VILLAGE OF KEY BISCAYNE

Village Council
Michael W. Davey, Mayor
Edward London, Vice Mayor
Luis Lauredo, Councilmember
Allison McCormick, Councilmember
Brett Moss, Councilmember
Franklin H Caplan, Councilmember
Ignacio J. Segurola, Councilmember

REGULAR COUNCIL MEETING
TUESDAY, OCTOBER 12, 2021
5:55 PM

1. **CALL TO ORDER/ROLL CALL OF MEMBERS**

2. **INVOCATION**
REVEREND JUAN CARLOS PAGUAGA
ST AGNES CATHOLIC CHURCH

3. **PLEDGE OF ALLEGIANCE**

4. **BRIEF COMMENTS BY COUNCIL**

5. **AGENDA:**
APPROVAL/DEFERRALS/ADDITIONS/DELETIONS/SUBSTITUTIONS/WITHDRAWL

6. **PUBLIC COMMENT:**
There is a (3) minute time limit for each speaker during public comments. Your cooperation is appreciated in observing the (3) minute rule. If you have a matter you would like to discuss during public comments, a request form is available at the entrance of the Council Chamber, please fill-it in and return it to the Village Clerk prior to the start of the meeting. When your name is called, please come forward to the podium. Or if you are joining the meeting remotely, please call (305) 365-7569 or (312) 626-6799, and enter the Zoom Meeting ID: 231

627 8415, followed by #. There is no participant ID. Press # again. Please press *9 to "raise your hand" which places you in a queue to speak. You will be called upon by the last three digits of your telephone number when it is your turn to speak. When called upon, please press *6 to unmute yourself. PLEASE STATE YOUR NAME, ADDRESS, IF YOU ARE A HIRED CONSULTANT OR VILLAGE EMPLOYEE AND/OR IF ENGAGED IN LOBBYING ACTIVITIES AND/OR REPRESENTING AN ORGANIZATION FOR THE RECORD.

7. **SPECIAL PRESENTATIONS:**

7.A. 1.) ATHLETICS FIELD UTILIZATION & ALLOCATION DISCUSSION BY GLEN WALDMAN CHAIR, VILLAGE ATHLETICS ADVISORY BOARD

8. **CONSENT AGENDA:**
(Consent agenda items are those which are routine, do not require discussion or explanation prior to Village Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request on an individual Council member for independent consideration provided such request is made during the approval/deferrals/additions/deletions substitutions/withdrawals segment of the meeting, prior to the vote on the consent agenda.)

8.A. JUNE 29, 2021 MINUTES
(FIRST BUDGET WORKSHOP)

TAB 1

8.B. JULY 27, 2021 MINUTES
(REGULAR COUNCIL MEETING)

TAB 2

9. **ORDINANCES: (NOT LATER THAN 7:30 P.M.)**
A. FIRST READING:

1.) NONE

B. SECOND READING:

1.) NONE

10. **RESOLUTIONS:**

10.A. A RESOLUTION
OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AUTHORIZING THE VILLAGE MANAGER TO ISSUE A WORK ORDER TO MOFFATT &

NICHOL, INC. FOR ENGINEERING, SURVEYING, AND MARINE BIOLOGICAL SERVICES RELATING TO THE BEACH RENOURISHMENT PROJECT IN AN AMOUNT NOT TO EXCEED $63,150; AND PROVIDING FOR AN EFFECTIVE DATE.
(BUILDING, ZONING, PLANNING AND PUBLIC WORKS DIRECTOR JAKE OZYMAN)

TAB 3

10.B. A RESOLUTION
OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, ACCEPTING A $50,000.00 FLORIDA RECREATION FOR DEVELOPMENT ASSISTANCE PROGRAM (FRDAP) GRANT FROM THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (FDEP) FOR IMPROVEMENTS TO LAKE PARK AND APPROVING A STANDARD GRANT AGREEMENT RELATED TO THE SAME; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.
(PARKS, RECREATION AND OPEN SPACES DIRECTOR TODD HOFFERBERTH)

TAB 4

10.C. A RESOLUTION
OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, ACCEPTING A $50,000.00 FLORIDA RECREATION FOR DEVELOPMENT ASSISTANCE PROGRAM (FRDAP) GRANT FROM THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (FDEP) FOR IMPROVEMENTS TO HAMPTON PARK AND APPROVING A STANDARD GRANT AGREEMENT RELATED TO THE SAME; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.
(PARKS, RECREATION AND OPEN SPACES DIRECTOR TODD HOFFERBERTH)

TAB 5

10.D. A RESOLUTION
OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING A SETTLEMENT AGREEMENT AND GENERAL RELEASE OF ALL CLAIMS OF BLAS MANUEL MINARRO MARTINEZ IN AMOUNT NOT TO EXCEED $150,000 TO BE PAID BY THE VILLAGE'S INSURER; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.
(VILLAGE ATTORNEY)

TAB 6

10.E. A RESOLUTION
OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING AN AGREEMENT WITH THE CITY OF MIAMI FOR FIRE, RESCUE, AUTOMATIC AID, AND ANCILLARY SERVICES AT AN ANNUAL COST OF $573,144.00; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND

PROVIDING FOR AN EFFECTIVE DATE.
(FIRE RESCUE CHIEF ERIC LANG)

TAB 7

10.F. A RESOLUTION
OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING AND ACCEPTING A PUBLIC BEACH ACCESS EASEMENT AND DEDICATION AGREEMENT WITH THE SANDS OF KEY BISCAYNE CONDOMINIUM ASSOCIATION, INC. RELATING TO THE PROPERTY LOCATED AT 605 OCEAN DRIVE; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.
(BUILDING, ZONING, PLANNING AND PUBLIC WORKS DIRECTOR JAKE OZYMAN)

TAB 8

11. **PUBLIC COMMENTS:**
There is a (3) minute time limit for each speaker during public comments. Your cooperation is appreciated in observing the (3) minute rule. If you have a matter you would like to discuss during public comments, a request form is available at the entrance of the Council Chamber, please fill-it in and return it to the Village Clerk prior to the start of the meeting. When your name is called, please come forward to the podium. Or if you are joining the meeting remotely, please call (305) 365-7569 or (312) 626-6799, and enter the Zoom Meeting ID: 231 627 8415, followed by #. There is no participant ID. Press # again. Please press *9 to "raise your hand" which places you in a queue to speak. You will be called upon by the last three digits of your telephone number when it is your turn to speak. When called upon, please press *6 to unmute yourself. PLEASE STATE YOUR NAME, ADDRESS, IF YOU ARE A HIRED CONSULTANT OR VILLAGE EMPLOYEE AND/OR IF ENGAGED IN LOBBYING ACTIVITIES AND/OR REPRESENTING AN ORGANIZATION FOR THE RECORD.

12. **REPORTS AND RECOMENDATIONS:**

VILLAGE MANAGER (NOT LATER THAN 9:00 P.M.)

1.) MANAGER'S ONGOING PROJECT UPDATE
TAB 9

a. REPORT PARADISE PARK PROJECT UPDATE (PARKS, RECREATION AND OPEN SPACES DIRECTOR TODD HOFFERBERTH)

b. PRESENT BICYCLISTS ON RICKENBACKER UPDATE (INTERIM CHIEF OF POLICE JASON YOUNES)

c. REPORT COVID 19 UPDATES (FIRE RESCUE CHIEF ERIC LANG)

d. REPORT SEPTIC TO SEWER UPDATE (BUILDING, ZONING, PLANNING AND PUBLIC WORKS DIRECTOR JAKE OZYMAN)

e. REPORT KITE SURFING PROGRAM UPDATES (CHIEF RESILIENCE AND SUSTAINABILITY OFFICER DR. ROLAND SAMIMY)

f. REPORT BEACH MAINTENANCE PLAN UPDATE (CHIEF RESILIENCE AND SUSTAINABILITY OFFICER DR. ROLAND SAMIMY)

g. REPORT USACE SHORELINE PROTECTION AND STABILIZATION PROGRAM UPDATES (CHIEF RESILIENCE AND SUSTAINABILITY OFFICER DR. ROLAND SAMIMY AND VILLAGE MANAGER)

h. REPORT BUILDING CERTIFICATION UPDATE (CHIEF BUILDING OFFICIAL RENE VELAZCO)

i. REPORT FALL & WINTER COMMUNITY ACTIVITIES (PARKS, RECREATION AND OPEN SPACES DIRECTOR TODD HOFFERBERTH)

MAYOR AND COUNCIL MEMBERS

1.) VILLAGE BOARDS AND COMMITTEES (COUNCILMEMBER LAUREDO)

VILLAGE ATTORNEY

1.) NONE

VILLAGE CLERK

1.) NONE

13. **OTHER BUSINESS/GENERAL DISCUSSION**

13.A. 1.) NONE

14. **SCHEDULE OF FUTURE MEETINGS/EVENTS:**

A. REGULAR COUNCIL MEETING
TUESDAY, OCTOBER 26, 2021, 6:00 P.M., COUNCIL CHAMBER

B. WORKSHOP- GOLF CART ORDINANCE
TUESDAY, NOVEMBER 2, 2021, 6:00 P.M., COUNCIL CHAMBER

C. REGULAR COUNCIL MEETING
TUESDAY, NOVEMBER 16, 2021, 6:00 P.M., COUNCIL CHAMBER

D. REGULAR COUNCIL MEETING
TUESDAY, DECEMBER 7, 2021, 6:00 P.M., COUNCIL CHAMBER

15. **ADJOURNMENT**

I. ANY PERSON WISHING TO ADDRESS THE VILLAGE COUNCIL ON AN ITEM ON THIS AGENDA IS ASKED TO REGISTER WITH THE VILLAGE CLERK PRIOR TO THAT ITEM BEING HEARD. PRIOR TO MAKING A STATEMENT, PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

II. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, ALL PERSONS WHO ARE DISABLED AND WHO NEED SPECIAL ACCOMMODATIONS TO PARTICIPATE IN THIS PROCEEDING BECAUSE OF THAT DISABILITY SHOULD CONTACT THE OFFICE OF THE VILLAGE CLERK, 88 WEST MCINTYRE STREET, KEY BISCAYNE, FLORIDA 33149, TELEPHONE NUMBER (305) 365-5506, NOT LATER THAN TWO BUSINESS DAYS PRIOR TO SUCH PROCEEDINGS.

III. IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE VILLAGE COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT A MEETING OR HEARING, THAT PERSON WILL NEED A RECORD OF THE PROCEEDINGS AND, FOR SUCH PURPOSE, MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED (F.S.286.0105).

IV. IN ACCORDANCE WITH VILLAGE CODE SECTION 2-161, ADOPTING SECTION 2-11.1(s) OF THE MIAMI-DADE COUNTY CODE, ANY PERSON ENGAGING IN LOBBYING ACTIVITIES, AS DEFINED THEREIN, MUST REGISTER AT THE VILLAGE CLERK'S OFFICE BEFORE ADDRESSING THE COUNCIL ON THE ABOVE MATTERS OR ENGAGING IN LOBBYING ACTIVITIES.

THE ABOVE MEETINGS ARE HELD IN THE COUNCIL CHAMBER, 560 CRANDON BOULEVARD AND ARE SUBJECT TO CHANGE. ZONING MEETINGS AND SPECIAL COUNCIL MEETINGS WILL BE SCHEDULED ON AN AS NEEDED BASIS. PLEASE VISIT www.keybiscayne.fl.gov TO VIEW THE MEETING SCHEDULE.

MINUTES

FIRST BUDGET WORKSHOP-
COMMUNITY GROUP PRESENTATIONS

KEY BISCAYNE, FLORIDA

TUESDAY, JUNE 29, 2021

COUNCIL CHAMBER
560 CRANDON BOULEVARD

1. **CALL TO ORDER/ROLL CALL OF MEMBERS:** The meeting was called to order by the Vice Mayor at 6:05 p.m. Present were Councilmembers Franklin H. Caplan, Luis Lauredo, Allison McCormick, Brett G. Moss (arrived 6:11 p.m.), Ignacio Segurola and Vice Mayor Edward London. Mayor Michael W. Davey was absent. Also present were Village Manager Steven C. Williamson, Village Clerk Jocelyn B. Koch and Village Attorney Chad Friedman.

2. **PLEDGE OF ALLEGIANCE:** Vice Mayor London led the Pledge of Allegiance.

3. **BRIEF COMMENTS BY COUNCIL:** Councilmembers Lauredo and McCormick addressed the Council sympathizing with those affected by the Surfside tragedy; Councilmember Lauredo also recognized the Building, Zoning and Planning department's increased workload and also requested limiting the number of workshops and Council meetings per year in order to be more efficient; Councilmember McCormick also noted staff will be looking closely at the buildings within the Village regarding safety and also stated support for the community groups presenting tonight; Councilmember Caplan addressed the Council thanking Ms. Ann Taintor for making two homemade pies and also thanked all the civic minded contributors who add to the quality of life within the Village and Vice Mayor London addressed the Council stating it is a balancing act on what the Village should provide in the way of services for the community regarding community group funding.

4. **PUBLIC COMMENTS:** The following people addressed the Council: Vivian Gallego Mendez, 644 Crandon Boulevard; Jamie Tompkins, 730 Curtiswood Drive; Jonathan Mendez, 161

Crandon Boulevard; Marta Zapata, 881 Ocean Drive; Robert Brookes, The Pines of Delray North, Delray Beach and Jennifer Stearns Buttrick, 180 Cape Florida Drive, Counsel for the Key Biscayne Community Foundation.

5. **BUDGET PRESENTATIONS:** The following community groups gave FY2022 presentations, current updates and made their presentations in the following order:

- Key Biscayne Car week was presented by Mary Tague, 610 North Mashta Drive and Frances Reeves, 251 Crandon Boulevard.
- Village of Kindness/Kindness in the Schools was presented by Laudy Ibarra, 482 Fernwood Road.
- Key Biscayne Children's Business Fair was presented by Fernanda Torres, 181 Crandon Boulevard.
- Youth Leadership was presented by Patricia Woodson, 1725 Tigertail Avenue, Coconut Grove.
- Active Seniors on the Key Club was presented by Edward Stone, 170 Ocean Lane Drive.
- Historical Society was presented by Ann Taintor, 170 Ocean Lane Drive and Ron Erbel, 786 Fernwood Road.
- Trap, Neuter & Release Program was presented by Lisa Cornsby, 590 Ocean Drive.
- A Zero Waste Culture/Composting was presented by Taima Hervas, 250 Galen Drive and Helena Iturralde 150 SE 25th Road, Miami and team members: Jonathan Mendez, 161 Crandon Boulevard; Marta Zapata, 881 Ocean Drive; Enzo Fuque, 555 Crandon Boulevard; Maria Aviles, 107 East Enid Drive; Gloria Johnson, 269 West Mashta Drive and Jackie Kellogg, 115 Sunrise Drive.
- 4th of July Committee-Parade was presented by Rafa Momene, 300 Sunrise Drive.
- Key Biscayne Piano Festival was presented by Amarylli Fridgegotto, 550 Ocean Drive.
- 4th of July BBQ by the Rotary Club of Key Biscayne Foundation was presented by Robert Brookes, The Pines of Delray North, Delray Beach.
- City Theatre was presented by Susan Westfall, 525 Allendale Road.
- Key Biscayne Chamber of Commerce was presented by Tatyana Chiocchetti, 88 West McIntyre Street.

At this time, Vice Mayor London excused himself at from the workshop at 7:54 p.m. and Councilmember Lauredo chaired the remainder of the workshop.

- Key Biscayne Community Foundation was presented by Melissa White, 370 Heather Lane.
- Village of Key Biscayne 30th Year Anniversary was presented by Melissa White, 370 Heather Lane.

Councilmember Lauredo addressed the Council regarding the 30th Anniversary Party budget.

Chief Financial Officer Benjamin Nussbaum addressed the Council regarding the 30th Anniversary Party budget.

Ms. White addressed the Council regarding reimbursement for expenses and the Community Foundation's fee for service contract with the Village.

Councilmembers McCormick and Lauredo addressed the Council regarding the above items.

The Manager addressed the Council reporting that the 30th Anniversary Party's budget was approved in FY21.

There was discussion from Council and Ms. White regarding the above items.

Councilmember Caplan addressed the Council requesting point of order.

Councilmember McCormick addressed the Council requesting that for the future only community groups requesting funding should make a presentation at the budget workshop and not the Key Biscayne Community Foundation since the Foundation provides a different role and service as being an independent contract service provider.

Councilmember Lauredo addressed the Council regarding the above items.

Vice Mayor London returned to the meeting at 8:21 p.m.

Councilmember Lauredo thanked all the community groups who made a presentation and requested the support of Council for all of them. Councilmembers Caplan and McCormick also gave support and appreciation for the community groups.

Councilmember Segurola addressed the Council requesting that all community groups requesting funding from the Village, give an accounting of what was accomplished with the money spent in the previous year and to provide this information to Council within the next 30 days.

Councilmembers Segurola and Caplan addressed formalizing and completing the requested forms from the community groups.

6. **SCHEDULE OF FUTURE MEETINGS/EVENTS:** A schedule of future meetings and events was presented to the Council.

7. **ADJOURNMENT:** The meeting was adjourned at 8:32 p.m.

Respectfully submitted:

_____

Jocelyn B. Koch
Village Clerk

Approved this _____ day of _____2021:

_____

Edward London
Vice Mayor

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MINUTES

REGULAR COUNCIL MEETING
KEY BISCAYNE, FLORIDA

TUESDAY, JULY 27, 2021

COUNCIL CHAMBER
560 CRANDON BOULEVARD

1. **CALL TO ORDER/ROLL CALL OF MEMBERS:** The meeting was called to order by the Mayor at 6:03 p.m. Present were Councilmembers Franklin H. Caplan, Luis Lauredo, Allison McCormick, Brett G. Moss, Ignacio Segurola, Vice Mayor Edward London (arrived 6:04 p.m.) and Mayor Michael W. Davey. Also present were Village Manager Steven C. Williamson, Village Clerk Jocelyn B. Koch and Village Attorney Chad Friedman.

2. **INNVOCATION:** Youth Pastor Tony Goudie, Key Biscayne Community Church gave an invocation.

3. **PLEDGE OF ALLEGIANCE:** Mayor Davey led the Pledge of Allegiance.

4. **BRIEF COMMENTS BY COUNCIL:** Mayor Davey addressed the public regarding the highly contagious Covid19 Delta variant and asked residents to wear masks indoors since children under 12 years old cannot get vaccinated yet; also addressed the public regarding Miami-Dade County's RFP regarding the Rickenbacker Causeway and for the county commission to hear from residents at the August 4th, 2021 public meeting at the Key Biscayne Community Center; Mayor Davey and Councilmembers Caplan, London, McCormick and Moss addressed the public communicating their disappointment with losing the Key Biscayne Community Foundation as a Village partner and stated their appreciation for all the foundation's valuable past work; Councilmember Segurola addressed the public stating that the residents should not be concerned and that the Village administration will be able to effectively administer programming and will do as good a job as the Key Biscayne Community Foundation and without cutting any programming. Councilmember McCormick stated it is a best practice in government to partner with not for profits and the Village benefitted greatly from the relationship and requested that the Manager prepare on

how this is going to impact the Village in terms of the budget; Councilmember Lauredo addressed the Council stating it is the Council's responsibility and duty as a trustee of taxpayer funds to address concerns and thanked the Key Biscayne Community Foundation for their past work. Councilmember Caplan addressed the Council requesting to recuse himself from voting on Item 10AC.

5. **AGENDA:** Councilmember Segurola requested to discuss another option regarding the Rickenbacker Causeway along with the Manager's Report, Item12A1i. There was no objection to this request.

The agenda, as amended, was approved by a 7-0 voice vote. The vote was as follows: Councilmembers Caplan, Lauredo, McCormick, Moss, Segurola, Vice Mayor London and Mayor Davey voting Yes.

6. **PUBLIC COMMENTS:** The following residents addressed the Council: Nina Wallin, 270 Hampton Lane; Alejandro Serrano, 765 Crandon Boulevard and Fausto Gomez, 765 Crandon Boulevard.

At this time, Councilmember Segurola made a motion to allow an additional three minutes for Fausto Gomez's public comments. The motion was seconded by Councilmember Lauredo.

Councilmember Moss made an amending motion to allow for two more minutes. Councilmember Segurola accepted the amendment.

The motion, as amended, was approved by a 7-0 voice vote. The vote was as follows: Councilmembers Caplan, Lauredo, McCormick, Moss, Segurola, Vice Mayor London and Mayor Davey voting Yes.

At this time, the following resident addressed the Council: Louisa Conway, 151 Crandon Boulevard.

7. **SPECIAL PRESENTATIONS:** There were no special presentations given to Council.

8. **CONSENT AGENDA:** Councilmember McCormick made a motion to approve the following consent agenda. The motion was seconded by Mayor Davey.

The minutes of the May 2nd, 2021Workshop.

The minutes of the June 8th, 2021Workshop.

At this time, Councilmember Lauredo addressed the Council regarding transparency and outreach for these proposed Zoning amendments.

9. **ORDINANCES:** There were no ordinances considered by Council.

10. **RESOLUTIONS:** The Clerk read the following resolution by title:

A CAPITAL AUTHORIZING RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AUTHORIZING THE VILLAGE MANAGER TO ISSUE A WORK ORDER TO SFM SERVICES, INC. FOR THE VILLAGE'S CRANDON BOULEVARD LANDSCAPE AND IRRIGATION IMPROVEMENTS PROJECT IN AN AMOUNT NOT TO EXCEED $99,355; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilmember Caplan made a motion to approve the resolution. The motion was seconded by Mayor Davey.

> Building, Zoning, Planning and Public Works Director Jake Ozyman addressed the Council regarding the above resolution authorizing the completion of the landscaping and irrigation improvements for Phase II of Crandon Boulevard and Phase I of Harbor Drive.

Vice Mayor London addressed the Attorney regarding a possible conflict of interest.

The Attorney addressed the possible conflict of interest.

There was discussion from Council regarding the above resolution and SFM Services.

The resolution was approved by a 7-0 voice vote. The vote was as follows: Councilmembers Caplan, Lauredo, McCormick, Moss, Segurola, Vice Mayor London and Mayor Davey voting Yes.

The Clerk read the following resolution by title:

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, CONFIRMING THE VILLAGE'S ABILITY TO FUND AND SUPPORT THE PERMITTING, DESIGN, CONSTRUCTION, AND MONITORING OF THE VILLAGE'S BEACH RENOURISHMENT PROJECT; PROVIDING FOR AN EFFECTIVE DATE.

Councilmember Moss made a motion to approve the resolution. The motion was seconded by Mayor Davey.

> Chief Resilience and Sustainability Officer Dr. Roland Samimy addressed the Council regarding this resolution, beach nourishment and subsequent post nourishment monitoring, permit requirements and matching state funds.

There was discussion from Council regarding the above resolution.

The resolution was approved by a 7-0 voice vote. The vote was as follows: Councilmembers Caplan, Lauredo, McCormick, Moss, Segurola, Vice Mayor London and Mayor Davey voting Yes.

The Clerk read the following resolution by title:

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING THE CONTINUING PROFESSIONAL SERVICES AGREEMENT WITH VARIOUS CONSULTANTS FOR ARCHITECTURAL AND ENGINEERING SERVICES PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2021-08; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Davey made a motion to approve the resolution. The motion was seconded by Councilmember London.

At this time, Councilmember Caplan recused himself from voting on the resolution and exited the Council Chamber.

Director Ozyman addressed the Council regarding the above resolution and establishing an hourly rate if needed.

There was discussion from Council regarding the above resolution.

The resolution was approved by a 6-0 voice vote. The vote was as follows: Councilmembers Lauredo, McCormick, Moss, Segurola, Vice Mayor London and Mayor Davey voting Yes.

At this time Councilmember Caplan returned to the Council Chamber.

The Clerk read the following resolution by title, as updated:

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING MEMORANDUMS OF UNDERSTANDING BETWEEN THE CITY OF MIAMI AND THE VILLAGE'S FIRE RESCUE DEPARTMENT AND POLICE DEPARTMENT TO COOPERATE AND PARTICIPATE IN THE SECURING THE CITIES PROGRAM; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilmember Moss made a motion to approve the resolution. The motion was seconded by Mayor Davey.

The Manager addressed the Council regarding the above resolution.

There was discussion from Council regarding the above resolution.

The resolution was approved by a 7-0 voice vote. The vote was as follows: Councilmembers Caplan, Lauredo, McCormick, Moss, Segurola, Vice Mayor London and Mayor Davey voting Yes.

11. **PUBLIC COMMENTS:** The following resident addressed the Council: Armando Chapelli, 791 Crandon Boulevard.

12. **REPORTS AND RECOMMENDATIONS:** The following items were discussed:

Village Manager. The Manager addressed the Council introducing the new Chief of Staff Jocelyne Moussavou.

At this time, the Manager gave an update on the search for the new Chief of Police with a goal of having a new chief onboard in September.

Parks, Recreation and Open Spaces Director Todd Hofferberth addressed the Council reporting on the status of the park plans at 530 Crandon Boulevard and the finalization of the construction agreement negotiations with Critical Path Construction including a July 21, 2021 kick-off meeting and reporting on DERM and addressing outstanding issues.

There was discussion from Council and the Manager regarding the above item and a timeline for the construction and the removal of approximately 50 cubic yards of contaminated soil from 530 Crandon Park.

Community Engagement and Communications Officer Jessica Drouet addressed the Council regarding the naming contest for 530 Crandon Park.

There was discussion from Council regarding the naming of the park at 530 Crandon Boulevard.

Councilmember Lauredo made a motion to name the park at 530 Crandon Boulevard, Sunrise Park. The motion was seconded by Vice Mayor London and failed by a 3-4 roll call vote. The vote was as follows: Councilmembers Lauredo, Segurola and Vice Mayor London voting Yes. Councilmembers Caplan, McCormick, Moss and Mayor Davey voting No.

The Attorney addressed the Council stating that whatever name is chosen for 530 Crandon Boulevard, a resolution would be brought back for Council's approval.

There was discussion from Council regarding possible park names.

Councilmember Moss made a motion to name the park at 530 Crandon Boulevard, Paradise Park. The motion was seconded by Councilmember Caplan and failed by a 2-5 roll call vote. The vote was as follows: Councilmembers Lauredo and Moss voting Yes. Councilmembers Caplan, McCormick, Segurola, Vice Mayor London and Mayor Davey voting No.

There was additional discussion from Council regarding possible park names.

Councilmember Caplan made a motion to name the park at 530 Crandon Boulevard, Civic Center Park. The motion was seconded by Councilmember Moss and failed by a 2-5 roll call vote. The vote was as follows: Councilmembers Caplan and McCormick voting Yes. Councilmembers Lauredo, Segurola, Moss, Vice Mayor London and Mayor Davey voting No.

Councilmember Caplan made a motion to name the park at 530 Crandon Boulevard, Sunrise Park. The motion was seconded by Councilmember Lauredo and failed by a 3-4 roll call vote. The vote was as follows: Councilmembers Caplan, Lauredo, and Vice Mayor London voting Yes. Councilmembers McCormick, Moss, Segurola and Mayor Davey voting No.

Mayor Davey made a motion to name the park at 530 Crandon Boulevard, Founders Park. The motion died for lack of a second.

Mayor Davey made a motion to request additional contest name entries for the park at 530 Crandon Boulevard. The motion was seconded by Councilmember Segurola and failed by a 3-4 roll call vote. The vote was as follows: Councilmember Segurola, Vice Mayor London and Mayor Davey voting Yes. Councilmembers Caplan, Lauredo, McCormick and Moss voting No.

There was discussion from Council regarding the name of the park at 530 Crandon Boulevard.

Councilmember Lauredo made a motion to name the park at 530 Crandon, Paradise Park. The motion was seconded by Councilmember Caplan and approved by a 5-2 roll call vote. The vote was as follows: Councilmembers Caplan, Lauredo, McCormick, Moss and Mayor Davey voting Yes. Councilmember Segurola and Vice Mayor London voting No.

Communications Officer Drouet addressed the Council giving a presentation of the new Village website set to launch on August 2nd, 2021.

Vice Mayor London addressed the Council regarding digitizing records, contracts and having all records made available to the public.

There was discussion from Council regarding the above items.

The Manager addressed the Council regarding public records being made available on the website and presenting a plan for the cost and timeline for doing so at the next Regular Council Meeting.

Councilmember Caplan addressed the Council regarding the Historical Society and providing images for the Uniquely KB section on the website.

The Manager addressed the Council thanking Katie Petros and Jessica Drouet for their hard work on the website redesign.

Dr. Samimy addressed the Council reporting on the status of securing beach access point easements.

Village Attorney Eduardo M. Soto addressed the Council regarding the above item.

Dr. Samimy addressed the Council reporting on the sargassum removal plan with composting options and cost projections for the remainder of FY21 and for FY22 and also reporting on updated numbers from Beach Raker including 93 trucks of seaweed in June were hauled and it is anticipated that by the end of July, 105 trucks of seaweed would be

hauled and in August and September possibly 100 trucks of seaweed would be hauled for each month which would cause a $445,000 deficit in the budget.

There was discussion from Council regarding the above items.

The Manager addressed the Council regarding reviewing with staff the above budget issue and reporting back to Council with a recommendation.

Dr. Samimy addressed the Council reporting on the status of the Village's participation in USACE's Shoreline Protection and Stabilization Program.

There was discussion from Council regarding the above items including deployment of breakwater, mitigation and water quality.

Chief Financial Officer Benjamin Nussbaum addressed the Council regarding the future implementation plan for the Council Chamber including increased seating to pre-covid numbers, eliminating the use of headsets, software upgrades to support remote participation and integrating the "Peak" agenda software system from Granicus.

Councilmember Lauredo addressed the Council regarding Council Chamber seating and erring on the side of caution and health.

There was extensive discussion from Council regarding the full capacity seating in the Council Chamber, the current mask policy, the positivity rates of Covid19 infection and the Delta variant.

The Manager addressed the Council stating the Village's current policy it to strongly encourage mask wearing and social distancing. Also stating Fire Rescue Chief Eric Lang is tracking the testing numbers for Covid19 and the Village has a vaccination rate of 85% for 12-year-olds and older and will continue to offer vaccination events within the Village in order to increase the vaccination percentage rate even higher. The Manager also stated these numbers will be monitored and discussed with Council if a change needs to be made.

Chief Building Official Rene Velasco addressed the Council reporting on the status of the Building Re-certification Update.

The Manager addressed the Council thanked Building Official Velasco and his team for reaching out and supporting the community through the re-certification process and stated the spreadsheet would be posted online for the public to view. The Manager reported there are 126 buildings within the Village: 42 are compliant, 29 are in the re-certification process and 17 are within a three-year period of being due and 7 are more than three years overdue but every property owner has responded and is working closely with the Village and there are 38 buildings that will move into the recertification process over the next few years.

There was extensive discussion from Council regarding the above items including compliance, building safety, Miami-Dade County's recertification ordinance and its enforcement.

The Attorney addressed the Council regarding enforcement under the unsafe structures provision of the County ordinance.

The Manager addressed the Council stating the Miami-Dade County ordinance is limited to basic structural and electrical items. The Manager also stated the Village does not make this safety determination, it is the engineer hired by the individual property owners who certifies that the building is safe, and the Village recertifies that the engineer says the building is in fact, safe.

Councilmembers Lauredo and Caplan requested for staff to define what "in progress" means for a better understanding for the public.

Chief of Staff Moussavou addressed the Council reporting that staff is developing a draft of FAQ's that will help define the terms related to this process in order to add clarity and understanding for the public.

Chief Building Official Velasco addressed the Council reporting on compliance and the consequences of non-compliance.

The Manager addressed the Council reporting on the status of media inquiries and public records requests regarding building re-certification.

The Manager addressed the Council reporting on the upcoming August 4th Public Meeting regarding the Rickenbacker Causeway and a future meeting with the County's Parks and Open Spaces Department, part of the RFP team, and to strongly ask them to be a part of the evaluation process.

There was extensive discussion from Council regarding the Rickenbacker Causeway RFP.

Councilmember Segurola addressed the Council proposing the Village partner with one of the project bidders in order to facilitate an intra-governmental transfer for the Rickenbacker Causeway.

The Manager will give an update. Recommended a Rickenbacker Causeway Council meeting. Ask the Manager to reach out to these two groups and any other new group and report back to council within a week and is worth another Council meeting in the very near future.

The Attorney addressed the Council regarding the Manager confirming with Miami-Dade County on the process and the timeline of the RFP.

It was the consensus of Council to direct the Manager to contact Council when this information is received and to propose a Special Council Meeting regarding the Rickenbacker Causeway.

Director Ozyman addressed the Council reporting on the status of single-family home conversions from septic to sewer and that DERM is reinstating fines for noncompliance.

