RESOLUTION NO. 15-10-97

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE FLORIDA KEYS ELECTRIC COOPERATIVE ASSOCIATION, INC. AND ISLAMORADA, VILLAGE OF ISLANDS, TO PROVIDE POST-STORM RESTORATION STAGING AREAS; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE MEMORANDUM OF UNDERSTANDING; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE MEMORANDUM OF UNDERSTANDING; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Islamorada, Village of Islands (the “Village”), and Florida Keys Electric Cooperative Association, Inc. (“FKEC”) recognize that it is in the best interests of FKEC members who are also residents of Monroe County and the Village to restore electric services as quickly and efficiently as is reasonably practicable following a major storm event affecting Monroe County, the Village and FKEC’s service area; and

WHEREAS, FKEC’s restoration planning and resources are best utilized from pre-selected staging areas throughout the County, including within the Village; and

WHEREAS, FKEC’s resources and restoration activities include the use of third-party mutual aid line crews and contractors who will require approximately one to two acre sites at various locations within Monroe County and the Village in order to provide vehicle and equipment staging areas, food services, sleeping facilities, laundry services and other related functions; and

WHEREAS, the Village is willing to designate certain specified site locations owned by the Village for FKEC’s restoration activities under certain conditions; and
WHEREAS, the Village Council finds that approval of the Memorandum of Understanding (‘MOU”) between FKEC and the Village, a copy of which is attached 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 herein by this reference.

Section 2. Approval of Agreement. The Village Council hereby approves the MOU between FKEC and the Village to provide staging areas for post-storm event restoration activities, attached as Exhibit “A” 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 implement the terms and conditions of the MOU.

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

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

PASSED AND ADOPTED this 1st day of October, 2015.

Motion to adopt by Councilman Chris Sante, second by Councilman Jim Mooney.
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

MIKE FORSTER, MAYOR

ATTEST:

KELLY TOOTH, VILLAGE CLERK

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

ROGET V. BRYAN, VILLAGE ATTORNEY
Storm Restoration Staging Areas
Memorandum of Understanding

This Memorandum of Understanding (MOU) between Islamorada, Village of Islands, Florida, a political subdivision of the state of Florida, hereinafter “the Village” and Florida Keys Electric Cooperative Association, Inc., a Florida not for profit corporation, hereinafter, “FKEC” regarding restoration staging areas following major storm events, to wit:

Whereas, the Village and FKEC recognize that it is in the best interests of FKEC members who are also residents of Monroe County and the Village to restore electric services as quickly and efficiently as is reasonably practicable following a major storm event affecting Monroe County, the Village and FKEC’s service area; and

Whereas, FKEC’s restoration planning and resources are best utilized from pre-selected staging areas throughout the County, including the Village; and

Whereas, FKEC’s resources and restoration activities include the use of third party mutual aid line crews and contractors who will require approximately one to two acre sites at various locations in Monroe County and the Village in order to provide vehicle and equipment staging areas, food services, sleeping facilities, laundry services and other related functions; and

Whereas, the Village is willing to designate certain specified site locations owned by the Village for FKEC’s restoration activities under certain conditions.

NOW THEREFORE, for and in consideration of the mutual covenants, terms and conditions as set forth herein, FKEC and the Village agree as follows:

1. The foregoing recitals are incorporated herein by reference.

2. The Village agrees to make every effort to provide FKEC with locations in and around Founders Park, located within the Village, for the logistical staging of restoration activities in the event of a major storm. Example sites include the great lawn and the back road between the beach and the main park in Founders Park and the parking area along the Overseas Highway in front of the baseball fields.

3. The sites will be used to establish temporary work camps for FKEC’s restoration crews as well as outside mutual aid line crews and contractors critical to the restoration of electric service within FKEC’s service territory. The camps may include administrative command posts, sleeping facilities, food services, laundry services, vehicle and equipment staging communication services, generators, and other related activities and equipment.
4. FKEC’s Chief Operating Officer and the Village’s Director of Public Works and Director of Parks and Recreation will jointly make the final determination of site locations in writing when a specific major storm event appears imminent.

