

## AGREEMENT

**THIS AGREEMENT** is made and entered into as of October 25, 2016, by and between the **NORTH MIAMI COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic (the "CRA") having an address at 776 N.E. 125<sup>th</sup> Street, North Miami, Florida 33161, and **KEITH AND SCHNARS, P.A.**, a Florida corporation (the "Consultant") having an address at 6500 North Andrews Avenue, Fort Lauderdale, Florida 33309.

## RECITALS

1. The CRA desires to engage the Consultant for provision of the services as set forth in the Scope of Work (as defined below), subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties do hereby agree as follows:

1. **General Intent.** The intent of this Agreement is to set forth the rights and obligations of the parties with respect to the provision by Consultant to the CRA of professional services for the Conceptual Design Masterplan for the Proposed NW 7<sup>th</sup> Avenue Chinatown Cultural Arts and Innovation District as set forth in that Scope of Services and Fee Schedule dated September 26, 2016 attached hereto as Exhibit "A" and by this reference made a part hereof (the "Proposal"). The parties acknowledge and agree that the Proposal contains certain terms and conditions that are incorporated into this Agreement; provided, however in the event there is any conflict between the terms and conditions of this Agreement and the Proposal, the terms and conditions of this Agreement shall control. The proposal contains a Scope of Work for the Consultant, which for purposes of this Agreement shall mean and be referred to as the "Scope of Work" for purposes of this Agreement.

### **2. Services and Responsibilities**

2.1 Consultant hereby agrees to perform the services described and for the fee set forth in the Proposal. The Consultant shall be solely responsible for the satisfactory and complete execution of the Scope Work. The Scope of Work shall generally be performed at the direction of the CRA and completed with time frames as agreed upon by the parties from time to time

2.2 Consultant hereby represents and warrants to the CRA that it possesses (a) the skills necessary to perform the Scope of Work as required by this Agreement and (b) all necessary licenses required by the State of Florida, Miami-Dade County and the City of North Miami to perform the Scope of Work. The Consultant agrees that all design documents prepared or furnished shall comply with all applicable laws, statutes, codes, rules and regulations including but not limited to, the Florida Building Code and all design requirements established by the Florida Accessibility Code and the Americans with Disabilities Act (ADA).

2.3 Any designs, drawings, or specifications prepared or furnished by the Consultant that fail to meet the requirements of Section 2.2, or otherwise are defective or contain errors, conflicts or omissions, will be promptly corrected by the Consultant at no cost to CRA. The Consultant will promptly reimburse CRA for any and all damages, including fines and incidental

damages, without limitation, resulting from the use of such defective designs, drawings, or specifications; provided, however, Consultant shall not be responsible for consequential damages. CRA's approval, acceptance, use of, or payment for all or any part of the Scope of Work shall in no way alter the Consultant's obligations with respect to the design of the project or CRA's rights hereunder.

2.4 The Consultant shall not specify in the plans and specifications a particular design, process or product that infringes upon any patent. The Consultant shall defend suits or claims for infringement of patent rights and indemnify and hold CRA harmless from any loss, cost or expense, including attorneys' fees incurred, which results if the Consultant violates the requirements of this Section 2.4.

2.5 The Consultant shall maintain one record set of all plans and specifications in good order and marked currently to record all changes made during construction and an accurate location of all portions of the work sufficient to prepare accurate as-built plans and specifications. The as-built plans and specifications shall provide as much accuracy as possible, and submission of same to CRA upon Final Completion shall be a condition precedent to the final payment.

2.6 The services of Consultant shall only be performed upon the prior request of the CRA Executive Director. Consultant shall report to the CRA Executive Director. During the conduct of the performance of its services, Consultant shall schedule regular meetings with the CRA Executive Director or his designee to discuss the progress of the work.

2.7 Consultant hereby represents to the CRA, with full knowledge that CRA is relying upon these representations when entering into this Agreement with Consultant, that Consultant has the professional expertise, experience and manpower to perform the services to be provided by Consultant pursuant to the terms of this Agreement. Consultant shall maintain during the term of this Agreement all necessary licenses and qualifications required by applicable law.

