



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

EXECUTIVE SUMMARY

To: Jim Scholl, City Manager

Through: Sarah Spurlock, Assistant City Manager and Kevin Bond, Acting City Planner

From: Donald Leland Craig, AICP, Consulting Planner

Date: January 23, 2015

Meeting Date: February 3, 2015

RE: Keys Overnight Temporary Shelter (KOTS) – Former Easter Seals Site

ACTION STATEMENT:

Request: That the Commission approve the location of a relocated KOTS Shelter at the City owned property known as the “Easter Seals” site on Stock Island.

Location: Stock Island to serve a City wide and Unincorporated County Need

BACKGROUND: Since 2004 the City has operated the existing KOTS homeless shelter at 5220 College Road on property owned by Monroe County and operated by the Monroe County Sherriff as his jail and administrative complex. Due to on-going litigation initiated in 2011 against the City, Monroe County and the Florida Keys Outreach Coalition by Sunset Marina Residences Condominiums and resolved by a Settlement Agreement reached in October 2013, the city is obligated to use its best efforts and due diligence to permit, build and relocate the KOTS shelter to a suitable site. Specifically, the Settlement Agreement states on page 1, Item 1, “ The city shall use due diligence in relocating from the Jail property to another location.” Further, Item 4 on page 2 states, “ Plaintiff shall not oppose relocation of the homeless shelter to the Easter Seals property (“Easter Seals Site”); however Plaintiff shall be allowed to participate in the conditional use process to ensure compliance with all Federal, State and Municipal laws, including but not limited to appropriate buffer zones, security and other such considerations.”

Executive Summary

Site Evaluation and Coordination with Monroe County and the state of Florida

From the time of the Settlement Agreement until now the City has rigorously examined a wide range of possible sites for relocating the shelter. At three different meetings since the Settlement Agreement was reached the Commission reviewed the staff analysis of sites as it was refined and clarified. In December 2013 the Commission considered at least 13 publicly and privately owned sites. When the votes were tallied, the Commission's preferences in order were:

Juvenile Justice Center – part of the existing Jail complex

Easter Seals Site

Ponciana Housing site - tie

Existing KOTS – tie

Exhibit A is the vote tally sheet from the December 2013 meeting where sites were considered together with the other sites evaluated by staff.

During the period that staff was evaluating alternative sites, meetings with County staff and a public joint meeting of the City Commission and the Monroe County Board of County Commissioners were held. From those meetings, County legal staff, City legal staff and Monroe County Land Authority staff determined that it is possible to use Land Authority funds to fund the construction of a homeless shelter. It is possible for the City to sell to the Land Authority a parcel it owns and designates for the shelter, leaseback from the Authority the same land and use the sale proceeds from the sale for construction. The sale must be based on the "fair market value" of the land as determined by appraisal. This method is in place, but can only be used for lands owned by the City. Lands owned by a private entity are not eligible for such funding because of the requirements of the City Charter, which requires a referendum for acquisition, or disposal of real property owned by the City.

Also since the late 2013 Commission meeting, conversations between City staff and the Sheriff have revealed that he is not willing to extend the month-to-month lease under which the City is operating the present KOTS Shelter. The City Commission through Resolution 09-056, dated March 14, 2009 entered into an Interlocal Agreement, which allowed the City to use a portion of the Sheriff's Jail Property for a "Homeless Persons Safe Zone". The Interlocal Agreement contains a termination date of March 21, 2014. The Interlocal Agreement is **Attachment 1**.

Finally, after the vote in late 2013 when the state owned Juvenile Justice Center emerged as a preferred site, staff investigated whether there were either state or federal restrictions on the re-use of the site for a homeless shelter. It became apparent in a few short months that pass through federal funding used to construct the center effectively barred its re-use for anything other than those uses related to protection of juveniles at risk, or in the criminal justice system. Appeals to agencies further up the federal administration chain were considered, but were found by City staff and its federal lobbyist to have little merit.

Schedule Required by the Settlement Agreement

Since that time the Commission has considered the Easter seals site once again at a meeting October 7, 2014, when no clear determination of a site was made. While these deliberations have occurred the timelines established by the Settlement Agreement have been in play. The deadlines established by the settlement agreement in brief are:

1. Submit a development plan approval application to the Planning Department within 240 days of the effective date of the changes to the PS zoning district establishing more restrictive standards for homeless shelters. The new PS zoning rules became effective on January 14, 2014.

