



V I L L A G E O F K E Y B I S C A Y N E

Office of the Village Manager

Village Council
Robert Oldakowski, *Mayor*
Robert L. Vernon, *Vice Mayor*
Enrique Garcia
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Patricia Weinman

Village Manager
Jacqueline R. Menendez

DT: November 14, 2006

TO: Honorable Mayor and Members of the Village Council

FR: Jacqueline R. Menendez, Village Manager

RE: Fire Rescue Department Vehicle Replacement

RECOMMENDATION

It is recommended that the Village Council approve the attached Resolution for the lease of five (5) new staff support vehicles for the Fire Rescue Department at a cost of \$30,727.61 per year for four (4) years.

BACKGROUND

In an effort to replace four (4) older Fire Rescue Department support staff vehicles and adding one (1) support staff vehicle granted under the current Collective Bargaining Agreement between the Village and Fire Department Local # 3638, the Chief of Fire Rescue is recommending the lease of five (5) new vehicles.

The vehicles to be leased are 2007 Ford Explorer type trucks with extended warranties. The Fire Rescue Department will benefit from savings by leasing these vehicles and having an opportunity to purchase them for the cost of one dollar (\$1.00) each at the end of the four (4) years/lease.

The new vehicles will be purchased through the Florida Sheriffs Association's Florida Association of Counties Bid Award Announcement –Bid # 06-14-0821. Leasing of the new vehicles will be through the Ford Motor Credit Company. Funds for the lease will come from the Capital Fire Rescue Apparatus Replacement Fund.

Additionally, the Fire Rescue Chief is recommending the sale of the following high mileage vehicles previously purchased by the Fire Rescue Department.

- One (1) - 1996 Pick-up Truck
- One (1) - 1998 Chevrolet Blazer
- Two (2) - 1998 Chevrolet Suburbans
- One (1) - 2001 Ford Crown Victoria

These sales will be through publicized sealed bids and monies from the public resale will be allocated back into the Capital Fire Apparatus Replacement Fund.

88 West McIntyre Street, Suite 210 • Key Biscayne, Florida 33149 • (305) 365-5500 • Fax (305) 365-8936

MISSION STATEMENT: "TO PROVIDE A SAFE, QUALITY COMMUNITY ENVIRONMENT FOR ALL ISLANDERS THROUGH RESPONSIBLE GOVERNMENT."

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RESOLUTION NO. 2006-

A CAPITAL PROJECT AUTHORIZING RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, CONCERNING THE ACQUISITION OF FIRE VEHICLES FOR THE VILLAGE FIRE RESCUE DEPARTMENT; AUTHORIZING AND PROVIDING FOR THE VILLAGE TO PURCHASE FIRE EQUIPMENT, TO-WIT: FIVE (5) FIRE VEHICLES; AUTHORIZING EXPENDITURE OF FUNDS; AUTHORIZING AND APPROVING MASTER LEASE AGREEMENT AND RELATED DOCUMENTS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council as the governing body of the Village of Key Biscayne (the "Village"), desires to obtain certain fire equipment (the "Equipment") for the Village Fire Rescue Department as described in Equipment Schedule No. 01 to the Master Lease Agreement (collectively, the "Lease") with Ford Motor Credit Company ("Ford"), the form of which Lease has been available for review by the Village Council prior to this meeting; and

WHEREAS, the Equipment is essential for the Village to perform its governmental functions; and

WHEREAS, the Village has taken the necessary steps, including those relating to any applicable legal bidding requirements, to arrange for the acquisition of the Equipment and finds the purchase of Equipment to be exempt from competitive bidding pursuant to Village Code Section 2-86 as being derived from another government entity's bid process; and

WHEREAS, the Village proposes to enter into the Lease with Ford, substantially in the form presented at this meeting; and

WHEREAS, the Village Council hereby finds and determines that the terms of the Lease and related instruments (collectively, the "Purchase Documents") in substantially the form presented at this meeting and incorporated in this Resolution are in the best interests of the Village for the acquisition of the Equipment.

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

Section 1. Recitals Adopted. That each of the recitals stated above is hereby adopted and confirmed.

Section 2. Capital Project Authorizing Resolution. That pursuant to Village Charter Section 3.07(b), this Resolution shall constitute a Capital Project Authorizing Resolution. The Capital Project is the purchase of fire equipment, to-wit: Five (5) new vehicles (the "Equipment") for the Village of Key Biscayne Fire Rescue Department, at a projected cost of One Hundred Twelve Thousand Seven Hundred Eleven (\$112,711.00) Dollars, plus fixed annual financing costs of 6.10% for the four (4) year (48 months) term of the lease – purchase transaction, as payable in four (4) annual installment payments of Thirty Thousand Seven Hundred Twenty Seven Dollars and Sixty One Cents (\$30,727.61).

