Memorandum

MIAMI-DADE COUNTY

Date: May 7, 2024

Agenda Item No. 8(L)(2)

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

From: Daniella Levine Cava
Mayor

Daniella Levine Cava

Resolution No. R-387-24

Subject: Resolution Approving an Interlocal Agreement between Miami-Dade County and the Village of Key Biscayne to Establish Cost Sharing for the Key Biscayne, Florida Coastal Storm Risk Management Study

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Executive Summary

The purpose of this item is to gain approval of and authorization by the Board of County Commissioners (Board) for the County to execute an Interlocal Agreement (Agreement) between the Village of Key Biscayne (Village) and Miami-Dade County (County) for the Key Biscayne, Florida Coastal Storm Risk Management (CRSM) Study. The Key Biscayne CSRM Study will be conducted by the Army Corps to evaluate Key Biscayne's shoreline erosion and back bay storm surge inundation risk and develop a Tentatively Selected Plan (TSP) for future congressional authorization. The County is to serve as the Non-Federal Local Sponsor (Sponsor) to the Army Corps for the Key Biscayne CSRM Study and has executed a Federal Cost Share Agreement (FCSA), approved by the Board under Resolution No. R-858-23, establishing a 50/50 cost-share percentage between the County, as the Sponsor, and the Army Corps for said study. The proposed Agreement, which is attached as Attachment 1 to the resolution, establishes a 50/50 cost-share percentage, for the Sponsor cost share of the Key Biscayne CSRM Study, between the Village and the County, as Sponsor, for the Key Biscayne CSRM Study. The proposed Agreement has been approved by the Village Council under Resolution No. 2023-55 (attached as Exhibit 1 to this memo).

For more than 45 years, Miami-Dade County as Sponsor has worked in partnership with the Army Corps to implement the Federally authorized Coastal Storm Risk Management Project, which serves as a critical component of our community's resilience. We look forward to continuing this successful partnership, including this feasibility study for the inclusion of the Key Biscayne beach segment in this important resilience effort. A comprehensive approach to regional beach/sediment management and shoreline protection is critical for all Miami-Dade County coastal beachfront communities.

Miami-Dade County faces many conflicting needs with the continued erosion protection of its shoreline, protection from flooding and surge effects on the Bay, and the Everglades restoration; all needs made more critical with the increase in Sea Level Rise forecasted to impact our residents, properties, and businesses in the years to come. This makes our long-standing partnership with the Army Corps much more important.

Recommendation

It is recommended that the Board approve the attached Agreement between the Village and the County. The Agreement between the Village and the County establishes the Village's cost share obligation of 25 percent (equal to 50 percent of the Sponsor cost-share) for the Key Biscayne, Florida CSRM Study.

It is also recommended that the Board authorize the County Mayor or the County Mayor's designee to execute the Agreement and exercise the provisions contained therein; and delegates authority to the County Mayor or County Mayor's designee to increase the time needed to complete the study.

Delegation of Authority

The proposed resolution authorizes the County Mayor or County Mayor's designee to execute the attached Agreement, exercise the provisions contained therein, including receipt of payment under said agreement, and to take all actions to effectuate same.

Furthermore, the proposed resolution delegates authority to the County Mayor or County Mayor's designee to execute amendments for extensions of the time needed to complete the study.

Scope

The Key Biscayne, Florida CSRM Study covers shoreline areas in Commission District 7, which is represented by Commissioner Raquel A. Regalado.

Fiscal Impact/Funding Source

Under the proposed Agreement, The Village will contribute funds towards the County's agreement with the Army Corps, which was previously approved via County Resolution No. R-858-23.

The actual amount to be received by the County from The Village shall be deposited into the County's Capital Budget – Beach - Erosion Mitigation and Renourishment Program 2000000344 for payment to the Army Corps under the conditions of the FCSA.