2. Secure Planning Board resolution concerning the development plan submittal within 180 days of submittal.
 3. Secure issuance of a City Commission resolution concerning the development plan submittal within 60 days following Planning Board action.
 4. Submit an application for building permits for construction of improvements with 120 days of the development pan approval.
 5. Issuance of building permit for construction of the improvements within 90 days after building permit application is deemed complete.
 6. Issuance of a certificate of occupancy within 270 days of the issuance of the building permit.
- According to that schedule item 1 should have occurred by September 12, 2014 and according to that same schedule item 2 should occur by March 13, 2015.

The Former Easter Seals Site

The site of the former Easter Seal facility is part of a City owned group of 7 tax parcels that comprise approximately 5.02 acres. The Easter Seals site itself is approximately 46,173 square feet in size, or about 1.06 acres. The site contains the former Easter Seals building of 2947 square feet. It is bounded on the east by a City owned building leased to the Mosquito Control District and on the north to a parcel leased to the SPCA for animal control purposes.

Concept

As early as 2011, planning staff was directed by the City Manager to investigate the use of the site for a possible homeless shelter because the long disused building and site could accommodate a shelter much like the existing KOTS. That design was refined several times to reflect the requirements of the adopted PS zoning district with regard to the performance standards for homeless shelters and to respond to comments and direction made by the City Commission as to level of services provided. The plan that has emerged from this preliminary design process is provided as **Exhibit B** in two parts, site plan and elevations. Essentially, the plan provides for the re-use of the existing building as offices, intake center and storage for both clients and the operational requirements. The necessary showers, laundry and bathrooms are provided in re-purposed shipping containers, in addition to several covered, but open on the sides assembly areas provided to gather clients off the streets prior to sleeping in the shelter. The overnight sleeping facilities are proposed as large concrete slabs with roofs, but open on the sides with wire mesh fences as sides. Fans suspended from the ceilings would provide air circulation, but no air conditioning within these sleeping areas is planned. Within each of the shelters, sleeping accommodations can be provided on pads, cots or stacked bunks. Each shelter can be subdivided by demising walls in order to provide for clients with different physical, medical or social needs. As presently designed and depending on the method of providing sleeping accommodations approximately 150-200 persons could be accommodated. Finally, should the future operational direction change, the site contains enough room to provide a food service trailer to serve meals in the assembly areas for up to 150 persons in one seating.

In addition the shelter concept contains a “time-out” area consisting of a roofed area with wire mesh fencing to contain unruly, inebriated or drug using clients to prevent their disturbing the clients seeking emergency shelter who are truly needy. At the existing KOTS, there is no “time out” area, and as the rigorous filtering of clients takes place inebriated or unruly clients are turned away, and often are arrested and taken to the jail and hospital, adding to the public burden and costing more to manage and house.

Costs

Staff has in the past, completed cost analyses of the facilities proposed in the site plan by contacting local contractors knowledgeable of construction and remodeling costs, and by contacting companies that re-purpose and sell shipping containers. The costs have been updated since 2011, and re-presented as **Exhibit C**.

In summary the estimated costs for providing a functioning KOTS shelter, which meets the requirements of the PS zoning district, are the following:

Men's Shelter Area:	\$241,724
Women's Shelter Area:	\$204,356
Men's Shower:	\$37,486
Women's Shower	\$37,486
Conversion of Easter Seals Building to offices, intake, Including upgraded toilets, storage, ADA and code compliance	\$176,633
Subtotal:	\$697,685
Additional Development Costs	
1. Site preparation and drainage:	\$ 25,000
2. Improvements to parking areas:	\$ 15,000
3. Site Lighting:	\$10,000
4. Upgraded sewer and water service:	\$30,000
5. Landscape Buffer:	\$15,000
6. Site fencing:	\$10,000
7. Security Cameras and Communications:	\$3,500
8. Loading and Receiving Area:	\$2,500
9. Outdoor Assembly Area:	\$10,000
10. Development application, building permits and other fees	\$25,000
Subtotal:	\$146,000
Grand total:	\$843,685
Contingency @20%	\$168,737
Revised Total	\$1,012,422

These estimated costs are based upon preliminary designs, which have been reviewed with one local contractor only. They do not represent estimates based on specific designs, nor do they represent bids. The costs for shower facilities were based on quotes provided in 2011, which have been inflated by 15% as were all estimates made late in that year. Hence the 20% contingency is in addition to inflated prices, which should remain in place until such time as specific designs are completed.

Site and Improvement Values to Support Land Authority Appraisal

As required by the Land Authority rules, all potential purchases of land for authorized purposes must be supported by appraised land values equivalent or in excess of the sales price. If the City decides to sell the Easter Seals site to the Land Authority and use the sale proceeds for construction in a leaseback arrangement, the property values must support the sales price. In 2014 the Monroe County Property Appraiser carries a "Total Just (Market) Value" of **\$3,107,949** for AKA Parcel # 8757883, parcel ID: 0072082-002200. Of that amount \$2,550,399 is assigned to the land, \$538,273 is assigned to Building values and \$19,277 to miscellaneous improvements. Thus it appears that the potential sale is supported by value of the land such that after expenses sufficient monies would be available for construction of the shelter as presently programmed.

Previous City Actions: The City Commission has not taken previous action to support the location of a homeless shelter at the Easter Seals site. However, when the Commission previously voted on a range of sites for the possible shelter, the Easter Seals ranked No.2. When the Juvenile Justice Center proved infeasible, the Easter Seals site emerged as the leading site.

Prior to this action the City Commission adopted revisions to the Public Service (PS) zoning district, with great care and in direct response to concerns expressed by neighbors and others about any potential homeless shelter to be located in a PS district. This action occurred in two stages. The first when the Planning Board at a public hearing first considered changes to the PS zone to refine the standards for homeless shelters. At the hearing the Planning Board directed staff to amend the proposed land development regulation to include more physical protections to surrounding areas and to provide that the establishment of a shelter in the PS zone could only be approved as a conditional use, thus assuring at least two public hearings for thorough public input. The second stage came with the City Commission hearing at which again the endorsement of a shelter only as a conditional use with major development plan standards was the amendment made to the Land Development Regulations. Please see **Exhibit D**, which are the PS Zoning Land Development Regulations.

Planning Staff Analysis:

The possible use of the Easter Seals site meets the following criteria which are essential to the success of providing a facility required to cope with the on-going need to protect the public from the negative effects of homelessness on public and private property and to maintain public health.

1. The site is appropriately zoned Public Service (PS) and the performance standards required for operation of the shelter without negative impacts on surrounding properties are in place.
2. The site is owned by the City already and no land acquisition costs are associated with the provision of a shelter.
3. The site is eligible for acquisition by the Monroe County Land Authority, using funds that have been raised in the City through the bed tax for the Authority and other sources, which are slated for use solely in the City of Key West. The total amount of unused funds is approximately \$9,500,000.
4. The property value at \$3,107,949 is sufficient to support the sale to the Land Authority via required appraisal, and generate sufficient cash to construct the shelter.
5. The site already has one building in place, which is capable of being remodeled at a modest price to serve the administrative and social service needs of the homeless clients.
6. The site is large enough to accommodate in the future food service facilities in order to allow the removal of the "soup kitchen" from the middle of the island and remove the necessity of traveling through residential neighborhoods to access it.

7. The site is on a main road and highway, allowing the homeless clients access via transit as well as walking and by bicycle.
8. The site is well away from other residential neighborhoods, which will allow a high level of shaded security lighting to control the site.
9. The proposed approach for housing the homeless on an emergency basis is the minimal required for a safe haven, and does not provide excessive services.
10. The site is large enough to accommodate off street assembly of clients to lower loitering levels on surrounding streets.
11. The site offers the Southernmost Homeless Assistance League, Inc. (SHAL), the contracted operators of the present KOTS, sufficient facilities and size to operate the shelter in a manner that is more efficient with fewer impacts on City and neighborhood resources. **Exhibit E** is the Operations Staff Analysis for a relocated KOTS shelter to the Easter Seals site.

Options/Advantages/Disadvantages:

Option 1: Approve the location of the City KOTS homeless shelter at the Easter Seals site, the sale of the site to Monroe County Land Authority and the use of the sale proceeds to construct the new shelter.

1. **Consistency with the City's Strategic Plan, Vision, and Mission:** The proposed action supports the plan's goals to provide a safe and healthy environment for the entire city.
2. **Financial Impact:** The approval of the proposal would require the sale of the property and the use of a portion of the sale proceeds to fund the cost of the new shelter, which is currently estimated at \$1,012,422.

Option 2: Deny the proposed location of a shelter at this site. This action would require the City to find another suitable location, which meets the requirements imposed by law and consistent with the City's Comprehensive Plan and Land Development Regulations. Given the month-to-month lease for the present KOTS shelter, finding another site must proceed quickly.

1. **Consistency with the City's Strategic Plan, Vision, and Mission:** This option would not serve to protect the health and safety of the public.
2. **Financial Impact:** No immediate impact on the City's finances.

Recommendation

The Planning Department recommends **approval** of Option 1

Attachment 1

EXECUTIVE SUMMARY

TO: Jim Scholl, City Manager

FROM: Mark Finigan, Assistant City Manager

DATE: February 18, 2009

SUBJECT: Interlocal Agreement (ILA) – Homeless Safe Zone



Action statement:

Approval is requested by the City Commission of an Interlocal Agreement (ILA) between the City of Key West and the Board of County Commissioners of Monroe County authorizing the use of County property for a "Homeless Safe Zone".

Background:

City Resolution 04-130 was the initial ILA between the City and Monroe County recognizing the City's exclusive use of County owned land as a Homeless Safe Zone. The initial term was for five (5) years, ending March 21, 2009. The County property in question is a tract of land on Norman Key, more commonly recognized as property situated to the north / northeast of the Monroe County Sheriffs Office Administration Building.

Florida Keys Outreach Coalition (FKOC) is the management entity who administers the ongoing program at the Homeless Safe Zone for the City. The ILA before you would be for an additional five (5) years.

Financial Impact:

The ILA has no financial impact to the City and can be terminated prior to the expiration of any new term without financial commitment – with exception of returning the property to the state it was prior to the 2004 ILA.

Recommendation:

Approve the Interlocal Agreement between the City of Key West and the Board of County Commissioners Monroe County authorizing the use of County property for a "Homeless Safe Zone".

RESOLUTION NO. 09-056

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AUTHORIZING THE EXECUTION OF THE ATTACHED INTERLOCAL AGREEMENT BETWEEN THE CITY AND MONROE COUNTY BOCC RECOGNIZING CERTAIN USE OF COUNTY PROPERTY AS A "HOMELESS SAFE ZONE"; PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

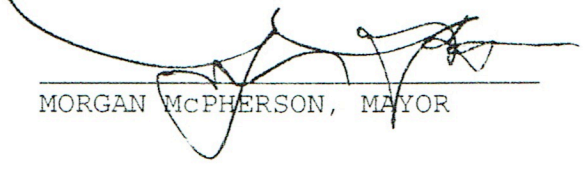
Section 1: That the attached Interlocal Agreement between the City and Monroe County BOCC is hereby approved.

Section 2: That this Resolution 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.

Passed and adopted by the City Commission at a meeting held this 3rd day of March 2009.

Authenticated by the presiding officer and Clerk of the Commission on March 4, 2009

Filed with the Clerk March 4, 2009.


MORGAN McPHERSON, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

HOMELESS SAFE ZONE
INTERLOCAL AGREEMENT

This Agreement is made and entered into by MONROE COUNTY, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, FL, 33040, ("COUNTY"), and the City of Key West, a municipal corporation of the State of Florida, whose address is 525 Angela Street, Key West, Florida 33040 (the "CITY").

WHEREAS, the COUNTY, in general, and the CITY of Key West, in particular, have a significant population of homeless people; and

WHEREAS, CITY and COUNTY have determined that this agreement is in the best interests of the public; and

WHEREAS, the COUNTY owns a parcel of land situated on Norman Key that includes the Premises used hereunder and more particularly described in Exhibit "A"; and

WHEREAS, the parties desire to enter into an interlocal agreement for the CITY's use of the COUNTY's Premises as a homeless persons safe zone.

1. **PROPERTY.** The COUNTY agrees to let City have the exclusive use of that portion of the land designated "Homeless Safe Zone" as shown on Exhibit A, hereafter "the Premises". Exhibit A is attached and made a part of this Agreement.

2. **TERM.**

- A. Subject to and upon the terms and conditions set forth herein, this Agreement shall continue in force for a term of five years commencing as of the 22nd day of March, 2009 and ending on the 21st day of March, 2014.
- B. There shall be no option to renew this agreement after the expiration of the term described herein.

