

RESOLUTION NO. 24-11-123

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA,
VILLAGE OF ISLANDS, FLORIDA, APPROVING MEMORANDUM
OF AGREEMENT WITH FLORIDA DEPARTMENT OF
TRANSPORTATION WITH RESPECT TO VANE COMPRESSORS
AND ASSOCIATED ELECTRICAL WORK MAINTENANCE;
AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS
AND CONDITIONS OF THE MEMORANDUM OF AGREEMENT;
AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED
FUNDS; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE
THE MEMORANDUM OF AGREEMENT; AND PROVIDING FOR AN
EFFECTIVE DATE**

WHEREAS, the Florida Department of Transportation ("FDOT") has jurisdiction over State Road 5 (Overseas Highway) at Canal #147, from Leserra Lane to Atlantic Lane, which is located within the limits of Islamorada, Village of Islands, Florida (the "Village"); and

WHEREAS, the VILLAGE, pursuant to Permit Number 2024-K-692-00005, will install vane compressors and associated electrical work along State Road 5 (Overseas Highway) at Canal #147, from Leserra Lane to Atlantic Lane (the "Project"); and

WHEREAS, it is necessary to enter into the Memorandum of Agreement with FDOT for the Village to install and maintain the Project (the "Agreement"); and

WHEREAS, the Village Council of Islamorada, Village of Islands (the "Village Council"), has determined that in the best interest of the Village and its residents to enter into the Agreement.

**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 Village Council hereby approves the Agreement for the Project, as set forth in Exhibit "A" attached hereto.

Section 3. Authorization of Village Officials. The Village Manager and/or designee and the Village Attorney are authorized to take all actions necessary to implement the terms and conditions of the Agreement.

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 Agreement.

Section 5. Authorization of Agreement Execution. The Village Manager is authorized to execute the Agreement on behalf of the Village and to execute any extension and amendments to the Agreement, subject to approval as to form and legality by the Village Attorney.

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

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Motion to adopt by Buddy Pinder, seconded by Deb Gillis.

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

Mayor Sharon Mahoney	<u>Yes</u>
Vice Mayor Don Horton	<u>Yes</u>
Council Member Steve Friedman	<u>Yes</u>
Council Member Deb Gillis	<u>Yes</u>
Council Member Buddy Pinder	<u>Yes</u>

PASSED AND ADOPTED THIS 19th DAY OF NOVEMBER, 2024.

Signed by:
Sharon Mahoney
99E7851BB13C484...

SHARON MAHONEY, MAYOR

ATTEST:

DocuSigned by:
Marne K. McGrath
006BA9A9B2704D5...

MARNE MCGRATH, VILLAGE CLERK

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

Signed by:
John J. Quick
362BFAA7FDDDA17...

JOHN J. QUICK, VILLAGE ATTORNEY



FLORIDA DEPARTMENT OF TRANSPORTATION
VANE COMPRESSORS AND ASSOCIATED ELECTRICAL WORK
MAINTENANCE MEMORANDUM OF AGREEMENT
WITH
ISLAMORADA, VILLAGE OF ISLANDS

This **AGREEMENT**, entered into on December 3rd, 2024, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida, hereinafter called the **DEPARTMENT**, and the **ISLAMORADA, VILLAGE OF ISLANDS**, a political subdivision of the State of Florida, hereinafter called the **VILLAGE**, and collectively referred to as the **PARTIES**.

RECITALS:

