

AGREEMENT

AGREEMENT BETWEEN THE STATE OF FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY, THE COUNTY OF MONROE, CITY OF KEY WEST, ISLAMORADA, VILLAGE OF ISLANDS, CITY OF LAYTON, CITY OF KEY COLONY BEACH AND THE CITY OF MARATHON FOR THE TRANSFER AND DISTRIBUTION OF BPAS UNITS FROM THE CITY OF KEY WEST TO MONROE COUNTY AND THE TRANSFER AND DISTRIBUTION OF ROGO ALLOCATIONS FROM MONROE COUNTY TO ISLAMORADA, VILLAGE OF ISLANDS, CITY OF LAYTON, CITY OF KEY COLONY BEACH AND THE CITY OF MARATHON, PURSUANT TO SECTION 380.032(3), FLORIDA STATUTES.

THIS AGREEMENT is entered into by and between the State of Florida's Department of Economic Opportunity (the "DEO"), Monroe County, the City of Key West, Islamorada, Village of Islands, the City of Layton, the City of Key Colony Beach and the City of Marathon (the " Local Governments") (all collectively known as the "Parties") for the purpose of Complying with Rules 28-18, 28-19, and 28-20, of the Florida Administrative Code, and as provided for in Section 380.032(3), Florida Statutes.

RECITALS:

WHEREAS, the Local Governments are designated as Areas of Critical State Concern (the Florida Keys ACSC and the City of Key West ACSC) pursuant to Sections 380.05 and 380.0552, Florida Statutes, and the Florida Administrative Code Chapter 28-36, hereinafter referred to as the "Keys ACSCs", and

WHEREAS, the DEO is the state land planning agency having authority and duty to exercise general supervision of the administration and enforcement of Chapter 380, Florida Statutes, the Environmental Land and Water Management Act (the "Act"), which includes provisions relating to areas of critical state concern; and

WHEREAS, the DEO is authorized by Section 380.032(3), Florida Statutes to contract with any landowner, developer or other governmental agency as may be necessary to effectuate the provisions and purposes of the Act, or any related rule; and

WHEREAS, the City of Key West (“Key West”) adopted its Comprehensive Land Use Plan on March 5, 2013, which provides for the allocation of certain residential building rights known as Building Permit Allocation System units (“BPAS”), under which Key West awards 91 units on an annual basis over the current planning horizon consisting of the years 2013 through 2023, and

WHEREAS, Key West has a certain number of unallocated BPAS units accumulated in years one (1) through four (4) which the City desires to allocate to an Affordable Housing/Workforce Housing project (“The Quarry”) located on Big Coppitt Key, which is beyond the jurisdictional boundary limits of Key West, and

WHEREAS, the provision of affordable housing in the lower keys coupled with the distribution of ROGO units to the remaining municipalities will benefit all members of the ACSCs, and

WHEREAS, the Key West Comprehensive Land Use plan does not currently provide for an allocation beyond its jurisdictional boundary, nor provide for a distribution of its un-allocated units other than “Recovered Units” as defined in Section 108-997(e) of the Land Development Regulations of Key West, and

WHEREAS, Key West has approved a Comprehensive Land Use Plan Amendment which has been rendered to the DEO for review and comment pursuant to the State Coordinated Review Guidelines of Chapter 163, Florida Statutes, which would allow the transfer of 104 BPAS units to Monroe County for the Workforce Housing/Affordable Housing Project known as “The Quarry,” located on Big Coppitt Land Use Area 1 at approximate Mile Marker 9 (a copy of the proposed Comprehensive Land Use Plan Amendment is attached hereto and incorporated by reference); and

WHEREAS, the Parties, have met to discuss the reallocation and a method of BPAS/ROGO re-distributions between Monroe County and the remaining municipalities located in the ACSCs in an effort to fulfill Administration Commission’s actions, and have agreed to present this agreement to their Commission/Council for execution of this Agreement.

NOW THEREFORE, the parties set forth the following terms and conditions of this Agreement.