3. **USE AND CONDITIONS.**

- A. The Premises shall be used solely for the purposes of providing a homeless safe zone. No signs of any kind shall be permitted except within the footprint of the Premises. If the Premises are used for any other purpose, the COUNTY shall have the option of immediately terminating this Agreement. The CITY shall not permit any use of the Premises in any manner that would obstruct or interfere with any COUNTY functions and duties, or would, in any way, devalue, destroy or otherwise injure the COUNTY property.
- B. The CITY will further use and occupy the Premises in a careful and proper manner, and not commit any waste thereon. The CITY shall not cause, or allow to be caused, any nuisance or objectionable activity of any nature on the

Premises. Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any State or Federal laws or regulations or as those terms are understood in common usage, are specifically prohibited. The CITY shall not use or occupy the Premises for any unlawful purpose and will, at the CITY's sole cost and expense, conform to and obey any present or future ordinance and/or rules, regulations, requirements and orders of governmental authorities or agencies respecting the use and occupation of the Premises.

- C. The CITY shall establish a "No Smoking" zone for that portion of the Premises which is adjacent to the Sheriff's Office propane tanks, according to the requirements of the Fire Marshals of the COUNTY and the CITY. This "No Smoking" zone shall be strictly enforced by the CITY. Any violations shall be cause for immediate termination of the Agreement by the COUNTY.
- D. The CITY shall, through its agents and employees, prevent the unauthorized use of the Premises or the common areas, or any use thereof not in conformance with this Agreement. The CITY shall not permit the Premises to be used or occupied in any manner that will violate any laws or regulations of any applicable governmental authority or entity.
- E. The CITY, its officers, employees, agents, contractors, volunteers, and invitees shall have the same rights of ingress and egress along the right-of-way routes to the Premises as do other members of the general public. The CITY shall be responsible for ensuring that these common ways of ingress and egress are used by their officers, employees, agents, contractors, volunteers, and invitees in a reasonable, orderly, and sanitary manner in cooperation with all other occupants and their officers, employees, agents and invitees. The CITY shall conduct itself and will cause its officers, employees, agents, and invitees to conduct themselves with full regard for the rights, convenience, and welfare of all other users of the public property of which the Premises is a sub-part.
- F. The CITY shall be solely responsible for operating the homeless safe zone, including all maintenance, security, enforcement of rules and regulations, programs, transportation and any and all other aspects of operations.

4. **RENT.** For the use of the Premises, the CITY must pay the COUNTY the sum of ten dollars (\$10.00) per year, due on the first day of the contract year, payable in advance and remitted to the Monroe County Clerk's Office, 500 Whitehead Street, Key West, FL 33040.

5. **UTILITIES.** The CITY shall be provided monthly water, electrical and sewerage utilities at the Premises at no cost to the CITY, the water and electrical utility costs to be borne by the Sheriff of Monroe County and the sewerage cost to be borne by the COUNTY. Any other utilities, such as telephone or cable television, shall be provided, if at all, at the expense of the CITY. CITY shall be responsible for paying any and all costs of

utility connection fees, impact fees, effluent discharge units, or any other costs associated with the placement of utility infrastructure to provide utility services to the Premises.

6. **ALTERATIONS AND IMPROVEMENTS.**

- A. No structure or improvements of any kind, whether temporary or permanent, shall be placed upon the land without prior approval in writing by the COUNTY's Administrator, a building permit issued by CITY and any permits required by law by any other agency, federal or state. Any such structure or improvements shall be constructed in a good and workmanlike manner at the CITY's sole cost and expense, except as otherwise agreed herein. Subject to any landlord's lien, any structures or improvements constructed by the CITY shall be removed by the CITY at its sole cost and expense, by midnight on the day of termination of this Agreement or extension hereof, and the land restored as nearly as practical to its condition at the time this agreement is executed, unless the Board of County Commissioners accepts, at the time delivery is tendered in writing delivery of the Premises together with any structures or improvements constructed by the CITY. The CITY shall be solely responsible for obtaining all necessary permits and paying impact fees required by any agency and any connection fees required by any utility.
- B. COUNTY reserves the right to inspect the area and to require whatever adjustment to structures or improvements as COUNTY, in its sole discretion, deems necessary. Any adjustments shall be done at the CITY's sole cost and expense. Any building permits sought by the CITY shall be subject to permit fees, unless waived.
- C. Portable or temporary advertising signs are prohibited.

