ORDINANCE NO. 13-10

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 74, OF THE CODE OF ORDINANCES ENTITLED "UTILITIES," ARTICLE V, STORMWATER UTILITY, TO CONVERT MONTHLY STORMWATER BILLING TO A NON AD VALOREM ASSESSMENT ON THE PROPERTY TAX ROLL BEGINNING IN FY 2014; BY AMENDING SECTION 74-361 TO ADD DEFINITIONS; AMENDING SECTION 74-365 TO PROVIDE FOR USER FEE; REPEALING SECTION 74-366 AND REPLACING IT WITH A NEW SECTION 74-366 REGARDING STORMWATER SERVICE ASSESSMENTS; ADDING A NEW SECTION 74-367 TO PROVIDE FOR STORMWATER IMPROVEMENT ASSESSMENTS; ADDING A NEW SECTION 74-368 TO PROVIDE FOR AN INITIAL ASSESSMENT RESOLUTION; ADDING A NEW SECTION 74-369, STORMWATER ASSESSMENT ROLL; ADDING SECTION 74-370 TO PROVIDE NOTICE BY PUBLICATION; ADDING SECTION 74-371 TO PROVIDE NOTICE BY MAIL; ADDING SECTION 74-372 TO PROVIDE FOR FINAL ASSESSMENT RESOLUTION; ADDING SECTION 74-373 TO PROVIDE AN ANNUAL RATE RESOLUTION; ADDING SECTION 74-374 TO PROVIDE EFFECT OF STORMWATER RESOLUTIONS; ADDING SECTION 74-375 TO PROVIDE FOR LIEN OF STORMWATER ASSESSMENTS; ADDING SECTION 74-376 TO PROVIDE A METHOD OF COLLECTION OF STORMWATER ASSESSMENTS; ADDING SECTION 74-377 TO PROVIDE AN ALTERNATIVE METHOD OF COLLECTION OF STORMWATER ASSESSMENTS; ADDING SECTION 74-378 TO PROVIDE FOR COLLECTION OF STORMWATER ASSESSMENTS FROM GOVERNMENT PROPERTY; ADDING SECTION 74-379 TO PROVIDE RESPONSIBILITY FOR ENFORCEMENT; ADDING SECTION 74-381 TO PROVIDE FOR PROCEDURAL IRREGULARITIES; ADDING SECTION 74-382 TO PROVIDE FOR CORRECTION OF ERRORS AND OMISSIONS; ADDING SECTION 74-383, APPLICABILITY; ADDING SECTION 74-484 ALTERNATIVE METHOD; RENUMBERING SECTION 74-367 TO 74-385; RENUMBER SECTION 74-368 TO 74-386; RENUMBERING SECTION 74-369 TO SECTION 74-387 AND ADJUSTING THE EQUIVALENT STORMWATER UNIT (ESU) RATE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, pursuant to Article VIII, section 2(b), Florida Constitution, and sections 166.021 and 166.041, Florida Statutes, the City Commission has all powers of local self-government to perform municipal functions and to render municipal services except when prohibited by law, and such power may be exercised by the enactment of legislation in the form of City ordinances; and

WHEREAS, the City Commission may exercise any governmental, corporate, or proprietary power for a municipal purpose except when expressly prohibited by law, and the City Commission may legislate on any subject matter on which the Florida Legislature may act, except those subjects described in (a), (b), (c), and (d) of section 166.021(3), Florida Statutes. The subject matter of paragraphs (a), (b), (c), and (d) of section 166.021(3), Florida Statutes, are not relevant to the imposition of assessments related to stormwater collections, facilities or programs of the City; and

WHEREAS, the purpose of this Ordinance is to (1) provide procedures and standards for the imposition of Stormwater Assessments under the constitutional and statutory power of the City; (2) authorize a procedure for the funding of Stormwater Management Services, facilities, or programs provided to properties within the Stormwater Service Area; and (3)

legislatively determine the special benefit provided to Assessed Property from the Stormwater Utility; and

WHEREAS, the Florida Legislature has mandated that local governments in the State of Florida, including the City of Key West, have the responsibility for developing mutually compatible stormwater management programs consistent with the rules and regulations of the Florida Department of Environmental Protection, the Federal Clean Water Act, the water management districts and the stormwater management programs established and maintained by other local governments; and

WHEREAS, the Stormwater Assessments imposed hereby are consistent with the authority granted in section 403.0893, Florida Statutes. That statutory provision is additional and supplemental authority to the constitutional and statutory power of self-government granted to a municipality; and

WHEREAS, amendments to shift stormwater billing as a non ad valorem assessment to the annual property tax rolls, will improve efficiency, and promote the health and welfare of the environment, thereby protecting citizens and visitors of the City of Key West.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Chapter 74 of the Code of Ordinances is hereby amended as follows*:

Sec. 74-361. Definitions.

For the purpose of this article, the following definitions shall apply. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined herein shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

Annual Rate Resolution means the resolution approving a Stormwater Assessment Roll for a specific Fiscal Year.

Assessed Property means all parcels of real property included on the Stormwater Assessment Roll that receive a special benefit from the Stormwater Improvements and Stormwater Management Services identified in an Annual Rate Resolution.

Bonds means revenue bonds, notes, loans or any other debt obligations issued or incurred to finance the costs of construction.

