

**POINCIANA GARDENS TRANSPORTATION**  
**INTERLOCAL AGREEMENT**

THIS INTERLOCAL AGREEMENT is entered into as of this \_\_\_\_ day of August, 2022 between the Key West Housing Authority, a political subdivision of the State of Florida (hereinafter, KWHA) and the City of Key West, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter, the CITY).

**WITNESSETH:**

WHEREAS, at the CITY's request, KWHA constructed an Assisted Living Facility (ALF) known as Poinciana Gardens; and

WHEREAS, Poinciana Gardens was constructed on property owned by the KWHA known as Poinciana Plaza; and

WHEREAS, KWHA owns the land and improvements and administers the operation of Poinciana Gardens; and

WHEREAS, the Poinciana Gardens Emergency Management Plan requires transportation of up to fifty-eight (58) Poinciana Gardens assisted living residents ("residents") in the event of a threat of a category 3 (or higher) hurricane approaching; and

WHEREAS, the CITY has agreed to provide these transportation services for the residents, provided a state of emergency has been declared by the CITY; and

WHEREAS, the KWHA has agreed to provide Poinciana Gardens staff members to assist with the transfer; and

WHEREAS, the KWHA has agreed to provide additional transportation services for the residents' luggage and supplies;

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, the parties agree as follows:

1. In the event there is a threat of a category 3 (or higher) hurricane, the CITY shall provide transportation services for the residents upon email notice to the City as specified in paragraph 16 at least twenty-four (24) hours in advance of the need for transport.
2. The CITY shall transport the residents to the following location:

Marina Isle Assisted Living  
530 N Palmetto Avenue  
Sanford, FL 32771  
(407) 499-7300

The location may be changed upon agreement by both entities.

3. KWHHA shall provide adequate rest accommodations for the drivers in compliance with Fla. Admin. Code R. 14-90.006 and any and all applicable regulations and in coordination with the CITY.
4. KWHHA agrees to coordinate a minimum of one (1) refueling stop per roundtrip per vehicle. The refueling stop shall be as close as feasibly possible to Sanford, Florida. KWHHA shall be responsible for the cost of the refueling stop.
5. The CITY shall use the best suited vehicles and drivers available and reasonably required to safely transport the residents as well as their travel bag(s) and any essential equipment they may need to bring with them including, but not limited to, oxygen tanks, c-pap machines and walkers. The drivers shall be required to drive the residents to Marina Isle Living Facility. Once the local roads have been reopened in both Monroe County, Florida and Sanford, Florida, and as long as it is feasible and safe to travel, KWHHA shall notify the City to return to Sanford, Florida, in order to return the residents and Poinciana Gardens staff members back to Key West in accordance with paragraph 3 above.
6. The KWHHA shall provide at least two (2) Poinciana Gardens staff members to assist with the transfer of the residents and who will remain with the residents through the duration of the transfer and until their return to back to Poinciana Gardens. The City shall not be responsible for assisting the staff members or for the care of the residents.
7. The KWHHA shall provide for the transport of any additional luggage and supplies for the residents in a separate vehicle(s).
8. This Agreement shall become effective immediately upon execution.
9. In the event of any failure of compliance by either party hereto with any of its material obligations to the other party as provided for herein, such action shall constitute a default under this Agreement.
10. Upon any such default, the non-defaulting party shall provide to the defaulting party a written Notice of such default, which Notice (a "Default Notice") shall state in reasonable detail the actions the defaulting party must take to cure the same. The defaulting party shall cure any such default, within 30 days following the date of the Default Notice.
11. Notwithstanding the provisions of this Section, if any such default by the defaulting party remains uncured at the conclusion of any specified 30 day cure period, and if the nature of the defaulting party's obligations are such that more than 30 days is required to effect cure, then the defaulting party shall not be in default hereunder and the non-defaulting party shall not have the right to exercise its termination rights granted herein as a result of any such default, if the defaulting party commences cure within the applicable cure period and thereafter diligently pursues cure to completion of performance.
12. In the event the defaulting party fails to affect any required cure as provided for herein, the defaulting party shall be deemed to be in uncured default hereunder, and the non-defaulting party shall have the right, but shall not be obligated, upon written Notice to the defaulting party, to

terminate this Agreement.

13. If such Notice is given, this Agreement shall terminate on the date set forth in the Notice and the parties shall be relieved of all rights and obligations hereunder, except for any rights and obligations that expressly survive termination.
14. Other than in the event of default pursuant to paragraphs 9 through 13 above, this Agreement may be terminated by either party for any reason upon 90 days written notice.
15. To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the KWHA does hereby agree to defend, indemnify and hold the CITY, its officers, agents, or employees, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the acts or omissions of KWHA or any third party vendor contracted by KWHA in connection with this Agreement. KWHA's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this section.

To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the CITY does hereby agree to defend, indemnify and hold KWHA, its officers, agents, or employees, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the acts or omissions of the CITY or any third party vendor contracted by the CITY in connection with this Agreement. CITY's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this section.

Nothing contained in this Section shall be construed to be a waiver by either party of any protections under sovereign immunity, Section 768.28 Florida Statutes, or any other similar provision of law. Nothing contained herein shall be construed to be a consent by either party to be sued by third parties in any matter arising out of this or any other Agreement.

16. The parties to this agreement stipulate that each is a state or of governmental entity as defined by the 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 Sections 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes arising out of the activities governed by this agreement.

**17. Notices.**

All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing and addressed as follows, or to any other address which either party may designate to the other party by mail:

<u>If to KWHA:</u>	Randy Sterling Executive Director Key West Housing Authority
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1400 Kennedy Drive  
Key West, FL 33040

With a copy to: John Parks Jr.  
Chairman  
Key West Housing Authority  
1400 Kennedy Drive  
Key West, FL 33040

If to City: Patti McLauchlin  
City Manager  
P.O. Box 1409  
Key West, Florida 33041  
Email address: [citymanagers@cityofkeywest-fl.gov](mailto:citymanagers@cityofkeywest-fl.gov)

With copies to: Shawn Smith, Esq.  
City Attorney  
P.O. Box 1409  
Key West, Florida 33041  
Email address: [cityattorney@cityofkeywest-fl.gov](mailto:cityattorney@cityofkeywest-fl.gov)

Rod Delostrinos  
Director of Transportation for City of Key West  
P.O. Box 1409  
Key West, Florida 33041  
Email address: [rdelostrinos@cityofkeywest-fl.gov](mailto:rdelostrinos@cityofkeywest-fl.gov)

Any Notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered; or sent by overnight delivery service.

#### **18. Attorneys Fees and Waiver of Jury Trial.**

In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

#### **19. Governing Law.**

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Lower Keys Division of the Circuit Court or the Southern District of

Florida. This Agreement is not subject to arbitration.

**20. Entire Agreement/Modification/Amendment.**

This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

**21. Nonassignability.**

This Agreement shall not be assignable by either party unless such assignment is first approved by both parties.

**22. Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and beenforceable to the fullest extent permitted by law.

**23. Independent Contractor.**

The CITY and its employees, volunteers, agents, vendors and subcontractors shall be and remain an independent contractor and not agents or employees of the KWHHA with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise, or venture between the parties.

KWHHA and its employees, volunteers, agents, vendors and subcontractors shall be and remain an independent contractor and not agents or employees of the CITY with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise, or venture between the parties.

**24. Waiver.**

The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct

**25. Funding.**

KWHHA agrees to reimburse the CITY for costs associated with the transportation in the event the CITY is not reimbursed from FEMA or otherwise.

**26. Construction.**

This Agreement has been carefully reviewed by each of the parties. Therefore, this Agreement is not to be construed against any party on the basis of authorship.

**27. Survival of Provisions.**

Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

**28. Counterparts.**

This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]**

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day and year first written above.

KEY WEST HOUSING AUTHORITY BOARD

BY: \_\_\_\_\_  
Chairperson

(SEAL)

ATTEST:

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
ATTORNEY'S OFFICE

THE CITY OF KEY WEST, FLORIDA

\_\_\_\_\_  
Teri Johnston, Mayor

ATTEST:

\_\_\_\_\_  
Cheri Smith  
City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND RELIANCE OF THE CITY OF KEY WEST, FLORIDA ONLY:

BY: \_\_\_\_\_  
City Attorney