

RESOLUTION NO. 18-

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, AUTHORIZING ACCEPTANCE OF GRANT FUNDS NOT TO EXCEED TWO MILLION TWENTY FOUR THOUSAND FIVE HUNDRED SEVENTY EIGHT AND NO/100 DOLLARS (\$2,024,578.00), SUBJECT TO CERTAIN CONDITIONS STATED HEREIN FROM THE FLORIDA INLAND NAVIGATION DISTRICT (FIND) WATERWAYS ASSISTANCE PROGRAM FOR DREDGING IMPROVEMENTS TO THE BAHIA MAR YACHTING CENTER AND DELEGATING AUTHORITY TO THE CITY MANAGER TO EXECUTE THE FLORIDA INLAND NAVIGATION DISTRICT PROJECT AGREEMENT AND ANY AND ALL DOCUMENTS NECESSARY OR INCIDENTAL THERETO.

WHEREAS, pursuant to Resolution 17-59, the City approved an application for Grant Funds for the following project:

Project Title: Bahia Mar Yachting Center Dredging Project

Brief Description of Project: Dredging the waterway adjacent to the Bahia Mar Yachting Center; and

WHEREAS, financial assistance from Florida Inland Navigation District (FIND) is required for the Project referenced above; and

WHEREAS, Florida Inland Navigation District (FIND) has approved a grant award under the Waterways Assistance Program in the amount of \$2,024,578.00 and requires execution of the Project Agreement; and

WHEREAS, The City has entered into a lease of Bahia Mar Yachting Center with Rahn Bahia Mar, L.L.C., a Delaware limited liability company ("Tenant"); and

WHEREAS, representatives of Florida Inland Navigation District (FIND) have expressed concern regarding the terms of the Lease, and have requested that the City execute a separate agreement with the Tenant which shall incorporate the terms stated in Exhibit "B"; and

WHEREAS, Section 4.01(b) of the City Charter of the City of Fort Lauderdale requires that the Mayor, City Manager, City Attorney and City Clerk execute all contracts, agreements or other instruments to which the City is a party and under which the City assumes any liability; and

WHEREAS, the City Charter further provides that the City Commission has the authority to delegate by resolution to another person the authority to execute these instruments;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That the City Commission hereby approves the Project Agreement, attached hereto as Exhibit "A", with the Florida Inland Navigation District Waterways Assistance Program in the amount of \$2,024,578.00 relating to the above referenced Project and the City Manager of the City of Fort Lauderdale, Florida, is hereby delegated the authority to execute the Project Agreement and any and all necessary documents incidental thereto.

SECTION 2. That as a condition to receiving funds from Florida Inland Navigation District (FIND), the Tenant must execute an agreement with the City in form and substance acceptable to the City which shall incorporate the terms and conditions in Exhibit "B", shall provide for matching funds from the Tenant and shall provide for recording a restrictive covenant on the Property, which shall be in effect for a minimum of twenty five (25) years.

SECTION 3. The City Commission certifies the following in conjunction with the Project Agreement and any application for extension of time:

A. That it will accept the terms and conditions set forth in FIND Rule 66B-2, F.A.C. which will be a part of the Project Agreement for any assistance awarded under the Application.

B. That it is in complete accord with the application and that it will carry out the Project in the manner described in the proposal and any plans and specifications attached thereto, unless prior approval for any change has been received from FIND.

C. That it has the ability and intention to finance its share of the cost of the Project and that the Project will be operated and maintained at the expense of the City or Tenant for public use for a minimum of twenty-five (25) years.

D. That, neither it nor the Tenant will discriminate against any person on the basis of race, color or national origin in the use of any property or facility acquired or developed pursuant to this proposal, and shall comply with the terms and intent of Title VI of the Civil Rights Act of 1964, P.L. 88-352 (1964) and design and construct all facilities to comply fully with

statutes relating to accessibility by handicapped persons as well as other federal, state and local laws, rules and requirements.

E. That it will maintain adequate financial records on the proposed Project to substantiate claims for reimbursement.

F. That it will make available to FIND, if requested, a post-audit of expenses incurred on the project prior to, or in conjunction with request for the final 30% of the funding required by FIND.