At this time the Manager addressed the Council reporting on an update regarding the Key Biscayne

Community Center being fully open except for Sundays and that the summer camp is in full operation and staffing shortage issues.

Director Hofferberth addressed the Council regarding extending the hours of operation and returning the hours of operation back to normal once school starts.

There was extensive discussion from Council regarding the Community Center's staffing issues and operating hours.

Dr. Samimy addressed the Council reporting on the implementation and progress of the kite surfing program.

There was discussion from Council regarding the above items.

Mayor and Councilmembers. Councilmember Lauredo addressed the Council regarding Impact-Concurrency fee as an additional revenue source for the Village.

The Attorney addressed the Council regarding an Impact-Concurrency policy calculated by square footage or by the number of bedrooms and fee amounts.

There was extensive discussion from Council regarding the above items.

It was the consensus of Council to direct the Manager to look at what it would cost the Village to make that first step in the process in order to evaluate a possible Impact-Concurrency fee program and report back to Council.

The Manager addressed the Council requesting to place his full efforts regarding the Stormwater and Building fees instead and to report back to Council at the October Regular Council Meeting with a recommendation. There was no objection to this request.

Mayor Davey addressed the Council regarding a consensus of Council to support a resolution urging the United States government to provide support to the Cuban people. The Mayor submitted to Council two versions of a proposal to use as a possible resolution.

Councilmember Lauredo addressed the Council suggesting the one-page proposal of the resolution and for him to work with the Clerk on the distribution list for transmittal of the resolution. There was no objection to this request.

There was discussion form Council regarding the above item.

The Attorney addressed the Council regarding that this resolution is time sensitive.

At this time, the Clerk read the following resolution by title:

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, EXPRESSING KEY BISCAYNE'S SUPPORT FOR THE

HEROIC RESISTANCE EFFORTS AGAINST THE CUBAN COMMUNIST REGIME; PROVIDING FOR TRANSMITTAL; AND PROVIDING AN EFFECTIVE DATE.

Mayor Davey made a motion to approve the resolution. The motion was seconded by Councilmember Caplan and approved by a 7-0 roll call vote. The vote was as follows: Councilmembers Caplan, Lauredo, McCormick, Moss, Segurola, Vice Mayor London and Mayor Davey voting Yes.

Village Attorney. The Attorney did not submit a report.

Village Clerk. The Clerk did not submit a report.

13. **OTHER BUSINESS/GENERAL DISCUSSION:** There was no further business discussed.

14. **SCHEDULE OF FUTURE MEETINGS/EVENTS:** A schedule of future meetings and events was presented to the Council.

15. **ADJOURNMENT:** The meeting was adjourned at 9:12 p.m.

Respectfully submitted:

_____
Jocelyn B. Koch
Village Clerk

Approved this _____ day of _____2021:

_____
Michael W. Davey
Mayor

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE VILLAGE COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT A MEETING OR HEARING, THAT PERSON WILL NEED A RECORD OF THE PROCEEDINGS AND, FOR SUCH PURPOSE, MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

VILLAGE OF KEY BISCAYNE

Village Council

Michael W. Davey, *Mayor*
Edward London, *Vice Mayor*
Frank Caplan
Luis Lauredo
Allison McCormick
Brett Moss
Ignacio J. Segurola

Village Manager
Steven C. Williamson

MEMORANDUM

DATE: October 12, 2021

TO: Honorable Mayor and Councilmembers

FROM: Steven C. Williamson, Village Manager

RE: Professional Services for Post Construction Biological and Physical Monitoring

RECOMMENDATION

I recommend that the Village Council authorize the Village Manager to execute a work order to Moffatt & Nichol for the permit required post construction biological and physical monitoring associated with the 2021 beach re-nourishment, issued pursuant to the competitively awarded continuing professional engineering services contract for the provision of coastal engineering services. The total fee for these services is an amount not to exceed $63,150. Funding is allocated from the FY21 Adopted Budget, Capital Improvements, Shoreline Protection: Beach Renourishment & Dune Restoration 2021.

BACKGROUND

Permit(s) issued for the 2021 beach re-nourishment effort requires three (3) years of post-construction biological and physical monitoring to document any environmental changes resulting from the beach re-nourishment.

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

RESOLUTION NO. 2021- _____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AUTHORIZING THE VILLAGE MANAGER TO ISSUE A WORK ORDER TO MOFFATT & NICHOL, INC. FOR ENGINEERING, SURVEYING, AND MARINE BIOLOGICAL SERVICES RELATING TO THE BEACH RENOURISHMENT PROJECT IN AN AMOUNT NOT TO EXCEED $63,150; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Key Biscayne ("Village") issued Request for Qualifications No. 2021-08 ("RFQ") for continuing professional services relating to architecture and engineering services; and

WHEREAS, pursuant to the RFQ, the Village Council selected Moffatt and Nichol, Inc. (the "Consultant") as one of the consultants to provide continuing professional services relating to architecture and engineering services and authorized the Village Manager to execute an agreement with Consultant; and

WHEREAS, the Village Council requires professional services relating to engineering, surveying, and marine biological services for annual monitoring of the beach renourishment project (the "Services"); and

WHEREAS, the Consultant has provided a proposal, attached hereto as Exhibit "A," (the "Proposal") for the Services; and

WHEREAS, the Village Council desires to authorize the Village Manager to issue a work order for the Services consistent with the Proposal, attached hereto as Exhibit "A," and the continuing professional services agreement entered into between the Village and Consultant; and

WHEREAS, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE

VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. **Authorization.** The Village Manager is hereby authorized to issue a work order to the Consultant for the Services consistent with the Proposal attached hereto as Exhibit "A" and the continuing professional services agreement in an amount not to exceed $63,150.00.

Section 3. **Effective Date.** That this Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this _____ day of _____, 2021.

_____
MICHAEL W. DAVEY, MAYOR

ATTEST:

_____
JOCELYN B. KOCH
VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
VILLAGE ATTORNEY

moffatt & nichol

2937 SW 27th Avenue, Suite 101A
Miami, FL 33133

(305) 230-1924
www.moffattnichol.com

September 13, 2021

Mr. Jake Ozyman, P.E.
Director of Community Development
Village of Key Biscayne
88 West McIntyre Street, Suite 210
Key Biscayne, FL 33149

Via email: jozyman@keybiscayne.fl.gov

Subject: **CONSULTING SERVICES RELATIVE TO THE VILLAGE OF KEY BISCAYNE BEACH RENOURISHMENT, MIAMI-DADE COUNTY, FLORIDA**

Dear Mr. Ozyman:

This is to submit a proposal for consulting services relative to the Village of Key Biscayne (Village) Beach Renourishment Project (Project). This scope of work includes biological and physical monitoring tasks required in the Summer of 2021 to fulfil environmental permit conditions related to the 2021 renourishment event. The following work tasks outline the scope of services to be performed for the Village by M&N:

EXHIBIT "A" – SCOPE OF SERVICES

Part 1 – 2021 Biological Monitoring

The M&N team shall conduct a biological monitoring survey to delineate the approximate western extent of seagrass and a qualitative survey for seagrass in accordance with the Biological Monitoring Plan (BMP) for the 2021 Village of Key Biscayne Beach Renourishment Project revised August 3, 2020. The survey limits are from FDEP survey control monuments R-102 through R-108 with control areas south of R-110 and north of R-100 and shall follow the methodology for marine benthic surveying based on the National Marine Fisheries Service (NMFS) Recommendations for Sampling Halophila Johnsonii at a Project Site (NMFS, 2002), using the "large area" protocol and consistent with past survey methods using the Braun Blanquet (BB) technique.

The western seagrass edge mapping shall occur adjacent to the re-nourishment area between FDEP survey control monuments R-102 and R-108. Approximately 5,425 feet (1,654 meters) of shoreline shall be surveyed to locate the western extent of the submerged aquatic vegetation (SAV). The western edge shall be delineated and recorded using Differential Global Positioning System (DGPS) for analysis and mapping purposes.

Snorkeling and SCUBA will be utilized for all transects and shoreline delineation. Tidal conditions may influence the pace at which the effort can be accomplished. Should adverse conditions be encountered, additional time may be required. This would be necessary if extreme tides, Village events, marine/pedestrian traffic, and/or poor visibility are encountered, which would make surveying this area dangerous and pose a safety risk to staff. **Please note that additional time if required to survey these areas shall require additional fees.**

a. **2021 Biological Monitoring:** M&N will coordinate with Smart-Sciences, Olin Hydrographic Solutions, Inc., and the county, state and federal regulatory agencies relative to the biological monitoring event to be conducted in the summer of 2021, as well as perform associated analysis and reporting. July is noted as the preferred month for completion of the biological survey fieldwork in the FDEP-approved BMP dated August 3, 2020; however, within the timeframe of June 1st to September 30th is acceptable. M&N will coordinate with Smart-Sciences and the regulatory agencies relative to data collection methodology and analysis scope based on the updated FDEP-approved BMP. Miami-Dade County DERM requires a summer 2021 post-construction monitoring survey and report with comparison to the 2020 pre-construction data set.

   Please refer to scope of work described by our subconsultants (Smart Sciences, Inc. and Olin Hydrographic Solutions, Inc.) in Attachment 1 of this proposal.

b. **2021 Biological Monitoring Report:** M&N will coordinate with Smart-Sciences for the drafting of the Biological Monitoring Report. M&N will also provide quality control reviews. The final monitoring report will be produced and submitted by Smart-Sciences. M&N will assist in organizing the pertinent submittals to each agency, per their pre-construction and/or post-construction reporting requirements.

c. **2021 Biological Monitoring Meetings:** M&N will participate in conference calls and meetings as requested by the regulatory agencies and/or directed by the Village to review the post-construction monitoring/pre-construction biological survey schedule and process and to address any questions or concerns. Approximately fourteen (14) hours are budgeted for this effort. If additional meetings are required, these will be provided under an addendum scope of services.

Part 2 – 2021 Physical Monitoring

a. **2021 Post-Construction Physical Monitoring Report:** M&N will prepare an engineering report that will include the pre/post-construction beach profile data collected by the contractor to prepare the as-built survey for the Project. The report will summarize and discuss the data, the performance of the beach fill project, and identify erosion and accretion patterns within the monitored area. In addition, the report will include a comparative review of project performance to performance expectations and identification of any adverse impacts attributable to the project. The appendices of the report will include plots of survey profiles and graphical

representations of volumetric and shoreline position changes for the monitoring area. The results will be analyzed for patterns, trends, or changes between annual surveys and cumulatively since project construction. The report will be compiled and distributed to the environmental regulatory agencies for permit compliance within 90 days following the monitoring survey.

Deliverable: Physical Monitoring Coastal Engineering Report (signed/sealed by a Florida Professional Engineer)

b. **2021 Physical Monitoring Meetings:** M&N will participate in conference calls and meetings as requested by the regulatory agencies and/or directed by the Village to review the pre-construction physical survey scope, schedule or other aspects of the process and to address any questions or concerns. Approximately twelve (12) hours are budgeted for this effort. If additional meetings are required, these will be provided under an addendum scope of services.

GENERAL

Contract Terms
This proposal is subject to the contract terms within the "Agreement" dated _____, with the Village. While we make every effort to keep our fees within estimates quoted, additional costs may be incurred due to circumstances beyond our immediate control, including but not limited to, rule or procedural changes, Project team or agency staff delays, and legal actions.

Schedule
The schedule for the Year 1 post-construction biological monitoring/permit compliance consulting services is approximately four (4) months, although the regulatory agencies sometimes take up to 1 year to review the submitted reports.

Professional Fees and Expenses
Professional Fees are summarized in Table 1. Expenses will be invoiced at cost and are estimated at $200.

If you wish for us to provide these services, please provide a work order in the standard format for this Project, which will serve as our Authorization to Proceed. Should you have any questions regarding this proposal, please do not hesitate to contact me at (786) 725-4180 or tblankenship@moffattnichol.com.

Sincerely,
Moffatt & Nichol, Inc.

Tim Blankenship, P.E.
Business Unit Leader

TKB:CJB:AW

Enclosure: Attachment 1

Table 1 Professional Fees

Part	Description	Type	Fee
1	2021 Biological Monitoring		
1a	2021 Biological Monitoring	Lump Sum	$27,000.00
1b	2021 Biological Monitoring Report	Lump Sum	$18,800.00
1c	2021 Biological Monitoring Meetings	Hourly, Est.	$2,850.00
2	2021 Physical Monitoring		
2a	2021 Post-Construction Physical Monitoring Report	Lump Sum	$7,750.00
2b	2021 Physical Monitoring Meetings	Hourly, Est.	$2,400.00
	Biological Survey Contingency Day (if reqd.)	Lump Sum	$4,150.00
	Reimbursable Estimate		$200.00
	TOTAL FEE ESTIMATE		**$63,150.00**

Attachment 1

SMART-SCIENCES
Environmental Consulting

When Urbanization Meets Nature

June 28, 2021

Abbie Wilson, P.E.
Moffatt & Nichol
2937 SW 27th Ave, Suite 101A
Miami, Florida 33133

Sent via e-mail to awilson@moffattnichol.com

Subject: **Proposal for 2021 Post-Construction Biological Monitoring**
Village of Key Biscayne Beach Renourishment Project
FDEP Permit No. 0160846-021-JN
From FDEP Survey Control Monument R-102 to R-108, S. of R-110, N. of R-100
Village of Key Biscayne, Miami-Dade County, Florida
Smart-Sciences Proposal No. 273-001-P

Dear Ms. Wilson:

Smart-Sciences, Inc. (Smart-Sciences) is pleased to submit this proposal to Moffatt & Nichol (Client) for post-construction biological monitoring for the above referenced project. Smart-Sciences will conduct post-construction biological monitoring to delineate the western seagrass edge and evaluate the composition and density of the seagrass waterward of the project location along permanent transects. Completion of construction/sand placement was achieved during the early months of 2021. Post construction biological monitoring is required annually for a total of three years. The first annual post-construction survey will be performed by Smart-Sciences in the summer of 2021. The data collected during the proposed post-construction biological monitoring will be analyzed in comparison to the data collected during the Pre-Construction Biological Monitoring Survey (conducted by Smart-Sciences, August 2020) to document the ecological conditions post-construction, and to determine if unanticipated impacts to the seagrass community occurred due to the project construction activities or due to fill equilibration. Included in the proposal is an outline of the project information provided to us, the scope of services, our fee, the schedule, authorization procedures, and the terms and conditions governing the project.

Background Information

The project location is within the Village of Key Biscayne between Florida Department of Environmental Protection (FDEP) survey control monuments R-102 and R-108, approximately 5,425 feet (1,654 meters) of coastline, with control monitoring site located south of R-110, north of R-100. A Biological Monitoring Plan (BMP) was prepared in support of the Village of Key Biscayne's shore protection project in Miami-Dade County, Florida. The goals of the BMP include delineating the western edge of the nearshore seagrass community offshore of the project area and estimating percent cover and species composition of seagrasses along perpendicular permanent transects within the project area.

The Miami-Dade County Regulatory and Economic Resources, Department of Environmental Resources Management (DERM), FDEP, and United States Army Corp of Engineers (USACE) permits require

biological monitoring in accordance with the approved project specific BMP. The purpose of the monitoring is to identify unanticipated adverse impacts to submerged aquatic resources that result from construction and/or equilibration of the beach renourishment project. Pre-Construction monitoring is required to document the ecological baseline conditions present prior to commencement of any construction activities for comparison with post-construction monitoring. Post-Construction monitoring is required to document the ecological baseline conditions present after the completion of beach construction activities for three years for comparison with the pre-construction monitoring event.

The following tasks provide for the post-construction monitoring required in accordance with the BMP, which includes monitoring within the immediate area of the project influence, as well as monitoring control areas to document background conditions. FDEP has requested that data collected from the control transects be reported separately from the permit-required survey data that will be collected within the Project area.

Proposed Scope of Services

Task 1 –Biological Monitoring Survey

Smart-Sciences will conduct a biological monitoring survey to delineate the approximate western extent of seagrass and a qualitative survey for seagrass in accordance with the BMP for Village of Key Biscayne Beach Nourishment Project revised August 3, 2020. Smart-Sciences worked with Moffatt & Nichol and all three regulatory agencies to update the BMP to provide consistent data that could be statistically analyzed. The survey limits are from FDEP survey control monuments R-102 through R-108 with control areas south of R-110 and north of R-100. This effort will follow the methodology for marine benthic surveying based on the National Marine Fisheries Service (NMFS) Recommendations for Sampling *Halophila johnsonii* at a Project Site (NMFS, 2002), using the "large area" protocol and consistent with past survey methods using the Braun Blanquet technique.

The western seagrass edge mapping will occur adjacent to the renourishment area between FDEP survey control monuments R-102 and R-108. Approximately 5,425 feet (1,654 meters) of shoreline will be surveyed to locate the western extent of the submerged aquatic vegetation (SAV). The western edge will be delineated by Smart-Sciences staff and recorded by others using Differential Global Positioning System (DGPS) for analysis and mapping purposes. This effort is anticipated to take two qualified staff biologists two days to complete. Coordination with the survey crew, will occur prior to fieldwork.

The qualitative seagrass community survey will occur within the same survey limits with the addition of six control transects, three located south of FDEP survey control monument R-110 and three located north of survey control monument R-100. Within the renourishment area, 25 transects will be established along the western seagrass edge identified above, spaced approximate 200 feet (60 meters) apart. Each transect will extend east 115 feet (35 meters), visually perpendicular to the shoreline. The beginning of each transect will be located using a handheld Global Positioning System (GPS) by Smart-Sciences and will correspond

with the start of transect locations identified during the pre-construction survey from 2020. Staff will document the seagrass species and estimate the density of seagrasses using the Braun Blanquet technique along each transect. A one-square meter ($1m^2$) quadrat will be placed on the substrate every five meters along the north side of the transect tape and seagrass density information will be collected. Eight Braun Blanquet sampling stations will be monitored along each transect for a total of 200 qualitative measurements within the project area. If the seagrass area is a mixed bed, dominant seagrass species and other seagrass species occurring within the seagrass bed will be noted. The density estimate will be for the total seagrass coverage, not for each species separately. The biologists will also note the dominate species of attached macroalgae present within the seagrass bed, substrate composition, and take representative photographs of the survey area. Results will include calculations of density (average cover including zeros), abundance (average cover excluding zeros), and frequency of occurrence (percentage of quadrats containing seagrass) for each transect and also for the project as a whole.

A control group composed of six additional seagrass community monitoring transects will be established approximately 2,000 feet (610 meters) south and north of the project area within Bill Baggs Cape Florida State Park and Crandon Park, respectively. Additional seagrass western edge mapping will be conducted in the control area as well. These six transects and the additional seagrass edge mapping area will be monitored using the same methods described above, resulting in a total of 48 qualitative measurements within the control areas. This information will serve as control data and will be used to distinguish natural sand displacement and natural changes in the seagrass community. The control location was selected because it closely resembles the conditions of the seagrass community within the project area, but is far enough away from the project area to not be directly influenced by transport of the beach fill material.

The qualitative seagrass community survey is anticipated to take two qualified staff biologists four days to complete. A contingency day might be required depending on ocean conditions (i.e., poor visibility, strong currents). Snorkeling and SCUBA will be utilized for all transects and shoreline delineation. Tidal conditions may influence the pace and rate of speed at which the effort can be accomplished. Should adverse conditions be encountered, additional time may be required. This would be necessary if extreme tides, Village events, marine/pedestrian traffic, and/or poor visibility are encountered, which would make surveying this area dangerous and pose a safety risk for staff. Additional time required to survey these areas may incur additional fees, subject to your approval.

This task also includes coordination, mobilization activities for field surveys, and safety briefings.

Task 2 – Biological Monitoring Survey Report

Smart-Sciences will prepare a comprehensive Post-Construction Biological Monitoring Survey Report to document results of the western seagrass edge mapping and qualitative survey conducted in **Task 1**. The report will provide a summary of the results of the biological monitoring survey along with identifying any

adverse impacts attributable to the project. The reports will analyze and discuss observed burial or community changes within the seagrass community based upon the data collected and observations made with comparison to control data. A statistical analysis will be prepared comparing Braun Blanquet data between the August 2020 pre-construction monitoring to the 2021 Post-Construction Biological Monitoring Survey. The reports will include a comparison of the 2020 pre-construction observations with 2021 post-construction observations and a discussion of the findings. If any impacts are identified, the report will include an estimate of the area of impact. A Geographic Information Systems (GIS) base map will be prepared comparing the western edge of seagrass mapped prior to commencement of construction to the western edge of seagrass mapped post-construction. Additional maps depicting the density and species distribution along the transects (25 in project area + six control) based upon the Braun Blanquet data, will also be prepared.

Per the BMP, the reports need to be submitted to FDEP, USACE and DERM within 90 days after the completion of the field survey. Reports need to be presented in hardcopy and electronic format. In addition, collected raw data (Excel, field data sheets in PDF, etc.) will need to be provided to FDEP, USACE, and DERM electronically so that it can be used for processing. The electronic file will also include the Excel and raw field data sheets in PDF.

Task 3 – Conference Calls/Meetings/Project Coordination

Anticipated activities include the following:

- Conference calls with project team
- Coordination/Conference Calls with FDEP, DERM, USACE and the Village of Key Biscayne.

Assumptions

- Beach maintenance access will be provided.
- The fees are inclusive of equipment and reimbursable expenses.
- GPS data will be collected using Florida State Plane East (US Feet) projection and datum of NAD 83.
- GPS collected data will have sub-meter accuracy when differentially corrected.
- If necessary, Moffatt & Nichol will request a variance to conduct the surveys outside of the June 1 and September 30 USACE guidelines.
- Changes to the scope may incur additional fees.

Cost of Services

Smart-Sciences proposes to perform the above scope of services for the following fee estimates:

Task Description	**Cost Estimate**
Task 1 –Biological Monitoring Survey	$20,700 (lump sum)
Task 1 – Biological Monitoring Survey Contingency Day (**If needed**)	$2,300 (lump sum, **if needed**)
Task 2 – Biological Monitoring Survey Report	$15,000 (lump sum)
Task 3 – Conference Calls/Meetings with Agencies and Team	$1,250 (hourly)

If unforeseen conditions should require services beyond the scope of services described herein, Smart-Sciences will notify you immediately of additional costs necessary to complete the project, prior to proceeding. Services beyond those described herein will be invoiced in accordance with our standard schedule of fees at the applicable rates. Please note that payment of invoices is due upon receipt.

Schedule

Smart-Sciences will make accommodations to initiate fieldwork once notified to proceed. Smart-Sciences will provide the Biological Monitoring Survey Report (**Task 2**) within 90 days after concluding the field portion of the survey (**Task 1**). Smart-Sciences will continue to coordinate closely with Moffatt & Nichol throughout the duration of the project.

Authorization

Attached is a copy of our Standard General Conditions for Professional Services Agreement, which is a part of the proposal. If the above scope of services and fees are acceptable, please sign below and return a signed, fully executed copy of our proposal.

The above proposal is hereby agreed to by:

Signature: _____ Date: _____

Name: _____

Title: _____

Company: _____

We appreciate the opportunity to offer our professional services on this project. If you have any questions concerning this proposal, please contact our office at 786-313-3977.

Sincerely,

SMART-SCIENCES, INC

Gisele Colbert, M.S.
Principal Scientist

Andrea Orozco, M.S.
Project Scientist

Attachments
Professional Services Agreement
Schedule of Fees

Olin Hydrographic Solutions, Inc.

Consulting Engineering, Surveying & Mapping, and Environmental Services
5952 Senegal Drive, Jupiter, FL 33458
Phone 1 (305) 619 2800; Fax (305) 860 4411

August 23, 2021 P210823A

Abbie Wilson, PE
Project Manager
Moffatt & Nichol
2937 SW 27th Ave, Suite 101A
Miami, FL 33133

RE: Key Biscayne – Biological Monitoring

Olin Hydrographic Solutions, Inc. (OHS) is pleased to provide this proposal relative to the services for the above-referenced project.

The following parts describe the scope of work to be performed by OHS and also present the terms of agreement between OHS and Moffatt & Nichol (client).

Please note fees are inclusive of all mobilization and equipment and OHS staff have performed this same survey several times in past years.

Part 1 – Biological Survey

a) **Extent of Sea Grass Mapping:** OHS will work with the environmental biologist to map the extents of the seagrass for this project. It is envisaged that 2 days will be required to complete this task. OHS staff will utilize a Trimble RTK-GPS to position the sea-grass extents as pointed out by the biologist and capture any associated attributes. The survey data will be reduced and supplied to the Biologist in a format that they are able to incorporate into their drawings and reports

Fees for Part 1 (a) services are lump sum.....$3,700

Additional days will be billed at $1850/day.

GENERAL

Schedule: Part 1 will commence within 2 weeks following our Authorization to Proceed from the Client.

Fees: This fee proposal is valid for 60 days. OHS will invoice the Client for Part I service on a lump sum. Invoices are to be paid within thirty (30) days of receipt of the invoice by the Client. Invoices not paid within thirty (30) days and not in dispute shall incur interest at a rate of 1.5 percent per month. The Client agrees to pay any cost of collection including reasonable attorney's fees incurred whether or not a suit is commenced, or an appeal is taken.

We look forward to working with you through the successful implementation of this project. Please return an executed copy of this agreement which will serve as our Authorization to

Proceed. Should you have any questions regarding this proposal, please contact me at (305) 619 2800.

Sincerely,



OLIN HYDROGRAPHIC SOLUTIONS, INC.
David Olin, P.E.
President

SIGNED:_____ **DATE:**_____
Moffatt & Nichol

Moffatt & Nichol
Fee Proposal Worksheet

Project Number: P210149
Project Title: Key Biscayne Beach Nourishment 2021 Monitoring
Project Manager: Christy Brush
Project Principal: Tim Blankenship

Date: 10/14/21

Sub Mark-up:
ODC Mark-up:

I. MAN-HOUR BUDGET — CLASSIFICATION/RATES

Phase	Task	Title	Principal/Environmental Mngr P-9, P-8 $205.00	Supervisory Eng./Sci P-7 $197.00	Sr. Eng/Environment P-6 $191.00	Eng III/Environmental P-5 $140.00	Eng II/Environmental P-4 $140.00	Eng./Sci I P-3 $140.00	Staff Eng. P-1, P-2 $84.00	Senior Tech. T-5 $115.00	Designer T-4 $78.00	CADD II T-3 $78.00	CADD I T-2, T-1 $78.00	Word Processor A-4, A-3 $65.00	General Clerical A-1, A-2 $65.00	HOURS	LABOR TOTAL
1		2021 Biological Monitoring														-	$0.00
	a	2021 Biological Monitoring	1.00	8.00	3.00				2.00					1.20		15.2	$2,600.00
	b	2021 Biological Monitoring Report	2.00	10.00	5.00				5.00					0.69		22.7	$3,800.00
	c	2021 Biological Monitoring Meetings	1.00	3.00	4.00									0.62		8.6	$1,600.00
2		2021 Physical Monitoring														-	$0.00
	a	2021 Post-Construction Physical Monitoring Report	5.00	3.00	8.00				45.00			10.00		0.71		71.7	$7,750.00
	b	2021 Physical Monitoring Meetings	2.00	4.00	6.00									0.86		12.9	$2,400.00
																-	$0.00
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TOTAL MAN-HOURS			11.00	28.00	26.00	0.00	0.00	0.00	52.00	0.00	0.00	10.00	0.00	4.08	0.00	131.1	
II. M&N LABOR			$2,255.00	$5,516.00	$4,966.00	$0.00	$0.00	$0.00	$4,368.00	$0.00	$0.00	$780.00	$0.00	$265.00	$0.00		$18,150.00

III. OTHER COSTS

A. Subconsultants

			Markup	Total
1.	Smart Sciences	$39,250	$0	$39,250
2.	Olin	$5,550	$0	$5,550
3.		$0	$0	$0
3.		$0	$0	$0
4.		$0	$0	$0
5.		$0	$0	$0
6.		$0	$0	$0
7.		$0	$0	$0
8.		$0	$0	$0
9.		$0	$0	$0
10.		$0	$0	$0
	Total Subconsultants	$44,800	$0	$44,800

B. Other Direct Costs

Airfare	$0	N/A	$0
Lodging	$0	N/A	$0
Meals	$0	N/A	$0
Mileage/Rental Car	$0	N/A	$0
Outside Reproduction	$0	$0	$0
Postage/Delivery	$0	$0	$0
Telephone/Fax	$0	$0	$0
I&R/Diving Equipment	$0	N/A	$0
Other Reimbursibles	$200	$0	$200
	$200	$0	$200

IV. PROJECT SUMMARY

Total M&N Labor	$18,150
Total Subconsultant Cost:	$44,800
Total Other Direct Costs:	$200
Mark-up on Subconsultants:	$0
Mark up on ODCs:	$0
Total Project Estimate	**$63,150**

Village Council
Michael W. Davey, *Mayor*
Edward London, Vice Mayor
Frank Caplan
Luis Lauredo
Allison McCormick
Brett Moss
Ignacio J. Segurola

Village Manager
Steven C. Williamson

MEMORANDUM

DATE: October 12, 2021

TO: Honorable Mayor and Councilmembers

FROM: Steven C. Williamson, Village Manager

RE: Approving a $50,000 Florida Recreation for Development Assistance Program (FRDAP) grant from the Florida Department of Environmental Protection (FDEP) for improvements to Lake Park

RECOMMENDATION

I recommended that the Village Council authorize the Village Manager to accept a non-matching, $50,000 grant from the Florida Recreational Department of Environmental Protection (FDEP) to be used for Lake Park improvements.

BACKGROUND

The Land and Recreation Grants staff administers grants to local governments through the Florida Recreation Development Assistance Program (FRDAP). This competitive, reimbursement grant program provides financial assistance for acquisition or development of land for public outdoor recreation. Lake Park is a popular passive site located on Crandon Blvd. Currently the park has a picnic facility, trails and landscaping all situated on the shorelines of the lake.

The Village will use the FRDAP grant funding to improve several of the park's elements. These enhancements include a major renovation of the picnic pavilion. This effort will increase users' enjoyment of the facility while developing a more resilient facility to combat the increase in threats due to storm surge and changes in the climate. The project will also bring the structure up to current ADA standards. New native landscaping will be installed to support the redevelopment of the site.

RESOLUTION NO. 2021-_____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, ACCEPTING A $50,000.00 FLORIDA RECREATION FOR DEVELOPMENT ASSISTANCE PROGRAM (FRDAP) GRANT FROM THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (FDEP) FOR IMPROVEMENTS TO LAKE PARK AND APPROVING A STANDARD GRANT AGREEMENT RELATED TO THE SAME; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council of the Village of Key Biscayne (the "Village") desires to make improvements to Lake Park, including renovations to the picnic facility and installation of new landscaping (the "Project"); and

WHEREAS, the Florida Department of Environmental Protection ("FDEP") has allocated $50,000.00 of grant funding to the Village for the Project under the Florida Recreation for Development Assistance Program (the "FRDAP Grant"); and

WHEREAS, the Village desires to enter into a Standard Grant Agreement (the "Agreement") with the FDEP to accept the FRDAP Grant for the Project in substantially the form attached hereto as Exhibit "A"; and

WHEREAS, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. **Acceptance and Approval.** That the Village Council hereby accepts the $50,000.00 FRDAP Grant and approves the Agreement with FDEP in substantially the form attached hereto as Exhibit "A."

Section 3. **Authorization.** That the Village Council hereby authorizes the Village Manager to execute the Agreement with FDEP, in substantially the form attached hereto as Exhibit "A," and any subsequent amendments or related documents necessary to implement the Agreement, subject to the approval by the Village Attorney as to form, content, and legal sufficiency.

Section 4. **Effective Date.** That this Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this _____ day of _____, 2021.