- A. The **DEPARTMENT** has jurisdiction over **State Road 5 (Overseas Highway) at Canal #147, from Leserra Lane to Atlantic Lane**, which is located within the limits of the **VILLAGE**; and
- B. The **VILLAGE**, pursuant to **Permit Number 2024-K-692-00005**, will install vane compressors and associated electrical work along State Road 5 (Overseas Highway) at Canal #147, from Leserra Lane to Atlantic Lane, the limits of which are described in the attached Exhibit 'A' (the **PROJECT LIMITS**), which by reference shall become a part of this **AGREEMENT**; and
- C. It is the intent of the **PARTIES** for this **AGREEMENT** to supplement all existing Maintenance Memorandum of Agreement and existing Permits previously executed between the **DEPARTMENT** and the **CITY**; and
- D. The **PARTIES** to this **AGREEMENT** mutually recognize the need for entering into an agreement designating and setting forth the **VILLAGE'S** responsibilities with regards to the maintenance of the vane compressors and associated electrical work within the **PROJECT LIMITS**; and
- E. The **VILLAGE**, by Resolution No. 24-11-123, dated November 19, 2024, attached hereto as Exhibit 'B', which by reference shall become a part of this **AGREEMENT**, desires to enter into this **AGREEMENT** and authorizes its officers to do so.

NOW, THEREFORE, for and in consideration of the mutual benefits contained herein and other good and valuable consideration, the **PARTIES** covenant and agree as follows:

1. RECITALS

The recitals in this **AGREEMENT** are true and correct, and are incorporated herein by reference and made a part hereof.

2. DEPARTMENT RESPONSIBILITIES

The **PARTIES** agree that the execution of this **AGREEMENT** shall constitute an assignment of all maintenance responsibilities pertaining to the vane compressors and associated electrical work (the **IMPROVEMENTS**) within the **PROJECT LIMITS** to the **VILLAGE** upon the **DEPARTMENT**'s release of its contractor from further warranty work and responsibility.

The **DEPARTMENT** may, at its sole discretion, perform periodic inspection of the **IMPROVEMENTS** to ensure that the **VILLAGE** is performing its duties pursuant to this **AGREEMENT**. The **DEPARTMENT** shall share with the **VILLAGE** its inspection findings, and may use those findings as the basis of its decisions regarding maintenance deficiencies, as set forth in Section 4 of this **AGREEMENT**.

3. VILLAGE'S RESPONSIBILITIES

So long as the **IMPROVEMENTS** remain in place, the **VILLAGE** shall be responsible for the maintenance of the same. The **VILLAGE** shall maintain the **PROJECT LIMITS** in accordance with all applicable **DEPARTMENT** guidelines, standards, and procedures, which shall include but shall not be limited to the Maintenance Rating Program Handbook, as may be amended from time to time. Additionally, when the **DEPARTMENT** does not have guidelines, standards, and procedures related to certain maintenance activities, the **VILLAGE** shall maintain the **PROJECT LIMITS** in accordance with Federal standards, guidelines, and procedures, as may be amended from time to time, and in accordance with the standards set forth in the Plans, in the Project Specifications, Special Provisions and all Manufacturer's and Vendor's maintenance recommendations. The **VILLAGE** shall ensure that any improvements comply with the terms of this **AGREEMENT** and meet the **DEPARTMENT**'S safety guidelines.

Obtaining copies of all applicable rules, regulations, policies, procedures, guidelines, and manuals, and the Project Specification and Special Provisions, as may be amended from time to time.

Maintaining a service log of all maintenance operations that sets forth the date of the maintenance activity, the location that was maintained, and the work that was performed.

Submitting Lane Closure Requests to the **DEPARTMENT** when maintenance activities will require the closure of the sidewalk or a traffic lane in the **DEPARTMENT's** right-of-way. Lane closure requests shall be submitted through the District Six Lane Closure Information System, to the **DEPARTMENT's** area Permit Manager and in accordance with the District Six Lane Closure Policy, as may be amended from time to time.

When remedial action is required in accordance with the above requirements, the **VILLAGE** at its own expense shall complete all necessary repairs within thirty (30) days of the date the deficiency is identified.

Restore the **DEPARTMENT's** RW to its original condition every time repairs are completed. Remove and properly disposing of all discarded materials related to the repairs.

Paying for all maintenance, operational and electrical costs associated therewith.

4. MAINTENANCE DEFICIENCIES

If at any time it shall come to the attention of the **DEPARTMENT** that the **VILLAGE'S** responsibilities as established herein are not being properly accomplished pursuant to the terms of this **AGREEMENT**, the **DEPARTMENT** may, at its option, issue a written notice, in care of the **VILLAGE MANAGER**, to notify the **VILLAGE** of the maintenance deficiencies. From the date of receipt of the notice, the **VILLAGE** shall have a period of thirty (30) calendar days, within which to correct the cited deficiency or deficiencies. Receipt is determined in accordance with Section 5 of this **AGREEMENT**.