1. In 2012, pursuant to Administration Commission action, 3550 building permit allocation units were awarded for a period of 10 years (355 per year) from the State to the local governments as follows:

Local Government (the Parties)	Annual Allocation
Monroe County	197 units
Marathon	30 units
Islamorada	28 units
Key Colony Beach	6 units
Layton	3 units
Key West	91 units

2. Upon the execution of this Agreement by all Parties, Key West shall approve and adopt the Comprehensive Land Use Plan of Key West amendment allowing the allocation of 104 previously unallocated BPAS units to Monroe County for the "The Quarry" project on Big Coppitt Key for the construction of workforce housing/affordable housing.
3. Upon effectiveness of the Comprehensive Land Use Plan of Key West and the execution of this Agreement by all Parties, the City of Key West shall transfer 104 previously unallocated BPAS units to Monroe County for "The Quarry" project on Big Coppitt Key for the construction of workforce housing/affordable housing.
4. Monroe County agrees to provide permanent ROGO units to the remaining municipalities, based upon their percentages of vacant land, as determined in the revocable 2012 Hurricane Evacuation Clearance Time Memorandum of Understanding, as follows:

Local Government (the Parties)	Number of ROGOs due to the Parties
Marathon	11.83 units
Islamorada	10.25 units
Key Colony Beach	0.85 units
Layton	0.12 units
<i>TOTAL</i>	<i>23.05 units</i>

All ROGO units transferred pursuant to this section shall be restricted to non-transient use by the receiving municipality. The receiving municipality shall determine whether or not the units are to be issued for market rate or affordable housing.

5. Marathon, Islamorada, Key Colony Beach and Layton shall determine if the ROGO units received shall be utilized as market rate dwelling units or affordable housing dwelling units and shall work with DEO to amend their comprehensive plan in order to utilize the transferred allocations.
6. In the event building permits are not issued for "the Quarry" project on or before June 30, 2019, the BPAS units awarded by Key West will remain with Monroe County as affordable ROGO units to be awarded by Monroe County for Affordable/Workforce Housing residential uses in Monroe County south of Mile Marker 26.
7. **Entirety of Agreement.** The parties agree that this Section 380.032 Agreement contains the entire and exclusive understanding and agreement among the parties and may not be modified in any manner except by an instrument in writing and duly signed by the DEO and the Parties (Local Governments).
8. **Duplicate Originals.** This Section 380.032 Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which need be produced for any purpose.

9. **Enforcement.** In the event of a breach of this Section 380.032 Agreement, or failure to comply with any condition of it, DEO may enforce this Agreement pursuant to 380.11(2)(a) and (d), Florida Statutes, or as otherwise provided by law. In the event of a breach of this Section 380.032 Agreement, or failure to comply with any condition of it, the Local Governments may enforce this Agreement, as permitted by law, in the appropriate state court in and for Monroe County, Florida.
10. **Scope of Authority.** This Section 380.032 Agreement affects the rights and obligations of the parties as provided herein. This Section 380.032 Agreement is not intended to influence or determine the authority or decisions of any other state or local government or agency in the issuance of any other permits or approvals that might be required by state law or local ordinance for any development authorized by this Agreement except as provided herein.
11. **Effective Date.** This Agreement is effective upon execution by all parties and ends upon the termination of the Keys ACSCs designation.
12. **Notification.** Notifications under this Agreement shall be made by hand delivery, U.S. certified mail, return receipt requested, or an express mail service that provides proof of delivery. Notification by a Party to the DEO shall be directed to the Areas of Critical State Concern Administrator, Department of Economic Opportunity, 107 East Madison Street, Tallahassee, FL 32399-4128. Notification to the other parties to this Agreement shall be directed as follows:
 1. **Monroe County.** Mayor, Monroe County, 2798 Overseas Highway, Marathon, FL 33050 with a copy to the Planning and Environmental Resources Director, 2798 Overseas Highway, Marathon, FL 33050
 2. **City of Key West.** Mayor, City of Key West, 1300 White Street, PO Box 1409, Key West, FL 33041-1409, with a copy to the Planning Director, 1300 White Street, PO Box 1409, Key West, FL 33041-1409
 3. **City of Marathon.** Mayor, City of Marathon, 9805 Overseas Highway, Marathon, FL 33050, with a copy to the Planning Director, 9805 Overseas Highway, Marathon, FL 33050
 4. **City of Layton.** Mayor, City of Layton, 68260 Overseas Highway, PO Box 778, Long Key, FL 33001-0141
 5. **City of Key Colony Beach.** Mayor, City of Key Colony Beach, PO Box 10141, Key Colony Beach, FL 33051-0141, with a copy to the City Clerk at PO Box 510141, Key Colony Beach, FL 33051-0141

6. Islamorada, City of Islands. Mayor, Islamorada, Village of Islands,
86800 Overseas Highway, Islamorada, FL 33036,
with a copy to the Director of Planning and Development Services, 86800 Overseas Highway,
Islamorada, FL 33036

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates
below written.

