

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: September 19, 2007

Division: Growth Management

Bulk Item: Yes  No

Department: Planning & Environmental Resources

Staff Contact: Richard Jones

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**AGENDA ITEM WORDING:**

Approval of a Memorandum of Agreement between Monroe County and NOAA to facilitate cooperation and coordination for the funding and implementation of emergency response and marine salvage efforts within the Florida Keys National Marine Sanctuary.

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**ITEM BACKGROUND:**

Monroe County responds to derelict vessel and marine debris issues on a routine basis as well as post-disaster. The Memorandum of Agreement will allow the County and NOAA to coordinate salvage efforts and expedite removal activities and provides for funding arrangements.

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**PREVIOUS RELEVANT BOCC ACTION:**

N/A

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**CONTRACT/AGREEMENT CHANGES:**

N/A

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**STAFF RECOMMENDATIONS:**

Approval

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**TOTAL COST:** N/A

**BUDGETED:** Yes  No

**COST TO COUNTY:** \_\_\_\_\_

**SOURCE OF FUNDS:** \_\_\_\_\_

**REVENUE PRODUCING:** Yes  No

**AMOUNT PER MONTH** \_\_\_\_\_ **Year** \_\_\_\_\_

**APPROVED BY:** County Atty   OMB/Purchasing  Risk Management

**DOCUMENTATION:** Included  Not Required \_\_\_\_\_

**DISPOSITION:** \_\_\_\_\_

**AGENDA ITEM #** \_\_\_\_\_

Revised 11/06

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY			
Contract with: <u>NOAA</u>	Contract # _____	Effective Date: <u>Immediate</u>	Expiration Date: <u>09/30/2010</u>
Contract Purpose/Description: <u>Memorandum of Agreement with NOAA for coordination on marine salvage and response</u>			
Contract Manager: <u>Richard Jones</u> (Name)	<u>2805</u> (Ext.)	<u>Planning/11</u> (Department/Stop #)	
for BOCC meeting on <u>09/19/07</u> Agenda Deadline: <u>09/04/07</u>			

CONTRACT COSTS	
Total Dollar Value of Contract: \$ <u>N/A</u>	Current Year Portion: \$ _____
Budgeted? Yes <input type="checkbox"/> No <input type="checkbox"/>	Account Codes: _____
Grant: \$ _____	_____
County Match: \$ _____	_____
ADDITIONAL COSTS	
Estimated Ongoing Costs: \$ _____/yr	For: _____
(Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)	

CONTRACT REVIEW				
	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>9-4-07</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>9-4-07</u>
Risk Management	<u>8-28-07</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>8-28-07</u>
O.M.B./Purchasing	<u>8/30/07</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>8/30/07</u>
County Attorney	<u>8/27/07</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>8/27/07</u>
Comments: _____				
_____				
_____				

**MEMORANDUM OF AGREEMENT**

**PURSUANT TO THE  
NATIONAL MARINE SANCTUARIES ACT  
16 U.S.C. 1442(e)**

**AMONG THE**

**U.S. DEPARTMENT OF COMMERCE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
NATIONAL OCEAN SERVICE  
NATIONAL MARINE SANCTUARY PROGRAM**

**AND THE**

**BOARD OF COUNTY COMMISSIONERS  
MONROE COUNTY, FLORIDA**

**FOR THE PURPOSE OF  
COOPERATION ON MARINE SALVAGE AND RESPONSE**

**NOS Agreement Code: MOA-2007-041/7512**

## **I. PARTIES AND PURPOSE**

- A. This Memorandum of Agreement (Agreement) is among the U.S. Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), National Marine Sanctuary Program (NMSP), through the Florida Keys National Marine Sanctuary (FKNMS) and the Monroe County Board of County Commissioners, Monroe County, Florida.
- B. The purpose of this Agreement is to facilitate cooperation and coordination for the funding and implementation of emergency response and marine salvage within the FKNMS area. The intent is to provide rapid local support, through marine salvage contractors currently under contract with Monroe County, to minimize potential injury to marine resources.

