

**RESOLUTION NO. 23-11-132**

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING FISCAL YEAR 2023-2024 EXPENDITURES THROUGH AN AGREEMENT BETWEEN PROFESSIONAL EMERGENCY SERVICES, INC., AND ISLAMORADA, VILLAGE OF ISLANDS, TO PROVIDE EMERGENCY MEDICAL SERVICES; APPROVING A FIRST AMENDMENT TO THE AGREEMENT TO PROVIDE FOR UPDATED PROVISIONS; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Islamorada, Village of Islands (the "Village") provides Emergency Medical Services ("EMS") to its citizens, tourists and the general public, in accordance with Chapter 401, Florida Statutes; and

**WHEREAS**, pursuant to Chapter 64J-1.004 of the Florida Administrative Code, each advanced life support, basic life support or air ambulance provider shall employ a Medical Director, either directly or as an independent contractor, who meets certain qualifications to perform the duties and responsibilities described therein; and

**WHEREAS**, the Village prepared and advertised a Request for Proposals ("RFP") for insurance and risk management services, (RFP-20-09); and

**WHEREAS**, the Village Council of Islamorada, Village of Islands (the "Village Council") adopted Resolution No. 20-09-08, thereby approving the recommendation of the RFP 20-09 evaluation committee and the selection of the selection of Professional Emergency Services, Inc. ("PES") to provide Medical Director Services and authorizing the Village Manager and Village Attorney to negotiate and enter into an agreement with PES for Medical Director Services; and

**WHEREAS**, the Village entered into an Agreement with PES with a term effective October 1, 2020 through September 30, 2025 with the option to renew for two (2) additional two-year terms and compensation for the Services to paid in equal monthly installments with an increase of 5% each year; and

**WHEREAS**, the Village desires to incorporate certain updated and new provisions to the Agreement through a First Amendment to the Agreement (the "First Amendment"); and

**WHEREAS**, the Village desires to continue the Services through the Agreement as amended by the First Amendment during FY 2023-2024 for an amount not to exceed Sixty Three Thousand Two Hundred and Six Dollars and 40/100 (\$63,206.40); and

**WHEREAS**, the Village desires to incorporate certain updated and new provisions to the Agreement through a First Amendment to the Agreement (the "First Amendment"); and

**WHEREAS**, the Village desires to continue Medical Director Services through the Agreement as amended by the First Amendment during FY 2023-2024 for an amount not to exceed Sixty Three Thousand Two Hundred and Six Dollars and 40/100 (\$63,206.40); and

**WHEREAS**, the Village Council finds that approval of the First Amendment to the Agreement and approval of FY 2023-2024 expenditures for PES to provide Medical Director Services 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 and Execution of First Amendment.** The Village Council hereby approves the form of the First Amendment attached hereto as Exhibit "A." The Village Manager is authorized to execute the First Amendment in the form attached hereto as Exhibit "A," subject to the approval as to form and legality by the Village Attorney and on behalf of the Village, to execute any other required agreements and/or documents to implement the terms and conditions of the First Amendment.

**Section 3. Approval of Fiscal Year Expenditures.** The Village Council hereby approves FY 2023-2024 expenditures from Professional Emergency Services to provide Medical Director Services at an amount not to exceed Sixty Three Thousand Two Hundred and Six Dollars and 40/100 (\$63,206.40).

**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 for the Services.

**Section 5. Effective Date.** This Resolution shall take effect immediately upon adoption.

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

**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>
Councilwoman Elizabeth Jolin	<u>Yes</u>
Councilman Mark Gregg	<u>Yes</u>
Councilman Henry Rosenthal	<u>No</u>

**PASSED AND ADOPTED THIS 7th DAY OF NOVEMBER, 2023.**

DocuSigned by:

*Joseph B. Pinder III*

F8EB3A68BD794EF...

JOSEPH B. PINDER, III, MAYOR

ATTEST:

DocuSigned by:

*Marne K. McGrath*

008BA9A9B2704D5...

MARNE MCGRATH, VILLAGE CLERK

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

DocuSigned by:

*John J. Quick*

302BFAA7FDD417...

