

MEMORANDUM

Agenda Item No. 8(O)(1)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: May 2, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving execution of a Master Joint Participation Agreement between Miami-Dade County and the Village of Key Biscayne regarding utility work for Miami-Dade County, which establishes procedures for the performance and reimbursement of the utility work; authorizing the County Mayor to exercise all provisions conferred within the Master Joint Participation Agreement; authorizing the County Mayor to execute individual joint participation agreements with the Village of Key Biscayne as utility work projects are identified; and authorizing the County Mayor to exercise all provisions conferred within any individual joint participation agreements that are executed

Resolution No. R-415-23

The accompanying resolution was prepared by the Water and Sewer Department and placed on the agenda at the request of Prime Sponsor Commissioner Raquel A. Regalado.



Geri Bonzon-Keenan
County Attorney

GBK/ks

MDC001

Memorandum



Date: May 2, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Subject: Resolution Approving a Master Joint Participation Agreement Establishing Procedures for the Performance and Reimbursement of Utility Work Between the Village of Key Biscayne and Miami-Dade County and Authorizing Individual Joint Participation Agreements with the City on a Project by Project Basis

EXECUTIVE SUMMARY

This item seeks authorization from the Board of County Commissioners (“Board”) to allow the County Mayor or County Mayor’s designee to execute a Master Joint Participation Agreement (“Master JPA”) with the Village of Key Biscayne (the “Village”) to allow the Village to perform water and sewer improvements while implementing the Village’s capital program, which includes, among other things, extensive road paving, road raising and drainage projects that overlap with programmed water and sewer projects. The JPA is attached hereto as Exhibit 1.

The Master JPA will significantly benefit the County and the Village by reducing the impact on the community, leveraging efficiencies, and reducing waste on collaborative projects.

RECOMMENDATION

It is recommended that the Board approve the attached resolution authorizing the execution of the Master JPA, which establishes procedures for the performance and reimbursement of utility work between the Village and the County, through its Miami-Dade Water and Sewer Department (WASD). It also authorizes the parties to enter into future individual Joint Participation Agreements on a project-by-project basis in substantially the same form attached to the Master JPA as Exhibit A.

SCOPE

The utility work to be performed will take place inside the limits of the Village, which is located in District 7, represented by Commissioner Raquel A. Regalado.

FISCAL IMPACT / FUNDING SOURCE:

Because the County owns the water and wastewater system and related appurtenances within the Village, the County will provide the funding for each of the specific projects of the utility work proposed. Individual Joint Participation Agreements will be executed for each project as they are identified. The individual Joint Participation Agreements will list the appropriate funding sources depending on the type of project. Possible funding sources include:

Water Distribution

Water Renewal and Replacement

Sewer Collection

Wastewater Renewal and Replacement

Water Revenue Bonds Sold
Water Connection Charges
Future Revenue Bonds

Wastewater Revenue Bonds Sold
Wastewater Connection Charges
General Obligation Bonds
Future Revenue Bonds

TRACK RECORD/MONITOR:

WASD's Assistant Director, Engineering and Construction, Nelson Perez-Jacome, P.E., will oversee the implementation of the Master JPA and the associated individual Joint Participation Agreements.

DELEGATION OF AUTHORITY

This item authorizes the County Mayor or County Mayor's designee to: (1) execute the Master JPA and any corresponding individual Joint Participation Agreements, and (2) exercise any and all rights conferred therein.

BACKGROUND:

As part of its capital improvements program, the Village will be undertaking extensive work within the public right-of-way (i.e., road paving, road raising, and drainage projects). The Village's projects will overlap with programmed water and sewer projects within the area. Executing these projects simultaneously through the Master JPA and, as needed, individual project-specific Joint Participation Agreements will significantly benefit the County, the Village, and the residents of the Village by accomplishing the work collaboratively, leveraging efficiencies and reducing waste and inconvenience.

The Master JPA provides the procedures for the performance and reimbursement of the relocation, replacement, or removal of water and sewer facilities owned by the County installed within the Village limits when the Village engages in future roadway/resurfacing work or other improvements that necessitate utility work collaboration and information. The utility work, which includes design and construction, will be authorized through individual Joint Participation Agreements, as shown in Exhibit A to the Master JPA, on a project-by-project basis after the Village and the County have determined that the work is necessary. Each Joint Participation Agreement will contain project-specific terms, conditions, and costs.

Observance of the procedures stipulated in the Master JPA may reduce: 1) the number of project setbacks, 2) project costs, and 3) traffic impacts on the public by improving the coordination efforts between the Village, the County, and the respective contractors performing the needed utility work. Approval of this Master JPA will authorize the County Mayor or County Mayor's designee to execute the individual Joint Participation Agreements on an as-needed basis with no further action from the Board.

The Master JPA will remain in full force for a ten (10)-year period from its effective date; however, it can be terminated at any time by either party with a thirty (30) day written notice.

Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners
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The Village Commission approved this Master Joint Participation Agreement on August 24, 2022,
is Resolution No. 2022-43, which is attached hereto as Exhibit 2.