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*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

Costs of construction means costs reasonably incurred in connection with providing capital improvements to the system or any portion thereof, including but not limited to the costs of:

(1) Acquisition of all property, real or personal, and all interests in connection therewith including all rights-of-way and easements therefor;

(2) Physical construction, installation and testing, including the costs of labor, services, materials, supplies and utility services used in connection therewith;

(3) Architectural, engineering, legal and other professional services;

(4) Insurance premiums taken out and maintained during construction, to the extent not paid for by a contractor for construction and installation;

(5) Any taxes or other charges which become due during construction;

(6) Expenses incurred by the city or on its behalf with its approval in seeking to enforce any remedy against any contractor or subcontractor in respect of any default under a contract relating to construction;

(7) Principal of and interest of any bonds; and

(8) Miscellaneous expenses incidental thereto.

Comprehensive Plan means the comprehensive plan adopted by the City pursuant to Chapter 163, Part II, Florida Statutes.

Debt service means, with respect to any particular fiscal year and any particular series of bonds, an amount equal to the sum of:

(1) All interest payable on such bonds during such fiscal year, plus;

(2) Any principal installments of such bonds during such fiscal year.

Developed property means real property other than undisturbed property.

~~*Director* means the director of utilities or his or her designee.~~

Dwelling unit means a single unit or apartment providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

Equivalent stormwater unit and ESU mean the average impervious area of residentially developed property per dwelling unit located within the city and as established by city commission resolution as provided in this article.

ESU rate means a fee charged on each ESU as established by city commission resolution or ordinance as provided in this article.

Exempt property means public rights-of-way, public streets, public alleys and public sidewalks, public parks, undisturbed property, conservation areas and easements; any property on which is retained 100 percent of the total volume of runoff within the property (measured on the basis of a 72-hour, 100-year storm event); any property which does not contribute any storm water runoff to the city's stormwater management systems (as determined by the city manager's designee and/or the process set forth in Sec.74-365(f)(3)), and any property owned by the U.S. Navy which by agreement with the city is deemed exempt.

Extension and replacement means costs of extensions, additions and capital improvements to, or the renewal and replacement of capital assets of, or purchasing and installing new equipment for, the system, or land acquisition for the system and any related costs thereto, or paying extraordinary maintenance and repair, including the costs of construction, or any other expenses that are not costs of operation and maintenance or debt service.

Final Assessment Resolution means the resolution which shall confirm, modify or repeal the Initial Assessment

Resolution and which shall be the final proceeding for the imposition of the initial Stormwater Assessment.

Fiscal year means a 12-month period commencing on October 1 of any year, or such other 12-month period adopted as the fiscal year of the city.

Impervious area means the number of square feet of surface area that either prevents or retards the entry of water into soil as water would otherwise enter it under natural conditions if the surface were undisturbed property; and/or causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions on undisturbed property. Impervious area includes, but is not limited to, structures, roofs, roof extensions, patios, porches, driveways, parking areas, sidewalks, pavement and athletic courts.

Initial Assessment Resolution means the resolution which shall be the initial proceeding for the imposition of the Stormwater Assessment.

Nonresidential developed property means developed property that is put to a commercial, governmental, philanthropic or other purpose that is not set forth under the definition of residential developed property.

Obligations mean a series of bonds or other evidence of indebtedness including but not limited to, notes, commercial paper, capital leases or any other obligations of the City issued or incurred to finance any portion of the Capital Cost of a Stormwater Improvement and secured, in whole or in part, by proceeds of the Stormwater Improvement Assessments.

Operating budget means the annual system operating budget adopted by the city for the succeeding fiscal year.

Operations and maintenance means the current expenses, paid or accrued, of operation, maintenance and current repair of the system, as calculated in accordance with sound accounting practice, and includes, without limiting the generality of the foregoing, insurance premiums, administrative expenses, labor, executive compensation, the cost of materials and supplies used for current operations, and charges for the accumulation of appropriate operations, and charges for the accumulation of appropriate reserves for current expenses not annually incurred, but which are such as may reasonably be expected to be incurred in accordance with sound accounting practice.

Pledged Revenue means, as to any series of Obligations, (A) the proceeds of such Obligations, including investment earnings, (B) proceeds of the Stormwater Improvement Assessments pledged to secure the payment of such Obligations, and (C) any other

legally available non-ad valorem revenue pledged to secure the payment of such Obligations, as specified by the resolution authorizing such Obligations.

Property appraiser means the office of the county property appraiser.

Residential developed property means developed property that is used for dwelling, including, but not limited to, single-family, duplex, accessory residential, multifamily, manufactured housing, group homes, mobile homes, residential dwellings holding a transient rental license, residential properties where home occupations occur, and vacant residential dwelling units.

Revenues mean all rates, fees, assessments, rentals, or other charges or other income received in connection with the management and operation of the system, including amounts received from the investment or deposit of moneys in any fund or account and any amounts contributed by the city, all as calculated in accordance with sound accounting practice.

Runoff coefficients are those numbers approved by the city commission that are used to estimate the impervious area for each nonresidential developed property. A list of the

coefficients used for Key West is attached hereto as Exhibit "A".

Editor's note— Exhibit "A" referenced above is not set out at length herein, but is on file in the office of the city clerk.

Stormwater Assessment means either a Stormwater Improvement Assessment, a Stormwater Service Assessment, or both.

Stormwater Assessment Roll means the roll created that includes all parcels within the City and their assigned Stormwater Assessment relating to Stormwater Improvements or Stormwater Management Services approved by a Final Assessment Resolution or an Annual Rate Resolution.

