



# VILLAGE OF KEY BISCAINE

Office of the Village Manager

## MEMORANDUM

*Village Council*  
Franklin H. Caplan, *Mayor*  
Mayra P. Lindsay, *Vice Mayor*  
Michael W. Davey  
Theodore J. Holloway  
Michael E. Kelly  
Ed London  
James S. Taintor

DATE: May 14, 2013

TO: Honorable Mayor and Members of the Village Council

FROM: John C. Gilbert, Village Manager

*Village Manager*  
John C. Gilbert

RE: Strategic Planning Process- Proposals

### RECOMMENDATION

It is recommended that the Village Council approve the attached Resolution to authorize the Village Manager to enter into an agreement with Managing Results, LLC as the consultant to guide the strategic planning process on May 18 -19, 2013 in the amount not to exceed \$12,492.

### BACKGROUND

At the March 5, 2013 Council Meeting, the Village Council directed the Village Manager to obtain three (3) proposals for a strategic planning session to take place prior to the FY2013-14 budget process. The following three (3) companies submitted a proposal: Florida International University-Metropolitan Center, SMCOV and Managing Results, LLC. Prior to obtaining the three (3) proposals, the scope of work below was provided to each individual company:

1. Pre-consultation with the Manager and Council Members to gain insight on their vision and priorities.
2. Facilitation of an on-site planning session with the Manager, Council and Department Heads.
3. Creation of the Strategic Planning Report.

At the April 7, 2013 Council Meeting, SMCOV (2<sup>nd</sup> lowest bidder) was recommended by staff as the consultant to facilitate and create a Strategic Plan. Additionally, at this meeting Council directed the Village Manager to return to Council with other venue options to facilitate the strategic planning process. This in-turn required the top two (2) finalists, Managing Results, LLC and SMCOV to submit revised proposals, to include 1.5 day planning sessions.

At the April 23, 2013 Zoning Meeting, the Village Council reviewed the revised top two (2) proposals, directed the Village Manager to negotiate a contract with Managing Results, LLC. For your review attached as Exhibit A is the agreement between the Village and Managing Results, LLC.

The funding for this planning process not to exceed \$12,492 will be obtained from the Reserved Carry Forward line item.

**RESOLUTION NO. 2013-**

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, RATIFYING AN AGREEMENT FOR PROFESSIONAL SERVICES WITH MANAGING RESULTS, LLC; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR EFFECTIVE DATE.**

**WHEREAS**, the Village Manager at the direction of the Village Council solicited proposals for professional services related to creating a strategic plan to address issues, trends, and concerns impacting the Village over the course of the next two to five (2-5) years (a “Strategic Plan”); and

**WHEREAS**, Managing Results, LLC, a Colorado limited liability corporation (“MR”) submitted a proposal to create a Strategic Plan on behalf of the Village; and

**WHEREAS**, the Village Council determined that MR’s proposal to create a Strategic Plan best suited the Village’s needs and selected MR to create a Strategic Plan for the Village; and

**WHEREAS**, the Village Council wishes to ratify its selection of MR to create the Strategic Plan, which shall be implemented pursuant to the agreement in substantially the form attached hereto as Exhibit “A” (the “Agreement”), the terms of which are hereby approved.

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

**Section 1. Recitals Adopted.** Each of the above stated recitals are hereby adopted, confirmed and incorporated herein.

**Section 2. Ratification.** The Village Council’s selection of MR to create a Strategic Plan for the Village is hereby ratified and confirmed.

**Section 3. Agreement Approved.** That the Village Manager is hereby authorized to execute the Agreement with Managing Results LLC, in substantially the form attached hereto as

Exhibit "A", once the Agreement is approved by the Village Attorney as to form and legal sufficiency.

**Section 4. Implementation.** That the Village Manager is authorized to take any necessary action to implement the purposes of this Resolution and the Agreement.

**Section 5. Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_, 2013.

\_\_\_\_\_  
MAYOR FRANKLIN H. CAPLAN

ATTEST:

\_\_\_\_\_  
CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
VILLAGE ATTORNEY

# EXHIBIT A

**AN AGREEMENT BY AND BETWEEN THE  
VILLAGE OF KEY BISCAYNE, FLORIDA,  
A FLORIDA MUNICIPAL CORPORATION  
AND MANAGING RESULTS, LLC  
FOR PROFESSIONAL SERVICES**

**1.0 PARTIES.** The parties to this Agreement (the “Agreement”) are the VILLAGE OF KEY BISCAYNE, FLORIDA, a Florida municipal corporation (the “Village”) and Managing Results, LLC, a Colorado limited liability corporation (“MR” and/or “Consultant”).

**2.0 RECITALS AND PURPOSE.**

**2.1** The Village desires to implement a strategic plan to establish a direction for operational and policy decisions within the Village in accordance with the Scope of Work, as defined herein (a “Strategic Plan”).

**2.2** The Village has determined that MR has the requisite background, skill, expertise, staff, and insurance to create a Strategic Plan and to perform the requested professional services (“the Work”) under the terms and conditions more fully set forth below.

**2.3** The Village and MR acknowledge and agree that the Village contemplates using MR as a consultant for the Work as described herein. The Village and MR acknowledge and agree that the Village may, at its own discretion, use other consultants to perform similar professional services, and that this Agreement in no way limits the Village from hiring other consultants or constitutes a contract for exclusive services from MR. Notwithstanding the foregoing, the Village agrees that consultants other than MR shall not have access to or use of MR’s methodologies.

**3.0 CONTRACT DOCUMENTS AND EXHIBITS.** The Agreement shall consist of this Agreement together with the following:

Exhibit “1”: Scope Of Work

All exhibits referred to in this Agreement are by reference, incorporated herein for all purposes. In the event any matter, term, provision, or condition that is the subject of this Agreement requires clarification or is in dispute, or is the subject of a difference of opinion, MR shall secure the written instructions from the Village before proceeding with the performance of the services affected by such conflicts, omissions or discrepancies.

**4.0 SCOPE OF SERVICES.** MR shall perform the Work as described herein and in the Scope Of Work, or as amended by the mutual consent of the parties in writing.

**5.0 TERM.**

**5.1** This Agreement will become effective and binding on all parties upon the execution of the Agreement by both parties.

5.2 The term of this Agreement shall continue in full force and effect through May 31, 2013, or until final completion and acceptance of the Work by the Village, whichever occurs first, unless otherwise sooner terminated pursuant to the terms of this Agreement (the "Term"). All Work shall be fully completed by MR, with final acceptance and approval by the Village, within the Term.

6.0 **COMPENSATION.** The Village shall pay MR for the Work requested by the Village and rendered by MR pursuant to this Agreement as follows:

Two days of Preparation:	\$4,000.00
One and one half days of On-Site Facilitation by 2 senior consultants:	\$6,000.00
One Half to develop the Strategic Planning Report:	\$1,000.00
	Total Labor \$11,000.00
Estimated Travel for two consultants:	\$2,492.00 <sup>1</sup>

MR agrees to submit invoices after the Work is completed, and payment from the Village will be due fifteen (15) days from the review and approval of such invoices by the Village Manager.

7.0 **RIGHT TO TERMINATE.** The Village shall have the right to terminate, without cause, this Agreement. If the Village should decide to terminate this Agreement prior to MR completing the Work, the Village agrees to pay MR's fees, plus expenses incurred through the date of such termination, in an amount not to exceed the cost allocated to each task as set forth in Section 6.0 above. Any such termination shall not be considered a breach of this Agreement or any extension thereof.

8.0 **QUALITY OF WORK.** The Work performed by MR shall be done in accordance with generally accepted professional practices and to the level of competency presently maintained by other practicing professional consultants in the same type of work in Miami-Dade County, Florida.

