# Memorandum

MIAMI-DADE COUNTY

Date: September 4, 2007

Agenda Item No. 8(R)(1)(A)

To: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

From: George M. Burgess, County Manager

Subject: Agreement between the Village of Key Biscayne and Miami-Dade County to provide for the installation of Wastewater and Water Facility Improvements and Water Reclamation Facilities in the Village of Key Biscayne

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## RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) adopt the attached resolution authorizing the execution of an agreement between Miami-Dade County and the Village of Key Biscayne (Village) providing for installation of wastewater and water facility improvements and water reclamation facilities in the Village.

## SCOPE OF AGENDA ITEM

The agenda item is for the Village of Key Biscayne, Commission District 7.

## FISCAL IMPACT/FUNDING SOURCE

There is a fiscal impact to Miami-Dade County. The item provides for Miami-Dade County through its Miami-Dade Water and Sewer Department (MDWASD) to contribute an amount not to exceed $6 million for water improvements at the Village and to pay the actual cost of the water reclamation facilities at the Village in an amount not to exceed $2 million.

The funding source for the water main replacements are water bonds sold and the funding source for the water reclamation facility are wastewater bonds sold.

## TRACK RECORD/MONITOR

MDWASD's Intergovernmental Affairs Manager will monitor the agreement.

## BACKGROUND

On October 15, 1998, the Village of Key Biscayne and Miami-Dade County entered into an agreement to provide for the installation of wastewater facilities to those portions of the Village shown on "Exhibit A", that do not have sanitary sewage service available. The Village Engineer has completed the design of those wastewater facilities and is ready to begin the construction of the project. As part of the Village's wastewater facilities plan, the County will replace a series of water mains owned by the County which are located in the same areas the wastewater facility improvements will be installed, as shown in the highlighted areas of Exhibit "A". MDWASD will

assist the Village by paying for a portion of the water main replacements in an amount not to exceed $6 million.

In addition, the County will fund the installation of a water reclamation project including the design, construction, and construction management of the project in an amount not to exceed $2 million, which is MDWASD's budgeted dollar amount. Project costs prior to receiving bids for this water reclamation project are estimated at $1.7 million, if actual costs rise above $2 million, an amendment to the agreement would be required. The Village Engineer will provide the design and the Village's Contractor will construct the project as shown in "Exhibit "B". The County will review and approve the plans.

Key Biscayne residents will be required by the County's Department of Environmental Resource Management to connect to the wastewater system, but not to the reclaimed water system. Residents are already connected to the water system. There will be connections to the reclamation system for the residents along the route of the mains in the event the residents choose to connect.

Upon completion of the projects, the facilities will be conveyed to the County to be owned and operated by MDWASD. In the event that the Village obtains funding from the State of Florida's Revolving Loan Fund (SRF) Program, the agreement contains a provision in which the County will lease the facilities from the Village, please see Exhibit "C", until the loan is fully paid to the State's SRF Program. At that time, the Village will complete the conveyance of the facilities as described in this agreement to the County.

The agreement expires when the wastewater, water and water reclamation facilities have been conveyed to the County. This agreement terminates and supersedes the 1998 agreement and has been approved by the Village.

Assistant County Manager

# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

**DATE:** September 4, 2007

**FROM:** R. A. Cuevas, Jr. County Attorney

**SUBJECT:** Agenda Item No. 8(R)(1)(A)

**Please note any items checked.**

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(R)(1)(A)
09-04-07

RESOLUTION NO. _____

RESOLUTION APPROVING THE EXECUTION OF AN AGREEMENT WITH THE VILLAGE OF KEY BISCAYNE PROVIDING FOR THE INSTALLATION OF WASTEWATER AND WATER FACILITY IMPROVEMENTS AND WATER RECLAMATION FACILITIES

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the execution of the agreement with the Village of Key Biscayne providing for the installation of wastewater and water facility improvements and water reclamation facilities in the Village of Key Biscayne in substantially the form attached hereto and made a part hereof; and authorizes the County Mayor or his designee to execute same for and on behalf of Miami-Dade County, Florida.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

| | |
|---|---|
| Jose "Pepe" Diaz | Audrey M. Edmonson |
| Carlos A. Gimenez | Sally A. Heyman |
| Joe A. Martinez | Dennis C. Moss |
| Dorrin D. Rolle | Natacha Seijas |
| Katy Sorenson | Rebeca Sosa |
| Sen. Javier D. Souto | |

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of September, 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency:

David M. Murray

B E T W E E N
MIAMI- DADE COUNTY, FLORIDA
A N D
THE VILLAGE OF KEY BISCAYNE, FLORIDA

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THIS AGREEMENT, made and entered into this _____ day of _____, 2007, by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY", and the VILLAGE OF KEY BISCAYNE, a municipal corporation of the State of Florida, hereinafter referred to as the "VILLAGE";

WHEREAS, there is a public need for the VILLAGE to construct a sanitary sewage collection system, hereinafter referred to as "the Wastewater Project", to serve those portions of the territory of the Village which do not presently have sanitary sewer service; and

WHEREAS, as part of the VILLAGE'S construction of the facilities of the Wastewater Project, the COUNTY desires to replace certain water mains owned by the COUNTY in Wastewater Project Phases 1 through 4, hereinafter referred to as the "Water project" and to install water reclamation mains in Fernwood Road between West Mashta Drive and north of Harbor Drive, hereinafter referred to as the "Water Reclamation Project", and shown on Exhibits "A" and "B" respectively; and