## **II. BACKGROUND**

- A. The FKNMS was established to protect the resources within the boundaries described in Appendix I to Subpart P of 15 CFR Part 922 to educate and interpret for the public regarding the Florida Keys marine environment, and to manage such human uses of the Sanctuary consistent with the Florida Keys National Marine Sanctuary and Protection Act and the National Marine Sanctuaries Act Amendments (Public Law 101-605 and 16 USC 1431 *et seq.*). The laws provide legal authority to the United States to conduct emergency response and salvage to prevent or minimize destruction, loss of, or injury to, sanctuary resources, or to minimize the imminent risk of such destruction, loss, or injury. Nothing in these laws are intended to restrict activities that do not cause an adverse effect to the resources or property of the Sanctuary or that do not pose harm to users of the Sanctuary (Public Law 101-605 (H.R. 5909)).
- B. On behalf of the Monroe County Board of County Commissioners, the mission of the Planning Department is to help protect, conserve, and restore the quality of the waters and marine resources of the Florida Keys consistent with the Monroe County 2010 Comprehensive Plan and provide for adequate and appropriate recreational and commercial use of the Keys' marine environment using the best available data and technological support.

## **III. AUTHORITIES**

- A. The legal authority for the Florida Keys National Marine Sanctuary (FKNMS) to enter into this Agreement is the National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1442(e), which allows the Secretary of Commerce, whenever appropriate, to enter into an agreement with a State or other Federal agency to use the personnel, services, or facilities of such agency on a reimbursable or

nonreimbursable basis, to assist in carrying out the purposes and policies of the NMSA.

- B. The programmatic authority for the Florida Keys National Marine Sanctuary (FKNMS) to enter into this Agreement is the NMSA, 16 U.S.C. 1431 *et seq*, which includes the following Purposes and Policies (16 U.S.C. 1431(b)(2), (3), and (7)):
1. to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;
  2. to maintain the natural biological communities in the national marine sanctuaries, and to protect, and where appropriate, restore and enhance natural habitats, populations, and ecological processes;
  3. to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native America tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas.

#### **IV. TERMS AND CONDITIONS**

A. FKNMS will:

1. Work with Monroe County and their respective contractors to address emergency response and salvage efforts that impact sanctuary resources. NOAA will review response and salvage plans to address threats from marine debris, abandoned and derelict vessels and/or other potential marine resources impacts;
2. Work with Monroe County and other resource trustees to address emergency response and salvage efforts on a case-by-case basis, with every effort made to expedite activities to limit on-going injury to Sanctuary resources.

B. Monroe County:

1. Will work with NOAA and provide access to response and marine salvage contractors;
2. Will maintain contracts with appropriate sub-contractors in order to meet necessary emergency response time frames. Typical responses would

include the recovery of small to medium sized vessels or debris that threaten Sanctuary resources, particularly fore reef and patch reef areas.

Large threats or impacts from vessels on the scale of 80 to 100 feet or larger may be handled by other means on a case-by-case basis as determined by the two Parties;

3. Is not obligated to initiate a salvage operation using its contractors if it does not believe that it has the appropriate or adequate material resources to complete the salvage job safely or to provide maximal protection of threatened or impacted living marine resources during the salvage operation.

C. Emergency threats only to include:

- a. Removal of marine debris which threatens or has impacted sanctuary resources;
- b. Removal of immediate threats to safe navigation; and
- c. Removal of any vessel (80 to 100 feet or smaller) which threatens or has impacted sanctuary resources on a case-by-case basis.

## **V. FUNDING, PROGRAMMING, PAYMENT, AND REIMBURSEMENT ARRANGEMENTS**

- A. FKNMS and the NMSP Resource Protection Team will provide payment upon receipt of invoice from the Marine Resources Office of Monroe County. In the event that FKNMS or the NMSP Resource Protection Team wish to dispute an invoice amount, the FKNMS or the NMSP Resource Protection Team will contact the Marine Resources Office of Monroe County to discuss the dispute.
- B. The Marine Resources Office of Monroe County will provide coordination and cooperation regarding joint response and salvage efforts and timely invoices to FKNMS or the NMSP Resource Protection Team at NOAA's request for emergency response and salvage efforts.

## Accounting and Fiscal Data

1. The FKNMS will provide funding to the Monroe County Board of County Commissioners on a case-by-case basis for the period beginning on June 11, 2007 or the effective date of this Agreement, whichever is later, and ending on September 30, 2010.
  
