

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: 8/15/07

Division: Growth Management

Bulk Item: Yes No

Department: Environmental Resources

Staff Contact /Phone #: Ralph Gouldy, Ext 2502

AGENDA ITEM WORDING:

Approval of an Interlocal Agreement (ILA) between Monroe County and Florida Fish and Wildlife Conservation Commission for permission to access County-owned land on Grassy Key for removal of Gambian rats.

ITEM BACKGROUND:

The previous ILA for Gambian rat eradication program has expired. This ILA would allow for access from June 10, 2007 ending June 30, 2008.

PREVIOUS RELEVANT BOCC ACTION:

Approval of an ILA for Gambian Rat Eradication Project on Grassy Key from March 15, 2006 to March 15, 2007.

CONTRACT/AGREEMENT CHANGES:

Time extension of ILA for access to County-owned land.

STAFF RECOMMENDATIONS:

Staff recommends approval.

TOTAL COST: -0-

BUDGETED: Yes No

COST TO COUNTY: n/a

SOURCE OF FUNDS: n/a

REVENUE PRODUCING: Yes No **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty OMB/Purchasing n/a Risk Management

DOCUMENTATION: Included Not Required

DISPOSITION:

AGENDA ITEM #

INTERLOCAL AGREEMENT

This Agreement is made and entered into by MONROE COUNTY (COUNTY), a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, FL 33040, and the FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION (AGENCY), a public agency of the State of Florida, whose address is 620 South Meridian Street, Tallahassee, FL 32399-1600.

WHEREAS, the parties are authorized by Section 163.01(4), Florida Statutes, to enter into an interlocal agreement to carry out their independent powers;

WHEREAS, the parties entered into an interlocal agreement, commencing March 15, 2006, and ending March 15, 2007, to allow for a Gambian Rat Eradication Project (PROJECT) on Grassy Key; and

WHEREAS, the parties desire to enter into another interlocal agreement, in order to continue the Gambian Rat Eradication Project (PROJECT) on Grassy Key; now therefore,

IN CONSIDERATION OF the mutual promises and conditions contained herein, the PARTIES agree as follows:

1. **SCOPE.** The AGENCY shall use the portion of Grassy Key owned by the COUNTY for the purposes of conducting the PROJECT, the scope of which is more particularly described in Exhibit A.
2. **TERM.**
 - A. Subject to and upon the terms and conditions set forth herein, this Agreement shall continue in force for a term commencing as of the 10th day of July, 2007 and ending on the 30th day of June, 2008.
 - B. The parties may extend this agreement after the expiration of the term described herein according to such terms and conditions as may be agreed to at the time of extension.
3. **USE AND CONDITIONS.** The premises, which are defined as that portion of Grassy Key owned by Monroe County, more particularly described in and shown the sketch attached hereto as Exhibit B, shall be used solely for the PROJECT.
4. **UTILITIES.** No utilities are anticipated to be necessary for the PROJECT and therefore none are authorized by this Agreement.
5. **ALTERATIONS and IMPROVEMENTS.** No alterations or improvements are anticipated to be necessary for the PROJECT and therefore none

are authorized by this Agreement.

6. **MECHANIC'S LIENS.** No mechanic's liens are anticipated to be necessary for the PROJECT and therefore none are authorized by this Agreement.

7. **RECORDS – ACCESS AND AUDITS.** Both Parties shall maintain adequate and complete records for a period of four years after termination of this lease. Each Party, its officers, employees, agents and contractors shall have access to the Other Party's books, records, and documents related to this Agreement upon request. The access to and inspection of such books, records, and documents by the Parties shall occur at any reasonable time.

8. **RELATIONSHIP OF PARTIES.** The Parties are independent of each other and shall at no time be legally responsible for any negligence on the part of the Other Party, its employees, agents or volunteers resulting in either bodily or personal injury or property damage to any individual, property or corporation.

9. **TAXES.** The Parties are not subject to taxes and assessments.

10. **INSURANCE.** The parties to this agreement stipulate that each is a state governmental agency as defined by Florida Statutes and represents to the other that it has purchased suitable Public Liability, Vehicle Liability, and Workers' Compensation insurance, or is self-insured, in amounts adequate to respond to any and all claims under federal or state actions for civil rights violations, which are not limited by Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes arising out of the activities governed by this agreement.

