

RESOLUTION NO. 2007-

A CAPITAL PROJECT AUTHORIZING RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AUTHORIZING CONSTRUCTION OF CRANDON BOULEVARD UTILITY CROSSINGS AS AN ADDITION TO THE WORK OF THE CRANDON BOULEVARD CONTRACTOR IN ORDER TO AVOID CONFLICT WITH THE PENDING WATER, SEWER AND RECLAIMED WATER PROJECT; AUTHORIZING FIFTH CHANGE ORDER FOR CONSTRUCTION CONTRACT BETWEEN THE VILLAGE AND M. VILA AND ASSOCIATES, INC., IN ORDER TO PROVIDE FOR UTILITY CROSSING WORK AS ADDITIONAL WORK OF CRANDON BOULEVARD IMPROVEMENTS – PHASE III PROJECT ; PROVIDING FOR APPROVAL OF CHANGE ORDER NO. 5 TO CONTRACT FOR CONSTRUCTION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR EFFECTIVE DATE.

WHEREAS, pursuant to public bidding process, the Village previously entered into a contract for construction of Crandon Boulevard Improvements – Phase II with M. Vila and Associates, Inc.; and

WHEREAS, subsequently, the Village solicited competitive bids for the construction of Crandon Boulevard Improvements – Phase III (the “Crandon Project”); and

WHEREAS, no responsive bid was received by the Village concerning the construction of Crandon Boulevard Improvements – Phase III; and

WHEREAS, accordingly, pursuant to Section 255.20(1)(c)(2), Florida Statutes, the Village Council found that the mandatory competitive bidding requirements of that statute were rendered non-applicable for Phase III of the Project since competitive bids were solicited but no responsive bid was received; and

WHEREAS, the Village Council further found, upon advice of the Village Attorney, that the Village Council may waive the competitive bidding required by the Village Code pursuant to

Village Code Section 2-85, upon the Council finding, as it did find, that it was impractical to again apply such competitive bidding procedures in light of the need to expeditiously commence and complete the Crandon Boulevard Improvements – Phase III, and that further efforts at competitive bidding were not otherwise mandated by state law, as described above; and

WHEREAS, the Village Project Engineer and Owner’s Representative successfully negotiated a proposed change order with M. Vila and Associates, Inc., the Crandon Boulevard Improvements – Phase II contractor (the “Contractor”), for the extension of the services of the Contractor for the Crandon Boulevard Improvements – Phase III, as described in Resolution No. 2006-43; and

WHEREAS, work is presently underway for Phase III of the Crandon Project, and it is essential that the utility crossing work (the “Utility Crossing Work”) for the presently pending Phase 2 and 3 of the Villages Water, Sewer, Reclaimed Water Project (which is in final regulatory permitting) be accomplished before the construction of roadwork in Phase III of the Crandon Project; and

WHEREAS, if the Utility Crossing Work is not done now, the completion of the Crandon roadwork will be severely delayed and cause traffic disruptions or will expose the Crandon roadwork to subsequent damage and destruction by the Water, Sewer, Reclaimed Water Project; and

WHEREAS, because of the pendency of the Water, Sewer, Reclaimed Water Project, it is now essential and inherent to the design and completion of Phase III of the Crandon Project that the Utility Crossing Work must be done as part of the Phase III Crandon Project in order to properly accomplish Phase III of the Crandon Project and to avoid and remediate the utility conflicts to the Phase III Crandon Project which would otherwise be caused by the Water, Sewer, Reclaimed Water Project; and

WHEREAS, the Village Council, upon advice from the Village Manager, the Project Engineer (“C3TS”), and the Village’s Owner’s representative, now finds that it is necessary to expeditiously implement and construct the Utility Crossing Work as part of Phase III of the Crandon Project; and

WHEREAS, upon advice from the Village Attorney, the Village Council finds that the Village Council may waive the competitive bidding required by the Village Code for the Utility Crossing Work pursuant to Village Code Section 2-85, upon the Council finding, as is hereby found, that it is impractical to apply competitive bidding procedures in light of the need to expeditiously commence and complete the work in advance of the Water, Sewer, Reclaimed Water Project, and that further competitive bidding is not mandated by State law since the work is inherent in the proper accomplishment of Phase III of the Crandon Project in that it serves to avoid utility conflicts for Phase III of the Crandon Project, and

WHEREAS, the Village’s Project Engineer and Owner’s Representative have successfully negotiated a proposed change order with the Contractor for the necessary additional work of the Contractor for the Utility Crossing Work, as described herein; and

WHEREAS, the Village Council finds that it is in the best interest of the Village to proceed as indicated in this Resolution.

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

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

Section 2. Agreement Approved, Specification of Funds, Conditions.

A. **Change Order Approved:** That the Change Order No. 5 to the Contract for

Construction (the “Agreement”), in substantially the form attached hereto, between the Contractor and the Village for construction of the Utility Crossing Work is hereby approved, and the Village Manager is hereby authorized to execute the Agreement on behalf of the Village, once approved as to form and legal sufficiency by the Village Attorney, and subject to the provisions and conditions of this Resolution.

B. **Funding Source:**

- (i) That funding for the Utility Crossing Work shall be provided in accordance with the Village Manager’s Memorandum which accompanies this Resolution, and shall be provided through the funding sources of the Village’s Water, Sewer, Reclaimed Water Project.
- (ii) That the total cost of the Utility Crossing Work shall not exceed the dollar amount of Three Hundred Thirty-Seven Thousand, Sixteen Dollars and Seventy-One Cents (\$ 337,016.71) Dollars as specified in the Change Order No. 5, in the absence of further Village Council authorization.

C. **Conditions:** That the Agreement shall be subject to the condition precedent that Village funds are available and budgeted for accomplishment of the Utility Crossing Work.. Further, the approval of the Agreement shall be subject to the following conditions, which shall be incorporated into the Agreement by reference, as follows:

- (i) Contractor agrees that in the event that a referendum or initiative measure is adopted at an election by the majority of the electors of the Village voting on such measure, which operates to prohibit the construction of the Utility Crossing Work or prohibits the financing of the construction of the Water, Sewer, Reclaimed Water Project in accordance with the plans; the Village Council shall have the authority, within thirty (30) days after any such event, to terminate the Contract by providing written notice of termination to the Contractor. In the event of such termination, the Village shall not be liable to Contractor for payment of any supplemental compensation, penalties,

damages, loss of profits, termination fee or demobilization fee as a result of such termination, and the Contractor shall only be paid by the Village in accordance with the Contract, for the portion of the Work which has been performed by Contractor up to the time of notice of termination of the Contract. The Contractor shall be entitled to recover from the Village payment for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, and profit earned on the Utility Crossing Work Project prior to the date of termination.

- (ii) Pursuant to Village Charter Section 3.07(b), this Resolution shall serve as the capital project authorizing Resolution for the Utility Crossing Work, supplementing the authorization previously made through Ordinance No.2006-4 (Crandon Project Phase III) and Ordinance No.2006-6 (Water, Sewer Project).

Section 3. Implementation. That the Village Manager is hereby authorized to take any action which is necessary to implement the purposes of this Resolution and the Agreement.

Section 4. Effective Date. That this Resolution shall be effective immediately upon adoption hereof.

PASSED AND ADOPTED this 5th day of June, 2007.

MAYOR ROBERT L. VERNON

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY