RESOLUTION NO. 15-06-48

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA APPROVING THE INTERLOCAL AGREEMENT BETWEEN MONROE COUNTY, FLORIDA AND ISLAMORADA, VILLAGE OF ISLANDS TO PROVIDE REIMBURSEMENT FUNDING FROM BOATING IMPROVEMENT FUNDS DURING FISCAL YEAR 2015-2016; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, since 2004, Islamorada, Village of Islands (the "Village") has operated a buoy maintenance program ("Program"), maintaining a Florida Uniform Waterway Marker compliant system of 135 navigational buoys and a series of fixed regulatory, recreational and informational markers within the Village’s 1200’ off-shore jurisdiction in the Atlantic Ocean and Gulf of Mexico to aid in boater navigation and facilitate preservation of nearshore waters, flats and reefs; and

WHEREAS, Florida Boating Improvement Funds ("BIF") are allocated to Monroe County ("County") for use throughout the County for boat ramps, lifts and hoists, marine railways, and other public launching facilities; piers, docks and other mooring facilities; recreational channel marking and other uniform waterway markers; derelict vessel removal; boating education; economic development initiatives that promote boating; and other local boating-related activities that enhance boating access for recreational boaters; and

WHEREAS, in 2012, the County began soliciting applications from municipalities for submission by April 1 of each year for consideration by the Monroe County Board of County Commissioners ("BOCC") for the allocation of County Boating Improvement Funds in the
and the Village for the reimbursement of Fiscal Year 2015-2016 Project costs from Boating Improvement Funds, 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.

WHEREAS, the Village submitted a Municipality Funding Request, attached hereto as Exhibit “A”, to the County on April 1, 2015, requesting Twenty Five Thousand Dollars ($25,000.00) for reimbursement of Program costs expended during Fiscal Year 2015-2016, which included operation and maintenance of the Village’s existing buoy maintenance program, labor and supplies for the buoy installation at newly permitted locations as the need arises, and for printing and distribution of educational materials advising boaters about boating safety issues and waterway marker information; and

WHEREAS, on May 20, 2015, the BOCC approved the Village’s BIF Municipality Funding Request; and

WHEREAS, County staff prepared the Interlocal Agreement (“Agreement”), attached hereto as Exhibit “B”, providing for reimbursement to the Village of approved Fiscal Year 2015-2016 expenditures in an amount not to exceed Twenty Five Thousand Dollars ($25,000.00); and

WHEREAS, the Village Council finds that approval of the Agreement between Monroe County and the Village 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 reference.

Section 2. Approval of Agreement. The Agreement between Monroe County and the Village for the reimbursement of Fiscal Year 2015-2016 Project costs from Boating Improvement Funds, 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 her designee and the Village Attorney are authorized to take all actions necessary to implement the terms and conditions of the Agreement.

Section 4. **Execution of Agreement.** The Mayor is 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 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 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
Motion to adopt by Councilman Chris Sante, second by Mayor Mike Forster.

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

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

PASSED AND ADOPTED this 18th day of June, 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
To assist with anticipated program maintenance costs in FY 15/16, the Village requests Monroe County reimburse the Village $25,000.00 in Boating Improvement Funds for costs expended in the upcoming fiscal year. Based on prior years' expenditures and FY 15/16 program goals of increased site visitation, permitting additional buoy locations and continued distribution of educational materials, the Village's total Buoy Maintenance Program costs for FY 15/16 are estimated to be $31,250.00. If awarded, the Village will provide $6,250.00 (25%) cash match toward program costs from its FY 15/16 Parks and Recreation budget. Funded program work would include: 1) labor for certified divers to visit buoys and anchoring materials as needed; 2) supplies for replacement buoys, anchor assembly lines, property identification and numbering decals; 3) labor and supplies for buoy installations at newly permitted locations as the need arises; and 4) printing and distribution of educational materials advising boaters about safety issues and waterway maker information.
III- PROJECT DETAILS

<table>
<thead>
<tr>
<th>Total estimated project cost (attach cost estimates)</th>
<th>Funding amount requested</th>
</tr>
</thead>
<tbody>
<tr>
<td>31,250.00</td>
<td>25,000.00</td>
</tr>
</tbody>
</table>

Is project site occurring entirely on city owned property? No
Is project a new capital improvement? No
Does project include revenue generating infrastructure? No

Description of how project may promote public water access:
Islamorada’s Buoy Maintenance Program utilizes 120 highly visible shallow draft buoys marked with GPS identifiers to determine position, warn of dangers and obstructions to navigation and alert boaters and operators of various Federal, State and Local Regulations. Safer than fixed signs, buoys reduce the severity of boater/sign collisions and are less expensive to erect and maintain. The buoys are ideal for the low-energy environment surrounding Islamorada, where boaters must remain vigilant of manatees and sea turtles year round. To promote safe boating practices and protection of the Village’s fragile sea grass beds and manatee and sea turtle populations, all buoys exhibit the reminder: "IDLE SPEED NO WAKE 300' FROM SHORE." For boating visitors unfamiliar with the area, the Village also distributes educational brochures and rack cards to increase public safety awareness and knowledge of local boating issues.

