

RESOLUTION NO. 18-05-35

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA APPROVING NON-EXCLUSIVE CONTINUING SERVICES AGREEMENTS FOR HOUSING DEVELOPMENT SERVICES FOR AFFORDABLE AND EMPLOYEE WORKFORCE HOUSING; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENTS; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE PROFESSIONAL SERVICES AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Islamorada, Village of Islands (the “Village”) prepared and advertised a Request for Qualifications (“RFQ”) for Housing Development Services for Affordable and Employee Workforce Housing, (RFQ-18-05); and

WHEREAS, the Village Manager received qualifications in response to RFQ 18-05 and a Village evaluation committee (the “Committee”) consisting of Village staff conducted a review process and provided rankings of the responses to the Village Manager and the Village Council for approval; and

WHEREAS, on April 12, 2018, the Village Council adopted Resolution 18-04-33, thereby approving the selection of the two (2) firms for the services set forth in RFQ 18-05; and

WHEREAS, the Committee has recommended both proposals for selection and inclusion in the library of Professional Contractors Services for Affordable Housing Development Services for Affordable and Employee Workforce Housing; and

WHEREAS, by executing the Non-Exclusive Continuing Services Agreements (the “Agreements”) with the selected firms, the Village will be able to expeditiously pursue the development of affordable and workforce housing; and

WHEREAS, the Village Council has determined that approval of the Agreements is in the best interest of the Village and its residents.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Approval of Agreements. The Village Council of Islamorada, Village of Islands, hereby approves the Agreements with the following firms for Housing Development Services for Affordable and Employee Workforce Housing pursuant to RFQ 18-05, copies of which are attached as Exhibit "A", together with such non-material changes as may be acceptable to the Village Manager and approved as to form and legality by the Village Attorney:

- Habitat for Humanity of the Upper Keys, Inc.
- The Leben Family LLP.

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 Agreements.

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 Agreements.

Section 5. Execution of Agreement. The Village Manager is authorized to execute the Agreements on behalf of the Village, to execute any required agreements and/or documents to implement the terms and conditions of the Agreements and to execute any extensions and/or amendments to the Agreements, 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 Councilwoman Cheryl Meads, second by Vice Mayor Deb Gillis.

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

Mayor Chris Sante	YES
Vice Mayor Deb Gillis	YES
Councilman Mike Forster	YES
Councilwoman Cheryl Meads	YES
Councilman Jim Mooney	YES

PASSED AND ADOPTED THIS 3RD DAY OF MAY, 2018.



CHRIS SANTE MAYOR

ATTEST:



KELLY TOTH, VILLAGE CLERK

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



ROGET V. BRYAN, VILLAGE ATTORNEY

NON-EXCLUSIVE CONTINUING SERVICES AGREEMENT

between

ISLAMORADA, VILLAGE OF ISLANDS

and

HABITAT FOR HUMANITY OF THE UPPER KEYS, INC.

A Florida corporation

For

**Housing Development Services
for Affordable and Employee Workforce Housing**

**NON-EXCLUSIVE CONTINUING SERVICES AGREEMENT
FOR HOUSING DEVELOPMENT SERVICES
FOR AFFORDABLE AND EMPLOYEE WORKFORCE HOUSING**

THIS AGREEMENT is made between ISLAMORADA, VILLAGE OF ISLANDS, a Florida municipal corporation, (hereinafter referred to as the "VILLAGE") and HABITAT FOR HUMANITY OF THE UPPER KEYS, INC., a Florida corporation authorized to do business in the State of Florida, (hereinafter referred to as the "CONSULTANT"), whose place of business is 98970 Overseas Highway, Key Largo, Florida 33037.

WHEREAS, pursuant to Section 287.055, Florida Statutes, the VILLAGE requested qualifications from qualified firms pursuant to a Request for Qualifications (RFQ 18-05); and

WHEREAS, the VILLAGE desires to hire the CONSULTANT on a continuing, nonexclusive basis to provide housing development services for affordable and employee workforces housing within the Village (Services) as expressed in RFQ 18-05 to which CONSULTANT responded; and

WHEREAS, CONSULTANT is willing and able to perform such professional services for the VILLAGE within the basic terms and conditions set forth in this non-exclusive continuing services agreement (hereinafter referred to as "Continuing Services Agreement" or "Agreement") and the VILLAGE's RFQ 18-05; and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the CONSULTANT to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

WHEREAS, the Village's Request for Qualifications (RFQ) was undertaken in accordance with Section 287.055, Florida Statutes, Florida's Consultant Competitive Negotiation Act and the parties hereto have complied with all the requirements therein; and

WHEREAS, the Consultant and Village desire to enter into the foregoing Agreement for a period of three (3) years from the execution and perform all professional services in connection with the RFQ 18-05, as described herein, on a continuing basis in connection with projects where the estimated construction costs does not exceed \$2,000,000.00 or studies which do not exceed \$200,000.00.

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

SECTION 1. DEFINITIONS

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

1.1 **Compensation:** The total amount paid by the VILLAGE to the CONSULTANT for rendering professional services for a specific project, exclusive of reimbursable expenses.

1.2 **Reimbursable Expenses:** The direct non-salary expenses directly attributable to the Project. Reimbursable expenses include application and permit fees paid for securing approval

of authorities having jurisdiction over the Specific Project; actual cost of reproduction, printing, binding and photocopying of drawings, specifications, renderings and other documents; postage; travel expenses; and subconsultant's fees.

