



Council Communication

To: Mayor and Village Council
Through: Maria T. Aguilar, Village Manager
From: Lesli Wojtecki, Director of Public Works
Date: June 18, 2015

SUBJECT: RESOLUTION APPROVING THE LEASE AGREEMENT WITH FLORIDA DEPARTMENT OF TRANSPORTATION FOR RIGHT-OF-WAY PROPERTY BAYSIDE, MILE MARKER 84, PARCEL NO. 489

Background:

Since 2003, pursuant to Resolution No. 03-02-05, Islamorada, Village of Islands (“Village”), has leased the right-of-way property adjacent to U.S. Highway 1 Bayside at MM 84, Parcel No. 489, from the State of Florida Department of Transportation (“FDOT”). The Lease Agreement provides for use of the property by the Village for public purposes, including re-vegetation, installation of a bike trail and other improvements. The Lease Agreement provides that the Village shall pay no rent or consideration for the public purpose use of the property.

In 2010, the Village and FDOT entered into a five (5) year Lease Agreement, which expires on June 30, 2015, and which may be renewed, at the Village’s option, for an additional five (5) years, to and including June 30, 2020. The Village currently performs mowing and trimming maintenance on the right-of-way property in accordance with the current Lease Agreement with FDOT.

Analysis:

The Village wishes to exercise its renewal option of the current Lease Agreement. The new lease term would begin on July 1, 2015 and would end June 30, 2020. The proposed Lease Agreement, and Addendum, is provided as Exhibit “A” to the Resolution.

Budget Impact:

The Lease Agreement provides for no rent payments due from the Village. The Village is required to maintain the existing fence on the property and provide liability insurance.

Staff Impact:

There is no staff impact associated with the execution of the Lease Agreement.

Recommendation:

It is recommended that the Village Council adopt the Resolution approving the Lease Agreement and Addendum with the State of Florida Department of Transportation for right-of way property adjacent to U.S. Highway 1 Bayside at MM 84, Parcel No. 489.

RESOLUTION NO. 15 ____.

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA APPROVING THE LEASE AGREEMENT BETWEEN THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) AND ISLAMORADA, VILLAGE OF ISLANDS, FOR RIGHT-OF-WAY PROPERTY LOCATED AT APPROXIMATELY MILE MARKER 84, BAYSIDE, AND IDENTIFIED AS FDOT PARCEL NO. 489; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE LEASE AGREEMENT; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE LEASE AGREEMENT AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in 2003, Islamorada, Village of Islands (the “Village”), entered into a Lease Agreement for right-of-way property, located at approximately MM 84 bayside, and identified as Parcel No.489, by the Florida Department of Transportation (“FDOT”); and

WHEREAS, on August 17, 2010, pursuant to Resolution 10-07-40, the Village entered into a Lease Agreement with FDOT for five (5) years, renewable for one five (5) year term; and

WHEREAS, the Village wishes to exercise its renewal option of the 2010 Lease Agreement for an additional five (5) year term through June 30, 2020; and

WHEREAS, the Lease Agreement provides for the use of the property by the Village for public purposes, including re-vegetation, installation of a bike trail and other improvements; and

WHEREAS, the Village would continue to perform fence repairs and mowing and trimming maintenance in accordance with the Agreement; and

WHEREAS, the Village Council finds that approval of the Lease Agreement and Addendum between FDOT and the Village attached hereto as Exhibit “A” 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 into this Resolution by this reference.

Section 2. Approval of Agreement. The Village Council of Islamorada, Village of Islands, hereby approves the Lease Agreement between the Village and FDOT, a copy of which is attached as Exhibit “A,” together with such non-material changes as may be acceptable to the Village Manager and approved as to form and legality by the Village Attorney.

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

Section 4. Execution of Lease Agreement. The Village Manager is authorized to execute the Lease Agreement on behalf of the Village, to execute any required agreements and/or documents to implement the terms and conditions of the Lease Agreement and to execute any extensions and/or amendments to the Lease Agreement, subject to approval as to form and legality by the Village Attorney.

Section 5. Authorization of Fund Expenditure. Notwithstanding the limitations imposed upon the Village Manager pursuant to the Village’s Purchasing Procedures Ordinance, the Village Manager is hereby authorized to expend budgeted funds to implement the terms and conditions of the Agreement.