WHEREAS, the COUNTY, through its Miami-Dade Water and Sewer Department, hereinafter referred to as the "Department", will assist the VILLAGE in the Water Project and in the Water Reclamation Project by paying a portion of the costs to replace the COUNTY's water mains and will pay for the installation of water reclamation mains; and

WHEREAS, the parties recognize that Village has separately obtained a binding contractual commitment of assistance from the COUNTY for the Wastewater Project in the amount of $5.1 Million

Dollars under the Building Better Communities Program, and that this Agreement shall not affect or impair that COUNTY assistance; and

WHEREAS, the Wastewater Project, Water Project and Water Reclamation Project will each benefit the health, safety and welfare of the citizens of the VILLAGE and of the COUNTY; and

WHEREAS, the COUNTY, through the Department, owns, operates and maintains regional wastewater treatment facilities, water facilities, and water reclamation facilities; and

WHEREAS, the VILLAGE desires to construct each of the Projects described herein and to appropriately connect to the Department's facilities.

NOW, THEREFORE, for and in consideration of the mutual covenants set forth herein, the COUNTY and the VILLAGE hereby agree as follows:

1. PROJECT SCOPE

A. The scope of the Water Project, Water Reclamation Project and Wastewater Project shall be set forth on plans and specifications prepared by the consulting engineer for the VILLAGE and approved by the Department, including any change orders to said plans. The VILLAGE, at its own cost and expense, except as otherwise described herein, may cause to be designed, constructed and installed, the Water Project, Water Reclamation Project and the Wastewater Project (individually each is referred to as a "Project", and are collectively referred to as the "Projects"), including any and all water mains, water reclamation mains, valves, hydrants, services, gravity sewer mains, force mains, pumping stations and all appurtenances. The final design of the Water Project, Water Reclamation Project and the Wastewater Project shall be subject to approval of the Department. The design and construction of facilities to be conveyed or leased by the VILLAGE to the COUNTY shall conform to the COUNTY's standards.

B. The COUNTY shall have the right but not the obligation to make engineering inspections of all the construction work performed by the VILLAGE under the terms of this contract. Such

inspections shall not be construed to constitute any guarantee on the part of the COUNTY nor shall it relieve the VILLAGE of any responsibility as to the quality and condition of materials and workmanship. Any inspections by the COUNTY shall not relieve the VILLAGE of any responsibility for proper construction of said facilities in accordance with approved plans and specifications. During construction, and at the time when various tests are required, the COUNTY's engineer or its authorized representative, together with the VILLAGE's engineer and contractor, shall jointly be present to witness tests for determination of conformance with approved plans and specifications. The VILLAGE shall provide written notice to the COUNTY a minimum of forty-eight (48) hours in advance of the tests. In the event that the COUNTY's engineer or its authorized representative shall not appear at the date and time set forth in the notice, then the tests may be conducted as scheduled; provided, however, if the COUNTY shall have provided the VILLAGE with a list of required inspections, then such inspections shall be mandatory and shall not be conducted unless the COUNTY's engineer is present. The COUNTY reserves the right to schedule construction meetings with the VILLAGE at a place designated by the COUNTY with respect to construction related matters upon twenty-four (24) hours notice.

2. PERMITS AND APPROVALS The VILLAGE shall be fully responsible for obtaining all required approvals from all appropriate governmental and regulatory agencies and all necessary permits for all facilities contemplated to be constructed in this contract. Certain federal, state and county agencies, including but not limited to the State of Florida Department of Transportation, the South Florida Water Management District and U.S. Army Corps of Engineers, may require that the COUNTY be named as permittee on such permits. In such event, the VILLAGE or the VILLAGE' s contractor shall provide sufficient and reasonable security as may be acceptable to the COUNTY which shall indemnify and protect the COUNTY from all claims, actions, judgments, liability, loss, cost and expense, including reasonable attorney's fees, related to work performed by the VILLAGE pursuant to such permits. The security, in a form

reasonably acceptable to the COUNTY and the VILLAGE, shall be furnished prior to the start of construction and shall be in an amount equal to the COUNTY's cost estimate for the permit work or other such amount as may be acceptable to the COUNTY and the VILLAGE. In the event of any claims from a permittor, the VILLAGE shall have or be allowed sixty (60) days to resolve said claims. Otherwise, the COUNTY, after ten (10) days written notice to the VILLAGE, shall be entitled to pay said claims from the security. The VILLAGE or its contractor shall be liable for all costs in excess of the security.

3. EASEMENTS AND DEEDS If the Projects or any portion thereof are installed within private property outside of public right-of-way, the facilities shall be installed in the center of a fifteen (15') foot wide easement. If the facilities are not located in platted easements or other dedicated rights-of-way, the VILLAGE shall obtain easements in favor of the COUNTY and the VILLAGE from the owner of the private properties prior to the provision of water, wastewater or water reclamation service. If any wastewater pumping station facilities are installed outside of public rights-of-way, the station shall be installed within a minimum thirty (30') foot by thirty (30') foot site. The VILLAGE shall obtain a warranty deed in favor of the COUNTY from the owner of the property of the wastewater pumping station site prior to the provision of sanitary sewer service. Granting of all easements and warranty deeds shall be by separate instruments in recordable form as approved by the COUNTY and the VILLAGE and shall be accompanied by a written opinion of title by an attorney licensed to practice law in the State of Florida which states that the owner of the property interest is conveying said interest subject only to such liens, encumbrances and restrictions as are acceptable to the VILLAGE and the COUNTY. For easements, the opinion shall also state that upon execution by the property owner, a valid and enforceable easement will be vested in the VILLAGE and the COUNTY. VILLAGE may elect to provide for each of the above referenced deeds and easements to have the COUNTY as the sole grantee.

4. CONVEYANCE OF WASTEWATER PROJECT

A. (1) Following completion of the Wastewater Project, all conveyance documents, in proper form acceptable to the COUNTY, shall be provided by the COUNTY for execution by the VILLAGE, VILLAGE'S contractor and any property owners, as applicable. This shall include any lease, releases of lien, grants of easement and warranty deeds. Subject to the terms of the lease, which (if determined to be used by Village to assist VILLAGE in financing of the Wastewater Project), shall be similar to that attached hereto as Exhibit "C" (the "Lease"), the VILLAGE shall be the owner of the wastewater facilities during the period, if any, of said Lease. The Lease shall commence on the date the Department provides its final approval of the completed Wastewater Project and receives all properly executed conveyance documents, other than the Bill of Sale . On the date that the Lease, if applicable, terminates and the VILLAGE completes all applicable loan repayments or financing obligations for the Wastewater Project, as described in Paragraph 6 hereinafter, or such earlier date that the VILLAGE is lawfully able to do so, the VILLAGE shall convey to the COUNTY the wastewater facilities by Bill of Sale, similar to that attached hereto as Exhibit "D". When sold to the COUNTY, and after a bill of sale is executed by the VILLAGE, the wastewater facilities shall then be under the sole, complete, and exclusive control and operation of COUNTY.

(2) All documents, except the Bill of Sale (if a Lease approach is utilized), must be properly executed, delivered to, and accepted by the COUNTY prior to the rendition of wastewater (sanitary sewer) service by the COUNTY. The Lease, if used, shall be accompanied by copies of paid bills and lien waivers, releases, or satisfactions from all persons who performed work and from all persons who incorporate materials into the Wastewater Project, together with a breakdown of the actual cost of said facilities. Concurrently, the VILLAGE shall furnish the COUNTY with one (1) set of Mylar as-built drawings of all facilities showing specific locations and depths among other things, as located by a licensed surveyor, along with four (4) prints of the as-built drawings which have been sealed by a surveyor and certified

by the engineer of record. Approval by the COUNTY of all required documents, drawings and surveys specified herein shall constitute final approval by the COUNTY of said facilities under the Lease; if applicable, and for the subsequent transfer to the COUNTY. During the period of the Lease, if said Lease is utilized , and effective immediately after final Department approval of the completed Wastewater Project, but prior to final transfer of the Wastewater Project facilities to the COUNTY, the completed Wastewater Project shall at all times remain the property or facility of the VILLAGE, but shall be under the exclusive control and operation of the COUNTY pursuant to the Lease, if applicable. In the event that a Lease is not entered into between the parties, the Wastewater Project shall, upon completion, be conveyed to the COUNTY by Bill of Sale in the same manner by which the Water and Water reclamation projects are conveyed to the COUNTY herein below.

B. CONVEYANCE OF WATER PROJECT AND WATER RECLAMATION PROJECT

Following completion of the Water Project and the Water reclamation Project, the VILLAGE shall convey to the COUNTY, by properly executed Bill of Sale, all of its right, title and interest in the water and water reclamation facilities constructed and/or replaced by the VILLAGE and appropriate easements for the operation and maintenance of such facilities. Following the COUNTY's acceptance of the Bill of Sale, the water and water reclamation facilities shall be under the sole, complete and exclusive control and operation of the COUNTY. The Bill of Sale for the water and water reclamation facilities shall be accompanied by copies of paid bills and lien waivers, releases, or satisfactions from all persons who performed work and from all persons who incorporate materials into the projects, together with a breakdown of the actual cost of said facilities. In addition, the VILLAGE, directly or through the VILLAGE's contractor shall deliver to the COUNTY an executed maintenance bond, or other assurance acceptable to the COUNTY, which guarantees a one-year warranty period, as further detailed below in Paragraph 5. Concurrently, the VILLAGE shall furnish the COUNTY with one (1) set of Mylar as-built drawings of all facilities showing

specific locations and depths among other things, as located by a licensed surveyor, along with four (4) prints of the as-built drawings which have been sealed by a surveyor and certified by the engineer of record along with the electronic file in the Department's latest version of Autocad. Approval by the COUNTY of all required documents, drawings and surveys specified herein shall constitute final approval by the COUNTY of said water and water reclamation facilities.

5. MAINTENANCE BOND The VILLAGE is constructing each of the Projects and is subsequently transferring the same to the COUNTY. The VILLAGE warrants that the facilities to be conveyed to the COUNTY shall be free from defects in materials and workmanship for a period of one (1) year from final acceptance by the COUNTY. Since the COUNTY is obligated to maintain the facilities simultaneously with the conveyance or lease of the wastewater facilities, and the COUNTY is obligated to maintain the water and water reclamation facilities simultaneously with their conveyance, the VILLAGE, directly or through the VILLAGE's contractor, shall deliver to the COUNTY an executed maintenance bond, or other assurance acceptable to the COUNTY, which guarantees the warranty described in this paragraph. If it becomes necessary to repair and replace any of the facilities during the initial one (1) year period, then the warranty as to those items repaired and replaced shall continue to remain in effect for an additional period of one (1) year from the date of final acceptance by the COUNTY of those repairs and/or replacement. The bond or other assurance shall be in the amount equal to fifty percent (50%) of the actual construction cost, including labor and materials, of said facilities. The bond shall have as the surety thereon only such surety company as is acceptable to the COUNTY and which is authorized to write bonds of such character and amount under the laws of the State of Florida. A surety company must have a Best's Key Rating Guide General Policyholder's Rating of "A" or better and a Financial Category of Class "V" or better. The attorney-in-fact or other officer who signs a bond must file with such bond a certified copy of his power-of-attorney authorizing him to do so. The maintenance bond may be written with the VILLAGE's contractor as

"Principal" and the VILLAGE and the COUNTY as "Co-obligee" or the COUNTY *as* sole "Obligee", whichever is preferred by the VILLAGE. In the alternative, at the VILLAGE'S option, the VILLAGE may be named as "Principal" and the COUNTY as "Obligee", if authorized by law. The maintenance bond shall remain in force for one (1) year following the date of acceptance by the COUNTY of the Project to protect the COUNTY against losses resulting from any and all defects in materials or improper performance. Upon demand by the COUNTY, the VILLAGE shall cause to be corrected all such defects which are discovered, or the COUNTY, after sixty (60) days written notice to the VILLAGE, may make such repairs and replacements of defective work and materials and the VILLAGE and its surety or the VILLAGE'S contractor and its surety, as applicable, shall be liable to the COUNTY for all costs arising therefrom. The VILLAGE also warrants that it shall be solely responsible to COUNTY for the repair of any damages to said facilities which are caused by persons in its employment. This shall not relieve any contractor or other person of its responsibilities.

6. VILLAGE FINANCING OF WASTEWATER PROJECT. The VILLAGE shall be responsible to apply for and receive funding from the State of Florida ("State") revolving fund loan program and/or other sources of financing which may be determined by VILLAGE to be necessary for the Wastewater Project, and to subsequently enter into any appropriate agreement with the State and/ or other entities in order to secure any necessary Wastewater Project funding. The VILLAGE hereby recognizes that an agreement, if any, with the State may require loan repayments to the State for a period not to exceed twenty (20) years. The VILLAGE agrees that the COUNTY shall not be responsible for loan repayments which are the subject of any agreement between the VILLAGE and the State or between the VILLAGE and any other entity regardless of any Lease or conveyance of the Wastewater Project to the COUNTY, unless expressly provided by other written COUNTY- VILLAGE agreement.

7. VILLAGE AND COUNTY UNDERSTANDING AND INDEMNIFICATION

A. The COUNTY and the VILLAGE acknowledge and agree that a condition precedent to all obligations contained in this Agreement, except the obligation of the VILLAGE to indemnify the COUNTY, is that all necessary funds to cover construction costs for the Water Project and Water Reclamation Projects are provided or committed to be provided by the COUNTY, and that all necessary funds to cover the construction costs for the Wastewater Project and repay any applicable VILLAGE- third party loans are the responsibility of the VILLAGE, unless otherwise expressly provided.

B. The VILLAGE agrees to indemnify and save harmless forever, the COUNTY, its officers, agents and employees from all claims, liability, actions, loss, cost and expense, including attorney's fees, which may be sustained by the COUNTY, its officers, agents, and employees due to, caused by, or arising from the negligence of the VILLAGE, its officers, employees and agents in connection with the performance of this Agreement. The VILLAGE agrees to defend against any claims brought or actions filed against the COUNTY, its officers, agents and employees in connection with the subject of the indemnities contained herein.

C. The COUNTY agrees to indemnify and save harmless forever, the VILLAGE, its officers, agents and employees from all claims, liability, loss, cost and expense, including attorney's fees, which may be sustained by the VILLAGE, its officers, agents and employees due to, caused by, or arising from the negligence of the COUNTY in the performance of this Agreement. The COUNTY agrees to defend against any claims brought or actions filed against the VILLAGE, its officers, agents and employees in connection with the subject of the indemnities contained herein.

D. Notwithstanding paragraph (B) and (C) above, nothing contained herein shall create any liability of the COUNTY or VILLAGE beyond the scope of Section 768.28, Florida Statutes, and the monetary limits thereof, as currently in effect or as lawfully amended in the future. The parties intend that the monetary limits of Sec. 768.28 (5), Florida Statutes, shall apply to paragraphs (B) and (C) above,

regardless of whether or not said monetary limits would otherwise apply.

8. NON-ASSIGNABILITY No rights pursuant to this Agreement shall be assignable by the VILLAGE unless the COUNTY agrees in writing.

9. TERM This contract shall be and remain in full force and effect indefinitely, and for at least the duration of the completion and conveyance of the Projects, until and unless expressly cancelled or terminated by a subsequent agreement duly executed by the COUNTY and the VILLAGE.

10. NOTICE All notices required pursuant to this Agreement shall be properly given if mailed by United States registered or certified mail addressed to the party to which notice is to be given at the following respective addresses:

Village of Key Biscayne
88 W. McIntyre Street
Key Biscayne, Florida 33149
Attention: Village Manager

Miami-Dade County
c/o Miami-Dade Water and Sewer Department
3071 S.W. 38th Avenue, Suite 502
Miami, Florida 33146
Attention: Director

11. WASTEWATER CUSTOMER RESPONSIBILITIES The VILLAGE recognizes and agrees that the individual sanitary sewer customers served by the COUNTY within the VILLAGE will be charged the COUNTY's standard sewer connection charges in effect at the time service is received. Thereafter, individual customers will be billed directly by the COUNTY for monthly and/or quarterly service charges at rates in effect at the time service is rendered.

12. WATER PROJECT FUNDING ASSISTANCE In consideration of the VILLAGE's construction of the Water Project, the COUNTY herein agrees to provide funding assistance for the design and construction of the needed improvements. It is expressly understood that the COUNTY shall not be responsible for any costs in excess of $6,000,000 incurred in the construction of the Water Project, unless an amendment to this Agreement is approved by the COUNTY. Following submittal by the VILLAGE to

the COUNTY of each invoice, including all necessary supportive documentation, from the VILLAGE's design consultant and/or contractor, the COUNTY shall reimburse the VILLAGE for the amount properly specified on each invoice, within sixty (60) days of receipt of the proper invoice.

13. WATER RECLAMATION PROJECT FUNDING

A. In consideration of the VILLAGE's design and construction of the Water Reclamation Project, the COUNTY herein agrees to fund the actual cost for the design, construction and construction management of the water reclamation facilities, estimated to cost One Million Seven Hundred Thousand Dollars ($1,700,000). It is expressly understood that the COUNTY shall not be responsible for any costs in excess of Two Million Dollars ($2,000,000) incurred in the construction of the Water Reclamation Project, unless an amendment to this Agreement is approved by the COUNTY. Following submittal by the VILLAGE to the COUNTY of each invoice, including all necessary supportive documentation, from the VILLAGE's design consultant and/ or contractor, the COUNTY shall reimburse the VILLAGE for the amount specified on each invoice, within sixty (60) days of receipt of the proper invoice. In the event that the Water Reclamation Project is cancelled by the COUNTY, the COUNTY will reimburse the VILLAGE for all costs expended to date. The COUNTY agrees not to cancel the Water Reclamation Project once the VILLAGE notifies the COUNTY that the VILLAGE has determined to award a contract for construction of the Water Reclamation Project or that the VILLAGE has determined to enter into a change order or amendment with VILLAGE'S Wastewater Project contractor for inclusion of the Water Reclamation Project work, as authorized by VILLAGE'S Wastewater Project bid specifications.

B. The VILLAGE agrees to accept and utilize re-use water in lieu of potable water, to the extent the use for which the COUNTY is offering such re-use water is permitted by law.

14. INVOICING Upon execution by both parities of this Agreement, the VILLAGE will submit an invoice to the COUNTY in the amount of Two Hundred Fifty Thousand ($250,000) for the Water Project and Two Hundred Fifty Thousand ($250,000) for the Water Reclamation Project, for a total of Five Hundred Thousand ($500,000), which will be held by the VILLAGE to be used to reduce the COUNTY's final payments to the VILLAGE and may be used by the VILLAGE to pay the initial invoices from the VILLAGE's engineer and/or construction contractor. Thereafter, on a monthly basis, the VILLAGE shall submit an invoice to the COUNTY for expenses incurred to date for the Water and Water Reclamation Projects for actual costs incurred by the VILLAGE for the design and/or installation costs associated with the Projects. The COUNTY shall reimburse the VILLAGE for the costs to design and

construct the Water and Water Reclamation Projects, including, but not limited to labor, materials, supplies, permit fees, vehicles, fringe benefits, overhead, consultant and independent contractor costs and other related costs, including the costs of the maintenance bonds and other security required by this Agreement, as appropriate.

The COUNTY shall make full payments to the VILLAGE within sixty (60) days from each invoice date.

15. GENERAL

A. Nothing expressed or implied herein is intended or shall be construed to confer upon or to give any person, firm, corporation or other entity other than the parties hereto, any right, remedy or claim under or by reason of this Agreement or by reason of any term, covenant, condition, promise and agreement contained herein and this Agreement shall be for the sole and exclusive benefit of the parties hereto and their successors and assigns. No third-party beneficiary rights are intended or implied.

B. This Agreement has been duly authorized, executed and delivered by each party hereto and constitutes a legal, valid and binding obligation of each enforceable against the other in accordance with its terms. If any part of this Agreement is held to be invalid, the remainder of this Agreement shall not be affected thereby.

C. This document embodies the entire agreement and understanding between the parties hereto, and, except as expressly recognized herein, any other agreements and understandings, whether verbal or written, with reference to the subject matter of this Agreement are merged herein or superceded hereby. That certain Agreement of October 15, 1998, between the parties, which concerned the Wastewater Project, is hereby terminated and superceded. No alterative change or modifications of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto.

D. The VILLAGE agrees that it shall fully comply with all requirements of Miami-Dade County Codes 2-8.2.10., 10-33.02, 2-10.4.01, 2-11.16 , 2-11.15, as may be applicable, and all other ordinances or resolutions governing use of COUNTY funds, and shall ensure that all contracts entered into by the VILLAGE shall comply with such requirements, to the extent applicable. The COUNTY shall procure design and construction services in a manner consistent with state law, and shall ensure that all contractors are bonded and paid in accordance with the provisions of state law.

E. The Miami-Dade County Inspector General may, on a random basis, perform audits on this Agreement throughout the duration of said Agreement (hereinafter "random audits"). This random

audit is separate and distinct from any other audit by the COUNTY. The IG shall have the power to retain and coordinate the services of an Independent Private Sector Inspector General (IPSIG) who may be engaged to perform said random audits, as well as audit, investigate, monitor, oversee, inspect, and review the operations, activities and performance and procurement process including, but not limited to, project design, establishment of bid specifications, bid submittals, activities of the VILLAGE and contractor and their respective officers, agents and employees, lobbyists, subcontractors, materialmen, staff and elected officials in order to ensure compliance with contract specifications and detect corruption and fraud. The IG shall have the power to subpoena witnesses, administer oaths and require the production of records. Upon ten (10) days written notice to the VILLAGE (and any affected contractor and materialman) from IG, the VILLAGE (and any affected contractor and materialman) shall make all requested records and documents available to the IG for inspection and copying.

The IG shall have the power to report and/or recommend to the Board whether a particular project, program, contract or transaction is or was necessary and, if deemed necessary, whether the method used for implementing the project or program is or was efficient both financially and operationally. Monitoring of an existing project or program may include reporting whether the project is on time, within budget and in conformity with plans, specifications, and applicable law. The IG shall have the power to analyze the need for, and reasonableness of, proposed change orders.

The IG is authorized to investigate any alleged violation by a contractor of its Code of Business Ethics, pursuant Miami-Dade County Code Section 2-8.1. The provisions in this section shall apply to the VILLLAGE, its contractors and their respective officers, agents and employees. The VILLAGE shall incorporate the provisions in this section in all contracts and all other agreements executed by its contractors in connection with the performance of this agreement. Any rights that the COUNTY has under this section shall not be the basis for any liability to accrue to the COUNTY from the VILLAGE, its contractors or third parties for such monitoring or investigation or for the failure to have conducted such monitoring or investigation and the county shall have no obligation to exercise any of its rights for the benefit of the VILLAGE.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their names and their seals affixed hereto and to said duplicate by their respective officers thereunto duly authorized, all as of the day and year hereinbefore written.

MIAMI-DADE COUNTY, FLORIDA

ATTEST:

By:_____
Clerk

By:_____
County Mayor

THE VILLAGE OF KEY BISCAYNE

ATTEST:

By:_____
Village Clerk

By:_____
Village Manager

Jacqueline Menendez
Printed Name

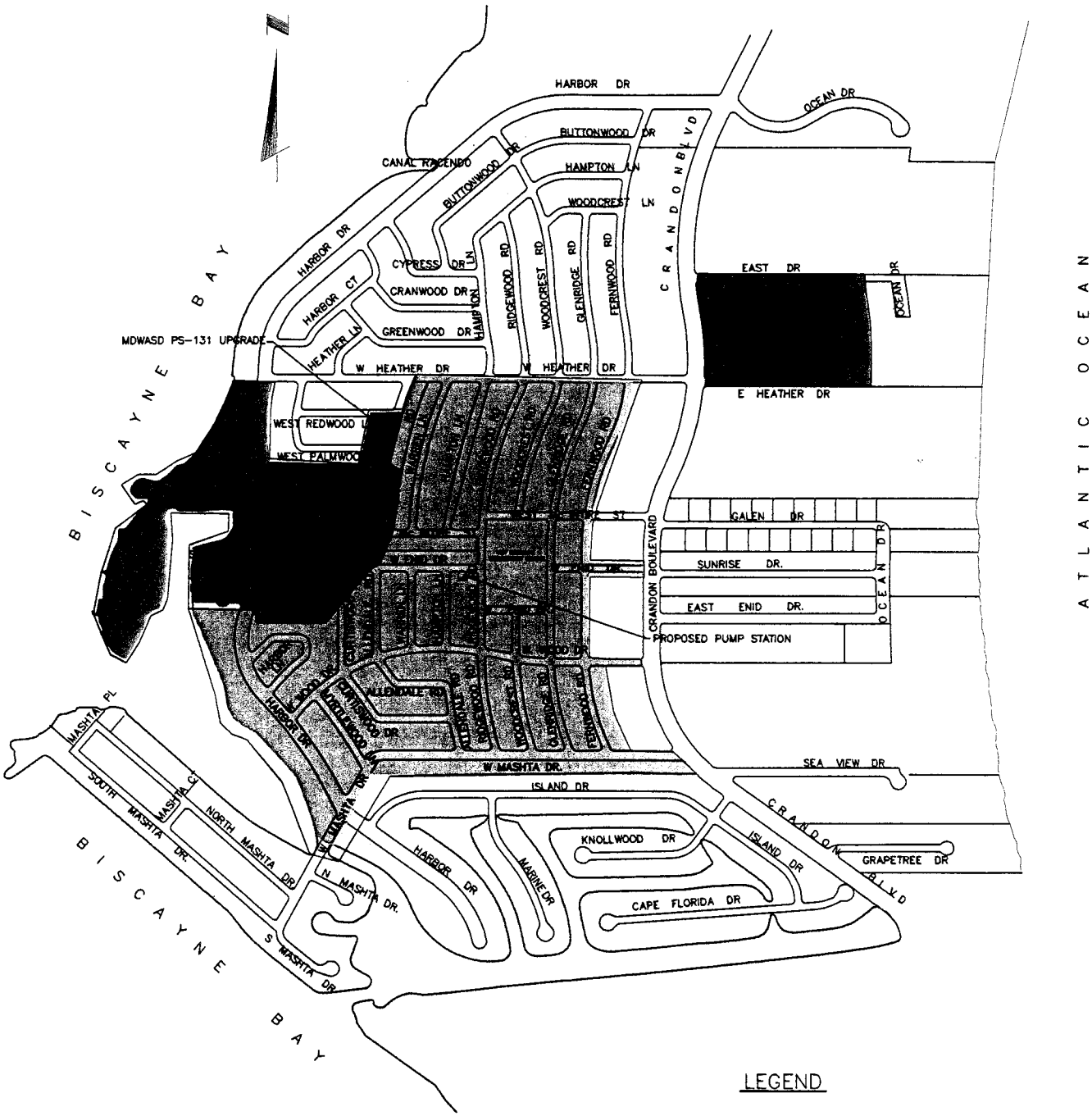
Approved as to Form
and Legal Sufficiency:

_____
Assistant County Attorney

Approved as to Form and Legal Sufficiency:

_____
Village Attorney

EXHIBIT "A"



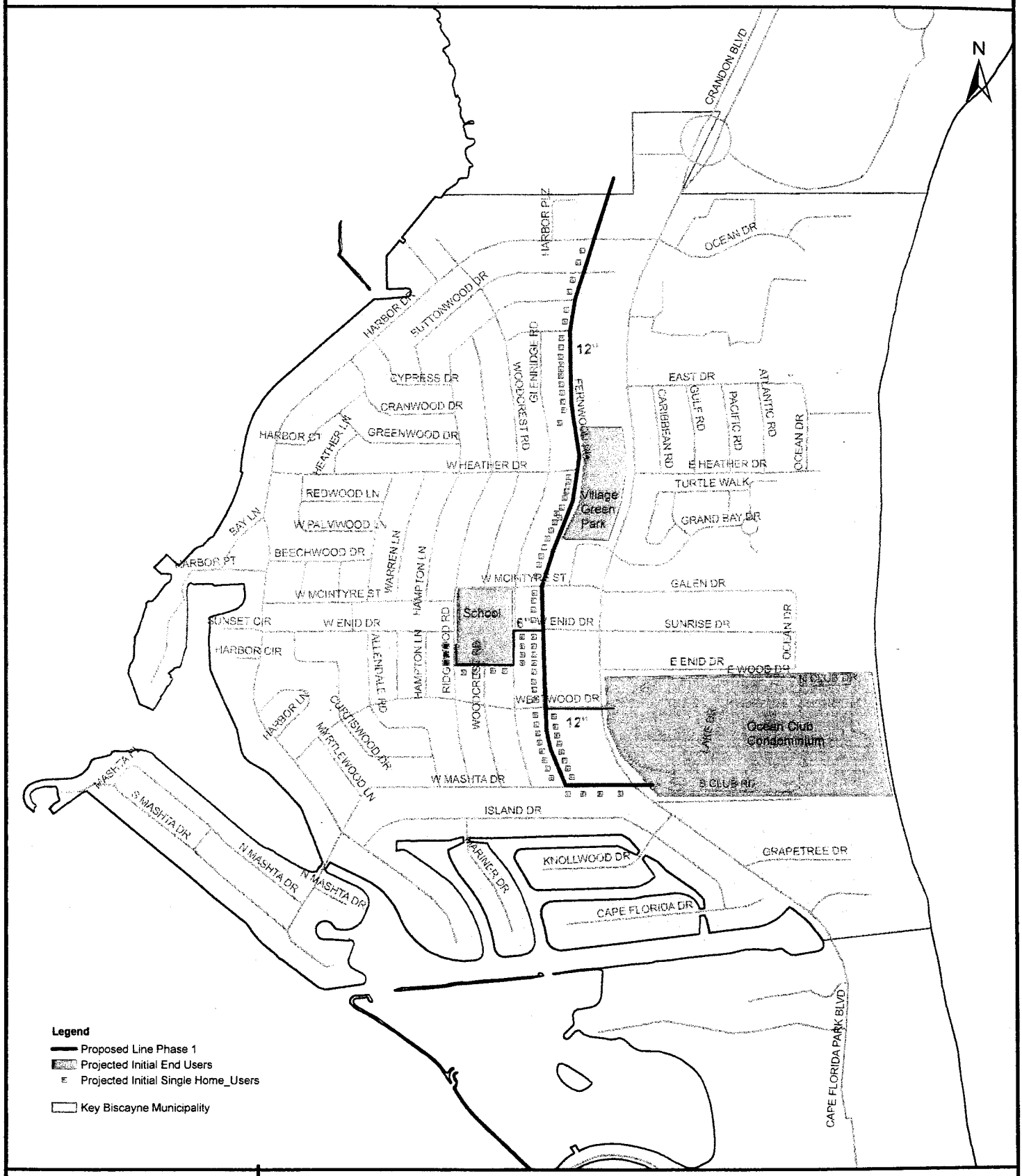

PBSJ

VILLAGE OF KEY BISCAYNE

# VILLAGE OF KEY BISCAYNE

## SANITARY SEWER SYSTEM AND WATER SYSTEM IMPROVEMENTS
## KEY MAP

# EXHIBIT B




MIAMI-DADE COUNTY

# VILLAGE OF KEY BISCAYNE

## WATER RECLAMATION PROJECT

Exhibit "C"

(Sample)

LEASE AGREEMENT

THIS LEASE AGREEMENT entered into as of this _____ day of _____, 2007 by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, hereinafter called "COUNTY", and the VILLAGE OF KEY BISCAYNE, FLORIDA, a municipal corporation of the State of Florida, hereinafter called "VILLAGE".

WITNESSETH:

WHEREAS, this Lease is entered into in accordance with that certain Agreement Between Miami-Dade County and the Village of Key Biscayne, dated _____ , 2007, hereinafter referred to as the "Agreement"; and

WHEREAS, the COUNTY desires to lease from the VILLAGE, and the VILLAGE desires to lease to the COUNTY, certain property or facilities in accordance with the terms and conditions hereinafter stated;

NOW THEREFORE, in consideration of the mutual promises herein contained and other valuable considerations, receipt of which is hereby acknowledged, the COUNTY and the VILLAGE agree as follows:

**1.** **Lease** of Demised Premises. The VILLAGE leases to the COUNTY, and the COUNTY leases and accepts from VILLAGE, that certain sanitary sewerage facilities, with all appurtenances thereto, hereinafter called the "Demised Premises", more particularly described on Exhibit "A" attached hereto and made a part hereof.

2. Term. This Lease shall commence on the _____ day of _____ _____ and end on the date that the VILLAGE has completed all loan repayments as specified in Paragraph 6 of the Agreement and the VILLAGE has executed a Bill of Sale in favor of the COUNTY.

3. **Agreement to Convey Title.** On or before expiration of this Lease, unless otherwise notified by the COUNTY, the VILLAGE shall convey to the COUNTY good and sufficient legal title to the Demised Premises as required in the Agreement.

4. Rent. The rent for the term of this Lease shall be $10.00 per year, in advance, due and payable on each anniversary date of the date hereof.

5. **Use and Maintenance of Demised Premises.** The COUNTY shall have the sole unrestricted use and benefit of, and responsibility for, the Demised Premises. The COUNTY shall be responsible during the term of this Lease for the complete and total operation, maintenance, replacement and repair of the Demised Premises and the improvements thereto, subject to the warranty provided by the VILLAGE pursuant to Paragraph 5 of the Agreement.

6. **General Provisions.**

a. **Entire Agreement.** This Lease contains the entire agreement between the VIILAGE and the COUNTY. Any changes, modifications, or termination hereof shall not be effective unless in writing and signed by the party against whom enforcement is sought.

b. **Notices.** All notices required pursuant to this Lease shall be properly given if mailed by United States registered or certified mail addressed to the party to which notice is to be given at the following respective addresses:

Miami-Dade County
c/o Miami-Dade Water and Sewer Department
3071 S.W. 38th Avenue, Suite 502
Miami, Florida 33146
Attention: Director

Village of Key Biscayne
88 W. McIntyre Street
Key Biscayne, Florida 33149
Attention: Village Manager

c. **Partial Invalidity or Unenforceability.** If any term, covenant, or condition of this Lease shall be invalid or unenforceable to any extent, the remainder of the terms, covenants, and conditions of this Lease shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

IN WITNESS WHEREOF, the COUNTY and VILLAGE have executed this Lease the day and year above written.

ATTEST:

BY:_____
Clerk

MIAMI-DADE COUNTY

BY:_____
County Manager

**VILLAGE OF KEY BISCAYNE**

ATTEST:

BY: _____
Village Clerk

BY: _____
Village Manager

_____
Printed Name

Approved as to form and legal sufficiency.

_____
Assistant County Attorney

Approved as to form and legal Sufficiency.

_____
Attorney for Village

Exhibit "D"

ABSOLUTE BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that the VILLAGE of KEY BISCAYNE, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter called GRANTOR, for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, paid and delivered by MIAMI-DADE COUNTY, a political subdivision of the State of Florida, hereinafter called GRANTEE, the receipt whereof is hereby acknowledged, has granted, bargained, sold, transferred and delivered, and by these presents does grant, bargain, sell, transfer and deliver unto the GRANTEE, its successors and assigns, the following:

TO HAVE AND TO HOLD the same unto the GRANTEE, its successors and assigns forever.

GRANTOR does covenant to and with GRANTEE, its successors and assigns, that GRANTOR is the lawful owner of the above described; that said property is free from all encumbrances; that GRANTOR has good right to sell the same aforesaid; and that the GRANTOR will warrant and defend the sale of the said property unto the GRANTEE, its successors and assigns, against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, the GRANTOR has hereunto set its hand and seal this_____day of_____ , 20_____.

ATTEST:

By:_____
Village Clerk

VILLAGE OF KEY BISCAYNE

By:_____
Village Manager

_____
Printed Name