

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2017-67**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN AGREEMENT BETWEEN THE STATE OF FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY (DEO), THE COUNTY OF MONROE, CITY OF KEY WEST, ISLAMORADA, VILLAGE OF ISLANDS, CITY OF LAYTON, CITY OF KEY COLONY BEACH AND THE CITY OF MARATHON FOR THE TRANSFER AND DISTRIBUTION OF BPAS UNITS FROM THE CITY OF KEY WEST TO MONROE COUNTY AND THE TRANSFER AND DISTRIBUTION OF ROGO ALLOCATIONS FROM MONROE COUNTY TO ISLAMORADA, VILLAGE OF ISLANDS, CITY OF LAYTON, CITY OF KEY COLONY BEACH AND THE CITY OF MARATHON, PURSUANT TO SECTION 380.032(3), FLORIDA STATUTES.**

**WHEREAS**, this agreement is entered into by and between the State of Florida's Department of Economic Opportunity (the "DEO"), Monroe County, the City of Key West, Islamorada, Village of Islands, the City of Layton, the City of Key Colony Beach and the City of Marathon ( the " Local Governments") ( all collectively known as the "Parties") for the purpose of Complying with Rules 28-18, 28-19, and 28-20, of the Florida Administrative Code, and as provided for in Section 380.032(3), Florida Statutes.

**WHEREAS**, the Local Governments are designated as Areas of Critical State Concern (the Florida Keys ACSC and the City of Key West ACSC) pursuant to Sections 380.05 and 380.0552, Florida Statutes, and the Florida Administrative Code Chapter 28-36, hereinafter referred to as the "Keys ACSCs", and

**WHEREAS**, the DEO is the state land planning agency having authority and duty to exercise general supervision of the administration and enforcement of Chapter 380, Florida Statutes, the Environmental Land and Water Management Act ( the "Act"), which includes provisions relating to areas of critical state concern; and

**WHEREAS**, the DEO is authorized by Section 380.032(3), Florida Statutes to contract with any landowner, developer or other governmental agency as may be necessary to effectuate the provisions and purposes of the Act, or any related rule; and

**WHEREAS**, the City of Key West ("Key West") adopted its Comprehensive Land Use Plan on March 5, 2013, which provides for the allocation of certain residential building rights known as Building Permit Allocation System units ("BPAS"), under which Key West awards 91 units on an annual basis over the current planning horizon consisting of the years 2013 through 2023, and

**WHEREAS**, Key West has a certain number of unallocated BPAS units accumulated in

years one (1) through four (4) which the City desires to allocate to an Affordable Housing/Workforce Housing project (“The Quarry”) located on Big Coppitt Key, which is beyond the jurisdictional boundary limits of Key West, and

**WHEREAS**, the provision of affordable housing in the lower keys coupled with the distribution of ROGO units to the remaining municipalities will benefit all members of the ACSCs, and

**WHEREAS**, the Key West Comprehensive Land Use plan does not currently provide for an allocation beyond its jurisdictional boundary, nor provide for a distribution of its un-allocated units other than “Recovered Units” as defined in Section 108-997(e) of the Land Development Regulations of Key West, and

**WHEREAS**, Key West has approved a Comprehensive Land Use Plan Amendment which has been rendered to the DEO for review and comment pursuant to the State Coordinated Review Guidelines of Chapter 163, Florida Statutes, which would allow the transfer of 104 BPAS units to Monroe County for the Workforce Housing/Affordable Housing Project known as “The Quarry,” located on Big Coppitt Land Use Area 1 at approximate Mile Marker 9 (a copy of the proposed Comprehensive Land Use Plan Amendment is attached hereto and incorporated by reference); and

**WHEREAS**, the Parties, have met to discuss the reallocation and a method of BPAS/ROGO re-distributions between Monroe County and the remaining municipalities located in the ACSCs in an effort to fulfill Administration Commission’s actions, and have agreed to present this agreement to their Commission/Council for execution of this Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:**

**Section 1.** The above recitals are true and correct and are incorporated herein by this reference.

**Section 2.** The 380 Agreement attached hereto is hereby approved; entered into by and between the State of Florida’s Department of Economic Opportunity (the “DEO”), Monroe County, the City of Key West, Islamorada, Village of Islands, the City of Layton, the City of Key Colony Beach and the City of Marathon for the purpose of Complying with Rules 28-18, 28-19, and 28-20, of the Florida Administrative Code, and as provided for in Section 380.032(3), Florida

