

RESOLUTION NO. 13-235

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "AMENDMENT TO 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 anticipated \$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 "Year Two of Four" Mayfield Grant Funds in the amount of \$50 million dollars in Fiscal Year 2013; and

WHEREAS, the attached Amendment 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, and amends the distribution of funds for 'Year Two of Four,' 'Year Three of Four' and 'Year Four of Four';

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

Section 1: That the attached "Amendment To 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 17 day of September, 2013.

Authenticated by the Presiding Officer and Clerk of the Commission on 18 day of September, 2013.

Filed with the Clerk on September 18, 2013.

| | |
|----------------------------|------------|
| Mayor Craig Cates | <u>Yes</u> |
| Vice Mayor Mark Rossi | <u>Yes</u> |
| Commissioner Teri Johnston | <u>Yes</u> |
| Commissioner Clayton Lopez | <u>Yes</u> |
| Commissioner Billy Wardlow | <u>Yes</u> |
| Commissioner Jimmy Weekley | <u>Yes</u> |
| Commissioner Tony Yaniz | <u>Yes</u> |

ATTEST:

Cheryl Smith
CHERYL SMITH, CITY CLERK

Craig Cates
CRAIG CATES, MAYOR

AMENDMENT TO
"STATE WASTEWATER FUNDING
DISTRIBUTION AGREEMENT FOR 'YEAR TWO OF FOUR'"

THIS AMENDMENT AGREEMENT ("Amendment Agreement") is made and entered into this 17th day of September, 2013, to amend the "STATE WASTEWATER FUNDING DISTRIBUTION AGREEMENT FOR 'YEAR TWO OF FOUR,'" entered into the 20th day of February 2013, by and between the following Parties:

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 autonomous public body corporate and politic 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

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Amendment to
"State Wastewater Funding Distribution Agreement For 'Year Two Of Four'"

WITNESSETH:

WHEREAS, in 2008 the State Legislature authorized the issuance of \$200 million of Everglades restoration bonds ("Mayfield Grant Funds"), to be administered by the Florida Communities Trust; 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 anticipated Mayfield Grant Funds; and

WHEREAS, the first of the four \$50 million yearly allocations of Mayfield Grant Funds was disbursed by the State 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 entered into an Interlocal Agreement, dated the 20th day of February 2013 ("Original ILA") with reference to the distribution of the anticipated \$50 million "Year Two of Four" of Mayfield Grant Funds; and

WHEREAS, Paragraph "4.(a)" of the Original ILA, details and specifies the distribution of the anticipated \$50 million "Year Two of Four" of Mayfield Grant Funds that the Parties have determined to be and have agreed would be fair and equitable to all Parties; and

WHEREAS, the Parties now desire to amend the terms of the Original ILA to cover how the "Year Two of Four," "Year Three of Four," and "Year Four of Four" of Mayfield Grant Funds will be disbursed by the State directly to the Parties; and

WHEREAS, notwithstanding any interpretations of Section 215.619 Florida Statutes to the contrary, the Parties agree that wastewater infrastructure in Key West (separately designated as an area of Critical State Concern pursuant to Rule 28-36.001 F.A.C.) advances the principles underpinning the Mayfield Grant Funds authorized by that Section, and that Key West should, therefore, share in appropriations related thereto.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Amendment 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.

Terms defined in Paragraph "1" of the Original ILA have the same meaning in this Amendment Agreement unless otherwise specified.

2. RECITALS.

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

3. EFFECTIVE DATE AND TERM.

- (a) This Amendment Agreement shall take effect on the date it is fully executed by the Authorized Officer of all of the Parties.
- (b) This Amendment Agreement shall continue in full force and effect until:
 - 1) All of the anticipated \$200 million of Mayfield Grant Funding has been distributed to the Parties in accordance with this Amendment Agreement and there are no additional Mayfield Grant Funds available to be distributed; or
 - 2) This Amendment Agreement is terminated by the mutual consent of all of the Parties, in writing.

4. THE ORIGINAL ILA IS HEREBY AMENDED AS FOLLOWS:

- (a) All references to "*Year Two of Four*" are hereby deleted and are replaced by, "*Year Two of Four*," "*Year Three of Four*," and "*Year Four of Four*".
- (b) Paragraph "4," which paragraph is captioned "DISTRIBUTION OF FUNDS," is deleted in its entirety and replaced by paragraph "5" below.

5. DISTRIBUTION OF FUNDS.

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

STATE WASTEWATER FUNDING SCHEDULE

| Wastewater Project (Recipient) | Year 2-4 Total Amount | Year 2 | Year 3 | Year 4 |
|--------------------------------|-----------------------|----------------|----------------|----------------|
| Islamorada | \$24.50 | \$ 7.00 | \$ 8.75 | \$ 8.75 |
| Marathon | \$34.50 | \$17.00 | \$ 8.75 | \$ 8.75 |
| KLWTD | \$43.00 | \$17.00 | \$12.50 | \$13.50 |
| County/FKAA | \$34.00 | \$ 5.00 | \$15.00 | \$14.00 |
| Key West | \$12.00 | \$ 3.00 | \$ 4.00 | \$ 5.00 |
| Key Colony Beach | \$ 2.00 | \$ 1.00 | \$ 1.00 | \$ 0.00 |
| TOTAL In Millions | \$150.00 | \$50.00 | \$50.00 | \$50.00 |

- (b) In the event the State appropriates less than the anticipated \$50 million yearly allocation of "Year Two of Four," "Year Three of Four," and "Year Four of Four" of Mayfield Grant Funding, 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 5. (a) above. If the provisions of this paragraph are triggered, the remaining allocation for that year will be completed prior to the distribution of funds for any subsequent year on the schedule.

