

RESOLUTION NO. 19-09-80

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING A WORK AUTHORIZATION WITH CPH, INC. FOR THE FOUNDERS PARK BREAKWATER REPAIRS PROJECT PHASE 2; 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 breakwater at Founders Park plays a vital role to Islamorada, Village of Islands (the "Village") by safeguarding the park's harbor, vessels, and marine facilities from wave-induced energy generated from Florida Bay; and

WHEREAS, the breakwater, constructed in 1961, has suffered structural damage and erosion from repeated wash-over from tidal activity, boat wakes, sea level rise and hurricane related storm surge; and

WHEREAS, these processes have caused several wash-outs along the breakwater, thereby exposing the harbor to wave energy from Florida Bay; and

WHEREAS, since construction, the breakwater has not received any structural maintenance or repair and is currently extremely vulnerable to further erosion; and

WHEREAS, given the potential for future storm surge, sea level rise, and further erosion, the Village is seeking to make repairs to the breakwater to safeguard the harbor and marine facilities; and

WHEREAS, while the State of Florida owns the sovereign submerged lands containing the breakwater; the state has granted the Village a 25-year Sovereign Submerged Lands Easement for use of the breakwater which allows authority to the Village to perform repairs while also giving long-term rights for management and maintenance of the breakwater; and

WHEREAS, the Village is in need of an independent contractor to provide structural engineering design services for breakwater reconstruction and repairs; and

WHEREAS, through an evaluation process of four proposals submitted for this project, Village staff selected CPH, Inc ("CPH") to perform these services; and

WHEREAS, the Village has a current Continuing Services Agreement (“CSA”) with CPH through June 2020 for engineering and architectural services; and

WHEREAS, CPH has proposed a phased approach toward design of breakwater repairs; and

WHEREAS, CPH has completed the first phase of the project which included: completing environmental studies, conducting initial surveying, establishing permitting requirements, preparing conceptual design drawings, and establishing a preliminary construction budget for the overall project; and

WHEREAS, within this second phase, outlined in Exhibit “1” attached hereto, CPH has proposed to perform grant assistance and breakwater design; and

WHEREAS, the Village’s adopted FY 2019-2020 budget included Thirty-Five Thousand Dollars (\$35,000.00) in the General Fund Village Manager Professional Services expense account for the Project; and

WHEREAS, CPH’s cost proposal for the services is Thirty-Five Thousand Dollars (\$35,000.00), with additional reimbursable expenses not to exceed Five Hundred (\$500.00); and

WHEREAS, the Village Council, upon recommendation of the Village Manager, desires to approve Work Authorization No. 4 with CPH to provide the “Scope of Services” for the second phase of Founders Park Breakwater Project, at a cost not to exceed Thirty-Five Thousand Five Hundred Dollars (\$35,500.00), 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. 4 for CPH as set forth in Exhibit “A” attached hereto, to provide the Engineering Scope of Services for the second phase of the Founders Park Breakwater repair, at a cost not to exceed Thirty-Five Thousand Five Hundred Dollars (\$35,500.00).

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 Manager pursuant to the Village's Purchasing Procedures Ordinance, the Village Manager is authorized to expend budgeted funds to implement the terms and conditions of the Work Authorization.

Section 5. Effective date. This Resolution shall take effect immediately upon its adoption.

Motion to adopt by Vice Mayor Mike Forster, seconded by Councilwoman Cheryl Meads.

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

Mayor Deb Gillis	YES
Vice Mayor Mike Forster	YES
Councilman Ken Davis	ABSENT
Councilwoman Cheryl Meads	YES
Councilman Jim Mooney	YES

PASSED AND ADOPTED ON THIS 19TH DAY OF SEPTEMBER, 2019.



DEB GILLIS, 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

CPH, INC.

