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3 **RESOLUTION NO. 2012-12**
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5 **A RESOLUTION OF THE VILLAGE COMMISSION OF**
6 **THE VILLAGE OF BISCAYNE PARK, FLORIDA**
7 **AUTHORIZING THE VILLAGE MANAGER TO**
8 **EXECUTE THE AGREEMENT FOR CODE**
9 **COMPLIANCE SERVICES WITH C.A.P.**
10 **GOVERNMENT, INC., FOR THE VILLAGE FOR A**
11 **PERIOD OF EIGHT MONTHS; IN AN AMOUNT**
12 **NOT TO EXCEED \$26,400.00; PROVIDING FOR AN**
13 **EFFECTIVE DATE**
14

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16
17 WHEREAS, Code compliance and enforcement are necessary to preserve and maintain the
18 livability, values and integrity of our Village; and

19 WHEREAS, it is the responsibility of the Village to provide professional code compliance
20 services to insure compliance of the Village's Code of Ordinances; and

21 WHEREAS, more than ever, code compliance must keep up with the resulting abandoned and
22 vacant properties from the economic downturn that has affected cities throughout Florida and the entire
23 nation; and

24 WHEREAS, through the continual assessment and evaluation of our departments with a goal to
25 provide excellence in all areas of community service, this self-evaluation has led us to explore alternate
26 options in the management and day-to-day operation of the Code Compliance department; and

27 WHEREAS, networking with other municipalities, we have identified C.A.P. Government, Inc.
28 (hereinafter referred to as CAP) as a provider of code compliance services; and,

29 WHEREAS, CAP has been successful in providing code compliance services in the cities of
30 Key Biscayne, Miami Lakes, Doral and Palmetto Bay; and

31 WHEREAS, CAP has provided a proposal inclusive of the scope of services required at a
32 monthly rate of \$3,300 per month; and

33 WHEREAS, the Village Commission finds it to be in the best interests of the residents of the
34 Village to utilize the services of CAP for professional code compliance services for an eight month pilot

1 program, commencing in February 2012 and concluding in October 2012 to assess their performance;
2 and

3 WHEREAS, the Village Commission approves entering into the agreement with CAP,
4 consistent with section 2-141 of the Village's Purchasing Ordinance.

5 NOW THEREFORE BE IT RESOLVED BY THE VILLAGE COMMISSION OF THE
6 VILLAGE OF BISCAYNE PARK, FLORIDA:

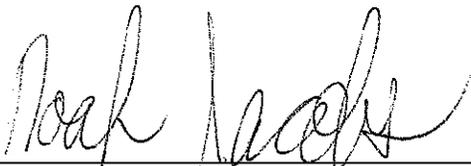
7 **Section 1.** The foregoing "Whereas" clauses are hereby ratified and confirmed as
8 being true and correct and hereby made a specific part of this Resolution upon adoption hereof.

9 **Section 2.** C.A.P. Government, Inc., is selected for professional code compliance
10 services for a period of eight months commencing in February 2012 and ending in October 2012
11 for the Village of Biscayne Park.

12 **Section 3.** The Village Manager is hereby authorized to execute the agreement for
13 professional code compliance services between the Village and C.A.P. Government, Inc. for the
14 timeframe specified, incorporated herein as exhibit "1".

15 **Section 4.** This Resolution shall become effective upon adoption.

16 PASSED AND ADOPTED this 7th day of February, 2012.

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22 _____
23 Noah Jacobs, Mayor

24 Attest:

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26 
27 _____
28 Maria C. Camara, Village Clerk

29 Approved as to form:

30
31
32
33 
34 _____
Village Attorney

**The foregoing resolution upon being
put to a vote, the vote was as follows:**

Mayor Jacobs: Yes
Vice Mayor Watts: No
Commissioner Anderson: Yes
Commission Cooper: Yes
Commissioner Ross: Yes

**CONTRACT BETWEEN
THE VILLAGE OF BISCAYNE PARK AND C.A.P. GOVERNMENT, INC.**

THIS AGREEMENT is made and entered into this 7th day of February, 2012, by and between the Village of Biscayne Park, (hereinafter referred to as the Village) a Florida municipal corporation, and C.A.P. Government, Inc., (hereinafter referred to as CAP) a Florida corporation.

WHEREAS, Code enforcement and compliance are necessary to preserve and maintain the livability, values and integrity of our Village; and,

WHEREAS, it is the responsibility of the Village to provide professional code compliance services to insure compliance of the Village's Code of Ordinances; and,

WHEREAS, more than ever, code compliance must keep up with the resulting abandoned and vacant properties from the economic downturn that has affected cities throughout Florida and the entire nation; and,

WHEREAS, through the continual assessment and evaluation of our departments with a goal to provide excellence in all areas of community service, this self-evaluation has led us to explore alternate options in the management and day-to-day operation of the Code Compliance department; and

WHEREAS, networking with other municipalities, we have identified CAP as a provider of code compliance services; and,

WHEREAS, CAP has been successful in providing code compliance services in the Town of Key Biscayne, Village of El Portal, Village of Palmetto Bay, and the Town of Miami Lakes; and,

WHEREAS, the Village Commission finds it to be in the best interests of the residents of the Village to utilize the services of CAP for professional code compliance services for eight months, commencing in February 2012 and concluding in October 2012 to assess their performance; and,

WHEREAS, the Village Commission approves entering into the agreement with CAP, consistent with section 2-140 of the Village's Purchasing Ordinance.

WHEREAS, the Village is in need of code compliance services;

WHEREAS, the parties have negotiated the price and scope of code compliance services to be provided; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which is acknowledged by both parties, the parties agree as follows:

1. Purpose; Authorization

1.1. The purpose of this agreement is to provide for the engagement of CAP by the Village to perform code compliance as described in Section 2 below. In performing all services it is

1.1. The purpose of this agreement is to provide for the engagement of CAP by the Village to perform code compliance as described in Section 2 below. In performing all services it is understood that all CAP employees, while performing services for the Village shall report to the Village Manager, or designee. CAP agrees to work cooperatively with the Village's Building Official and Village Manager to ensure that services are provided in a coherent and uniform process.

1.2. CAP's employees assigned to perform services for the Village shall be authorized to enforce the Village code under the Village's constitutional home rule powers.

2. Scope of Services.

2.1 Pursuant to section 2.3.3 of the June 3, 2003 agreement, the Village may retain CAP to perform code compliance services for the Village as described in Section 3 below.

2.2 CAP's employees assigned to perform services for the Village shall be authorized to enforce the Village code as specified in chapter 162, Florida Statutes.

3. Scope Of Services

CAP shall provide the following code compliance and enforcement services to the Village:

3.1 Provide support services relating to the start-up, organization and coordination of the Village's code compliance department as requested and determined by the Village Manager.

3.2 Pursuant to chapter 162, Florida Statutes and the Village code, CAP shall enforce the Village code, the Florida Building Code and the Miami-Dade County Codes and ordinances as required.

3.3 Issue notices of violation, stop work orders, citations and fines.

3.4 Prepare all paperwork and documentation for Code Enforcement Board hearings and process all cases through the code compliance process.

3.5 Attend all Code Enforcement Board hearings on behalf of the Village.

3.6 Provide all necessary vehicles, mobile phones or radios and equipment for CAP employees to perform the code compliance services required by this contract.

3.7 CAP shall provide monthly reports to the Village Manager of all known and reported violations of the Village code, the Florida Building Code and the Miami-Dade County Codes.

3.8 Provide other code compliance and enforcement services mutually agreed to by CAP and the Village Manager.

3.9 Provide certified code compliance officers and adequate staff support to accomplish this scope of work.

3.10 Provide personnel experienced in the Florida Building Code and code compliance certified individuals who are bi-lingual (English/Spanish/Creole). The designated "code compliance officers" will patrol the Village for an average of 25 hours per week on different days of the week, as necessary. The designated "code compliance officers" responsibilities shall include the following:

- (a) Patrolling to identify code violations;
- (b) Issue code violation warnings;
- (c) Issuing code violation citations;
- (d) Present code compliance cases to the Code Enforcement Board;
- (e) Assist the Village Administration with the filing of liens;
- (f) Assist the Village with records maintenance as it relates to code compliance files, enforcement actions, orders, and liens;
- (g) Assist the Village with the proper posting and mailing of violations; and
- (h) Assist the Village with publishing/advertising code compliance board hearings.

3.11 All training of the designated/assigned code compliance officers shall be at the sole responsibility and expense of CAP. All designated CAP employees provided to the Village shall be certified code compliance officers with at least a Class 1 certification from F.A.C.E. (Florida Association of Code Enforcement).

3.12 The Village shall provide badges and photo identification for CAP employees, which shall be worn by CAP employees at all times while conducting Village official functions.

4. Village Responsibilities.

4.1 The Village may provide badges and photo I.D. for CAP employees.

4.2 The Village will provide workspace and access to Village land-line telephones for all code compliance officers employed by CAP to perform the services required by this contract.

4.3 The Village shall provide workspace, furniture, computer software and hardware, fax line and telephones (in office) for the staff provided by CAP to perform the services required by this agreement.

4.4 The Village shall be the record custodian for all records.

4.5 CAP has developed a team of highly trained, professional staff. The Village is discouraged from approaching or hiring any of CAP's staff.

5 Change Orders

5.1 The Village or CAP, may at any time, upon mutual agreement and by written order, make changes within the general scope of this Contract in the services to be performed provided such changes/modifications comply with the enabling resolution. The Village may, from time to time, request changes in the services of CAP to be performed hereunder. Such changes, which are mutually agreed upon between the parties shall be incorporated in written amendments to this Contract. The parties shall modify the Contract with a mutually negotiated written Change Order, within the financial authority of the Village Manager.

6. Compensation

6.1 For all code compliance services provided by CAP as described in section 2 of this contract, the Village shall pay CAP a monthly fee of \$3,300.

6.2 The code compliance officer shall provide a minimum of 25 hours per week of services as provided under section 2.

6.3 Fees for code compliance services shall be billed and paid pursuant to monthly invoices submitted by CAP to the Village.

6.4 The Village shall initially contract for the services of one code compliance officer.

6.5 The Village shall provide CAP 30 calendar days' written notice of the Village's intent to increase or decrease the number of code compliance officers provided by CAP to the Village.

6.6 The Village shall pay CAP within 30 calendar days of approval by the Village Manager of any invoices submitted by CAP to the Village.

7. Records; Right To Inspect And Audit

7.1 All notices, violations, liens, plans, permits, work papers and all other documents and plans (collectively referred to as records) that result from CAP providing services to the Village under this agreement shall be the property of the Village and will be kept at a place designated by the Village.

7.2 The Village Manager, shall, during the term of this agreement, have access to, and the right to examine and audit, any records of CAP involving transactions related to this agreement during normal business hours upon five (5) days prior written notice.

7.3 CAP has the right to examine and audit any records of the Village regarding the permit collections and transactions related to this agreement upon five (5) days prior written notice.

7.4 The Village may cancel this agreement because of the refusal by CAP to allow access by the Village Manager or designee to any records pertaining to work performed under this agreement.

7.5 Public access to records shall be governed by Chapter 119 and other applicable provisions of the Florida Statutes.

8. Indemnification

8.1 CAP 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, judgments or damages, and statutory fines and penalties (collectively referred to as loss or losses) arising out of, related to, or in any way connected with CAP's performance, errors, acts or omissions under any provision of this agreement including, but not limited to, liabilities arising from contracts between CAP and third parties made pursuant to this agreement, except to the extent the losses are caused by or arise out of any act or omission of the Village, its officers, agents and employees. CAP 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 loss arising out of, related to, or in any way connected with CAP's performance, errors, acts or omissions under this agreement, except to the extent the losses are caused by or arise out of any act or omission of the Village, its officers, agents and employees.

8.2 The Village shall defend, indemnify, and hold harmless CAP, its shareholders, directors, officers, agents, employees and affiliates, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, and statutory fines and penalties (collectively referred to as loss or losses) arising out of, related to, or in any way connected with this agreement, except to the extent the losses are caused by or arise out of any act or omission of CAP, its shareholders, directors, officers, agents, employees and affiliates. The Village shall reimburse CAP for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any claim or investigation and for any losses arising out of, related to, or in any way connected with the Village's performance, errors, acts or omissions under this agreement, except to the extent the losses are caused by or arise out of any act or omission of CAP, its shareholders, directors, officers, agents, employees and affiliates.

8.3 CAP shall defend, indemnify and hold the Village harmless from all claims, including but not limited to claims presented to EEOC, FHRC and MDCEOC, losses, injuries or damages and wages or overtime compensation due its employees in rendering services pursuant to this agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act or any other federal, state, or local law.

8.4 The provisions of this section shall survive termination of this agreement.

9. Insurance

 Village
CAP

9.1. CAP shall maintain, at its sole cost and expense, during the term of the agreement, standard professional liability insurance in the minimum amount of \$1,000,000 per occurrence.

9.2. CAP shall maintain, at its sole cost and expense, during the life of the agreement, commercial general liability, including contractual liability insurance, in the amount of \$1,000,000 per occurrence to protect it from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damage which may arise from any operations under the agreement, whether the operations be by CAP or by anyone directly employed by or contracting with CAP.

9.3. CAP shall maintain, at its sole cost and expense, during the life of the agreement, comprehensive automobile liability insurance in the minimum amount of \$500,000 combined single limit for bodily injury and property damage liability to protect it from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles, whether the use of the vehicle be by CAP or by anyone directly or indirectly employed by CAP.

9.4. CAP shall maintain, at its sole cost and expense, during the life of the agreement, adequate worker's compensation insurance and employer's liability insurance as required by Chapter 440, Florida Statutes.

9.5. CAP shall maintain each of the insurance policies throughout the term of this agreement and any extensions of this agreement.

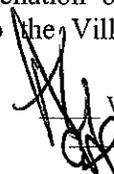
9.6. CAP shall provide the Village with a current copy of each of the above insurance policies, and any renewals.

9.7. The underwriter of the insurance shall be qualified to do business in Florida, be Best rated A-8 or better, and have agents upon whom service of process may be made in the State of Florida.

9.8. Policies shall contain waiver of subrogation against the Village, where applicable, and shall expressly provide that the policy or policies are primary over any other insurance the Village may have. All policies shall contain a "severability of interest" or "cross-liability" clause without obligation for premium payment by the Village.

9.9. All deductibles or self-insured retentions must be declared to and be approved by the Village Manager. The successful Respondent shall be responsible for the payment of any deductible or self-insured retention in the event of any claim.

9.10. The Certificates shall clearly indicate that CAP has obtained insurance of the type, amount, and classification as required and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the Village's

 Village
CAP

representative, and shall include the Village of Biscayne Park as an additional insured.

9.11 CAP shall require its approved consultants and subconsultants, if any, to procure and maintain insurance coverage in the required amounts or alternatively insure the activities provided by any consultants or subconsultants in CAP's own policies. Compliance with the foregoing requirements shall not relieve CAP of its liability and obligations under the agreement.

10. Term

10.1 This agreement shall become effective on the date signed below and shall remain in force for a period of eight months, as a pilot program, unless earlier terminated as provided in Section 11.