**3. Relationship of the Parties.** The Consultant accepts the relationship of trust and confidence established by this Agreement and covenants with the CRA to cooperate with the CRA and exercise the Consultant's skill and judgment in furthering the interests of the CRA; to furnish efficient business administration and supervision, and to perform the Scope of Work in an expeditious and economical manner consistent with the CRA's interests. The CRA agrees to furnish or approve, in a timely manner, information required by the Consultant and to make payments to the Consultant in accordance with the requirements of this Agreement

#### **4. Compensation and Method of Payment**

4.1 Compensation for the services provided by Consultant to the CRA shall be based on the fees provided in the Proposal and by this reference made a part hereof. The fees set forth in the Proposal represent and contain all amounts due and payable for the services provided by Consultant as set forth in the Scope of Work including any out of pocket and third party costs which may be incurred and/or paid by Consultant.

4.2 Consultant shall submit to the CRA a written invoice for compensation no more often than on a monthly basis. Each invoice shall include a detailed billing statement for services rendered and any other supporting documentation as reasonably requested by the CRA. With respect to the procedures for payment, the CRA and Consultant agree to comply with and

be bound by the provisions of Part VII, Chapter 218, Florida Statutes, entitled the Local Government Prompt Payment Act.

**5. Changes in Scope of Work.** CRA may request changes that would increase, decrease or otherwise modify the scope of services to be provided under this Agreement. Such changes must be contained in a written amendment, executed by the parties hereto, with the same formality and with equality and dignity prior to any deviation from the terms of this Agreement including the approval of the CRA Board.

**6. Termination.**

6.1 Termination by the Consultant. The Consultant may terminate the Agreement if the CRA fails to make a payment as required by the Agreement followed by written notice thereof from Consultant to CRA and CRA's continued failure to make such payment for fifteen (15) days following the receipt of such notice. If the Consultant terminates the Agreement as set forth in the previous sentence, the Consultant shall be entitled to recover from the CRA payment for the Scope Work executed up to the date of termination but shall not be entitled to any other damages including, but not limited to, consequential and/or punitive damages. Any termination or purported termination by the Consultant for any reason other than CRA's nonpayment shall be void thereby entitling the CRA to its rights and remedies available at law and in equity.

6.2 Termination by the CRA for Cause. The CRA may terminate this Agreement if the Consultant:

6.2.1 Persistently or repeatedly refuses or fails to follow CRA's directions relative to the performance of the Scope of Work including, but not limited to, failing to perform the Scope of Work or any portion thereof within agreed upon time frames;

6.2.2 Persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

6.2.3 Otherwise materially breaches any provision of the Agreement Documents.

When any of the above reasons exist, the CRA may without prejudice to any other rights or remedies and after giving the Consultant seven (7) days' written notice, terminate this Agreement and the employment of the Consultant. The Consultant shall not be entitled to receive payment for the Scope of Work completed until the remainder of the Scope of Work is finished and, in addition to any other rights available to the CRA at law or in equity, the Consultant shall be liable to CRA for all reasonable excess completion costs and costs to correct as a result of said termination.

6.3 Termination by the CRA for Convenience. Notwithstanding anything in the Agreement to the contrary, CRA shall have the right, for whatever reason and in its sole discretion, to terminate the Agreement without penalty or liability by providing the Consultant with seven (7) days written notice thereof. Upon such termination, this Agreement shall be null and void, except that Consultant shall be entitled to payment for the Scope Work executed up to the date of termination. Any of Consultant's then outstanding and/or unfulfilled duties and/or obligations under the Agreement accruing prior to such termination shall survive the termination of the Agreement. Consultant acknowledges and agrees that Consultant shall not be entitled to, and hereby waives any claims for, any damages in the event that the CRA exercises its termination right hereunder including, but not limited to, any consequential or punitive damages.

**7. Insurance.** The Consultant shall purchase and maintain insurance as follows.

7.1 Worker's Compensation Insurance coverage in accordance with Florida statutory requirements.

7.2 Commercial General Liability Insurance coverage with limits of no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, which policy shall include coverage of the contractual liabilities contained in this Agreement.

