



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

*Village Council*

Michael W. Davey, *Mayor*

Allison McCormick, *Vice Mayor*

Luis Lauredo

Edward London

Brett Moss

Katie Petros

Ignacio J. Segurola

## MEMORANDUM

DATE: April 30, 2019

TO: Honorable Mayor and Council Members

FROM: Andrea Agha, Village Manager 

RE: Third Amendment to Agreement for Use of St. Agnes Catholic Church Athletic Field

### RECOMMENDATION

Approve the third amendment to the agreement for use and maintenance of the athletic field at St. Agnes Catholic Church for a base annual amount of \$60,000 with a three percent (3%) annual increase for a total contract value of \$318,548.15 over the 5-year term of the agreement.

### BACKGROUND

Pursuant to the Village's agreement with St. Agnes, the Village has access to the field and basketball court on weekdays after 5:30 PM and all day on Saturday's in return for an annual payment and maintenance of the field. The field is used by the Village's soccer, rugby and baseball programs. The basketball court is used by the Village's volleyball and basketball programs. In addition to the use agreement fee, the Village pays for the maintenance and utilities associated with maintaining and operating the field for approximately \$60,000 per year.

The Village first entered into a use and maintenance agreement with St. Agnes in June of 2004. The second amendment to the agreement was approved by the Village Council on May 27, 2014. The term of the second amendment is set to expire on September 30, 2019.

I had the opportunity to meet with St. Agnes leadership in late 2018 to discuss the upcoming renewal of the agreement. Subsequently, Village staff met with the St. Agnes Finance Committee representatives to negotiate the agreement. The new base annual rate for the agreement will be \$60,000 representing an increase in the amount of \$9,351 or 18.5% over the current agreement. The recommended third amendment to the agreement includes an annual license fee increase by three percent (3%) on October 1,

2020 and each October 1st thereafter by an additional three percent (3%) over the previous year's annual license fee for up to 5 years. The St. Agnes or Village shall be entitled to terminate this Agreement for any reason whatsoever upon at least twelve (12) months prior written notice to the other party. To prevent termination of this Agreement during an athletic sport season, this Agreement may only be terminated as of October 1st of a particular calendar year (e.g. to terminate the Agreement on October 1, 2021, notice must be given no later than October 1, 2020).

The Village faces significant limitations for playing fields. Alternatives to this agreement include acquiring and developing land within the Village boundary which will likely cost in excess of \$16 million for comparable square footage if it were to be available, which it presently is not. The Village is also pursuing playing field options with Miami Dade County within Crandon Park. Playing fields within Crandon Park require an amendment to the Crandon Park Master Plan. Village staff is working diligently in coordination with the County through this process. We anticipate the amendment process take no less than one year and we are not certain the Amendment will be approved. Village staff is actively seeking alternative playing field options in collaboration with Council advisory Boards. Under most alternative solutions, the Village will likely carry the responsibility of the utilities and field maintenance.

**RESOLUTION NO. 2019- \_\_\_\_\_**

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING A THIRD AMENDMENT TO THE AGREEMENT FOR USE OF ST. AGNES CATHOLIC CHURCH ATHLETIC FIELD BETWEEN THE VILLAGE OF KEY BISCAYNE AND THE ARCHDIOCESE OF MIAMI; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Resolution No. 2004-28, the Village Council of the Village of Key Biscayne (the “Village”) approved and authorized an Agreement for Use of St. Agnes Catholic Church Athletic Field (the “Agreement”) between the Village and the Archdiocese of Miami (the “Archdiocese”); and

**WHEREAS**, the Agreement was amended for the first time on August 31, 2009 and a second time on May 27, 2014; and

**WHEREAS**, the Village Council and the Archdiocese desire to, among other things, extend the term of the Agreement and adjust fees to be paid to the Archdiocese under the Agreement as particularly described in the Third Amendment to Agreement for Use of St. Agnes Catholic Church Athletic Field attached hereto as Exhibit “A” (the “Third Amendment”); and

**WHEREAS**, the Village Council finds that this Resolution is in the best interest and welfare of the citizens of the Village.

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

**Section 1.    Recitals.** That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

**Section 2.    Amendment Approved.** That the Third Amendment between the Village and the Archdiocese, in substantially the form attached hereto, is hereby approved, and the Village

Manager and Village Clerk are authorized, in their respective capacities, to execute the Third Amendment on behalf of the Village, once approved by the Village Attorney as to form and legal sufficiency.

**Section 3.** **Implementation.** That the Village Manager is authorized to take any and all action necessary to implement the purposes of this Resolution, the Third Amendment, and the Agreement.

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

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
MICHAEL W. DAVEY, MAYOR

ATTEST:

\_\_\_\_\_  
JENNIFER MEDINA, CMC  
VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

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

**THIRD AMENDMENT TO  
AGREEMENT FOR USE OF ST. AGNES CATHOLIC CHURCH ATHLETIC FIELD**

**THIS THIRD AMENDMENT TO AGREEMENT FOR USE OF ST. AGNES CATHOLIC CHURCH ATHLETIC FIELD** (this "Third Amendment") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2019 by and between the **VILLAGE OF KEY BISCAYNE**, a Florida municipal corporation ("Village") and **THE MOST REVEREND THOMAS WENSKI**, Archbishop of the Archdiocese of Miami, his successors in office, a corporation sole (hereinafter the "Owner").

