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3 **RESOLUTION NO. 2011-43**  
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5 **A RESOLUTION OF THE VILLAGE COMMISSION**  
6 **OF THE VILLAGE OF BISCAYNE PARK, FLORIDA**  
7 **RELATING TO CONTRACTS; AUTHORIZING THE**  
8 **VILLAGE MANAGER TO EXECUTE THE**  
9 **CONTRACT FOR PROFESSIONAL SUPPORT**  
10 **SERVICES TO CHARLES A. SMITH, JR. AS FINANCE**  
11 **DIRECTOR FOR THE VILLAGE OF BISCAYNE**  
12 **PARK; PROVIDING FOR AN EFFECTIVE DATE.**  
13

14 WHEREAS, in May 2011, the position of Finance Director became open and was  
15 appropriately posted to be filled; and,  
16

17 WHEREAS, after reviewing resumes submitted and conducting interviews, Charles A.  
18 Smith, Jr. was selected to fill the position of Finance Director having the knowledge and  
19 abilities to perform the specialized services of the accounting and budgeting processes of  
20 municipalities and government accounting standards, and is highly trained and knowledgeable  
21 of the responsibilities of a Finance Director for a Florida municipal corporation; and,  
22

23 WHEREAS, Charles A. Smith, Jr. brings to the Village twenty five (25) plus years in  
24 public and private sector including municipal experience as the Budget Manager for the  
25 Village of Wellington, the Financial Operations Manager for the City of Plantation and a  
26 Senior Budget Analyst for the Broward County School Board; and  
27

28 WHEREAS, the Village desires to retain the services of Charles A. Smith, Jr. through a  
29 professional services contract for the annual price of \$60,000, to encompass all services  
30 required, to be paid on a bi-weekly basis of \$2,307.69, commencing October 1, 2011.  
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33 NOW THEREFORE BE IT RESOLVED BY THE VILLAGE COMMISSION OF THE  
34 VILLAGE OF BISCAYNE PARK, FLORIDA:  
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36 **Section 1.** The foregoing "Whereas" clauses are hereby ratified and confirmed as  
37 being true and correct and hereby made a specific part of this Resolution upon adoption hereof.  
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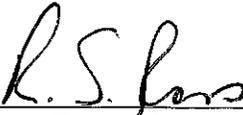
39 **Section 2.** The Village Manager is authorized to execute the contract for  
40 professional support services with Charles A. Smith, Jr. for the position of Finance Director.  
41 The agreement, in substantial form, is attached and incorporated by reference into this  
42 resolution as exhibit 1.  
43

44 **Section 3.** This Resolution shall become effective upon adoption.  
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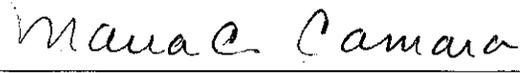
46 PASSED AND ADOPTED this 20<sup>th</sup> day of September, 2011.  
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**The foregoing resolution upon being  
put to a vote, the vote was as follows:**

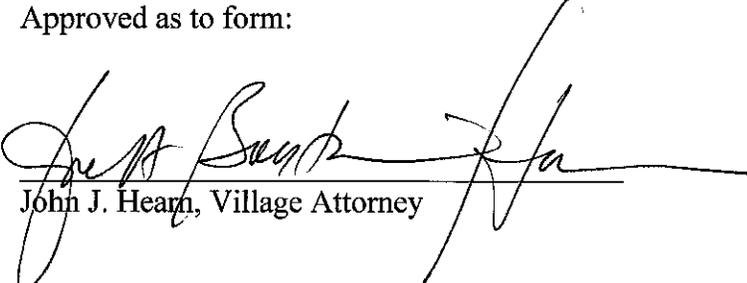
Mayor Ross: Yes  
Vice Mayor Anderson: Yes  
Commissioner Bernard: Yes  
Commission Childress: Yes  
Commissioner Cooper: No

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5 \_\_\_\_\_  
6 Roxanna Ross, Mayor

7 Attest:

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11 \_\_\_\_\_  
12 Maria C. Camara, Village Clerk

13  
14 Approved as to form:

15  
16   
17 \_\_\_\_\_  
18 John J. Hearn, Village Attorney  
19  
20

**VILLAGE OF BISCAYNE PARK CONTRACT FOR**  
**PROFESSIONAL SUPPORT SERVICES**

**THIS CONTRACT** is made and entered into as of the 1<sup>st</sup> day of October, 2011 by and between the Village of Biscayne Park (Village), and Charles A. Smith, Jr. (Consultant)..