SECTION 4. That the office of the City Attorney shall review and approve as to form all documents prior to their execution by the City Manager.

SECTION 5. That this resolution shall be in full force and effect upon final passage.

ADOPTED this the ____ day of _____ 2018.

Mayor
JOHN P. "JACK" SEILER

ATTEST:

City Clerk
JEFFREY A. MODARELLI

EXHIBIT "A"

FLORIDA INLAND NAVIGATION DISTRICT PROJECT AGREEMENT

PROJECT NO. BR-FL-17-129

This PROJECT AGREEMENT ("AGREEMENT") made and entered into this _____ day of _____, 20____ by and between the Florida Inland Navigation District (hereinafter the "DISTRICT"), and the City of Fort Lauderdale, (hereinafter the "PROJECT SPONSOR").

In consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **PROJECT** - Subject to the provisions of this AGREEMENT and Rule 66B-2 of the Florida Administrative Code (a current copy of which is attached as Exhibit "B"), the DISTRICT has approved assistance funding to the PROJECT SPONSOR in furtherance of an approved project ("PROJECT") consisting of the Bahia Mar Yachting Center Dredging Phase II. Said PROJECT is more specifically described in the PROJECT SPONSOR'S Waterways Assistance Application, which is on file at the DISTRICT's headquarters.

Any modifications to the PROJECT'S scope of work shall require written advance notice and justification from the PROJECT SPONSOR and the prior written approval of the DISTRICT.

2. **TERM** - The PROJECT SPONSOR shall not commence work on the PROJECT prior to the execution of this AGREEMENT unless specifically authorized by the DISTRICT Board and **shall complete the PROJECT and submit all required payment reimbursement information on or before September 30, 2019 ("PROJECT PERIOD")**, unless the PROJECT PERIOD has been extended with the prior written approval of the DISTRICT. Any request for an extension of the PROJECT PERIOD shall require submittal by the PROJECT SPONSOR of a request for extension to the DISTRICT no later than 60 days prior to the original expiration date of the PROJECT PERIOD. This request will then be considered by the DISTRICT Board, whose decision shall be final. In no event other than a declared state of emergency that affects the project completion shall the PROJECT be extended beyond September 30, 2020. The PROJECT SPONSOR acknowledges this is the only provision to carry over the DISTRICT assistance funding under this AGREEMENT beyond September 30, 2019, and that any extension of funding beyond this date shall be at the sole discretion of the DISTRICT.

3. **ASSISTANCE AMOUNT** - The DISTRICT shall contribute ("ASSISTANCE AMOUNT") no more than seventy-one percent (71%) ("MATCHING PERCENTAGE") of the PROJECT SPONSOR'S eligible out-of-pocket costs for completion of this PROJECT ("PROJECT AMOUNT"). Payment of funds by the DISTRICT to the PROJECT SPONSOR (the "ASSISTANCE AMOUNT") will be on a reimbursement basis only, and only for those authorized out of pocket costs as shown in Exhibit A ("PROJECT COSTS") and meeting the requirements of Section 5 below and shall not, in any event, exceed \$2,024,578.00.

Any modifications to the PROJECT'S Cost Estimate (Exhibit A) shall require written advance notice and justification from the PROJECT SPONSOR and the prior written approval of the DISTRICT.

4. **MATCHING FUNDS** - The PROJECT SPONSOR warrants and represents that it has the PROJECT SPONSOR Match Amount (the PROJECT AMOUNT less the ASSISTANCE AMOUNT) available for the completion of the PROJECT and shall, prior to the execution of this Agreement, have provided the DISTRICT with suitable evidence of the availability of such funds using the DISTRICT's Form #95-01 (Exhibit C) and, upon request, providing the DISTRICT with access to applicable books and records, financial statements, and bank statements.