5. FKEC will have the authority to direct storm restoration service providers to the agreed on locations immediately following a major storm event if, in FKEC’s judgment, the establishment of restoration activities at such locations is necessary to restore electric service.

6. FKEC agrees to indemnify, defend and hold the Village, its officer, agents or employee, harmless from and against any liability, claims, damages, costs, expenses (including reasonable attorney’s fees, costs, and expenses) or demands for injury to persons and property arising out of the acts or omission of any third party contractor or FKEC’s use of the sites as aforesaid.

7. The use of the specified sites by FKEC shall last no longer than forty-five (45) days unless otherwise agreed to in writing by the Village.

8. FKEC will carry the following insurance in the amounts shown and include the Village as an additional named insured on these policies:

- Commercial General Liability $1,000,000 (GL3)
- Business Automobile Liability $1,000,000 (VL3)
- Workers’ Compensation Workers Comp – Statutory required limits
- Employers Liability $500,000

9. FKEC shall fully restore the sites to their pre-use condition within ninety (90) days after the sites are vacated.

10. In the event of any failure of compliance by either party hereto with any of its material obligations to the other parties as provided for herein, such action shall constitute a default under this agreement. Upon such default, the non-defaulting party shall provide to the defaulting party a written Notice of such default, which Notice (a “Default Notice”) shall state in reasonable detail the actions the defaulting party must take to cure the same. The defaulting party shall cure any such default, within 30 days following the date of the Default Notice.

Notwithstanding the provisions of this Section, if any such default by the defaulting party remains uncured at the conclusion of any specified thirty (30) day cure period, and if the nature of the defaulting party’s obligations are such that more than thirty (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.

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.

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.

11. Either party may terminate this agreement by written notice of one to the other at any time.

12. Notices by one party to the other may be sent by any of the following means: USPS, overnight courier, hand delivery, e-mail or fax.

Notices as to the Village:

To: Maria T. Aguilar, Village Manager
   86800 Overseas Highway
   Islamorada, FL 33036
   Phone: 305-664-6410
   Fax: 305-664-6464
   maria.aguilar@islamorada.fl.us

With a copy to:
   Roget V. Bryan, Village Attorney
   86800 Overseas Highway
   Islamorada, FL 33036
   Phone: 305-664-6418
   Fax: 305-504-8989
   roget.bryan@islamorada.fl.us

Notices as to FKEC:
John A. Stuart, Chief Operating Officer
Post Office Box 377
91630 Overseas Highway
Tavernier, Florida 33070-0377
Phone: (305) 852-2431
Fax: (305) 852-4794
john.stuart@fkec.com
13. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, 16th Judicial Circuit Court or the Southern District of Florida. This Agreement is not subject to arbitration.

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

15. 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.

16. The FKEC and its employees, volunteers, agents, vendors and subcontractors shall be and remain independent contractor and not agents or employees of the Village 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.

17. 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.

18. 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.

19. This memorandum of understanding contains the entire agreement between the parties relating to the subject matter hereof, and any prior agreements, representations either oral or written, or understandings are hereby superseded. Any oral representations or modifications concerning this memorandum of understanding shall be of no force or effect, except for subsequent modifications in writing signed by both parties hereto.
In Witness Whereof, the undersigned have set their hands and seals

Islamorada, Village of Islands, Florida

By: Maria F. Aguilar
Maria F. Aguilar, Village Manager

ATTEST:

Kelly Toth, Village Clerk

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

Roget V. Bryan, Village Attorney

Florida Keys Electric Cooperative Association Inc.

By:
Scott Newberry, Chief Executive Officer

WITNESSES:

Print Name: SUSAN P. KOHLHOFER
Date: October 7, 2015

Print Name: Virginia G. Jorgenson
Date: October 7, 2015