

GOLDEN BEACH, FLORIDA

RESOLUTION NO. 1517.03

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA AUTHORIZING AND APPROVING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE TOWN OF GOLDEN BEACH AND LEIBY TAYLOR STEARNS LINKHORST AND ROBERTS, P.A. TO PROVIDE LEGAL SERVICES RELATING TO THE TOWN OF GOLDEN BEACH'S STORMWATER MANAGEMENT PROGRAM; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, AS FOLLOWS:

Section 1. That the Town Council hereby authorizes the Mayor to sign an Agreement with Leiby Taylor Stearns Linkhorst and Roberts, P.A., a copy of which is attached as Exhibit "A", to provide legal services relating to the Town of Golden Beach's stormwater management program. Said Agreement is subject to approval by the Mayor and Town Attorney.

Section 2. Severability. That the provisions of this Resolution are declared to be severable and if any section, sentence, clause or phrase of this Resolution shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, clauses, sentences and phrases of this Resolution but they shall remain in effect, notwithstanding the invalidity of any part.

Section 3. Conflict. That all resolutions or parts of resolutions in conflict with this Resolution are hereby repealed to the extent of such conflict.

Section 4. Effective Date. That this Resolution shall become effective immediately upon approval of the Town Council.

Sponsored by Administration.

Resolution No. 1517.03

The Motion to adopt the foregoing resolution was offered by Vice Mayor Iglesias, seconded by Councilmember Singer and on roll call the following vote ensued:

Mayor Addicott	<u>ABSENT</u>
Vice Mayor Iglesias	<u>AYE</u>
Councilmember Einstein	<u>AYE</u>
Councilmember Paruas	<u>AYE</u>
Councilmember Singer	<u>AYE</u>

PASSED AND ADOPTED by the Town Council of the Town of Golden Beach this 26TH day of August, 2003.


MAYOR MICHAEL ADDICOTT

ATTEST:


CATHY SZABO
TOWN CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY


PAUL D. EICHNER
TOWN ATTORNEY

**LEIBY
TAYLOR
STEARNS
LINKHORST &
ROBERTS, P.A.**
THE LEIBY CONSTRUCTION LAW FIRM
Attorneys at Law

LARRY R. LEIBY +
lrl@leibylaw.com
KEVIN J. TAYLOR +
kjt@leibylaw.com
MICHAEL E. STEARNS +
mes@leibylaw.com
ADAM C. LINKHORST
acl@leibylaw.com
DOUGLAS J. ROBERTS
djr@leibylaw.com

RICHARD E. GUTTENTAG
reg@leibylaw.com
STUART H. SAKWA
shs@leibylaw.com
LEONARDO N. ORTIZ
lno@leibylaw.com
JAMES S. HELF
jsh@leibylaw.com

* Also Certified Circuit Court Civil Mediator
+ Also Florida Certified Building Contractor

August 20, 2003

Mayor Michael Addicott
Town of Golden Beach
One Golden Beach Drive
Golden Beach, Florida 33160

Re: Town of Golden Beach v. Stormwater Management Program
Our file No. 136.9901

Gentlemen:

We are pleased to have the opportunity to be of service to you. We look forward to working with you and will do our best to provide the highest quality legal services in a responsive, efficient manner. Fundamental to a sound relationship is a clear understanding of the terms and conditions upon which we will be providing legal services. Accordingly, the purpose of this letter is to clarify and confirm these terms and conditions.

Scope of Services. You asked us to represent you in connection with matters regarding Town of Golden Beach's **Storm water Management Program**, including the facilitating an analysis and advising on appropriate legal action and strategies.

While this letter is intended to deal with the specific legal services described above, these terms and conditions will also apply to any additional legal services that we may agree to provide that are outside the initial scope of our representation.

Staffing. Kevin Taylor will be the principal in the firm primarily responsible for overseeing the representation with the assistance of others, including the Senior Partner **Larry Leiby**, as appropriate from time to time. When questions or comments arise about our services, staffing, billings, or other aspects of our representation, please contact Mr. Taylor. It is important that you are satisfied with our services and responsiveness at all times.

