

**RESOLUTION NO. 2019- \_\_\_\_\_**

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

**WHEREAS**, the Key Biscayne Community Foundation, Inc. (the “Foundation”) is a local organization that addresses community needs and effects positive change within the Village; and

**WHEREAS**, over the last several years, the Foundation performed and administered numerous programs and services for the Village, which include, but are not limited to, programming related to the environment and natural resources; civic engagement and anti-bullying; arts and culture; community information, workshops and town halls; and

**WHEREAS**, over the last several years, the Foundation performed and administered fiscal sponsorship of community groups for the Village, which includes, but is not limited to, 4<sup>th</sup> of July Parade; Active Seniors on the Key Club; KB Historical and Heritage Society; KB Lighthouse Run; and

**WHEREAS**, over the last several years, the Foundation performed and administered a local-transportation project for the Village, which includes on demand and circulator transportation; and

**WHEREAS**, the Village Council and the Foundation desire to continue with this successful partnership and to enter into the agreement, in substantially the form attached hereto, as Exhibit “A” (the “Agreement”); and

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

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

**Section 1. Recitals.** That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

**Section 2. Agreement Approved.** That the Agreement between the Village and the Foundation, in substantially the form attached hereto as Exhibit "A," is hereby approved.

**Section 3. Authorization.** That the Village Manager is authorized to execute the Agreement, on behalf of the Village, once approved by the Village Attorney as to form, content, and legal sufficiency.

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

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
MICHAEL W. DAVEY, MAYOR

ATTEST:

\_\_\_\_\_  
JENNIFER MEDINA, CMC  
VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

\_\_\_\_\_  
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.  
VILLAGE ATTORNEY

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE VILLAGE OF KEY BISCAYNE  
AND  
KEY BISCAYNE COMMUNITY FOUNDATION, INC.**

**THIS AGREEMENT** (this “Agreement”) is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 2019 (the “Effective Date”), by and between the **VILLAGE OF KEY BISCAYNE, FLORIDA**, a Florida municipal corporation, whose principal address is 88 West McIntyre Street, Key Biscayne, Florida 33149 (hereinafter the “Village”), and **THE KEY BISCAYNE COMMUNITY FOUNDATION, INC.**, a Florida Not-For Profit Corporation, whose address is 88 West McIntyre Street, Suite 200, Key Biscayne, Florida 33149 (hereinafter, the “Consultant”).

**WHEREAS**, the Consultant will perform services on behalf of the Village, all as further set forth in the Scope of Services attached hereto as Exhibit “A” (the “Services,” as further defined below); and

**WHEREAS**, the Consultant and Village, through mutual negotiation, have agreed upon a fee for the Services; and

**WHEREAS**, the Village desires 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.** Consultant shall provide the Services set forth in the Scope of Services attached hereto as Exhibit “A” and incorporated herein by reference (the “Services”). Additional services may be agreed to in writing between the Village and the Consultant (“Additional Services”).
- 1.2.** Prior to commencement of work on a specific Project, the Contractor will provide the Village with a fixed lump sum cost for the Services set forth in the Statement of Work calculated using the rates set forth on the Rate Schedule attached hereto. If the Village approves the fixed lump sum cost for the Project, the Village will provide the Consultant with a Notice to Proceed to perform the Services set forth in the Statement of Work. Consultant acknowledges that it shall not undertake to perform any Services on any Project until it has received from the Village the Notice to Proceed on such Project.
- 1.3.** Consultant shall furnish all reports, documents, and information obtained pursuant to this Agreement, and recommendations during the term of this Agreement (hereinafter “Deliverables”) to the Village.

**2. Term/Commencement Date.**

2.1. This Agreement shall become effective upon the Effective Date and shall remain in effect for three years thereafter, unless earlier terminated in accordance with Paragraph 8. Additionally, the Village Manager may renew this Agreement for 2 additional 1 year periods on the same terms as set forth herein upon written notice to the Consultant.

2.2. Consultant agrees that time is of the essence and Consultant shall complete the Services within the time frames set forth in the Statement of Work and the Notice to Proceed for each Project in the manner provided in this Agreement, unless extended by the Village Manager.

**3. Compensation and Payment.**

3.1. Compensation for Services provided by Consultant shall be in accordance with the Proposal attached hereto as Exhibit "A." Compensation for Additional Services shall be in an amount to be determined in writing by the Village and the Consultant.

3.2. Consultant shall deliver an invoice to Village no more often than once per month detailing Services completed and the amount due to Consultant under this Agreement. Fees shall be paid in arrears each month, pursuant to Consultant's invoice, which shall be based upon the percentage of work completed for each task invoiced. The Village shall pay the Consultant in accordance with the Florida Prompt Payment Act after approval and acceptance of the Services by the Village Manager.

**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 Services.

4.2. Consultant may only utilize the services of a particular subconsultant with the prior written approval of the Village Manager, which approval may be granted or withheld in the Village Manager's sole and absolute discretion.

**5. Village's Responsibilities.**

5.1. Village shall make available any maps, plans, existing studies, reports, staff and representatives, and other data pertinent to the Services and in possession of the Village, and provide criteria requested by Consultant to assist Consultant in performing the Services.

5.2. Upon Consultant's request, Village shall reasonably cooperate in arranging access to public information that may be required for Consultant to perform the Services.

**6. Consultant's Responsibilities; Representations and Warranties.**

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

circumstances. If at any time during the term of this Agreement or within two (2) years from the completion of this Agreement, it is determined that the Consultant's Deliverables or Services are incorrect, not properly rendered, defective, or fail to conform to Village requests, the Consultant shall at Consultant's sole expense, immediately correct its Deliverables or Services.

**6.2.** The Consultant hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws applicable to and necessary to perform the Services for Village as an independent contractor of the Village. Consultant further warrants and represents that it has the required knowledge, expertise, and experience to perform the Services and carry out its obligations under this Agreement in a professional and first class manner.

**6.3.** The Consultant represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Consultant have been duly authorized, and this Agreement is binding on Consultant and enforceable against Consultant in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

**7. Conflict of Interest.** To avoid any conflict of interest or any appearance thereof, Consultant shall not, for the term of this Agreement, provide any consulting services to any private sector entities (developers, corporations, real estate investors, etc.), with any current, or foreseeable, adversarial issues in the Village.

**8. Termination.**

**8.1.** The Village Manager or the Consultant, 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, Consultant shall immediately stop work on the project unless directed otherwise by the Village Manager.

**8.3.** In the event of termination by the Village, the Consultant shall be paid for all work 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.** 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 Village, naming the Village as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance

coverage shall be primary insurance with respect to the Village, its officials, employees, agents, and volunteers naming the Village as additional insured. Any insurance maintained by the Village shall be in excess of the Consultant's insurance and shall not contribute to the Consultant's insurance. The insurance coverages shall include at a minimum the amounts set forth in this section and may be increased by the Village as it deems necessary or prudent.

**9.1.1.** Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Consultant. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.

**9.1.2.** Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Consultant shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.

**9.1.3.** Professional Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, single limit.

**9.2. Certificate of Insurance.** Certificates of Insurance shall be provided to the Village, reflecting the Village as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by Village and prior to commencing 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. The Consultant shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the Village. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Village reserves the right to inspect and return a certified copy of such policies, upon written request by the Village. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Village before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Village.

**9.3. Additional Insured.** Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, the Village is to be specifically included as an

Additional Insured for the liability of the Village resulting from Services performed by or on behalf of the Consultant in performance of this Agreement. The Consultant's insurance, including that applicable to the Village as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Village shall be in excess of and shall not contribute to the Consultant's insurance. The Consultant's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

**9.4. Loss Payee.** The Village is to be specifically named as a loss payee under the Consultant's Professional Insurance policy so that the Village will be a third party beneficiary entitled to receive all money payable under the relevant policy for any claims, damages, or losses in connection with, related to, or arising from Consultant's Services or performance pursuant to this Agreement.

**9.5. Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the Village. The Consultant shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

**9.6.** The provisions of this section shall survive termination of this Agreement.

**10. Nondiscrimination.** During the term of this Agreement, 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.** Consultant shall 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 from Consultant's negligent acts, errors, or omissions arising out of the performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the Village for all its expenses including reasonable attorneys' fees and costs

incurred in and about the defense of any such claim or investigation and for any judgment or damages arising from Consultant's negligent performance or non-performance of this Agreement.

12.2. Nothing herein is intended to serve as a waiver of sovereign immunity by the Village nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The Village is subject to section 768.28, Florida Statutes, as may be amended from time to time.

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

13. **Notices/Authorized Representatives.** 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: Andrea Agha  
Village Manager  
Village of Key Biscayne  
88 West McIntyre Street  
Key Biscayne, FL 33149

With a copy to: Chad Friedman, Esq.  
Village Attorney  
Weiss Serota Helfman Cole & Bierman, P.L.  
2525 Ponce de Leon Blvd., Suite 700  
Coral Gables, FL 33134

For the Consultant: Key Biscayne Community Foundation, Inc.  
Attn: Melissa White  
88 West McIntyre Street, Suite 200  
Key Biscayne, FL 33149

14. **Governing Law and Venue.** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any proceedings 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 supersedes 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.** Consultant acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which relate to Services to the Village which are conceived, developed or made by Consultant during the term of this Agreement (“Work Product”) belong to the Village. Consultant shall promptly disclose such Work Product to the Village and perform all actions reasonably requested by the Village (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).
- 16.2.** Consultant agrees to keep and maintain public records in Consultant’s possession or control in connection with Consultant’s performance under this Agreement. The Village Manager or her 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. Consultant additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Consultant shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Village.
- 16.3.** Upon request from the Village’s custodian of public records, Consultant shall provide the Village with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- 16.4.** Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Village.
- 16.5.** Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Consultant shall be delivered by the Consultant to the Village Manager, at no cost to the Village, within seven (7) days. All such records stored electronically by Consultant shall be delivered to the Village in a format that is compatible with the Village’s information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Consultant shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 16.6.** Any compensation due to Consultant shall be withheld until all records are received as provided herein. Consultant’s failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Village.

16.7. Notice Pursuant to Section 119.0701(2)(a), Florida Statutes. **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.**

**Custodian of Records: Jennifer Medina, CMC**

**Mailing address: 88 West McIntyre Street**

**Key Biscayne, FL 33149**

**Telephone number: 305-365-5506**

**Email: [jmedina@keybiscayne.fl.gov](mailto:jmedina@keybiscayne.fl.gov)**

17. **Nonassignability.** This Agreement shall not be assignable by Consultant unless such assignment is first approved by the Village Manager. The Village is relying upon the apparent qualifications and expertise of the Consultant, and such firm's familiarity with the Village's area, circumstances and desires.
18. **Severability.** 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.** The Consultant and its employees, volunteers and agents shall be and remain an independent contractor and not an agent or employee 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.** The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement at its own expense.
21. **Waiver.** 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.** 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.** 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. **Public Entity Crimes Affidavit.** Consultant shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.
25. **Counterparts.** 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.

**[Remainder of page intentionally left blank. Signature pages follow.]**

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date written below their signatures.

***FOR THE CONSULTANT:***

**KEY BISCAYNE COMMUNITY FOUNDATION, INC.,** a Florida Corporation

By: \_\_\_\_\_  
Name: Melissa White  
Title: \_\_\_\_\_  
Date Executed: \_\_\_\_\_

***FOR THE VILLAGE:***

**VILLAGE OF KEY BISCAYNE,** a Florida Municipal Corporation

By: \_\_\_\_\_  
Andrea Agha, Village Manager  
Date Executed: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Jennifer Medina, Village Clerk, CMC

Approved as to Form and Legal Sufficiency:

By: \_\_\_\_\_  
Weiss Serota Helfman Cole & Bierman, P.L.  
Village Attorney

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

The Scope of Services to be provided by Consultant to the Village are itemized below. The fee to the Consultant for the services referenced below is \$125,000.

1. **Environment and Natural Resources:**

Through the Key Biscayne Citizen Scientist Project promote the protection of natural resources through education, information, and advocacy; this includes administration and coordination of partner efforts, staff time, materials and supplies.

2. **Customer relations related to local transportation programming:**

Administration of customer service relationship with residents and visitors: complaints, comments, changes; this includes all staff time, materials and supplies.

3. **Civic Engagement and Anti-bullying:**

Through the Village of Empathy promote good citizenry through programming that educates about the rights and responsibilities of citizenship; this includes administration of programming, staff time, materials.

4. **Arts and Culture:**

Cultural programming: augment current programming with the best local playwrights, musicians, artists, writers, etc.; this includes administration of events, marketing to community, staff time, materials and supplies.

5. **Community information, workshops, and town halls:**

Community news and information: provide monthly information on social, cultural, and community events for all organizations; administration of design & marketing, staff time, materials and supplies. Community forums: advocate locally on issues that benefit the community through town halls meetings, constant contact, and social media. This includes administration of events.

6. **Fiscal sponsorship of community groups:**

Administration of project including income and expenses of community groups that receive municipal funding for programmatic services to the community.