

## AGREEMENT

**THIS AGREEMENT** is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, between the Board of County Commissioners of Monroe County (County), Florida, a political subdivision of the State of Florida, the City of Key West (City), a municipality incorporated in the State of Florida, and the Key West Botanical Garden Society, Inc. (KWBGS), a not-for-profit organization, as follows:

**WHEREAS**, the County transferred the site of the old Public Service Building (PSB) to the City on July 26, 2005, after providing to the City Phase 1 and Phase 2 Environmental Site Assessments; and

**WHEREAS**, the May 2, 2005, Option Agreement for Sale and Purchase provides that "except for those findings and conditions identified in the Property's Phase I and Phase II Environmental Site Assessments, Seller warrants and represents ... [that due to] the best of Seller's knowledge, no underground treatment, buried, partially buried or above ground storage tanks, storage vessels, sumps, drums, containers, water, gas or oil wells, or landfills are or have ever been located on the property;" and

**WHEREAS**, the 2005 Phase 1 report recommended a Phase 2 assessment due to the fact that there had been a fuel tank on the premises and that when it was removed in 2003, samples disclosed contamination, as a result of which contaminated soil was removed. The Phase 2 assessment, certified to the City of Key West and the Florida Community Trust on June 7, 2005, stated in summary: "The testing of the Public Service Building Site revealed that no heavy metals were found in the soils that are above action levels. The ground water under the old tank site tested below action levels. This Phase Two Report and the findings of the testing will recommend 'No Further Action'."

**WHEREAS**, the City leased the site to the Key West Botanical Garden Society (KWBGS) to develop as a botanical garden and incorporate with the existing adjacent botanical garden; and

**WHEREAS**, in the summer of 2008, while excavating for installation of a pond, KWBGS encountered what appeared to be oil contamination; and

**WHEREAS**, \$47,018 was incurred for clean-up, removal and post clean-up assessment, prior to interest and late charges which were incurred; and

**WHEREAS**, in a letter of April 2, 2009, the City requested payment of certain bills related to the environmental assessment conducted for KWBGS and the subsequent clean-up of oil contamination; and

**WHEREAS**, the County recognizes that even after its 2003 removal of considerable oil-contaminated soil and obtaining in 2005 an environmental assessment which required no further action, there may have remained residual and undetected contamination; and

**WHEREAS**, it is desired to settle the outstanding issues between the County, City, and KWBGS regarding this matter; and

**WHEREAS**, the City has expended approximately \$24,000 in addressing the invoices, before interest and penalties; and

WHEREAS, KWBGS has paid most of the bills for assessment, clean-up, and removal in order to continue with its development of the botanical garden, but the County is not in privity with the KWBGS for the possession and operation of the site, and is only in privity with the City regarding the possession and ownership of the property;

NOW THEREFORE, the parties agree as follows:

- 1) The County, City and KWBGS agree to settle the dispute regarding the site of the old Public Service Building transferred to the City on July 26, 2005, and which was reflected in a deed recorded at the Official Records of Monroe County, OR Book 2136 Pages 2453-2471.
- 2) Upon execution of this agreement by both parties, the County will pay to the City the sum of \$24,206.00.
- 3) In consideration of the \$24,206.00 to be paid by the County under this agreement and the out-of-pocket expenditures already made by the City in addressing the contaminants at the site, and the application of the settlement monies to be applied to the outstanding invoices, all three parties hereby hold each of the other parties harmless from any and all claims for assessments and/or clean-up of any contamination from the fuel tank removed and remediated first by the County and subsequently by KWBGS as the lessee of the City.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first above written.

(SEAL)  
Attest: DANNY L. KOLHAGE, Clerk

By \_\_\_\_\_  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By \_\_\_\_\_  
Mayor/Chairman

(SEAL)  
Attest: \_\_\_\_\_, Clerk

By \_\_\_\_\_  
Clerk

CITY OF KEY WEST, FLORIDA

By \_\_\_\_\_  
City Manager

(SEAL)  
Attest:

By \_\_\_\_\_  
Secretary

KEY WEST BOTANICAL GARDEN SOCIETY, INC.

By Rick Hartley as president, KWBGS  
President 7/11/2011