Section 6. Effective Date. This Resolution shall take effect immediately upon adoption.

Motion to adopt by _____; second by _____.

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

Mayor Mike Forster _____

Vice Mayor Deb Gillis _____

Councilman Jim Mooney _____

Councilman Chris Sante _____

Councilman Dennis Ward _____

PASSED AND ADOPTED ON THIS ____ DAY OF _____, 2015.

MIKE FORSTER, 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

LEASE AGREEMENTITEM/SEGMENT NO.: 2503081MANAGING DISTRICT: SixF.A.P. NO.: N/ASTATE ROAD NO.: 5, MM 84COUNTY: MonroePARCEL NO.: 489

THIS **AGREEMENT**, made this _____ day of _____, 2015, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, (hereinafter called the Lessor), and ISLAMORADA, VILLAGE OF ISLANDS, whose mailing address is 86800 Overseas Highway, Islamorada, Florida 33036

(hereinafter called the Lessee).

WITNESSETH:

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

1. **Property and Term.** Lessor does hereby lease unto Lessee the property described in Exhibit "A", attached and made a part hereof, for a term of five (5) years beginning 7/1/2015 and ending 6/30/2020. This Lease may be renewed for an additional See Addendum term at Lessee's option, subject to the rent adjustment as provided in Paragraph 3 below. Lessee shall provide Lessor one hundred and twenty (120) days advanced written notice of its exercise of the renewal option.

If Lessee holds over and remains in possession of the property after the expiration of the term specified in this Lease, or any renewals of such term, Lessee's tenancy shall be considered a tenancy at sufferance, subject to the same terms and conditions as herein contained in this Lease.

This Lease is subject to all utilities in place and to the maintenance thereof as well as any other covenants, easements, or restrictions of record.

This Lease shall be construed as a lease of only the interest, if any, of Lessor, and no warranty of title shall be deemed to be given herewith.

2. **Use.** The leased property shall be used solely for the purpose of See Addendum. If the property is used for any other purpose, Lessor shall have the option of immediately terminating this Lease. Lessee shall not permit any use of the property in any manner that would obstruct or interfere with any transportation facilities.

Lessee will further use and occupy the leased property in a careful and proper manner, and not commit any waste thereon. Lessee will not cause, or allow to be caused, any nuisance or objectionable activity of any nature on the property. Lessee will not use or occupy said property for any unlawful purpose and will, at Lessee's sole cost and expense, conform to and obey any present or future ordinances and/or rules, regulations, requirements, and orders of governmental authorities or agencies respecting the use and occupation of the leased property.

Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws or regulations, or as those terms are understood in common usage, are specifically prohibited. The use of petroleum products, pollutants, and other hazardous materials on the leased property is prohibited. Lessee shall be held responsible for the performance of and payment for any environmental remediation that may be necessary, as determined by the Lessor, within the leased property. If any contamination either spread to or was released onto adjoining property as a result of Lessee's use of the leased property, the Lessee shall be held similarly responsible. The Lessee shall indemnify, defend, and hold harmless the Lessor from any claim, loss, damage, costs, charge, or expense arising out of any such contamination.

3. **Rent.** Lessee shall pay to Lessor as rent, on or before the first day of each rent payment period, the sum of See Addendum plus applicable tax, for each N/W of the term. If this Lease is terminated prior to the end of any rent payment period, the unearned portion of any rent payment, less any other amounts that may be owed to Lessor, shall be refunded to Lessee. Lessee shall pay any and all state, county, city, and local taxes that may be due during the term hereof, including any real property taxes. Rent payments shall be made payable to the Florida Department of Transportation and shall be sent to Right of Way Administration, 1000 NW 111th Avenue, R/W Administration, Rm. 6105-B, Miami, Florida 33172, Attn.: Property Management

Lessor reserves the right to review and adjust the rental fee biennially and at renewal to reflect market conditions. Any installment of rent not received within ten (10) days after the date due shall bear interest at the highest rate allowed by law from the due date thereof, per Section 55.03(1), Florida Statutes. This provision shall not obligate Lessor to accept late rent payments or provide Lessee a grace period.