We intend to provide quality legal services in an efficient, economical manner. This necessitates involving other firm attorneys with the requisite expertise, and paralegals, who are not attorneys but are experienced in the preparation of documents and the completion of various tasks. From time to time, internal conferences will take place among our personnel and two or more may attend meetings or proceedings on your behalf. Although this approach might seem to result in duplication of effort, it is our belief that this practice facilitates communication, improves the quality of the work, allows for times when a principal attorney may be involved in another trial or matter, and ultimately is more economical.

Responsibilities. *In reliance upon information and guidance provided by you, we will provide legal counsel and assistance to you in accordance with this letter, keep you reasonably informed of progress and developments, and respond to your inquiries.*

To enable us effectively to render these services, you agree to cooperate fully with us in all matters relating to the preparation and presentation of your case, to fully and accurately disclose to us all facts that may be relevant to the matter or that we may otherwise request, and to keep us apprised of developments relating to the matter. You also will make yourself reasonably available to attend meetings, discovery proceedings and conferences, hearings, and other proceedings. Your responsibilities will also include determining acceptable terms of any compromise, settlement, or agreement. We will not settle a matter without your agreement.

In addition, you will be responsible for advising us whether any document we have prepared or received and sent to you for your approval or review reflects the principal terms of your proposed agreement, general litigation strategy, or other expectations, as the case may be.

Either at the beginning or during the course of our representation, we may express our opinions or beliefs concerning the matter or various courses of action and the results that might be anticipated. Any such statement made by any employee of our firm is intended to be an expression of opinion only, based on information available to us at the time, and must not be construed by you as a promise or guarantee of any particular result. No guarantees are possible in matters such as this.

Fees, Disbursements, and Other Charges. Our fees will be based primarily on the amount of time spent by attorneys and paralegals on your matter. Each lawyer and paralegal has an hourly billing rate based generally on his or her experience and any special expertise. The rate multiplied by the time spent on your behalf, measured in tenths of an hour, will be evaluated by the billing attorney as the basis for determining the fee.

The billing rate would be set at \$125 an hour for this project for general representation and \$200 an hour for litigation. Time devoted by paralegals is charged at billing rates currently ranging from \$60 to \$90 an hour. These rates are adjusted from time to time generally to reflect increased experience and special expertise of the attorneys and paralegals and inflationary cost increases affecting our practice. Adjusted rates will apply to all services performed thereafter.

Other factors may be considered in determining our fees, including the novelty and difficulty of the questions involved; the skill requisite to perform the services properly; the experience, reputation, and ability of those performing the services; the time limitations imposed by you or the circumstances; the amount involved and results obtained; and any other factors that may be relevant under applicable rules of professional conduct. However, these factors will not result in you being required to fund fees exceeding the indicated amounts based on our hourly rates without prior discussion with you.

In addition to our fees, we will expect payment for disbursements and other charges as described in the General Provisions enclosed with this letter. You authorize us to incur reasonable costs, however we will not retain any investigators, consultants, or experts necessary in our judgment to pursue your claims, without prior written approval from the Town Manager.

Each month we will furnish you with a statement describing our services rendered and separately showing disbursements and other charges. There often is an unavoidable delay in reporting disbursements and other charges, and therefore not all disbursements and charges may be billed at the same time as the related legal services.

You agree to deposit \$-0- with us as security for the fees and the disbursements and other charges in connection with our representation. This amount will be held in our general trust account and may be applied by us to any amount that has been billed and is not promptly paid. If it appears that the matter is not likely to be resolved and our fees and charges will exceed the amount deposited, we have the right to request a further deposit. If the amount requested is not promptly paid, we will have the right to cease performing work and to withdraw from the representation.

The fees and charges billed to you are your responsibility whether or not a court awards attorneys' fees against an opposing party. Courts may award attorneys' fees which they consider reasonable under the applicable statutes, but which may be less than the amounts billed to you. In such cases, you continue to be obligated to pay us for our actual fees and charges even though the court awards less. The parties to a dispute may agree, or a court may order, that another party is to pay some or all of our fees or charges. This will not affect your obligation to pay our fees and charges, and we will not be obligated to enforce any such agreement or order. Any amounts actually received by us from another party will, of course, be credited against the fees and charges for which you are otherwise obligated to us. There will be no double recovery.

If a monetary judgment or award is made in your favor, we shall have a lien on the proceeds to the extent of any unpaid fees, disbursements, or other charges.

General Provisions. Enclosed is a statement entitled General Provisions setting forth additional terms and conditions, which are incorporated into this letter and apply to our representation to the extent not expressly inconsistent with this letter.

Any controversy, dispute, or claim arising out of or relating to our fees, charges, performance of legal services, obligations reflected in this letter, or other aspects of our representation shall be resolved through binding arbitration in Broward County, Florida, in accordance with the Fee Arbitration Rule (Chapter 14) of the Rules Regulating the Florida Bar, and judgment on the award rendered may be entered in any court having jurisdiction thereof. [YOU ACKNOWLEDGE THAT BY AGREEING TO ARBITRATION, YOU ARE RELINQUISHING YOUR RIGHT TO BRING AN ACTION IN COURT AND TO A JURY TRIAL.]

If this letter correctly reflects your understanding of the terms and conditions of our representation, please confirm your acceptance by signing the enclosed copy in the space provided below and return it [and the deposit of \$-0-]. Upon your acceptance, these terms and conditions will apply retroactively to the date we first performed services on your behalf. If this letter is not signed and returned, you will be obligated to pay us the reasonable value of any services we may have performed on your behalf.

We are pleased to have this opportunity to be of service and to work with you.

Very truly yours,

Leiby Taylor Stearns Linkhorst and Roberts, P.A.

By:
KEVIN J. TAYLOR, ESQ.

Enclosure

Leiby Taylor Stearns Linkhorst and Roberts, P.A.
1390 North University Drive, Ft. Lauderdale, Florida 33322
Broward (954) 382-9199 Fax (954) 382-9063

I/we read and understand the terms and conditions set forth in this letter (including the attached General Provisions) and agree to them. [If more than one party signs below, we each agree to be liable, jointly and severally, for all obligations under this letter (including the attached General Provisions).]

Date:

Mayor Michael Addicott

EXHIBIT 1 – FIRM POLICY

Except as modified by the accompanying engagement letter, the following provisions will apply to the relationship between Leiby Taylor Stearns Linkhorst and Roberts, P.A. and our clients:

(1) The time for which a client will be charged will include, but will not be limited to, telephone and office conferences with a client and counsel, witnesses, consultants, court personnel, and others; conferences among our personnel; factual investigation; legal research; responding to clients' requests to provide information to auditors in connection with reviews or audits of financial statements; drafting of letters, pleadings, briefs, and other documents; travel time; waiting time in court or elsewhere; and time in depositions and other discovery proceedings.

(2) In addition to our fees, we will be entitled to payment or reimbursement for disbursements and other charges incurred in performing services such as photocopying, messenger and delivery, air freight, computerized research, videotape recording, travel (including mileage, parking, airfare, lodging, meals, and ground transportation), long distance telephone, telecopying, word processing, court costs, and filing fees. To the extent we directly provide any of these services, we reserve the right to adjust the amount we charge, at any time or from time to time, as we deem appropriate, in light of our direct costs, our estimated overhead allocable to the services, and outside competitive rates. Unless special arrangements are made, fees and expenses of others (such as experts, investigators, witnesses, consultants, and court reporters) and other large disbursements will not be paid by our firm and will be the responsibility of, and billed directly to, the client.

(3) Although we may from time to time for a client's convenience furnish estimates of fees or charges that we anticipate will be incurred on a client's behalf, these estimates are subject to unforeseen circumstances and are by their nature inexact. We will not be bound by any estimates except as otherwise expressly set forth in the engagement letter or otherwise agreed to by us in writing.

(4) Fees, disbursements, and other charges will be billed monthly and are payable within ten (10) days of presentation. It is important that payment be prompt.

(5) A client shall have the right at any time to terminate our services and representation upon written notice to the firm. Such termination shall not, however, relieve the client of the obligation to pay for all services rendered and disbursements and other charges made or incurred on behalf of the client prior to the date of termination.