Stormwater Basin means a part of the earth's surface that contributes stormwater runoff to a drainage system, which consists of diffuse surface waters, together with all natural or artificial tributary surface streams and/or bodies of impounded surface water.

Stormwater Basin Plan means a policy document that is adopted by the City Commission for each Stormwater Basin or hydrologic subarea thereof in which Stormwater Improvements are proposed and that provides for implementation of the Stormwater Master Plan.

Stormwater Improvement means land, capital facilities and improvements acquired or provided to detain, retain, convey or treat stormwater.

Stormwater Improvement Assessment means a special assessment imposed by the City within a Stormwater Improvement Area to fund the Capital Cost or the debt service and related cost of Obligations issued to finance the Project Cost of a Stormwater Improvement.

Stormwater management system and system ~~mean the existing stormwater management of the city and all improvements thereto which by this article are constituted as the property and responsibility of the city, to be operated to, among other things, conserve water, control discharges necessitated by rainfall events, incorporate methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over-drainage, environmental degradation and water pollution or otherwise affect the quality and quantity of discharge from such system.~~ shall mean and include all natural and manmade elements used to convey stormwater from the first point of impact with the surface of the earth to a suitable receiving water body or location internal or external to the boundaries of the city. The stormwater management system includes all pipes, channels, streams, ditches, wetlands,

sinkholes, detention/retention basins, ponds, and other stormwater conveyance and treatment facilities.

Stormwater service area means the geographic area described in the Initial Assessment Resolution that encompasses all parcels within the City which specially benefit from the Stormwater Management Service and all parcels to which Stormwater Management Services are provided.

Stormwater Service Assessment means a special assessment imposed by the City within the Stormwater Service Area to fund the Stormwater Service Cost.

Stormwater Service Cost means the estimated amount for any Fiscal Year of all expenditures and reasonable reserves that are properly attributable to the Stormwater Management Service provided within the Stormwater Service Area under generally accepted accounting principles, including, without limiting the generality of the foregoing, reimbursement to the City for any moneys advanced for the Stormwater Management Service, and interest on any interfund or intrafund loan for such purpose.

Tax Collector means the Monroe County Tax Collector.

Tax Roll means the real property ad valorem tax assessment roll maintained by the Property Appraiser for the purpose of the levy and collection of ad valorem taxes.

Uniform Assessment Collection Act means sections 197.3632 and 197.3635, Florida Statutes, or any successor statutes authorizing the collection of non-ad valorem assessments on the same bill as ad valorem taxes, and any applicable regulations promulgated thereunder.

Undisturbed property means real property that has not been altered from its natural state.

User fee means a user fee authorized by state law and this article which is established to pay operations and maintenance, extension and replacement and debt service.

Sec. 74-362. - Findings, determinations and powers.

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Sec. 74-363. - Creation of stormwater user fees.

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Sec. 74-364. - Operating budget.

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Sec. 74-365. - User fee.

(a) *Fee established.* Subject to the provisions of this article, there is hereby imposed on each and every residential developed property and nonresidential developed property, other than exempt property, and the owners thereof, a user fee. The user fee shall be ~~a monthly or~~ an annual service charge ~~and shall be determined by the provisions of this article~~.

(b) *User fee for residential developed property.* The user fee for residential developed property shall be the ESU rate multiplied by the number of individual dwelling units existing on the property.

(c) User fee for nonresidential developed property.

(1) The user fee for nonresidential developed property shall be the ESU rate multiplied by the numerical factor obtained by multiplying the gross area of a property by the runoff coefficient for that property. The minimum user fee for any nonresidential developed property shall be equal to the charge for one ESU rate. In the event of newly developed nonresidential developed property, the charge for the user fee attributable to that development shall commence, or increase in the case of additional development to property that is already

developed property, upon the issuance of the certificate of occupancy for such additional development, or in the event that no certificate of occupancy will be issued for that development, or in the event development has halted, then on the date that the city manager's designee determines, in his or her reasonable judgment, that the development is substantially complete or has been halted for at least three months.

(2) In the event of separately metered nonresidential developed property with joint users of common impervious areas, the city manager's designee shall calculate and allocate the pro rata user fee among the users. Any owner or non-owner user disagreeing with the city manager's designee's calculation or allocation may appeal such determination to the city manager's designee as provided in paragraph (e)(5) of this section.

(d) Dwelling unit and impervious area calculation.

(1) The city manager's designee shall initially, and from time to time, determine the number of dwelling units located on residential developed property in order to establish the user fee provided by subsection (b) of this section.

(2) Nonresidential developed property in the city shall have its gross square footage calculated in order to establish the user fee provided by subsection (c) of this section. The city manager's designee shall make the initial calculation and may from time to time change this calculation

from such information and data deemed pertinent by the city manager's designee.

(e) Appeal of dwelling unit and impervious area calculation. Any person disagreeing with the calculation of the stormwater user charge, as provided in this section, may appeal such determination to the city manager's designee. Any appeal must be filed in writing and shall include a survey prepared by a registered surveyor or registered engineer showing dwelling units, total property area, impervious area or nonresidential developed property, as appropriate. The city manager's designee may request additional information from the appealing party. Based upon the information provided by the city and the appealing party, the city manager's designee shall make a final calculation of the user fee. The city manager's designee shall notify the parties, in writing, of the city manager's designee's decision. If still dissatisfied, a party may request, in writing, a review by the city manager of the city manager's designee's decision. Such request must cite specific error by the city manager's designee and provide the calculation that the party believes is correct. The city manager shall review the record presented and render a written decision. The city manager may request additional information from either party.

