VILLAGE OF KEY BISCAYNE

Office of the Village Manager

MEMORANDUM

Franklin H. Caplan, Mayor
Michael W. Davey
Robert Gusman
James S. Taunton

Genaro "Chip" Iglesias

DATE: May 24, 2011

TO: Honorable Mayor and Members of the Village Council

FROM: Genaro "Chip" Iglesias, Village Manager

RE: Building, Zoning, and Planning Department Permitting System: Issuance of a Request for Proposals

Attached to this memorandum is a Request for Proposals (RFP) for a Building, Zoning, and Planning Department Software Permit Tracking System. This RFP is submitted to the Village Council for informational purposes. As such, action is not being requested.

BACKGROUND

The Capital Improvements Plan (CIP) includes a line item that will provide a significant upgrade to the permitting system software used in the Building, Zoning, and Planning Department. The current system was purchased in 1999 at a cost of $57,835. It is a client server based system with very limited internet functionality. The new system will be a web based hosted solution. It will be user intuitive with high speed internet connectivity for use by the general public and inspectors in the field.

The attached Request for Proposals (RFP) will be used to solicit proposals from qualified firms to provide a software package that, at a minimum, will include the following:

- Planning and Zoning application reviews and workflow management
- Building permit & inspections processes
- Building plan review management
- Code/ordinance enforcement case tracking system
- Business license issuance/renewals
- Public works permits and inspections
- Fire/life safety inspection results
- Contractor license verification
- Capacity for wireless "in the field" data entry ability
- Automated report generation i.e. 90 and 180 day letters
- Automated alerts sent via email; such as status of applications and inspections
- 40 year recertification as set forth in Chapter 8 of the Miami-Dade County Code
- State and County reports

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www.keybiscayne.fl.gov

Additionally, the new software will provide an online public access application for facilitating permit applications, inspection scheduling, status inquiries, etc. The system will provide a fully-integrated GIS application for displaying user-defined data (permits, inspections, violations, etc.), perform custom queries, manage/review digital building plans, and permit the importation of existing permit data.

Once proposals are received, they will be evaluated by staff with recommendations provided to my Office. The Village Council will make the final decision regarding which firm will be selected. Funding is available in the "Reserved Building Division" line item of the budget which is limited to supporting the Building Division.

Due to the complexity of the RFP and the expected response to our solicitation, Miami-Dade County Department of Procurement Management provided technical assistance in the preparation of the attached document. They will also continue to provide assistance through the evaluation and selection process.

REQUEST FOR PROPOSALS (RFP)
No. ____

BUILDING, ZONING AND PLANNING DEPARTMENT SOFTWARE PERMIT TRACKING SYSTEM

VILLAGE OF KEY BISCAYNE

Issue Date: _____, 2011

Proposal Due Date: _____, 2011 at 2:00 P.M.

VILLAGE OF KEY BISCAYNE

VILLAGE COUNCIL

Franklin H. Caplan, Mayor
Michael E. Kelly, Vice Mayor
Michael W. Davey
Enrique Garcia
Robert Gusman
Mayra P. Lindsay
James S. Taintor

VILLAGE ATTORNEY

Weiss, Serota, Helfman, Pastoriza, Cole & Boniske, P.A.

OFFICE OF THE VILLAGE CLERK

Conchita H. Alvarez, MMC

ADMINISTRATION

Genaro "Chip" Iglesias, Village Manager
Jud Kurlancheek, AICP, Building, Zoning, and Planning Director
Eugenio M. Santiago, P.E., Chief Building Official
Michael Fleming, Information Technology

The Contracting Officer for this Solicitation is:
Fred Simmons, Jr., CPPO
Email: Fred@miamidade.gov
Phone Number: 305-375-4259

A. General Information

This is a Request for Proposals (RFP) for a turnkey software solution for a permit tracking system for the Village of Key Biscayne's ("Village") Building, Zoning and Planning Department. Proposers who respond to this solicitation must thoroughly complete and submit all documentation required by this RFP.

The Village's Building, Zoning and Planning Department will hold a pre-submission meeting and conference call for proposers interested in responding to this RFP. The pre-submission meeting will be held on _____, 2011 at 10:00 a.m. at:

88 West McIntyre Street, Suite 250
Building, Zoning, and Planning Department
Key Biscayne, FL 33149

Please note that the Scope of Services may be modified by the Village through written addenda to this RFP.

Proposers may propose options and/or alternatives to its proposal. Any option(s) and/or Alternative(s) will be considered during negotiations. Those that are acceptable to the Village will be included in any Contract resulting from this solicitation.

B. Scope of Services

The Village of Key Biscayne is seeking proposals from qualified firms to provide and implement a turnkey software solution for a permit tracking system to address the needs of the Village's Building, Zoning and Planning Department ("Project"). As the Village is a barrier island, the Village seeks a vendor-hosted web-based solution.

Software Solution Requirements and Approach

The proposed software solution is required to manage a variety of functions administered by the Village's Building, Zoning and Planning Department, including but not limited to the following:

- Planning and Zoning application reviews and workflow management;
- Building permit & inspections processes;
- Building plan review management;
- Code/ordinance enforcement case tracking system;
- Business license issuance/renewals;
- Public Works' permits and inspections;
- Fire/life safety inspection results;

- Contractor license and insurance verification;
- Capacity for wireless "in the field" data entry ability;
- Automated report generation i.e. 180 letter;
- Automated alerts sent via email such as, but not limited to, inspection results, permit expiration;
- 40 year recertification as set forth in Chapter 8 of the Miami-Dade County Code; and
- State and County reports.

Additionally, the proposed software solution must provide an online public access system for facilitating online permit applications, inspection scheduling, status inquiries, etc. It is desired that the proposed solution provide an interface with the Village's GIS system.

The Village uses ESRI for displaying user-defined data (permits, inspections, violations, etc.) and performing custom queries. The software solution should also have the ability to manage and review digital building plans.

The proposed software solution and pricing must include the importation or transfer from the Village's existing permit system data (Accela Permits Plus and File Marker Pro) to the new solution. The proposed software solution and approach should include an implementation strategy and transition plan that ensures smooth transitions from the Village's current systems (Accela Permits Plus and File Marker Pro) to the new systems, without interruption of operations or data, loss of revenues, or loss or duplication of data.

