

RESOLUTION NO. 12-025

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED AGREEMENT REGARDING MANAGEMENT AND MAINTENANCE FOR THE KEY WEST MARINE PARK BY REEF RELIEF; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Key West Marine Park is a multiple-use zoned area on the oceanside of the island of Key West with areas that are accessible to swimmers only, adjacent to vessel access lanes for use by fishing, sailing, charter, dive and other motorized vessels, which enhances the use of the shoreline while providing a safe recreational opportunity for visitors and residents to swim and otherwise enjoy the coral reef environment; and

WHEREAS, the City obtained a letter of consent from the Florida Department of Environmental Protection to turn responsibility for the park over to Reef Relief; and

WHEREAS, Reef Relief possesses unique skills and funding ability to manage and maintain the park; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached Agreement regarding the management and maintenance of the Key West Marine Park by Reef Relief is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 3rd day of January, 2012.

Authenticated by the presiding officer and Clerk of the Commission on January 4, 2012.

Filed with the Clerk January 4, 2012.



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK



Executive Summary

To: Jim Scholl, City Manager

From: Jim Fitton, Port & Transit Director

Via: David Fernandez, Assistant City Manager, Operations
Mark Finigan, Assistant City Manager, Administration

Date: November 21, 2011

Re: **TRANSFER OF RESPONSIBILITY FOR KEY WEST MARINE PARK**

ACTION ITEM

This is a request to enter into an agreement with Reef Relief to turn over management and maintenance of the Key West Marine Park.

BACKGROUND

In 2001 the City of Key West and Reef Relief created the Key West Marine Park on the south side of the Island from the White Street Pier to the end of Duval Street, extending seaward 600 feet, Resolution 01-259. In 2006, citing a lack of funds to maintain the park, Reef Relief requested to transfer responsibility for the Marine Park back to the City. The Resolution to do so was postponed by the Commission and never brought forward for a vote. Since that time the Marine Park has been maintained by Key West Bight Marina employees.

Earlier this year Reef Relief approached City staff about resuming management of the Marine Park. The Florida Department of Environmental Protection issued a Letter of Consent to the City to turn responsibility for the park over to Reef Relief if so desired.

FINANCIAL IMPACT:

In exchange for a boat slip in Garrison Bight for their workboat Reef Relief will assume total financial responsibility for maintaining the Marine Park and providing educational literature for users. The 2011-2012 rental rate for the proposed Reef Relief slip is just under \$4000. The City has been budgeting \$5000 to \$10,000 per year to maintain the demarcation buoys and using Marina employees to do the repairs so the agreement will save both money and man hours for the city.

OPTIONS:

1. Approval of this request will ensure the long term maintenance of the Key West Marine Park at no direct cost to the City.

2. Disapproval will require ongoing funding and personnel in support of the Marine Park, or;
3. The Commission can decide to cancel the park and remove the demarcation buoys altogether.

RECOMMENDATION:

Given the enhanced safety aspect for swimmers and the educational benefit to both tourists and local citizens, staff recommends approval.

AGREEMENT

THIS AGREEMENT made and entered into by and between the City of Key West, a municipal corporation of the State of Florida, whose mailing address is P.O. Box 1409, Key West, Florida 33040, hereafter referred to as the "CITY" and Reef Relief, Inc., a not for profit corporation of the State of Florida, whose address is 631 Greene Street, Key West, Florida, 33040, hereafter referred to as "REEF RELIEF". This agreement shall be effective on the date of execution of the last party to sign the AGREEMENT for the term specified in Paragraph 3.1.

Whereas, Reef Relief is a not for profit membership organization with headquarters in Key West, Florida, dedicated to protecting coral reef ecosystems and educating the public on coral reef ecosystems; and

Whereas, on March 20, 2001, at the request of Reef Relief, the City Commission of the City of Key West passed Resolution No. 01-89, supporting the development of a marine park on the oceanside of Key West from Duval Street to the White Street Pier; and

Whereas, on September 5, 2001, the City Commission of the City of Key West passed Resolution No. 01-259, approving a Memorandum of Understanding between City and Reef Relief providing for the development of the Key West Marine Park on the oceanside of Key West from Duval Street to the White Street Pier; and

Whereas, the Key West Marine Park is located on state-owned, submerged land; and

Whereas, on June 17, 2011, the Florida Department of Environmental Protection issued its Letter of Consent to City to manage a near shore swimming area in waters located in the Key West Marine Park and adjacent to the southwestern part of Key West in the Atlantic Ocean, a copy of which is attached hereto, incorporated by reference, and more particularly described as Exhibit "A"; and

Whereas, the parties desire to amend the provisions contained in the Memorandum of Understanding referred to herein above; and

Whereas, Reef Relief has the expertise, equipment, and funding to maintain the Key West Marine Park.