7.3 Professional Liability Insurance with minimum limits of \$1,000,000 per occurrence with respect to Consultant.

Certificates of insurance from insurers acceptable to the CRA shall be delivered to the CRA upon execution of this Agreement. Only with respect to commercial general liability insurance, the certificates shall (a) name the CRA as an additional insured and loss payee and (b) contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the CRA. Failure of the Consultant to obtain and maintain required insurance shall be grounds for termination of the Agreement by the CRA. Consultant shall require any subconsultants who are preparing plans and specifications to provide professional liability insurance with the same insurance coverage as set forth above.

**8. Indemnification.** In consideration of the entry of this Agreement, and to the extent permitted by Chapter 725, Florida Statutes, as may be amended, the Consultant agrees to indemnify, protect, defend, and hold harmless the CRA its members, managers, officers, employees, consultants, and agents from liabilities, damages, losses, and costs including, but not limited to reasonable attorney's fees at both the trial and appellate levels to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of the Scope of Work. The foregoing indemnity is limited to \$1,000,000 per occurrence, which monetary limitation on the extent of the indemnification both parties acknowledge and agree bears a reasonable commercial relationship to the Agreement; provided, however, that the Consultant's indemnity obligations hereunder are not limited by the availability of insurance proceeds. In the event that any claims are brought or actions are filed against the CRA with respect to the indemnity contained herein, the Consultant agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed. To the extent this indemnification clause or any other indemnification clause in this Agreement does not comply with Chapter 725, Florida Statutes, as may be amended, this provision and all aspects of the Contract Documents shall hereby be interpreted as the parties' intention for the indemnification clauses and Contract Documents to comply with Chapter 725, Florida Statutes, as may be amended.

**9. Miscellaneous**

9.1 Ownership of Documents. All plans, specifications, shop drawings, as well as any and all documents prepared by the Consultant pursuant to or in connection with this Agreement are and shall remain the exclusive property of the CRA. Upon request of the CRA and/or upon the termination or completion of this Agreement, Consultant shall promptly deliver to the CRA all or any portion of the above referenced documents including the tapes or discs relating thereto. Consultant further acknowledges that CRA may post any of such documents on the CRA's website. Such documents may be posted by CRA without the prior authorization of Consultant. No additional fee or compensation will be paid to Consultant by CRA for such posting.

9.2 Records. Consultant shall keep books and records and require any and all subcontractors to keep books and records as may be necessary in order to record complete and correct accurate records with respect to this engagement. Such books and records will be available at all reasonable times for examination and audit by CRA and shall be kept for a period of six (6) years after the completion of all work to be performed pursuant to this Agreement, unless contacted by CRA and advised such records must be kept for a longer period. Consultant shall further be required to respond to the reasonable inquiries of successor Consultant and allow successor Consultant to review Consultant'S working papers related to matters of continuing accounting, reporting or auditing significance. Incomplete or incorrect entries in such books and records will be grounds for disallowance by CRA of any fees or expenses based upon such entries.

9.3 Independent Contractor. This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that Consultant is an independent contractor under this Agreement and not the CRA's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution act, the Social Security Act, the Federal Unemployment Tax Act, the provision of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. Consultant shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Consultant's activities and responsibilities hereunder. Consultant agrees that it is a separate and independent enterprise from the CRA, that it has full opportunity to find other business, that it has to make its own investment in its business, and that it will utilize a high level of skill necessary to perform the services. This Agreement shall not be construed as creating any joint employment relationship between Consultant and the CRA and the CRA will not be liable for any obligation incurred by Consultant, including by not limited to unpaid minimum wages and/or overtime premiums.

9.4 Assignments; Amendments.

9.4.1 This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by Consultant without the prior written consent of CRA, which consent may be withheld by the CRA in its sole and absolute discretion. This Agreement shall run to the CRA and its successors and assigns.

9.4.2 It is further agreed that no modification, amendment or alteration in the terms or conditions contained here shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith and approved by the CRA Board.

