

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, SUPPLEMENTING ORDINANCE NO. 03-15; AUTHORIZING THE ISSUANCE OF A SERIES OF SEWER SYSTEM REVENUE BONDS FOR THE PURPOSE OF FINANCING SEWER PROJECTS ORIGINALLY FUNDED THROUGH THE STATE OF FLORIDA DEPARTMENT OF EMERGENCY MANAGEMENT AND PAYING COSTS OF ISSUANCE RELATED THERETO; PROVIDING FOR THE PAYMENT OF SUCH SEWER SYSTEM REVENUE BONDS FROM NET REVENUES OF THE SEWER SYSTEM OF THE CITY; AUTHORIZING AN AMENDMENT TO THE RESERVE ACCOUNT REQUIREMENT UPON CONSENT OF A MAJORITY OF BONDHOLDERS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA:

SECTION 1. AUTHORITY FOR THIS ORDINANCE. This Supplemental Ordinance is enacted pursuant to chapter 166, part II, Florida Statutes, and other applicable provisions of law.

SECTION 2. FINDINGS. It is hereby ascertained, determined and declared that:

(A) On September 21, 1999, the City Commission, as the governing body of the City of Key West, Florida (the "Issuer"), duly adopted Resolution No. 99-346 (the "1999 Resolution"), which authorized the issuance of the Issuer's Sewer System Revenue Bonds in one or more series in an amount not to exceed \$23,000,000 to finance the cost of design, permitting, acquisition, construction, and reconstruction of improvements to the Sewer System.

(B) The issuance of said bonds was subject to a bond referendum held on November 2, 1999, wherein the qualified electors of the Issuer approved the issuance of said bonds (the "1999 Referendum").

(C) Following Hurricane Irene, on February 9, 2000, the Issuer received a grant through the State of Florida Department of Emergency Management ("FDEM") Public Assistance FEMA Funds (FEMA Disaster No. 1306-DE-FL) to finance certain capital improvements to the Sewer System (the "FEMA Grant"). The Issuer completed said capital improvements in November, 2002.

(D) The Issuer underwent an audit of the FEMA Grant. On January 26, 2004, the Issuer received official notification de-obligating the FEMA Grant on the grounds the damage to the Sewer System (as defined in the Original Ordinance) was preexisting and not a result of Hurricane Irene.

(E) On September 28, 2011, the Issuer received a demand letter from FDEM

requesting reimbursement of \$6,268,629.46 of the FEMA Grant.

(F) The Issuer deems it necessary and in the best interests of the Issuer and the residents thereof to authorize the issuance of sewer system revenue bonds for the purpose of financing sewer projects originally funded through FDEM.

(G) Ordinance No. 03-13 of the Issuer, duly enacted on June 17, 2003, as supplemented and amended (the "Original Ordinance"), provides for the issuance of Additional Parity Obligations (as defined in the Original Ordinance) upon compliance with certain requirements therein.

(H) The principal of and interest on the sewer system revenue bonds shall be payable solely from the Net Revenues (as defined in the Original Ordinance) of the Sewer System.

SECTION 3. AUTHORIZATION OF BONDS. The issuance by the Issuer of not exceeding \$6,400,000 Sewer System Revenue Bonds (the "2012 Bonds"), for the purpose and secured as specified above; to be dated, to bear interest at a rate or rates not exceeding the maximum legal rate per annum, to be payable, to mature, to be subject to redemption and to have such other characteristics as shall be provided by subsequent resolution of the City Commission prior to their delivery; is hereby authorized. The City Commission may adopt a specific bond resolution (including any resolutions supplemental to the bond resolution), supplemental to this ordinance, which sets forth the fiscal details of the 2012 Bonds and other covenants and provisions necessary for the marketing, sale and issuance of the 2012 Bonds.

SECTION 4. AMENDMENT TO TAKE EFFECT UPON CONSENT OF THE REGISTERED OWNERS OF NOT LESS THAN A MAJORITY OF THE OUTSTANDING BONDS. The following amendment to the Original Ordinance will take effect at such time as the written consent of the Registered Owners of fifty-one percent or more in principal amount of the Bonds so affected and then outstanding is obtained. BY ACCEPTANCE OF THE 2012 BONDS, EACH REGISTERED OWNER THEREOF IS DEEMED TO HAVE CONSENTED TO THE PROSPECTIVE AMENDMENT CONTAINED IN THIS SECTION. Section 17(B)(3) of the Original Ordinance is hereby amended by adding a new paragraph to the end as follows:

The Issuer may also establish a separate subaccount in the Reserve Account for any series of Bonds and provide a pledge of such subaccount to the payment of such series of Bonds apart from the pledge provided herein. To the extent a series of Bonds is secured separately by a subaccount of the Reserve Account, the Registered Owners of such Bonds shall not be secured by any other moneys in the Reserve Account. Moneys in a separate subaccount of the Reserve Account shall be maintained at a level applicable to such series of Bonds secured by the subaccount as designated by the Supplemental Ordinance authorizing such series of Bonds as the Issuer deems appropriate, provided such level may not exceed the Reserve Account Requirement for such series of Bonds. Moneys deposited into the Reserve Account to replenish withdrawals therefrom shall be

deposited in the Reserve Account and the separate subaccounts in the Reserve Account on a pro rata basis.

Further, a series of Bonds may be issued without being secured by the Reserve Account or any subaccount therein to the extent so provided by a Supplemental Ordinance.

SECTION 5. REPEAL OF INCONSISTENT PROVISIONS. All ordinances, resolutions or parts thereof in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 6. ORIGINAL ORDINANCE TO CONTINUE IN FORCE. The Original Ordinance and all the terms and provisions thereof, are and shall remain in full force and effect except as may otherwise amended and supplemented hereby.

SECTION 7. EFFECTIVE DATE. This ordinance shall take effect immediately upon its final passage and adoption.

Read and passed on first reading at a regular meeting of the City Commission held on this 15th day of November, 2011.

Read and passed on final reading at a regular meeting held this 3rd day of January, 2012.

Authenticated by the presiding officer and Clerk of the Commission on the 4th day of January, 2012.

Filed with the Clerk on January 4, 2012.

Craig Cates, Mayor

ATTEST:

Cheri Smith, City Clerk