RESOLUTION NO. 2017-30

A CAPITAL PROJECT AUTHORIZING RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, SELECTING GREAT TIMES ENTERTAINMENT, LLC (D/B/A PLAYSMART) FOR INSTALLATION OF PLAYGROUND EQUIPMENT AT THE VILLAGE'S COMMUNITY CENTER; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 3.07(b) of the Charter of the Village of Key Biscayne, Florida ("Village"), the Village Council desires to authorize the expenditure of Village funds for the capital project consisting of the installation of playground equipment at the Village's Community Center (the "Project"); and

WHEREAS, the Village received three proposals for the Project; and

WHEREAS,Great Times Entertainment, LLC (d/b/a Playsmart) ("Contractor") submitted a proposal for the Project ("Proposal"); and

WHEREAS, after review and evaluation of the three proposals, the Village Manager recommends that the Contractor be selected to perform the Project as the lowest, responsive and responsible bidder; and

WHEREAS, the Village Council desires to select Contractor to perform the Project and authorize the Village Manager to negotiate and execute a contract with the Contractor consistent with the Proposal in an amount not to exceed $120,200.00 (the "Contract"); and

WHEREAS, the Village Council finds that it is in the best interest of the Village to authorize and award a Contract for the Project to Contractor; 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.** Each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. **Selection of Contractor.** The Village Council hereby approves and selects the Contractor for the Project.

Section 3. **Authorization.** The Village Council hereby authorizes the Village Manager to negotiate and execute a contract consistent with the Contractor's Proposal in an amount not to exceed $120,200.00 and execute any related or necessary documentation on behalf of the Village, subject to approval by the Village Attorney as to form, content, and legal sufficiency.

Section 4. **Implementation.** The Village Council hereby authorizes the Village Manager to take any and all action which is reasonably necessary to implement the purpose of this Resolution.

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

PASSED and ADOPTED this 13th day of June, 2017.

MAYOR MAYRA PEÑA LINDSAY

ATTEST:

CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

VILLAGE ATTORNEY

PLAYGROUND INSTALLATION AGREEMENT

This Agreement (the "Agreement") is dated as of the 22nd day of June 2017 by and between the Village of Key Biscayne (the "Village") and Great Times Entertainment, LLC (d/b/a Playsmart) (the "Contractor") located at 910 Broadway Suite B, Quincy, IL 62301.

1. The Work. The scope of the work (the "Work") is generally described as the installation of indoor playground equipment at the Village's Community Center as provided in Exhibit "A." Work shall commence within three (3) days after notice to proceed is provided by Village to Contractor, and all Work and requirements of this Agreement shall be completed within forty-five days (45) days thereafter. The Work includes prompt procurement by Contractor of all necessary permits and approvals and all equipment and materials needed for the Work. The Contractor shall supply and the Work shall include all labor, materials, tools, apparatus, means of transportation, services, methods and incidentals necessary for completion of the Work. Contractor shall be accountable for the safe and proper installation of the playground equipment and related improvements in accord with this Agreement. Contractor shall ensure removal of all equipment, tools and apparatus and any debris upon delivery of the Work to the Village. Contractor shall perform all Work in the best and most workmanlike manner. Special care shall be taken in placing and removing material or equipment to avoid unnecessary injury to either persons or to property. The "Work" shall be installed as reflected in Exhibit "A." Contractor shall provide Village a written warranty for the Work and all equipment incorporated therein, which warranty shall remain for the period of one (1) year after Village's acceptance of the Work.

2. Compensation. Village agrees to pay Contractor as compensation for all services provided hereunder the lump sum amount of $120,200.00, fifty percent (50%) will be paid upon execution of the agreement and the remaining fifty percent (50%) shall be payable within 30 days of Village's acceptance of the Work and receipt of the warranty.

3. Required Documentation. The Contractor shall provide proof of authorization to transact business in Florida, evidence of compliance with all license requirements for the Work and evidence of all insurance required prior to commencing any Work hereunder. Failure to timely return this executed Agreement and evidence of required licensure and insurance shall result in cancellation of this Agreement, at Village's option.

4. Liquidated Damages. Unless otherwise excused by the Village in writing, in the event that the Contractor fails to meet the time specified in this Agreement for completion of the Work, the Contractor shall pay to the Village one hundred dollars ($100.00) per day for each and every unexcused calendar day of delay beyond the required completion date, until completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable not as a penalty, but as liquidated damages representing an estimate at or before the time of this Agreement. The Village shall be entitled but not required to withhold from any amounts due otherwise to Contractor an amount then believed by the Village to be adequate to recover liquidated damages applicable to unexcused delays. All limitations of time set forth in this Agreement are of the essence.

5. Insurance. Contractor shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts as specified below, naming the Village

as a named insured, underwritten by a firm qualified to do business in the State of Florida. Each certificate of insurance shall include a (30) thirty-day advance notice of cancellation provision in favor of the Village. All subcontractors must provide Village evidence of compliance with all insurance requirements herein, including without limitation, the required certificates, before commencing any Work.

a. Commercial general liability coverage with limits of liability of not less than $1,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability and general aggregate in the amount of $1,000,000. 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.

b. Workers compensation insurance as required by law.

c. Business automobile liability with minimum limits of $1,000,000 per person, per occurrence, combined single limit for bodily injury liability and property damage liability each. Coverage must be afforded on a form no more restrictive than the latest edition of the business automobile liability policy, without restrictive endorsements and must include owned vehicles, hired and non-owned vehicles and employers' non-ownership.

6. Clean-Up. Immediately following completion of the Work, Contractor shall remove any debris related to the Work from the Village premises, using its own labor, material and tools. The Village premises shall be left in the same or better condition as provided to Contractor. Prior to commencement of the Work, Contractor shall provide Village the name and location of the facility that will be used for debris placement. The Contractor shall provide the Village with copies of receipts for debris placement from the disposal facility. The Work shall be performed in such a manner as to provide a minimum of inconvenience to the residents and workers in the area. The area where Work occurs shall be cleaned daily to the satisfaction of the Village.

7. Hours. All Work must be performed between the hours of 7:30 A.M. and 6:00 P.M., Monday through Saturday. Any Work to be performed outside of these days and hours must be approved in advance, in writing, by the Village Manager.

8. INDEMNIFICATION. CONTRACTOR HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS VILLAGE, AND VILLAGE'S OFFICERS AND EMPLOYEES FROM ALL LIABILITIES, DAMAGES, LOSSES AND COSTS (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY'S FEES AT ANY LEVEL) ON ACCOUNT OF OR RELATING TO THE WORK, AND ANY ACTS OR FAILURES TO ACT BY THE CONTRACTOR OR ANY SUBCONTRACTOR RELATED THERETO. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE VILLAGE AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

9. Termination.

A. This Agreement may be terminated by the Village upon five (5) calendar days' written notice to the Contractor for: (i) breach of any material term or condition of this Agreement; (ii) for failure to perform the Work in a diligent, efficient, workmanlike, skillful, careful manner and in accordance with the provisions hereof; or (iii) in the event the Contractor is adjudged bankrupt or has made an assignment for the benefit of creditors. In such event, Village shall provide a description of the nature of the default in writing to Contractor, and if Contractor has not fully cured such default within the aforesaid five (5) day period, the Village shall have the right to terminate this Agreement by written notice to Contractor. Without limitation of any other remedy for damages or otherwise that may also be available, in such event Village may make good all Work, may use all equipment left remaining at no cost to Village, and may take such action as may be necessary in the circumstances to resolve any public safety or welfare issues with no liability or consequences therefore. Village shall have no liability for services provided or goods ordered or any other expenses incurred by Contractor subsequent to notice to Contractor of termination. If, after such termination, it is determined that the Contractor was not in default or sufficient cause for termination did not exist, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Village, as described below.

B. This Agreement may be terminated by the Village for convenience upon five (5) calendar days' written notice to the Contractor. In the event of such a termination, the Contractor shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding Subcontractor obligations. The Contractor shall be compensated for all services performed to the satisfaction of the Village.

10. Assignment and Subcontractors. Contractor shall not sell, assign, transfer or convey this Agreement, in whole or in part, without the prior written consent of the Village Manager. Any such assignment without prior approval shall be void ab initio. All subcontractors shall be approved in advance by Village before providing any of the Work. The Contractor agrees and represents that any approved subcontractors possess the requisite skills to perform the Work and that the Work shall be executed in a good and workmanlike manner, free from defects, and that all materials shall be new and approved by or acceptable to Village .

11. Applicable Law. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR AND SHALL COMPLY WITH ALL FEDERAL, STATE AND LOCAL LAWS REGARDING THE WORK REQUIRED HEREUNDER.

12. Entire Agreement. This Agreement together with exhibits and incorporated documents constitutes the final and entire agreement between the Contractor and Village and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding this Agreement or the Work shall be deemed to exist or to bind either party, unless same be in writing, dated subsequent to the date hereto, and duly executed by the party to be charged. In the

event of any conflict in terms and provisions between this Agreement and the exhibits, the terms of those documents shall govern in the order of priority as set forth herein.

13. Location of Claims. This Agreement and all actions hereunder shall in all respects be governed by and interpreted and enforced pursuant to the laws of the State of Florida. Any suit arising out of this Agreement shall be brought in Miami-Dade County, Florida.

14. Expenses and Delay. The Village shall have no liability to the Contractor for any damages incurred by the Contractor for delay or interruption of the Work. The Contractor's sole and exclusive remedy for any such delay, if any, shall be an extension of the time required or allowed to complete the Work. In order to obtain an extension of time, the Contractor shall request same of the Village in writing within 24 hours of any delay or interruption of the Work.

15. Severability. Should any provision, paragraph, sentence, word, or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word, or phrase shall be deemed modified to the extent necessary in order to conform with such laws, and the remainder shall remain unmodified and in full force and effect.

16. Waiver of Jury Trial and Venue. The Village and Contractor knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon this Agreement or arising out of, under, or in connection with the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party.

17. Attorneys' Fees. 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 such costs and expenses, including, but not limited to, court costs, and reasonable attorneys' fees.

18. Notice. Notice hereunder shall be provided via certified mail or hand delivery to the following:

For the Village:	John C. Gilbert, Village Manager Village of Key Biscayne, Florida 88 W. McIntyre Street, Suite 210 Key Biscayne, FL 33149 Telephone: 305-365-5500 Fax Number: 305-365-8936
For The Contractor:	Great Times Entertainment DBA Playsmart Attention: _Gary Boots 910 Broadway STE B Quincy Illinois Telephone: (_217) 440 – 3330 Fax Number: (217) 223 5657

THE CONTRACTOR'S SIGNATURE BELOW INDICATES CONTRACTOR HAS READ, UNDERSTANDS, AND ACCEPTS ALL PROVISIONS CONTAINED HEREIN, INCLUDING THE EXHIBITS AND THAT THE CONTRACTOR HAS THE REQUISITE AUTHORITY TO SIGN THIS CONTRACT.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature.

ATTEST:

VILLAGE CLERK

VILLAGE OF KEY BISCAYNE

By: _____
Village Manager

28 day of June, 2017.

APPROVED AS TO FORM AND SUFFICIENCY:

By: _____
VILLAGE ATTORNEY

ROSA MADELIN LOPEZ
MY COMMISSION # FF 941989
EXPIRES: February 18, 2020
Bonded Thru Budget Notary Services

6/28/17

WITNESS

By: _____

Print Name: Gary Boots

By: _____

Print Name: Richard Houseweart

CONTRACTOR
Great Times Entertainment, LLC
(d/b/a Playsmart)

By _____
(Signature and Title)
(Corporate Seal)

Tim N Anderson - Partner
(Type Name/Title signed above)

22nd day of June, 2017

STATE OF FLORIDA
COUNTY OFMIAMI- DADE

SWORN TO AND SUBSCRIBED before me this ___ day of _____, 2017.

My Commission Expires:

_____

Notary Public