RESOLUTION NO. 17-02-15

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA APPROVING THE LOCAL GOVERNMENTAL AGREEMENT NO. 4600003537 BETWEEN THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT AND ISLAMORADA, VILLAGE OF ISLANDS; AUTHORIZING THE VILLAGE MANAGER AND VILLAGE OFFICIALS TO TAKE ALL NECESSARY STEPS TO FINALIZE AND IMPLEMENT THE TERMS AND CONDITIONS OF THE GRANT AGREEMENT; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE GRANT AGREEMENT; APPROVING FUNDING FOR REMAINING PROJECT COSTS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in May 2016, Islamorada, Village of Islands (the “Village”) applied for financial assistance from the South Florida Water Management District (the “SFWMD”) pursuant to the SFWMD Cooperative Funding Program; and

WHEREAS, on September 8, 2016, the Governing Board of the SFWMD awarded funding to the Village in the amount of One Hundred Fifty Thousand and no/100 Dollars ($150,000.00) for the Venetian Shores Bayview Isle Drive and Village Bella Drive Project (the “Project”); and

WHEREAS, the estimated project cost is Eight Hundred Ninety-Four Thousand Six Hundred Thirty-Two and 0/100 Dollars ($894,632.00); and

WHEREAS, the Village Council desires to approve Local Governmental Agreement No. 4600003537 to provide financial assistance for the Project.

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 Grant Agreement.** The Village Council hereby approves Local Governmental Agreement No. 4600003537 between the SFWMD and the Village to provide One Hundred Fifty Thousand and no/100 Dollars ($150,000.00) for the Project, a copy of which is attached as Exhibit “1” hereto, 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 his designee and the Village Attorney are authorized to take all actions necessary to finalize and implement the terms and conditions of the Agreement.

**Section 4. Execution of Agreement.** The Village Manager is authorized to execute the Agreement on behalf of the Village, to execute any related documents necessary 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 5. Approval of Funding for Remaining Project Costs.** The Village Council hereby approves the use of non-ad valorem stormwater assessment funds and/or local government discretionary sales surtax funds to fund the remaining costs of the Project or to be pledged for financing to fund the remaining costs of the Project in the approximate amount of Seven Hundred Fifty Thousand and no/100 Dollars ($750,000.00).

**Section 6. Effective Date.** This Resolution shall take effect immediately upon adoption.
PASSED AND ADOPTED this 16th day of February, 2017.

Motion to adopt by Councilwoman Deb Gillis, second by Councilwoman Cheryl Meads.

**FINAL VOTE AT ADOPTION**

<table>
<thead>
<tr>
<th>Name</th>
<th>Vote</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mayor Jim Mooney</td>
<td>YES</td>
</tr>
<tr>
<td>Vice Mayor Chris Sante</td>
<td>YES</td>
</tr>
<tr>
<td>Councilman Mike Forster</td>
<td>YES</td>
</tr>
<tr>
<td>Councilwoman Deb Gillis</td>
<td>YES</td>
</tr>
<tr>
<td>Councilwoman Cheryl Meads</td>
<td>YES</td>
</tr>
</tbody>
</table>

**CHRISS SANTE, VICE MAYOR**

**ATTEST:**

**KELLY S. TOOTH, VILLAGE CLERK**

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

**ROGET V. BRYAN, VILLAGE ATTORNEY**
2. The period of performance of this AGREEMENT shall commence on October 1, 2016 and shall terminate on October 31, 2018.
3. The total DISTRICT contribution for all work completed herein shall not exceed the amount of $150,000 or 50% of eligible stormwater expenditures for the project as noted in Exhibit B, whichever is less.

4. The RECIPIENT shall submit Reimbursement Request Packages as described in the Payment and Deliverables Schedule set forth in Exhibit "B" attached hereto and made a part hereof. Payments by the DISTRICT shall be made following receipt and acceptance of the Reimbursement Request Packages by the DISTRICT's Project Manager. Reimbursement Request Packages shall adequately demonstrate completion of each Task in accordance with Exhibit "A" and shall include, but not be limited to, a copy of the RECIPIENT's invoice and other documentation supporting payment.

5. The DISTRICT's payment is a reimbursement of actual eligible expenditures and is therefore contingent on adequate documentation to support actual eligible expenditures within the not-to-exceed AGREEMENT funding limitation. The RECIPIENT should provide prior written notice to the DISTRICT's Project Manager of its decision to apply the unexpended balance toward a subsequent Task. Actual eligible expenditures less than the estimated project cost will result in a reduced final payment per the AGREEMENT funding limitation. The RECIPIENT is responsible for any additional funds either through local revenues, grants, other appropriations, and/or other funding sources.

6. The RECIPIENT shall provide evidence that its minimum cost-share of 50% has been met for each submitted invoice. Absence of proper supporting documentation may result in non-payment or audit and return of prior payments. In no event shall the DISTRICT be liable for any contribution hereunder in excess of $150,000.

7. If the total consideration for this AGREEMENT is subject to multi-year funding allocations, funding for each applicable fiscal year of this AGREEMENT will be subject to Governing Board budgetary appropriation. In the event the DISTRICT does not approve funding for any subsequent fiscal year, this AGREEMENT shall terminate upon expenditure of the current funding, notwithstanding other provisions in this AGREEMENT to the contrary. The DISTRICT will notify the RECIPIENT in writing after the adoption of the final DISTRICT budget for each subsequent fiscal year if funding is not approved for this AGREEMENT.

8. The RECIPIENT shall submit quarterly financial reports to the DISTRICT providing a detailed accounting of all expenditures incurred hereunder throughout the term of this AGREEMENT. The RECIPIENT shall report and document the amount of funds expended per month during the quarterly reporting period and the AGREEMENT expenditures to date within the maximum not-to-exceed AGREEMENT funding limitation.

9. The RECIPIENT's contribution shall be at least 50% of the total amount of the project in conformity with the laws and regulations governing the RECIPIENT.

10. All work to be performed under this AGREEMENT is set forth in Exhibit "A", Statement of Work, which is attached hereto and made a part of this AGREEMENT. The RECIPIENT shall submit quarterly progress reports detailing the status of work to date for each task. The work specified in Exhibit "A" shall be under the direction of the RECIPIENT but shall be open to periodic review and inspection by either party. No work
set forth in Exhibit “A” shall be performed beyond September 28, 2018 unless authorized through execution of an amendment to this AGREEMENT to cover succeeding periods.

11. The RECIPIENT shall not subcontract, assign or transfer any other work under this AGREEMENT without the prior written consent of the DISTRICT’s Project Manager. The RECIPIENT agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract. It is understood and agreed by the RECIPIENT that the DISTRICT shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract(s).

12. Both the DISTRICT and the RECIPIENT shall have joint ownership rights to all work items, including but not limited to, all documents, technical reports, research notes, scientific data, computer programs, including the source and object code, which are developed, created or otherwise originated hereunder by the other party, its subcontractor(s), assign(s), agent(s) and/or successor(s) as required by the Exhibit “A”, Statement of Work. Both parties’ rights to deliverables received under this AGREEMENT shall include the unrestricted and perpetual right to use, reproduce, modify and distribute such deliverables at no additional cost to the other party.

13. The RECIPIENT, to the extent permitted by law, assumes any and all risks of personal injury, bodily injury and property damage attributable to negligent acts or omissions of the RECIPIENT and the officers, employees, servants and agents thereof. The RECIPIENT represents that it is self-funded for Worker’s Compensation and liability insurance, covering bodily injury, personal injury and property damage, with such protection being applicable to the RECIPIENT, its officers and employees while acting within the scope of their employment during performance of under this AGREEMENT. In the event that the RECIPIENT subcontracts any part or all of the work hereunder to any third party, the RECIPIENT shall require each and every subcontractor to identify the DISTRICT as an additional insured on all insurance policies as required by the RECIPIENT. Any contract awarded by the RECIPIENT shall include a provision whereby the RECIPIENT’s subcontractor agrees to indemnify, pay on behalf, and hold the DISTRICT harmless from all damages arising in connection with the RECIPIENT’s subcontract.

14. The RECIPIENT and the DISTRICT further agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.

15. The parties to this AGREEMENT are independent entities and are not employees or agents of the other parties. Nothing in this AGREEMENT shall be interpreted to establish any relationship other than that of independent entities, between the DISTRICT, the RECIPIENT, their employees, agents, subcontractors or assigns, during or after the term of this AGREEMENT. The parties to this AGREEMENT shall not assign, delegate or otherwise transfer their rights and obligations as set forth in this AGREEMENT without the prior written consent of the other parties. Any attempted assignment in violation of this provision shall be void.
16. The parties to this AGREEMENT will not discriminate against any person on legally protected bases in any activity under this AGREEMENT.

17. The RECIPIENT, its employees, subcontractors or assigns, shall comply with all applicable federal, state and local laws, regulations and requirements relating to the performance of this AGREEMENT. The DISTRICT undertakes no duty to ensure such compliance, but will attempt to advise the RECIPIENT, upon request, as to any such laws of which it has present knowledge.

18. Either party may terminate this AGREEMENT at any time for convenience upon thirty (30) calendar days prior written notice to the other party. In the event of termination, all funds not expended by the RECIPIENT for authorized work performed through the termination date shall be returned to the DISTRICT within sixty (60) days of termination.

19. The RECIPIENT shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the RECIPIENT assert any exemptions to the requirements of Chapter 119 and related Statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the RECIPIENT.

20. The RECIPIENT shall maintain records and the DISTRICT shall have inspection and audit rights below. The RECIPIENT shall similarly require each subcontractor to maintain and allow access to such records for audit purposes:

   A. Maintenance of Records: The RECIPIENT shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this AGREEMENT including supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of five (5) years from the expiration date of this AGREEMENT.

   B. Examination of Records: The DISTRICT or designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this AGREEMENT. Such examination may be made only within five (5) years from the expiration date of this AGREEMENT.

   C. Extended Availability of Records for Legal Disputes: In the event that the DISTRICT should become involved in a legal dispute with a third party arising from performance under this AGREEMENT, the RECIPIENT shall extend the period of maintenance for all records relating to the AGREEMENT until the final disposition of the legal dispute. All such records shall be made readily available to the DISTRICT.

21. If the DISTRICT’s contribution includes state or federal appropriated funds, the RECIPIENT shall, in addition to the obligations set forth in paragraph 20 above, require each subcontractor to maintain and allow access to such records in compliance with the requirements of the Florida State Single Audit Act and the Federal Single Audit Act.

22. All notices or other communication regarding this AGREEMENT shall be in writing and forwarded to the attention of the following individuals:
23. RECIPIENT shall send its invoices and any attachments to APIInvoice@sfwmd.gov and a copy to the DISTRICT Project Manager. All invoices must reference the RECIPIENT’s legal name as authorized to do business with the State of Florida; DISTRICT’S AGREEMENT Number and Purchase Order (PO) Number as specified on the cover/signature page of the AGREEMENT; a unique invoice number not previously used; date; a description of the services performed, and the amount to be invoiced. RECIPIENT shall: 1) submit invoices using a pdf file at a resolution of no less than 300 dpi; 2) name the pdf file with the RECIPIENT’s name and the PO number; 3) provide all required attachments with the invoice file (refer to Attachment 1 to Exhibit C), and 4) include the PO number and Invoice number in the subject line of the email. If email or pdf filing is not possible, the RECIPIENT must provide the above to the following address:

South Florida Water Management District
Accounts Payable
P.O. Box 24682
West Palm Beach, FL 33416-4682

RECIPIENT must submit its invoices in compliance with the requirements of this subsection and all other terms and conditions of this AGREEMENT in order to receive prompt payment by the DISTRICT as described in Section 218.70, F.S. RECIPIENT’s failure to follow the instructions set forth in the AGREEMENT regarding a proper invoice and acceptable services and/or deliverables may result in an unavoidable delay in payment by the DISTRICT.

24. RECIPIENT recognizes that any representations, statements or negotiations made by DISTRICT staff do not suffice to legally bind DISTRICT in a contractual relationship unless they have been reduced to writing and signed by an authorized DISTRICT representative. This AGREEMENT shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

25. This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy, electronic or facsimile copy of this AGREEMENT and any signatory hereon shall be considered for all purposes as original.

26. This AGREEMENT may be amended, extended or renewed only with the written approval of the parties. The DISTRICT shall be responsible for initiating any amendments to this AGREEMENT, if required.

27. This AGREEMENT, and any work performed hereunder, is subject to the Laws of the State of Florida. Nothing in this AGREEMENT will bind any of the parties to perform...
beyond their respective authority, nor does this AGREEMENT alter the legal rights and remedies which the respective parties would otherwise have, under law or at equity.

28. Should any term or provision of this AGREEMENT be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this AGREEMENT, to the extent that the AGREEMENT shall remain operable, enforceable and in full force and effect to the extent permitted by law.

29. Failures or waivers to insist on strict performance of any covenant, condition, or provision of this AGREEMENT by the parties shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this AGREEMENT. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this AGREEMENT specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

30. Any dispute arising under this AGREEMENT which cannot be readily resolved shall be submitted jointly to the signatories of this AGREEMENT with each party agreeing to seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. A joint decision of the signatories, or their designees, shall be the disposition of such dispute.

31. This AGREEMENT states the entire understanding and agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or agreements previously existing between the parties with respect to the subject matter of this AGREEMENT.

32. Any inconsistency in this AGREEMENT shall be resolved by giving precedence in the following order:
(a) Terms and Conditions outlined in preceding paragraphs 1 – 31
(b) Exhibit “A” Statement of Work
(c) Exhibit “B” Payment and Deliverable Schedule
(d) all other exhibits, attachments and documents specifically incorporated herein by reference
IN WITNESS WHEREOF, the parties or their duly authorized representatives hereby execute this AGREEMENT on the date first written above.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
BY ITS GOVERNING BOARD

By: Peter Antonacci, Executive Director

By: Dorothy A. Bradshaw, Director
Administrative Services Division

SFWMD/ OFFICE OF COUNSEL APPROVED
By: 
Print Name: Fredrick Menendez
Date: 1/31/17

SFWMD PROCUREMENT APPROVED
By: 
Date: 1/31/17

ISLAMORADA, VILLAGE OF ISLANDS

By: 
Name of Authorized Individual

Title: Village Manager
The Village will be responsible for satisfactory completion of the scope of work and may retain consultants, contractors, and/or vendors to provide the professional and construction services required. The Village will also be responsible for project management, budget management, quality control, and public outreach.

3.0 SCOPE OF WORK

The Village shall construct a stormwater management system along Bayview Drive, Villa Bella Drive, and portion of Venetian Boulevard, which generally includes:

- Approximately 4,400 linear feet of natural swales
- Approximately 4,400 linear feet of exfiltration trenches
- Approximately 1,940 linear feet of 18" perforated HDPE pipe
- Approximately 15 catch basins
- 2 -24" diameter injection well and associated appurtenances

The Village will be responsible for satisfactory completion of the scope of work and may retain consultants, contractors, and/or vendors to provide the professional and construction services required. The Village will also be responsible for project management, budget management, quality control, and public outreach.
4.0 WORK BREAKDOWN STRUCTURE

The work breakdown structure is presented below:

**Task 1**

Submit design plans, project specifications, bid amount documentation, and Notice to Proceed (NTP) to the DISTRICT Project Manager via email.

Initiate construction activities per design plans, project specifications, and applicable permits.

**Tasks 2 though 7**

Continue construction activities per design plans, project specifications, and applicable permits.

Submit a quarterly status report (Exhibit “C”) to the DISTRICT Project Manager via email which provides a narrative of construction activities completed since the NTP was issued; a discussion of project status; an explanation of conflicts or issues, if any, which may affect construction progress or project performance; and a description of other pertinent information attached to the quarterly status report such as project oversight/management documentation, results from applicable inspections or field tests, addendums or revisions to design plans or project specifications, and relevant project correspondence.

**Task 8**

Complete construction activities (100%) per design plans, project specifications, and applicable permits.

Submit a Certification of Completion to the DISTRICT Project Manager.

Submit a Reimbursement Request Package to the DISTRICT Project Manager which includes a VILLAGE invoice and supporting documentation such as consultant, contractor, and/or vendor invoices and proof of payment(s).
EXHIBIT “B”
PAYMENT AND DELIVERABLES SCHEDULE
Venetian Shores Bayview Isle Drive and Villa Bella Drive Project
Islamorada, Village of Islands

The schedule set forth below is October 1, 2016 to September 28, 2018.

All deliverables submitted hereunder are subject to review and acceptance by the District Project Manager. Acceptability of all work will be based on the judgment of the District that the work is technically complete and accurate.

Payment shall be made following receipt and acceptance by the District of the Reimbursement Request Package(s) in accordance with the schedule set forth below. The Recipient shall submit a reimbursement request upon completion of each Task noted below. If applicable, the Recipient shall submit a final reimbursement request for payment on or before September 28, 2018 for reimbursement. All reimbursement requests shall be accompanied by adequate documentation to demonstrate completion of each Task in accordance with Exhibit A the Statement of Work (SOW).

Reimbursement Request Packages shall include, but not be limited to, a copy of the Recipient’s invoice, signed certification letter for partial payment that the Task(s) is (are) complete per the SOW or that the project is complete per the SOW, copies of vendor invoices, and any other documentation supporting payment. Reimbursement Request Packages shall adequately demonstrate completion of each Task in accordance with Exhibit A the SOW.

The District shall only be obligated to pay for documented actual construction costs within the not-to-exceed amounts specified below. In no event shall the District’s total obligation exceed the amount specified below for the total Agreement; however, an actual construction cost less than the estimated construction cost may result in a reduced final payment. The Recipient is responsible for any additional funds either through local revenues, grants, other appropriations, and/or other funding sources.

Total payment by the District for all work completed herein shall not exceed the amount of $150,000.00. If the total consideration for this Agreement is subject to multi-year funding allocations, funding for each applicable fiscal year will be subject to Governing Board budgetary appropriation. In the event the District does not approve funding for any subsequent fiscal year, this Agreement shall terminate upon expenditure of the current funding, notwithstanding other provisions in this Agreement to the contrary.
<table>
<thead>
<tr>
<th>Task</th>
<th>Deliverable(s)</th>
<th>Due Date</th>
<th>RECIPIENT Share</th>
<th>DISTRICT Not-To-Exceed Amount</th>
<th>Estimated Project Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Design Plans, Project Specifications, Bid Amount Documentation, and NTP</td>
<td>September 29, 2017</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>2</td>
<td>Exhibit &quot;C&quot; - Quarterly Status Report</td>
<td>March 31, 2017</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>3</td>
<td>Exhibit &quot;C&quot; - Quarterly Status Report</td>
<td>June 30, 2017</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>4</td>
<td>Exhibit &quot;C&quot; - Quarterly Status Report</td>
<td>September 29, 2017</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>5</td>
<td>Exhibit &quot;C&quot; - Quarterly Status Report</td>
<td>December 29, 2017</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>6</td>
<td>Exhibit &quot;C&quot; - Quarterly Status Report</td>
<td>March 30, 2018</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>7</td>
<td>Exhibit &quot;C&quot; - Quarterly Status Report</td>
<td>June 29, 2018</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>8</td>
<td>Exhibit &quot;C&quot; - Quarterly Status Report</td>
<td>September 28, 2018</td>
<td>$596,425</td>
<td>$150,000</td>
<td>$746,425</td>
</tr>
</tbody>
</table>

Total: $596,425 | $150,000 | $746,425

If applicable, interim Reimbursement Request Packages shall be submitted upon completion of the task(s) noted above. Reimbursement Request Packages must be submitted on or before September 28, 2018 for reimbursement. Exhibit C Quarterly Status Reports are due within ten (10) days of the due date. Ineligible costs include, but not limited to, permits, as-builts, videos, early completion bonus, bonds and insurance, etc.
1.0 DATE OF REPORT

Click here to enter a date.

2.0 NAME AND TITLE OF PERSON COMPLETING REPORT

Click here to enter text.

3.0 NARRATIVE OF CONSTRUCTION ACTIVITIES COMPLETED TO DATE OR SINCE LAST REPORT

Click here to enter text.

4.0 DISCUSSION OF OVERALL PROJECT STATUS

Click here to enter text.

5.0 EXPLANATION OF CONFLICTS, IF ANY, WHICH MAY AFFECT CONSTRUCTION PROGRESS OR PROJECT PERFORMANCE

Click here to enter text.

6.0 DESCRIPTION OF OTHER PERTINENT INFORMATION ATTACHED TO THIS REPORT FOR FURTHER CLARIFICATION OF DETAILS CONTAINED IN CONSTRUCTION ACTIVITIES NARRATIVE, OVERALL PROJECT STATUS DISCUSSION, AND/OR CONFLICTS EXPLANATION

Click here to enter text.