

CONCESSION AGREEMENT

This Concession Agreement made this 6th day of January, 2009, by and between The City of Key West, a municipal corporation, (hereinafter referred to as "City") and Key West Wildlife Center, Inc., a non-profit corporation of the State of Florida, (hereinafter referred to as "Concessionaire").

Whereas, the City is the owner of the property identified on Exhibit A, attached hereto, located in Monroe County, Florida (hereinafter referred to as the "Property"); and

Whereas, the City desires to make available the Property to the Concessionaire for the operation of a wildlife center, providing rehabilitation and release or rehabilitation and permanent educational habitat for injured wildlife; and

Whereas, the City requires relocation of chickens out of the City; and

Whereas, the Key West Wildlife Center, Inc. in exchange for use of the subject property described above agrees to administer a chicken relocation program as agreed upon by both parties.

Now, therefore, the parties mutually agree as follows:

(a) **Concession Term:** The City grants Concessionaire the right to use the Property to operate Concessionaire's headquarters. Such use shall be limited to retrieving, rehabilitating, and releasing injured migratory birds, land mammals and reptiles and to conducting educational classes dealing with migratory birds, land mammals and reptiles as well as administer the chicken relocation program. The City grants to Concessionaire the Property for a term of three years, and the City reserves the right to exercise an option term of an additional two-year period at its sole discretion. This Agreement shall commence upon its execution.

(b) **Concession Fee:** Concessionaire shall pay an annual fee of \$10.00 to the City.

(c) **Employees:** At its own expense, the Concessionaire shall furnish employees as may be necessary in the operation of the Concessionaire's activities pursuant to this Agreement. Employees of Concessionaire shall not accrue any of the rights or benefits of a City employee.

(d) **Utilities:** With the exception of phone service and television, the City shall be responsible to pay for all public utility services utilized by Concessionaire on the Property in furtherance of this Agreement, including but not limited to electricity, water, solid waste and sewer service. Concessionaire expressly agrees herein to be responsible for payment of telephone and television service.

(e) **Compliance with laws:** The Concessionaire agrees that it will, at its sole cost and expense, comply with all federal, state and local laws and ordinances and further agrees that it will abide by all applicable rules and regulations that are now in or hereafter may be enforced by all applicable rules and regulations that are now in or hereafter may be enforced by the City.

(f) **Insurance:** Concessionaire agrees to provide at its expense comprehensive liability insurance insuring itself and the City against all claims of damages or injury to persons or property

arising for any reason out of the Concessionaire's use of the Property, or arising out of its activities related to the concession use, or otherwise arising from its exercise of rights or failure to perform obligations pursuant to this Agreement. The insurance policy shall be written by a solvent insurance company in good standing and fully licensed to do business in Florida, and shall provide a minimum of \$300,000 coverage for bodily injury and property damage. The policy shall show the City as a named insured, and shall provide that it cannot be canceled or revoked except after a minimum of 30 days written notice to City. A true copy of the insurance contract shall be filed with the City Clerk within 10 days after execution of this Agreement, and shall be maintained on file throughout the concession Term. Concessionaire's failure to maintain the insurance policy in full force and effect at any time during the Term shall be a default hereunder, and upon such default Concessionaire shall immediately suspend all concession use and shall provide to City written notice of the default. If applicable, the Concessionaire shall also obtain Workers' Compensation insurance for each of its employees

City shall obtain property damage insurance to cover the value of each structure on the Property. Concessionaire shall be responsible for its equipment, supplies and other materials used in the prosecution of its activities outlined under this Agreement.

The insurance amounts here provided shall not in any way operate to limit or release, or be construed to limit or release, Concessionaire from any liability to City, or from any obligation to indemnify City as provided herein. Insurance amounts are minimum requirements, and shall be supplemented by Concessionaire as necessary to meet its obligations, and to fully indemnify the City, as provided in this Agreement.

(g) **Indemnification:** The Concessionaire shall protect and indemnify the City and its employees or agents from and against any damages, penalties, fines, judgments or charges that may be imposed or incurred by reason of the violation or breach of any law or regulation or by reason of any act, neglect or omission of the Concessionaire. The Concessionaire shall indemnify the City and its employees or agents from any judgment or claim recovered or asserted for personal injury or property damage sustained or claimed to have been sustained by reason of any of the activities covered by the terms of this agreement and shall pay all expenses and costs connected with the defense of such judgment or claims. The Concessionaire shall not be liable and shall not indemnify for any damage, injury or loss occasioned by the negligence of the City, its employees or agents.

These covenants shall survive the termination of this Agreement. Nothing contained herein is intended to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28, Florida Statutes.

(h) **Repair and maintenance:** The City shall be responsible for maintaining the structural and mechanical aspects of the improvements located on the Property, including plumbing and electrical. The Concessionaire shall be responsible for daily cleaning of the Property, to include the restrooms, and shall be responsible for the purchase of necessary supplies and/or materials to do so.

(h) **Termination by City:** The City shall have the right to terminate this Agreement upon the happening of any of the following:

- (1) The abandonment or discontinuance of operation by Concessionaire.
- (2) The failure of the Concessionaire to perform any of the terms and conditions of this Agreement after the expiration of 30 days from the date written notice has been given by the City to the Concessionaire to correct such default or breach.

(3) In the event of emergency, the City requires use of the Property.

