

**RESOLUTION NO. 19-05-25**

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AUTHORIZING APPROVAL OF AN INTERLOCAL AGREEMENT WITH MONROE COUNTY, FLORIDA FOR FKRAD MONITORING SERVICES UNDER FDEP GRANT MN008; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the Florida Keys Reasonable Assurance Documentation ("FKRAD") was developed by the FDEP in cooperation with local governments, state agencies, and federal agencies within the Florida Keys to set forth and accelerate the actions that have been taken or were planned to be taken to reduce nutrient loadings to nearshore waters throughout the Florida Keys so that water quality standards are met, and that beneficial uses for the nearshore waters are restored; and

**WHEREAS**, the FKRAD was approved by the Florida Department of Environmental Protection ("FDEP") for nutrients in 2008 and provided to the Environmental Protection Agency ("EPA") in February 2009; and

**WHEREAS**, in 2008 Islamorada, Village of Islands (the "Village") signed an agreement as a Florida Keys stakeholder to the FKRAD to manage local anthropogenic nutrient contributions in order to control cumulative water quality impacts within the local zone of impact in the nearshore waters of the Florida Keys; and

**WHEREAS**, Monroe County (the "County") received FDEP Grant Number MN008 in the amount of Three Hundred Sixty Thousand Seven Hundred Eighteen Dollars (\$360,718.00) for continuing FKRAD monitoring services within unincorporated Monroe County, the City of Marathon, the City of Key West, the City of Layton, and the Village; and

**WHEREAS**, the County has an agreement with the University of Miami for Three Hundred Sixty Thousand Seven Hundred Eighteen Dollars (\$360,718.00) to conduct the FKRAD monitoring work; and

**WHEREAS**, the County and municipalities share of the FKRAD monitoring costs is equal to 50%; and

**WHEREAS**, the Village's portion of the work would be Thirty-Three Thousand Nine Hundred Twenty-Seven Dollars and Six Cents (\$33,927.06) for six (6) monitoring stations located within Village limits which shall be paid by the Village to the County to reimburse the County for the Village's cost share portion and of which fifty (50%) percent, Sixteen Thousand Six Hundred Forty-Eight Dollars and Fifty-Three Cents (\$16,648.53) shall be reimbursed by the County to the Village upon receipt from FDEP; and will

**WHEREAS**, it is necessary for the Parties to enter into this Interlocal Agreement (the "Agreement") pursuant to Section 163.01, Florida Statutes, as amended, in order to spell out the rights and responsibilities of the Parties under the Grant and this Agreement; and

**WHEREAS**, the County and the Village desire to enter into this agreement for FKRAD monitoring services within the Village, as attached hereto as Exhibit "A"; and

**WHEREAS**, the Village Council of Islamorada, Village of Islands (the "Village Council") has determined that approval of the Interlocal Agreement with the County is in the best interest of the Village and its residents.

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

**Section 1. Recitals.** The above recitals are true and correct and incorporated herein by this reference.

**Section 2. Approval of Agreement.** The Village Council hereby approves and ratifies execution of the Interlocal Agreement with Monroe County for FKRAD monitoring services within the Village pursuant to FDEP Grant number MN008.

**Section 3. Authorization of Village Officials.** The Village Manager and/or his designee and the Village Attorney are hereby authorized to take all actions necessary to implement the terms and conditions of the Agreement.

**Section 4. Authorization of Fund Expenditure.** Notwithstanding the limitations imposed upon the Village Manager pursuant to the Village's Purchasing Procedures Ordinance, the Village Manager is authorized to expend budgeted funds to implement the terms and conditions of the Agreement.

**Section 5. Execution of Agreement.** The Mayor and/or Village Manager are authorized to execute the Agreement on behalf of the Village, to execute any required agreements and/or documents to implement the terms and conditions of the Agreement and to execute any

extensions and/or amendments to the Agreement, subject to the approval as to form and legality by the Village Attorney.

**Section 6.** **Effective date.** This Resolution shall take effect immediately upon its adoption.

Motion to adopt by Vice Mayor Mike Forster, seconded by Councilman Ken Davis.

**FINAL VOTE AT ADOPTION**  
**VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS**

Mayor Deb Gillis	YES
Vice Mayor Mike Forster	YES
Councilman Ken Davis	YES
Councilwoman Cheryl Meads	YES
Councilman Jim Mooney	YES

**PASSED AND ADOPTED ON THIS 30<sup>TH</sup> DAY OF MAY, 2019.**

  
\_\_\_\_\_  
DEB GILLIS, MAYOR

ATTEST:

  
\_\_\_\_\_  
KELLY TOTH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND BENEFIT OF ISLAMORADA,  
VILLAGE OF ISLANDS ONLY

  
\_\_\_\_\_  
ROGET V. BRYAN, VILLAGE ATTORNEY

**INTERLOCAL AGREEMENT BETWEEN MONROE COUNTY,  
FLORIDA, AND ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA,  
FOR RAD MONITORING SERVICES UNDER DEP GRANT MN008**

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into this 22<sup>nd</sup> day of May, 2019, pursuant to Section 163.01, Florida Statutes, between Monroe County, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida 33040 ("County"), and Islamorada, Village of Islands, Florida, a municipal corporation of the State of Florida, whose address is 86800 Overseas Highway, Islamorada, Florida 33036 ("Village" or "Villages") (collectively hereinafter referred to as the "Parties").

**WITNESSETH:**

**WHEREAS**, the County and the Village are authorized to enter into this Agreement and implement its provisions pursuant to Section 163.01, Florida Statutes, as amended, which permits local government units to make the most efficient use of their powers by enabling them to cooperate with each other for mutual advantage and to provide services and facilities in a manner and pursuant to forms of governmental organization that accords best with geographic, economic, and other factors influencing the needs and development of local communities; and

**WHEREAS**, the Florida Keys Reasonable Assurance Documentation (FKRAD) was approved by the Florida Department of Environmental Protection (FDEP or Department) for Nutrients in 2008 and provided to the Environmental Protection Agency (EPA) in February 2009; and

**WHEREAS**, the FKRAD was developed by the Department in cooperation with local governments, state agencies, and federal agencies within the Florida Keys to set forth and accelerate the actions that have been taken or were planned to be taken to reduce nutrient loadings to near shore waters throughout the Florida Keys so that water quality standards are met, and beneficial uses are restored; and

**WHEREAS**, the County received Florida Department of Environmental Protection (FDEP) Grant number MN008 ("Grant") in the amount of \$360,718.00 for RAD monitoring services in unincorporated Monroe County, the City of Marathon, the Village of Islamorada, the City of Key West and the City of Layton; and

**WHEREAS**, the County has an agreement with the University of Miami for \$360,718.00 to conduct the RAD monitoring work; and

**WHEREAS**, the County and municipalities share of the RAD monitoring costs is equal to 50%; and

**WHEREAS**, the Village's portion of the work is \$33,927.06 for six (6) monitoring stations located within Village limits which shall be paid by the Village to the County to reimburse the County for the Village's cost share portion and of which fifty (50%) percent (\$16,648.53) shall be reimbursed by the County to the Village upon receipt from FDEP; and



**WHEREAS**, it is necessary for the Parties to enter into this Agreement in order to spell out the rights and responsibilities of the Parties under the Grant and this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which is acknowledged by both of the Parties, and pursuant to Section 163.01, et. seq., Florida Statutes, the Florida Interlocal Cooperation Act of 1969, the Parties hereto agree as follows:

**SECTION 1. RECITALS.** The foregoing recitals are true and correct and are hereby incorporated in this Agreement by reference.

**SECTION 2. TERM AND TERMINATION.**

The term of this Agreement shall run from the date on which the Agreement is executed by both the Parties ("Effective Date") and shall continue in full force and effect until the Parties have satisfied all of their obligations under this Agreement, unless terminated sooner as provided herein ("Term").

In the event that funding from FDEP or any other source is withdrawn, reduced, or limited in any way after the Effective Date of this Agreement but prior to completion of the Agreement, the County may terminate the Agreement, subject to renegotiation under new funding limitations and conditions.