4. **Improvements.** No structures or improvements of any kind shall be placed upon the property without the prior written approval of the District Secretary for District Six of Lessor. Any such structures or improvements shall be constructed in

a good and workmanlike manner at Lessee's sole cost and expense. Subject to any landlord lien, any structures or improvements constructed by Lessee shall be removed by Lessee, at Lessee's sole cost and expense, by midnight on the day of termination of this Lease and the leased property restored as nearly as practical to its condition at the time this Lease is executed. Portable or temporary advertising signs are prohibited.

Lessee shall perform, at the sole expense of Lessee, all work required in the preparation of the leased property for occupancy by Lessee, in the absence of any special provision herein contained to the contrary; and Lessee does hereby accept the leased property as now being in fit and tenable condition for all purposes of Lessee.

Lessor reserves the right to inspect the property and to require whatever adjustment to structures or improvements as Lessor, in its sole discretion, deems necessary. Any adjustments shall be done at Lessee's sole cost and expense.

5. Maintenance. Lessee shall keep and maintain the leased property and any building or other structure, now or hereafter erected thereon, in good and safe condition and repair at Lessee's own expense during the existence of this Lease, and shall keep the same free and clear of any and all grass, weeds, brush, and debris of any kind, so as to prevent the same from becoming dangerous, inflammable, or objectionable. Lessor shall have no duty to inspect or maintain any of the leased property or buildings, and other structures thereon, during the term of this Lease; however, Lessor shall have the right, upon twenty-four (24) hours notice to Lessee, to enter the leased property for purposes of inspection, including conducting an environmental assessment. Such assessment may include: surveying; sampling of building materials, soil, and groundwater; monitoring well installations; soil excavation; groundwater remediation; emergency asbestos abatement; operation and maintenance inspections; and, any other actions which may be reasonable and necessary. Lessor's right of entry shall not obligate inspection of the property by Lessor, nor shall it relieve the Lessee of its duty to maintain the leased property. In the event of emergency due to a release or suspected release of hazardous waste on the property, Lessor shall have the right of immediate inspection, and the right, but not the obligation, to engage in remedial action, without notice, the sole cost and expense of which shall be the responsibility of the Lessee.

6. Indemnification. (select applicable paragraph)

Lessee is a Governmental Agency

To the extent provided by law, Lessee shall indemnify, defend, and hold harmless the Lessor and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by Lessee, its agents, or employees, during the performance of the Lease, except that neither Lessee, its officers, agents, or employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Lessor or any of its officers, agents, or employees during the performance of the Lease.

When the Lessor receives a notice of claim for damages that may have been caused by the Lessee, the Lessor will immediately forward the claim to the Lessee. Lessee and the Lessor will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Lessor will determine whether to require the participation of Lessee in the defense of the claim or to require that Lessee defend the Lessor in such claim as described in this section. The Lessor's failure to promptly notify Lessee of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by Lessee. The Lessor and Lessee will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any.

Lessee is not a Governmental Agency

Lessee shall indemnify, defend, save, and hold harmless Lessor, its agent, officers, and employees, from any losses, fines, penalties, costs, damages, claims, demands, suits, and liabilities of any nature, including attorney's fees, (including regulatory and appellate fees), arising out of or because of any acts, action, neglect, or omission by Lessee, or due to any accident, happening, or occurrence on the leased property or arising in any manner from the exercise or attempted exercise of Lessee's rights hereunder whether the same regards person or property of any nature whatsoever, regardless of the apportionment of negligence, unless due to the sole negligence of Lessor.

Lessee's obligation to indemnify, defend and pay for the defenses or at Lessor's option, to participate, and to associate with the Lessor in the defense and trial of any claim and any related settlement negotiations, shall be triggered by the Lessor's notice of claim for indemnification to Lessee. Lessee's inability to evaluate liability or its evaluation of liability shall not excuse Lessee's duty to defend and indemnify within seven days after such notice by the Lessor is given by registered mail. Only an adjudication or judgment after the highest appeal is exhausted specifically finding the Lessor solely negligent shall excuse performance of this provision by Lessee. Lessee shall pay all costs and fees related to this obligation and its enforcement by Lessor. Lessor's failure to notify Lessee of claim shall not release Lessee of the above duty to defend.

