



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

MEMORANDUM

Village Council
Robert L. Vernon, *Mayor*
Enrique Garcia, *Vice Mayor*
Michael W. Davey
Robert Gusman
Michael E. Kelly
Jorge E. Mendia
Thomas Thornton

DATE: October 26, 2010
TO: Honorable Mayor and Members of the Village Council
FROM: Genaro "Chip" Iglesias, Village Manager

GM for Chip Iglesias

Village Manager
Genaro "Chip" Iglesias RE: Memorandum of Understanding Between the Village and the National Park Service for Seagrass Restoration

RECOMMENDATION

It is recommended that the Village Council approve the Memorandum of Understanding (MOU) with the National Park Service (Biscayne National Park) (the "Park"), in substantially the form attached hereto, providing that the Village and the Park will implement a project for the restoration of 0.3 acre of seagrass to offset impacts from the Village's 2002 Beach Restoration project. This restoration will take place within the Park and will be accomplished by the Park and funded by the Village. It is further recommended that I be authorized to execute the Agreement on behalf of the Village and to take all action necessary to implement the Agreement.

BACKGROUND

The Village conducted an authorized beach renourishment project within its jurisdiction in 2002. The renourishment project resulted in impacts to seagrass habitat, for which in-kind mitigation was required by the Florida Department of Environmental Protection (FDEP), the US Army Corps of Engineers (Corps), and the Miami-Dade County Department of Environmental Resources Management (DERM), to offset the lost functional services of seagrass habitat impacted by the renourishment project. To date, 0.3 acre of the required mitigation remains to be completed. Completion of this mitigation is also being required by the FDEP prior to issuance of a Notice to Proceed with the Village's additional beach restoration. The FDEP has agreed to issuance of a Notice to Proceed upon execution of a MOU with the Park, instead of requiring completion of the Project.

In order to complete the required restoration, a suitable site had to be located and no other suitable sites were located in closer proximity to the Village. However, within the Park, 0.3 acre of damaged seagrass, that resulted from vessel grounding injuries of unknown origin (orphan sites), was mapped for this restoration effort.

The restoration project within the Park ("Project"), as designed, is the result of ongoing discussions among the Park, the Village and its consultants, and the FDEP, which have taken place over the past year. The Project will result in the restoration of seagrass habitat in the Park for which federal funding is otherwise unavailable, as well as the satisfaction of the Village's remaining mitigation requirements from the aforementioned agencies. The FDEP has agreed to the Project as adequate to complete the required restoration and, as previously noted, will move forward with the issuance of the presently pending authorization for additional beach restoration.

The Project will take place on or immediately adjacent to "No Name Shoal" in the Park, a seagrass bank with numerous injuries from multiple vessel groundings. In May, 2010, the Village and its consultants conducted aerial and field surveys to identify specific injuries for inclusion in the Project. A total of 17 blowholes and depressions identified in these surveys were selected for Project restoration. The 17 individual injuries range in size from 20 m² to over 230 m² and cover a total of 0.3 acre (1,214 m²). These were proposed for restoration in an amended mitigation plan and have been approved by FDEP and the Park as appropriate for restoration.

As part of the Project, one Class II Private Aid to Navigation (PATON) will be installed prior to the completion of restoration activities at the eastern end of "No Name Shoal", serving to mark the shoal and reduce the risk of damage to the restoration efforts. The PATON will be a "danger shoal" day board with a white flashing light on a 4-second interval. The Park has received conceptual approval from the U.S. Coast Guard (USCG) on the type and location of the PATON. PATON installation will be contracted out by NPS and maintained by the Park. The PATON will require a USCG permit that will be obtained by the Park. The Project will fund installation of the PATON and maintenance for a period of five years.

Restoration work will be contracted out by NPS. Project management, contract oversight, and restoration monitoring will be conducted by the Park with oversight by the Village's consultants. The Project will be paid for by the Village and the estimated total Project cost is \$490,875, which is for Project implementation and 5 years of monitoring. These funds were approved in the Village's Capital Improvement Plan budget adopted on September 28, 2010.