JOHN J. QUICK, INTERIM VILLAGE ATTORNEY





**Exhibit "A"**

**FIRST AMENDMENT TO AGREEMENT  
FOR MEDICAL DIRECTOR SERVICES**

THIS IS A FIRST AMENDMENT TO AGREEMENT FOR MEDICAL DIRECTOR SERVICES,  
dated the 30<sup>th</sup> day of September, 2020, (the "Agreement") between:  
ISLAMORADA, VILLAGE OF ISLANDS  
a Florida municipal corporation, hereinafter "VILLAGE,"

and

PROFESSIONAL EMERGENCY SERVICES, INC.,  
a for profit corporation, authorized to do business in the State of  
Florida, hereinafter "CONTRACTOR."

**WITNESSETH:**

In consideration of the mutual terms and condition, promises, covenants, and payments hereinafter set forth, VILLAGE and CONTRACTOR agree as follows:

**ARTICLE 1**  
**PREAMBLE**

In order to establish the background, context and form of reference for this Agreement and to generally express the objectives. and intentions, of the respective parties herein, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 1.1 The VILLAGE, as a provider of Emergency Medical Services to its citizens is required by Chapter 401, Florida Statutes, to contract with a licensed physician to serve as the VILLAGE'S "MEDICAL DIRECTOR", also referred to as the "FIRE DEPARTMENT PHYSICIAN."
- 1.2 On September 17, 2020, the VILLAGE accepted the proposal from CONSULTANT and authorized the proper VILLAGE officials to enter into the Agreement with CONSULTANT to render the services more particularly described in the Agreement, which is attached hereto as Exhibit "A" and incorporated herein.
- 1.3 Since the date of the Agreement, there have been changes to the requirements for contracts with municipalities that necessitates this First Amendment to the Agreement.

ARTICLE 2  
AMENDMENTS

2.1 A new Section 8.6 of the Agreement is hereby included to read as follows:

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

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

2.2 A new Section 8.7 is hereby added to the Agreement to read as follows:

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

2.3 A new Section 8.8 of the Agreement is hereby added to read as follows:

**8.8 Scrutinized Companies.**

- (a) CONTRACTOR certifies that it and its subconsultants are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the CONTRACTOR or its subconsultants are found to have submitted a false certification; or if CONTRACTOR, or its subconsultants are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
- (b) If this Agreement is for more than one million dollars, CONTRACTOR certifies that it and its subconsultants 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 City may immediately terminate this Agreement at its sole option if CONTRACTOR, its affiliates, or its subconsultants are found to have submitted a false certification; or if CONTRACTOR, its affiliates, or its subconsultants 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.
- (c) CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.
- (d) 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.

ARTICLE 3  
MISCELLANEOUS

**3.01 Severability.** If any provision of this First Amendment or application thereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this First Amendment, and the application of such provisions to persons or situations other than those as 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.

**3.02 Governing Law.** This Agreement shall be governed by the laws of the State of Florida with venue lying in Monroe County, Florida.

**3.03 Entire Agreement.** Except to the extent amended by this First Amendment, the Agreement together with Contract Documents, attached as an Exhibit thereto, as amended therein represents the entire and integrated agreement between the VILLAGE and the CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral.

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 CONTRACTOR, by and through its \_\_\_\_\_, duly authorized officer to execute same dated as of \_\_\_\_, November, 2023.

**VILLAGE**

ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA

By: \_\_\_\_\_  
Edward Koconis, Interim Village Manager

AUTHENTICATION:

\_\_\_\_\_  
Marne McGrath, Village Clerk

(SEAL)

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

\_\_\_\_\_  
John J. Quick, Interim Village Attorney



CONTRACTOR

WITNESSES:

\_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

SECRETARY

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_, a Florida corporation, and acknowledged executed the foregoing Agreement as the proper official of \_\_\_\_\_, for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this \_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:



**Exhibit "A"**

**AGREEMENT BETWEEN  
ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA  
AND  
PROFESSIONAL EMERGENCY SERVICES, INC.  
FOR MEDICAL DIRECTOR SERVICES**

This Agreement is between Islamorada, Village of Islands, Florida, a municipal corporation organized and existing under the laws of the State of Florida, its successors and assigns, hereinafter referred to as the "VILLAGE"

**AND**

Professional Emergency Services, Inc. (hereinafter referred to as the "CONSULTANT"), whose principal place of business is 10 High Point Road, Tavernier, FL 33070 and who is represented by Dr. Sandra Schwemmer.