NOW THEREFORE, City and Reef Relief agree as follows:

Article 1. Obligations of Reef Relief

1.1 At no cost whatsoever to the City, Reef Relief agrees to provide the following services to maintain the Key West Marine Park in accordance with the conditions contained in the Letter of Consent from the Florida Department of Environmental Protection referred to herein above:

A. Maintenance: Reef Relief agrees to assume responsibility for maintaining and servicing the thirty-four (34) demarcation buoys associated with the Key West Marine Park.

B. Education: Reef Relief agrees to produce educational materials to be available to residents and visitors to the park containing the rules for ecofriendly snorkeling, boating, and fishing. Reef Relief agrees to install and maintain educational signage along the shoreline on both public and private uplands of the Key West Marine Park.

C. Reef Relief will become an active participant in the Higgs Beach Park planning efforts to assure continuity and vision for the Higgs Beach Development project.

Article 2. Obligations of the City

2.1 Subject to the limitations contained herein, the City herein expressly agrees to grant Reef Relief access to City property for the purpose of fulfilling Reef Relief's obligations as specified herein.

2.2 During the term of this Agreement, the City herein expressly agrees to permit Reef Relief to occupy slip Kingfish 1 located at City Marina, 1801 North Roosevelt Boulevard, Key West, Florida, for the purpose of docking the vessel Reef Relief will utilize to perform its obligations pursuant to this Agreement, which vessel is approximately 24 feet in length.

Article 3. General Legal Provisions

3.1. Agreement Period

A. The duration of this Agreement shall be 3 years commencing from the effective date of this Agreement.

3.2 Termination

A. This agreement may be terminated at any time, with or without cause, by either party hereto upon one hundred eighty (180) days written notice to the other party. No further work will be performed by Reef Relief upon receipt of the City's notice unless

specifically authorized by the General Services Department Director of the City of Key West.

3.3. Indemnification

A. Reef Relief agrees to protect, defend, indemnify, save and hold harmless The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees, including volunteers, from and against any and all claims, demands, expense and liability arising out of injury or death to any person or the damage, loss of destruction of any property which may occur or in any way grow out of any act or omission of Reef Relief, its agents, servants, and employees, or any and all costs, expense and/or attorney fees incurred by the City as a result of any claim, demands, and/or causes of action except of those claims, demands, and/or causes of action arising out of the negligence of The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees. Reef Relief agrees to investigate, handle, respond to, provide defense for and defend any such claims, demand, or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if it (claims, etc.) is groundless, false or fraudulent. Nothing contained in this indemnification is intended to act as a waiver of City's right of sovereign immunity pursuant to Florida law, including those rights contained in section 768.28, Florida Statutes. This indemnification shall survive the expiration or termination of this Agreement. Reef Relief shall defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the City's option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the City whether performed by Reef Relief, or by persons employed or used by Reef Relief.

3.4 Insurance

Reef Relief shall keep in full force and effect at all times during the effective period of this contract, and at its own cost and expense, the following insurance in insurance companies authorized in the State of Florida, with an A.M. Best rating of A:VI or higher and shall provide evidence of such insurance to the City. The policies or certificates shall provide thirty (30) days prior to cancellation notices of same shall be given to the City by U.S. Mail for all of the required insurance policies stated below. All notices shall name Reef Relief and identify the contract number. The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees are to be added as "additional insured" as respects liability arising out of activities performed by or on behalf of the Contractor. *Waiver of Subrogation in favor of the City of Key West City Government is required on all policies excepting Workers' Compensation.*

Reef Relief shall maintain limits no less than those stated below:

1. Worker's Compensation – Statutory – in compliance with the Compensation law of the State of Florida. The coverage must include Employer's Liability with a limit of One Million (\$1,000,000) Dollars each accident.

2. Commercial General Liability - The Contractor's Commercial General Liability (CGL) shall be in an amount acceptable to the City of Key West but not less than Five Hundred Thousand Dollars (\$500,000.00) Dollars Combined Single Limit per occurrence and One Million (\$1,000,000.00) Dollars annual aggregate. The coverage must include:
 - Commercial Form
 - Premises/Operations
 - Products/Completed Operations
 - Independent Contractors (if any part of the Work is to be subcontracted)
 - Broad Form Property Damage
 - Personal Injury

3. Automobile Liability Insurance with a minimum limit of liability per occurrence of One Million (\$1,000,000.00) Dollars for bodily injury and property damage. This insurance shall include for bodily injury and property damage the following coverage:
 - Owned automobiles
 - Hired automobiles
 - Non-owned automobiles

4. Certificates of Insurance

Certificates of Insurance shall be filed and maintained throughout the life of this Contract with the City Clerk evidencing the minimum limits of insurance cited above. All policies shall provide they may not be terminated or modified without insurer providing the City of Key West at least thirty (30) days advance notice. Additionally, Reef Relief shall immediately notify the City of any cancellation of such insurance.

In addition, it is understood if at any time any of the policies required by City shall become unsatisfactory to the City as to form or substance, or if a company issuing any such policy shall become unsatisfactory to the City, Reef Relief shall obtain a new policy, submit the same to the City for approval and submit a certificate of insurance as which may be required by the contract. It is understood that upon failure of Reef Relief to furnish, deliver and maintain such insurance as above provided, the contract at the election of the City may be declared suspended, discontinued or terminated. Further, failure of Reef Relief to take out and/or maintain any required insurance shall not relieve Reef Relief from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligations of Reef Relief concerning indemnification.

3.5. Assignment

A. Reef Relief shall not assign all or any part of this Agreement.

3.6. Jurisdiction

A. The law of the state of Florida and Monroe County will govern the validity of this Agreement, its interpretation and performance, and any other claims related to it.

3.7. Severability and Survival

A. If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will affect any other provision, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

3.8. Attorney's Fees

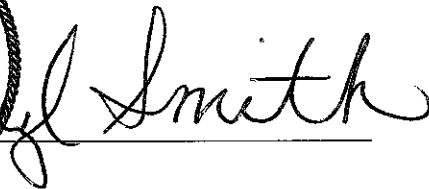
A. In the event of litigation affecting the rights of either party under this Agreement, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights, including those expended on appeal.

IN WITNESS WHEREOF, the parties execute below on this 3rd day of January, 201¹².


THE CITY OF KEY WEST, FLORIDA

By: 
Craig Cates, Mayor




Cheryl Smith
City Clerk

REEF RELIEF, INC.

By: 
Peter Anderson, its President



Florida Department of Environmental Protection

South District Branch Office
2796 Overseas Highway Suite 221
Marathon, FL 33050

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

May 27, 2011

City of Key West
c/o David M Hawthorne
1801 North Roosevelt Boulevard
Key West, FL 33040

Re: Monroe County - ERP
Use Agreement No. 44-143
BOT: 440224505
PA File No: 44-0190163-001

Dear Mr. Hawthorne:

Thank you for applying to the Submerged Lands and Environmental Resources Program, as staff to the Board of Trustees of the Internal Improvement Trust Fund, to manage a nearshore swimming area in waters located adjacent to the southwestern part of Key West in the Atlantic Ocean, Class III, Outstanding Florida Waters, Section 5, Township 68 South, Ranges 25 East, Monroe County.

PROPRIETARY REVIEW - APPROVED

Your project occurs on state-owned, submerged land and will require authorization from the Department to use these lands. The Department has reviewed your project as described above and on the documents and/or drawings attached to your Management Agreement No. 44-143, and as long as the work performed is located within the boundaries as described and is consistent with the terms and conditions therein, we find your project qualifies for consent to use state-owned submerged lands. **As such, consider this letter to also constitute authorization to perform the activity. This consent is conditioned upon acceptance of and compliance with the attached General Consent Conditions.**

Consider this the authority sought under Section 253.77, Florida Statutes (F.S.), and Chapters 18-21, Florida Administrative Code (F.A.C.), to pursue this project.

Prior to the commencement of construction and/or activities authorized herein, you must obtain the U.S. Army Corps of Engineers (Corps) permit if it is required by the Corps. Any modifications to the construction and/or activities authorized herein that may be required by the Corps shall require reconsideration by and the prior written

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approval of the Department of Environmental Protection prior to commencement of construction and/or any activities on sovereignty submerged lands.

This letter in no way waives the authority and/or jurisdiction of any government entity, nor does it disclaim any title interest the state may have in the project site. Please check with your local government for specific requirements. Where local governments have standards, the more stringent standards shall apply. This letter does not constitute authority to proceed with your project under Chapter 403, F.S.

Your project may be inspected by authorized state personnel in the future to ensure compliance with appropriate laws and rules. If your project is not in compliance, you may be subject to penalties under Chapter 18-14, F.A.C.