Pricing

Pricing should be based on fourteen (14) concurrent users as well as five (5) mobile field users. The proposal price should include all expenses associated with the successful implementation of the Project.

Training

The proposal should also include training of Village staff in using and administering the new software solution, as well as annual and ongoing support and maintenance that include trouble shooting, upgrades and enhancements to the system.

C. General Conditions

This RFP is not an offer to contract. Acceptance of a proposal neither commits the Village to award a contract to any proposer, even if all requirements stated in this RFP are satisfied, nor limits the Village's right to negotiate in its best interest. The Village reserves the right to contract with a proposer for reasons other than the lowest price. The Village reserves the right to accept any proposal(s) deemed to be in the best

interest of the Village or to waive any informality or irregularity set forth in this solicitation. The Village may reject any or all proposals and re-advertise. The Village may seek additional information or clarification of any proposals at any time.

D. **Proposal Costs**

The Village reserves the right to negotiate the terms and conditions, and price of any agreement resulting from this solicitation.

The Village will not be liable for any costs incurred by proposers in responding to this RFP. All expenses involved with the preparation and submission of Proposals to the Village or any work performed in connection therewith, shall be borne by the Proposer(s). No payment shall be made for any responses received, or for any other effort required of or made by the Proposer prior to commencement of the work as defined by a contract, duly approved by the Village Council, and the issuance of a Notice To Proceed (NTP).

E. **Award**

Award of the contract will be to a responsive proposal and responsible Proposer, whose qualifications and offer indicate the award will be in the best interest of the Village, and who's Proposal complies with the requirements and specifications of this RFP. In no case will the award be made until all necessary investigations have been made into the responsibility of the Proposer(s), and the Village Manager is satisfied that the Proposer(s) is qualified to do the Work, and has the necessary organization, capital and equipment to carry out the Work in the specified timeframes. If the Village accepts a Proposal, the Village will provide a written Notice of Award to the Proposers who meet the requirements of this RFP. The award of this Proposal is non-exclusive and the Village may, in the Village's sole discretion, award this contract to more than one Proposer.

F. **Assignment**

The proposer may not assign any award made as a result of this RFP, without the prior written consent of the Village.

G. **Execution of Contract**

The successful Proposer(s) shall, within thirty (30) days of receipt of a written Notice of the Award of the contract, deliver to the Village a fully executed contract and all required licenses and certificates of insurance. The final contract shall be substantially in the form provided and approved by the Village Attorney.

H. **Interpretation and Clarifications**

All questions concerning the meaning, intent, or clarifications of the RFP and specifications shall be addressed at the pre-submission meeting. Interpretations or clarifications considered necessary by the Village in response to such questions may be addressed by the Village by means of Addenda mailed or delivered to all parties registered with the Village Clerk as having received the RFP. Only questions answered by written Addenda shall be binding on the Village. Oral and other interpretation or clarifications of this RFP shall not be binding on the Village.

I. **Opening of Proposals**

Proposals will be publicly opened at the appointed time and place as stated in this RFP. Late Proposals will not be considered or accepted. No responsibility will be attached to any Village staff for the premature opening of a Proposal not properly addressed and identified.

J. **Public Entity Crimes**

In accordance with the Public Entity Crimes Act (Section 287.133, Florida Statutes), a person or affiliate who is a contractor, who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the Village, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases or real property to the Village, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with the Village in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section by the vendor shall result in rejection of the Proposal, termination of the contract, and may cause vendor debarment. Proposers are required to execute and submit the Sworn Statement on Public Entity Crimes attached to this RFP as Appendix D.

K **Insurance Requirements**

The Proposer shall be required to provide and maintain insurance coverage of such types and amounts as required by the Village and specified in the contract. The Proposer shall include with his/her proposal documentation from the Proposer's insurer, evidencing the insurability of the Proposer to meet the Insurance requirements.

L. **Compliance with Laws**

The Proposer shall be familiar with and comply with all applicable Federal, State, and local laws, ordinances, rules, and regulations that may in any manner affect the work or services required in this RFP.

M. Proposal Instructions and Schedule

Proposers are to submit sealed proposals, which will be evaluated by the Village of Key Biscayne. The sealed proposal must be labeled on the outside of the envelope **"RFP: Building, Zoning & Planning Department, Software Permit Tracking System"** in order to be considered. Submit one (1) marked original and eight (8) complete copies of your proposal, and one (1) electronic copy in PDF format on disc.

Submission Location: Village of Key Biscayne
Office of the Village Clerk, Suite 220
88 W McIntyre St
Key Biscayne, FL 33149

Proposal Due Date _____**, 2011 at 2:00 p.m.**

RFP Schedule The anticipated review and selection schedule for this RFP is set forth below. The indicated dates are intended to be guidelines and may be adjusted by the Village to accommodate the Village's needs and requirements.

Milestone:	**Date:**
RFP to be issued	_____, 2011
Pre-Submission meeting	_____, 2011
Proposal Due Date	_____, 2011
Evaluation Committee Ranking and Recommendations to Village Manager	_____, 2011
Village Council Selection of Firm	_____, 2011
Village Council Award of Contract with Firm	_____, 2011

N. Pre-Submission Meeting and Conference Call

Village Staff will conduct a pre-submission meeting and Conference Call on _____, 2011 at **10:00 a.m.** at the following address:

Key Biscayne Village Hall
Building, Zoning, and Planning Department Conference Room
88 W. McIntyre Street
Key Biscayne, FL 33149

The conference call-in number for the pre-submission meeting is _____.

Each attendee at the meeting shall be required to sign in and identify specifically only one firm he/she is representing. For persons with disabilities, auxiliary aids or services will be provided upon request with at least five (5) days notice prior to the date of the meeting by calling the Village Clerk's Office at (305) 365-5506.

Each potential Proposer planning to attend the pre-submission meeting via conference call is required to submit its intention to the Contracting Officer electronically at fred@miamidade.gov with a copy to Mr. Fleming (mfleming@keybiscayne.fl.gov), at least 48 hours in advance of the meeting date and time. The name of the firm being represented, and contact information (name, email address, etc.) of a key representative of the firm that will participate in the pre-submission meeting must be provided.