(f) User fee adjustments and exempt property determinations. After the city has determined a user fee based on impervious area calculations, residential and nonresidential developed property owners may be eligible for an exempt property determination or a user fee adjustment when certain criteria are met. It is the property owner's responsibility to provide proof that conditions exist that may qualify a property for a particular adjustment or exempt property determination.

(1) Retention/detention fee adjustment. The city may allow adjustment of stormwater user fees for privately maintained retention and/or detention facilities upon an inspection and approval of such facilities by a certified engineer. French vertical drains are not acceptable stormwater facilities when determining fee adjustment eligibility. The rate of adjustment for privately maintained retention/detention facilities is based on the following:

a. Where stormwater management facilities are constructed and maintained, which collect and retain 100 percent of runoff on the property (measured on the basis of a 72-hour, 25-year storm event), the property owner shall receive a reduction of the user fee by 15 percent.

b. Where stormwater management facilities are constructed and maintained, which collect and retain 100 percent of runoff on the property (measured on the basis of a 72-hour, 50-year storm event), the property owner shall receive a reduction of the user fee by 25 percent.

The following conditions must be met in order for an eligible property owner to receive the user fee adjustment: The property owner must apply for the user fee adjustment in writing and provide proof of 100 percent runoff retention on the property by submitting hydraulic/hydrologic calculations and topographic maps signed and sealed by a certified engineer to the city manager's designee. The city manager's designee must agree that 100 percent of the property's runoff will not have an impact on city owned or maintained stormwater facilities. The property owner must enter into a maintenance agreement with the city for continued maintenance of private stormwater facilities.

(2) Senior citizen and permanently and totally disabled residential developed property user fee adjustment. The senior citizen and permanently and totally disabled residential user fee adjustment shall mean a 15 percent reduction in the user fee for a property which is the residence of a qualified senior citizen or other citizen who is totally and permanently disabled. Any subscriber who is 60 years of age or older by October 1 of the year in which the base charge adjustment is

established, or who is totally and permanently disabled, and whose total annual income does not exceed the maximum social security benefit amount established each year shall be entitled to the reduction upon submission of such proof of age, disability, residency, and income as the city manager may reasonably require. Proof of age may be submitted anytime after the October 1 date at which time the fee adjustment will be made effective from that day forward.

(3) Exempt property determinations.

The following conditions must be met in order for an eligible exempt property owner to receive an exempt property determination:

a. The property owner must apply for the exempt property determination in writing to the city manager's designee and provide proof that the property constitutes an exempt property as defined in Sec.74-361 of the Key West Code of Ordinances. The proof submitted by the property owner shall include, but shall not be limited to, survey data and engineering reports, performed by either a registered professional land surveyor currently registered in the State of Florida or a professional engineer currently registered in the State of Florida where appropriate to support the request and as deemed necessary by the city manager's designee.

b. The city manager's designee will review the proof and information submitted by the property owner and make a determination as to whether the subject property constitutes an exempt property as defined in Sec.74-361 of the Key West Code of Ordinances. The determination of the city manager's designee shall be in writing. Any credit or refund of user fees resulting from the exempt property determination shall be retroactive to the date the application was complete, including submission of all required documentation but in no event shall exceed one (1) year from the date of the determination.

c. In the event a property owner is not satisfied with the determination of the city manager's designee, the property owner may, within thirty (30) days of the determination, appeal in writing to the City Manager. Thereafter, the City Manager will review any material submitted by the property owner or city manager's designee and within 30 days of receipt of the written appeal, issue a final written determination.

~~**Sec. 74-366. -- Collection of fee.**~~

~~(a) The user fee for metered property shall be billed and collected monthly with the monthly utility bill for those properties using city utilities and billed and collected separately as a user fee for those properties not using other~~

~~city utilities. The city shall have the option to collect on an annual basis. All such bills for user fee shall be rendered monthly by the finance department of the city. The user fee for those properties using city utilities is part of a consolidated statement for utility customers that is generally paid for by a single payment. In the event that a partial payment is received, the payment shall be applied pro rata to each account billed on the consolidated statement in the proportion that an individual account bears to the total consolidated statement of all current charges for all accounts. The user fee for unmetered property also shall be billed monthly. All bills for user fee shall become due and payable in accordance with rules and regulations of the finance department pertaining to the collection of the user fees.~~

~~(b) User fees shall be subject to a five percent per month (not to exceed 25 percent) late fee. The city shall be entitled to recover attorney's fees incurred in collecting delinquent user fees. Any charge due pursuant to this article that is not paid when due may be recovered in an action at law by the city. In addition to any other remedies or penalties provided by this article or any other ordinance of the city, the failure of any owner of property using city utilities within the city to pay the charges promptly when due shall subject such property owner to discontinuance of utility services. The utilities director of~~

~~the city, or the utilities director's designee, is hereby directed to enforce this provision as to any and all delinquent property owners. The employees of the city shall, at all reasonable times, have access to any premises served by the city for inspection, repair or the enforcement of the provisions of this article.~~

~~(c) All user fees assessed pursuant to this article shall be a lien upon the property to which such fee is associated from the date such fee becomes due until the fee is paid. The owner of every building, premises, lot or house shall be obligated to pay the charge for all service provided for such owner's premises, which obligation may be enforced by the city by action at law. In the event of such action, the city shall be entitled to recover all court costs and reasonable attorney's fees for such collection. No changes of ownership shall affect the application of this article, and the failure of any owner to learn that he purchased property against which a lien for user fees exists shall in no way affect his responsibility for such payment.~~

Sec. 74-366. Stormwater Service Assessments.

