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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM Agenda Item No. 8(M)(1)(A)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: September 1, 2011

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

SUBJECT: Resolution approving interlocal agreement between Village of Key Biscayne and Miami-Dade County for the use, improvement and maintenance of Calusa Mangrove Trail area of Crandon Park, including Village payment of up to $300,000; and authorizing County Mayor to execute the agreement on behalf of the County and to exercise any and all rights contained therein

Resolution No. R-671-11

The accompanying resolution was prepared by the Parks and Recreation Department and placed on the agenda at the request of Prime Sponsor Commissioner Xavier L. Suarez.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

/

Memorandum

MIAMI-DADE COUNTY

Date: September 1, 2011

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Alina T. Hudak
County Manager

Subject: Calusa Mangrove Trail at Crandon Park
Interlocal Joint Use Agreement

Recommendation

It is recommended that the Board adopt the attached resolution approving an Interlocal Joint Use Agreement between Miami-Dade County and the Village of Key Biscayne (VKB) for the use, improvement and maintenance of certain County lands within Crandon Park (Calusa Mangrove Trail area), including a payment of up to $300,000 from the VKB to fund the County's improvement of the Park, and authorizing the County Mayor or County Mayor's designee to execute such Agreement on behalf of Miami-Dade County and to exercise any and all other rights conferred therein.

Scope

Calusa Mangrove Trail consists of approximately nine (9) acres within Crandon Park, a 904-acre countywide metropolitan park, which is located at 4000 Crandon Boulevard within County Commission District 7. The Trail area lies within the jurisdictional boundaries of VKB. Approval of the Interlocal Agreement will authorize the long-term use and programming of the Calusa Mangrove Trail area by the VKB for the benefit of all County residents.

Fiscal Impact/Funding Source

The VKB agrees to assume all costs associated with use and maintenance of the Calusa Mangrove Trail area within Crandon Park and to contribute up to $300,000 for improvements therein. The VKB will also provide all staff, programming, security and insurance required for park operations. This Agreement will reduce the County capital costs associated with the Crandon Park Master Plan by up to $300,000 and will reduce future County operating and maintenance budgets since the VKB will assume all operating and maintenance costs.

Track Record/Monitor

Randy Koper, Property Management Section of the Park and Recreation Department (MDPR), will monitor compliance of the Agreement.

Background

As part of its incorporation, the County approved an Interlocal Agreement (R-970-92) allowing the VKB to use and provide park and recreation services within the Calusa Mangrove Trail area of Crandon Park (Exhibit A). For almost twenty (20) years, the VKB has used, staffed and maintained that portion of the Park largely for the benefit of VKB residents, but without the benefit of a long-term agreement.

The Crandon Park Master Plan required that the Calusa Park Playhouse, play equipment and tennis courts be razed or removed and the recreation center be modified to South Florida vernacular style and retain only restrooms, storage, closet and open-roofed shelter. In the Settlement Agreement between Bruce Matheson and Miami-Dade County dated January 14, 1993, the County agreed to make specific improvements to the Calusa Mangrove Trail required by the Crandon Park Master Plan by May 2012. In

addition, the Crandon Park Master Plan Amendment Committee in 2007 agreed to a request by the VKB to delay the removal of lighted ballfields within Crandon Park, as required by the Crandon Park Master Plan, if the VKB paid the estimated $250-$300,000 cost to make required park improvements to the Calusa Mangrove Trail (Exhibit B). The proposed Interlocal Joint-Use Agreement would memorialize the VKB's contribution towards the required improvement in the Calusa Mangrove Trail area of Crandon Park, as well as set a date for such payment, and would allow the VKB to formally and jointly use Calusa Mangrove Trail while assuming the long-term maintenance of the area.

The Interlocal Joint Use Agreement (Exhibit C):

1. Legally establishes how the VKB can jointly use, improve and maintain County land for the benefit of all County residents.
2. Establishes the term of the Agreement as ten (10) years with three (3) ten-year options to renew.
3. Defines when and how much the VKB will reimburse the County to complete certain improvements required for the area by the Crandon Park Master Plan, as amended.
4. Provides that the VKB will assume security, operations, maintenance and service responsibilities for Calusa Mangrove Trail.
5. Institutes VKB insurance and indemnification requirements to GSA Risk Management specifications.

Attachments

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: September 1, 2011

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

SUBJECT: Agenda Item No. 8(M)(1)(A)

Please note any items checked.

_____ **"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**

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

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

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Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(M)(1)(A)
9-1-11

RESOLUTION NO. R-671-11

RESOLUTION APPROVING INTERLOCAL AGREEMENT BETWEEN VILLAGE OF KEY BISCAYNE AND MIAMI-DADE COUNTY FOR THE USE, IMPROVEMENT AND MAINTENANCE OF CALUSA MANGROVE TRAIL AREA OF CRANDON PARK, INCLUDING VILLAGE PAYMENT OF UP TO $300,000; AND AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT ON BEHALF OF THE COUNTY AND TO EXERCISE ANY AND ALL RIGHTS CONTAINED THEREIN

WHEREAS, Miami-Dade County Park and Recreation Department (heretofore known as "COUNTY") is required to complete certain capital improvement projects within Crandon Park, inclusive of the Calusa Mangrove Trail ("CMT") area, in accordance with the terms and conditions of the Crandon Park Master Plan, as amended; and

WHEREAS, as a condition of extending the availability of lighted fields within Crandon Park, the Village of Key Biscayne ("VKB") agreed to pay the cost of certain improvements within the CMT and further desires to jointly use CMT with the COUNTY; and

WHEREAS, the VKB and COUNTY now desire to establish a Interlocal Joint Use Agreement for the long-term use, maintenance and improvement of CMT as a means of implementing certain terms of the Crandon Park Master Plan and increasing recreational opportunities open to all County residents,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board: (1) approves the Interlocal Agreement between the VKB and COUNTY for the use, maintenance and improvement of land within Crandon Park in substantially the form attached hereto as Exhibit C;

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(2) accepts up to $300,000 from the VKB to pay for certain improvements within CMT; and (3) authorizes the County Mayor or County Mayor's designee to execute the Interlocal Agreement and to exercise any and all rights conferred therein on behalf of the County.

The foregoing resolution was offered by Commissioner **Jose "Pepe" Diaz**, who moved its adoption. The motion was seconded by Commissioner **Audrey Edmonson** and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman			aye
Audrey M. Edmonson, Vice Chairwoman			aye
Bruno A. Barreiro	absent	Lynda Bell	aye
Esteban L. Bovo, Jr.	aye	Jose "Pepe" Diaz	aye
Sally A. Heyman	aye	Barbara J. Jordan	aye
Jean Monestime	aye	Dennis C. Moss	aye
Rebeca Sosa	aye	Sen. Javier D. Souto	absent
Xavier L. Suarez	absent		

The Chairperson thereupon declared the resolution duly passed and adopted this 1st day of September, 2011. 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: *Christopher Agrippa*
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Monica Rizo

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Exhibit A

Agenda Item No. 5(f)(1)
7-21-92

RESOLUTION NO. R-970-92

RESOLUTION AUTHORIZING APPROVAL OF INTERLOCAL AGREEMENT BETWEEN METROPOLITAN DADE COUNTY AND THE VILLAGE OF KEY BISCAYNE CONCERNING MUNICIPAL SERVICES AND AUTHORIZING THE COUNTY MANAGER TO EXECUTE THE AGREEMENT AND TO EXERCISE CANCELLATION PROVISIONS CONTAINED THEREIN

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 DADE COUNTY, FLORIDA, that this Board approves the attached Interlocal Agreement between Metropolitan Dade County and the Village of Key Biscayne concerning municipal services, authorizes the County Manager to execute same for and on behalf of Dade County, after the documents have been fully executed by the Village, and authorizes the County Manager to exercise cancellation provisions contained therein.

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

Not [illegible]
Agnda Item No. 5(g)(31)
Page No. 2

The Mayor thereupon declared the resolution duly passed and adopted this 21st day of July, 1992.

DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

MARSHALL ADER, CLERK

RAYMOND REED

BY: Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

INTERLOCAL AGREEMENT

This is an Interlocal Agreement between Metropolitan Dade County, a political subdivision of the State of Florida (the "County") and the Village of Key Biscayne, a municipal corporation of the State of Florida (the "Village") entered this 29th day of July, 1992 (the or this "Agreement").

WHEREAS, on June 18, 1991, a charter for the Village was approved by the citizens of Key Biscayne and the Village Board of Trustees was sworn into office on September 23, 1991, and

WHEREAS, prior to June 18, 1991, the area included within the Village boundaries was part of the unincorporated area of Dade County (the "Unincorporated Area") and police, planning, solid waste collection, parks and recreation, public works and building and zoning services were provided by the County, (collectively "Municipal Services" individually each is a "Municipal Service"), and

WHEREAS, Municipal Services have continued to be provided to the Village by the County during the 1991-92 transition year, and

WHEREAS, the parties recognize that during the budgeting process for fiscal year 1991-92 the Village was not in existence and therefore, the area now incorporated as the Village was considered as part of the Unincorporated Area budget, and

WHEREAS, the Village and the County want to enter into this Agreement in order to 1) delineate the responsibilities for, service levels, and costs of Municipal Services to be provided to the Village by the County for the 1991-92 transition year, 2) delineate the responsibilities for, service levels, and costs of Municipal Services, should the Village desire to continue these Municipal Services, for fiscal year 1992-93, 3) outline procedure whereby the Village may, from time to time as as it deems appropriate, provide all or some of those Municipal services in lieu of the County, and 4) outline the general terms of future lease agreements between the County and the Village concerning specified capital assets.

I. MUNICIPAL SERVICES FOR TRANSITION YEAR 1991-92

A. County responsibilities. The County shall continue to provide to the Village the same level of Municipal Services as were provided in fiscal year 1990-91 as more particularly described below.

1. Police Services. Through the Metro-Dade Police Department provide police protection to the Village. Police practices and operational staffing patterns will continue in the same manner and at the same level as those provided in fiscal year 1990-91. The Department will answer all calls for police service within the Village. It is estimated that the County will serve the Village with 17 police officers and required supervision.

2. Planning Services. Through the Metropolitan Dade County Planning Department perform analysis on applications for zoning changes and on applications for amendments to the County's Comprehensive Master Plan should the need arise. Fees for comprehensive planning amendments shall be paid by the applicant in accordance with A.O. 4-81 and will be retained by the County.

3. Solid Waste: Garbage Collection/Trash Collection/Recycling Services.

Provide residential units, as are defined in the Code of Metropolitan Dade County (Attachment 1) in the Village with garbage collection service in the same manner as the Unincorporated Area. Residents will receive the same level of trash pickup service as is provided to Unincorporated Area residents. In accordance with the Code of the Metropolitan Dade County, and the Dade County Comprehensive Development Master Plan (Attachment 2). The County will operate and maintain a neighborhood trash recycling facility which may be utilized by residents of the Unincorporated Dade County Service Area and municipalities served by Dade County (such as the Village of Key Biscayne) for solid waste collection in accordance with the Code and CDMP. Should the center be forced to close, a separate agreement concerning Solid Waste Services will be negotiated between the County and the Village. Recycling pickups will be made on a once per week basis. Garbage collection/trash collection and recycling collection will all be provided in the same manner provided for in the rest of the Unincorporated Area.

All residents included in the service area will be responsible for preparation and placement of garbage/trash and recycling materials in the manner specified pursuant to the Code of Metropolitan Dade County.

4. Public Works Services. Through the County Public Works Department, provide:

a. Roadway maintenance services which will include shoulder repair, pothole patching, sidewalk repair, and lot clearing services to the Village. Work will be performed in in accordance with current practice in the Unincorporated Area. (Attachment 3 shows service calls 1990-91)

b. Storm water utility services which include drain cleaning on County maintained roads, to be paid for from Countywide funds, and drain cleaning on residential streets, to be paid for from storm water utility fees collected as a municipality, with the same frequency as was provided in 1990-91. The parties agree that Key Biscayne is not included in the County's Stormwater Utility Program for 1992-93, (Attachment 4).

c. Administration of four special taxing districts within the Village. The districts are: Mastha Island Street Light District, Key Biscayne #1 Street Light District, Key

Biscayne #2 Street Light District, and Cape Florida Street Light District.

d. The County agrees to continue to maintain Crandon Boulevard, Harbor Drive, and West Mashta from Crandon Boulevard to Crandon Boulevard to be paid for with Countywide funds. (Attachment 5) The County and the Village agree to enter into an agreement, subject to approval of the State, requesting a change in the designation of Harbor Drive and West Mashta to Village Roads. Until the designation has been changed, if the Village wishes to make improvements on these roads (i.e., bike paths, landscaping) it may do so but the Village must agree to maintain these improvements. The standard County permitting process must be followed.