For

Work Authorization No. 4

Engineering & Surveying Services

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

The VILLAGE and CONSULTANT agree as follows:

SECTION 1. SCOPE OF SERVICES

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

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

1.3 The VILLAGE may request changes that would increase, decrease, or otherwise modify the Scope of Services. Such changes must be contained in a written change order executed by the parties in accordance with the provisions of the Continuing Services Agreement between the VILLAGE and CONSULTANT, dated June 10, 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:

- *Conduct grant research, document preparation, and submittal*
- *A design package that will include the plans and specifications required for permitting*
- *An Updated Opinion of Probable Construction Costs of Option 1 to repair the breakwater*

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, **February 28, 2020** unless otherwise terminated pursuant to Section 6 or other applicable provisions of this Project Agreement. The Village Manager may extend the term of this Agreement through written notification to the CONSULTANT. Such extension shall not exceed (30) days. No further extensions of this Agreement shall be effective unless authorized by the Village Council.

3.2 Commencement. The CONSULTANT'S services under this Project Agreement and the time frames applicable to this Project Agreement shall commence upon the date provided in a written Notice to Proceed ("Commencement Date") provided to the CONSULTANT from the Village Manager. The CONSULTANT shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notice to Proceed of Commencement.

3.3 Contract Time. Upon receipt of the Notice to Proceed, the CONSULTANT shall commence services to the VILLAGE on the Commencement Date, and shall continuously perform services to the VILLAGE, without interruption, in accordance with the time frames set forth in the "Project Schedule," a copy of which is attached and incorporated into this Agreement as Exhibit "1." The number of calendar days from the Commencement Date, through the date set forth in the Project Schedule for completion of the Project shall constitute the Contract Time.

3.4 All limitations of time set forth in this Agreement are of the essence.

SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION

4.1 Lump Sum Compensation. VILLAGE agrees to pay CONSULTANT an amount not to exceed Thirty-Five Thousand Dollars **(\$35,000.00)** as compensation for performance of all services related to the Project. It is understood that the method of compensation is that of lump sum which means that CONSULTANT shall perform all services set forth for total compensation in the amount stated above. Said lump sum includes but is not limited to, compensation for all fees, expenses, and out-of-pocket costs of the CONSULTANT.

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

SECTION 5. BILLING AND PAYMENTS TO THE CONSULTANT

5.1 Invoices.

5.1.1 Lump Sum Compensation. CONSULTANT shall submit invoices which are identified by the specific project number on a monthly basis and in a timely manner. These invoices shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished in accordance with the Payment Schedule as shown on Exhibit "1", attached hereto and made a part of this Agreement. Invoices for each phase shall not exceed the amounts allocated to said phase. The statement shall show a summary of fees with accrual of the total and credits for portions paid previously.

5.1.2 Disputed Invoices. In the event all or a portion of an invoice submitted to the VILLAGE for payment to the CONSULTANT is disputed, or additional backup documentation is required, the Village Manager shall notify the CONSULTANT within fifteen (15) working days of receipt of the invoice of such objection, modification or additional documentation request. The CONSULTANT shall provide the VILLAGE with a written response and any additional information requested by the VILLAGE within five (5) working days of the date of the VILLAGE'S notice. The VILLAGE may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CONSULTANT. The VILLAGE, at its sole discretion, may pay to the CONSULTANT the undisputed portion of the invoice.

5.2 Suspension of Payment. In the event that the VILLAGE becomes credibly informed that any representations of the CONSULTANT, provided pursuant to Subparagraph 5.1, are wholly or partially inaccurate, or in the event that the CONSULTANT is not in compliance with any term or condition of this Project Agreement, the VILLAGE may withhold payment of sums then or in the future otherwise due to the CONSULTANT until the inaccuracy, or other breach of Project Agreement, and the cause thereof, is corrected to the VILLAGE'S reasonable satisfaction.

5.3 Retainage. The VILLAGE reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due to the CONSULTANT until the project is completed, as applicable. Said retainage may be withheld at the sole discretion of the VILLAGE and as security for the successful and timely completion of the CONSULTANT'S duties and responsibilities under this Project Agreement.

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

SECTION 6. TERMINATION/SUSPENSION

6.1 For Cause. This Agreement may be terminated by either party upon three (3) calendar days written notice to the other for breach of any material term or condition of this Agreement. In the event that CONSULTANT abandons this Agreement or causes it to be terminated by the VILLAGE, the CONSULTANT shall indemnify the VILLAGE against any loss pertaining to this termination. In the event that the CONSULTANT is terminated by the VILLAGE for cause and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 6.2 and the provisions of Section 6.2 shall apply.