(6) We reserve the right to withdraw from our representation with the client's consent or for good cause. Good cause may include the client's failure to honor the terms of the engagement letter, the client's failure to pay amounts billed in a timely manner, the client's failure to cooperate or follow our advice on a material matter, or any fact or circumstance that would, in our view, impair an effective attorney-client relationship or would render our continuing representation unlawful or unethical. If we elect to do so, the client will take all steps necessary to free us of any obligation to perform further, including the execution of any documents (including forms for substitution of counsel) necessary to complete our withdrawal, and we will be entitled to be paid for all services rendered and disbursements and other charges made or incurred on behalf of the client prior to the date of withdrawal. An attorney's lien on files, papers, and proceeds of litigation exists, and is acknowledged for any unpaid sums.

KEVIN J. TAYLOR

EDUCATION

1996 Juris Doctorate – University of Miami School of Law

1989 Bachelor's Degree in Construction Management – Florida International University

EMPLOYMENT

8/00- Present Partner – LEIBY TAYLOR STEARNS LINKHORST & ROBERTS P.A.

12/96 – 8/00 Associate Attorney - LEIBY CONSTRUCTION LAW FIRM,
Ft. Lauderdale, Fla.

9/96 – 12/96 Associate Attorney - LEIBY FERENCIK LIBANOFF AND
BRANDT, P.A., Ft. Lauderdale, Fla.

1/94 – 9/96 Law Clerk – LEIBY FERENCIK LIBANOFF AND BRANDT, PA.,
Plantation, Florida

6/90 – 7/93 Chief Estimator/ Project Manager – CONCEPTS IN DEVELOPMENT, North Miami
Beach

3/87 – 6/90 Sole Proprietor - KEVIN TAYLOR CONSTRUCTION, Miami, Florida

8/84 – 1/87 Peace Corps Volunteer U.S. PEACE CORPS – Belize, Central America

1976 – 8/ 84 Carpenter/Lead Carpenter - Various companies in Houston Texas and Miami
Florida

PROFESSIONAL LICENSURE

Admitted to the Florida Bar 1996
State Certified Building Contractor – License No. CBC025040
Florida Licensed Real Estate Salesman

OTHER

9/96 – Present Adjunct Professor – Florida International University, Construction Management
Department Construction Law and Construction Claims on the Graduate and
Undergraduate Level

9/96 – Present Lecturer for various Continuing Education providers including the Associated
General Contractors, Associated Builders and Contractors, The Florida Bar,
Lorman Education, and several other private CEU providers.

9/96 – Present Drafted Articles for various legal and trade related publications on constrution Law
Issues.

American Arbitration Association Construction Arbitration Training –1997
Associated General Contractors of America – National- – member Construction
Documents Committee 2002- present

LARRY R. LEIBY

Attorney, Mediator, Arbitrator/Umpire, and Author

President of: Leiby Taylor Stearns Linkhorst and Roberts, P.A.
The Leiby Construction Law Firm

Born: 1947, Philadelphia, PA

Education: University of Miami (B.M. 1969); University of Miami School of Law (J.D. 1973)

Bar admissions: Florida Bar 1973; U.S. Supreme Court, 1980; U.S. Eleventh Circuit Court of Appeals, 1981; U.S. District Court, Southern District, 1979; U.S. District Court, Middle District, 1981.

Publications: Author of the following:

Florida Construction Law Manual, (1981, 1988, 1994) text published by Shepard's/ McGraw-Hill. The book is in its fifth edition, now published by West Group (2003)

Florida Construction Lien and Payment Bond Primer, published by Golfman Group, Inc. (1999)

"Bid Mistakes: When Does it Matter? What Can Be Done?", *Stetson Law Review*, 1987

"Survey of Construction Law", *Nova Law Review*, 1992 and 1994

Florida International University Technical Publication No. 110, *The Role and Liability of the Qualifying Agent in a Corporate Structure* (1993)

"Licensing for Construction: A Legal Mechanism of Control", *Comparative Studies in Construction Law: The Sweet Lectures*, published by Construction Law Press, London, United Kingdom (1996)

"1998 Changes to the Florida Construction Lien Law", *The Florida Bar Journal*, September, 1999.

"Florida Construction Liens and Payment Bonds", *The Credit Manager's Survival Kit*, published by LGL Publications, Inc., Madison, WI (2000)

"Contractual Indemnity in Construction for Your Negligence - What Year Is It?", *The Florida Bar Journal*, July/August, 2003.

Alternate Dispute Resolution: Florida Circuit Court-Civil Mediator (1997-); Arbitrator trainer for AAA construction industry arbitrators (basic and advanced case management courses); Arbitrator, and member of Large Complex Case Panel of American Arbitration Association (1995-); AAA Construction Mediator (1999).

Professional leadership and teaching:

Founder and Chairman of the Florida Bar Construction Law Committee (1976-1994), member (1994-)

American Bar Association Public Contract Law Section, Florida state chairman (1990-95), member (1975-); Forum Committee on the Construction Industry, member (1975-)

Adjunct professor at Florida International University, Department of Construction Management, teaching Construction Law; Case Studies; Construction Claims (1992-95)

Lecturer for seminars on Construction Law topics for The Florida Bar (1976-), Broward County Bar Association, Dade County Bar Association, American Arbitration Association, Stetson Law School, University of Miami Law School, University of Central Florida, American Subcontractors Association, Associated Builders and Contractors, Associated General Contractors, Builders Association of South Florida, Construction Specifications Institute, and several other construction industry trade associations

He has been selected for the following distinctions by peer review: Martindale Hubbell AV Rating; Martindale-Hubbell Register of Preeminent Attorneys; American Research Corporation "Leading Florida Attorney"; Woodard/White's Best Lawyers in America (2003); Chambers USA America's Leading Business Lawyers 2003-04; List of Top Lawyers in South Florida by South Florida Legal Guide (2002-).

Director, Associated Builders and Contractors East Florida Chapter (1997-)

Reported appellate decisions:

Rossmoor Corp. v. Tri-County Concrete Products, Inc., 375 So.2d 896 (Fla. 4th DCA 1979)
Coordinated Constructors, Inc. v. Florida Fill, Inc., 387 So.2d 1006 (Fla. 3rd DCA 1980)
Acadia Development Corp. v. Rinker Materials Corp., 419 So.2d 1142 (Fla. 3rd DCA 1982)
Vincent J. Fasano, Inc. v. School Bd. of Palm Beach County, 436 So.2d 201 (Fla. 4th DCA 1983)
Builders Glass & Metal, Inc. v. M.E.T. Construction, Inc., 528 So.2d 988 (Fla. 3rd DCA 1988)
Fidelity and Deposit Co. of Maryland v. Delta Painting Corp., 529 So.2d 781 (Fla. 4th DCA 1988)
Levitz Elec., Inc. v. George Hyman Construction Co. (In re Levitz Elec., Inc.), 100 B.R. 602 (S.D. Fla. 1989)
Mursten Construction Co. v. C.E.S. Industries, Inc., 588 So.2d 1061 (Fla. 3rd DCA 1991)
Alexdex Corp. v. Nachon Enterprises, Inc., 641 So.2d 858 (Fla. 1994)
Hollub Construction Company v. Narula, 704 So.2d 689 (Fla. 3rd DCA 1997)
Fischer-McGann, Inc. v. Gene B. Glick Co., Inc., 715 So.2d 994 (Fla. 4th DCA 1998)
Continental Concrete, Inc. v. Lakes at La Paz III Ltd. Partnership, 758 So.2d 1214 (Fla. 4th DCA 2000)
Hewett-Kier Constr., Inc. v. Lemuel Ramos & Associates, Inc., 775 So.2d 373 (Fla. 4th DCA 2000)
Bill Stroop Roofing, Inc. v. Miami-Dade County, 788 So.2d 365 (Fla. 3rd DCA 2001)
H. W. Gay Enterprises, Inc. v. John Hall Electrical Contracting, Inc., 792 So.2d 580 (Fla. 4th DCA 2001)
Miller and Solomon Gen. Contractors, Inc. v. Brennan's Glass Co., 837 So.2d 1182 (Fla. 4th DCA 2003)