**Section 3.** This resolution shall take effect immediately upon its adoption and the signature of all parties.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8TH DAY OF AUGUST, 2017.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_

**Dr. Daniel Zieg, Mayor**

AYES: Bartus, Coldiron, Cook, Zieg  
NOES: None  
ABSENT: Senmartin  
ABSTAIN: None

**ATTEST:**

  
\_\_\_\_\_

Diane Clavier  
City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

  
\_\_\_\_\_

David Migut, City Attorney

## AGREEMENT

**AGREEMENT BETWEEN THE STATE OF FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY, THE COUNTY OF MONROE, CITY OF KEY WEST, ISLAMORADA, VILLAGE OF ISLANDS, CITY OF LAYTON AND THE CITY OF MARATHON FOR THE TRANSFER AND DISTRIBUTION OF BPAS UNITS FROM THE CITY OF KEY WEST TO MONROE COUNTY AND THE TRANSFER AND DISTRIBUTION OF ROGO ALLOCATIONS FROM MONROE COUNTY TO ISLAMORADA, VILLAGE OF ISLANDS, CITY OF LAYTON AND THE CITY OF MARATHON, PURSUANT TO SECTION 380.032(3), FLORIDA STATUTES.**

**THIS AGREEMENT** is entered into by and between the State of Florida's Department of Economic Opportunity (the "DEO"), Monroe County, the City of Key West, Islamorada, Village of Islands, the City of Layton and the City of Marathon (the "Local Governments") (all collectively known as the "Parties") for the purpose of Complying with Rules 28-18, 28-19, and 28-20, of the Florida Administrative Code, and as provided for in Section 380.032(3), Florida Statutes.

### RECITALS:

**WHEREAS**, the Local Governments are designated as Areas of Critical State Concern (the Florida Keys ACSC and the City of Key West ACSC) pursuant to Sections 380.05 and 380.0552, Florida Statutes, and the Florida Administrative Code Chapter 28-36, hereinafter referred to as the "Keys ACSCs", and

**WHEREAS**, the DEO is the state land planning agency having authority and duty to exercise general supervision of the administration and enforcement of Chapter 380, Florida Statutes, the Environmental Land and Water Management Act (the "Act"), which includes provisions relating to areas of critical state concern; and

**WHEREAS**, the DEO is authorized by Section 380.032(3), Florida Statutes to contract with any landowner, developer or other governmental agency as may be necessary to effectuate the provisions and purposes of the Act, or any related rule; and

**WHEREAS**, the City of Key West ("Key West") adopted its Comprehensive Land Use Plan on March 5, 2013, which provides for the allocation of certain residential building rights known as Building Permit Allocation System units ("BPAS"), under which Key West awards 91 units on an annual basis over the current planning horizon consisting of the years 2013 through 2023, and

**WHEREAS**, Key West has a certain number of unallocated BPAS units accumulated in years one (1) through four (4) which the City desires to allocate to an Affordable Housing/Workforce Housing project ("The Quarry") located on Big Coppitt Key, which is beyond the jurisdictional boundary limits of Key West, and

**WHEREAS**, the provision of affordable housing in the lower keys coupled with the distribution of ROGO units to the remaining municipalities will benefit all members of the ACSCs, and

**WHEREAS**, the Key West Comprehensive Land Use plan does not currently provide for an allocation beyond its jurisdictional boundary, nor provide for a distribution of its un-allocated units other than "Recovered Units" as defined in Section 108-997(e) of the Land Development Regulations of Key West, and

**WHEREAS**, Key West has approved a Comprehensive Land Use Plan Amendment which has been rendered to the DEO for review and comment pursuant to the State Coordinated Review Guidelines of Chapter 163, Florida Statutes, which would allow the transfer of 104 BPAS units to Monroe County for the Workforce Housing/Affordable Housing Project known as "The Quarry," located on Big Coppitt Land Use Area 1 at approximate Mile Marker 9 (a copy of the proposed Comprehensive Land Use Plan Amendment is attached hereto and incorporated by reference); and

**WHEREAS**, the Parties, have met to discuss the reallocation and a method of BPAS/ROGO re-distributions between Monroe County and the remaining municipalities located in the ACSCs in an effort to fulfill Administration Commission's actions, and have agreed to present this agreement to their Commission/Council for execution of this Agreement.

**NOW THEREFORE**, the parties set forth the following terms and conditions of this Agreement.

1. In 2012, pursuant to Administration Commission action, 3550 building permit allocation units were awarded for a period of 10 years (355 per year) from the State to the local governments as follows:

Local Government (the Parties)	Annual Allocation
Monroe County	197 units
Marathon	30 units
Islamorada	28 units
Key Colony Beach	6 units
Layton	3 units
Key West	91 units

2. Upon the execution of this Agreement by all Parties, Key West shall approve and adopt the Comprehensive Land Use Plan of Key West amendment allowing the allocation of 104 previously unallocated BPAS units to Monroe County for the "The Quarry" project on Big Coppitt Key for the construction of workforce housing/affordable housing.
3. Upon effectiveness of the Comprehensive Land Use Plan of Key West and the execution of this Agreement by all Parties, the City of Key West shall transfer 104 previously unallocated BPAS units to Monroe County for "The Quarry" project on Big Coppitt Key for the construction of workforce housing/affordable housing.

4. Monroe County agrees to provide permanent ROGO units to the remaining municipalities, based upon their percentages of vacant land, as determined in the revocable 2012 Hurricane Evacuation Clearance Time Memorandum of Understanding, as follows:

Local Government (the Parties)	Number of ROGOs due to the Parties
Marathon	<b>11.83 units</b>
Islamorada	<b>10.25 units</b>
Layton	<b>0.12 units</b>
<i>TOTAL</i>	<b>23.05 units</b>

All ROGO units transferred pursuant to this section shall be restricted to non-transient use by the receiving municipality. The receiving municipality shall determine whether or not the units are to be issued for market rate or affordable housing.

5. Marathon, Islamorada and Layton shall determine if the ROGO units received shall be utilized as market rate dwelling units or affordable housing dwelling units and shall work with DEO to amend their comprehensive plan in order to utilize the transferred allocations.
6. In the event building permits are not issued for “the Quarry” project on or before June 30, 2019, the BPAS units awarded by Key West will remain with Monroe County as affordable ROGO units to be awarded by Monroe County for Affordable/Workforce Housing residential uses in Monroe County south of Mile Marker 26.
7. **Entirety of Agreement.** The parties agree that this Section 380.032 Agreement contains the entire and exclusive understanding and agreement among the parties and may not be modified in any manner except by an instrument in writing and duly signed by the DEO and the Parties (Local Governments).
8. **Duplicate Originals.** This Section 380.032 Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which need be produced for any purpose.
9. **Enforcement .** In the event of a breach of this Section 380.032 Agreement, or failure to comply with any condition of it, DEO may enforce this Agreement pursuant to 380.11(2)(a) and (d), Florida Statutes, or as otherwise provided by law. In the event of a breach of this Section 380.032 Agreement, or failure to comply with any condition of it, the Local Governments may enforce this Agreement, as permitted by law, in the appropriate state court in and for Monroe County, Florida.
10. **Scope of Authority.** This Section 380.032 Agreement affects the rights and obligations of the parties as provided herein. This Section 380.032 Agreement is not intended to influence or determine the authority or decisions of any other state or local government or agency in the

issuance of any other permits or approvals that might be required by state law or local ordinance for any development authorized by this Agreement except as provided herein.

11. **Effective Date.** This Agreement is effective upon execution by all parties and ends upon the termination of the Keys ACSCs designation.
12. **Notification.** Notifications under this Agreement shall be made by hand delivery, U.S. certified mail, return receipt requested, or an express mail service that provides proof of delivery. Notification by a Party to the DEO shall be directed to the Areas of Critical State Concern Administrator, Department of Economic Opportunity, 107 East Madison Street, Tallahassee, FL 32399-4128. Notification to the other parties to this Agreement shall be directed as follows:

1. **Monroe County.** Mayor, Monroe County,  
2798 Overseas Highway, Marathon, FL 33050  
with a copy to the Planning and Environmental Resources Director, 2798 Overseas Highway,  
Marathon, FL 33050

2. **City of Key West.** Mayor, City of Key West,  
1300 White Street, PO Box 1409, Key West, FL 33041-1409,  
with a copy to the Planning Director, 1300 White Street, PO Box 1409, Key West, FL 33041-  
1409

3. **City of Marathon.** Mayor, City of Marathon,  
9805 Overseas Highway, Marathon, FL 33050,  
with a copy to the Planning Director, 9805 Overseas Highway, Marathon, FL 33050

4. **City of Layton.** Mayor, City of Layton,  
68260 Overseas Highway, PO Box 778, Long Key, FL 33001-0141

5. **Islamorada, City of Islands.** Mayor, Islamorada, Village of Islands,  
86800 Overseas Highway, Islamorada, FL 33036,  
with a copy to the Director of Planning and Development Services, 86800 Overseas Highway,  
Islamorada, FL 33036

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates  
below written.