**SECTION 3. RESPONSIBILITIES OF THE PARTIES.**

A. Each party to this Agreement shall designate an individual who may be designated by title or position to oversee and administer the party's participation in this Agreement. The Parties' initial Administrators shall be the following individuals:

For the County:

Rhonda Haag  
Director Sustainability and Projects  
102050 Overseas Highway, Ste. 246  
Key Largo, FL 33037  
Bus: (305) 453-8774  
[Haag-rhonda@monroecounty-fl.gov](mailto:Haag-rhonda@monroecounty-fl.gov)

For the Village:

Seth Lawless  
Village Manager  
86800 Overseas Highway  
Islamorada, FL 33036  
Tel: (305) 664-6460  
[seth.lawless@islamorada.fl.us](mailto:seth.lawless@islamorada.fl.us)

Either party may change its Administrator at any time by delivering written notice of such party's new Administrator to the other party.

B. The Scope of Services for work to be performed under this Grant is as shown in the Notice of Grant and Agreement Award ("Award") for the Grant, attached hereto as **Exhibit A** to this Agreement, and also as shown in the University of Miami agreement, attached hereto as **Exhibit B**, both incorporated herein by reference. By entering into this Agreement, each party agrees that it will comply with all terms and conditions imposed on the Sponsor in the Award.

C. Monroe County and DEP have overall responsibility for direction of any work performed

by the University of Miami ("University") under the Grant, including work performed in Islamorada. If at any time the Village directs work to be performed by the University of Miami that is not covered under the DEP Award document, the Village shall be responsible for full payment of that work to the County for such work. The County shall provide the deliverables from the University of Miami to the County indicating the work that has been performed. The County shall have sole responsibility for direction of work performed by the University of Miami.

D. The contract project period is August 15, 2018 through February 15, 2021. The total estimated project budget for the Village is \$33,927.06 for six (6) monitoring stations located within the Village limits as shown in the map attached as **Exhibit C** to this Agreement.

E. The County has hired the University of Miami to perform the work covered by the DEP Grant MN008. Thereafter, throughout the Term of this Agreement, the University will submit invoices to the County, with copies to the Village, for the work performed, up to the amounts shown in **Exhibit B**. Within ten (10) calendar days following receipt of the invoice from the University of Miami, the Village shall provide an electronic funds transfer (EFT) to deposit funds with the County in an amount necessary to pay 100% of amount of the invoice for services performed within the Village.

F. Following receipt of the invoice from the University of Miami, the County shall make payment to the University of Miami in accordance with the Florida prompt payment Act and shall submit a reimbursement claim to FDEP for reimbursement of 50% of the eligible invoice costs in accordance with DEP grant MN008.

G. Within ten (10) days of receipt by the County of the eligible reimbursement costs from FDEP, the County will issue the approved reimbursement amount to the Village by electronic funds transfer.

H. The Village understands that only work covered in the Grant Agreement is allowable work. All amendments to the Award require the prior written approval of both the County and FDEP.

#### **SECTION 4. RECORDS – ACCESS AND AUDITS.**

A. Both Parties shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Records shall be retained for a period of seven (7) years from the termination of this agreement or for a period of three (3) years from the date of submission of the final expenditure report in accordance with 2 CFR § 200.333, whichever is greater. Each party to this Agreement or its authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for four (4) years following the termination of this Agreement. If an auditor employed by the County determines that monies paid to the Village pursuant to this Agreement were spent for purposes not authorized by this Agreement, the Village shall repay the monies together with interest calculated pursuant to Sec. 55.03, of the Florida Statutes, running from the date the monies were paid by the County.

B. The Parties shall allow public access to all records subject to the provisions of Chapter 119, Florida Statutes, and the Constitution of the State of Florida and which have been made or received

by either party in conjunction with this Interlocal Agreement.

#### **SECTION 5. NONDISCRIMINATION.**

The Parties agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The Parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Chapter 14, Article II, which prohibits discrimination on the basis of race, color, sex, religion, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; 11) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

#### **SECTION 6. GOVERNING LAW, VENUE.**

The laws of the State of Florida shall govern this Agreement. Any lawsuit to enforce the terms and conditions of this Agreement must be brought in Monroe County, Florida.

#### **SECTION 7. SEVERABILITY.**

If any provision or part of a provision of this Agreement is found by a court or other authority of competent jurisdiction to be void or unenforceable, that provision or part of a provision is to be deemed deleted from this Agreement and the remaining provisions to continue in full force and effect. The Parties shall, in this event, seek to agree upon a valid and enforceable provision or part of a provision to replace the provision or part of a provision found to be void and unenforceable.

#### **SECTION 8. CODE OF ETHICS.**

The Parties agree that officers and employees of the Village and County required to comply with the standards of conduct for public officers and employees as delineated in Section 112.311, et seq., Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting

employment or contractual relationship; and disclosure or use of certain information.

The County and Village each warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. Each party further warrants that it has not employed, retained or otherwise had act on its behalf any former county officer or county employee subject to the prohibition of Section 2 of Ordinance No. 010-1990 as amended by Ordinance 020-1990 or any county officer or employee in violation of Section 3 of Ordinance No. 010-1990. For the breach or violation of the provision, each party shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration

#### **SECTION 9. AUTHORITY TO EXECUTE, EXECUTION IN COUNTERPARTS, EXECUTION BY ELECTRONIC SIGNATURES.**

The persons signing below represent and warrant that each possesses the requisite authority to execute this Agreement and to bind his respective entity through his signature. This Agreement may be signed in counterparts. In accordance with Monroe County Ordinance No. 005-2018, an electronic signature is equally valid as a hard copy or wet signature.

#### **SECTION 10. NOTICE.**

Whenever any party desires to give notice to the other, it must be given by written notice, either by registered first class U.S. mail, return receipt requested, or by certified mail, and sent to:

For the County:

Monroe County Administrator  
1100 Simonton St.  
Key West, FL 33040

For the Village:

Village Manager  
Islamorada, Village of Islands  
86800 Overseas Highway  
Islamorada, FL 33036

#### **SECTION 11. OTHER FEDERAL CLAUSES.**

The Parties understand that the subject matter of this Agreement is work that will be paid for by a federal award, as that term is defined in 2 C.F.R. part 200, and therefore, the following federal contract clauses apply:

**A. Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b).

**B. Clean Air Act** (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must comply with all applicable standards, orders or regulations issued



pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**C. Debarment and Suspension** (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**D. Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**E. NRCS Regulations.** NRCS administers the Emergency Watershed Protection (EWP) program through the following authorities:

- Section 216, Public Law 81-516 (33 U.S.C. Section 701b);
- Section 403 of Title IV of the Agricultural Credit Act of 1978, Public Law 95-334; and
- Section 382, Title III, of the 1996 Farm Bill Public Law 104-127.
- Codified rules for administration of the EWP program are set forth in 7 CFR 624.

The Parties understand agree that they will comply with the aforementioned statutes and regulations.

**SECTION 12. ENTIRETY OF AGREEMENT.** This Agreement constitutes the entire agreement between the County and the Village, and supersedes all proposals, prior agreements, and all other communication between the Parties in relation to the subject matter covered by this Agreement. Except as otherwise provided herein, no revision, amendment or modification of this Agreement shall be effective unless reduced to writing and executed by both Parties.



WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their Authorized Officers and have affixed their corporate seals hereon.

KEVIN MADOK, CLERK

*Samuel Stannard*

Deputy Clerk

Date: 5/22/2019



Attest: KELLY TOTH, VILLAGE CLERK

By: *Kelly S Toth*

**BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA**

By:

*Sylvia J. Murphy*

Sylvia Murphy, Mayor

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND  
RELIANCE OF MONROE COUNTY BOARD OF COUNTY  
COMMISSIONERS ONLY:

\_\_\_\_\_  
PEDRO MERCADO, ASSISTANT COUNTY ATTORNEY

**ISLAMORADA, VILLAGE OF ISLANDS,  
FLORIDA**

By:

*Seth Lawless*  
Seth Lawless, Village Manager

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

\_\_\_\_\_  
ROGET V. BRYAN, VILLAGE ATTORNEY

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM

*Pedro J. Mercado*  
PEDRO J. MERCADO  
ASSISTANT COUNTY ATTORNEY

Date

6/19/19

**Exhibit A**

**DEP GRANT AGREEMENT FOR  
RAD MONITORING SERVICES  
MN008**

**EXHIBIT A Available Upon  
Request.**

Please contact Village Clerk at  
305-664-6413 or  
[deputyclerk@islamorada.fl.us](mailto:deputyclerk@islamorada.fl.us)