7. **MECHANIC'S LIENS.** The CITY shall not permit any mechanic's lien or liens to be placed on the Premises or on improvements on it. If a mechanic's lien is filed, it shall be the sole responsibility of the CITY or its officer, employee, agent, contractor or other representative causing the lien to be filed to discharge the lien and to hold harmless and defend the Department of Juvenile Justice, Monroe County Sheriff's Office, and Monroe County against enforcement of such lien. Pursuant to Section 713.01, Florida Statutes, the liens authorized in Chapter 713, Florida Statutes, do not apply to the COUNTY.

8. **RECORDS – ACCESS AND AUDITS.** The CITY shall maintain adequate and complete records for a period of four years after termination of this Agreement. The COUNTY, its officers, employees, agents and contractors shall have access to the CITY's books, records, and documents related to this Agreement upon request. The access to and inspection of such books, records, and documents by the COUNTY shall occur at any reasonable time.

9. **RELATIONSHIP OF PARTIES.** The CITY is, and shall be an independent contractor and not an agent or servant of the COUNTY. The CITY shall exercise control, direction, and supervision over the means and manner that its personnel, contractors and volunteers perform the work for which purpose this Agreement is entered. The CITY shall have no authority whatsoever to act on behalf and/or as agent for the COUNTY in any promise, agreement or representation other than specifically provided for in this Agreement. The COUNTY shall at no time be legally responsible for any negligence on the part of the CITY, its employees, agents or volunteers resulting in either bodily or personal injury or property damage to any individual, property or corporation.

10. **TAXES.** The CITY must pay all taxes and assessments, if any, including any sales or use tax, levied by any government agency with respect to the CITY's operations on the Premises.

11. **INSURANCE.** The parties to this agreement stipulate that each is a state governmental agency as defined by Florida Statutes and represents to the other that it has purchased suitable Public Liability, Vehicle Liability, and Workers' Compensation insurance, or is self-insured, in amounts adequate to respond to any and all claims under federal or state actions for civil rights violations, which are not limited by Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes Section 768.28 and Chapter 440, arising out of the activities governed by this agreement.

To the extent allowed by law, each party shall be responsible for any acts of negligence on the part of its employees, agents, contractors, and subcontractors and shall defend, indemnify and hold the other party harmless from all claims arising out of such actions.

The CITY agrees to keep in full force and effect the required insurance coverage during the term of this Agreement. If the insurance policies originally purchased which meet the requirements of this lease are canceled, terminated or reduced in coverage, then the LESSEE must immediately substitute complying policies so that no gap in coverage occurs. Copies of current policy certificates shall be filed with the COUNTY whenever acquired or amended.

12. **CONDITION OF PREMISES.** The CITY must keep the Premises in good order and condition. The CITY must promptly repair damage to the Premises. At the end of the term of this Agreement, the CITY must surrender the Premises to the COUNTY in the same good order and condition as the Premises were on the commencement of the term of this agreement, normal wear and tear excepted. The CITY is solely responsible for any improvements to land and appurtenances placed on the Premises. The CITY shall not commit waste on the Premises, nor maintain or permit a nuisance on the Premises. After termination or expiration of this Agreement, the CITY shall pay the COUNTY the cost of any repairs and clean-up necessary to restore the Premises to its condition at the commencement of this Agreement.

13. **HOLD HARMLESS.** To the extent allowed by law, the CITY is liable for and must fully defend, release, discharge, indemnify and hold harmless the COUNTY, the members of the County Commission, COUNTY officers and employees, and the Sheriff's Office, its officers and employees, from and against any and all claims, demands, causes of action, losses, costs and expenses of whatever type – including investigation and witness costs and expenses and attorney's fees and costs – that arise out of or are attributable to the CITY's operations on the Premises except for those claims, demands, damages, liabilities, actions, causes of action, losses, costs and expenses that are the result of the negligence of the COUNTY. The CITY's purchase of the insurance required under this Agreement does not release or vitiate its obligations under this paragraph. The CITY does not waive any of its sovereign immunity rights including but not limited to those expressed in Section 768.28, Florida Statutes.

14. **NON-DISCRIMINATION.** The CITY for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Premises or in the contracting for improvements to the Premises.

