# VILLAGE OF KEY BISCAYNE

**Office of the Village Manager**

MEMORANDUM

*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 Manager*
John C. Gilbert

DATE: April 10th, 2012

TO: Honorable Mayor and Members of the Village Council

FROM: John C. Gilbert, Village Manager

RE: Professional Services Agreement with B and B Consulting and Construction Management, Inc. for Inspection services for the Consultatio Development.

## RECOMMENDATION

Approval of the attached Professional Services Agreement with B and B Consulting and Construction Management, Inc. for the new construction inspection services for Consultatio 350 Ocean Drive Development.

## BACKGROUND

The experience and expertise in new construction, the Florida Fire Prevention Code and the operations of Key Biscayne Fire Rescue are significant considerations when hiring a contractual individual or entity. The funding source for this professional service agreement was approved in the FY 2012 budget in for the Building, Zoning and Planning Department as a Contractual Services, Fire Code Review/ Inspector. This is a budget neutral position that will be charged to the Developer as part of the inspection fees. This inspector's sole purpose is for plan review, inspections and testing of the Consultatio Development located at 350 Ocean Drive.

**RESOLUTION NO. 2012-**

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE VILLAGE OF KEY BISCAYNE AND B&B CONSULTING AND CONSTRUCTION MANAGEMENT, INC., TO PROVIDE FIRE INSPECTION SERVICES FOR THE VILLAGE; PROVIDING FOR A WAIVER OF COMPETITIVE BIDDING; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS,** Consultatio Key Biscayne, LLC, the owner of an approximately 10 acre tract of oceanfront land within the Village of Key Biscayne (the "Village") intends to develop its land with approximately 150 residential dwellings units (the "Project"); and

**WHEREAS,** the process of reviewing plans, inspecting work and otherwise overseeing the life/safety aspect of the Project are beyond the in-house expertise of the Village Administration; and

**WHEREAS,** the Village Council desires to obtain the professional services of B&B Consulting and Construction Management, Inc. (the "Consultant"), to assist the Village Administration with the various life/safety aspects of the Project; and

**WHEREAS,** the Village Council finds that approval of the attached Professional Services Agreement between the Consultant and the Village to provide the various life/safety aspects of the Project is in the best interest of the Village.

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

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

**Section 2.** **Agreement Approved.** That the Professional Services Agreement (the "Agreement"), in substantially the form attached hereto, is hereby approved, and the Village Manager is authorized to execute the Agreement, on behalf of the Village, once approved as to form and legal sufficiency by the Village Attorney.

**Section 3.** **Waiver of Competitive Bidding.** The Village Council hereby waives competitive bidding as a professional services agreement pursuant to Section 2-87 of the Village Code. Further, and pursuant to Section 2-85 of the Village Code, the Village Council waives competitive bidding because the unique services that the Consultant will provide make it impractical to apply such procedure.

**Section 4.** **Implementation.** That the Village Manager and Village Attorney are hereby authorized to take any necessary action to implement the Agreement and this Resolution.

**Section 5.** **Effective Date.** That this Resolution shall be effective immediately upon adoption hereof.

PASSED AND ADOPTED this ___ day of _____, 2012.

_____
MAYOR FRANKLIN H. CAPLAN

ATTEST:

_____
CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
VILLAGE ATTORNEY

**PROFESSIONAL SERVICES AGREEMENT**
**BETWEEN**
**THE VILLAGE OF KEY BISCAYNE**
**AND**
**B&B CONSULTING AND CONSTRUCTION MANAGEMENT, INC.**

**THIS PROFESSIONAL SERVICES AGREEMENT** (this "Agreement") is made effective as of the __th day of April, 2012 (the "Effective Date"), by and between the **VILLAGE OF KEY BISCAYNE, FLORIDA,** a Florida municipal corporation (hereinafter the "Village"), and **B&B CONSULTING AND CONSTRUCTION MANAGEMENT, INC.,** a Florida corporation (hereinafter the "Consultant").

**WHEREAS,** Consultatio Key Biscayne, LLC, the owner of an approximately 10 acre tract of oceanfront land within the Village intends to develop its land with approximately 150 residential dwellings units (the "Project"); and

**WHEREAS,** the process of reviewing plans, inspecting work and otherwise overseeing the life/safety aspect of the Project are beyond the in-house expertise of the Village Administration; and

**WHEREAS,** the Village wishes to engage the Consultant's expertise in life/safety services to assist the Village Administration with various aspects of the Project; and

**WHEREAS**, the Consultant and the Village, through mutual negotiation, have agreed upon a scope of services, schedule, and fee for highly technical fire inspection services for the Project; and

**WHEREAS**, the Village wishes to engage the Consultant to perform the services and provide the deliverables as specified below.

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

1. **Scope of Services.**

   1.1. The Consultant shall furnish such professional services and provide deliverables for the Project (the "Services") as described in Exhibit "A" attached hereto.

2. **Term/Commencement Date.**

   2.1 This Agreement shall become effective upon the Effective Date and shall remain in effect through the completion of the Project, unless earlier terminated in accordance with Paragraph 8. The Village Manager may

extend the term of this Agreement up to an additional one hundred eighty (180) days by written notice to the Consultant.

2.2 The Consultant agrees that time is of the essence and the Consultant shall complete the Services for the Project within the timeframes set forth by the Village Manager.

3. **Compensation and Payment.**

3.1 The Consultant shall be paid on an hourly basis at the rate of $75.00 per hour for the Services. Fees shall be billed and paid pursuant to monthly invoices.

3.2 The Consultant shall pay all of its own expenses incurred in performing the Services.

3.3 Invoices shall be promptly processed for payment by the Village pursuant to Section 218.70, Florida Statutes, upon receipt of the Consultant's invoice.

