

RESOLUTION NO. 13-067

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "STATE WASTEWATER FUNDING DISTRIBUTION AGREEMENT FOR YEAR TWO OF FOUR," AN INTERLOCAL AGREEMENT BETWEEN THE CITY AND THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS, THE CITY OF KEY COLONY BEACH, THE CITY OF MARATHON, THE FLORIDA KEYS AQUEDUCT AUTHORITY, KEY LARGO WASTEWATER TREATMENT DISTRICT AND ISLAMORADA CITY OF ISLANDS; AUTHORIZING THE MAYOR TO EXECUTE NECESSARY DOCUMENTS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in 2008 the State Legislature approved a modification to Section 215.619, Florida Statutes, authorizing the issuance of \$200 million of Everglades restoration bonds for the purpose of implementing the Florida Keys Area of Critical State Concern protection program under sections 380.05 and 380.0552, Florida Statutes; and

WHEREAS, the \$200 million generated by the issuance of Everglades restoration bonds is administered by the Florida Communities Trust (the "Mayfield Grant Funds"); and

WHEREAS, the parties anticipate the State will disburse the second of "Year Two of Four" Mayfield Grant Funds in the amount of \$50 million dollars in Fiscal Year 2013; and

WHEREAS, the attached interlocal agreement details and specifies the Year Two of Four distribution of Mayfield Grant Funds that the parties have determined to be, and have agreed would be fair and equitable to all Parties;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached "State Wastewater Funding Distribution Agreement for Year Two of Four" interlocal agreement between the City and Monroe County, the City of Key Colony Beach, the City of Marathon, the Florida Keys Aqueduct Authority, Key Largo Wastewater Treatment District and Islamorada Village of Islands is hereby approved.


Section 2: That the Mayor is authorized to execute necessary documents related to this Agreement and the acceptance of funding.

Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.


Passed and adopted by the City Commission at a meeting held this 5 day of March, 2013.

Authenticated by the presiding officer and Clerk of the Commission on March 6, 2013.

Filed with the Clerk March 6, 2013.


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

STATE WASTEWATER FUNDING
DISTRIBUTION AGREEMENT
FOR "YEAR TWO OF FOUR"

THIS AGREEMENT ("Agreement") made and entered into this 20th day of February, 2013, by and between the following Parties for the distribution of the second of four \$50 million yearly allocations of State funding from the Save Our Everglades Trust Fund.

PARTIES:

CITY OF KEY COLONY BEACH (hereinafter referred to as "Key Colony Beach"), a municipal corporation of the State of Florida, whose address is P.O. Box 510141, Key Colony Beach, FL 33051-0141; and

CITY OF KEY WEST (hereinafter referred to as "Key West"), a municipal corporation of the State of Florida, whose address is 3132 Flagler Avenue, Key West, FL 33040, and

CITY OF MARATHON (hereinafter referred to as "Marathon"), a municipal corporation of the State of Florida, whose address is 9805 Overseas Highway, Marathon, FL 33050; and

FLORIDA KEYS AQUEDUCT AUTHORITY (hereinafter referred to as "FKAA"), an independent special district established under the Laws of Florida, whose address is 1100 Kennedy Drive, Key West, FL 33040; and

KEY LARGO WASTEWATER TREATMENT DISTRICT (hereinafter referred to as "KLWTD"), an independent special district established under the Laws of Florida, whose address is P.O. Box 491, Key Largo, FL 33037; and

ISLAMORADA, VILLAGE OF ISLANDS (hereinafter referred to as "Islamorada"), a municipal corporation of the State of Florida, whose address is 86800 Overseas Highway, Islamorada, FL 33036; and

MONROE COUNTY (hereinafter referred to as "County"), a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Suite 205, Key West, FL 33040; and

WITNESSETH:

WHEREAS, Monroe County contains a National Marine Sanctuary (Florida Keys National Marine Sanctuary), several Federal and State Parks, and State Aquatic Preserves (Coupon Bight Aquatic Preserve and Lignumvitae Key Aquatic Preserve); and

WHEREAS, Monroe County and Key West were determined by the State Legislature to be areas containing, or having a significant impact upon, environmental or natural resources of regional or statewide importance that is so environmentally sensitive and fragile, that Monroe