5. **PROJECT COSTS** - To be eligible for reimbursement under this Agreement, PROJECT COSTS must be necessary and reasonable for the effective and efficient accomplishment of the PROJECT and must be directly allocable thereto. PROJECT COSTS are generally described in Exhibit B. PROJECT COSTS must be incurred and work performed within the PROJECT PERIOD, with the exception of pre-agreement costs, if any, consistent with Section 6 below, which are also eligible for reimbursement by the DISTRICT.

If the PROJECT SPONSOR receives additional funding for the PROJECT COSTS from another source that was not identified in the original application and that changes the agreement MATCHING PERCENTAGE, the PROJECT SPONSOR shall proportionately reimburse the DISTRICT's program funds equal to the MATCHING PERCENTAGE in the approved project agreement. The PROJECT SPONSOR shall promptly notify the DISTRICT of any project payments it receives from a source other than the DISTRICT.

6. **PRE-AGREEMENT COSTS** - The DISTRICT and the PROJECT SPONSOR fully understand and agree that there shall be no reimbursement of funds by the DISTRICT for any obligation or expenditure made prior to the execution of this Agreement unless previously

delineated in Exhibit A, consistent with Exhibit B, and previously approved by the DISTRICT Board during the grant review process.

7. **REIMBURSEMENT PROCEDURES** - PROJECT COSTS shall be reported to the DISTRICT and summarized on the Payment Reimbursement Request Form (Form #90-14) attached as Exhibit D. Supporting documentation including bills and canceled payment vouchers for expenditures shall be provided to the DISTRICT by the PROJECT SPONSOR or LIAISON AGENT with any payment request. All records in support of the PROJECT COSTS included in payment requests shall be subject to review and approval by the DISTRICT or by an auditor selected by the DISTRICT. Audit expenses shall be borne by the PROJECT SPONSOR.

Project funds may be released in installments, at the discretion of the DISTRICT, upon submittal of a payment request by the PROJECT SPONSOR or LIAISON AGENT. The DISTRICT shall retain ten percent (10%) of each installment payment until the completion of the PROJECT.

The following costs, if authorized in the attached Exhibit B, shall be reimbursed only upon completion of the PROJECT to the reasonable satisfaction of the DISTRICT and in accordance with Exhibit B: personnel, equipment, project management, administration, inspection, and design, permitting, planning, engineering, and/or surveying costs. Assuming the PROJECT SPONSOR has otherwise fully complied with the requirements of this Agreement, reimbursement for a PROJECT approved as Phase I project will be made only upon commencement of construction of the PROJECT for which the Phase I planning, designing, engineering and/or permitting were directed, which may or may not involve further DISTRICT funding. Procedures set forth below with respect to reimbursement by the DISTRICT are subject to this requirement of commencement of construction.

The DISTRICT shall have the right to withhold any payment hereunder, either in whole or part, for non-compliance with the terms of this Agreement.

8. **FINAL REIMBURSEMENT** - The PROJECT SPONSOR, upon completion of the PROJECT, shall submit to the DISTRICT a request for final reimbursement of the ASSISTANCE AMOUNT less any prior installment payments. The payment amounts previously retained by the DISTRICT shall be paid upon (1) receipt of the Final Audit report of expenses incurred on the PROJECT by the DISTRICT, (2) full completion of the PROJECT to the reasonable satisfaction of the DISTRICT, (3) submission of Project Completion Certification Form No. 90-13 (Exhibit E), (4) submission of a photograph of the PROJECT showing the sign required by Section 18, and (5) a Final Project Report as described in Exhibit G. As part of the documentation accompanying the

request for final reimbursement, PROJECT SPONSOR shall provide proof of payment of all contractors, material suppliers, engineers, architects and surveyors with whom PROJECT SPONSOR has directly contracted (each a "DIRECT PROVIDER") to provide services or materials for the PROJECT. The final reimbursement amount shall be adjusted as necessary such that neither the total ASSISTANCE AMOUNT nor the MATCHING PERCENTAGE is exceeded. Unless otherwise determined by the DISTRICT, the final reimbursement check shall be presented by a DISTRICT representative to the PROJECT SPONSOR during a public commission meeting or public dedication ceremony for the PROJECT.