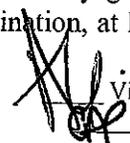
11. Termination

11.1 Without Cause.

The Village may terminate this contract at any time, without cause, upon 45 day's prior written notice. Contractor shall be entitled to payment for services rendered upon the effective date termination but shall not be entitled to future lost profits, consequential or compensatory damages, or other costs or expenses. Upon receipt of written notice of termination, CAP shall not enter into any third party agreements and shall incur only those expenses specifically approved or directed in writing by the Village Manager. Upon written notice of termination, the Village Manager may elect not to use the services of CAP. CAP may terminate this agreement at any time by giving the Village written notice at least 45 calendar days prior to the effective date of termination, or if the reason for termination is non-payment, by giving written notice fifteen (15) calendar days prior to the effective date of termination. In the event of termination or expiration of this agreement, CAP and the Village shall cooperate in good faith in order to effectuate a smooth and harmonious transition from CAP to the Village, or to any other person or entity the Village may designate, and to maintain during the period of transition the same services provided to the Village pursuant to the terms of this agreement. CAP will take all reasonable and necessary actions to transfer all books, records and data of the Village in its possession in an orderly fashion to either the Village or its designee in a hard copy and electronic format. Subsequent to the termination of this agreement, the Village may contract with CAP at a mutually agreed upon amount to perform specified services on an as-needed basis. The Village shall compensate CAP in the event of termination of the contract under 11.1 for all services provided prior to the date of termination and pay all reasonable expenses associated with those services incurred by CAP.

11.2 For Cause.

If, through any cause, CAP shall fail to fulfill in a timely and proper manner his obligations under this Contract, or if CAP shall violate any of the covenants, agreements, or stipulations of this Contract, the Village shall thereupon have the right to terminate this Contract by giving written notice to CAP of such termination and specify the effective date of termination, at least


Village
CAP

15 days prior. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CAP under this Contract shall, at the option of the Village, become its property. CAP shall be entitled to receive just and equitable compensation for any work satisfactorily completed and not yet billed and/or paid to CAP. Notwithstanding the above, CAP shall not be relieved of liability to the Village for damages sustained by the Village by virtue of any breach of the Contract by CAP, and the Village may withhold any payments to CAP for the purpose of set-off until such time as the exact amount of damages due the Village from CAP is determined. CAP may terminate this agreement for non-payment, by giving written notice fifteen (15) calendar days prior to the effective date of termination.

11.3 Right To Withhold.

If work under this Contract is not performed in accordance with the terms hereof, the Village has the right to withhold any payment due to CAP, of any sums as the Village may deem ample to protect it against loss, or to ensure payment of claims arising there from, and, at its option, the Village may apply such sums in such manner as the Village may deem proper to secure itself or to satisfy such claims. The Village will provide CAP with fifteen (15) days prior written notice in the event that it elects to exercise its right to withhold under this Section.

12. Remedies - Termination For Default. Either party may terminate this contract prior to the expiration of the initial term on account of a material breach of this contract by the other party, which has not been cured within three (3) days of the date of receipt of written notice of breach from the party seeking termination. Should Contractor fail to cure within 30 days, the Village may then immediately terminate the contract "for cause." Termination shall be effective as of the end of the notice period in the case of any uncured material breach. Contractor may terminate this contract prior to the expiration of the initial term or any subsequent renewal term upon not less than 60-days prior written notice to the Village in the event that contractor is unable to complete the services identified in section 2 due to causes beyond contractor's control. The Village shall have no liability to CAP for future profits or losses in the event of termination for default. The rights and remedies of the Village provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

13. Entire Agreement; Modification/Amendment

13.1. 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.

13.2 No agent, employee, or other representative of either party is empowered to modify and amend the terms of this agreement, unless executed with the same formality as this document.

 Village
CAP

14. 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.

15. Governing Law. This agreement shall be construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any litigation arising under or related to this agreement shall be in Miami-Dade County, Florida.

16. 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.

17. Notices; Authorized Representatives. Any notices required or permitted by this agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, or by registered or certified mail with postage prepaid, return receipt requested, addressed to the parties at the following addresses:

For the Village:

Village of Biscayne Park
Attention: Ana M. Garcia
Village Manager
640 NE 114th Street
Biscayne Park, Florida 33161
Telephone: (305) 899-8000
Facsimile: (305) 891-7241

For CAP:

Carlos A. Penin, P.E., President
C.A.P. Government, Inc.
8350 NW 52 Terrace
Suite 209
Doral, FL 33166
Phone: (305) 448-1711
Facsimile: (305) 448-1712

Either party shall have the right to change its address for notice purposes by sending written notice of the change of address to the other party in accordance with the provisions hereof.