GENERAL CONSENT CONDITIONS FOR AUTHORIZATIONS

Rule 18-21.004(7), Florida Administrative Code (F.A.C.), provides that all authorizations granted by rule or in writing under Rule 18-21.005, F.A.C., except those for aquaculture activities and geophysical testing, shall be subject to the general conditions as set forth in paragraphs (a) through (i) below. The general conditions shall be part of all authorizations under this chapter, shall be binding upon the grantee, and shall be enforceable under Chapter 253 or Chapter 258, Part II, Florida Statutes, (F.S.).

- a) Authorizations are valid only for the specified activity or use. Any unauthorized deviation from the specified activity or use the conditions for undertaking that activity or use shall constitute a violation. Violation of the authorization shall result in suspension or revocation of the grantee's use of the sovereignty submerged land unless cured to the satisfaction of the Board.
- b) Authorizations convey no title to sovereignty submerged land or water column, nor do they constitute recognition or acknowledgment of any other person's title to such land or water.
- c) Authorizations may be modified, suspended or revoked in accordance with their terms or the remedies provided in Sections 253.04 and 258.46, F.S., or Chapter 18-14, F.A.C.
- d) Structures or activities shall be constructed and used to avoid or minimize adverse impacts to sovereignty submerged lands and resources.

- e) Construction, use, or operation of the structure or activity shall not adversely affect any species which is endangered, threatened or of special concern, as listed in Rules 68A-27.003, 68A-27.004, and 68A-27.005, F.A.C.
- f) Structures or activities shall not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity shall be modified in accordance with the court's decision.
- g) Structures or activities shall not create a navigational hazard.
- h) Structures shall be maintained in a functional condition and shall be repaired or removed if they become dilapidated to such an extent that they are no longer functional. This shall not be construed to prohibit the repair or replacement subject to the provisions of Rule 18-21.005, F.A.C., within one year, of a structure damaged in a discrete event such as a storm, flood, accident, or fire.
- i) Structures or activities shall be constructed, operated, and maintained solely for water dependent purposes, or for non-water dependent activities authorized under Rule 18-21.004(1) (g), F.A.C., or any other applicable law.

Thank you for applying to the Submerged Lands and Environmental Resources Program. If you have any questions, please contact Yanett Langley at the letterhead address, by telephone at (305) 289-7085, or by e-mail at Yanett.Langley@dep.state.fl.us. When referring to this project, please reference this file number listed above.

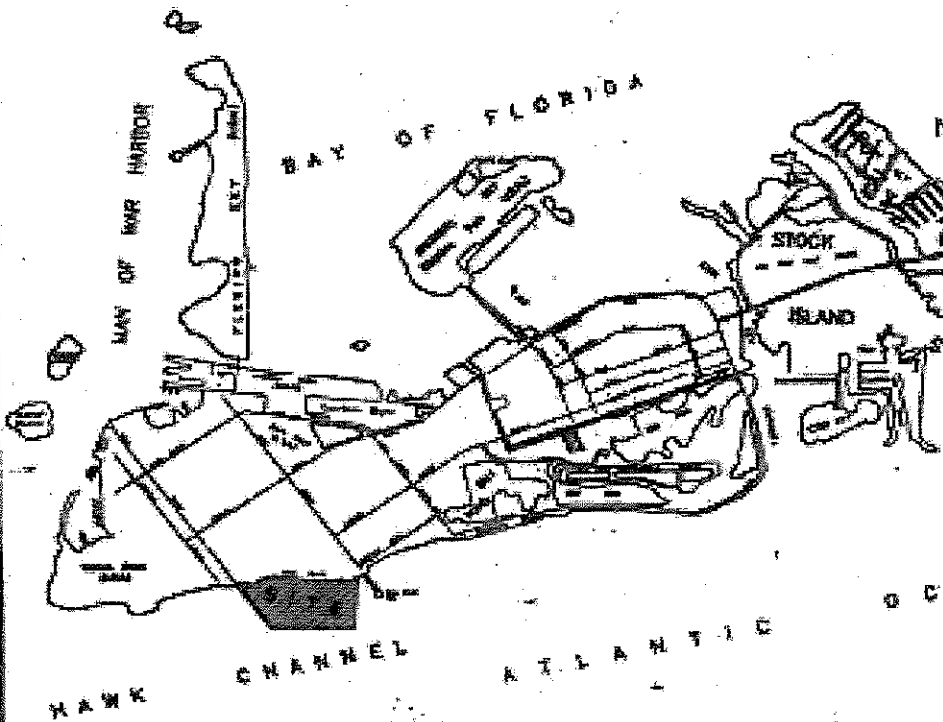
Sincerely,



Bruce Franck
Environmental Manager
Submerged Lands and Environmental Resource Program