_____
MICHAEL W. DAVEY, MAYOR

ATTEST:

_____
JOCELYN B. KOCH
VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
VILLAGE ATTORNEY

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Standard Grant Agreement

This Agreement is entered into between the Parties named below, pursuant to Section 215.971, Florida Statutes:

1. Project Title (Project): **Lake Park** — Agreement Number: **A2039**

2. Parties: **State of Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000** (Department)

   Grantee Name: **Village of Key Biscayne** — Entity Type: **a local government**

   Grantee Address: **88 West McIntyre, Key Biscayne, FL 33149-1846** — FEID: **65-0291811** (Grantee)

3. Agreement Begin Date: **upon execution** — Date of Expiration: **June 30, 2024**

4. Project Number: **A22039** *(If different from Agreement Number)* — Project Location(s): **N. Club Drive, Key Biscayne, FL 33149-2008**

   Project Description: **Renovation of picnic facility and new landscaping.**

5. Total Amount of Funding: **$50,000.00**

Funding Source?	Award #s or Line Item Appropriations:	Amount per Source(s):
☑ State ☐Federal	**Line Item No. 1692A, GAA, FY2021-2022**	**$50,000.00**
☐ State ☐Federal		
☐ Grantee Match		
	Total Amount of Funding + Grantee Match, if any:	**$50,000.00**

6. Department's Grant Manager
   Name: **Tamika Bass** or successor
   Address: **3900 Commonwealth Blvd. MS# 585 Tallahassee, FL 32399**
   Phone: **850-245-2501**
   Email: **tamika.bass@floridadep.gov**

   Grantee's Grant Manager
   Name: **Todd Hofferberth** or successor
   Address: **88 West McIntyre Key Biscayne, FL 33149-1846**
   Phone: **305-365-8901**
   Email: **thofferberth@keybiscayne.fl.gov**

7. The Parties agree to comply with the terms and conditions of the following attachments and exhibits which are hereby incorporated by reference:

☑ Attachment 1: Standard Terms and Conditions Applicable to All Grants Agreements
☑ Attachment 2: Special Terms and Conditions
☑ Attachment 3: Grant Work Plan
☑ Attachment 4: Public Records Requirements
☑ Attachment 5: Special Audit Requirements
☑ Attachment 6: Program-Specific Requirements
☐ Attachment 7: Grant Award Terms (Federal) *Copy available at https://facts.fldfs.com, in accordance with §215.985, F.S.
☐ Attachment 8: Federal Regulations and Terms (Federal)
☐ Additional Attachments (if necessary):
☑ Exhibit A: Progress Report Form
☐ Exhibit B: Property Reporting Form
☑ Exhibit C: Payment Request Summary Form
☐ Exhibit D: Quality Assurance Requirements for Grants
☐ Exhibit E: Advance Payment Terms and Interest Earned Memo
☐ Additional Exhibits (if necessary):

8. The following information applies to Federal Grants only and is identified in accordance with 2 CFR 200.331(a)(1):

Federal Award Identification Number(s) (FAIN):	
Federal Award Date to Department:	
Total Federal Funds Obligated by this Agreement:	
Federal Awarding Agency:	
Award R&D?	☐ Yes ☐N/A

IN WITNESS WHEREOF, this Agreement shall be effective on the date indicated by the Agreement Begin Date above or the last date signed below, whichever is later.

Village of Key Biscayne **GRANTEE**

Grantee Name

By _____

(Authorized Signature) Date Signed

Print Name and Title of Person Signing

State of Florida Department of Environmental Protection **DEPARTMENT**

By _____

Secretary or Designee Date Signed

Callie DeHaven, Director, Division of State Lands

Print Name and Title of Person Signing

☐ Additional signatures attached on separate page.

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STANDARD TERMS AND CONDITIONS
APPLICABLE TO GRANT AGREEMENTS

ATTACHMENT 1

1. Entire Agreement.

This Grant Agreement, including any Attachments and Exhibits referred to herein and/or attached hereto (Agreement), constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any terms and conditions included on Grantee's forms or invoices shall be null and void.

2. Grant Administration.

a. Order of Precedence. If there are conflicting provisions among the documents that make up the Agreement, the order of precedence for interpretation of the Agreement is as follows:
   i. Standard Grant Agreement
   ii. Attachments other than Attachment 1, in numerical order as designated in the Standard Grant Agreement
   iii. Attachment 1, Standard Terms and Conditions
   iv. The Exhibits in the order designated in the Standard Grant Agreement

b. All approvals, written or verbal, and other written communication among the parties, including all notices, shall be obtained by or sent to the parties' Grant Managers. All written communication shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. If the notice is delivered in multiple ways, the notice will be considered delivered at the earliest delivery time.

c. If a different Grant Manager is designated by either party after execution of this Agreement, notice of the name and contact information of the new Grant Manager will be submitted in writing to the other party and maintained in the respective parties' records. A change of Grant Manager does not require a formal amendment or change order to the Agreement.

d. This Agreement may be amended, through a formal amendment or a change order, only by a written agreement between both parties. A formal amendment to this Agreement is required for changes which cause any of the following:
   (1) an increase or decrease in the Agreement funding amount;
   (2) a change in Grantee's match requirements;
   (3) a change in the expiration date of the Agreement; and/or
   (4) changes to the cumulative amount of funding transfers between approved budget categories, as defined in Attachment 3, Grant Work Plan, that exceeds or is expected to exceed twenty percent (20%) of the total budget as last approved by Department.
   A change order to this Agreement may be used when:
   (1) task timelines within the current authorized Agreement period change;
   (2) the cumulative transfer of funds between approved budget categories, as defined in Attachment 3, Grant Work Plan, are less than twenty percent (20%) of the total budget as last approved by Department;
   (3) changing the current funding source as stated in the Standard Grant Agreement; and/or
   (4) fund transfers between budget categories for the purposes of meeting match requirements.
   This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.

e. All days in this Agreement are calendar days unless otherwise specified.

3. Agreement Duration.

The term of the Agreement shall begin and end on the dates indicated in the Standard Grant Agreement, unless extended or terminated earlier in accordance with the applicable terms and conditions. The Grantee shall be eligible for reimbursement for work performed on or after the date of execution through the expiration date of this Agreement, unless otherwise specified in Attachment 2, Special Terms and Conditions. However, work performed prior to the execution of this Agreement may be reimbursable or used for match purposes if permitted by the Special Terms and Conditions.

4. Deliverables.

The Grantee agrees to render the services or other units of deliverables as set forth in Attachment 3, Grant Work Plan. The services or other units of deliverables shall be delivered in accordance with the schedule and at the pricing outlined in the Grant Work Plan. Deliverables may be comprised of activities that must be completed prior to Department making payment on that deliverable. The Grantee agrees to perform in accordance with the terms and conditions set forth in this Agreement and all attachments and exhibits incorporated by the Standard Grant Agreement.

5. Performance Measures.

The Grantee warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Grant Work Plan; (3) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (4) the services shall not and do not knowingly infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (5) its employees, subcontractors, and/or subgrantees shall comply with any security and safety requirements and processes, if provided by Department, for work done at the Project Location(s). The Department reserves the right to investigate or inspect at any time to determine whether the services or qualifications offered by Grantee meet the Agreement requirements. Notwithstanding any provisions herein to the contrary, written acceptance of a particular deliverable does not foreclose Department's remedies in the event deficiencies in the deliverable cannot be readily measured at the time of delivery.

6. Acceptance of Deliverables.

a. Acceptance Process. All deliverables must be received and accepted in writing by Department's Grant Manager before payment. The Grantee shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable time at Grantee's expense. If Department's Grant Manager does not accept the deliverables within 30 days of receipt, they will be deemed rejected.

b. Rejection of Deliverables. The Department reserves the right to reject deliverables, as outlined in the Grant Work Plan, as incomplete, inadequate, or unacceptable due, in whole or in part, to Grantee's lack of satisfactory performance under the terms of this Agreement. The Grantee's efforts to correct the rejected deliverables will be at Grantee's sole expense. Failure to fulfill the applicable technical requirements or complete all tasks or activities in accordance with the Grant Work Plan will result in rejection of the deliverable and the associated invoice. Payment for the rejected deliverable will not be issued unless the rejected deliverable is made acceptable to Department in accordance with the Agreement requirements. The Department, at its option, may allow additional time within which Grantee may remedy the objections noted by Department. The Grantee's failure to make adequate or acceptable deliverables after a reasonable opportunity to do so shall constitute an event of default.

7. Financial Consequences for Nonperformance.

a. Withholding Payment. In addition to the specific consequences explained in the Grant Work Plan and/or Special Terms and Conditions, the State of Florida (State) reserves the right to withhold payment when the Grantee has failed to perform/comply with provisions of this Agreement. None of the financial consequences for nonperformance in this Agreement as more fully described in the Grant Work Plan shall be considered penalties.

b. Corrective Action Plan. If Grantee fails to correct all the deficiencies in a rejected deliverable within the specified timeframe, Department may, in its sole discretion, request that a proposed Corrective Action Plan (CAP) be submitted by Grantee to Department. The Department requests that Grantee specify the outstanding deficiencies in the CAP. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.

   i. The Grantee shall submit a CAP within ten (10) days of the date of the written request from Department. The CAP shall be sent to the Department's Grant Manager for review and approval. Within ten (10) days of receipt of a CAP, Department shall notify Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, Grantee shall have ten (10) days from receipt of Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain Department approval of a CAP as specified above may result in Department's termination of this Agreement for cause as authorized in this Agreement.

   ii. Upon Department's notice of acceptance of a proposed CAP, Grantee shall have ten (10) days to commence implementation of the accepted plan. Acceptance of the proposed CAP by Department does not relieve Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, Department shall retain the right to require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by Department or steps taken by Grantee shall preclude Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement

the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to Department as requested by Department's Grant Manager.

iii. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by Department may result in termination of the Agreement.

8. Payment.

a. Payment Process. Subject to the terms and conditions established by the Agreement, the pricing per deliverable established by the Grant Work Plan, and the billing procedures established by Department, Department agrees to pay Grantee for services rendered in accordance with Section 215.422, Florida Statutes (F.S.).

b. Taxes. The Department is exempted from payment of State sales, use taxes and Federal excise taxes. The Grantee, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by Grantee to suppliers for taxes on materials used to fulfill its contractual obligations with Department. The Grantee shall not use Department's exemption number in securing such materials. The Grantee shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.

c. Maximum Amount of Agreement. The maximum amount of compensation under this Agreement, without an amendment, is described in the Standard Grant Agreement. Any additional funds necessary for the completion of this Project are the responsibility of Grantee.

d. Reimbursement for Costs. The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on Exhibit C, Payment Request Summary Form. To be eligible for reimbursement, costs must be in compliance with laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf.

e. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by Department pursuant to the Grant Work Plan shall be submitted to Department in sufficient detail for a proper pre-audit and post-audit to be performed. The Grantee shall only invoice Department for deliverables that are completed in accordance with the Grant Work Plan.

f. Interim Payments. Interim payments may be made by Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by Department's Grant Manager.

g. Final Payment Request. A final payment request should be submitted to Department no later than sixty (60) days following the expiration date of the Agreement to ensure the availability of funds for payment. However, all work performed pursuant to the Grant Work Plan must be performed on or before the expiration date of the Agreement.

h. Annual Appropriation Contingency. The State's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of Department if the Legislature reduces or eliminates appropriations.

i. Interest Rates. All interest rates charged under the Agreement shall be calculated on the prevailing rate used by the State Board of Administration. To obtain the applicable interest rate, please refer to: www.myfloridacfo.com/Division/AA/Vendors/default.htm.

j. Refund of Payments to the Department. Any balance of unobligated funds that have been advanced or paid must be refunded to Department. Any funds paid in excess of the amount to which Grantee or subgrantee is entitled under the terms of the Agreement must be refunded to Department. If this Agreement is funded with federal funds and the Department is required to refund the federal government, the Grantee shall refund the Department its share of those funds.

9. Documentation Required for Cost Reimbursement Grant Agreements and Match.

If Cost Reimbursement or Match is authorized in Attachment 2, Special Terms and Conditions, the following conditions apply. Supporting documentation must be provided to substantiate cost reimbursement or match requirements for the following budget categories:

a. Salary/Wages. Grantee shall list personnel involved, position classification, direct salary rates, and hours spent on the Project in accordance with Attachment 3, Grant Work Plan in their documentation for reimbursement or match requirements.

b. Overhead/Indirect/General and Administrative Costs. If Grantee is being reimbursed for or claiming match for multipliers, all multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by Grantee exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate.

c. Contractual Costs (Subcontractors). Match or reimbursement requests for payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from Grantee. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the Project. All eligible multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by any subcontractor exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate. Nonconsumable and/or nonexpendable personal property or equipment costing $5,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in Chapters 273 and/or 274, F.S., and Chapter 69I-72, Florida Administrative Code (F.A.C.) and/or Chapter 69I-73, F.A.C., as applicable. The Grantee shall be responsible for maintaining appropriate property records for any subcontracts that include the purchase of equipment as part of the delivery of services. The Grantee shall comply with this requirement and ensure its subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors.

   i. For fixed-price (vendor) subcontracts, the following provisions shall apply: The Grantee may award, on a competitive basis, fixed-price subcontracts to consultants/contractors in performing the work described in Attachment 3, Grant Work Plan. Invoices submitted to Department for fixed-price subcontracted activities shall be supported with a copy of the subcontractor's invoice and a copy of the tabulation form for the competitive procurement process (e.g., Invitation to Bid, Request for Proposals, or other similar competitive procurement document) resulting in the fixed-price subcontract. The Grantee may request approval from Department to award a fixed-price subcontract resulting from procurement methods other than those identified above. In this instance, Grantee shall request the advance written approval from Department's Grant Manager of the fixed price negotiated by Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor. Upon receipt of Department Grant Manager's approval of the fixed-price amount, Grantee may proceed in finalizing the fixed-price subcontract.

   ii. If the procurement is subject to the Consultant's Competitive Negotiation Act under section 287.055, F.S. or the Brooks Act, Grantee must provide documentation clearly evidencing it has complied with the statutory or federal requirements.

d. Travel. All requests for match or reimbursement of travel expenses shall be in accordance with Section 112.061, F.S.

e. Direct Purchase Equipment. For the purposes of this Agreement, Equipment is defined as capital outlay costing $5,000 or more. Match or reimbursement for Grantee's direct purchase of equipment is subject to specific approval of Department, and does not include any equipment purchased under the delivery of services to be completed by a subcontractor. Include copies of invoices or receipts to document purchases, and a properly completed Exhibit B, Property Reporting Form.

f. Rental/Lease of Equipment. Match or reimbursement requests for rental/lease of equipment must include copies of invoices or receipts to document charges.

g. Miscellaneous/Other Expenses. If miscellaneous or other expenses, such as materials, supplies, non-excluded phone expenses, reproduction, or mailing, are reimbursable or available for match or reimbursement under the terms of this Agreement, the documentation supporting these expenses must be itemized and include copies of receipts or invoices. Additionally, independent of Grantee's contract obligations to its subcontractor, Department shall not reimburse any of the following types of charges: cell phone usage; attorney's fees or court costs; civil or administrative penalties; or handling fees, such as set percent overages associated with purchasing supplies or equipment.

h. Land Acquisition. Reimbursement for the costs associated with acquiring interest and/or rights to real property (including access rights through ingress/egress easements, leases, license agreements, or other site access agreements; and/or obtaining record title ownership of real property through purchase) must be supported by the following, as applicable: Copies of Property Appraisals, Environmental Site Assessments, Surveys and Legal Descriptions, Boundary Maps, Acreage Certification, Title Search Reports, Title Insurance, Closing Statements/Documents, Deeds, Leases, Easements, License Agreements, or other legal instrument documenting

acquired property interest and/or rights. If land acquisition costs are used to meet match requirements, Grantee agrees that those funds shall not be used as match for any other Agreement supported by State or Federal funds.

10. Status Reports.

The Grantee shall submit status reports quarterly, unless otherwise specified in the Attachments, on Exhibit A, Progress Report Form, to Department's Grant Manager describing the work performed during the reporting period, problems encountered, problem resolutions, scheduled updates, and proposed work for the next reporting period. Quarterly status reports are due no later than twenty (20) days following the completion of the quarterly reporting period. For the purposes of this reporting requirement, the quarterly reporting periods end on March 31, June 30, September 30 and December 31. The Department will review the required reports submitted by Grantee within thirty (30) days.

11. Retainage.

The following provisions apply if Department withholds retainage under this Agreement:

a. The Department reserves the right to establish the amount and application of retainage on the work performed under this Agreement up to the maximum percentage described in Attachment 2, Special Terms and Conditions. Retainage may be withheld from each payment to Grantee pending satisfactory completion of work and approval of all deliverables.

b. If Grantee fails to perform the requested work, or fails to perform the work in a satisfactory manner, Grantee shall forfeit its right to payment of the retainage associated with the work. Failure to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed. The Department shall provide written notification to Grantee of the failure to perform that shall result in retainage forfeiture. If the Grantee does not correct the failure to perform within the timeframe stated in Department's notice, the retainage will be forfeited to Department.

c. No retainage shall be released or paid for incomplete work while this Agreement is suspended.

d. Except as otherwise provided above, Grantee shall be paid the retainage associated with the work, provided Grantee has completed the work and submits an invoice for retainage held in accordance with the invoicing procedures under this Agreement.

12. Insurance.

a. Insurance Requirements for Sub-Grantees and/or Subcontractors. The Grantee shall require its sub-grantees and/or subcontractors, if any, to maintain insurance coverage of such types and with such terms and limits as described in this Agreement. The Grantee shall require all its sub-grantees and/or subcontractors, if any, to make compliance with the insurance requirements of this Agreement a condition of all contracts that are related to this Agreement. Sub-grantees and/or subcontractors must provide proof of insurance upon request.

b. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Grantee providing such insurance.

c. Proof of Insurance. Upon execution of this Agreement, Grantee shall provide Department documentation demonstrating the existence and amount for each type of applicable insurance coverage ***prior to*** performance of any work under this Agreement. Upon receipt of written request from Department, Grantee shall furnish Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.

d. Duty to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, or if Grantee cannot get adequate coverage, Grantee shall immediately notify Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) days after the cancellation of coverage.

e. Insurance Trust. If the Grantee's insurance is provided through an insurance trust, the Grantee shall instead add the Department of Environmental Protection, its employees, and officers as an additional covered party everywhere the Agreement requires them to be added as an additional insured.

13. Termination.

a. Termination for Convenience. When it is in the State's best interest, Department may, at its sole discretion, terminate the Agreement in whole or in part by giving 30 days' written notice to Grantee. The Department shall notify Grantee of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Agreement is to be terminated. The Grantee must submit all invoices for work to be paid under this Agreement within thirty (30) days of the effective date of termination. The Department shall not pay any invoices received after thirty (30) days of the effective date of termination.

b. Termination for Cause. The Department may terminate this Agreement if any of the events of default described in the Events of Default provisions below occur or in the event that Grantee fails to fulfill any of its other

obligations under this Agreement. If, after termination, it is determined that Grantee was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Department. The rights and remedies of Department in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

c. Grantee Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination unless as otherwise directed by Department, Grantee shall not furnish any service or deliverable on the date, and to the extent specified, in the notice. However, Grantee shall continue work on any portion of the Agreement not terminated. If the Agreement is terminated before performance is completed, Grantee shall be paid only for that work satisfactorily performed for which costs can be substantiated. The Grantee shall not be entitled to recover any cancellation charges or lost profits.
d. Continuation of Prepaid Services. If Department has paid for any services prior to the expiration, cancellation, or termination of the Agreement, Grantee shall continue to provide Department with those services for which it has already been paid or, at Department's discretion, Grantee shall provide a refund for services that have been paid for but not rendered.
e. Transition of Services Upon Termination, Expiration, or Cancellation of the Agreement. If services provided under the Agreement are being transitioned to another provider(s), Grantee shall assist in the smooth transition of Agreement services to the subsequent provider(s). This requirement is at a minimum an affirmative obligation to cooperate with the new provider(s), however additional requirements may be outlined in the Grant Work Plan. The Grantee shall not perform any services after Agreement expiration or termination, except as necessary to complete the transition or continued portion of the Agreement, if any.

14. Notice of Default.

If Grantee defaults in the performance of any covenant or obligation contained in the Agreement, including, any of the events of default, Department shall provide notice to Grantee and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Grantee fail to perform within the time provided, Grantee will be found in default, and Department may terminate the Agreement effective as of the date of receipt of the default notice.

15. Events of Default.

Provided such failure is not the fault of Department or outside the reasonable control of Grantee, the following non-exclusive list of events, acts, or omissions, shall constitute events of default:

a. The commitment of any material breach of this Agreement by Grantee, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Agreement;
b. The commitment of any material misrepresentation or omission in any materials, or discovery by the Department of such, made by the Grantee in this Agreement or in its application for funding;
c. Failure to submit any of the reports required by this Agreement or having submitted any report with incorrect, incomplete, or insufficient information;
d. Failure to honor any term of the Agreement;
e. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Grantee by a state or other licensing authority;
f. Failure to pay any and all entities, individuals, and furnishing labor or materials, or failure to make payment to any other entities as required by this Agreement;
g. Employment of an unauthorized alien in the performance of the work, in violation of Section 274 (A) of the Immigration and Nationality Act;
h. Failure to maintain the insurance required by this Agreement;
i. One or more of the following circumstances, uncorrected for more than thirty (30) days unless, within the specified 30-day period, Grantee (including its receiver or trustee in bankruptcy) provides to Department adequate assurances, reasonably acceptable to Department, of its continuing ability and willingness to fulfill its obligations under the Agreement:
    i. Entry of an order for relief under Title 11 of the United States Code;
    ii. The making by Grantee of a general assignment for the benefit of creditors;
    iii. The appointment of a general receiver or trustee in bankruptcy of Grantee's business or property; and/or
    iv. An action by Grantee under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

16. Suspension of Work.

The Department may, in its sole discretion, suspend any or all activities under the Agreement, at any time, when it is in the best interest of the State to do so. The Department shall provide Grantee written notice outlining the particulars of suspension. Examples of reasons for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, Grantee shall comply with the notice. Within 90 days, or any longer period agreed to by the parties, Department shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or (2) terminate the Agreement. If the Agreement is terminated after 30 days of suspension, the notice of suspension shall be deemed to satisfy the thirty (30) days' notice required for a notice of termination for convenience. Suspension of work shall not entitle Grantee to any additional compensation.

17. Force Majeure.

The Grantee shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of Grantee or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond Grantee's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to Grantee. In case of any delay Grantee believes is excusable, Grantee shall notify Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first arose, if Grantee could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five days after the date Grantee first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY**. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against Department. The Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist Grantee shall perform at no increased cost, unless Department determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to Department, in which case Department may: (1) accept allocated performance or deliveries from Grantee, provided that Grantee grants preferential treatment to Department with respect to products subjected to allocation; (2) contract with other sources (without recourse to and by Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity; or (3) terminate Agreement in whole or in part.

18. Indemnification.

a. The Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless Department and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:
    i. personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, or subcontractors; provided, however, that Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of Department;
    ii. the Grantee's breach of this Agreement or the negligent acts or omissions of Grantee.

b. The Grantee's obligations under the preceding paragraph with respect to any legal action are contingent upon Department giving Grantee: (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense; and (3) assistance in defending the action at Grantee's sole expense. The Grantee shall not be liable for any cost, expense, or compromise incurred or made by Department in any legal action without Grantee's prior written consent, which shall not be unreasonably withheld.

c. Notwithstanding sections a. and b. above, the following is the sole indemnification provision that applies to Grantees that are governmental entities: Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, F.S. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State to be sued by third parties in any matter arising out of any contract or this Agreement.

d. No provision in this Agreement shall require Department to hold harmless or indemnify Grantee, insure or assume liability for Grantee's negligence, waive Department's sovereign immunity under the laws of Florida, or

otherwise impose liability on Department for which it would not otherwise be responsible. Any provision, implication or suggestion to the contrary is null and void.

19. Limitation of Liability.

The Department's liability for any claim arising from this Agreement is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Agreement. Such liability is further limited to a cap of $100,000.

20. Remedies.

Nothing in this Agreement shall be construed to make Grantee liable for force majeure events. Nothing in this Agreement, including financial consequences for nonperformance, shall limit Department's right to pursue its remedies for other types of damages under the Agreement, at law or in equity. The Department may, in addition to other remedies available to it, at law or in equity and upon notice to Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it.

21. Waiver.

The delay or failure by Department to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of Department's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

22. Statutory Notices Relating to Unauthorized Employment and Subcontracts.

a. The Department shall consider the employment by any Grantee of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If Grantee/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Grantee shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Agreement.

b. Pursuant to Sections 287.133, 287.134, and 287.137 F.S., the following restrictions apply to persons placed on the convicted vendor list, discriminatory vendor list, or the antitrust violator vendor list:

   i. Public Entity Crime. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

   ii. Discriminatory Vendors. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

   iii. Antitrust Violator Vendors. A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply on any contract to provide any good or services to a public entity; may not submit a bid, proposal, or reply on any contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact new business with a public entity.

   iv. Notification. The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list, the discriminatory vendor list, or antitrust violator vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and the antitrust violator vendor list and posts the list on its website. Questions regarding the discriminatory vendor list or antitrust violator vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

23. Compliance with Federal, State and Local Laws.

a. The Grantee and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Grantee shall include this provision in all subcontracts issued as a result of this Agreement.

b. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.

c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

d. Any dispute concerning performance of the Agreement shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts of the State, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

24. Scrutinized Companies.

a. Grantee certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

b. If this Agreement is for more than one million dollars, the Grantee certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

c. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

25. Lobbying and Integrity.

The Grantee agrees that no funds received by it under this Agreement will be expended for the purpose of lobbying the Legislature or a State agency pursuant to Section 216.347, F.S., except that pursuant to the requirements of Section 287.058(6), F.S., during the term of any executed agreement between Grantee and the State, Grantee may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Grantee shall comply with Sections 11.062 and 216.347, F.S.

26. Record Keeping.

The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. In the event that any work is subcontracted, Grantee shall similarly require each subcontractor to maintain and allow access to such records for audit purposes. Upon request of Department's Inspector General, or other authorized State official, Grantee shall provide any type of information the Inspector General deems relevant to Grantee's integrity or responsibility. Such information may include, but shall not be limited to, Grantee's business or financial records, documents, or files of any type or form that refer to or relate to Agreement. The Grantee shall retain such records for the longer of: (1) three years after the expiration of the Agreement; or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: http://dos.myflorida.com/library-archives/records-management/general-records-schedules/).

27. Audits.

a. Inspector General. The Grantee understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Grantee will comply with this duty and ensure that its sub-grantees and/or subcontractors issued under this Agreement, if any, impose this requirement, in writing, on its sub-grantees and/or subcontractors, respectively.

b. Physical Access and Inspection. Department personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:

    i. Grantee shall provide access to any location or facility on which Grantee is performing work, or storing or staging equipment, materials or documents;

ii. Grantee shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
iii. Grantee shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.

c. Special Audit Requirements. The Grantee shall comply with the applicable provisions contained in Attachment 5, Special Audit Requirements. Each amendment that authorizes a funding increase or decrease shall include an updated copy of Exhibit 1, to Attachment 5. If Department fails to provide an updated copy of Exhibit 1 to include in each amendment that authorizes a funding increase or decrease, Grantee shall request one from the Department's Grants Manager. The Grantee shall consider the type of financial assistance (federal and/or state) identified in Attachment 5, Exhibit 1 and determine whether the terms of Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, Grantee shall utilize the guidance provided under 2 CFR §200.330 for determining whether the relationship represents that of a subrecipient or vendor. For State financial assistance, Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website: https:\\apps.fldfs.com\fsaa.

d. Proof of Transactions. In addition to documentation provided to support cost reimbursement as described herein, Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Agreement pursuant to State guidelines (including cost allocation guidelines) and federal, if applicable. Allowable costs and uniform administrative requirements for federal programs can be found under 2 CFR 200. The Department may also request a cost allocation plan in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). The Grantee must provide the additional proof within thirty (30) days of such request.

e. No Commingling of Funds. The accounting systems for all Grantees must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.
    i. If Department finds that these funds have been commingled, Department shall have the right to demand a refund, either in whole or in part, of the funds provided to Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from Department shall refund, and shall forthwith pay to Department, the amount of money demanded by Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from Department by Grantee to the date repayment is made by Grantee to Department.
    ii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by Department, from another source(s), Grantee shall reimburse Department for all recovered funds originally provided under this Agreement and interest shall be charged for those recovered costs as calculated on from the date(s) the payment(s) are recovered by Grantee to the date repayment is made to Department.
    iii. Notwithstanding the requirements of this section, the above restrictions on commingling funds do not apply to agreements where payments are made purely on a cost reimbursement basis.

28. Conflict of Interest.

The Grantee covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.

29. Independent Contractor.

The Grantee is an independent contractor and is not an employee or agent of Department.

30. Subcontracting.

a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by Grantee.

b. The Department may, for cause, require the replacement of any Grantee employee, subcontractor, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.

c. The Department may, for cause, deny access to Department's secure information or any facility by any Grantee employee, subcontractor, or agent.
d. The Department's actions under paragraphs b. or c. shall not relieve Grantee of its obligation to perform all work in compliance with the Agreement. The Grantee shall be responsible for the payment of all monies due under any subcontract. The Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract and Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract.
e. The Department will not deny Grantee's employees, subcontractors, or agents access to meetings within the Department's facilities, unless the basis of Department's denial is safety or security considerations.
f. The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Agreement embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State. A list of minority-owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.
g. The Grantee shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both Grantee and the subcontractor(s), and without the fault or negligence of either, unless the subcontracted products or services were obtainable from other sources in sufficient time for Grantee to meet the required delivery schedule.

31. Guarantee of Parent Company.

If Grantee is a subsidiary of another corporation or other business entity, Grantee asserts that its parent company will guarantee all of the obligations of Grantee for purposes of fulfilling the obligations of Agreement. In the event Grantee is sold during the period the Agreement is in effect, Grantee agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of Grantee.

32. Survival.

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

33. Third Parties.

The Department shall not be deemed to assume any liability for the acts, failures to act or negligence of Grantee, its agents, servants, and employees, nor shall Grantee disclaim its own negligence to Department or any third party. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. If Department consents to a subcontract, Grantee will specifically disclose that this Agreement does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Agreement.

34. Severability.

If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

35. Grantee's Employees, Subcontractors and Agents.

All Grantee employees, subcontractors, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under Agreement must comply with all security and administrative requirements of Department and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement.

36. Assignment.

The Grantee shall not sell, assign, or transfer any of its rights, duties, or obligations under the Agreement, or under any purchase order issued pursuant to the Agreement, without the prior written consent of Department. In the event of any assignment, Grantee remains secondarily liable for performance of the Agreement, unless Department expressly waives such secondary liability. The Department may assign the Agreement with prior written notice to Grantee of its intent to do so.

37. Compensation Report.

If this Agreement is a sole-source, public-private agreement or if the Grantee, through this agreement with the State, annually receive 50% or more of their budget from the State or from a combination of State and Federal funds, the Grantee shall provide an annual report, including the most recent IRS Form 990, detailing the total compensation for the entities' executive leadership teams. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. The Grantee must also inform the Department of any changes in total executive compensation between the annual

reports. All compensation reports must indicate what percent of compensation comes directly from the State or Federal allocations to the Grantee.

38. Execution in Counterparts and Authority to Sign.

This Agreement, any amendments, and/or change orders related to the Agreement, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Terms and Conditions
AGREEMENT NO. A2039

ATTACHMENT 2

These Special Terms and Conditions shall be read together with general terms outlined in the Standard Terms and Conditions, Attachment 1. Where in conflict, these more specific terms shall apply.

1. Scope of Work.
The Project funded under this Agreement is Lake Park. The Project is defined in more detail in Attachment 3, Grant Work Plan.

2. Duration.
a. Reimbursement Period. The reimbursement period for this Agreement begins when the final party signs the Agreement (the "effective date") and ends on the Project Completion Date. Only authorized Pre-Agreement expenses may be reimbursed outside of this period.
b. Extensions. There are no extensions available for this Project.
c. Service Periods. Additional service periods are not authorized under this Agreement.

3. Payment Provisions.
a. Compensation. This is a cost reimbursement Agreement. The Grantee shall be compensated under this Agreement as described in Attachment 3.
b. Invoicing. Invoicing will occur after approval of the final delivereable(s).
c. Advance Pay. Advance Pay is not authorized under this Agreement.

4. Cost Eligible for Reimbursement or Matching Requirements.
Reimbursement for costs or availability for costs to meet matching requirements shall be limited to the following budget categories, as defined in the Reference Guide for State Expenditures, as indicated:

Reimbursement	Match	Category
☒	☐	Salaries/Wages
		Overhead/Indirect/General and Administrative Costs:
☒	☐	a. Fringe Benefits, which shall be calculated at the rate of 40% of direct salaries.
☒	☐	b. Indirect Costs, which shall be calculated at the rate of 15% of direct costs.
☒	☐	Contractual (Subcontractors)
☐	☐	Travel, in accordance with Section 112, F.S.
☐	☐	Equipment
☒	☐	Rental/Lease of Equipment
☒	☐	Miscellaneous/Other Expenses
☐	☐	Land Acquisition

5. Equipment Purchase.
No Equipment purchases shall be funded under this Agreement.

6. Land Acquisition.
There will be no Land Acquisitions funded under this Agreement.

7. Match Requirements
There is no match required on the part of the Grantee under this Agreement.

8. Insurance Requirements

Required Coverage. At all times during the Agreement the Grantee, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. The limits of coverage under each policy maintained by the Grantee shall not be interpreted as limiting the Grantee's liability and obligations under the Agreement. Grantee shall provide coverage through a self-insurance program established and operating under the laws of Florida. Additional insurance requirements for this Agreement may be required elsewhere in this Agreement, however the minimum insurance requirements applicable to this Agreement are:

a. Comprehensive General Liability Insurance.
The Grantee shall provide adequate comprehensive general liability insurance coverage and hold such liability insurance at all times during the Agreement. The minimum limits shall be $200,000 for each person and $300,000 per occurrence.

b. Commercial Automobile Insurance.
If the Grantee's duties include the use of a commercial vehicle, the Grantee shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The minimum limits shall be as follows:

$200,000/300,000	Automobile Liability for Company-Owned Vehicles, if applicable
$200,000/300,000	Hired and Non-owned Automobile Liability Coverage

c. Workers' Compensation.
The Grantee shall comply with the workers' compensation requirements of Chapter 440, F.S.

d. Other Insurance. None.

9. Quality Assurance Requirements.
There are no special Quality Assurance requirements under this Agreement.

10. Retainage.
Retainage is permitted under this Agreement. Retainage may be up to a maximum of 10% of the total amount of the Agreement.

11. Subcontracting.
The Grantee may subcontract work under this Agreement without the prior written consent of the Department's Grant Manager. Regardless of any subcontract, the Grantee is ultimately responsible for all work to be performed under this Agreement.

12. State-owned Land.
The work will not be performed on State-owned land.

13. Office of Policy and Budget Reporting.
There are no special Office of Policy and Budget reporting requirements for this Agreement.

14. Additional Terms.
None.

ATTACHMENT 3
GRANT WORK PLAN
FLORIDA RECREATION DEVELOPMENT ASSISTANCE PROGRAM (FRDAP)
Project Name: **Lake Park**
Grantee Name: **Village of Key Biscayne**
FRDAP Project # **A22039**

SUMMARY: The Grantee shall complete the Project Element(s), which were approved by the Department through the FRDAP Application Evaluation Criteria, pursuant to Chapter 62D-5, Florida Administrative Code (F.A.C.). Any alteration(s) to the Project Element(s) as submitted in the Grantee's application and listed in the Grant Work Plan is considered a significant change, must be pre-approved by the Department, and may require a formal Amendment to this Agreement. All work must be completed in accordance with the FRDAP Program, and local, state and federal laws, the approved Project plans, all required permits, and the Florida Building Code. Prior to the Department issuing a "Notice to Commence" to the Grantee, as specified in Attachment 6 of the Agreement, Program Specific Requirements, the Department must receive evidence of and have approved all Deliverables in Task 1.

For the purpose of this Agreement, the terms "Project Element" and "Project Task" are used interchangeably to mean an identified facility within the Project.

The Project is located at **N. Club Drive, Key Biscayne, FL 33149-2008** and is considered a "Small Project" pursuant to paragraph 62D-5.055(6)(a), F.A.C.

Retroactive Project.
☐This Project has been approved as a "Retroactive Project." Retroactive Projects are eligible for a FRDAP grant award if they otherwise meet the FRDAP rule criteria, funds are available, and Project Costs have occurred within one (1) year prior to the approval for funding by the Governor (June 2, 2021).

☒This Project has not been approved as a "Retroactive Project."

Project Completion: The Project Completion Date for this Agreement is April 30, 2024.

Budget: Reimbursement for allowable costs for the Project shall not exceed the maximum Grant Award Amount outlined below. There is no match required on the part of the Grantee under this Agreement. The total estimated Project Cost provided below is based on the approved FRDAP Application. A detailed cost analysis will be provided in the Deliverables for Task 1, prior to the Department issuing the "Notice to Commence." All final Project Costs shall be submitted to the Department with the payment request.

Maximum Grant Award Amount:	**$50,000.00**
Required Grantee Match Amount:	**$0**
Total Estimated Project Cost:	**$50,000.00**
Match Ratio:	**0%**

Scope of Work/Tasks	Deliverables	Due Date	Financial Consequences
TASK 1 **1.A.** Development of Commencement Documentation Checklist (DRP-107)[1]. **1.B.** A Cost Analysis Form, with detailed budget (and In-House Cost Schedule(s), if applicable).	**DELIVERABLE 1** The Department will issue "Notice to Commence" upon receipt and approval of: **1.A.** All applicable Project specific Commencement documentation listed on Commencement Documentation Checklist (DRP-107) **1.B.** A Cost Analysis Form, with detailed budget (and In-House Cost Schedule(s), if applicable). Project planning expenses, such as application preparation, architectural and engineering fees, permitting fees, Project inspection, and other similar fees are eligible for reimbursement. However, reimbursement, if requested, shall not exceed fifteen (15%) of total Project Cost, and shall be invoiced upon Project completion, in accordance with the Payment Request Schedule. **The Grantee may not proceed with development of the Project until Notice to Commence has been issued.**	180 calendar days after Execution of Agreement[2]	Failure to provide the required Commencement Documentation may jeopardize your funding. The Department may terminate the Project Agreement if the required Deliverables are not submitted and approved by the Department.
TASK 2 **2.A.** Development of Primary and Support Project Elements, which includes: **Renovation of picnic facility and new landscaping.** **2.B.** Development of Completion of Documentation Checklist (DRP-111). **2.C.** Completion of Final Status Report (DRP-109).	**DELIVERABLE 2** The Grantee may request reimbursement upon Department receipt and approval of: **2.A.** Development of required Project Elements. **2.B.** All applicable Project specific Completion documentation listed on Completion Documentation Checklist (DRP-111) **2.C.** Final Status Report (DRP-109). The Grantee may request reimbursement for allowable budgeted expenses and costs pursuant to the Agreement that are directly related to the successful development of the Project site. Reimbursement shall not exceed the Grant	Due April 30, 2024, which shall also be the Project Completion Date[3]	No reimbursement will be made for Deliverable(s) deemed unsatisfactory by the Department. Payment(s) will not be made for unsatisfactory or incomplete work. In addition, a Task may be terminated for Grantee's failure to perform.

	Award Amount, less any reimbursement requested for in Deliverable 1, and shall be invoiced upon Project completion, in accordance with the Payment Request Schedule below. Ten percent (10%) of the Grant Award will be retained until the Project is designated complete by the Department.		

Project Task Performance Standard: The Department's Grant Manager will review the Project Completion Certificate and the Deliverables to verify compliance with the requirements for funding under the FRDAP; approved plans and application approved for funding. Upon review and written acceptance by the Department's Grant Manager of the Project Completion Certificate and the Deliverables under each Project Task, the Grantee may proceed with the payment request submittal.

Payment Request Schedule: Following Department approval of all Deliverables, the Grantee may submit a **single payment request** on Exhibit C, Payment Request Summary Form, DRP-115, along with all required documentation as outlined in the Financial Reporting Procedures (DRP-110), as applicable, to support payment. A payment request submitted as part of the reimbursement process must correspond with the Cost Analysis and supporting documents provided under Project Tasks.

Endnotes:

1. FRDAP documentation is available at https://floridadep.gov/lands/land-and-recreation-grants/content/frdap-assistance and/or from the Land and Recreational Grants Section, State of Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, MS# 585, Tallahassee, Florida, 32399-3000.
2. Project Agreement is subject to termination if Commencement documentations under Task 1 are not received and approved by the Department within 180 calendar days of the Project Agreement execution.
3. Due Date will not be extended beyond the Grant Period as outlined in Subsection 62D-5.058(7), F.A.C.

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Public Records Requirements

Attachment 4

1. **Public Records.**

a. If the Agreement exceeds $35,000.00, and if Grantee is acting on behalf of Department in its performance of services under the Agreement, Grantee must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by Grantee in conjunction with the Agreement (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.

b. The Department may unilaterally terminate the Agreement if Grantee refuses to allow public access to Public Records as required by law.

2. **Additional Public Records Duties of Section 119.0701, F.S., If Applicable.**
For the purposes of this paragraph, the term "contract" means the "Agreement." If Grantee is a "contractor" as defined in section 119.0701(1)(a), F.S., the following provisions apply and the contractor shall:

a. Keep and maintain Public Records required by Department to perform the service.

b. Upon request, provide Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.

c. A contractor who fails to provide the Public Records to Department within a reasonable time may be subject to penalties under section 119.10, F.S.

d. Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the Public Records to Department.

e. Upon completion of the contract, transfer, at no cost, to Department all Public Records in possession of the contractor or keep and maintain Public Records required by Department to perform the service. If the contractor transfers all Public Records to Department upon completion of the contract, the contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the contractor keeps and maintains Public Records upon completion of the contract, the contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to Department, upon request from Department's custodian of Public Records, in a format specified by Department as compatible with the information technology systems of Department. These formatting requirements are satisfied by using the data formats as authorized in the contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the contractor is authorized to access.

f. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS AT:**

Telephone: **(850) 245-2118**
Email: public.services@floridadep.gov
Mailing Address: **Department of Environmental Protection**
ATTN: Office of Ombudsman and Public Services
Public Records Request
3900 Commonwealth Boulevard, MS 49
Tallahassee, Florida 32399

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Audit Requirements
(State and Federal Financial Assistance)

Attachment 5

The administration of resources awarded by the Department of Environmental Protection *(which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the agreement)* to the recipient *(which may be referred to as the "Recipient", "Grantee" or other name in the agreement)* may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEP Department staff, limited scope audits as defined by 2 CFR 200.425, or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in 2 CFR §200.330

1. A recipient that expends $750,000 or more in Federal awards in its fiscal year, must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F. EXHIBIT 1 to this Attachment indicates Federal funds awarded through the Department of Environmental Protection by this Agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from the Department of Environmental Protection. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR 200.502-503. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200.514 will meet the requirements of this part.

2. For the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR 200.508-512.

3. A recipient that expends less than $750,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F-Audit Requirements. If the recipient expends less than $750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F-Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other federal entities.

4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at **www.cfda.gov**

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of $750,000 in any fiscal year of such recipient (for fiscal years ending June 30, 2017, and thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this form lists the state financial assistance awarded through the Department of Environmental Protection by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of Environmental Protection, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

2. In connection with the audit requirements addressed in Part II, paragraph 1; the recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

3. If the recipient expends less than $750,000 in state financial assistance in its fiscal year (for fiscal year ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than $750,000 in state financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).

4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at https://apps.fldfs.com/fsaa for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at http://www.leg.state.fl.us/Welcome/index.cfm, State of Florida's website at http://www.myflorida.com/, Department of Financial Services' Website at http://www.fldfs.com/and the Auditor General's Website at http://www.myflorida.com/audgen/.

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and required by PART I of this form shall be submitted, when required by 2 CFR 200.512, by or on behalf of the recipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR 200.36 and 200.512

   A. The Federal Audit Clearinghouse designated in 2 CFR §200.501(a) (the number of copies required by 2 CFR §200.501(a) should be submitted to the Federal Audit Clearinghouse), at the following address:

By Mail:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at http://harvester.census.gov/facweb/

2. Copies of financial reporting packages required by PART II of this Attachment shall be submitted by or on behalf of the recipient directly to each of the following:

A. The Department of Environmental Protection at one of the following addresses:

By Mail:
Audit Director
Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:
FDEPSingleAudit@dep.state.fl.us

B. The Auditor General's Office at the following address:

Auditor General
Local Government Audits/342
Claude Pepper Building, Room 401
111 West Madison Street
Tallahassee, Florida 32399-1450

The Auditor General's website (http://flauditor.gov/) provides instructions for filing an electronic copy of a financial reporting package.

3. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at one of the following addresses:

By Mail:
Audit Director
Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:
FDEPSingleAudit@dep.state.fl.us

4. Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with 2 CFR 200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

5. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with 2 CFR 200, Subpart F-Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (non and for-profit organizations), Rules of the Auditor General, should indicate the date and the reporting package was delivered to the recipient correspondence accompanying the reporting package.

PART V: RECORD RETENTION

The recipient shall retain sufficient records demonstrating its compliance with the terms of the award and this Agreement for a period of **five (5)** years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of **three (3)** years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

EXHIBIT – 1

FUNDS AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Note: If the resources awarded to the recipient represent more than one federal program, provide the same information shown below for each federal program and show total federal resources awarded

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program A	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				$	
Federal Program B	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				$	

Note: Of the resources awarded to the recipient represent more than one federal program, list applicable compliance requirements for each federal program in the same manner as shown below:

Federal Program A	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.:(eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	
Federal Program B	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	

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Note: If the resources awarded to the recipient for matching represent more than one federal program, provide the same information shown below for each federal program and show total state resources awarded for matching.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:					
Federal Program A	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category
Federal Program B	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category

Note: If the resources awarded to the recipient represent more than one state project, provide the same information shown below for each state project and show total state financial assistance awarded that is subject to section 215.97, F.S.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:						
State Program A	State Awarding Agency	State Fiscal Year[1]	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
Original Agreement	General Appropriations Act Line Item 1692A – Fixed Capital Outlay Florida Recreation Development Assistance Grants from Florida Forever Trust Fund	2021-2022	37.017	Florida Recreation Development Assistance Program	$50,000.00	140002

Total Award	$50,000.00	

Note: List applicable compliance requirement in the same manner as illustrated above for federal resources. For matching resources provided by the Department for DEP for federal programs, the requirements might be similar to the requirements for the applicable federal programs. Also, to the extent that different requirements pertain to different amount for the non-federal resources, there may be more than one grouping (i.e. 1, 2, 3, etc.) listed under this category.

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [www.cfda.gov] and/or the Florida Catalog of State Financial Assistance (CSFA) [https://apps.fldfs.com/fsaa/searchCatalog.aspx], and State Projects Compliance Supplement (Part Four: State Projects Compliance Supplement [https://apps.fldfs.com/fsaa/state_project_compliance.aspx]. The services/purposes for which the funds are to be used are included in the Agreement's Grant Work Plan. Any match required by the Recipient is clearly indicated in the Agreement.

[1] Subject to change by Change Order.

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
PROGRAM SPECIFIC REQUIREMENTS

FLORIDA RECREATION DEVELOPMENT ASSISTANCE PROGRAM

ATTACHMENT 6

1. Project Submittal Forms.
Administrative Forms, Reimbursement Forms, and Guidelines referenced in this Agreement may be found at https://floridadep.gov/lands/land-and-recreation-grants/content/frdap-assistance, or by contacting the Department's Grant Manager.

2. Notice to Commence.
Prior to commencement of the Project, the Grantee shall submit to the Department for approval all documentation and completion of responsibilities listed on the Commencement Documentation Checklist, DRP-107. Upon satisfactory approval by the Department, the Department will issue written "Notice to Commence" to the Grantee to commence the Project. **The Grantee SHALL NOT proceed until the Department issues the "Notice to Commence."** Until the Department issues the "Notice to Commence," the Department is not obligated to pay or reimburse Grantee for fees, costs, or general expenses of any kind that were incurred prior to the "Notice to Commence," except for Pre-Agreement Expenses as more fully described in subsection 62D-5.054(34), F.A.C.

3. Site Plans.
Project site facilities must be attractive for public use and compatible with the environment. Plans and specifications for Project site improvements and facilities must be in accordance with current engineering and architectural standards. The Grantee should emphasize the health and safety of users, accessibility to the general public, and the protection of the recreational and natural values of the area. **The Grantee may alter a conceptual site plan only after written approval by the Department.**

The Grantee shall have final site plans (site, engineering, and architectural) prepared for the Project and sealed by a registered architect or engineer licensed in accordance with the laws of the State of Florida (collectively the "Project Plans"). The Grantee must deliver a complete original, signed, and sealed set of the Project Plans to the Department before the Department will issue final reimbursement.

4. Project Completion.
All work under this Agreement must be completed no later than 60 days before the expiration date of the Agreement, known as the "Project Completion Date." The Department may require the Grantee to do additional work before designating the Project "complete." If the Project has not been designated as complete by the Department by midnight of the Date of Expiration, the Project funds will revert to the revenue fund from which they were appropriated (paragraph 62D-5.058(7)(a), F.A.C.).

5. Project Completion Certification.
To certify completion, the Grantee will submit to the Department the Project Completion Certification, DRP-112, available online and incorporated herein by reference. The Project must be designated complete prior to the Department releasing final reimbursement. The Department shall designate the Project complete upon receipt and approval of all deliverables and when Project site is open and available for use by the public for outdoor recreation purposes. The Department will release the retainage when the Department approves the Completion Documentation set forth in paragraph 62D-5.058(7)(d), F.A.C. The final payment of the retained amount will be processed within thirty (30) days of the Project designated complete by the Department.

6. The following modifies paragraph 8.d, Attachment 1, Standard Terms and Conditions:

a. Reimbursement for Costs.
Project Costs will be reimbursed as provided in paragraph 62D-5.058(2)(a), F.A.C., and in the Project Agreement. The Grantee is eligible for reimbursement, in whole or in part, for Department-approved Pre-Agreement Expenses

and, if applicable, costs associated with Retroactive Projects, through the Project Completion Date of this Agreement. The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on Exhibit C, Payment Request Summary Form. To be eligible for reimbursement, cost(s) must meet all FRDAP requirements, financial reporting requirements, and rules and regulations applicable to expenditures of state funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf.

i. Pre-Agreement Expenses. Pursuant to subsection 62D-5.054(34), F.A.C., Pre-Agreement Expenses means expenses incurred by a Grantee for accomplishment of an eligible FRDAP project prior to full execution of the Project Agreement. Parties hereby acknowledge and agree, Grantee is entitled to submit for cost-reimbursement eligible Pre-Agreement Expenses, which are expenses Grantee incurred for the accomplishment of the Project prior to full execution of this Agreement.

7. The following is added to paragraph 8, Attachment 1, Standard Terms and Conditions:

k. Project Costs. The Department will reimburse Project costs pursuant to paragraph 62D-5.058(2)(a), F.A.C., and as provided herein. Project costs, except for Pre-Agreement Expenses, shall be incurred between the effective date of the Agreement, and the Project Completion Date as set forth in the Project Completion Certification determined and identified herein. If the total cost of the Project exceeds the grant amount and the required match (if applicable), Grantee must pay the excess cost.

l. Cost Limits. Pursuant to paragraphs 62D-5.058(2)(a) and (b), F.A.C., project planning expenses, such as application preparation, surveys (boundary and topographic), title searches, project signs, architectural and engineering fees, permitting fees, project inspection fees, and other similar fees are eligible Project costs provided that such costs do not exceed fifteen percent (15%) of the total Project cost.

8. The following hereby replaces paragraph 8.h, Attachment 1, Standard Terms and Conditions:

h. Annual Appropriation Contingency. The State's performance and obligation to pay under this Agreement is contingent upon an annual appropriation from the Recommended Application Priority List by the Florida Legislature. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the Department if the Legislature reduces or eliminates appropriations. It is further understood that Grant Awards may be revised by the Department due to the availability of FRDAP program funds.

9. The following replaces paragraph 10, Attachment 1, Standard Terms and Conditions:

Status Reports.

a. The Grantee must utilize, Project Status Report Form, DRP-109, available online and incorporated herein by reference, to describe the work performed during the reporting period, problems encountered, problem resolutions, schedule updates and proposed work for the next reporting period. The Project Status Reports must be submitted to the Department's Grant Manager no later than January 5, May 5, and September 5. The Department's Grant Manager has thirty (30) calendar days to review the required reports and deliverables submitted by the Grantee.

b. Additionally, the Grantee shall comply with the reporting and inventory requirements set forth in the Statewide Comprehensive Outdoor Recreation Plan (SCORP), available online: https://floridadep.gov/parks/florida-scorp-outdoor-recreation-florida and hereby incorporated by reference, by updating the Florida Outdoor Recreation Inventory (FORI) system (https://floridadep.gov/parks/florida-outdoor-recreation-inventory).

10. Site Dedication.

a. Land owned by the grantee and developed or acquired with FRDAP funds must be dedicated in perpetuity as an outdoor recreational site for the use and benefit of the general public in accordance with Rule 62D-5.059, F.A.C. Land under control other than by ownership of the Grantee such as by lease, must be dedicated as an outdoor recreation area for the use and benefit of the general public for a minimum period of twenty-five (25) years from the Project Completion Date as set forth in the Project Completion Certificate. The dedications must be recorded in the county's public property records by the Grantee. Execution of this Agreement by the Department constitutes an acceptance of a Project site(s) dedication on behalf of the general public of the State of Florida.

b. Should the Grantee's interest in the land change, either by sale, lease, or other written legal instrument, the Grantee is required to notify the Department in writing of the change no later than ten (10) days after the change occurs,

and the Grantee is required to notify all subsequent parties with interest to the land of the terms and conditions as set forth in this Agreement.

11. Management of Project Sites.

a. Site Inspections. Grantees must ensure by site inspections that facilities on the Project site are being operated and maintained for outdoor recreation for a minimum period of twenty-five (25) years from the Project Completion Date set forth in the Project Completion Certificate. The Project site must be open at reasonable times and must be managed in a safe and attractive manner.

b. Non-Compliance. The Department will terminate an agreement and demand return of the program funds (including interest) for non-compliance if a Grantee fails to comply with the terms stated in with the Agreement. If the Grantee fails to comply the Agreement, the Department will declare the Grantee ineligible for further participation in FRDAP until such time as the Grantee comes into compliance.

c. Public Accessibility. All facilities must be accessible to the public on a non-exclusive basis, without regard to age, sex, race, religion, or ability level.

d. Entrance Fees. Reasonable differences in entrance fees for other FRDAP projects may be allowed on the basis of residence, but only if the Grantee can clearly show that the difference in entrance fees reflects, and is substantially related to, all economic factors related to park management, and it is not simply related to the amount of tax dollars spent by the residents for the park; and that a definite burden on the Grantee in park maintenance costs clearly justifies a higher fee for nonresidents.

e. Native Plantings. In developing a FRDAP project with program funds, the Grantee must primarily use vegetation native to the area, except for lawn grasses.

f. The Grantee will obtain Department approval prior to any current or future development of facilities on the Project Site(s), which is defined in subsection 62D-5.054(46), F.A.C. This Agreement is not transferable.

12. Procurement Requirements for Grantee.

The Grantee must secure all goods and services for the Project according to its adopted procurement procedures.

13. Signage.

The Grantee must erect a permanent information sign on the Project site that credits funding (or a portion thereof) to the Florida Department of Environmental Protection and the Florida Recreation Development Assistance Program. The sign must be made of appropriate materials, which are durable for a minimum of twenty-five (25) years after the Project is complete. The sign must be installed on the Project site and approved by the Department before the Department processes the final Project reimbursement request.

14. Termination and Ineligibility.

In addition to the remedies provided elsewhere in this Agreement, if the Grantee fails to comply with the terms stated in this Agreement or with any provisions in Rule Chapter 62D-5, F.A.C., the Department will terminate this Agreement and demand return of the program funds (including interest). Furthermore, the Department will declare the Grantee ineligible for further participation in FRDAP until the Grantee complies. Further, the Grantee agrees to ensure that all necessary permits are obtained prior to implementing any Grant Work Plan activity that may fall under applicable federal, state, or local laws.

15. Conversion.

The Project Site acquired and/or developed with FRDAP assistance must be retained and used for public outdoor recreation. Should the Grantee, within the periods set forth in subsections 62D-5.059(1) and (2), F.A.C., convert all or part of the Project site to other than public outdoor recreational uses, the Grantee must replace the area, facilities, resource, or Project site at its own expense with an acceptable project of comparable scope, and quality.

Florida Department of Environmental Protection

Exhibit A
Land and Water Conservation Fund Program
Florida Recreation Development Assistance Program
Project Status Report

Required Signatures: Adobe Signature

Project Name: _____ Project Number: _____

Project Sponsor: _____

Identify primary and support recreation areas and facilities to be constructed. **(50% of total costs must be in primary facilities).**
PROVIDE PHOTOS OF WORK IN PROGRESS

PRIMARY FACILITIES/ELEMENTS:

Project Elements	Work Accomplished	% Completed

SUPPORT FACILITIES/ELEMENTS:

Project Elements	Work Accomplished	% Completed

PROBLEMS ENCOUNTERED:

Period Covered (Check Appropriate Period):

☐ January through April:	Due May 5th
☐ May through August:	Due September 5th
☐ September through December:	Due January 5th

LIAISON: _____ _____

Signature Date

Florida Department of Environmental Protection

EXHIBIT C
PAYMENT REQUEST SUMMARY FORM

Required Signatures: Adobe Signature

Date: _____

Grantee _____ Project Name and Number _____

Billing Period: _____ Billing #: _____

DEP Division: _____ DEP Program: _____

	Project Costs This Billing	Cumulative Project Costs
Contractual Services DRP-116		
Grantee Labor DRP-117		
Employee Benefits (_____% of Salaries)		
Direct Purchases: Materials & Supplies DRP-118		
Grantee Stock DRP-120		
Equipment DRP-119		
Land Value		
Indirect Costs (15% of Grantee Labor)		
TOTAL PROJECT COSTS	$0.00	$0.00

CERTIFICATION: I hereby certify that the above expenses were incurred for the work being accomplished in the attached progress reports.

_____ _____
Project Administrator **Date**

CERTIFICATION: I hereby certify that the documentation has been maintained as required to support the project expenses as reported above and is available for audit upon request.

_____ _____
Project Financial Officer **Date**

VILLAGE OF KEY BISCAYNE

Village Council
Michael W. Davey, *Mayor*
Edward London, Vice Mayor
Frank Caplan
Luis Lauredo
Allison McCormick
Brett Moss
Ignacio J. Segurola

Village Manager
Steven C. Williamson

MEMORANDUM

DATE: October 12, 2021

TO: Honorable Mayor and Councilmembers

FROM: Steven C. Williamson, Village Manager

RE: Approving a $50,000 Florida Recreation for Development Assistance Program (FRDAP) grant from the Florida Department of Environmental Protection (FDEP) for improvements to Hampton Park

RECOMMENDATION

I recommended that the Village Council authorize the Village Manager to accept a non-matching, $50,000 grant from the Florida Recreational Department of Environmental Protection (FDEP) to be used for Lake Park improvements.

BACKGROUND

The Land and Recreation Grants staff administers grants to local governments through the Florida Recreation Development Assistance Program (FRDAP). This competitive, reimbursement grant program provides financial assistance for acquisition or development of land for public outdoor recreation. Hampton Park is one of the few undeveloped lots available on the island. Located in a residential neighborhood on the corner of Hampton Lane and West Heather Dr. Currently the site is home to a picnic facility, nature trails, bocce ball court and native landscaping.

The Village will use the FRDAP grant funding to improve several of the park's primary elements. These enhancements include upgrading the bocce ball court, picnic facilities and nature trails. This effort will increase users' enjoyment of the facility while developing a more resilient park. The existing landscaping will be upgraded with more native landscaping including irrigation. To further support park users', amenities, benches, trash cans and lighting will be installed.

RESOLUTION NO. 2021-_____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, ACCEPTING A $50,000.00 FLORIDA RECREATION FOR DEVELOPMENT ASSISTANCE PROGRAM (FRDAP) GRANT FROM THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (FDEP) FOR IMPROVEMENTS TO HAMPTON PARK AND APPROVING A STANDARD GRANT AGREEMENT RELATED TO THE SAME; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council of the Village of Key Biscayne (the "Village") desires to make improvements to Hampton Park, including renovations to the bocce ball court, nature trails, and picnic facilities and installation of new landscaping, benches, trash bins, lighting, and signage (the "Project"); and

WHEREAS, the Florida Department of Environmental Protection ("FDEP") has allocated $50,000.00 of grant funding to the Village for the Project under the Florida Recreation for Development Assistance Program (the "FRDAP Grant"); and

WHEREAS, the Village desires to enter into a Standard Grant Agreement (the "Agreement") with the FDEP to accept the FRDAP Grant for the Project in substantially the form attached hereto as Exhibit "A"; and

WHEREAS, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. **Acceptance and Approval.** That the Village Council hereby accepts the $50,000.00 FRDAP Grant and approves the Agreement with FDEP in substantially the form attached hereto as Exhibit "A."

Section 3. **Authorization.** That the Village Council hereby authorizes the Village Manager to execute the Agreement with FDEP, in substantially the form attached hereto as Exhibit "A," and any subsequent amendments or related documents necessary to implement the Agreement, subject to the approval by the Village Attorney as to form, content, and legal sufficiency.

Section 4. **Effective Date.** That this Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this _____ day of _____, 2021.

_____
MICHAEL W. DAVEY, MAYOR

ATTEST:

_____
JOCELYN B. KOCH
VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
VILLAGE ATTORNEY

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Standard Grant Agreement

This Agreement is entered into between the Parties named below, pursuant to Section 215.971, Florida Statutes:

1. Project Title (Project): **Hampton Park**
   Agreement Number: **A2035**

2. Parties: **State of Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000** (Department)
   Grantee Name: **Village of Key Biscayne**
   Entity Type: **a local government**
   Grantee Address: **88 West McIntyre, Key Biscayne, FL 33149-1846**
   FEID: **65-0291811** (Grantee)

3. Agreement Begin Date: **upon execution**
   Date of Expiration: **June 30, 2024**

4. Project Number: **A22035** *(If different from Agreement Number)*
   Project Location(s): **571 Glenridge Road, Key Biscayne, FL 33149-1840**
   Project Description: **Renovation of bocce ball court, nature trails, picnic facilities, landscaping; include new benches, trash, lighting and signage.**

5. Total Amount of Funding: **$50,000.00**

Funding Source?	Award #s or Line Item Appropriations:	Amount per Source(s):
☑ State ☐Federal	**Line Item No. 1692A, GAA, FY2021-2022**	**$50,000.00**
☐ State ☐Federal		
☐ Grantee Match		
	Total Amount of Funding + Grantee Match, if any:	**$50,000.00**

6. Department's Grant Manager
   Name: **Tamika Bass** or successor
   Address: **3900 Commonwealth Blvd. MS# 585 Tallahassee, FL 32399**
   Phone: **850-245-2501**
   Email: **tamika.bass@floridadep.gov**

   Grantee's Grant Manager
   Name: **Todd Hofferberth** or successor
   Address: **88 West McIntyre Key Biscayne, FL 33149-1846**
   Phone: **305-365-8901**
   Email: **thofferberth@keybiscayne.fl.gov**

7. The Parties agree to comply with the terms and conditions of the following attachments and exhibits which are hereby incorporated by reference:

☑ Attachment 1: Standard Terms and Conditions Applicable to All Grants Agreements
☑ Attachment 2: Special Terms and Conditions
☑ Attachment 3: Grant Work Plan
☑ Attachment 4: Public Records Requirements
☑ Attachment 5: Special Audit Requirements
☑ Attachment 6: Program-Specific Requirements
☐ Attachment 7: Grant Award Terms (Federal) *Copy available at https://facts.fldfs.com, in accordance with §215.985, F.S.
☐ Attachment 8: Federal Regulations and Terms (Federal)
☐ Additional Attachments (if necessary):
☑ Exhibit A: Progress Report Form
☐ Exhibit B: Property Reporting Form
☑ Exhibit C: Payment Request Summary Form
☐ Exhibit D: Quality Assurance Requirements for Grants
☐ Exhibit E: Advance Payment Terms and Interest Earned Memo
☐ Additional Exhibits (if necessary):

8. The following information applies to Federal Grants only and is identified in accordance with 2 CFR 200.331(a)(1):

Federal Award Identification Number(s) (FAIN):	
Federal Award Date to Department:	
Total Federal Funds Obligated by this Agreement:	
Federal Awarding Agency:	
Award R&D?	☐ Yes ☐N/A

IN WITNESS WHEREOF, this Agreement shall be effective on the date indicated by the Agreement Begin Date above or the last date signed below, whichever is later.

Village of Key Biscayne **GRANTEE**

Grantee Name

By _____

(Authorized Signature) Date Signed

Print Name and Title of Person Signing

State of Florida Department of Environmental Protection **DEPARTMENT**

By _____

Secretary or Designee Date Signed

Callie DeHaven, Director, Division of State Lands

Print Name and Title of Person Signing

☐ Additional signatures attached on separate page.

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STANDARD TERMS AND CONDITIONS
APPLICABLE TO GRANT AGREEMENTS

ATTACHMENT 1

1. Entire Agreement.

This Grant Agreement, including any Attachments and Exhibits referred to herein and/or attached hereto (Agreement), constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any terms and conditions included on Grantee's forms or invoices shall be null and void.

2. Grant Administration.

a. Order of Precedence. If there are conflicting provisions among the documents that make up the Agreement, the order of precedence for interpretation of the Agreement is as follows:
   i. Standard Grant Agreement
   ii. Attachments other than Attachment 1, in numerical order as designated in the Standard Grant Agreement
   iii. Attachment 1, Standard Terms and Conditions
   iv. The Exhibits in the order designated in the Standard Grant Agreement

b. All approvals, written or verbal, and other written communication among the parties, including all notices, shall be obtained by or sent to the parties' Grant Managers. All written communication shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. If the notice is delivered in multiple ways, the notice will be considered delivered at the earliest delivery time.

c. If a different Grant Manager is designated by either party after execution of this Agreement, notice of the name and contact information of the new Grant Manager will be submitted in writing to the other party and maintained in the respective parties' records. A change of Grant Manager does not require a formal amendment or change order to the Agreement.

d. This Agreement may be amended, through a formal amendment or a change order, only by a written agreement between both parties. A formal amendment to this Agreement is required for changes which cause any of the following:
   (1) an increase or decrease in the Agreement funding amount;
   (2) a change in Grantee's match requirements;
   (3) a change in the expiration date of the Agreement; and/or
   (4) changes to the cumulative amount of funding transfers between approved budget categories, as defined in Attachment 3, Grant Work Plan, that exceeds or is expected to exceed twenty percent (20%) of the total budget as last approved by Department.
   A change order to this Agreement may be used when:
   (1) task timelines within the current authorized Agreement period change;
   (2) the cumulative transfer of funds between approved budget categories, as defined in Attachment 3, Grant Work Plan, are less than twenty percent (20%) of the total budget as last approved by Department;
   (3) changing the current funding source as stated in the Standard Grant Agreement; and/or
   (4) fund transfers between budget categories for the purposes of meeting match requirements.
   This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.

e. All days in this Agreement are calendar days unless otherwise specified.

3. Agreement Duration.

The term of the Agreement shall begin and end on the dates indicated in the Standard Grant Agreement, unless extended or terminated earlier in accordance with the applicable terms and conditions. The Grantee shall be eligible for reimbursement for work performed on or after the date of execution through the expiration date of this Agreement, unless otherwise specified in Attachment 2, Special Terms and Conditions. However, work performed prior to the execution of this Agreement may be reimbursable or used for match purposes if permitted by the Special Terms and Conditions.

4. Deliverables.

The Grantee agrees to render the services or other units of deliverables as set forth in Attachment 3, Grant Work Plan. The services or other units of deliverables shall be delivered in accordance with the schedule and at the pricing outlined in the Grant Work Plan. Deliverables may be comprised of activities that must be completed prior to Department making payment on that deliverable. The Grantee agrees to perform in accordance with the terms and conditions set forth in this Agreement and all attachments and exhibits incorporated by the Standard Grant Agreement.

5. Performance Measures.

The Grantee warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Grant Work Plan; (3) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (4) the services shall not and do not knowingly infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (5) its employees, subcontractors, and/or subgrantees shall comply with any security and safety requirements and processes, if provided by Department, for work done at the Project Location(s). The Department reserves the right to investigate or inspect at any time to determine whether the services or qualifications offered by Grantee meet the Agreement requirements. Notwithstanding any provisions herein to the contrary, written acceptance of a particular deliverable does not foreclose Department's remedies in the event deficiencies in the deliverable cannot be readily measured at the time of delivery.

6. Acceptance of Deliverables.

a. Acceptance Process. All deliverables must be received and accepted in writing by Department's Grant Manager before payment. The Grantee shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable time at Grantee's expense. If Department's Grant Manager does not accept the deliverables within 30 days of receipt, they will be deemed rejected.

b. Rejection of Deliverables. The Department reserves the right to reject deliverables, as outlined in the Grant Work Plan, as incomplete, inadequate, or unacceptable due, in whole or in part, to Grantee's lack of satisfactory performance under the terms of this Agreement. The Grantee's efforts to correct the rejected deliverables will be at Grantee's sole expense. Failure to fulfill the applicable technical requirements or complete all tasks or activities in accordance with the Grant Work Plan will result in rejection of the deliverable and the associated invoice. Payment for the rejected deliverable will not be issued unless the rejected deliverable is made acceptable to Department in accordance with the Agreement requirements. The Department, at its option, may allow additional time within which Grantee may remedy the objections noted by Department. The Grantee's failure to make adequate or acceptable deliverables after a reasonable opportunity to do so shall constitute an event of default.

7. Financial Consequences for Nonperformance.

a. Withholding Payment. In addition to the specific consequences explained in the Grant Work Plan and/or Special Terms and Conditions, the State of Florida (State) reserves the right to withhold payment when the Grantee has failed to perform/comply with provisions of this Agreement. None of the financial consequences for nonperformance in this Agreement as more fully described in the Grant Work Plan shall be considered penalties.

b. Corrective Action Plan. If Grantee fails to correct all the deficiencies in a rejected deliverable within the specified timeframe, Department may, in its sole discretion, request that a proposed Corrective Action Plan (CAP) be submitted by Grantee to Department. The Department requests that Grantee specify the outstanding deficiencies in the CAP. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.

    i. The Grantee shall submit a CAP within ten (10) days of the date of the written request from Department. The CAP shall be sent to the Department's Grant Manager for review and approval. Within ten (10) days of receipt of a CAP, Department shall notify Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, Grantee shall have ten (10) days from receipt of Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain Department approval of a CAP as specified above may result in Department's termination of this Agreement for cause as authorized in this Agreement.

    ii. Upon Department's notice of acceptance of a proposed CAP, Grantee shall have ten (10) days to commence implementation of the accepted plan. Acceptance of the proposed CAP by Department does not relieve Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, Department shall retain the right to require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by Department or steps taken by Grantee shall preclude Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement

the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to Department as requested by Department's Grant Manager.

iii. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by Department may result in termination of the Agreement.

8. Payment.

a. Payment Process. Subject to the terms and conditions established by the Agreement, the pricing per deliverable established by the Grant Work Plan, and the billing procedures established by Department, Department agrees to pay Grantee for services rendered in accordance with Section 215.422, Florida Statutes (F.S.).

b. Taxes. The Department is exempted from payment of State sales, use taxes and Federal excise taxes. The Grantee, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by Grantee to suppliers for taxes on materials used to fulfill its contractual obligations with Department. The Grantee shall not use Department's exemption number in securing such materials. The Grantee shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.

c. Maximum Amount of Agreement. The maximum amount of compensation under this Agreement, without an amendment, is described in the Standard Grant Agreement. Any additional funds necessary for the completion of this Project are the responsibility of Grantee.

d. Reimbursement for Costs. The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on Exhibit C, Payment Request Summary Form. To be eligible for reimbursement, costs must be in compliance with laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf.

e. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by Department pursuant to the Grant Work Plan shall be submitted to Department in sufficient detail for a proper pre-audit and post-audit to be performed. The Grantee shall only invoice Department for deliverables that are completed in accordance with the Grant Work Plan.

f. Interim Payments. Interim payments may be made by Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by Department's Grant Manager.

g. Final Payment Request. A final payment request should be submitted to Department no later than sixty (60) days following the expiration date of the Agreement to ensure the availability of funds for payment. However, all work performed pursuant to the Grant Work Plan must be performed on or before the expiration date of the Agreement.

h. Annual Appropriation Contingency. The State's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of Department if the Legislature reduces or eliminates appropriations.

i. Interest Rates. All interest rates charged under the Agreement shall be calculated on the prevailing rate used by the State Board of Administration. To obtain the applicable interest rate, please refer to: www.myfloridacfo.com/Division/AA/Vendors/default.htm.

j. Refund of Payments to the Department. Any balance of unobligated funds that have been advanced or paid must be refunded to Department. Any funds paid in excess of the amount to which Grantee or subgrantee is entitled under the terms of the Agreement must be refunded to Department. If this Agreement is funded with federal funds and the Department is required to refund the federal government, the Grantee shall refund the Department its share of those funds.

9. Documentation Required for Cost Reimbursement Grant Agreements and Match.

If Cost Reimbursement or Match is authorized in Attachment 2, Special Terms and Conditions, the following conditions apply. Supporting documentation must be provided to substantiate cost reimbursement or match requirements for the following budget categories:

a. Salary/Wages. Grantee shall list personnel involved, position classification, direct salary rates, and hours spent on the Project in accordance with Attachment 3, Grant Work Plan in their documentation for reimbursement or match requirements.

b. Overhead/Indirect/General and Administrative Costs. If Grantee is being reimbursed for or claiming match for multipliers, all multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by Grantee exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate.

c. Contractual Costs (Subcontractors). Match or reimbursement requests for payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from Grantee. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the Project. All eligible multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by any subcontractor exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate. Nonconsumable and/or nonexpendable personal property or equipment costing $5,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in Chapters 273 and/or 274, F.S., and Chapter 69I-72, Florida Administrative Code (F.A.C.) and/or Chapter 69I-73, F.A.C., as applicable. The Grantee shall be responsible for maintaining appropriate property records for any subcontracts that include the purchase of equipment as part of the delivery of services. The Grantee shall comply with this requirement and ensure its subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors.
    i. For fixed-price (vendor) subcontracts, the following provisions shall apply: The Grantee may award, on a competitive basis, fixed-price subcontracts to consultants/contractors in performing the work described in Attachment 3, Grant Work Plan. Invoices submitted to Department for fixed-price subcontracted activities shall be supported with a copy of the subcontractor's invoice and a copy of the tabulation form for the competitive procurement process (e.g., Invitation to Bid, Request for Proposals, or other similar competitive procurement document) resulting in the fixed-price subcontract. The Grantee may request approval from Department to award a fixed-price subcontract resulting from procurement methods other than those identified above. In this instance, Grantee shall request the advance written approval from Department's Grant Manager of the fixed price negotiated by Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor. Upon receipt of Department Grant Manager's approval of the fixed-price amount, Grantee may proceed in finalizing the fixed-price subcontract.
    ii. If the procurement is subject to the Consultant's Competitive Negotiation Act under section 287.055, F.S. or the Brooks Act, Grantee must provide documentation clearly evidencing it has complied with the statutory or federal requirements.

d. Travel. All requests for match or reimbursement of travel expenses shall be in accordance with Section 112.061, F.S.

e. Direct Purchase Equipment. For the purposes of this Agreement, Equipment is defined as capital outlay costing $5,000 or more. Match or reimbursement for Grantee's direct purchase of equipment is subject to specific approval of Department, and does not include any equipment purchased under the delivery of services to be completed by a subcontractor. Include copies of invoices or receipts to document purchases, and a properly completed Exhibit B, Property Reporting Form.

f. Rental/Lease of Equipment. Match or reimbursement requests for rental/lease of equipment must include copies of invoices or receipts to document charges.

g. Miscellaneous/Other Expenses. If miscellaneous or other expenses, such as materials, supplies, non-excluded phone expenses, reproduction, or mailing, are reimbursable or available for match or reimbursement under the terms of this Agreement, the documentation supporting these expenses must be itemized and include copies of receipts or invoices. Additionally, independent of Grantee's contract obligations to its subcontractor, Department shall not reimburse any of the following types of charges: cell phone usage; attorney's fees or court costs; civil or administrative penalties; or handling fees, such as set percent overages associated with purchasing supplies or equipment.

h. Land Acquisition. Reimbursement for the costs associated with acquiring interest and/or rights to real property (including access rights through ingress/egress easements, leases, license agreements, or other site access agreements; and/or obtaining record title ownership of real property through purchase) must be supported by the following, as applicable: Copies of Property Appraisals, Environmental Site Assessments, Surveys and Legal Descriptions, Boundary Maps, Acreage Certification, Title Search Reports, Title Insurance, Closing Statements/Documents, Deeds, Leases, Easements, License Agreements, or other legal instrument documenting

acquired property interest and/or rights. If land acquisition costs are used to meet match requirements, Grantee agrees that those funds shall not be used as match for any other Agreement supported by State or Federal funds.

10. Status Reports.

The Grantee shall submit status reports quarterly, unless otherwise specified in the Attachments, on Exhibit A, Progress Report Form, to Department's Grant Manager describing the work performed during the reporting period, problems encountered, problem resolutions, scheduled updates, and proposed work for the next reporting period. Quarterly status reports are due no later than twenty (20) days following the completion of the quarterly reporting period. For the purposes of this reporting requirement, the quarterly reporting periods end on March 31, June 30, September 30 and December 31. The Department will review the required reports submitted by Grantee within thirty (30) days.

11. Retainage.

The following provisions apply if Department withholds retainage under this Agreement:

a. The Department reserves the right to establish the amount and application of retainage on the work performed under this Agreement up to the maximum percentage described in Attachment 2, Special Terms and Conditions. Retainage may be withheld from each payment to Grantee pending satisfactory completion of work and approval of all deliverables.

b. If Grantee fails to perform the requested work, or fails to perform the work in a satisfactory manner, Grantee shall forfeit its right to payment of the retainage associated with the work. Failure to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed. The Department shall provide written notification to Grantee of the failure to perform that shall result in retainage forfeiture. If the Grantee does not correct the failure to perform within the timeframe stated in Department's notice, the retainage will be forfeited to Department.

c. No retainage shall be released or paid for incomplete work while this Agreement is suspended.

d. Except as otherwise provided above, Grantee shall be paid the retainage associated with the work, provided Grantee has completed the work and submits an invoice for retainage held in accordance with the invoicing procedures under this Agreement.

12. Insurance.

a. Insurance Requirements for Sub-Grantees and/or Subcontractors. The Grantee shall require its sub-grantees and/or subcontractors, if any, to maintain insurance coverage of such types and with such terms and limits as described in this Agreement. The Grantee shall require all its sub-grantees and/or subcontractors, if any, to make compliance with the insurance requirements of this Agreement a condition of all contracts that are related to this Agreement. Sub-grantees and/or subcontractors must provide proof of insurance upon request.

b. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Grantee providing such insurance.

c. Proof of Insurance. Upon execution of this Agreement, Grantee shall provide Department documentation demonstrating the existence and amount for each type of applicable insurance coverage ***prior to*** performance of any work under this Agreement. Upon receipt of written request from Department, Grantee shall furnish Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.

d. Duty to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, or if Grantee cannot get adequate coverage, Grantee shall immediately notify Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) days after the cancellation of coverage.

e. Insurance Trust. If the Grantee's insurance is provided through an insurance trust, the Grantee shall instead add the Department of Environmental Protection, its employees, and officers as an additional covered party everywhere the Agreement requires them to be added as an additional insured.

13. Termination.

a. Termination for Convenience. When it is in the State's best interest, Department may, at its sole discretion, terminate the Agreement in whole or in part by giving 30 days' written notice to Grantee. The Department shall notify Grantee of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Agreement is to be terminated. The Grantee must submit all invoices for work to be paid under this Agreement within thirty (30) days of the effective date of termination. The Department shall not pay any invoices received after thirty (30) days of the effective date of termination.

b. Termination for Cause. The Department may terminate this Agreement if any of the events of default described in the Events of Default provisions below occur or in the event that Grantee fails to fulfill any of its other

obligations under this Agreement. If, after termination, it is determined that Grantee was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Department. The rights and remedies of Department in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

c. Grantee Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination unless as otherwise directed by Department, Grantee shall not furnish any service or deliverable on the date, and to the extent specified, in the notice. However, Grantee shall continue work on any portion of the Agreement not terminated. If the Agreement is terminated before performance is completed, Grantee shall be paid only for that work satisfactorily performed for which costs can be substantiated. The Grantee shall not be entitled to recover any cancellation charges or lost profits.

d. Continuation of Prepaid Services. If Department has paid for any services prior to the expiration, cancellation, or termination of the Agreement, Grantee shall continue to provide Department with those services for which it has already been paid or, at Department's discretion, Grantee shall provide a refund for services that have been paid for but not rendered.

e. Transition of Services Upon Termination, Expiration, or Cancellation of the Agreement. If services provided under the Agreement are being transitioned to another provider(s), Grantee shall assist in the smooth transition of Agreement services to the subsequent provider(s). This requirement is at a minimum an affirmative obligation to cooperate with the new provider(s), however additional requirements may be outlined in the Grant Work Plan. The Grantee shall not perform any services after Agreement expiration or termination, except as necessary to complete the transition or continued portion of the Agreement, if any.

14. Notice of Default.

If Grantee defaults in the performance of any covenant or obligation contained in the Agreement, including, any of the events of default, Department shall provide notice to Grantee and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Grantee fail to perform within the time provided, Grantee will be found in default, and Department may terminate the Agreement effective as of the date of receipt of the default notice.

15. Events of Default.

Provided such failure is not the fault of Department or outside the reasonable control of Grantee, the following non-exclusive list of events, acts, or omissions, shall constitute events of default:

a. The commitment of any material breach of this Agreement by Grantee, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Agreement;

b. The commitment of any material misrepresentation or omission in any materials, or discovery by the Department of such, made by the Grantee in this Agreement or in its application for funding;

c. Failure to submit any of the reports required by this Agreement or having submitted any report with incorrect, incomplete, or insufficient information;

d. Failure to honor any term of the Agreement;

e. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Grantee by a state or other licensing authority;

f. Failure to pay any and all entities, individuals, and furnishing labor or materials, or failure to make payment to any other entities as required by this Agreement;

g. Employment of an unauthorized alien in the performance of the work, in violation of Section 274 (A) of the Immigration and Nationality Act;

h. Failure to maintain the insurance required by this Agreement;

i. One or more of the following circumstances, uncorrected for more than thirty (30) days unless, within the specified 30-day period, Grantee (including its receiver or trustee in bankruptcy) provides to Department adequate assurances, reasonably acceptable to Department, of its continuing ability and willingness to fulfill its obligations under the Agreement:

    i. Entry of an order for relief under Title 11 of the United States Code;

    ii. The making by Grantee of a general assignment for the benefit of creditors;

    iii. The appointment of a general receiver or trustee in bankruptcy of Grantee's business or property; and/or

    iv. An action by Grantee under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

16. Suspension of Work.

The Department may, in its sole discretion, suspend any or all activities under the Agreement, at any time, when it is in the best interest of the State to do so. The Department shall provide Grantee written notice outlining the particulars of suspension. Examples of reasons for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, Grantee shall comply with the notice. Within 90 days, or any longer period agreed to by the parties, Department shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or (2) terminate the Agreement. If the Agreement is terminated after 30 days of suspension, the notice of suspension shall be deemed to satisfy the thirty (30) days' notice required for a notice of termination for convenience. Suspension of work shall not entitle Grantee to any additional compensation.

17. Force Majeure.

The Grantee shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of Grantee or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond Grantee's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to Grantee. In case of any delay Grantee believes is excusable, Grantee shall notify Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first arose, if Grantee could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five days after the date Grantee first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY**. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against Department. The Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist Grantee shall perform at no increased cost, unless Department determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to Department, in which case Department may: (1) accept allocated performance or deliveries from Grantee, provided that Grantee grants preferential treatment to Department with respect to products subjected to allocation; (2) contract with other sources (without recourse to and by Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity; or (3) terminate Agreement in whole or in part.

18. Indemnification.

a. The Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless Department and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:
    i. personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, or subcontractors; provided, however, that Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of Department;
    ii. the Grantee's breach of this Agreement or the negligent acts or omissions of Grantee.

b. The Grantee's obligations under the preceding paragraph with respect to any legal action are contingent upon Department giving Grantee: (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense; and (3) assistance in defending the action at Grantee's sole expense. The Grantee shall not be liable for any cost, expense, or compromise incurred or made by Department in any legal action without Grantee's prior written consent, which shall not be unreasonably withheld.

c. Notwithstanding sections a. and b. above, the following is the sole indemnification provision that applies to Grantees that are governmental entities: Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, F.S. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State to be sued by third parties in any matter arising out of any contract or this Agreement.

d. No provision in this Agreement shall require Department to hold harmless or indemnify Grantee, insure or assume liability for Grantee's negligence, waive Department's sovereign immunity under the laws of Florida, or

otherwise impose liability on Department for which it would not otherwise be responsible. Any provision, implication or suggestion to the contrary is null and void.

19. Limitation of Liability.

The Department's liability for any claim arising from this Agreement is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Agreement. Such liability is further limited to a cap of $100,000.

20. Remedies.

Nothing in this Agreement shall be construed to make Grantee liable for force majeure events. Nothing in this Agreement, including financial consequences for nonperformance, shall limit Department's right to pursue its remedies for other types of damages under the Agreement, at law or in equity. The Department may, in addition to other remedies available to it, at law or in equity and upon notice to Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it.

21. Waiver.

The delay or failure by Department to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of Department's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

22. Statutory Notices Relating to Unauthorized Employment and Subcontracts.

a. The Department shall consider the employment by any Grantee of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If Grantee/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Grantee shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Agreement.

b. Pursuant to Sections 287.133, 287.134, and 287.137 F.S., the following restrictions apply to persons placed on the convicted vendor list, discriminatory vendor list, or the antitrust violator vendor list:

   i. Public Entity Crime. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

   ii. Discriminatory Vendors. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

   iii. Antitrust Violator Vendors. A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply on any contract to provide any good or services to a public entity; may not submit a bid, proposal, or reply on any contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact new business with a public entity.

   iv. Notification. The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list, the discriminatory vendor list, or antitrust violator vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and the antitrust violator vendor list and posts the list on its website. Questions regarding the discriminatory vendor list or antitrust violator vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

23. Compliance with Federal, State and Local Laws.

a. The Grantee and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Grantee shall include this provision in all subcontracts issued as a result of this Agreement.

b. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.

c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

d. Any dispute concerning performance of the Agreement shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts of the State, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

24. Scrutinized Companies.

a. Grantee certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

b. If this Agreement is for more than one million dollars, the Grantee certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

c. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

25. Lobbying and Integrity.

The Grantee agrees that no funds received by it under this Agreement will be expended for the purpose of lobbying the Legislature or a State agency pursuant to Section 216.347, F.S., except that pursuant to the requirements of Section 287.058(6), F.S., during the term of any executed agreement between Grantee and the State, Grantee may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Grantee shall comply with Sections 11.062 and 216.347, F.S.

26. Record Keeping.

The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. In the event that any work is subcontracted, Grantee shall similarly require each subcontractor to maintain and allow access to such records for audit purposes. Upon request of Department's Inspector General, or other authorized State official, Grantee shall provide any type of information the Inspector General deems relevant to Grantee's integrity or responsibility. Such information may include, but shall not be limited to, Grantee's business or financial records, documents, or files of any type or form that refer to or relate to Agreement. The Grantee shall retain such records for the longer of: (1) three years after the expiration of the Agreement; or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: http://dos.myflorida.com/library-archives/records-management/general-records-schedules/).

27. Audits.

a. Inspector General. The Grantee understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Grantee will comply with this duty and ensure that its sub-grantees and/or subcontractors issued under this Agreement, if any, impose this requirement, in writing, on its sub-grantees and/or subcontractors, respectively.

b. Physical Access and Inspection. Department personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:

   i. Grantee shall provide access to any location or facility on which Grantee is performing work, or storing or staging equipment, materials or documents;

ii. Grantee shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
iii. Grantee shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.

c. Special Audit Requirements. The Grantee shall comply with the applicable provisions contained in Attachment 5, Special Audit Requirements. Each amendment that authorizes a funding increase or decrease shall include an updated copy of Exhibit 1, to Attachment 5. If Department fails to provide an updated copy of Exhibit 1 to include in each amendment that authorizes a funding increase or decrease, Grantee shall request one from the Department's Grants Manager. The Grantee shall consider the type of financial assistance (federal and/or state) identified in Attachment 5, Exhibit 1 and determine whether the terms of Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, Grantee shall utilize the guidance provided under 2 CFR §200.330 for determining whether the relationship represents that of a subrecipient or vendor. For State financial assistance, Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website: https:\\apps.fldfs.com\fsaa.

d. Proof of Transactions. In addition to documentation provided to support cost reimbursement as described herein, Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Agreement pursuant to State guidelines (including cost allocation guidelines) and federal, if applicable. Allowable costs and uniform administrative requirements for federal programs can be found under 2 CFR 200. The Department may also request a cost allocation plan in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). The Grantee must provide the additional proof within thirty (30) days of such request.

e. No Commingling of Funds. The accounting systems for all Grantees must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.
    i. If Department finds that these funds have been commingled, Department shall have the right to demand a refund, either in whole or in part, of the funds provided to Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from Department shall refund, and shall forthwith pay to Department, the amount of money demanded by Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from Department by Grantee to the date repayment is made by Grantee to Department.
    ii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by Department, from another source(s), Grantee shall reimburse Department for all recovered funds originally provided under this Agreement and interest shall be charged for those recovered costs as calculated on from the date(s) the payment(s) are recovered by Grantee to the date repayment is made to Department.
    iii. Notwithstanding the requirements of this section, the above restrictions on commingling funds do not apply to agreements where payments are made purely on a cost reimbursement basis.

28. Conflict of Interest.

The Grantee covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.

29. Independent Contractor.

The Grantee is an independent contractor and is not an employee or agent of Department.

30. Subcontracting.

a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by Grantee.

b. The Department may, for cause, require the replacement of any Grantee employee, subcontractor, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.

c. The Department may, for cause, deny access to Department's secure information or any facility by any Grantee employee, subcontractor, or agent.
d. The Department's actions under paragraphs b. or c. shall not relieve Grantee of its obligation to perform all work in compliance with the Agreement. The Grantee shall be responsible for the payment of all monies due under any subcontract. The Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract and Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract.
e. The Department will not deny Grantee's employees, subcontractors, or agents access to meetings within the Department's facilities, unless the basis of Department's denial is safety or security considerations.
f. The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Agreement embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State. A list of minority-owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.
g. The Grantee shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both Grantee and the subcontractor(s), and without the fault or negligence of either, unless the subcontracted products or services were obtainable from other sources in sufficient time for Grantee to meet the required delivery schedule.

31. Guarantee of Parent Company.

If Grantee is a subsidiary of another corporation or other business entity, Grantee asserts that its parent company will guarantee all of the obligations of Grantee for purposes of fulfilling the obligations of Agreement. In the event Grantee is sold during the period the Agreement is in effect, Grantee agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of Grantee.

32. Survival.

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

33. Third Parties.

The Department shall not be deemed to assume any liability for the acts, failures to act or negligence of Grantee, its agents, servants, and employees, nor shall Grantee disclaim its own negligence to Department or any third party. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. If Department consents to a subcontract, Grantee will specifically disclose that this Agreement does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Agreement.

34. Severability.

If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

35. Grantee's Employees, Subcontractors and Agents.

All Grantee employees, subcontractors, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under Agreement must comply with all security and administrative requirements of Department and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement.

36. Assignment.

The Grantee shall not sell, assign, or transfer any of its rights, duties, or obligations under the Agreement, or under any purchase order issued pursuant to the Agreement, without the prior written consent of Department. In the event of any assignment, Grantee remains secondarily liable for performance of the Agreement, unless Department expressly waives such secondary liability. The Department may assign the Agreement with prior written notice to Grantee of its intent to do so.

37. Compensation Report.

If this Agreement is a sole-source, public-private agreement or if the Grantee, through this agreement with the State, annually receive 50% or more of their budget from the State or from a combination of State and Federal funds, the Grantee shall provide an annual report, including the most recent IRS Form 990, detailing the total compensation for the entities' executive leadership teams. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. The Grantee must also inform the Department of any changes in total executive compensation between the annual

reports. All compensation reports must indicate what percent of compensation comes directly from the State or Federal allocations to the Grantee.

38. Execution in Counterparts and Authority to Sign.

This Agreement, any amendments, and/or change orders related to the Agreement, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Terms and Conditions
AGREEMENT NO. A2035

ATTACHMENT 2

These Special Terms and Conditions shall be read together with general terms outlined in the Standard Terms and Conditions, Attachment 1. Where in conflict, these more specific terms shall apply.

1. Scope of Work.
The Project funded under this Agreement is Hampton Park. The Project is defined in more detail in Attachment 3, Grant Work Plan.

2. Duration.
a. Reimbursement Period. The reimbursement period for this Agreement begins when the final party signs the Agreement (the "effective date") and ends on the Project Completion Date. Only authorized Pre-Agreement expenses may be reimbursed outside of this period.
b. Extensions. There are no extensions available for this Project.
c. Service Periods. Additional service periods are not authorized under this Agreement.

3. Payment Provisions.
a. Compensation. This is a cost reimbursement Agreement. The Grantee shall be compensated under this Agreement as described in Attachment 3.
b. Invoicing. Invoicing will occur after approval of the final delivereable(s).
c. Advance Pay. Advance Pay is not authorized under this Agreement.

4. Cost Eligible for Reimbursement or Matching Requirements.
Reimbursement for costs or availability for costs to meet matching requirements shall be limited to the following budget categories, as defined in the Reference Guide for State Expenditures, as indicated:

Reimbursement	Match	Category
☒	☐	Salaries/Wages
		Overhead/Indirect/General and Administrative Costs:
☒	☐	a. Fringe Benefits, which shall be calculated at the rate of 40% of direct salaries.
☒	☐	b. Indirect Costs, which shall be calculated at the rate of 15% of direct costs.
☒	☐	Contractual (Subcontractors)
☐	☐	Travel, in accordance with Section 112, F.S.
☐	☐	Equipment
☒	☐	Rental/Lease of Equipment
☒	☐	Miscellaneous/Other Expenses
☐	☐	Land Acquisition

5. Equipment Purchase.
No Equipment purchases shall be funded under this Agreement.

6. Land Acquisition.
There will be no Land Acquisitions funded under this Agreement.

7. Match Requirements
There is no match required on the part of the Grantee under this Agreement.

8. Insurance Requirements

Required Coverage. At all times during the Agreement the Grantee, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. The limits of coverage under each policy maintained by the Grantee shall not be interpreted as limiting the Grantee's liability and obligations under the Agreement. Grantee shall provide coverage through a self-insurance program established and operating under the laws of Florida. Additional insurance requirements for this Agreement may be required elsewhere in this Agreement, however the minimum insurance requirements applicable to this Agreement are:

a. Comprehensive General Liability Insurance.
The Grantee shall provide adequate comprehensive general liability insurance coverage and hold such liability insurance at all times during the Agreement. The minimum limits shall be $200,000 for each person and $300,000 per occurrence.

b. Commercial Automobile Insurance.
If the Grantee's duties include the use of a commercial vehicle, the Grantee shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The minimum limits shall be as follows:

$200,000/300,000	Automobile Liability for Company-Owned Vehicles, if applicable
$200,000/300,000	Hired and Non-owned Automobile Liability Coverage

c. Workers' Compensation.
The Grantee shall comply with the workers' compensation requirements of Chapter 440, F.S.

d. Other Insurance. None.

9. Quality Assurance Requirements.
There are no special Quality Assurance requirements under this Agreement.

10. Retainage.
Retainage is permitted under this Agreement. Retainage may be up to a maximum of 10% of the total amount of the Agreement.

11. Subcontracting.
The Grantee may subcontract work under this Agreement without the prior written consent of the Department's Grant Manager. Regardless of any subcontract, the Grantee is ultimately responsible for all work to be performed under this Agreement.

12. State-owned Land.
The work will not be performed on State-owned land.

13. Office of Policy and Budget Reporting.
There are no special Office of Policy and Budget reporting requirements for this Agreement.

14. Additional Terms.
None.

ATTACHMENT 3
GRANT WORK PLAN
FLORIDA RECREATION DEVELOPMENT ASSISTANCE PROGRAM (FRDAP)
Project Name: **Hampton Park**
Grantee Name: **Village of Key Biscayne**
FRDAP Project # **A22035**

SUMMARY: The Grantee shall complete the Project Element(s), which were approved by the Department through the FRDAP Application Evaluation Criteria, pursuant to Chapter 62D-5, Florida Administrative Code (F.A.C.). Any alteration(s) to the Project Element(s) as submitted in the Grantee's application and listed in the Grant Work Plan is considered a significant change, must be pre-approved by the Department, and may require a formal Amendment to this Agreement. All work must be completed in accordance with the FRDAP Program, and local, state and federal laws, the approved Project plans, all required permits, and the Florida Building Code. Prior to the Department issuing a "Notice to Commence" to the Grantee, as specified in Attachment 6 of the Agreement, Program Specific Requirements, the Department must receive evidence of and have approved all Deliverables in Task 1.

For the purpose of this Agreement, the terms "Project Element" and "Project Task" are used interchangeably to mean an identified facility within the Project.

The Project is located at **571 Glenridge Road, Key Biscayne, FL 33149-1840** and is considered a "Small Project" pursuant to paragraph 62D-5.055(6)(a), F.A.C.

Retroactive Project.
☐This Project has been approved as a "Retroactive Project." Retroactive Projects are eligible for a FRDAP grant award if they otherwise meet the FRDAP rule criteria, funds are available, and Project Costs have occurred within one (1) year prior to the approval for funding by the Governor (June 2, 2021).

☒This Project has not been approved as a "Retroactive Project."

Project Completion: The Project Completion Date for this Agreement is April 30, 2024.

Budget: Reimbursement for allowable costs for the Project shall not exceed the maximum Grant Award Amount outlined below. There is no match required on the part of the Grantee under this Agreement. The total estimated Project Cost provided below is based on the approved FRDAP Application. A detailed cost analysis will be provided in the Deliverables for Task 1, prior to the Department issuing the "Notice to Commence." All final Project Costs shall be submitted to the Department with the payment request.

Maximum Grant Award Amount:	**$50,000.00**
Required Grantee Match Amount:	**$0**
Total Estimated Project Cost:	**$50,000.00**
Match Ratio:	**0%**

Scope of Work/Tasks	Deliverables	Due Date	Financial Consequences
TASK 1 **1.A.** Development of Commencement Documentation Checklist (DRP-107)[1]. **1.B.** A Cost Analysis Form, with detailed budget (and In-House Cost Schedule(s), if applicable).	**DELIVERABLE 1** The Department will issue "Notice to Commence" upon receipt and approval of: **1.A.** All applicable Project specific Commencement documentation listed on Commencement Documentation Checklist (DRP-107) **1.B.** A Cost Analysis Form, with detailed budget (and In-House Cost Schedule(s), if applicable). Project planning expenses, such as application preparation, architectural and engineering fees, permitting fees, Project inspection, and other similar fees are eligible for reimbursement. However, reimbursement, if requested, shall not exceed fifteen (15%) of total Project Cost, and shall be invoiced upon Project completion, in accordance with the Payment Request Schedule. **The Grantee may not proceed with development of the Project until Notice to Commence has been issued.**	180 calendar days after Execution of Agreement[2]	Failure to provide the required Commencement Documentation may jeopardize your funding. The Department may terminate the Project Agreement if the required Deliverables are not submitted and approved by the Department.
TASK 2 **2.A.** Development of Primary and Support Project Elements, which includes: **Renovation of bocce ball court, nature trails, picnic facilities, landscaping; include new benches, trash, lighting and signage.** **2.B.** Development of Completion of Documentation Checklist (DRP-111). **2.C.** Completion of Final Status Report (DRP-109).	**DELIVERABLE 2** The Grantee may request reimbursement upon Department receipt and approval of: **2.A.** Development of required Project Elements. **2.B.** All applicable Project specific Completion documentation listed on Completion Documentation Checklist (DRP-111) **2.C.** Final Status Report (DRP-109). The Grantee may request reimbursement for allowable budgeted expenses and costs pursuant to the Agreement that are directly related to the successful development of the Project site. Reimbursement shall not exceed the Grant	Due April 30, 2024, which shall also be the Project Completion Date[3]	No reimbursement will be made for Deliverable(s) deemed unsatisfactory by the Department. Payment(s) will not be made for unsatisfactory or incomplete work. In addition, a Task may be terminated for Grantee's failure to perform.

	Award Amount, less any reimbursement requested for in Deliverable 1, and shall be invoiced upon Project completion, in accordance with the Payment Request Schedule below. Ten percent (10%) of the Grant Award will be retained until the Project is designated complete by the Department.		

Project Task Performance Standard: The Department's Grant Manager will review the Project Completion Certificate and the Deliverables to verify compliance with the requirements for funding under the FRDAP; approved plans and application approved for funding. Upon review and written acceptance by the Department's Grant Manager of the Project Completion Certificate and the Deliverables under each Project Task, the Grantee may proceed with the payment request submittal.

Payment Request Schedule: Following Department approval of all Deliverables, the Grantee may submit a **single payment request** on Exhibit C, Payment Request Summary Form, DRP-115, along with all required documentation as outlined in the Financial Reporting Procedures (DRP-110), as applicable, to support payment. A payment request submitted as part of the reimbursement process must correspond with the Cost Analysis and supporting documents provided under Project Tasks.

Endnotes:

1. FRDAP documentation is available at https://floridadep.gov/lands/land-and-recreation-grants/content/frdap-assistance and/or from the Land and Recreational Grants Section, State of Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, MS# 585, Tallahassee, Florida, 32399-3000.
2. Project Agreement is subject to termination if Commencement documentations under Task 1 are not received and approved by the Department within 180 calendar days of the Project Agreement execution.
3. Due Date will not be extended beyond the Grant Period as outlined in Subsection 62D-5.058(7), F.A.C.

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Public Records Requirements

Attachment 4

1. **Public Records.**

a. If the Agreement exceeds $35,000.00, and if Grantee is acting on behalf of Department in its performance of services under the Agreement, Grantee must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by Grantee in conjunction with the Agreement (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.

b. The Department may unilaterally terminate the Agreement if Grantee refuses to allow public access to Public Records as required by law.

2. **Additional Public Records Duties of Section 119.0701, F.S., If Applicable.**

For the purposes of this paragraph, the term "contract" means the "Agreement." If Grantee is a "contractor" as defined in section 119.0701(1)(a), F.S., the following provisions apply and the contractor shall:

a. Keep and maintain Public Records required by Department to perform the service.

b. Upon request, provide Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.

c. A contractor who fails to provide the Public Records to Department within a reasonable time may be subject to penalties under section 119.10, F.S.

d. Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the Public Records to Department.

e. Upon completion of the contract, transfer, at no cost, to Department all Public Records in possession of the contractor or keep and maintain Public Records required by Department to perform the service. If the contractor transfers all Public Records to Department upon completion of the contract, the contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the contractor keeps and maintains Public Records upon completion of the contract, the contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to Department, upon request from Department's custodian of Public Records, in a format specified by Department as compatible with the information technology systems of Department. These formatting requirements are satisfied by using the data formats as authorized in the contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the contractor is authorized to access.

f. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS AT:**

Telephone: **(850) 245-2118**
Email: public.services@floridadep.gov
Mailing Address: **Department of Environmental Protection**
ATTN: Office of Ombudsman and Public Services
Public Records Request
3900 Commonwealth Boulevard, MS 49
Tallahassee, Florida 32399

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Audit Requirements
(State and Federal Financial Assistance)

Attachment 5

The administration of resources awarded by the Department of Environmental Protection *(which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the agreement)* to the recipient *(which may be referred to as the "Recipient", "Grantee" or other name in the agreement)* may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEP Department staff, limited scope audits as defined by 2 CFR 200.425, or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in 2 CFR §200.330

1. A recipient that expends $750,000 or more in Federal awards in its fiscal year, must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F. EXHIBIT 1 to this Attachment indicates Federal funds awarded through the Department of Environmental Protection by this Agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from the Department of Environmental Protection. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR 200.502-503. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200.514 will meet the requirements of this part.

2. For the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR 200.508-512.

3. A recipient that expends less than $750,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F-Audit Requirements. If the recipient expends less than $750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F-Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other federal entities.

4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at **www.cfda.gov**

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of $750,000 in any fiscal year of such recipient (for fiscal years ending June 30, 2017, and thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this form lists the state financial assistance awarded through the Department of Environmental Protection by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of Environmental Protection, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

2. In connection with the audit requirements addressed in Part II, paragraph 1; the recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

3. If the recipient expends less than $750,000 in state financial assistance in its fiscal year (for fiscal year ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than $750,000 in state financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).

4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at https://apps.fldfs.com/fsaa for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at http://www.leg.state.fl.us/Welcome/index.cfm, State of Florida's website at http://www.myflorida.com/, Department of Financial Services' Website at http://www.fldfs.com/and the Auditor General's Website at http://www.myflorida.com/audgen/.

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and required by PART I of this form shall be submitted, when required by 2 CFR 200.512, by or on behalf of the recipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR 200.36 and 200.512

   A. The Federal Audit Clearinghouse designated in 2 CFR §200.501(a) (the number of copies required by 2 CFR §200.501(a) should be submitted to the Federal Audit Clearinghouse), at the following address:

By Mail:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at http://harvester.census.gov/facweb/

2. Copies of financial reporting packages required by PART II of this Attachment shall be submitted by or on behalf of the recipient directly to each of the following:

A. The Department of Environmental Protection at one of the following addresses:

By Mail:
Audit Director
Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:
FDEPSingleAudit@dep.state.fl.us

B. The Auditor General's Office at the following address:

Auditor General
Local Government Audits/342
Claude Pepper Building, Room 401
111 West Madison Street
Tallahassee, Florida 32399-1450

The Auditor General's website (http://flauditor.gov/) provides instructions for filing an electronic copy of a financial reporting package.

3. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at one of the following addresses:

By Mail:
Audit Director
Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:
FDEPSingleAudit@dep.state.fl.us

4. Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with 2 CFR 200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

5. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with 2 CFR 200, Subpart F-Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (non and for-profit organizations), Rules of the Auditor General, should indicate the date and the reporting package was delivered to the recipient correspondence accompanying the reporting package.

PART V: RECORD RETENTION

The recipient shall retain sufficient records demonstrating its compliance with the terms of the award and this Agreement for a period of **five (5)** years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of **three (3)** years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

EXHIBIT – 1

FUNDS AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Note: If the resources awarded to the recipient represent more than one federal program, provide the same information shown below for each federal program and show total federal resources awarded

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program A	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				$	
Federal Program B	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				$	

Note: Of the resources awarded to the recipient represent more than one federal program, list applicable compliance requirements for each federal program in the same manner as shown below:

Federal Program A	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.:(eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	
Federal Program B	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	

Note: If the resources awarded to the recipient for matching represent more than one federal program, provide the same information shown below for each federal program and show total state resources awarded for matching.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:					
Federal Program A	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category
Federal Program B	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category

Note: If the resources awarded to the recipient represent more than one state project, provide the same information shown below for each state project and show total state financial assistance awarded that is subject to section 215.97, F.S.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:						
State Program A	State Awarding Agency	State Fiscal Year[1]	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
Original Agreement	General Appropriations Act Line Item 1692A – Fixed Capital Outlay Florida Recreation Development Assistance Grants from Florida Forever Trust Fund	2021-2022	37.017	Florida Recreation Development Assistance Program	$50,000.00	140002

Total Award	$50,000.00	

Note: List applicable compliance requirement in the same manner as illustrated above for federal resources. For matching resources provided by the Department for DEP for federal programs, the requirements might be similar to the requirements for the applicable federal programs. Also, to the extent that different requirements pertain to different amount for the non-federal resources, there may be more than one grouping (i.e. 1, 2, 3, etc.) listed under this category.

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [www.cfda.gov] and/or the Florida Catalog of State Financial Assistance (CSFA) [https://apps.fldfs.com/fsaa/searchCatalog.aspx], and State Projects Compliance Supplement (Part Four: State Projects Compliance Supplement [https://apps.fldfs.com/fsaa/state_project_compliance.aspx]. The services/purposes for which the funds are to be used are included in the Agreement's Grant Work Plan. Any match required by the Recipient is clearly indicated in the Agreement.

[1] Subject to change by Change Order.

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
PROGRAM SPECIFIC REQUIREMENTS

FLORIDA RECREATION DEVELOPMENT ASSISTANCE PROGRAM

ATTACHMENT 6

1. Project Submittal Forms.
Administrative Forms, Reimbursement Forms, and Guidelines referenced in this Agreement may be found at https://floridadep.gov/lands/land-and-recreation-grants/content/frdap-assistance, or by contacting the Department's Grant Manager.

2. Notice to Commence.
Prior to commencement of the Project, the Grantee shall submit to the Department for approval all documentation and completion of responsibilities listed on the Commencement Documentation Checklist, DRP-107. Upon satisfactory approval by the Department, the Department will issue written "Notice to Commence" to the Grantee to commence the Project. **The Grantee SHALL NOT proceed until the Department issues the "Notice to Commence."** Until the Department issues the "Notice to Commence," the Department is not obligated to pay or reimburse Grantee for fees, costs, or general expenses of any kind that were incurred prior to the "Notice to Commence," except for Pre-Agreement Expenses as more fully described in subsection 62D-5.054(34), F.A.C.

3. Site Plans.
Project site facilities must be attractive for public use and compatible with the environment. Plans and specifications for Project site improvements and facilities must be in accordance with current engineering and architectural standards. The Grantee should emphasize the health and safety of users, accessibility to the general public, and the protection of the recreational and natural values of the area. **The Grantee may alter a conceptual site plan only after written approval by the Department.**

The Grantee shall have final site plans (site, engineering, and architectural) prepared for the Project and sealed by a registered architect or engineer licensed in accordance with the laws of the State of Florida (collectively the "Project Plans"). The Grantee must deliver a complete original, signed, and sealed set of the Project Plans to the Department before the Department will issue final reimbursement.

4. Project Completion.
All work under this Agreement must be completed no later than 60 days before the expiration date of the Agreement, known as the "Project Completion Date." The Department may require the Grantee to do additional work before designating the Project "complete." If the Project has not been designated as complete by the Department by midnight of the Date of Expiration, the Project funds will revert to the revenue fund from which they were appropriated (paragraph 62D-5.058(7)(a), F.A.C.).

5. Project Completion Certification.
To certify completion, the Grantee will submit to the Department the Project Completion Certification, DRP-112, available online and incorporated herein by reference. The Project must be designated complete prior to the Department releasing final reimbursement. The Department shall designate the Project complete upon receipt and approval of all deliverables and when Project site is open and available for use by the public for outdoor recreation purposes. The Department will release the retainage when the Department approves the Completion Documentation set forth in paragraph 62D-5.058(7)(d), F.A.C. The final payment of the retained amount will be processed within thirty (30) days of the Project designated complete by the Department.

6. The following modifies paragraph 8.d, Attachment 1, Standard Terms and Conditions:

a. Reimbursement for Costs.
Project Costs will be reimbursed as provided in paragraph 62D-5.058(2)(a), F.A.C., and in the Project Agreement. The Grantee is eligible for reimbursement, in whole or in part, for Department-approved Pre-Agreement Expenses

and, if applicable, costs associated with Retroactive Projects, through the Project Completion Date of this Agreement. The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on Exhibit C, Payment Request Summary Form. To be eligible for reimbursement, cost(s) must meet all FRDAP requirements, financial reporting requirements, and rules and regulations applicable to expenditures of state funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf.

i. Pre-Agreement Expenses. Pursuant to subsection 62D-5.054(34), F.A.C., Pre-Agreement Expenses means expenses incurred by a Grantee for accomplishment of an eligible FRDAP project prior to full execution of the Project Agreement. Parties hereby acknowledge and agree, Grantee is entitled to submit for cost-reimbursement eligible Pre-Agreement Expenses, which are expenses Grantee incurred for the accomplishment of the Project prior to full execution of this Agreement.

7. The following is added to paragraph 8, Attachment 1, Standard Terms and Conditions:

k. Project Costs. The Department will reimburse Project costs pursuant to paragraph 62D-5.058(2)(a), F.A.C., and as provided herein. Project costs, except for Pre-Agreement Expenses, shall be incurred between the effective date of the Agreement, and the Project Completion Date as set forth in the Project Completion Certification determined and identified herein. If the total cost of the Project exceeds the grant amount and the required match (if applicable), Grantee must pay the excess cost.

l. Cost Limits. Pursuant to paragraphs 62D-5.058(2)(a) and (b), F.A.C., project planning expenses, such as application preparation, surveys (boundary and topographic), title searches, project signs, architectural and engineering fees, permitting fees, project inspection fees, and other similar fees are eligible Project costs provided that such costs do not exceed fifteen percent (15%) of the total Project cost.

8. The following hereby replaces paragraph 8.h, Attachment 1, Standard Terms and Conditions:

h. Annual Appropriation Contingency. The State's performance and obligation to pay under this Agreement is contingent upon an annual appropriation from the Recommended Application Priority List by the Florida Legislature. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the Department if the Legislature reduces or eliminates appropriations. It is further understood that Grant Awards may be revised by the Department due to the availability of FRDAP program funds.

9. The following replaces paragraph 10, Attachment 1, Standard Terms and Conditions:

Status Reports.

a. The Grantee must utilize, Project Status Report Form, DRP-109, available online and incorporated herein by reference, to describe the work performed during the reporting period, problems encountered, problem resolutions, schedule updates and proposed work for the next reporting period. The Project Status Reports must be submitted to the Department's Grant Manager no later than January 5, May 5, and September 5. The Department's Grant Manager has thirty (30) calendar days to review the required reports and deliverables submitted by the Grantee.

b. Additionally, the Grantee shall comply with the reporting and inventory requirements set forth in the Statewide Comprehensive Outdoor Recreation Plan (SCORP), available online: https://floridadep.gov/parks/florida-scorp-outdoor-recreation-florida and hereby incorporated by reference, by updating the Florida Outdoor Recreation Inventory (FORI) system (https://floridadep.gov/parks/florida-outdoor-recreation-inventory).

10. Site Dedication.

a. Land owned by the grantee and developed or acquired with FRDAP funds must be dedicated in perpetuity as an outdoor recreational site for the use and benefit of the general public in accordance with Rule 62D-5.059, F.A.C. Land under control other than by ownership of the Grantee such as by lease, must be dedicated as an outdoor recreation area for the use and benefit of the general public for a minimum period of twenty-five (25) years from the Project Completion Date as set forth in the Project Completion Certificate. The dedications must be recorded in the county's public property records by the Grantee. Execution of this Agreement by the Department constitutes an acceptance of a Project site(s) dedication on behalf of the general public of the State of Florida.

b. Should the Grantee's interest in the land change, either by sale, lease, or other written legal instrument, the Grantee is required to notify the Department in writing of the change no later than ten (10) days after the change occurs,

and the Grantee is required to notify all subsequent parties with interest to the land of the terms and conditions as set forth in this Agreement.

11. Management of Project Sites.

a. Site Inspections. Grantees must ensure by site inspections that facilities on the Project site are being operated and maintained for outdoor recreation for a minimum period of twenty-five (25) years from the Project Completion Date set forth in the Project Completion Certificate. The Project site must be open at reasonable times and must be managed in a safe and attractive manner.

b. Non-Compliance. The Department will terminate an agreement and demand return of the program funds (including interest) for non-compliance if a Grantee fails to comply with the terms stated in with the Agreement. If the Grantee fails to comply the Agreement, the Department will declare the Grantee ineligible for further participation in FRDAP until such time as the Grantee comes into compliance.

c. Public Accessibility. All facilities must be accessible to the public on a non-exclusive basis, without regard to age, sex, race, religion, or ability level.

d. Entrance Fees. Reasonable differences in entrance fees for other FRDAP projects may be allowed on the basis of residence, but only if the Grantee can clearly show that the difference in entrance fees reflects, and is substantially related to, all economic factors related to park management, and it is not simply related to the amount of tax dollars spent by the residents for the park; and that a definite burden on the Grantee in park maintenance costs clearly justifies a higher fee for nonresidents.

e. Native Plantings. In developing a FRDAP project with program funds, the Grantee must primarily use vegetation native to the area, except for lawn grasses.

f. The Grantee will obtain Department approval prior to any current or future development of facilities on the Project Site(s), which is defined in subsection 62D-5.054(46), F.A.C. This Agreement is not transferable.

12. Procurement Requirements for Grantee.

The Grantee must secure all goods and services for the Project according to its adopted procurement procedures.

13. Signage.

The Grantee must erect a permanent information sign on the Project site that credits funding (or a portion thereof) to the Florida Department of Environmental Protection and the Florida Recreation Development Assistance Program. The sign must be made of appropriate materials, which are durable for a minimum of twenty-five (25) years after the Project is complete. The sign must be installed on the Project site and approved by the Department before the Department processes the final Project reimbursement request.

14. Termination and Ineligibility.

In addition to the remedies provided elsewhere in this Agreement, if the Grantee fails to comply with the terms stated in this Agreement or with any provisions in Rule Chapter 62D-5, F.A.C., the Department will terminate this Agreement and demand return of the program funds (including interest). Furthermore, the Department will declare the Grantee ineligible for further participation in FRDAP until the Grantee complies. Further, the Grantee agrees to ensure that all necessary permits are obtained prior to implementing any Grant Work Plan activity that may fall under applicable federal, state, or local laws.

15. Conversion.

The Project Site acquired and/or developed with FRDAP assistance must be retained and used for public outdoor recreation. Should the Grantee, within the periods set forth in subsections 62D-5.059(1) and (2), F.A.C., convert all or part of the Project site to other than public outdoor recreational uses, the Grantee must replace the area, facilities, resource, or Project site at its own expense with an acceptable project of comparable scope, and quality.

Florida Department of Environmental Protection

Exhibit A
Land and Water Conservation Fund Program
Florida Recreation Development Assistance Program
Project Status Report

Required Signatures: Adobe Signature

Project Name: _____ Project Number: _____

Project Sponsor: _____

Identify primary and support recreation areas and facilities to be constructed. **(50% of total costs must be in primary facilities).**
PROVIDE PHOTOS OF WORK IN PROGRESS

PRIMARY FACILITIES/ELEMENTS:

Project Elements	Work Accomplished	% Completed

SUPPORT FACILITIES/ELEMENTS:

Project Elements	Work Accomplished	% Completed

PROBLEMS ENCOUNTERED:

Period Covered (Check Appropriate Period):

- ☐ January through April: Due May 5th
- ☐ May through August: Due September 5th
- ☐ September through December: Due January 5th

LIAISON: _____ _____

Signature Date

Florida Department of Environmental Protection

EXHIBIT C
PAYMENT REQUEST SUMMARY FORM

Required Signatures: **Adobe Signature**

Date: _____

Grantee _____ Project Name and Number _____

Billing Period: _____ Billing #: _____

DEP Division: _____ DEP Program: _____

	Project Costs This Billing	Cumulative Project Costs
Contractual Services DRP-116		
Grantee Labor DRP-117		
Employee Benefits (_____% of Salaries)		
Direct Purchases: Materials & Supplies DRP-118		
Grantee Stock DRP-120		
Equipment DRP-119		
Land Value		
Indirect Costs (15% of Grantee Labor)		
TOTAL PROJECT COSTS	$0.00	$0.00

CERTIFICATION: I hereby certify that the above expenses were incurred for the work being accomplished in the attached progress reports.

_____ _____
Project Administrator **Date**

CERTIFICATION: I hereby certify that the documentation has been maintained as required to support the project expenses as reported above and is available for audit upon request.

_____ _____
Project Financial Officer **Date**

RESOLUTION NO. 2021- _____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING A SETTLEMENT AGREEMENT AND GENERAL RELEASE OF ALL CLAIMS OF BLAS MANUEL MINARRO MARTINEZ IN AMOUNT NOT TO EXCEED $150,000 TO BE PAID BY THE VILLAGE'S INSURER; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on or about October 25, 2019, Blas Manuel Minarro Martinez ("Martinez") filed a lawsuit styled *Blas Manuel Minarro Martinez et al. v. Village of Key Biscayne* in the Circuit Court of Miami-Dade County, Florida under case number 2019-030802-CA-01, seeking damages allegedly related to an incident on May 9, 2017 (the "Lawsuit"); and

WHEREAS, Martinez is willing to settle all of his claims that were or could have been brought against the Village pertaining to the Lawsuit, including all costs and attorney's fees incurred in this matter, and release the Village of any liability, in exchange for a lump-sum payment of $150,000, which will be paid by the Village's insurer, all as set forth in the Settlement Agreement and General Release attached hereto as Exhibit "A" (the "Agreement and Release"); and

WHEREAS, although the Village disputes the merits of the Lawsuit, the Village Council desires to accept the Agreement and Release, thereby disposing of all claims against the Village by Martinez, and authorize the Village Manager and Village Attorney to prepare and execute all settlement and related documents consistent with the terms of the Agreement and Release; and

WHEREAS, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. **Approval.** That the Village Council approves the settlement of all claims that were or could have been asserted by Martinez as a result of the alleged incident on May 9, 2017, including costs and attorney's fees, for $150,000, which will be paid by the Village's insurer, all as set forth in the Agreement and Release attached hereto as Exhibit "A."

Section 3. **Authorization.** That the Village Council authorizes the Village Manager and the Village Attorney to prepare and execute all settlement and related documents consistent with the terms of the Agreement and Release attached hereto as Exhibit "A" and the intent of this Resolution.

Section 4. **Effective Date.** That this Resolution shall be effective immediately upon adoption hereof.

PASSED and ADOPTED this _____ day of _____, 2021.

_____
MICHAEL W. DAVEY
MAYOR

ATTEST:

_____
JOCELYN BREWSTER KOCH
VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
VILLAGE ATTORNEY

EXHIBIT A

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement") is entered into October __, 2021, by and between Blas Manuel Minarro Martinez ("Martinez") and the Village of Key Biscayne ("Village"), a Florida municipal corporation (Martinez and Village collectively referred to as the "Parties").

Recitals

WHEREAS, on or about October 25, 2019, Martinez filed a lawsuit against the Village, styled *Blas Manuel Minarro Martinez et al. v. Village of Key Biscayne et al.*, in the Circuit Court of the 11th Judicial Circuit In and For Miami-Dade County, Case No. 2019-030802-CA 01 alleging negligence against the Village (the "Lawsuit"); and

WHEREAS, the Village denies Martinez's allegations; and

WHEREAS, on August 26, 2021, the Parties agreed to resolve this matter; and

NOW THEREFORE, in consideration of their mutual promises contained herein, the Parties hereby agree as follows:

Terms

1. **Incorporation of Recitals.** The Parties hereby agree and acknowledge that the foregoing Recitals to this Agreement are true and correct and are hereby incorporated into and made a part of this Agreement as if fully set forth herein.

2. **Payment.**

a. The Village's insurer shall pay Martinez, pursuant to Paragraph 3 below, the sum of One Hundred Fifty Thousand and 00/100 Dollars ($150,000.00) in full and complete settlement of all of Martinez's claims relating to the Lawsuit ("Settlement Sum").

b. The Settlement Sum should be made payable to: Robert Dixon, P.A. f/b/o Blas Manuel Minarro Martinez.

3. **Closing of Settlement.**

a. Within thirty (30) days of the approval of this Agreement by the Village Council, the Village shall deliver the Settlement Sum to Law Offices of Robert Dixon.

b. Within three (3) business day of the clearance of Settlement Sum, Martinez's counsel shall inform counsel for the Village that the Settlement Sum has cleared and shall file a Notice of Voluntary Dismissal with Prejudice as to Martinez with the Court, with each Party bearing their own fees and costs.

c. The Settlement shall be considered closed upon the clearance of the Settlement Sum and the filing of the Notice of Voluntary Dismissal with Prejudice.

4. **Additional Terms.** Martinez agrees to forfeit his rights (a) to reinstate the Lawsuit, and (b) to bring a new lawsuit based upon the facts and allegations raised in the Lawsuit.

Additionally, Martinez states that at the time of the execution of this Agreement there are no outstanding claims or liens by way of reimbursement or subrogation by insurance carriers, attorneys, hospitals, medical providers or other entities including Medicare or Medicaid, for amounts paid or owed on behalf of Martinez by reason of the incident which is described above, or, in the alternative, if there are any such outstanding claims or liens, Martinez will indemnify and hold the Village harmless from said amounts and will fully satisfy and resolve those claims including but not limited to any hospital liens, medical liens, attorneys liens, insurance liens and/or liens held by Medicaid or Medicare, any other governmental agency, or any other entity.

5. **Adequate Consideration.** Martinez agrees that the consideration as set forth in paragraph 2 above constitutes adequate and ample consideration for the rights and claims Martinez is waiving and/or forfeiting under this Agreement and for the obligations imposed upon him by virtue of this Agreement.

6. **Complete Release.** Martinez hereby voluntarily releases, waives, and forever discharge any and all claims, rights, demands, actions, or causes of actions, of any kind whatsoever, known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, and any consequences thereof, which he has or may have against the Village (including but not limited to, its officials, elected officials, employees, agents, law enforcement officers, and attorneys) from the beginning of the world until the date of execution of this Agreement.

It is Martinez's intention to fully, finally and forever resolve and release any and all disputes he may have or believe himself to have against the Village (including but not limited to, its officials, elected officials, employees, agents, law enforcement officers, and attorneys) with respect to any alleged acts occurring before the Effective Date of this Agreement, whether those disputes are presently known or unknown, suspected or unsuspected.

6. **No Lawsuits or Claims by Third Parties.** Martinez waive the rights and claims set forth above and agrees not to institute, or have instituted by anyone, a lawsuit against the Village based on any such claims or rights. Martinez further acknowledges and agrees that with respect to the rights and claims he is waiving, he is waiving not only his right to recover money or any other relief in any action he might commence, but also his right to recover in any action brought on his behalf by any other party.

7. **No Precedent Set**. The Parties agree that this Agreement is based upon the unique facts and circumstances of this particular case and does not establish any precedent, pattern or evidence of past practice for the resolution, disposition or determination of any other matter. Martinez further acknowledges that this Agreement is being entered into by the Parties as a compromise of the disputed claims and not on the merits, and is solely for the purposes of avoiding the expense and inconvenience of further litigation. Neither this Agreement, nor any other consideration made and contained herein is construed to be an admission of liability on the part of the any Parties.

8. **Effective Date**. This Agreement will become effective upon the execution of this Agreement by Martinez and the Village.

9. **Public Record**. Martinez understands and agree that under the Florida Public Records Law, Chapter 119, Florida Statutes, the Village is required to, and shall upon request by any third party, disclose the terms of this Agreement, and the Village shall comply with all federal, state, and local laws requiring disclosure of public records.

10. **Non-Admission of Wrongdoing**. The Parties agree that neither this Agreement nor the furnishing of any consideration under this Agreement shall be construed as an admission by any party of any wrongdoing, liability or unlawful conduct.

11. **Governing Law and Interpretation**. This Agreement shall be governed and construed in accordance with the laws of the State of Florida. If any provision of this Agreement is declared illegal or unenforceable by any court of competent jurisdiction, and if it cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect. Venue for any litigation arising from this Agreement will be in Miami-Dade County, Florida.

12. **Entire Agreement**. This Agreement sets forth the entire agreement between the Parties and shall supersede any and all prior agreements, understandings, whether written or oral, between the Parties, except as specified in this Agreement. The Parties acknowledge that they have not relied on any representations, promises, or agreements of any kind made to them in connection with their decision to sign this Agreement except for those set forth in this Agreement.

13. **Encouragement to Consult Attorney**. The Parties acknowledge that they have taken a reasonable period of time to consider the Agreement and have consulted with legal counsel before signing this Agreement.

14. **Amendment**. This Agreement may not be amended except by written agreement signed by all Parties.

15. **Headings**. Section headings are used herein for convenience of reference only and shall not affect the meaning of any provisions of this Agreement.

16. **Acknowledgement**. The Parties acknowledge that they have carefully read and understand this Agreement consisting of four (4) pages and agree that they have not made any representations other than those contained herein. Martinez also acknowledges that he enters into this Agreement voluntarily, without any pressure or coercion and with full knowledge of its significance, and this Agreement constitutes a full and absolute settlement and bar as to any and all claims he had, has, or may have against the Village.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Agreement as of the date set forth below.

BLAS MANUEL MINARRO MARTINEZ	VILLAGE OF KEY BISCAYNE
By: BLAS M. MINARRO MARTINEZ	By:
Title:	Title:
Date: 09/15/2021	Date:

Notary Public State of Florida
Francy Ramirez Fischer
My Commission HH 091175
Expires 03/13/2025

09/15/2021

VILLAGE OF KEY BISCAYNE

Village Council

Michael W. Davey, *Mayor*
Edward London, *Vice Mayor*
Frank Caplan
Luis Lauredo
Allison McCormick
Brett Moss
Ignacio J. Segurola

Village Manager
Steven C. Williamson

MEMORANDUM

DATE: October 12, 2021

TO: Honorable Mayor and Councilmembers

FROM: Steven C. Williamson, Village Manager

RE: Acceptance of Automatic Aid & Ancillary Services Agreement # 6

RECOMMENDATION

I recommend that the Village Council approve the attached Resolution approving the Agreement between the Village of Key Biscayne and the City of Miami for Fire, Rescue, Automatic Aid and Ancillary Services at the Village of Key Biscayne, covering the period of October 1, 2021 and terminating on September 30, 2026.

BACKGROUND

The Village of Key Biscayne Fire Rescue Department negotiated with the City of Miami Fire Department for the sixth time since inception for an agreement for fire, rescue, automatic aid, and ancillary services. The recommended Agreement, which was approved by the City of Miami Commission by Resolution No. CA.1 9501 on September 23, 2021, establishes a five (5) year fixed annual cost of $573,144 or $47,762 per month. The annual cost for the prior year was $545,328 or $44,772 per month. This agreement benefits the Village because it supports leveraging resources and services to serve the Key Biscayne community:

- By providing automatic aid to the Fire Rescue department to include:
  - Additional response units for specialized response teams such as: Fire boat, HAZMAT, Special Operations and Dive
  - Augmentation of material and equipment for emergency response support
- By providing services related to vehicle maintenance and equipment repair
- By providing necessary infrastructure to support critical communication equipment such as Computer Aided Dispactch (CAD) ,800 MHz radio equipment and 911 call takers /dispatch
- By providing "Medical Director Services" in support of Firefighter & Paramedic operations (a requirements by the State of Florida for Paramedics to practice)
- Provide training facilities and programming for Key Biscayne fire personel

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

RESOLUTION NO. 2021-_____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING AN AGREEMENT WITH THE CITY OF MIAMI FOR FIRE, RESCUE, AUTOMATIC AID, AND ANCILLARY SERVICES AT AN ANNUAL COST OF $573,144.00; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Key Biscayne ("Village") Fire Department requires certain fire, rescue, automatic aid, and ancillary services (the "Services") to augment the fire protection and related services provided by the Village Fire Rescue Department; and

WHEREAS, the City of Miami ("Miami") desires to continue providing the Services offered by its Fire Rescue Department to the Village on a contractual basis at an annual cost of $573,144.00; and

WHEREAS, the Village Council desires to approve the Agreement with Miami for the Services in substantially the form attached hereto as Exhibit "A" ("the Agreement") and authorize the Village Manager to execute the Agreement; and

WHEREAS, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. Approval. That the Village Council hereby approves the Agreement, in substantially the form attached hereto as Exhibit "A," for the Services at an annual cost of $573,144.00.

Section 3. **Authorization.** That the Village Manager is hereby authorized to execute the Agreement, in substantially the form attached hereto as Exhibit "A," subject to the approval of the Village Attorney as to form, content, and legal sufficiency.

Section 4. **Implementation.** That the Village Manager is hereby authorized to take all actions necessary to implement the purposes of this Resolution.

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

PASSED and ADOPTED this _____ day of _____, 2021.

_____
MICHAEL W. DAVEY, MAYOR

ATTEST:

_____
JOCELYN B. KOCH
VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
VILLAGE ATTORNEY

EXHIBIT A

AGREEMENT BETWEEN THE VILLAGE OF KEY BISCAYNE AND THE CITY OF MIAMI FOR FIRE, RESCUE, AUTOMATIC AID AND ANCILLARY SERVICES AT THE VILLAGE OF KEY BISCAYNE, FLORIDA

THIS AGREEMENT, entered into this _____ day of _____, 20____, by and between the Village of Key Biscayne, a municipal corporation of the State of Florida (the "VILLAGE"), and the City of Miami, a municipal corporation of the State of Florida (the "CITY").

WHEREAS, the VILLAGE has requested certain fire, rescue and fire inspection services be performed by the CITY to augment the fire protection provided by the VILLAGE which services are the responsibility of the VILLAGE to provide; and

WHEREAS, the CITY is desirous of continuing such services for the VILLAGE on a contractual basis and has thus negotiated this Agreement; and

WHEREAS, the VILLAGE desires to engage the CITY to implement such services on a contractual basis until such time as this Agreement may be canceled by either party in the manner provided for herein;

NOW, THEREFORE, in consideration of the mutual premises and covenants herein contained, it is agreed as follows:

SECTION I

DEFINITION AND PURPOSE.

A. DEFINITIONS

1. "MIAMI FIRE-RESCUE DEPARTMENT" means the CITY's Department of Fire-Rescue.
2. "KEY BISCAYNE FIRE RESCUE DEPARTMENT" means the VILLAGE's Department of Fire Rescue.
3. "CITY FIREFIGHTER" means full-time, fully paid State Certified Fire Fighters, Officers, EMTs or Paramedics according to Miami Fire-Rescue Department job descriptions.
4. "VILLAGE FIREFIGHTER" means full-time, fully paid State Certified Fire Fighter/Paramedics, Fire Fighter/EMTs, or Officers, according to Village of Key Biscayne job descriptions which are equivalent to or exceed MIAMI FIRE-RESCUE DEPARTMENT job descriptions.
5. "FIRE VEHICLE" means an apparatus meeting the appropriate requirements as set forth in NFPA Standard 1901.
6. "ADVANCED LIFE SUPPORT RESCUE VEHICLE" means an apparatus meeting the requirements as set forth by the State of Florida.
7. "Appropriate equipment, material and personnel", as used in SECTION II, SCOPE OF SERVICE, paragraph A. Through J., means that which has been determined to be sufficient and appropriate for the specific

situation by joint agreement of the City Manager or designee and the Village Manager or designee.

8. "Major Emergency" means those incidents that extend longer than one (1) hour in duration.

9. "NORMAL WEAR AND TEAR" shall be defined as typical maintenance problems that occur because of parts or equipment malfunction and inoperability due to age. It shall not include such things as operator error, failure to follow operational and/or safe procedures, damaged equipment due to mistreatment or accidents, lost equipment and similar situations. If the parties do not agree on whether the damage was caused by "normal wear and tear", the Original Equipment Manufacturer will make the determination.

B. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which the CITY will provide fire, rescue and ancillary services to augment the VILLAGE's fire rescue service as set forth in SECTION II of this Agreement.

SECTION II

SCOPE OF SERVICE.

The CITY agrees, in accordance with the terms of this Agreement, to provide the following Fire-Rescue services to the

VILLAGE providing that the VILLAGE maintains a fire rescue service consisting of an on-duty force of at least one FIRE APPARATUS staffed with four fully paid VILLAGE FIREFIGHTERS (as specified within NFPA 1710) and one ADVANCED LIFE SUPPORT RESCUE VEHICLE staffed with three fully paid VILLAGE FIREFIGHTERS and all required equipment. MIAMI FIRE-RESCUE DEPARTMENT shall respond upon request to staff the VILLAGE Fire Station once Key Biscayne;

- Units have responded to two calls for service and the Officer in charge of the second unit dispatched has determined his/her unit's services shall be required for more than a minimal amount of time, and the Officer has also determined that the other Key Biscayne unit is not close to returning to service or in a close proximity to the VILLAGE.
- Has had all units dispatched and the incident commander has determined that services from all units shall be required for longer than a minimal amount of time.

A. Automatic dispatch of appropriate equipment, material and personnel for fire suppression purposes to augment KEY BISCAYNE FIRE RESCUE DEPARTMENT resources shall be according to the dispatch criteria, using MIAMI FIRE-RESCUE DEPARTMENT situation codes.

B. Automatic dispatch of appropriate equipment, material and personnel for emergency medical purposes to augment KEY BISCAYNE FIRE RESCUE DEPARTMENT resources shall be according to the dispatch criteria, using MIAMI FIRE-RESCUE DEPARTMENT situation codes.

C. Material and personnel for fire inspection, plans examination and investigation purposes as set forth in APPENDIX II attached hereto and made a part hereof.

D. Material and personnel for initial fire recruit training for the VILLAGE's newly hired firefighter candidates. KEY BISCAYNE FIRE RESCUE DEPARTMENT will be responsible for all other types of training, (including the cost of EMS re-certification training) and staffing in services units (as specified within Section II - Scope of Services) caused by vacancies due to on-duty FIREFIGHTERS' participating, if they are unable to respond.

E. Material and personnel for VILLAGE vehicle and equipment maintenance due to normal wear and tear.

F. Material and personnel for VILLAGE 800 MHz Communications equipment maintenance due to normal wear and tear.

G. Material for maintenance of Computer Aided Dispatch System utilized by the Village of KEY BISCAYNE FIRE RESCUE DEPARTMENT.

H. Material and personnel for the provision of VILLAGE firefighting and medical expendable supplies used as a result of emergency operations and required training.

I. Material and personnel for EMS quality assurance.

J. Material and personnel for command and control of incidents involving MIAMI FIRE-RESCUE DEPARTMENT units as set forth in APPENDIX III attached hereto and made a part hereof. The parties agree that all materials and personnel for non-emergency activities (i.e., parades, community events, etc.) shall be the responsibility of the VILLAGE, including the cost of staffing service unit's caused by vacancy due to on-duty FIREFIGHTERS' participation.

SECTION III

TERM.

Subject to the cancellation provision set forth in Section X hereof, the term of this Agreement shall be for a period of five (5) years commencing on October 1, 2021 and terminating on September 30, 2026. The parties may mutually agree to extend the contract for up to one (1) year to negotiate and approve the subsequent agreement.

SECTION IV

COMPENSATION.

A. The CITY will charge the minimum monthly fee set forth in the fee schedule labeled APPENDIX I, attached hereto and made a part hereof, commencing on October 1, 2021 (the "Minimum Fee"). This charge for fire rescue services shall be for equipment and personnel required to augment routine KEY BISCAYNE FIRE RESCUE DEPARTMENT services and protection, as necessary, in accordance with MIAMI FIRE-RESCUE DEPARTMENT Standard Operating Procedure.

B. In the event of a Major Emergency, as further described in this section, in addition to the MINIMUM FEE, an additional Major Emergency fee as set forth in APPENDIX I shall be charged to the VILLAGE. For the purposes of this Agreement, a "Major Emergency" is defined as those incidents that extend longer than one (1) hour in duration. Not considered Major Emergencies are minor fires, rescue runs, small hazardous materials incidents and those incidents that have been routinely handled in the past, elsewhere in the CITY and the VILLAGE, by its Fire Department, by routine custom and practice.

C. For the purpose of invoicing, when Major Emergencies occur, the VILLAGE will make payment within ninety (90) days after mailing by the CITY of the invoice for services. Interest at the rate of twelve percent (12%) per annum shall

automatically accrue on delinquent invoices from the ninety first (91) day after invoicing until they are paid.

D. The charges as set forth in the attached fee schedule, APPENDIX I shall be the maximum hourly rates for equipment and personnel with the time for such charges to be calculated from the time of the alarm to the time the responding MIAMI FIRE-RESCUE DEPARTMENT units return to City service. The hourly charges shall be prorated for fractional parts of an hour with minutes being the smallest increments. Such charges are based upon at least four (4) CITY FIREFIGHTERS operating each Aerial, Quint, Haz-Mat Apparatus, Foam Engine, Fire Boat and Fire Engine, three (3) CITY FIREFIGHTERS operating each Rescue, and two (2) CITY FIREFIGHTERS operating the Air Truck, and one (1) District Chief, (1) Battalion Commander, one (1) EMS Captain, and one (1) Safety Officer listed in the major emergency fee schedule. In the event fewer CITY FIREFIGHTERS are provided, the charge will be reduced proportionately.

E. The CITY will provide a monthly invoice for routine services and protection, with appropriate documentation as required. Pursuant to Florida State Statute 218.74, The VILLAGE shall make payment within forty five (45) days after mailing by the CITY of the invoice for services. Interest at the rate of twelve percent (12%) per annum shall automatically accrue on

delinquent invoices from the forty six (46) day after invoicing until they are paid.

F. Charges for fire watches shall be the same OFF DUTY OVERTIME RATES found in Chapter 19, Section 19.9 of the City of Miami Municode as charged to the public for FIRE-RESCUE SERVICES. The current rates (subject to change) are:

- Inspector $ 65.77/hour
- Rescue Unit $208.83/hour
- Firefighting Units $281.56/hour
- Administrative Fee $ 12.00/per person assigned

SECTION V

INDEMNIFICATION.

The VILLAGE shall indemnify and save harmless the CITY from any and all claims, liability, losses and causes of action arising out of the negligence of VILLAGE's agents, officers or employees, to the extent of the limitations included within Florida Statutes, Section 768.28.

The CITY shall indemnify and save harmless the VILLAGE from any and all claims, liability, losses and causes of action arising out of the negligence of CITY's agents, officers, or employees, to the extent of the limitations included within Florida Statutes, Section 768.28.

SECTION VI

ACCESS, FIRE CODE, FIRE INSPECTION.

A. ACCESS

The VILLAGE hereby confirms that it shall provide unencumbered ingress and egress to CITY personnel, vehicles, boats and helicopters entering or departing the VILLAGE for the purposes of executing the provisions of this Agreement, including, but not limited to, medical emergencies, fire suppression, fire inspection, fire investigation and equipment testing.

B. FIRE CODE

The Florida Fire Prevention Code and any additional fire prevention codes established by the VILLAGE shall apply to the VILLAGE.

C. FIRE INSPECTIONS

The CITY, when available and resources permit, agrees to provide as needed and when requested, fire inspection services on VILLAGE property and the VILLAGE further agrees to authorize the MIAMI FIRE-RESCUE DEPARTMENT to enforce the Florida Fire Prevention Code and any additional fire prevention codes established by the VILLAGE as set forth in APPENDIX II.

It is further understood that all revenue that is generated by these inspections shall be the property of the VILLAGE.

SECTION VII

SWITCH WITH ANOTHER PARAMEDIC (SWAP)

The CITY and VILLAGE agree to continue the "Switch with another Paramedic" (SWAP) Program as an interdepartmental exchange program designed to compare and evaluate other emergency medical and firefighting systems and operations. Paramedics will be able to compare their own system with that of the exchange Department. Likewise, these Paramedics will be able to offer insight into their own system as seen from this perspective.

SECTION VIII

RIGHT OF FIRST REFUSAL

The MIAMI FIRE-RESCUE DEPARTMENT shall have the Right of First Refusal purchase opportunity on all KEY BISCAYNE FIRE RESCUE DEPARTMENT vehicles when they are to be sold by the VILLAGE. One appraisal shall be obtained by the CITY, and one appraisal shall be obtained by the VILLAGE and shall be averaged to arrive at fair market value. The CITY shall pay the average price determined by these two appraisals, if fair market value does not vary by more than 10% between appraisals.

SECTION IX

TECHNOLOGICAL IMPROVEMENTS.

All technological improvements adopted and implemented by the MIAMI FIRE-RESCUE DEPARTMENT shall be offered to the KEY

BISCAYNE FIRE RESCUE DEPARTMENT. If the KEY BISCAYNE FIRE RESCUE DEPARTMENT chooses to take advantage of these improvements, the VILLAGE's portion of the cost of these improvements shall be borne by the KEY BISCAYNE FIRE RESCUE DEPARTMENT.

SECTION X

CANCELLATION.

This Agreement shall expire on September 30, 2026 provided, however, that on any fiscal year during the term of this Agreement, either party may terminate, without cause, only upon written notice served upon the non canceling party on or before the 30th day of September of such year. Cancellation will be at the discretion of the City Manager on behalf of the CITY and Village Manager on behalf of the VILLAGE. In the event of such cancellation, the CITY shall be paid fees for all services provided prior to the effective date of such cancellation.

SECTION XI

AMENDMENTS.

This Agreement may be amended only upon the written agreement of the parties. No amendments to this Agreement shall be binding on either party unless in writing and approved by the CITY's Commission and the VILLAGE's Council.

SECTION X11

NOTICE.

All notices provided by either party under this Agreement shall be deemed to be sufficiently sent if mailed by U.S. Certified Mail, Return Receipt Requested, and shall be sent to the officers specified below:

FOR THE CITY - CITY MANAGER

Arthur V. Noriega
444 S.W. 2nd Avenue
Miami, Florida, 33130

FOR THE VILLAGE - VILLAGE MANAGER

Steve Williamson
88 West McIntyre Street
Key Biscayne, Florida 33149

SECTION XIII

GENERAL CONDITIONS.

A. Title and Paragraph headings are for convenient reference and are not part of this Agreement.

B. In the event of conflict between terms of this Agreement and any terms or conditions contained in any attached documents, the terms of this Agreement shall rule.

C. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

D. Should any provision(s), paragraph(s), sentence(s), word(s) or phrase(s) contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable under the laws of the State of Florida or the CITY, such provision(s), paragraph(s), sentence(s), word(s) or phrase(s) shall be deemed modified to the extent necessary in order to conform with such laws or, if not modifiable to conform with such laws, then same shall be deemed severable and, in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.

SECTION XIV

OWNERSHIP OF DOCUMENTS.

VILLAGE agrees that all documents maintained and generated pursuant to this contractual relationship between CITY and VILLAGE shall be subject to all provisions of the Public Records Law, Chapter 119, Florida Statutes.

It is further understood by and between the parties that any information, writings, maps, contact documents, reports or any other matter whatsoever which is given by CITY to VILLAGE pursuant to this Agreement shall at all times remain the property of the CITY and shall not be used by the VILLAGE for any other purposes whatsoever without the written consent of the CITY.

SECTION XV

NONDELEGABILITY.

The obligations undertaken by the CITY pursuant to this Agreement shall not be delegated or assigned to any other person or firm unless the VILLAGE shall first consent in writing to the performance or assignment of such service or any part thereof by another person or firm.

SECTION XV1

AUDIT RIGHTS.

CITY and VILLAGE reserve the right to audit the records of each other, as said records relate to this Agreement, at any time during the performance of this Agreement and for a period of three (3) years after final payment is made under this Agreement.

SECTION XVII

AWARD OF AGREEMENT.

VILLAGE warrants that it has not employed or retained any person employed by the CITY to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person employed by the CITY any fee, commission percentage, brokerage fee, or gift of any kind contingent upon or resulting from the award of this Agreement.

SECTION XVIII

CONSTRUCTION OF AGREEMENT.

This Agreement shall be construed and enforced according to the laws of the State of Florida, and venue shall be in Miami-Dade County.

SECTION XIX

INDEPENDENT CONTRACTOR

CITY and its employees and agents shall be deemed to be independent contractors, and not agents or employees of VILLAGE, and shall not attain any rights or benefits under the Civil Service or Pension Ordinance of VILLAGE, or any rights generally afforded classified or unclassified employees; further CITY employees shall not be deemed entitled to the Florida Workers' Compensation benefits as an employee of the VILLAGE.

SECTION XX

NONDISCRIMINATION.

VILLAGE agrees that it shall not discriminate as to race, sex, color, creed, national origin or handicap in connection with its performance under this Agreement.

Furthermore, that no otherwise qualified individual shall, solely by reason or his/her race, sex, color, creed, national origin, or handicap, be excluded from participating in, be denied benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

SECTION XX1

CONTINGENCY CLAUSE.

Funding for this Agreement is contingent upon the availability of funds and continued authorization for program activities and is subject to amendment or termination due to lack of funds, or authorization, reduction of funds, and/or change in regulations.

SECTION XXII

DEFAULT PROVISION

In the event that CITY shall fail to comply with each and every term and condition of this Agreement or fails to perform any of the terms and conditions contained herein, then the VILLAGE, at its sole option, upon ninety (90) day written notice to the CITY, may cancel and terminate this Agreement.

SECTION XXIII

ENTIRE AGREEMENT

Except as specified below, this instrument and its attachments constitute the sole and only Agreement of the parties hereto relating to the subject hereof and correctly sets forth the rights, duties, and obligations of each to the other as of its date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect, except that the Agreement of October 1, 2016 shall continue until September 30, 2021.

IN WITNESS WHEREOF, the parties hereto have hereunto caused these presents to be signed in their names by the duly authorized officials, attested by their respective CITY and VILLAGE Clerk on the day and year first herein above written.

Village of Key Biscayne,
A municipal corporation
of the State of Florida

_____
Steve Williamson
Village Manager
Village of Key Biscayne

ATTEST:

_____
Jocelyn B. Koch
Village Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

_____
Village Attorney
Village of Key Biscayne

City of Miami,
A municipal corporation
of the State of Florida

_____
Arthur V. Noriega
City Manager
City of Miami

ATTEST:

_____
Todd Hannon
City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

_____
Victoria Mendez
City Attorney
City of Miami

APPROVED AS TO INSURANCE
REQUIREMENTS:

_____
Ann-Marie Sharpe, Director
Dept. of Risk Management

APPENDIX I

FEE SCHEDULE

A. For normal automatic aid and ancillary services to augment the KEY BISCAYNE FIRE RESCUE DEPARTMENT, a monthly fee (the MINIMUM FEE) shall be established. For the first year of this Agreement, the monthly fee shall be forty seven thousand seven hundred sixty two dollars (47,762.00). Thereafter, thirty (30) days prior to the annual anniversary, the City will review the Consumer Price Index for All Urban Consumers (CPI-U), Not Seasonally Adjusted, Miami-Fort Lauderdale-West Palm Beach, and adjust the fee accordingly, with a maximum annual increase or decrease of no more than 3% above or below the previous year. This fee covers personnel and material as necessary in accordance with City of Miami Standard Operating Procedures.

The CITY will provide a monthly invoice with appropriate documentation as required. Pursuant to Florida State Statute 218.74, the VILLAGE shall make payment within forty five (45) days after mailing by the CITY of the invoice with the exception of Paragraph C, Section IV. Interest at the rate of twelve percent (12%) per annum shall automatically accrue on delinquent invoices until they are paid.

B. For Major Emergencies, as defined in Section 1A, Definition 8, the following fee schedule, in addition to the normal monthly fee, is established:

1. $1,758 per hour per Aerial/Quint Company

2. $1,319 per hour per Pumper Company

3. $1,159 per hour per Haz Mat Truck/Dive Unit/TRT Unit

4. $1,319 per hour per Foam Pumper Truck

5. $879 per hour per Advanced Life Support Rescue Company

6. $1,319 per hour per Fire Boat

7. $293 per hour per person for Special Equipment (District Chief, Battalion Commander, Safety Officer, etc.)

8. $440 per hour per Air Truck

The charges as set forth above shall be the hourly rates for equipment and personnel with the time for such charges to be calculated from the time of the alarm to the time the MIAMI FIRE-RESCUE DEPARTMENT responding units return to City service. The hourly charges shall be prorated for fractional parts of an hour with minutes being the smallest increments. Such charges are based upon at least four (4) CITY FIREFIGHTERS operating each piece of apparatus listed in items 1, 2, 3, 4, and 6 above, and three (3) CITY FIREFIGHTERS operating equipment listed in items 5. In the event fewer CITY FIREFIGHTERS are provided, the charge will be reduced proportionately.

For the purposes of this Agreement, a "Major Emergency" is defined as those incidents that involve automatic aid multi-company dispatches and extend longer than one (1) hour in

duration. These incidents are considered out of control. Not considered Major Emergencies are minor fires, rescue runs, small hazardous materials incidents and those incidents that have been routinely handled in the past elsewhere in the CITY and the VILLAGE by its Fire Department, by routine custom and practice.

C. Fire watches, shall be the same OFF DUTY OVERTIME RATES found in Chapter 19, Section 19.9 of the City of Miami Municode as charged to the public for FIRE-RESCUE SERVICES. The current rates (subject to change) are:

- Inspector $ 65.77/hour
- Rescue Unit $208.83/hour
- Firefighting Units $281.56/hour
- An Administrative Fee based on CITY Ordinance No. 10237 requiring a charge of $12.00 per person per day.
- Charges may be changed based upon contract agreement between the City of Miami and Miami Firefighters Local No. 587.

D. If for unforeseen reasons the VILLAGE is unable to provide its own fire rescue services, the CITY agrees to provide full fire rescue service to the VILLAGE on a monthly basis until such time as the KEY BISCAYNE FIRE RESCUE DEPARTMENT is again fully operational. The term of this interim Agreement for full fire rescue service, as reflected in SECTION II of this Agreement and substituting CITY equipment, material and personnel for VILLAGE equipment, material and personnel, would

be for a maximum of twelve (12) months. Price will be determined should the actual need arise.

APPENDIX II

INSPECTION SERVICES

A. The CITY, when available and resources permit, will provide during normal business hours Monday through Friday from 8:00 A.M. until 5:00 p.m. when requested by the VILLAGE, a qualified Fire Inspector from the MIAMI FIRE-RESCUE DEPARTMENT Fire Prevention Bureau to conduct required regular fire inspections of all occupancies except one- and two-family dwellings and apartment buildings three floors or less.

B. The CITY, when available and resources permit, will provide during normal business hours Monday through Friday from 8:00 A.M. until 5:00 P.M. as soon as possible upon request by the VILLAGE, a qualified Plans Examiner from the MIAMI FIRE-RESCUE DEPARTMENT Fire Prevention Bureau to review plans for new building construction and/or major building modifications to all occupancies except one- and two-family dwellings.

C. The CITY will provide at any time of day or night when requested by the VILLAGE a qualified Fire Investigator from the MIAMI FIRE-RESCUE DEPARTMENT Fire Prevention Bureau to investigate all fires having a cause that is designated by the fire officer in charge of the scene to be of a suspicious or undetermined nature, all fire bombings,

all attempted fire bombings, all explosions where there is a fire related death and all deaths resulting from fire related injuries.

APPENDIX III

MAJOR EMERGENCY COMMAND STRUCTURE

When an emergency incident occurs within the Village of Key Biscayne involving MIAMI FIRE-RESCUE DEPARTMENT units, the Command structure listed below will be followed:

A. Officers of Equal Rank: When officers on the incident from the Village of KEY BISCAYNE FIRE RESCUE DEPARTMENT and MIAMI FIRE-RESCUE DEPARTMENT are of equal ranks, the Officer from the Village of KEY BISCAYNE FIRE RESCUE DEPARTMENT is in charge of the incident.

B. Officers of Unequal Rank: When Officers on an incident from the Village of KEY BISCAYNE FIRE RESCUE DEPARTMENT and MIAMI FIRE-RESCUE DEPARTMENT are of unequal ranks, the highest ranking Officer will be in charge of the incident.

C. District Chiefs: MIAMI FIRE-RESCUE DEPARTMENT District Chiefs on arrival, will be in Command of all incidents at the Village of Key Biscayne requiring their dispatch. This Command structure will be followed whether the units involved in the incident are solely MIAMI FIRE-RESCUE DEPARTMENT or a combination of MIAMI FIRE-RESCUE DEPARTMENT and Village of KEY BISCAYNE FIRE RESCUE DEPARTMENT. The only exceptions to this are:

1. The District Chief is relieved of Command by a Miami Officer of higher rank.

2. The District Chief is relieved by the Chief or the Deputy Chief of the Village of KEY BISCAYNE FIRE RESCUE DEPARTMENT. The District Chief will then be in charge of Operations.
3. The incident can be turned over to the appropriate authority of the Village of KEY BISCAYNE FIRE RESCUE DEPARTMENT.

VILLAGE OF KEY BISCAYNE

Village Council

Michael W. Davey, *Mayor*
Edward London, *Vice Mayor*
Frank Caplan
Luis Lauredo
Allison McCormick
Brett Moss
Ignacio J. Segurola

Village Manager
Steven C. Williamson

MEMORANDUM

DATE: October 12, 2021

TO: Honorable Mayor and Councilmembers

FROM: Steven C. Williamson, Village Manager

RE: Executing an Easement Agreement between the Village of Key Biscayne and the Sands Condominium to Establish a Public Beach Access Path

RECOMMENDATION

I recommend that the Village Council authorize the Village Manager to execute an easement agreement with the Sands Condominium to establish a public beach access path similar to the public beach access points on the north and south sides of the Oceana Condominium. The path is situated between the Sands Condminium and the Key Biscayne Beach Club. Establishing this public beach access is a requirement forbeing accepted into the US Army Corps of Engineers Coastal Storm Risk Management feasibility study for entry into the long term (50-year) federal shoreline protection program. The public path will be renovated to Key Biscayne and ADA standards and will be maintained by the Village of Key Biscyane in perpetuity. The total fee for improving the path is estimated not to exceed $60,000. Funding is allocated is the FY22 Budget; however, the Village is submitting an FDEP Coastal Partnership Initiatives Grant to obtain external funding to cover the cost of renovating the path. Deadline for submission of the grant application is October 15, 2021.

BACKGROUND

One of the reasons the US Army Corps of Engineers (USACE) agreed to accept the Village's request for a waiver for inclusion into its ongoing feasibility study is because the Village agreed to establish additional beach access points that would be available to the public. For the ~1.2 mile stretch of Key Biscayne beach, USACE ¼ mile spacing requirements dictated that a total of 5 public access points be available as depicted below.

The Village identified five (5) access points that are being considered as a public access as follows:

1- Public Access #1 (PA-1): Between CCS and Island House

2- Public Access #2 (PA-2): Oceana North

3- Public Access #3 (PA-3): Oceana South

4- Public Access #4 (PA-4): Between the Sands and KB Beach Club

5- Public Access #5 (PA-5): Between Ocean Club and Casa Del Mar

Two paths (Oceana North and Oceana South) of the five public access points already exist. The five access points are spread out in a way to provide continuous access to the beach every 1/4 mile or less. Moving forward into the USACE long term federal shoreline protection program requires the remaining three paths (inclusive of PA-4) to be converted into public beach access points.

Per the easement agreement with the Sands Condominium, the title bearer of the given property, the Village will take responsibility and cost for renovating the beach access path made public. The Village will maintain the path and design it to be ADA compliant and safe to users of the path. The public beach access path will not be advertised. No public parking will be provided beyond what currently exists along Crandon Boulevard and other public parking locations and the public access will be available to those who may come to it using FreeBee, walking, biking or some other manner. The path will be available to the general public and will not be gated or locked. The Village will maintain the public beach access paths in the same manner as it maintains public parks. No restrooms will be built to serve the public beach access paths; however, the Village may include a shower for beach goers similar to the showers provided at the two existing paths north and south of Oceana.

Beach raking services and beach renourishment activities will continue to use the beach access paths immediately to the north and south of the Oceana property as those two paths were widened and designed specifically to serve that purpose. Due to special constraints, neither of three additional proposed public beach paths (including PA-4) will be able to support vehicles other than VKB Police or Public Works all terrain vehicles (ATVs).

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

RESOLUTION NO. 2021 - _____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING AND ACCEPTING A PUBLIC BEACH ACCESS EASEMENT AND DEDICATION AGREEMENT WITH THE SANDS OF KEY BISCAYNE CONDOMINIUM ASSOCIATION, INC. RELATING TO THE PROPERTY LOCATED AT 605 OCEAN DRIVE; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Key Biscayne ("Village") desires to be accepted into the U.S. Army Corps of Engineers feasibility study for entry into the long term (50-year) federal shoreline protection program (the "Re-Nourishment Program"); and

WHEREAS, as a condition of the Re-Nourishment Program, the Village is required to ensure that the general public has access to the beaches located within the Village at certain designated intervals; and

WHEREAS, The Sands of Key Biscayne Condominium Association, Inc. has voluntarily agreed to grant the Village a public beach access easement entitled "Public Access Easement and Dedication Agreement" (the "Easement") on the property located at 605 Ocean Drive; and

WHEREAS, the Village Council desires to approve and accept the Easement, in substantially the same form attached hereto as Exhibit "A"; and

WHEREAS, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. Each of the above stated recitals are hereby adopted, confirmed and incorporated herein.

Section 2. **Easement Approved and Accepted.** The Village Council hereby approves and accepts the Easement, in substantially the form attached hereto as Exhibit "A," subject to the Village Attorney's approval as to form, content and legal sufficiency.

Section 3. **Implementation.** The Village Manager is hereby authorized to take any and all steps necessary to implement the intent and purpose of this Resolution.

Section 4. **Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this _____ day of _____, 2021.

_____
MICHAEL W. DAVEY, MAYOR

ATTEST:

_____
JOCELYN B. KOCH
VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
VILLAGE ATTORNEY

EXHIBIT A

THIS INSTRUMENT PREPARED BY AND SHOULD BE RETURNED TO:

Eduardo M. Soto, Esq.
Weiss Serota Helfman
Cole & Bierman, P.L.
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, Florida 33134

For Recording Purposes Only

PUBLIC ACCESS EASEMENT AND DEDICATION AGREEMENT

THIS PUBLIC ACCESS EASEMENT AND DEDICATION AGREEMENT (this "Agreement") is made this _____ day of _____, 2021, by The Sands of Key Biscayne Condominium Association, Inc., a Florida non-profit corporation, (hereinafter referred to as the "Grantor"), and the Village of Key Biscayne, a Florida municipal corporation (hereinafter referred to as the "Village").

RECITALS:

1. Grantor owns fee simple title to certain real property located in Miami-Dade County, Florida, and more specifically within the boundaries of the Village, as more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (the "Easement Area");

2. The Village has determined that its beaches are in need of re-nourishment and in connection therewith has requested federal assistance ("Re-Nourishment Program");

3. As a condition of the Re-Nourishment Program, the Village is required to ensure that the general public have access to the beaches located within the Village ("Village Beaches") at certain designated intervals;

4. The Village has determined that the Easement Area is a suitable access point as required by the Re-Nourishment Program;

5. Grantor has agreed to grant the general public access to the Village Beaches subject to the Village undertaking the obligations as set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the premises and the sum of TEN

DOLLARS ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. **Recitals**. The parties acknowledge that the foregoing recitals are true and correct and are hereby incorporated into this Agreement as is fully set forth herein.

2. **Dedication of Beach Access Easements**. Grantor does hereby dedicate, grant and convey to the Village, the Easement Area as described on Exhibit A attached hereto, for the benefit of the general public, for the purposes of pedestrian and bicycle ingress and egress to and from the Village Beaches or Atlantic Ocean, allowing for the use and benefit of the Village Beaches, including the right of access and ingress and egress for maintenance vehicles for Village Beach maintenance and re-nourishment, and emergency vehicles and Village operations for public, health, safety and welfare purposes. Maintenance vehicles on the Easement Areas for routine (daily or weekly) beach maintenance purposes shall be limited to All Terrain Vehicles (ATV) and/or similar vehicles. In connection with non-routine beach re-nourishment performed by the Village, the Village (and/or its contractor or vendor) may utilize larger vehicles, as necessary with advance reasonable notice provided to Grantor. The Village acknowledges that a fence currently encroaches into the Easement Area which the Village shall not disturb or otherwise remove; provided however that the encroachment shall not be rebuilt in the event it is destroyed by casualty.

3. **Purpose and Use of Beach Access Dedication/Easement**. The intent and purpose of the dedication granted to the Village on the Easement Area is to provide exclusive and perpetual unrestricted and year-round pedestrian, bicycle and limited vehicular access to and from the beach or Atlantic Ocean to the Village, for the use and benefit of its residents and all users or parties designated by the Village, as well as the right of access and ingress and egress for maintenance vehicles for beach maintenance and re-nourishment, and emergency vehicles and Village operations for public, health, safety and welfare purposes. The Village shall have the right to temporarily close and/or restrict use and access of the Easement Area, including closures for beach maintenance and re-nourishment purposes, provided, the Village provides Grantor with written advance reasonable notice of such closure (and in the event of emergency situations requiring immediate closure, no notice by the Village shall be required). Notwithstanding the foregoing, vehicular access shall be limited to maintenance, re-nourishment, emergency situations, and access for individuals with disabilities only.

4. **Improvements to Beach Easement Areas; Maintenance and Repair.** Village shall install and construct, at its sole cost and expense, certain improvements on the Easement Area, to make the Easement Area suitable for pedestrian, bicycle and limited vehicular (golf cart) (as per 3. above) access, including (a) installation of a paved path and/or walkway on the Beach Easement Areas; (b) landscaping; (c) fencing, and (d) limited lighting as approved by applicable governmental and permitting agencies (the improvements described in (a), (b), (c) and (d) above shall be hereinafter collectively referred to as the "Improvements"). The Village shall maintain and repair the Easement Area and the Improvements, at its sole cost and expense, in safe and good working condition and such that pedestrian and vehicular access is not impaired or obstructed. The Village shall keep the Easement Area and Improvements clear and free of trash, debris and rubbish and free of obstructions of every nature, and shall provide adequate drainage and lighting thereon. No walls, fences, barriers, building, structure or any other sort of temporary

or permanent obstruction shall be constructed or erected on or over the Easement Area that would impede, impair, block or obstruct any portion of the Easement Area or prevent or limit the reasonable movement of pedestrians and vehicles on the Easement Area and access to and from the Village Beach or Atlantic Ocean. The Village agrees that prior to the installation of any improvements to the Easement Area, it will submit all proposed improvements to the Grantor and to the extent possible, incorporate any reasonable revisions to said proposed improvements provided that so long as the improvements are consistent with the current architecture of the Easement Area, the Village may install such improvements.

5. **Incidental Rights**. The rights granted herein to the Village shall likewise include all incidental rights reasonably necessary for the use and enjoyment of such rights and such incidental rights are hereby created, granted, and declared.

6. **Amendment.** This Agreement shall not be changed, amended, or modified except by an instrument in writing, executed by the parties to this Agreement.

7. **Duration**. The easement rights contained herein shall be perpetual, but may be terminated by the Village, in its sole discretion, but only in the event that in the event there is no federal assistance provided with respect to the Re-Nourishment Program, and the Village council approves such termination after a public hearing.

8. **Covenants Running with the Land; Successors and Assigns**. It is intended that each of the dedications, easements, covenants, conditions, restrictions, rights, and obligations set forth herein shall run with the land of Grantor and create an equitable servitude in favor of the Village, its successors and/or assigns, and shall bind Grantor, its successors and assigns (including any condominium association and/or or unit owners owning, operating or maintaining any part of the Easement Area as part of a condominium).

9. **Enforcement**. The Village and Grantor shall each have the right to pursue and legally enforce this Agreement and the dedications, easements, covenants, conditions, obligations and restrictions set forth herein, including, but not limited to, all maintenance obligations of the Village on the Easement Area and repair obligations of the Village set forth in this Agreement, by whatever action or actions are legally available, including without limitation, any equitable remedy, injunction or specific performance. The Village and Grantor shall have the right, but shall not be obligated, to take such action as shall be reasonably necessary to cure any default of this Agreement and enforce the dedications, easements, covenants, conditions, obligations and restrictions set forth herein, at the sole cost and expense of the violating party.

10. **Attorney's Fees**. In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party shall be entitled to recover its cost and reasonable attorney's fees incurred in the preparation and prosecution of such action or proceeding.

11. **Severability.** Each provision of this Agreement is hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the

validity or enforceability of any provision in this Agreement is held to be depended upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared.

12. **Governing Laws**. The laws of the State of Florida shall govern the interpretation, validity, performance, and enforcement of this Agreement. Venue shall be in Miami-Dade County Florida.

13. **Notices.** All notices, requests, demands, and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; the day after it is sent, if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express); five days after being sent, if sent by certified or registered mail for each party indicated below and addressed as follows:

To Grantor: The Sands of Key Biscayne
Condominium Association, Inc.
605 Ocean Drive, Management Office
Key Biscayne, Florida 33149

With a copy to: Gary M. Mars, Esq.
Siegfried Rivera
201 Alhambra Circle, 11th Floor
Coral Gables, Florida 33134

To Village: Village Manager
88 W. McIntyre Street
Key Biscayne, Florida 33149

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

14. **Warranties and Representations**. Grantor does hereby covenant and represent to Village that: (a) it is lawfully seized and possessed of the Easement Area; and (b) it has good and lawful authority and right to enter into this Agreement and convey said easements.

15. **Indemnification for Beach Maintenance and Re-Nourishment; Gate and Access Control System.** Subject to the provisions and monetary limitations of Section 768.28, Florida Statutes (as may be amended from time to time), which limitations shall be applicable regardless of whether such provisions would otherwise apply, and to the extent permitted by law, the Village shall indemnify and hold harmless Grantor, and its successors and/or assigns, from and against all costs, expenses, losses, claims or damages, including reasonable attorneys' fees and costs at trial and appellate levels, relating to death or personal injury to persons, or loss of or

damage to property, resulting from, arising out of, or incurred in connection with beach maintenance and re-nourishment operations performed by the Village on the Easement Area, or in connection with the installation, operation and maintenance by the Village of any gate or access control system installed by the Village on the Easement Area, except any and all costs, expenses, losses, claims or damages, resulting from, arising out of, or incurred in connection any acts or omissions, including intentional and negligent acts, of Grantor or any of its officers, guests, invitees, employees, agents or contractors. Additionally, the Village agrees to indemnify and hold harmless Grantor, and its successors and/or assigns from and against all costs, expenses, losses, claims or damages, including reasonable attorney's fees and costs at the trial and appellate levels in connection with any litigation, actions, demands, costs, expenses, losses claims or damages arising out of or in connection with Grantor's entry of the subject Agreement with the Village, and in connection with the easement rights contained herein, including but not limited to any claims challenging the Association's authority to enter into the subject Agreement and easement.

16. Ocean Drive Parking. The Village shall not expand or otherwise amplify parking for motor vehicles of any kind on Ocean Drive from Galen Drive to the Beach Park maintained and operated by the Village during the term of the Easement without Grantor's consent..

[SIGNATURE PAGES TO FOLLOW]

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

GRANTOR:

WITNESSES:

_____

Print Name: _____

By: _____
Name: _____
Title: _____

_____

Print Name: _____

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____ 2021, by _____, as _____ , on behalf of The Sands of Key Biscayne Condominium Association, Inc. He/she [ ] is personally known to me or [ ] produced _____ as identification.

[SEAL]

_____
Notary Public, State of Florida
Commission expires: _____

VILLAGE:

WITNESSES:

VILLAGE OF KEY BISCAYNE a Florida municipal corporation

_____

By: _____

Print Name: _____

Name: _____

Title: _____

_____

Print Name: _____

Attest:

_____

Village Clerk

Approved as to Form and Legal Sufficiency:

_____

Village Attorney

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____ 2021, by _____ of the Village of Key Biscayne, a Florida municipal corporation, on behalf of the corporation. He [ ] is personally known to me or [ ] produced _____ as identification.

[SEAL]

_____

Notary Public, State of Florida

Commission expires: _____

Village Council
Michael W. Davey, *Mayor*
Edward London, Vice Mayor
Frank Caplan
Luis Lauredo
Allison McCormick
Brett Moss
Ignacio J. Segurola

Village Manager
Steven C. Williamson

MEMORANDUM

DATE: October 12th, 2021

TO: Honorable Mayor and Councilmembers

FROM: Steven C. Williamson, Village Manager

RE: Ongoing Projects Update

Section A: Report on Paradise Park (PROS Director Todd Hofferberth)

As of September 2021, DERM requested that permit documents include soil management plans. CAD files will be supplied by the consultants and overlayed onto the existing plans. Once updated, the documents will be stamped (by the Village's Building Department) and submitted to DERM for final review.

The construction fence permit has been approved as of September 30, 2021. The contractor has confirmed that fence installation will occur 2 weeks prior to commencement of construction.

To minimize petroleum and waste contamination, DERM requires the installation of 1 additional well; installation is scheduled on October 8th and soil testing will begin October 9th. Should findings be acceptable, results will be forwarded to DERM and notices of "No Further Action" (NFA) will be issued.

Section B: Bicyclists on Rickenbacker (Interim Police Chief Jason Younes)

With great concern for the safety of all persons travelling along the Rickenbacker Causeway, many citizens have been forthcoming with complaints regarding the unsafe operation of bicycles and motor vehicles travelling on the causeway. By utilizing high visibility saturation patrols, police personnel assigned to this initiative have been monitoring traffic and enforcing traffic laws to help combat any observable unsafe driving conditions. We have been effectively and efficiently utilizing on-duty officers to work traffic enforcement throughout the Rickenbacker Causeway and Crandon Blvd during high peak hours. All participating personnel have been conducting traffic stops on motor vehicles and bicyclists who are observed violating traffic laws.

The KBPD has also partnered with other law enforcement agencies in addressing this issue collaboratively. On September 15th, 2021, we met to coordinate and plan for a multi-agency education and enforcement operation to be conducted along the Rickenbacker Causeway. The meeting was organized by the Florida Department of Transportation. Also in attendance were representatives from University of Miami, City of Miami Police Department, and Miami Dade County Police Department. The discussion included addressing violations by the large bicycle pelotons. The Florida Department of Transportation is developing a plan, to include press

releases, social media education, possible press conferences and finally a multi-agency enforcement campaign. KBPD offered its full support and participation to the multi-agency enforcement operation.

Rickenbacker Causeway & Crandon Blvd statistics from September 16th to October 5th

Citations Issued: Bicycles – 56
Vehicles – 14

Warnings Issued: Bicycles – 60
Vehicles – 14

Total Enforcement Traffic Stops Taken: 144

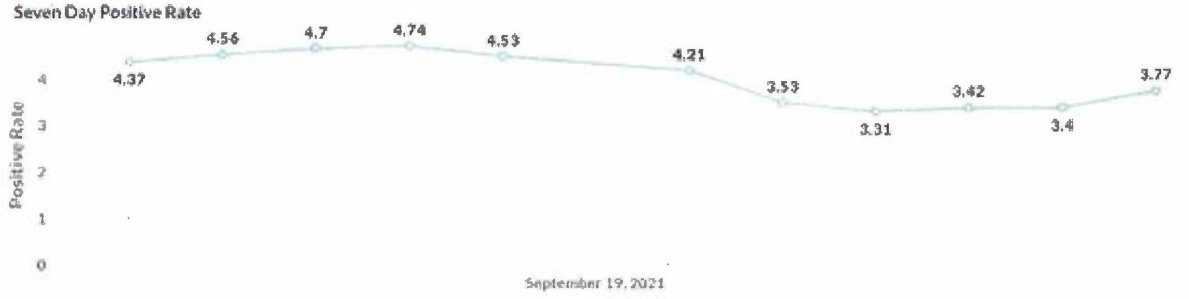
Section C: COVID 19 Update: Policy Modifications, Testing, Vaccination and Positivity rates (Fire Chief Eric Lang)

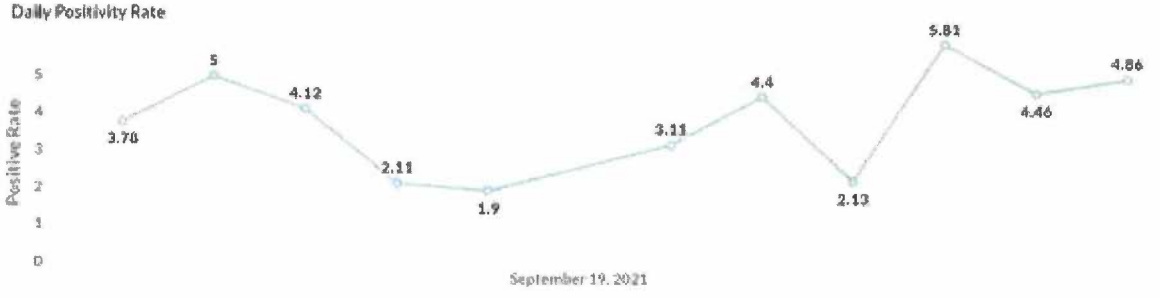
The Village has been responding to the impacts of COVID-19 since March 2020. The current actions of the Village include:

1. Ongoing COVID-19 testing has been occurring in two locations (kiosk on Village Green and van at Calusa Park) through Curative, Inc. The number of tests conducted per day between September 14th and September 27th are listed below. The locations are open between 8am to 6pm every day except Sunday. Demand at both testing sites remains high.



2. Positivity rates based on testing at the two locations (combined) are noted below:





3. Vaccine events have been occurring regularly:
    a. Vaccines provided by the Village as of September 28, 2021, total 1,440
    b. Two additional vaccine events are scheduled on October 6th and 27th
    c. Third dose/booster shots will be provided per CDC recommendations:
        i. People 65 years and older and residents in long-term care settings should receive a booster shot of Pfizer-BioNTech's COVID-19 vaccine at least 6 months after their Pfizer-BioNTech primary series;
        ii. People aged 50 to 64 with certain underlying medical conditions should receive a booster shot of Pfizer-BioNTech's COVID-19 vaccine at least 6 months after their Pfizer-BioNTech primary series;
        iii. People 18 to 49 who are at high risk for severe COVID-19 due to certain underlying medical conditions may receive a booster shot of Pfizer-BioNTech's COVID-19 vaccine at least 6 months after their Pfizer-BioNTech primary series, based on their individual benefits and risks; and
        iv. People aged 18-64 years who are at increased risk for COVID-19 exposure and transmission because of occupational or institutional setting may receive a booster shot of Pfizer-BioNTech's COVID-19 vaccine at least 6 months after their Pfizer-BioNTech primary series, based on their individual benefits and risks.

4. Vaccine percentages in the Village as reported by Miami Dade County on September 24, 2021, are as follows:
    - 71% vaccinated (ages 12-17 years old)

- 83% vaccinated (ages 18 + years old)

5. On August 2, 2021, the Village Manager instituted an administrative policy mandating facial coverings for employees and visitors inside all Village Buildings and facilities that remains in place today.

Section D: Report on Septic to Sewer update (BZP & Public Works Director Jake Ozyman)

The Village of Key Biscayne has total of 63 homes on septic of which 60 fall within Environmental Quality Control Board ("EQCB") and three (3) properties do not.

Since last the reporting period (8/24/21), three (3) homes connected to the County sanitary system.

Below are the percent of compliance for each Sewer Connection Zone and the number of homes remaining on septic compared to our last update:

Zone	8/24/21 Report		10/12/21 Report		Actions Taken	
	% Compliance	Number of Homes Remaining	% Compliance	Number of Homes Remaining	In Process	Enforcement
Zone 4	95%	3	95%	3	0	3
Zone 1	93%	8	94%	7	6	1
Zone 2 & 3	89%	52	90%	50	19	31
Outside of Project Area		3		3	3	0
Total		66		63	28	35

Progress Summary:

- The Village continues to partner with the DERM to enforce fines
- On July 21, 2021, and August 21, 2021, the Village met with representatives from Miami-Dade Water and Sewer Department (WASD) where opportunities for resident education and financing of services were presented. The staff is coordinating with both DERM and WASD to advance this campaign and is also working with the County to track issuance and responses to Notice of Required Connection (NORC) issued by the County to non-compliant residents

Section E: Kite Surfing Program Update (Chief Resiliency Officer Roland Samimy)

In advance of the upcoming windy season, the Village held its third meeting (internal) at the kiteboarding launch site on September 28th with key staff from PROS, Police, PW and CRO to discuss implementation of the beach ranger program. In addition to discussing and putting in place the four key components of the program: (1) The physical beach plan, (2) the rules, regulations and enforcement, (3) the Beach Ranger program, and (4) support from the Key Biscayne Watersports Association, the Village Manager asked staff to consider contractually

outsourcing the operations and management of the entire kite surfing program.

Action items include:
1) CRO to continue establishing a vessel exclusion zone and installing signage (new signs added to posts defining the kite launch area),
2) PROS led the kickoff of the beach ranger program on 10/3/2021 with the support of KBPD,
3) VKB will continue with registration of kite-surfers and collection of membership fees in partnership with KBWA
4) Village Manager and PROS will research the feasibility and requirements surrounding opportunities to outsource the operations and management of the Kite surfing program

Roland Samimy, CRO, continues to lead communications with Florida Wildlife Commission, Florida Department of Environmental Protection, United States Army Core of Engineers, Dustcoat Guard and MDC-DERM related to the establishment of a vessel exclusionary zone. Application status is as follows:

- a permit amendment was issued by FWC to add the regulatory buoys to FWC Permit No. 93-045
- Application to FDEP for verification of *de minimis* exemption (request under review)
- Class I permit application to MDC-DERM as delegate to the USACE has been submitted

Section F: Report on Beach Maintenance Plan (Chief Resiliency Officer Roland Samimy)

The Village issued an RFP for beach maintenance services on September 07, 2021 and hosted its pre-bid meeting on September 17, 2021. Deadline for submission of proposals is October 13, 2021 (4pm) at which time Village staff will review proposals and make a recommendation to Council regarding preferred contractor to provide beach maintenance services in FY 22.

Seaweed hauling services for the month of September fell below the projected 50 trucks. It is anticipated that the number of trucks hauled for September will be lower than 20 trucks thereby, requiring less funds from reserves to cover the FY21 overage.

The terms of the seaweed composting pilot program as presented by the Historic Beach Park Trust is heavily focused on partnership with the Vermi-composting team (fertile earth worm farm from Davie, Florida) and is being revised by Village Manager Williamson and CRO Samimy to ensure it aligns with Village needs as previously discussed with Commissioner Regalado's team and The Beach Park Trust.

Section G: Report on Village's Participation in USACE's Coastal Storm Risk Management Beach Protection Feasibility Study (Chief Resiliency Officer Roland Samimy)

1. Threats to Key Biscayne and our residents' way of life:
The residents of Key Biscayne face a significant risk of the perilous combination of sea-level rise and storm surge from an increased number and severity of natural storm events. This impending threat has the potential to wreak havoc on the condominiums, homes, hotels and businesses east

of Crandon Blvd. The damage and costs of such events is always in the back of our residents and business owners' minds leading to an unnecessary level of fear and frustration. The Village and our County and federal partners have the skills, knowledge and resources that can work together to limit the disruption of our residents' lives, property, and livelihoods.

2. US Army Corps of Engineers Support:

Last year, the Village of Key Biscayne fought hard to be part of Miami-Dade County's ongoing Coastal Storm Risk Management (CSRM) feasibility study being performed by the US Army Corps of Engineers (USACE). USACE was able to invest an additional $1 million to expand the study from Bal Harbor in the north all the way to Key Biscayne in the south. During the past year, the USACE CSRM program evaluated strategies to increase resilience and preparedness, and to reduce risk from future storms and the coming impacts of sea-level change along Miami-Dade County's oceanside waterfront. USACE investigated the problems and sought solutions to reduce potential damages from coastal flooding affecting communities, critical infrastructure, critical facilities, property, and ecosystems. Both the County and USACE heard our community and understood the importance of adding Key Biscayne to the program study. After a year of analysis, USACE is now able to bring their years of broad expertise, nation-wide experience, and significant federal funding to protect our ocean beach and its adjacent properties.

3. Beach Shoreline Protection Plan:

On September 14, 2021, with Miami-Dade County as our local sponsor, USACE decided on a tentatively selected plan (TSP) that includes Key Biscayne in the ongoing CSRM program. The beach shoreline protection TSP includes adding reinforced dunes to our beach, protective tie-back walls along our northeastern and southeastern Village borders, and periodic beach renourishments. The approximate cost of the TSP is $120 million, comprised of an initial $60 million capital project and an additional $60 million for periodic renourishment and maintenance. The TSP has a substantial benefit to cost ratio that makes it attractive for federal funding and the protection of our Village. We are now awaiting USACE's final tentatively selection plan report to be released on November 4, 2021. From that point forward, there are five steps to the CSRM program:

- *Feasibility Analysis* – once the final TSP report is released, the Village in partnership with the County and the community will provide feedback to USACE. Our goal is to further optimize beach shoreline protection by minimizing impacts to seagrasses, limiting private property easements, reducing renourishment frequency, and safeguarding sea turtle habitats while ensuring the essential protection of human life, property, and our residents' livelihoods.
- *Agency Decision* – in February 2022, after receiving and evaluating County, Village and community input, USACE will decide on a final Miami-Dade County beach shoreline protection project concept. Between February and May 2022, USACE will work with the County and the Village to create a final Miami-Dade County beach shoreline protection project report that includes the Key Biscayne oceanside waterfront.

- *Chief's Report* – in October of 2022, the Chief of Engineers will issue his report to Congress requesting that the recommended Miami-Dade County beach shoreline protection project concept be authorized to construct.
- *Water Resources Development Act (WRDA) Authorization and Appropriations* – WRDA is a biennial program occurring in even years. The Chief of Engineers' request will be either authorized in 2022 or 2024 legislation. Historically, projects receive funding appropriations 3 to 5 years after WRDA authorization, providing a window for Key Biscayne's beach shoreline protection project funding between 2025 to 2029.
- *Design and Construction* – once funding is appropriated, Miami-Dade County and the Village of Key Biscayne will draft a project partnership agreement with the Jacksonville District of the US Army Corps of Engineers to start the design of the project. Jacksonville District will work with the County, Village and community to create an optimal design that protects the shoreline and the adjacent property. Once the design is approved, likely a two-year process, the Corps of Engineers will begin project construction around 2031.

4. Call to Action:

To gain the peace of mind and protection against future storms and sea-level rise, our residents must become knowledgeable and engaged with the Village in the CSRM process. Prior to the release of the final TSP report on November 4, the Village staff will share what we know of the tentatively selected plan with the Council, condominium homeowners' associations, and the residents along the beach shoreline.

- We all must make certain we remain in the USACE CSRM program and receive the $120 million we deserve to protect our ocean beach and the adjacent property.
- Not only will the project and its funding safeguard our beach and property, but it will also free up Village resources to invest in other critical infrastructure across our community.
- To gain the level of protection our community needs, a united Village must work together with Miami-Dade County and USACE over the next 10 years to keep the project focused and on course to fully benefit the Village.
- To satisfy our part of the agreement for USACE to move forward, the Village will develop a resilient infrastructure implementation plan to protect USACE's project benefit area east of Crandon Blvd and integrate stormwater improvements, roadway enhancements, utilities hardening, and bayside shoreline protection. We will also need to make strategic decisions to change our ordinances, land-use policies, master plans, and building standards to ensure we build a stronger, more resilient Key Biscayne.

5. Two Possible Outcomes:

The Village of Key Biscayne or even Miami-Dade County ***are not included*** in USACE's CSRM program:

- Our residents' lives, property and livelihoods remain at stake.
- Our residents will continue to face the threat of the combination of rising sea-level and more severe storm surge.

- The next storm can potentially wreak havoc on our residents' condominiums, homes, hotels and businesses east of Crandon Blvd.
- The fear and frustration of damage and high costs will stay in our residents and business owners' minds.
- When the environmental conditions reach perilous levels, the Village and our residents will have to pay for the beach shoreline protection ourselves.

The Village of Key Biscayne and Miami-Dade County ***are included*** as partners in USACE's CSRM program:

- Our residents' lives, property and livelihoods will be protected from rising sea-level and more severe storm surge.
- Our residents will be free from worry and anxiety as a result of the protection and be able to continue to live safe, thriving and active lives.
- The Village and its residents will benefit from USACE's vast planning, design and construction expertise and experience.
- Approximately $120 million of federal funding will be invested in the protection of our beach and its adjacent properties, providing the necessary safeguard.
- This allows the Village to invest its time, money and efforts in other complementary critical resilient infrastructure projects across the village.
- The Village of Key Biscayne can continue its journey in being a vibrant community with a high quality of life, a strong sense of place, a thriving commercial district, and stronger, more resilient infrastructure.

Section H: Building Recertification Update (Building Official Rene Velazco)

The Building Department continues to work with all management companies and their engineers to complete the required recertification process for their structures; pending properties continue to submit engineering reports for electrical and structural reviews.

The Village is preparing to send notices of violation for lack of compliance with the 40-year recertification process to properties in non-compliance; the process includes the following steps and anticipated deadlines:

1. Prepare letter for management companies stating that violations will be issued for lack of compliance with Miami-Dade Code recertification requirement. Letter template will be submitted to Village Attorney and Village Manager for approval. (10.05.2021)
2. Send letters to management companies. (10.08.2021)
3. Issue $500.00 violations to structures that are 3 or more years past due starting on November 1, 2021. On December 1, 2021, issue same violation to structures that are 3 years or less past due. Violation placards will be posted in a conspicuous location at the property.

4. Report case to Miami-Dade County-Unsafe Structural Board, if inspection report from design professional is not submitted to the Village for review within 30 days of issuance of violation,

Pursuant to meetings held in September between the VKB Building Official and the Rules and Appeals Board, new requirements for the certification were discussed and will be submitted to the County Commission for approval (exact commission date to be determined) a summary of the proposed updates are as follows:

- Advanced, initial notice of recertification to be issued two (2) years prior to the due date:

  1st notice – 2 years
  2nd notice – 1 year
  3rd notice – 90 days

- Change frequency for recertification period: Initial recertification will commence at 30 years (instead of 40 years)

- Structural and electrical engineers will be expected to use a new threshold for buildings. See Florida Building and Florida Statute definition below:

  In accordance with Florida Statute, any building which is greater than 3 stories or 50 feet (15 240 mm) in height, or which has an assembly occupancy classification that exceeds 5,000 square feet (464.52 m2) in area and an occupant content of greater than 500 persons

- Criteria for recertification extension requests:

  Management companies/HOAs can request extensions after submittal of Engineer's reports with deficiencies, providing the Engineer submits a letter certifying that the building is safe for its continued occupancy while repairs are performed

- Require continued "statements for safe occupancy" on extended recertification timeframes:

  Once a permit is issued to make repairs, the process is regulated by the requirements for permit extensions of the Florida building Code

- Legislate an affirmative "duty to report" any adverse findings to the Building Official:

  Engineers must report findings of deficiencies to the Building Official within 10 days if management company does not report to municipality. If a safety issue if found, the report must be submitted to the Building Official within 24 hours

- Require HOA notification of building unit owners/residents and physical posting of notice:

Building Official must post violation in a conspicuous place, and HOA must notify the owners/residents that a violation has been issued for non-compliance with the Miami-Dade County recertification requirements

- Consider a "Failure to Maintain" penalty for violation of Sec.8-11 (a) re: Building Maintenance

On October 5, 2021, the Board of County Commission put forth resolution 212076 to allow the Office of the Property Appraiser to compile, review and audit data regarding buildings requiring recertifications (pursuant to section 8-11(F) of the Miami Dade County code). This resolution would support agreements between the County and local municipalities where this data would be obtained and posted to the Property Appraiser's website.

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Village of Key Biscayne Building Recertification Status				
	Due on 2021	*Due less than 3 yrs. (2018 - 2020)*	*Due more than 3 yrs. (2017 or before)*	*Number of Structures*
Compliant				51
Recertification In Progress	1	18	6	25
Auditing Records	0	5	7	12
No Progress	0	0	0	0
Due in 2022 -2026 (40, 50, 60 & 70 yrs.)				40
Total structures = 126				

* Two of the structures are listed as compliant for the 40-year, and as pending for the 50-year due in 2022. 09/29/2021

Status Changes/Progress:

7/23/21 - (1) from "auditing records" to "recert in progress"; B.O. received notification from engineer outlining repairs can proceed while structure is occupied.

7/28/21 - (1) from "recert in progress" to "compliant". Property provided 40 yrs recert ltr from E. Santiago; not previously on file.

8/03/21 - Letters mailed & hand-delivered to P.M. companies of cat 2 and 3. Update letter from DP certifying safety of structure; submit ltr within 15 days.

8/11/21 - (1) from "auditing records" to "recert in progress"; B.O. received engineer reports which are being reviewed.

8/11/21 - (1) from "auditing records" to "recert in progress"; B.O. received engineer report that is safe structurally and electrical repairs can proceed while structure is occupied.

8/11/21 - (1) from "auditing records" to "recert in progress"; B.O. received engineer report stating deficiencies; P.M. working on pulling permits for repairs.

8/17/21 - (5) changed from "recetr on progress" to compliance; after meeting with P.M. realized that 40 yrs recert are technically due end of the 2021 year.

8/23/21 - (1) changed from "recert in progress" to "auditing records"; as per VM.

8/25/21 - (1) changed from auditing records" to "compliant" 60 yr recertification granted.

9/8/21 - (1) changed from "recert in progress" to "compliant" 50 yr recertification granted.

9/9/21 - (1) changed from "auditing" to "recert in progress"; received engineering report; VKB in procress of reviewing it.

9/27/21 - (1) changed from "recert in progress" to "compliant" received engineering report; VKB reviewed an approved.

9/29/21 - (1) changed from "auditing" to "recert in progress"; received engineering report; VKB in procress of reviewing it.

Definitions:

1. Compliant: building owner or property management firm has completed, received and submitted the appropriate recertification document (s) to the Village of Key Biscayne Building and Zoning Department

2. Recertification In Progress: building owner or property management firm is working with an engineer or architect to ensure compliance measures are met as they relate to the recertification process

3. Auditing Records: building owner or property management firm has not hired an engineer/architect to perform mandatory inspections related to the recertification requirements, or has not taken any action in addressing the hired engineer's or architect's recommended action(s)

Proposed Enforcement Action:

Beginning on November 1, preparing to issue notice of violations (NOV) to those properties with structures for which recertification is due more than three years. Proposed fines are not to exceed $500 per day until achieving compliance.

Beginning on December 1, preparing to issue notice of violations (NOV) to those properties with structures for which recertification is due less than three years. Proposed fines are not to exceed $500 per day until achieving compliance.

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Section I: Fall & Winter Community Activities (PROS Director Todd Hofferberth)

Month	Event	Sponsor	Date	Location	Description
October	Law Enforcement Weekend	Other	10/9/21 & 10/10/21	Other	Multiple locations throughout the Village
	Piano concert	Community Group	10/15/2020	Village Hall	Piano Concert Series
	Citizen Science Lecture	Community Foundation	10/21//21	Community Center	Coordinated by Rumya Sundaram
	Fall Festival	PROS	10/24/2021	Civic Center	This was at Paradise Park in 2019, moved to Civic center while Paradise Park is under construction
	Dog Park Halloween Event and Zombie Crawl	PROS	10/30/2020	Village Green	Dog costume contest, Ed London usually a judge. TKA Zombie Crawl is tenative
November	Veteran's Day	PROS	11/11/2021	Village Green	American Legion & PROS
	Piano Concert	Community Group	11/12/2021	Community Center	Piano Concert Series
	Lighthouse Run	PROS	11/13/2021	Other	Bill Baggs St. Park and KB roads
	Citizen Science Lecture	Community Foundation	11/18/2021	Community Center	Coordinated by Rumya Sundaram
	Rotary Wine & Food Festival	Community Group	11/19/2021	Fairways on the Key/Crandon Golf course	6:00 pm to 11:00 pm. Joins us for wine, food, silent auction at DJ music. Tickets available at www.keybiscaynewinefest.com. Use code WINE2021 to save on pre-registration.
	Rib Off	Other	11/20/2021	Other	Key Biscayne Yacht Club
December	Winterfest Weekend	PROS	12/4/21 & 12/5/21	Civic Center	12/4/21 and 12/5/21
	Piano Concert	Community Group	12/10/2021	Civic Center	Piano Concert Series
	Winterfest Boat Parade	Other	12/11/2021	Other	Key Biscayne Yacht Club and Bill Baggs St. Park. KBPD participates as well as PROS
	Concert	PROS	12/18/2021	Presbyterian	Seraphic Fire annual concert
January					
Febuary	Key Biscayne Car Week	Community Group	TBD	Civic Center	