Questions concerning this RFP and the services requested will be answered at the pre-submission meeting. Any changes to this RFP will be made by addendum issued by the Village. Proposers shall acknowledge all addenda issued by the Village in the form attached hereto as Appendix E. The purpose of this meeting is to provide an open forum for the firms to review the RFP, ask questions regarding the RFP and the services solicited by the Village and respond to questions regarding this RFP. This will be the ***only*** opportunity for interested firms to ask questions regarding the RFP prior to proposal submission. **FIRMS ARE PROHIBITED FROM CALLING VILLAGE STAFF OR VILLAGE COUNCIL WITH QUESTIONS OR SUBMITTING QUESTIONS TO THE VILLAGE REGARDING THIS RFP PRIOR TO SUBMITTAL.** Firms are encouraged to submit their questions in writing to the Contracting Officer with a copy to Mr. Fleming at least three (3) business days before the pre-submission meeting in order to ensure that they will be answered at the meeting.

O. Proposal Due Date

Please submit one (1) original and seven (7) hard copies of the proposal, including price, and one (1) electronic copy of the complete proposal, including price in PDF format on disc of your RFP proposals to:

Ms. Conchita Alvarez, Village Clerk, MMC
88 W. McIntyre Street, Suite No. 220
Key Biscayne, FL 33149

Your proposals must be delivered by 2:00 p.m. on the proposal due date of _____, 2011, as further detailed in paragraph "N" above. Proposals delivered late after the proposal due date and time will not be accepted.

P. **Proposal Requirements and General Qualifications**

Each proposal will be evaluated on the basis of how well the software solution meets the requirements of the RFP, and the firm, key sub-consultants and personnel, and the team's collective individual professionals meet the criteria outlined in the RFP. Please submit your responses in a concise written tabulated format indexed and organized in order by the following sections:

1 Letter of Intent: The Letter of Intent shall be signed by an officer of the Proposer authorized to bind the firm. The Letter of Intent shall contain a statement indicating the period of time during which the proposal and the prices quoted will remain valid. The proposal shall be valid for a period of not less than one hundred and eighty days (180) from the proposal due date.

2 Statement of Organization: Appendix A attached to the RFP shall be completed and signed by the Proposer or an authorized agent of the Proposer. Proposers should supply information that will assist the Village in understanding the Proposer's organization or structure.

3 Acknowledgment, Warranty and Acceptance: Appendix B attached to the RFP shall be completed and signed by the Proposer.

4 Non-Collusive Affidavit: Appendix C attached to the RFP shall be completed and signed by the Proposer.

5 Sworn Statement on Public Entity Crimes: Appendix D attached to the RFP shall be completed and signed by the Proposer.

6 Acknowledgment of Receipt of Addenda to RFP: Appendix E attached to the RFP shall be completed and signed by the Proposer.

7 Firm Profile, Qualifications and Experience: Provide a summary of the firm's, proposed team's and key personnel's qualifications and experience in providing the requested services, including the Project Manager and Principal-in-Charge. The firm must have five (5) years of continuous operation with permitting software under the same name with professional licenses and insurance. Key personnel must have a minimum of five (5) years of experience in the planning, design, and implementation of building permit software and similar projects. The Project Manager should

have served as Project Manager on a minimum of three (3) previous such projects in municipalities of the approximate size of Village of Key Biscayne. This individual must be capable of making decisions, and speaking on behalf of the Firm. The Project Manager shall be the primary contact and lead representative to the Village.

8 Project References: Provide a schedule of current and past reference projects for the past five (5) years, of similar scope and magnitude provided to other municipalities or governmental agencies, for which the Proposer has provided services and describe those services. In particular, the Village would like to review similar project experience to determine whether or not projects met the schedule and budget requirements. Please include the name of a contact/reference person for each project. Proposer should provide references for all projects summarized using the form provided in Appendix F.

9 Conceptual Plan and Proposal Information: Each Proposer shall provide a comprehensive summary of the following:

a. Proposed software solution, overview, and capabilities.

b. List all specifications for hardware, operating environment, database, mapping and security needed to implement and maintain the proposed software system, including storage and memory requirements, maximum file size, number of records and lengths, etc.

c. Implementation methodology, schedule, tasks with target dates.

d. Training methodology approach.

e. Technical support and maintenance availability.

f. Sample reports and screen shots.

g. Permitting solutions.

h. Licensing structure with fee schedule.

i. Implementation schedule indicating tasks and target.

j. Transition of services from the Village's existing applications to the new application, including data migration services.

k. Testing, acceptance and warranty.

10 Project Schedule: Each proposal shall provide a detailed Project schedule to implement the Scope of Services, including estimated timeframes and deliverables for each stage of the Project. Detail the amount of support to be provided including number and type of personnel, time commitment and training content and format, at each stage of the Project.

11 Product Vision: Each proposal shall describe the Proposer's vision for the continuing expandability of the software system. In addition, the Proposer shall disclose the evolution of its software functionality. Future versions and/or upgrades should be discussed in conjunction with the proposed version. The proposal shall also describe the methods by which clients are kept informed of new releases, new hardware components, known viruses/bugs and fixes, and any additional information the proposer deems appropriate. The proposal shall describe any implications of new releases to the price or maintenance contract. The proposal shall describe how enhancements are prioritized and by whom. The proposal shall explain the affect of any customization on future upgrades and maintenance.

12 Maintenance and Support: The proposal shall provide a comprehensive description of maintenance and support options, including, but not limited to the following:

- *Hours of Support:* Describe options for hours of maintenance and support and the cost of each option. Provide the response time and associated guarantee for each option.

- *Maintenance Costs:* Explain maintenance cost options and what is and/or is not included with the product's final cost. If maintenance cost is a percentage of the price, describe needed maintenance and provide an estimate (in time and cost) of maintenance to be performed.

- *Support:* Provide information on the nearest support center to the Village and if support will be on-site or remote. Provide a list and description of applicable training

and implementation courses that will be made available to the Village. The training must be comprehensive enough so that the Village's staff and systems administration personnel can effectively operate and maintain the system. Provide support details, including any requirements for modem communication, cost, and problem reporting and tracking methodology used.

- *Ownership:* Provide ownership information, including cost, on the source code in the event the Village drops support of the software and/or the proposer goes out of business.

- *User Groups:* Provide information on active user groups. Describe user conference frequency, location and other details.