BF/yl

FILE NUMBER 247
SERIALIZED PER 1006



LOCATION MAP

City of Key West & Stock Island

RECEIVED

NOV 04 2002

DER - South District

RECEIVED

SEP 16 2001

D.E.P. Marshes

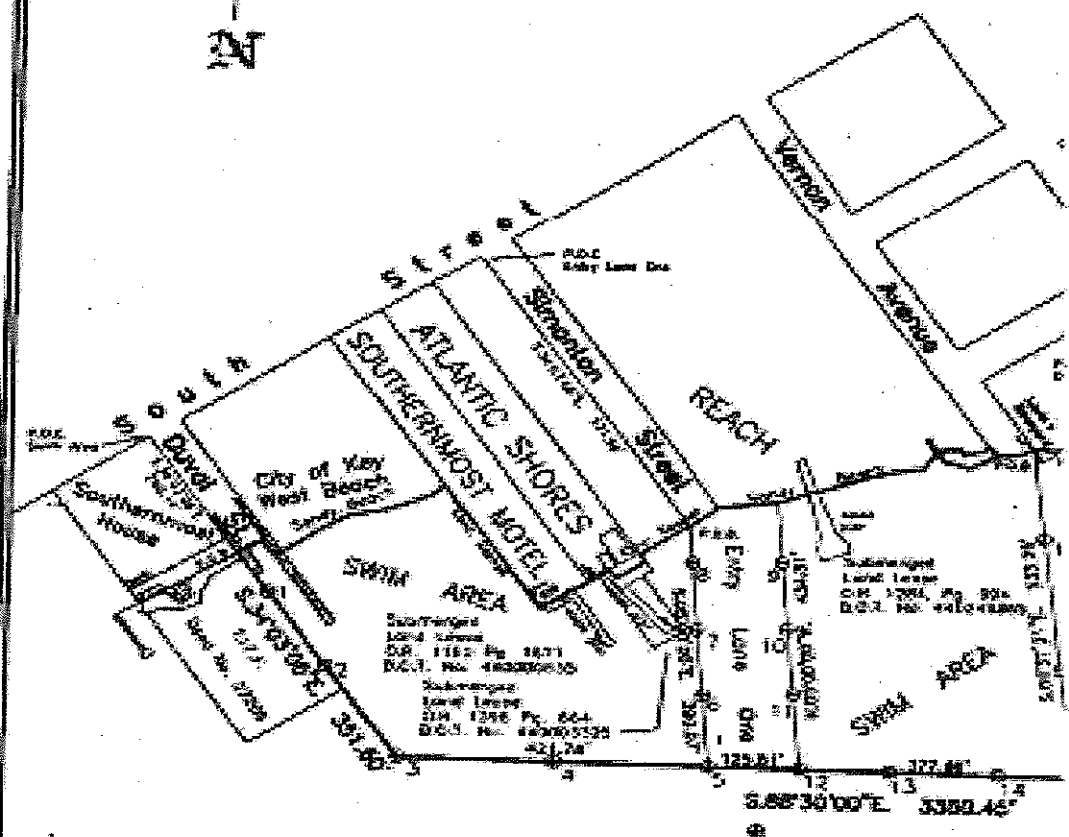
Exhibit B
Page 10 of 17 Pages
Management Agreement No. 02A-44-143

Root Title Key West Marina Park, Key West, Florida, 33040			
Sketch of Survey to Accompany Land Description		Draw No.: 01-301	
Scale: 1"=200'	Plat: 181-32	Record-book No. Book 8-11	Date of Plat: 7/26/01
PREPARED BY: HILDEF DATE: 8/28/01			
CHECKED BY: HILDEF DATE: 8/28/01			
APPROVED BY: HILDEF DATE: 8/28/01			