1.3 **Specific Project Agreement:** An agreement to provide services for a particular Project.

1.4 **Subconsultant Fee:** The direct and actual cost of the Subconsultant with no markup, as reflected by actual invoices of the Subconsultant.

1.5 **Travel Expenses:** Travel expenses, whether within or outside of Monroe County, and whether to Specific Project or otherwise, shall not be reimbursed unless CONSULTANT has secured advance written authorization for such travel from the Village Manager. All approved travel expenses will be reimbursed in accordance with the village adopted travel policy.

SECTION 2. SPECIFIC PROJECTS/SCOPE OF SERVICES

2.1 In accordance with the Consultants' Competitive Negotiation Act, CONSULTANT may provide professional services to the VILLAGE for Specific Projects as authorized from time to time by either the Village Council or the Village Manager, as authorized by subsection 2.6 hereunder and the Village's purchasing regulations. The VILLAGE reserves the right to select one or more firms to do the Projects.

2.2 When the need for services for a Specific Project occurs, the Village Manager may enter into negotiations with the CONSULTANT for that Specific Project under the terms and conditions of this Agreement. The VILLAGE shall initiate said negotiations by providing the CONSULTANT with a "Scope of Services Request," requesting from the CONSULTANT a proposal to provide professional services for the Specific Project. The CONSULTANT shall prepare a proposal which includes those subjects specified in subsection 2.3 (a) through (g). The Village Manager and CONSULTANT shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 2.3.

2.3 The VILLAGE and CONSULTANT shall utilize as the agreement for each Specific Project a Standard Project Agreement ("Project Agreement"). Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:

- a. The Scope of Services;
- b. The Deliverables;
- c. The Time and Schedule of Performance and Term;
- d. The amount of Compensation;
- e. The Personnel assigned to the Specific Project;
- f. Any additional contractual requirements for consultant agreements pursuant to Section 287.055, Florida Statutes;

- g. Any modifications to the Project Agreement, if mutually agreed upon by the parties.

2.4 If the Village Manager determines that the CONSULTANT's services for a particular Project are needed on an hourly basis in lieu of a lump sum compensation package, the CONSULTANT shall charge the VILLAGE for professional services at those hourly fees as specified in a Project Agreement/Work Authorization (the Project Agreement") to be entered into by the parties for such particular Project. The Project Agreement shall specify that the CONSULTANT's services shall be provided on an hourly basis with a maximum amount of compensation that may not be exceeded without additional approval.

2.5 The professional services to be rendered by the CONSULTANT shall commence subsequent to the execution of each Project Agreement.

2.6 The Village Manager is authorized to negotiate and execute Project Agreements for Projects in which the CONSULTANT's services do not exceed \$25,000.00. The CONSULTANT's Services shall be performed, completed and submitted to the VILLAGE as specified in the Project Agreement.

2.7 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

SECTION 3. TERM/TERMINATION

3.1 **Term of Agreement.** - This Continuing Service Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect for period of three (3) years therefrom, unless and until terminated pursuant to Section 3.2, 3.3, or other applicable sections of this Agreement. Each Project Agreement shall specify the period of service agreed to by the VILLAGE and the CONSULTANT for services to be rendered under said Project Agreement.

3.2 **Termination - For Convenience** - This Continuing Services Agreement may be terminated by the VILLAGE for convenience upon thirty (30) calendar days written notice to the CONSULTANT.

3.3 **Effect on Project Agreement** - Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3.4 **Non-Exclusive Agreement** - Notwithstanding the provisions of Subsection 3.1, the Village Manager may issue requests for proposals for this professional discipline at any time and may utilize the services of any other consultants retained by the VILLAGE under similar agreements. Nothing in this Agreement shall be construed to give the CONSULTANT a right to perform services for any specific project.

SECTION 4. ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES

4.1 **Changes Permitted.** Changes in the Scope of Services of a Project Agreement consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the VILLAGE by Change Order without invalidating the Project Agreement.

4.2 **Change Order Defined.** Change Order shall mean a written order to the CONSULTANT executed by the VILLAGE, issued after execution of a Project Agreement, authorizing and directing a change in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and/or the Contract Time may be changed only by Change Order.

4.3 **Effect of Executed Change Order.** The execution of a Change Order by the VILLAGE and the CONSULTANT shall constitute conclusive evidence of the CONSULTANT's agreement to the ordered changes in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The CONSULTANT, by executing the Change Order, waives and forever releases any claim against the VILLAGE for additional time or compensation for matters relating to or arising out of or resulting from the Services included within or affected by the executed Change Order.

4.4 **Authority to Execute Changes or Requests for Additional Services.** The Village Manager is authorized to negotiate and execute Change Orders, in an amount not to exceed \$25,000.00 per change. Changes, which exceed \$25,000.00, shall be approved by the Village Council.

SECTION 5. SURVIVAL OF PROVISIONS

5.1 Any terms or conditions of either this Agreement or any subsequent Project Agreement that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

SECTION 6. VILLAGE'S RESPONSIBILITIES

6.1 Assist the CONSULTANT by placing at its disposal all available information as may be requested in writing by the CONSULTANT and allowing reasonable access to all pertinent information relating to the services to be performed by the CONSULTANT.