13 Special Considerations: The proposal shall describe any special resources which the firm or personnel assigned to the Project may bring to the Project or in-house expertise in technical areas which will specifically benefit the Village.

14 Quality Assurance/Quality Control: The proposal shall provide a detailed description of the firm's quality assurance/quality control review and checking procedures, including describing how coordination, checking and quality assurance/quality control will be accomplished to achieve a one hundred percent (100%) correct, complete, coordinated solution for this Project in compliance with all applicable laws, codes, ordinances, rules and regulations.

15 Pricing Summary: The proposal shall provide the final and complete price for completing the Work required by this RFP. The proposed price must include, but should not be limited to, license fees, modifications, training, travel and per diem expenses, installation, service charges, upgrades, documentation, taxes, discounts, etc. Costs for on-going maintenance and support must be identified. All price tables should be sub-totaled and totaled. Pricing should be broken down as follows:

One Time Project Costs: Proposers should provide a fixed price with an itemized list of costs. The price proposal must represent a comprehensive price that includes all of the Proposer's efforts and resources to satisfy the Scope of Services and all specifications in this RFP. The fixed price

should incorporate all of the Proposer's Project related expenses:

- Software
- Implementation, including data conversion, installation, testing, and training
- Hardware, if necessary
- Operating and System software, if necessary
- Maintenance and Support Costs, for the twelve (12) month period following system implementation and acceptance

Recurring Project Costs:

- Software license/maintenance agreements, if applicable
- Upgrades, if applicable
- Ongoing Maintenance and Support

Hourly Rates: List all hourly rates for additional work requested by the Village outside of the Scope of Services and specifications of this RFP, as may be necessary or recommended.

16 Insurance:
The proposal must show evidence of insurability for the insurance required by this RFP. The proposal shall include its current certificates of insurance: proof of professional liability insurance coverage and amounts, employer's liability insurance, worker's compensation insurance, commercial general liability insurance, and commercial automobile liability insurance and any other insurance requirements that the proposer will carry for this Project or as required by the Village.

17 Additional Information:
Please provide any other additional information that the Proposer believes would be helpful to the Village in the evaluation of proposal.

18. Confidential, Proprietary Information:

Proposers are hereby notified that all information submitted as part of, or in support of proposals will be available for public inspection after opening of proposals, in compliance with Chapter 119, Florida Statutes, popularly known as the "Public Record Law". The Proposer shall not submit any information in response to this Solicitation which the Proposer considers to be a trade secret, proprietary or confidential. The submission of any information to the Village in connection with this Solicitation shall be deemed conclusively to be a waiver of any trade secret or other protection, which would otherwise be available to Proposer. In the event that the Proposer submits information to the Village in violation of this restriction, either inadvertently or intentionally, and clearly identifies that information in the proposal as protected or confidential, the Village may, in its sole discretion, either (a) communicate with the Proposer in writing in an effort to obtain the Proposer's written withdrawal of the confidentiality restriction or (b) endeavor to redact and return that information to the Proposer as quickly as possible, and if appropriate, evaluate the balance of the proposal. Under no circumstances shall the Village request the withdrawal of the confidentiality restriction if such communication would in the Village's sole discretion give to such Proposer a competitive advantage over other Proposers. The redaction or return of information pursuant to this clause may render a proposal non-responsive.

Q. Evaluation Criteria and Selection Process

Proposals submitted will be evaluated by an Evaluation Committee, who will review submissions and provide a recommendation to the Village Manager, who shall provide a recommendation to the Village Council. The Village Council will make any contract award.

The Evaluation Committee shall examine each proposal to determine its responsiveness to the requirements of the RFP. Failure to provide the required information may disqualify a proposal as non-responsive, and such proposal will not be considered. The evaluation of proposals and the determination of responsiveness shall be the sole responsibility of the Evaluation Committee and the Village Manager. Such determination shall be based on information provided by the Proposer, as well as other information reasonably available to the Village.

The Evaluation Committee may make such investigations as it deems necessary to determine the ability of the software solution proposed by the

Proposer to perform, and the Proposer shall furnish the Village all such information as the Evaluation Committee or Village Manager may request before and during the Proposal period. The Evaluation Committee reserves the right to make additional inquiries, request additional information from Proposers, interview some or all Proposers, make site visits, obtain credit reports, or take any other action it deems necessary to fairly evaluate all Proposers. The Evaluation Committee may in its sole discretion reject a Proposal or disqualify a Proposer.

The Evaluation Committee shall evaluate and rank each proposal. Proposals shall be evaluated and ranked based on the following criteria:

Evaluation Criteria	Points
• Technology and System Functionality	20 pts.
• Proposed Pricing	20 pts.
• Conceptual Plan/Proposal Information	20 pts
• Support and Maintenance	20 pts
• Qualifications/Experience	20 pts
Total	100 pts.

The Evaluation Committee will evaluate each firm's proposal and qualifications based on the above Evaluation Criteria which are listed in no particular order. The Evaluation Committee will rank proposals based on the total points scored. The scores are to be used as a guideline in ranking and selecting firm(s) for further consideration by the Village Manager. The Village Manager will recommend a firm(s) to the Village Council for further consideration and selection.

The Village Council will consider the selection of a firm(s) based upon the recommendation of the Village Manager, and any other information obtained for consideration. Should the Village Manager not be able to negotiate a suitable contract with the firm selected by the Village Council, the Village Manager may then commence negotiations with the firm ranked two (2), and so on until a successful contract has been negotiated.

Price Evaluation: The price proposal will be evaluated subjectively in combination with the technical proposal, including an evaluation of how well it matches Proposer's understanding of the Village's needs described in this Solicitation, the Proposer's assumptions, and the value of the proposed services. The pricing evaluation is used as part of the evaluation process to determine the highest ranked Proposer. The Village reserves the right to negotiate the final terms, conditions and pricing of the contract as may be in the best interest of the Village.

R. Proposal Acceptance

The Village reserves the right to accept or reject any and/or all proposals or parts of proposals, to workshop or negotiate any and all proposals, to waive irregularities, and to request new proposals for the required materials or services. All materials submitted in response to the RFP become the sole property of the Village, which has the right to use any or all ideas presented in any response to the RFP, and the selection or rejection of the proposals does not affect this right.