FREDERICK H. HILDEF
ENGINEER PLANNER SU

3150 Northside Drive
 Suite 187
 Key West, FL 33840
 (305) 293-0468
 Fax: (305) 293-0237

FILE # 1345247
 SEE 1232 REVISIONS



STRAITS OF FLORIDA

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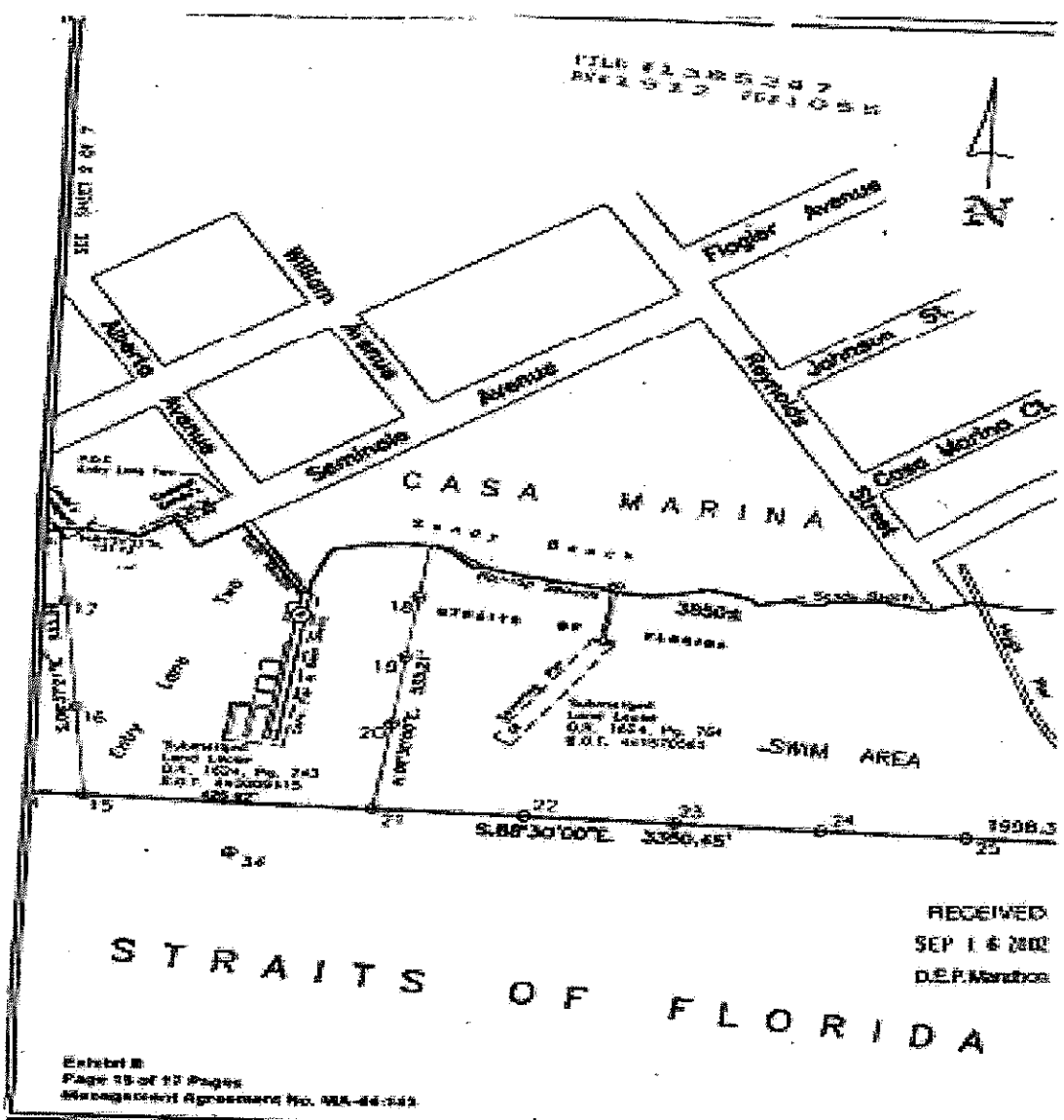
Exhibit
 Page 16 of 17 Pages
 Management Agreement No. MA-44-548

Sheet

Reef Relief Key West Marine Park, Key West, Florida 33040			
Station of Survey to Accompany Legal Description		Dwg. No. 01-401	
Scale: 1"=200'	Ref. 181-22	Plot parcel No. None	Drawn By: F.H.H.
Date: 7/28/01		Field Notes:	Issue Date:
REVISIONS AND/OR NOTED			
07/28/01: Rude Leases	11/20/01: Note to pier		
07/28/01: Rude Boundary	01/22/02: D.E.P. Changes		
10/20/01: Rude Loop			
2/28/02: Rude Loop			

