RESOLUTION NO. 14-12-101

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA APPROVING THE FIRST AMENDMENT TO THE EMPLOYMENT AGREEMENT BETWEEN THE VILLAGE AND ROGET BRYAN TO SERVE AS THE VILLAGE ATTORNEY; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE FIRST AMENDMENT; AUTHORIZING THE MAYOR TO EXECUTE THE FIRST AMENDMENT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, pursuant to Section 7(4) of the Charter of Islamorada, Village of Islands (the “Village”), the Village Attorney is a Charter Officer of the Village; and

WHEREAS, in 2013, the Village conducted a search for an attorney to be employed by the Village to serve as the Village Attorney; and

WHEREAS, on September 27, 2013, the Village Council selected Roget Bryan (“Bryan”) to serve as the Village Attorney; and

WHEREAS, on October 10, 2013, the Village Council approved an Employment Agreement (the “Agreement”) between Bryan and the Village; and

WHEREAS, the Village and Bryan desire to amend the Agreement to revise the date of the “Annual Evaluation” as provided for herein; and

WHEREAS, the Village and Bryan desire to further amend the Agreement to clarify the payout of full annual and sick leave upon termination or expiration of the Agreement; and

WHEREAS, the Village Council finds that approval of the First Amendment to the Employment Agreement attached hereto as Exhibit “A” 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 First Amendment. The Village Council of Islamorada, Village of Islands, hereby approves the First Amendment to the Employment Agreement between the Village and Roget Bryan for services as the Village Attorney, a copy of which is attached as Exhibit “A.”

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 First Amendment to the Agreement.

Section 4. Execution of First Amendment. The Mayor is authorized to execute the Agreement on behalf of the Village.

Section 5. Effective Date. This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by Councilman Dennis Ward, who moved for its adoption. This motion was seconded by Vice Mayor Deb Gillis, and upon being put to a vote, the vote was as follows:

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

Mayor Mike Forster        YES
Vice Mayor Deb Gillis     YES
Councilman Jim Mooney     YES
Councilman Chris Sante    YES
Councilman Dennis Ward    YES

PASSED AND ADOPTED THIS 18TH DAY OF DECEMBER, 2014.

MIKE FORSTER, MAYOR
ATTEST:

KELLY TOTH, VILLAGE CLERK

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

ROGET V. BRYAN, VILLAGE ATTORNEY
FIRST AMENDMENT TO
VILLAGE ATTORNEY EMPLOYMENT AGREEMENT
BETWEEN ISLAMORADA, VILLAGE OF ISLANDS
AND ROGET BRYAN

THIS FIRST AMENDMENT to the Employment Agreement (the “First Amendment”) is made between Islamorada, Village of Islands, Florida, a Florida municipal corporation (the “Village”) and Roget Bryan, (“Bryan” or “Village Attorney”), and.

WHEREAS, the Village and Bryan entered into a certain Employment Agreement (“the Agreement”) effective October 2013, attached hereto as Exhibit 1; and

WHEREAS, in accordance with the provisions of the “Agreement”, the Village and Bryan desire to amend the Agreement to revise the date of the “Annual Evaluation” as provided for herein; and

WHEREAS, the Village and Bryan desire to further amend the Agreement to clarify the payout of full annual and sick leave upon termination or expiration thereof as provided for herein; and

WHEREAS, the parties desire to enter into this First Amendment to modify the terms of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this First Amendment, Bryan and the Village agree as follows.

Section 1. First Amendment to Agreement. The Agreement is amended to read as follows:

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Section 3. Performance Evaluations.

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3.2 The Village Council shall annually evaluate the performance of the Village Attorney within 30 days of the Anniversary Date at the first regular Village Council meeting in March of each year (the “Annual Evaluation”). During the Annual Evaluation, the Village Council may, at its discretion, approve a bonus or salary increase.

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Section 16. Termination.

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16.7 Unless otherwise specified in this Agreement, should the Village Attorney leave the employ of the Village, the Village Attorney or his beneficiary, shall be entitled to receive payment of all accrued and unused
sick or annual leave calculated at the Village Attorney’s rate of pay in
effect upon the date of termination.

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Section 2. No Further Modifications. All other terms and conditions of the existing
Agreement not in conflict or superseded by this First Amendment shall remain in full force and
effect as if set for the herein.

Section 3. Effective Date. This First Amendment shall be effective upon execution
by the parties.

IN WITNESS WHEREOF, the parties execute this First Amendment on the respective
dates under each signature: The Village, signing by and through its Mayor, attested to by its
Village Clerk, and by Bryan.

Attest:

Kelly Toth, Village Clerk

ISLAMORADA, VILLAGE OF ISLANDS

By: Mike Forster, Mayor

Date: 12/22/14

ROGET BRYAN

By: Roget Bryan

Date: 12/19/14

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

Roget V. Bryan, Village Attorney
This Employment Agreement (the "Agreement") is made and entered into this 11th day of October 2013, by and between Islamorada, Village of Islands, Florida, a Florida municipal corporation, (the "Village") and Roget V. Bryan ("Bryan" or "Village Attorney").

RECITALS:

WHEREAS, Section 7(4) of the Village Charter (the "Charter") requires that there shall be a Village Attorney, who shall be the Chief Legal Officer of the Village; and

WHEREAS, the Village desires to employ the services of Bryan as the Village Attorney and Bryan wishes to accept this employment.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement the parties agree as follows:

Section 1. Duties and Responsibilities.

1.1 The Village Attorney shall have all powers and perform all duties and responsibilities proscribed in Section 7(4) of the Village Charter, as required in this Agreement and applicable sections of Florida Law and the Village Code.

1.2 The Village Attorney shall carry out all duties and responsibilities as directed by the Village Council.

1.3 The Village Attorney shall manage the costs of specialized/outside legal counsel and liaison with specialized/outside legal counsel on all matters assigned thereto.

1.4 The Village Attorney shall be available to the Village Council, Village Manager and staff during regular business hours in which the Village’s Administrative offices are open.

1.5 The Village Attorney shall supervise the Village Attorney’s Office and any personnel hired to work for the Office of the Village Attorney. The Village Attorney’s Office shall maintain at a minimum those hours that the Village’s Administrative offices are open.

Section 2. Salary.

2.1 The Village Attorney shall receive an initial annual salary in the amount of $140,000.00 payable in equal installments in accordance with the Village’s existing pay periods.

2.2 The salary shall be adjusted from time to time by cost-of-living adjustments consistent with those provided to other Village employees.

2.3 The salary shall be adjusted by the Village Council as specified in Section 3 of the Agreement.
2.4 Any changes to the salary shall be made on the Anniversary Date.

2.5 The Village Attorney shall be entitled to an initial relocation sum of $5,000.00 in recognition of the Village Attorney’s need to relocate to the area. Said sum shall be included with the Village Attorney’s first pay period.

Section 3. Performance Evaluations.

3.1 The Village Council shall evaluate the performance of the Village Attorney at the first regular Village Council meeting in March of 2014 (the “Initial Evaluation”). If the Village Attorney receives a positive evaluation from the Village Council, the Village Attorney shall be entitled to a lump sum relocation allowance of $5,000.00 in recognition of the Village Attorney’s need to relocate to the area. Said sum shall be payable to the Village Attorney within 30 days after the Initial Evaluation.

3.2 The Village Council shall annually evaluate the performance of the Village Attorney within 30 days of the Anniversary Date (the “Annual Evaluation”). During the Annual Evaluation, the Village Council may, at its discretion, approve a bonus or salary increase.

3.3 The evaluations specified in Sections 3.1 and 3.2 shall be based upon (i) the Village Attorney’s performance of the duties specified in Section 1 and (ii) the Village Attorney’s achievements of the Village Council’s directives to the Village Attorney’s Office.