(i) **Termination by Concessionaire:** The Concessionaire shall have the right to terminate this Agreement after the expiration of 90 days from the date written notice has been given by the Concessionaire to the City.

(j) **Relocation of Chickens:** The Concessionaire expressly agrees to accept all healthy and unhealthy chickens which are delivered to the Property by the general public or the City. The Concessionaire expressly agrees herein to relocate no less than every three months all healthy chickens housed in the aviary to a location outside the City of Key West pursuant to the direction of the City Manager or his designee. The City expressly agrees herein to compensate Concessionaire for the care, habitat maintenance, medical supplies, and relocation of the chickens in the amount of \$4,166.66 per month, retroactive to November 1, 2008. Concessionaire shall maintain accounting records sufficient to segregate the aforementioned operating costs of the wildlife center from the Concessionaire's obligations pursuant to this paragraph. Concessionaire will provide the City a full biannual report of such costs and effectiveness of the chicken location program. Monthly compensation will be reviewed annually by the City and the Concessionaire to ensure the costs of administering the chicken relocation program is fair and reasonable to both parties. Any change in the monthly compensation will require the agreement of both parties. Additionally, the monthly compensation amount is subject to continued appropriation in the City of Key West annual budget. In the event of an impending hurricane or other natural disaster, Concessionaire shall transport all chickens out of the City pursuant to the direction of the City Manager or his designee. No later than thirty days from the effective date of this Agreement, City shall provide a truck and trailer to Concessionaire for Concessionaire to utilize to relocate chickens. City expressly agrees herein to immediately transfer the title of the truck and trailer into the name of Concessionaire. Further, Concessionaire expressly agrees to obtain comprehensive and liability insurance for the truck and trailer in the amount stipulated by the City and to name the City of Key West as an additional insured on the policy. The Concessionaire expressly agrees herein to transfer title back to City at the termination of this Agreement.

(k) **Relocation of Wildlife to Aviary and Operation of Facilities:** No later than 90 days from the effective date of this agreement, Concessionaire shall relocate all wildlife (to include chickens) to the aviary located on the Property. Thereafter, all wildlife (to include chickens) shall be housed in the aviary.

Concessionaire agrees to operate the facilities using Best management Practices. Concessionaire further agrees to take all steps necessary to assure no fecal material occurs as a result of the direct or indirect actions of the concessionaire.

(l) **City access to McCoy Indigenous Park and Pavillions :** Concessionaire expressly agrees herein that access by the general public to the McCoy Indigenous Park will be between the hours of 9:00 am and 6:00 pm every day of the week to include all holidays. City shall have exclusive use of the two pavilions located on the property as well as the surrounding cartilage during weekends and federal holidays for the purpose of making them available to the public for scheduled events. City may decide at a future date to authorize the concessionaire the responsibility of scheduling and administering events held at the pavilions.

(m) **Federal Approval:** The parties acknowledge that City's authority to enter into this agreement is subject to review and approval of the Director of the United States Department of the Interior, National Park Service, as provided in Quitclaim Deed executed on April 21, 1973, between City and the United States of America. Accordingly all rights conferred herein by City to Concessionaire are granted entirely subject to such approval.

(n) **Section 1.31:** Unless waived by the city commission, the Concessionaire must submit to the appropriate background check pursuant to Section 1.31 of the Key West Code of Ordinances. Compliance with Section 1.31 is a condition of the effective commencement of this Agreement.

(o) **Assignment, Sub-lease, Transfer of Control:** This concession shall be a privilege to be held by the Concessionaire for the benefit of the public. The concession cannot under any circumstances be assigned, or control thereof be transferred, by any means whatsoever without the prior written consent of the City, and then only under such conditions as the City may establish. Any purported transfer of control of or sublease or assignment of this concession without prior written authorization by the City Commission shall be null and void. The authorization shall be at the absolute discretion of the City.

(p) **Captions:** Headings labeling any provision herein are for convenience only, and shall not in any way be construed as affecting, limiting expanding, or stating the contents or intent of this Agreement.

(q) **Entire Agreement:** This Agreement sets forth all the promises and agreements between City and Concessionaire. No subsequent alteration, amendment or change to this Agreement shall be binding upon City or Concessionaire unless reduced to writing and duly executed by both parties.

(r) **Partial Invalidity:** If any provision of this Agreement is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

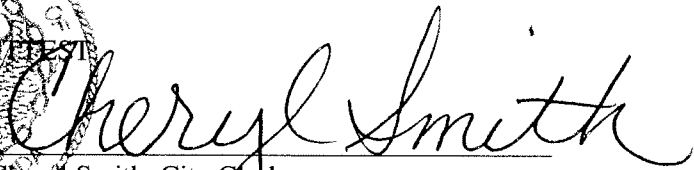
(s) **Governing Law:** This Agreement shall be construed and governed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

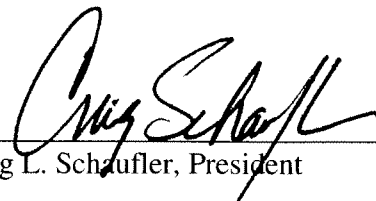
CITY OF KEY WEST

By: 
Jim K. Scholl, City Manager




Cheryl Smith, City Clerk

CONCESSIONAIRE: Key West Wildlife Center, Inc.

By: 
Craig L. Schaufler, President