5. <u>Parks and Recreation Services</u>. Through the County Parks and Recreation Department, provide:

a. One full-time staff position, programming, maintenance and equipment for Calusa Park.

b. A subsidized summer program for Key Biscayne children at Calusa Park.

c. Landscape maintenance services for the athletic fields at Key Biscayne Elementary School.

d. Landscape maintenance services for Crandon Boulevard through the Village, including litter pickup on the same schedule as 1990-91, which is seven days per week, and grass mowing on an as needed basis which varies by season, to be paid for from Countywide funds.

6. Building and Zoning - Through the Building and Zoning Department provide service as outlined in the existing Interlocal Agreement between the Village and the County (County Commission R-1189, approved October 15, 1991) (Attachment 6).

B. Village Responsibilities.

If the Village enacts any ordinances which impact police services while the County is providing police services to the Village, the Village and the County shall mutually agree on the additional fees the County may charge the Village for enforcement of the ordinance.

C. Financial Issues.

1. The Village has been receiving Utility Tax revenues directly from some utility companies since October 1, 199~~2~~1. Some utility companies may have erroneously paid utility taxes to the County instead of the Village for October, November

and December, 1992. The County will turn over these revenues to the Village based on the following formula: January-June average monthly collection x 3 less actual monthly collection October-December by the Village. The actual Florida Power and Light Utility Tax collection for January shall be adjusted to reflect the $35,000 advance the Village received in October and the Utility Tax collection for Southern Bell shall be averaged to adjust for quarterly payments.

2. The Village will reimburse the County $5,403 for the costs associated with the Key Biscayne Primary and Regular Elections held September 3, and 17, 1991. (Attachment 7)

3. The Village will reimburse the County $9,777 for the costs associated with translating, copying and mailing copies of the proposed Key Biscayne Village Charter to each elector in Key Biscayne. (Attachments 8)

4. The County agrees to pay to the Village the FP&L Franchise Fees generated from customers in the Village beginning October 1, 1991 and continuing thereafter for the duration of the Franchise Agreement with FP&L. The County agrees to pay the Village these funds within 45 days of receipt of funds from FP&L and upon notification from FP&L of the Village's share of Franchise Fees.

5. The County agrees to pay the Village $600,000 to be used toward recreation on Key Biscayne. The payments will be $100,000 in October, 1992 and $500,000 in January, 1993.

II. MUNICIPAL SERVICES AFTER SEPTEMBER 30, 1992.

A. County Responsibilities from October 1, 1992 through September 30, 1993. The County shall continue providing all Municipal Services for which a Transfer Notice has not been received pursuant to Section III of this Agreement ("Continued Services"). Continued services shall be provided by the County at the level budgeted for in the 1992-93 Budget unless a Transfer Notice has been received. Building and zoning services will be continued as outlined in the interlocal agreement between the County and the Village (Attachment 6) unless Transfer Notice has been received.

B. Village Responsibilities from October 1, 1992-September 30, 1993. The Village shall pay the County fees for Continued Services during 1992-93 as are provided below:

SERVICE	MONTHLY FEE (UNLESS OTHERWISE NOTED)
Police	$220,000
Public Works	
Lot Clearing (ENCO), Shoulder Repair, Pothole Patching, Sidewalk Repair (cost estimate is based on historical use/complaint data. If the demand for service exceeds historical use, services may be purchased on a direct cost basis)	1,300 and Lot Clearing fees will be retained by County

Storm water Utility Services/ Village Streets	700
Special Taxing District Administration	Residents are billed through Taxing District, no additional costs
Parks and Recreation Services	
Calusa Park:	
One full-time staff position at Calusa Park	2,286
Maintenance of Buildings and Grounds at Calusa Park	1,205
Children Summer Program	$ 14,890 for 10 week program
Maintenance of Athletic Fields at Key Biscayne Elementary School	1,205
International Tennis Center Resident Use of a maximum of 4 courts at one given time	2,500
Planning	Fees paid by applicant per A.O. 4-81

Building and Zoning Services	Fees paid by applicant per A.O. 4-63A Code Enforcement $350 per case
Solid Waste Collection	Residents will be billed directly in the same manner as Unincorporated Dade County

C. County/Village Responsibilities After September 30, 1993. For fiscal years after 1992-93, the County will provide the Village with a cost estimate for Continued Services by May 1 of each fiscal year. The revised charges will take effect October 1 of each fiscal year.

III. ASSUMPTION OF SERVICES BY THE VILLAGE.

A. Transfer Notice. In the event that the Village wishes to commence providing any of the Municipal Services being provided by the County pursuant to this Agreement, the Village shall provide written notice to the County of its intent to begin providing such Municipal Service or Municipal Services (the "Transfer Notice").

The Transfer Notice shall specify the Municipal Service or Municipal Services the Village wants the County to discontinue providing and the date upon which the Village wants to begin providing those Municipal Services (the "Transfer Date").

The Transfer Notice shall be given not less than the time periods specified below prior to the Transfer Date.

Police	90 days
Planning	30 days
Public Works	30 days
Parks and Recreation Services	30 days
Building and Zoning	30 days
Solid Waste	April 1 of any fiscal year for transfer date of October 1 of following fiscal year.

B. Transition Agreements. Upon receipt of a Transfer Notice by the County from the Village negotiations with respect to transition agreements relating to Municipal Services specified in the Transfer Notice shall immediately commence between the County and the Village in order to specify the details and timing of the transfer ("Transition Agreements"). The Transition Agreements will be in the form of a Letter of Understanding between the County and the Village and may be executed by the County Manager and the Village, following legal review by both the County Attorney and the Village Attorney.

The Transition Agreements will cover operational issues only and will be made within the cost and time frames outlined in this agreement (Section IIB and IIIA).

The Transition Agreements shall contain at a minimum the following elements:

A methodology whereby an orderly transfer of Municipal Services is accomplished.

A pro-rata schedule of payments or reimbursements for services as provided in Section IIB based upon the Transfer Date.

The negotiations shall proceed on an expedited basis until a Transition Agreement is agreed upon or until the County or the Village notifies the other party that an impasse has occurred.

Upon the declaration of an impasse by either party, a committee shall be appointed consisting of two Village Trustees appointed by the Village Board of Trustees and two County Commissioners appointed by the Board of County Commissioners. The committee shall meet in an attempt to resolve the disputed issues.

IV. CAPITAL ASSETS.

The County and Village shall enter into separate agreements which shall contain the following general business terms. The separate agreements will be the governing instrument concerning the property involved.

A. Police Station. The County shall lease to the Village the police station located at 85 West Enid Drive once it is vacated by the Metro-Dade Police Department. The Lease will commence as of the transfer date for police service and will be for a period of 30 years at a rental of $1.00 per year. The lease may be terminated for cause as will be defined in the lease agreement.

B. Calusa Park. The County agrees, subject to the consent and approval of the owners of the reverter of the subject property, to lease the Village Calusa Park, excluding a portion of the Park which is already leased to Florida Power and Light, for a period of 30 years at a cost of $1.00 per year. The use of this leasehold property is conditional upon the Village adhering to all covenants and deed restrictions on the property as conveyed to Dade County. Calusa Park must be used for public park purposes only. The lease will be reviewable every year by the County in order to determine whether Calusa Park is being maintained and operated properly and after that review the lease may be terminated for cause as will be further defined in the lease agreement. Any capital improvements made to the facility must be approved by the County. Any changes to the Park Master Plan must be approved by the County Park and Recreation Department and will require a 33-303 public hearing. The parties acknowledge that the Playhouse Theater is a historical building and it is the County's intent to move this building to the Crandon Gardens in the future. Use of Calusa Park can not be restricted to Key Biscayne Residents only.

C. Development Impact/Capital Funds. Through the Development Impact process concerning the VMS program (Application 89-123; Public Hearing 9/14/89) the developer is to donate up to $500,000 to the County Park and Recreation Department for developing/improving park facilities on Key Biscayne (recorded with County Clerk, Book 14281, Page 1543). The County has not yet received these funds. The County hereby assigns its right to receive those funds to the Village.

V. SERVICES EXCLUDED FROM THIS AGREEMENT

The agreement does not include the following municipal services:

- Library - Special Taxing District
- Fire and Rescue - Special Taxing District
- Water and Sewer Services - The Village is currently included in area served by the Water and Sewer Authority Department. Residents are billed directly for the service.

VI. TERMINATION

This contract may be terminated by either party upon 365 days written notice. Notice must be provided as in Section VII of this agreement. The obligations under Section IC(4) relating to FP&L Franchise Fees shall survive the termination of this Agreement and shall be a continued obligation of the County.

VII. NOTICES.

All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, or overnight delivery addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

The County: County Manager
Metro-Dade County
111 N.W. 1 Street, Suite 2910
Miami, FL 33128

A copy to: County Attorney
Metro-Dade County
111 N.W. 1 Street, Suite 2810
Miami, FL 33128

Village: Village Manager
Village of Key Biscayne
85 West McIntyre Street
Key Biscayne, FL 33149

A copy to: Richard Jay Weiss, Esq.
Village Attorney
Weiss Serota & Helfman, P.A.
2665 South Bayshore Drive
Miami, FL 33133

Unless otherwise required by law, any notice sent hereunder shall (subject to proof of receipt or refusal of same) be deemed to have been delivered on the same day if hand-delivered, on the next business day if sent by overnight courier or on the day of receipt of refusal, if sent by certified or registered mail.

VIII. AMENDMENTS.

This Agreement may be modified only by an agreement in writing signed and sealed by the Village and County.

IX. INDEMNIFICATION.

In connection with this agreement, the Village shall indemnify and save harmless the County from any and all claims, liability, losses and causes of action which may arise out of actions of the Village in fulfillment of this Agreement.

The County shall also indemnify and save harmless the Village from any and all claims, liability, losses and causes of action which may arise out of actions of the County in fulfillment of this Agreement.

X. LAW.

This Agreement shall be construed in accordance with the laws of the State of Florida. The venue for any lawsuit arising out of this Agreement shall be Dade County, Florida.

XI. SEVERABILITY.

Should any provision, paragraph, sentence, word or phrase 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, such provision, paragraph, sentence, word or phase shall be deemed modified to the extent necessary in order to conform with such laws, then same shall be deemed severable, and in this Agreement, shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seal the day and year first above written.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Assistant County Attorney

METROPOLITAN DADE COUNTY, a
political subdivision of the
State of Florida

By: _____
Joaquin G. Avino, P.E., P.L.S.
County Manager

ATTEST:

Marshall Ader, Clerk

By: _____
As Deputy Clerk

COUNTY COMMISSIONERS DADE COUNTY FLORIDA

VILLAGE OF KEY BISCAYNE, a
political subdivision of the
State of Florida

By: _____
Rafael Conte, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

Exhibit B

VILLAGE OF KEY BISCAYNE

Office of the Village Manager

MEMORANDUM

Village Council
Franklin H. Caplan, *Mayor*
Michael E. Kelly, *Vice Mayor*
Michael W. Davey
Enrique Garcia
Robert Gusman
Mayra P. Lindsay
James S. Taintor

Village Manager
Genaro "Chip" Iglesias

DATE: May 24th, 2011

TO: Honorable Mayor and Members of the Village Council

FROM: Genaro "Chip" Iglesias, Village Manager

RE: Calusa Park Interlocal Agreement

RECOMMENDATION

It is recommended that the Village Council approve the Interlocal Agreement with Miami-Dade County for Calusa Mangrove Trail (CMT); providing for payment not to exceed $300,000 to the County for the County to construct the improvements to CMT. The Interlocal Agreement is attached as Exhibit "A".

