without cause, may terminate this Agreement upon five (5) calendar days written notice to the Contractor, or immediately with cause.

**8.2.** Upon receipt of the Village's written notice of termination, Contractor shall immediately stop work on any Project unless directed otherwise by the Village Manager.

**8.3.** In the event of termination by the Village, the Contractor shall be paid for all work accepted by the Village Manager up to the date of termination, provided that the Contractor has first complied with the provisions of Paragraph 8.4.

**8.4.** The Contractor shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Services and the project to the Village, in a hard copy and electronic format within fourteen (14) days from the date of the written notice of termination or the date of expiration of this Agreement.

**9. Performance Bonds.** Performance Bonds shall be required for all Projects with a value of \$200,000.00 and higher.

**10. Insurance.**

**10.1.** Contractor shall secure and maintain throughout the duration of this agreement insurance of such types and in such amounts not less than those specified below as satisfactory to Village, naming the Village as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Village, its officials, employees, agents, and volunteers naming the Village as additional insured. Any insurance maintained by the Village shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include at a minimum the amounts set forth in this section and may be increased by the Village as it deems necessary or prudent.

10.1.1. Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.

10.1.2. Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Contractor shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.

10.1.3. Business Automobile Liability with minimum limits of \$1,000,000 per occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile

Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

10.1.4. Professional Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, single limit.

10.1.5. Pollution Liability Insurance in an amount of \$1,000,000 per claim and in the aggregate Contractor shall purchase and maintain pollution liability insurance against claims for damages arising out of the assessment, removal, remediation, transport and/or handling of hazardous materials, including but not limited to mold, asbestos, and lead. The policy shall include a minimum limit of not less than \$1,000,000.00 per claim and in the aggregate. Said pollution liability policy shall include and list as additional insureds the Village, include coverage for its respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and, the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis.

**10.2. Certificate of Insurance.** Certificates of Insurance shall be provided to the Village, reflecting the Village as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by Village and prior to commencing Services. Each certificate shall include no less than (30) thirty-day advance written notice to Village prior to cancellation, termination, or material alteration of said policies or insurance. The Contractor shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the Village. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Village reserves the right to inspect and return a certified copy of such policies, upon written request by the Village. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Village before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Village.

**10.3. Additional Insured.** Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, the Village is to be specifically included as an Additional Insured for the liability of the Village resulting from Services performed by or on behalf of the Contractor in performance of this Agreement. The Contractor's insurance, including that applicable to the Village as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Village shall be in excess of and shall not contribute to the Contractor's insurance. The Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall

apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

**10.4. Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the Village. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

**10.5.** The provisions of this section shall survive termination of this Agreement.

**11. Nondiscrimination.** During the term of this Agreement, Contractor shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and will abide by all Federal and State laws regarding nondiscrimination.

**12. Attorneys Fees and Waiver of Jury Trial.**

**12.1.** In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

**12.2.** IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

**13. Indemnification.**

Contractor shall indemnify and hold harmless the Village, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising from Contractor's performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the Village for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising from Contractor's performance or non-performance of this Agreement.

**13.1.** Nothing herein is intended to serve as a waiver of sovereign immunity by the Village nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The Village is subject to section 768.28, Florida Statutes, as may be amended from time to time.

**13.2.** The provisions of this section shall survive termination of this Agreement.

**14. Notices/Authorized Representatives.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been



changed by written notice in compliance with the provisions of this section. For the present, the Contractor and the Village designate the following as the respective places for giving of notice:

Village: Village Manager  
Islamorada, Village of Islands  
86800 Overseas Highway  
Islamorada, Florida 33036

Copy To: Village Attorney  
  
Islamorada, Village of Islands  
86800 Overseas Highway  
Islamorada, Florida 33036

Contractor: Page Excavating, Inc.  
Mark Scott Page, President  
88005 Overseas Highway  
Islamorada, Florida 33036

**15. Governing Law and Venue.** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any proceedings arising out of this Agreement shall be proper exclusively in Monroe County, Florida.

**16. Entire Agreement/Modification/Amendment.**

**16.1.** This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

**16.2.** No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

**17. Ownership and Access to Records and Audits.**

**17.1.** Contractor acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which relate to Services to the Village which are conceived, developed or made by Contractor during the term of this Agreement ("Work Product") belong to the Village. Contractor shall promptly disclose such Work Product to the Village and perform all actions reasonably requested by the Village (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).

**17.2.** Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. The Village Manager or

her designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of the Contractor involving transactions related to this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Village.

- 17.3.** Upon request from the Village's custodian of public records, Contractor shall provide the Village with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- 17.4.** Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Village.
- 17.5.** Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the Village Manager, at no cost to the Village, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Village in a format that is compatible with the Village's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 17.6.** Any compensation due to Contractor shall be withheld until all records are received as provided herein.
- 17.7.** Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Village.
- 17.8.** Public Records. Village is a public agency subject to Chapter 119, Florida Statutes. To the extent that Village is acting on behalf of Village pursuant to Section 119.0701, Florida Statutes, Village shall:
  - 17.8.1.** 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 Agreement;
  - 17.8.2.** 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;
  - 17.8.3.** 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



17.8.4. Meet all requirements for retaining public records and transfer to Village, at no cost, all public records in possession of the Village upon termination of this 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 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.**

- 18. Nonassignability.** This Agreement shall not be assignable by Contractor unless such assignment is first approved by the Village Manager. The Village is relying upon the apparent qualifications and expertise of the Contractor, and such firm's familiarity with the Village's area, circumstances and desires.
- 19. Severability.** If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.
- 20. Independent Contractor.** The Contractor and its employees, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the Village with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.
- 21. Compliance with Laws.** The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement at its own expense.
- 22. Waiver.** The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.
- 23. Survival of Provisions.** Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.
- 24. Prohibition of Contingency Fees.** The 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 Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

**25. Public Entity Crimes Affidavit.** Contractor shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

**26. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

**27. Conflicts.** In the event of a conflict between the terms of this Agreement and any exhibits or attachments hereto, the terms of this Agreement shall control.

**28. Scrutinized Companies.** .

**28.1.** Contractor certifies that it and its sub-consultants are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Village may immediately terminate this Agreement at its sole option if the Contractor or its sub-consultants are found to have submitted a false certification; or if Contractor, or its sub-consultants are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

**28.2.** If this Agreement is for more than one million dollars, Contractor certifies that it and its sub-consultants are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Village may immediately terminate this Agreement at its sole option if Contractor, its affiliates, or its sub-consultants are found to have submitted a false certification; or if Contractor, its affiliates, or its sub-consultants are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

**28.3.** Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

**28.4.** As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

**29. E-Verify Affidavit.** In accordance with Section 448.095, Florida Statutes, the Village requires all contractors doing business with the Village to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The Village will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to

provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Agreement, the Contractor acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.

### **30. CONTRACT PROVISION AND REQUIRED FORM FOR SUBMITTAL WITH PROPOSALS**

Any contracts awarded under this agreement may be funded in full or in part by a federal grant. Neither the United States nor any of its departments, agencies or employees is or will be a party to this agreement. In the event of a conflict between the terms of Sections 1-29 of this Agreement, and the provisions of this Section 30, the conflicting provisions of this Section 30 shall apply only to the extent that this Agreement is actually funded in full or in part by a federal grant.

The contract provisions, Federal contract provisions and FEMA contract provision listed below and provided on the following pages are made a part of this agreement. The three documents noted as requiring signature and submittal with proposal shall be included.

#### **Contract Provisions**

1. REMEDIES
2. TERMINATION FOR CAUSE AND CONVENIENCE
3. DAVIS BACON ACT
4. EQUAL EMPLOYMENT OPPORTUNITY/NOTICE OF AFFIRMATIVE ACTION
5. COPELAND ANTI-KICKBACK ACT
6. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT
7. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
8. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT
9. PROCUREMENT OF RECOVERED MATERIALS
10. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS
11. RETENTION OF RECORDS
12. DEBARMENT AND SUSPENSION - ***Requires signature and submittal with proposal***
13. BYRD ANTI-LOBBYING AMENDMENT - ***Requires signature and submittal with proposal***

#### **Additional Contract Terms – Combined into one document - *Requires signature and submittal with proposal***

ACCESS TO RECORDS CHANGES/MODIFICATIONS

NON-USE OF OFFICIAL SEAL, LOGO AND FLAGS

COMPLIANCE WITH FEDERAL LAW, REGULATIONS AND EXECUTIVE ORDERS NOT OBLIGATION BY THE FEDERAL GOVERNMENT

PROGRAM FRAUD AND FALSE/FRAUDULENT STATEMENTS OR RELATED ACTS

## **1. REMEDIES FOR BREACH**

In addition to all other remedies included in this FEMA Appendix, Contractor shall, at a minimum, be liable to the Village for all foreseeable damages it incurs as a result of Contractor violation or breach of the terms of this contract. This includes without limitation any costs incurred to remediate defects in Contractor's services and/or the additional expenses to complete Contractor's services beyond the amounts agreed to in this contract, after Contractor has had a reasonable opportunity to remediate and/or complete its services as otherwise set for in this contract. All remedies provided for in this contract may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

## **2. TERMINATION FOR CAUSE AND CONVENIENCE**

Any Agreement resulting from a procurement activity by Islamorada, Village of Islands (the "VILLAGE") may be terminated by either party for cause, or the VILLAGE for convenience, upon ten (10) days written notice by the VILLAGE to CONTRACTOR in which event the CONTRACTOR shall be paid its compensation for services performed to termination date. In the event that the CONTRACTOR abandons this Agreement or causes it to be terminated, he shall indemnify the VILLAGE against any loss pertaining to this termination up to a maximum of the full contracted fee amount. All finished or unfinished documents, data, studies, plans, surveys, and reports prepared by CONTRACTOR shall become the property of VILLAGE and shall be delivered by CONTRACTOR to VILLAGE.

## **3. DAVIS BACON ACT**

Applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It DOES NOT apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.

- a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- c. Additionally, contractors are required to pay wages not less than once a week.



#### **4. EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the contractor agrees as follows:

**(1)** The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

**(2)** The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

**(3)** The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

**(4)** The contractor will send to each labor union or representative of workers with which he has a ~~collective bargaining agreement or other contract or understanding~~, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**(5)** The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

**(6)** The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

**(7)** In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with

procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

**(8)** The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings

## **5. COPELAND ANTI-KICKBACK ACT**

Applies to all contracts for construction or repair work above \$2,000 in situations where the Davis-Bacon Act also applies. It does not apply to the FEMA Public Assistance Program.

a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

## **6. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

a. Standard. If the FEMA award meets the definition of "funding agreement" under 37C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II(F).

b. Applicability. This requirement applies to "funding agreements," but it DOES NOT apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of "funding agreement."

c. Funding Agreements Definition. The regulation at 37 C.F.R. § 401.2(a) defines "funding agreement" as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph."

## **7. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

Applies to all FEMA contracts awarded by the non- federal entity in excess of \$100,000 under grant and cooperative agreement programs that involve the employment of mechanics or laborers. It is

applicable to construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**(1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**(2) *Violation; liability for unpaid wages; liquidated damages.*** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

**(3) *Withholding for unpaid wages and liquidated damages.*** Islamorada, Village of Islands shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

**(4) *Subcontracts.*** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

## **8. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

### **Clean Air Act**

This requirement applies to contracts awarded by a non-federal entity of amounts in excess of \$150,000 under a federal grant.

1. The contractor agrees to comply with all applicable standards, orders or regulations issued



pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

2. The contractor agrees to report each violation to Islamorada, Village of Islands, and understands and agrees that Islamorada, Village of Islands will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### **Federal Water Pollution Control Act**

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

2. The contractor agrees to report each violation to the Islamorada, Village of Islands, and understands and agrees that Islamorada, Village of Islands will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### **9. PROCUREMENT OF RECOVERED MATERIALS**

The Contractor agrees to comply with all applicable requirements of Section 6002 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act.

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ~~2. Meeting contract performance requirements; or~~
3. At a reasonable price.

In performance of this contract, the Contractor shall procure solid waste management services in a manner that maximizes energy and resource recovery and establish an affirmative procurement program for procurement of recovered materials identified in EPA guidelines.

Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site,  
<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

## **10. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS**

In accordance with 2 C.F.R. §200.321, the Consultant/Contractor shall take the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible:

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
  - v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  - vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs i. through v. of this subparagraph.
- b. The requirement outlined in subparagraph a. above, sometimes referred to as "socioeconomic contracting," does not impose an obligation to set aside either the solicitation or award of a contract to these types of firms. Rather, the requirement only imposes an obligation to carry out and document the six affirmative steps identified above.
- c. The "socioeconomic contracting" requirement outlines the affirmative steps that the Consultant/Contractor must take; the requirements do not preclude the Consultant/Contractor from undertaking additional steps to involve small and minority businesses and women's business enterprises.
- d. The requirement to divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises, does not authorize the Consultant/Contractor to break a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds so as to utilize streamlined acquisition procedures (e.g. "project splitting").