RESOLUTION NO. _____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING AN AGREEMENT (MEMORANDUM OF UNDERSTANDING) BETWEEN THE VILLAGE OF KEY BISCAYNE AND THE NATIONAL PARK SERVICE (BISCAYNE NATIONAL PARK) FOR SEAGRASS RESTORATION WITHIN BISCAYNE NATIONAL PARK AS MITIGATION FOR BEACH RESTORATION IMPACTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village conducted a beach renourishment project within its jurisdiction in 2002; and

WHEREAS, the renourishment project resulted in impacts to seagrass habitat, for which in-kind mitigation was required by the Florida Department of Environmental Protection (FDEP), the US Army Corps of Engineers (Corps) and the Miami-Dade County Department of Environmental Resources Management (DERM); and

WHEREAS, a substantial part of the required mitigation has been completed but, to date, 0.3 acre of the required mitigation remains to be completed; and

WHEREAS, the National Park Service (Biscayne National Park) and the Village have agreed to collaborate on a project (Project) to restore 0.3 acre of impacted seagrasses within the boundaries of Biscayne National Park; and

WHEREAS, the Project, as designed, is the result of ongoing discussions among the Park, the Village and its consultants, and the FDEP, which have taken place over the past year; and

WHEREAS, the Project will result in the restoration of seagrass habitat in Biscayne National Park for which federal funding is otherwise unavailable, as well as satisfaction of the

Village's remaining mitigation requirements for the aforementioned agencies; and

WHEREAS, the Project mitigation plan has been approved by FDEP and the Park as appropriate for restoration and satisfaction of mitigation obligations; and

WHEREAS, the actual work implementing and monitoring the success of the Project will be done by the National Park Service, with oversight by the Village's consultants; and

WHEREAS, the Project will be funded by the Village and the necessary funds are available in the Village budget; and

WHEREAS, the Village Council finds that participation in the Project in accordance with the terms and requirements set forth in the Memorandum of Understanding is in the best interest of the Village.

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

Section 1. Recitals Adopted. Each of the above stated recitals are hereby adopted, confirmed and incorporated herein.

Section 2. Agreement Approved. That the Memorandum of Understanding (MOU), in substantially the form attached hereto, is hereby approved and the Village Manager is authorized to execute the MOU on behalf of the Village.

Section 3. Village Manager Authorized. That the Village Manager is further authorized to execute all documents necessary to implement the MOU on behalf of the Village.

Section 4. Village Manager and Attorney to Implement. That the Village Manager and Village Attorney are authorized to take any and all action necessary to implement the MOU.

Section 5. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this ____ day of _____, 2010.

ROBERT L. VERNON
MAYOR

ATTEST:

Conchita Alvarez, CMC
Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Village Attorney

MEMORANDUM OF UNDERSTANDING
Between the
NATIONAL PARK SERVICE
BISCAYNE NATIONAL PARK
And
THE VILLAGE OF KEY BISCAYNE

This Memorandum of Understanding (MOU) is entered into between the National Park Service (NPS), a bureau of the United States Department of the Interior (Department), and the Village of Key Biscayne (Village), a Florida municipal corporation, for the purpose of collaborating with Biscayne National Park (Park).

Article I. Background and Objectives

The Park is one of the largest marine parks in the National Park System and was established to preserve and protect a rare combination of terrestrial, marine, and amphibious life for the enjoyment of present and future generations.

Seagrass meadows are an important nearshore habitat type located within the Park. Shallow seagrass habitat in the Park is frequently impacted by vessel groundings. These incidents create specific types of injuries to these resources, including propeller scars, blowholes, and berms. Natural recovery from grounding injuries may take months to over a decade or longer, especially when the injury extends deep into the sediment. The Park's general objectives for restoring vessel grounding injuries in seagrass habitat include restoring topographic elevation at those sites with substantial sediment excavation, restoring seagrass coverage of injured and backfilled areas, and encouraging seagrass recruitment into injured and backfilled areas. These objectives are accomplished by placing sediment fill, transplanting seagrasses, and applying nutrients via bird stakes and fertilizer application.

The NPS estimates that less than ten percent of grounding incidents in the Park are reported. Thus there are a large number of grounding injuries for which no responsible party is known, and the Park refers to these as "orphan sites". Opportunities and funding for the restoration of orphan sites are extremely limited.

The Village conducted an authorized beach renourishment project within its jurisdiction in 2000, under the following permits:

- Miami-Dade County Department of Environmental Resources Management (DERM) Class I Coastal Construction Permit # CC99-347
- United States Army Corps of Engineers (COE) Individual Permit # 199904294 (IP-DSG)
- Florida Department of Environmental Protection (FDEP) Joint Coastal Permit # 0160856-001-JC

The renourishment project resulted in impacts to seagrass habitat, for which in-kind mitigation was required to restore the functional services of seagrass habitat impacted by the renourishment project. To date, 0.3 acre of the required mitigation remains to be completed.