FREDERICK H. HILDEBRAND
 ENGINEER PLANNER SURVEYOR

2180 Executive Drive
 Suite 100
 Key West, FL 33040
 (305) 293-3448
 Fax: (305) 293-3281

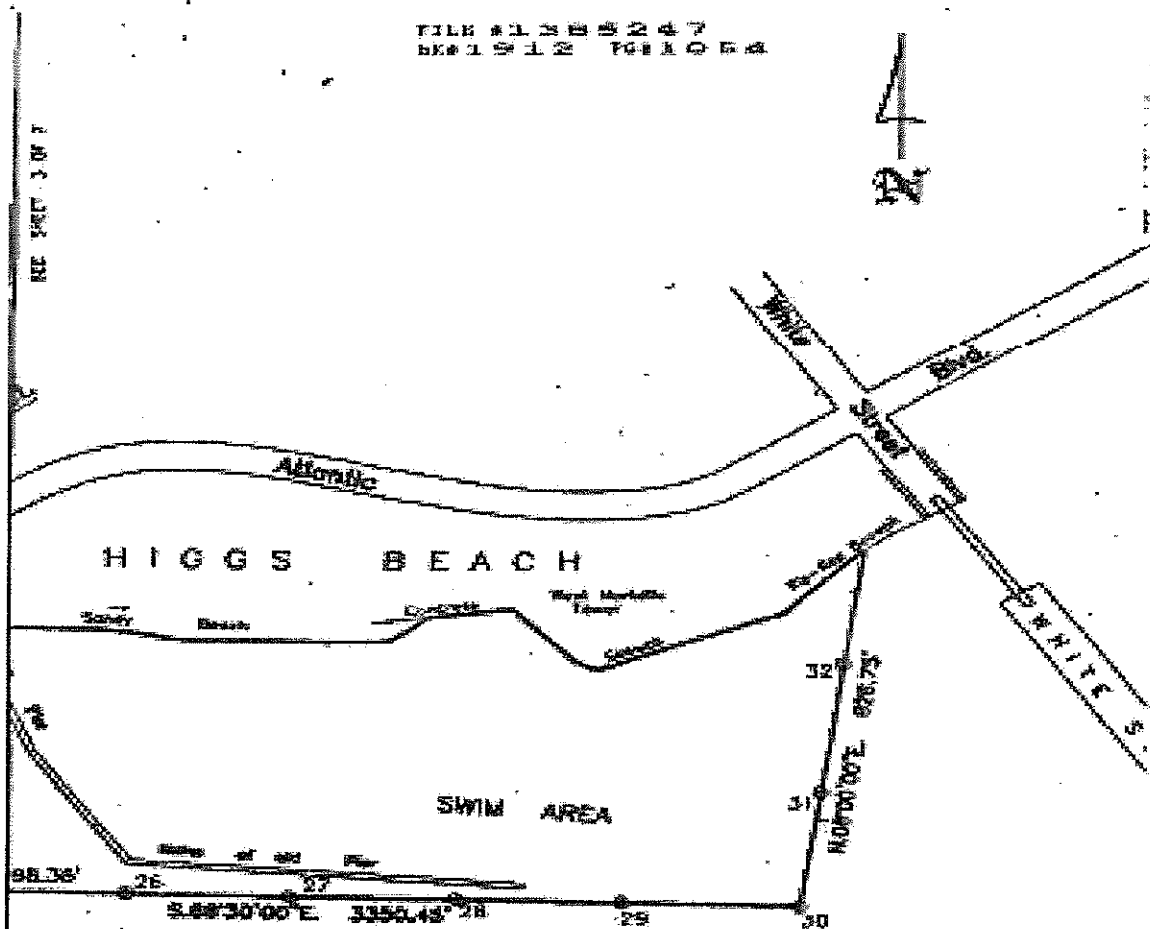


Road Relief			
Key West Marina Park, Key West, Florida 33040			
Sketch of Survey to Accompany		D- No.	
Legal Description		91-401	
Scale: 1"=200'	Ref. 189-22	Flood panel No.	Rev. by F.H.H.
Date: 7/26/01		Flood Date	Flood Elev.
PROPERTY ADDRESS			
PARCEL: East 1/2 Sec. 24	974702 D.E.P. Fisheries		
7/28/01: E-mail: [unreadable]			
12/21/01: [unreadable]			
[unreadable]			

