RESOLUTION NO. 12-05-35

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA APPROVING THE FIRST AMENDMENT TO OPERATIONS AND MAINTENANCE RENEWAL AGREEMENT BETWEEN U.S. WATER SERVICES CORPORATION AND ISLAMORADA, VILLAGE OF ISLANDS TO PROVIDE OPERATIONS AND MAINTENANCE SERVICES FOR THE NORTH PLANTATION KEY WASTEWATER TREATMENT, COLLECTIONS AND DISPOSAL SYSTEM; 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 FIRST AMENDMENT TO OPERATIONS AND MAINTENANCE RENEWAL AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on June 1, 2011 the Village entered into an Operations and Maintenance Renewal Agreement (the “Agreement”) with U.S. Water Services Corporation (the “Operator”) for operation, maintenance and repair of the Village’s “Facilities” as defined in the Agreement; and

WHEREAS, the Agreement provides certain terms and conditions regarding renewal of the Agreement and regarding transition to a new operator of the Facilities; and

WHEREAS, the parties wish to make certain revisions to the Agreement with regard to the transition to a new operator; and

WHEREAS, the Village Council finds that approval of the First Amendment to Operations and Maintenance renewal Agreement (the “First Amendment”) between Operator and the Village, attached hereto, is in the best interest of the Village.

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 First Amendment between Operator and the Village, a copy of which is attached, 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, is approved.

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 implement the terms and conditions of the First Amendment.

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 First Amendment.

Section 5. Execution of Agreement. The Village Manager is authorized to execute the First Amendment on behalf of the Village, to execute any required agreements and/or documents to implement the terms and conditions of the First Amendment and to execute any extensions and/or amendments to the First Amendment, subject to the approval as to form and legality by the Village Attorney.

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

PASSED AND ADOPTED this 24th day of May, 2012.

Motion to adopt by Vice Mayor Philipson, second by Councilman Achenberg.
FINAL VOTE AT ADOPTION

Mayor Michael Reckwerdt  Yes
Vice Mayor Ken Philipson  Yes
Councilman Don Achenberg  Yes
Councilman Ted Blackburn  Yes
Councilman Dave Purdo  No

Ken Philipson
Ken Philipson, Vice Mayor

ATTEST:

Debra E. Eastman, MMC
Village Clerk

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

Village Attorney
FIRST AMENDMENT TO OPERATIONS AND MAINTENANCE RENEWAL AGREEMENT

This First Amendment (the “First Amendment”) to Operations and Maintenance Renewal Agreement dated June 1, 2011 (the “Agreement”) between Islamorada, Village of Islands, Florida, and U.S. Water Services Corporation, is made and entered into this 1st day of June, 2012, by and between Islamorada, Village of Islands, Florida, a municipal corporation of the State of Florida (the “VILLAGE”) and U.S. Water Services Corporation, a Florida corporation (the “OPERATOR”).

WITNESSETH

WHEREAS, on June 1, 2011, the VILLAGE entered into the Agreement with the OPERATOR for operation, maintenance and repair of the VILLAGE’S “Facilities” as defined in the Agreement; and

WHEREAS, the Agreement provides certain terms and conditions regarding renewal of the Agreement and regarding transition to a new operator of the Facilities; and

WHEREAS, the parties wish to make certain revisions to the Agreement with regard to the transition to a new operator.

NOW THEREFORE, in consideration of the mutual covenants set forth in this First Amendment, the parties agree as follows.

Section 1. Amendment to Agreement. The following sections of the Agreement are amended or created to read as follows:

* * *

1 Words in strike through type are deletions; words in underlined type are additions.
ARTICLE 15. TRANSITION/PHASE OUT PERIOD

***

15.3 Upon completion of the transition period and in further event that the VILLAGE is unable to procure the same level of Services through its own means at such time of termination or expiration, the then pending term of this Agreement shall be extended by the written request of the VILLAGE'S Representative in 30 day increments or until the VILLAGE is capable of rendering such Services.

***

15.6 The parties acknowledge VILLAGE'S intention to transition to a new operator of the Facilities on or about July 1, 2012, or as soon as feasible thereafter. This First Amendment serves as the VILLAGES request, and OPERATOR’S acceptance, of an incremental renewal of the Agreement, commencing as of June 1, 2012, and continuing thereafter until written 30 day notice is provided by VILLAGE to OPERATOR. OPERATOR agrees to coordinate with VILLAGE’S new operator during such 30 day period in a joint effort to effect a smooth transition and termination of the Agreement upon the expiration of such 30 days.

Section 2. No Further Modifications. All other terms and conditions of the Agreement, other than as specifically addressed herein, shall remain in full force and effect as if set forth in full herein.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this First Amendment upon the terms and conditions above stated on the day and year first above written.

OPERATOR: U.S. Water Services Corporation / Date

VILLAGE: Edward Koconis Village Manager / Date
Approved as to form and legality for the use and benefit of the Islamorada, Village of Islands, Florida only:

Weiss Serota Helfman
Pastoriza Cole & Boniske, P.A.
VILLAGE ATTORNEY

Attest:

Debra Eastman
VILLAGE CLERK