9.0 **CONFIDENTIALITY.**

9.1 Notwithstanding any provision in the Agreement to the contrary, the Village is obligated to comply with the Florida Public Records Act (F.S.A §119 *et seq.*), which may require the Village to disclose all or a portion of communications relating to the Agreement, or terms of

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<sup>1</sup> \*(Based on GSA guidelines for 2 hotel nights and per diem, travel agent estimated cost for two coach tickets and one rental car. Only actual travel costs will be submitted for reimbursement but shall in no event exceed the estimated costs as set forth above)

same, or of any transaction under the Agreement, and other related matters. Any confidentiality provision in this Agreement is subject to the Florida Public Records Act

9.2 To the extent permitted by law, the parties agree that communications relating to the Agreement, or terms of same, or of any transaction under the Agreement, and other related matters be kept confidential and shall not be disclosed to any person except as the parties may subsequently agree.

9.3 In no event shall the Village be liable to MR for the disclosure of all or a portion of communications, or relating documents, or electronic imaging.

**10.0 CONSULTING METHODOLOGY INTELLECTUAL PROPERTY.** The Managing Results, LLC methodology (the "MR Methodology") is the proprietary intellectual property of MR. The MR Methodology contains methodologies, trade secrets, definitions, graphics, presentations and guidelines that are the sole proprietary intellectual property of MR and also contains trade secrets of MR. Through this Agreement MR, is providing a non-exclusive, perpetual license for use by the Village of the MR Methodology. The Village shall keep the MR Methodology confidential and under no circumstances will the Village, except as agreed by MR or required by law, disclose the MR Methodology to other third parties, either individuals, governmental or private sector organizations. All changes or derivative work made to the MR Methodology shall remain the exclusive property of MR. Notwithstanding the foregoing, all documents produced by the Village using the MR Methodology and other documents delivered by MR as required pursuant to this Agreement shall be considered the exclusive property of the Village.

## **11.0 INSURANCE.**

11.1 MR shall at its own expense keep in full force and effect during the term of this Agreement, and during the term of any extension or amendment of this Agreement, insurance as stated below to insure against the liability assumed by MR pursuant to the provisions of this Agreement.

11.2 MR shall not be relieved of any liability assumed pursuant to the foregoing paragraph by reason of its failure to secure insurance as required by this Agreement or by reason of its failure to secure insurance in sufficient amounts, sufficient durations, or sufficient types to cover such liability.

11.3 Within five (5) business days of the complete execution of this Agreement, and before MR commences any work, MR shall furnish the Village's Risk Management Office with a Certificate of Insurance that indicates that insurance coverage has been obtained which meets the requirements as outlined below:

A. Workers' Compensation Insurance for all employees of MR based on statutory limits prescribed by and in accordance with applicable laws to MR for

employees engaged in work performed under the Agreement. Employers Liability in the minimum amount of One Hundred Thousand Dollars and No Cents (\$100,000.00) per occurrence shall be maintained.

B. Commercial General Liability Insurance in an amount not less than One Million Dollars and No Cents (\$1,000,000.00) for bodily injury and property damage for each occurrence, and not less than Two Million Dollars and No Cents (\$2,000,000.00) aggregate. The Village must be endorsed as an additional insured with respect to this coverage in a form acceptable to the Village Risk Manager.

C. Automotive Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work performed by or on behalf of MR under this Agreement in an amount not less than Three Hundred Thousand Dollars and No Cents (\$300,000.00) combined single limit per occurrence for bodily injury and property damage.

D. Professional Liability Insurance in an amount of not less than One Million Dollars and No Cents (\$1,000,000.00) per occurrence. The coverage shall have an extended reporting period of three years following the date of substantial completion of the Work for reporting of claims. The Village shall not be named as an additional insured on this policy.

**11.4** All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida. The Company must be rated no less than "A-vii" by the latest edition of Best's Insurance Guide that is published by A.M. Best Company, Oldwick, New Jersey.

**11.5** The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals that most nearly reflect the operations of MR. Further, the insurance specified above in Paragraph 11.3(B) shall provide that such insurance is primary coverage with respect to activities contemplated under this Agreement by all insured and additional insured.

**11.6** MR shall be responsible for notifying the Village within thirty (30) days of any material modification to, or cancellation of, these policies during the contractual period; including, but not limited to, any pending or paid claims against the aggregate amount of the policy. MR must notify the Village within ten (10) days of any cancellation of coverage for non-payment.

**12.0 ASSIGNMENT.** MR shall not assign this Agreement without the prior written consent of the Village.

**13.0 WAIVER OF BREACH.** A waiver by any party to the Agreement or the breach of any term or provision of the Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

**14.0 NO THIRD PARTY BENEFICIARIES.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Village and MR and nothing contained in this Agreement shall give or allow any such claim or right of action to any other third party on this Agreement. It is the express intention of the Village and MR that any person other than the Villager MR receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**15.0 INDEPENDENT CONTRACTOR.** MR and the Village hereby represent that MR is an independent contractor for all purposes hereunder. As such, MR is not covered by any workers' compensation insurance or any other insurance maintained by the Village except as would apply to members of the general public. MR shall not create any indebtedness on behalf of the Village.

**16.0 SUBCONTRACTING.** MR shall not subcontract any of its responsibilities without the Village's prior written approval, which may be withheld in the Village's sole discretion. Prior to entering into a subcontract with a third party for any services required under this Agreement, MR shall: (1) give the Village reasonable prior written notice specifying the components of the services affected, the scope of the proposed subcontract, the identity and qualifications of the proposed subcontractor, and the reasons for subcontracting the work in question; and (2) obtain the Village's prior written approval of such subcontractor. The Village also shall have the right to revoke its prior approval of a subcontractor and direct MR to replace such subcontractor as soon as possible. MR shall be responsible for any failure by any subcontractor or subcontractor personnel to perform in accordance with this Agreement or to comply with any duties or obligations imposed on MR under this Agreement to the same extent as if such failure to perform or comply was committed by MR or MR's personnel. MR shall be the Village's sole point of contact regarding the services, including with respect to payment. Notwithstanding the foregoing, the Village consents to MR's subcontracting certain responsibilities under this Agreement to Matthew Birnie.

**17.0 COMPLIANCE WITH ALL LAWS.** All of the services performed under this Agreement by MR shall comply with all applicable laws, rules, regulations and codes of the United States and State of Florida, and with the charter, ordinances, rules and regulations of the Village.

**18.0 INDEMNIFICATION OF THE VILLAGE.** MR agrees to investigate, defend, indemnify and hold harmless (including court costs and attorney fees, whether or not the claim or claims alleged are groundless, false, or fraudulent) the Village, its officers, employees, and insurers, from and against all liability, claims and demands on account of any losses, injuries, and damages, including but not limited to, alleged personal injury claims and/or death claims, or property damage claims, or errors and omissions, which arise out of or are in any manner connected with this contract, whether or not such injury, loss, or damage is caused by, or is claimed to be caused by, the act, omission, negligence or other fault of MR, any employees of MR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Nothing herein is intended to constitute a covenant, promise, or agreement to indemnify and hold harmless the Village from any liability or damages

directly caused by or attributable to the Village's own negligence, nor is anything herein intended to be nor may be construed as a waiver of the immunities, protections, or limitations on damages provided to the Village by Florida Statutes §768.28(5) as it may from time to time be amended.

**19.0 GOVERNING LAW AND VENUE.** The Agreement shall be governed by the laws of the State of Florida. Venue for any action arising under the Agreement or for the enforcement of the Agreement shall be in the appropriate court for Miami-Dade County, Florida.

**20.0 NO WAIVER OF GOVERNMENTAL IMMUNITY.** Nothing contained in this or any of the exhibits attached thereto shall be construed as a waiver of any of the immunities, limitations, privileges, rights, procedures, or requirements contained in the Florida Statutes §768.28(5).

**21.0 FORCE MAJEURE.** Any delays in or failure of performance by any party of his or its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.