6. ENTIRE AGREEMENT

This Amendment Agreement and the Original ILA embody the entire agreement between the Parties with reference to the distribution of the balance of the \$150 million of Mayfield Grant Funds. In the event of any conflict or inconsistency between the provisions of the Original ILA and this Amendment Agreement, the provisions of this Amendment Agreement shall control and govern. This Amendment Agreement may be modified and amended only by written instrument executed by the Parties hereto. However, two or more parties to this agreement may agree by a separate agreement to redistribute or reallocate their respective shares of the anticipated funds as set forth in the schedule in paragraph 5(a) by written instrument, which only needs to be executed by the parties to that separate agreement, subject to appropriate State approvals.

7. ORIGINAL ILA REMAINS IN FULL FORCE AND EFFECT

Except as specifically modified and amended herein, all of the terms, provisions, requirements and specifications contained in the Original ILA shall remain in full force and effect. Except as otherwise expressly provided herein, the parties do not intend to, and the execution of this Amendment Agreement shall not, in any manner impair the Original ILA, the purpose of this Amendment Agreement being simply to amend and ratify the Original ILA, as hereby amended and ratified, and to confirm and carry forward the Original ILA, as hereby amended, in full force and effect.

8. JOINT COOPERATION.

In accordance with paragraph "7" of the Original ILA, the Parties agree to cooperate and to use their best efforts and their joint resources to advocate for the appropriation of the balance of the \$150 million of Mayfield Grant Funds, and the distribution of those said funds directly to the Parties in accordance with the distribution schedule as set forth in herein.

9. SEVERABILITY.

If any provision or part of a provision of this Amendment Agreement is found by a court, arbitrator or other authority of competent jurisdiction to be void or unenforceable, that provision or part of a provision is to be deemed deleted from this Amendment Agreement and the remaining provisions to continue in full force and effect. The Parties shall in this event seek to agree upon a valid and enforceable provision or part of a provision to replace the provision or part of a provision found to be void and unenforceable.

10. THIRD PARTY RIGHTS.

No provision of this Amendment Agreement is to be construed as creating any rights enforceable by a third party, and all third party rights implied by law are, to the extent permissible by law, excluded from this Amendment Agreement.

11. 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.

12. 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.

13. 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**

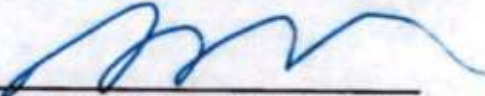
George Neugent, Mayor

(SEAL)

ATTEST: Amy Heavilin, Clerk

Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



Robert B. Shillinger, County Attorney

**CITY OF KEY COLONY BEACH,
FLORIDA**

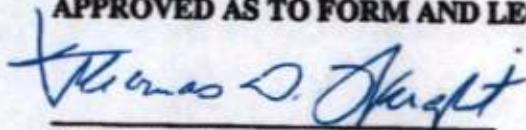

Ronald A. Sutton, Mayor

(SEAL)

ATTEST:


Cathy Henninger, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



Thomas D. Wright, City Attorney

CITY OF KEY WEST, FLORIDA



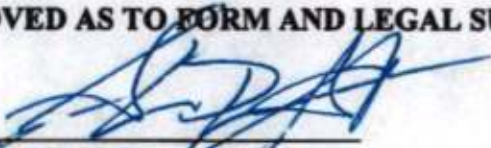
Craig Cates, Mayor





Cheryl Smith, City Clerk

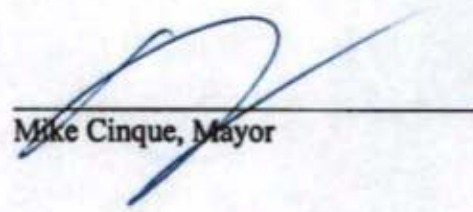
APPROVED AS TO FORM AND LEGAL SUFFICIENCY



Shawn Smith, City Attorney

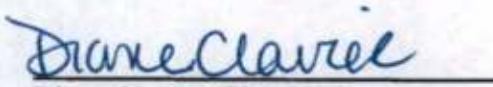
FLORIDA

CITY OF MARATHON,


Mike Cinque, Mayor

(SEAL)

ATTEST:


Diane Clavier, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:


John Herin, City Attorney

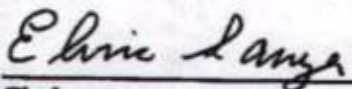
**FLORIDA KEYS AQUEDUCT
AUTHORITY**



J Robert Dean, Chair

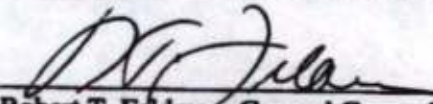
(SEAL)

ATTEST:



Clerk

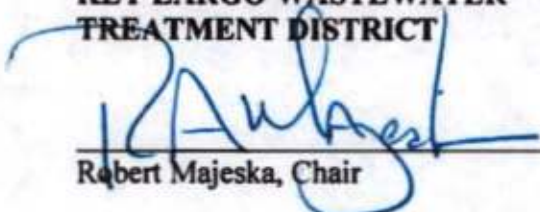
APPROVED AS TO FORM AND LEGAL SUFFICIENCY:




Robert T. Feldman, General Counsel



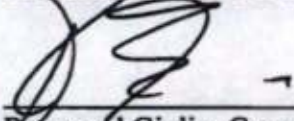
**KEY LARGO WASTEWATER
TREATMENT DISTRICT**


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:

William J. Ta
Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Nina Boniske
Nina Boniske, Village Attorney