15. **TERMINATION.** The COUNTY may treat the CITY in default and terminate this Agreement immediately, without prior notice, upon failure of the CITY to comply with any provision related to compliance with all laws, rules and regulations. This Agreement may be terminated by COUNTY due to breaches of other provisions of this Agreement if, after written notice of the breach is delivered to the CITY, the CITY does not cure the breach within 7 days following delivery of notice of breach. The COUNTY may terminate this Agreement upon giving sixty (60) days prior written notice to the CITY. Any waiver of any breach of covenants herein contained shall not be deemed to be a continuing waiver and shall not operate to bar either party from declaring a forfeiture for any succeeding breach either of the same conditions or covenants or otherwise.

16. **CESSATION OF HOMELESS SAFE ZONE OPERATIONS.** Upon the natural expiration or early termination of this agreement, the operation of a homeless safe zone shall immediately be ceased and all improvements, equipment, and other personalty of the CITY, its officers, employees, contractors, agents, volunteers and invitees shall immediately be removed from the Premises. Any damage to the Premises which has occurred due to the use contemplated under this Agreement shall be immediately repaired and the Premises restored to its original condition. Should the CITY determine to cease operation of the homeless safe zone prior to the natural termination of this agreement, the CITY shall give COUNTY prior written notice of such intended cessation sixty (60) days before the effective date of the cessation of operation. The purpose of this Agreement is to provide the LESSEE with a solution to its homeless situation and the COUNTY shall not operate a homeless safe zone at this site upon the expiration or termination of this lease.

17. **ASSIGNMENT.** The CITY may not assign this Agreement or assign or subcontract any of its obligations under this Agreement without the approval of the COUNTY's Board of County Commissioners. All the obligations of this Agreement will

extend to and bind the legal representatives, successors and assigns of the CITY and the COUNTY.

18. **SUBORDINATION.** This Agreement is subordinate to the laws and regulations of the United States, the State of Florida, and the COUNTY, whether in effect on commencement of this Agreement or adopted after that date.

19. **INCONSISTENCY.** If any item, condition or obligation of this Agreement is in conflict with other items in this Agreement, the inconsistencies shall be construed so as to give meaning to those terms which limit the County's responsibility and liability.

20. **GOVERNING LAWS/VENUE.** This Agreement is governed by the laws of the State of Florida and the United States. Venue for any dispute arising under this Agreement must be in Monroe County, Florida. In the event of any litigation, the prevailing party is entitled to a reasonable attorney's fee and costs.

21. **ETHICS CLAUSE.** The CITY warrants that it has not employed, retained or otherwise had act on its behalf any former County officer or employee subject to the prohibition of Section 2 of Ordinance No. 010-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 010-1990. For breach or violation of this provision, the COUNTY may, in its discretion, terminate this Agreement without liability and may also, in its discretion, deduct from the Agreement or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift or consideration paid to the former County officer or employee.

22. **CONSTRUCTION.** This Agreement has been carefully reviewed by the CITY and the COUNTY. Therefore, this Agreement is not to be construed against any party of the basis of authorship.

23. **NOTICES.** Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the following:

COUNTY:
County Administrator
1100 Simonton Street
Key West, FL 33040

CITY:
City Manager
525 Angela Street
Key West, FL 33040

24. **FULL UNDERSTANDING.** This Agreement is the parties' final mutual understanding. It replaces any earlier agreements or understandings, whether written or oral. This Agreement cannot be modified or replaced except by another written and signed agreement.

25. **EFFECTIVE DATE.** This Agreement will take effect on March 22, 2009.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representatives.

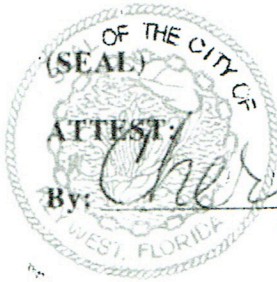
(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

By: *Danny L. Kolhage*
Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: *George R. Neugebaur*
Mayor/Chairman



(SEAL)