**22.0 ADDITIONAL DOCUMENTS OR ACTION.** The parties agree to execute any additional documents and to take any additional action that is necessary to carry out this Agreement.

**23.0 BINDING EFFECT.** This Agreement shall inure to the benefit of, and be binding upon, the parties, their respective legal representatives, successors, heirs, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

**24.0 PARAGRAPH CAPTIONS.** The paragraph captions in this Agreement are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

**25.0 INTEGRATION, AMENDMENT, AND SEVERABILITY.** This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

**26.0 NOTICES.** Any notice or notification required or permitted by the Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the signature page below, or at such other address

as has been previously furnished in writing, to the other party or parties. Such notice or notification shall be deemed to have been given when deposited in the United States mail.

**27.0 BINDING AUTHORITY.** MR represents and affirms that the signature page hereof accurately states the full legal name of MR (whether as a corporation, partnership, limited liability company, sole proprietorship, or other), contains all requisite signature(s) on behalf of MR, has been properly acknowledged by attestation, notary acknowledgment, or both, and in all other respects is effective to bind MR, in accordance with all applicable statutes, regulations, resolutions, rules, bylaws, agreements, or similar sources of authority or limitation. This Agreement may be executed in counterpart(s), each of which shall be deemed to be an original, and all of which, taken together, shall constitute one instrument.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**IN WITNESS WHEREOF**, the parties hereby execute this Agreement on the date set forth below their signature.

**VILLAGE:**

ATTEST

**VILLAGE OF KEY BISCAYNE, FLORIDA, a  
Florida municipal corporation**

\_\_\_\_\_  
Village Clerk

By: \_\_\_\_\_  
John C. Gilbert, Village Manager

Date Executed: \_\_\_\_\_

Approved as to Form and Legal  
Sufficiency:

\_\_\_\_\_  
Village Attorney

**MANAGING RESULTS, LLC**

\_\_\_\_\_  
Marty Weidner, Senior Vice President  
21 Neville Way  
Crested Butte, CO 81224

**EXHIBIT 1**  
**SCOPE OF WORK**

**Village Strategic Plan Process/Methodology**

MR will work with the Village to create a Strategic Plan for the Village through the following steps :

**I. Review documents to identify issues and trends that will impact the residents and Key Biscayne Village government**

Documents that will be reviewed will include, but not be limited to, department strategic plans, action plans, financial projections, current and recent budgets, performance reports, Council actions, policies and statements, press and media articles, public surveys, employee surveys, demographic information, economic development plans and projections, land use plans, Master or Comprehensive plans, other reports on topics such as education, health, environment, arts and culture, tourism, etc.

**II. Interviews with Mayor, Council Members and Village Manager**

The Mayor, Council Members and the Village Manager will be interviewed by a senior MR consultant. These one-on-one interviews will focus on two primary topics:

- (i) What are the most important Issues the residents of Key Biscayne and the Village government will be facing over the next 2-5 years; and
- (ii) What are their vision and priorities?

From the interviews MR will gain and summarize an understanding of the perspectives of each of the elected officials and the Village Manager which will be used to develop the final Agenda for the Strategic Planning Retreat.

**III. Facilitated Strategic Planning Retreat**

In a 1.5 day Strategic Planning session, from 8:30 a.m. to 5:00 p.m on May 18, 2013 and from 8:30 a.m. to 12:00 p.m on May 19, 2013, two of MR's most senior consultants will work with the Mayor, Council Members, Village Manager, Department Directors, Deputies/Assistants in a facilitated process to:

- (i) Review a summary of the Issues and Trends identified in the materials and interviews that will have a major impact on the residents and Village of Key Biscayne over the next 2-5 years;
- (ii) Identify the Strategic Plan Priorities; and

(iii) Identify Measurable Strategic Results

**IV. Strategic Plan Document**

The Village wide Strategic Plan decisions made during the Retreat will be recorded by the MR consultants on flip charts. To save money the Village, instead of MR, will create the document resulting from the retreat decisions and recorded on the flip charts.