Section 3. Equipment Purchase Authorized.

A. That the purchase of the Equipment is hereby authorized. The Equipment is further described in the Master Lease Agreement and Equipment Schedule No. 01 (collectively the "Lease") between the Village and Ford, a copy of which is set forth in Exhibit "A," attached hereto and incorporated herein. The Equipment shall be utilized by the Village Fire Rescue Department to provide support vehicles for the Village.

B. That the Village Council hereby approves the Lease, and authorizes the Village Manager to execute the Lease, once approved by the Village Attorney for legal sufficiency, for the acquisition of the Equipment for a cost which is consistent with this Resolution and the Lease.

C. That the Village Manager is authorized to take all action necessary to implement this Resolution and the Lease, and is authorized to expend Village funds for the purchase of the Equipment pursuant to the Lease and in accordance with Village budget appropriations.

D. That the Purchase Documents and the acquisition and financing of the Equipment under the terms and conditions as described in the Purchase Documents are hereby approved. The Village Manager and any other officer of the Village who shall have power to execute contracts on behalf of the Village be, and each of them hereby is authorized to execute, acknowledge and deliver the Purchase Documents with any changes, insertions and omissions therein as may be approved by the Village Attorney such approval to be conclusively evidenced by such execution and delivery of the Purchase Documents. The Village Clerk of the Village is authorized to affix the official seal of the Village to the Purchase Documents and attest the same.

E. That the proper officers of the Village, be and each of them hereby is, authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do or cause to be done any and all other acts and things necessary or proper for carrying out this Resolution and the Purchase Documents.

F. That pursuant to Section 265(b) of the Internal Revenue Code of 1986, as amended (the "Code"), Village hereby specifically designates the Lease as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Code.

Section 4. That the Village Manager is hereby authorized to sell five (5) Village vehicles as described in the accompanying memorandum.

Section 5. Effective Date. That this Resolution shall be effective immediately upon adoption hereof.

PASSED AND ADOPTED this 14th day of November, 2006.

MAYOR ROBERT L. VERNON

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



FORD MOTOR CREDIT COMPANY
MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT
 Lease No. 7794000

Lessee: City of Key Biscayne
 88 West McIntyre St.
 Key Biscayne, FL 33149

Lessor: Ford Motor Credit Company
 P. O. Box 1739
 Dearborn, MI 48121-1739

Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, the equipment, including all modifications, alterations, additions, or improvements thereto (the "Equipment"), described in the Schedules (the "Schedules") hereto executed from time to time by Lessor and Lessee, in accordance with the following terms and conditions of this Master Equipment Lease-Purchase Agreement ("Master Agreement") and the applicable Schedule.

As provided in Section 17 hereof, Lessor may assign its rights and interests under and related to any one or more Schedules. If none of Lessor's interest in, to and under any Schedule has been assigned pursuant to Section 17 hereof, or if all of Lessor's interest in, to and under this Master Agreement and all Schedules have been assigned to the same assignee without any reassignment, the term "Lease" is used herein to mean this Master Agreement, including all Schedules. If Lessor's interest in, to and under any Schedule or Schedules has been assigned or reassigned pursuant to Section 17 hereof, the term "Lease" is used herein to mean all Schedules that have the same Lessor and this Master Agreement as it relates to those Schedules and the Equipment listed therein, and each Lease shall constitute a separate single lease relating to that Equipment.

1. TERM AND TERMINATION. (a) Lease Term. The lease term (the "Lease Term") for the Equipment listed in each Schedule will commence on the date that Equipment is accepted pursuant to Section 3 and, unless earlier terminated as expressly provided for in Paragraphs 6, 19 or 20 of this Master Agreement, will continue until the expiration date (the "Expiration Date") set forth in the applicable Schedule. The termination or expiration of the lease of any item of Equipment shall apply solely to that item of Equipment and will not result in the termination of this Master Agreement or the lease of any other item of Equipment, and the rights and obligations of Lessor and Lessee under this Master Agreement shall continue in full force and effect with respect to the remaining Equipment subject to this Master Agreement.

(b) Term of Master Agreement. The term of this Master Agreement shall commence on the date it is executed by Lessor and Lessee, and will continue until terminated by either Lessor or Lessee upon at least thirty days prior written notice of the effective date of such termination (the "Termination Date"); provided, however, that the terms and conditions of this Master Agreement shall continue in full force and effect and the obligations of Lessee hereunder and any Schedule(s) with respect to Equipment leased prior to the Termination Date shall remain in full force and effect until all such obligations have been fulfilled.

2. LEASE PAYMENTS. For the lease of the Equipment listed in each Schedule, Lessee shall pay to Lessor the lease payments and other charges (the "Lease Payments") set forth in the applicable Schedule and this Master Agreement. As set forth in the applicable Schedule, each Lease Payment includes a principal portion and an interest portion. The Lease Payments will be payable without notice or demand at the office of Lessor (or such other place as Lessor or its assignee may from time to time designate in writing) on the first Lease Payment Date and thereafter as set forth in the applicable Schedule. If any Lease Payment is received later than ten (10) days after the due date, Lessee will pay a late payment charge equal to 1.8% of the amount of the Lease Payment or the maximum amount permitted by law, whichever is less. Except as specifically provided in Section 6 hereof, the obligation of Lessee to make the Lease Payments hereunder and perform all of its other obligations hereunder will be absolute and unconditional in all events and will not be subject to any setoff, defense, counterclaim, or recoupment for any reason whatsoever including, without limitation, any failure of the Equipment to be delivered or installed, any defects, malfunctions, breakdowns or infirmities in the Equipment or any accident, condemnation or unforeseen circumstances. Lessee reasonably believes that sufficient funds can be obtained to make all Lease Payments during the applicable Lease Term and hereby covenants that the official of Lessee responsible for budget preparation will do all things lawfully within his or her power to obtain, maintain and properly request and pursue funds from which the Lease Payments may be made, including making provisions for Lease Payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using his or her best efforts to have such portion of the budget approved and exhausting all available administrative reviews and appeals in the event such portion of the budget is not approved. It is Lessee's intent to make Lease Payments for the full Lease Term if funds are legally available therefor and in that regard Lessee represents that the use of the Equipment is essential to its proper, efficient and economic operation. The foregoing provisions shall not be construed to require Lessee's governing body or other governmental body charged with budgeted or appropriating funds for Lessee to budget or appropriate funds to make Lease Payments. Lessor and Lessee understand and intend that the obligation of Lessee to pay Lease Payments hereunder and each Schedule hereto shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of Lessee.

3. DELIVERY AND ACCEPTANCE. Lessee will cause the Equipment to be delivered to Lessee at the location specified in the applicable Schedule ("Equipment Location"). Lessee will pay all transportation and other costs, if any, incurred in connection with the delivery and installation of the Equipment. Lessee will accept the Equipment as soon as it has been delivered and is operational. Lessee will evidence its acceptance of the Equipment by executing and delivering to Lessor a Delivery and Acceptance Certificate (in the form provided by Lessor) within three days of delivery of the Equipment.

4. WARRANTIES. (a) Assignment of Warranties. So long as no Event of Default has occurred and is continuing, Lessor assigns to Lessee during the Lease Term of the Equipment all manufacturer's warranties, if any, expressed or implied with respect to the Equipment, and Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties at Lessee's expense. Lessee will resolve any claims under such warranties directly with the appropriate manufacturer or vendor. Lessee's sole remedy for the breach of any warranty shall be against the party providing the warranty, and not against Lessor. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties of the manufacturer or vendor of the Equipment.

(b) **DISCLAIMER OF WARRANTIES.** LESSEE ACKNOWLEDGES AND AGREES THAT THE EQUIPMENT IS OF A SIZE, DESIGN AND CAPACITY SELECTED BY LESSEE, THAT LESSOR IS NEITHER A MANUFACTURER NOR A VENDOR OF THE EQUIPMENT AND THAT LESSOR LEASES AND LESSEE TAKES THE EQUIPMENT AND EACH PART THEREOF "AS-IS" AND THAT LESSOR HAS NOT MADE, AND DOES NOT MAKE, ANY REPRESENTATION, WARRANTY, OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, QUALITY, DURABILITY, DESIGN, OPERATION, FITNESS FOR USE, OR SUITABILITY OF THE EQUIPMENT IN ANY RESPECT WHATSOEVER OR IN CONNECTION WITH OR FOR THE PURPOSES AND USES OF LESSEE, OR AS TO THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, OR AS TO THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, OR AS TO ANY OBLIGATION BASED ON STRICT LIABILITY IN TORT OR ANY OTHER REPRESENTATION, WARRANTY, OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT THERETO, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY LESSEE AND LESSOR SHALL NOT BE OBLIGATED OR LIABLE FOR ACTUAL, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES OF OR TO LESSEE OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE EQUIPMENT AND THE MAINTENANCE THEREOF.

5. RETURN OF EQUIPMENT. Unless Lessee shall have exercised its purchase option as provided in Section 20 hereof, upon the expiration or earlier termination of the Lease Term of the Equipment pursuant to the terms hereof, Lessee shall, at its sole expense but at Lessor's option, return the Equipment to Lessor packed for shipment in accordance with manufacturer's specifications and freight prepaid and insured to any location within 200 miles of the Lessee.

6. NON-APPROPRIATION OF FUNDS. Notwithstanding anything contained in this Master Agreement or any Schedule to the contrary, in the event no funds or insufficient funds are appropriated and budgeted and sufficient funds are otherwise unavailable by any means whatsoever in any fiscal period for all Lease Payments under a Lease, Lessee will immediately notify Lessor in writing of such occurrence and the Lease Term for the Equipment under that Lease shall terminate on the last day of the fiscal period for which sufficient appropriations have been received or made without penalty or expense to Lessee, except as to Lessee's obligations and liabilities under this Master Agreement relating to, or accruing or arising prior to, such termination. In the event of such termination, Lessee agrees to peacefully surrender possession of the Equipment under that Lease to Lessor on the date of such termination in the manner set forth in Section 5 hereof and Lessor will have all legal and equitable rights and remedies to take possession of the Equipment. If the Lease Term for any Equipment is terminated in accordance with this Section, Lessee agrees, to the extent permitted by law, that Lessee will not expend funds for the purchase or use of equipment performing functions similar to those performed by the Equipment which has been terminated for a period of 90 days following the termination of the Lease Term; provided this restriction shall not be applicable in the event that the Equipment is sold, released or otherwise disposed of by Lessor and the amount received from such disposition, less all costs of such sale or disposition, is sufficient to pay all then applicable Concluding Payments (as defined in the Schedules) or to the extent that the application of these restrictions is unlawful and would affect the validity of a Lease or this Master Agreement. This Section shall remain in full force and effect notwithstanding the termination of this Master Agreement or any Lease Term.

7. REPRESENTATIONS, COVENANTS AND WARRANTIES. Lessee represents, covenants and warrants as of the date hereof and at all times during the Master Agreement Term that: (a) Lessee is a State or a fully constituted political subdivision of a State, and has a substantial amount of one or more of the following sovereign powers: (1) power to tax, (2) power of eminent domain, or (3) police power, and will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and this Master Agreement; (b) the execution, delivery and performance by the Lessee of this Master Agreement and all documents executed in connection herewith, including, without limitation, all Schedules hereto and the Delivery and Acceptance Certificates referred to in Section 3 hereof (this Master Agreement together with all such documents shall be collectively referred to herein as the "Lease Documents") have been duly authorized by all necessary action on the part of the Lessee; (c) the Lease Documents each constitute a legal, valid and binding obligation of the Lessee enforceable in accordance with their respective terms; (d) all required public bidding procedures regarding the award of the Master Agreement and the purchase of the Equipment have been followed by Lessee, and no governmental orders, permissions, consents, approvals or authorizations are required to be obtained and no registrations or declarations are required to be filed in connection with the execution and delivery of the Lease Documents; (e) Lessee has sufficient appropriations or other funds available to pay all Lease Payments and other amounts due hereunder for the current fiscal period; (f) the use of the Equipment by Lessee is essential to and will be limited to the performance by Lessee of one or more governmental functions of Lessee consistent with the permissible scope of Lessee's authority; and (g) no portion of the Equipment will be used directly or indirectly in any trade or business carried on by any person other than Lessee. At the request of Lessor, Lessee shall deliver to Lessor an opinion of Lessee's counsel in form and substance as set forth in the form of opinion of counsel attached hereto or otherwise acceptable to Lessor, dated the date of acceptance of the Equipment pursuant to Section 3 hereof. In the event that a question arises as to Lessee's qualification as a political subdivision, Lessee agrees to cooperate with Lessor to make application to the Internal Revenue Service for a letter ruling with respect to the issue.

8. TITLE TO EQUIPMENT; SECURITY INTEREST. Upon acceptance of the Equipment by Lessee hereunder, title to the Equipment will vest in Lessee subject to Lessor's rights under this Master Agreement; provided, however, that title will immediately vest in Lessor without any action by Lessee and Lessee shall immediately surrender possession of the Equipment to Lessor in accordance with Section 5 hereof, if Lessee terminates the Lease Term of the Equipment pursuant to Section 6, or upon the occurrence of an Event of Default, or if Lessee does not exercise the purchase option prior to the Expiration Date. In order to secure all of its obligations hereunder, Lessee hereby (a) grants to Lessor a first and prior security interest in any and all right, title and interest of Lessee in the Equipment including but not limited to computer programs and computer documentation, if any, relating to the Equipment and in all additions, attachments, accessions, and substitutions thereto, and on any proceeds therefrom, (b) agrees that this Master Agreement may be filed as a financing statement evidencing such security interest, (c) agrees to execute and deliver all financing statements, certificates of title and other instruments in form satisfactory to Lessor necessary or appropriate to evidence such security interest, and (d) authorizes Lessor acting on behalf of Lessee to execute and file any financing statements and to take any other action required to perfect Lessor's security interest in the Equipment.

9. USE; REPAIRS. Lessee will use the Equipment in a careful manner for the use contemplated by the manufacturer of the Equipment. Lessee shall comply with all laws, ordinances, insurance policies and regulations relating to the possession, use, operation or maintenance of the Equipment. Lessee, at its expense, will keep the Equipment in good working order and repair and furnish all parts, mechanisms and devices required therefor.

10. ALTERATIONS. Lessee will not make any modifications, alterations, additions or improvements to the Equipment without Lessor's prior written consent unless such alterations, additions or improvements may be readily removed without damage to the Equipment.

11. LOCATION; INSPECTION. The Equipment will not be removed from or, if the Equipment consists of rolling stock, its permanent base will not be changed from the Equipment Location without Lessor's prior written consent which will not be unreasonably withheld. Lessor will be entitled to enter upon the Equipment Location or elsewhere during reasonable business hours to inspect the Equipment or observe its use and operation.

12. LIENS AND TAXES. Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances except those created under this Master Agreement. Lessee shall pay, when due, to the extent required by law, all charges and taxes (local, state and federal) which may now or hereafter be imposed upon the ownership, leasing, rental, sale, purchase, possession or use of the Equipment, excluding however, all taxes on or measured by Lessor's income. If Lessee fails to pay said charges, or taxes when due, Lessor may, but need not, pay said charges or taxes and, in such event, Lessee shall reimburse Lessor therefor on demand, with interest at the maximum rate permitted by law from the date of such payment by Lessor to the date of reimbursement by Lessee.

13. RISK OF LOSS; DAMAGE; DESTRUCTION. Lessee assumes all risk of loss of or damage to the Equipment from any cause whatsoever, and no such loss of or damage to the Equipment nor defect therein nor unfitness or obsolescence thereof shall relieve Lessee of the obligation to make Lease Payments or to perform any other obligation under this Master Agreement. In the event of damage to any item of Equipment, Lessee will immediately place the same in good repair, with the proceeds of any insurance recovery applied to the cost of such repair. If Lessor determines that any item of Equipment is lost, stolen, destroyed or damaged beyond repair, within 30 days of such determination, Lessee, at the option of Lessor, will either (a) replace the same with like equipment in good repair, or (b) pay Lessor an amount equal to (1) the Concluding Payment for the immediately preceding Lease Payment Date as set forth in the applicable Schedule, (2) the accrued interest portion of the next Lease Payment through the date such amount is paid, and (3) all other amounts then due under this Master Agreement with respect to such Equipment. In the event that Lessee is obligated to make such payment pursuant to subparagraph (b) above with respect to less than all of the Equipment, Lessor will provide Lessee with the pro rata amount of the Concluding Payment to be made by Lessee with respect to the Equipment which has suffered the event of loss.

14. PERSONAL PROPERTY. The Equipment is and will remain personal property and will not be deemed to be affixed or attached to real estate or any building thereon. If requested by Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

15. INSURANCE. Lessee, will, at its expense, maintain at all times during the Lease Term, fire and extended coverage, public liability and property damage insurance with respect to the Equipment in such amounts, covering such risks, and with such insurers satisfactory to Lessor, or may self-insure against any or all such risks under a self-insurance program satisfactory to Lessor. In no event will the insurance limits be less than the amount of the then applicable Concluding Payment with respect to such Equipment. Each insurance policy will name Lessee as an insured and Lessor as an additional insured, and will contain a clause requiring the insurer to give Lessor at least thirty (30) days prior written notice of any alteration in the terms of such policy or the cancellation thereof. The proceeds of any such policies or self-insurance will be payable to Lessee and Lessor as their interests may appear. Upon acceptance of the Equipment and upon each insurance renewal date, Lessee will deliver to Lessor a certificate evidencing such insurance. In the event that Lessee has been permitted to self-insure, Lessee will furnish Lessor with a letter or certificate to such effect. In the event of any loss, damage, injury or accident involving the Equipment, Lessee will promptly provide Lessor with written notice thereof and make available to Lessor all information and documentation relating thereto and shall permit Lessor to participate and cooperate with Lessee in making any claim for insurance in respect thereof.

