

TEMPORARY USE LEASE AGREEMENT
FOR A HOMELESS SAFE ZONE

This TEMPORARY USE LEASE AGREEMENT FOR HOMELESS SAFE ZONE (“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 1300 White Street, Key West, FL 33040, (“CITY”).

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

WHEREAS, COUNTY and CITY have collaborated over the years to address the issue of safe housing for the homeless population; and

WHEREAS, the CITY has operated a homeless shelter known as the Keys Overnight Temporary Shelter (“KOTS”) on COUNTY owned property designated for use by the Monroe County Sheriff (“SHERIFF”), as his Headquarters and Detention Center since 2004, under various agreements between the COUNTY and CITY; and

WHEREAS, the COUNTY, CITY, and SHERIFF recognized that a new KOTS facility was needed, while the SHERIFF also needed to provide affordable housing in order to recruit and retain personnel due to the high cost of living in Monroe County; and

WHEREAS, the CITY and the SHERIFF both wished to utilize the parcel of land currently housing the KOTS Homeless Safe Zone for each of its needs; and

WHEREAS, after further negotiations in 2019, the COUNTY, CITY, and SHERIFF agreed to a land swap in which the CITY would provide a parcel of City owned land at 250 Trumbo Road, Key West, Florida, parcel number 00001720-000200, for the construction of affordable housing units for the SHERIFF’s employees; and

WHEREAS, in exchange for the Trumbo Road property, the COUNTY would provide a portion of COUNTY owned land at the North Stock Island location where the SHERIFF’s Headquarters and the Detention Center are located, along with the current KOTS, for the CITY to build a new and permanent KOTS facility; and

WHEREAS, the COUNTY and the CITY, joined by the SHERIFF, entered into a Keys Overnight Temporary Shelter (KOTS) and Essential Governmental Employee Housing Interlocal Agreement, (“2019 ILA”) recorded October 29, 2019, in the Official Records of Monroe County, Florida, that would permit the CITY to use a portion of the COUNTY’s parcel of land for a New KOTS facility until the CITY could accept conveyance of the property from the COUNTY in

exchange for conveyance of the Trumbo Road property to the COUNTY for use as an affordable housing site for the Sheriff's Office and other public employees; and

WHEREAS, the 2019 ILA remains in full force and effect and shall not be modified or amended in any manner by this Agreement; and

WHEREAS, the parties desire to enter into this Temporary Use Lease Agreement for a Homeless Safe Zone that would permit the CITY to use a portion of the COUNTY's land as a temporary homeless persons safe zone, currently referred to as KOTS, until such time as the CITY can finalize construction of a new KOTS facility on the parcel of land shown on Exhibit "A" to the 2019 ILA, located on the grounds of the Sheriff's Headquarters and Detention Center in Key West, Florida; and

WHEREAS, the CITY anticipates that it will need to utilize the temporary KOTS parcel for approximately two (2) years while construction is being completed on the new KOTS facility; and

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

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

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

2. **TERM.** Subject to, and upon the terms and conditions set forth herein, this Agreement shall continue in force for a term of two (2) years commencing on October 19, 2022, and terminating on October 18, 2024, unless terminated earlier pursuant to the terms of this Agreement. The COUNTY, in its sole discretion, may extend this Agreement for a time period to be determined depending on the status of the construction of the New KOTS facility and that such extension is in the best interest of the public, and upon written approval by both parties.

3. **USE AND CONDITIONS DURING THE LEASEHOLD PERIOD.**

A. The Premises shall be used solely for the purposes of providing a temporary homeless safe zone during the construction of the permanent replacement facility. 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 or Monroe County Sheriff's Office 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 that in any way involve hazardous materials or hazardous 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, if any, which may be 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 temporary homeless safe zone, including all maintenance, security, enforcement of rules and regulations, programs, transportation, and any and all other aspects of operations.
- G. The ADA walkway will be used as the sole means of access to the facility.

4. **RENT.** For the use of the Premises, the CITY must pay the COUNTY the sum of Ten and 00/100 (\$10.00) Dollars per month, due on the first day of the contract month, payable in advance and remitted to the Monroe County Clerk’s Office, 500 Whitehead Street, Key West, FL 33040.

5. **HOLDOVER.** CITY has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Agreement. If the CITY holds over, (“Holdover Period”), the rent payable shall be increased as follows during the month immediately preceding such expiration or earlier termination:

<u>FIRST 15 DAYS</u>	<u>SECOND 15 DAYS</u>	<u>31ST DAY & THEREAFTER</u>
\$500.00/Day	\$1,000/Day	\$1,500.00/Day

CITY’s right of possession shall terminate on thirty (30) days’ written notice from COUNTY. All other terms and conditions of this Agreement shall continue to apply during this Holdover Period. CITY shall indemnify, defend, and hold COUNTY harmless from and against any and all claims, demands, actions, losses, damages, obligations, costs, and expenses, including, without limitation, attorneys’ fees incurred or suffered by COUNTY by reason of CITY’s failure to surrender the Premises on the expiration or earlier termination of this Agreement in accordance with the provisions of this Agreement.

6. **UTILITIES.** The CITY shall be provided Five Thousand and 00/100 (\$5,000.00) Dollars per year for water, electrical, and sewerage utilities at the Premises, by the COUNTY. Any other utilities, such as telephone or cable television, shall be provided, if at all, at the expense of the CITY. The CITY, however, 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, if any are required. Any injection wells currently located within the Premises, which shall not be utilized by the CITY, shall be properly secured by the CITY at its expense, pursuant to any applicable Federal, State, or Local rules and regulations.

7. **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. If at any time after any tax or assessment has become due or payable, the CITY, neglects to pay the tax or assessment, COUNTY shall be entitled to pay the tax or assessment at any time after that and the amount paid by COUNTY shall be deemed to be additional rent for the leased Premises, due and payable by the CITY.

8. **INSURANCE.** The parties to this agreement stipulate that each is a state governmental agency as defined by Florida Statutes. The parties represent to each other that each has purchased suitable Public Liability, Vehicle Liability, and Workers’ Compensation insurance,

or are 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 Temporary Use Lease are canceled, terminated, or reduced in coverage, then the CITY 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.

9. **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 the 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. 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. All structures currently located on the CITY's leased premises, said leased premises depicted in the 2019 ILA, shall be permitted to be moved onto the Premises. Additionally, CITY will be permitted to place landscaping and pave the ADA walkway, both depicted in Exhibit A, attached hereto, at CITY's own expense. CITY will also be permitted to spread clean 57 stone to allow for drainage.
- C. The COUNTY reserves the right to inspect the leased area and to require whatever adjustment to structures or improvements as the 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 at CITY's sole cost and expense.
- D. CITY shall perform, at the sole expense of CITY, all work required in the preparation of the property or premises hereby leased for occupancy by CITY; and

CITY does hereby accept the leased property or premises as now being in fit and tenable condition for all purposes of CITY.

E. Portable or temporary advertising signs are prohibited, as referenced in 3.A. herein.

10. **MECHANIC'S LIENS.** The CITY shall not permit any mechanic's lien or liens to be placed on the Premises or on improvements on or made to 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 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.

11. **CONDITION OF THE 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.

12. **HOLD HARMLESS.** To the extent allowed by law, the CITY agrees to be fully responsible to the limits set forth in such statute for its own negligent acts or omissions, or intentional tortious acts, which result in claims or suits against the COUNTY, the members of the Monroe County Commission, County officers and employees, and the Monroe County Sheriff's Office, its officers and employees, and agrees to be liable to the statutory limits for any damages proximately caused by said acts or omissions, or intentional tortious acts. 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.

To the extent allowed by law, the COUNTY, the members of the Monroe County Commission, County officers and employees, its officers and employees, agrees to be fully responsible to the limits set forth in such statute for its own negligent acts or omissions, or intentional tortious acts, which result in claims or suits against the CITY, City officers and employees, and agrees to be liable to the statutory limits for any damages proximately caused by said acts or omissions, or intentional tortious acts. The COUNTY'S purchase of the insurance required under this Agreement does not release or vitiate its obligations under this paragraph. The COUNTY does not waive any of its sovereign immunity rights including, but not limited to, those expressed in Section 768.28, Florida Statutes.

13. **RECORDS – ACCESS AND AUDITS.** The CITY shall maintain adequate and complete records for a period of four (4) 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.

14. **RELATIONSHIP OF THE 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.

The COUNTY is and shall be an independent contractor and not an agent or servant of the CITY. The COUNTY 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 COUNTY shall have no authority whatsoever to act on behalf and/or as agent for the CITY in any promise, agreement, or representation other than specifically provided for in this Agreement. The CITY shall at no time be legally responsible for any negligence on the part of the COUNTY, its employees, agents, or volunteers resulting in either bodily or personal injury or property damage to any individual, property, or corporation.

15. **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.

16. **TERMINATION.** The COUNTY may treat the CITY in default and terminate this Agreement with fifteen (15) days’ 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 the 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 seven (7) days following delivery of notice of breach. The COUNTY may terminate this Agreement upon giving thirty (30) 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.

17. **CESSATION OF HOMELESS SAFE ZONE OPERATIONS.** Upon the cessation of homeless safe zone operations at this temporary location, all improvements, equipment, and other personal property of the CITY, its officers, employees, contractors, agents, volunteers, and invitees

shall be removed from the Premises within thirty (30) days. Any damage to the Premises which has occurred due to the use contemplated under this Agreement shall be immediately repaired within a reasonable timeframe and the Premises restored to its original condition. The COUNTY shall not operate a homeless safe zone at this temporary site upon the expiration or termination of this lease.

18. **DEFAULT-WAIVER.** The waiver by the CITY or the COUNTY of an act or omission that constitutes a default of an obligation under this Agreement does not waive another default of that or any other obligation.

19. **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.

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

21. **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.

22. **GOVERNING LAWS/VENUE/MEDIATION.** 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, Lower Keys Division of the Circuit Court, or the Southern District of Florida, as applicable. In the event of any litigation, the prevailing party is entitled to a reasonable attorney's fee and costs. The CITY and COUNTY agree that, in the event of conflicting interpretations of the terms or a term of this Temporary Use Lease Agreement by or between any of them, the issue shall be submitted for resolution under the Florida Governmental Conflict Resolution process set forth in Chapter 164, Florida Statutes, prior to the institution of any other administrative or legal proceeding.

23. **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. 020-1990. 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.

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

25. **NOTICES.** Any written notices or correspondence given pursuant to this Agreement, unless otherwise specified, shall be sent by United States Mail, certified, return receipt requested, postage prepaid, or by courier with proof of delivery. The place of giving Notice shall remain the same as set forth herein until changed in writing in the manner provided in this paragraph. Notice is deemed received by either party when hand delivered by national courier with proof of delivery or by U.S. Mail upon verified receipt or upon the date of refusal or non-acceptance of delivery. Notice shall be sent to the following:

COUNTY:

Monroe County Administrator
1100 Simonton Street
Key West, FL 33040

With a copy to:

Monroe County Attorney's Office
1111 12th Street, Suite 408
Key West, FL 33040

CITY:

Key West City Manager
1300 White Street
Key West, FL 33040

With a copy to:

Key West City Attorney
1300 White Street
Key West, FL 33040

26. **AMENDMENTS TO BE IN WRITING.** This Agreement may be modified or amended only by a writing duly authorized and executed by both COUNTY and CITY. It may not be amended or modified by oral agreements or understandings between the parties unless the same shall be reduced to writing duly authorized and executed by both COUNTY and CITY.

27. **SEVERABILITY.** If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions, and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition, and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions, and provisions of this Agreement would prevent the accomplishment of the original intent of this Lease Agreement. The COUNTY and CITY agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

28. **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.

29. **EFFECTIVE DATE.** This Agreement will take effect upon the signature of the last party to the Agreement.

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SIGNATURE PAGE TO FOLLOW

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

(SEAL)

ATTEST: KEVIN MADOK, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
As Deputy Clerk

By: _____
Mayor David Rice

(SEAL)

ATTEST: CHERYL SMITH,
CLERK

CITY OF KEY WEST

By: _____
Clerk

By: _____
Mayor Teri Johnston

MONROE COUNTY ATTORNEY'S OFFICE
APPROVED AS TO FORM
Patricia Eables
PATRICIA EABLES
ASSISTANT COUNTY ATTORNEY
DATE: 10/14/2022

CITY OF KEY WEST
CITY ATTORNEY'S OFFICE
APPROVED AS TO FORM ONLY
N. Mellies
NATHALIA A. MELLIES
ASSISTANT CITY ATTORNEY
Date 10/14/2022

ACCEPTANCE BY THIRD PARTY:

The Sheriff of Monroe County does hereby acknowledge that the Monroe County Sheriff's Office is an intended third-party to this Agreement, that he has participated in and accepts the terms of this Agreement and that any future objections to the temporary KOTS location as reflected on Exhibit "A", attached hereto, are waived.

MONROE COUNTY SHERIFF'S DEPARTMENT

By: _____
Rick Ramsay, Monroe County Sheriff

EXHIBIT “A”

Keys Overnight Temporary Shelter (KOTS) Premises Proposed Site Plan on Temporary Leased Area