In order to establish the background, context and form of reference for this Agreement and to generally express the objectives, and intentions, of the respective parties herein, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

WHEREAS, the VILLAGE, as a provider of Emergency Medical Services to its citizens, is required by Chapter 401, Florida Statutes, to contract with a licensed physician to serve as the VILLAGE'S "MEDICAL DIRECTOR", also referred to as the "FIRE DEPARTMENT PHYSICIAN"; and

WHEREAS, the VILLAGE prepared and advertised a Request for Proposals ("RFP 20-09") for EMS Medical Director Services, a copy of which is attached hereto and incorporated herein by reference; and

WHEREAS, the CONSULTANT meets the qualifications necessary to provide Medical Director services to the VILLAGE and the VILLAGE desires to utilize the services of the CONSULTANT; and

WHEREAS, on September 17, 2020, the VILLAGE accepted the proposal from CONSULTANT and authorized the proper VILLAGE officials to enter into an agreement with CONSULTANT to render the services more particularly described herein below.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payments set forth below, the VILLAGE and the CONSULTANT agree as follows:

## ARTICLE I

### SCOPE OF SERVICES

1.1 Under the direction of the Fire Chief, and as defined in Florida Administrative Code, Chapter 64E-2.004, Medical Direction, the CONSULTANT shall perform the services of Medical Director for the VILLAGE'S Fire Rescue/Emergency Medical Services Department as more particularly set forth herein.

1.1.1 Under the direction of the Fire Chief, advise, consult, train, and counsel the Village's emergency medical services system, overseeing appropriate quality assurance, but not including administration and managerial functions.

1.1.2 Develop medically correct standing orders or protocols that permit specified ALS and BLS procedures when communication cannot be established with a supervising physician or when any delay in patient care would potentially threaten the life or health of the patient.

1.1.3 Issue standing orders and protocols to the VILLAGE to ensure that the VILLAGE transports each of its patients to facilities that offer a type and level of care appropriate to the patient's medical condition if available within the service region.

1.1.4 Assist and advise in the development of a comprehensive plan for prompt medical review of all possible infectious exposures reported by Village of Islamorada EMS and firefighter personnel and for post-exposure medical follow-up when indicated, in compliance with State and Federal requirements. Assist in the training of the individual EMS and firefighters regarding the exposure policy. The Medical Director or designee shall be available for consultations with field personnel to determine the significance of any bodily fluid exposure and to suggest appropriate action for such an exposure.

1.1.5 Provide continuous 24-hour-per-day, 7-day-per-week medical direction, which shall include in addition to the development of protocols and standing orders, direction to VILLAGE personnel as to availability of medical direction "off-line" service to resolve problems, system conflicts, and provide services in an emergency as that term is defined by section 252.34(3) Florida Statutes.

1.1.6 Develop and implement a patient care quality assurance system to assess the medical performance of Paramedics and Emergency Medical Technicians ("EMTs").

1.1.7 Audit the performance of system personnel by use of a quality assurance program to include but not be limited to, a prompt review of run reports, direct observation, and comparison of performance standards for drugs, equipment, system protocols and procedures.

1.1.8 Participate as appropriate in any other quality assurance program developed by the Department.

1.1.9 Possess a DEA registration, to provide controlled substances to the VILLAGE. DEA registration shall include the address at which controlled substances are stored. Proof of

such registration shall be maintained on file with the VILLAGE and shall be readily available for inspection. The Village will forward all renewal documents as received to Medical Director to assure continuous registration and will reimburse Medical Director for cost of such registration.

1.1.10 Ensure and certify that security procedures for medications, fluids and controlled substances are in compliance with Chapters 499 and 893, Florida Statutes, and Chapter 64F-12, Florida Administrative Code.

1.1.11 Assist and coordinate with the Fire Chief written operating procedures creating, authorizing and confirming adherence to rules and regulations regarding all aspects of the handling of medications, fluids and controlled substances by the VILLAGE.