To the extent allowed by law, each party shall be responsible for any acts of negligence on the part of its employees, agents, contractors, and subcontractors and shall defend, indemnify and hold the other party harmless from all claims arising out of such actions.

Each party agrees to keep in full force and effect the required insurance coverage during the term of this Agreement. If the insurance policies originally purchased which meet the requirements of this agreement are canceled, terminated or reduced in coverage, then the respective party must immediately substitute complying policies so that no gap in coverage occurs. Copies of current policy certificates shall be filed with the Other Party whenever acquired or amended.

11. **CONDITION OF PREMISES.** The AGENCY must keep the premises in good order and condition. The AGENCY must promptly repair damage to the premises. The AGENCY is solely responsible for any improvements to land and appurtenances placed on the premises. Neither party shall commit waste on the premises, nor maintain or permit a nuisance on the premises. It is anticipated

that AGENCY will provide such security as it requires during the life of this agreement.

12. RESTRICTIONS ON AGREEMENTS ENTERED PURSUANT TO THIS AGREEMENT. The AGENCY shall include in all agreements funded under this agreement the following terms:

A. Anti-discrimination. Contractor agrees that they will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this agreement because of their race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

B. Anti-kickback. Contractor warrants that no person has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the AGENCY has any interest, financially or otherwise, in contractor. For breach or violation of this warranty, the AGENCY shall have the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee. Contractor acknowledges that it is aware that funding for this agreement is available through the County and that violation of this paragraph may result in the County withdrawing funding for the Project.

C. Hold harmless/indemnification. Contractor acknowledges that this agreement is funded at least in part by the County and agrees to indemnify and hold harmless the County and any of its officers and employees from and against any and all claims, liabilities, litigation, causes of action, damages, costs, expenses (including but not limited to fees and expenses arising from any factual investigation, discovery or preparation for litigation), and the payment of any and all of the foregoing or any demands, settlements or judgments (collectively claims) arising directly or indirectly from any negligence or criminal conduct on the part of Contractor in the performance of the terms of this agreement. The Contractor shall immediately give notice to the County of any suit, claim or action made against the Contractor that is related to the activity under this agreement, and will cooperate with the County in the investigation arising as a result of any suit, action or claim related this agreement.

D. Insurance. Contractor agrees that it maintains in force at its own expense a liability insurance policy which will insure and indemnify the Contractor and the County from any suits, claims or actions brought by any person or persons and from all costs and expenses of litigation brought against the Contractor for such injuries to persons or damage to property occurring during the agreement or thereafter that results from performance by Contractor of the obligations set forth in this agreement. At all times during the term of this agreement and for one year

after acceptance of the project, Contractor shall maintain on file with the County a certificate of the insurance of the carriers showing that the aforesaid insurance policy is in effect. The following coverage's shall be provided:

1. Workers Compensation insurance as required by Florida Statutes.
2. Commercial General Liability Insurance with minimum limits of \$500,000 per occurrence for bodily injury, personal injury and property damage.
3. Comprehensive Auto Liability Insurance with minimum limits of \$300,000 combined single limit per occurrence.

The Contractor, the County and the AGENCY shall be named as additional insured, exempt workers compensation. The policies shall provide no less than 30 days notice of cancellation, non-renewal or reduction of coverage.

At all times during the term of this agreement and for one year after acceptance of the project, Contractor shall maintain on file with the County a certificate of insurance showing that the aforesaid insurance coverage's are in effect.

e) Licensing and Permits. Contractor warrants that it shall have, prior to commencement of work under this agreement and at all times during said work, all required licenses and permits whether federal, state, County or City.

f) Right to Audit. The Contractor 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 the AGENCY, the County, the State of Florida or authorized agents and representatives of said government bodies.

13. **HOLD HARMLESS.** To the extent allowed by law, the AGENCY is liable for and must fully defend, release, discharge, indemnify and hold harmless the COUNTY, the members of the County Commission, County officers and employees, County agents and contractors, and the Sheriff's Office, its officers and employees, from and against any and all claims, demands, causes of action, losses, costs and expenses of whatever type - including investigation and witness costs and expenses and attorneys' fees and costs - that arise out of or are attributable to the AGENCY's operations on the premises except for those claims, demands, damages, liabilities, actions, causes of action, losses, costs and expenses that are the result of the sole negligence of the COUNTY. The AGENCY's purchase of the insurance required under this Agreement does not release or vitiate its obligations under this paragraph. AGENCY does not waive any of its sovereign immunity rights including but not limited to those expressed in Section 768.28, Florida Statutes.

To the extent allowed by law, the COUNTY is liable for and must fully defend, release, discharge, indemnify and hold harmless the AGENCY, its members,

officers and employees, agents and contractors, from and against any and all claims, demands, causes of action, losses, costs and expenses of whatever type - including investigation and witness costs and expenses and attorneys' fees and costs - that arise out of or are attributable to the COUNTY's operations on the premises except for those claims, demands, damages, liabilities, actions, causes of action, losses, costs and expenses that are the result of the sole negligence of the AGENCY. The COUNTY's purchase of the insurance required under this Agreement does not release or vitiate its obligations under this paragraph. COUNTY does not waive any of its sovereign immunity rights including but not limited to those expressed in Section 768.28, Florida Statutes.

14. NON-DISCRIMINATION. The AGENCY and the COUNTY, each for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of premises or in the contracting for improvements to the premises.

COUNTY and AGENCY agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. COUNTY AND AGENCY agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Ch. 13, Art. VI, prohibiting discrimination on the bases of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; and 11) any other nondiscrimination provisions in any Federal or state statutes which may

apply to the parties to, or the subject matter of, this Agreement.

15. **TERMINATION.** Either party may terminate this agreement after giving to the other party at least thirty (30) days written notice.

16. **ASSIGNMENT.** The AGENCY may not assign this Agreement or assign or subcontract any of its obligations under this Agreement without the approval of the COUNTY's Board of County Commissioners. All the obligations of this Agreement will extend to and bind the legal representatives, successors and assigns of the AGENCY and the COUNTY.

17. **SUBORDINATION.** This Agreement is subordinate to the laws and regulations of the United States, the State of Florida, and the COUNTY, whether in effect on commencement of this lease or adopted after that date.

18. **INCONSISTENCY.** If any item, condition or obligation of this Agreement is in conflict with other items in this Agreement, the inconsistencies shall be construed so as to give meaning to those terms which limit the County's responsibility and liability.

19. **GOVERNING LAWS/JURY TRIAL WAIVER.** This Agreement is governed by the laws of the State of Florida and the United States. In the event of any litigation, the prevailing party is entitled to a reasonable attorney's fee and costs. As consideration of this Agreement, the parties hereby waive trial by jury in any action or proceeding brought by any party against any other party pertaining to any matter whatsoever arising out of or in any way connected with this Agreement.

20. **ETHICS CLAUSE.** AGENCY warrants that it has not employed, retained or otherwise had act on its behalf any former County officer or employee subject to the prohibition of Section 2 of ordinance No. 010-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 010-1990. For breach or violation of this provision, the COUNTY may, in its discretion, terminate this Lease without liability and may also, in its discretion, deduct from the Lease or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift or consideration paid to the former County officer or employee.

21. **CONSTRUCTION.** This Agreement has been carefully reviewed by the AGENCY and the COUNTY. Therefore, this Agreement is not to be construed against any party on the basis of authorship.

22. **NOTICES.** Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the following:

COUNTY:

Thomas Willi
County Administrator
Monroe County
1100 Simonton Street
Key West, FL 33040

AGENCY:

Scott Hardin
Exotic Species Coordinator
FFWCC
620 South Meridian Street
Tallahassee, FL 32399-1600

23. **FULL UNDERSTANDING.** This Agreement is the parties' final mutual understanding. It replaces any earlier agreements or understandings, whether written or oral. This Agreement cannot be modified or replaced except by another written and signed agreement.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

By: _____
Deputy Clerk

COUNTY

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Mayor/Chairman

AGENCY

FLORIDA FISH AND WILDLIFE CONSERVATION
COMMISSION

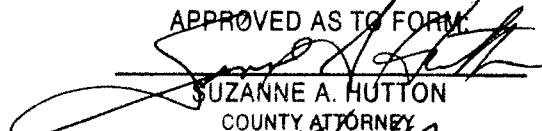
(SEAL)
ATTEST:

By: _____

By: _____

Title: Director, Division of Habitat and
Species Conservation

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM



SUZANNE A. HUTTON
COUNTY ATTORNEY
Date 7/30/07

EXHIBIT A

Gambian pouched rat eradication on Grassy Key, Monroe County

Gambian pouched rats (*Cricetomys gambianus*), native to Africa, were bred in captivity on Grassy Key (1500 acres). It is believed that eight rats escaped between 1999 and 2002 and ultimately established a reproducing population. Gambian pouched rats are large, weighing an average of 3 pounds and measuring 20-35 inches from head to tail, which is much larger than the native species including the Key Largo wood rat, cotton rat, and silver rice rat. The Gambian pouch rat's unusually large size has made this species popular in the exotic pet trade, although the Food and Drug Administration (FDA) banned their transport and sale in 2003 because they are a carrier of monkey pox.

These nonindigenous rodents primarily eat fruit and grains, but are also known to eat invertebrates. Conditions on Grassy Key are not optimal for this species, possibly due to a lack of burrowing habitat and limited fresh water, as well as potential competition from the abundant raccoon population. Gambian pouched rats have been concentrated in the vicinity of dwellings within a mile [two kilometers?] of the release site. The population apparently relies on refuse, and pet food and water from homeowners. Scientists fear that this species is poised to move from Grassy Key onto adjacent keys and eventually to the mainland of Florida.

In February 2006, a pilot eradication project was conducted on Crawl Key, a 360-acre uninhabited key (due west of Grassy Key) where Gambian rat photographs were recorded in three of four camera locations in 2005. In June 2006, USDA APHIS Wildlife Services (WS) placed toxicant (zinc phosphide) in 94 bait stations in suitable habitat on a 40-m grid system. We concluded that the combined effects of the eradication effort, along with impacts from Hurricane Wilma, eliminated this sub-population. Based on the pilot project, the consistency of the bait was modified to avoid removal by raccoons along with subsequent non-target mortality.

Using previous trapping and radio telemetry, a bait station grid was established for Grassy Key using a 40-meter grid in the "core" area; on the periphery, bait stations were placed 50 meters apart.

Lot owners in the affected areas were contacted to seek access to their property for placing bait stations. A first mailing took place in November 2006 with a follow-up effort in December. Most property owners granted access, although a few expressed concerns over the use of the toxicant.

From January through May, 2007, approximately 1000 bait stations were placed throughout tropical hammock and residential areas of Grassy Key. In March 2007, 20 Gambian pouched rats were trapped for the USDA APHIS National Wildlife Research Center (NWRC) for studies of more effective attractants and third generation rodenticides. As an indication that the pouched rat population was recovering from the impacts of Hurricane Wilma in late 2005, three of 11 females transported to the NWRC lab in Fort Collins, Colorado, had litters either in flight or shortly after arrival.

On May 21, the eradication effort commenced with the pre-baiting of roughly 600 stations around the periphery of the core area. Following three days of pre-baiting with only peanut butter, zinc phosphide was added and remained in the stations for an additional seven days. Starting June 4, the remaining

stations were baited. Toxic bait was removed from all stations by June 15.

A toll-free number was established to provide daily information to residents on the location of active bait stations. Numerous media interviews were conducted, helping to maintain a high level of public awareness. No adverse public reaction occurred during the active eradication phase.

Two dead Gambian pouched rats were observed by residents, and several dead black rats were observed by WS staff. Intensive surveys using remote cameras and trapping will be conducted in July and September to detect and eliminate any surviving Gambian pouched rats.

For 2007-08, staff will survey Grassy Key to determine if there are surviving Gambian pouched rats. If survivors are detected, localized toxic baiting will be used in the immediate vicinity. The initial survey is scheduled for July 9-23, 2007. Additional surveys will be conducted throughout 2007 and 2008.

EXHIBIT B – PROPERTIES OWNED BY MONROE COUNTY IN GRASSY KEY
(lots shaded)