9.5 No Contingent Fees. Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Consultant to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or form, other than a bona fide employee working solely for Consultant any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the CRA shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

9.6 Notice. Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested,

or by nationally recognized overnight delivery service, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. Notice may also be sent by electronic means (facsimile or email) provided such is followed by a hard copy of such notice provided in the manner set forth above. Notice is deemed given when received. For the present, Consultant and the CRA designate the following as the respective places for giving such notice:

CRA:           Larry M. Spring, Jr.  
                  CRA Executive Director  
                  City Hall  
                  776 N.E. 125<sup>th</sup> Street, 4<sup>th</sup> Floor  
                  North Miami, Florida 33161  
                  Telephone No. (305) 895-9888  
                  Facsimile No. (305) 893-1367

With a copy to:

                  Steven W. Zelkowitz  
                  CRA Attorney  
                  GrayRobinson, P.A.  
                  333 S.E. 2<sup>nd</sup> Avenue, Suite 3200  
                  Miami, FL 33131  
                  Telephone No. (305) 416-6880  
                  Facsimile No. (305) 416-6887

Consultant:   Bruce Reed  
                  Keith and Schnars, P.A.  
                  6500 North Andrews Avenue  
                  Fort Lauderdale, FL 33309  
                  Telephone No. (954) 776-1616  
                  Facsimile No. (954) 771-7690

9.7   Binding Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

9.8   Headings. Headings herein are for convenience of reference only and shall not be considered on any interpretation of this Agreement.

9.10   Exhibits. Each Exhibit referred to in this Agreement should be treated as part of this Agreement, and is incorporated herein by reference.

9.11   Severability. If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and provided that the Agreement's fundamental terms and conditions remain legal and enforceable, the remainder of the Agreement shall continue in full force and effect, remain operative and binding, and shall and be enforced to the fullest extent permitted by law.

9.12 Governing Law; Venue. This Agreement will be governed by the laws of the State of Florida. Any claim, objection, or dispute arising out of the terms of this Agreement shall be brought in Miami-Dade County.

9.13 Extent of Agreement. This Agreement represents the entire and integrated agreement between the CRA and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral.

9.14 No Third Party Rights. Nothing contained in this Agreement shall create a contractual relationship with or duties, obligations or causes of action in favor of any third party against either the CRA or Consultant.

9.15 Ethics Requirements. Consultant is responsible for educating itself on the various ethics and conflict of interest provisions of Florida law, Miami-Dade County Ordinance and City Code. Consultant shall not employ, directly or indirectly, the mayor, any member of the City Council, or any director or department head of the City. The City Code prohibits any employee, or member or their immediate family or close personal relation from receipt of a benefit or to profit from any contract entered into with the City, either directly or through any firm of which they are a member, or any corporation of which they are a stockholder, or any business entity in which they have a controlling financial interest. Any affected party may seek a conflict of interest opinion from the State of Florida Ethics Commission and/or Miami-Dade County Ethics Commission regarding conflict of interest provisions.

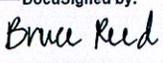
9.16 CRA Contingency. The CRA's obligations under this Agreement including, but not limited to, the CRA's payment obligations to the Consultant are expressly subject to and contingent upon the approval of that certain Second Amendment to Interlocal Cooperation Agreement by the CRA, City of North Miami and Miami-Dade County. In the event that any of the CRA, City of North Miami and Miami-Dade County fail to approve the Second Amendment to Interlocal Cooperation Agreement, this Agreement shall be null and void and of no further force and effect between the parties.

**10. WAIVER OF JURY TRIAL. EACH PARTY WAIVES ALL RIGHTS TO ANY TRIAL BY JURY IN ALL LITIGATION RELATING TO OR ARISING OUT OF THIS AGREEMENT.**

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first written above.

**Consultant:**

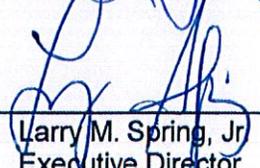
KEITH AND SCHNARS, P.A.  
a Florida corporation

DocuSigned by:  
  
By: \_\_\_\_\_  
Name: Bruce Reed  
Title: Vice President

**CRA:**

NORTH MIAMI COMMUNITY  
REDEVELOPMENT AGENCY, a public body  
corporate and politic

By: \_\_\_\_\_  
  
Dr. Smith Joseph  
Chairman

By: \_\_\_\_\_  
  
Larry M. Spring, Jr  
Executive Director

Attest:  
  
By: \_\_\_\_\_  
Michael A. Etienne, Esq.  
City Clerk

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
  
Gray Robinson, P.A., CRA Attorney