  2. Monroe County  
EIN<sup>1</sup>: 59-6000749  
DUNS<sup>2</sup>: 073876757
  
  3. NOAA  
EIN: 52-0821608  
DUNS: 78-4769085
- C. The funds for this Agreement will be made available on an as needed basis, to address emergency response and salvage incidents. These incidents can be somewhat weather dependent and cannot be predicted from year to year.
- D. In consideration of previous years' expenditure for emergency response, FKNMS and Monroe County will develop an annual budget and SOW under the Agreement. The development and completion of both should occur by May 30 of each year for inclusion in an amendment to this Agreement to become effective at the beginning of each fiscal year, October 1.
- E. Individual activities authorized by this Agreement will be submitted as work orders (WO) that must be approved by NMSP Resource Protection Coordinator, NMSP Deputy Director, appropriate NOAA General Counsel Office (GC for Ocean Services or GC for Natural Resources), and the Monroe County Administrator prior to beginning work covered under this Agreement. Individual WOs must include:
1. Detailed list of activities to be undertaken;
  2. Complete Fiscal and Accounting Data, including full CBS ACCS for charges (task code will be incident-specific), Appropriation Codes, type of funds and expiration dates, etc.;
  3. Detailed budget for activities to be undertaken.

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<sup>1</sup> Employer Identification Number (Tax ID Number)

<sup>2</sup> Dunn and Bradstreet's Data Universal Numbering System

- F. This Agreement and any extensions thereof are subject to the availability of funds.

## **VI. CONTACTS**

- A. The points of contact for activities under this Agreement are:

<u>FKNMS</u>	<u>Monroe County</u>
David A Score	Richard Jones
Superintendent	Senior Planner
Florida Keys National Marine Sanctuary	Monroe County Planning Department Marine Resources Office
33 East Quay Road	2798 Overseas Hwy.
Key West, Florida 33040	Marathon, Florida 33050
Telephone: (305) 809-4700	Telephone: (305) 289-2805
Facsimile: (305) 293-5011	Facsimile: (305) 289-2536
<u>David.A.Score@noaa.gov</u>	<u>jones-rich@monroecounty-fl.gov</u>

- B. The Parties agree that if there is a change regarding the information in this section, the Party making the change will notify the other Party in writing of such change.

## **VII. THIRD PARTY LIABILITY**

Monroe County shall hold and save the NMSP, its officers, agents, and employees harmless from liability of any nature or kind, including costs and expenses to which they may be subject, for or on account of any or all suits or damages of any character whatsoever resulting from injuries or damages sustained by any person or persons or property by virtue of performance of this Agreement, arising or resulting in whole or in part from the fault, negligence, wrongful act, or wrongful omission of Monroe County, any of its subcontractors, employees, and agents.

## **VIII. DURATION OF AGREEMENT, AMENDMENTS, OR TERMINATION**

- A. This Agreement will become effective on June 11, 2007, or after execution by both Parties, whichever is later, and will expire on September 30, 2010.
- B. The Agreement may be amended within its scope or renewed prior to the expiration date, through the written mutual consent of the Parties.
- C. The Agreement may be terminated by (1) written mutual consent; (2) one Party's written notice six months in advance; or (3) completion of the Terms and Conditions of the Agreement.

D. The Parties will review this Agreement at least once every three years to determine whether it should be revised or terminated.

**IX. OTHER PROVISIONS**

If the Parties disagree over how to interpret this Agreement, they shall present their differences to each other in writing, and they shall discuss them. If the Parties fail to resolve their differences within thirty (30) days, they may refer the matter to higher level of authority within their respective organizations.

**X. APPROVALS**

ACCEPTED AND APPROVED FOR:

ACCEPTED AND APPROVED FOR:

U. S. DEPARTMENT OF COMMERCE  
NATIONAL OCEANIC ATMOSPHERIC  
ADMINISTRATION  
NATIONAL OCEAN SERVICE  
NATIONAL MARINE SANCTUARY  
PROGRAM

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

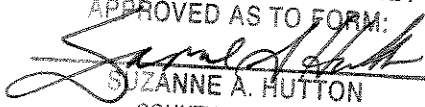
BY: \_\_\_\_\_  
Daniel J. Basta, Director

BY: \_\_\_\_\_  
Mayor Mario DiGennaro

(Seal)

ATTEST: DANNY L. KOLHAGE, CLERK

By: \_\_\_\_\_  
Deputy Clerk

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:  
  
SUZANNE A. HUTTON  
COUNTY ATTORNEY  
Date 8/27/07