Any proposal that has been submitted to the Village Clerk may be withdrawn prior to the proposal due date and time stated herein, upon proper identification and signature releasing submittal documents back to the proposing Firm.

S. Other

1. Proposer will receive no reimbursement for its expenses in preparing a submittal, or travel expenses if they choose to visit the site or if Village requests additional written information or oral presentations. The Village shall not be liable for any costs, fees, or expenses incurred by any Proposer in responding to this RFP, or subsequent inquiries or presentations relating to its response.

2. Documentation must be provided in the proposal that clearly identifies the authorized signer of the documents required by the solicitation and his/her authority to bind the firm. Such documentation must indicate that the person has been so designated and given authority by the proposing entity

3. The authorized signer of the proposal response to this RFP must declare by signing Appendices A, B, C, D, E, and F that the person(s), Firm(s) and parties identified in the proposal are interested in and available for providing the services; that the proposal is offered without collusion with any other person(s), Firm(s) and parties; that the proposal is fair in all respects and is made in good faith without fraud; and that the signer of the cover letter of the proposal has full authority to bind the person(s), Firm(s) and parties identified in the proposal.

4. All materials and documents submitted hereunder shall become the sole property of the Village, and the Village may use and disclose as the Village may deem necessary, reasonable or required by law.

5. The Proposer shall, at its own expense, obtain all necessary permits, pay all licenses, fees and taxes required to comply with all Village and/or County ordinances, state and federal laws, rules, regulations and professional standards that would apply to this Project and the contract to be awarded.

6. The Proposer shall observe and comply with all federal, state and local laws, ordinances, rules, regulations and professional standards that would apply to this Project and the contract to be awarded.

7. A response to this RFP shall not be construed as a contract nor indicate a commitment of any kind on the part of the Village. The Village reserves the right to reject any or all responses to this RFP, or to accept any response deemed to be in the Village's best interest.

8. If the Village finds it necessary to add to or amend this document prior to the proposal due date, the Village will issue written addenda/addendum. Each Proposer must acknowledge receipt of each addendum by signing the acknowledgement (Appendix E), and providing it with its proposal.

9. Florida law provides that municipal records should be open for inspection by any person pursuant to Section 119, F.S. Public Records Law. All information and materials received by the Village in connection with responses shall become the property of the Village and shall be deemed to be public records subject to public inspection.

End of Request for Proposals

APPENDIX A
PROPOSER'S STATEMENT OF ORGANIZATION

1. Full Name of Firm/Proposer: _____

   Principal Business Address:

   _____

   _____

   _____

   Firm Telephone Number: _____

   Firm Fax Number: _____

2. Principal Contact Person(s) responsible for direct contact with the Village of Key Biscayne and day-to-day servicing of account:

   Name: _____ Title: _____

   Telephone No: _____ Fax: _____

   Email: _____

   Name: _____ Title: _____

   Telephone No: _____ Fax: _____

   Email: _____

3. Form of Business Concern (Corporation, Partnership, Joint Venture, Other):

   _____

   _____

4. Provide names of partners or officers as appropriate and indicate if the individual has the authority to sign in name of Proposer. Provide proof of the ability of the individuals so named to legally bind the Proposer.

Name	Address	Title

APPENDIX A
PROPOSER'S STATEMENT OF ORGANIZATION
(CONTINUED)

If a corporation, in what state incorporated: _____

Date Incorporated: _____

If a Joint Venture or Partnership, date of Agreement: _____

5. List all firms participating in this project (including any subcontractors, etc.):

Name	Address	Title
1.		
2.		
3.		
4.		

6. Outline specific areas of responsibility for each firm listed in Question 5.

1. _____
2. _____
3. _____
4. _____

7. Licenses:

a. County or Municipal Occupational License No.

_____
(Attach Copy)

b. Occupational License Classification:

_____

c. Occupational License Expiration Date:

_____

d. Social Security or Federal I.D. No:

_____

[THIS SPACE INTENTIONALLY LEFT BLANK]

APPENDIX B

ACKNOWLEDGEMENT, WARRANTY AND ACCEPTANCE

A. Firm warrants that it is willing and able to comply with all applicable State of Florida laws, rules and regulations.

B. Firm warrants that it has read, understands and is willing to comply with all of the requirements of the RFP.

C. Firm warrants that it will not delegate or subcontract its responsibilities under an agreement without the prior written consent of the Village.

D. Firm warrants that all information provided by it in connection with its Proposal and this Project is true and accurate.

E. CONTINGENCY FEE AND CODE OF ETHICS WARRANTY:
Firm warrants that neither it, nor any principal, employee, agent, representative or family member has promised to pay, and Firm has not, and will not; pay a fee the amount of which is contingent upon the Village of Key Biscayne awarding this contract. Firm warrants that neither it, nor any principal, employee, agent, or representative has procured, or attempted to procure, this contract in violation of any of the provisions of the Miami-Dade County conflict of interest and code of ethics ordinances. Further, Firm acknowledges that a violation of this warranty will result in the termination of the contract and forfeiture of funds paid, or to be paid, to the Firm, if the Firm is chosen for performance of the contract.

Signature of Official:

_____

Name: _____

Title: _____

Firm: _____

Date: _____

APPENDIX C

NON-COLLUSIVE AFFIDAVIT

State of _____
SS:
County of _____

_____being first duly sworn, deposes and says that:

(1) He/she is the, (Owner, Partner, Officer, Representative or Agent) of: _____, the Firm that has submitted the attached Proposal;

(2) He/she is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;

(3) Such Proposal is genuine and is not a collusive or a sham Proposal;

(4) Neither the said Firm nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Firm or person to submit a collusive or sham response in connection with the work for which the attached Proposal has been submitted, or to refrain from responding in connection with such work, or have in any manner, directly or indirectly, sought by agreement or collusion, communication, or conference with any Firm or person to fix this Proposal or to secure through any collusion, conspiracy, connivance, or unlawful agreement, any advantage against the Village of Key Biscayne, or any person interested in the proposed work;

Signed, sealed and delivered in the presence of:

_____

Firm/Proposer:

By: _____
Print Name: _____
Title: _____

Firm: _____

Date: _____

ACKNOWLEDGMENT

State of Florida
County of _____

On this_____day of, 201___, before me, the undersigned Notary Public of the State of Florida, personally appeared_____, and whose name(s) is/are subscribed to the within instrument, and he/she/they acknowledge that he/she/they executed it.

