RESOLUTION NO. 14-09-68

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA APPROVING AN INTERLOCAL AGREEMENT BETWEEN ISLAMORADA VILLAGE OF ISLANDS AND THE FLORIDA KEYS AQUEDUCT AUTHORITY (FKAA) PROVIDING FOR FUNDING FROM THE FKAA FOR ASPHALT OVERLAY FOR THE VENETIAN SHORES NEIGHBORHOOD; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE INTERLOCAL AGREEMENT; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE INTERLOCAL AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Keys Aqueduct Authority (FKAA) was created by Special Legislation, Chapter 76-441, Laws of Florida, as amended; and

WHEREAS, the FKAA has contracted with Layne Heavy Civil for water distribution pipeline upgrades within Venetian Shores, Islamorada; and

WHEREAS, the Village is also under contract for the construction of a wastewater vacuum collection system within the same neighborhood; and

WHEREAS, the FKAA and the Village desire to enter into an Interlocal Agreement whereby the Village will provide a full roadway width asphalt overlay of the roads within Venetian Shores and the FKAA will provide funding to the Village; and

WHEREAS, the Village Council finds that approval of the Interlocal Agreement between the Village and FKAA, attached hereto as Exhibit “A”, is in the best interest of the Village and its residents.

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 Interlocal Agreement.** The Village Council of Islamorada, Village of Islands, hereby approves the Interlocal Agreement between the Village and FKAA, a copy of which is attached hereto 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.

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

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 Interlocal Agreement.

Section 5. **Execution of Interlocal Agreement.** The Village Manager is authorized to execute the Interlocal Agreement on behalf of the Village, to execute any required agreements and/or documents to implement the terms and conditions of the Interlocal Agreement and to authorize any further acts necessary to implement the terms thereof, subject to approval as to form and legality by the Village Attorney.

Section 6. **Effective Date.** This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 23rd day of September, 2014.

Motion to adopt by Councilman Dave Purdo, second by Vice Mayor Deb Gillis.
FINAL VOTE AT ADOPTION

Mayor Ted Blackburn       YES
Vice Mayor Deb Gillis     YES
Councilman Mike Forster   YES
Councilman Ken Philipson  YES
Councilman Dave Purdo     YES

TED BLACKBURN, MAYOR

ATTEST:

KELLY TOOTH, VILLAGE CLERK

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

ROGET V. BRYAN, VILLAGE ATTORNEY
INTERLOCAL AGREEMENT
BETWEEN THE
FLORIDA KEYS AQUEDUCT AUTHORITY
AND
ISLAMORADA, VILLAGE OF ISLANDS

THIS INTERLOCAL AGREEMENT is entered into by and between the Florida Keys Aqueduct Authority (the “Authority”) and Islamorada, Village of Islands (the “Village”), each of which is an independent, existing entity serving as a public agency under the laws of the State of Florida.

WHEREAS, the Florida Keys Aqueduct Authority (Authority) was created by Special Legislation, Chapter 76-441, Laws of Florida, as amended; and

WHEREAS, Islamorada, Village of Islands (Village) is a Florida municipality and has created a wastewater utility to service the Village; and

WHEREAS, the Authority has contracted with Layne Heavy Civil for water distribution pipeline upgrades within Venetian Shores, Islamorada; and

WHEREAS, the Village is also under contract for the construction of a wastewater vacuum collection system within the same neighborhood; and

WHEREAS, the Authority and the Village desire to enter into an Interlocal Agreement whereby the Village will provide a full roadway-width asphalt overlay of the roads within Venetian Shores which are receiving both Authority water distribution upgrades and Village wastewater collection system.

NOW, THEREFORE, in consideration of the mutual covenants, representations and promises set forth in this Agreement and for other good and valuable consideration each to the other, receipt of which is hereby acknowledged by each party, the Authority and the Village hereby agree, stipulate, and covenant as follows:
ARTICLE I
DEFINITIONS

WORDS AND TERMS. Words and terms used herein shall have the meanings set forth below:

"Agreement" means this Interlocal Agreement.

"Authority" means the Florida Keys Aqueduct Authority.

"Authorized Representative" means the official of the Authority or the Village authorized by ordinance or resolution to sign documents of the nature identified in this Agreement.

"Village" means the Village of Islamorada

"Contractor" shall mean Reynolds or Layne Heavy Civil, operating under the same corporation of Layne Christensen.

ARTICLE II
INTERLOCAL AGREEMENT

SECTION 2.01 PURPOSE OF INTERLOCAL AGREEMENT. The purpose of this Agreement is to establish a funding mechanism for the following described project:

The Village shall provide a full roadway-width asphalt overlay of the roads within Venetian Shores which are receiving both Authority water distribution upgrades and Village wastewater collection system.

It is understood and agreed that both Authority and Village representatives will participate in a visual inspection prior to the commencement of asphalt overlay operations to determine that all portions of the roadways listed above remain in acceptable condition for paving. Any noted deficiencies will be corrected by Contractor forces within 15 calendar days of the inspection date at no cost to Authority. The Village will specify in its contract with its Contractor that the asphalt overlay will meet all of the applicable requirements imposed by law. Without limiting the generality of the foregoing, the contract will specify that the overlay will meet the requirements of the Monroe County Code of Ordinances, Part I, Chapter 19, Article II in effect at the time of the overlay. The Village will direct the Contractor to perform the work, and will be responsible for monitoring the progress of the work, traffic control, and final inspection of the work upon completion. The Village will notify the Authority at least seven calendar days before
commencement of the work, and at least seven days prior to final inspection. The Authority may have a representative present at the final inspection and approval of the work.