6.2 Furnish to the CONSULTANT, at the CONSULTANT's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by the CONSULTANT, in possession of the VILLAGE.

6.3 Arrange for access to and make all provisions for the CONSULTANT to enter upon public property as required for the CONSULTANT to perform services.

SECTION 7. CODE OF ETHICS

7.1 The CONSULTANT agrees to abide by all applicable State and Village codes in the performance of services hereunder and they shall be incorporated in this Agreement by this reference.

7.2 The CONSULTANT warrants and represents that its employees shall abide by the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes.

SECTION 8. POLICY OF NON-DISCRIMINATION/WAGES

8.1 The CONSULTANT shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work and shall not discriminate on the grounds of race, color, religion, sex, age, marital status, national origin, physical or mental disability in the performance of work under this Agreement.

8.2 The CONSULTANT shall comply with the wage provisions of Section 287.055, Florida Statutes. If the project is subject to federal or state grant funding that requires specific wage and non-discrimination provisions, the CONSULTANT shall be required to comply with the same.

SECTION 9. OWNERSHIP OF DOCUMENTS/DELIVERABLES

9.1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the VILLAGE or furnished by the CONSULTANT pursuant to any Project Agreement, shall become the property of the VILLAGE, whether the Project for which they are made is completed or not, and shall be delivered by the CONSULTANT to the VILLAGE within five (5) calendar days after receipt of written notice requesting delivery of said documents or digital files. The CONSULTANT shall have the right to keep one record set of the documents upon completion of the Project, however, in no event shall the CONSULTANT, without the VILLAGE's prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

9.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files or other data, entered into by the CONSULTANT for each Specific Project shall provide that all such documents and rights obtained by virtue of such contracts shall become the property of the VILLAGE.

9.3 All final plans and documents prepared by the CONSULTANT in connection with any Project Agreement shall bear the endorsement and seal of a person duly registered as a Professional Engineer, Architect, Landscape Architect, Professional Geologist, or Land Surveyor, as appropriate, in the State of Florida and date approved and/or sealed.

SECTION 10. RECORDS/AUDITS

10.1 The CONSULTANT shall maintain and require Subconsultants to maintain, complete and correct records, books, documents, papers and accounts pertaining to the Specific Project. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the Village Manager or any authorized VILLAGE representative with reasonable notice and shall be kept for a period of three (3) years after the completion of each

Project Agreement. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by or reimbursement to the VILLAGE of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the reasonable satisfaction of the VILLAGE.

10.2 The CONSULTANT shall comply with Chapter 119, Florida Statutes, as applicable. 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.

10.3 Refusal of the CONSULTANT to comply with the provisions of Sections 10.1 or 10.2 shall be grounds for immediate termination for cause by the VILLAGE of this Agreement or any Project Agreement.

SECTION 11. NO CONTINGENT FEE

11.1 The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee 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 than a 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. In the event the CONSULTANT violates this provision, the VILLAGE shall have the right to terminate this Agreement or any Project Agreement, without liability, and at its sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 12. INDEPENDENT CONTRACTOR

12.1 The CONSULTANT is an independent contractor under this Agreement and any Project Agreement. Personal services provided by the CONSULTANT shall be by employees 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, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to

services rendered under this Agreement or any Project Agreements shall be those of the CONSULTANT.

SECTION 13. ASSIGNMENT; AMENDMENTS

13.1 This Agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by the CONSULTANT, without the prior written consent of the VILLAGE.

13.2 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

SECTION 14. INDEMNIFICATION/HOLD HARMLESS

14.1 Pursuant to Section 725.08, Florida Statutes, the CONSULTANT shall indemnify and hold harmless the VILLAGE and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent such liabilities, damages, losses, and costs are caused by any errors or omissions, negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT or any persons employed or utilized by the CONSULTANT in the performance of this or any Project Agreement.

SECTION 15. INSURANCE

The CONSULTANT shall secure and maintain throughout the duration of this Agreement and any Project Agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the VILLAGE against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the VILLAGE, its officials, employees, agents and volunteers. Any insurance maintained by the VILLAGE shall be in excess of the CONSULTANT's insurance and shall not contribute to the CONSULTANT's insurance. The insurance coverages shall include a minimum of:

15.1 **Worker's Compensation and Employer's Liability Insurance:** Coverage 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 \$100,000.00 each accident.

15.2 **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the CONSULTANT and the VILLAGE against claims for injuries to members of the public and/or damages to property of others arising from the CONSULTANT's use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.

15.3 **Commercial General Liability.** This insurance shall be written in comprehensive form and shall protect the CONSULTANT and the VILLAGE against claims arising from injuries to

members of the public or damage to property of others arising out of any act or omission to act of the CONSULTANT or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.

(a) Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

(b) The VILLAGE is to be specifically included as an Additional Insured for the liability of the VILLAGE resulting from operations performed by or on behalf of the CONSULTANT in performance of this or any Project Agreement. The CONSULTANT'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 CONSULTANT'S insurance. The CONSULTANT'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 in the same manner as if separate policies had been issued to each.