County and Key West were designated by the State as Areas of Critical State Concern pursuant to Sections 380.05, Florida Statutes; and

WHEREAS, the Florida Department of Environmental Protection has determined that excessive nutrients are a primary contributor to water quality degradation in the Florida Keys, leading to depressed oxygen levels, increased algae and an imbalance in the number and diversity of native aquatic life, and

WHEREAS, in 1999, the State Legislature established binding treatment and disposal requirements for all wastewater management facilities in Monroe County; and

WHEREAS, the County, FCAA, Key Colony Beach, Key West, KLWTD, Islamorada, and Marathon (collectively, the "Parties"), are all engaged in efforts to provide centralized wastewater treatment plants and collection systems throughout the Florida Keys and to upgrade and improve existing wastewater treatment systems to protect the fragile ecosystem of the Florida Keys and to comply with the requirements of Chapter 99-395; and

WHEREAS, the responsibility for financing the construction or upgrade of wastewater management facilities in the Florida Keys resides with the Parties to this Agreement and the business owners, homeowners, and property owners in the areas served by the Parties; and

WHEREAS, in 2008 the State Legislature approved a modification to Section 215.619, Florida Statutes, authorizing the issuance of \$200 million of Everglades restoration bonds for the purpose of implementing the Florida Keys Area of Critical State Concern protection program under Sections 380.05 and 380.0552, Florida Statutes; and

WHEREAS, the Florida Keys Area of Critical State Concern protection program calls for the restoration and conservation of natural systems through, among other things, the implementation of state-mandated wastewater management projects identified in the Keys Wastewater Plan, dated November 2007, and submitted to the Florida House of Representatives on December 4, 2007; and

WHEREAS, the \$200 million generated by the issuance of Everglades restoration bonds is administered by the Florida Communities Trust (the "Mayfield Grant Funds"); and

WHEREAS, in March of 2012, the State Legislature appropriated and the Governor subsequently approved, the first of four \$50 million yearly allocations of the \$200 million in Mayfield Grant Funds; and

WHEREAS, the first of four \$50 million yearly allocations of Mayfield Grant Funds was disbursed with the stipulation that 60% of the said \$50 million be distributed to the County for the Cudjoe Regional Wastewater Project and that 40% be distributed to Islamorada; and

WHEREAS, the Parties anticipate the State will disburse the second or Year Two of Four distribution of Mayfield Grant Funds -in Fiscal Year 2013; and

WHEREAS, this Agreement details and specifies the Year Two of Four distribution of Mayfield Grant Funds that the Parties have determined to be, and have agreed would be fair and equitable to all Parties.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, and other valuable consideration, the sufficiency and receipt of which is acknowledged by all of the Parties, the Parties hereby agree as follows:

1. **DEFINITIONS** - As used herein, the following terms shall have the following meanings, unless the context clearly otherwise requires:

Agreement shall mean this Interlocal Agreement.

Authorized Officer shall mean the Mayors of the County, Key Colony Beach, Key West, Islamorada, and Marathon, and the Chairperson of the Boards of the FCAA and the KLWTD.

Fiscal Year shall mean the State of Florida fiscal year, i.e., the period commencing on July 1 of each year and continuing through the next succeeding June 30, or such other period as may be prescribed by law.

Fund, Funds or Funding shall mean the Mayfield Grant Fund, Mayfield Grant Funding, or State Wastewater Funding.

Mayfield Grant Fund or State Wastewater Fund shall mean the \$200 million authorized by the State Legislature pursuant to Section 215.619, Florida Statutes and distributed by the State to the Parties pursuant to Section 215.619(1)(a)2, Florida Statutes.

Party or Parties shall mean the signatories to this Agreement, individually or collectively (to wit: the County, FCAA, Key Colony Beach, Key West, KLWTD, Islamorada, and Marathon).

State shall mean the State of Florida.

Wastewater shall mean sewage or effluent of any nature or originating from any source.

Year Two of Four shall mean the second of four \$50 million yearly allocations of *Mayfield Grant Funds*.

2. **RECITALS.**

The recitals set forth above are true and correct and are hereby incorporated in this Agreement.

