



VILLAGE OF KEY BISCAYNE

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

DATE: September 2, 2008
TO: Honorable Mayor and Members of the Village Council
FROM: Genaro "Chip" Iglesias, Village Manager
RE: Horticulturist Position – Professional Services Agreement

RECOMMENDATION

It is recommended that the Village Council approve the professional services agreement for Ron Oprazadek to fill the Horticulturist Position.

BACKGROUND

Mr. Oprazadek will report to the Village Manager and will be responsible for supervising the maintenance of landscape in the Village, as well as coordinating with the maintenance crews.

The funds for this position were allocated to Public Works during the 2007 budget process.

cc: Randy White, Village Finance Director
David M. Wolpin, Esq., Village Attorney

RESOLUTION NO. 2008- _____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING PROFESSIONAL SERVICES AGREEMENT BETWEEN THE VILLAGE OF KEY BISCAYNE AND RON OPRAZADEK CONCERNING HORTICULTURE SERVICES; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council desires to obtain the professional services of Ron Oprazadek concerning the provision of horticulture services to the Village; and

WHEREAS, the Village Council finds that approval of the attached Agreement for Professional Services between Ron Oprazadek and the Village 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 certain Village of Key Biscayne Agreement for Professional Services (the "Agreement"), in substantially the form attached hereto, is hereby approved, and the Village Manager is authorized to execute the Agreement 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 authorized to take any necessary action to implement the purposes of this resolution and the Agreement.

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

PASSED AND ADOPTED this 9th day of September, 2008.

ROBERT VERNON, MAYOR

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Village Attorney

Exhibit

[Agreement for Professional Services]

**VILLAGE OF KEY BISCAYNE
AGREEMENT
FOR
PROFESSIONAL SERVICES
(HORTICULTURIST)**

THIS AGREEMENT (this "Agreement") is made effective as of the ___ day of _____, 2008 (the "Effective Date"), by and between the **VILLAGE OF KEY BISCAYNE**, a Florida municipal corporation (hereinafter the "Village"), and **RON OPRAZADEK** (hereinafter the "Consultant").

WHEREAS, the Consultant and Village, through mutual negotiation, have agreed upon a scope of services, schedule, and fee for professional horticulturist services within the Village; and

WHEREAS, the Village desires to engage the Consultant to perform the services as specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Consultant and the Village agree as follows.

1. **Scope of Services.**

1.1. The Consultant shall furnish such professional services (the "Services") as described in Exhibit "A" attached hereto and made a part hereof.

2. **Term/Commencement Date.**

2.1 This Agreement shall become effective upon the Effective Date and shall remain in effect through _____, 2009, unless earlier terminated in accordance with Paragraph 8.

3. **Compensation and Payment.**

3.1 The Consultant shall be compensated at an annual rate of Fifty Thousand Dollars (\$50,000). Village shall pay such amount in installments in the same manner as Village employees are paid.

3.2 In the event of any termination of this Agreement, Village shall not be liable for any further payments except with respect to those periods in which Consultant actually performed Services under this Agreement.

4. **Assignment.**

4.1 This Agreement involves skilled personal services and shall not be assignable by the Consultant.

5. **Village's Responsibilities**

- 5.1 Village shall make available any maps, plans, existing studies, reports and other data pertinent to the Services and in possession of the Village.
- 5.2 Upon Consultant's request in writing, Village shall arrange for access to any real property as required for Consultant to perform the Services.

6. **Consultant's Responsibilities**

- 6.1 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the Services for the Project as is ordinarily provided by a consultant under similar circumstances.

7. **Conflict of Interest.**

- 7.1 To avoid any conflict of interest or any appearance thereof, Consultant shall not, for the term of this Agreement, provide any consulting services to any private sector entities (developers, corporations, real estate investors, etc.), with any adversarial issues in the Village. For the purposes of this section "adversarial" shall mean any development application where staff is recommending denial or denied the application, or an administrative appeal or court action wherein the Village is a party.

8. **Termination.**

- 8.1 The Village Manager, without cause, may terminate this Agreement upon thirty (30) days written notice to the Consultant, or immediately with cause.
- 8.2 Upon receipt of the Village's written notice of termination, Consultant shall stop work unless directed otherwise by the Village Manager.
- 8.3 In the event of termination by the Village, the Consultant shall be paid up to the date of termination, provided that the Consultant has first complied with the provisions of Paragraph 8.4.
- 8.4 The Consultant shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Services to the Village, in a hard copy and electronic format within fourteen (14) days from the date of the written notice of termination or the date of expiration of this Agreement.