**SIGNATURES ON FOLLOWING PAGES**

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates below written.

CITY OF KEY WEST, FLORIDA

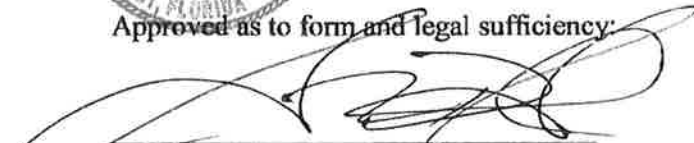
October 18, 2017  
Date

  
Craig Cates, Mayor



  
Cheryl Smith, City Clerk

Approved as to form and legal sufficiency:

  
for City Attorney



**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates below written.

CITY OF MARATHON, FLORIDA

December 8, 2017

Date

Michelle Coldiron

Michelle Coldiron, Mayor

**ATTEST:**

Diane Clavier

Diane Clavier, City Clerk

**Approved as to form and legal sufficiency:**

David Mignot

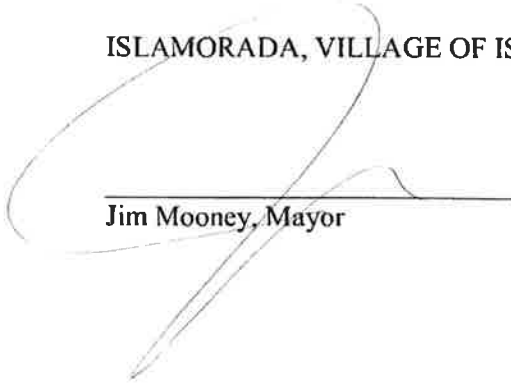
David Mignot City Attorney

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates below written.

FLORIDA

ISLAMORADA, VILLAGE OF ISLANDS,

10/31/17  
Date

  
\_\_\_\_\_  
Jim Mooney, Mayor

ATTEST:

  
\_\_\_\_\_  
Kelly Toth, Village Clerk

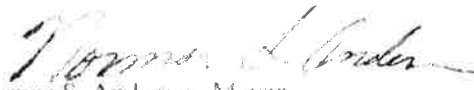
Approved as to form and legal sufficiency:

  
\_\_\_\_\_  
Roget V. Bryan, Village Attorney

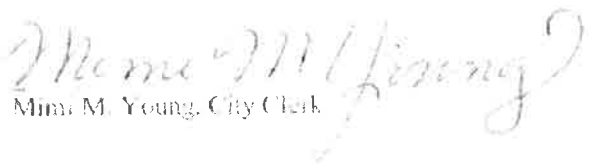
IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below written:

CITY OF DAYTON, FLORIDA


11-9-2017  
Date

  
Norman S. Anderson, Mayor

ATTEST

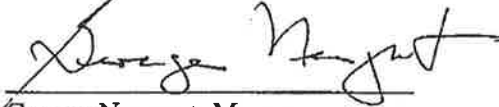
  
Mimi M. Young, City Clerk

Approved as to form and legal sufficiency


  
Dale S. Coburn for City Attorney

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below written.

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

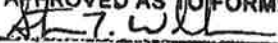
  
George Neugent, Mayor



September 27, 2017  
Date  
ADRESH K. MADOK, CLERK  
  
Pamela Hancock, for County Clerk  
Deputy Clerk

Approved as to form and legal sufficiency:

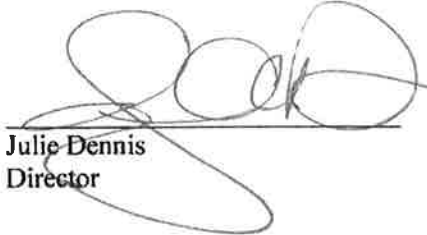
\_\_\_\_\_, for County Attorney

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:  
  
STEVEN T. WILLIAMS  
ASSISTANT COUNTY ATTORNEY  
Date 10/2/17


IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below written.

STATE OF FLORIDA, DEPARTMENT OF  
ECONOMIC OPPORTUNITY,  
DIVISION OF COMMUNITY DEVELOPMENT,


12/21/17  
Date

  
Julie Dennis  
Director

ATTEST:

  
Print Name: Miriam Shipos

Approved as to form and legal sufficiency:

  
Print Name: Jon Morris  
Title: Assistant General Counsel  
Date: 12/12/17