SIGNATURES ON FOLLOWING PAGES

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below written.

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

Date

George Neugent, Mayor

ATTEST:

_____, for County Clerk

Approved as to form and legal sufficiency:

_____. for County Attorney

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below written.

CITY OF KEY WEST, FLORIDA

Date

Craig Cates, Mayor

ATTEST:

Cheryl Smith, City Clerk

Approved as to form and legal sufficiency:

_____ for City Attorney

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below written.

CITY OF MARATHON, FLORIDA

Date

Dr. Dan Zieg, Mayor

ATTEST:

Diane Clavier, City Clerk

Approved as to form and legal sufficiency:

for City Attorney

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below written.

CITY OF LAYTON, FLORIDA

Date

Norman S. Anderson, Mayor

ATTEST:

Mimi M. Young, City Clerk

Approved as to form and legal sufficiency:

for City Attorney

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below written.

CITY OF KEY COLONY BEACH, FLORIDA

Date

John Deneale, Mayor

ATTEST:

Kathryn McCullough, City Clerk

Approved as to form and legal sufficiency:

for City Attorney

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 1 OF THE COMPREHENSIVE PLAN ENTITLED "FUTURE LAND USE ELEMENT" BY AMENDING POLICY 1-1.16.1, ENTITLED "MAINTAIN A BUILDING PERMIT ALLOCATION ORDINANCE," AMENDING POLICY 1-1.16.2, ENTITLED "BUILDING PERMIT ALLOCATION ORDINANCE AND AFFORDABLE HOUSING," AMENDING POLICY 1-1.16.3, ENTITLED "PERMIT ALLOCATION SYSTEM RATIO BY STRUCTURE TYPE," AND BY ADDING POLICY 1-1.16.5 ENTITLED "TRANSFER OF BUILDING PERMIT ALLOCATIONS;" BY AMENDING CHAPTER 2 ENTITLED "TRANSPORTATION ELEMENT," BY AMENDING POLICY 2.16.4 TO PROPERLY REFLECT AS POLICY 2-1.6.4, AND REVISING THE REFERENCE TO THE NUMBER OF ALLOCATED UNITS; AMENDING CHAPTER 3 OF THE COMPREHENSIVE PLAN ENTITLED "HOUSING," BY AMENDING POLICY 3-1.1.4, ENTITLED "BUILDING PERMIT ALLOCATION SYSTEM;" PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission has passed numerous resolutions aimed at increasing the availability of affordable and workforce housing in the City of Key West; and

WHEREAS, development of any housing is strictly controlled by the State of Florida, which has designated the City of Key West as a State Area of Critical Concern; and

WHEREAS, this state regulation has resulted in a specified number of new building permits that may be granted each year under what is known as the Building Permit Allocation System (BPAS); and

WHEREAS, based on recommendations by the Department of Economic Opportunity, changes to the City's Comprehensive Plan were requested; and

WHEREAS, the City Commission finds that it is in the best interest of the City that there exists a method to transfer Building Permit Allocations not utilized within the City to Lower Keys areas of Monroe County, for beneficial use purposes and/or affordable housing that will directly benefit the City of Key West as determined by the City Commission; and

WHEREAS, Chapter 1, entitled "Future Land Use Element" and Chapter 3, entitled "Housing" are to be amended through ordinance in response to the Department of Economic Opportunity; and

WHEREAS, the Planning Board ("Board") held a noticed public hearing on May 18, 2017, where based on the consideration of recommendations by the city planner, city attorney, building official and other information, the Board recommended approval of the proposed amendments set forth in Planning Board Resolution 2017-21; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST,
FLORIDA;

Section 1: That Chapter 1 of the Comprehensive Plan is hereby amended as follows*:

Policy 1-1.16.1: Maintain a Building Permit Allocation Ordinance.

The City of Key West shall maintain and enforce its building permit allocation ordinance as follows: Between 85 and 100 units will be reserved as beneficial use permits to address property rights associated with existing vacant lots of record. The permit allocation system shall limit the number of permits issued for new permanent and transient development to 910 units during the period from July 2013 to July 2023. The annual allocation will be ninety-one units (91) single-family units or an equivalent combination of residential and transient types based on the equivalency factors established in Policy 1-1.16.3. The annual allocation limitation shall not apply to affordable housing allocations. In order to address the ongoing affordable housing shortage and affordable housing deed restrictions expected to expire, during the first three years (July 2013 - July 2016) 60 percent of the units

*(Coding: Added language is underlined; deleted language is ~~struck through~~ at first reading. Added language is double underlined and ~~double struck through~~ at second reading.)

allocated shall be affordable. Between years four (4) and 10 (2016 - 2023), a minimum of 50% shall be affordable. ~~Between years four (4) and 10, 80 percent of remaining (non-affordability restricted) units shall be permanent, and 20 percent may be transient. Between years four (4) and 10, no more than 10 percent may be transient.~~ During Year One (1) (July 2013 - 2014), 48 of the affordable units to be allocated will be dedicated for use at the Peary Court Housing complex property, being transferred from military to private sector housing.

~~The annual building permit allocation period will begin on July 1 of each year. Applications will be accepted between July 1 and September 30. Applications will be reviewed and processed by City staff and the appropriate boards between October 1 and April 1. Applicants will be allowed to amend their application to address review comments during that timeframe. Final award will occur on or around July 1 of the year following receipt of the application.~~ Staff may consider the following criteria in ranking applications: 1) building one to two feet higher than the base flood elevation; 2) exceeding the minimum required percentage of affordable housing; 3) compliance with green building standards; 4) compliance with adopted urban design standards, and; 5) a minimum contribution to a sustainability and open space recreation fund.

Building permits shall be obtained within two years of the development approval date. If a building permit is not obtained

within that timeframe the allocated units will revert to the City for reallocation ~~during the next allocation season. If the recovered units are not allocated within one year they will revert to the County for beneficial use purposes and/or affordable housing.~~

Policy 1-1.16.2: Building Permit Allocation Ordinance and Affordable Housing.

The City permit allocation system shall require that sixty percent (60%) of all new permanent residential units be affordable units based on definitions and criteria contained in Policy 3-1.1.7 and 3-1.1.8 between July 1, 2013 and July 1, 2016, and that a minimum of fifty (50%) be affordable between July 1, 2016 and July 1, 2023.

Policy 1-1.16.3: Permit Allocation System Ratios by Structure Type.

The permit allocation system shall be sensitive to differing trip generating characteristics of permanent and transient residential units as well as single-family units, accessory apartment units and multi-family residential units. ~~The annual allocation shall be ninety-one units (91) single-family units based on the Transportation Interface for Modeling Evacuations (TIME) Model.~~ The permit allocation system shall incorporate a

series of equivalent single-family unit (ESFU) values in applying the ~~annual~~ permit allocation threshold established in the building permit allocation ordinance as hereinafter explained.

Table 1-1.16.3

Residential Structure Type	Equivalent Single-Family Unit Value (ESFU) ⁽¹⁾
Single Family	1.00 ^(a)
Accessory Apt./SRO	.78 ^(b)
Multi Family	1.00 ^(c)
Transient Unit	.86 ^(d)

(1) The equivalent single family unit values are predicated on the ratio of the average number of vehicles per unit based on the 2010 US Census for the respective residential structure types divided by the vehicles per single family units (i.e., 1.28 vehicles per unit). The computations are as follows:

(a) Single Family $1.28/1.28 = 1.00$

(b) Accessory Apt. or Single Room Occupancy (SRO): $1.00/1.28 = .78$. The former Fl. Department of Community Affairs (now Department of Economic Opportunity) approved the estimated average vehicles per accessory unit or single room occupancy (SRO) as one (1) vehicle per accessory unit or SRO.