9. **RECORDS RETENTION** - The PROJECT SPONSOR shall retain all records supporting the PROJECT COSTS for three (3) years after the end of the fiscal year in which the Final Payment is released by the DISTRICT, except that such records shall be retained by the PROJECT SPONSOR until final resolution of matters resulting from any litigation, claim, or special audit that starts prior to the expiration of the three-year retention period.

10. **DEFAULT AND REMEDIES** – In the event of a breach of any of the terms of this Agreement by the PROJECT SPONSOR, the DISTRICT shall provide written notice to the PROJECT SPONSOR, which shall have sixty (60) days in which to cure the breach. If the PROJECT SPONSOR fails to cure the breach within the cure period, the DISTRICT shall have the right, but not the obligation, to demand that the PROJECT SPONSOR immediately refund the ASSISTANCE AMOUNT to the extent paid. PROJECT SPONSOR shall refund to the DISTRICT the full amount of the ASSISTANCE AMOUNT, whereupon this Agreement, and all further rights thereunder, shall be terminated. If the DISTRICT does not demand reimbursement as aforesaid, the DISTRICT may exercise any and all other remedies available at law or in equity. With respect to the PROJECT SPONSOR's obligations under Sections 15, 17 and 20, PROJECT SPONSOR acknowledges that breach by the PROJECT SPONSOR of one or more of its obligations under said sections might cause the DISTRICT to suffer irreparable harm, namely harm for which damages would be an inadequate remedy. PROJECT SPONSOR further acknowledges that the DISTRICT might suffer irreparable harm due to delay if, as a condition to obtaining an injunction, restraining order, or other equitable remedy with respect to such a breach, the DISTRICT were required to demonstrate that it would suffer irreparable harm. The parties therefore intend that if the PROJECT SPONSOR breaches one or more of its obligations under Sections 15, 17 or 20, the DISTRICT, in addition to such other remedies which may be available, shall have the right to seek specific performance and injunctive relief, and for purposes of determining whether to grant an equitable

remedy any court will assume that the breach would cause the DISTRICT irreparable harm. The provisions of this section shall survive completion of the PROJECT.

11. **DISTRICT PROJECT MANAGER** - The Executive Director, or his designee, is hereby designated as the DISTRICT's Project Manager for the purpose of this Agreement and shall be responsible for monitoring performance of its terms and conditions and for approving all reimbursement requests prior to payment.

12. **PROJECT SPONSOR'S LIAISON AGENT** - The PROJECT SPONSOR shall appoint a LIAISON AGENT, whose name and title shall be submitted to the DISTRICT upon execution of this Agreement, to act on behalf of the PROJECT SPONSOR relative to the provisions of the Project Agreement.

13. **STATUS REPORTS** - The PROJECT SPONSOR or LIAISON AGENT shall submit to the DISTRICT project status reports during the PROJECT term. These Quarterly Reports are to be on Form #95-02 (Exhibit F). Project design drawings, engineering drawings, and a copy of the Project bid award construction item cost list will be submitted as available. Photographs shall be submitted when appropriate to reflect the work accomplished. NON-COMPLIANCE by the PROJECT SPONSOR with the reporting schedule in Exhibit G may result in revocation of this Agreement.

14. **LAWS** - The PROJECT SPONSOR agrees to obtain and to abide by all federal, state, and local permits and proprietary authorizations, and all applicable laws and regulations in the development of the PROJECT. The PROJECT SPONSOR agrees that all PROJECT facilities shall be designed and constructed in compliance with applicable state and federal statutory requirements for accessibility by handicapped persons, as well as all other federal, state and local laws, rules, and requirements.

15. **NON-DISCRIMINATION** - The PROJECT SPONSOR agrees that when completed, the PROJECT shall be readily accessible, on a non-exclusive basis, to the general public without regard to age, sex, race, physical handicap, or other condition, and without regard to residency of the user in another political subdivision.

16. **PARKING FACILITIES** - Adequate parking shall be made available by the PROJECT SPONSOR to accommodate vehicles for the number of persons for which the PROJECT is being developed.

