VILLAGE OF KEY BISCAYNE

Office of the Village Manager

MEMORANDUM

Village Council
Mayra P. Lindsay, *Mayor*
Franklin H. Caplan, *Vice Mayor*
Luis F. de La Cruz
Theodore Holloway
Michael E. Kelly
Edward London
James Taintor

Village Manager
John C. Gilbert

DATE: April 28, 2015

TO: Honorable Mayor and Members of the Village Council

FROM: John C. Gilbert, Village Manager

RE: Village Green Bathroom Repairs

RECOMMENDATION

It is recommended that the Village Council authorize the Village Manager to execute the two (2) attached Agreements to repair the bathrooms located at the Village Green. The agreements total $23,700 and will be paid from the "Recreation Facilities Reserve" line item included in the Capital Improvement Plan budget with a current balance of $410,713.00

88 West McIntyre Street • Suite 210 • Key Biscayne, Florida 33149 • (305) 365-5514 • Fax (305) 365-8936

RESOLUTION NO. 2015-

A CAPITAL PROJECT AUTHORIZING RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING THE AGREEMENT BETWEEN THE VILLAGE OF KEY BISCAYNE AND KEIF CARPENTRY, INC., CONCERNING THE REPAIR OF THE VILLAGE GREEN BATHROOMS; PROVIDING FOR WAIVER OF COMPETITIVE BIDDING; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE AGREEMENT; AUTHORIZING EXPENDITURE OF FUNDS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 3.07(b) of the Village Charter, the Village Council desires to authorize the expenditure of Village funds for a capital project consisting of the repair of the Village Green bathrooms (the "Bathroom Repairs"); and

WHEREAS, Keif Carpentry, Inc. ("Keif") has submitted a proposal to the Village for the Bathroom Repairs; and

WHEREAS, the Village Council desires to accept the proposal and enter into an Agreement with Keif for the Bathroom Repairs in substantially the form attached as Exhibit "A" (the "Agreement"); and

WHEREAS, pursuant to Section 2-85 of the Village Code of Ordinances (the "Village Code"), the Village Council finds that it is impractical to competitively bid the Bathroom Repairs and desires to waive competitive bidding requirements; and

WHEREAS, the Village Council finds that the adoption of this Resolution is in the best interest and welfare of the residents 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. **Project Authorized; Specification of Funds.** That the Bathroom Repairs as described herein and in the Agreement attached hereto as Exhibit "A" is approved and authorized, subject to the condition that the cost of the Bathroom Repairs shall not exceed $18,200.00. The funding sources and amounts for the Bathroom Repairs is hereby authorized and approved as set forth in the Village Manager's Memorandum accompanying this Resolution.

Section 3. **Waiver of Competitive Bidding.** That pursuant to Section 2-85 of the Village Code, competitive bidding procedures of the Village Code are hereby waived for the Bathroom Repairs.

Section 4. **Agreement Approved.** That the Village Manager is hereby authorized to execute the Agreement with Keif, 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 5. **Implementation.** That the Village Manager is authorized to take any necessary action to implement the purposes of this Resolution and the Agreement.

Section 6. **Effective Date.** That this Resolution shall be effective immediately upon adoption hereof.

PASSED AND ADOPTED this _____ day of _____, 2015.

_____

MAYOR MAYRA PEÑA LINDSAY

ATTEST:

_____

CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

_____

VILLAGE ATTORNEY

EXHIBIT "A"

VILLAGE OF KEY BISCAYNE, FLORIDA

EMERGENCY/MINOR CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the "Agreement") dated this ____ day of April, 2015, is

BETWEEN

the **Village of Key Biscayne**, a municipal corporation of the State of Florida, with address at 88 West McIntyre Street, Florida 33149 (the "Municipality") **AND**

Keif Carpentry, Inc. a Florida corporation, with address at 200 Galen Drive #101, Key Biscayne, FL 33149 (the "Contractor").

BACKGROUND:

A. The Municipality is of the opinion that the Contractor has the necessary qualifications, experience and abilities to provide services to the Municipality for the Municipality's Village Green Park bathrooms project (the "Project").

B. The Contractor is agreeable to providing such services to the Municipality on the terms and conditions set out in this Agreement.

IN CONSIDERATION OF the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Municipality and the Contractor (individually the "Party" and collectively the "Parties" to this Agreement) agree as follows:

Services Provided

1. The Municipality hereby agrees to engage the Contractor to provide the Municipality with services (the "Services") consisting of shaker-style starboard doors, including jamb material and casing, for the boys and girls bathroom stalls and storage room and of installation of grey composite at repaired roof top areas at the Village Green Park in accordance with the Contractor's proposal attached hereto as Exhibit "A".