Jimmy Morales
Chief Operations Officer



MEMORANDUM

(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: May 2, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(O)(1)

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
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(O)(1)
5-2-23

RESOLUTION NO. R-415-23

RESOLUTION APPROVING EXECUTION OF A MASTER JOINT PARTICIPATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE VILLAGE OF KEY BISCAYNE REGARDING UTILITY WORK FOR MIAMI-DADE COUNTY, WHICH ESTABLISHES PROCEDURES FOR THE PERFORMANCE AND REIMBURSEMENT OF THE UTILITY WORK; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL PROVISIONS CONFERRED WITHIN THE MASTER JOINT PARTICIPATION AGREEMENT; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE INDIVIDUAL JOINT PARTICIPATION AGREEMENTS WITH THE VILLAGE OF KEY BISCAYNE AS UTILITY WORK PROJECTS ARE IDENTIFIED; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL PROVISIONS CONFERRED WITHIN ANY INDIVIDUAL JOINT PARTICIPATION AGREEMENTS THAT ARE EXECUTED

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

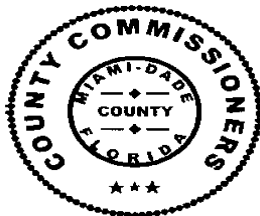
NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the execution of a Master Joint Participation Agreement between Miami-Dade County and the Village of Key Biscayne regarding utility work for Miami-Dade County and authorizes the County Mayor or County Mayor's designee to exercise the provisions conferred within the Master Joint Participation Agreement. The Master Joint Participation Agreement establishes the procedures for the performance and reimbursement of the utility work, including the utility design and construction work to be performed. The Board also authorizes the County Mayor or County Mayor's designee to execute individual joint participation agreements with the Village of Key

Biscayne for the specific utility projects as they are identified, in substantially the form attached hereto and made a part hereof, and to exercise all the provisions conferred therein.

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

Oliver G. Gilbert, III, Chairman	aye	
Anthony Rodríguez, Vice Chairman	aye	
Marleine Bastien	aye	Juan Carlos Bermudez aye
Kevin Marino Cabrera	aye	Sen. René García aye
Roberto J. Gonzalez	aye	Keon Hardemon aye
Danielle Cohen Higgins	aye	Eileen Higgins aye
Kionne L. McGhee	aye	Raquel A. Regalado aye
Micky Steinberg	aye	

The Chairperson thereupon declared this resolution duly passed and adopted this 2nd day of May, 2023. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.



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

LUIS L. MONTALDO, CLERK

By: **Basia Pruna**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

SED

Sarah E. Davis

EXHIBIT 1

INTERLOCAL MASTER AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE VILLAGE OF KEY BISCAIYNE TO PROVIDE UTILITY WORK FOR MIAMI-DADE COUNTY

THIS AGREEMENT is entered into this _____ day of _____, 202_ (the "Effective Date"), by and between Miami-Dade County, a political subdivision of the State of Florida (the "COUNTY"), and the Village of Key Biscayne, a municipal corporation organized and existing under the laws of the State of Florida (the "VILLAGE").

WITNESSTH:

WHEREAS, the COUNTY owns or may, in the future, own certain water and wastewater facilities, including but not limited to, gravity sewer pipes, pump stations, reclaimed water pipes, valves and valve covers, manholes and access covers, water pipes, sanitary sewage pipes, meters, hydrants, and all appurtenances thereto, which are or may, in the future, be located in the VILLAGE's public roads or lands (the "FACILITIES"); and

WHEREAS, the Miami-Dade Water & Sewer Department ("WASD") operates the COUNTY's water and sanitary wastewater system; and

WHEREAS, the VILLAGE will be engaging in a Village-wide project to improve resiliency throughout the island, which will include, among other things, roadway and stormwater system improvements as well as installation of various underground utilities (hereinafter referred to as either the "Project" or the "Projects"); and

WHEREAS, the VILLAGE and the COUNTY may propose Projects that necessitate the installation, relocation (vertically and/or horizontally), replacement, adjustment or removal of the Facilities or some combination thereof (hereinafter referred to as "Utility Work"); and

WHEREAS, the VILLAGE and the COUNTY desire to minimize delays, costs, and impact to the public, which may result from lack of coordination and communication between or among them and their respective contractors performing the Project and/or the Utility Work; and

WHEREAS, the VILLAGE and the COUNTY desire to enter into a master agreement that establishes the procedure for the performance and reimbursement of the Utility Work, including the utility design work to be performed and the utility construction work to be carried out (the "Interlocal Master Agreement"); and

WHEREAS, the purpose of this Interlocal Master Agreement and the individual joint participation agreements (hereinafter, "JPA") is to perform the Utility Work with the Project in an efficient, coordinated, economical and expeditious manner,

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the VILLAGE and the COUNTY hereby agree as follows:

1. Within 12 months of the Effective Date of this Agreement, the VILLAGE will provide to the COUNTY a list of Projects that it intends to begin engineering design for in the next two years. This list of Projects will include anything involving roadway or subsurface work as well as Projects involving landscaping, resurfacing, drainage and lighting. The list of Projects will include the scope of work and schedule/timing for each Project. Such list may be amended after the exchange, but it is the intent of the VILLAGE to give the COUNTY advance notice of anticipated Projects with sufficient lead time for planning and funding purposes. Within sixty (60) days of the exchange of the list of Projects, the COUNTY will review and identify the Projects from the VILLAGE's list that are potential candidates for proposed WASD infrastructure improvements within the limits of any Project. Additionally, at this time, the COUNTY will notify the VILLAGE of any projects on the VILLAGE's list that do not correspond with projects that WASD has placed on its Capital Improvements Plan and, therefore, will constitute Utility Work that is being taken out of order for WASD.
2. In the event the VILLAGE and the COUNTY determine and agree that Utility Work may be necessary for any Project, a Joint Participation Agreement ("JPA"), in substantially the same form as the JPA attached hereto as Exhibit A, will be executed by the VILLAGE and the COUNTY. A JPA will be entered into for design work, if applicable, and a separate JPA will be entered into for construction work, if applicable. Each JPA will specify the Project-specific terms, conditions and costs associated with the design and/or construction of all Utility Work for each Project.
3. Utility Coordination and Identifying/Implementing Projects