7. Insurance. Lessee at its expense, shall maintain at all times during the term of this Lease, public liability insurance protecting Lessor and Lessee against any and all claims for injury and damage to persons and property, and for the loss of life or property occurring in, on, or about the property arising out of the act, negligence, omission, nonfeasance, or malfeasance of Lessee, its employees, agents, contractors, customers, licensees, and invitees. Such insurance shall be carried in a minimum amount of not less than one million (\$ 1,000,000.00) for bodily injury or death to any one person or any number of persons in any one occurrence and not less than one million (\$ 1,000,000.00) for property damage, or a combined

coverage of not less than two million (\$ 2,000,000.00). All such policies shall be issued by companies licensed to do business in the State of Florida and all such policies shall contain a provision whereby the same cannot be canceled or modified unless Lessor is given at least sixty (60) days prior written notice of such cancellation or modification. Lessee shall provide Lessor certificates showing such insurance to be in place and showing Lessor as additional insured under the policies. If self-insured or under a risk management program, Lessee represents that such minimum coverage for liability will be provided for the leased property.

Lessor may require the amount of any public liability insurance to be maintained by Lessee be increased so that the amount thereof adequately protects Lessor's interest. Lessee further agrees that it shall during the full term of this Lease and at its own expense keep the leased property and any improvements thereon fully insured against loss or damage by fire and other casualty. Lessee also agrees that it shall during the full term of this Lease and at its own expense keep the contents and personal property located on the leased property fully insured against loss or damage by fire or other casualty and does hereby release and waive on behalf of itself and its insurer, by subrogation or otherwise, all claims against Lessor arising out of any fire or other casualty whether or not such fire or other casualty shall have resulted in whole or in part from the negligence of the Lessor.

8. Eminent Domain. Lessee acknowledges and agrees that its relationship with Lessor under this Lease is one of landlord and tenant and no other relationship either expressed or implied shall be deemed to apply to the parties under this Lease. Termination of this Lease for any cause shall not be deemed a taking under any eminent domain or other law so as to entitle Lessee to compensation for any interest suffered or lost as a result of termination of this Lease, including any residual interest in the Lease, or any other facts or circumstances arising out of or in connection with this Lease.

Lessee hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including special damages, severance damages, removal costs, or loss of business profits, resulting from Lessee's loss of occupancy of the leased property, or any such rights, claims, or damages flowing from adjacent properties owned or leased by Lessee as a result of Lessee's loss of occupancy of the leased property. Lessee also hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort as set out above, as a result of Lessee's loss of occupancy of the leased property, when any or all adjacent properties owned or leased by Lessee are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether this Lease is still in existence on the date of taking or sale; or has been terminated prior thereto.

9. Miscellaneous.

a. This Lease may be terminated by Lessor immediately, without prior notice, upon default by Lessee hereunder, and may be terminated by either party, without cause upon thirty (30) days prior written notice to the other party.

b. In addition to, or in lieu of, the terms and conditions contained herein, the provisions of any Addendum of even date herewith which is identified to be a part hereof is hereby incorporated herein and made a part hereof by this reference. In the event of any conflict between the terms and conditions hereof and the provisions of the Addendum(s), the provisions of the Addendum(s) shall control, unless the provisions thereof are prohibited by law.

c. Lessee acknowledges that it has reviewed this Lease, is familiar with its terms, and has had adequate opportunity to review this Lease with legal counsel of Lessee's choosing. Lessee has entered into this Lease freely and voluntarily. This Lease contains the complete understanding of the parties with respect to the subject matter hereof. All prior understandings and agreements, oral or written, heretofore made between the parties and/or between Lessee and the previous owner of the leased property and landlord of Lessee are merged in this Lease, which alone, fully and completely expresses the agreement between Lessee and Lessor with respect to the subject matter hereof. No modification, waiver, or amendment of this Lease or any of its conditions or provisions shall be binding upon Lessor or Lessee unless in writing and signed by both parties.

d. Lessee shall not sublet the property or any part thereof, nor assign this Lease, without the prior consent in writing of the Lessor; this Lease is being executed by Lessor upon the credit and reputation of Lessee. Acceptance by Lessor of rental from a third party shall not be considered as an assignment or sublease, nor shall it be deemed as constituting consent of Lessor to such an assignment or sublease.

e. Lessee shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone, and telegraph services, or any other utility or service used on the property.

f. This Lease shall be governed by the laws of the State of Florida, and any applicable laws of the United States of America.

g. All notices to Lessor shall be sent to the address for rent payments and all notices to Lessee shall be sent to:
Islamorada, Village of Islands, 86800 Overseas Highway, Islamorada, Florida 33036, Attn. Maria T. Aguilar, Village Manager