1.1.12 Notify the Department of Health in writing, when applicable, of each substitution by the VILLAGE of equipment or medication.

1.1.13 Assume direct responsibility for the use by an EMT of an automatic or semiautomatic defibrillator, the performance of esophageal intubation by an EMT; and on routine inter-facility transports, the monitoring and maintenance of non-medicated IV's by an EMT. The Medical Director shall ensure that the EMT is trained to perform these procedures, shall establish written protocols for the performance of these procedures; and shall provide written evidence to the Department documenting compliance with provisions of this paragraph.

1.1.14 Review and approve a 30-hour EMT refresher course.

1.1.15 Complete a minimum of ten (10) hours per year of continuing medical education related to prehospital care or teaching or a combination of both.

1.1.16 Coordinate, approximately four (4) hours per month of in-service education to include classroom teaching and review of EMT and Paramedic performance.

## ARTICLE 2

### METHOD OF PAYMENT

2.1 The VILLAGE agrees to pay the CONSULTANT as full compensation for the services described in Article 1 a fee of \$54,600.00 to be paid to the CONSULTANT in twelve equal monthly installments of \$4,550.00. The CONSULTANT shall be entitled to a fee increase of five percent (5%) upon renewal of this Agreement and subsequent renewal hereunder if the Agreement is renewed pursuant Article 6. This fee includes all costs and expenses of CONSULTANT.

2.2 The VILLAGE agrees that it will use its best efforts to pay the CONSULTANT within thirty (30) calendar days following the month in which the CONSULTANT'S services are rendered.

### ARTICLE 3

#### DEFINITIONS

- 3.1 "Department" means the Department of Health and Rehabilitative Services.
- 3.2 "Emergency medical technician" or "EMT" means a person who is certified by the department to perform basic life support.
- 3.3 "Medical direction" means direct supervision by a physician through a two-way voice communication or, when such voice communication is unavailable, through established standing orders, pursuant to rules of the department.
- 3.4 "Medical Director" means a physician who is employed or contracted by a licensee and who provides medical supervision, including appropriate quality assurance but not including administrative and managerial functions, for daily operations and training.
- 3.5 "Paramedic" means a person who is certified by the Department to perform basic and advanced life support.
- 3.6 "Physician" means a practitioner who is licensed under the provisions of Chapter 458 or Chapter 459, Florida Statutes.
- 3.7 "Fire Department Physician" means a licensed doctor of medicine or osteopathy who has been designated by the fire department to provide professional expert in the areas of occupational safety and health as they relate to emergency services.
- 3.8 "Fire Chief" means the highest ranking officer in charge of fire rescue services.

### ARTICLE 4

#### CONSULTANT OBLIGATIONS

- 4.1 In accordance with Section 401.265, Florida Statutes, and Rule 64E-2.004, Florida Administrative Code, the Medical Director shall possess and maintain through the term of this Agreement a Florida license to practice medicine and shall maintain board certification in emergency medicine.
- 4.2 Dr. Sandra Schwemmer, D.O., FACOEP, FACEP of Professional Emergency Services, Inc., is designated as the Medical Director/Fire Department Physician for the Village's Fire Department. The Medical Director shall designate an Associate Medical Director who shall be available if the Medical Director is on vacation, sick or otherwise unavailable. The Associate Medical Director shall be subject to prior approval by the Village Manager or his designee.
- 4.3 Through the term of this Agreement, the Medical Director shall possess and maintain current registration as a Medical Director with the U.S. Department of Justice, Drug

Enforcement Administration ("DEA"), to provide controlled substances to the VILLAGE. A copy of the registration shall be provided to the VILLAGE prior to execution of this Agreement.

4.4 CONSULTANT shall maintain active participation in a regional or statewide physician group involved in prehospital care.

4.5 The CONSULTANT shall perform such other duties and responsibilities as now are imposed or may be imposed during the term of this Agreement by Florida law, including but not limited to the applicable provisions of Chapters 252 and 401, Florida Statutes, and Rule 64E2, Florida Administrative Code, as may be amended from time to time.

