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 S. Taintor

Village Manager
John C. Gilbert

DATE: May 26, 2015

TO: Honorable Mayor and Members of the Village Council

FROM: John C. Gilbert, Village Manager

RE: Request to Authorize the Village Manager to enter into an agreement with Stantec for construction phase services for the Village Green Field Resurfacing project.

RECOMMENDATION

It is recommended that the Village Council authorize the Village Manager to enter into an agreement for $49,176 with Stantec for construction phase services for the Village Green Resurfacing project. The scope of services for this agreement is attached in Exhibit "A".

BACKGROUND

On April 14th David Nardone made a presentation to the Village Council regarding the Village athletic fields. Mr. Nardone described a recommended field resurfacing construction method. The method of construction described by Mr. Nardone was published as an addendum to the original RFP. The RFP responses were opened on May 6th. On May 12th this Village Council approved a resolution selecting Green Source Landscape & Sports Turf, Inc. and authorizing the Village Manager to enter into an agreement to complete this specified scope of work. Green Source Landscape & and Sports Turf has been advised of a May 26th project start date.

By authorizing this proposal the Village Council insures that Stantec and David Nardone will remain involved in this project from the pre-construction phase through to the final punch list and close out documents.

Funding for this project is in the Capital Improvement Fund- Playing Field Reserves line item.

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

RESOLUTION NO. 2015- _____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, SELECTING STANTEC CONSULTING SERVICES INC. FOR CONSTRUCTION PHASE SERVICES FOR THE RESURFACING OF THE VILLAGE GREEN ATHLETIC FIELDS; PROVIDING FOR A WAIVER OF COMPETITIVE BIDDING; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village recently selected a company for the resurfacing of the Village Green athletic fields (the "Project"); and

WHEREAS, the Village desires to engage Stantec Consulting Services Inc. for construction phase services for the Project consistent with the proposal attached as Exhibit "A;" 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 services 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. **Selection.** That the Village Council selects Stantec Consulting Services Inc. for construction phase services for the Project.

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 services.

Section 4. **Implementation.** That the Village Manager is authorized to take any necessary action to implement the purposes of this Resolution, including the execution of an Agreement consistent with the proposal attached as Exhibit "A," subject to the Village Attorney's approval as to form, content and legal sufficiency.

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

PASSED AND ADOPTED this ____ day of____, 2015.

_____
MAYRA PEÑA LINDSAY, MAYOR

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

STANTEC CONSULTING SERVICES INC.

THIS AGREEMENT (this "Agreement") is made effective as of the ____ day of May, 2015 (the "Effective Date"), by and between the **VILLAGE OF KEY BISCAYNE, FLORIDA,** a Florida municipal corporation (hereinafter the "Village"), and **STANTEC CONSULTING SERVICES INC.**, a for-profit corporation (hereinafter the "Consultant").

WHEREAS, the Consultant and Village, through mutual negotiation pursuant to the Continuing Contract for Professional Services between the parties, have agreed upon a scope of services, schedule, and fee for **CONSTRUCTION ADMINISTRATION SERVICES FOR THE RESURFACING OF TWO ATHLETIC FIELDS AT THE VILLAGE GREEN** for the Village (the "Project"); 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. The Consultant shall furnish such professional services and provide deliverables (the "Services") as described in the Consultant's Proposal attached hereto and made a part hereof as Exhibit "A" (the "Proposal").

2. **Term/Commencement Date.**

   2.1 This Agreement shall run concurrent with the schedule of the construction contract with which this Agreement is coordinated and shall commence with the Pre-Construction Conference among the Consultant, the construction contractor and the Village.

   2.2 Consultant agrees that time is of the essence. This Agreement shall remain in effect and the Consultant shall complete the Services in concurrent duration with the construction contract (estimated to be 100 days) unless extended by the Village Manager.

3. **Compensation and Payment.**

3.1 Compensation for Services provided by Consultant shall be in accordance with the compensation or fee schedule set forth in the Proposal attached hereto as Exhibit "A".

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 Project.

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 Village Manager's reasonable discretion.

5. **Village's Responsibilities**

5.1 Village shall make available any construction contracts, maps, plans, existing studies, reports and other data pertinent to the Services and in possession of the Village.

5.2 Upon Consultant's request, Village shall reasonably cooperate in arranging for access to any real property as required for Consultant to perform the Services.

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 two (2) years from the completion of the Project, it is determined that the Consultant's deliverables or services are incorrect, not properly rendered, defective, or fail to conform to the Services for the Project, upon written notification from the Village Manager, 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 and certifications required under Federal, State and local laws applicable to and necessary to perform the Services for Village as an independent contractor of the Village.

7. **Conflict of Interest.**

7.1 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 adversarial issues in the Village. For the purposes of this section "adversarial" shall mean any development application where staff is recommending denial or denied an application, or an administrative appeal or court action wherein the Village is a party.

8. **Termination.**

8.1 The Village Manager may terminate this Agreement without cause upon a fifteen (15) calendar day prior written notice to the Consultant, or immediately with cause. Consultant may terminate this Agreement with or without cause upon a thirty (30) day prior written notice to the Village.

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 9 and may be increased by the Village as it deems necessary or prudent.

9.2 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.

9.3 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.

9.4 Business Automobile Liability with minimum limits of $1,000,000 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 Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

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

9.6 **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), 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 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. 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.

9.7 **Additional Insured.** Except with respect to Professional Liability 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.

9.8 **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 retention in the event of any claim.

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

10. **Nondiscrimination.**

10.1 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 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 performance or non-performance of this Agreement.

12.2 To the extent permitted by applicable Law, neither party shall be liable to the other for punitive damages or indirect, incidental or consequential damages, whether arising out of breach of this Agreement, tort (including negligence), or any other theory of liability, and each party hereby releases the other party from any such liability.

12.3 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
Village of Key Biscayne
88 West McIntyre Street
Key Biscayne, FL 33149

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

For The Consultant: Javier F. Salman
Stantec Consulting Services Inc.
901 Ponce de Leon Boulevard, Suite 900
Coral Gables, Florida 33134

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.

15.3 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.

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

16.1 Consultant acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports 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). Consultant shall not be responsible for Village's use of the Work Product for any purpose other than the specific purpose of this Agreement.

16.2 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.

16.3 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. In addition, the Consultant agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes.

16.4 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 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.**

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 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.**

20.1 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 licenses and certifications from all jurisdictional agencies to perform the Services under this Agreement.

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. **Public Entity Crimes Affidavit**

24.1 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**

25.1 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.

[Remainder of page intentionally left blank]

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

FOR THE CONSULTANT:

STANTEC CONSULTING SERVICES INC.,
a for-profit corporation

By: _____
Name: _____
Title: _____

Date Executed: _____

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first above written.

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:

_____
Village Attorney

EXHIBIT "A"

Stantec Consulting Services Inc.
901 Ponce de Leon Blvd., Suite 900
Coral Gables, Florida 33134

May 8, 2015

Village of Key Biscayne
88 West McIntyre Street
Key Biscayne, Florida 33149

Attention: Todd Hofferberth

Reference: Construction Phase Services for Village Green Field Resurfacing

Dear Mr. Hofferberth,

We are pleased to present this proposal for professional engineering services for your consideration.

Scope of Project:

The Village will be contracting for the replacement of the two (2) existing grass fields located at the Village Green. Construction assistance and support will be required through the duration of the work. Our proposed scope of services is detailed below.

Scope of Services:

We will coordinate and attend a pre-construction conference with all parties, review and approve contractor's submittals/shop drawings, answer requests for information, assess conflicts in the field and provide directives as required, and review and recommend contractor's application for payment. We will also provide weekly site visits through the course of the work for the anticipated 100 day schedule. A report with photos will be generated for each visit. Lastly, we will compile a punch list and perform project close-out with the contractor including final payment requisition, warranty letters, and close-out documents.

Our fee also includes three visits by our landscape architect principal David Nardone including attendance at the pre-construction conference, one visit prior to sod being placed, and one visit for punch list walk through. Additional visits can be provided for an additional fee.

No testing is included in our fee but it can be provided as an additional service if required. Our proposal is based on a total contract duration of 100 days. Any additional contract time may require additional services.

Terms and Conditions:

All terms and conditions shall be per our Continuing Contract for Professional Services and all fees shall be billed monthly as the work progresses per the following lump sum:

Construction Phase $49,176

We are ready to begin working on this assignment upon your authorization to proceed. If acceptable to you, we will accept a signed copy of this form as your written authorization to proceed. We look forward to working with the Village on this assignment.

Thank you,

Stantec Consulting Services Inc.

Sean Compel, P.E., LEED AP
Associate
Tel: 305-445-2900
sean.compel@stantec.com

Village of Key Biscayne

Approved by:

Signature	Print Name	Date

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