15.4 **Professional Liability:** The CONSULTANT shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.00 with a deductible of no more than \$25,000.00 per claim. The CONSULTANT shall be responsible for maintaining this professional liability insurance for a minimum of five (5) years from the date of execution of each Project Agreement. Upon request of the VILLAGE, the CONSULTANT shall make available for inspection copies of any claims filed or made against the policy during the policy term. The CONSULTANT shall additionally notify the VILLAGE, in writing, within thirty (30) calendar days of any claims filed or made against the policy in excess of \$25,000.00 during the policy term.

15.5 **Certificate of Insurance:** Prior to the execution of this Agreement, the CONSULTANT shall provide the Village Manager with evidence of insurability from the CONSULTANT's Insurance Carrier or a Certificate of Insurance. Prior to execution of any Project Agreement, the CONSULTANT shall provide to the Village Manager, Certificates of Insurance evidencing the required insurance coverages. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this and any Project Agreement and shall state that such insurance is as required by this and any Project Agreement. The VILLAGE reserves the right to require the CONSULTANT to provide 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 or policies 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 Manager.

15.6 All deductibles or self-insured retentions must be declared to and be approved by the Village Manager. The CONSULTANT shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The Village Manager may require the CONSULTANT, as a condition of execution of a particular Project Agreement, to provide a bond or

other monetary consideration to cover the CONSULTANT's deductible for Professional Liability Insurance.

SECTION 16. REPRESENTATIVE OF VILLAGE AND THE CONSULTANT

16.1 **VILLAGE REPRESENTATIVE.** It is recognized that questions in the day-to-day conduct of this Agreement will arise. The VILLAGE designates the Village Manager or his/her designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

16.2 **CONSULTANT REPRESENTATIVE.** The CONSULTANT shall inform the VILLAGE Representative, in writing, of the representative of the CONSULTANT to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

SECTION 17. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL

17.1 If either the VILLAGE or the CONSULTANT is required to enforce the terms of this Agreement or any Project 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 costs, expenses, and attorney's fees in any state or federal administrative, circuit court and appellate court proceedings.

17.2 In the event of any litigation arising out of this Agreement or Project Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

SECTION 18. ALL PRIOR AGREEMENTS SUPERSEDED

18.1 This document incorporates and includes all prior 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 of the Agreement shall be predicated upon any prior representations or agreements whether oral or written.

SECTION 19. THE CONSULTANT' RESPONSIBILITIES

19.1 The CONSULTANT shall comply with all applicable provisions of the Village Code, as well as State and Federal laws, rules and regulations.

19.2 The CONSULTANT shall exercise the same degree of care, skill and diligence in the performance of the services for each Project Agreement as is ordinarily provided by a professional engineer, architect, landscape architect, surveyor or mapper under similar circumstances. If at any time during the term of any Project Agreement or the construction of the Project for which the CONSULTANT has provided engineering, architectural landscape, surveying, mapping or architectural services under a prior Project Agreement, it is determined that the CONSULTANT 's documents are incorrect, defective or fail to conform to the Scope of Services of the particular Project, upon written notification from the VILLAGE, the CONSULTANT shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work,

including any additional testing, inspections, and construction and reimbursements to the VILLAGE for any other services and expenses made necessary thereby, save and except any costs and expenses which the VILLAGE would have otherwise paid absent the CONSULTANT's error or omission. The VILLAGE's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement, the Project Agreement, by law, equity or otherwise.

19.3 The CONSULTANT's obligations under Paragraph 19.2 of this Agreement shall survive termination of this Agreement or any Project Agreement.

19.4 Any and all drawings, plans, specifications, or other construction or contract documents prepared by the CONSULTANT shall be accurate, coordinated and adequate for construction and shall be in conformity and comply with all applicable law, codes and regulations.

SECTION 20. SUBCONSULTANTS

20.1 In the event the CONSULTANT requires the services of any Subconsultants or other professional associates in connection with services covered by any Project Agreement, the CONSULTANT must secure prior written approval of the Village Manager. The CONSULTANT shall utilize his/her best efforts to utilize Subconsultants where principal place of business is located within the Village or Monroe County.

20.2 Any subcontract with a Subconsultant shall afford to the CONSULTANT rights against the Subconsultant which correspond to those rights afforded to the VILLAGE against the CONSULTANT herein, including but not limited to those rights of termination as set forth herein.

20.3 No reimbursement shall be made to the CONSULTANT for any subconsultants that have not been previously approved by the VILLAGE for use by the CONSULTANT.

SECTION 21. NOTICES

Whenever either party desires to give notice to the other, it must be given by hand delivery or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, 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 CONSULTANT:

Habitat for Humanity of the Upper Keys, Inc.
989700 Overseas Highway
Key Largo, Florida 33037
Telephone: 305-453-0050

FOR VILLAGE:

Islamorada, Village of Islands
Seth Lawless, Village Manager
86800 Overseas Highway
Islamorada, Florida 33036
Telephone: 305-664-6400
Facsimile: 305-664-6464

Copy: Roget V. Bryan, Village Attorney
Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, Florida 33036
Telephone: 305-664-6418
Facsimile: 305-504-8989

SECTION 22. TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by the CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement or any Project Agreement are accurate, complete, and current at the time of contracting. Each Project Agreement's contract prices and any additions shall be adjusted to exclude any significant sums by which the VILLAGE determines the Project's contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Project Agreement.

SECTION 23. CONSENT TO JURISDICTION

The parties submit to the jurisdiction of any Florida State or Federal court in any action or proceeding arising out of relating to this Agreement or any Project Agreement. Venue of any action to enforce this Agreement or any Project Agreement hereunder shall be in Monroe County, Florida.

SECTION 24. GOVERNING LAW

This Agreement and any Project Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

SECTION 25. HEADINGS

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

SECTION 26. 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.

SECTION 27. SEVERABILITY

If any provision of this Agreement or any Project Agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, 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.

SECTION 28. 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.

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IN WITNESS WHEREOF, the parties execute 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 the CONSULTANT by and through its _____, whose representative has been duly authorized to execute same through a resolution of the corporation or partnership.

ATTEST:

ISLAMORADA, VILLAGE OF ISLANDS

Kelly S Toth
Kelly Toth, Village Clerk

By: Seth Lawless
Seth Lawless, Village Manager

Date: 6/29/18

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

[Signature]
Roget V. Bryan, Village Attorney

ATTEST:

HABITAT FOR HUMANITY OF THE UPPER KEYS, INC.

Secretary

Print Name

By: Jack Niedbalski
Jack Niedbalski
Habitat for Humanity of the Upper Keys, Inc.

Date: 6-29-18

WITNESSES:

Kelly S Toth
Print Name: Kelly S Toth

Stephanie Conde
Print Name: Stephanie Conde

NON-EXCLUSIVE CONTINUING SERVICES AGREEMENT

between

ISLAMORADA, VILLAGE OF ISLANDS

and

THE LEBEN FAMILY LLLP

A Florida corporation

For

**Housing Development Services
for Affordable and Employee Workforce Housing**

**NON-EXCLUSIVE CONTINUING SERVICES AGREEMENT
FOR HOUSING DEVELOPMENT SERVICES
FOR AFFORDABLE AND EMPLOYEE WORKFORCE HOUSING**

THIS AGREEMENT is made between ISLAMORADA, VILLAGE OF ISLANDS, a Florida municipal corporation, (hereinafter referred to as the "VILLAGE") and THE LEBEN FAMILY LLLP, a Florida corporation authorized to do business in the State of Florida, (hereinafter referred to as the "CONSULTANT"), whose principal place of business is 6670 Estero Blvd., #A-101, Ft. Myers Beach, Florida 33931

WHEREAS, pursuant to Section 287.055, Florida Statutes, the VILLAGE requested qualifications from qualified firms pursuant to a Request for Qualifications (RFQ 18-05); and

WHEREAS, the VILLAGE desires to hire the CONSULTANT on a continuing, nonexclusive basis to provide housing development services for affordable and employee workforces housing within the Village (Services) as expressed in RFQ 18-05 to which CONSULTANT responded; and

WHEREAS, CONSULTANT is willing and able to perform such professional services for the VILLAGE within the basic terms and conditions set forth in this non-exclusive continuing services agreement (hereinafter referred to as "Continuing Services Agreement" or "Agreement") and the VILLAGE's RFQ 18-05; and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the CONSULTANT to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

WHEREAS, the Village's Request for Qualifications (RFQ) was undertaken in accordance with Section 287.055, Florida Statutes, Florida's Consultant Competitive Negotiation Act and the parties hereto have complied with all the requirements therein; and

WHEREAS, the Consultant and Village desire to enter into the foregoing Agreement for a period of three (3) years from the execution and perform all professional services in connection with the RFQ 18-05, as described herein, on a continuing basis in connection with projects where the estimated construction costs does not exceed \$2,000,000.00 or studies which do not exceed \$200,000.00.

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

SECTION 1. DEFINITIONS

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

1.1 **Compensation:** The total amount paid by the VILLAGE to the CONSULTANT for rendering professional services for a specific project, exclusive of reimbursable expenses.

1.2 **Reimbursable Expenses:** The direct non-salary expenses directly attributable to the Project. Reimbursable expenses include application and permit fees paid for securing approval

of authorities having jurisdiction over the Specific Project; actual cost of reproduction, printing, binding and photocopying of drawings, specifications, renderings and other documents; postage; travel expenses; and subconsultant's fees.

1.3 **Specific Project Agreement:** An agreement to provide services for a particular Project.

1.4 **Subconsultant Fee:** The direct and actual cost of the Subconsultant with no markup, as reflected by actual invoices of the Subconsultant.

1.5 **Travel Expenses:** Travel expenses, whether within or outside of Monroe County, and whether to Specific Project or otherwise, shall not be reimbursed unless CONSULTANT has secured advance written authorization for such travel from the Village Manager. All approved travel expenses will be reimbursed in accordance with the village adopted travel policy.

SECTION 2. SPECIFIC PROJECTS/SCOPE OF SERVICES

2.1 In accordance with the Consultants' Competitive Negotiation Act, CONSULTANT may provide professional services to the VILLAGE for Specific Projects as authorized from time to time by either the Village Council or the Village Manager, as authorized by subsection 2.6 hereunder and the Village's purchasing regulations. The VILLAGE reserves the right to select one or more firms to do the Projects.

2.2 When the need for services for a Specific Project occurs, the Village Manager may enter into negotiations with the CONSULTANT for that Specific Project under the terms and conditions of this Agreement. The VILLAGE shall initiate said negotiations by providing the CONSULTANT with a "Scope of Services Request," requesting from the CONSULTANT a proposal to provide professional services for the Specific Project. The CONSULTANT shall prepare a proposal which includes those subjects specified in subsection 2.3 (a) through (g). The Village Manager and CONSULTANT shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 2.3.

