



# VILLAGE OF KEY BISCAYNE



Office of the Village Manager

## MEMORANDUM

*Village Council*  
Franklin H. Caplan, *Mayor*  
Michael W. Davey, *Vice Mayor*  
Theodore J. Holloway

DATE: September 2, 2014

Michael E. Kelly  
Mayra P. Lindsay  
Ed London  
James S. Taintor

TO: Honorable Mayor and Members of the Village Council

FROM: John C. Gilbert, Village Manager

*Village Manager*  
John C. Gilbert

RE: Agreement with the Chamber of Commerce

### RECOMMENDATION

It is recommended that the Village Council approve the Agreement between the Village and the Key Biscayne Chamber of Commerce "Chamber", attached as Exhibit A.

### BACKGROUND

As directed by the Village Council, the attached proposed Agreement provides an amended scope of services provided within the Agreement as Exhibit A.

Upon approval, the term of the Agreement will remain in effect for a period of three (3) years, unless earlier terminated. The Manager may renew this Agreement for an additional one (1) year periods. The payments to the Chamber by the Village will be made at the end of each month in an amount not to exceed \$6,458.33 per month or \$77,500 annually.

Reviewed by Mr. Chad Friedman from Weiss Serota Helfman Pastoriza Cole & Boniske as to form and legal sufficiency.

RESOLUTION NO. 2014 - \_\_\_\_\_

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING AN AGREEMENT WITH THE KEY BISCAYNE CHAMBER OF COMMERCE; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on October 9, 2001, the Village of Key Biscayne (the “Village”) and the Key Biscayne Chamber of Commerce (the “Chamber”) entered into an agreement relating to specified services that the Chamber would provide for the Village; and

**WHEREAS**, the Village and Chamber desire to enter into a new agreement, in substantially the form attached hereto as in Exhibit “A,” for certain specified services; and

**WHEREAS**, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

**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. Agreement Approved.** The Village Council hereby approves the agreement with the Chamber in substantially the form attached hereto as Exhibit “A.”

**Section 3. Village Manager Authorized.** The Village Manager is hereby authorized to execute the agreement, in substantially the form attached hereto as Exhibit “A,” subject to approval as to form, content, and legal sufficiency by the Village Attorney.

**Section 4. Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2014.

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

ATTEST:

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

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

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

**AGREEMENT BETWEEN  
VILLAGE OF KEY BISCAYNE  
AND  
KEY BISCAYNE CHAMBER OF COMMERCE.**

**THIS AGREEMENT** (the “Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2014 (the “Effective Date”) by and between the **VILLAGE OF KEY BISCAYNE**, a Florida municipal corporation (the “Village”) and **KEY BISCAYNE CHAMBER OF COMMERCE**, a nonprofit Florida corporation (the “Chamber”).

**WHEREAS**, on October 9, 2001, the Village and the Chamber entered into an agreement relating to specified services that the Chamber would provide for the Village (the “Existing Agreement”); and

**WHEREAS**, the Village and Chamber desire to replace the Existing Agreement with this Agreement for the specified services attached as Exhibit “A” (the “Services”).

**NOW, THEREFORE**, in consideration of the aforementioned recitals, which are true and correct and incorporated into the body of this Agreement by reference, the mutual covenants and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Chamber and the Village agree as follows.

1. **Scope of Services.**

1.1. The Chamber shall furnish the Services as described in the attached Exhibit “A.” The Services provided by the Chamber shall be nonexclusive and nothing shall preclude the Village from engaging other firms to perform the same or similar services for the benefit of the Village within the Village’s sole and absolute discretion.

2. **Term/Commencement Date.**

2.1 This Agreement shall become effective upon the Effective Date and shall remain in effect for a period of three years, unless earlier terminated in accordance with Paragraph 4. The Village Manager, at his or her discretion, may renew this Agreement for an additional one year periods.

3. **Compensation and Payment.**

3.1 For all of the Services provided by the Chamber as described in Section 1, the Village shall pay the Chamber monthly compensation as provided in the attached Exhibit “B.”

3.2 The Chamber shall not be entitled to recover and shall not be reimbursed for any other costs and/or fees incurred during, and/or associated with, the

rendition of the Services, which have not been approved by the Village in advance.

3.3 The Chamber shall send the Village a monthly invoice on the first of each month, and the Village shall render payment within thirty (30) days of receipt of the invoice.

3.4 Compensation to the Chamber shall payable in accordance with the Florida Prompt Payment Act.

4. **Termination.**

4.1 Notwithstanding the provisions of Section 2, either party may terminate this Agreement at any time upon thirty (30) days advance written notice to the other party.

4.2 In the event of such termination, the Village shall be obligated to the Chamber only for the pro-rated monthly compensation incurred prior to the termination date.

5. **Insurance.**

5.1 The Chamber shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts as specified below naming the Village as an additional insured entity, underwritten by a firm qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall include a minimum of the following.

5.1.1 Commercial General Liability. Commercial general liability insurance with limits of liability not less than Five Hundred Thousand Dollars (\$500,000.00).

5.1.2 Worker's Compensation and Employer's Liability Insurance. Workers' Compensation Insurance for statutory limits as required by applicable State and Federal laws.

5.1.3 Employer's Liability Insurance. Employer's Liability Insurance shall be provided at the statutory coverage amount with a minimum of One Hundred Thousand Dollars (\$100,000.00) per accident. The Chamber shall agree to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.

5.1.4 Business Automobile Liability Insurance. Business Automobile Liability Insurance with minimum limits of Five Hundred Thousand Dollars (\$500,000.00) per person, per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability each. 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 Vehicles, Hired and Non-Owned Vehicles and Employers' non-Ownership.

5.2 Certificates of insurance shall be provided to the Village at the time of execution of this Agreement as well as certified copies, as requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days written notice shall be provided to the Village before any policy or coverage is cancelled or restricted.

6. **Nondiscrimination.**

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

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

7.1 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, but not limited to, 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.

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

8. **Indemnification.**

8.1 The Chamber 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, directly caused by the Chamber's negligent acts, errors, or omissions in the performance or non-performance of any provisions of this Agreement, including but not limited to, liabilities arising from contracts between the Chamber and its employees, volunteers or agents. The Chamber shall reimburse the Village for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any claim or

investigation and for any judgment or damages directly caused by the Chamber's negligent acts, errors, or omissions in the performance or non-performance of this Agreement.

8.2 The provisions of this Section shall survive termination of this Agreement.

9. **Notices/Authorized Representatives.**

9.1 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 private postal service or by registered or certified mail with postage prepaid return receipt requested, addressed to the parties (or their successors) at the following addresses.

For the Village:                      John C. Gilbert, Village Manager  
Village of Key Biscayne  
88 West McIntyre Street  
Key Biscayne, Florida 33149

With a copy to:                      Stephen J. Helfman, Esq.  
Weiss Serota Helfman Pastoriza Cole &  
Boniske, P.L.  
2525 Ponce de Leon Blvd., Suite 700  
Coral Gables, Florida 33134

For The Consultant:                Kathy Susnjer  
Key Biscayne Chamber of  
Commerce  
88 W. McIntyre Street, Suite 100  
Key Biscayne, Florida 33149

10. **Governing Law.**

10.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Miami-Dade County or, if in Federal Court, the Southern District of Florida.

11. **Entire Agreement/Modification/Amendment.**

11.1 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.

11.2 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 Agreement.

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

12.1 The Chamber shall comply with the applicable provisions of Florida's Public Records Law and Chapter 119, Florida Statutes.

12.2 The Village may terminate this Agreement for refusal by the Chamber to allow access by the Village Attorney or designee to any records pertaining to Services performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

13. **Nonassignability**

13.1 The Village is relying upon the apparent qualifications and expertise of the Chamber, and its familiarity with the Village's area, circumstances and desires. Therefore, this Agreement shall not be assignable by Chamber unless such assignment is first approved by the Village Manager.

14. **Severability.**

14.1 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 terms and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

15. **Independent Contractor.**

15.1 The Chamber and its employees, volunteers and agents shall be and remain independent contractors 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.

15.2 The Chamber shall be responsible for all compensation, tax responsibilities, insurance benefits, other employee benefits, and any other status or rights of its employees during the course of their employment with Chamber.

16. **Conflict of Interest.**

16.1 The Chamber shall not be prohibited from representing or providing the like services to other persons and entities other than the Village, so long as the Chamber shall avoid any representation or relation which would create an adversarial position or conflict of interest, as first determined by the Village Attorney and Village Council.

16.2 The Chamber shall not take on any matter that would jeopardize the Chamber's ability to devote the time, resources, and efforts necessary to fulfill its obligations to the Village.

17. **Compliance with Laws.**

17.1 The Chamber shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Services.

18. **Waiver**

18.1 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.

19. **Survival of Provisions**

19.1 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.

20. **Prohibition Of Contingency Fees.**

20.1 The Chamber warrants that it has not employed or retained any company or person(s), other than a bona fide employee working solely for the Chamber, 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 Chamber, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

21. **Counterparts**

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

IN WITNESS WHEREOF, the parties, by their respective authorized agents have executed this Agreement on the respective dates under each signature.

**CHAMBER:**

**KEY BISCAYNE CHAMBER OF COMMERCE**, a nonprofit Florida corporation

By: \_\_\_\_\_

Name:

Title: Executive Director

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

Witness: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print

Witness: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print

Attest:

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

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

By: \_\_\_\_\_  
Name: John C. Gilbert  
Title: Village Manager

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

Approved as to Form and Legal Sufficiency  
for the Sole Use and Benefit of the  
Village of Key Biscayne:

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

# Key Biscayne Chamber of Commerce & Visitors Center

## EXHIBIT A

1. Chamber to serve as a referral source and conduit for tourism and other inquires by phone and/or by pedestrian walk-in traffic regarding non-governmental issues on Key Biscayne therefore anyone walking into the Village offices may be told to "Call and/or go to the Key Biscayne Chamber of Commerce.
2. Chamber to represent the Village of Key Biscayne at non-governmental business-related sessions such as the Greater Miami Convention and Visitors Bureau, Visit Florida, Miami-Dade County Coalition of Chambers and the Beacon Council, etc..
3. Chamber to conduct educational programs and seminars for the island's commercial segment which will result in an enhanced relationship with the community.
4. Chamber will promote community awareness of business interests through advertising, printed materials, the internet, social media and promotions both on and off the island.
5. Chamber to represent, advocate and be a voice for the business community with regards to ordinances, resolutions and policies.
6. Chamber to assist in development programs and events, in partnership with the Village and local businesses.
7. Chamber to equip, maintain and staff a Chamber office which is accessible to the public during business hours.
8. Chamber to provide bi-weekly newsletters to its membership pronouncing issues of interest to the Island's businesses and public service organizations.
9. Chamber to provide "On Location" the Chamber's television show which visits local businesses on channel 77 to promote the economic development and growth of Key Biscayne.

10. Chamber to provide a "Shop on the Key" promotion to stimulate local businesses.
11. Chamber to develop and maintain a volunteer network to assist with community activities.
12. Chamber to fulfill requests by the Village to communicate directly with the business community as directed by the Village Manager.
13. Chamber to submit quarterly progress reports to the Village at the end of each quarter for the duration of this Agreement.
14. During election years, Chamber to provide a platform for Village Council and/or Mayoral election debates and candidates networker with the business and residential community.
15. Chamber to greet and inform residents looking to accomplish tasks in the Village Government building, which office they should visit and show how to get there.
16. Chamber to staff and maintain a Visitors Center which includes information for both tourists and residents.
17. Chamber to act as a "better business bureau" when complaints are received regarding chamber businesses.
18. Chamber to welcome new residents by providing information on the Village and its businesses."

## **Exhibit B**

### **FEES FOR SERVICES**

Seventy-seven thousand, five hundred dollars and no cents (\$77,500)

Payments to be made to Chamber by Village at the end of each month in 1/12 increments of the total \$77,500 (\$6,458.33/mo). A quarterly progress report will be submitted by consultant and provided to the Village.