6.2 For Convenience. This Agreement may be terminated by the VILLAGE for convenience upon five (5) calendar days written notice to the CONSULTANT. In the event of such a termination, the CONSULTANT shall incur no further obligations in connection with the Project and shall, to the extent possible terminate any outstanding subconsultant obligations. The CONSULTANT shall be compensated for all services performed to the satisfaction of the VILLAGE and reimbursable expenses incurred prior to the date of termination. In such event, the CONSULTANT shall promptly submit to the VILLAGE its invoice for final payment and reimbursement which invoice shall comply with the provisions of Paragraph 5.1. Under no circumstances shall the VILLAGE make payment of profit to the CONSULTANT for services which have not been performed.

6.3 Assignment Upon Termination. Upon termination of this Project Agreement, the work product of the CONSULTANT shall become the property of the VILLAGE and the CONSULTANT shall, within ten (10) working days of receipt of written direction from the VILLAGE, transfer to either the VILLAGE or its authorized designee, all work product in its possession, including but not limited to, designs, specifications, drawings, studies, reports and all other documents and digital data in the possession of the CONSULTANT pertaining to this Project Agreement. Upon the VILLAGE'S request, the CONSULTANT shall additionally assign its rights, title and interest under any subcontractor's agreements to the VILLAGE.

6.4 Suspension for Convenience. The VILLAGE shall have the right at any time to direct the CONSULTANT to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to five (5) calendar days. If any such suspension is directed by the VILLAGE, the CONSULTANT shall immediately comply with same. In the event the VILLAGE directs a suspension of performance as provided herein, through no fault of the CONSULTANT, the VILLAGE shall pay the CONSULTANT as full compensation for such suspension the CONSULTANT'S reasonable costs, actually incurred and paid, of demobilization and remobilization.

SECTION 7. PERSONNEL ASSIGNED TO PROJECT

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

NAME**FUNCTION**

<u>Kyle Bechtelheimer, P.E.</u>	<u>Sr. Project Engineer</u>
<u>Todd Hendrix, P.E.</u>	<u>Sr. Vice President / Associate</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

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

SECTION 8. INCORPORATION OF CONTINUING SERVICES AGREEMENT

All terms and conditions of the "Continuing Service Agreement" between the VILLAGE and CONSULTANT, dated June 10, 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.

(This space is intentionally left blank)

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

VILLAGE

ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA

By: 
Seth Lawless, Village Manager

The 23RD day of September, 2019.

AUTHENTICATION:


Kelly Toth, Village Clerk

(SEAL)

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


Roget V. Bryan, Village Attorney

CONSULTANT

CPH, INC.

By: 

Print Name: David A. Gierach

Title: President

The 1st day of October, 20 19

AUTHENTICATE:


Secretary

Patricia Hunt
Print Name


(CORPORATE SEAL)

WITNESSES:



Print Name: Cindy Valentin

Patricia L. Anderson

Print Name: Patricia L. Anderson



Founders Park Breakwater – Design

**PROFESSIONAL ENGINEERING SERVICES
FOR THE
ISLAMORADA, VILLAGE OF ISLANDS
FOUNDERS PARK BREAKWATER DESIGN**

CPH, Inc. has prepared this proposal to provide professional services for the above referenced project. This Agreement is composed of details of the services to be performed. Islamorada, Village of Islands herein called the "CLIENT", and CPH as the consultant.

PROJECT DESCRIPTION

CPH hereby proposes to conduct Professional Consulting services for the above-referenced project. The project will include the design of the Founders Park Breakwater based on the preliminary design Option 1, described further in the Founders Park Breakwater Study, submitted to Islamorada, Village of Islands, on April 1, 2019.

SCOPE OF SERVICES

The following represents a summary of scope of work and services for the CLIENT. CPH shall provide the professional services described below.

Scope of Services is broken into two (2) Tasks:

TASK A – GRANT ASSISTANCE

TASK B – BREAKWATER DESIGN



BASIC SERVICES:

TASK A – GRANT ASSISTANCE

1. CPH will assist the CLIENT with grant research, document preparation, and submittal. The proposed work will be based on an hourly, Not to Exceed fee.