BACKGROUND

On May 4, 2005 the Village of Key Biscayne (Village) attended a meeting of the Committee on the Amendment of the Crandon Park Master Plan (CACPMP) seeking an extension on the removal of the playing fields and lights at Crandon Park scheduled for June of 2005. The Village proposed funding improvements to the CMT in return for an extended period of use of the Crandon Park fields and lights. The quid pro quo proposal from the Village included the renovation of the existing structure, upgrading the restrooms, adding a storage room, and converting the existing tennis courts to a multi-purpose use in accordance with the Crandon Park Master Plan. The Village's proposal was estimated between $250,000 and $300,000. The CACPMP unanimously passed the following motion.

> *"The question before the Committee is to amend the Master Plan to allow for up to an additional eight (8) years of lights on the ballfields in question. That extension would be extinguished earlier if there were equal and suitable lit ballfields on the Virginia Key project at the time when it happens. Secondly, that would be contingent upon the inclusion of the lighted ballfields in the VKMP, and the master plan being completed within two (2) years, and also contingent upon the quid pro quo as introduced by the Village to be completed in two (2) years."*
>
> *There was some discussion by the Committee on the proposal. The motion was amended to add that the CPAC would meet after two (2) years to review the progress of the two (2) contingencies that were granted two (2) years to be completed by.*

88 West McIntyre Street • Suite 210 • Key Biscayne, Florida 33149 • (305) 365-5500 • Fax (305) 365-8936
MISSION STATEMENT: "TO PROVIDE A SAFE, QUALITY COMMUNITY ENVIRONMENT FOR ALL ISLANDERS THROUGH RESPONSIBLE GOVERNMENT"
www.keybiscayne.fl.gov

- April 10, 2007: the Village Council passed resolution 2007-15 urging the Board of County Commissioners to permit the reconfiguration of Calusa Park. This resolution is attached as Exhibit "B". The Village began drafting reconfiguration plans with the goal of amending the previously approved quid pro quo with a new plan that provided more improvements to the park.
- September 2007: the Village conducted an RFQ process for the environmental assessment and reconfiguration of Calusa Park. The Village received five (5) responses. A local firm stated their willingness to conduct the work for the Village free of charge. The Village engaged this firm in the reconfiguration of Calusa Park.
- November 2007: the Village met with the Miami-Dade Commissioner for District 7 and Staff 7 to discuss the proposed reconfiguration and discuss the required amendment to the Crandon Park Master Plan.
- September 2008: the Village Council increased the Capital Improvement Plan (CIP) funding for this project from $250,000 to $1,000,000 to address the estimated cost of the new reconfiguration plans.
- February 2008: the Village met with the Miami-Dade Commissioner for District 7 and representatives from Miami-Dade County Park & Recreation Department to discuss the revised plan for Calusa Park.
- June 2008: the Village conducted several meetings with Miami-Dade County to finalize the plans for proposed reconfiguration of Calusa Park.
- August 2008: the Village Council passed Resolution 2008-44 urging the County Commissioner allow the improvement of Calusa Park in accordance with the revised plan and authorizing the Village Manager and Mayor to take any and all actions to implement the intent of this resolution. This is attached as Exhibit "C".
- May 18, 2010: Miami-Dade County settled a lawsuit filed by Bruce Matheson regarding pending items in the Crandon Park Master Plan.
- October 2010: the Miami Dade Parks & Recreation Director sent a letter notifying the Village that due to the settled lawsuit that the original plans for Calusa Park should be implemented as soon as possible pending the completion of an Interlocal Agreement. The Village amended the Capital Improvement Plan by reducing the funding from $1,000,000 to $250,000 since it was deemed not feasible to get approval for the reconfigured plan. The Village engaged Miami-Dade County in drafting an Interlocal Agreement. The Village contracted an architect to develop plans for the required changes to the structure at Calusa Park.
- November 2010: the Village made required changes to the tennis courts at Calusa Park so they would meet the required "multi-purpose" use described in the Crandon Park Master Plan.
- January 2011: representatives from the Village and County met to review the plans provided by the architect hired by the Village. As a result of this meeting, changes to the plans were required to insure that the plan was in accordance with the Crandon Parks Master Plan. The Village instructed the architect to make the required revisions.

- March 2011: the final plans for the Calusa structure we provided to the County as the Interlocal Agreement continued to be negotiated.
- May 11, 2011: the County provided the Calusa Park renovation estimate provided as Exhibit "D"
- May 11, 2011: the Village and County attorneys agreed upon a final version of the Interlocal Agreement.

Resolution

RESOLUTION NO. 2011-

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING A INTERLOCAL JOINT USE AGREEMENT WITH MIAMI-DADE COUNTY FOR CALUSA MANGROVE TRAIL ("CMT") ; PROVIDING FOR PAYMENT OF NOT TO EXCEED $300,000.00 TO THE COUNTY FOR THE COUNTY TO CONSTRUCT NECESSARY IMPROVEMENTS TO THE CMT; PROVIDING FOR VILLAGE MAINTENANCE OF THE CMT AND NEW IMPROVEMENTS; PROVIDING FOR VILLAGE SECURITY OF THE CMT; PROVIDING FOR RECORDING OF THE EXECUTED AGREEMENT BY THE VILLAGE CLERK; PROVIDING AN EFFECTIVE DATE.

WHEREAS, since the creation of the Village, the Village and its residents have utilized that portion of Crandon Park known as the Calusa Mangrove Trail which is located within the corporate boundaries of the Village, but which is part of the County owned Crandon Park; and

WHEREAS, over time the facilities within the CMT have deteriorated and are in need of substantial renovation and/or changes is their use; and

WHEREAS, any use of the CMT must comply with the Crandon Park Master Plan, as it may be amended, that identifies the CMT area as requiring: 1) the renovation of the existing recreation center into an open-but-roofed shelter; 2) renovation and upgrading the restrooms to current Americans with Disabilities Act of 1990 (42 U.S.C.§§ 12101, et seq.), as amended from time to time, compliance; and 3) renovation and conversion of the four existing non-lighted tennis courts to un-lighted, multipurpose sport courts pursuant to plans that have been submitted by the Village to the County, in accordance with the Crandon Park Master Plan, as amended (the "CMT Improvements"); and

WHEREAS, the County has agreed to build the CMT Improvements at a Village cost of not to exceed $300,000; and

WHEREAS, both the Village and the County wish to memorialize their respective obligations regarding the construction, operation, maintenance and use of the CMT and the CMT Improvements; and

WHEREAS, both the Village and County are authorized by law to enter into binding interlocal agreements to effectuate joint governmental functions; and

WHEREAS, the Village has budgeted sufficient funds for the costs of the CMT Improvements.

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

Section 1. That the Interlocal Joint Use Agreement for Calusa Mangrove Trail is hereby approved, in substantially the form attached hereto, and the Mayor is authorized to execute the Agreement on behalf of the Village.

Section 2. That the Village Manager is further authorized to execute all documents necessary to implement the Agreement on behalf of the Village.

Section 3. That the Village Manager and Village Attorney are authorized to take any and all actions necessary to implement the Agreement.

Section 4. That upon execution by the Village and the County, the Clerk is hereby directed to cause the agreement to be recorded in the public records of Miami-Dade County, as required by Florida law.

Section 4. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this ____ day of _____, 2011.

_____
MAYOR FRANKLIN H. CAPLAN

ATTEST:

_____
CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
VILLAGE ATTORNEY

EXHIBIT "A"

Exhibit A

INTERLOCAL
JOINT USE AGREEMENT
FOR
CALUSA MANGROVE TRAIL

This Interlocal Joint Use Agreement ("Agreement") is entered into by and between Miami-Dade County ("COUNTY"), a political subdivision of the State of Florida, and the Village of Key Biscayne, Florida ("VILLAGE"), a Florida municipal corporation, on the_____ day of _____, 2011 pursuant to Resolution _____, passed and adopted by the Miami-Dade Board of County Commissioners on the ___ day of _____, 2011, and pursuant to Resolution No. _____, passed and adopted by the VILLAGE on the __day of _____, 2011, for joint improvement, use and maintenance of a portion of Crandon Park and generally known as the Calusa Mangrove Trail ("CMT"), see Exhibit "1".

WITNESSETH:

WHEREAS, the COUNTY, through its Park and Recreation Department, operates and maintains Crandon Park as a countywide park to provide recreational facilities, programs and services to COUNTY residents; and

WHEREAS, the COUNTY, in the interest of increasing public access to certain parts of Crandon Park, desires to allow the VILLAGE to use certain park facilities in a manner that does not adversely impact natural resources or recreational program accessibility; and

WHEREAS, the COUNTY, pursuant to provisions of the Recreation and Open Space Element of the Comprehensive Development Master Plan (Objective ROS-1C), the COUNTY can provide local recreation open space to municipalities through an Inter-local Agreement; and

WHEREAS, Section 163.01, Florida Statutes, the "Florida Interlocal Cooperation Act of 1969," authorizes local government units to enter into Interlocal agreements for the mutual benefit of said governmental units; and

WHEREAS, Sections 166.021 and 125.01, Florida Statutes, authorize the County and the City to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, any use of the CMT must comply with the Crandon Park Master Plan, as it may be amended, that identifies the CMT area as requiring, among other requirements: 1) the renovation of the existing recreation center into an open-but-roofed shelter; 2) renovation and upgrading the restrooms to comply with current Americans with Disabilities Act of 1990 (42 U.S.C.§§ 12101, et seq), as amended from time to time; and 3) renovation and conversion of the four existing non-lighted tennis courts to multipurpose sport courts, all by May 2012; pursuant to plans submitted by the VILLAGE to the COUNTY, in accordance with the Crandon Park Master Plan, as amended (the "CMT Improvements"); and

NOW, THEREFORE, in consideration of the terms and conditions, promises and covenants hereinafter set forth, the parties agree as follows to jointly utilize that portion of Crandon Park now known as Calusa Mangrove Trail ("CMT") as defined by Exhibit "1" and as further set forth herein.

1. Recitals, Findings and Purpose.

The recitals and findings set forth above are hereby adopted by reference and incorporated herein as if fully set forth in this section.

The purpose of this Agreement is to memorialize the agreement between the parties regarding the joint use, maintenance and improvement of the CMT, as defined and depicted in Exhibit "1" which is incorporated herein by reference, and is not intended and does not serve to create an interest in land of the CMT or any other part of the COUNTY property in Crandon Park.

2. VILLAGE agrees to the following:

a. VILLAGE will, at its own cost and expense, maintain an adequate standard for grounds maintenance, facility maintenance and security for facilities and structures located within the CMT as defined by Exhibit "2";

b. VILLAGE, at its own cost and expense, will provide security for the grounds, facilities and structures to consist, minimally, of Village of Key Biscayne Park and Recreation Department staff surveillance during the day and Village of Key Biscayne Police Department patrol during the evening.

c. The CMT shall be open to the public at large, which shall have access to the grounds, facilities and structures within the CMT, all weekdays and weekends, sunrise to sunset, throughout the year, except as otherwise specifically set forth herein. COUNTY may, on an infrequent basis, reserve exclusive use of the CMT area provided there is no conflict with previously scheduled activities, and subject to no less than ten (10) days advance written request to the VILLAGE Manager. VILLAGE Manager's consent shall not be unreasonably withheld. Likewise, the VILLAGE may, on an infrequent basis, reserve exclusive use of the CMT area, provided there is no conflict with previously scheduled activities and subject to no less than ten (10) days advance written request to the COUNTY's Director of the Park and Recreation Department. COUNTY's Director of the Park and Recreation Department shall not unreasonably withhold consent.

d. As consideration for the Crandon Park Amendment Committee allowing the ballfield lights to conditionally remain at Crandon Park for up to eight years from 2005, the VILLAGE will pay to the COUNTY the actual cost for the COUNTY to complete the CMT Improvements, inclusive of COUNTY design, permitting, bidding, project management, construction supervision and project close out, which actual cost is currently estimated to be approximately $258,000.00. However, in no event shall the VILLAGE's financial

responsibility for the CMT improvements exceed $300,000 or be less than $250,000. Should the actual construction cost be less than $250,000, such funds remaining after completion of the CMT Improvements will be used by the COUNTY to make mutually agreed upon improvements to Crandon Park, consistent with the Crandon Park Master Plan, as amended.

e. VILLAGE will designate a Village Park Manager to coordinate with a COUNTY designee for all scheduling and other issues related to usage by either party of the areas identified in Exhibit "A". Said Park Manager shall be responsible for emergency response to all Calusa Mangrove Trail incidents. In accordance with COUNTY incident reporting procedures, the Park Manager must report all emergencies to the COUNTY designee located at Crandon Park within 24 hours of the incident.

f. VILLAGE will meet annually with the COUNTY to jointly coordinate a schedule for the year which may include all events, activities, programs and exclusive use periods known at that time.

g. VILLAGE shall be responsible for providing landscape maintenance and facility maintenance services to the CMT in accordance with the requirements of the standards of the Crandon Park Master Plan and the Landscaping Maintenance Services plan, a copy of which is attached hereto and made a part hereof as Exhibit 2 (the "Landscape Maintenance Services Plan"). For purposes of this Agreement, the term "landscape" or "landscaping," shall mean living plant materials and non-living durable materials commonly used in environmental landscape design such as, but not limited to, curbing, rocks, pebbles, sand, paving, decorative pavers, pump systems, grading and irrigation systems The maintenance of any and all such landscaping within the CMT shall comply with applicable requirements of the County's Code of Ordinances, and, if changed from Exhibit 2 at the request of the VILLAGE, shall be approved, in writing, by the County's Director of the Parks and Recreation Department or his/her designee, and said approval shall not be unreasonably be withheld or delayed.

3. COUNTY agrees to the following:

a. COUNTY will complete, at the sole cost of the VILLAGE, the CMT Improvements, inclusive of COUNTY design, bidding, project management, construction supervision and project close out by May 31, 2012. The VILLAGE has agreed to permit the improvements at no cost to the COUNTY.

b. COUNTY shall designate a County Park Manager to coordinate with VILLAGE Park Manager for all scheduling and other issues related to usage by either party of the areas identified in Exhibit "A".

c. The COUNTY will meet annually with VILLAGE to jointly coordinate a schedule for the year which may include all events, activities, programs and exclusive use periods known at that time.

4. **COUNTY and VILLAGE agree to the following:**

a. VILLAGE shall be responsible to secure and lock any storage room/s when not in use and unlock the restrooms at sunrise and lock the restrooms at sunset.

b. VILLAGE will not park any VILLAGE vehicles overnight or store any property on any part of CMT as defined by Exhibit "A", except for poles, nets and other shelter equipment used on the multi-purpose courts. This equipment will be stored in the storage room of the shelter.

c. VILLAGE shall separately meter (or cause to be metered) and pay for all utilities used within area identified in Exhibit "A at its sole cost and expense. All utility modifications and payments shall commence at the execution of this Agreement.

d. VILLAGE shall maintain and use CMT as a public park and shall use, maintain and keep CMT open, along with all improvements contained therein, for the use, enjoyment and recreation of all members of the public, whether or not such users are VILLAGE residents.

e. VILLAGE shall not discriminate against non-VILLAGE residents in program registration, in pricing, in registration or reservation priorities or in any other policies as they relate to the use and operation of CMT.

f. VILLAGE shall refer to CMT in all publications, notices and program registrations as "Calusa Mangrove Trail in Crandon Park".

g. VILLAGE will comply with all applicable County Ordinances and, specifically, Article 7 of the County Charter, the Crandon Park Master Plan and Chapter 26 of the County Code of Ordinances relating to Parks, including the Shannon Melendi Act.

h. VILLAGE agrees that, in accordance with the Crandon Park Master Plan, all advertising, merchandising or promotion of any product, service or organization whatsoever (either express or implied) shall be prohibited on, over or within CMT, including but not limited to advertising associated with graphic panels, signs, billboards, bus benches, bus shelters, banners, audio or video devices, balloons, temporary graphic displays or similar devices. No activity, feature or building shall be advertised or promoted on the Crandon Park lands by a sign, flag or banner or any other means.

i. VILLAGE and COUNTY, in accordance with the Crandon Park Master Plan, shall ensure that all users, vendors, permittees, lessees, promoters, concessionaires or other purveyors of goods or services upon CMT pay the VILLAGE and/or COUNTY, as applicable, a fee which is the greater of a flat fee or a minimum of 10% of all gross revenue generated by the permittee, lessee, promoter, concessionaires or other purveyor from any activities occurring on the CMT for which a price, charge, trade, barter or fee is

imposed. Such funds shall be devoted to implementing the Crandon Park Master Plan and maintaining the CMT. VILLAGE shall separately document and account for its receipt of any such funds and the use of such funds solely within the CMT.

4. Term

a. The term of the Agreement shall be ten (10) years, commencing upon execution of this Agreement by the VILLAGE and COUNTY.

b. VILLAGE may request, in writing, no earlier than one-hundred and eighty (180) days in advance of the applicable expiration date, the renewal of this Interlocal Joint Use Agreement for up to three (3) additional ten-year option terms, which may be approved at the sole discretion of the COUNTY.

6. Payment

a. VILLAGE will pay to the COUNTY, in an amount not to exceed $300,000, the total cost to the COUNTY for the COUNTY to complete the CMT Improvements, inclusive of COUNTY design, bidding, project management, construction supervision and project close out. Payment from the VILLAGE shall be provided by check to the COUNTY in two installments: $100,000 within ten (10) days of approval of the Agreement by the Board of County Commissioners and the balance within thirty (30) days of the VILLAGE being notified by the COUNTY of final completion of the CMT Improvements.

b. As previously stated herein, VILLAGE will assume the costs to maintain existing and proposed landscape and facilities during the term of the Agreement.

c. Further, VILLAGE shall provide evidence of such funding to the County Mayor or designee in a VILLAGE resolution authorizing the VILLAGE to enter into an Agreement expressly for such purposes, prior to the execution of this Agreement.

7. Additional Improvements

a. VILLAGE may, upon prior notification to and the written approval of the County's Director of the Parks and Recreation Department, install or construct within the Parks, at its expense, additional landscaping materials or hardscape, including but not limited to benches and trash receptacles, all of which require compliance with the Crandon Park Master Plan, as amended. The location of said landscaping or hardscaping shall be approved by the COUNTY's Parks and Recreation Director or his or her designee prior to installation. Any such requests by the VILLAGE shall not be unreasonably withheld or delayed. If any such additional improvements are installed, the VILLAGE agrees to maintain the same, at its sole cost and expense, in accordance with the terms of this Agreement.

b. COUNTY may, upon prior notification to and the written approval of the VILLAGE, install or construct within the CMT portion of the Park, at its sole cost and expense, additional landscaping materials or hardscape, including but not limited to, benches and trash receptacles. The location of said landscaping or hardscaping shall be approved by the VILLAGE prior to installation. Any such requests by the COUNTY shall not be unreasonably withheld or delayed. If any such additional improvements are installed pursuant to this provision, the VILLAGE shall be responsible to maintain the same in accordance with the terms of this Agreement.

8. Construction of Additional Improvements

a. Prior to the commencement of any additional construction by the VILLAGE with a cost of $200,000 or more, the VILLAGE or its contractor shall furnish the COUNTY with a Section 255.05, Florida Statutes, statutory payment and performance bonds, as described herein, approved by the COUNTY, which approval shall not be unreasonably withheld. The bond shall be that of a responsible surety company qualified under the terms of the Agreement, licensed to do business in Florida, in amounts not less than the cost of work, as determined by the COUNTY and shall remain in effect until the entire cost of the VILLAGE's work shall have been paid in full. The bonds shall provide the following, without limitation:

1) That a payment bond in an amount not less than the cost of construction of VILLAGE's work is obtained that is conditioned to secure the completion of VILLAGE's work free from all liens and claims of contractors, subcontractors, mechanics, laborers and material; and

2) That a performance bond in an amount not less than the cost of construction of VILLAGE's work is obtained that insures that the construction work shall be completed by the VILLAGE, the general contractor or, on their default, the surety.

If the construction work to be performed by the VILLAGE has a construction cost of less than $200,000 and the VILLAGE elects not to obtain a statutory payment and performance bond for such work, then the VILLAGE agrees to perform such work by strictly following the procedures set out in Rule 60D-5.004I(2) of the Florida Administrative Code. In the event that a contractor, subcontractor, materialman, laborer, and/or supplier on a project undertaken by the VILLAGE make a claim or demand against the COUNTY arising from its work on such project, the VILLAGE agrees to defend and indemnify the COUNTY against such claim or demand.

c. Prior to the commencement of construction, the VILLAGE shall cause it's contractor to provide an original policy for Builders Risk/Installation Floater on an "All Risk" basis in an amount not less than the estimated replacement value at the time of completion of new buildings, structures, additions, improvements, alterations, repairs, machinery or equipment. The policy shall

be in the name of Miami-Dade County as primary beneficiary and the Contractor as their interests may appear. This insurance is to be maintained until final completion of the work, as determined by the Park and Recreation Department.

d. All construction work must meet or exceed requirements of applicable building codes in effect. During construction the VILLAGE shall retain all responsibility for securing the construction site. The VILLAGE shall be solely responsible for payment of all project cost and any cost overruns. The VILLAGE shall be solely responsible for overseeing the construction project from permitting through final completion.

e. The VILLAGE agrees to perform the construction work as provided herein, in compliance with all applicable local, State, and Federal laws, including but not limited to Section 255.20 of the Florida Statutes.

9. Indemnification

a. The COUNTY shall indemnify and hold VILLAGE and its officers, employees, agents and instrumentalities harmless the from any and all liability, losses, damages, including attorney's fees and costs of defense, which VILLAGE may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the Agreement by the COUNTY and COUNTY shall defend the VILLAGE, including any and all appellate actions, in any such actions or proceedings whether in the name of the VILLAGE or otherwise. Provided, however, the indemnification contained herein shall only be to the extent and within the limitations of Section 768.28 Florida Statutes, subject to the provisions of the Statute whereby the COUNTY shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of $100,000 ($200,000 for claims arising on or after July 1, 2011), or any claim or judgment or portions thereof, which when totaled with all other claims or judgments paid by the COUNTY arising out of the same incident or occurrence, exceed the sum of $200,000 ($300,000 for claims arising on or after July 1, 2011) from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise solely as a result of the negligence of the COUNTY.

b. The VILLAGE shall indemnify and hold COUNTY and its officers, employees, agents and instrumentalities harmless the from any and all liability, losses, damages, including attorney's fees and costs of defense, which COUNTY may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the Agreement by the VILLAGE and VILLAGE shall defend the COUNTY, including any and all appellate actions, in any such actions or proceedings whether in the name of the COUNTY or otherwise. Provided, however, the indemnification contained herein shall only be to the extent and within the limitations of Section 768.28 Florida Statutes subject to the provisions of the Statute whereby the VILLAGE shall not be held liable to

pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of $100,000 ($200,000 for claims arising on or after July 1, 2011), or any claim or judgment or portions thereof, which when totaled with all other claims or judgments paid by the VILLAGE arising out of the same incident or occurrence, exceed the sum of $200,000 ($300,000 for claims arising on or after July 1, 2011) from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise solely as a result of the negligence of the VILLAGE..

10. Insurance

a. Should VILLAGE hire a contractor to undertake further improvements, the landscape maintenance, facility maintenance or security required pursuant to this Agreement, or contract to undertake programming and events by a contractor, VILLAGE or contractor shall submit to COUNTY copies of its required insurance coverage and specifically provide that COUNTY (defined to mean the county, its officers, agents, employees, volunteers and representatives) as an additional insured or additional named insured with respect to the required coverage and the operations of contractor.

b. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then, in that event, Contractor shall furnish, at least thirty (30) calendar days prior to expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of that period of the contract and extension there under is in effect. VILLAGE and Contractor shall not continue to complete the improvements or perform under the terms of this Agreement unless all required insurance remains in full force and effect.

c. VILLAGE shall require Contractor to procure and maintain at its own expense, and keep in effect during the full term of the Agreement, a policy or policies of insurance which must include the following coverages and minimum limits of liability.

1. Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoreman's and Harbor Worker's Act, the Federal Employers' Liability Act and the Jones Act. Employer's Liability Insurance shall be provided with a minimum of one hundred thousand dollars ($100,000.00) per accident. Contractor shall agree to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.

2. Comprehensive General Liability (occurrence form), with the following minimum limits of liability, with no restrictive endorsements:

$500,000 Combined Single Limit, per occurrence, Bodily Injury & Property Damage Coverage shall specifically include the following

with minimum limits not less than those required for Bodily Injury Liability and Property Damage Liability:

1. Premises and Operations;
2. Independent Contractors;
3. Product and Completed Operations Liability;
4. Broad Form Property Damage; and
5. Broad Form Contractual Coverage applicable to the Agreement and specifically insuring the indemnification and hold harmless agreement provided herein.

3 Automobile Liability Insurance, covering all owned, non-owned, and hired vehicles used in connection with the Lease Agreement in an amount not less than $500,000 combined single limit for bodily injury and property damage.

e. COUNTY does not in any way represent that the types and amounts of insurance required hereunder are sufficient or adequate to protect VILLAGE's or Contractor's interest or liabilities, but are merely minimum requirements established pursuant to this Agreement.

f. Insurance companies selected by the Contractor must be acceptable to COUNTY. All of the policies of insurance required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to the COUNTY and to the VILLAGE.

g. The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with a minimum rating of B+ to A+, in accordance with the latest edition of A.M. Best's Insurance Guide.

h. Any Contractor retained by the VILLAGE to perform work at the subject property shall ensure that any company issuing insurance to cover the requirements contained in this Agreement agrees that they shall have no recourse against the COUNTY for payment or assessments in any form on any policy of insurance.

i. COUNTY shall provide written notice of the occurrence to VILLAGE of any possible insurable claim or event within fifteen (15) working days of COUNTY's actual notice of such a claim or event.

j. Violation of the terms of this Section and its sub-parts shall constitute a breach of the Agreement, and COUNTY, in its sole discretion, may cancel the Agreement, and all rights, title and interest of the VILLAGE in this Agreement shall thereupon cease and terminate, subject to the provisions of Paragraph 11 hereof.

11. Default and Cancellation

a. If the VILLAGE in any manner violates the covenants and conditions of this Agreement for any other reason that would place the VILLAGE in default, and does not correct the violation within thirty (30) days after receiving written notification from the COUNTY, or has not provided the COUNTY with a written response within thirty (30) days after receiving said written notification indicating the status of why the VILLAGE cannot correct the violation within the thirty (30) days, then this Interlocal Joint Use Agreement may, at the option of the COUNTY, and upon ten (10) days additional written notice to VILLAGE, be cancelled forthwith without payment or compensation to VILLAGE.

b. If the COUNTY in any manner violates the covenants and conditions of this Agreement for any other reason that would place the COUNTY in default, and does not correct the violation within thirty (30) days after receiving written notification from the VILLAGE, or has not provided the VILLAGE with a written response within thirty (30) days after receiving said written notification indicating the status of why the COUNTY cannot correct the violation within the thirty (30) days, then this Interlocal Joint Use Agreement may, at the option of the VILLAGE, and upon ten (10) days additional written notice to COUNTY, be cancelled forthwith without payment or compensation to COUNTY.

c. In the event of cancellation of this Agreement as herein provided, the VILLAGE shall remove all of its personal property and discontinue its use of the facilities located within Exhibit "A".

12. Termination

a. COUNTY may terminate this Agreement with or without cause by providing VILLAGE with at least one-hundred eighty (180) days written notice. Upon or prior to the effective date of termination, COUNTY shall thereafter be responsible for all Landscape Maintenance Services within the Parks.

13. Amendments

The County Manager, or his designee, shall be the party designated by the COUNTY, and the Village Manager, or his designee, shall be the party designated by the VILLAGE, to grant or deny all approvals required by this Interlocal Joint Use Agreement, or to terminate this Interlocal Joint Use Agreement.

14. Notices

Except as otherwise provided herein, all notices or other communications which shall or may be given pursuant to this Interlocal Joint Use Agreement shall be in writing and shall be delivered by personal service or by certified mail addressed to the parties at their respective addresses indicated below, or as the same may be changed, in writing, from

time to time. Such notice shall be deemed given on the day on which personally served, or if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

To the VILLAGE: Village Manager
The Village of Key Biscayne
Village of Key Biscayne Village Hall
88 W. McIntyre Street
Key Biscayne, FL 33149

To the COUNTY: County Manager
Stephen P. Clark Center
111 N.W. First Street, 29th Floor
Miami, Florida 33128

With a copy to: Miami-Dade County Park & Recreation Department
Attn: Director
275 N.W. 2nd Street
Miami, Florida 33128

15. Assignment

Neither party shall assign, transfer, sublet or subject this Agreement or its rights, title, or interest thereupon without the other party's prior written approval, to be given in the sole discretion of such party.

16. Governing Law and Venue

The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida, Any claim, objection, or dispute arising out of the terms of this Agreement shall be litigated in the Eleventh Judicial Circuit in and for Miami-Dade COUNTY, Florida.

17. Construction of Agreement

The terms and conditions herein are to be construed with their common meaning to effectuate the intent of this Agreement. All words used in the singular form shall extend to and include the plural and all words in the plural form shall extend to and include the singular. All words in any gender shall extend to and include all genders.

18. Entire Agreement, No Oral Modification

This Agreement represents the entire and integrated agreement between COUNTY and VILLAGE, and supersedes all prior negotiations, representations or agreements, either written or verbal. This Agreement may only be amended by written instruments signed by both COUNTY and VILLAGE and may include other services only if directly related to the intent and scope of this Agreement. The failure of a party to insist on strict

performance of any terms of this Agreement shall not be construed as a waiver and relinquishment for the future of any term, condition or election but the same shall remain in full force and effect.

19. Severability

In the event any paragraph, clause or sentence of this Interlocal Joint Use Agreement or any future amendment is declared invalid by a court of competent jurisdiction, such paragraph, clause or sentence shall be stricken from the subject Interlocal Joint Use Agreement and the balance of the Interlocal Joint Use Agreement shall not be affected by the deletion thereof, provided to do so would not render interpretation of the lease provisions ambiguous or a nullity.

20. Recording of Agreement

It is agreed that this Agreement shall be filed with the Clerk of the Circuit Court of Miami-Dade County, as required by Section 163.01(11), Florida Statutes.

21. Effective Date

This Agreement shall become effective upon the execution by the County and the VILLAGE.

IN WITNESS WHEREOF, Miami-Dade County and Village of Key Biscayne, have caused theses presents to be executed in their respective names, by proper officials, the day and year first above written.

Attest:

VILLAGE OF KEY BISCAYNE, FLORIDA, a political subdivision of the State of Florida

By: _____
Village Mayor

STATE OF FLORIDA }
COUNTY OF MIAMI-DADE }

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, who is personally known and who being duly sworn, deposes and says that the aforementioned is true and correct to his or her best knowledge.

[SEAL]_____

Notary Public: _____
Commission:

Attest:

MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida

By: _____
County Mayor

STATE OF FLORIDA }
COUNTY OF MIAMI-DADE }

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, respectively, of the Miami-Dade County, Florida, who is personally known and who being duly sworn, depose and say that the aforementioned is true and correct to their best knowledge.

[SEAL]_____

Notary Public: _____
Commission:

_____
County Attorney review for
Legal sufficiency

_____
County Clerk

Exhibit 1
Calusa Mangrove Trail
Boundary Sketch

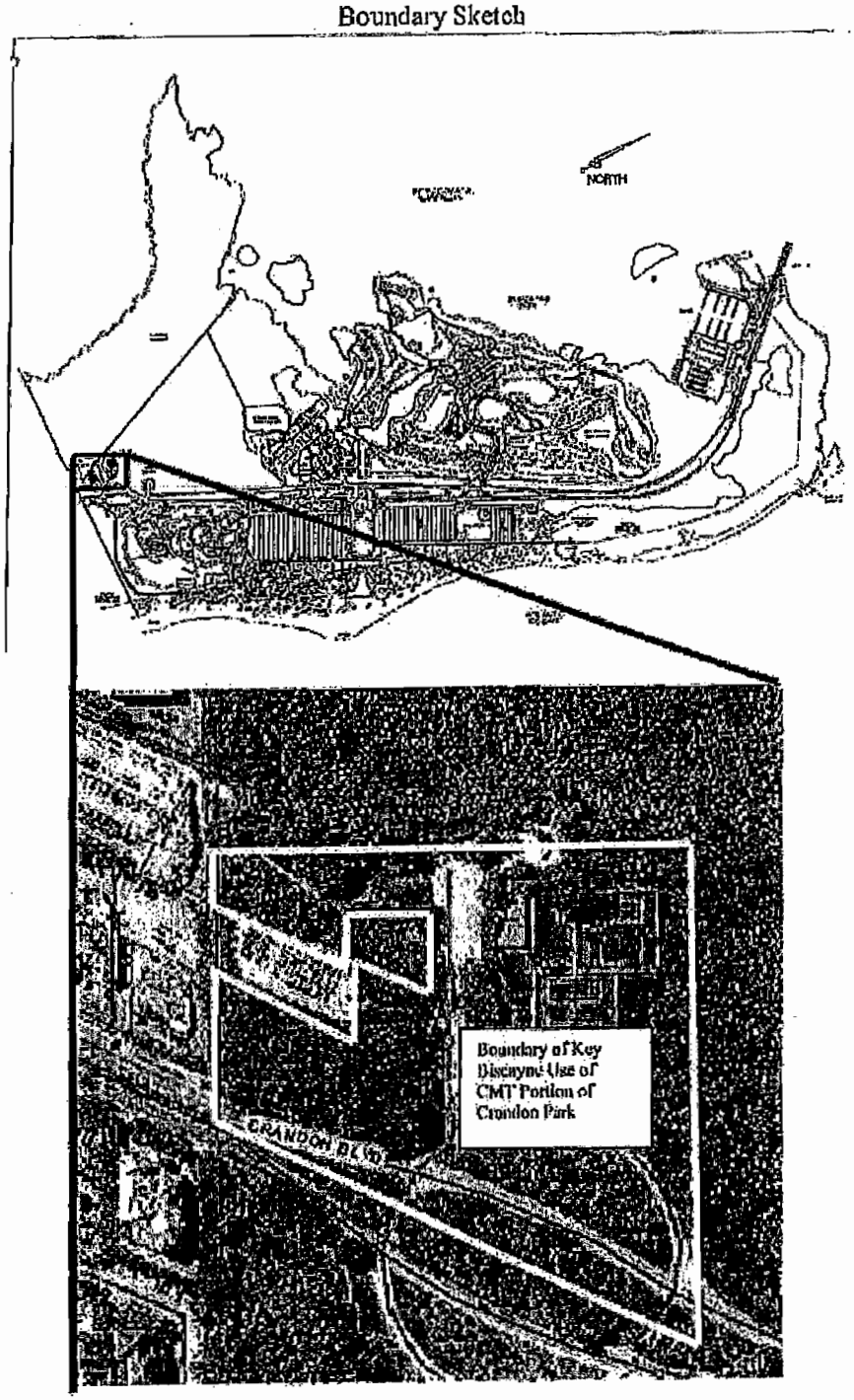

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Exhibit 2
Calusa Mangrove Trail
Required Maintenance

VILLAGE to furnish all expertise, supervision, labor, equipment, material, transportation, and support services necessary to perform Landscaping Maintenance and Facility Maintenance, at the location(s) listed, at the quality, quantity and frequency specified.

1. **Landscape Maintenance**

Turf Maintenance

To be performed at a minimum of 26 cuts per year depending upon low and high growing season.

Trimming

Grass shall be trimmed 26 times/year during, or as an immediate operation following mowing. Trimming may be accomplished by hand or hand power shear or rotary cutting machines.

Edging

Mechanical edging (vertical trimming) shall be done a minimum of 26 times/year during, or as an immediate operation following mowing of all turf edges is to be used in all areas abutting sidewalks, flush paved surfaces, curbs, drives, patios, etc.

Blowing/Sweeping

Blowing and or sweeping of all sidewalks, flush paved surfaces, curbs, drives, patios, parking lots, etc. shall be done a minimum of 26 times/year during, or as an immediate operation following mowing

Pruning Shrubs and Ground Cover Plants

All planted shrubs, hedges and ground cover plants growing in the work areas shall be pruned to maintain plants in healthy, growing condition and to maintain plant growth within reasonable bounds and to prevent encroachment of passageways, walks, streets, view of signs or in any manner deemed objectionable by the individual Site Manager. Planters shall be trimmed and pruned as necessary to provide a uniform appearance. Mulch shall be applied to a depth of 2" twice a year. All non-planted exotic vegetation shall be removed or at least retained at the size and location as of the date of Agreement execution.

Tree Care

All trees to be maintained at a minimum canopy high of 8' at all walkways, bike path, common areas and areas so designated by the Project Manager.

Weed Control

All landscaped areas within the specified area including shrub and ground cover beds, planters, swales, walkways, and areas covered with gravel, rocks, or wood chips shall be kept free of weeds.

Insect Control

Using an IPM approach, the VILLAGE shall maintain all turf, shrubs, hedges and ground cover plants in a healthy, growing condition free of pest infestations and damage.

Fertilization

The VILLAGE shall fertilize all turf areas, shrubs and ground cover twice a year using a 50% slow release Nitrogen formula with a ratio of Nitrogen, Phosphorus and Potassium of 2/.5/1.

Irrigation

The County shall provide a working irrigation system. The VILLAGE will then maintain the system in working order. The VILLAGE will be required to inspect and repair the system on a monthly basis. All functional irrigation systems will be inspected once a month. Repairs to systems can be provided at an additional cost of parts + labor.

Litter Control

VILLAGE shall be responsible for removing all trash that would be cut or scattered by mowing prior to mowing, including illegal dumping and materials deemed dangerous to public use.

Exotic Plant Control

Pursuant to the County's Park and Recreation Department Natural Area Management Plan recommendations and guidelines, the Village shall manage exotic plan control by maintain existing exotic and invasive plants at levels equal or less than the condition at the time of execution of this Agreement.

2. **Facility Maintenance**

Buildings and Surfaces

The VILLAGE shall paint the buildings and structures a minimum of every 5 years or at such time as the condition of the paint warrants application because the appearance or protection of the structures falls below acceptable County standards.

The VILLAGE shall maintain for the length of the agreement, all electrical, plumbing and sewer fixtures and services.

The VILLAGE shall maintain for the length of the agreement, the roofs on all buildings and structures to prevent leaks that may damage interior areas and roof supports.

The VILLAGE shall maintain handicap parking signage/parking spaces and no parking areas. The VILLAGE shall reseal and restripe parking lots a minimum of 1 time every 3 years or when required to maintain the parking area to County acceptable conditions.

The VILLAGE shall resurface the multi-use courts a minimum of every 5 years or when required to maintain the courts to County acceptable conditions.

Cleaning Standards

The VILLAGE agrees to clean the buildings and restrooms a minimum of daily, twice a day on weekends, holidays and during periods of high use (camps).

The VILLAGE agrees to empty trash containers a minimum of daily, twice a day on weekends, holidays and during periods of high use (camps).

The VILLAGE agrees to pick up litter and illegally dumped material from the facility grounds a minimum of daily, twice a day on weekends, holidays and during periods of high use (camps).

The VILLAGE agrees to maintain picnic tables and grills in a safe, working order.

The VILLAGE agrees to replace tables and grills immediately if they become unsafe or unsightly.

The VILLAGE shall pressure wash and clean the exterior of all buildings, structures and court surfaces a minimum of 4 times a year.

Hurricane Protection

The VILLAGE shall follow a COUNTY provided Hurricane preparedness manual for securing the grounds, parking lots, buildings and structures following County issued warnings.

EXHIBIT "B"

RESOLUTION NO 2007-15

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, URGING THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, TO TAKE ACTION TO PERMIT THE RECONFIGURATION OF CALUSA PARK, PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Miami-Dade County is a growing community with residents in need of active recreational fields, including baseball and other multi-purpose playing fields, and

WHEREAS, Miami-Dade County residents could benefit from a reconfigured Calusa Park that would maintain the existing facilities while creating a field for active recreation

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

Section 1 Recitals Adopted The recitals stated above are hereby confirmed and adopted

Section 2 Request The Village Council hereby requests that the Board of County Commissioners approve of a resolution seeking an amendment to the Crandon Park Master Plan which would allow the reconfiguration of Calusa Park

Section 3 The Village Council hereby authorizes the Village Manager to immediately take any and all action necessary and expedient to implement the purpose and intent of this Resolution, including the provision to the County of the specific text of the requested amendment to the Crandon Park Master Plan The Village Manager is also authorized to continue to utilize the services of the Village Attorney and any other professionals who may be able to assist in accomplishing the purposes of this Resolution

Section 4 Effective Date That this Resolution shall be effective immediately from and after adoption hereof

PASSED AND ADOPTED this 10th day of April, 2007

MAYOR ROBERT L VERNON

ATTEST

CONCHITA H ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

VILLAGE ATTORNEY

EXHIBIT "C"

RESOLUTION NO. 2008-44

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, URGING THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, TO TAKE ALL ACTION NECESSARY TO IMPROVE CALUSA PARK IN CRANDON PARK; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, a portion of Miami-Dade County Crandon Park, known as Calusa Park is located within the municipal boundaries of the Village of Key Biscayne; and

WHEREAS, Calusa Park has and continues to provide essential recreational space for the residents of Miami-Dade County and the residents of the Village of Key Biscayne; and

WHEREAS, Calusa Park is underutilized in terms of its space and functionality; and

WHEREAS, the Village of Key Biscayne Village Council has determined that it is in the best interest of all Miami-Dade County residents that the Village plan and participate in the cost of improving Calusa Park in order to maximize its service to the community; and

WHEREAS, any change to Calusa Park must be initiated by Miami-Dade County and approved by a Crandon Park Master Plan Committee.

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

Section 1. **Recitals Adopted.** The recitals stated above is hereby confirmed and adopted.

Section 2. **Request.** The Village Council hereby urges the Board of County Commissioners take all necessary action to amend the Crandon Park Master Plan to allow for the improvement to Calusa Park substantially in accordance with the plan attached hereto as Exhibit "A".

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EXHIBIT "D"

MIAMI-DADE COUNTY

Delivering Excellence Every Day

Park and Recreation Department
Construction & Maintenance Division
11395 SW 79th Street, Miami, FL 33173
T (305) 596-4460 x252 F (305) 271-7030
www.miamidade.gov/parks

Project	Caluso Park Shelter Renovations (for revised plan scope)		63045
Date	3/25/2011		
General Conditions	Description	Unit	Material Cost
1	Sub (pressure clean ceiling, columns, walls and slab, repair rusted rebar and spalling concrete, supply engineered drawings for spalling repairs)	LS	$ 31,000.00
1	Plumbing materials	LS	$ 1,500.00
1	Electrical materials	LS	$ 7,500.00
1	Underground Utility Location	LS	$ 2,000.00
1	Sub (re-roof, add gutter along north side, build up roof to drain north)	LS	$ 75,000.00
		Total Cost	$ 117,000.00

Material Cost

Qty	Category	Description	Unit	Material Cost
15	Aggregate	Sand (50lb)	Ea	$ 480.00
3	Masonry	Stucco mix (50 lb Bag)	Bg	$ 18.00
1	Misc.	Shelter Grill	Ea	$ 2,000.00
180	Misc.	Santana Partitions	SF	$ 9,000.00
1	Plumbing	Wall mount urinal	Ea	$ 300.00
3	Misc.	Steel entry door	Ea	$ 2,250.00
7	Misc.	Picnic table	Ea	$ 3,850.00
18	Masonry	Fibermesh 3000 PSI concrete (Truck)	CY	$ 2,250.00
25	Metals	3/8" diameter, #3 rebar (.38 lb per LF)	LF	$ 7.25
2	Masonry	Expansion Joint	Pkg	$ 20.00
45	Masonry	Sika Poly Expansion Seal (2 LF per tube)	Ea	$ 765.00
20	Masonry	Structural Epoxy-Tie Anchoring Adhesive 22oz. Tube	Ea	$ 600.00
50	Masonry	Concrete Block (8" x 8" x 16")	Ea	$ 150.00
			Total	$ 21,690.25

Equipment Cost

Qty	Days	Description	Total Equip Hours	Equip Cost
1	5	Combination with dump truck and trailer	40	$ 3,000.00
			Total Labor	$ 3,000.00

Labor Cost

Men	Days	Description	Total Labor Hours	Labor Cost
2	45	Carpenter (install santana partitions, stucco repairs, install grill, build/install picnic tables, various restroom repairs, install steel entry doors; frame walkways, pin existing slab, prep for concrete, pour and finish concrete, remove playground equipment, remove forms, final dress and clean up, install ADA ramp)	720	$ 57,600.00
2	8	Plumber (replace floor urinal with wall urinal, add hose bib)	128	$ 10,240.00
2	5	Electrician (new service, revive, connect existing security lighting, reconnect)	80	$ 6,400.00
2	7	Painter (Prepare and paint interior and exterior, paint ADA spaces)	112	$ 8,960.00
1	5	Mason (block in two doors, various stucco repairs)	40	$ 3,200.00
1	7	Operator (grub and compact earth for walkways, demolish and haul away to-lot equipment, dress walkway edges)	56	$ 4,480.00
			Total Labor	$ 90,880.00

Survey	$	1,280.00
Permitting	$	-
Dump Fee	$	1,500.00
Sub-Total	$	117,000.00
Material	$	21,690.25
Equip.	$	3,000.00
Labor	$	90,880.00
Sub-Total	$	235,350.25
Supervision	$	23,535.03
Total	$	258,885.28

Accepted

Estimated By: _____ Date: _____
Construction Supervisor

Accepted By: _____ Date: _____
Construction Manager

Approved By: _____ Date: _____
Project Manager

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Exhibit C

INTERLOCAL
JOINT USE AGREEMENT
FOR
CALUSA MANGROVE TRAIL

This Interlocal Joint Use Agreement ("Agreement") is entered into by and between Miami-Dade County ("COUNTY"), a political subdivision of the State of Florida, and the Village of Key Biscayne, Florida ("VILLAGE"), a Florida municipal corporation, on the_____ day of _____, 2011 pursuant to Resolution _____, passed and adopted by the Miami-Dade Board of County Commissioners on the ___ day of _____, 2011, and pursuant to Resolution No. _____, passed and adopted by the VILLAGE on the __day of _____, 2011, for joint improvement, use and maintenance of a portion of Crandon Park and generally known as the Calusa Mangrove Trail ("CMT"), see Exhibit "1".

WITNESSETH:

WHEREAS, the COUNTY, through its Park and Recreation Department, operates and maintains Crandon Park as a countywide park to provide recreational facilities, programs and services to COUNTY residents; and

WHEREAS, the COUNTY, in the interest of increasing public access to certain parts of Crandon Park, desires to allow the VILLAGE to use certain park facilities in a manner that does not adversely impact natural resources or recreational program accessibility; and

WHEREAS, the COUNTY, pursuant to provisions of the Recreation and Open Space Element of the Comprehensive Development Master Plan (Objective ROS-1C), the COUNTY can provide local recreation open space to municipalities through an Inter-local Agreement; and

WHEREAS, Section 163.01, Florida Statutes, the "Florida Interlocal Cooperation Act of 1969," authorizes local government units to enter into Interlocal agreements for the mutual benefit of said governmental units; and

WHEREAS, Sections 166.021 and 125.01, Florida Statutes, authorize the County and the City to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, any use of the CMT must comply with the Crandon Park Master Plan, as it may be amended, that identifies the CMT area as requiring, among other requirements: 1) the renovation of the existing recreation center into an open-but-roofed shelter; 2) renovation and upgrading the restrooms to comply with current Americans with Disabilities Act of 1990 (42 U.S.C.§§ 12101, et seq), as amended from time to time; and 3) renovation and conversion of the four existing non-lighted tennis courts to multipurpose sport courts, all by May 2012; pursuant to plans submitted by the VILLAGE to the COUNTY, in accordance with the Crandon Park Master Plan, as amended (the "CMT Improvements"); and

NOW, THEREFORE, in consideration of the terms and conditions, promises and covenants hereinafter set forth, the parties agree as follows to jointly utilize that portion of Crandon Park now known as Calusa Mangrove Trail ("CMT") as defined by Exhibit "1" and as further set forth herein.