(A) The Commission is hereby authorized to impose Stormwater Service Assessments against property located within the Stormwater Service Area. The Stormwater Service

Cost may be assessed against Developed Property located within the Stormwater Service Area at a rate of assessment based upon the special benefit accruing to such property from the Stormwater Management Service provided by the City, measured by the number of ESUs attributable to each parcel or classification of property.

(B) Notwithstanding the foregoing, if the Commission specifically determines that any portion of the Stormwater Service Area receives a distinct special benefit from any component of the Stormwater Management Service that is materially different in kind or degree from the special benefit received by other portions of the Stormwater Service Area, the Stormwater Service Cost related to such component shall be assessed against the portion of the Stormwater Service Area receiving the distinct special benefit.

Sec. 74-367. Stormwater Improvement Assessments.

(A) The Commission is hereby authorized to impose Stormwater Improvement Assessments to fund all or any portion of the Capital Cost or the debt service and related cost of Obligations issued to finance the Project Cost of a Stormwater Improvement identified in any Stormwater Basin Plan. Stormwater Improvement Assessments to fund the Capital Cost or the debt

service and related cost of Obligations issued to finance the Project Cost of each Stormwater Improvement may be imposed against all parcels of property within the Stormwater Improvement Area at a rate of assessment based upon the special benefit accruing to such property from the Stormwater Improvement measured by the number of ESUs attributable to each parcel or classification of property.

(B) If Stormwater Improvement Assessments are imposed to fund the debt service and related cost of Obligations issued to finance the Project Cost of a Stormwater Improvement, the Stormwater Improvement Assessment may include the amount required to fund any amounts withdrawn during the prior Fiscal Year from any debt service reserve account established for Obligations and the amount of any principal of and interest on Obligations that has become due and remains unpaid.

Sec. 74-368. Initial Assessment Resolution.

The initial proceeding for imposition of the Stormwater Assessments shall be the Commission's adoption of an Initial Assessment Resolution. The Initial Assessment Resolution shall (A) describe the Stormwater Improvement or Stormwater Management Service proposed for funding from the proceeds of the Stormwater Assessments and Stormwater Fees; (B) estimate the Capital Cost

or Stormwater Service Cost; (C) describe with particularity the proposed method of apportioning the Capital Cost or Stormwater Service Cost among the parcels of property located within the Stormwater Improvement Area or Stormwater Service Area, as applicable, such that the owner of any parcel of property can objectively determine the amount of the Stormwater Assessments, based upon its value, use or physical characteristics; and (D) include specific legislative findings that recognize the equity provided by the apportionment methodology and specific legislative findings that recognize the special benefit provided by the Stormwater Improvement or Stormwater Management Service. At its option, the Commission may adopt separate Initial Assessment Resolutions for the Stormwater Service Assessment and each Stormwater Improvement Assessment.

Sec. 74-369. Stormwater Assessment Roll.

(A) The City Manager shall prepare, or direct the preparation of, a preliminary Stormwater Assessment Roll that contains the following information:

(1) a summary description of each parcel of property (conforming to the description contained on the Tax Roll) subject to the Stormwater Assessment

(2) the name of the owner of record of each parcel as shown on the Tax Roll;

(3) the number of ESUs (or other units used to determine the amount of the Stormwater Assessment) attributable to each parcel;

(4) the estimated maximum Stormwater Assessment to become due in any Fiscal Year for each ESU or other units used to determine the amount of the Stormwater Assessment;

(5) the estimated maximum Stormwater Assessment to become due in any Fiscal Year for each parcel: and

(6) at the option of the Commission, the Stormwater Assessment Roll may also include the estimated maximum annual Stormwater Assessment to become due in any future Fiscal Year for each ESU (or other units used to determine the amount of the Stormwater Assessment) and each parcel.

(B) Copies of the Initial Assessment Resolution and the preliminary Stormwater Assessment Roll shall be on file in the office of the City Manager and open to public inspection. The foregoing shall not be construed to require that the Stormwater Assessment Roll be in printed form if the amount of the Stormwater Assessment for each parcel of property can be determined by use of a computer terminal available for use by the public.

Sec. 74-370. Notice by Publication.

After filing the Stormwater Assessment Roll in the office of the City Manager, as required by Section 3.05 hereof, the City Manager shall publish once in a newspaper of general circulation within the City a notice stating that a public hearing of the Commission will be held on a certain day and hour, not earlier than 20 calendar days from such publication, at which hearing the Commission will receive written comments and hear testimony from all interested persons regarding adoption of the Final Assessment Resolution and approval of the Stormwater Assessment Roll. The published notice shall conform to the requirements set forth in the Uniform Assessment Collection Act for purposes of the Stormwater Assessments.

Sec. 74-371. Notice by Mail.

In addition to the published notice required by Section 74-370, the City Manager shall provide notice of the proposed Stormwater Assessments by first class mail to the owner of each parcel of property subject to the Stormwater Assessments, which notice shall conform to the requirements set forth in the Uniform Assessment Collection Act. Notice shall be mailed at least 20 calendar days prior to the hearing to each property

owner at such address as is shown on the Tax Roll on the twentieth calendar day prior to the date of mailing. Notice shall be deemed mailed upon delivery thereof to the possession of the U.S. Postal Service. The City Manager shall provide proof of such notice by affidavit. Failure of the owner to receive such notice due to mistake or inadvertence shall not affect the validity of the Stormwater Assessment Roll nor release or discharge any obligation for the payment of a Stormwater Assessment imposed by the Commission pursuant to this Ordinance.

Sec. 74-372. Final Assessment Resolution.

At the time named in such notice, or such time to which an adjournment or continuance may be taken, the Commission shall receive written objections and hear testimony of interested persons and may then, or at any subsequent meeting of the Commission, adopt the Final Assessment Resolution which shall (A) confirm, modify or repeal the Initial Assessment Resolution with such amendments, if any, as may be deemed appropriate by the Commission; (B) approve the Stormwater Assessment Roll, with such amendments as it deems just and right; and (C) determine the method of collection.

Sec. 74-373. Annual Rate Resolution.

During its budget adoption process, the Commission shall adopt an Annual Rate Resolution for each Fiscal Year following adoption of the Final Assessment Resolution. The Final Assessment Resolution shall constitute the Annual Rate Resolution for the initial Fiscal Year. The Annual Rate Resolution shall approve the Stormwater Assessment Roll for such Fiscal Year. The Stormwater Assessment Roll shall be prepared in accordance with the Initial Assessment Resolution, as confirmed or amended by the Final Assessment Resolution. If the proposed Stormwater Assessment for any parcel of Developed Property exceeds the maximum amount established in the Final Assessment Resolution or if a Stormwater Assessment is imposed against property not previously subject thereto, the Commission shall provide notice to the owner of such property in accordance with Section 74-371 hereof and conduct a public hearing prior to adoption of the Annual Rate Resolution. Failure to adopt an Annual Rate Resolution during the budget adoption process for a Fiscal Year may be cured at any time.

Sec. 74-374. Effect of Stormwater Resolutions.

The adoption of the Final Assessment Resolution or Annual Rate Resolution shall be the final adjudication of the issues presented (including, but not limited to, the apportionment methodology, the rate of assessment, the adoption of the Stormwater Assessment Roll and the levy and lien of the Stormwater Assessments), unless proper steps are initiated in a court of competent jurisdiction to secure relief within 20 days from the date of Commission adoption of the Final Assessment Resolution. The Stormwater Assessments for each Fiscal Year shall be established upon adoption of the Annual Rate Resolution. The Stormwater Assessment Roll, as approved by the Final Assessment Resolution or Annual Rate Resolution, shall be delivered to the Tax Collector, or such other official as the Commission, by resolution, deems appropriate.

Sec. 74-375. Lien of Stormwater Assessments.

(A) Upon adoption of the Annual Rate Resolution for each Fiscal Year, Stormwater Assessments to be collected under the Uniform Assessment Collection Act shall constitute a lien against Assessed Property equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad valorem assessments. Except as otherwise provided

by law, such lien shall be superior in dignity to all other prior liens, titles and claims, until paid. The lien shall be deemed perfected upon adoption by the Commission of the Annual Rate Resolution and shall attach to the property included on the Stormwater Assessment Roll as of the prior January 1, the lien date for ad valorem taxes.

(B) Upon adoption of the Final Assessment Resolution, Stormwater Assessments to be collected under the alternative method of collection provided in Section 74-377 hereof shall constitute a lien against Assessed Property equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad valorem assessments. Except as otherwise provided by law, such lien shall be superior in dignity to all other prior liens, titles and claims, until paid. The lien shall be deemed perfected on the date notice thereof is recorded in the Official Records of Monroe County, Florida.

Sec. 74-376. Method of Collection of Stormwater Assessments.

Unless directed otherwise by the Commission, Stormwater Assessments shall be collected pursuant to the Uniform Assessment Collection Act, and the City shall comply with all applicable provisions thereof. Any hearing or notice required by

this Ordinance may be combined with any other hearing or notice required by the Uniform Assessment Collection Act.

Sec. 74-377. Alternative Method of Collection of Stormwater Assessments.

In lieu of using the Uniform Assessment Collection Act, the City may elect to collect the Stormwater Assessment by any other method which is authorized by law or under an alternative collection method provided by this Section.

(A) The City shall provide Stormwater Assessment bills by first class mail to the owner of each affected parcel of property, other than Government Property. The bill or accompanying explanatory material shall include (1) a brief explanation of the Stormwater Assessment, (2) a description of the ESU calculation used to determine the amount of the Assessment, (3) the number of ESUs attributed to the parcel, (4) the total amount of the parcel's Stormwater Assessment for the appropriate period, (5) the location at which payment will be accepted, (6) the date on which the Stormwater Assessment is due, and (7) a statement that the Stormwater Assessment constitutes a lien against assessed property equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad valorem assessments.

(B) A general notice of the lien resulting from imposition of the Stormwater Assessments shall be recorded in the Official Records of Monroe County, Florida. Nothing herein shall be construed to require that individual liens or releases be filed in the Official Records.