WITNESS my hand and official seal

_____
NOTARY PUBLIC, STATE OF FLORIDA

NOTARY PUBLIC SEAL OF OFFICE:

_____
(Name of Notary Public: Print, Stamp or Type as commissioned.)
___ Personally known to me, or
___ Produced identification:

_____
(Type of Identification Produced)

___ Did take an oath or
___ Did not take an oath.

APPENDIX D

SWORN STATEMENT PURSUANT TO SECTION 287.133 (3)(a) FLORIDA STATUES, ON PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to the VILLAGE OF KEY BISCAYNE, FLORIDA

By

_____

For

_____

Whose business address is:

_____

And (if applicable) its Federal Employer Identification Number (FEIN) is: _____

(if the entity has no FEIN, include the Social Security Number of the individual signing this Sworn statement - S.S. # _____)

2. I understand that a ""public entity crime" as defined In Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with any agency or political subdivision of any other State or of the United States, including, but not limited to, any Proposals or contract for goods or services to be provided to any public entity or an agency or any political subdivision of any other state or of the United Sates and involving antitrust fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation

3. I understand that "convicted" or "conviction"" as defined in Paragraph 287.133(1) (b), Florida Statutes means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result or a jury verdict, non jury trial, or entry of a plea or guilty or nab contenders.

4. I understand that an "affiliate" as defined in Paragraph 287.133(1) (a), Florida Statutes, and means:

A. A predecessor or successor of a person convicted of a public entity crime; or

B. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate"' includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling Interest in another person, or pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1) (e), Florida Statutes, means any natural person or entity organized under the laws or any state or of the United States with the legal power to enter into a binding contract and which Qualifications or applies to Proposals on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of any entity.

Signed, sealed and delivered
in the presence:

_____

_____

FIRM:

_____

By: _____
Print Name: _____
Title: _____

ACKNOWLEDGMENT

State of Florida
County of _____

On this_____day of, 201___, before me, the undersigned Notary Public of the State of Florida, personally appeared _____, and whose name(s) is/are subscribed to the within instrument, and he/she/they acknowledge that he/she/they executed it.

WITNESS my hand and official seal

_____
NOTARY PUBLIC, STATE OF FLORIDA

NOTARY PUBLIC SEAL OF OFFICE:

_____
(Name of Notary Public: Print, Stamp or Type as commissioned.)
___ Personally known to me, or
___ Produced identification:

_____
(Type of Identification Produced)
___ Did take an oath or
___ Did not take an oath.

APPENDIX E

ACKNOWLEDGMENT OF ADDENDA TO RFP

The Proposer hereby acknowledges the receipt of the following addenda issued by the Village and incorporated into and made part of this RFP. In the event that the Proposer fails to include any such addenda in the table below, submission of this form shall constitute acknowledgment of receipt of all addenda, whether or not received by the Proposer.

ADDENDUM NUMBER	DATE RECEIVED	PRINT NAME	TITLE	SIGNATURE

APPENDIX F

REFERENCES

The Proposer shall provide a minimum of five (5) references of municipalities or governmental agencies currently being served by the Proposer's Software System with similar services to those being proposed in this Proposal.

1. Name of Municipality/Agency:_____
Address:_____
_____
Phone Number:_____
Principal Contact Person(s):_____
Year Contract Initiated: _____ Population: _____

2. Name of Municipality/Agency_____
Address:_____
_____
Phone Number:_____
Principal Contact Person(s):_____
Year Contract Initiated: _____ Population: _____

3. Name of Municipality/Agency:_____
Address:_____
_____
Phone Number:_____
Principal Contact Person(s):_____
Year Contract Initiated: _____ Population: _____

4. Name of Municipality/Agency:_____
Address:_____
_____
Phone Number:_____
Principal Contact Person(s):_____
Year Contract Initiated: _____ Population: _____

5. Name of Municipality/Agency:_____
Address:_____
_____
Phone Number:_____
Principal Contact Person(s):_____
Year Contract Initiated: _____ Population: _____

Appendix G
Price Schedule

PROPOSED PRICES

The Proposer shall state its price for the Work outlined in this RFP. The Proposer shall submit its flat, fixed prices which are guaranteed for the term of the contract. The Village reserves the right to negotiate prices submitted for each section of work. The prices for any additional work, equipment, or hardware will be negotiated.

The work identified in the following table shall be priced by the Proposer. Prices shall be inclusive of all things necessary to complete the Work. **Prices shall not be conditioned**. The Village will evaluate the Proposer's Total Proposed Price.

Proposer's Total Proposed Price: $_____

Price Breakdown:

Maintenance and Support $_____

Maintenance Costs: $_____

Training Costs: $_____

Source Code Ownership $_____

One Time Project Costs $_____

Software $_____

Implementation: $_____

including data conversion, installation, testing, and training

Hardware, if necessary $_____

Operating and System $_____

software, if necessary

Maintenance and Support $_____

Costs for the twelve (12) $_____

month period following system implementation and acceptance

Transfer data from File Maker Pro $_____

and Accela

Recurring Project Costs: **$_____**

Software license/ maintenance agreements if applicable	$_____
Upgrades, if applicable	$_____
Ongoing Maintenance and Support	$_____

***Hourly Rates*:**

Classification: _____ $_____

*Classification:*_____ $_____

*Classification:*_____ $_____

*Classification:*_____ $_____

*Classification:*_____ $_____

*Classification:*_____ $_____

*Classification:*_____ $_____

(This is the form of Agreement the Village anticipates awarding to the selected Proposer.)

Contract No.