Section 4. Insurance/Retirement Benefits/Life Insurance.

4.1 The Village Attorney shall receive the benefits currently provided to Village employees for health insurance to include vision, life insurance, dental insurance, and retirement benefits as outlined in the Village’s Employee’s Policies and Procedures Manual dated October 1, 2000 (the “Manual”).

4.2 Should the Manual be amended by action of the Village Council, the Village Attorney’s benefits listed in Section 4.1 shall be changed to match those benefits provided in the amended Manual, provided such changes do not result in any decreased benefits as provided for under Section 4.1.

4.3 The Village shall make a contribution into a 457 deferred compensation program as selected by the Village Attorney, in an amount equal to ten percent (10%) of the Village Attorney’s Salary (the “Retirement Contribution”). The Retirement Contribution shall be made coinciding with each Village pay period. The Village Attorney shall be allowed to make such voluntary additional contributions to such a program up to the statutory limit. The Village shall transfer ownership of its interest in the program upon the Village Attorney’s resignation or termination.

Section 5. Professional Dues and Expenses.

5.1 The Village shall pay for the Village Attorney’s annual bar dues for membership in the Florida Bar, and for all reasonable and customary professional dues and subscriptions necessary
for Village Attorney’s participation in professional associations and organizations, as approved in the Village’s annual budget.

5.2 The Village shall pay for the Village Attorney’s participation in those local civic and non-profit job-affiliated organizations that the Village Attorney is authorized to participate in by the Village Council.

5.3 The Village, through its Finance Director, shall pay non-personal job related expenses incurred by the Village Attorney, if incurred as part of his duties. Such payments shall be made on a reimbursement basis, based upon submittal by the Village Attorney of actual receipts and expense vouchers.

Section 6. Automobile.

6.1 The Village Attorney shall be entitled to reimbursement for mileage at the IRS standard rate per mile for Village related travel from the Village’s Administrative offices and for tolls, parking and other direct expenses incurred during the performance of the Village Attorney’s services, understanding that the Village Attorney shall use his personal automobile for Village business.

Section 7. Annual Leave, Sick Leave and Holidays.

7.1 The Village Attorney shall receive the benefits currently provided to Village employees for annual leave, sick leave and holidays as outlined in the Manual.

7.2 At the beginning of the Term the Village Attorney shall be credited with five (5) days of administrative leave. The Village Attorney shall additionally be annually credited on the Anniversary Date with five (5) days of administrative leave.

7.3 Notwithstanding the limitations in the Manual, the Village Attorney is entitled to accrue all annual, sick and administrative leave, without limit.

7.4 Any unused accrued annual leave in excess of one hundred ninety-two (192) hours shall be annually cashed in on the Anniversary Date at the Village Attorney’s salary in effect at the time.

Section 8. Travel.

8.1 The Village shall pay for reasonable and customary travel expenses of Village Attorney for meetings and seminars, including, but not limited to, the annual IMAA conference, the Florida Municipal Attorneys Association, and such other national, regional, state and local government groups and committees, as annually budgeted for by the Village Council or as may be directed by the Village Council.

8.2 The Village shall pay for reasonable and customary travel expenses of the Village Attorney to attend short courses, institutes and seminars that are necessary for his required continuing education credits, professional development and related to Village issues.
8.3 Attendance at the meetings, seminars, and courses listed in Sub-section 8.2 shall not exceed a total of seven (7) days per calendar year. (For purposes of this sub-section “day(s)” shall mean any day(s) that the Village’s Administrative offices are open)

Section 9. Equipment and Office Space.

9.1 The Village shall provide the Village Attorney with the use of desktop and laptop computers with appropriate software, a cellular telephone (PDA/smartphone) and such other equipment as may be necessary for the Village Attorney to make himself available to perform his duties and to be able to maintain communications with the Village’s residents, the Village Council and staff at all times, as approved in the Village’s annual budget.