9. **Independent Consultant.**

9.1 The parties acknowledge and agree that Consultant is, and shall remain at all times during the term of the Agreement, an independent contractor. Consultant and Village agree that Consultant shall not become an employee, partner, agent, joint venturer or principal of Village. Accordingly, neither party shall have any authority to represent or bind the other. Further, Consultant shall not be entitled to the rights and benefits afforded to Village's employees, including, but not limited to, disability or unemployment insurance, workers' compensation, medical or disability insurance, vacation or sick leave or any other employment benefit. Consultant shall file all tax returns and reports required to be filed by Consultant on the basis that Consultant is an independent contractor, rather than an employee, and Consultant shall indemnify the Company for the amount of any employment taxes paid by the Village as the result of not withholding employment taxes from the compensation under this Agreement.

10. **Inventions and Patents.**

10.1 Consultant acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports and all similar or related information (whether patentable or not) which relate to Services to the Village which are conceived, developed or made by Consultant during the term of this Agreement ("Work Product") belong to the Village. Consultant shall promptly disclose such Work Product to the Village and perform all actions reasonably requested by the Village (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).

11. **Attorneys Fees and Waiver of Jury Trial.**

11.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

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

12. **Indemnification.**

12.1 Consultant shall defend, indemnify, and hold harmless the Village, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the Village for all its expenses including reasonable attorneys fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Consultant's performance or non-performance of this Agreement.

12.2 The provisions of this section shall survive termination of this Agreement.

13. **Notices/Authorized Representatives.**

13.1 Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties at the following addresses:

For the Village: Genaro "Chip" Iglesias
Village Manager
Village of Key Biscayne
88 West McIntyre Street
Key Biscayne, FL 33149

With a copy to: Stephen J. Helfman, Esq.
Village Attorney
Weiss Serota Helfman Pastoriza
Cole & Boniske, P.L.
2525 Ponce de Leon Blvd.
Coral Gables, Florida 33134

For The Consultant: Ron Oprazadek

_____ 1

14. **Governing Law.**

14.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

15. **Entire Agreement/Modification/Amendment.**

15.1 This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

15.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

16. **Ownership and Access to Records and Audits.**

16.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Consultant providing the Services to the Village under this Agreement shall be the property of the Village.

16.2 The Village Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Consultant involving transactions related to this Agreement.

16.3 The Village may cancel and terminate this Agreement immediately for refusal by the Consultant to allow access by the Village Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

17. **Severability.**

17.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Compliance with Laws.**

18.1 The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement.

19. **Waiver**

19.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

20. **Survival of Provisions**

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

21. **Prohibition of Contingency Fees.**

21.1 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(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

22. **Counterparts**

22.1 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.

23. **Public Entity Crimes Affidavit**

23.1 Consultant shall comply with Section 287.133, Florida Statutes, (Public Entity Crimes Statute) notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

24. **Insurance.**

- 24.1 Consultant shall secure and maintain throughout the duration of this 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, be rated AB or better, 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 the amounts set forth in this Section.
- 24.2 **Worker's Compensation and Employer's Liability Insurance.** If applicable, coverage to apply for all employees for statutory limits as required by applicable State and Federal laws.
- 24.3 **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 \$300,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 24.4 **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 \$500,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 24.5 **Certificate of Insurance.** Consultant shall provide the Village Manager with Certificates of Insurance for all required policies. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this 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 term of this Agreement, 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.

- 24.6 **Additional Insured.** 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 Consultant in performance of this Agreement. 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.
- 24.7 **Deductibles.** 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.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first above written.

VILLAGE:

CONSULTANT:

VILLAGE OF KEY BISCAYNE

RON OPRAZADEK

By: _____
Genaro "Chip" Iglesias, Village Manager

Attest: _____
Conchita Alvarez, Village Clerk

Approved as to Form and Legal Sufficiency:

Village Attorney

EXHIBIT "A"

THE SERVICES

HORTICULTURIST

Village of Key Biscayne

This position reports to the Village Manager. The horticulturist will be responsible for supervising the maintenance of landscape in the Village, as well as coordinating with the maintenance crews.

This position requires knowledge of greenhouse/nursery management, modern biological and chemical pest control methods, and familiarity with how to use native plant species, maintain ball fields and turf areas and knowledge about maintenance and operation of irrigation systems. This Agreement requires working in physically challenging conditions, and requires a hands-on knowledge of job-related material, nutritional/cultural requirements, pathology and taxonomic classification of plants in Key Biscayne, and the ability to work cooperatively with diverse personalities.