(C) The City shall have the right to appoint or retain an agent to foreclose and collect all delinquent Stormwater Assessments in the manner provided by law. A Stormwater Assessment shall become delinquent if it is not paid within 30 days from the date any installment is due. The City or its agent shall notify any property owner who is delinquent in payment of his or her Stormwater Assessment within 60 days from the date the Stormwater Assessment was due. Such notice shall stale in effect that the City or its agent will initiate a foreclosure action and cause the foreclosure of such property subject to a delinquent Stormwater Assessment in a method now or hereafter provided by law for foreclosure of mortgages on real estate, or otherwise as provided by law.

(D) All costs, fees and expenses, including reasonable attorney fees and title search expenses related to any foreclosure action as described herein shall be included in any judgment or decree rendered therein. At the sale pursuant to decree in any such action, the City may be the purchaser to the same extent as an individual person or corporation. The City may

join in one foreclosure action the collection of Stormwater Assessments against any or all property assessed in accordance with the provisions hereof. All delinquent property owners whose property is foreclosed shall be liable for an apportioned amount of reasonable costs and expenses incurred by the City and its agents, including reasonable attorney fees, in collection of such delinquent Stormwater Assessments and any other costs incurred by the City as a result of such delinquent Stormwater Assessments including, but not limited to, costs paid for draws on a credit facility and the same shall be collectible as a part of or in addition to, the costs of the action.

(E) In lieu of foreclosure, any delinquent Stormwater Assessment and the costs, fees and expenses attributable thereto, may be collected pursuant to the Uniform Assessment Collection Act; provided however, that (1) notice is provided to the owner in the manner required by law and this Ordinance, and (2) any existing lien of record on the affected parcel for the delinquent Stormwater Assessment is supplanted by the lien resulting from certification of the Stormwater Assessment Roll to the Tax Collector.

Sec. 74-378. Collection of Stormwater Assessments from Government Property.

(A) Unless directed otherwise by the Commission, the City may provide Stormwater Assessment bills by first class mail to the owner of each affected parcel of Government Property. The bill or accompanying explanatory material shall include (1) a brief explanation of the Stormwater Assessment, (2) a description of the ESUs or other unit used to determine the amount of the Stormwater Assessment, (3) the number of ESUs (or other units used to calculate the amount of the Stormwater Assessment) attributed to the parcel, (4) the total amount of the parcel's Stormwater Assessment for the appropriate period, (5) the location at which payment will be accepted, and (6) the date on which the Stormwater Assessment is due.

(B) A Stormwater Assessment shall become delinquent if it is not paid within 30 days from the date any installment is due. The City shall notify the owner of any Government Property that is delinquent in payment of its Stormwater Assessment within 60 days from the date the Stormwater Assessment was due. Such notice shall state in effect that the City will initiate a mandamus or other appropriate judicial action to compel payment

(C) All costs, fees and expenses, including reasonable attorney fees and title search expenses, related to any mandamus or other action as described therein shall be included in any judgment or decree rendered therein. All delinquent owners of Government Property against which a mandamus or other

appropriate action is filed shall be liable for an apportioned amount of reasonable costs and expenses incurred by the City, including reasonable attorney fees, in collection of such delinquent Stormwater Assessments and any other costs incurred by the City as a result of such delinquent Stormwater Assessments including, but not limited to, costs paid for draws on a credit facility and the same shall be collectible as a part of or in addition to, the costs of the action.

Sec. 74-379. Responsibility for Enforcement.

The City and its agent, if any, shall maintain the duty to enforce the prompt collection of Stormwater Assessments by the means provided herein. The duties related to collection of Stormwater Assessments may be enforced at the suit of any holder of Obligations in a court of competent jurisdiction by mandamus or other appropriate proceedings or actions.

Sec. 74-380. Revisions to Stormwater Assessments.

If any Stormwater Assessment made under the provisions of this Ordinance is either in whole or in part annulled, vacated or set aside by the judgment of any court, or if the Commission is satisfied that any such Stormwater Assessment is so irregular or defective that the same cannot be enforced or collected, or if

the Commission has failed to include any property on the Stormwater Assessment Roll that should have been so included, the Commission may take all necessary steps to impose a new Stormwater Assessment against any such property, following as nearly as may be practicable, the provisions of this Ordinance and in case such second Stormwater Assessment is annulled, the Commission may obtain and impose other Stormwater Assessments until a valid Stormwater Assessment is imposed.

Sec. 74-381. Procedural Irregularities.

Any irregularity in the proceedings in connection with the levy of any Stormwater Assessment under the provisions of this Ordinance shall not affect the validity of the same after the approval thereof, and any Stormwater Assessment as finally approved shall be competent and sufficient evidence that such Stormwater Assessment was duly levied, that the Stormwater Assessment was duly made and adopted, and that all other proceedings adequate to such Stormwater Assessment were duly had, taken and performed as required by this Ordinance; and no variance from the directions hereunder shall be held material unless it be clearly shown that the party objecting was materially injured thereby. Notwithstanding the provisions of this Section **74-381**, any party objecting to an Stormwater Assessment Imposed pursuant to this Ordinance must file an

objection with a court of competent jurisdiction within the time periods prescribed in Section **74-372** of this Ordinance.

Sec. 74-382. Correction of Errors and Omissions.

(A) No act of error or omission on the part of the Commission, City Manager, Property Appraiser, Tax Collector, Clerk, or their respective deputies, employees or designees, shall operate to release or discharge any obligation for payment of any Stormwater Assessment imposed by the Commission under the provisions of this Ordinance.