3. EFFECTIVE DATE AND TERM.

- (a) This Agreement shall take effect on the date it is fully executed by the Authorized Officer of all of the Parties.
- (b) This Agreement shall continue in full force and effect until:
 - 1) All of the anticipated Year Two of Four Mayfield Grant Funding has been distributed to the Parties in accordance with this Agreement and there are no additional Year Two of Four Mayfield Grant Funds available to be distributed; or
 - 2) This Agreement is terminated by the mutual consent of all of the Parties, in writing.

4. DISTRIBUTION OF FUNDS.

- (a) If the State appropriates the anticipated Year Two of Four \$50 million allocation of Mayfield Grant Funds, all such Funding so received shall be distributed to the Parties in accordance with and pursuant to the distribution schedule set forth below.

**YEAR TWO of FOUR
STATE WASTEWATER FUNDING SCHEDULE**

Wastewater Project (Recipient)	Amount
County	\$0
FKAA	\$5,000,000
Key Colony Beach	\$1,000,000
Key West	\$4,000,000
KLWTD	\$20,000,000
Islamorada	\$0
Marathon	\$20,000,000
TOTAL	\$50,000,000

- (b) In the event the State appropriates less than the anticipated \$50 million Year Two of Four allocation of Mayfield Grant Funds, all such Funding received shall be distributed to the Parties on a *pro rata* basis pursuant to the distribution schedule as set forth in paragraph 4. (a) above.
- (c) In the event the State appropriates less than the anticipated \$50 million Year Two of Four allocation Annual Appropriation, the State subsequent appropriation of the Year Three, Four, Five, etc., of the Mayfield Grant shall continue to be distributed on a prorate basis predicated on the Paragraph 4a distribution schedule until such time as all parties have received the allocation amount specified in Paragraph 4a.

5. UTILIZATION OF FUNDING.

- (a) Any Mayfield Grant Funds received by the Parties from the State shall be utilized by the Parties to finance or refinance the cost of constructing sewage collection, treatment, and disposal facilities; or any other lawful purpose in accordance with the laws, statutes, rules, and regulations promulgated by the State with reference to the expenditure of any such Funds.

6. NO GUARANTEED DISTRIBUTION AMOUNT.

The amount of Funding to be received by each Party pursuant to this Agreement is dependent upon (a) the amount of Funding actually received from the State, (b) the restrictions and requirements set forth in Section 215.619, Florida Statutes, as well as the bonding, appropriations, and distribution processes of the State, and (c) Paragraph 4 of this Agreement.

7. JOINT COOPERATION

The Parties agree to cooperate and to use their best efforts and their joint resources to advocate for the appropriation and distribution of the \$50 million Year Two of Four allocation of Mayfield Grant Funds to the Parties. Toward that end:

- (a) The parties agree to utilize their state lobbyist(s) (if applicable) to request the State Legislature and the Governor to approve and appropriate the Year Two of Four allocation of Mayfield Grant Funds to the Parties pursuant to Paragraph 4a and in accordance with this Agreement.
- (b) The parties agree to coordinate their lobbying efforts and to work in good faith with each other. In exercising "good faith", a party shall not lobby against the interests of the other parties as it pertains to Year 2 of 4 allocation of Mayfield Grants. Each party shall make reasonable efforts to keep the other parties advised of their own lobbying activities as it relates to State wastewater funding.
- (c) Each Party shall keep the other Parties informed of all meetings, trips, telephone calls, and developments in a timely fashion. Each Party shall provide such information with enough notice to enable the other Parties to participate in and/or attend such meetings, trips, or telephone calls, if appropriate.

8. RECORDS – ACCESS AND AUDITS.

All Parties shall maintain adequate and complete records for a period of four years after each Annual Allocation. Each Party, its officers, employees, agents and contractors shall, upon proper request, have access to the books, records, and documents of the other Parties, related to this Agreement. The access to and inspection of such books, records, and documents by the Parties shall occur at a reasonable time upon reasonable notice.

9. ASSIGNMENT.

No Party may assign this Agreement or any of its obligations under this Agreement without the approval of the other Parties. All the obligations of this Agreement will extend to and bind the legal representatives, successors and assigns of all of the Parties.