2.3 The VILLAGE and CONSULTANT shall utilize as the agreement for each Specific Project a Standard Project Agreement ("Project Agreement"). Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:

- a. The Scope of Services;
- b. The Deliverables;
- c. The Time and Schedule of Performance and Term;
- d. The amount of Compensation;
- e. The Personnel assigned to the Specific Project;
- f. Any additional contractual requirements for consultant agreements pursuant to Section 287.055, Florida Statutes;

- g. Any modifications to the Project Agreement, if mutually agreed upon by the parties.

2.4 If the Village Manager determines that the CONSULTANT's services for a particular Project are needed on an hourly basis in lieu of a lump sum compensation package, the CONSULTANT shall charge the VILLAGE for professional services at those hourly fees as specified in in a Project Agreement/Work Authorization (the Project Agreement") to be entered into by the parties for such particular Project. The Project Agreement shall specify that the CONSULTANT's services shall be provided on an hourly basis with a maximum amount of compensation that may not be exceeded without additional approval.

2.5 The professional services to be rendered by the CONSULTANT shall commence subsequent to the execution of each Project Agreement.

2.6 The Village Manager is authorized to negotiate and execute Project Agreements for Projects in which the CONSULTANT's services do not exceed \$25,000.00. The CONSULTANT's Services shall be performed, completed and submitted to the VILLAGE as specified in the Project Agreement.

2.7 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

SECTION 3. TERM/TERMINATION

3.1 **Term of Agreement** - This Continuing Service Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect for period of three (3) years therefrom, unless and until terminated pursuant to Section 3.2, 3.3, or other applicable sections of this Agreement. Each Project Agreement shall specify the period of service agreed to by the VILLAGE and the CONSULTANT for services to be rendered under said Project Agreement.

3.2 **Termination - For Convenience** - This Continuing Services Agreement may be terminated by the VILLAGE for convenience upon thirty (30) calendar days written notice to the CONSULTANT.

3.3 **Effect on Project Agreement** - Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3.4 **Non-Exclusive Agreement** - Notwithstanding the provisions of Subsection 3.1, the Village Manager may issue requests for proposals for this professional discipline at any time and may utilize the services of any other consultants retained by the VILLAGE under similar agreements. Nothing in this Agreement shall be construed to give the CONSULTANT a right to perform services for any specific project.

SECTION 4. ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES

4.1 **Changes Permitted.** Changes in the Scope of Services of a Project Agreement consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the VILLAGE by Change Order without invalidating the Project Agreement.

4.2 **Change Order Defined.** Change Order shall mean a written order to the CONSULTANT executed by the VILLAGE, issued after execution of a Project Agreement, authorizing and directing a change in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and/or the Contract Time may be changed only by Change Order.

4.3 **Effect of Executed Change Order.** The execution of a Change Order by the VILLAGE and the CONSULTANT shall constitute conclusive evidence of the CONSULTANT's agreement to the ordered changes in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The CONSULTANT, by executing the Change Order, waives and forever releases any claim against the VILLAGE for additional time or compensation for matters relating to or arising out of or resulting from the Services included within or affected by the executed Change Order.

4.4 **Authority to Execute Changes or Requests for Additional Services.** The Village Manager is authorized to negotiate and execute Change Orders, in an amount not to exceed \$25,000.00 per change. Changes, which exceed \$25,000.00, shall be approved by the Village Council.

SECTION 5. SURVIVAL OF PROVISIONS

5.1 Any terms or conditions of either this Agreement or any subsequent Project Agreement that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

SECTION 6. VILLAGE'S RESPONSIBILITIES

6.1 Assist the CONSULTANT by placing at its disposal all available information as may be requested in writing by the CONSULTANT and allowing reasonable access to all pertinent information relating to the services to be performed by the CONSULTANT.

6.2 Furnish to the CONSULTANT, at the CONSULTANT's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by the CONSULTANT, in possession of the VILLAGE.

6.3 Arrange for access to and make all provisions for the CONSULTANT to enter upon public property as required for the CONSULTANT to perform services.

SECTION 7. CODE OF ETHICS

7.1 The CONSULTANT agrees to abide by all applicable State and Village codes in the performance of services hereunder and they shall be incorporated in this Agreement by this reference.

7.2 The CONSULTANT warrants and represents that its employees shall abide by the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes.

SECTION 8. POLICY OF NON-DISCRIMINATION/WAGES

8.1 The CONSULTANT shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work and shall not discriminate on the grounds of race, color, religion, sex, age, marital status, national origin, physical or mental disability in the performance of work under this Agreement.

8.2 The CONSULTANT shall comply with the wage provisions of Section 287.055, Florida Statutes. If the project is subject to federal or state grant funding that requires specific wage and non-discrimination provisions, the CONSULTANT shall be required to comply with the same.

SECTION 9. OWNERSHIP OF DOCUMENTS/DELIVERABLES

9.1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the VILLAGE or furnished by the CONSULTANT pursuant to any Project Agreement, shall become the property of the VILLAGE, whether the Project for which they are made is completed or not, and shall be delivered by the CONSULTANT to the VILLAGE within five (5) calendar days after receipt of written notice requesting delivery of said documents or digital files. The CONSULTANT shall have the right to keep one record set of the documents upon completion of the Project, however, in no event shall the CONSULTANT, without the VILLAGE's prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

9.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files or other data, entered into by the CONSULTANT for each Specific Project shall provide that all such documents and rights obtained by virtue of such contracts shall become the property of the VILLAGE.

9.3 All final plans and documents prepared by the CONSULTANT in connection with any Project Agreement shall bear the endorsement and seal of a person duly registered as a Professional Engineer, Architect, Landscape Architect, Professional Geologist, or Land Surveyor, as appropriate, in the State of Florida and date approved and/or sealed.

SECTION 10. RECORDS/AUDITS

10.1 The CONSULTANT shall maintain and require Subconsultants to maintain, complete and correct records, books, documents, papers and accounts pertaining to the Specific Project. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the Village Manager or any authorized VILLAGE representative with reasonable notice and shall be kept for a period of three (3) years after the completion of each

Project Agreement. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by or reimbursement to the VILLAGE of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the reasonable satisfaction of the VILLAGE.

10.2 The CONSULTANT shall comply with Chapter 119, Florida Statutes, as applicable. 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.

10.3 Refusal of the CONSULTANT to comply with the provisions of Sections 10.1 or 10.2 shall be grounds for immediate termination for cause by the VILLAGE of this Agreement or any Project Agreement.

SECTION 11. NO CONTINGENT FEE

11.1 The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee 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 than a 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. In the event the CONSULTANT violates this provision, the VILLAGE shall have the right to terminate this Agreement or any Project Agreement, without liability, and at its sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 12. INDEPENDENT CONTRACTOR

12.1 The CONSULTANT is an independent contractor under this Agreement and any Project Agreement. Personal services provided by the CONSULTANT shall be by employees 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, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to

services rendered under this Agreement or any Project Agreements shall be those of the CONSULTANT.

SECTION 13. ASSIGNMENT; AMENDMENTS

13.1 This Agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by the CONSULTANT, without the prior written consent of the VILLAGE.

13.2 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

SECTION 14. INDEMNIFICATION/HOLD HARMLESS

14.1 Pursuant to Section 725.08, Florida Statutes, the CONSULTANT shall indemnify and hold harmless the VILLAGE and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent such liabilities, damages, losses, and costs are caused by any errors or omissions, negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT or any persons employed or utilized by the CONSULTANT in the performance of this or any Project Agreement.

SECTION 15. INSURANCE

The CONSULTANT shall secure and maintain throughout the duration of this Agreement and any Project Agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the VILLAGE against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the VILLAGE, its officials, employees, agents and volunteers. Any insurance maintained by the VILLAGE shall be in excess of the CONSULTANT's insurance and shall not contribute to the CONSULTANT's insurance. The insurance coverages shall include a minimum of:

15.1 **Worker's Compensation and Employer's Liability Insurance:** Coverage 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 \$100,000.00 each accident.

15.2 **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the CONSULTANT and the VILLAGE against claims for injuries to members of the public and/or damages to property of others arising from the CONSULTANT's use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.

15.3 **Commercial General Liability:** This insurance shall be written in comprehensive form and shall protect the CONSULTANT and the VILLAGE against claims arising from injuries to

members of the public or damage to property of others arising out of any act or omission to act of the CONSULTANT or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.

(a) Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

(b) The VILLAGE is to be specifically included as an Additional Insured for the liability of the VILLAGE resulting from operations performed by or on behalf of the CONSULTANT in performance of this or any Project Agreement. The CONSULTANT'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 CONSULTANT'S insurance. The CONSULTANT'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 in the same manner as if separate policies had been issued to each.

15.4 **Professional Liability:** The CONSULTANT shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.00 with a deductible of no more than \$25,000.00 per claim. The CONSULTANT shall be responsible for maintaining this professional liability insurance for a minimum of five (5) years from the date of execution of each Project Agreement. Upon request of the VILLAGE, the CONSULTANT shall make available for inspection copies of any claims filed or made against the policy during the policy term. The CONSULTANT shall additionally notify the VILLAGE, in writing, within thirty (30) calendar days of any claims filed or made against the policy in excess of \$25,000.00 during the policy term.

15.5 **Certificate of Insurance:** Prior to the execution of this Agreement, the CONSULTANT shall provide the Village Manager with evidence of insurability from the CONSULTANT's Insurance Carrier or a Certificate of Insurance. Prior to execution of any Project Agreement, the CONSULTANT shall provide to the Village Manager, Certificates of Insurance evidencing the required insurance coverages. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this and any Project Agreement and shall state that such insurance is as required by this and any Project Agreement. The VILLAGE reserves the right to require the CONSULTANT to provide 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 or policies 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 Manager.

15.6 All deductibles or self-insured retentions must be declared to and be approved by the Village Manager. The CONSULTANT shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The Village Manager may require the CONSULTANT, as a condition of execution of a particular Project Agreement, to provide a bond or

other monetary consideration to cover the CONSULTANT's deductible for Professional Liability Insurance.