2. The Services may also include any other related tasks which the Parties may agree on. The Contractor hereby agrees to provide such Services to the Municipality.

Term of Agreement

3. The term of this Agreement (the "Term") will begin on the date of this Agreement and will remain in full force and effect until the completion of the Services, subject to earlier termination as provided in this Agreement. The Term of this Agreement may be extended by mutual written agreement of the Parties.

4. In the event that either Party wishes to terminate this Agreement without cause, that Party will be required to provide 10 days prior written notice to the other Party.

5. In the event that the Municipality terminates this Agreement for cause, the Contractor shall immediately cease performance of the work and vacate the site. The Municipality will compensate the Contractor for the reasonable value of work performed up to the termination date, but shall reserve the right to withhold payment for damages, excess costs to complete or other Municipality expenses. Termination costs shall not include lost profits, consequential damages, delay damages, unabsorbed or under-absorbed overhead expenses of the Contractor, its subcontractors or suppliers.

Performance

6. The Contractor shall be responsible for the performance of all services under this Agreement until those services are complete and accepted by the Municipality; and shall assign a skilled and competent supervisor who shall be on the job site at all times that work is being performed and who shall be responsible for:

    - Coordinating, directing and supervising all work and workers utilized on the site,

    - Verifying any and all measurements at the site,

    - Assuring that all work under this Agreement progresses in accordance with the plans and specifications and without delay,

- Enforcing Contractor's Health and Safety provisions on the job site, including fences, guards, use of personal protective equipment and safe work practices.

- Receiving, inspecting, accepting and protecting any and all equipment, materials and supplies delivered to or stored at the site, and

- Inspecting and protecting any and all completed work at the site.

Compensation

7. For the services rendered by the Contractor as required by this Agreement, the Municipality will provide compensation (the "Compensation") to the Contractor of a fixed amount of **$18,200.00**.

8. The Compensation will be payable, while this Agreement is in force, according to the following payment terms:

    - Progress Payments of undisputed amounts shall be made within 30 days of the receipt by the Municipality of a properly prepared and submitted, per Municipality requirements, monthly Application for Payment.

9. The above Compensation includes all applicable sales tax, and duties as required by law.

Changes

10. In the event that the Municipality orders or authorizes changes in the services, within the general scope of this Agreement, consisting of additions, deletions or revisions, the compensation and/or Construction Duration may be equitably adjusted only by a written Change Order executed by both Parties.

Compliance with Laws and Regulations

11. The Contractor shall comply with any and all applicable federal, state and local laws, rules, codes and regulations with respect to the services under this Agreement.

Payment Penalties

12. In the event that the Municipality does not comply with the rates, amounts, or payment dates provided in this Agreement, a late payment penalty will be charged as follows:

    - Payments of undisputed invoice amounts made more than 30 days after the payment due date shall bear interest at the current legal rate for each month or part thereof that the payment is late.

Return of Property

13. Upon the expiry or termination of this Agreement, the Contractor will return to the Municipality any property, documentation, records, or confidential information which is the property of the Municipality.

Capacity/ as Independent Contractor

14. In providing the Services under this Agreement it is expressly agreed that the Contractor is acting as an independent contractor and not as an employee. The Contractor and the Municipality acknowledge that this Agreement does not create a partnership or joint venture between them, and is exclusively a contract for service.

Notice

15. All notices, requests, demands or other communications required or permitted by the terms of this Agreement will be given in writing and delivered to the Parties of this Agreement as follows:

    a. Village of Key Biscayne
       Attn. John C. Gilbert, Village Manager
       88 West McIntyre
       Key Biscayne, Florida, 33149
       Fax: (305) 365-8914

       With a copy to:

       Steven Helfman, Esq.
       Village Attorney
       Weiss Serota Helfman Cole & Bierman
       2525 Ponce de Leon Boulevard
       Coral Gables, Florida, 33134

Fax: (305) 854-2323
Email: shelfman@wsh-law.com

b. Leif Carpentry, Inc.
Attn. Brian Keif
200 Galen Drive, #101
Key Biscayne, Florida, 33149
Email: brianmkeif@yahoo.com

or to such other address as any Party may from time to time notify the other.

Indemnification

16. The Contractor will indemnify and hold harmless the Municipality from and against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever to the extent that any of the foregoing is directly or proximately caused by the negligent or willful acts or omissions of the Contractor or its agents or representatives and which result from or arise out of the Contractor's participation in this Agreement. This indemnification will survive the termination of this Agreement.

Insurance

17. The Contractor will be required to obtain and maintain for the duration of this Agreement:

    a. Commercial General Liability insurance including coverage for bodily injury and property damage in the minimum amount of $1,000,000 per occurrence and $2,000,000 in the aggregate combined single limit for bodily injury and property damage. This liability insurance shall include completed operations and product liability coverage and eliminate the exclusion respecting property under the care, custody and control of the Contractor.

    b. Business Automobile Insurance for owned, hired and non-owned vehicles with minimum limits of $1,000,000 per occurrence combined single limit for bodily injury and property damage and without restrictive endorsements.

c. Worker's Compensation Insurance, to apply to all employees of the Contractor, for statutory limits as required by the State of Florida and Employer's Liability Insurance with minimum limits of $1,000,000 per accident.

d. Builder's Risk Insurance (Not Applicable)

18. Certificates of Insurance shall be provided to the Municipality by the Contractor prior to commencing any services hereunder. Each Certificate shall include a provision that not less than 30 days written notice shall be provided to the Municipality before any policy or coverage is cancelled, terminated, restricted or materially altered.

19. Except for Worker's Compensation and Employer's Liability policies, all insurances shall designate the Municipality as an additional insured, shall apply on a primary basis and contain a severability of interest provision.

Permits, Taxes and Licenses

20. The Contractor shall, at its own expense, obtain all necessary permits, pay all license fees, other fees and taxes required to comply with local ordinances, state and federal laws, rule, regulations and professional standards that are applicable to this agreement.

Dispute Resolution

21. In the event a dispute arises out of or in connection with this Agreement, the Parties will attempt to resolve the dispute through friendly consultation.

22. If the dispute is not resolved within a reasonable period, then any or all outstanding issues may be submitted to mediation in accordance with any statutory rules of mediation. In the event that mediation is unsuccessful, either Party may initiate an action in law or equity in a court of competent jurisdiction.

Modification of Agreement

23. Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorized representative of each Party.

Time of the Essence

24. Time is of the essence in this Agreement. The duration for the performance of services under this Agreement is 30 days (Construction Duration), as may be amended. In the event that performance of the services under this Agreement is delayed by the occurrence of any act or event that is not the fault of the Contractor, the Construction Duration may be reasonably extended upon prompt notification and request of the Contractor and approval by the Municipality, which extension shall be the sole remedy for such delay.

25. In the event that the Contractor fails to complete the work by the date of this Agreement plus the Construction Duration, the Contractor shall pay to the Municipality, as liquidated damages and not as a penalty, the sum of $1.00 per day of delay beyond the date corresponding to the date of this Agreement plus the Construction Duration, as may be amended.

Assignment

26. The Contractor will not voluntarily or by operation of law assign or otherwise transfer its obligations under this Agreement without the prior written consent of the Municipality.

Entire Agreement

27. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

Inurement

28. This Agreement will inure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators, successors and permitted assigns.

Titles/Headings

29. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.

Interpretation

30. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

Governing Law

31. It is the intent of the Parties to this Agreement that this Agreement and the performance under this Agreement, and all suits and special proceedings under this Agreement, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of Florida, without regard to the jurisdiction in which any action or special proceeding may be instituted.

Severability

32. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

Waiver

33. The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.

IN WITNESS WHEREOF the Parties have duly affixed their signatures under hand and seal on this ___ day of April, 2015.

FOR THE CONTRACTOR:

Keif Carpentry, Inc.

By: _____

(Title)_____

FOR THE VILLAGE:

VILLAGE OF KEY BISCAYNE,
a Florida municipal corporation

By: _____
John C. Gilbert, Village Manager

Date Executed: _____

Attest: _____
Conchita Alvarez, Village Clerk, CMC

Approved as to Form and Legal Sufficiency:

_____

Keif Carpentry

Estimate

Estimate No: 77
Date: February 24, 2015

200 Galen Dr. #101
Miami, Fl 33149

786-488-1467

Brianmkelf@yahoo.com

For: Village Of Key Biscayne
Ref: Village Green Bathrooms

Description	Quantity	Rate	Amount
Custom shaker style starboard doors including all jamb material and casing for doors to bathroom stalls. Includes stainless steel hinges.	6	$1,700.00	$10,200.00*
Storage door done in starboard shaker style	2	$1,500.00	$3,000.00*
Install gray composite in areas repaired in rooftop to ensure no future peeling or rot	2	$2,500.00	$5,000.00*

* Indicates non-taxable item

50%deposit required
25% for 3/4 progress payment
25% upon completion

Subtotal	$18,200.00
TAX (7.00%)	$0.00
Total	**$18,200.00**