



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

Franklin H. Caplan, *Mayor*
Michael W. Davey, *Vice Mayor*
Theodore J. Holloway
Michael E. Kelly
Mayra P. Lindsay
Ed London
James S. Taintor

DATE: June 24, 2014
TO: Honorable Mayor and Members of the Village Council
FROM: John C. Gilbert, Village Manager
RE: Beach Cleaning, Maintenance and Beautification Services

Village Manager
John C. Gilbert

RECOMMENDATION

It is recommended that the Village Council approve the attached Resolution authorizing the Village Manager to execute an Agreement with W. D. Thompson, Inc., D/B/A Beach Raker (attached as Exhibit "A-1") to provide beach cleaning, maintenance and beautification services in an amount not to exceed \$186,400. Funds are available in the Public Works budget.

BACKGROUND

On May 28, 2014, Universal Beach Services (UBS) notified the Village that they were terminating their services effective Saturday, May 31, 2014. Miami-Dade County has been maintaining the beach for the past three (3) weeks. This provided the Village the opportunity to enter into an agreement with Beach Raker.

The beach was formerly serviced five (5) days a week at a cost of \$106,840 annually (established in October 2003) and during the recession it was negotiated to \$101,752 annually. The proposed schedule is to keep servicing the beach five (5) days a week with one (1) operator during the months of less seaweed deposits and with two (2) operators during the months when the gulfstream pushes the most seaweed onto our shores.

- Two (2) operators: May 19 – October 31
- One (1) operator: November 1 - May 18

Beach Raker reviewed the documentation provided since the original Request for Proposal (RFP) with regard to methodology, permitting, equipment and the level of service desired by the Village to mirror Crandon Park's style of beach. Beach Raker provided a comprehensive analysis and submitted a proposal of services based on the revised conditions and expectations.

The term of the Agreement is for one (1) year with an option to extend for an additional (2) year term and up to three (3) additional one year terms. The same terms, conditions and pricing as set forth in this agreement apply to all extensions.

Reviewed by Ms. Lillian Arango from Weiss Serota Helfman Pastoriza Cole & Boniske as to form and legal sufficiency.

RESOLUTION NO. 2014- _____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING THE AGREEMENT WITH W.D. THOMPSON, INC. D/B/A BEACH RAKER FOR BEACH CLEANING, MAINTENANCE AND BEAUTIFICATION SERVICES; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE AGREEMENT FOR SUCH SERVICES; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Key Biscayne (“Village”) recently solicited proposals or quotes from firms to provide Beach Cleaning, Maintenance and Beautification Services (“Services”) to the Village;

WHEREAS, the Village wishes to engage W.D. Thompson, Inc. D/B/A Beach Raker (“Beach Raker”) to provide the Services to the Village; and

WHEREAS, the Village Council desires that Beach Raker provide the Services and authorizes the Village Manager to execute the Agreement with Beach Raker (the “Agreement”) substantially in the form attached hereto as Exhibit “A-1”; and

WHEREAS, the Village Council finds that it is in the best interest of the Village to enter into the Agreement for the Services with Beach Raker, and proceed as indicated in this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE 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. Agreement Approved. That the Agreement, substantially in the form attached hereto as Exhibit "A-1", between W.D. Thompson, Inc. D/B/A Beach Raker and the Village for Beach Cleaning, Maintenance and Beautification Services is hereby approved, and the Village Manager is hereby authorized to execute the Agreement and related or necessary documentation on behalf of the Village, once approved as to form, content and legal sufficiency by the Village Attorney.

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

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

PASSED AND ADOPTED this ____ day of June, 2014.

MAYOR FRANKLIN H. CAPLAN

ATTEST:

CONCHITA H. ALVAREZ, MMC,
VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

EXHIBIT "A-1"

(Agreement for Beach Cleaning, Maintenance and Beautification Services)

AGREEMENT

between

VILLAGE OF KEY BISCAYNE, FLORIDA

and

W.D. THOMPSON, INC. D/B/A BEACH RAKER

for

BEACH CLEANING, MAINTENANCE AND BEAUTIFICATION SERVICES

THIS AGREEMENT (this "Agreement") is made by and between the **VILLAGE OF KEY BISCAYNE, FLORIDA**, a Florida municipal corporation (hereinafter referred to as the "VILLAGE"), and **W.D. THOMPSON, INC.**, a Florida corporation, **D/B/A BEACH RAKER** (hereinafter referred to as the "CONTRACTOR"), whose principal place of business is 220 N.E. 13 Street, Pompano Beach, Florida 33063.

RECITALS:

WHEREAS, the Village is in need of beach cleaning, maintenance and beautification services for ocean shoreline within the municipal limits of the VILLAGE as shown on the VILLAGE Plan attached to this Agreement as Exhibit "A, including solid waste collection and disposal, recycling, beach grading, management of seaweed, response to coastal storm events and tilling, for locations within the VILLAGE" (the "Services" or "Project");

WHEREAS, the CONTRACTOR is willing and able to perform the Services for the VILLAGE in accordance with the Beach Cleaning, Maintenance and Beautification Services Criteria and Typical Conditions (the "Specifications") attached hereto as Exhibit "B", and in accordance with the Proposal Costs included as part of Exhibit "B" attached to this Agreement; and

NOW THEREFORE, in consideration of the mutual terms, conditions, promises and covenants set forth below, the VILLAGE and CONTRACTOR agree as follows:

SECTION 1. SCOPE AND SERVICES

1.1 **Agreement Documents**. This Agreement Documents, which comprise the entire agreement between the VILLAGE and the CONTRACTOR concerning the Services, consist of this Agreement (including any changes or amendments thereto), the Plan attached hereto as Exhibit "A", the Specifications for the Services attached hereto as Exhibit "B" (including the revisions to the Specifications from CONTRACTOR included as part of Exhibit "B"), and the Proposal Costs included in Exhibit "B", the Insurance Certificates, and the Notice to Proceed, all of which are deemed incorporated into and made a part of this Agreement by this reference and govern the Project. The Services as defined in Section 1.2

hereof and to be provided and performed with respect to the Project shall be at all times subject to the requirements of the Agreement Documents.

1.2 **Scope of Services.** The CONTRACTOR shall provide to the VILLAGE beach cleaning, maintenance and beautification services in accordance with the Permit issued to the Village by the Florida Department of Environmental Protection (FDEP) for approximately 6,200 feet of ocean shoreline within the municipal limits of the VILLAGE as shown on the VILLAGE Plan attached to this Agreement as Exhibit "A, including solid waste collection and disposal, recycling, beach grading, management of seaweed, response to coastal storm events and tilling, or as otherwise determined by the VILLAGE (the "Service Areas") and in accordance with the Specifications attached thereto as Exhibit "B". The VILLAGE reserves the right to remove or change specific area locations within the Service Areas on a temporary or permanent basis, as deemed appropriate by the VILLAGE. The Services and work shall include the furnishing of all labor, materials, tools, equipment, machinery, superintendence and services necessary for the Services, which are more specifically set forth in the Specifications incorporated herein as Exhibit "B". The CONTRACTOR shall maintain the Project in accordance with the highest quality beach cleaning, maintenance and beautification standards consistent with the Specifications set forth herein which shall surpass industry standards. The CONTRACTOR'S Services shall be subject to inspection and approval by the VILLAGE, who shall indicate items or services that need to be addressed or corrected and the CONTRACTOR shall address and complete same in a timely manner and provide a status report. The CONTRACTOR shall adhere to the beach cleaning, maintenance and beautification programs and frequency as provided in the Specifications attached to this Agreement as Exhibit "B".

SECTION 2. BILLING AND PAYMENTS TO THE CONTRACTOR

2.1 **Payment; Invoices.** The VILLAGE shall pay the CONTRACTOR in accordance with the annual fixed price set forth in the Proposal Costs included and attached hereto as Exhibit "B", payable monthly within thirty (30) calendar days of approval by the VILLAGE of any invoices submitted by CONTRACTOR to the VILLAGE. Payment will be made on a monthly basis after Services are rendered, accepted and properly invoiced. CONTRACTOR shall provide one invoice for all general maintenance Services performed regularly on a monthly basis, itemized with each task enumerated in the Proposal Costs. Additional Services (Additional Seaweed Management and Storm Conditions with Excess Seaweed and Debris Removal) shall be itemized and billed separately in accordance with the rates set forth in the Proposal Costs attached hereto as Exhibit "B". The VILLAGE shall make payments to CONTRACTOR pursuant to applicable Florida law. Payments shall be made for units or Services ordered, placed and accepted by the VILLAGE and for rates in accordance with the Proposal Costs attached hereto as Exhibit "B."

2.2 **Disputed Invoices.** In the event that all or a portion of an invoice submitted to the VILLAGE for payment to the CONTRACTOR is disputed, or additional backup documentation is required, the VILLAGE shall notify the CONTRACTOR within fifteen (15) working days of receipt of the invoice of such objection, modification or additional documentation request. The CONTRACTOR shall provide the VILLAGE with additional backup documentation within five (5) working days of the date of the VILLAGE'S notice. The VILLAGE may request additional information, including but not limited to, all invoices, expense records, accounting records, and payment records of the CONTRACTOR.

The VILLAGE shall, pay to the CONTRACTOR the undisputed portion of the invoice. The parties shall endeavor to resolve the disputed portions in a mutually agreeable fashion.

2.3 **Suspension of Payment.** In the event that the VILLAGE becomes credibly informed that any representations of the CONTRACTOR are wholly or partially inaccurate, or in the event that the CONTRACTOR is not in compliance with any terms or conditions of this Agreement, the VILLAGE may withhold payment of sums then or in the future otherwise due to the CONTRACTOR until the inaccuracy, or other breach of this Agreement, and the cause thereof, is corrected to the VILLAGE'S reasonable satisfaction.

SECTION 3. TERM/TIME OF PERFORMANCE

3.1 **Term.** The CONTRACTOR shall be instructed to commence the Services by written instruction from the VILLAGE in the form of a Notice to Proceed providing the commencement date of this Agreement. This Agreement shall commence on the commencement date indicated on the Notice to Proceed and shall continue in full force and effect for an initial term of one (1) year, unless otherwise terminated pursuant to the terms of this Agreement (the "Term"). The VILLAGE by written notice to CONTRACTOR, given on or before ninety (90) days prior to the expiration of the initial one (1) year term, may elect to extend the Term of this Agreement for an additional two (2) year term upon the same terms, conditions and pricing as set forth herein for such renewal Term. Thereafter, the Term of this Agreement shall be automatically renewed annually for up to three (3) additional one (1) year renewal terms, upon the same terms, conditions and pricing as set forth in this Agreement, unless the VILLAGE provides written notice to the CONTRACTOR of its election not to renew the Term or renewal term at least ninety (90) days prior to the expiration of the Term or the applicable renewal term. In the event that Services are scheduled to terminate either by expiration or by termination by the VILLAGE, the VILLAGE, in its sole discretion, may request that the CONTRACTOR continue the Services for a transition period until new Services can be established and operational. This transition period shall not exceed ninety (90) days beyond the expiration date of this Agreement.

3.2 **Commencement.** The CONTRACTOR'S Services under this Agreement and the time frames and schedule applicable to this Agreement shall commence upon the commencement date indicated on the Notice to Proceed. The CONTRACTOR shall not incur any expenses or obligations or incur payment to third parties prior to the issuance of a Notice to Proceed for the Project, and the CONTRACTOR must receive the Notice to Proceed from the VILLAGE prior to beginning the performance of the Services.

3.3 **Contract Time.** From and after the receipt of the Notice to Proceed, the CONTRACTOR shall continuously perform the Services to the VILLAGE, with faithfulness and diligence and without interruption, for the duration of the Term and any renewal term thereafter (the "Contract Time"). Time is of the essence in the performance of the Services and all limitations of time set forth in this Agreement are of the essence.

SECTION 4. TERMINATION OF AGREEMENT

4.1 **Performance Probationary Period; Termination.** This Agreement and the performance of the Services by the CONTRACTOR are subject to a sixty (60) day

performance probationary period. During this probationary period, the CONTRACTOR'S performance will be closely monitored by the VILLAGE. If the CONTRACTOR'S performance fails to consistently meet the standards and requirements set forth in this Agreement, the VILLAGE shall have the right to terminate this Agreement upon written notice to the CONTRACTOR. If the CONTRACTOR'S performance is acceptable and meets the standards and requirements of this Agreement, the VILLAGE shall so notify the CONTRACTOR and this Agreement shall continue and extend throughout the Term provided in this Agreement. The VILLAGE shall have the right to terminate this Agreement during the probationary period, with or without cause, and the exercise of this right shall be solely within the discretion of the VILLAGE.

4.2 **Termination for Default.** If CONTRACTOR fails to timely begin the Services, or fails to perform the Services with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the Services according to the Specifications and this Agreement, or shall perform the Services unsuitably, or cause it to be rejected as defective and unsuitable, or shall discontinue the prosecution of the Services pursuant to the accepted schedule or if the CONTRACTOR shall fail to perform any material term set forth in this Agreement, the VILLAGE will notify the CONTRACTOR in writing of the violation and allow the Contractor a seven (7) days to cure and correct the violation. In the event that the violation is not cured or corrected within the seven (7) day cure period, the Village may terminate the services of CONTRACTOR, exclude CONTRACTOR from the Project site, provide for alternate prosecution of the Services, appropriate or use any or all materials and equipment on the Project site as may be suitable and acceptable, and may perform the Services by whatever methods it may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment. All damages, costs and charges incurred by the VILLAGE, together with the costs of completing the Services, shall be deducted from any monies due or which may become due to CONTRACTOR. In case the damages and expenses so incurred by VILLAGE shall exceed monies due CONTRACTOR from the VILLAGE, CONTRACTOR shall be liable and shall pay to VILLAGE the amount of said excess promptly upon demand therefore by VILLAGE.

4.3 **Termination for Insolvency or Bankruptcy.** if CONTRACTOR shall become insolvent or be declared bankrupt, or commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall not carry on the Services in an acceptable manner, VILLAGE may, upon seven (7) days written notice of termination, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Project site, provide for alternate prosecution of the Services, appropriate or use any or all materials and equipment on the Project site as may be suitable and acceptable, and may perform the Services by whatever methods it may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment. All damages, costs and charges incurred by the VILLAGE, together with the costs of completing the Services, shall be deducted from any monies due or which may become due to CONTRACTOR. In case the damages and expenses so incurred by VILLAGE shall exceed monies due CONTRACTOR from the VILLAGE, CONTRACTOR shall be liable and shall pay to VILLAGE the amount of said excess promptly upon demand therefore by VILLAGE.

4.4 **Payment after Termination.** Provided that the CONTRACTOR has performed in accordance with the terms of this Agreement as of the date of termination pursuant to Sections 4.2 and 4.3 above, CONTRACTOR shall receive all payments due to

CONTRACTOR for Services rendered and accepted prior to and up to the date of termination.

SECTION 5. ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES

5.1 **Changes Permitted.** Changes in the Services or the Project consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the VILLAGE by Change Order (as defined below) without invalidating the terms of this Agreement.

5.2 **Change Order Defined.** "Change Order" shall mean a written order to the CONTRACTOR executed by the VILLAGE, issued after execution of this Agreement, authorizing and directing a change in the Services, the Project, Payment or the Contract Time, or any combination thereof. The Payment and/or the Contract Time may be changed only by Change Order.

5.3 **Effect of Executed Change Order.** The execution of a Change Order by the VILLAGE and the CONTRACTOR shall constitute conclusive evidence of the CONTRACTOR'S agreement to the ordered changes in the Services or the Project, or an adjustment in the Payment or the Contract Time, or any combination thereof. The CONTRACTOR, by executing the Change Order, waives and forever releases any claim against the VILLAGE for additional time or compensation for matters relating to or arising out of or resulting from the Services included within or affected by the executed Change Order. Change Order costs shall be determined at a negotiated fee between the parties or based on the Proposal Costs attached hereto as Exhibit "B."

SECTION 6. SURVIVAL OF PROVISIONS

Any terms or conditions of this Agreement that require acts beyond the date of the Term, shall survive termination of this Agreement, and shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

SECTION 7. VILLAGE'S RESPONSIBILITIES

7.1 The VILLAGE will assist CONTRACTOR by placing at its disposal all available information as may be requested in writing by the CONTRACTOR relating to the Project and allow reasonable access to all pertinent information relating to the Services to be performed by CONTRACTOR.

7.2 The VILLAGE shall furnish to CONTRACTOR, at the CONTRACTOR'S written request, all available maps, plans, existing studies, reports and other data, pertinent to the Services to be provided by CONTRACTOR, that are in possession of the VILLAGE.

7.3 The VILLAGE shall arrange for access to and make all provisions for CONTRACTOR to enter upon public property under the control of the VILLAGE as required for CONTRACTOR to perform the Services.

7.4 The VILLAGE shall furnish the CONTRACTOR with adequate secured storage space with running water, on or adjacent to the beach for the CONTRACTOR to store its equipment.

SECTION 8. CODE OF ETHICS.

Intentionally Omitted.