## 11. RETENTION OF RECORDS

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three (3) years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or passthrough entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:

- (a) If any litigation, claim, or audit is started before the expiration of the three (3)-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- (b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
- (c) Records for real property and equipment acquired with Federal funds must be retained for three (3) years after final disposition.
- (d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the three (3)-year retention requirement is not applicable to the non-Federal entity.
- (e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.
- (f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
  - (1) If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal government (or to the pass-through entity) to form the basis for negotiation of the rate, then the three (3)-year retention period for its supporting records starts from the date of such submission.
  - (2) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal government (or to the pass-through entity) for negotiation purposes, then the three (3)-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

**12. SUSPENSION AND DEBARMENT**

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by Islamorada, Village of Islands. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Islamorada, Village of Islands, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

  
\_\_\_\_\_  
Signature of Authorized Certifying Official

### **13. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (as amended)**

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

If applicable, contractors must sign and submit to the non-federal entity the following certification: APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING. The certification is found on the next page.



**APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

  
Signature of Authorized Certifying Official

MARK PAGE PRES  
Name and Title of Authorized Certifying Official

9/19/23  
Date

## **ADDITIONAL CONTRACT TERMS FOR FEDERAL AND FEMA FUNDED PROJECTS**

The following clauses will form part of the agreement between Islamorada, Village of Islands and the Contractor resulting from this RFQ.

### **A. Access to Records:**

The following access to records requirements shall apply to the contract.

1. The Contractor agrees to provide Islamorada, Village of Islands, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
4. In compliance with the Disaster Recovery Act of 2018, Islamorada, Village of Islands and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

### **B. Changes to the Contract:**

Any changes to the contract between Islamorada, Village of Islands and the Contractor modification, change order, or constructive change must be allowable, allocable, within the scope of the grant or cooperative agreement, and reasonable for the completion of project scope.

- C. **Non-use of DHS Seal, Logo, and Flags:** The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of HSS agency officials without specific FEMA pre-approval.
- D. **Compliance with Federal Law, Regulations, and Executive Orders:** This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures and directives.

- E. **No Obligation by Federal Government:** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- F. **Program Fraud and False or Fraudulent Statement or Related Facts:** The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

[Signature Page To Follow]



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

**ISLAMORADA, VILLAGE OF ISLANDS**

By: Bryan Cook 9/13/2023  
Bryan Cook  
Interim Village Manager

Attest:

By: Marne McGrath  
Marne McGrath  
Village Clerk

Approved as to form and legal sufficiency:

By: [Signature]  
Weiss Serota Helfman Cole & Bierman, P.L.  
Village Attorney

**CONTRACTOR**

By: [Signature]

Name: MARK PAGE

Title: PRES.

Entity: PAGE EXCAVATING

Witness: Michelle M. Giguere

Name: [Print] MICHELLE M. GIGUERE

## E-VERIFY AFFIDAVIT

In accordance with Section 448.095, Florida Statutes, the Village requires all contractors doing business with the Village to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The Village will not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

**The contracting entity must provide of its proof of enrollment in E-Verify.** For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participation/enrollment-in-e-verify>

By signing below, the contracting entity acknowledges that it has read Section 448.095, Florida Statutes and will comply with the E-Verify requirements imposed by it, including but not limited to obtaining E-Verify affidavits from subcontractors.

☐ **Check here to confirm proof of enrollment in E-Verify has been attached to this Affidavit.**

In the presence of:

Signed, sealed and delivered by:

*Michelle M. Giguere*

*Mark Page*

Witness #1 Print Name: MICHELLE M. GIGUERE

Print Name: MARK PAGE

*Stephane Conde*

Title: PRES

Witness #2 Print Name: Stephane Conde

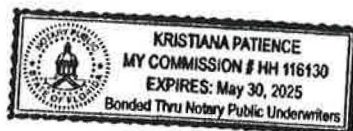
Entity Name: PAGE EXCAVATING

## ACKNOWLEDGMENT

State of Florida

County of Monroe

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 19 day of September, 2023, by Mark Page (name of person) as President (type of authority) for Page Excavating (name of party on behalf of whom instrument is executed).



*Kristiana Patience*  
Notary Public (Print, Stamp, or Type as Commissioned)

☒ Personally known to me; or  
\_\_\_\_ Produced identification (Type of Identification: \_\_\_\_\_)  
\_\_\_\_ Did take an oath; or  
\_\_\_\_ Did not take an oath

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

The Scope of Services are those contained in the RFQ 23-10 dated June 29, 2023 and Contractor's Proposal dated July 28, 2023, attached hereto and incorporated herein by reference.