4. **Subconsultants.**

4.1 The Consultant shall be responsible for all payments to any subconsultants and shall maintain responsibility for all work related to the Project.

4.2 Any subconsultants used on the Project must have the prior written approval of the Village Manager.

5. **Village's Responsibilities.**

5.1 Furnish to the Consultant, at the Consultant's written request, all available data pertinent to the Services to be provided by the Consultant, in possession of the Village.

5.2 Arrange for access to and make all provisions for the Consultant to enter upon real property as required for the Consultant to perform the Services as may be requested in writing by the Consultant.

6. **Consultant's Responsibilities.**

6.1 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the Services for the Project as is ordinarily provided by a consultant under similar circumstances. If at any time during the term of this Agreement or within one (1) year from the completion of the Project, it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the Services for the Project, upon written

notification from the Village Manager, the Consultant shall at the Consultant's sole expense, immediately correct the work.

7. **Conflict of Interest.**

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

8. **Termination.**

8.1 The Village Manager without cause may terminate this Agreement upon five (5) calendar days written notice to the Consultant, or immediately with cause.

8.2 Upon receipt of the Village's written notice of termination, the Consultant shall stop all Services unless directed otherwise by the Village Manager.

8.3 In the event of termination by the Village, the Consultant shall be paid for all Services accepted by the Village Manager up to the date of termination, provided that the Consultant has first complied with the provisions of Paragraph 8.4.

8.4 The Consultant shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Services and the Project to the Village, in a hard copy and electronic format within fourteen (14) days from the date of the written notice of termination or the date of expiration of this Agreement.

9. **Insurance.**

9.1 The Consultant shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts not less than those specified below as satisfactory to the Village, naming the Village as an Additional Insured, underwritten by a firm rated A-X or better by Bests Rating and qualified to do business in the State of Florida. Certificates of Insurance shall be provided to the Village, reflecting the Village as an Additional Insured, no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by the Village and prior to providing any Services. Each certificate shall include no less than (30) thirty-day advance written notice to Village prior to cancellation, termination, or material alteration of said policies or insurance.

9.2 **Workers' Compensation and Employer's Liability Insurance.** Unless otherwise exempt from providing Workers' Compensation and Employer's Liability Insurance, the Consultant shall obtain such insurance coverage as required by law.

9.3 **Business Automobile Liability Insurance.** Unless otherwise exempt from providing business automobile liability insurance, the Consultant shall obtain such insurance coverage with minimum limits of $1,000,000.00 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include Owned, Hired, and Non-Owned Vehicles.

9.4 **Commercial General Liability.** The Consultant must obtain this insurance with limits of liability of not less than a $1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. The General Aggregate Liability limit shall be in the amount of $2,000,000.

9.5 **Professional Liability Errors and Omissions.** The Consultant shall obtain such insurance coverage in an amount not less than $1,000,000.

10. **Nondiscrimination.**

10.1 During the term of this Agreement, the Consultant shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination

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

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

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

12. **Indemnification.**

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

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

13. **Notices/Authorized Representatives.**

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

For the Village: John C. Gilbert, Village Manager
88 West McIntyre Street, Suite 210
Key Biscayne, Florida 33149
Telephone: 305-365-5500
Fax Number: 305-365-8936

For The Consultant: William Barron, President
B&B Consulting and Construction Management, Inc.
6901 Sparta Road
Sebring, Florida 33875-5571
Telephone: 863-382-7118

14. **Governing Law.**

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

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

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

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

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

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

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

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

17. **Nonassignability.**

17.1 This Agreement shall not be assignable by the Consultant unless such assignment is first approved by the Village Manager. The Village is relying upon the apparent qualifications and personal expertise of the Consultant, and such firm's familiarity with the Village's area, circumstances and desires.

18. **Severability.**

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

19. **Independent Contractor.**

19.1 The Consultant and its employees, volunteers and agents shall be and remain independent contractor and not agents or employees of the Village with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

20. **Compliance with Laws.**

20.1 The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

21. **Waiver.**

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

22. **Survival of Provisions.**

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

23. **Prohibition of Contingency Fees.**

23.1 The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

24. **Counterparts.**

24.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the first date as written above.

Attest:

_____
Conchita Alvarez, CMC, Village Clerk

VILLAGE OF KEY BISCAYNE

By:_____
John C. Gilbert
Village Manager

Date:_____

CONSULTANT

B&B CONSULTING AND CONSTRUCTION, INC.

By:_____
William Barron, President

Date:_____

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF VILLAGE OF KEY BISCAYNE ONLY

_____
Village Attorney

## ATTACHMENT A
## SCOPE OF SERVICES

The Consultant shall furnish the following Services:

- Review all of the Project's construction/building plans to ensure that all phases of buildings under construction meet the required Fire Prevention and Life Safety Code. This includes, but is not limited to, reviewing fire alarm systems, fire sprinkler systems, smoke evacuation systems, fire pumps, standpipes, generators, and tank removals and installations.
- Review and analyze the comment sheets from the City of Miami Fire Plan Examiners.
- As needed, meet with the owners, developers, members of the design team and contractors concerning fire safety issues.
- As needed, attend construction meetings.
- Conduct on site fire inspections during all phases of the construction.
- As requested by the Village Manager and/or the Fire Chief, provide the Village with updates and inspection reports during the design and construction phases of the Project
- Provide fire suppression personnel with training concerning the fire safety issues/needs of the Project.
- Coordinate all activities with the Village's Fire Marshal or his/her designee.
- Any additional services as requested by the Fire Chief and/or the Village Manager.