10. SUBORDINATION.

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

11. 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 responsibility and liability of each Party.

12. NOTICES.

Unless otherwise specified, all Notices must be sent by certified mail to the following:

**FLORIDA KEYS AQUEDUCT
AUTHORITY**

Executive Director
1100 Kennedy Drive
Key West, FL 33040

Key West, FL 33040

ISLAMORADA VILLAGE OF ISLANDS:
Village Manager
868000 Overseas Highway
Islamorada, Florida 33036

KEY COLONY BEACH:

City Attorney, Thomas D. Wright
9711 Overseas Highway
Marathon, FL 33051

MARATHON:

City Manager
9805 Overseas Highway
Marathon, FL 33050

&

City Administrator

P.O. Box 510141

Key Colony Beach, FL 33051-0141

**KEY LARGO WASTEWATER
TREATMENT DISTRICT:**

General Manager
PO Box 491
Key Largo, Florida 33037

MONROE COUNTY:

County Administrator
1100 Simonton Street, Suite 205
Key West, FL 33040

&

KEY WEST:

City Manager
3132 Flagler Avenue

County Attorney

P.O. Box 1026

Key West, FL 33041-1026

13. NON-RELIANCE BY NON-PARTIES.

No Non-Party entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement or benefit of any service or program contemplated hereunder, and each Party agrees that neither the Party nor any officer, agent, or employee of the Party shall have the authority to inform, counsel or otherwise indicate that any particular individual or groups of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to or superior to the community in general or for the purposes contemplated under this Agreement.

14. HEADINGS.

The headings and other captions contained in this Agreement are provided for reference and convenience purposes only and are in no way intended to describe, interpret, define, expand, or limit the scope, extent, or intent of this Agreement, or any provision hereto.

15. IMPLEMENTING ACTIONS OF THE PARTIES.

The Parties shall take any and all necessary and appropriate actions relating to the implementation of this Agreement.

16. DISPUTE RESOLUTION.

With respect to any dispute, claim, or controversy arising out of or relating to this Agreement, or any Party's performance thereof, or the breach, termination, enforcement, interpretation or validity thereof, the Parties shall utilize the process for dispute resolution set forth in Chapter 164, known as the "Florida Governmental Conflict Resolution Act".

17. ATTORNEYS' FEES AND COSTS.

In the event there is litigation arising under or related to Agreement, each Party shall pay its own attorneys' fees and costs and expenses incurred in enforcing the Agreement including any appellate attorney's fees.

18. GOVERNING LAW; VENUE.

This Agreement shall be governed by and construed according to the laws of the State of Florida and venue shall be proper exclusively in Monroe County.

19. HOLD HARMLESS.

To the extent provided by law and without waiving Sovereign Immunity, each Party agrees to fully hold harmless, indemnify, defend, discharge and release the other Parties, their officers, employees, agents, contractors and subcontractors from and against any and all causes of action, claims, costs, demands, expenses and losses of whatever type that arise out of or are attributable to

this Agreement; except for any causes of action, claims, costs, demands, expenses and losses that are the result of the sole negligence or malfeasance of the respective Party.

20. COUNTERPARTS.

This Agreement may be executed in any number of counterparts and by each Party on separate counterparts, each of which, when so executed and delivered, shall be an original and all of which shall together constitute one and the same Agreement. Signature pages may be detached from the various counterparts and attached to a single copy of this document to physically form one document. A facsimile version of any signature shall be deemed an original for all purposes.

21. JOINT PREPARATION.

The preparation of this Agreement has been a joint effort of the Parties, and this Agreement has been carefully reviewed by the Parties. Therefore this Agreement shall not, solely as a matter of judicial interpretation, be construed more severely against one of the Parties than the other.

22. FULL UNDERSTANDING.

This Agreement is the Parties' final mutual understanding regarding the subject matter hereof. It replaces and supersedes any earlier prior and contemporaneous agreements or understandings, whether written or oral. This Agreement may be modified and amended only by written instrument executed by the Parties hereto.