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

ISLAMORADA, VILLAGE OF ISLANDS
Lessee (Company Name, if applicable)

By: _____
District Secretary

BY: _____

Gus Pego, P.E.
Print Name

Maria T. Aguilar
Print Name

Attest: _____

Title: rVillage Manager

Name/Title: _____ Exec. Secretary

Attest: _____ (SEAL)

LEGAL REVIEW:

Print Name

District Counsel

Title: _____

Alicia Trujillo, Esq.
Print Name

ADDENDUM

This is an Addendum to that certain Lease Agreement between DO NOT SIGN
_____ and the State of Florida Department of Transportation dated the _____ day of _____, _____.
In addition to the provisions contained in said Agreement, the following terms and conditions shall be deemed to be a part thereof
pursuant to Paragraph 9 (b) of said Agreement:

DO NOT SIGN - SEE SEPARATE ADDENDUM

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____
District Secretary

Lessee (Company Name, if applicable)

BY: _____

Print Name

Print Name

Attest: _____

Title: _____

Name/Title: _____

Attest: _____ (SEAL)

LEGAL REVIEW:

Print Name

District Counsel

Title: _____

Print Name

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
ADDENDUM TO LEASE AGREEMENT

Item/Segment No.: 2503081
Managing District: Six
SR. No.: 5, MM 84
County: Monroe
Parcel No.: 489

THIS AGREEMENT SHALL SERVE AS AN ADDENDUM to that certain Lease Agreement between THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (Lessor) and ISLAMORADA, VILLAGE OF ISLANDS (Lessee), and hereinafter collectively known as the "Parties", dated the _____ day of _____ 2015. In addition to the provisions contained in said Lease Agreement, the following terms and conditions shall be deemed to be a part thereof pursuant to Paragraph 9 (b) of said Lease Agreement.

1. Property and Term.

This Agreement is valid for five (5) years, after which time the parcel will be reviewed again in accordance with the Department's 10-year review period.

2. Use.

The use of this parcel is for the public purpose as determined by Resolution No. 03-02-05, as adopted on February 13, 2003 by the Village Council of Islamorada, Village of Islands and attached hereto. The public purpose includes, but is not limited to, re-vegetation, installation of a bike path and other improvements. Any improvements on the leased property shall not be made without the prior written approval from Lessor.

3. Rent.

This is a public purpose lease at no consideration. In the event that the Lessee determines to start utilizing the parcel for a commercial-end use producing income and profit, Lessee shall first notify the Lessor of its intent and obtain the Lessor's written approval. Lessee's commercial-end use of the parcel will be subject to a rental fee in accordance with the current rental market.

4. Maintenance.

Lessee shall be responsible for the maintenance and repair of the chain-link fence installed alongside the perimeter of the leased property.

5. Section 9.a. Miscellaneous, is hereby revised as follows:

Lessor may terminate this Agreement upon default by Lessee provided the Lessee is given a written notice from the Lessor stating the nature of such default and granting Lessee ten (10) days (grace period) to cure said default. If Lessee fails to cure the default within the grace period, Lessor can terminate this Agreement without notice.

Item/Segment No.: 2503081
Managing District: Six
SR. No.: 5, MM 84
County: Monroe
Parcel No.: 489

This Lease may be terminated by either party, without cause, upon thirty (30) days prior written notice to the other party.

This Agreement is authorized by Resolution No. 10-07-40 of the Village Council of Islamorada, Village of Islands, Florida as adopted on July 8, 2010.

All other terms and conditions of the Lease Agreement remain unchanged and with this confirmed and ratified by Lessor and Lessee.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum to the Lease Agreement as of this ____ day of _____, 2015

ISLAMORADA,
VILLAGE OF ISLANDS (Lessee)

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
(Lessor)

By: _____

By: _____
District Secretary

Name: Maria T. Aguilar

Name: Gus Pego, P.E

Title: Village Manager

Attest: _____

Attest: _____

Name/Title: _____, Exec. Secretary

Name: _____

Legal Review

Title: _____

Name: District Chief Counsel
Alicia Trujillo, Esq.

Approved as to Form and
Legality for Islamorada,
Village of Islands

Roget V. Bryan, Village Attorney