(B) The number of ESUs attributed to a parcel of property may be corrected at any time by the City Manager. Any such correction which reduces a Stormwater Assessment shall be considered valid from the date on which the Stormwater Assessment was 1mposed and shall in no way affect the enforcement of the Stormwater Assessment imposed under the provisions of this Ordinance. Any such correction which increases a Stormwater Assessment or imposes a Stormwater Assessment on omitted property shall first require notice to the affected owner in the manner described in Section **74-371** hereof, providing the date, time and place that the Commission will consider confirming the correction and offering the owner an opportunity to be heard.

(C) After the Stormwater Assessment Roll has been delivered to the Tax Collector, any changes, modifications or corrections thereto shall be made in accordance with the procedures applicable to errors and insolvencies for ad valorem taxes.

Sec. 74-383. Applicability.

This Ordinance and the City's authority to impose Stormwater Assessments pursuant hereto shall be applicable throughout the City.

Sec. 74-384. Alternative Method.

This Ordinance shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing or which may hereafter come into existence. This Ordinance, being necessary for the welfare of the inhabitants of the City, shall be liberally construed to effect the purposes hereof.

Sec. ~~74-367~~ 74-385. - Program responsibility.

It shall be the duty of the city's department of utilities to administer the stormwater management user fee system. The department shall keep an accurate record of all persons using the services and facilities of the stormwater management system of the city and to make changes in accordance with the rates and changes established in this article.

Sec. ~~74-368~~ 74-386.- Stormwater management utility enterprise fund.

(a) All user fees collected by the city shall be paid into a separate fund which is hereby created, to be known as the "stormwater management fund". Such fund shall be used for the purpose of paying the costs of construction, operations, and maintenance, and administration of the stormwater facilities of the city and to carry out all other purposes of the system. To the extent that the user fees collected are insufficient to construct the needed stormwater drainage facilities, the cost of the same may be paid from such city fund as may be determined by the city commission, but the city commission may order the reimbursement of such fund if additional charges are thereafter collected.

(b) The fees paid shall not be used for general or other governmental or proprietary purposes of the city, except to pay for the equitable share of the cost of accounting, management and government thereof. Other than as described above, the fees shall be used solely as provided herein.

Sec. ~~74-369~~ 74-387. - Equivalent stormwater unit (ESU) rate.

The user fee charged on each ESU shall be ~~$7.05~~ 7.80. This rate may be adjusted by resolution of the city commission each October 1, by up to 100 percent of the percentage increase in the CPI-(U), the U.S. City Averages (as of June). The city commission shall enact an ordinance amendment to this section in order to increase the ESU in excess of the CPI.

Section 2: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4: This Ordinance 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.

Read and passed on first reading at a regular meeting held this 4 day of June, 2013.

Read and passed on final reading at a regular meeting held this 18 day of June, 2013.

Authenticated by the presiding officer and Clerk of the Commission on 19 day of June, 2013.

Filed with the Clerk June 19, 2013.

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

THE CITY OF KEY WEST
Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

MEMORANDUM

EXECUTIVE SUMMARY

TO: Bogdan Vitas, City Manager
E. David Fernandez, Asst. City Manager - Operations

FROM: Jay Gewin, Utilities Manager

DATE: April 30, 2013

RE: **Approval of Amendments to the City's Stormwater Ordinances in Order to Shift Utility Billing to the Property Tax Roll, and to Update Additional Sections**

ACTION STATEMENT:

These Amendments to Chapter 74 of the City's Stormwater ordinances relates to the City's transfer of the billing for its Stormwater utility to the property tax roll. Additional changes included updating the rate to its current level (as approved by resolution) and a modification to the appeal procedure.

BACKGROUND:

The City of Key West has struggled with excessive past-due accounts for our stormwater utility. While the total sum of delinquencies is now decreasing over last year, there is still a significant amount of funds that need to be collected by the City.

To remedy this situation, and to improve our collection rate going forward, the City Commission has given City Staff direction to move our solid waste and stormwater utility billings as a non-ad valorem assessment on the property tax roll. The Monroe County Tax Collector is supportive of this plan, and will work with the City to implement the transition.

Due to the requirements set forth in state statute, the soonest the City could move our billing to the tax roll would be FY 2014, which would be mailed to the public in November of 2013.

PURPOSE AND JUSTIFICATION

In order to proceed with this billing transfer to a non-ad velorum assessment to the property tax roll, the City will need to modify its code of ordinances. Much of the language included in these amendments is based on the language from the code from the Village of Islamorada.

The other changes were based on updating the stormwater appeal procedure so that it will be similar to other utilities around the state, and matching the fee to the current $7.80 per month based on the approved resolution of the City Commission.

OPTIONS / ADVANTAGES / DISADVANTAGES:

1. The City Commission can agree to the amendments that are proposed. Doing so will enable us to move forward in moving the stormwater utility billing to the property tax roll, which will increase our collection rate.

2. The City Commission can decline the amendments. This option is not recommended by City Staff because it will preclude the City from achieving the benefits from the shift of billing to the property tax roll.

FINANCIAL IMPACT:

Shifting the utility billing to the property tax roll will result in an increased collection rate, and will eliminate postage and other fees associated with monthly billing.

RECOMMENDATION:

Staff recommends that the City Commission select option 1, approving the amendments to the stormwater code.