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3 **RESOLUTION NO. 2013-41**
4

5 **A RESOLUTION OF THE VILLAGE COMMISSION**
6 **OF THE VILLAGE OF BISCAYNE PARK, FLORIDA;**
7 **AUTHORIZING THE INTERIM VILLAGE MANAGER**
8 **TO EXECUTE THE AGREEMENT BETWEEN CRAIG**
9 **A. SMITH & ASSOCIATES, INC. AND THE VILLAGE**
10 **OF BISCAYNE PARK FOR PROFESSIONAL**
11 **SERVICES RELATING TO STORMWATER AND**
12 **RAODWAY IMPROVEMENTS; PROVIDING FOR AN**
13 **EFFECTIVE DATE.**
14

15
16 WHEREAS, in the area of 111th street between 9th Avenue and 9th Court and holes and
17 road depressions have been identified and road patching has been performed; and,
18

19 WHEREAS, it was recommended that the underground conditions be investigated and
20 performed by a professional engineer; and,
21

22 WHEREAS, an initial assessment recommended geotechnical services be performed,
23 and five companies were contacted with a request to visit the location and to do a field
24 inspection; and
25

26 WHEREAS, Craig A. Smith & Associates, Inc. (hereinafter referred to as "CAS") was
27 the only company capable and willing to perform the field inspection and provide a
28 preliminary conceptual cost estimate and assessment of the area; and
29

30 WHEREAS, based on their field inspection, CAS recommends immediate attention to
31 the road depression in order to prevent further road settling which includes further investigative
32 evaluation, drainage repair and restoration, roadway construction and all necessary
33 professional services; and
34

35 WHEREAS, the total cost for the investigation evaluation for NE 111th Street and 9th
36 Court from CAS is \$10,633.00, which the Village is able to use available CITT funds; and
37

38 WHEREAS, the fees are under the limits that would require following Chapter 287 of
39 the Florida Statutes concerning the Consultants Competitive Negotiations Act; and
40

41 WHEREAS, consistent with section 2-139 of the Village's Purchasing and Procurement
42 policy, the Village administration requests to waive the competitive bidding procedures due to
43 the urgency and time constraints to make the necessary Stormwater and roadway
44 improvements as identified by the professional engineer.
45

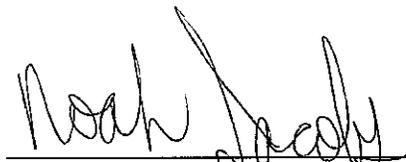
46
47 NOW THEREFORE BE IT RESOLVED BY THE VILLAGE COMMISSION OF THE
48 VILLAGE OF BISCAYNE PARK, FLORIDA:
49

1
2 **Section 1.** The foregoing "Whereas" clauses are hereby ratified and confirmed as
3 being true and correct and hereby made a specific part of this Resolution upon adoption hereof.
4

5 **Section 2.** The Village Commission of the Village of Biscayne Park hereby
6 authorizes the Interim Village Manager to execute an agreement between Craig A. Smith &
7 Associates, Inc. and the Village of Biscayne Park for Professional Services, upon approval of
8 the Agreement by the Village attorney relating to Stormwater and roadway improvements.
9 The agreement, in substantial form, is attached and incorporated by reference into this
10 resolution exhibit 1.

11
12 **Section 3.** This Resolution shall become effective upon adoption.
13

14
15
16 PASSED AND ADOPTED this 11th day of September, 2013.
17

18
19 
20
21 _____
22 Noah Jacobs, Mayor

23
24 Attest:

25
26 
27 _____
28 Maria C. Camara, Village Clerk

29
30 Approved as to form:

31
32 
33 _____
34 Village Attorney
35
36

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

Mayor Jacobs: Yes
Vice Mayor Anderson: Yes
Commissioner Cooper: Yes
Commissioner Ross: Yes
Commissioner Watts: Yes

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT made and entered into this 8th day of October, 2013 by and between THE VILLAGE OF BISCAYNE PARK, of the State of Florida, (hereinafter referred to as "VILLAGE") and CRAIG A. SMITH & ASSOCIATES, INC., a Florida corporation (hereinafter referred to as 'CONSULTANT').

WITNESSETH

WHEREAS, VILLAGE is a political entity of the State of Florida, having a responsibility to provide certain services to benefit the residents of VILLAGE; and

WHEREAS, CONSULTANT is in the business of providing professional engineering, planning, designing, permitting, construction management & observation, surveying & mapping, grant assistance, utility locating and other consulting services in the State of Florida; and

WHEREAS, VILLAGE desires to engage a professional consulting firm to provide and furnish VILLAGE with all labor, services and supervision as necessary to provide technical expertise, guidance, investigation, study, design, construction, engineering, surveying, mapping and related services pertinent to projects for the VILLAGE, as required by the VILLAGE; and

WHEREAS, VILLAGE shall use the services of the CONSULTANT under the limits as outlined in the Florida Consultants' Competitive Negotiation Act of 1973 (Section 287.055, Florida Statutes) as amended; and

WHEREAS, CONSULTANT may be required to investigate, analyze, evaluate, report, coordinate, prepare plans, specifications and contract documents, for any of the aforementioned disciplines, related matter, or any other infrastructure project assignments within the limits of CCNA upon request of VILLAGE.

NOW THEREFORE in consideration of the premises, and in consideration of the mutual conditions, covenants, and obligations hereafter expressed, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** THAT the foregoing recitals are true and correct and constitute a material inducement to the parties to enter into this Agreement. Said recitals are hereby ratified and made a part of this Agreement.
2. **Specific Provisions.** THAT the parties hereby agree to the following specific provisions:
 - a. **Authorization of Work.**
 - i. VILLAGE shall retain CONSULTANT to represent the Village on matters affecting the Village.
 - ii. VILLAGE shall consult with the CONSULTANT from time-to-time regarding technical issues referencing the Village's infrastructure or with respect to any technical issues.

- iii. All work to be performed by CONSULTANT under this Agreement shall be authorized in writing by VILLAGE, by and through the Mayor or by the Mayor's designee, as such designee is appointed in writing by VILLAGE.
- iv. Authorizations shall contain a description of the work to be undertaken, a budget amount of the fee to be paid, and a time schedule. Budget amounts shall not be exceeded unless prior written approval and an increase in funds available are provided by VILLAGE. In the event VILLAGE does not approve a revised budget and additional funding, and the need for such action is not shown to be the fault of CONSULTANT, then the authorization shall be terminated and CONSULTANT shall be paid in full for all work performed to that point.
- v. The form and format of the budget described in sub-paragraph 2.a.ii hereinabove shall be in sufficient details so as to identify the various elements of cost and shall be subject to the approval of VILLAGE.
- vi. Authorizations may contain additional provisions specific to the authorized work for the purpose of expanding upon certain aspects of this Agreement pertinent to the work to be undertaken. Such supplemental instruction or provision shall not be construed as a modification to this Agreement.

b. Consulting Services.

CONSULTANT agrees to and shall provide consulting, review, and advisory services as requested by VILLAGE, which may include, but may not be limited to professional engineering, registered surveying and mapping or architectural services. No minimum amount of professional services, compensation, or exclusivity will be assured to CONSULTANT.

c. Compensation; Payment.

- i. **Compensation:** For work performed on an hourly basis, compensation shall be based upon the rate schedule which is attached hereto as Exhibit "A" and incorporated herein by reference and shall be updated yearly automatically based on industry increases. For projects where the scope of services can be clearly defined in advance of the work effort, compensation may be based on an agreed lump sum amount provided in a letter proposal to be executed by the VILLAGE as the Notice to Proceed. Unforeseen extraordinary expenses may be eligible for reimbursement if such reimbursement is requested in writing by CONSULTANT and approved in writing by VILLAGE, prior to the expenditure, together with an explanation of the nature and necessity of the expense, as well as the reason the expense was not reasonably foreseeable so as to be included in the initial authorization. This sub-paragraph shall not be deemed to authorize extension of deadlines otherwise applicable to a project.
- ii. **Payment:** CONSULTANT shall submit monthly invoices to VILLAGE. Upon approval by VILLAGE, VILLAGE agrees to compensate

CONSULTANT for all services authorized and performed in accordance with approved Work Authorizations subject to the upper limit or lump sum fee set out in each Work Authorization. VILLAGE shall pay CONSULTANT within thirty (30) days of receipt of complete invoices. VILLAGE reserves the right to ratably withhold amounts in the event of the nonperformance of all or part of CONSULTANT'S obligations. CONSULTANT shall, without additional compensation, correct and revise any errors, omissions, or other deficiencies in his work product, services, or materials arising from the error or omission or negligent act of CONSULTANT.

iii. **Increase of Scope:** In the event the VILLAGE directs the CONSULTANT to perform work not contained in or additional to described in 2.a.iv. herein, the CONSULTANT shall be compensated for the additional work performed after prior approval by the VILLAGE.

d. **Term.**

This Agreement shall be for a period of six months and either party may terminate at any time based on a minimum of 30 days notice. Termination as outlined below.

e. **Termination.**

i. **Termination at Will:** This Agreement may be terminated by VILLAGE at any time without cause by VILLAGE giving written notice to CONSULTANT not less than thirty (30) days prior to the date of termination; provided, that this provision shall not be construed to relieve either party from its rights or obligations of this Agreement through the date of the actual termination. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery.

ii. **Termination for Cause:** This Agreement may be terminated by either party for cause by VILLAGE or CONSULTANT giving written notice to the other party not less than ten (10) days prior to the date of termination; provided, that his provision shall not be construed to relieve either party from its rights or obligations of this Agreement through the date of the actual termination. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery.

f. **Project Management.**

The Project Manager for CONSULTANT shall be:
Gene R. Schriener, President

The Project Manager for VILLAGE shall be:
Candido Sosa-Cruz, Assistant to Village Manager/Public Services Director

g. Notices.

All notices to the parties under this Agreement shall be in writing and sent certified mail to:

- i. **VILLAGE:** Village of Biscayne Park, Attn: Candido Sosa-Cruz, Village Hall, 640 NE 114th Street, Biscayne Park, FL 33161
- ii. **CONSULTANT:** Craig A. Smith & Associates, Inc., Attention: Gene R. Schriner, 7777 Glades Road, Suite 410, Boca Raton, FL 33434

h. Insurance.

- i. Throughout the Term of this Agreement, including all renewals, CONSULTANT shall maintain such insurance as will fully protect both CONSULTANT and VILLAGE from any and all claims under any Workers Compensation Act or Employers Liability Laws, and from any and all other claims of whatsoever kind or nature to the damage or property, or for personal injury, including death, made by anyone whomsoever, that may arise from operations carried on under this Agreement, either by CONSULTANT, any subcontractor, or by anyone directly or indirectly engaged or employed by either of them.
- ii. In no event shall the insurance coverage required by the terms of this Agreement be less than the amounts described below. Should either an insurance requirement or the amount of insurance not be stated, the amount of insurance required by the terms of this Agreement shall in no event be less than:
 1. **Workers' Compensation:** (unless exempt) with Employers' Liability with a limit of not less than \$500,000.00 each accident, \$500,000.00 each employee, \$500,000.00 policy limit for disease; and
 2. **Commercial General Liability:** (CGL) insurance with a limit of not less than \$500,000.00 each occurrence, combined single limit for bodily injury and property damage including coverage for contractual liability, personal injury, broad form property damage, products and completed operations; CGL insurance shall be written on an occurrence form and shall include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage and property damage resulting from explosion, collapse or underground (x,c,u) exposures, personal injury and advertising injury; fire damage liability shall be included at \$100,000.00 (if a general aggregate limit, it shall apply to this project in the amount of \$1,000,000.00.

Products and completed operations aggregate shall be \$1,000,000.00); and

3. **Comprehensive or Business Automobile Liability Insurance** with not less than \$1,000,000.00 each occurrence combined single limit for bodily injury and property damage, including coverage for owned, hire and non-owned vehicles as applicable;
 4. **Professional Liability Insurance**, which shall be maintained during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement. In the event that CONSULTANT goes out of business during the Term of this Agreement or the three (3) year period following termination of this Agreement, CONSULTANT shall purchase Extended Reporting Coverage for claims arising out of CONSULTANT'S negligent acts, errors, or omissions, during the Term of the Professional Liability Policy. CONSULTANT and its officers, employees and/or agents will provide VILLAGE with a Certificate of Insurance evidencing professional liability insurance with limits of not less than \$1,000,000.00 aggregate with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.
- iii. The CONSULTANT shall furnish VILLAGE with Certificates of Insurance, which are to be signed by a person authorized by that insurer to bind coverage on its behalf. VILLAGE is to be specifically included as an additional insured or loss payee on all policies except Workers' Compensation. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be issued 30 days prior to said expiration date. The policy shall provide a 30 day notification clause in the event of cancellation or modification to the policy. All certificates of insurance must be on file with and approved by VILLAGE before commencement of any work activities.
- i. **General Provisions.** THAT the parties hereby agree to the following general provisions:
- a. **Representations of the Consultant.** CONSULTANT represents that it has sufficient manpower and technical expertise to perform the services contemplated by this Agreement in a timely and professional manner consistent with the standards of the industry in which CONSULTANT operates. CONSULTANT warrants that its services are to be performed within the limits prescribed by VILLAGE, consistent with the generally accepted standards and practices of CONSULTANT'S profession.
 - b. **Representations of VILLAGE.** VILLAGE represents that it is duly organized and existing as a political subdivision of the State of Florida.

Further VILLAGE has the full power and authority to enter into the transactions contemplated by this Agreement and has the ownership and/or control over the property which is the subject of this Agreement or which shall be serviced thereby.

c. Personal Nature of Agreement. The parties acknowledge that VILLAGE places great reliance and emphasis upon the knowledge, expertise and personal abilities of CONSULTANT. Accordingly, this Agreement is personal and CONSULTANT shall not assign or delegate any rights or duties hereunder without the specific written consent of VILLAGE. In the event CONSULTANT requires the services of any professional associate in connection with the work to be performed under this Agreement, CONSULTANT shall obtain the written approval of VILLAGE'S Manager prior to engaging such professional associate.

d. Independent Contractor.

It is specifically agreed that CONSULTANT is deemed to be an independent contractor and not a servant, employee, joint adventurer or partner of VILLAGE. It is further agreed that no agent, employee, or servant of CONSULTANT shall be deemed to be the agent, employee or servant of VILLAGE. None of the benefits, if any, provided by VILLAGE to its employees, including but not limited to, compensation insurance and unemployment insurance, are available from VILLAGE to the employees, agents, or servants of CONSULTANT. CONSULTANT will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, and subcontractors during the performance of this Agreement. CONSULTANT agrees to comply with all Federal, State and municipal laws, rules and regulations that are now or may in the future become applicable to CONSULTANT, CONSULTANT'S business, equipment, or personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations. VILLAGE will not be held responsible for the collection of or the payment of taxes or contributions of any nature on behalf of CONSULTANT.

e. Acceptance of Work Product, Payment and Warranty. Upon receipt of a periodic work product, or notice that work has progressed to a point of payment in accordance with an approved proposal/work order or for hourly work in accordance with Exhibit "A" attached together with an invoice sufficiently itemized to permit audit, VILLAGE will diligently review same. When it finds the work acceptable under this Agreement the installment payment, found to be due to CONSULTANT, will be paid to CONSULTANT within thirty (30) days after the date of receipt of the invoice either hourly time and materials for that billing period or percentage of completion for lump sum projects. CONSULTANT warrants that the data utilized by CONSULTANT (other than as provided by VILLAGE) is from a source, and collected using methodologies, which are generally recognized in

CONSULTANT'S industry or profession to be a reliable basis and foundation for CONSULTANT'S work product. CONSULTANT shall notify VILLAGE in writing should it appear, in CONSULTANT'S professional judgment that the date or information provided by VILLAGE for us in CONSULTANT'S work product is incomplete, defective or unreliable. CONSULTANT guarantees to amend, revise or correct to the satisfaction of VILLAGE any error appearing in the work as a result of CONSULTANT'S failure to comply with the warranties and representations contained herein. Neither inspection nor payment, including final payment by VILLAGE shall relieve CONSULTANT from its obligations to do and complete the work product in accordance with this Agreement. If VILLAGE deems it inexpedient to require CONSULTANT to correct deficient or defective work, an equitable deduction from the contract price shall be made therefore or in the alternative, VILLAGE may seek damages.

f. Public Records.

All documents, papers, letters, or other materials made by, received by, or maintained by CONSULTANT in connection with this Agreement shall be deemed to be public records under Chapter 119, Florida Statutes. CONSULTANT shall allow public access to all such documents, papers, letters, or other materials in accordance with the provisions of Chapter 119, Florida Statutes. Should CONSULTANT assert any exemptions to the requirements of Chapter 119 and related statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon CONSULTANT. Failure by CONSULTANT to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by VILLAGE.