4.6 Inter-facility Transfers: CONSULTANT will develop BLS and ALS medical evaluation and treatment protocols and approve operating procedures as related to BLS and ALS inter-facility patient transfers. CONSULTANT will provide training for EMT's related to monitoring BLS and ALS patients during inter-facility transfers. CONSULTANT will develop a patient care quality assurance system for inter-facility patient transfers. CONSULTANT is not responsible and assumes no liability for the choice or appropriateness of the receiving facility. CONSULTANT is not responsible and assumes no liability for the medical treatment provided to patients by physicians and/or other medical personnel at the sending and/or receiving facilities. CONSULTANT is not responsible and assumes no liability for any complications or negative patient outcome before, during or after the inter-facility transfer.

## ARTICLE 5

### VILLAGE OBLIGATIONS

5.1 The VILLAGE shall assist the CONSULTANT by placing at its disposal all available information pertinent to the services to be performed by the CONSULTANT.

5.2 The VILLAGE shall provide for the CONSULTANT'S use during the term of this Agreement, a Medical Director's identification badge, and appropriate administrative support services as approved by the Fire Chief.

## ARTICLE 6

### TERM

6.1 This Agreement shall commence on October 1, 2020, and shall continue through September 30, 2025, unless terminated earlier under Article 7. The VILLAGE shall have the option to renew this Agreement for two (2) additional two year terms subject to the same terms and conditions, by providing the CONSULTANT with written notice to renew no less than thirty (30) days from the expiration date.

**ARTICLE 7**  
**TERMINATION**

7.1 If through any cause the CONSULTANT fails to fulfill its obligations under this Agreement, the VILLAGE shall have the right to immediately terminate this Agreement upon providing written notice to the CONSULTANT.

7.2 This Agreement may be terminated by the VILLAGE without cause upon thirty (30) days written notice to the CONSULTANT. If the VILLAGE terminates without cause, the CONSULTANT shall be compensated for all services performed and approved by the VILLAGE prior to the termination date, provided that all property belonging to the VILLAGE is returned prior to release of final compensation to the CONSULTANT.

7.3 The CONSULTANT acknowledges that the VILLAGE is a bona fide governmental entity of the State of Florida with the VILLAGE'S fiscal year ending on September 30 of each calendar year. If the VILLAGE does not appropriate sufficient funds to purchase the services required under this Agreement for any of the VILLAGE'S fiscal years subsequent to the one in which the Agreement is executed and entered into, then this Agreement shall be terminated effective upon expiration of the fiscal year for which sufficient funds for the services provided for under this Agreement were last appropriated by the VILLAGE. The VILLAGE shall not, in this event, be obligated to pay for services beyond said fiscal year.

**ARTICLE 8**  
**MISCELLANEOUS**

8.1 **Ownership of Documents/Deliverables.** Any files, documents, studies, run reports, training curriculum and other data prepared by the CONSULTANT in connection with this Agreement are and shall remain the property of the VILLAGE, and shall be delivered to the VILLAGE no later than seven (7) days after termination of this Agreement. VILLAGE is a public agency subject to Chapter 119, Florida Statutes. To the extent that CONSULTANT is acting on behalf of VILLAGE pursuant to Section 119.0701, Florida Statutes, CONSULTANT shall:

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

8.2 No Contingent Fee. The CONSULTANT warrants that he/she has not employed or retained any company or person other than a bona fide employee or agent contractor working solely for the CONSULTANT to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other bona fide employee working solely for the CONSULTANT any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the VILLAGE shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

8.3 Policy on Non-Discrimination. The CONSULTANT shall not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, marital status or national origin, physical or mental disability.

8.4 Independent Contractor. The CONSULTANT is an independent contractor under this Agreement. Personal services provided by the CONSULTANT shall be by employees/agents of the CONSULTANT and subject to supervision by the CONSULTANT, and not as officers, employees, or agents of the VILLAGE. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of the CONSULTANT.

8.5 Assignment: Amendments

8.5.1 The parties recognize that the services contemplated by the CONSULTANT are of a unique and personal nature and as such this Agreement shall not be assigned, transferred or otherwise encumbered, by the CONSULTANT, without the prior written consent of the VILLAGE.