SECTION 9. COMPLIANCE WITH LAWS; LICENSES; POLICY OF NON-DISCRIMINATION/WAGES

9.1 The CONTRACTOR and any and all of its agents, employees and subcontractors shall comply with all applicable federal, state, county and local laws, ordinances, rules, regulations and procedural requirements applicable to the performance of the Services and operations pursuant to this Agreement, including, but not limited to, Chapter 17 (Noise) of the Village's Code of Ordinances regulating noise, power tools and equipment, Chapter 8, Article VI (Lighting Regulations and Marine Turtle Protection), and meeting or exceeding all applicable requirements of the latest version of the codes and specifications applicable to the Services promulgated or published by the Florida Department of Transportation (FDOT) (vehicle Safety and traffic control requirements), the Occupational Safety Health Act (OSHA), the Environmental Protection Agency (EPA), all Federal and State Environmental Protection laws and regulations, and the Florida Department of Environmental Protection (FDEP). The CONTRACTOR is required to enter upon the ocean shoreline, VILLAGE'S property and public rights-of-way to perform the Services pursuant to this Agreement and shall obtain all necessary licenses, permits, approvals and insurance in connection with such access and right of entry. The CONTRACTOR shall comply with all requirements and the VILLAGE'S agreements with any other entity or agency which concern the Service Areas upon which the Services are to be provided.

9.2 The CONTRACTOR shall be licensed and certified by all appropriate federal, state, county and local agencies. Prior to the commencement of the Services or work and at all times during the Term or any renewal term(s) of this Agreement, CONTRACTOR shall procure and maintain, at its sole cost and expense, and provide copies to the VILLAGE, all required licenses, permits and certifications for the performance of the Services and the operations set forth in this Agreement.

9.3 The CONTRACTOR shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, age, marital status, national origin, physical or mental disability in the performance of Services or work under this Agreement. The CONTRACTOR shall comply with all equal employment opportunity requirements and any and all applicable requirements established by state and federal law.

SECTION 10. OWNERSHIP OF DOCUMENTS

10.1 Any and all records, drawings and specifications, as instruments of the Services to be performed (the "Drawings and Specifications"), are and shall become the property of the VILLAGE whether the Project for which they are made is executed or not. The CONTRACTOR shall be permitted to retain copies, including reproducible copies, of the Drawings and Specifications for information and reference in connection with the VILLAGE'S use and occupancy of the Project.

10.2 The CONTRACTOR agrees not to divulge, furnish or make available to any third person, insurance broker or organization, without the VILLAGE'S prior written consent, or unless incident to the proper performance of the CONTRACTOR'S obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the Services to be rendered by the CONTRACTOR hereunder, and the CONTRACTOR shall require all of its employees, agents and subcontractors to comply with the provisions of this paragraph.

SECTION 11. OWNERSHIP AND ACCESS TO RECORDS AND AUDITS.

11.1 CONTRACTOR acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports and all similar or related information (whether patentable or not) which relate to Services to the VILLAGE which are conceived, developed or made by CONTRACTOR during the term of this Agreement ("Work Product") belong to the VILLAGE. CONTRACTOR shall promptly disclose such Work Product to the VILLAGE and perform all actions reasonably requested by the VILLAGE (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).

11.2 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the CONTRACTOR providing the Services to the VILLAGE under this Agreement shall be the property of the VILLAGE.

11.3 The VILLAGE Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the CONTRACTOR involving transactions related to this Agreement. In addition, the CONTRACTOR agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes.

11.4 The VILLAGE may cancel and terminate this Agreement immediately for refusal by the CONTRACTOR to allow access by the VILLAGE Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

SECTION 12. NO CONTINGENT FEE

The CONTRACTOR warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the

CONTRACTOR to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the VILLAGE shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Payment, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

SECTION 13. INDEPENDENT CONTRACTOR

The CONTRACTOR is an independent CONTRACTOR under this Agreement. Personnel provided by the CONTRACTOR shall be employees of the CONTRACTOR and subject to supervision by the CONTRACTOR, and not as officers, employees, or agents of the VILLAGE. Personnel policies, tax responsibilities, social security, health insurance, worker's compensation insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to Services rendered under this Agreement shall be those of the CONTRACTOR.

SECTION 14. ASSIGNMENT; AMENDMENTS

14.1 This Agreement or the Services shall not be assigned, sold, transferred or otherwise encumbered, under any circumstances, in whole or in part, by CONTRACTOR, without the prior written consent of the VILLAGE, in its sole and absolute discretion.

14.2 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement by both parties.

SECTION 15. INDEMNIFICATION/HOLD HARMLESS

15.1 The CONTRACTOR shall indemnify and hold harmless the VILLAGE, and its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the acts, omissions, negligence, recklessness, wrongful conduct, acts, errors or omissions of the CONTRACTOR or any subcontractors or other persons employed or utilized by the CONTRACTOR in the performance of this Agreement. The CONTRACTOR'S obligation under this paragraph shall not be limited in any way by the agreed upon Payment, or the CONTRACTOR'S limit of, or lack of, sufficient insurance protection.

15.2 The indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or any subcontractor or other persons employed or utilized by the CONTRACTOR in the performance of this Agreement, under worker's compensation acts, disability benefit acts, or other employee benefit acts.

15.3 The CONTRACTOR shall not specify or allow any subcontractor or other persons employed or utilized by the CONTRACTOR in the performance of this Agreement to specify a particular design, process or product that infringes upon any patent. The

CONTRACTOR shall indemnify and hold VILLAGE and its officers and employees harmless from any loss, cost or expense, including reasonable attorney's fees and costs incurred, on account thereof if the CONTRACTOR violates the requirements of this Section 15.