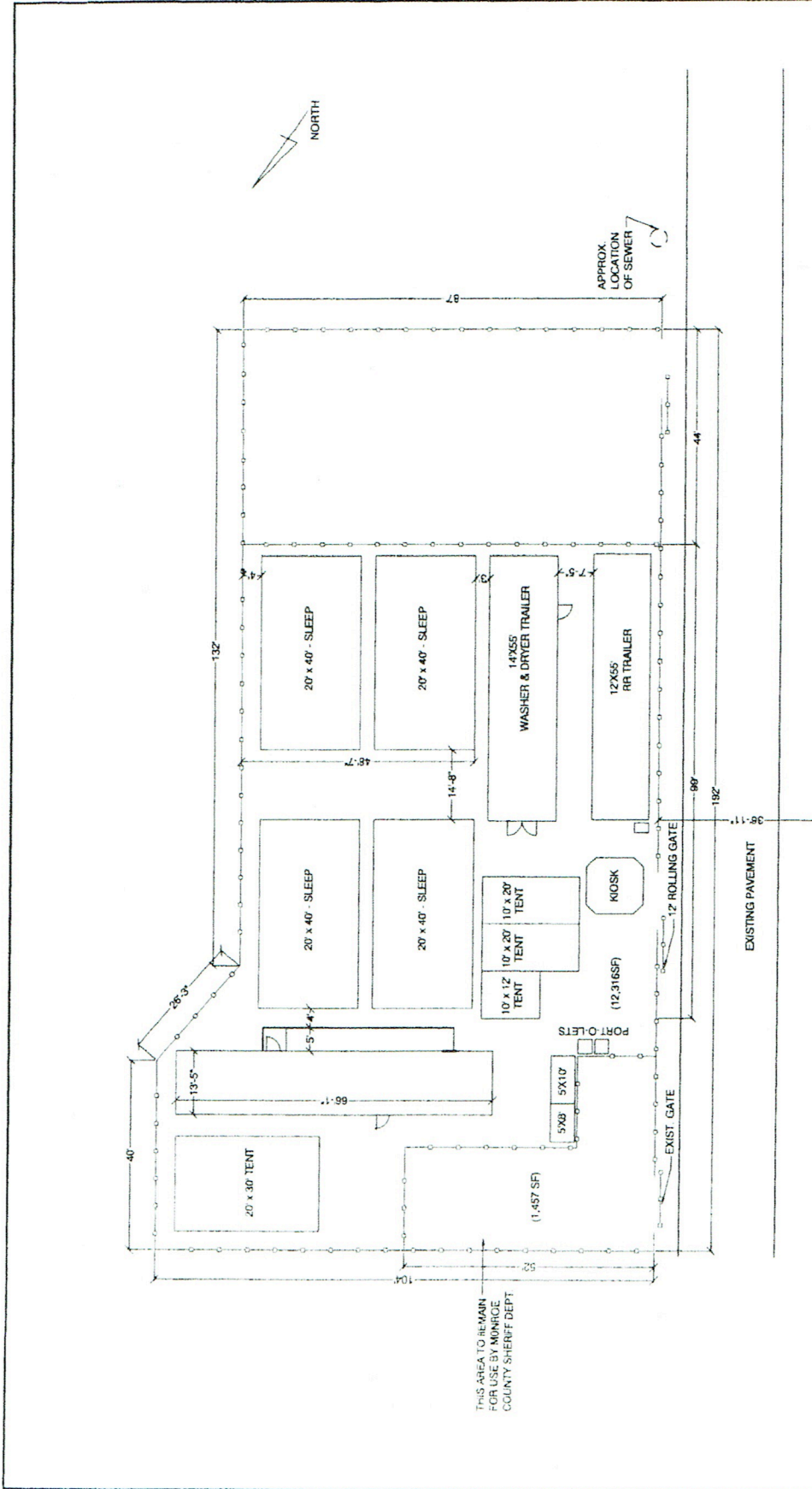
ATTEST:

By: *Cheryl Smith*
Clerk

CITY OF KEY WEST

By: *[Signature]*
Mayor

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM
Pedro J. Mercado
PEDRO J. MERCADO
ASSISTANT COUNTY ATTORNEY
Date 3/12/09



REVISED 2-19-09 K. OLSON

HOMELESS SAFE ZONE
VEHICLE IMPOUND AREA-STOCK ISLAND

JONES
D. AUSTIN
FLOWERS

HO 0401
B-438
2/12/04

1" = 20'

SITE PLAN
1 OF 1

City of Key West
Engineering Services

360 Seawater Drive
Key West, FL 33040
305.756.8100



NOTE:
DIMENSION INFORMATION
PROVIDED BY J. KING - MCPW