FREDERICK H. HILDEBRANDT
ENGINEER PLANNER SURVEYOR

3150 Northside Drive
 Suite 101
 Key West, FL 33040
 (305) 292-0182
 Fax (305) 292-0517

TITLE SHEET NUMBER
 HIGGS BEACH SURVEY



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 DEP. MARSHAL

STRAITS OF FLORIDA

Exhibit A
 Page 14 of 17 Pages
 Management Project No. 01A-04-143

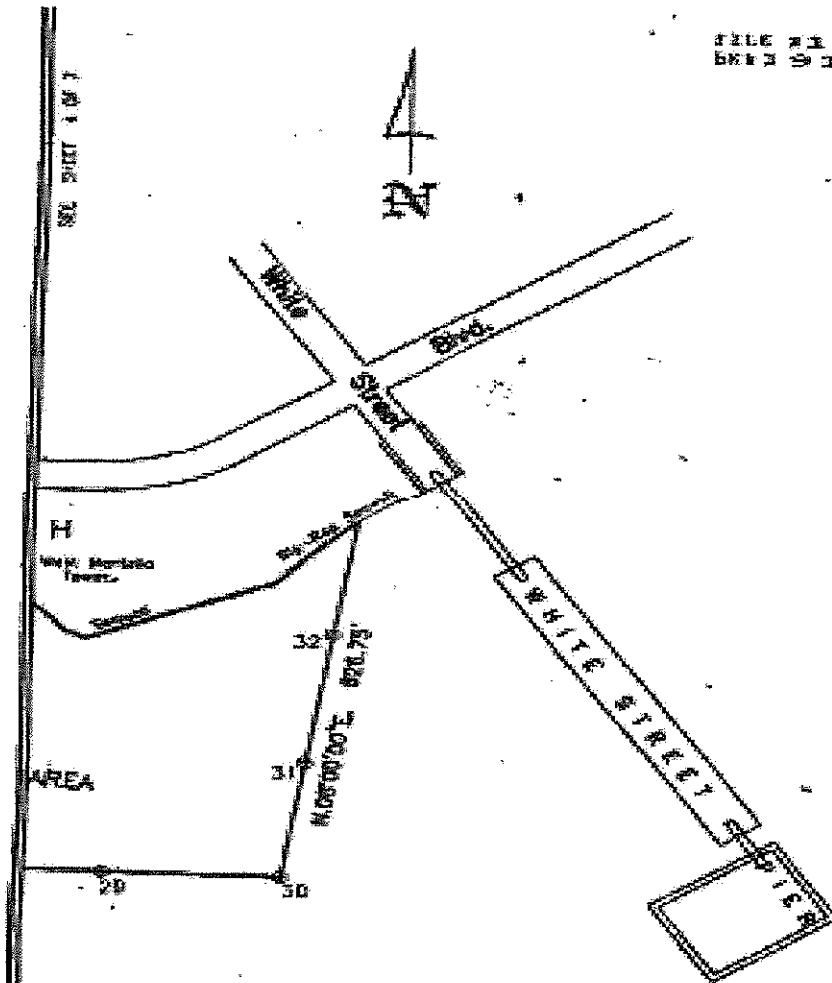
Sheet 4 of

Reed Relief Key West Marine Park, Key West, Florida 33040			
Sketch of Survey to Accompany Legal Description		Draw No. 01-401	
Scale: 1"=200'	Rel. 151-22	Fixed point No. Fixed base:	Draw. No. F.A.C.R. Fixed base:
DATE: 7/28/01			
BY: F.H.H. - Surveyor			
CHECKED: D.E.C. - Engineer			
DATE: 8/28/01			
BY: F.H.H. - Surveyor			
CHECKED: D.E.C. - Engineer			
DATE: 8/28/01			

FREDERICK H. HILDEBRANDT
 ENGINEER PLANNER SURVEYOR

2100 Northway Drive
 Suite 100
 Key West, FL 33040
 (305) 961-9999
 Fax: (305) 961-9237

FILE NUMBER
 5823 U P N T O L O W



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 D.E.P. Marathon

STRAITS OF FLORIDA

EXHIBIT B
 Page 13 of 17 Pages
 Management Agreement No. MA-44-145

Sheet 5 of

Reef Relief Key West Marine Park, Key West, Florida 33040			
Sketch of Survey to Accompany Legal Description		Plan No. 01-491	
Scale: 1"=200'	Sheet 188-22	Record plan no.	Date by F.H.H. None Ent.
Date: 7/26/01		Need date:	
REVISIONS AND/OR ADDITIONS			
8/11/01: Study Location	5/8/00: D.E.P. Change		
8/28/01: Revised Boundary			
10/01/01: Bay Coord.			

FREDERICK H. HILDEBRAND
 ENGINEER PLANNER SURVEYOR

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 (305) 290-0995
 Fax: (305) 290-0995