

RESOLUTION NO. 10-01-06

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA APPROVING AMENDMENT NO. 1 TO THE AGREEMENT BETWEEN THE DEPARTMENT OF THE ARMY AND ISLAMORADA, VILLAGE OF ISLANDS FOR TECHNICAL AND FINANCIAL ASSISTANCE FOR THE FLORIDA KEYS WATER QUALITY IMPROVEMENT PROGRAM (FKWQIP) REGIONAL WASTEWATER TREATMENT AND COLLECTION FACILITIES; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE FIRST AMENDMENT; AUTHORIZING THE MAYOR TO EXPEND BUDGETED FUNDS; AUTHORIZING THE MAYOR TO EXECUTE THE FIRST AMENDMENT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, On August 17, 2008 Islamorada, Village of Islands (the "Village") entered into an Agreement (the Agreement) with the Department of the Army ("ACOE") for funding and technical assistance; and

WHEREAS, the ACOE has prepared Amendment No. 1 (the "First Amendment") to increase the Project funding, to revise the Project scope to include the entire Village, and to incorporate the requirements of the Recovery Act ; and

WHEREAS, the Village Council finds that approval of the First Amendment between ACOE 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 this reference.

Section 2. Approval of Amendment. The First Amendment to the Agreement between ACOE and the Village to provide financial assistance for wastewater, a copy of which

is attached as Exhibit "A," together with such non-material changes as may be acceptable to the 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 Amendment. The Mayor 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 28th day of January, 2010.

Motion to adopt by Councilwoman Gillis; seconded by Councilwoman Zima Borski.

FINAL VOTE AT ADOPTION

Mayor Don Achenberg	YES
Vice Mayor Michael Reckwerdt	NO
Councilmember Dave Boerner	YES
Councilwoman Jill Zima Borski	YES
Councilwoman Deb Gillis	YES



DON ACHENBERG, MAYOR

ATTEST:



VILLAGE CLERK

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



VILLAGE ATTORNEY

AMENDMENT NO. 1
TO
AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
THE VILLAGE OF ISLAMORADA, FLORIDA
FOR
TECHNICAL AND FINANCIAL ASSISTANCE
FOR THE
FLORIDA KEYS WATER QUALITY
IMPROVEMENT PROGRAM (FKWQIP)
REGIONAL WASTEWATER TREATMENT
AND COLLECTION FACILITIES
FOR THE VILLAGE OF ISLAMORADA, FLORIDA
IN MONROE COUNTY, FLORIDA

THIS AMENDMENT NO. 1 is entered into this 5th day of Feb, 2010, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Jacksonville District (hereinafter the "District Engineer"), and the Village of Islamorada, Florida (hereinafter the "Non-Federal Sponsor"), represented by the Mayor.

WITNESSETH, THAT:

WHEREAS, the Government and the Non-Federal Sponsor entered into an agreement on August 17, 2008 (hereinafter the "Agreement") for design and construction of the Florida Keys Water Quality Improvement Program Regional Wastewater Treatment and Collection Facilities Project in the Village of Islamorada, Monroe County, Florida;

WHEREAS, the Government and the Non-Federal Sponsor desire to amend the August 17, 2008 Agreement to add work to the Project so that Federal cost sharing may occur when sufficient Federal appropriations occur;

WHEREAS, the work was evaluated in the Decision Document for the Project consistent with the statutory requirements for the Florida Keys Water Quality Improvement Program and consistent with the requirements of the National Environmental Policy Act and other applicable environmental statutes;

WHEREAS, it is necessary to amend the August 17, 2008 Agreement to add the additional work; and

WHEREAS, Section 1512 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (hereinafter the "Recovery Act") requires recipients of Recovery

Act funds to report certain information on the use of Recovery Act funds, and the Government intends to provide Recovery Act funds to the Non-Federal Sponsor as reimbursement of the Federal share pursuant to the terms of this Agreement.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree to amend the Agreement as follows to add work and document the requirement of the Non-Federal Sponsor to report the information required by the Recovery Act:

1. Article I – Definitions of the August 17, 2008 Agreement is amended to read at paragraph A. as follows:

A. The term “Project” shall mean the Regional Wastewater Treatment and Collection Facilities for the Village of Islamorada, Florida in Monroe County, Florida consisting of the following: The scope of the project includes the construction of two regional wastewater treatment plant facilities and five collection service areas to serve the residents and commercial businesses located within the Village. Project #MPK-1 for Middle Plantation Key includes the expansion of the existing permitted 0.355 MGD wastewater treatment plant facility located at Gardenia Street and Woods Avenue on North Plantation. A plant expansion is proposed for this existing treatment plant facility to accommodate the remaining unsewered service area of Plantation Key. Expansion of this treatment plant facility with the additional capacity will provide the Village with the ability to treat the remaining unsewered service areas located on Plantation Key. Project #MPK-2, for Middle Plantation Key includes the design and construction of a central sewer collection system that will serve approximately 850 residential and commercial properties located on Plantation Key. A total of six existing package treatment plants located within this service area will be decommissioned and connected into the central sewer system to be constructed in Middle Plantation Key. Project #SPK-2, for South Plantation Key involves the design and construction of a central sewer collection system that will serve an estimated 911 residential and commercial properties located in the southern half of Plantation. A total of seven existing package treatment plants will be decommissioned and connected into the sewer collection and transmission system planned for this service area. Project #WK-2 for Windley Key includes the design and construction of a central sewer collection system that will primarily serve commercial properties and a small number of residential properties located on Windley Key. This service area includes an estimated 184 properties. Project #UMK-2 for Upper Matecumbe Key includes the design and construction of a central sewer collection system that will serve the residential and commercial properties located on Upper Matecumbe Key. Project #LMK-1 for Lower Matecumbe Key involves the design and construction of a regional wastewater treatment plant facility located on the northern end of Lower Matecumbe Key. The regional treatment plant facility to be constructed at this location will be designed to serve the unsewered residential and commercial properties located on Lower Matecumbe Key, Upper Matecumbe Key, and Windley Key. Project #LMK-2 for Lower Matecumbe Key includes the design and construction of a central sewer collection system that will serve the residential and commercial properties located in this service area consisting of approximately 1,170 connections.