If said deficiencies are not corrected within this time period, the **DEPARTMENT** may, at its option, proceed as follows:

- a. Maintain the **IMPROVEMENTS** or a part thereof and invoice the **VILLAGE** for expenses incurred; or
- b. Terminate this **AGREEMENT** in accordance with Section 7, remove any or all of the **IMPROVEMENTS** located within the **PROJECT LIMITS**, and charge the **VILLAGE** the reasonable cost of such removal.

5. NOTICES

All notices, requests, demands, consents, approvals, and other communication which are required to be served or given hereunder, shall be in writing and shall be sent by certified U.S. mail, return receipt requested, postage prepaid, addressed to the party to receive such notices as follows:

To the DEPARTMENT: Florida Department of Transportation
1000 Northwest 111 Avenue, Room 6205
Miami, Florida 33172-5800
Attn: District Maintenance Engineer

To the VILLAGE: Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, Florida 33036
Attention: Village Manager

Notices shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided.

6. REMOVAL, RELOCATION OR ADJUSTMENT OF THE IMPROVEMENTS

- a. The **PARTIES** agree that the **IMPROVEMENTS** addressed by this **AGREEMENT** may be removed, relocated or adjusted at any time in the future, at the **DEPARTMENT's** sole discretion. In the event that the **DEPARTMENT** relocates or adjusts the **IMPROVEMENTS**, the **VILLAGE'S** maintenance responsibilities will survive the relocation or adjustment, as long as the materials remain within the **PROJECT LIMITS**.

7. TERMINATION

This **AGREEMENT** is subject to termination under any one of the following conditions:

- a. By the **DEPARTMENT**, if the **VILLAGE** fails to perform its duties under Section 3 of this **AGREEMENT**, following the thirty (30) days written notice, as specified in Section 4 of this **AGREEMENT**.
- b. In accordance with Section 287.058(1)(c), Florida Statutes, the **DEPARTMENT** shall reserve the right to unilaterally cancel this **AGREEMENT** if the **VILLAGE** refuses to allow public access to any or all documents, papers, letters, or other materials made or received by the **VILLAGE** pertinent to this **AGREEMENT** which are subject to provisions of Chapter 119, of the Florida Statutes.
- c. If mutually agreed to by both parties, upon thirty (30) days advance notice. An agreement to terminate shall be valid only if made in writing and executed with the same formalities as this **AGREEMENT**.

8. TERMS

- a. The effective date of this **AGREEMENT** shall commence upon execution by the **PARTIES** and shall continue so long as the **IMPROVEMENTS** remain in place until termination as set forth in Section 7.
- b. E-Verify

The **VILLAGE** shall:

- i. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and
- ii. Expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

(Executive Order Number 2011-02)

The **VILLAGE** shall insert the above clause into any contract entered into by the **VILLAGE** with vendors or contractors hired by the **VILLAGE** for purposes of performing its duties under this **AGREEMENT**.

- c. This writing embodies the entire **AGREEMENT** and understanding between the **PARTIES** hereto and there are no other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.
- d. This **AGREEMENT** shall not be transferred or assigned, in whole or in part, without the prior written consent of the **DEPARTMENT**.
- e. This **AGREEMENT** shall be governed by and construed in accordance with the laws of the State of Florida. Any provisions of this **AGREEMENT** found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions of the **AGREEMENT**.
- f. Venue for any and all actions arising out of or in connection to the interpretation, validity, performance or breach of this **AGREEMENT** shall lie exclusively in a state court of proper jurisdiction in Leon County, Florida.
- g. A modification or waiver of any of the provisions of this **AGREEMENT** shall be effective only if made in writing and executed with the same formality as this **AGREEMENT**.
- i. The section headings contained in this **AGREEMENT** are for reference purposes only and shall not affect the meaning or interpretation hereof.
- j. No term or provision of this **AGREEMENT** shall be interpreted for or against either Party because the Party or its legal representative drafted the provision.
- k. The **DEPARTMENT** is a state agency, self-insured and subject to the provisions of Section 768.28, Florida Statutes, as may be amended from time to time. Nothing in this **AGREEMENT** shall be deemed or otherwise interpreted as waiving the **DEPARTMENT's** sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