**WITNESSETH:**

**WHEREAS**, Village and Owner entered into that certain Agreement dated June 23<sup>rd</sup>, 2004 (the "Agreement") regarding the Village's use of the St. Agnes Catholic Church's athletic field; and

**WHEREAS**, Village and Owner entered into an Amendment to Agreement for Use of St. Agnes Catholic Church Athletic Field on August 31<sup>th</sup>, 2009 ("First Amendment") and a Second Amendment to Agreement for Use of St. Agnes Catholic Church Athletic Field on September 19<sup>th</sup>, 2014 ("Second Amendment"), wherein the parties modified the fees payable, the term of the Agreement and provided for termination of the Agreement; and

**WHEREAS**, Village and Owner wish to further modify the Agreement in accordance with the terms and conditions set forth herein in this Third Amendment.

**NOW, THEREFORE**, for and in consideration of the mutual promises set forth herein, the parties do hereby agree as follows:

1. The above recitals are true and correct and are incorporated herein by this reference. All initially capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Agreement.

2. Owner agrees that the Village has paid the annual license fee under the Agreement entitling the Village to use the St. Agnes Catholic Church's athletic field through September 30, 2019.

3. Section 4 of the Agreement is hereby deleted and replaced as follows:

4. Fees. Beginning October 1, 2019, the Village shall pay the Owner an annual license fee of sixty thousand and 00/100 Dollars (\$60,000) for the licenses granted to Village herein, which fee shall be paid in equal monthly installments of Five Thousand Dollars and 00/100 (\$5,000) on the first day of each month during the Term. For any partial month during the Term, the monthly installment payment shall be prorated on a per diem basis based on the number of days in such month. The annual license fee shall increase by three percent (3%) on October 1, 2020 and each October 1<sup>st</sup> thereafter by an additional three percent (3%) over the previous year's

annual license fee. The equal monthly installments will be adjusted accordingly starting in October of each year. Owner hereby directs the Village to make all payments required hereunder directly to St. Agnes Catholic Church at 100 Harbor Drive, Key Biscayne, Florida 33149. Notwithstanding the foregoing, the Village, at its sole option, may elect to pay the annual fee in one (1) annual payment provided such payment is made before October 15<sup>th</sup> of each year of the Term.

4. Section 3.1 of the Agreement is hereby deleted and replaced as follows:

3.1 The term of this Agreement has previously commenced and shall be extended for an additional five (5) year period commencing on October 1, 2019 and expire at 11:59 p.m. on September 30, 2024 (the "Term").

5. Section 24 of the Agreement is hereby deleted and replaced as follows:

The Owner or Village shall be entitled to terminate this Agreement for any reason whatsoever upon at least twelve (12) months prior written notice to the other party. To prevent termination of this Agreement during an athletic sport season, this Agreement may only be terminated as of October 1<sup>st</sup> of a particular calendar year (e.g. to terminate the Agreement on October 1, 2021, notice must be given no later than October 1, 2020).

6. In the event of any conflict or ambiguity between the terms and provisions of this Third Amendment and the terms and provisions of the Agreement, the First Amendment, and the Second Amendment, the terms and provisions of this Third Amendment shall control.

7. Except as otherwise specifically set forth herein, the Agreement is hereby ratified and affirmed and shall remain unmodified and in full force and effect in accordance with its terms.

8. This Third Amendment may be executed in several counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. An executed facsimile or electronic copy of this Third Amendment shall have the same force and effect as an original hereof.

**[Signatures of parties follow on next page]**

IN WITNESS WHEREOF the parties have executed this Third Amendment as of the date first set forth above.

WITNESSES:

OWNER:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
THE MOST REVEREND THOMAS WENSKI,  
Archbishop of the Archdiocese of Miami, his  
successors in office, a corporation sole

\_\_\_\_\_  
Print Name: \_\_\_\_\_

VILLAGE:

VILLAGE OF KEY BISCAYNE,  
a Florida municipal corporation

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Andrea Agha, Village Manager

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Village Clerk

Approved as to legal form and  
sufficiency:

By: \_\_\_\_\_  
Village Attorney

STATE OF FLORIDA                    )  
  ) SS:  
COUNTY OF MIAMI-DADE            )

The foregoing Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by THE MOST REVEREND THOMAS WENSKI, Archbishop of the Archdiocese of Miami, who (check one) [ ] is personally known to me or [ ] has produced a Florida drivers license as identification.

\_\_\_\_\_  
(Signature of person taking acknowledgment)

\_\_\_\_\_  
(Name of acknowledged typed, printed or stamped)

\_\_\_\_\_  
(Title or rank)

\_\_\_\_\_  
(Serial number, if any)

STATE OF FLORIDA                    )  
  ) SS.  
COUNTY OF MIAMI-DADE            )

The foregoing Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by ANDREA AGHA, as Village Manager of the Village of Key Biscayne, a Florida municipal corporation, who (check one) [ ] is personally known to me or [ ] has produced a Florida drivers license as identification.

\_\_\_\_\_  
Notary Public, State of Florida

My Commission Expires: