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3 **RESOLUTION NO. 2014-18**
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5 **A RESOLUTION OF THE VILLAGE COMMISSION**
6 **OF THE VILLAGE OF BISCAYNE PARK, FLORIDA;**
7 **AUTHORIZING THE MAYOR TO EXECUTE THE**
8 **PROFESSIONAL CONSULTANT SERVICES**
9 **AGREEMENT BETWEEN R.P. UTILITY &**
10 **EXCAVATION CORPORATION, AND THE VILLAGE**
11 **OF BISCAYNE PARK TO PROVIDE DRAINAGE AND**
12 **ROADWAY REPAIR ON NORTHEAST 111TH STREET**
13 **AND NORTHEAST 9TH COURT; PROVIDING FOR AN**
14 **EFFECTIVE DATE.**
15

16
17 WHEREAS, in November 2013, the Village Commission passed Resolution 2013-62
18 authorizing the agreement between the Village and Craig A. Smith & Associates, Inc.
19 (hereinafter referred to as "CAS") for professional services relating to project bidding for the
20 construction and close-out associated with the drainage and roadway repair on northeast 111th
21 Street and northeast 9th Court; and,
22

23 WHEREAS, CAS produced RFP 2014-02 detailing the scope and requirements of the
24 project, which was published on January 14, 2014; and,
25

26 WHEREAS, following a mandatory site meeting, and at the closing date of February 3,
27 2014, a total of six (6) respondents provided their bids which were reviewed by CAS; and,
28

29 WHEREAS, the firm of R.P. Utility & Excavation Corporation provided the lowest
30 responsible bid in the amount of \$17,500.00; and
31

32 WHEREAS, the Village Commission finds it to be in the best interests of the residents
33 of the Village to select R.P. Utility & Excavation Corporation to provide drainage and roadway
34 repair on northeast 111th Street and northeast 9th Court, consistent with the scope and
35 requirements of RFP 2014-02.
36
37

38 **NOW THEREFORE BE IT RESOLVED BY THE VILLAGE COMMISSION OF**
39 **THE VILLAGE OF BISCAYNE PARK, FLORIDA:**
40

41
42 **Section 1.** The foregoing "Whereas" clauses are hereby ratified and confirmed as
43 being true and correct and hereby made a specific part of this Resolution upon adoption hereof.
44

45 **Section 2.** The Village Commission of the Village of Biscayne Park hereby
46 authorizes the Village Manager to execute the Professional Consultant Services Agreement
47 between R.P. Utility & Excavation Corporation and the Village of Biscayne Park to provide
48 drainage and roadway repair on northeast 111th Street and northeast 9th Court, consistent with

1 the scope and requirements of RFP 2014-02. The Agreement, in substantial form, is attached
2 and incorporated by reference into this resolution as exhibit 1.

3
4 **Section 3.** This Resolution shall become effective upon adoption.
5

6
7 PASSED AND ADOPTED this 4th day of March, 2014
8

9 **The foregoing resolution upon being put
10 to a vote, the vote was as follows:**

11 
12 _____
13 David Coviello, Mayor

14 Mayor Coviello: Yes
15 Vice Mayor Watts: Yes
16 Commissioner Anderson: Yes
17 Commissioner Jonas: Yes
18 Commissioner Ross: Yes

19 Attest:

20 
21 _____
22 Maria C. Camara, Village Clerk

23 Approved as to form:

24 
25 _____
26 John J. Hearn, Village Attorney
27
28
29

**PROFESSIONAL CONSULTANT
SERVICES AGREEMENT**

THIS IS AN AGREEMENT, dated the 4th day of March, 2014, between:

THE VILLAGE OF BISCAYNE PARK, a municipal corporation, hereinafter referred to as "VILLAGE",

and

R.P. UTILITY & EXCAVATION, CORP., a Florida corporation, hereinafter referred to as "CONSULTANT".

WITNESSETH:

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, VILLAGE and CONSULTANT 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 advertised its request for proposals (hereinafter, "RFP") which set forth the VILLAGE's desire to hire a firm to perform Consulting Services related to professional civil engineering.

1.2 The VILLAGE received a quote from CONSULTANT to render the professional services more particularly described herein below.

**ARTICLE 2
SERVICES AND RESPONSIBILITIES**

2.1 CONSULTANT hereby agrees to perform the following professional consultant services for the VILLAGE:

See Exhibit "A" attached hereto and incorporated herein.
Village of Biscayne Park Contract Documents and Specification
CAS Project No. 13-1723

2.2 CONSULTANT shall furnish all services, labor, equipment, and materials necessary and as

may be required in the performance of this Agreement and all work performed under this Agreement shall be done in a professional manner.

2.3 CONSULTANT hereby represents to VILLAGE, with full knowledge that VILLAGE is relying upon these representations when entering into this Agreement with CONSULTANT, that CONSULTANT has the professional expertise, experience and manpower to perform the services to be provided by CONSULTANT pursuant to the terms of this Agreement.

2.4 CONSULTANT assumes professional and technical responsibility for performance of its services to be provided hereunder in accordance with recognized professional standards of good engineering practice. If within one year following completion of its services, such services fail to meet the aforesaid standards, and the VILLAGE promptly advises CONSULTANT thereof in writing, CONSULTANT agrees to re-perform such deficient services without charge to the VILLAGE.

2.5 CONSULTANT shall not utilize the services of any sub-consultant without the prior written approval of VILLAGE.

ARTICLE 3
TIME FOR PERFORMANCE

CONSULTANT shall perform the services as identified in Section 2.1 as soon as is reasonably practicable.

ARTICLE 4
COMPENSATION AND METHOD OF PAYMENT

4.1 VILLAGE agrees to compensate CONSULTANT for the services performed by CONSULTANT pursuant to the provisions of Section 2.1 hereof, a Lump Sum Fee of \$17,500.00.

4.2 Method of Billing and Payment.

4.2.1 CONSULTANT shall be entitled to invoice VILLAGE on a monthly basis for services performed. The invoice shall include, but not be limited to, the time period covered, the percentage of the contract completed, a description of the services performed, and any other information reasonably required by VILLAGE.

4.2.2 VILLAGE will make its best efforts to pay CONSULTANT within thirty (30) days of receipt of proper invoice the total shown to be due on such invoice.

4.2.3 Payment will be made to CONSULTANT at:

ADDRESS: R.P. UTILITY & EXCAVATION, CORP
3422 SW 156TH COURT
MIAMI, FL 33185

ARTICLE 5
CHANGES TO SCOPE OF WORK AND ADDITIONAL WORK

VILLAGE or CONSULTANT may request changes that would increase, decrease or otherwise modify the Scope of Services to be provided under this Agreement. Such changes or additional services must be in accordance with the provisions of the Code or Ordinances of the VILLAGE and must be contained in a written amendment, executed by the parties hereto, with the same formality and with equality and dignity prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work. In no event will the CONSULTANT be compensated for any work which has not been described in a separate written agreement executed by the parties hereto.

ARTICLE 6
MISCELLANEOUS

6.1 Ownership of Documents. Reports, surveys, plans, studies and other data provided in connection with this Agreement are and shall remain the property of VILLAGE whether or not the project for which they are made is completed. VILLAGE hereby agrees to use CONSULTANT's work product for its intended purposes.

6.2 Term and Termination.

6.2.1 This Agreement may be terminated by either party for cause, or by either party for convenience, upon thirty (30) days written notice by the VILLAGE to CONSULTANT in which event the CONSULTANT shall be paid its compensation for services performed to termination date. In the event that the CONSULTANT abandons this Agreement or causes it to be terminated, it shall indemnify the VILLAGE against any loss pertaining to this termination. All finished or unfinished documents, data, studies, plans, surveys, and reports prepared by CONSULTANT shall become the property of VILLAGE and shall be delivered by CONSULTANT to VILLAGE immediately.

6.2.2 This Agreement shall take effect as of the date of execution as shown herein below and continue for such time as is contemplated by the VILLAGE project.

6.3 Records. CONSULTANT shall keep books and records and require any and all subcontractors to keep books and records as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement, and any expenses for which CONSULTANT expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by VILLAGE and shall be kept for a period of three (3) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by VILLAGE of any fees or expenses based upon such entries.

6.4 Indemnification.

6.4.1 CONSULTANT shall indemnify and save harmless and defend the VILLAGE, its trustees,

elected and appointed officials, agents, servants and employees from and against any and all claims, demands, or causes of action of whatsoever kind or nature sustained by the VILLAGE or any third party arising out of, or by reason of, or resulting from acts, error, omission, or negligent act of CONSULTANT, its agents, servants or employees in the performance under this Agreement, for all costs, losses and expenses, including but not limited to, damages to persons or third party property, judgments and attorneys' fees arising out of or in connection with the performance by CONSULTANT pursuant to this Agreement.

6.4.2 CONSULTANT shall indemnify VILLAGE for all loss, damage, expense or liability including, without limitation, court costs and attorneys' fees that may result by reason of any infringement or claim of infringement of any patent, trademark, copyright, trade secret or other proprietary right due to services furnished pursuant to this Agreement. CONSULTANT will defend and/or settle at its own expense any action brought against the VILLAGE to the extent that it is based on a claim that products or services furnished to VILLAGE by CONSULTANT pursuant to this Agreement, or if any portion of the services or goods furnished in the performance of the service becomes unusable as a result of any such infringement or claim.

6.5 Insurance.

6.5.1 The CONSULTANT shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the VILLAGE Manager of the VILLAGE nor shall the CONSULTANT allow any Subcontractor to commence work on his sub-contract until all similar such insurance required of the subcontractor has been obtained and approved.

6.5.2 Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the VILLAGE Manager prior to the commencement of the work. These Certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty days (30) prior written notice has been given to the VILLAGE. Policies shall be issued by companies authorized to do business under the laws of the State of Florida.

6.5.3 Policyholders and Financial Ratings must be no less than "A" and Class X respectively in the latest edition of "Bests Key Rating Guide", published by A.M. Best Guide.

6.5.4 Insurance shall be in force until all work required to be performed under the terms of this Agreement is satisfactorily completed as evidenced by the formal acceptance by the VILLAGE. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, the CONSULTANT shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of this Agreement and extension thereunder is in effect. The CONSULTANT shall not continue to work pursuant to this Agreement unless all required insurance remains in full force and effect.

6.5.5 REQUIRED INSURANCE

6.5.5.1. **COMPREHENSIVE GENERAL LIABILITY** insurance to cover liability bodily injury and property damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

- A. Comprehensive General Liability
 - 1. Each Occurrence \$1,000,000
 - 2. Annual Aggregate 1,000,000

6.5.5.2. **WORKERS COMPENSATION** insurance shall be maintained during the life of this Agreement to comply with statutory limits for all employees, and in the case any work is sublet, the CONSULTANT shall require the Subcontractors similarly to provide Workers Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONSULTANT. The CONSULTANT and his subcontractors shall maintain during the life of this policy Employers Liability Insurance. The following limits must be maintained:

- A. Workers Compensation Statutory
- B. Employer's Liability \$ 500,000 per occurrence

The CONSULTANT shall hold the VILLAGE, their agents, and employees, harmless on account of claims for damages to persons, property or premises arising out of the operations to complete this Agreement and name the VILLAGE as an additional insured under their policy.

The VILLAGE reserves the right to require any other insurance coverage it deems necessary depending upon the exposures.

6.5.5.3 **PROFESSIONAL LIABILITY** insurance in the amount of \$500,000.00

6.6 Independent Contractor. This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the CONSULTANT is an independent contractor under this Agreement and not the VILLAGE's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. The CONSULTANT shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONSULTANT's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONSULTANT, which policies of CONSULTANT shall not conflict with VILLAGE, H.U.D., or United States policies, rules or regulations relating to the use of CONSULTANT's Funds provided for herein.. The CONSULTANT agree that it is a separate and independent enterprise from the VILLAGE, that it has full opportunity to find other business, that it has make its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONSULTANT and the

VILLAGE and the VILLAGE will not be liable for any obligation incurred by CONSULTANT, including but not limited to unpaid minimum wages and/or overtime premiums.

6.7 Assignments; Amendments.

6.7.1 This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT without the prior written consent of VILLAGE. For purposes of this Agreement, any change of ownership of CONSULTANT shall constitute an assignment which requires VILLAGE approval. However, this Agreement shall run to the VILLAGE and its successors and assigns.

6.7.2 It is further agreed that no modification, amendment or alteration in the terms or conditions contained here shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

6.8 No Contingent Fees. 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 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.

6.9 Notice. Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, the CONSULTANT and the VILLAGE designate the following as the respective places for giving of notice:

VILLAGE: Heidi Shafran, Village Manager
640 NE 114th Street
Biscayne Park, FL 33161

Copy To: John J. Hearn, Village Attorney
1917 N.W. 81st Avenue
Coral Springs, FL 33071

CONSULTANT: R.P. UTILITY & EXCAVATION, CORP
3422 SW 156TH COURT
MIAMI, FL 33185

6.10 Binding Authority. Each person signing this Agreement on behalf of either party

individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

6.11 Legal Representation. It is acknowledged that each party was represented by counsel in the preparation of and contributed equally to the terms and conditions of this Agreement and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.

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

6.13 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 herein by reference.

6.14 Severability. If any provision of this Agreement or 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.

6.15 Governing Law. This Agreement shall be governed by the laws of the State of Florida with venue lying in Miami-Dade County, Florida.

6.16 Extent of Agreement. This Agreement represents the entire and integrated agreement between the VILLAGE and the CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral.

(Remainder of this page left blank intentionally.)

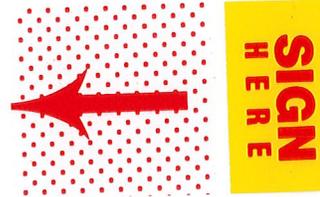
IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

VILLAGE

ATTEST:
Maria C. Camara
MARIA C. CAMARA
VILLAGE CLERK

BY: [Signature]
DAVID J. COVIELLO, MAYOR

APPROVED AS TO FORM:
[Signature]
JOHN J. HEARN
VILLAGE ATTORNEY



CONSULTANT
R.P. UTILITY & EXCAVATION, CORP

WITNESSES:

BY: _____
RAIDEL PEREZ, PRESIDENT

ATTEST:

SECRETARY

STATE OF FLORIDA)
) S.S.
COUNTY OF _____)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____ and acknowledged they executed the foregoing Agreement as the proper official of CONSULTANT, for the use and purposes mentioned in it and that the instrument is the act and deed of CONSULTANT.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this _____ day of _____, 2014.

My Commission Expires: _____ NOTARY PUBLIC