For any Project where the VILLAGE or COUNTY determines that Utility Work may be necessary, the following procedure will be utilized (although the VILLAGE and the COUNTY may mutually agree to combine or eliminate any portion of the procedure that may not be applicable to a specific Project) for purposes of implementing a JPA:

 - a. Identifying Projects/Utility Coordination
 - (1) Upon receipt of the list of Projects from the VILLAGE, WASD will have sixty (60) days to advise the VILLAGE of its possible interest in entering into a JPA for the Utility Work necessary for the Projects identified. In the event that the VILLAGE is able to undertake additional Projects due to new funding sources not identified in the fiscal budget, the VILLAGE will notify WASD, and all of the above terms will apply.
 - (2) Upon completion of 30% of the design work for a particular VILLAGE Project, the VILLAGE shall send a written notice to WASD, including the 30% design work (the "Notice") (see Paragraph 10 herein for requirements of notices), which will set forth the scope and timeline of the particular VILLAGE Project.

- (3) WASD shall inform the VILLAGE of its interest in entering into a JPA or not within thirty (30) days of the Notice and submittal of 30% of the design of the VILLAGE's Project by the VILLAGE. To the extent possible at this point in the Project, WASD shall inform the VILLAGE of the preliminary proposed scope for the Utility Work and whether the JPA will be for design and/or construction by the VILLAGE.

b. Mandatory Utility Meeting

- (1) If WASD sends a written response to the VILLAGE's Notice expressing a desire to enter into a JPA for design and/or construction of the Utility Work, the VILLAGE shall propose in writing a time, date and location for a mandatory meeting (the "Meeting Notice") between the representatives of the VILLAGE and WASD who will be managing and/or supervising the Utility Work to discuss the parameters of the Project and implement the process for a mutually beneficial Project (hereinafter, the "Mandatory Utility Meeting"). Within two business days of receipt of the Meeting Notice, WASD will confirm its availability for the Mandatory Utility Meeting at the time, date and location specified on the Meeting Notice or will suggest in writing other possible dates, times or locations for the Mandatory Utility Meeting.
- (2) The VILLAGE's and WASD's representatives will bring any information pertinent to the Project to the Mandatory Utility Meeting, including but not limited to, the VILLAGE's thirty percent (30%) design work for the Project as well as reports and as-built drawings of the existing WASD Facilities.
- (3) At the Mandatory Utility Meeting, the VILLAGE and WASD will discuss and identify the scope of the Utility Work to be done by the VILLAGE, and if applicable, the scope of the Utility Work to be done by WASD. Additionally, the minimum qualifications for the VILLAGE designer and contractor will be discussed, if the VILLAGE is to do the design work for the Utility Work. At the Mandatory Utility Meeting, if the VILLAGE and WASD disagree as to the scope of the Utility Work to be performed by each party and the Mandatory Utility Meeting is adjourned before an agreement can be reached, the VILLAGE and WASD will not move forward with a JPA for the design or construction of the Utility Work. WASD, at its own discretion, will decide whether to proceed with the Utility Work and when it will proceed with such work.
- (4) If a JPA is not entered into at the conclusion of the Mandatory Utility Meeting, the VILLAGE will, nevertheless, execute a Letter of Intent to proceed with the Project. The Letter of Intent will be in substantially the same form as that attached hereto as Exhibit B. The purpose of the Letter of Intent is to ensure that, if WASD moves forward with the design work

required for the Utility Work necessary for the Project and incurs the expenses associated with such design work, the VILLAGE will not discontinue or unreasonably delay the Project and WASD's resources will not be wasted.

- (5) Regardless of whether the VILLAGE or WASD is performing the design work, the Project plans shall be designed in a manner to reduce and minimize any conflicts with WASD Facilities. Where conflicts are identified, the VILLAGE and WASD agree to resolve the conflicts in the most cost-effective manner that is the least disruptive to the general public and is the least costly to the residents of Miami-Dade County.
- (6) Regardless of whether the VILLAGE or WASD is performing the design aspect of the Utility Work, each will fully cooperate with all Right-Of-Way ("ROW") users in the preparation of the design. To the extent a conflict arises in the design process with a ROW user other than WASD or the VILLAGE, the VILLAGE and WASD agree to resolve the conflicts in the manner that is least disruptive to the general public and is the least costly to the residents of Miami-Dade County.

c. VILLAGE to Design Utility Work

- (1) Within two (2) weeks after the Mandatory Utility Meeting, if the parties desire to enter into a JPA for the design work, the VILLAGE will provide a design cost proposal to WASD for the design work to be performed by the VILLAGE for the Utility Work.
- (2) If WASD agrees with the design cost proposal provided by the VILLAGE for the design work, it will provide written confirmation of its agreement with the design cost proposal within ten (10) business days of its receipt of the design cost proposal. In its written confirmation, WASD will also reconfirm its desire to enter into a JPA with the VILLAGE for the design work.
- (3) If WASD does not agree with the design cost proposal provided by the VILLAGE for the design work, it will advise the VILLAGE of its disagreement in writing within five (5) business days of receipt of the proposal and will propose a date, time and location for a second meeting between WASD and the VILLAGE to discuss the design cost proposal for the design work. The second meeting shall take place no later than ten (10) business days from WASD's receipt of the VILLAGE's design cost proposal for the design work. If either WASD or the VILLAGE do not wish to have a second meeting to discuss the VILLAGE's design cost proposal, whichever party declines the second meeting will also make it clear in writing that it no longer wishes to proceed with a JPA for the Utility Work.

- (4) If the VILLAGE's design cost proposal is not acceptable to WASD but the parties conduct a second meeting and reach an agreement as to the design cost proposal, WASD will provide written confirmation of its agreement with the revised design cost proposal and a reconfirmation of its desire to proceed with a JPA for the design work.
- (5) If the parties cannot reach an agreement as to the VILLAGE's design cost proposal, WASD will be responsible for the design work. As set forth in Section 3(d) below, the VILLAGE and COUNTY may enter into a construction JPA where WASD will provide the design work to the VILLAGE for inclusion in the VILLAGE's construction contract documents.
- (6) If the VILLAGE and WASD agree that the VILLAGE will perform the design work based on the design cost proposal or revised design cost proposal, as applicable, the VILLAGE will prepare, execute and forward two originals of the JPA for the Utility Work to WASD for approval. The COUNTY will execute both original JPAs and return a copy to the VILLAGE within ten (10) business days of its receipt of the VILLAGE's executed JPA.
- (7) Once the JPA is executed by WASD, the VILLAGE will submit an invoice to WASD for the design work for a lump sum amount. WASD will pay the invoice within forty-five (45) days of receipt of the invoice. WASD shall have the right to review and audit the VILLAGE's records regarding use of the lump sum payment.
- (8) The VILLAGE shall submit the Utility design materials to WASD for review and approval when the design of the Utility Work is thirty percent (30%) complete, again when the design is sixty percent (60%) complete, and again when the design is ninety percent (90%) complete. In the event WASD finds deficiencies in the design materials, it will notify the VILLAGE of such deficiencies in writing within ten (10) business days after each submittal. The VILLAGE shall have the right to review WASD's comments to ensure that they comply with the VILLAGE's Code. Within thirty (30) days of the VILLAGE's receipt of WASD's notification of deficiencies, the VILLAGE will correct the deficiencies and return the corrected documents for WASD's review and approval.
- (9) When the design is one-hundred percent (100%) complete, the VILLAGE shall provide WASD with a final set of coordinated design documents (the "Plans Package"). The Plans Package shall, at a minimum, include: final accepted engineering design drawings; "dry-run" permit approvals; technical specifications and special provisions; an estimated opinion and

probable construction cost, including contingency and allowance account funds for the construction of the Utility Work; and the minimum contractor qualifications. The Plans Package will also identify any and all activities and work necessary for the Utility Work, including but not limited to, clearing and grubbing; survey work; and a traffic control plan. WASD shall review and provide final acceptance in writing to the VILLAGE of the Plans Package within ten (10) business days.

- (10) If the VILLAGE requests information from WASD's files, WASD shall furnish such information to the VILLAGE within ten (10) business days from the VILLAGE's request. The VILLAGE, however, shall remain solely responsible for the proper preparation of the design materials in accordance with WASD Design and Construction Standards.

d. WASD to Design Utility Work

- (1) After the Mandatory Utility Meeting, if the VILLAGE and WASD agree that WASD will perform the design work, then WASD and the VILLAGE will develop a mutually agreeable timeline and coordinate their utility and roadway design efforts.
- (2) WASD shall submit the Utility design materials to the VILLAGE for review and approval when the design is thirty percent (30%) complete, again when the design is sixty percent (60%) complete, and again when the design is ninety percent (90%) complete. In the event the VILLAGE finds deficiencies in the design materials, it will notify WASD of such deficiencies in writing within ten (10) business days after each submittal. Within thirty (30) days of WASD's receipt of the VILLAGE's notification of deficiencies, WASD will correct the deficiencies and return the corrected documents.
- (3) Ultimately, WASD will submit to the VILLAGE a Plans Package, which shall, at a minimum, include: final accepted engineering design drawings; "dry-run" permit approvals; technical specifications and special provisions; an estimated opinion and probable construction cost, including contingency and allowance account funds for the construction of the Utility Work; and the minimum contractor qualifications. The Plans Package will also identify any and all activities and work necessary for the Utility Work, including but not limited to, clearing and grubbing; survey work; and a traffic control plan. The VILLAGE shall review and provide final acceptance in writing to WASD of the Plans Package within ten (10) business days.
- (4) If WASD requests information from the VILLAGE's files, the VILLAGE shall furnish such information to WASD within ten (10) business days from WASD's request; however, if WASD is to perform the utility design work,

it shall, at all times, remain solely responsible for the proper preparation of the design materials.

e. Construction of Utility Work

- (1) Upon completion of the design work by either the VILLAGE or WASD, and approval of the design work by the party who did not perform the design work, the VILLAGE will incorporate its design plans or WASD's Plans Package into a request for solicitation. WASD will receive a copy of the request for solicitation fifteen (15) business days before it is advertised and will provide its comments regarding such request for solicitation within ten (10) business days. WASD shall provide any and all procurement language required by the County that may need to be included in the VILLAGE's solicitation. This should include any COUNTY code requirements or COUNTY procurement requirements that may be necessary. Language should be included in the VILLAGE's solicitation that notifies the bidders that the Utility Work is being funded by a JPA with WASD and that funding for the Utility Work will be released after satisfactory inspection by WASD. The solicitation shall include a separate bid item for the Utility Work. The VILLAGE shall procure a contract for construction of the Project, including the Utility Work, in accordance with the VILLAGE's legal and statutory requirements.
- (2) Regardless of whether the VILLAGE or WASD will be performing the construction aspect of the Utility Work, the VILLAGE and the COUNTY agree that the Facilities shall, at all times, remain the property of the COUNTY. In addition, regardless of whether the VILLAGE or WASD will be performing the construction aspect of the Utility Work, the VILLAGE agrees to consult with WASD and get WASD's approval of the sequence of construction for the Project(s).
- (3) VILLAGE to Construct Utility Work
 - (i) Before the VILLAGE selects a contractor from the bids received in response to the request for solicitation, WASD shall have an opportunity to review the Utility Work portion of the bids for balance and shall have the right to recommend and/or provide comments/evaluation to the VILLAGE as to which contractor should receive the award.
 - (ii) If the portion of the bid of the contractor selected by the VILLAGE for performance of the Utility Work is within ten (10) percent of the cost estimate provided in the Plans Package and agreed to by the VILLAGE and WASD in advance of the publication of the request for solicitation, the VILLAGE will prepare, execute and forward to