8.5.2 It is further agreed that no renewal modification, amendment or alteration in the terms or conditions of the Agreement, shall be effective unless contained in a written document executed with the same formality as the Agreement.

ARTICLE 9

INSURANCE

9.1 The CONSULTANT shall maintain in force and effect for the term of this Agreement the insurance described below.

9.1.1 Professional and General Liability. The VILLAGE will provide professional and general liability insurance with minimum limits of \$1,000,000.00 per occurrence for the CONSULTANT during the term of this Agreement. The VILLAGE will maintain such professional and general liability insurance for a minimum of three (3) years from the date of termination of this Agreement.

9.1.2 The VILLAGE will provide such coverage to the CONSULTANT within thirty (30) days of the execution by the VILLAGE of this Agreement. The CONSULTANT will be responsible for the payment of any deductible and/or self-insured retentions in the event of a claim.

9.1.3 To the fullest extent permitted by law, the CONSULTANT shall indemnify, defend and hold harmless the VILLAGE, its officials, agents, employees, and volunteers from and against any and all liability, suits, actions, damages, costs, losses and expenses, including attorneys' fees, demands and claims for personal injury, bodily sickness, diseases or death or damage or destruction of tangible personal property or loss of use resulting therefrom, arising out of any errors, omissions, misconduct or negligent acts of the CONSULTANT, its officials, agents, employees, volunteers or subcontractors in the performance of the services of the CONSULTANT under this Agreement.

9.1.4 Representative of the VILLAGE. It is recognized that questions in the day-to-day conduct of this Agreement will arise. The VILLAGE designates the Fire Chief or his designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

9.1.5 All Prior Agreements Superseded. This document incorporates all negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms shall be predicated upon any prior representations or agreements, whether oral or written.

9.1.6 Notices. Whenever either party desires to give notice to the other, it must be given by written notice, sent by certified United States mail with return receipt requested addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to wit:

For the VILLAGE:

Terry L. Abel, Fire Chief  
Department of Fire Rescue and Emergency Management  
Islamorada, Village of Islands  
86800 Overseas Hwy  
Islamorada, Florida 33036  
Telephone: (305) 664-6490  
Facsimile: (305) 852-5195

With a copy to:

Roger V. Bryan, Village Attorney  
Islamorada, Village of Islands  
86800 Overseas Hwy

Islamorada, Florida 33036  
Telephone: (305) 664-6418  
Facsimile: (305) 504-8989

For the CONSULTANT:

Dr. Sandra Schwemmer  
160 Key Heights Drive  
Tavernier Florida 33070

9.2 Consent to Jurisdiction. The parties irrevocably submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of or relating to the Agreement, and unanimously agree that all claims in respect of such action or proceeding may be heard and determined in such court. Each party further agrees that venue of any action to enforce this Agreement shall be in Monroe County, Florida.

9.3 Governing Law/Attorney's Fees. The parties agree that this Agreement shall be construed in accordance with and governed by the laws of the State of Florida. If either the VILLAGE or the CONSULTANT is required to enforce the terms of this Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses including but not limited to court costs, and reasonable attorney's fees.

9.4 Headings. Headings are for convenience of reference only and shall not be considered on any interpretation of this Agreement.

9.5 Exhibits. Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits, if not physically attached, should be treated as part of this Agreement, and are incorporated by reference.

9.6 Severability. If any provisions of this Agreement or its application to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement, and the application of such provision to persons or situations other than those, as to which it shall have been invalid or unenforceable shall not be affected, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: The VILLAGE, signing by and through its Village Manager, authorized to execute same by the Village Council action on the 22 day of September 2020, and by its duly authorized representative.

VILLAGE

By: Maria T. Bassett  
Maria T. Bassett, Acting Village Manager

Date: 9/30/2020

ATTEST:

Kelly S. Toth  
Kelly Toth, Village Clerk

APPROVED AS TO FORM  
AND SUFFICIENCY:

[Signature]  
Roger V. Bryan, Village Attorney

CONSULTANT

Witnesses:

Harley Hubbard  
Print Name: Harley Hubbard  
Karen Skene  
Print Name: Karen Skene

[Signature]  
Name: Sandra Schwenmer  
Title: Pres, PES  
Date: 9/30/20