The Authority agrees to reimburse the Village for approximately 19,500 square yards of asphalt overlay at the unit price of $12.54 per square yard as established in the Village's contract with Contractor with the total reimbursement being $244,530 for asphalt overlay within Venetian Shores. It is understood and agreed to by Authority and Village that reimbursement for the completed work outlined above will be payable to the Village within thirty (30) calendar days of receipt by the Authority of final invoicing by the Village.

ARTICLE III
GENERAL PROVISIONS

SECTION 3.01 ASSIGNMENT OF RIGHTS UNDER AGREEMENT. Neither the AUTHORITY nor the Village shall have the power to assign rights or obligations created by this Agreement to any third party without the prior written consent of the other party.

SECTION 3.02 AMENDMENT OF AGREEMENT. This Agreement may be amended only in a writing signed by an Authorized Representative of each of the parties hereto.

SECTION 3.03 SEVERABILITY. If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The Authority and Village agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

SECTION 3.04 ATTORNEY’S FEES AND COSTS. The Authority and Village agree that in the event any cause of action or administrative proceeding is initiated or defended
by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorneys’ fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney’s fees, court costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the Circuit Court of Monroe County.

SECTION 3.05 ADJUDICATION OF DISPUTES OR DISAGREEMENTS. The parties agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within thirty (30) days after the first meet and confer session, the issue or issues shall be discussed at a joint public meeting of the governing bodies of the parties. If the issue or issues are still not resolved to the satisfaction of both parties, then either shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law; provided, however, the unresolved issue or issues shall be submitted to mediation prior to the institution of any administrative or legal proceeding.

SECTION 3.06 NONDISCRIMINATION. The parties agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (2) Section 504 of the Rehabilitation Act of 1973, as amended (20 U.S.C. s. 794), which prohibits discrimination on the basis of handicap; (3) The Age Discrimination Act of 1975, as amended (42 U.S.C. ss. 6101-6107), which prohibits discrimination on the basis of age; (4) The Drug Abuse Office And Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (5) The Comprehensive Alcohol Abuse And Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or
alcoholism; (6) The Public Health Service Act of 1912, ss. 523 and 527, (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (7) The Americans With Disabilities Act of 1990 (42 U.S.C. s. 1201 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; (8) The Florida Civil Rights Act of 1992, (Chapter 760, Florida Statutes, and Section 509.092, Florida Statutes), as may be amended from time to time, relating to nondiscrimination; and (9) any other nondiscrimination provisions in any federal or state statutes or local ordinances which may apply to the parties to, or the subject matter of, this Agreement.

SECTION 3.07    COOPERATION. In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, the parties agree to participate, to the extent reasonably required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. The parties specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement or any Attachment or Addendum to this Agreement.

SECTION 3.08    COVENANT OF NO INTEREST. The Parties covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

SECTION 3.09    CODE OF ETHICS. The parties agree that their officers and employees recognize and will be required to comply with the standards of conduct relating to public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

SECTION 3.10    NO SOLICITATION/PAYMENT. The Parties warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide
employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the each party agrees that the other party shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

SECTION 3.11 PUBLIC ACCESS TO RECORDS. The parties shall allow and permit members of the public reasonable access to, and inspection of, all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the parties in conjunction with this Agreement.

SECTION 3.12 NON-WAIVER OF IMMUNITY. Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the parties in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by a party be required to contain any provision for waiver.

SECTION 3.13 LEGAL OBLIGATIONS; NON-DELEGATION OF DUTIES. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any other participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of either party, except to the extent permitted by law.

SECTION 3.14 NON-RELIANCE BY NON-PARTIES. No person or 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 to or benefit of any service or program contemplated hereunder, and the parties agree that neither the Authority nor the Village or any agent, officer, or employee of each shall have the Authority to inform, counsel, or otherwise indicate that any particular individual or group 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 in this Agreement.

SECTION 3.15 NO PERSONAL LIABILITY. No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of a party in his or her individual capacity, and no member, officer, agent or employee of a party shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

SECTION 3.16 SECTION HEADINGS. Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

SECTION 3.17 GOVERNING LAW; VENUE. This Agreement shall be governed by and construed in accordance with the Laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the parties agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.

ARTICLE IV
EXECUTION OF AGREEMENT

SECTION 4.01 COUNTERPARTS. This Agreement shall be executed in three or more counterparts, any of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

SECTION 4.02 SUPERSEDES OTHER AGREEMENTS. The parties agree that this Agreement represents their mutual agreement and replaces and supersedes any prior agreements, understandings, or communications on the subject of the Agreement, whether written or oral.
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on their behalf by the Authority's Executive Director and the Village's Manager.

Authority Board Approved: August 27, 2014

FLORIDA KEYS AQUEDUCT AUTHORITY

By: [Signature]
Kirk Zuelch, Executive Director

ATTEST:
[Signature]
Clerk

ISLAMORADA, VILLAGE OF ISLANDS

By: [Signature]
Maria I. Aquino
Village Manager

ATTEST:
[Signature]
Clerk