(c) Multi-Family: $1.28/1.28 = 1.00$

(d) Transient Unit: $1.10/1.28 = .86$ (based on the Hurricane Evacuation Study 1.10 vehicles per transient unit in Monroe County)

* * * * *

Policy 1-1.16.5: Transfer of Building Permit Allocations

By resolution the City of Key West may transfer building permit allocations to areas beyond the City limits for the development of Affordable Workforce Housing in close proximity to the City of Key West such that the anticipated residents could reasonably be expected to contribute to the workforce of the City of Key West.

Upon adoption of this Comprehensive Plan Amendment the City of Key West shall transfer 104 previously unallocated units to the Affordable Housing Development described as "THE QUARRY" located in the Big Coppitt Mixed Use Area 1, at approximate mile marker 9, Monroe County Florida. This shall be done pursuant to a Chapter 380 or similar Agreement between the City of Key West, Monroe County, the Florida Department of Economic Opportunity and other affected local government jurisdictions with the concurrence of Quarry Partners LLC, the owner of the property. The Agreement shall require, and Quarry Partners LLC shall provide, recorded Declarations of Affordable Housing Restrictions for these units acceptable to the City of Key West and Monroe County prior to the issuance of certificates of occupancy by Monroe County. In the event building permits to construct "The Quarry" affordable housing project are not issued on or before June 30, 2019 these

units shall be released to Monroe County and shall only be re-allocated for Affordable Housing purposes south of Mile Marker 26 on U.S. 1.

Section 2: That Chapter 2 of the Comprehensive Plan is hereby amended as follows

* * * * *

Policy 2-16.4 2-1.6.4 Transportation Concurrency Exception Area.

~~As a result of the State mandated hurricane evacuation modeling workshops and amendments to the Comprehensive Plan, the City will be allocated 91 new PBAS units annually starting in 2013.~~

Between years 2013 and 2023 The City of Key West shall allocate a total of 910 BPAS units. Due to the City's exception from transportation concurrency, the development or redevelopment of these units shall not be subject to roadway concurrency requirements.

* * * * *

Section 3: That Chapter 3 of the Comprehensive Plan is hereby amended as follows:

* * * * *

Policy 3-1.1.4: Building Permit Allocation System.

The City of Key West shall ~~annually~~ allocate ~~91 building permits per year between 2013 and 2023,~~ for a total of 910 permits between years 2013 and 2023. In order to address the ongoing affordable housing shortage and affordable housing deed restrictions expected to expire, during the first three years (July 2013 - July 2016) 60 percent of the units allocated shall be affordable. Between years four (4) and 10 (2016 - 2023), a minimum of 50% shall be affordable. ~~Between years four (4) and 10, 80 percent of remaining (non-affordability restricted) units shall be permanent, and 20 percent may be transient.~~ Between years four (4) and (10), no more than 10 percent may be transient. During Year One (1) (July 2013 - 2014), 48 of the affordable units to be allocated will be in the transfer of Peary Court from military to private sector housing, which leaves 43 units to be allocated from the first allocation pool.

* * * * *

Section 4: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 5: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 6: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and Clerk of the Commission and approval by the Florida Department of Economic Opportunity, pursuant to Chapter 380, Florida Statutes.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2017.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2017.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2017.

Filed with the Clerk _____, 2017.

Mayor Craig Cates	_____
Commissioner Sam Kaufman	_____
Commissioner Clayton Lopez	_____
Commissioner Richard Payne	_____
Commissioner Margaret Romero	_____
Commissioner Billy Wardlow	_____
Commissioner Jimmy Weekley	_____

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below written.

FLORIDA

ISLAMORADA, VILLAGE OF ISLANDS,

Date

Jim Mooney, Mayor

ATTEST:

Kelly Toth, Village Clerk

Approved as to form and legal sufficiency:

Roget Bryan, Village Attorney

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below written.

STATE OF FLORIDA, DEPARTMENT OF
ECONOMIC OPPORTUNITY,
DIVISION OF COMMUNITY DEVELOPMENT,

Date

Julie Dennis
Director

ATTEST:

Print Name:

Approved as to form and legal sufficiency:

Print Name:

Title:

Date: