



VILLAGE OF KEY BISCAINE

Office of the Village Manager

Village Council

Robert L. Vernon, *Mayor*
Jorge E. Mendia, *Vice Mayor*
Michael Davey
Enrique Garcia
Steve Liedman
Thomas Thornton
Patricia Weinman

Village Manager

Genaro "Chip" Iglesias

DT: June 17, 2008

TO: Honorable Mayor and Members of the Village Council

FR: Genaro "Chip" Iglesias, Village Manager

RE: Atlantic Radio Network

A large, stylized handwritten signature in black ink, likely belonging to Genaro "Chip" Iglesias, is written over the "TO" and "FR" lines of the memo.

RECOMMENDATION

It is recommended that the Village Council award the professional service agreement with Atlantic Radio Network, LLC for the establishment of a travelers' information service radio station.

BACKGROUND

Atlantic Radio Network, LLC (ARN) will establish a radio station to provide information to travelers and residents. ARN will provide all necessary engineering for the acquisition and building of a 10-watt TIS radio tower and studio, and will work on behalf of the Village to obtain FCC licensing. ARN will acquire and install all necessary broadcast equipment, and produce audio components for the programming of the Village Station. The Village Station will be located in the anti-room of the Council Chambers. The broadcast tower will be located in the tower of the fire station.

Funding for this project will come from the contingency line item in the Capital Projects Fund in an amount of \$39,500.

RESOLUTION NO. 2008- _____

A CAPITAL PROJECT AUTHORIZING RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING A PROFESSIONAL SERVICE AGREEMENT BETWEEN THE VILLAGE OF KEY BISCAYNE AND ATLANTIC RADIO NETWORK, LLC FOR ESTABLISHMENT OF TRAVELERS' INFORMATION SERVICE RADIO STATION AND ENABLING SUBSEQUENT PURCHASE OF CERTAIN RELATED EQUIPMENT; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council, pursuant to the recommendation of the Village Manager, desires to enter into a Professional Services Agreement for establishing a Travelers' Information Services ("TIS") Radio Station (the "Agreement") with Atlantic Radio Network, LLC ("ARN") for the purpose of disseminating information to travelers in the Village; and

WHEREAS, upon advice of the Village Attorney, the Village Council finds that this Agreement is exempt from competitive bidding as a professional service contract pursuant to Village Code Section 2-87(2), and in any event, finds that the use of competitive procedures are impractical in light of the desire to expeditiously commence this process and hereby waives competitive bidding procedures pursuant to Village Code Section 2-85; and

WHEREAS, the Village Council finds that the approval of the Agreement is in the best interest of the Village.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That each of the recitals stated above is hereby adopted and confirmed.

Section 2. Agreement Approved. That the Agreement between ARN and Village is hereby approved and the Village Manager is hereby authorized to execute the Agreement, in

substantially the form which is attached hereto as Exhibit "A", on behalf of the Village, once approved by the Village Attorney as to form and legal sufficiency.

Section 3. **Implementation.** That the Village Manager is hereby authorized to take any and all action which is necessary to implement the Resolution and Agreement. Funding for the Agreement shall be provided as indicated in the Village Manager's Memorandum, which accompanies this Resolution.

Section 4. **Effective Date.** That this Resolution shall be effective immediately upon adoption hereof.

PASSED AND ADOPTED this _____ day of _____, 2008.

ROBERT L. VERNON, MAYOR

ATTEST:

CONCHITA H. ALVAREZ, CMC

VILLAGE CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

Village Attorney

ENGINEERING AGREEMENT



300 Aragon Avenue, Suite 255
Coral Gables, Fl. 33134
Tel: 305. 476.9782
Fax: 305.476.9794

THIS AGREEMENT is made and entered by and among Atlantic Radio Network, LLC, a Florida limited liability company, herein referred to as "ARN" and the Village of Key Biscayne, a Florida municipal corporation, herein referred to as "Village".

WITNESSETH:

WHEREAS, Village is the owner of certain real property located in the Village of Key Biscayne, Florida in Miami-Dade County, State of Florida, as specifically described on Addendum "A" attached hereto (the "Property") and wishes to engage the services and expertise of ARN for the acquisition of a radio broadcast license and the building of a radio broadcast tower on the Property to disseminate information to travelers in the Village; and

WHEREAS, ARN desires to enter upon the Property, together with non-exclusive access to right-of-ways thereto for the purpose of providing production services enabling the Village to receive programming content for the radio station once it is on-line.

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

1. **Scope of Services/Equipment.** ARN will provide all necessary engineering for the acquisition and building of a 10-watt TIS radio tower and studio, as defined by the Federal Communications Commission ("FCC"), and all work related to obtain FCC licensing on behalf of the Village. ARN will acquire and install all of the necessary broadcast equipment, and produce audio components for the programming of the Village station, at radio tower and broadcasting locations to be provided by the Village. Addendum "A" of this agreement outlines the specific services and equipment referred to herein (the "Project").

2. **Access Rights.**

a. ARN's Access Right is specifically limited to the Project and to the Property and shall not include any other activities or any other real property surrounding the Property. ARN shall be responsible for any and all costs related to the Project, including installation, operation, and removal of its equipment. Village may revoke the Access Right at any time by sending written notice to the ARN by certified mail, return receipt requested, at the address above,

Initials: _____

however, ARN may enter the Properties to remove any equipment it has placed there pursuant to the Access Right.

b. Upon receipt of notice of the revocation of the Access Right, or the expiration of this Agreement, ARN shall remove any and all of its equipment from the Property within a reasonable period of time, but in no case later than ten (10) business days, and restore the Property to the condition in which it existed immediately prior to ARN's entry, reasonable wear and tear excepted. In the event that ARN fails to remove its equipment within the time period above, any remaining equipment shall be deemed abandoned and shall become the property of the Village. The Village, at its discretion, may dispose of such items in any manner it deems fit and charge Applicant for the costs associated with the removal of said items.

c. ARN agrees to comply with all local, state and federal laws, rules and ordinances applicable to the Project. ARN further agrees to exercise due care in the performance of all activities on the Property, and shall not interfere with Village's activities including, but not limited to, police, fire, rescue of other emergency services, park operations or community programs, or any other party's activities on the Property, or any other property or rights-of-way within the Village, except as permitted by the Village. ARN agrees to make reasonable repairs to any damage or disturbance to Property caused by ARN, its employees, contractors, or agents, at ARN's sole expense, reasonable wear and tear excepted.

3. **Term.** It is understood that the FCC will grant the license applied for by ARN on behalf of the Village ("License") and that the exact timeframe of the granting of that application may vary. This Agreement shall be effective as of the date of execution by both parties ("Effective Date"); provided, however, the initial term of this Agreement (the "Initial Term") is five (5) years, commencing on the start of construction of ARN's Facilities or the first (1st) day of the month following the date the FCC grants the License to ARN, whichever event occurs last ("Commencement Date"). In no event shall the Commencement Date occur later than twelve (12) months after the Effective Date. This Agreement will be automatically renewed for an additional term of Five (5) years ("Renewal Term"), unless ARN provides Village notice of its intention not to renew the Agreement not less than ninety (90) days prior to the expiration of the Initial Term or Renewal Term. If at the end of the Renewal Term, this Agreement has not been terminated by either party by giving to the other written notice of an intention to terminate the Agreement at least six (6) months prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year and for one (1) year terms thereafter until terminated by either party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of such term.

4. **Remuneration.** The Village will pay ARN a total fee of \$39,500 for the services and equipment to be provided pursuant to paragraph 1 of this Agreement, as follows:

a. Five Hundred and No/100 Dollars (\$500.00) shall be due and payable upon execution and delivery of this Agreement by the parties;

b. Upon identification of the radio channel to be used by the Village prior to commencement of the Project, fifty percent (50%) of the total fee in an amount equal to Nineteen Thousand Five Hundred and No/100 Dollars (\$19,500) shall be due and payable;

c. Upon installation and testing of the station, twenty-five percent (25%) of the total fee in an amount equal to Nine Thousand Seven Hundred Fifty and No/100 Dollars (\$9,750) shall be due and payable; and

d. Upon receipt of the License, the balance of the compensation (*i.e.*, twenty-five percent (25%) of the total fee) in an amount equal to Nine Thousand Seven Hundred Fifty and No/100 Dollars (\$9,750) shall be due and payable.

6. **Confidentiality of Negotiations.** Except to the extent otherwise required by law, neither party shall disclose the terms and conditions of the Agreement or business relationships contemplated between the parties.

7. **Expenses of Installation and Equipment.** ARN shall be responsible for all labor and equipment costs associated with this project. The acquisition of any and all permits and/or licenses that may be required by any governmental entities for the Project, including, without limitation, any and all building permits, environmental inspections and/or permits, and zoning approvals and variances, but expressly excluding the FCC licensing will be the responsibility of ARN. Village shall provide reasonable assistance to ARN to acquire the necessary building permits, environmental inspections and/or permits, and zoning approvals and variances that may be required to complete this work and facilitate the Project.

8. **Assignment and Subleasing.** This Agreement shall not be sold, assigned, licensed, or transferred at any time, without the Village's written consent. Notwithstanding the foregoing, ARN shall not be permitted to sublet any of the support structures or ground area of the Property to any other party. If ARN sells, assigns, licenses or transfers this Agreement without Village's consent as required herein, ARN shall not be released from its obligations accruing subsequent to any such sale, assignment, licensure or transfer hereunder.

9. **Insurance.** Upon execution of this Agreement, ARN shall provide, pay for and maintain the customary insurance coverage satisfactory to the Village as described herein. ARN shall provide, pay for and maintain, at its sole cost and expense, all insurance and/or bonds required by law, including but not limited to: (i) worker's compensation insurance as prescribed by the law of the state of Florida; (ii) employer's liability insurance with limits of at least \$1,000,000 each occurrence; (iii) comprehensive general liability insurance (including but not limited to contractual liability insurance) with a general aggregate limit of \$2,000,000 and limits of \$1,000,000 on account of any one occurrence; and (iv) automobile liability insurance (covering all owned, hired, and non-owned automobiles used in performance of the Services) with limits of at least \$1,000,000 each occurrence. Village shall be named as an additional insured on all policies of insurance purchased by ARN, except on policies for worker's compensation insurance. Each insurance policy shall state by endorsement that such policy shall not be canceled or materially changed without at least thirty (30) days' prior written notification to the named additional insured by registered mail, and ARN shall notify the other of any reduction or possible reduction in the limits of any such policy where such reduction, when added to any previous reduction, would reduce coverage below the limits provided by this Agreement. Each insurance policy shall state by endorsement that such policy shall provide for

severability of interest or cross liability, provide that such insurance is non-contributing primary coverage with respect to all insured, and contain a waiver of subrogation.

10. **Indemnification.** ARN shall, at its sole cost and expense, indemnify, hold harmless and defend the Village's executives, directors, officials, agents and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the Village arising out of ARN's use of the Property, except if the act or omission complained of is authorized, allowed or prohibited by this Agreement, provided, however, that ARN's obligation hereunder shall not extend to any damages caused solely by the gross negligence or wanton or willful acts of the Village. This provision includes, but is not limited to, the Village's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. The Village agrees to notify ARN, in writing, within a reasonable time of Village receiving notice, of any issue it determines may require indemnification. Nothing in this Agreement shall prohibit the Village from participating in the defense of any litigation by its own counsel and at its own cost if in the Village's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this Agreement shall be construed or interpreted: (1) as denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) as consent by the Village to be sued; or (3) as a waiver of sovereign immunity beyond the waiver provided in §768.28, F.S., as it may be amended. ARN's indemnification obligation shall survive the expiration or termination of this Agreement by six (6) months or until the applicable statute of limitations elapses, whichever occurs later.

11. **Applicable Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida. .

12. **Arbitration of Disputes.** All disputes arising in connection with this Agreement shall be handled by arbitration. The arbitration of any disputes arising in connection with this Agreement shall be conducted in Miami-Dade County, Florida. Any such final decision or award may be enforced against the parties or their assets wherever they may be found, and judgment upon such final decision or award may be entered in any court having jurisdiction thereof.

13. **Other Instruments.** The parties hereby agree to take any and all action which is necessary to effectuate and carry out the purposes of this Agreement.

14. **Headings.** The headings used in this Agreement are used for administrative purposes only and do not constitute substantive matter to be considered in construing the terms this Agreement

15. **Parties Bound.** This Agreement is binding on and shall inure to the benefit of the parties hereto and to their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

16. **Binding Agreement; Parties Bound.** This Agreement has been duly executed and delivered by ARN and the Village, and the individuals signing on behalf of ARN and the

Village represent and warrant that he or she is duly authorized to sign this Agreement. This Agreement is binding on and shall inure to the benefit of the parties hereto and to their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

17. **Time of the Essence.** Time is of the essence in the payment and performance obligations under this Agreement. Notwithstanding the foregoing, ARN cannot control the issuance of any license by the FCC, and shall not be responsible for any delays in the issuance of such License by the FCC.

18. **Counterparts.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original.

19. **Prior Agreements Superseded.** This Agreement supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter hereof, and there are no other agreements between the parties with respect to the terms of this Agreement, written or otherwise, except as set forth herein. This Agreement may be amended only by a written document duly executed by the parties. This Agreement shall be governed by the laws of Florida.

20. **Attorney's fees.** In the event of a dispute hereunder, the prevailing party shall be entitled to a reasonable attorney's fee and costs, including, without limitation, any such fees or costs paid or incurred in connection with any mediation, arbitration, litigation, and appeals or other post-judgment or post-decision proceedings.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, as of the day and year first above written.

WITNESSES:

ATLANTIC RADIO NETWORK, LLC

Print Name:

By: _____

Andrew P. Korge, President

Dated: _____

Print Name:

VILLAGE OF KEY BISCAYNE

Print Name:

By: _____

Chip Iglesias, City Manager

Dated: _____

Print Name:

APPROVED AS TO FORM:

By: _____
Village Attorney

ADDENDUM "A"



300 Aragon Avenue, Suite 255
 Coral Gables, Fl. 33134
 Tel: 305. 476.9782
 Fax: 305.476.9794

The following outlines the scope of services and equipment provided by ARN to the Village as referred to in section 1.1, Scope of Services/Equipment.

EQUIPMENT (Basic):

ARN TX	20 Watt AM Broadcast Transmitter	Total Quantity: 1	Higher wattage than license allows enabling you to increase power if granted in future.
RVR	AM Broadcast stand alone Antenna	Total Quantity: 1	Antenna to be mounted on facility roof.
Mackie	12 Channel Mixer Board	Total Quantity: 1	12 channel mixer board allows usage of many audio channels.
RVR or Falcon	Audio Processor	Total Quantity: 1	Audio processor to allow for optimum sound quality.
RE	Microphones	Total Quantity: 3	High quality microphones provide high quality sound and can be used for remote location broadcasts.
Radio Five	Editing/Automation System	Total Quantity: 1	System allows recording and storing of announcements for automated broadcasting of station.
N/A	Coax/Connectors	Total Quantity: 100 to 200 ft.	All necessary coax and connectors to link antenna to studio.
N/A	Cabling/Connectors	Total Quantity: Various	Cabling and connectors linking all studio elements.
N/A	Grounding	Total Quantity: Various	Cooper straps/rods

LABOR/ENGINEERING AND LEGAL

ARN	Spectral Engineering/ Channel Search	Total Quantity: Various	Search for available AM Channel to locate the 10-watt station.
ARN	Spectral Engineering/ Application	Total Quantity: Various	Submission of final engineering study for application.
ARN	Spectral Engineering/Field Study	Total Quantity: Various	Submission of Field study verifying pattern of station after station is activated.
Anthony Lepore, PA	Legal/Final Application	Total Quantity: Various	Submission and management of FCC licensing process.
ARN	Professional Engineering/Build-out	Total Quantity: Various	All professional labor necessary for the building of the antenna system and studio. Includes tuning of all components

ADDITIONAL PROFESSIONAL SERVICES: The following are ancillary services provided by ARN

N/A	Audio Production	Total Quantity: Various	Audio production of all station imaging. Includes voice talent and copywriting.
N/A	System Training	Total Quantity: Various	Six (6) hours of on-site training on automated system.
N/A	Audio Production	Total Quantity: Various	Audio production of eight (8) vignettes. Each Vignette will be 6-10 minutes in length. ARN will provide copywriting, full production and voice talent on these vignettes. Total value of production package: \$4,000.