THIS AGREEMENT made and entered into as of this _____ day of _____, 2011 by and between _____, a corporation organized and existing under the laws of the State of _____, having its principal office at _____ (hereinafter referred to as the "Contractor"), and Village of Key Biscayne, a Florida municipal corporation, having its principal office at 88 West McIntyre Street, Suite 210, Key Biscayne, Florida 33149 (hereinafter referred to as the "Village"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide a Building, Zoning and Planning Department Software Permit Tracking System, on a non-exclusive basis, that shall conform to the Scope of Services (**Appendix A**); Village of Key Biscayne's Request for Proposals (RFP) No._____, and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated _____, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the Village desires to procure from the Contractor such Building, Zoning and Planning Department Software Permit Tracking System for the Village, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1. <u>DEFINITIONS</u>

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is

intended:

a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), RFP No. and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.

b) The words "Contract Date" to mean the date on which this Agreement is effective.

c) The words "Contract Manager" to mean the Village Manager, or the duly authorized representative designated to manage the Contract.

d) The word "Contractor" to mean _____ and its permitted successors and assigns.

e) The word "Days" to mean Calendar Days.

f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the Village's Project Manager for review and approval pursuant to the terms of this Agreement.

g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the Village's Project Manager; and similarly the words "approved", acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the Village's Project Manager.

h) The words "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the Village.

i) The words "Project Manager" to mean the Village Manager or the duly authorized representative designated to manage the Project.

k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.

l) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.

m) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the

order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Appendix A), 3) the Village's RFP No. and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

ARTICLE 3. RULES OF INTERPRETATION

a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.

b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.

c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.

d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.

b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the Village in all aspects of the Services performed hereunder.

c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.

d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the Village's Project Manager.

e) The Contractor acknowledges that the Village shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the Village. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the Village with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM

The Contract shall become effective on _____ and shall continue through any warranty period, or until the system provided by the Contractor is fully accepted by the Village. This contract may be extended by the Village at its option.

ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the Village

a) to the **Project Manager**:

Village of Key Biscayne
Attention: Village Manager
88 West McIntyre Street, Suite 210
Key Biscayne, Florida 33149
Phone: (305) 365-5514
FAX: (305) _____

VI.

and,

b) to the **Contract Manager**:

Village of Key Biscayne
88 West McIntyre Street, Suite 220
Key Biscayne, FL 33149

Attention: Jud Kurlancheek, Director of Building, Zoning and Planning

VII. PHONE: (305) 365-8908

VIII. FAX: (305) _____

(2) To the Contractor

_____
_____
_____
Attention:
Phone:
Fax:
E-mail:

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the Village's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in the total amount of _____ ($_____). The Village shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the Village and the Contractor.

All Services undertaken by the Contractor before Village's approval of this Contract shall be at the Contractor's risk and expense.

With respect to travel costs and travel related expenses, the Contractor agrees to adhere to Section 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The Village shall not be liable for any such expenses that have not been approved in advance, in writing, by the Village.

ARTICLE 8. PRICING

Prices shall remain firm and fixed for the term of the Contract, including any option or extension periods; however, the Contractor may offer incentive discounts to the Village at any time during the Contract term, including any renewal or extension thereof.

ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the Village periodically, but not more than once per month, upon invoices certified by the Contractor pursuant to **Appendix B – Price Schedule**. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the Village, shall show the Village's contract number, and shall have a unique invoice number assigned by the Contractor.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the Village Contract Manager to the address set forth in Article 6.
The Village may at any time designate a different address and/or contact person by giving written notice to the other party.

ARTICLE 10. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the Village and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Village or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Village, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Village or its officers, employees, agents and instrumentalities as herein provided.

Upon Village's notification, the Contractor shall furnish Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.

2. Public Liability Insurance on a comprehensive basis in an amount not less than $1,000,000.00, combined single limit per occurrence for bodily injury and property damage. The **Village of Key Biscayne must be shown as an additional insured with respect to this coverage. The mailing address of the Village 88 West McIntyre Street, Suite 220, Key Biscayne, Florida 33149, as the certificate holder, must appear on the certificate of insurance.**

3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than $300,000.00,

combined single limit per occurrence for bodily injury and property damage.

4. Professional Liability Insurance in an amount not less than $1,000,000.00 with a deductible per claim not to exceed ten percent (10%) of the limit of liability.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the Village Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Financial Services and are members of the Florida Guaranty Fund.

Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the Village.

NOTE: VILLAGE OF KEY BISCAYNE CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days after notification of recommendation to award. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall have an additional five (5) business days to submit a corrected certificate to the Village. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Contractor shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the Village.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension

periods that may be granted by the Village. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the Village at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the Village shall suspend the Contract until such time as the new or renewed certificates are received by the Village in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the Village may, at its sole discretion, terminate this contract.

ARTICLE 11. MANNER OF PERFORMANCE

a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the Village in accordance with the terms and conditions of this Agreement. The Village shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the Village the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.

b) The Contractor agrees to defend, hold harmless and indemnify the Village and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the Village, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the Village. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.

c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the Village, should the Village make a determination, in its sole discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.

d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.

e) The Contractor shall at all times cooperate with the Village and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.

f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of

this Agreement.

ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the Village. The Contractor shall supply competent employees. The Village may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on Village property is not in the best interest of the Village. Each employee shall have and wear proper identification.

ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the Village. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the Village shall be that of an independent contractor and not as employees and agents of the Village.

The Contractor does not have the power or authority to bind the Village in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 14. AUTHORITY OF THE VILLAGE'S PROJECT MANAGER

a) The Contractor hereby acknowledges that the Village's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.

b) The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.

c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project

Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.

d) In the event of such dispute, the parties to this Agreement authorize the Village Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the Village Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the Village Manager within 10 days of the occurrence, event or act out of which the dispute arises.

e) The Village Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the Village Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the Village Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the Village Manager is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The Village Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

ARTICLE 15. MUTUAL OBLIGATIONS

a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.

b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the Village may, at its expense, elect to participate in the defense if the Village should so choose. Furthermore, the Village may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 17. AUDITS

The Village, or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the Village. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

The Contractor shall grant the Village access to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 18. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the Village in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

ARTICLE 19. CONSENT OF THE VILLAGE REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the Village.

ARTICLE 20. SUBCONTRACTUAL RELATIONS

a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The

services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.

b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the Village the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the Village may require. The Village will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the Village.

c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.

d) In order to qualify as a Subcontractor satisfactory to the Village, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the Village that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the Village that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.

e) The Village shall have the right to withdraw its consent to a subcontract if it appears to the Village that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the Village and Village's proprietary and confidential information. Contractor shall furnish to the Village copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the Village permitting the Village to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the Village finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the Village to any subcontractor hereunder as more fully described herein.

ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the Village were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the Village makes no representations or guarantees; and the Village shall not be responsible for the accuracy of the assumptions presented; and the Village shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The

Contractor accepts all risk associated with using this information.

ARTICLE 22. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 23. TERMINATION AND SUSPENSION OF WORK

a) The Village may terminate this Agreement if the Contractor or an individual or corporation or other entity attempts to meet its contractual obligation with the Village through fraud, misrepresentation or material misstatement.

b) The Village may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the Village and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the Village through fraud, misrepresentation or material misstatement may be debarred from Village contracting for up to five (5) years in accordance with the Village debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the Village Code.

d) In addition to cancellation or termination as otherwise provided in this Agreement, the Village may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor.

e) In the event that the Village exercises its right to terminate this Agreement, the Contractor shall, upon receipt of such notice, unless otherwise directed by the Village:

   i. stop work on the date specified in the notice ("the Effective Termination Date");

   ii. take such action as may be necessary for the protection and preservation of the Village's materials and property;

   iii. cancel orders;

   iv. assign to the Village and deliver to any location designated by the Village any noncancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services:

v. take no action which will increase the amounts payable by the Village under this Agreement; and

f) In the event that the Village exercises its right to terminate this Agreement, the Contractor will be compensated as stated in the payment Articles herein for the:

i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and

ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement but not incorporated in the Services.

g) All compensation pursuant to this Article is subject to audit.

ARTICLE 24. EVENT OF DEFAULT

a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:

i. the Contractor has not delivered Deliverables on a timely basis or has failed to perform the Work or Services as required in this Agreement.

ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;

iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;

iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;

v. the Contractor has failed to obtain the approval of the Village where required by this Agreement;

vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;

vii. the Contractor has failed in the representation of any warranties stated herein.

b) When, in the opinion of the Village, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the Village may request that the Contractor, within the timeframe set forth in the Village's request, provide adequate assurances to the Village, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the Village receives such assurances the Village may request an adjustment to

the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the Village the requested assurances within the prescribed time frame, the Village may:

i. treat such failure as a repudiation of this Agreement;

ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.

c) In the event the Village shall terminate this Agreement for default, the Village or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs, in the determination of the Village, the Village may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the Village may be terminated. Notwithstanding, the Village may, in its sole discretion, allow the Contractor to rectify the default to the Village's reasonable satisfaction within a thirty (30) day period. The Village may grant an additional period of such duration as the Village shall deem appropriate without waiver of any of the Village's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the Village prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

a) lost revenues;

b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the Village for re-procurement of Services, including procurement and administrative costs; and,

c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The Village may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

a) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications,

methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.

b) The Contractor shall be liable and responsible for any and all claims made against the Village for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the Village's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the Village and defend any action brought against the Village with respect to any claim, demand, cause of action, debt, or liability.

c) In the event any Deliverable or anything provided to the Village hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the Village's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the Village, at the Contractor's expense, the rights provided under this Agreement to use the item(s).

d) The Contractor shall be solely responsible for determining and informing the Village whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The Village may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the Village's judgment, use thereof would delay the Work or be unlawful.

e) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

ARTICLE 28. CONFIDENTIALITY

a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods developed for the Village or obtained from the Village in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the Village holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the Village, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the Village, unless required by law. In addition to the foregoing, all Village employee information and Village financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees,

agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the Village. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the Village, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the Village in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.

c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the Village shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the Village, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the Village all such Confidential Information existing in tangible form and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the Village. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 29. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Village of Key Biscayne is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledges that all computer software in the Village's possession may constitute or contain information or materials which the Village has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the Village has developed at its own expense, the disclosure of which could harm the Village's proprietary interest therein.

During the term of this Agreement, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the Village's property, any computer programs, data compilations, or other software which the Village has developed, has used or is using, is holding for use, or which are otherwise in the possession of the Village (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the Village and, if the Computer Software has been leased or purchased by the Village, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the Village any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the Village's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

ARTICLE 30. PROPRIETARY RIGHTS

a) The Contractor hereby acknowledges and agrees that the Village retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the Village to the Contractor hereunder or furnished by the Contractor to the Village and/or created by the Contractor for delivery to the Village, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the Village, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the Village's copyrights or other proprietary rights.

b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the Village, hereinafter referred to as "Developed Works" shall become the property of the Village.

c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the Village, except as required for the Contractor's performance hereunder.

d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the Village so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the Village or entities controlling, controlled by, under common control with, or affiliated with the Village, or organizations which may hereafter be formed by or become affiliated with the Village. Such license specifically includes, but is not limited to, the right of the Village to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity

outside the Village for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the Village or entities controlling, controlled by, under common control with, or affiliated with the Village, or organizations which may hereafter be formed by or become affiliated with the Village. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 31. VENDOR REGISTRATION AND FORMS/CONFLICT OF INTEREST

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ARTICLE 32. INSPECTOR GENERAL REVIEWS

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ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the Village orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement.

ARTICLE 34. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts).

ARTICLE 35. CONFLICT OF INTEREST

The Contractor represents that:

a) No officer, director, employee, agent, or other consultant of the Village or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.

b) There are no undisclosed persons or entities interested with the Contractor in this

Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the Village, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or

ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.

c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the Village, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the Village with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the Village's best interest to consent to such relationship.

d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.

e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the Village's Project Manager. Contractor shall thereafter cooperate with the Village's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the Village:

a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the Village, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the Village. Such approval may be withheld if for any reason the Village believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and

b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private

in connection with the Services to be performed hereunder except upon prior written approval and instruction of the Village; and

c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the Village.

ARTICLE 37. BANKRUPTCY

The Village reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the Village, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 38. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue shall be Miami-Dade County.

ARTICLE 39. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists the Village with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996, and HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to the Village of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to the Village for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to the Village for compliance audits.

PHI shall maintain its protected status regardless of the form and method of

transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

ARTICLE 40. VILLAGE USER ACCESS PROGRAM (UAP)

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ARTICLE 41. SURVIVAL

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the Village under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Village:

Village of Key Biscayne,
a Florida municipal corporation

By:

_____

Genaro "Chip" Iglesias, Village Manager

Date:

_____

Attest: _____
Village Clerk

Approved as to form
and legal sufficiency:

_____
Village Attorney

Contractor:

By:

_____

Name:

_____

Corporate Seal

Title:

_____

Date:

_____

APPENDIX "A"

SCOPE OF SERVICES

APPENDIX "B"

PRICE SCHEDULE