SECTION 16. INSURANCE

CONTRACTOR shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts not less than those specified below as satisfactory to VILLAGE, naming the VILLAGE as an Additional Insured, underwritten by an insurance company rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the VILLAGE, its officials, employees, agents and volunteers naming the VILLAGE as additional insured. Any insurance maintained by the VILLAGE shall be in excess of the CONTRACTOR'S insurance and shall not contribute to the CONTRACTOR'S insurance. The insurance coverages shall include at a minimum the amounts set forth in this Section 16 and may be increased by the VILLAGE as it deems necessary or prudent.

(a) Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of CONTRACTOR. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.

(b) Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the CONTRACTOR shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.

(c) Business Automobile Liability with minimum limits of \$1,000,000 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

(d) **Certificate of Insurance.** Certificates of Insurance shall be provided to the VILLAGE, reflecting the VILLAGE as an Additional Insured, no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by VILLAGE and prior to commencing any Services. Each certificate shall include no less than (30) thirty-day advance written notice to VILLAGE prior to cancellation, termination, or material alteration of said policies or insurance. The CONTRACTOR shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the VILLAGE. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall

state that such insurance is as required by this Agreement. The VILLAGE reserves the right to inspect and return a certified copy of such policies, upon written request by the VILLAGE. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the VILLAGE before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the VILLAGE.

(e) **Additional Insured.** The VILLAGE is to be specifically included as an Additional Insured for the liability of the VILLAGE resulting from Services performed by or on behalf of the CONTRACTOR in performance of this Agreement. The CONTRACTOR'S insurance, including that applicable to the VILLAGE as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the VILLAGE shall be in excess of and shall not contribute to the CONTRACTOR'S insurance. The CONTRACTOR'S insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

(f) **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the VILLAGE. The CONTRACTOR shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

(g) The provisions of this section shall survive termination of this Agreement.

SECTION 17. REPRESENTATIVE OF VILLAGE AND CONTRACTOR

17.1 **VILLAGE Representative.** It is recognized that questions in the day-to-day conduct of this Agreement will arise. The VILLAGE designates the VILLAGE Manager or his or her designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

17.2 **CONTRACTOR Representative.** CONTRACTOR shall inform the VILLAGE Manager, in writing, of the representative of the CONTRACTOR to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

SECTION 18. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL

18.1 If either the VILLAGE or CONTRACTOR is required to enforce the terms of this Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all costs, expenses, and reasonable attorney's fees in any state or federal administrative, circuit court and appellate court proceedings.

18.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

SECTION 19. ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly it is agreed that no deviation from the terms of the Agreement shall be predicated upon any prior representations or agreements whether oral or written.

SECTION 20. CONTRACTOR'S RESPONSIBILITIES

20.1 CONTRACTOR warrants that the Services to be performed hereunder shall be performed by the CONTRACTOR'S own staff or employees, unless otherwise approved in writing by the VILLAGE. The VILLAGE shall approve any and all subcontractors providing Services to the VILLAGE pursuant to this Agreement. Said approval shall not be construed as constituting an agreement between the VILLAGE and said other person or firm. The CONTRACTOR'S services shall be performed in a manner consistent with that degree of skill and care ordinarily exercised by practicing professionals performing similar services in the same locality and under the same or similar circumstances and conditions.

20.2 CONTRACTOR represents that it possesses the requisite skills and shall follow the professional standards and the standard of conduct for CONTRACTORS or vendors in performing all Services under this Agreement. The CONTRACTOR agrees to use its skill and judgment in furthering the VILLAGE'S interests hereunder and CONTRACTOR shall perform the Services in accordance with the practice of the pertinent industry and as expeditiously as is consistent with reasonable skill and care. The VILLAGE shall have the right to reject or disapprove Services which the Village finds to be defective or non-conforming. If at any time during the term of this Agreement or the Project for which the CONTRACTOR has provided Services under this Agreement, it is determined that the CONTRACTOR'S Services or work are incorrect, defective, non-conforming or fail to conform to the terms of this Agreement, upon written notification from the VILLAGE, the CONTRACTOR shall immediately proceed to correct the work, re-perform Services which failed to satisfy the foregoing standard of care and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional inspections, and installation and reimbursements to the VILLAGE for any other services and expenses made necessary thereby, save and except any costs which the VILLAGE would have otherwise paid absent the CONTRACTOR'S error or omission. The VILLAGE'S approval, acceptance, use of or payment for all or any part of the CONTRACTOR'S services shall in no way alter the CONTRACTOR'S obligations or VILLAGE'S rights hereunder.

20.3 CONTRACTOR agrees, within fourteen (14) calendar days of receipt of a written request from the VILLAGE, to promptly remove and replace any personnel employed or retained by the CONTRACTOR, any subcontractor or other persons employed or utilized by the CONTRACTOR in the performance of this Agreement or any personnel of any such subcontractor or other persons employed or utilized by the CONTRACTOR to provide and perform the Services or work pursuant to the requirements of this Agreement,

whom the VILLAGE shall request in writing to be removed, which request may be made by the VILLAGE.

20.4 If CONTRACTOR allows any work to be performed knowing, or when with the exercise of due care the CONTRACTOR should have known, it to be contrary to any such applicable laws, ordinances, rules, regulations or restrictions and fails to give VILLAGE written notice thereof prior to performance thereof, CONTRACTOR shall bear all costs, liabilities, and expenses arising therefrom, which costs, liabilities and expenses shall not be considered a part of CONTRACTOR'S fees or any other amounts due hereunder.

20.5 CONTRACTOR hereby represents and warrants that it has reviewed all necessary Project documents, Specifications, and that this Agreement, when taken together, fully and accurately describe the Services needed to complete the Project in accordance with the requisite standard of care, and that CONTRACTOR is not aware of any additional work, labor or services that will be required to complete the Project. CONTRACTOR warrants and represents that it has visited and inspected the Service Areas and become familiar with and is satisfied as to the general and local conditions and site conditions that may affect performance or progress of the Services, and the cost of the Services.

20.6 CONTRACTOR hereby represents and warrants that all Services shall comply with all applicable federal, state and local laws, ordinances and building codes.

