

AGREEMENT
CITY OF KEY WEST
KEYS OVERNIGHT TEMPORARY SHELTER

THIS AGREEMENT is made and entered into this 1st day of October, 2011 by and between the City of Key West ("CITY"), a Florida municipal corporation, whose address is 525 Angela Street, Key West, Florida, 33040, and the Southernmost Homeless Assistance League, Inc. ("SHAL"), 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 an interlocal agreement with Monroe County, City of Key West Resolution 09-056, CITY operates a facility for use by homeless persons for a safe zone and overnight temporary shelter located at 5537 College Road called the Keys Overnight Temporary Shelter ("KOTS"); and,

WHEREAS, SHAL is a local not-for-profit organization existing for the purpose of assisting homeless persons; and

WHEREAS, the CITY desires that SHAL manage the day-to-day operation of The Keys Overnight Temporary Shelter (herein referred to as "KOTS" on an interim emergency basis until such time the City selects through a competitive process a long term operator/manager.

NOW, THEREFORE, the parties agree as follows:

1. Term. This Agreement is effective commencing October 1, 2011, and shall continue in effect through September 30, 2012, 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 personal obligations of the parties named herein.
3. Scope of Services. SHAL agrees to render management and operational services of the 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 in the Fiscal Year 2011-12 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.
5. Obligations of CITY.

- A. CITY 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 trailer, utilities, maintenance and repairs of the facility and appliances.
- B. CITY shall pay to SHAL in accordance with Paragraph 5. C. below based on an annual sum of \$382,100 budgeted by the City of Key West for the FY 2011-12 operation of KOTS.
- C. CITY shall make payment to SHAL in equal monthly installments based on the annual budget provided in Paragraph 5. B. 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 2011, by or on October 5, 2011 .
- D. CITY will add SHAL as an additional covered party in accordance with the PGIT Public Entity Automatic Additional Covered Parties specimen policy that the CITY currently has in place or such other policies at CITY may from time to time obtain in substantial conformity therewith.

- 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.
- 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.
- 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.
- 10. Indemnification
The parties acknowledge that there is currently pending in Monroe County Circuit Court case number 2011-CA-911-K involving the continued operation of KOTS. The City agrees to defend SHAL in the event SHAL becomes a named party by virtue of its operation of the facility under this Agreement. Both City and SHAL agree that their interests in such litigation would be aligned to the extent that they may utilize the same counsel in defense of the suit. Therefore, both parties consent to the representation of the City Attorney's office, or their named designee, in such litigation.

Further, but only to the monetary limits of its own liability pursuant to Florida Statute 768.28, City agrees to defend, indemnify and hold SHAL harmless from all claims related to their operation of KOTS under this Agreement, except that the City shall not be obligated to defend, hold harmless or indemnify SHAL for the negligence, intentional torts or criminal misconduct of SHAL, its employees and agents. This contractual indemnity is specifically capped at the limits of the then existing amounts provided in Florida Statute 768.28. Should the City be required to defend SHAL, it may do so with counsel of the city's choosing in accordance with the conflict provisions of any

applicable Florida Bar Rules of Professional Conduct. Nothing herein is intended to waive the sovereign immunity afforded to the City pursuant to section 768.28 of the Florida Statutes.

11. Prior Obligations. SHAL, by entering this agreement, does not assume any of the prior liabilities of the KOTS, including any contracts, obligations or commitments of whatever nature, including but not limited to, agreements with prior service providers, employment agreements, accrued vacation or past wages, contracts for services or goods or such other obligations and SHAL will enter separate agreements for the provision of the same for such services and goods as SHAL requires for implementation of this agreement.
12. 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 to be provided to SHAL pursuant to this provision is attached hereto as **Attachment A.**
13. Subcontract Compliance. The City of Key West (Recipient) has entered into a grant agreement with the Florida Department of Children and Families (Department), Emergency Shelter Grant / Shelter Facilities, (Grant Agreement KFZ46), a copy of which is attached as Attachment B. Per paragraph H of the agreement, "The Recipient shall include or cause to be included in subcontracts (at any tier) the substance of all clauses contained in this agreement that mention or describe subcontract compliance."

To follow are those agreement sections/paragraphs that would apply to SHAL as the operator/subcontractor of the KOTS.

- D. Audit, Records, Etc
- E. Indemnification and Insurance
- F. Risk Prevention
- K. Sponsorship
- N. Information Security Obligations
- R. Support to Deaf or Hard-of-Hearing
- S. Employment Eligibility Verification

14. 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. 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. 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 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. Amendment to Agreement. No modification of the Agreement shall be valid unless in writing, executed by the parties of this Agreement.
- 18. 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.
- 19. Time is of the Essence. It is specifically declared and agreed that time is of the essence of this Agreement.
- 20. 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: President and Executive Director
 Southernmost Homeless Assistance League, Inc.
 P.O. Box 2990
 Key West, FL 33045-2990

Southernmost Homeless Assistance League, Inc. City of Key West

Wendy Coles (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)