Track Record/Monitor

The Assistant Director for the Division of Environmental Resources Management (DERM) in the Department of Regulatory and Economic Resources (RER), Lisa Spadafina, will monitor the Key Biscayne, Florida CSRM Study.

Background

Maintaining the County's beaches is critical to protecting our residents and infrastructure from the impacts of erosion and storm surge, and our world-renowned beaches play an important role in supporting our tourism industry. Through long term agreements with the Army Corps, Miami-Dade County serves as the Sponsor for beach re-nourishment activities along 13 miles of coastal beaches extending from Government Cut north through Sunny Isles Beach. These areas are part of a federally authorized shore protection project administered by the Army Corps, with the County serving as the Sponsor. Historically, the Army Corps has required that such activities be cost-shared with the Federal government, and such funding has generally been cost shared among the federal (Army) and non-federal (county & state) partners, however, there have been some beach renourishment activities that have been 100 percent federally funded. The main segment of the federally authorized Dade County Beach Erosion Control and Hurricane Protection Project, encompassing 10.5 miles of Atlantic coastline from Government Cut to Haulover Park, was reauthorized in 2022 for another 50 years.

The Key Biscayne Atlantic shoreline study area was included in the CSRM Feasibility Study for the reauthorization of the main segment as approved under Resolution No. R-1012-18. However, the Army Corps ultimately concluded that a comprehensive Atlantic coast-back bay solution would be necessary to establish a Key Biscayne segment that would be federally authorized in the future. The reauthorization study for the main segment was 100 percent federally funded.

On March 14, 2023, the Army Corps released its Fiscal Year (FY) 2023 work plan which included federal funds for the initiation of the Key Biscayne, Florida CSRM Study. For such study, the Army Corps is requiring a 50 percent cost share by the County, as the Non-Federal Sponsor, and this required cost share is provided for in the FCSA between the Army Corps and the County related to this new Key Biscayne, Florida CSRM Study.

The FCSA provides that the Federal government's 50 percent cost share for the Key Biscayne CRSM Study will not exceed $1.5 million, unless a higher amount is approved by the Federal Government. As such, the County's 50 percent cost share pursuant to the FCSA would initially be $1.5 million. The FCSA, however, allows the Federal government to approve a higher dollar amount for the Key Biscayne CRSM Study without the need for an amendment to the FCSA, and the County would still be responsible for 50 percent of the increased study costs. The Army Corps currently estimates that the total Key Biscayne CRSM Study costs may be $4.2 million, and the County's 50 percent cost share of that amount would be $2.1 million. Higher study estimates from the Army Corps are anticipated.

Under this Agreement, the Village shall contribute 25 percent of the total Key Biscayne CRSM Study costs, which is equivalent to half of the County's financial obligations pursuant to the FCSA between the County and the Army Corps. As such, Article III of the attached Agreement between the Village and the County establishes the Village's initial payment projected to be $750,000.00 or 25 percent of the initial Army Corps study estimate of $3 million. Article IV of the attached Agreement further establishes that the Army Corps study may increase in cost and the Village will continue to cost share 25 percent. Since the Army Corps currently estimates that the total Key Biscayne CRSM Study cost may be at least $4.2 million, the Village cost share shown in the attached resolution is already showing the best estimate available to the County at this time for the Village cost share, i.e. $1.05 million or 25 percent of the current Army Corps estimate of $4.2 million.

The FCSA allows the County to terminate the FCSA upon 30 days written notice to the Army Corps, however, the FCSA provides that any termination or suspension of the FCSA would not relieve the County of liability for any obligation incurred, and the FCSA contemplates that the costs of termination may include costs of resolution of contract claims and resolution of contract modifications.

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Jimmy Morales
Chief Operations Officer

EXHIBIT 1

RESOLUTION NO. 2023-55

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT WITH MIAMI-DADE COUNTY RELATED TO THE KEY BISCAYNE COASTAL STORM RISK MANAGEMENT (CRSM) FEASIBILITY STUDY; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Key Biscayne (the "Village") seeks to evaluate the Village's risk with respect to shoreline erosion and back bay storm surge inundation in order to reduce damages due to coastal flooding; and

WHEREAS, the U.S. Army Corps of Engineers (the "Army Corps") has included the Village in its Fiscal Year 2023 work plan for the Key Biscayne Coastal Storm Risk Management (CRSM) Feasibility Study (the "Study"); and

WHEREAS, the Army Corps has proposed entering into a Federal Cost Share Agreement (the "FCSA") with Miami-Dade County (the "County"), as the local sponsor, which establishes a 50/50 cost-share percentage between the Army Corps and the County for the total cost of the Study; and

WHEREAS, the County has proposed entering into an interlocal agreement with the Village, attached hereto as Exhibit "A" (the "Interlocal Agreement"), which establishes a 50/50 cost-share percentage between the County and the Village for the County's share pursuant to the FCSA; and

WHEREAS, the Village Council desires to approve the Interlocal Agreement relating to the Study and authorize the Village Manager to enter into the Interlocal Agreement with the County, in substantially the form attached hereto as Exhibit "A", for the Village's share; 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," for the Study.

Section 3. **Authorization.** That the Village Manager is hereby authorized to execute the Interlocal Agreement, in substantially the form attached hereto as Exhibit "A," for the Village's share in connection with the Study, 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. The Village Manager is further authorized to pay for the Village's share pursuant to the Interlocal Agreement subject to budgeted funds.

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

PASSED and ADOPTED this 26th day of September, 2023.

JOE I. RASCO
MAYOR

VILLAGE OF KEY BISCAYNE
ISLAND PARADISE
1991
FLORIDA

ATTEST:

Jocelyn B. Koch

JOCELYN B. KOCH
VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

____

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

MEMORANDUM

(Revised)

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

DATE: May 7, 2024

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(L)(2)

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(L)(2)
5-7-24

RESOLUTION NO. R-387-24

RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE VILLAGE OF KEY BISCAYNE RELATED TO THE KEY BISCAYNE, FLORIDA COASTAL STORM RISK MANAGEMENT FEASIBILITY STUDY AND BY WHICH THE VILLAGE WOULD CONTRIBUTE 25 PERCENT OF THE TOTAL STUDY COSTS, WHERE SUCH 25 PERCENT SHARE IS CURRENTLY ESTIMATED TO BE $1,050,000.00; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT, AND EXERCISE THE PROVISIONS, INCLUDING TERMINATION PROVISIONS, AND ALL OTHER RIGHTS CONTAINED THEREIN; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE CERTAIN AMENDMENTS TO THE AGREEMENT

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:

Section 1. This Board approves the Interlocal Agreement (Agreement) between the Village of Key Biscayne and Miami-Dade County, attached hereto as Attachment 1 and made a part hereof, by which the Village would be required to contribute 25 percent of the Key Biscayne, Florida Coastal Storm Risk Management ("CSRM") Feasibility Study costs, where the Village's 25 percent cost share is currently estimated to be $1,050,000.00.

Section 2. This Board authorizes the County Mayor or County Mayor's designee to execute the Agreement, in substantially the form attached as Attachment 1, for and on behalf of Miami-Dade County; to exercise the provisions contained therein, including the termination provisions and all other rights contained therein; to take all actions necessary to effectuate same;

and to execute future amendments to the Agreement, after approval by the County Attorney's Office for legal sufficiency, provided that such amendments are limited to extensions of time to complete the Key Biscayne CSRM Feasibility Study.

The foregoing resolution was offered by Commissioner **Danielle Cohen Higgins** , who moved its adoption. The motion was seconded by Commissioner **Anthony Rodriguez** 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 7th day of May, 2024. 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.