TASK B – BREAKWATER DESIGN

1. CONSULTANT will complete the design of Option 1 to repair the existing breakwater, based on the conceptual design presented in the Founders Park Breakwater Study. CPH will utilize sub-consultant H&M Engineers to assist with the Coastal Engineering portions of the design. The design will include the plans and specifications required for permitting.
2. CONSULTANT will update Opinion of Probable Construction Costs for submittal to the CLIENT with the design package.

COMPENSATION

Labor

CPH will perform the Scope of Services contained in this Agreement as identified on each task, either lump sum or time and materials. Refer to the Standard Hourly Rate Schedule to be utilized on this project. The following is the break down of fees for each task. Tasks that are identified as Time and Materials (Hourly) have been provided an 'Upset Limit' (USL) budget. The CLIENT will be informed when the services are about to exceed this limit.

Task	Phase Description	Billing Method	Fee
A.	GRANT ASSISTANCE	Hourly/NTE	\$5,000
B.	BREAKWATER DESIGN	Lump Sum	\$30,000
		<u>Total</u>	<u>\$35,000</u>



Reimbursable Expenses

In addition to the labor compensation outlined above, CPH shall be reimbursed directly for project specific expenditures such as, but not limited to travel, printing and reprographics, meals, hotel stay, rental cars, postage, and telephone usage. Reimbursable expenses will be billed at their actual cost, without increase. Reimbursable expenses will be set at a Not to Exceed amount of \$500.

SERVICES NOT INCLUDED

The following services are not anticipated and, therefore, not included in this Agreement at this time:

- Geotechnical studies and additional testing required by the regulatory agencies.
- Off-site utility analysis and design.
- Off-site storm water analysis and design.
- Bidding assistance.
- Change Order preparation.
- Pay request review.

Should work be required in any of these areas, or areas not previously described, CPH will prepare a proposal or amendment, at the CLIENT's request, that contains the Scope of Services, fee, and schedule required to complete the additional work item.

CPH, INC. AUTHORIZATION

By:

A handwritten signature in blue ink, appearing to read "Todd Hendrix", is written over a horizontal line.

Todd Hendrix, P.E.
Sr. Vice President / Associate

Date:

August 30, 20019



CLIENT AUTHORIZATION

Islamorada, Village of Islands, agrees with the provided Scope of Services and Compensation Schedule and CPH's Standard Hourly Rate Schedule referenced as Exhibit A (attached hereto and acknowledged as being received). Together they constitute the entire Agreement between CPH, Inc. and Islamorada, Village of Islands.

Total Labor Fees for services proposed herein: \$35,000, plus \$500 in reimbursable expenses, for a project total of \$35,500.

It is understood that fees for the subject project, including but not limited to, application fees, impact fees, review fees, etc., will be paid directly by the CLIENT.

Payment for services rendered will be due within forty-five (45) days of invoicing. Should the CLIENT choose to not complete the project at any phase of the project, CPH will be due any fees for services up to the time the CLIENT informs CPH in writing to stop work. Payment for services up to the time of the CLIENT'S notice will be due within thirty (30) days of the final invoice. Invoice payments must be kept current for services to continue. CPH reserves the right to terminate or suspend work when invoices become over forty-five (45) days past due. In event that the work is suspended or terminated as a result of non-payment, CLIENT agrees that CPH will not be responsible for CLIENT's failure to meet project deadlines imposed by governments, lenders, or other third parties. Neither is CPH responsible for other adverse consequences as a result of termination or suspension of work for nonpayment of the invoices.

This proposal is void if not executed and returned to CPH within 90 days of CPH's execution of the proposal.

The above fees, terms, conditions, and specifications are satisfactory and are hereby accepted. CPH is authorized to do the work as specified and payment will be made as outlined above.

By signing this agreement, I acknowledge that I have the legal authority to enter into this agreement and agree to be bound by the terms contained herein.

By: 
Signature

Seth Lawless
Printed Name

Title: Village Manager



Founders Park Breakwater – Design

Date: 9/23/19