CONSULTANT understands, acknowledges, and agrees that the CONSULTANT shall, pursuant to Section 119.0701, *Florida Statutes*, as amended from time to time, do the following:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by VILLAGE in order to perform the same service being rendered within this Agreement.
- (b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided within Chapter 199, *Florida Statutes*, as amended from time to time, or as otherwise provided for by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Meet all requirements for retaining public records and transfer, at no cost, to VILLAGE all public records in possession of CONSULTANT upon termination of this Agreement. Further,

to writing, authorized, and signed by the authorized VILLAGE representatives.

d. Attorney's Fees.

In the event of any litigation to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs which are directly attributed to such litigations both at the trial and appellate levels.

e. Waiver.

The indulgence of either party with regard to any breach or failure to perform any provision of this Agreement shall not be deemed to constitute a waiver of the provisions or any portion of this Agreement, either at the time the breach or failure occurs or at any of CONSULTANT'S work product, services, or materials shall not be construed to operate as a waiver of any of VILLAGE'S rights under this Agreement, or of any cause of action VILLAGE may have arising out of the performance of this Agreement.

f. Force Majeure.

Notwithstanding any provisions of this Agreement to the contrary, the parties shall not be held liable if failure or delay in the performance of this Agreement arises from fires, floods, strikes, embargos, acts of the public enemy, unusually severe weather, out break of war, restraint of government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. This provision shall not apply if the "Scope of Work" of this Agreement specifies that performance by CONSULTANT is specifically required during the occurrence of any of the events herein mentioned.

g. Headings.

All headings are for clarification only and are not to be used in any judicial construction of this Agreement or any paragraph.

h. Binding Nature of Agreement.

This Agreement shall be binding upon the successors and assigns of the parties hereto.

i. Law; Venue.

This Agreement shall is being executed in Palm Beach County, Florida and shall be governed in accordance with the laws of the State of Florida. Palm Beach County, Florida, shall be the venue of any action thereon.

j. Special Provisions. None

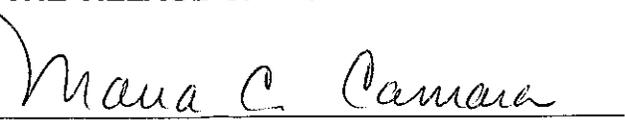
IN WITNESS WHEREOF, the parties hereto have signed and sealed this Agreement on the day and date first written above.

THE VILLAGE OF BISCAYNE PARK

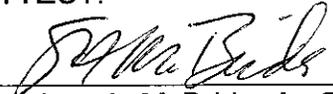
ATTEST:


Candido Jose Cruz

By:

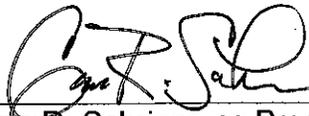


ATTEST:


Stephen A. McBride, As Secretary

CRAIG A. SMITH & ASSOCIATES, INC.

By:

 PRESIDENT, P.E.
Gene R. Schriener, as President and
Authorized Agent

(CORPORATE SEAL)

EXHIBIT "A"

VILLAGE OF BISCAYNE PARK

Hourly Rate Schedule
Craig A. Smith & Associates, Inc.

Principals	\$210.00
Court Testimony	\$200.00
Vice President.....	\$175.00
Senior Supervising Engineer	\$168.00
Supervising Engineer.....	\$151.00
Project Manager	\$130.00
Project Engineer	\$105.00
Senior Engineering Technician.....	\$112.00
Engineering Technician	\$86.00
CADD Technician	\$81.00
Senior Field Representative	\$112.00
Field Representative.....	\$90.00
Senior Professional Surveyor & Mapper	\$124.00
Professional Surveyor and Mapper	\$108.00
Survey Coordination Manager.....	\$90.00
Survey Technician	\$86.00
Clerical.....	\$55.00
Survey Crew, Vehicle, Standard Equipment	\$145.00
Survey Crew, Vehicle, GPS	\$180.00
Survey Crew - overtime	\$160.00
Survey Crew - pile staking.....	\$180.00

These rates are in effect for services rendered commencing March 1, 2013 .

1. Hourly rates are effective for calendar year 2013 and are subject to annual Adjustment.
2. Other direct costs shall be invoiced as a direct expense times ten percent (10%). Other direct costs include, but are not limited to, travel, lower tier sub-contractors, shipping, reproduction services and equipment.