WASD two (2) originals of the JPA for the construction aspect of the Utility Work. WASD will execute the JPA and return a copy to the VILLAGE within ten (10) business days of its receipt of the VILLAGE's executed JPA. If the bid of the contractor selected by the VILLAGE for the performance of the Utility Work is more than ten (10) percent of the cost estimate provided in the Plans Package and agreed to by the VILLAGE and WASD in advance of the publication of the request for solicitation, WASD shall have up to 30 days to work with the VILLAGE and the contractor to try to negotiate the price. If at the conclusion of the 30-day negotiation period, the bid for the Utility Work has not been brought down to an acceptable number to WASD, WASD shall have the right to reject the bid for the Utility Work and take over construction of the Utility Work itself.

- (iii) Immediately upon award of the contract for the construction aspect of the Project, WASD will receive notice of the award from the VILLAGE and will provide the funds to the VILLAGE in accordance with the terms of the executed construction JPA.
- (iv) The VILLAGE's contractor shall begin construction on the Project, including the Utility Work, once a Notice to Proceed has been issued by the VILLAGE.
- (v) The VILLAGE shall obtain all necessary permits and utility adjustments and will coordinate the review of construction documents by the utilities and permitting agencies. The VILLAGE shall obtain all necessary permits for the Project, including the Utility Work, in accordance with applicable state, federal and local laws and ordinances. WASD will use good faith efforts to assist the VILLAGE in expeditiously obtaining all permits from COUNTY departments.
- (vi) WASD shall fully cooperate with the VILLAGE's contractor in all matters relating to the performance of the Utility Work.
- (vii) WASD shall perform all construction inspections, testing and monitoring of the Utility Work to insure that it is properly performed in accordance with the Plans Package or the VILLAGE's designs. When the Utility design work was completed by the VILLAGE, the VILLAGE shall be responsible for reviewing contractor-furnished engineering submittals and will provide its written acceptance of the submittals to WASD for its review and approval. When the Utility design work was completed by WASD, WASD shall be responsible for reviewing contractor-furnished engineering submittals and will

provide its written acceptance of the submittals to the VILLAGE for its review and approval. Except for the inspection, testing, monitoring and reporting to be performed by WASD, the VILLAGE will perform all contract administration for its contract.

- (viii) The VILLAGE's engineer has full authority to supervise the Project. The VILLAGE's engineer shall confer with WASD when any adjustments and/or changes to the Plans Package or the VILLAGE's designs affect the Utility Work portion of the Project. If WASD does not agree with the adjustments/changes proposed by the VILLAGE's engineer, WASD will provide the VILLAGE with an explanation from its engineer based on the WASD Standard Utility Specifications, which Specifications will ultimately control in the event of any disagreements related to adjustments or changes to the Plans Package and are available on the WASD website or by request.
- (ix) Change Orders related to Utility Work are subject to review and approval of WASD prior to any compensation to the Contractor.
- (x) The VILLAGE's Contractor will be required to provide a payment and performance bond in accordance with Florida Statute Section 255.05 that includes the COUNTY as an additional named party on the bond. The VILLAGE's Contractor will also be required to provide a one-year maintenance bond (one-year from the date of completion and final inspection of the work), which bond shall name and benefit the COUNTY directly.

(4) WASD to Construct Utility Work

- (i) If the portion of the bid of the contractor selected by the VILLAGE for performance of the Utility Work exceeds the cost estimate agreed to by the VILLAGE and WASD by more than ten (10) percent, WASD may decline to enter into a JPA with the VILLAGE for the construction aspect of the Utility Work. WASD will notify the VILLAGE that it will not enter into a JPA for the construction work in writing within fourteen (14) days of its receipt of the bid/contractor materials.
- (ii) If WASD elects to perform the construction of the Utility Work, WASD shall proceed with the construction, as set forth in the Plans Package or the VILLAGE's designs, within fourteen (14) days of its notification to the CITY in writing of its choice to forgo the JPA for construction of the Utility Work and its intent to proceed with the work itself.

- (iii) If WASD is to perform the construction, WASD shall be responsible for obtaining all necessary permits and will coordinate the review of construction documents by the utilities and permitting agencies. The VILLAGE will use good faith efforts to assist WASD in expeditiously obtaining all permits from VILLAGE departments.

f. Cost of Utility Work

- (1) The Utility Work will be performed at the sole cost and expense of WASD, unless WASD is entitled to reimbursement or funding for the Utility Work from another source, including but not limited to, the following circumstances (collectively, "Reimbursable Work") :
- when the Project is federal aid eligible, meaning 50% or more of the Utility Work is for existing facilities;
 - when a written agreement incidental to a right-of-way acquisition process requires the VILLAGE to compensate WASD for the costs of any subsequent relocation of the Facilities; or
 - when WASD holds a compensable land interest under Florida condemnation law in the existing location of the Facilities at the time of the Project.
- (2) Failure of WASD to provide documentation for the basis to obtain reimbursement under one of the bulleted scenarios in provision 3(f)(1) above before it makes payment to the VILLAGE shall result in the Utility Work being deemed non-reimbursable.
- (3) WASD shall be responsible for all reasonable and necessary costs of the portion of Utility Work that is WASD's responsibility and all costs associated with any adjustments or changes to the Utility Work that conform to the WASD Standard Utility Specifications and are determined by the VILLAGE's engineer to be necessary, including but not limited to, the cost of changing the Plans Package or the VILLAGE's designs and the increase in the cost of performing the Utility Work, unless such adjustments and changes are necessitated by an error or omission of the VILLAGE; however, WASD shall not be responsible for any costs that exceed ten (10) percent above the probable construction cost, unless such additional costs are a direct result of a change to WASD's Standard Utility Specifications, or a change in scope of work initiated by WASD, after the design was completed or construction has begun. The VILLAGE shall not bear the burden of costs related to unforeseen construction conditions that may arise. After the Contingency/Allowance Fund (which may be used in accordance with the provisions of Paragraph 3(f)(5) below) has been depleted, no additional funds will be available from WASD or the COUNTY for

completion of the Project and the costs for completion of the Utility Work will become the sole responsibility of the VILLAGE and/or its contractor. Additionally, WASD shall not be responsible for the cost of delays caused by such adjustments or changes unless such changes or adjustments are as a result of errors or omissions made by WASD.

- (4) The JPA for the VILLAGE's construction of the Utility Work shall specify the manner and, where applicable, the percentage of payment from the COUNTY. The JPA for the CITY's construction of the Utility Work shall also specify the amounts set aside for Allowance and Contingency accounts.
- (5) Upon final payment by the VILLAGE to its contractor, the VILLAGE will have its final and complete accounting of all costs incurred in connection with the work performed on the Project, including the Utility Work completed. The VILLAGE shall provide the COUNTY with Final Releases from the Contractor. All project cost records and accounts shall be available to WASD for a period of three (3) years after the final close of the Project for purposes of review and audit.
- (6) Within thirty (30) days after the final close-out of the Project, the VILLAGE will notify WASD of the final cost of the Utility Work. In the event the final cost of the Utility Work is less than the total of deposits by WASD in connection with the Project, a refund of the excess will be made by the VILLAGE to WASD within sixty (60) days of the final close-out.

4. Claims Against the Parties Related to Utility Work

- a. In the event the VILLAGE's contractor submits a notice of intent to make a claim against the VILLAGE related to the Utility Work being constructed by WASD, the VILLAGE will notify WASD of the notice of intent to make a claim, and WASD will cooperate with the VILLAGE in analyzing and resolving the claim. In addition, upon notification of the contractor's notice of intent, WASD will keep and maintain daily field reports and records related to the intended claim.
- b. In the event the VILLAGE's contractor submits a notice of intent to make a claim against the VILLAGE related to the Utility Work being constructed by the VILLAGE, the VILLAGE will notify WASD of the notice of intent to make a claim, and WASD will cooperate with the VILLAGE in analyzing and resolving the claim. In addition, upon notification of the contractor's notice of intent, the VILLAGE will keep and maintain daily field reports and records related to the intended claim.
- c. After the VILLAGE and WASD have analyzed all contractor claims, each party will be responsible for paying its respective liability for its portion of any claim as determined by the analysis by the VILLAGE and WASD. However, each party reserves all rights and defenses to any such claims.

5. Compliance with the Law

The VILLAGE and the COUNTY shall each comply with applicable federal, state and local laws, codes, ordinances, rules and regulations in performing their respective duties, responsibilities, and obligations pursuant to this Agreement and with all applicable laws relating to the Project, including the Utility Work. Neither the VILLAGE nor the COUNTY shall unlawfully discriminate in the performance of their respective duties under this Agreement.

Moreover, whenever COUNTY funds are used, the VILLAGE agrees to comply with applicable COUNTY procurement requirements and regulations, including but not limited to, the Community Small Business Enterprise (CSBE) Program, Community Business Enterprise (CBE) Program, the Community Workforce Program (CWP), and the Responsible Wages and Benefits Ordinance (Ordinance No. 90-143). The VILLAGE also agrees to comply with the COUNTY's Ordinance 2-1076 regarding the Inspector General. Specifically, the VILLAGE agrees to abide by the applicable contract measure recommendation(s) established by the Department of Business Development Project Worksheet for the participation of specified business entities and/or trades, and for CWP requirements, as administered by the COUNTY's Department of Small Business Development (SBD). SBD shall have the right to oversee and perform compliance monitoring, including but not limited to, the right to audit and require reports and documentation related to the Miami-Dade County Code.

6. Force Majeure

Neither the COUNTY nor the VILLAGE shall be liable for any consequences caused by force majeure, inevitable accident or occurrence or cause beyond the reasonable control of the COUNTY or the VILLAGE, and such an act shall not constitute a breach of this Agreement on the part of the COUNTY or the VILLAGE. Additionally, neither the COUNTY nor the VILLAGE shall be liable to the other entity, its agents, its inhabitants or its customers for any damage resulting from such act or its consequences. As used herein, force majeure shall mean an act of God, which includes but is not limited to: sudden, unexpected or extraordinary forces of nature, such as floods, washouts, storms, hurricanes, fires, earthquakes, landslides, epidemics, explosions or other forces of nature. Inevitable accidents or occurrences shall mean those which are unpreventable by the COUNTY or the VILLAGE and shall include but not be limited to: strikes; lockouts; other industrial disturbances; wars; blockages; acts of terrorism; insurrections; riots; federal, state county and local governmental restrictions, regulations and restraints; military action; civil disturbances; explosions; and conditions in federal, state, county and local permits.