Village
CAP

18. Independent Contractor

18.1. CAP is, and shall be, in the performance of all work, services and activities under this agreement, an independent contractor and not an employee, agent or servant of the Village. Services provided by CAP shall be by employees of CAP and nothing in this agreement shall create an employment relationship between the Village and any CAP employee. CAP agrees that it is a separate and independent enterprise from the Village.

18.2 CAP shall be solely responsible for all employee insurance benefits, civil service benefits, compensation, including, but not limited to, unpaid minimum wages and overtime, and, or, any status or rights during the course of employment with CAP. Accordingly, the Village shall not be called upon to assume or share any liability for, or direct payment of, any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits under Chapter 440, Florida Statutes, or any other benefits of employment to any CAP personnel performing services, duties and responsibilities under this agreement for the benefit of the Village, or any other liabilities whatsoever. This agreement shall not create any joint employment relationship between CAP and the Village, and the Village will not be liable for any obligation incurred by CAP and, or regarding its employees.

18.3 CAP understands and agrees that CAP shall not represent other clients in matters adverse to the Village, and shall make promptly known any conflicts or potential conflicts. If said conflict(s) cannot be satisfactorily resolved to the Village's satisfaction, the Village reserves the right to suspend and/or terminate the services of CAP and procure services elsewhere. A conflict of interest shall be defined as provided for under the Village's Conflict of Interest Code, and section 2-11.1, Miami-Dade County Code of Ordinances.

18.4 CAP, shall, at its own expense, obtain all necessary permits, pay all licenses, fees and taxes required to comply with all local ordinances, state and federal laws, rules, regulations and professional standards that would apply to this contract.

18.5 CAP, shall, at its own expense, continue with any continuing education requirements for state professional licensing purposes.

19. Staffing

19.1. CAP shall certify that each of its staff persons used to staff the Village engagement has undergone a criminal background investigation. CAP shall ensure that no staff person has been convicted of a felony, crime of moral turpitude or violent crime; that no staff person that has been convicted of a felony or a misdemeanor, which misdemeanor concerns allegations of assault, sexual offender, theft or violence shall be assigned to staff the Village. Failure to do the background screening or failure to provide the background screening information to the Village shall be cause for immediate, for cause, termination of services. The knowing or negligent use of staff convicted of a felony, crime of moral turpitude, or violent crime shall be cause for immediate termination of the contract, without provision for liquidated damages.


Village
CAP

19.2 CAP agrees to perform annual State-wide background checks of its staff pursuant to section 16.2 and shall advise the Village Manager of any instances of concern as identified under section 16.2. Based upon the information provided, the Village Manager, within his discretion, is entitled to request that CAP replace such staff persons for Village engagement staffing purposes.

19.3 The Village Manager may request that CAP, if at any time during the term of this agreement the Village Manager becomes dissatisfied with the performance of any CAP employee or approved subconsultant assigned to provide professional services under this agreement, transfer the employee within two (2) business days of notification by the Village Manager. CAP agrees to act in good faith and to use its best efforts to resolve any problems experienced by the Village, and CAP agrees that if the issue is not resolved, the Village Manager's request for transfer of a CAP staff person shall be complied with.

19.4 CAP shall identify at Exhibit "A", the proposed staff persons to be used to staff the Village engagement of services. CAP may not change the principal person(s) in the engagement without the express permission of the Village. Should staff listed in Exhibit "A" be changed due to circumstances beyond CAP's control (i.e. retirement, resignation) or due to a request from the Village Manager to replace the staff person as provided under this agreement, CAP shall provide relevant information under section 16.3 to the Village Manager as to the replacement staff person.

20. Assignment

20.1 This agreement shall not be assignable by CAP without the prior approval of the Village Manager. The Village Manager shall not unreasonably withhold the assignment of the contract.

20.2 Approved subcontractors shall be subject to each provision of this contract and contractor shall be responsible and indemnify the Village for all subcontractors' acts, errors or omissions.

20.3 CAP shall not assign, transfer or pledge any interest in this contract without the prior written consent of the Village; provided, however, that claims for money by CAP from the Village under this contract may be assigned, transferred or pledged to a bank, trust company, or other financial institution without the Village's approval. Written notice of any assignment, transfer or pledge of funds shall be furnished within 30 days by CAP to the Village.

21. Prohibition Against Contingent Fees CAP warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CAP, 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 CAP, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement.

22. Warranties Of Cap

22.1 CAP warrants and represents that at all times during the term of this agreement it shall maintain in good standing all licenses and certificates required under federal, state and local laws necessary to perform the scope of services specified in this agreement.

22.2. CAP warrants and represents that its employees have received sexual harassment training that it maintains appropriate sexual harassment and non-discrimination policies, and it has implemented procedures for enforcing its sexual harassment and non-discrimination policies.

22.3 CAP warrants and represents that its employees will abide by the conflict of interest and code of ethics ordinances sets forth in Section 2-11.1 of the Village code and Section 2-11.1 of the Miami-Dade County Code, as these codes may be amended from time to time.

22.4 CAP, its approved subcontractors, suppliers and laborers ("subcontractors") are prohibited from placing a lien on the Village's property. CAP shall execute a similar contract with subcontractors, as applicable, confirming that subcontractors are prohibited from placing liens on the Village's property. Further, both contractor and subcontractor warrant not to file or record liens or notices of liens against the Village's property.

22.5 CAP warrants that it: (a) is duly licensed by the State of Florida and Miami-Dade County to provide the services identified in Section 2 of this contract; (b) has not provided a commission, bonus or other benefit or payment to any person to procure this contract other than paying the salaries of employees in the ordinary course of business; (c) has not committed a violation of a public entity crime statute and is not otherwise disqualified by the State of Florida from entering into this Agreement; and (d) no member, officer, or employee of the Village shall or for one year after current tenure, have any interest, direct or indirect, in this contract.

23. Attorneys' Fees

23.1. 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; provided, however, any award of attorneys' fees against the Village shall not exceed \$35,000.00. The Village does not waive sovereign immunity under 768.28, Florida statutes. Neither party shall be liable for prejudgment interest.

23.2 The Village does not waive sovereign immunity for any claim of prejudgment interest and prejudgment interest shall not be awarded against the Village.

24. Waiver Of Jury Trial In the event of any litigation arising out of this agreement, each party waives its right to trial by jury.

24. Time Of The Essence Time shall be of the essence for each and every provision of this agreement.

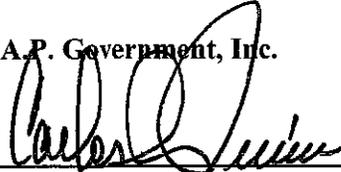
25. Miscellaneous. In the event a court must interpret any word or provision of this agreement, the word or provision shall not be construed against either party by reason of drafting or negotiating this agreement.

IN WITNESS WHEREOF the undersigned parties have executed this agreement on the date indicated above.

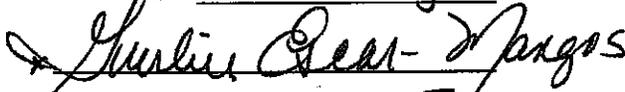
WITNESSES:

C.A.P. Government, Inc.

x 

By: 
Carlos A. Penin, P.E., President

Print Name: DAVID TRINGO



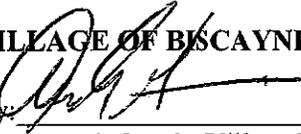
Print Name: GUERLIN ESCAR

Date: 2-17-12

ATTEST:

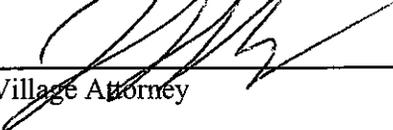

Maria Camara, Village Clerk

VILLAGE OF BISCAYNE PARK

By: 
Ana M. Garcia, Village Manager

Date: 2/17/12

APPROVED AS TO FORM:


Village Attorney