9.2 The Village shall provide the Village Attorney with sufficient space, furniture and equipment to staff the Office of the Village Attorney for both the Attorney and one (1) administrative support staff, as approved in the Village’s annual budget.

Section 10. Days.

10.1 Unless otherwise specified, any reference to days in this Agreement shall mean calendar days.

Section 11. Indemnification.

11.1 To the extent permitted by law, the Village shall defend, save harmless, and indemnify the Village Attorney against any action, claim, demand or other legal action, whether groundless or otherwise arising directly or indirectly out of the Attorney’s duties or position with the Village.

11.2 The aforesaid indemnification only applies to the extent that the costs, expenses or damages exceed monies covered by insurance including attorneys’ fees.

11.3 Notwithstanding the provision of Section 11.1, the Village shall not be obligated to indemnify or save harmless the Village Attorney from claims of any nature arising out of the malfeasance of the Village Attorney, or from injury or property damage caused by the intentional misconduct of the Village Attorney.

11.4 This indemnification provision shall survive the termination of this Agreement.

Section 12. Bonds.

12.1 The Village shall pay for the cost of any fidelity or other bonds for the Village Attorney required by any law, ordinance or the Village Charter.

Section 13. Reduction of Compensation.
13.1 The Village Council shall not at any time during the term of this Agreement reduce the salary provided to the Village Attorney below any percentage equally applied to all employees during the annual budget process.

13.2 The Village Council shall not at any time during the term of this Agreement reduce the benefits provided to the Village Attorney below those that are equally applied to all employees during the annual budget process.


14.1 The Village Attorney shall be considered a full-time employee of the Village and shall remain in the exclusive employ of the Village and not accept any other employment during the Term of this Agreement without the prior approval of the Village Council. Notwithstanding the foregoing, the Village Attorney shall have until December 31, 2013 to close out any remaining matters related to his private practice of law.

14.2 The Village Attorney shall be licensed to practice law in the State of Florida and be considered a member in good standing at all times during the Term of this Agreement.

14.3 The Village Attorney shall reside within 25 miles of the corporate limits of the Village during the Term of this Agreement. The residency requirement shall be fulfilled no later than May 31, 2014.

Section 15. Term.

15.1 The Term of this Agreement shall commence on December 1, 2013 and shall remain in effect until terminated by either the Village or Village Attorney as provided for in Section 16 of this Agreement.

15.2 For purposes of this Agreement, the Village Attorney’s Anniversary Date shall be December 1 (starting on December of 2014).

Section 16. Termination.

16.1 In accordance with the Charter, the Village Attorney shall serve at the pleasure of the Village Council. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Village Council to terminate this Agreement at any time.

16.2 In the event the Village Council wishes to terminate this Agreement, it shall do so in accordance with the provisions of Section 7(2) of the Charter.

16.3 In the event this Agreement is terminated by the Village Council up to the date of the Initial Evaluation specified in Subsection 3.1, the Village Attorney shall not be entitled to any Severance Payment. In the event that the Village Council terminates this Agreement without cause after the date of the Initial Evaluation and on or before November 30, 2014, the Village Attorney shall be entitled to a Severance Payment of 10 weeks. In the event that the Village Council terminates this Agreement without cause on or after March 1, 2015, the Village Attorney shall be entitled to a severance payment equal to 20 weeks. For purposes of this Section, the Severance
Payment shall mean payment of the Village Attorney’s salary at the rate of pay in effect upon the date of termination and continued benefits listed in Section 4 of this Agreement for the amount of weeks. (the “Severance Payment”).

16.4 Notwithstanding the provisions of Section 16.3, in the event Village Attorney is terminated for cause, the Village Attorney shall not be entitled to any Severance Payment. For the purposes of this Section “for cause” shall be defined as: (i) breach of any material term or condition of this Agreement, (ii) violation of any applicable laws or codes, (iii) misconduct as the term is defined in FS. 443.036, (iv) gross insubordination, (v) neglect of the duties specified in this Agreement (vi) a finding of discipline by the Florida Bar or failure to be in good standing with the Florida Bar, (vii) a confirmed violation of the Village’s drug policy, or (viii) conviction of a felony or plea of no contest to a felony.

16.5 In the event that the Village Attorney voluntarily resigns during the Term of this Agreement, the Village Attorney shall provide the Village with 30 days advance written notice, unless the parties agree in writing to a different period of time. In the event of resignation by the Village Attorney under this Section, the Village Attorney shall not be entitled to receive the Severance Payment specified in Section 16.3, but the Village shall pay the Village Attorney all accrued unused sick and annual leave calculated at the Village Attorney’s rate of pay in effect upon the date of termination.

16.6 If the Village Attorney is unable for a consecutive period of 60 days to perform his duties as specified in Section 1 of this Agreement due to disability, sickness, accident, or injury, as certified by a physician, the Village Council may elect to terminate this Agreement. In the event of the Village Attorney’s death, this Agreement shall be deemed terminated.

16.7 Unless otherwise specified in this Agreement, should the Village Attorney leave the employ of the Village, the Village Attorney or his beneficiary, shall be entitled to receive payment of all accrued and unused sick and annual leave calculated at the Village Attorney’s rate of pay in effect upon the date of termination.

16.8 The Village Attorney shall provide the Village direction as to payment by lump sum or installment payments within 30 days of termination or resignation.

**Section 17. Conflict of Interest Prohibition.**

17.1 Village Attorney shall not without the express prior approval of the Village Council, individually, as a partner, joint venturer, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of Monroe County, except for stock ownership in any company whose capital stock is publicly held and regularly traded.

17.2 The Village Attorney shall abide by the provisions of Chapter 112, Florida Statutes, the Code of Ethics for Public Officers and Employees.

17.3 The Village Attorney shall not disclose to any person, party, or entity any confidential, proprietary, time-sensitive, or non-public information relating to the Village or its operations unless required by law to do so.
17.4 The Village Attorney shall timely file statutory disclosures of financial interests as required by Chapter 112, Florida Statutes.


18.1 Complete Agreement. It is understood and agreed that this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and that the parties agree that there are no commitments, agreement, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

18.2 Amendment. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and with equal dignity herewith.

18.3 Severability. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, illegal, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

18.4 No Waiver. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

18.5 Non-Assignment. The rights and obligations herein granted are personal in nature and cannot be transferred or assigned by the Village Attorney.

18.6 Governing Law. Florida law shall govern this Agreement and any litigation which may arise from this Agreement shall be filed and litigated in the Circuit Court in and for Monroe County, Florida, Upper Keys Division or, if in Federal Court, in the Southern District of Florida.

18.7 Waiver of Jury Trial. Both the Village and the Village Attorney knowingly, voluntarily, and irrevocably waive their right to a trial by jury in any civil proceedings that may be initiated by either party with respect to any term or condition of this Agreement.

18.8 Notice. Notice to either party shall be deemed given if sent by certified mail, return receipt requested, by recognized public or private postal facilities, by hand delivery or delivered at a Village Council meeting. Notice shall be sent as follows:

For the Village: Ken Philipson, Mayor
Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, FL 33036
Telephone: (305) 664-6400
Facsimile: (305) 664-6464
For the Village Attorney: Roget V. Bryan, Village Attorney
Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, FL 33036
Telephone: (305) 664-6410
Facsimile: (305) 664-6464

IN WITNESS WHEREOF, the Village, by signature of the Mayor as authorized by Council Resolution No. 13-10-78 on October 10, 2013, and Village Attorney have signed and executed this Agreement the day and year first above written.

ISLAMORADA, VILLAGE OF ISLANDS

By: ____________________________
    Ken Philipson, Mayor

VILLAGE ATTORNEY

By: ____________________________
    Roget V. Bryan

ATTEST:

______________________________
Arlana S. Lawson, Village Clerk

Approved as to form and legal sufficiency
For the use of the Village Council only:

______________________________
Nina Boniske, Village Attorney