7. Dispute Resolution

The COUNTY and the VILLAGE shall resolve any disputes, controversies or claims between them arising out of this Agreement in accordance with the "Florida Governmental

Conflict Resolution Act," Chapter 164, Florida Statutes, as amended. This Agreement shall be governed by the laws of the State of Florida. Venue in any proceedings shall be in Miami-Dade County, Florida. Each party will bear its own attorneys' fees and costs.

8. Default

If either the VILLAGE or the COUNTY fails to perform its obligations under this Agreement or any project-specific JPA between the VILLAGE and COUNTY, the non-defaulting party shall be entitled to reimbursement in full of all documented costs it has expended in connection with the Utility Work. Moreover, in accordance with the provisions of Paragraph 7 above, the non-defaulting party may, but is not required to, seek specific performance against the defaulting party. Further, any payments that have been made as of the date of default by the non-defaulting party, including all Contingency/Allowance Funds, deposits, etc., shall be refunded in full.

9. Entire Agreement, Amendments, Joint Preparation, Severability

- a. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein, with the exception of the individual JPAs to be entered into on a Project by Project basis.
- b. No modifications, amendments or alterations in the terms herein shall be effective unless made in writing, approved and signed by all parties hereto.
- c. Additionally, the VILLAGE and the COUNTY acknowledge that this Agreement was prepared jointly, and each party had an opportunity to seek and receive whatever advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. The language agreed to expresses their mutual intent, and, as a matter of judicial construction, the resulting document shall not be construed more severely against one of the parties.
- d. In the event a portion of this Agreement is found to be invalid by a court of competent jurisdiction, the remaining provisions shall continue to be effective unless the VILLAGE or the COUNTY elect to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within ten (10) business days after the finding by the court becomes final.

10. Notice

- a. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, electronic mail, hand delivery or overnight delivery and shall be deemed to have been received by the end of five business days from the proper sending thereof unless proof of prior actual receipt is provided. The parties shall have a continuing obligation to keep one another apprised of the

appropriate persons for notices to be sent to pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

- (1) If to the COUNTY/WASD:
Miami-Dade Water & Sewer Department
Attn: Director
3071 S.W. 38th Avenue, 5th Floor
Miami, FL 33146

With a copy to:
Miami-Dade County
Attn: County Attorney
111 N.W. 1st Street, Suite 2810
Miami, FL 33128

- (2) If to the VILLAGE:
Village of Key Biscayne
Attn: Village Manager
88 West McIntyre Street
Key Biscayne, FL 33149

With copies to:
Village of Key Biscayne
Attn: Village Attorney
2800 Ponce de Leon Boulevard, Suite 1200
Coral Gables, FL 33134

11. Term

This Agreement shall be and remain in full force and effect for a period of ten (10) years from the Effective Date of this Agreement, provided, however, that this Agreement may be terminated at any time. If either party wishes to terminate this Agreement, that party must provide thirty (30) days' notice to the other party. If one of the parties seeks to terminate this Agreement, all projects that have been proceeding pursuant to the terms of this Agreement will survive and be completed in accordance with the Agreement's terms.

12. Miscellaneous

The VILLAGE and the COUNTY agree that time is of the essence in the performance of all obligations under this Agreement.

[SIGNATURES APPEAR ON NEXT PAGE]

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

ATTEST:

HARVEY RUVIN
CLERK OF THE BOARD

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

BY:

Deputy Clerk

BY: _____

County Mayor

Approved by County Attorney
as to form and legal sufficiency

County Attorney

ATTEST:

THE VILLAGE OF KEY BISCAYNE

By:

Joulynn B Koch
Village Clerk

By:

[Signature]
Village Manager

Steven C. Williamson
Printed Name



Approved as to Form
and Legal Sufficiency:

[Signature]
Village Attorney

EXHIBIT A

VILLAGE OF KEY BISCAYNE &

MIAMI-DADE COUNTY JOINT PARTICIPATION AGREEMENT

Village of Key Biscayne Project No. _____

Miami-Dade Water & Sewer Department Project No. _____

Location: _____

Date of Work: _____

THIS AGREEMENT, entered into this _____ day of _____, year of _____, by and between the Village of Key Biscayne (the "VILLAGE") and Miami-Dade County (the "COUNTY"),

WITNESSETH:

WHEREAS, on or about _____, the VILLAGE and the COUNTY entered into an Interlocal Master Agreement, which was approved through VILLAGE Resolution _____ and COUNTY Resolution _____; and

WHEREAS, the Interlocal Master Agreement provides the overall governing terms of the relationship and protocol for the VILLAGE and the COUNTY to follow when they wish to enter into a Joint Participation Agreement ("JPA") in those instances where the VILLAGE intends to engage in a project that involves constructing, reconstructing or otherwise changing or improving a public road (the "Project") and the COUNTY has utility facilities that must be protected, relocated, installed, adjusted or removed within the public road or area that the VILLAGE intends to improve through the Project,

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, and consistent with the terms of the Interlocal Master Agreement, the VILLAGE and COUNTY hereby agree as follows:

1. The VILLAGE shall perform the:

_____ Design

_____ Construction

of the Utility Work to be done by the VILLAGE in connection with its Project located at _____ (approximate address) _____ to be performed in or around _____ (month), _____ (year).

