

OPERATING AGREEMENT
CITY OF KEY WEST
KEYS OVERNIGHT TEMPORARY SHELTER

THIS AGREEMENT is made and entered into this ___ day of _____, 2017 by and between the City of Key West ("CITY" or "Landlord"), a Florida municipal corporation, whose mailing address is P.O. Box 1409, Key West, Florida, 33041-1409, and the Southernmost Homeless Assistance League, Inc. ("SHAL" or "Tenant"), a non-profit corporation qualified pursuant to United States Internal Revenue Service regulations as a 501(c)(3) tax exempt charitable organization, whose mailing address is P.O. Box 2990, Key West, Florida, 33045-2990.

WHEREAS, pursuant to Agreements between the CITY and SHAL, entered into on October 1, 2011 and August 9, 2013, SHAL provides homeless services, including the operation of a facility for use by homeless persons as a safe zone and overnight temporary shelter, located at 5537 College Road called the Keys Overnight Temporary Shelter ("KOTS"); and,

WHEREAS, the CITY desires that SHAL manage the day-to-day operation of The Keys Overnight Temporary Shelter (herein referred to as "KOTS") for the ten-year period described in that certain lease between the City of Key West ("Landlord") and SHAL ("Tenant"), of even date herewith;

NOW, THEREFORE, the parties agree as follows:

1. Term. This Agreement is effective commencing upon the date of execution of the last party to sign the Agreement and shall continue for a period of ten (10) years concurrent with the life of the above-described lease of even date hereof, unless earlier terminated by either party.
2. Relationship. The parties intend that the relationship between them is that of two independent organizations and entities, and that no employer-employee relationship exists or shall develop from the performance of this Agreement. This Agreement gives no rights or benefits to any third party and is exclusively between the CITY and SHAL. No other person or entity is entitled to rely upon the terms and conditions contained in this Agreement as they are specific and obligations of the parties named herein.
3. Scope of Services. SHAL agrees to render homeless services including the management and operation of KOTS. The parties agree that SHAL may hire employees and/or agents to assist with the performance of such services.
4. Obligations of SHAL.
 - A. SHAL will report monthly to the CITY significant operational changes or revised policies and procedures. No material changes or revisions shall be implemented without consent by CITY.
 - B. SHAL shall provide CITY with a detailed monthly expenditure report by the tenth day of the month following the expenditures. SHAL agrees the amounts paid to SHAL under Paragraph 5 are estimates, intended to cover specific budgeted expenditures for each Fiscal Year of the City of Key West operating budget. SHAL agrees to reimburse CITY in accordance with Paragraph 6 those unexpended funds advanced to SHAL.
 - C. SHAL agrees to be responsible for paying all required federal, state and local taxes relating to SHAL's business and that CITY has no responsibility for any such taxes.

- D. SHAL agrees to be responsible for all costs related to the operation of the KOTS facility, including, but not limited to, the sleeping quarters, the office/laundry facility, utilities, maintenance and repairs of the facility and appliances.
5. Obligations of CITY.
- A. CITY shall pay to SHAL, in accordance with Paragraph 5.C. below, the annual amount budgeted by the City of Key West for each fiscal year for the operation of KOTS.
- B. CITY shall make payment to SHAL in equal monthly installments based on the annual budgeted amount which shall be made on or about the 1st day of each month, provided, however, that the CITY shall make an advance payment, representing the two monthly installments for the months of October and November, by or on October 5, of each fiscal year.
- C. CITY may terminate this agreement in the event Monroe County fails or refuses to reach an inter-local agreement between the CITY and Monroe County providing for the funding of the operational expenses of SHAL as provided in 5.A. and B. above.
6. Termination of Agreement. Either party may terminate this Agreement at any time upon ninety (90) days' notice in writing to the other party. SHAL agrees to return unexpended advanced funds to CITY within ninety (90) days of the date of termination.
7. Authority to Issue Public Statements. To foster effective communication, the Chairman of the Board or the President and Executive Director of SHAL will be the only official spokespersons for SHAL. CITY may designate such spokesperson as CITY shall in its sole discretion appoint.
- 10.8. Assignment of Rights. The rights of each party under this agreement are limited to that party and shall not be assigned or transferred to any other party, firm, corporation, or other entity without the prior, express, and written consent of the other party.
- 11.9. No Waiver. The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but these shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
- 12.10. Indemnification To the fullest extent permitted by law, SHAL expressly agrees to indemnify and hold harmless the City of Key West, their officers, directors, agents and employees (herein called the "indemnitees") from any and all liability for damages, including, if allowed by law, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, to persons or property, caused in whole or in part by any act, omission, or default by SHAL or its subcontractors, material men, or agents of any tier or their employees, arising out of this agreement or its performance, including any such damages caused in whole or in part by any act, omission or default of any indemnitee, but specifically excluding any claims of, or damages against an indemnitee resulting from such indemnitee's gross negligence, or the willful, wanton or intentional misconduct of such indemnitee or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of SHAL or its subcontractors, material men or agents of any tier or their respective employees.

- 13.11. Personal Property. That the personal property used under this agreement is the sole property of the CITY and upon termination of this agreement for any cause shall be returned to the CITY. SHAL will keep an inventory of such personal property and such replacement personal property purchased by the CITY during the term of this agreement. A list of the personal property is attached hereto as exhibit "A" and incorporated herein by reference
- 14.12. Paragraph Headings of Agreement. The paragraph headings throughout this Agreement are for convenience and reference only, and the words contained herein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Agreement.
- 15.13. Interpretation of Agreement. The parties agree that in all cases, the language of this Agreement shall be construed according to its fair and simple meaning and not strictly for or against either party.
- 16.14. Integration and Amendment of Agreement. The parties acknowledge that the terms of this Agreement may vary from the terms negotiated or as evidenced by preliminary agreements between the parties made prior to the execution of this Agreement. The parties agree that the terms, covenants and conditions of this Agreement shall supersede all such prior negotiations and agreements, and that other than the lease agreement and the anticipated inter-local agreement with Monroe County there are no other agreements other than those contained herein, that this Agreement shall be and is the final expression of the Agreement of the parties and shall control.
- 17.15. Amendment to Agreement. No modification of the Agreement shall be valid unless in writing, executed by the parties of this Agreement.

Governing Law. The validity, meaning and effect of this Agreement shall be determined according to Florida law. Venue for any legal proceeding including mediation and arbitration shall be Monroe County, Florida.

- 18.16. Time is of the Essence. It is specifically declared and agreed that time is of the essence of this Agreement.
- 19.17. Notices. Notices required to be given under this Agreement or for any other purpose shall be sent by courier to the address specified above for each party or by certified mail, return receipt requested as follows:

For CITY: City Manager, City of Key West
 P.O. Box 1409
 Key West, FL 33041-1409

For SHAL: Executive Director
 Southernmost Homeless Assistance League, Inc.
 P.O. Box 2990
 Key West, FL 33045-2990

SIGNATURES ON NEXT PAGE...

Southernmost Homeless Assistance League, Inc.

City of Key West

John G. Miller (Date)
President and Executive Director

James Scholl (Date)
City Manager

WITNESS:

ATTEST:

(Signature of Witness)

Cheryl Smith
City Clerk

(Print Name of Witness)

(Signature of Witness)

(Print Name of Witness)