17. **SITE DEDICATION** - The PROJECT SPONSOR also agrees that the PROJECT site shall be dedicated for the public use for a minimum period of twenty-five (25) years from the

completion of the PROJECT, such dedication to be in the form of a deed, lease, management agreement or other legally binding document. Any change in such dedication shall require the prior approval of the DISTRICT. The PROJECT SPONSOR shall record evidence of such dedication within the Public Records of the County in which the PROJECT is located.

18. **ACKNOWLEDGMENT** – For construction projects, the PROJECT SPONSOR shall erect a permanent sign, approved by the DISTRICT, in a prominent location such as the PROJECT entrance of the completed PROJECT, which shall indicate that the DISTRICT contributed funds for the PROJECT. The wording of the sign required by this section shall be approved by the DISTRICT's staff before construction and installation of said sign. This sign shall contain the DISTRICT logo (Exhibit H) unless otherwise stipulated by the DISTRICT. In the event that the PROJECT SPONSOR erects a temporary construction sign, it shall also indicate the DISTRICT's participation. For all other types of projects, the PROJECT SPONSOR shall acknowledge the DISTRICT where feasible, in concurrence with the DISTRICT staff's recommendations.

19. **PROJECT MAINTENANCE** - When and as applicable, the PROJECT SPONSOR agrees to operate, maintain, and manage the PROJECT for the life of the PROJECT improvements and will pay all expenses required for such purposes. The PROJECT improvements shall be maintained in accordance with the standards of maintenance for other local facilities owned and operated by the PROJECT SPONSOR, and in accordance with applicable health standards. PROJECT facilities and improvements shall be kept reasonably safe and in reasonable repair to prevent undue deterioration and to encourage public use. The PROJECT SPONSOR warrants and represents that it has full legal authority and financial ability to operate and maintain said PROJECT facilities and improvements.

20. **FEES** – Any fees charged for this PROJECT shall be reasonable and the same for the general public of all member counties. The PROJECT SPONSOR must demonstrate that a minimum of fifty percent (50%) of the PROJECT fees will be utilized for project maintenance and improvements throughout the anticipated 25-year life of a development project or the design life of other project types, as applicable.

21. **SOVEREIGN IMMUNITY** - Each party hereto agrees that it shall be solely responsible for the wrongful acts of its employees, contractors and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity under Section 768.28, Florida Statutes. The PROJECT SPONSOR acknowledges that the DISTRICT, its

employees, commissioners and agents are solely providing funding assistance for the PROJECT and are not involved in the design, construction, operation or maintenance of the PROJECT.

22. **INSPECTIONS** - The DISTRICT reserves the right, upon reasonable request, to inspect said PROJECT and any and all records related thereto at any time.

23. **RIGHTS AND DUTIES** - The rights and duties arising under this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, and shall, unless the context clearly requires otherwise, survive completion of the PROJECT. The PROJECT SPONSOR may not assign this Agreement nor any interest hereunder without the express prior written consent of the DISTRICT.

24. **WAIVERS** - Waiver of a breach of any provisions of this Agreement shall not be deemed a waiver of any other breach of the same or different provision.

25. **NOTICE** - Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing, postage paid, and shall be sent by certified mail, return receipt requested, to the DISTRICT or PROJECT SPONSOR at the addresses below. The notice shall be effective on the date indicated on the return receipt.

To the DISTRICT at:

Florida Inland Navigation District
1314 Marcinski Road
Jupiter, Florida 33477-9498

To the PROJECT SPONSOR at:

City of Fort Lauderdale
Attention: Supervisor Marine Facilities, Parks and Recreation
2 South New River Drive East
Fort Lauderdale, FL 33301

26. **NO JOINT VENTURE** - The DISTRICT's role with respect to the PROJECT is that of a funding assistance authority only and the DISTRICT is not, and shall not be considered to be, an agent, partner, or joint venturer with the PROJECT SPONSOR.

27. **GOVERNING LAW** - The validity, interpretation and performance of this Agreement shall be controlled and construed according to the laws of the State of Florida.

28. **TRANSFERENCE** - It is the intent of the DISTRICT to issue this funding assistance to the PROJECT SPONSOR who has made application for this assistance. In the event

the PROJECT SPONSOR transfers ownership or management of the PROJECT to a party or parties not now a part of this AGREEMENT, other than another governmental entity that agrees to assume, in writing, PROJECT SPONSOR'S obligation hereunder, the DISTRICT retains the right to full reimbursement from the PROJECT SPONSOR to the full extent of the funding assistance provided by the DISTRICT, including but not limited to any costs and reasonable attorney's fees (regardless of whether litigation ensues) incurred by the DISTRICT in collecting said reimbursement.

29. **ENTIRE UNDERSTANDING** - This Agreement, including any exhibits made a part hereof, embodies the entire Agreement and understanding of the parties and supersedes all prior oral and written communications between them. The terms hereof may be modified only by a written amendment signed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day, month and year aforesaid.

WITNESSES:	FLORIDA INLAND NAVIGATION DISTRICT
_____	By: _____
	Executive Director
_____	Date: _____

WITNESSES:	PROJECT SPONSOR
_____	By: _____
	Title: _____
_____	Date: _____

EXHIBIT A

ATTACHMENT E-5

**FLORIDA INLAND NAVIGATION DISTRICT
ASSISTANCE PROGRAM 2017**

PROJECT COST ESTIMATE**(See Rule Section 66B-2.005 & 2.008 for eligibility and funding ratios)**

Project Title:	Bahia Mar Yachting Center Phase II Dredging
Applicant:	City of Fort Lauderdale

Project Elements <i>(Please list the MAJOR project elements and provide general costs for each one. For Phase I Projects, please list the major elements and products expected)</i>	Quantity or Total Estimated Cost <i>(Number and/or Footage etc.)</i>	Applicant's Cost	FIND Cost
Phase II – Constriction/Dredging to a consistent depth an area adjacent to the Bahia Mar Yachting Center and the recently deepened Intracoastal Waterway.			
Mobilization Dredging Spoil Site			
City owned Area: 11,755 Cu. Yds.			
50 / 50 split	\$646,525	\$323,263	\$323,263
ICW Access Area: 41,244 cu. yds.			
25 / 75 split	\$2,268,420	\$567,105	\$1,701,315

**TOTALS =	\$ 2,914,945	\$ 890,368	\$ 2,024,578
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EXHIBIT A

				ITEM 10.49	
				FIND	Match
				Estimated Cost per CY	
				Quantities	\$ 55.00
<u>Bahia Mar Yachting Center</u>					
Owned Area	50% Split			11,755	\$ 646,525 \$ 323,263 \$ 323,263
ICW Access Area	75% Split			41,244	\$ 2,268,420 \$ 1,701,315 \$ 567,105
Sub Total				\$ 2,914,945	\$ 2,024,578 \$ 890,368
52,999				Blended Split %	71% 29%

EXHIBIT "B"

All portions of the marina (docks, slips, dredged areas and/or mooring areas) which receive or have received grant assistance from the Florida Inland Navigation District ("FIND") (the "Funded Facilities") shall be made available to the general public of the twelve (12) counties under FIND's jurisdiction¹ on a "first come, first served" basis without any qualifying requirements such as, but not limited to, club membership, stock ownership, residency within Bahia Mar or occupancy of a hotel room in Bahia Mar. There shall be no discounted or preferential rates charged for the Funded Facilities which are not also made available to the general public of the twelve (12) counties under FIND's jurisdiction. At least ten percent (10%) of the Funded Facilities shall be made available for transient vessels; provided that Lessee may substitute equivalent facilities for transient vessels elsewhere in the marina. Funded Facilities shall not be submitted to the condominium or cooperative form of ownership. The foregoing provisions shall remain in effect with respect to any Funded Facilities or portion thereof for twenty-five (25) years from the date of receipt of grant assistance from FIND for such Funded Facilities or portion thereof.

¹ FIND's member counties are: Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Indian River, St. Lucie, Martin, Palm Beach, Broward and Miami-Dade Counties.