20.7 CONTRACTOR shall be responsible for promptly notifying the VILLAGE of any damage to buildings or other structures, vehicles, or property or possessions, which occur as a result of the Services and work performed by CONTRACTOR pursuant to this Agreement, or the improper or negligent activities of the CONTRACTOR.

20.8 CONTRACTOR'S obligations under this Section 20 shall survive termination of this Agreement.

SECTION 21. TAXES.

CONTRACTOR shall pay all taxes, levies, duties and assessments of every nature which may be applicable to the Services under this Agreement. The pricing and any agreed variations thereof shall include all taxes imposed by law at the time of this Agreement. CONTRACTOR shall make any and all payroll deductions required by law. CONTRACTOR herein indemnifies and holds the VILLAGE harmless from any liability on account of any and all such taxes, levies, duties and assessments.

SECTION 22. SAFETY.

CONTRACTOR shall be fully and solely responsible for safety and conducting all operations under this Agreement at all times in such a manner as to avoid the risk of bodily harm to persons and damage to property. CONTRACTOR shall continually and diligently inspect all Services, materials and equipment to discover any conditions which might involve such risks and shall be solely responsible for discovery and correction of any such conditions. CONTRACTOR shall have sole responsibility for implementing its safety program. VILLAGE shall not be responsible for supervising the implementation of

CONTRACTOR'S safety program, and shall not have responsibility for the safety of CONTRACTOR'S or its subcontractor's employees. CONTRACTOR shall maintain all portions of the Project site and Services in a neat, clean and sanitary condition at all times. CONTRACTOR shall assure that subcontractors performing Services comply with the foregoing safety requirements.

SECTION 23. CLEANING UP.

CONTRACTOR shall, at all times, at its expense, keep the Service Areas in a neat, clean and safe condition. Upon completion of any portion of the Services, CONTRACTOR shall promptly remove all of its equipment, construction materials, temporary structures and surplus materials not to be used at or near the same location during later stages of the Services. Upon completion of the Services, CONTRACTOR shall, at its expense, satisfactorily dispose of all rubbish, unused materials and other equipment and materials belonging to it or used in the performance of the Services and CONTRACTOR shall leave the Project site in a neat, clean and safe condition. In the event of CONTRACTOR'S failure to comply with the foregoing, the same may be accomplished by the VILLAGE at CONTRACTOR'S expense.

SECTION 24. NOTICES

Whenever either party desires to give notice to the other, it must be given by hand delivery or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

FOR CONTRACTOR:

W.D Thompson Inc. D/B/A Beach Raker
220 N.E. 13th Street
Pompano Beach, Florida 33063
Phone: _____
Email: _____
Attn: _____

FOR VILLAGE:

Village of Key Biscayne, Florida
Attn: John C. Gilbert, Village Manager
88 West McIntyre Street
Key Biscayne, Florida 33149
Phone: (305) 365-5514

With a copy to:

Stephen J. Helfman, Esq.
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
Village Attorneys
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, FL 33134
Phone: (305) 854-0800

SECTION 25. TRUTH-IN-NEGOTIATION CERTIFICATE

Execution of this Agreement by CONTRACTOR shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the Payment of this Agreement are accurate, complete, and current at the time of contracting. This Agreement's Payment and any additions shall be adjusted to exclude any significant sums by which the VILLAGE determines the Project's Payment was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one (1) year following the end of this Agreement.

SECTION 26. CONSENT TO JURISDICTION

The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this Agreement. Venue of any action to enforce this Agreement shall be proper exclusively in Miami-Dade County, Florida.

SECTION 27. GOVERNING LAW

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

SECTION 28. HEADINGS

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

SECTION 29. EXHIBITS

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits if not physically attached, should be treated as part of this Agreement, and are hereby incorporated by reference.

SECTION 30. NO WAIVER OF BREACH

The failure of a party to insist on strict performance of any provision of this Agreement shall not be construed to constitute a waiver of a breach of any other provision or of a subsequent breach of the same provision.

SECTION 31. SEVERABILITY

If any provision of this Agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION 32. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereby execute this Agreement on the date set forth below their signature.

ATTEST

**VILLAGE OF KEY BISCAYNE,
FLORIDA**

Village Clerk

By: _____
John C. Gilbert, Village Manager

Date Executed: _____

**APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND RELIANCE OF THE
VILLAGE OF KEY BISCAYNE, FLORIDA, ONLY:**

Village Attorney

IN WITNESS WHEREOF, the parties hereby execute this Agreement on the date set forth below their signature.

CONTRACTOR:

W.D. THOMPSON, INC., a Florida corporation, D/B/A Beach Raker

ATTEST:

By: _____

Name: _____

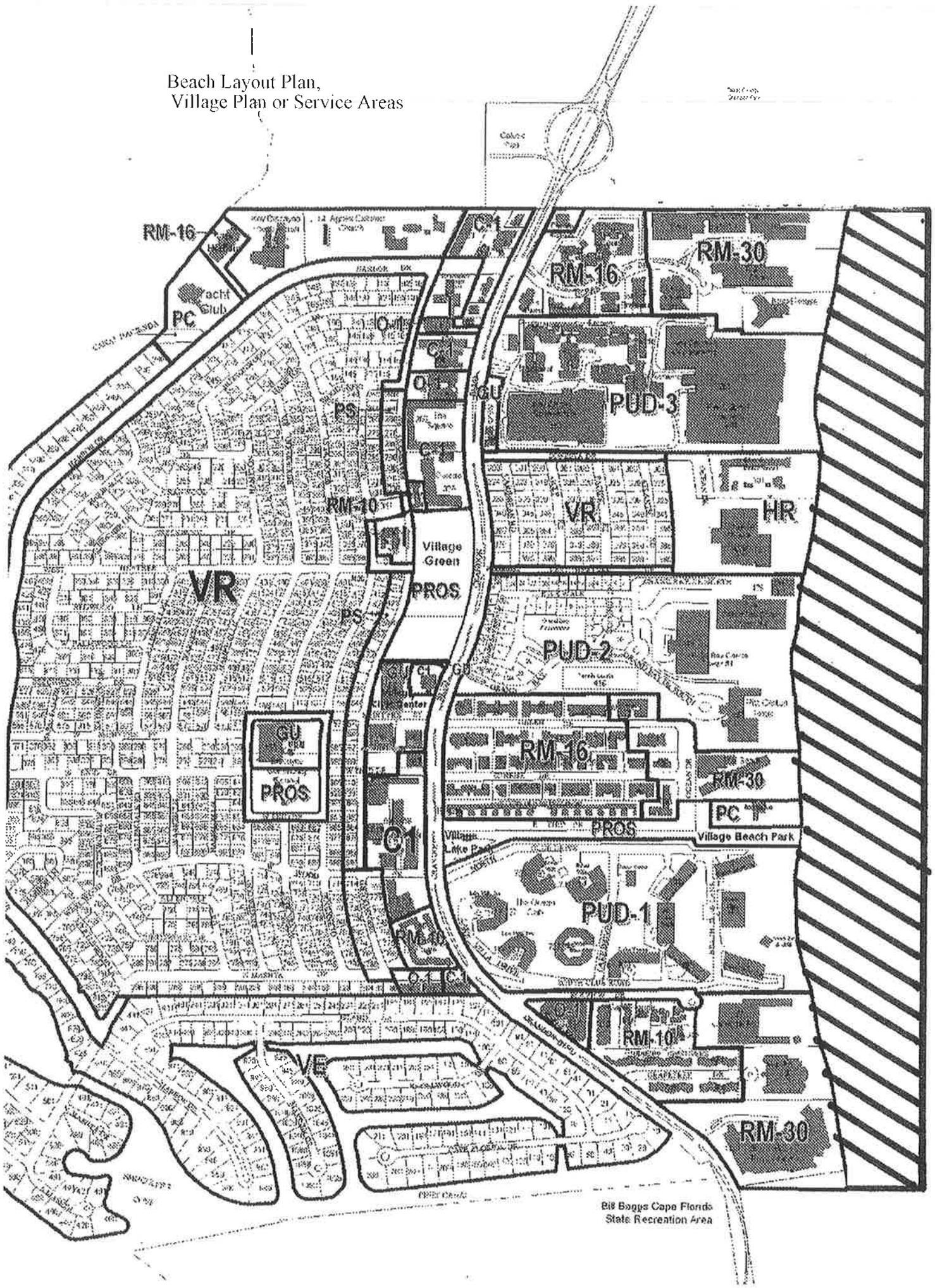
Title: _____

Date Executed: _____

EXHIBIT "A"

(Village Plan or Service Areas)

Beach Layout Plan,
Village Plan or Service Areas



BEACH

Big Baggs Cape Florida
State Recreation Area

EXHIBIT "B"

(Proposal Costs – Revisions to Specifications)

Village of Key Biscayne

Proposal for Services



Beach Cleaning, Maintenance, and Beautification Services

Submitted by:

Beach
Raker

beach cleaning, beach sanitizing.

220 NE 13th Street, Pompano FL 33060

Telephone: 954-560-3906

Fax: 561-892-0344

www.beachraker.net

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W.D. Thompson Inc., d/b/a Beach Raker



WD Thompson Inc., d/b/a Beach Raker
220 NE 13th Street, Pompano Fl 33060
Dade & Monroe: 954-560-3906
Broward & Palm Beach: 561-676-2184
Fax: 561-892-0344
www.beachraker.net

beach cleaning. beach sanitizing.

June 11, 2014

Mr. Jud Kurlancheek
Building, Zoning, and Planning Director
Village of Key Biscayne
88 West McIntyre Street, Suite 250
Key Biscayne, FL 33149

Dear Jud,

Thank you again for reaching out to us in regards to cleaning and maintaining the Village of Key Biscayne beach. Our recommendations and proposed costs for the services we discussed are attached.

Jud, there have been many discussions since the original RFP was published June 20th, 2013 regarding the best methodology, equipment and service level to meet the Village of Key Biscayne's needs. We have reviewed the Proposed Agreement between the Village and Universal Beach Services and have noted some issues and concerns that we have in particular with the Crandon Park Level 2 Specifications in our attached proposal.

We have confirmed with the Village, Coastal Systems International, and FDEP that the preferred cleaning methodology for the Village is the usage of Kubota Tractors and Seaweed Rakes incorporating seaweed below the Mean High Water Line (MHWL) as well as grooming these areas with our Barber Surf Rake, rather than the "Caterpillar 615c or equivalent" noted in the Village's revised specifications. We have also confirmed with the Village that permanent beach access will be provided by the Village for our equipment by July 14th, 2014, and a permanent equipment storage area will be provided by the Village by August 1st, 2014.

As for the Proposed Agreement between the Village and Beach Raker, we have expressed our concerns regarding the contract language specifically regarding the Contractor's Termination clauses. We want to ensure that both parties, the Village and Beach Raker, enter into a fair agreement that mutually benefits both parties.

Jud, we are working towards the June 25th start date and we feel very confident that you and Village will be satisfied with our services. If you have any further questions for us regarding equipment, methodology, service or permitting, and/or wish to meet in person to discuss the information enclosed, please don't hesitate to contact me.

Thank you again for the opportunity.

Respectfully,

Andrew Greener
General Manager
W.D. THOMPSON INC.
d/b/a BEACH RAKER
Cell: 561-676-2184
andrew@floridabeachraker.com



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Revised Proposal Costs for the Village of Key Biscayne 6/10/2014

Proposed Service:

One Operator - Five (5) days per week from November 1st to May 18th (29 Weeks)

Two Operators - Five (5) days per week from May 19th to October 31st (23 Weeks)

(Note: Turtle Nesting Season - May 1st to October 31st)

As permitted by FDEP, Contractor will incorporate the seaweed below the Mean High Water Line (MHWL) and groom the beach area with the Barber Surf Rake and Cherrington Sifter as needed and where we are permitted to clean by FDEP. As permitted and allowed by FDEP, Contractor will be responsible for beach grading, erosion control, hazard management, tilling, and environmental permitting as requested by the Village.

Equipment Located at Key Biscayne

M108 Kubota Tractor with seaweed rake and front mount.

M108 Kubota Tractor with seaweed rake and front mount.

600 HD Barber Surf Rake

ATV or Kubota RTV 9000

Equipment As Needed

Cherrington 740XL

Storage

Contractor will keep (2) Kubota Tractors and (1) Barber Surf Rake at the storage area provided by the Village, year around, to ensure our ability to respond to emergency situations and demonstrate our level of commitment to the Village. Tractor with front end and seaweed rake is 25 feet long by 9 feet wide. Tractor with Barber Surf Rake is 35 feet long by 9 feet wide. ATV is 10 feet long and 5 feet wide.

Cost

\$186,400 a year for the work described above.



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Note 1: The proposal costs above DO NOT include the hauling and disposal costs for heavy storm accumulations of seaweed that cannot be integrated below the tide line.

Note 2: The proposal costs above include the Contractor removing the man-made debris from the beach and maintaining the thirty (30) waste receptacles on the beach and depositing the waste in a dumpster provided by the Village. If the Village wishes for the Contractor to haul and dispose of the waste and man-made debris, not including seaweed, the cost per year will be an additional \$9,600.00.

Note 3: If the Village wishes to add an extra service day to the scope listed above, add \$755 per day.

Note 4: The Village will provide an equipment storage area for (2) Tractors and (1) Barber Surf Rake (dimensions listed above under Storage Section) with access to the beach and water line to wash off the equipment. The Village has stated the permanent storage area is being finalized, and will be ready August 1st, 2014. According to FDEP, another field permit will be required if the storage area changes from the Beach Club, and impacts the dune vegetation or the area seaward of the dune line. The Equipment Storage area does not have to be on the beach, we have other clients that provide areas in close proximity to the beach where the tractor and operator drive the road to the beach in the morning.

Note 5: The Village has agreed to provide the Contractor with access to the beach that will be ready July 14th, 2014. The Village has agreed that access will be adequate for a Fire Truck or Heavy Duty hauling truck as far as width and structural integrity for access from the road to the beach. The Village agrees this area is acceptable for the Contractor to access the beach with equipment as well as haul material off the beach, if necessary, at the request of the Village.

Note 6: Seaweed and Mechanical Cleaning. FDEP has determined that the Contractor can integrate seaweed below the Mean High Water Line (MHWL), year round, inside and outside of turtle nesting season. We understand the Village has applied for permission to mechanically clean areas landward of the wrack line, year round, including turtle nesting season. Until the Village receives approval from FWC and FDEP, the Contractor will not be authorized to use heavy equipment in areas landward of the wrack line, during turtle nesting season. The Contractor will hand-pick trash in these areas until approval is received. (We can help in the permitting process if desired by the Village. In the past, we have successfully received approval to mechanically clean areas landward of the wrack line, during turtle nesting season, for the following municipal clients, the Town of Lauderdale by the Sea, the City of Pompano Beach, and the City of Dania Beach.)

Note 7: Beach and Material Staging Area. We understand the Village is working with FDEP to designate and determine a possible staging area above the wrack line for the storage of seaweed during extreme storm events. Once the Village receives approval from FDEP and FWC, the Contractor will be authorized to store or stage any material, including seaweed, east of the dune line and in the dunes, during turtle

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W.D. Thompson Inc., d/b/a Beach Raker

6/10/2014



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nesting season. Currently, the Contractor is not authorized to store material, including seaweed, on the beach landward of the wrack line during turtle nesting season.

Note 8: Crandon Park - Level 2 Quality, Spec. 3) the specifications call for a Caterpillar 615c, or similar, elevating scraper/motor grader to remove deposited seaweed and debris by scraping and removing the top layer of beach sand (up to 2 inches). However, the Village has agreed the preferred methodology for cleaning is to use the combination of a Barber Surf Rake and Tractor with front-mount and seaweed rake to integrate the seaweed, and bury it, below the Mean High Water Line (MHWL), as this methodology does not remove two (2) inches of beach sand.

Note 9: Crandon Park Quality – Level 2, Spec. 4) states Contractor shall make multiple passes using scraper blade to leave a graded, well groomed surface. As FDEP stated, currently we are only permitted to clean at the Mean High Water Line (MHWL).

Note 10: Crandon Park Quality – Level 2, Spec. 5) states no non-organic material may remain after daily beach cleaning effort. In our experience, there will always be some non-organic material on the beach after cleaning has finished as beach goers leave trash after we leave, and the tide brings in two (2) wrack lines each day of trash. That being said, the Contractor will use its Barber Surf Rake and Cherrington Sifter to groom the beach areas where we are permitted by FDEP to improve the quality of the beach.

Note 11: Crandon Park Quality – Level 2, Spec 8) level of compaction of cleaned beach sand shall be consistent with upland dry beach. In our experience, the upper beach and lower beach will always be different as far as compaction. The lower area experiences low and high tides, and has ocean water washing over it, and is usually wet, while the upper beach is normally dry and sandy. Additionally as stated by FDEP, during turtle nesting season, currently, the Contractor is not permitted to use its equipment above the wrack line, therefore the areas the Contractor cleans versus the areas that are not cleaned may have different compaction as the lower area will have heavy equipment driving and operating over it, and the upper will not.