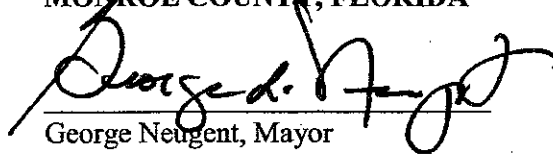
23. INTERLOCAL AGREEMENT.

This Agreement shall constitute an inter-local agreement pursuant to Section 163.01, Florida Statutes.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their Authorized Officers and have affixed their corporate seals hereon.


[SIGNATURES ON FOLLOWING PAGES]

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


George Neugent, Mayor

(SEAL)

ATTEST: Amy Heavlin, Clerk


Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:


Robert B. Shillinger, County Attorney


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CLERK DIR. CT.
MONROE COUNTY FL.

CITY OF KEY COLONY BEACH, FLORIDA

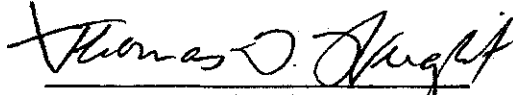

Ronald A. Sutton, Mayor

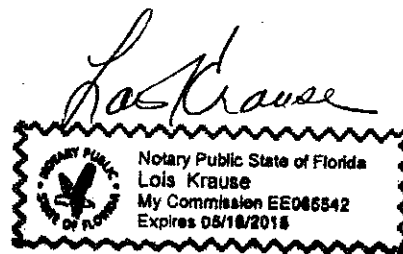
(SEAL)

ATTEST:


~~Vickie L. Bullinger, City Clerk~~
Cathy Henninger

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:


Thomas D. Wright, City Attorney

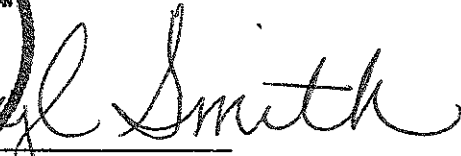


CITY OF KEY WEST, FLORIDA




Craig Cates, Mayor





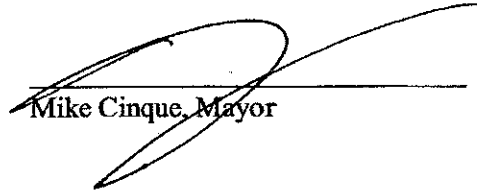
Cheryl Smith, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY



Shawn Smith, City Attorney

CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor

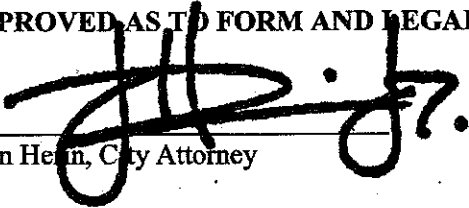
(SEAL)

ATTEST:



Diane Clavier, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



John Heinn, City Attorney

FLORIDA KEYS AQUEDUCT AUTHORITY

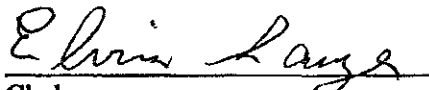
FKAA Board Approved:
February 27, 2013



J Robert Dean, Chair

(SEAL)

ATTEST:



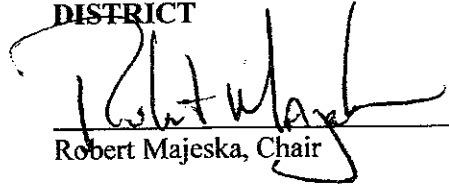
Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



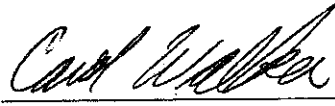
Robert T. Feldman, General Counsel

**KEY LARGO WASTEWATER TREATMENT
DISTRICT**

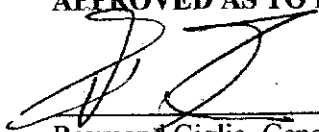

Robert Majeska, Chair



ATTEST:


Carol Walker, District Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:


Raymond Giglio, General Counsel



ISLAMORADA, VILLAGE OF ISLANDS,
FLORIDA

Ken Philipson
Ken Philipson, Mayor

(SEAL)

ATTEST:

Assunta J. Jo
Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Nina Boniske
Nina Boniske, Village Attorney