1. Recitals, Findings and Purpose.

The recitals and findings set forth above are hereby adopted by reference and incorporated herein as if fully set forth in this section.

The purpose of this Agreement is to memorialize the agreement between the parties regarding the joint use, maintenance and improvement of the CMT, as defined and depicted in Exhibit "1" which is incorporated herein by reference, and is not intended and does not serve to create an interest in land of the CMT or any other part of the COUNTY property in Crandon Park.

2. VILLAGE agrees to the following:

a. VILLAGE will, at its own cost and expense, maintain an adequate standard for grounds maintenance, facility maintenance and security for facilities and structures located within the CMT as defined by Exhibit "2";

b. VILLAGE, at its own cost and expense, will provide security for the grounds, facilities and structures to consist, minimally, of Village of Key Biscayne Park and Recreation Department staff surveillance during the day and Village of Key Biscayne Police Department patrol during the evening.

c. The CMT shall be open to the public at large, which shall have access to the grounds, facilities and structures within the CMT, all weekdays and weekends, sunrise to sunset, throughout the year, except as otherwise specifically set forth herein. COUNTY may, on an infrequent basis, reserve exclusive use of the CMT area provided there is no conflict with previously scheduled activities, and subject to no less than ten (10) days advance written request to the VILLAGE Manager. VILLAGE Manager's consent shall not be unreasonably withheld. Likewise, the VILLAGE may, on an infrequent basis, reserve exclusive use of the CMT area, provided there is no conflict with previously scheduled activities and subject to no less than ten (10) days advance written request to the COUNTY's Director of the Park and Recreation Department. COUNTY's Director of the Park and Recreation Department shall not unreasonably withhold consent.

d. As consideration for the Crandon Park Amendment Committee allowing the ballfield lights to conditionally remain at Crandon Park for up to eight years from 2005, the VILLAGE will provide design and permitting and pay to the COUNTY the actual cost for the COUNTY to complete the CMT Improvements, inclusive of COUNTY bidding, project management, construction supervision and project close out, which actual cost is currently estimated to be approximately $258,000.00. However, in no event shall the

VILLAGE's financial responsibility for the CMT improvements exceed $300,000 or be less than $250,000. Should the actual construction cost be less than $250,000, such funds remaining after completion of the CMT Improvements will be used by the COUNTY to make mutually agreed upon improvements to Crandon Park, consistent with the Crandon Park Master Plan, as amended.

e. VILLAGE will designate a Village Park Manager to coordinate with a COUNTY designee for all scheduling and other issues related to usage by either party of the areas identified in Exhibit "A". Said Park Manager shall be responsible for emergency response to all Calusa Mangrove Trail incidents. In accordance with COUNTY incident reporting procedures, the Park Manager must report all emergencies to the COUNTY designee located at Crandon Park within 24 hours of the incident.

f. VILLAGE will meet annually with the COUNTY to jointly coordinate a schedule for the year which may include all events, activities, programs and exclusive use periods known at that time.

g. VILLAGE shall be responsible for providing landscape maintenance and facility maintenance services to the CMT in accordance with the requirements of the standards of the Crandon Park Master Plan and the Landscaping Maintenance Services plan, a copy of which is attached hereto and made a part hereof as Exhibit 2 (the "Landscape Maintenance Services Plan"). For purposes of this Agreement, the term "landscape" or "landscaping," shall mean living plant materials and non-living durable materials commonly used in environmental landscape design such as, but not limited to, curbing, rocks, pebbles, sand, paving, decorative pavers, pump systems, grading and irrigation systems The maintenance of any and all such landscaping within the CMT shall comply with applicable requirements of the County's Code of Ordinances, and, if changed from Exhibit 2 at the request of the VILLAGE, shall be approved, in writing, by the County's Director of the Parks and Recreation Department or his/her designee, and said approval shall not be unreasonably be withheld or delayed.

3. COUNTY agrees to the following:

a. COUNTY will complete, at the sole cost of the VILLAGE, the CMT Improvements, inclusive of COUNTY bidding, project management, construction supervision and project close out by May 31, 2012. The VILLAGE has agreed to design and permit the improvements at no cost to the COUNTY.

b. COUNTY shall designate a County Park Manager to coordinate with VILLAGE Park Manager for all scheduling and other issues related to usage by either party of the areas identified in Exhibit "A".

c. The COUNTY will meet annually with VILLAGE to jointly coordinate a schedule for the year which may include all events, activities, programs and exclusive use periods known at that time.

4. COUNTY and VILLAGE agree to the following:

a. VILLAGE shall be responsible to secure and lock any storage room/s when not in use and unlock the restrooms at sunrise and lock the restrooms at sunset.

b. VILLAGE will not park any VILLAGE vehicles overnight or store any property on any part of CMT as defined by Exhibit "A", except for poles, nets and other shelter equipment used on the multi-purpose courts. This equipment will be stored in the storage room of the shelter.

c. VILLAGE shall separately meter (or cause to be metered) and pay for all utilities used within area identified in Exhibit "A at its sole cost and expense. All utility modifications and payments shall commence at the execution of this Agreement.

d. VILLAGE shall maintain and use CMT as a public park and shall use, maintain and keep CMT open, along with all improvements contained therein, for the use, enjoyment and recreation of all members of the public, whether or not such users are VILLAGE residents.

e. VILLAGE shall not discriminate against non-VILLAGE residents in program registration, in pricing, in registration or reservation priorities or in any other policies as they relate to the use and operation of CMT.

f. VILLAGE shall refer to CMT in all publications, notices and program registrations as "Calusa Mangrove Trail in Crandon Park".

g. VILLAGE will comply with all applicable County Ordinances and, specifically, Article 7 of the County Charter, the Crandon Park Master Plan and Chapter 26 of the County Code of Ordinances relating to Parks, including the Shannon Melendi Act.

h. VILLAGE agrees that, in accordance with the Crandon Park Master Plan, all advertising, merchandising or promotion of any product, service or organization whatsoever (either express or implied) shall be prohibited on, over or within CMT, including but not limited to advertising associated with graphic panels, signs, billboards, bus benches, bus shelters, banners, audio or video devices, balloons, temporary graphic displays or similar devices. No activity, feature or building shall be advertised or promoted on the Crandon Park lands by a sign, flag or banner or any other means.

i. VILLAGE and COUNTY, in accordance with the Crandon Park Master Plan, shall ensure that all users, vendors, permittees, lessees, promoters, concessionaires or other purveyors of goods or services upon CMT pay the VILLAGE and/or COUNTY, as applicable, a fee which is the greater of a flat

fee or a minimum of 10% of all gross revenue generated by the permittee, lessee, promoter, concessionaires or other purveyor from any activities occurring on the CMT for which a price, charge, trade, barter or fee is imposed. Such funds shall be devoted to implementing the Crandon Park Master Plan and maintaining the CMT. VILLAGE shall separately document and account for its receipt of any such funds and the use of such funds solely within the CMT.

4. Term

a. The term of the Agreement shall be ten (10) years, commencing upon execution of this Agreement by the VILLAGE and COUNTY.

b. VILLAGE may request, in writing, no earlier than one-hundred and eighty (180) days in advance of the applicable expiration date, the renewal of this Interlocal Joint Use Agreement for up to three (3) additional ten-year option terms, which may be approved at the sole discretion of the COUNTY.

6. Payment

a. VILLAGE will pay to the COUNTY, in an amount not to exceed $300,000, the total cost to the COUNTY for the COUNTY to complete the CMT Improvements, inclusive of COUNTY bidding, project management, construction supervision and project close out. Payment from the VILLAGE shall be provided by check to the COUNTY in two installments: $100,000 within ten (10) days of approval of the Agreement by the Board of County Commissioners and the balance within thirty (30) days of the VILLAGE being notified by the COUNTY of final completion of the CMT Improvements.

b. As previously stated herein, VILLAGE will assume the costs to maintain existing and proposed landscape and facilities during the term of the Agreement.

c. Further, VILLAGE shall provide evidence of such funding to the County Mayor or designee in a VILLAGE resolution authorizing the VILLAGE to enter into an Agreement expressly for such purposes, prior to the execution of this Agreement.

7. Additional Improvements

a. VILLAGE may, upon prior notification to and the written approval of the County's Director of the Parks and Recreation Department, install or construct within the Parks, at its expense, additional landscaping materials or hardscape, including but not limited to benches and trash receptacles, all of which require compliance with the Crandon Park Master Plan, as amended. The location of said landscaping or hardscaping shall be approved by the COUNTY's Parks and Recreation Director or his or her designee prior to installation. Any such requests by the VILLAGE shall not be unreasonably withheld or delayed. If any such additional improvements are installed, the VILLAGE agrees to

maintain the same, at its sole cost and expense, in accordance with the terms of this Agreement.

b. COUNTY may, upon prior notification to and the written approval of the VILLAGE, install or construct within the CMT portion of the Park, at its sole cost and expense, additional landscaping materials or hardscape, including but not limited to, benches and trash receptacles. The location of said landscaping or hardscaping shall be approved by the VILLAGE prior to installation. Any such requests by the COUNTY shall not be unreasonably withheld or delayed. If any such additional improvements are installed pursuant to this provision, the VILLAGE shall be responsible to maintain the same in accordance with the terms of this Agreement.

8. Construction of Additional Improvements

a. Prior to the commencement of any additional construction by the VILLAGE with a cost of $200,000 or more, the VILLAGE or its contractor shall furnish the COUNTY with a Section 255.05, Florida Statutes, statutory payment and performance bonds, as described herein, approved by the COUNTY, which approval shall not be unreasonably withheld. The bond shall be that of a responsible surety company qualified under the terms of the Agreement, licensed to do business in Florida, in amounts not less than the cost of work, as determined by the COUNTY and shall remain in effect until the entire cost of the VILLAGE's work shall have been paid in full. The bonds shall provide the following, without limitation:

1) That a payment bond in an amount not less than the cost of construction of VILLAGE's work is obtained that is conditioned to secure the completion of VILLAGE's work free from all liens and claims of contractors, subcontractors, mechanics, laborers and material; and

2) That a performance bond in an amount not less than the cost of construction of VILLAGE's work is obtained that insures that the construction work shall be completed by the VILLAGE, the general contractor or, on their default, the surety.

If the construction work to be performed by the VILLAGE has a construction cost of less than $200,000 and the VILLAGE elects not to obtain a statutory payment and performance bond for such work, then the VILLAGE agrees to perform such work by strictly following the procedures set out in Rule 60D-5.0041(2) of the Florida Administrative Code. In the event that a contractor, subcontractor, materialman, laborer, and/or supplier on a project undertaken by the VILLAGE make a claim or demand against the COUNTY arising from its work on such project, the VILLAGE agrees to defend and indemnify the COUNTY against such claim or demand.

c. Prior to the commencement of construction, the VILLAGE shall cause it's contractor to provide an original policy for Builders Risk/Installation Floater

on an "All Risk" basis in an amount not less than the estimated replacement value at the time of completion of new buildings, structures, additions, improvements, alterations, repairs, machinery or equipment. The policy shall be in the name of Miami-Dade County as primary beneficiary and the Contractor as their interests may appear. This insurance is to be maintained until final completion of the work, as determined by the Park and Recreation Department.

d. All construction work must meet or exceed requirements of applicable building codes in effect. During construction the VILLAGE shall retain all responsibility for securing the construction site. The VILLAGE shall be solely responsible for payment of all project cost and any cost overruns. The VILLAGE shall be solely responsible for overseeing the construction project from permitting through final completion.

e. The VILLAGE agrees to perform the construction work as provided herein, in compliance with all applicable local, State, and Federal laws, including but not limited to Section 255.20 of the Florida Statutes.

9. Indemnification

a. The COUNTY shall indemnify and hold VILLAGE and its officers, employees, agents and instrumentalities harmless the from any and all liability, losses, damages, including attorney's fees and costs of defense, which VILLAGE may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the Agreement by the COUNTY and COUNTY shall defend the VILLAGE, including any and all appellate actions, in any such actions or proceedings whether in the name of the VILLAGE or otherwise. Provided, however, the indemnification contained herein shall only be to the extent and within the limitations of Section 768.28 Florida Statutes, subject to the provisions of the Statute whereby the COUNTY shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of $100,000 ($200,000 for claims arising on or after July 1, 2011), or any claim or judgment or portions thereof, which when totaled with all other claims or judgments paid by the COUNTY arising out of the same incident or occurrence, exceed the sum of $200,000 ($300,000 for claims arising on or after July 1, 2011) from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise solely as a result of the negligence of the COUNTY.

b. The VILLAGE shall indemnify and hold COUNTY and its officers, employees, agents and instrumentalities harmless the from any and all liability, losses, damages, including attorney's fees and costs of defense, which COUNTY may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the Agreement by the VILLAGE and VILLAGE shall defend the COUNTY, including any and all appellate actions, in any such actions or proceedings whether in the name of the COUNTY or otherwise.

Provided, however, the indemnification contained herein shall only be to the extent and within the limitations of Section 768.28 Florida Statutes subject to the provisions of the Statute whereby the VILLAGE shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of $100,000 ($200,000 for claims arising on or after July 1, 2011), or any claim or judgment or portions thereof, which when totaled with all other claims or judgments paid by the VILLAGE arising out of the same incident or occurrence, exceed the sum of $200,000 ($300,000 for claims arising on or after July 1, 2011) from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise solely as a result of the negligence of the VILLAGE..

10. Insurance

a. Should VILLAGE hire a contractor to undertake further improvements, the landscape maintenance, facility maintenance or security required pursuant to this Agreement, or contract to undertake programming and events by a contractor, VILLAGE or contractor shall submit to COUNTY copies of its required insurance coverage and specifically provide that COUNTY (defined to mean the county, its officers, agents, employees, volunteers and representatives) as an additional insured or additional named insured with respect to the required coverage and the operations of contractor.

b. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then, in that event, Contractor shall furnish, at least thirty (30) calendar days prior to expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of that period of the contract and extension there under is in effect. VILLAGE and Contractor shall not continue to complete the improvements or perform under the terms of this Agreement unless all required insurance remains in full force and effect.

c. VILLAGE shall require Contractor to procure and maintain at its own expense, and keep in effect during the full term of the Agreement, a policy or policies of insurance which must include the following coverages and minimum limits of liability.

    1. Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoreman's and Harbor Worker's Act, the Federal Employers' Liability Act and the Jones Act. Employer's Liability Insurance shall be provided with a minimum of one hundred thousand dollars ($100,000.00) per accident. Contractor shall agree to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.

    2. Comprehensive General Liability (occurrence form), with the following minimum limits of liability, with no restrictive endorsements:

IN WITNESS WHEREOF, Miami-Dade County and Village of Key Biscayne, have caused theses presents to be executed in their respective names, by proper officials, the day and year first above written.

Attest:

VILLAGE OF KEY BISCAYNE, FLORIDA, a political subdivision of the State of Florida

By: _____
Village Mayor

STATE OF FLORIDA }
COUNTY OF MIAMI-DADE }

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, who is personally known and who being duly sworn, deposes and says that the aforementioned is true and correct to his or her best knowledge.

[SEAL]_____

Notary Public: _____
Commission:

Attest:

MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida

By: _____
County Mayor

STATE OF FLORIDA }
COUNTY OF MIAMI-DADE }

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, respectively, of the Miami-Dade County, Florida, who is personally known and who being duly sworn, depose and say that the aforementioned is true and correct to their best knowledge.

[SEAL]_____

Notary Public: _____
Commission:

_____
County Attorney review for
Legal sufficiency

_____
County Clerk

Exhibit 1
Calusa Mangrove Trail
Boundary Sketch

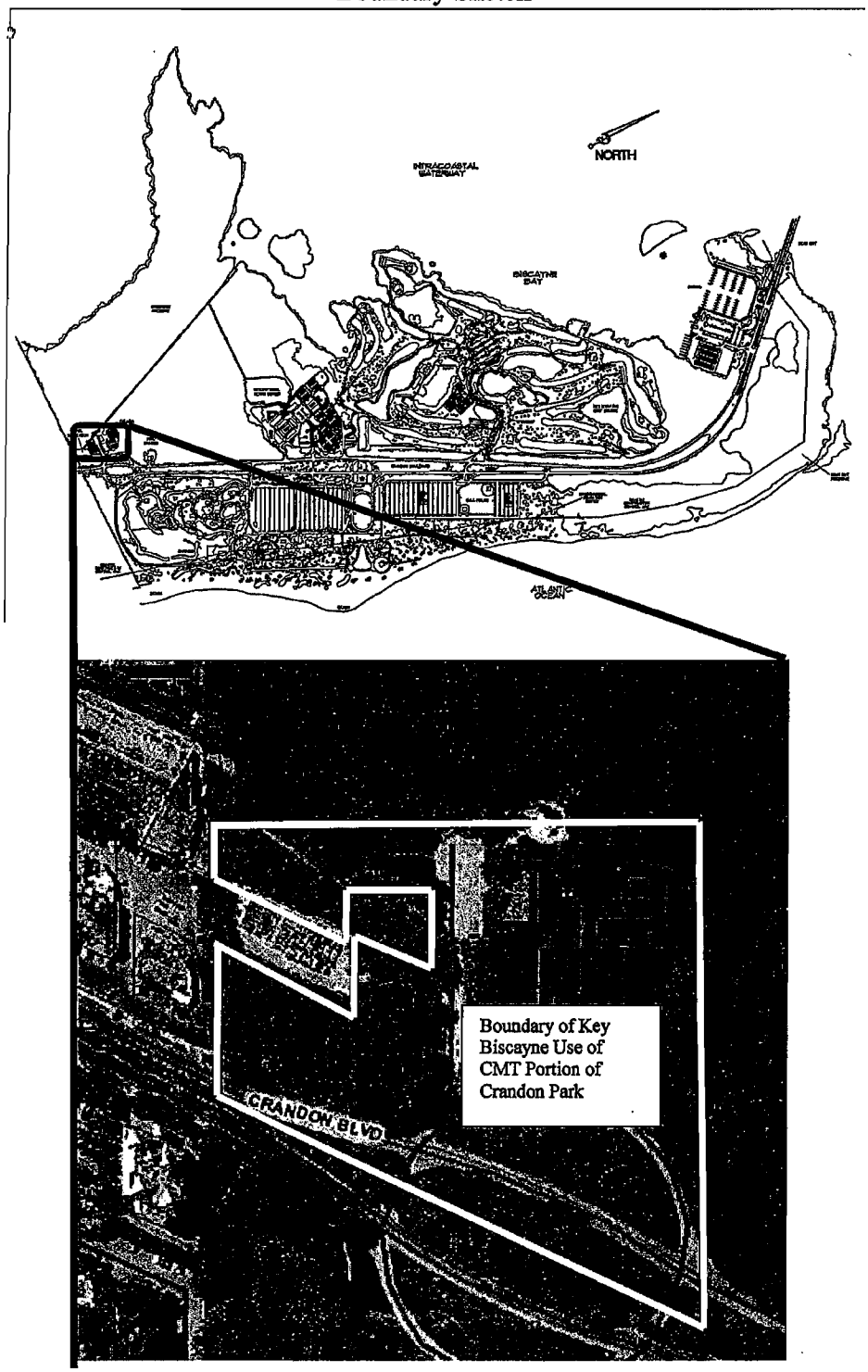

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Exhibit 2
Calusa Mangrove Trail
Required Maintenance

VILLAGE to furnish all expertise, supervision, labor, equipment, material, transportation, and support services necessary to perform Landscaping Maintenance and Facility Maintenance, at the location(s) listed, at the quality, quantity and frequency specified.

1. Landscape Maintenance

Turf Maintenance

To be performed at a minimum of 26 cuts per year depending upon low and high growing season.

Trimming

Grass shall be trimmed 26 times/year during, or as an immediate operation following mowing. Trimming may be accomplished by hand or hand power shear or rotary cutting machines.

Edging

Mechanical edging (vertical trimming) shall be done a minimum of 26 times/year during, or as an immediate operation following mowing of all turf edges is to be used in all areas abutting sidewalks, flush paved surfaces, curbs, drives, patios, etc.

Blowing/Sweeping

Blowing and or sweeping of all sidewalks, flush paved surfaces, curbs, drives, patios, parking lots, etc. shall be done a minimum of 26 times/year during, or as an immediate operation following mowing

Pruning Shrubs and Ground Cover Plants

All planted shrubs, hedges and ground cover plants growing in the work areas shall be pruned to maintain plants in healthy, growing condition and to maintain plant growth within reasonable bounds and to prevent encroachment of passageways, walks, streets, view of signs or in any manner deemed objectionable by the individual Site Manager. Planters shall be trimmed and pruned as necessary to provide a uniform appearance. Mulch shall be applied to a depth of 2" twice a year. All non-planted exotic vegetation shall be removed or at least retained at the size and location as of the date of Agreement execution.

Tree Care

All trees to be maintained at a minimum canopy high of 8' at all walkways, bike path, common areas and areas so designated by the Project Manager.

Weed Control

All landscaped areas within the specified area including shrub and ground cover beds, planters, swales, walkways, and areas covered with gravel, rocks, or wood chips shall be kept free of weeds.

Insect Control

Using an IPM approach, the VILLAGE shall maintain all turf, shrubs, hedges and ground cover plants in a healthy, growing condition free of pest infestations and damage.

Fertilization

The VILLAGE shall fertilize all turf areas, shrubs and ground cover twice a year using a 50% slow release Nitrogen formula with a ratio of Nitrogen, Phosphorus and Potassium of 2/.5/1.

Irrigation

The County shall provide a working irrigation system. The VILLAGE will then maintain the system in working order. The VILLAGE will be required to inspect and repair the system on a monthly basis. All functional irrigation systems will be inspected once a month. Repairs to systems can be provided at an additional cost of parts + labor.

Litter Control

VILLAGE shall be responsible for removing all trash that would be cut or scattered by mowing prior to mowing, including illegal dumping and materials deemed dangerous to public use.

Exotic Plant Control

Pursuant to the County's Park and Recreation Department Natural Area Management Plan recommendations and guidelines, the Village shall manage exotic plan control by maintain existing exotic and invasive plants at levels equal or less than the condition at the time of execution of this Agreement.

2. Facility Maintenance

Buildings and Surfaces

The VILLAGE shall paint the buildings and structures a minimum of every 5 years or at such time as the condition of the paint warrants application because the appearance or protection of the structures falls below acceptable County standards.

The VILLAGE shall maintain for the length of the agreement, all electrical, plumbing and sewer fixtures and services.

The VILLAGE shall maintain for the length of the agreement, the roofs on all buildings and structures to prevent leaks that may damage interior areas and roof supports.

The VILLAGE shall maintain handicap parking signage/parking spaces and no parking areas. The VILLAGE shall reseal and restripe parking lots a minimum of 1 time every 3 years or when required to maintain the parking area to County acceptable conditions.

The VILLAGE shall resurface the multi-use courts a minimum of every 5 years or when required to maintain the courts to County acceptable conditions.

Cleaning Standards

The VILLAGE agrees to clean the buildings and restrooms a minimum of daily, twice a day on weekends, holidays and during periods of high use (camps).

The VILLAGE agrees to empty trash containers a minimum of daily, twice a day on weekends, holidays and during periods of high use (camps).

The VILLAGE agrees to pick up litter and illegally dumped material from the facility grounds a minimum of daily, twice a day on weekends, holidays and during periods of high use (camps).

The VILLAGE agrees to maintain picnic tables and grills in a safe, working order.

The VILLAGE agrees to replace tables and grills immediately if they become unsafe or unsightly.

The VILLAGE shall pressure wash and clean the exterior of all buildings, structures and court surfaces a minimum of 4 times a year.

Hurricane Protection

The VILLAGE shall follow a COUNTY provided Hurricane preparedness manual for securing the grounds, parking lots, buildings and structures following County issued warnings.