COUNTY COMMISSIONERS MIAMI-DADE COUNTY FLORIDA

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

JUAN FERNANDEZ-BARQUIN, CLERK

By: **Basia Pruna**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

ASR

Abbie Schwaderer-Raurell

ATTACHMENT 1

INTERLOCAL AGREEMENT

between

THE VILLAGE OF KEY BISCAYNE
AND
MIAMI-DADE COUNTY
FOR
COASTAL STORM RISK MANAGEMENT FEASIBILITY STUDY

MIAMI-DADE COUNTY
(305) 375-2531
111 NW 1st STREET, 29th FLOOR
MIAMI, FL 33128

INTERLOCAL AGREEMENT
BETWEEN
THE VILLAGE OF KEY BISCAYNE (VILLAGE)
AND
MIAMI-DADE COUNTY (COUNTY)
FOR THE KEY BISCAYNE, FLORIDA COASTAL STORM RISK MANAGEMENT (CSRM) FEASIBILITY STUDY

THIS INTERLOCAL AGREEMENT, (the "Interlocal Agreement") by and between Miami-Dade County, a political subdivision of the State of Florida (hereinafter the "County" or the "Non-Federal Sponsor"), and the Village of Key Biscayne, a municipal corporation of the State of Florida (the "Village") is entered into as follows:

WITNESSETH

WHEREAS, Public Law 84-71, June 15, 1955 (69 Stat. 132), as modified, authorizes the Secretary of the Army, acting though the Chief of Engineers, to conduct an investigation into coastal storm risk management along the eastern and southern seaboard of the United States with respect to hurricanes; and

WHEREAS, the County has been asked by the Department of the Army (the "Federal Government") to serve as the Non-Federal Sponsor to the Federal Government for the Key Biscayne Coastal Storm Risk Management (CSRM) Feasibility Study; and

WHEREAS, for this Key Biscayne CRSM Feasibility Study, the Federal Government has cost-sharing requirements with which the County, as the Non-Federal Sponsor, would need to comply; and

WHEREAS, before the Federal Government will begin the Key Biscayne CSRM Feasibility Study, the Federal Government will require the County, as Non-Federal Sponsor, to enter into a separate agreement (hereinafter the "Non-Federal Sponsor Agreement")with the Federal Government by which the County would be required to contribute fifty percent (50%) of the study costs for the Key Biscayne CRSM Feasibility Study; and

WHEREAS, the Village is anticipated to benefit from the Key Biscayne CRSM Feasibility Study; and

WHEREAS, it is the intent of the County and the Village to enter into this Interlocal Agreement in order have the Village cost-share the Non-Federal Sponsor contribution for the Key Biscayne CSRM Feasibility Study; and

WHEREAS, the Village wishes to contribute twenty five percent (25%) of the total study costs of the Key Biscayne CRSM Feasibility Study, which is also equivalent to half of what the County will be required to contribute to the Federal Government pursuant to its Non-Federal Sponsor Agreement; and

WHEREAS, pursuant to this Interlocal Agreement between the County and the Village, the Village is agreeing to make such financial contributions, which shall be paid to the County to assist with the County's cost-sharing requirements as Non-Federal Sponsor for the Key Biscayne CRSM Feasibility Study; and

WHEREAS, the County is entering into the Non-Federal Sponsor Agreement with the Federal Government in reliance upon the representations and financial commitments by the Village that are contained in this Interlocal Agreement.

Now, therefore, in consideration of the mutual promises and covenants contained herein and the mutual benefits to be derived from this Interlocal Agreement, the parties hereto agree as follows:

ARTICLE I – DEFINITIONS

A. The term "Interlocal Agreement" shall mean this document, including any written amendments, attachments, and other written documents, which are expressly incorporated by reference.

B. The term "written notice" shall mean written communication between the parties.

C. The term "Study" means the activities and tasks required to identify and evaluate alternatives and the preparation of a decision document that, as appropriate, recommends a coordinated and implementable solution for preventing storm damages primarily due to coastal flooding because of hurricanes and storms from the coastal and back bay areas at Key Biscayne, Miami-Dade County, Florida.

D. The term "study costs" means all costs incurred by the Government and Non-Federal Sponsor after the effective date of the FCSA that are directly related to performance of the Study and cost shared in accordance with the terms of the FCSA. The term includes the Government's costs for preparing the PMP; for plan formulation and evaluation, including costs for economic, engineering, real estate, and environmental analyses; for preparation of a floodplain management plan if undertaken as part of the Study; for preparing and processing the decision document; for supervision and administration; for Agency Technical Review and other review processes required by the Government; and for response to any required Independent External Peer Review; and the County's creditable costs for in-kind contributions, if any. The term does not include any costs for dispute resolution; participation by the Government, the County, and the Village in the Study Coordination Team to discuss significant issues and actions; audits; an Independent External Peer Review panel, if required; or negotiating the FCSA and this Interlocal Agreement.

E. The term "Non-Federal Sponsor" shall mean Miami-Dade County.

F. The term "PMP" means the project management plan, and any modifications thereto, developed by the Government in consultation with the County, that specifies the scope, cost, and schedule for Study activities and tasks, including the County's in-kind contributions, and that guides the performance of the Study.

G. The term "fiscal year" means one year beginning on October 1st and ending on September 30th of the following year.

ARTICLE II – OBLIGATIONS OF THE PARTIES

A. The Village shall be responsible for 25 percent (25%) of the study costs (equal to 50 percent of the Non-Federal Sponsor cost-share), as provided in this Interlocal Agreement, and such funds shall be paid to the County in accordance with the provisions and payment schedule as provided herein.

B. The Village acknowledges and agrees that ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Federal Government per the FCSA.

C. The Village shall not use Federal program funds to meet any of its obligations under this Interlocal Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Study. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

ARTICLE III – INITIAL PAYMENT OF FUNDS BY THE VILLAGE TO THE COUNTY

A. According to the Federal Government, the study costs are currently estimated to be $3 million, with the Federal Government's share of such costs projected to be $1.5 million, the County's share of such costs projected to be $750,000.00, and the Village's share of such costs projected to be $750,000.00. The Village's $750,000.00 share shall be referred to herein as the Village's initial share. The Federal Government has represented that the dollar amounts in this paragraph A are only estimates that are subject to adjustment by the Federal Government and as such, cannot be construed as the total financial responsibilities of the Federal Government, the County, and the Village.

B. Within 15 days of the Effective Date of this Interlocal Agreement, the Village shall pay $12,500.00 to the County. The County will transfer said funds to the Federal Government upon request by the Federal Government.

C. With respect to funds beyond the $12,500 referenced in paragraph B, the Federal Government will advise the County, as the Non-Federal Sponsor, with written notice of the amount of funds required. Pursuant to the County's Non-Federal Sponsor Agreement with the Federal Government, the County would need to provide the full amount of such requested funds to the Federal Government within 15 calendar days of such written notice. It is anticipated that the Federal Government could provide multiple such notices.

D. With respect to the balance of the Village's $750,000.00 initial share, the County shall request payment from the Village, of its twenty-five percent (25%) share, with respect to any requests or notifications for funds from the Federal Government for the Key Biscayne

CRSM Feasibility Study. The total amount requested from the Village for the initial share shall not exceed $750,000. Payment by the Village is to be made as requested in the bill presentation. Failure to pay the agreed-upon costs to the County in accordance with this Agreement shall be deemed default by the Village.

ARTICLE IV – SUBSEQUENT PAYMENTS OF FUNDS BY THE VILLAGE TO THE COUNTY

A. This Article relates to the Village's required cost-share payments to the County, which shall be in addition to the Village's $750,000.00 initial share that is due to the County pursuant to Article III above.

B. The Federal Government projects that the Key Biscayne CRSM Feasibility Study may cost over the initial $3 million, and the Village shall be responsible for twenty-five percent (25%) of the total study costs, as determined by the Federal Government.

C. In the event that the Federal Government determines that more than $3 million is needed in total study costs for the Key Biscayne CRSM Feasibility Study, the Federal Government will advise the County, as the Non-Federal Sponsor, with written notice of the amount of funds required. Pursuant to the County's Non-Federal Sponsor Agreement with the Federal Government, the County would need to provide the full amount of such requested funds to the Federal Government within 15 calendar days of such written notice. It is anticipated that the Federal Government could provide multiple such notices.

D. The County shall provide written notice to the Village of its twenty-five percent (25%) share, with respect to any requests or notifications for funds from the Federal Government for the Key Biscayne CRSM Feasibility Study. The County shall request payment from the Village, of its twenty-five percent (25%) share, with respect to any requests or notifications for funds from the Federal Government for the Key Biscayne CRSM Feasibility Study. Payment by the Village is to be made as requested in the bill presentation. Failure to pay the agreed-upon costs to the County in accordance with this Agreement shall be deemed default by the Village.

E. The County shall provide to the Village the monthly reports generated by the Federal Government setting forth estimated study costs and the Federal Government's and the Non-Federal Sponsor's estimated shares of such costs as defined in the FCSA.

ARTICLE V – TERMINATION

A. Notwithstanding anything herein to the contrary, either party shall have the right to terminate this Interlocal Agreement, by giving written notice of termination to the other party, in the event that the other party is in material breach of this Interlocal Agreement.

B. Termination of this Interlocal Agreement by any Party is not effective until five (5) business days following receipt of the written notice of termination.

C. In the event of termination of this Interlocal Agreement, the Village shall be responsible for 50 percent (50%) of any remaining payments due by the County to the Federal Government for any work or costs or obligation incurred through the date such termination is effective. The County shall invoice the Village pursuant to Article IV. The requirements of this paragraph shall survive termination of this Interlocal Agreement.

ARTICLE VI – GOVERNING LAW

This Interlocal Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The County and the Village agree to submit to service of process and jurisdiction of the State of Florida for any controversy or claim arising out of or relating to this Agreement or a breach of this Interlocal Agreement. Venue for any court action between the parties for any such controversy arising from or related to this Interlocal Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, or in the United States District Court for the Southern District of Florida, in Miami-Dade County, Florida.

ARTICLE VII – ENTIRETY OF AGREEMENT

The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Interlocal Agreement that are not contained in this Interlocal Agreement, and that this Interlocal Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Interlocal Agreement shall be of no force or effect, and that this Interlocal Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.

ARTICLE VIII– MAINTENACE OF RECORDS AND AUDIT

A. The County and the Village shall maintain books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three (3) years after the final accounting and make such materials reasonably available for examination, audit, or reproduction by either party and by the Federal Government.

B. The Federal Government may conduct, or arrange for the conduct of, audits of such books, records, documents, or other evidence.

ARTICLE IX – RELATIONSHIP OF THE PARTIES

The parties agree that the Village and the County are each an independent entity and neither is to be considered the offer, agent, or employee of the other. No party or its officers, elected or appointed officials, employees, agents, independent contractors or consultants shall be considered employees or agents of any other party, nor to have been authorized to incur any expense on behalf of any other party, nor to act for or to bind any other party, nor shall an employee claim any right in or entitlement to any pension, workers' compensation benefit, unemployment compensation, civil service or other employee rights or privileges granted by operation of law or otherwise, except through and against the entity by whom they are employed.

ARTICLE X – NOTICES

Any notice, consent, or other communication required to be given under this Interlocal Agreement shall be in writing, and shall be considered given when delivered in person or sent by facsimile or electronic mail (provided that any notice sent by facsimile or electronic mail shall simultaneously be sent personal delivery, overnight courier or certified mail as provided herein), one (1) business day after being sent by reputable overnight carrier or three (3) business days after being mailed by certified mail, return receipt requested, to the parties at the addresses set forth below (or at such other address as a party may specify by notice given pursuant to this Section to the other party):

The County:
DERM Director
701 NW 1st Court, 4th Floor
Miami, FL 33136

The Village:
Key Biscayne Village Manager
88 W. McIntyre Street, Suite 210
Key Biscayne, FL 33149

A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

ARTICLE XI – CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XII – THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Interlocal Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Interlocal Agreement.