16. INDEMNIFICATION. Since Lessor's sole responsibility in connection with this transaction is to provide an amount equal to the principal portion of the Lease Payments to pay costs of the acquisition and lease of the Equipment, the parties intend that Lessor incur no liability, cost or expense with respect to Lessee's possession, use or operation of the Equipment. Accordingly, Lessee agrees, to the extent permitted by law, to indemnify Lessor against, and hold Lessor harmless from, any and all claims, actions, proceedings, expenses, damages or liabilities, including attorney's fees and court costs, arising in connection with the Equipment, including, but not limited to, its selection, purchase, delivery, installation, possession, use, operation, rejection, or return and the recovery of claims under insurance policies thereon. The indemnification provided under this Section shall survive the full payment of all obligations under this Master Agreement or the termination of the Lease Term for any reason.

17. ASSIGNMENT. Without Lessor's prior written consent, Lessee will not either (a) assign, transfer, pledge, hypothecate, grant any security interest in or otherwise dispose of this Master Agreement or the Equipment or any interest in this Master Agreement or the Equipment or (b) sublet or lend the Equipment or permit it to be used by anyone other than Lessee or Lessee's employees. Lessor may assign its rights, title and interest in and to this Master Agreement, the Equipment and any documents executed with respect to this Master Agreement and/or grant or assign a security interest in this Master Agreement and the Equipment, in whole or in part (including without limitations the rights and interests of Lessor under and related to any Schedule and the Equipment thereunder), and Lessee's rights will be subordinated thereto. Any such assignees shall have all of the rights of Lessor under this Master Agreement with respect to the rights and interest assigned. Subject to the foregoing, this Master Agreement inures to the benefit of and is binding upon the successors and assigns of the parties hereto. Lessee covenants and agrees not to assert against the assignee any claims or defenses by way of abatement, setoff, counterclaim, recoupment or the like which Lessee may have against Lessor. Upon assignment of Lessor's interests herein, Lessor will cause written notice of such assignment to be sent to Lessee which will be sufficient if it discloses the name of the assignee and address to which further payments hereunder should be made. No further action will be required by Lessor or by Lessee to evidence the assignment, but Lessee will acknowledge such assignments in writing if so requested. Lessee shall retain all notices of assignment and maintain a book-entry record (as referred to in Section 21) which identifies each owner of Lessor's interest in the Master Agreement. Upon Lessee's receipt of written notice of Lessor's assignment of all or any part of its interest in the Master Agreement, the term "Lessor," when used herein with respect to any rights assigned, shall mean the assignee to whom those rights are assigned and Lessee agrees to affirm to and recognize any such assignee as the owner of Lessor's interest in this Master Agreement, and Lessee shall thereafter make such payments, including without limitation such Lease Payments, as are indicated in the notice of assignment, to such assignee.

18. EVENT OF DEFAULT. The term "Event of Default," as used herein, means the occurrence of any one or more of the following events: (a) Lessee fails to make any Lease Payment (or any other payment) as it becomes due in accordance with the terms of this Master Agreement, and any such failure continues for ten (10) days after the due date thereof; (b) Lessee fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder and such failure is not cured within thirty (30) days after written notice thereof by Lessor; (c) the discovery by Lessor that any statement, representation, or warranty made by Lessee in this Master

Agreement or in any writing ever delivered by Lessee pursuant hereto or in connection herewith was false, misleading, or erroneous in any material respect; (d) Lessee becomes insolvent, or is unable to pay its debts as they become due, or makes an assignment for the benefit of creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of Lessee or of any of its assets, or a petition for relief is filed by Lessee under any bankruptcy, insolvency, reorganization or similar laws, or a petition in, or a proceeding under, any bankruptcy, insolvency, reorganization or similar laws is filed or instituted against Lessee and is not dismissed or fully stayed within thirty (30) days after the filing or institution thereof; (e) Lessee fails to make any payment when due or fails to perform or observe any covenant, condition, or agreement to be performed by it under any other agreement or obligation with Lessor or an affiliate of Lessor and any applicable grace period or notice with respect thereto shall have elapsed or been given; or (f) an attachment, levy or execution is threatened or levied upon or against the Equipment.

19. REMEDIES. Upon the occurrence of an Event of Default under any Lease, and as long as such Event of Default under any Lease is continuing, Lessor may, at its option, exercise any one or more of the following remedies: (a) by written notice to Lessee, declare an amount equal to all amounts then due under that Lease, and all remaining Lease Payments due under that Lease during the fiscal year of Lessee in which the default occurs to be immediately due and payable, whereupon the same shall become immediately due and payable; (b) by written notice to Lessee, request Lessee to (and Lessee agrees that it will), at Lessee's expense, promptly return the Equipment under that Lease to Lessor in the manner set forth in Section 5 hereof, or Lessor, at its option, may enter upon the premises where the Equipment under that Lease is located and take immediate possession of and remove the same; (c) sell or lease the Equipment under that Lease or sublease it for the account of Lessee, holding Lessee liable for all Lease Payments and other payments due to the effective date of such selling, leasing or subleasing and for the difference between the amounts otherwise payable by Lessee under that Lease and the purchase price, rental and other amounts paid by the purchaser, lessee or sublessee pursuant to such sale, lease or sublease; and (d) exercise any other right, remedy or privilege which may be available to it under applicable laws of the state where the Equipment is then located or any other applicable law or proceed by appropriate court action to enforce the terms of that Lease or to recover damages for the breach of that Lease or to rescind that Lease as to any or all of the Equipment under that Lease. In addition, Lessee will remain liable for all covenants and indemnities under this Master Agreement and, to the extent permitted by law, for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.

20. PURCHASE OPTION. Upon at least thirty (30) days prior written notice from Lessee to Lessor, and provided that no Event of Default has occurred and is continuing, Lessee will have the right to purchase the Equipment under any Schedule at a purchase price equal to the sum of (a) the Concluding Payment for the immediately preceding Lease Payment date as set forth in the applicable Schedule, (b) the accrued interest portion of the next Lease Payment through the date the purchase price is paid, and (c) any other amounts then due under this Master Agreement. Upon satisfaction by Lessee of such purchase conditions, Lessor will transfer any and all of its right, title and interest in the Equipment to Lessee as is, without warranty, express or implied, except Lessor will warrant that the Equipment is free and clear of any liens created by Lessor.

21. TAX COVENANTS; INDEMNITY. (a) Tax Assumptions and Covenants. The parties assume that, and Lessor is entering into this Master Lease with the expectation that, Lessor can exclude from Federal gross income the interest portion of each Lease Payment set forth in the Schedule under the column captioned "Interest Portion." Lessee covenants that it will (a) execute the appropriate Form 8038 for each Schedule prepared on behalf of Lessee by Lessor, who will register this Master Agreement and transfers thereof in accordance with section 149(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations thereunder, (b) not permit the property financed by this Master Agreement to be directly or indirectly used for a private business use within the meaning of section 141 of the Code, (c) not take any action which results, directly or indirectly, in the interest portion of any Lease Payment not being excludable from Federal gross income pursuant to section 103 of the Code and will take any reasonable action necessary to prevent such result, and (d) not take any action which results in this Master Agreement becoming, and will take any reasonable action to prevent this Master Agreement from becoming an arbitrage obligation within the meaning of section 148 of the Code or federally guaranteed within the meaning of section 149 of the Code.

(b) Tax Indemnity. In the event that Lessor either (a) receives notice from the Internal Revenue Service, or (b) reasonably determines, based on an opinion of independent tax counsel selected by Lessor and not reasonably objected to by Lessee within ten (10) days after notice from Lessor of the selection, that the interest portion of any of the Lease Payments set forth in the Schedules is includable in Lessor's gross income for Federal income tax purposes, then Lessee will pay Lessor within 30 days after receiving notice from Lessor of such determination, the amount which, with respect to such Lease Payments previously paid, will restore the after-tax yield (after taking into account all taxes, interest and penalties) on the transactions evidenced by this Master Agreement to that which would have been had such interest portion not been includable in Lessor's gross income for Federal income tax purposes, and pay as an additional Lease Payment on succeeding Lease Payment due dates such amount as will maintain such after-tax yield. Notwithstanding the earlier termination or expiration of this Master Agreement or Lease Term of the Equipment, the obligations provided for in this Section 21 shall survive such earlier termination or expiration.

22. MISCELLANEOUS. (a) Notices. All notices to be given under this Master Agreement shall be made in writing and mailed by certified mail, return receipt requested, to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five days subsequent to mailing.

(b) Section Headings. All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Master Agreement.

(c) Governing Law. This Master Agreement shall be construed in accordance with, and governed by, the laws of the state of the Equipment Location.

(d) Delivery of Related Documents. Lessee will execute or provide, as requested by Lessor, such other documents and information as are reasonably necessary with respect to the transaction contemplated by this Master Agreement.

(e) Entire Agreement. The Lease Documents constitute the entire agreement between the parties with respect to the lease of the Equipment, and this Master Agreement shall not be modified, amended, altered, or changed except with the written consent of Lessee and Lessor. Any provision of this Master Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Master Agreement. The waiver by Lessor of any breach by Lessee of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach thereof.

(f) Interest Rate Limitations. It is the intention of the parties hereto to comply with any applicable usury and other interest rate limitation laws; accordingly, notwithstanding any provisions to the contrary in this Master Agreement, in no event shall this Master Agreement require the payment or permit the collection of interest or any amount in the nature of interest or fees in excess of the maximum permitted by applicable law.

(g) Counterparts. This Master Agreement or any Schedule may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument and either of the parties hereto may execute this Master Agreement or any Schedule by signing any counterpart, except that to the extent that this Master Agreement or any Schedule constitutes chattel paper, no security interest therein may be perfected through possession except by possession of Counterpart No. 1 of a Schedule with respect to that Schedule and the Master Agreement as it relates to that Schedule.

IN WITNESS WHEREOF, the parties have executed this Master Agreement as of 12/15/2004.

Lessee: City of Key Biscayne
By: *Conchita H. Alvarez*
Title: Clerk



Lessor: Ford Motor Credit Company
By: *Frank Mastrella*
Title: Operations Manager, Municipal Finance

Approved as to form and legal sufficiency
[Signature]
Weisk Serota Helfman Pastoriza Guedes
Cole & Boniske, P.A., City Attorney

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ADDENDUM TO MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT

Lease No. 7794000

Florida

THIS ADDENDUM, which is entered into as of 12/15/2004 between Ford Motor Credit Company ("Lessor") and City of Key Biscayne ("Lessee"), is intended to modify and supplement the Master Equipment Lease-Purchase Agreement between Lessor and Lessee of even date herewith (the "Master Agreement"). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Master Agreement.

1. **Section 8. TITLE TO EQUIPMENT; SECURITY INTEREST.** Section 8 is re-titled **TITLE TO EQUIPMENT** and is amended in its entirety to state as follows:

Upon acceptance of the Equipment by Lessee hereunder, title to the Equipment will vest in Lessee subject to Lessor's rights under this Master Agreement; provided, however, that title will immediately vest in Lessor without any action by Lessee and Lessee shall immediately surrender possession of the Equipment to Lessor in accordance with Section 5 hereof, if Lessee terminates the Lease Term of the Equipment pursuant to Section 6, or upon the occurrence of an Event of Default, or if Lessee does not exercise the purchase option prior to the Expiration Date.

2. **Section 15. INSURANCE.** Section 15 is amended in its entirety to state as follows:

Lessee, will, at its expense, maintain at all times during the Lease Term, fire and extended coverage, public liability and property damage insurance with respect to the Equipment in such amounts, covering such risks, and with such insurers satisfactory to Lessor, or may self-insure against any or all such risks under a self-insurance program satisfactory to Lessor. In no event will the insurance limits be less than the amount of the then applicable Concluding Payment with respect to such Equipment or, in the case of public liability and property damage insurance, in the amounts of \$100,000/\$300,000 bodily injury liability and \$50,000 property damage insurance sufficient to meet the requirements of section 324.021(9)(b) of the Florida Statutes (or any successor statute). Each insurance policy will name Lessee as an insured and Lessor as an additional insured, and will contain a clause requiring the insurer to give Lessor at least thirty (30) days prior written notice of any alteration in the terms of such policy or the cancellation thereof. The proceeds of any such policies or self-insurance will be payable to Lessee and Lessor as their interests may appear. Upon acceptance of the Equipment and upon each insurance renewal date, Lessee will deliver to Lessor a certificate evidencing such insurance. In the event that Lessee has been permitted to self-insure, Lessee will furnish Lessor with a letter or certificate to such effect. In the event of any loss, damage, injury or accident involving the Equipment, Lessee will promptly provide Lessor with written notice thereof and make available to Lessor all information and documentation relating thereto and shall permit Lessor to participate and cooperate with Lessee in making any claim for insurance in respect thereof.

3. **Section 16. INDEMNIFICATION.** Section 16 is re-titled **LESSEE'S NEGLIGENCE** and is amended in its entirety to state as follows:

Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to any Equipment and for injury or death of any person or damage to any property, whether such injury or death be with respect to agents or employees of Lessee or to third parties, and whether such property damage be to Lessee's property or the property of others, which is proximately caused by the negligent conduct of Lessee, its officers, employees or agents. Lessee hereby assumes responsibility for and agrees to reimburse Lessor for all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorney's fees) of whatsoever kind and nature, imposed on, incurred by or asserted against Lessor that in any way relate to or arise out of a claim, suit or proceeding based in whole or in part upon the negligent conduct of Lessee, its officers, employees or agents, to the maximum extent permitted by law.

As modified hereby, this Master Agreement is and shall remain in full force and effect and, except as modified hereby, the rights and obligations of the parties thereunder are not modified or affected in any way.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed in their names by their duly authorized representatives as of the date first above written.

Lessee: City of Key Biscayne
By: *Conchita H. Alvarez*
Title: Clerk



Lessor: Ford Motor Credit Company
By: *Frank Mastrella*
Title: Operations Manager, Municipal Finance

Approved as to form and legal sufficiency
Weise Sergio
Weise Sergio, Weisman Pastoriza Guedes
Cole & Boniske, P.A., City Attorney

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