9. INDEMNIFICATION

Subject to Section 768.28, Florida Statutes, as may be amended from time to time, the **VILLAGE** shall promptly indemnify, defend, save and hold harmless the **DEPARTMENT**, its officers, agents, representatives and employees from any and all losses, expenses, fines, fees, taxes, assessments, penalties, costs, damages, judgments, claims, demands, liabilities, attorney's fees, (including regulatory and appellate fees), and suits of any nature or kind whatsoever caused by, arising out of, or related to the **VILLAGE'S** exercise or attempted exercise of its responsibilities as set out in this **AGREEMENT**, including but not limited to, any act, action, neglect or omission by the **VILLAGE**, its officers, agents, employees or representatives in any way pertaining to this **AGREEMENT**, whether direct or indirect, except that neither the **VILLAGE** nor any of its officers, agents, employees or representatives will be liable under this provision for damages arising out of injury or damages directly caused or resulting from the sole negligence of the **DEPARTMENT**.

The **VILLAGE'S** obligation to indemnify, defend and pay for the defense of the **DEPARTMENT**, or at the **DEPARTMENT's** option, to participate and associate with the **DEPARTMENT** in the defense and trial of any claim and any related settlement negotiations, shall be triggered immediately upon the **VILLAGE'S** receipt of the **DEPARTMENT's** notice of claim for indemnification. The notice of claim for indemnification shall be deemed received if the **DEPARTMENT** sends the notice in accordance with the formal notice mailing requirements set forth in Section 5 of this **AGREEMENT**. The **DEPARTMENT's** failure to notify the **VILLAGE** of a claim shall not release the **VILLAGE** of the above duty to defend and indemnify the **DEPARTMENT**.

The **VILLAGE** shall pay all costs and fees related to this obligation and its enforcement by the **DEPARTMENT**. The indemnification provisions of this section shall survive termination or expiration of this **AGREEMENT**, but only with respect to those claims that arose from acts or circumstances which occurred prior to termination or expiration of this **AGREEMENT**.

The **VILLAGE'S** evaluation of liability or its inability to evaluate liability shall not excuse the **VILLAGE'S** duty to defend and indemnify the **DEPARTMENT** under the provisions of this section. Only an adjudication or judgment, after the highest appeal is exhausted, specifically finding the **DEPARTMENT** was solely negligent shall excuse performance of this provision by the **VILLAGE**.

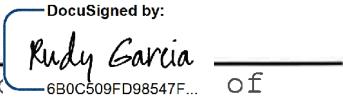
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

VILLAGE:

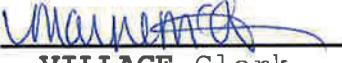
BY: 

VILLAGE Manager

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:

BY: 

DocuSigned by:
Rudy Garcia
District 6B0C509FD98547F... of
Transportation Operations

ATTEST: 

VILLAGE Clerk

(SEAL)

BY: 

VILLAGE Attorney

ATTEST: 

DocuSigned by:
Cristina Cuesta
Executive 9B3E212210734D7... RY

LEGAL REVIEW:

BY: 

DocuSigned by:
Alicia Trujillo
District 12CAF0E1B1DB4BC... nsel

EXHIBIT 'A'

PROJECT LIMITS

Below are the limits of the **IMPROVEMENTS** to be maintained under this **AGREEMENT**.

State Road Number: State Road 5 (Overseas Highway)

Agreement Limits: Canal #147
From Leserra Lane to Atlantic Lane

County: Monroe

EXHIBIT 'B'

VILLAGE RESOLUTION

To be herein incorporated once ratified by the **VILLAGE** Council.