The Park and the Village intend to collaborate on a project (Project) to restore 0.3 acre of vessel grounding injuries of unknown origin (orphan sites) - in seagrass habitat within the Park. The Project, as designed, is the result of ongoing discussions among the Park, the Village and its contractors, and FDEP, which have taken place over the past year. The Project will result in the restoration of seagrass habitat in the Park for which funding is otherwise unavailable, as well as the satisfaction of the Village's remaining mitigation requirements for the aforementioned permits.

The Project will take place on or immediately adjacent to "No Name Shoal" in the Park, a seagrass bank located at approximately 25.57446 N, -080.27194 E, with numerous injuries from multiple vessel groundings. In May, 2010, the Village and its contractors conducted aerial and field surveys to identify specific injuries for inclusion in the Project. A total of 17 blowholes and depressions identified in these surveys were selected for restoration in the Project. The 17 individual injuries range in size from 20 m² to over 230 m² and cover a total of 0.3 acre (1,214 m²). These were proposed for restoration in an amended mitigation plan and have been approved by FDEP and the Park as appropriate for restoration. The seventeen sites are depicted on Exhibit A with corresponding latitude and longitude coordinates denoted.

The restoration involves re-establishment of topographic elevation at the orphan sites and provision of nutrients via bird stakes with the objective of encouraging seagrass recruitment into the backfilled areas. The objective will be accomplished by placement of sediment fill into excavations and installation of bird roosting stakes in the filled sites. Sediment placement into blowholes or deep propeller scars returns the seafloor to its original grade and composition, stabilizes the substrate to prevent further deterioration from erosion, and prepares the area for colonization by seagrasses and macroalgae. Bird stakes placed in restoration areas encourages roosting of waterfowl, which ensures the regular release of natural fertilizer over the sea floor beneath the stakes, to enhance recolonization by seagrasses and macroalgae. It is estimated that approximately 600 cubic yards of fill and approximately 300 bird stakes will be needed to achieve the stated restoration objective of the Project. Restoration work will be contracted out by NPS. Project management, contract oversight, and restoration monitoring will be conducted by the Park.

As part of the Project, one Class II Private Aid to Navigation (PATON) will be installed prior to the completion of restoration activities at the eastern end of "No Name Shoal", serving to mark the shoal and reduce the risk of damage to the restoration efforts. The PATON will be a "danger shoal" day board with a white flashing light on a 4-second interval. The Park has received conceptual approval from the U.S. Coast Guard (USCG) on the type and location of the

PATON. PATON installation will be contracted out by NPS and maintained by the Park. The PATON will require a USCG permit that will be obtained by the Park.

The purpose of this MOU is to establish the terms through which the Park and the Village will accomplish the Project.

Article II. Statutory Authority

The NPS enters into this Agreement pursuant to the following legal authorities:

16 U.S.C. § 1-3 – General Authority to Take Actions That Promote and Regulate Units of the National Park System

The NPS Organic Act directs the Secretary of the Interior to promote and regulate National Park System lands by such means and measures as to conform to the fundamental purpose of such lands, namely conservation of the scenery and natural and historic objects and wildlife therein, and to provide for the enjoyment of these resources in a manner and by such means as will leave them unimpaired for the enjoyment of future generations.

16 U.S.C. § 6, 43 U.S.C. § 1473a – Authority to Accept Donations

The Secretary of the Interior in his administration of the National Park Service is authorized, in his discretion, to accept patented lands, rights-of-way over patented lands or other lands, buildings, or other property within the various national parks and national monuments, and moneys that may be donated for the purposes of the national park and monument system.

Authority to Expend Donated Funds: As a general rule, NPS may expend donated funds, and use donated goods and services, for any activity for which appropriated funds may be used, subject to the limitations noted in § 6.2 of Director's Order 21 (DO #21). Authority to expend appropriated funds may, as appropriate, be derived from many sources including the NPS Organic Act (16 U.S.C. §§ 1-4) and park-specific legislation. Be aware that park-specific and other specific legislation may restrict NPS' ability to rely on more general statutes, such as the NPS Organic Act, for legal authority to expend funds on certain activities.

Article III. Responsibilities and Understandings of the Parties

A. The NPS and Village jointly agree to:

1. Work together, in good faith, for the benefit of the Park and the Village to

accomplish the objectives articulated in this Agreement, ensure the success of the relationship established by this Agreement, and identify other opportunities for productive collaboration.

2. Ensure frequent and regular communications and actively participate in these communications. The communications shall concern all matters under this Agreement, including without limitation, the respective goals and responsibilities of the parties.
3. Work together, in good faith, to promptly resolve differences at the level of the Key Officials listed in Article V of this Agreement, prior to elevating matters within the organization of either party, the Department, or the United States.

B. The NPS agrees to:

1. Project Contracting: Within 30 days of the date hereof, the contract package will be submitted by the Park into the NPS contracting system. The anticipated procurement acquisition lead time is then approximately 90-120 days to an award. The Park will notify the Village if this timeframe will not be met and will provide the Village with a new anticipated timeframe. Park staff will develop, compete, award, and administer the restoration and PATON installation contract packages.

In the event that bids, proposals or change orders are received by the Park that differ in scope or exceed the initial budgeted amount of \$298,198 (for restoration) and \$4,000 (for PATON cost and installation), or the annual budgeted amounts set for in subparagraph 7 hereof, then the Park will not award said contract/s unless the Park and the Village agree, by written amendment to this agreement.

The restoration contract will include the following work elements:

- Planning meeting, site visit/s
- Implementation plan, draft and final
- Fill placement
- Bird stake and restoration signage fabrication and placement
- Restoration completion report, draft and final

The marker installation contract will include the following work elements:

- Planning meeting/site visit
- Equipment procurement
- Equipment installation

Price and the following technical evaluation criteria to evaluate bids:

- Recent specialized experience
- Professional qualifications
- Past performance

2. Contractor Oversight: Park staff will provide careful oversight of restoration and marker contractors, to ensure that the work is implemented correctly and efficiently and with minimal collateral resource injury. The Village shall be notified of the oversight activities proposed by the Park in sufficient time to allow, but not require, the Village to participate or observe such oversight efforts. Nothing herein should be construed to constitute any obligation on the part of the Village to participate in such oversight. However, nothing contained herein shall be construed for such coordination to delay Park activities undertaken under the terms of this agreement.

3. Restoration Monitoring and Reporting: Monitoring will be conducted by Park staff and/or its contractors for up to 5 years or until the “success criteria” are met. The monitoring schedule will include a “time zero” event (immediately following restoration) and annual monitoring surveys to document sediment stability and colonization of the restoration sites by seagrass and calcareous green algae. Approximately 10% of each injury will be monitored, using randomly-placed square 0.25 m² quadrats. The equivalent area of undisturbed adjacent reference habitat will also be monitored. In each monitoring quadrat, a modified Braun-Blanquet scale will be used to estimate the cover/abundance of seagrass and macroalgae. In 50% of the injury and reference quadrats per feature, *Thalassia testudinum* short shoots will also be counted from within one corner of the quadrat equal to 0.0625- m² in size. At each monitoring event, qualitative observations of sediment and bird stake stability will also be noted to determine if any significant physical changes have occurred within the mitigation area. Qualitative digital photographs and/or video data will also be collected to document the site conditions and seagrass recovery.

The Park agrees to notify the Village of the time schedule for annual monitoring in sufficient time to allow the Village to participate or observe the monitoring event. However, nothing contained herein shall be construed for such coordination to delay Park activities undertaken under the terms of this agreement.

The Park will present the results of monitoring data collection and describe the current site conditions in one monitoring report per annual monitoring event, for timely submission to the Village and FDEP.

At the end of the 5-year monitoring period, the success of the Project will be evaluated using one of the following two definitions:

Definition 1:

- *T. testudinum* density (shoots/m²) reaches 50% or greater within the restoration sites compared to the reference sites.

Definition 2:

- *T. testudinum* density (shoots/m²) reaches 30% or greater within the treatment sites compared to the reference sites
- *T. testudinum* density (shoots/m²) demonstrates a trending increase at a 95% confidence level
- the total coverage-abundance estimates of all seagrass and calcareous green algae species reaches 60% or greater than those of the reference sites.

4. Marker Inspection/Maintenance: Park staff will inspect the PATON twice annually and maintain it as needed for a five-year period following installation, to ensure proper performance. The Park agrees to notify the Village of the time schedule for this monitoring in sufficient time to allow the Village to participate or observe the monitoring event. However, nothing contained herein shall be construed for such coordination to delay Park activities undertaken under the terms of this agreement.

5. Summary Reporting: The Park will submit annual financial reports to the Village that provide a summary of activities conducted, expenditure of donation funds to date, and suggested budget modifications for subsequent Project years as needed.

6. Additional remedial effort: in the event, for whatever the reason, the initial restoration efforts do not achieve the success criteria or are clearly not trending towards success, as noted above, and one additional remediation effort is required by the FDEP, pursuant to paragraph c.5 below, the Park agrees to allow such additional remediation, subject to the Village and the Park reaching written agreement regarding the budget for such additional event.

7. Budget: The Park has developed the following budget for the Project. This is an estimate and is based on the Park's extensive experience implementing and monitoring similar seagrass restoration projects.

C. The Village agrees to:

1. Donate funds in the total amount of **\$490,875** to Biscayne National Park to support the Project. These funds will be donated in annual increments at the start of each Project year (with the first installment to be made by execution date of this Agreement) according to the budget estimate provided in this Agreement:

Yr. 1	\$359,582
Yr. 2	\$24,110
Yr. 3	\$25,185
Yr. 4	\$26,259
Yr. 5	\$27,333
Yr. 6	\$28,407
Total Donation	\$490,875

Should actual Project costs vary, donation amounts for subsequent Project years may be adjusted accordingly by agreement of the parties in writing. The Village understands that Project year work may not commence until funds for that year have been donated and that work will not continue if funds are not received.

2. For Project planning purposes, the Village has provided the complete survey results from the field assessment conducted by the Village and its contractors for the seventeen selected mitigation sites at No Name Shoal.
3. The Village has developed monitoring parameters and success criteria that are acceptable to FDEP and the Park and a copy of the document evincing FDEP's approval is attached hereto as Exhibit "B".
4. Notify the Park in a timely fashion of any issues and concerns related to the annual monitoring reports and interpretations of Project success.
5. Implement one remedial effort to offset any shortfalls of the Project if either of the following occur:
 - Monitoring data do not support one of the two success definitions
 - at any point during the monitoring period, an unanticipated event substantially alters the physical site conditions, thereby limiting or preventing natural re-colonization of the mitigation sites.

The nature, scale and scope of the remedial actions will be dependent on the level at which Project success was not met. Should such additional remedial action be needed, the Village will seek the approval of the proposed additional remedial action from the FDEP and a modification to this MOU will be prepared for approval by the Park and the Village.

Article IV. Term of Agreement

Unless earlier terminated by operation of the terms of this Agreement, or by agreement of the parties in writing, this Agreement will be in effect for a period of six (6) years beginning on the date the last signature is affixed to this Agreement or at such earlier time as the success criteria are achieved.

Anticipated Project activities by year are as follows, with an anticipated start date of November, 2010.

- Year 1: Restoration contracting and/or implementation of: 1) restoring the seventeen selected sites using the approved methods described in the Village's FDEP-approved addendum to the restoration and mitigation plan; 2) the PATON marker installation; and 3) baseline monitoring conducted by the Park.
- Years 2-6: Annual monitoring of restoration area and biannual inspection and maintenance of PATON.

Article V. Termination

Either Party may terminate this Agreement for default in the terms hereof but only after the non-defaulting party notifying the other party of such default, in writing, and by providing thirty (30) days written notice setting forth the reasons for proposing termination and giving the other party thirty (30) days to cure said default.

Article VI. Key Officials and Notices

A. Key Officials

The personnel specified below are considered essential to the successful coordination and communication between the Village and the Park for the work to be performed pursuant to this Agreement. Upon written notice to the other party, either party may designate an alternate to act in the place of the designated Key Official, or designated a new Key Official.

For Biscayne National Park:

Mark Lewis or his successor
Superintendent
Biscayne National Park
9700 SW 328 Street
Homestead, Florida 33033
305-230-1144 phone
305-230-1190 fax
Mark_lewis@nps.gov email

For the Village of Key Biscayne:

Genaro "Chip" Iglesias or his successor
Village Manager
Village of Key Biscayne
88 West McIntyre Street
Key Biscayne, FL 33146
305-365-5511 phone
305-365-8936 fax
chip@keybiscayne.fl.gov email

B. Notices

Any notice from one party to all the other parties related to this Agreement shall be in writing and delivered by mail, personal delivery, electronic delivery or other appropriate means, to the first Key Official of the other party at the address or contact number indicated above, or at such other address or contact number for such Key Official as may be provided by the other party from time to time, and shall be considered delivered upon receipt at the office of such Key Official.

Article VII. Required Clauses

- A. Non-Discrimination:** All activities pursuant or in association with this Agreement shall be conducted in compliance with the requirements of Executive Order 11246; Title VI of the Civil Rights Act of 1964, as amended (78 Stat. 252; 42 U.S.C. § 2000d et seq.); Title V, Section 504 of the Rehabilitation Act of 1973 (87 Stat. 394; 29 U.S.C. § 794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. §§ 6101 et seq.); and with all other federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex.

- B. NPS Appropriations:** Pursuant to 31 U.S.C. § 1341, nothing contained in this Agreement shall be construed to obligate the Department of the Interior or the United States to any current or future expenditure of funds in advance of the availability of appropriations from Congress. Nor does this Agreement obligate the Department of the Interior or the United States to spend funds on any particular project or purpose, even if funds are available.
- C. Prior Approval:** The Village shall obtain prior written approval from the NPS before:
1. Holding special events within the Park;
 2. Entering into third-party agreements of a material nature regarding the Park;
 3. Assigning or transferring this Agreement or any part thereof;
 4. Constructing any structure or making any improvements within the Park's boundaries;
 5. Releasing any public information that refers to the Department, the NPS, the Park, any NPS employee (by name or title), this Agreement or the Project contemplated hereunder. However, in the event the information requested qualifies as a "public record", under the provisions of Chapter 119, Florida Statutes, the Village may provide those records without written approval from the NPS, but shall also notify the NPS of the request and by providing copies of the requested information to the NPS.
- D. Compliance with Applicable Laws:** This Agreement and performance hereunder is subject to all laws, regulations and management policies including those governing the NPS property and resources, whether now in force or hereafter enacted or promulgated. Nothing in this Agreement shall be construed as in any way impairing the general powers of the NPS for supervision, regulation, and control of its property under such applicable laws, regulations, and management policies. Nothing in this Agreement shall be deemed inconsistent with or contrary to the purpose of or intent of any Act of Congress.
- E. Limitation on Lobbying:** The Village will not undertake activities, including lobbying for proposed Village or NPS projects or programs, that seek to either: (1) alter the appropriation of funds included in the President's budget request to Congress for the Department of the Interior or another federal agency that holds funds for the sole benefit of the NPS under Congressionally authorized programs, including the Federal Lands Highway Program; or (2) alter the allocation of such appropriated funds by NPS or another Federal agency. Nothing in this paragraph is intended to preclude the Village from applying for and obtaining a competitive or non-competitive grant of Federal financial assistance from a Federal agency, or from undertaking otherwise lawful activities with respect to any Village or NPS activity, project or program included in the President's budget request to Congress. Nothing in this paragraph should be construed as NPS requesting, authorizing or supporting advocacy by nonfederal entities before Congress or any other government official. Except as provided herein and in applicable

laws, nothing in this paragraph shall be construed to curtail the Village's ability to interact with elected or appointed officials.

- F. **Disclaimers of Government Endorsement:** The Village will not publicize or circulate materials (such as advertisements, solicitations, brochures, press releases, speeches, pictures, movies, articles, manuscripts, or other publications), suggesting expressly or implicitly, that the Government, the Department, NPS, or Government employees endorse the Village's business, goods, or services. All materials referring to the Government must be approved by the NPS Key Official prior to publication. Nothing herein is intended to prevent the NPS or the Department of the Interior from recognizing the Village or contributions made by the Village to NPS, and from authorizing an inclusion of such recognition in materials generated by the Village related to this Agreement.
- G. **Modifications:** This Agreement may be extended, renewed or amended only when agreed to in writing by the NPS and the Village.
- H. **Waiver:** Failure to enforce any clause of this Agreement by either party shall not constitute waiver of that clause. Waivers must be express and evidenced in writing.
- I. **Agency:** The Village is not an agent or representative of the United States, the Department of the Interior, or the NPS, nor will the Village represent itself as such to third parties. The NPS is not an agent or representative of the Village, nor will the NPS represent itself as such to third parties.
- J. **Partial Invalidity:** If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Article VIII. Signatures

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

FOR THE VILLAGE OF KEY BISCAYNE

Genaro "Chip" Iglesias
Village Manager, Village of Key Biscayne

Date

FOR THE NATIONAL PARK SERVICE

Mark Lewis
Superintendent, Biscayne National Park

Date