Status of project (is the project designed/permited if applicable?)
The applicant will provide any pertinent documentation to assist with the review and evaluation of the funding request such as site plans (verifying property ownership), design plans, permits, etc.

In compliance with Florida Administrative code, and Village Ordinance 03-10, Islamorada’s current waterway marker plan was reviewed and approved by the Florida Fish & Wildlife Conservation Commission’s Office of Boating Safety & Waterway Management in December 2008. The attached FWCC Permit No. 04-018 lists the statewide marker identification numbers, latitude/longitude, and sign verbiage for each of the 120 approved regulatory buoys in the system.

List other funding sources (match) and amounts:

<table>
<thead>
<tr>
<th>Funding Source (match)</th>
<th>Amounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Budget: Parks and Recreation</td>
<td>6250.00</td>
</tr>
</tbody>
</table>

Timeframe for project start/completion (if a multi-year project please explain):
This funding request is for FY 15/16, commencing on October 1, 2015 and ending September 30, 2016.

*Requests for funding for revenue generating infrastructure must include an explanation of unmet costs, including fiscal analysis documentation (such as a current annual financial report).
INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (Agreement) is entered into as of this 5th day of July, 2015, between Monroe County, a political subdivision of the State of Florida (COUNTY) and Islamorada, Village of Islands, a municipal corporation organized and existing under the laws of the State of Florida (CITY).

WITNESSETH:

WHEREAS, the COUNTY routinely uses State Boating Improvement Funds (BIF) for recreational boating access related projects within the various municipalities; and

WHEREAS, the CITY is requesting that the COUNTY provide reimbursement funding in the amount of $25,000 from BIF for costs to be incurred during FY’16 for regulatory buoy maintenance; and

WHEREAS, the above expenditures are qualified expenditures from the State BIF; and

WHEREAS, at the May 20, 2015 BOCC meeting the Monroe County Board of County Commissioners approved the selection of the BIF funding request submitted by the CITY and directed staff to prepare an Agreement;

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, it is agreed between the COUNTY and the CITY as follows:

Section 1. Payment. The COUNTY agrees to reimburse the CITY for services performed and costs incurred in FY’16 as follows:

1.1 The foregoing recitals are true and correct and are incorporated herein by reference.

1.2 Payment in an amount not to exceed $25,000 for regulatory buoy maintenance.

1.3 To receive payment, the CITY shall submit all requests for payment and applicable invoices to the Senior Administrator of the COUNTY’s Marine Resources Office by September 1, 2016. The invoices must describe the services performed, together with proof that payment has been made to the CITY’S contractor(s). All documentation shall be forwarded to the County Clerk for payment. Any other documentation requested by the Clerk shall be provided.

1.4 By submitting a request for payment the CITY represents that it has complied with all of its purchasing requirements.

1.5 Funding of this Agreement is contingent upon an annual appropriation by the COUNTY.
Section 2. Term.

2.1 This Agreement shall become effective upon execution by both parties.

2.2 If such Notice of Termination as specified in Section 3 is given, this Agreement shall terminate within five (5) days thereof.

Section 3. Termination and Default.

3.1 In the event of any failure of compliance by either party hereto with any of its material obligations to the other party as provided for herein such action shall constitute a default under this Agreement.

3.2 Upon any such default, the non-defaulting party shall provide to the defaulting party a written Notice of such default, which Notice (Default Notice) shall state in reasonable detail the actions the defaulting party must take to cure the same.

3.3 The defaulting party shall cure any such default, within 30 days following the date of the Default Notice.

3.4 Notwithstanding the provisions of this Section, if any such default by the defaulting party remains uncured at the conclusion of any specified 30 day cure period, and if the nature of the defaulting party's obligations are such that more than 30 days is required to effect cure, then the defaulting party shall not be in default hereunder and the non-defaulting party shall not have the right to exercise its termination rights granted herein as a result of any such default, if the defaulting party commences cure within the applicable cure period and thereafter diligently pursues cure to completion of performance.

3.5 In the event the defaulting party fails to affect any required cure as provided for herein, the defaulting party shall be deemed to be in uncured default hereunder, and the non-defaulting party shall have the right, but shall not be obligated, upon written Notice to the defaulting party, to terminate this Agreement.

3.6 If such Notice is given, this Agreement shall terminate on the date set forth in the Notice and the parties shall be relieved of all rights and obligations hereunder, except for any rights and obligations that expressly survive termination.

Section 4. Indemnification.

4.1 To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the CITY, to the extent of the COUNTY'S potential liability pursuant to section 768.28, Florida Statutes, does hereby agree to defend, indemnify and hold the COUNTY, its officers,
agents, or employees, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys’ fees, costs, and expenses at both the trial and appellate levels) arising from the acts or omissions of the CITY or any third party vendor contracted by the CITY in connection with this Agreement.

Section 5. Notices.

5.1 All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing and addressed as follows, or to any other address which either party may designate to the other party by mail:

If to County: Roman Gastesi, Jr.
County Administrator
Monroe County
Historic Gato Building
1100 Simonton Street
Key West, Florida 33040

With a copy to: Bob Shillinger, Esq.
Monroe County Attorneys Office
P.O. Box 1026
Key West, Florida 33041-1026

If to City: Maria T. Aguilar
Village Manager
Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, FL 33036

With a copy to: Roget V. Bryan
Village Attorney
Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, FL 33036

Any Notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered; or sent by overnight delivery service.

Section 6. Regulatory Powers.

6.1 Nothing contained herein shall be construed as waiving either party’s regulatory approval or enforcement rights or obligations as it may relate to regulations of general applicability, which may govern the Agreement.
6.2 Nothing herein shall be deemed to create an affirmative duty of either party to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with ordinances, rules and regulations, federal laws and regulations and state laws and regulations.

Section 7. Attorneys Fees and Waiver of Jury Trial.

7.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

7.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

Section 8. Governing Law.

8.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation or mediation arising out of this Agreement shall be in the 16th Judicial Circuit in and for Monroe County, Florida. This Agreement is not subject to arbitration.

Section 9. Entire Agreement/Modification/Amendment.

9.1 This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

9.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

Section 10. Access to Records and Audits.

10.1 CITY shall keep such records as are necessary to document the performance of the Agreement and expenses as incurred, and give access to these records at the request of COUNTY, the State of Florida, the Federal Government, or authorized agents and representatives of said government bodies. CITY shall also provide access to the personal property reports, permits, and equipment purchased or utilized under this Agreement. It is the responsibility of CITY to maintain appropriate records in accordance with generally accepted accounting principles consistently applied to insure a proper accounting of all funds and expenditures. Records shall be kept for a period of five (5) years following execution of this Agreement. CITY understands that it shall be responsible for repayment of any and all audit exceptions
which are identified by the Auditor General for the State of Florida, the Clerk of Court for Monroe County, the Board of County Commissioners for Monroe County, or their agents and representatives. COUNTY shall bill CITY for the amount of the audit exception and CITY shall promptly repay any audit exception. However, COUNTY warrants and represents that it has full authority to fund the Project under the terms and conditions specified herein. The COUNTY and CITY shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the COUNTY and CITY in conjunction with this Agreement; and the COUNTY shall have the right to unilaterally cancel this Agreement upon violation of this provision by CITY.

10.2 The COUNTY may cancel this Agreement for refusal by the CITY, or the CITY’s subcontractor, to allow access by the County Administrator or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

10.3 The term Records shall refer to any documents, books, data (electronic or hard copy), papers and financial records that result from the CITY or its subcontractors performance of the Services provided in this Agreement.

10.4 If the inspection or audit discloses that COUNTY funds paid to the CITY under this Agreement were used for a purpose not authorized by this Agreement, then the CITY must refund the funds improperly spent with interest calculated pursuant to Section 55.03, Florida Statutes, with interest running from the date the COUNTY paid the improperly spent funds to the CITY. This paragraph will survive the termination of this Agreement.

Section 11. Nonassignability.

11.1 This Agreement shall not be assignable by either party unless such assignment is first approved by both parties.

Section 12. Severability.

12.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

Section 13. Independent Contractor.

13.1 The CITY and its employees, volunteers, agents, vendors and subcontractors shall be and remain independent contractor and not agents or employees of the COUNTY with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be
construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

Section 14. Waiver.

14.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

Section 15. Funding.

15.1 The parties agree that the COUNTY’s responsibility under this Agreement is to provide funding only.


16.1 Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

Section 17. Counterparts.

17.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

Section 18. Paragraph Headings.

18.1 Paragraph headings, where used herein, are included for convenience only and are not intended to descriptively limit the scope and intent of the particular paragraph to which the refer.
IN WITNESS WHEREOF, the parties hereto have executed this agreement below.

BOARD OF COUNTY COMMISSIONERS
MONROE COUNTY, FLORIDA

BY: Danny L. Kolhage, Mayor

AMY HEAVILIN, CLERK
Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
BY: Assistant County Attorney

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM

PETER MORRIS
ASSISTANT COUNTY ATTORNEY
Date: 6/30/2015

ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA

Mike Forster, Mayor
Date: 11/22/15

ATTEST:

Kelly Toff
Village Clerk

(City Seal)

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

BY: Roget V. Bryan

(City Seal)