**WHEREAS**, the Village desires to engage and retain the services of the Consultant to perform the work described in this contract and the Consultant desires to accept the engagement; and,

**WHEREAS**, Consultant maintains specialized services and knowledge of the accounting and book keeping processes of municipalities and government accounting standards and is highly trained and knowledgeable of the responsibilities of a Finance Director for a Florida municipal corporation; and,

**WHEREAS**, due to Consultants unique skills, knowledge and experience, and the unavailability of a comparable Consultant in the market place despite efforts to discover same, the Consultant, with his specialized skills and knowledge has been selected as a Contract Employee; and,

**WHEREAS**, Consultant is a former applicant for the Finance Director position who had kept in contact with the Village and applied for the position; and,

**WHEREAS**, Consultant brings to the team 25 plus years in the Public and Private sector including Municipal experience as the Budget Manager for the Village of Wellington, and the financial operations Manager for the City of Plantation; and,

**WHEREAS**, Consultant was the VP of Financial operations for Smith-Johnson Realty and served as a Senior Budget analyst for the Broward County School Board.; and,

**WHEREAS**, Consultant is to provide services to assist the Village in creating, drafting, and modifying the Village's 2011-2012 budget and future budgets, future financial audits, and updates/modifications needed to the 2009-2010 audit.

**WHEREAS**, the Village desires to contract with, and Consultant has the knowledge and expertise to provide quality services to the Village and as the original contract with Consultant expired, the Village desires to execute a new contract with Consultant for very specific tasks, which tasks are based upon the specific needs of the agency, and which Consultant has specialized knowledge of the Village's needs, processes and concerns; and,

**WHEREAS**, the Village desires to contract for Consultant's independent contractor services.



**NOW THEREFORE**, in consideration of the sum of \$10.00, the mutual promises and covenants contained in this contract, and for other good and valuable consideration, the receipt and legal sufficiency of which is acknowledged by both parties, the parties agree as follows:

**I. WHEREAS CLAUSES.** The above whereas clauses are incorporated and made a part of this contract.

**II. PURPOSE.** The purpose of this contract is for Consultant to provide the Village with finance director services, the full scope of services to be listed under Section III, below.

**III. SCOPE OF SERVICES.** The Consultant hereby agrees to provide consulting services to help the Village with its needs for qualified general accounting, reconciliation, analysis and accounting staff services

**IV. TERM OF AGREEMENT.** The Consultant shall provide services specified in section III for a one year period, with two automatic one year renewal periods.

**V. PRICE.** The Consultant shall spend the time needed to provide all services delineated herein for the annual price of \$60,000.00, to encompass all services, to be paid on a weekly basis of 2,307.69. It is anticipated that the Consultant shall work a minimum average of 40 hours a week at Village Hall, and he will be required to attend all regularly scheduled commission meetings, plus any other special commission meeting or workshops where his presence will be required as the Finance Director.

**VI. TERMINATION – GENERALLY.** The Village may terminate this agreement at any time by giving the Consultant 30 calendar days prior written notice and paying the Consultant for all time and expenses incurred up until that point. If the Village discovers a problem with the Consultant's services, the Village shall immediately provide notice to the Consultant and list all deficiencies in the notice. The Consultant shall be provided seven calendar days to correct the deficiencies or problems listed in the notice. If the Consultant does not correct the problem to the satisfaction of the Village within the seven calendar days, the Village may elect to immediately terminate the agreement. The Village will be required to pay the Consultant for all time and expenses as provided for under Section V, incurred up to date of termination. The Village Manager shall make the final decision on behalf of the Village as to Consultant's compliance with terms of contract, quality of services and termination.

The Village shall have no liability to the Consultant 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.

Consultant is to provide 60 days prior written notice of intent to terminate this agreement. The Village will be required to pay the Consultant for all time and expenses as provided for under Section V, incurred up to date of termination.

  
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Consultant  
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Village

**VII. CHANGE ORDERS.** The Village may request changes in the Scope of Services of this Consulting Services Agreement. Such changes, including any increase or decrease in the amount of the Consultant's compensation, must be in writing and authorized by the Village Manger, provided all changes and services remain under \$5,000. Any changes over the \$5,000 threshold require approval of the Village Commission.

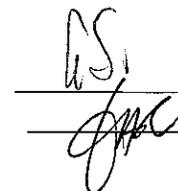
**VIII. TRANSFER AND ASSIGNMENT.** None of the work or services under this contract shall be subcontracted unless the Consultant obtains prior written consent from the Village. Approved subconsultants shall be subject to each provision of this contract and Consultant shall be responsible and indemnify the Village for all subconsultant's acts, errors or omissions.

The Consultant 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 the Consultant 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 10-days by the Consultant to the Village.

**IX. DOCUMENT RETENTION.** The Consultant shall provide one hard copy of all draft and final documents produced to the Village. All documents, including work notes, memorandum and all work papers must be retained for three years from the date of completion of the services. All books and records maintained for the Village, together with all supporting documents, shall remain the property of the Village, and shall be returned to the Village after they have served their purpose with the service, but in any event upon the termination of the contract. NO original documents or data of the Village shall be removed from the Village's premises by the Finance Director.

**X. EQUAL EMPLOYMENT OPPORTUNITY.** The Consultant agrees to comply with the provisions of Equal Employment Opportunity Act, (Executive Order 11246), and ensures that all employees or applicants for employment are not discriminated against because of their race, color, religion, sex, national origin or handicap status. The Consultant agrees to certify compliance with all applicable Equal Employment Opportunity regulations and employment practices.

**XI. SOVEREIGN IMMUNITY AND ATTORNEY'S FEES.** The Village does not waive sovereign immunity for any claim for breach of contract or for an award of prejudgment interest; provided, however, that in any action arising out of or to enforce this contract, the prevailing party shall be entitled to its reasonable attorney's fees and costs. The Village and the Consultant knowingly, irrevocably voluntarily and intentionally waive any right either may have to a trial by jury in State or Federal Court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon this agreement and scope of services herein.

  
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Consultant  
Village

**XII. JURISDICTION AND VENUE.** For the purposes of this contract, Florida law shall govern the terms of this contract. Venue shall be in Miami-Dade County, Florida.

**XIII. INSURANCE AND INDEMNIFICATION.**

(A) The Village shall not be held liable or responsible for any claims which may result from acts, errors or omissions of the Consultant or its subconsultants. In reviewing, approving or rejecting any submissions or acts of the Consultant, the Village in no way assumes responsibility or liability for the acts, errors or omissions of the Consultant or subconsultants.

(B) Each party shall be responsible for its own negligence. Each party shall defend, hold harmless and indemnify the other party for any tort, statutory liability, or professional liability demand, claim, judgment, settlement or expense resulting from, and to the extent of, its own liability. This provision shall survive the termination of this Agreement.

(C) The Consultant shall not commence work under this contract until he or the Village, through the Florida League of Cities, has obtained all insurance required by the Village. The Consultant shall defend, indemnify and hold the Village harmless from any and all claims, liability, losses, expenses and causes of action arising solely out of a negligent act, error, or omission or misconduct of the Consultant, or the Consultant's subconsultants, suppliers and laborers incident to the performance of the Consultant's services under this contract. The Consultant shall pay all claims, losses, fines, penalties, costs and expenses of any nature whatsoever resulting from its intentional misconduct or negligence.

(D) The Consultant shall maintain during the term of this contract the following insurance:

1. Consultant shall be sure to obtain Automobile liability insurance with broad form endorsement, severability of interest with cross liability provision, and personal injury and property damage liability with limits of \$500,000.00 combined single limit per occurrence for bodily injury and property damage. The policy or policies shall name the Village as an additional insured and shall reflect the hold harmless provision contained herein.

2. The Consultant is to maintain professional liability insurance with limits of \$2,000,000 combined single limit per occurrence. The policy or policies shall name the Village as an additional insured and shall reflect the hold harmless provision contained herein.

3. The 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 that the Village may have. The Village reserves the right to request a copy of the required policies for review. All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the Village.

4. All of the insurance is to be placed with Best rated A-8 or better insurance companies qualified to do business under the laws of the State of Florida.

  
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Consultant  
Village

5. The Consultant shall furnish certificates of insurance to the Village prior to the commencement of operations. The certificates shall clearly indicate that the Consultant has obtained insurance in the type, amount, and classification as required for strict compliance with this section and that no reduction in limits by endorsement during the policy term, or cancellation of this insurance shall be effective without 30 days prior written notice to the Village.

6. Compliance with the foregoing requirements shall not relieve the Consultant of its liability and obligations under this contract.

7. Workers' compensation insurance in compliance with Chapter 440, Florida Statutes, as presently written or hereafter amended, if applicable. The Village shall not provide worker's compensation, comprehensive liability, or any other form of coverage, other than professional liability insurance provided by Florida League of Cities. Consultant shall look to its own insurance for protection from liability and for coverage for death, bodily injury and personal injury.

**XIV. COMPLIANCE WITH LAWS.** The Consultant shall comply with all federal and state laws, and provide services in a competent and professional manner. All financial reports prepared by the Consultant shall be signed by a qualified member of the Consultant's firm, if applicable, and such signature shall be construed only as a certification of the accuracy of the report according to the best of his or her knowledge and belief, based upon information and data furnished by the Village, which is readily available to the Consultant. Consultant shall not assume the role of an employee or of management nor will they make any management decisions concerning the financial statements. Thus it may not consummate transactions, maintain custody of any assets or liabilities or exercise any authority on behalf of the Village.

**XV. INDEPENDENT CONTRACTOR.**

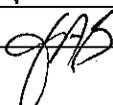
(1) Consultant is an independent contractor and as such shall be responsible for all taxes and related obligations in connection with this underlying contract. The Consultant affirms to the Village that he is not debarred from providing services by the Village or the State of Florida.

(2) Furthermore, Consultant affirmatively is required to provide the Village with 30 day written notice of any change to the Consultants status regarding debarment.

(3) Consultant shall promptly notify the Village Manager and Village Council concerning any operational/financial irregularities that may surface in the performance of his routine services.

(4) Consultant is to furnish services as an independent contractor to the Village and nothing in this contract shall create any association, partnership or joint venture between the parties, or any employer-employee relationships.

(5) As an independent contractor Consultant shall assist the Village in implementing municipal finance requirements. Consultant shall not have the power to bind the Village to any contract. Consultant shall have the power to determine the amount of time necessary to fully

  
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Consultant  
Village

perform under this contract. Consultant may provide services to other clients so long as Consultant fully performs under this contract and representation of other clients does not create a conflict of interest.

(6) The Consultant is an independent contractor under this Agreement and any project agreements and nothing in this Agreement shall create any association, partnership, or joint venture between the parties, or any employer-employee relationship. Personal services provided by the Consultant shall be by employees of the Consultant and subject to supervision by the Consultant, and not as officers, employees, or agents of the village, personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies, and other similar administrative procedures applicable to services rendered under this Agreement or any project agreements shall be those of the Consultant.

**XVI. SEVERABILITY.** Should any section or any part of any section of this contract be rendered void, invalid or unenforceable by any court of law, for any reason, the determination shall not render void, invalid or unenforceable any other section or part of any section of this contract.

**XVII. NOTICES.** All notices given or required under this contract shall be deemed sufficient if sent by certified mail, return receipt requested, to the addresses of the Consultant and to the Village specified in this contract, unless either party shall specify to the other party a different address for the giving of the notices.

**XVIII. CONTRACTING OFFICER REPRESENTATION.** For the purposes of this contract, the contracting officers are as follows:

To the Village:           The Village of Biscayne Park  
640 NE 114<sup>th</sup> Street  
Biscayne Park, FL 33161

To Consultant:           Charles A. Smith, Jr.  
9637 Sugar Pine Court  
Davie, Florida 33328

**XIX. ENTIRE CONTRACT.** The contract, when signed by all of the parties, constitutes the full and complete understanding and contract of all parties and may not be in any manner interpreted or fulfilled in contradiction of its express terms. This contract and the incorporated attachments constitute the entire understanding between the parties and integrates by its terms all previous contracts or understandings, oral or written, between the parties. In the event of any conflict, the terms of this contract will govern over the provisions of any incorporated documents. This Agreement may be signed in two or more counterparts, each of which constitutes the agreement of the parties and each of which will be treated as an original.

  
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Consultant  
Village

**XX. MISCELLANEOUS PROVISION.** In the event a court must interpret any word or provision of this contract, the word or provision shall not be construed against either party by reason of drafting or negotiating this contract.

**XXI. ATTORNEY'S FEES.** In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred including reasonable attorney's fees, the fees and expenses of any paralegals, law clerks and legal assistants and costs for services rendered in connection with any enforcement of this Agreement, including appellate proceedings and post judgment proceedings. Neither party shall be responsible for pre-judgment interest.

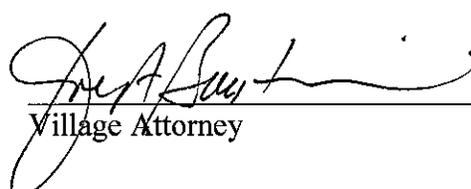
**IN WITNESS WHEREOF** the parties have executed this contract on the date indicated above.

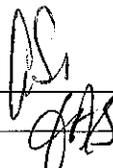
**WITNESSED:**

Mana C. Camara By:   
Charles A. Smith, Jr.  
Consultant

Mana C. Camara By:   
Ana Garcia,  
Village Manager

**APPROVED AS TO FORM:**

  
Village Attorney

 Consultant  
Village