RESOLUTION NO. 13-09-74

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA
APPROVING THE AMENDMENT TO “STATE WASTEWATER FUNDING DISTRIBUTION AGREEMENT FOR ‘YEAR TWO OF FOUR’”; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AMENDMENT; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT; PROVIDING FOR TRANSMITTAL; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Ch. 2010-205, Laws of Florida, incorporating and updating Ch. 99-395, Laws of Florida, mandates the upgrade of all wastewater systems within the Florida Keys to advanced wastewater treatment standards or best available technology by December 31, 2015; and

WHEREAS, with the 2010 law which imposed the December 31, 2015 deadline, the Legislature authorized the issuance of up to $200,000,000 in Everglades Bonds over four years to assist local governments in the Keys in meeting the state-mandated deadline; and

WHEREAS, in 2012, the Florida Legislature funded $50 million in bonds for the construction of wastewater treatment facilities in the Florida Keys Area of Critical State Concern. Proviso language in the 2012 General Appropriations Act directed 40% of the first year bond proceeds, $20 million, go to Islamorada and 60%, $30 million, go to Monroe County to fund wastewater collection and treatment project costs; and

WHEREAS, Monroe County prepared a State Wastewater Funding Distribution Agreement for “Year two of Four” (the “Agreement”) that was approved by all parties in the county and filed for the record in Monroe County on March 21, 2013, setting forth a distribution schedule for the next $50 million distribution; and

WHEREAS, the Florida Legislature did not include an appropriation of the Mayfield Grant fund in its 2013 General Appropriations Act; and

WHEREAS, all parties in Monroe County have worked cooperatively to prepare an Amendment to the “State Wastewater Funding Distribution Agreement for ‘Year Two of Four’” (the “Amendment”) setting forth a distribution schedule for the remaining $150 million state funding broken
“Amendment”) setting forth a distribution schedule for the remaining $150 million state funding broken down into “Year Two of Four”, “Year Three of Four” and “Year Four of Four”; and

WHEREAS, the Village Council finds that approval of the Amendment attached hereto is in the best interest of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Approval of Amendment. The Amendment to “State Wastewater Funding Distribution Agreement for ‘Year Two of Four’” (the “Amendment”), a copy of which is attached as Exhibit “A”, together with such non-material changes as may be acceptable to the Village Manager and approved as to form and legality by the Village Attorney, is approved.

Section 3. Authorization of Village Officials. The Village Manager and/or his designee and the Village Attorney are authorized to take all actions necessary to implement the terms and conditions of the Amendment.

Section 4. Authorization of Fund Expenditure. Notwithstanding the limitations imposed upon the Village Manager pursuant to the Village’s Purchasing Procedures Ordinance, the Village Manager is authorized to expend budgeted funds to implement the terms and conditions of the Amendment.

Section 5. Execution of Amendment. The Mayor is authorized to execute the Amendment on behalf of the Village, to execute any required agreements and/or documents to implement the terms and conditions of the Amendment and to execute any extensions and/or amendments to the Amendment, subject to the approval as to form and legality by the Village Attorney.

Section 6. Transmittal. Upon adoption, the Village Clerk is hereby directed to transmit a copy of this resolution and an executed Amendment to the office of the Monroe County Attorney.

Section 7. Effective Date. This Resolution shall take effect immediately upon adoption.
Motion to adopt by Councilwoman Deb Gillis, second by Councilman Dave Purdo.

FINAL VOTE AT ADOPTION
Mayor Ken Philipson	YES
Vice Mayor Ted Blackburn	YES
Councilman Mike Forster	YES
Councilwoman Deb Gillis	YES
Councilman Dave Purdo	YES

PASSED AND ADOPTED on this 26th day of September, 2013.

KEN PHILIPSON, MAYOR

ATTEST:

VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF ISLAMORADA, VILLAGE OF ISLANDS:

VILLAGE ATTORNEY
AMENDMENT TO

“STATE WASTEWATER FUNDING
DISTRIBUTION AGREEMENT FOR ‘YEAR TWO OF FOUR’”

THIS AMENDMENT AGREEMENT ("Amendment Agreement") is made and entered into this 19th 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

Page 1 of 13

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.

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

(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 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]
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

Page 9 of 13

Amendment to
“State Wastewater Funding Distribution Agreement For ‘Year Two Of Four’”
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:

Elvie Lanza
Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Robert T. Feldman, General Counsel

Page 11 of 13

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

(SEAL)

ATTEST:

Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Nina Boniske, Village Attorney