2. _____ As indicated in Paragraph 1 above, the VILLAGE is to perform the design work for the Utility Work. Accordingly, consistent with Paragraph (3)(c)(7), the COUNTY shall pay the VILLAGE a lump sum for the design work within sixty (60) days of the COUNTY's receipt of an invoice from the VILLAGE for the design costs as agreed to base on the design cost proposal provided to the COUNTY by the VILLAGE within two (2) weeks of the Mandatory Utility Meeting.

3. _____ As indicated in Paragraph 1 above, the VILLAGE is to perform the construction of the Utility Work. Based on the cost estimate agreed to by the VILLAGE and the COUNTY in advance of selection of the Contractor, the COUNTY agrees to pay: (a) _____ % of the estimated total cost of the construction portion of the Utility Work for an Allowance account to include the mobilization of equipment for Utility Work, additional maintenance of traffic costs for the Utility Work, (b) _____ % of the estimated total cost of the construction portion of the Utility Work for a Contingency Fund, which fund shall be dedicated to cover changes to the Utility Work during construction, and (c) a prorated share of the administrative costs for the Utility Work, which amount shall be 1% of the total estimated cost of the Utility Work.

4. _____ As indicated in Paragraph 1 above, the VILLAGE is to perform the construction of the Utility Work. Accordingly, consistent with Paragraph (3)(f)(4) of the Interlocal Master Agreement, the COUNTY agrees that payments shall be made to the VILLAGE for the construction work in the following manner or at the following times:

_____ Lump Sum

_____ Percentage at completion of phases of construction based on submission of invoice from the VILLAGE and review by COUNTY, which payments shall be made by the COUNTY within sixty (60) days of receipt of VILLAGE invoice

Initial Payment of _____ % at start of Project

First payment at _____ % of completion

Second payment at _____ % of completion

Third payment at _____ % of completion

Final payment at _____ % of completion

5. _____ As indicated in Paragraph 1 above, the VILLAGE is to perform the construction of the Utility Work and the COUNTY is to pay the VILLAGE for that work in the manner indicated in Paragraph 3; however, for the Utility Work related to this Project, the COUNTY is entitled to reimbursement from _____. The documentation related to the COUNTY's basis for the reimbursement is attached hereto as Exhibit 1.

6. _____ As indicated above, the VILLAGE is to perform the construction of the Utility Work; however, the COUNTY will need to complete connection of the Utility Work to the COUNTY's existing system.

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

County Mayor or Mayor's Designee

Approved by County Attorney
as to form and legal sufficiency

Assistant County Attorney

VILLAGE OF KEY BISCAYNE, a
municipal corporation of the State of Florida.

Village Manager

APPROVED AS TO FORM
CORRECTNESS

Village Attorney

EXHIBIT 2

RESOLUTION NO. 2022-43

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING AN INTERLOCAL MASTER AGREEMENT WITH MIAMI-DADE COUNTY FOR THE COORDINATION OF THE VILLAGE'S RESILIENT INFRASTRUCTURE PROGRAM STRATEGY AND INTEGRATED IMPLEMENTATION PLAN PROJECT AND THE COUNTY'S WATER AND SEWER UTILITY WORK THROUGH INDIVIDUAL JOINT PARTICIPATION AGREEMENTS; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Key Biscayne (the "Village") is currently in the process of implementing the Resilient Infrastructure Program Strategy and Integrated Implementation Plan, which will require the Village to excavate roadways to construct the various resiliency infrastructure upgrades (the "Project "); and

WHEREAS, as a part of the Project, the Miami-Dade County (the "County") Water and Sewer Department has notified the Village that it may propose projects that necessitate the installation, relocation, replacement, adjustment or removal of the County's water and sewer infrastructure facilities within the Village (the "Utility Work"); and

WHEREAS, in order to minimize disruptions to residents and increase efficiencies during construction of the Project and the County's Utility Work, the County and the Village have proposed entering into an interlocal master agreement, attached hereto as Exhibit "A"(the "Interlocal Agreement"), to coordinate the County's Utility Work and the Village's Project through individual joint participation agreements; and

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

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

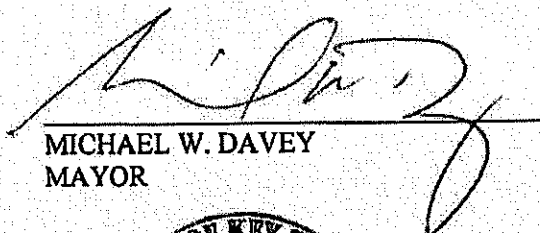
Section 1. Recitals. That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. Approval. That the Village Council approves the Interlocal Agreement with the County in substantially the form attached hereto as Exhibit "A."

Section 3. Authorization. That the Village Manager is hereby authorized to execute the Interlocal Agreement, in substantially the form attached hereto as Exhibit "A," and any required or related agreements, amendments, or documents which are required to implement the purposes of this Resolution and the Interlocal Agreement, subject to the approval of the Village Attorney as to form, content, and legal sufficiency.

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

PASSED and ADOPTED this 24th day of August, 2022.

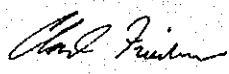

MICHAEL W. DAVEY
MAYOR

ATTEST:


JOCELYN B. KOCH
VILLAGE CLERK



APPROVED AS TO FORM AND LEGAL SUFFICIENCY:


WEISS SEROTA HELFMAN COLE & BIERMANN, P.L.
VILLAGE ATTORNEY