2. Article II – Obligations of the Government and the Non-Federal Sponsor of the August 17, 2008 Agreement is amended at Paragraph E1 as follows:

1. As of the effective date of this Amendment No. 1, \$9,889,000 of Federal funds have been provided by the Congress of the United States (hereinafter the “Congress”) for the Section 109 Program of which \$7,950,000 is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the Section 109 Program or the *Project*. Further, the Government’s financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

3. Article IV – Method of Payment of the August 17, 2008 Agreement is amended at Paragraph A1 to read:

1. As of the effective date of this Amendment No. 1, *total project costs* are projected to be \$45,476,923; the Government’s share of *total project costs* is projected to be \$29,560,000; the Non-Federal Sponsor’s share of *total project costs* is projected to be \$15,916,923; *total project costs* to be incurred by the Government are projected to be \$1,268,806; *total project costs* to be incurred by the Non-Federal Sponsor are projected to be \$44,208,117; total reimbursements in accordance with paragraph B.2. of this Article are projected to be \$28,291,194; the costs included in *total project costs* for the *pre-Agreement planning and design work* determined in accordance with Article II.K. of this Agreement are projected to be \$24,350; the Government’s share of financial obligations for data recovery activities pursuant to Article XV.E. of this Agreement is projected to be \$0; and the Non-Federal Sponsor’s share of financial obligations for data recovery activities pursuant to Article XV.E. of this Agreement is projected to be \$0. These amounts are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

4. The following is added as Article XVII of the Agreement.

ARTICLE XVII - RECOVERY ACT REQUIREMENTS

The Government intends to fund reimbursement to the Non-Federal Sponsor, pursuant to Article II.D. of this Agreement, with Recovery Act funds in whole or in part. The Recovery Act requires special reporting by recipients of Recovery Act funds in order to maximize transparency of the use of Recovery Act funds. Not later than ten calendar days after the close of each calendar quarter in which the Non-Federal Sponsor receives Recovery Act funds, the Non-Federal Sponsor shall report the information described in Section 1512(c) of the Recovery Act using the reporting instructions and data elements available online at that time at <http://www.FederalReporting.gov> or its successor, and shall ensure that any information that is pre-filled is corrected or updated as appropriate. Information from these reports will be made available to the public. The Non-Federal Sponsor shall maintain a current registration in the Central Contractor Registration (<http://www.ccr.gov>) until project close out, including maintaining a Dun and Bradstreet


Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>). The Non-Federal Sponsor also shall comply with all other applicable Recovery Act provisions, including Sections 1605 (regarding the requirement to use American iron, steel, and manufactured Goods for certain projects) and 1606 (regarding wage rates). The Non-Federal Sponsor's costs of complying with this Article shall be eligible for inclusion in *total project costs* in accordance with, and subject to the limitations of, Article II.C. of this Agreement.

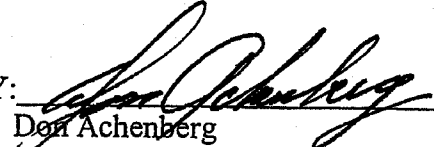
5. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

VILLAGE OF ISLAMORADA, FLORIDA

BY: 
Alfred A. Pantano
Colonel, U.S. Army
District Engineer

BY: 
Dan Achenberg
Mayor

DATE: 02/05/10

DATE: 1/29/10



Beverly Rudolph, MMC
VILLAGE CLERK

CERTIFICATE OF AUTHORITY

I, Nina Boniske, do hereby certify that I am the principal legal officer of the Village of Islamorada, Florida, that the Village of Islamorada, Florida is a legally constituted public body with full authority and legal capability to perform the terms of Amendment No. 1, between the Department of the Army and the Village of Islamorada, Florida in connection with the Florida Keys Water Quality Improvement Program (FKWQIP) Regional Wastewater Treatment and Collection Facilities for the Village of Islamorada, Florida in Monroe County, Florida, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed Amendment No. 1 on behalf of the Village of Islamorada, Florida have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 29 day of January, 2010.



Nina Boniske
Village Attorney
Village of Islamorada, Florida

CERTIFICATION REGARDING LOBBYING

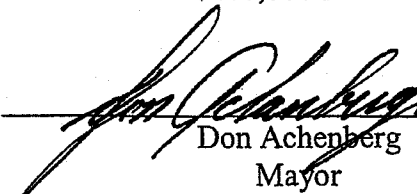
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Don Achenberg
Mayor
Village of Islamorada, Florida

DATE: 1/28/10