ARTICLE XIII– MODIFICATION AND AMENDMENT

Except as expressly permitted herein to the contrary, no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and equal dignity herewith.

ARTICLE XIV – WAIVER

There shall be no waiver of any right related to this Interlocal Agreement unless in writing and signed by the party waiving such right. No delay or failure to exercise a right under this Interlocal Agreement shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time or of any other right under this Interlocal Agreement. Waiver by any party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Interlocal Agreement.

ARTICLE XV – REPRESENTATION OF THE VILLAGE

The Village represents that this Interlocal Agreement has been duly authorized, executed, and delivered by Mayor and Council, as the governing body of the Village of Key Biscayne, Florida and it has granted the Manager of the Village of Key Biscayne, or designee, the required power and authority to execute this Interlocal Agreement.

ARTICLE XVI – REPRESENTATION OF THE COUNTY

The County represents that this Interlocal Agreement has been duly approved, executed, and delivered by the Board, as the governing body of the County, and it has granted the Miami-Dade County Mayor or Mayor's designee the required power and authority to execute this Interlocal Agreement.

ARTICLE XVII – INVALIDITY OF PROVISIONS, SEVERABILITY

Wherever possible, each provision of the Interlocal Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Interlocal Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Interlocal Agreement, provided that the material purpose of this Interlocal Agreement can be determined and effectuated.

ARTICLE XVIII – INDEMNIFICATION

The Village shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the County or its officers, employees, agents or instrumentalities 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 this Agreement by the Village or its employees, agents, servants, partners, principals or subcontractors. The Village shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgements and attorney's fees which may issue thereon. Provided, however, this indemnification shall only be to the extent and within the limitations of Section 768.28 Fla. Stat., subject to the provisions of that Statute whereby the Village shall not be held liable to pay a personal injury or property damage claim or judgement by any one person which exceeds the sum of $200,000, or any claim or judgement or portions thereof, which, when totaled with all other claims or judgement paid by the Village arising out of the same incident or occurrence, exceed the sum of $300,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the negligence of the Village.

The County shall indemnify and hold harmless the Village and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the Village or its officers, employees, agents or instrumentalities 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 negligence of the County or its employees, agents, servants, partners, principals or subcontractors. The County shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Village, where applicable, including appellate proceedings, and shall pay all costs, judgements and attorney's fees which may issue thereon. Provided, however, this indemnification shall only be to the extent and within the limitations of Section 768.28 Fla. Stat., subject to the provisions of that Statute whereby the County shall not be held liable to pay a personal injury or property damage claim or judgement by any one person which exceeds the sum of $200,000, or any claim or judgement or portions thereof, which, when totaled with all other claims or judgement paid by the County arising out of the same incident or occurrence, exceed the sum of $300,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the negligence of the County.

IN WITNESS THEREOF, the parties through their duly authorized representatives hereby execute this INTERLOCAL AGREEMENT with an effective date of ____________________, 2023.

Attest:

VILLAGE OF KEY BISCAYNE, FLORIDA
88 W. McIntyre Street, Suite 210
Key Biscayne, Florida 33149
Attn: Steve Williamson, Village Manager

Jaclyn B Koch 9-27-23
Village Clerk Date

Authorized signature on behalf
of the Village of Key Biscayne, Florida.

By: ______________________ 9/26/2023
Village Manager Date

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

By: ______________________ ____________
Mayor or Mayor's Designee Date

Stephen P. Clark Center
111 N.W. 1 Street
Miami, Florida 33128

ATTEST: Juan Fernandez-Barquin,
Clerk of the Court and Comptroller

By: ______________________________
(Deputy Clerk Signature)

Print Name: ______________________________

Date: ______________________________