SECTION 16. REPRESENTATIVE OF VILLAGE AND THE CONSULTANT

16.1 **VILLAGE REPRESENTATIVE.** It is recognized that questions in the day-to-day conduct of this Agreement will arise. The VILLAGE designates the Village Manager or his/her designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

16.2 **CONSULTANT REPRESENTATIVE.** The CONSULTANT shall inform the VILLAGE Representative, in writing, of the representative of the CONSULTANT to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

SECTION 17. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL

17.1 If either the VILLAGE or the CONSULTANT is required to enforce the terms of this Agreement or any Project 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 costs, expenses, and attorney's fees in any state or federal administrative, circuit court and appellate court proceedings.

17.2 In the event of any litigation arising out of this Agreement or Project Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

SECTION 18. ALL PRIOR AGREEMENTS SUPERSEDED

18.1 This document incorporates and includes all prior 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 of the Agreement shall be predicated upon any prior representations or agreements whether oral or written.

SECTION 19. THE CONSULTANT' RESPONSIBILITIES

19.1 The CONSULTANT shall comply with all applicable provisions of the Village Code, as well as State and Federal laws, rules and regulations.

19.2 The CONSULTANT shall exercise the same degree of care, skill and diligence in the performance of the services for each Project Agreement as is ordinarily provided by a professional engineer, architect, landscape architect, surveyor or mapper under similar circumstances. If at any time during the term of any Project Agreement or the construction of the Project for which the CONSULTANT has provided engineering, architectural landscape, surveying, mapping or architectural services under a prior Project Agreement, it is determined that the CONSULTANT 's documents are incorrect, defective or fail to conform to the Scope of Services of the particular Project, upon written notification from the VILLAGE, the CONSULTANT shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work,

including any additional testing, inspections, and construction and reimbursements to the VILLAGE for any other services and expenses made necessary thereby, save and except any costs and expenses which the VILLAGE would have otherwise paid absent the CONSULTANT's error or omission. The VILLAGE's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement, the Project Agreement, by law, equity or otherwise.

19.3 The CONSULTANT's obligations under Paragraph 19.2 of this Agreement shall survive termination of this Agreement or any Project Agreement.

19.4 Any and all drawings, plans, specifications, or other construction or contract documents prepared by the CONSULTANT shall be accurate, coordinated and adequate for construction and shall be in conformity and comply with all applicable law, codes and regulations.

SECTION 20. SUBCONSULTANTS

20.1 In the event the CONSULTANT requires the services of any Subconsultants or other professional associates in connection with services covered by any Project Agreement, the CONSULTANT must secure prior written approval of the Village Manager. The CONSULTANT shall utilize his/her best efforts to utilize Subconsultants where principal place of business is located within the Village or Monroe County.

20.2 Any subcontract with a Subconsultant shall afford to the CONSULTANT rights against the Subconsultant which correspond to those rights afforded to the VILLAGE against the CONSULTANT herein, including but not limited to those rights of termination as set forth herein.

20.3 No reimbursement shall be made to the CONSULTANT for any subconsultants that have not been previously approved by the VILLAGE for use by the CONSULTANT.

SECTION 21. NOTICES

Whenever either party desires to give notice to the other, it must be given by hand delivery or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, 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 CONSULTANT:

The Leben Family LLP
6670 Estero Blvd., #A-101
Ft. Myers Beach, Florida 33931
Telephone: 920-378-4156

FOR VILLAGE:

Islamorada, Village of Islands
Seth Lawless, Village Manager
86800 Overseas Highway
Islamorada, Florida 33036
Telephone: 305-664-6400
Facsimile: 305-664-6464

Copy: Roget V. Bryan, Village Attorney
Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, Florida 33036
Telephone: 305-664-6418
Facsimile: 305-504-8989

SECTION 22. TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by the CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement or any Project Agreement are accurate, complete, and current at the time of contracting. Each Project Agreement's contract prices and any additions shall be adjusted to exclude any significant sums by which the VILLAGE determines the Project's contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Project Agreement.

SECTION 23. CONSENT TO JURISDICTION

The parties submit to the jurisdiction of any Florida State or Federal court in any action or proceeding arising out of relating to this Agreement or any Project Agreement. Venue of any action to enforce this Agreement or any Project Agreement hereunder shall be in Monroe County, Florida.

SECTION 24. GOVERNING LAW

This Agreement and any Project Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

SECTION 25. HEADINGS

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

SECTION 26. 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.

SECTION 27. SEVERABILITY

If any provision of this Agreement or any Project Agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, 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.

SECTION 28. 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.

(THIS SPACE IS INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties execute 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 the CONSULTANT by and through its _____, whose representative has been duly authorized to execute same through a resolution of the corporation or partnership.

ATTEST:

ISLAMORADA, VILLAGE OF ISLANDS



Kelly Toth, Village Clerk

By: 

Seth Lawless, Village Manager

Date: May 4, 2018

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



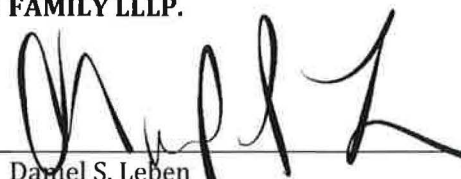
Roget V. Bryan, Village Attorney

ATTEST:

THE LEBEN FAMILY LLLP.


Secretary
Daniel S Leben

Print Name

By: 

Daniel S. Leben
The Leben Family LLLP

Date: May 1, 2018

WITNESSES:


Print Name: Haley M Magee

Print Name: _____