

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF KEY WEST AND
SCHOONER WESTERN UNION PRESERVATION SOCIETY, INC.**

This Memorandum of Understanding between the CITY OF KEY WEST, a municipal corporation (hereinafter referred to as "CITY") and THE SCHOONER WESTERN UNION PRESERVATION SOCIETY, INC., a Florida non-profit corporation and 501(c)(3) exempt organization, with an address of PO Box 43799 Key West, Florida 33041 (hereinafter referred to as "SWUPS") is entered into as required by the terms and conditions of RESOLUTION 15-218 adopted by the Caroline Street Corridor and Bahama Village Community Redevelopment Agency (CRA) on June 17, 2015.

WHEREAS, SWUPS applied for and obtain a State Historic Preservation Grant which required a funding match of up to \$250,000.00, and

WHEREAS, CRA approved and authorized a \$250,000.00 contribution towards obtaining said grant which was adopted and approved by the City Of Key West at its regularly scheduled meeting held on 06/17/2016 by Resolution 15-218 :

WHEREAS, a condition of the \$250,000.00 contribution is an agreement between SWUPS and the City of Key West that the vessel SCHOONER WESTERN UNION remain in the City of Key West and that it return to the City of Key West as a permanent Historic Place upon its anticipated restoration and upgrades for which the grant was obtained.

NOW THEREFORE, the parties mutually agree as follows:

1. The above recitals are true and correct and incorporated herein.
2. The City shall assume absolutely no liability, responsibility or obligation to SWUPS, or any other entity associated with the restoration and upgrade of the vessel SCHOONER WESTERN UNION except as specifically provided.
3. ^{WFS} SWUPS does hereby covenant and agree upon the completion of its restoration and upgrades the SCHOONER WESTER UNION shall be returned to the City of Key West where it shall be berthed for so long as desired by the City of Key West or until it is no longer feasible to berth the vessel at a location acceptable to the City of Key West.
4. SWUPS agrees that in addition to the minimum insurance requirements specified in its lease, SWUPS agrees to purchase and maintain at its expense all policies, amounts and coverages specified in any agreements required to be executed by the City in furtherance of this Memorandum of Understanding. These policies include, but are not limited to:
 - a. Protection & Indemnity limits of a minimum of \$1,000,000 Per Occurrence
 - b. Removal of Wreck coverage included in Protection & Indemnity limit
 - c. Vessel Pollution Coverage included in a minimum amount of \$800,000
 - d. Crew coverage as required by the Federal Jones Act as applicable

- e. Any other insurance coverage as required by law
 - f. CITY listed as certificate holder for purposes of notification of cancellation, termination, or renewal
 - g. Federal Longshoremen & Harbor Workers (if appl.) Statutory
 - h. CITY listed as Additional Insured
5. **Insurance:** SWUPS agrees that CITY is not in any way an insurer of SWUPS' vessel, property, family, invitees, employees, agents, passengers or guest. SWUPS hereby agrees to maintain and pay for a marine insurance policy providing such protection and indemnity throughout the term of this Memorandum of Understanding. Said policy of protection and indemnity shall protect CITY and SWUPS from all liability for injury to any persons or property which may arise in connection with the operation of or conduct of SWUPS or its vessel, equipment, agents, invitees, passengers, guests or employees.
6. SWUPS's breach of any of the terms and conditions of such obligations shall be considered a breach of this Memorandum of Understanding.
7. Upon any violation of the provisions of this Memorandum the City may declare a default under this MOU by delivering written notice thereof to the SWUPS. After providing written notice of default, the City may apply to a court of competent jurisdiction for specific performance of the Declaration, for an injunction prohibiting the removal of the vessel from the City of Key West, or for any such other relief as may be appropriate.
8. **Jurisdiction:** The law of the state of Florida and Monroe County will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it.
9. **Severability and Survival:** If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
10. **Dispute Resolution:** The parties will use their best efforts to resolve amicably any dispute, including the use of alternative dispute resolution options.
11. **Attorney's Fees:** In the event of litigation affecting the rights of either party under this Agreement, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fee incurred in the enforcement of the prevailing party's rights hereunder, including those pertaining to appeals.

WHEREFORE the parties have hereto set their hands and seals this (03) Day of June, 2016

CITY OF KEY WEST, FLORIDA

THE SCHOONER WESTERN UNION
PRESERVATION SOCIETY, INC.

By: JS Scholl
James Scholl, City Manager

By: William Barry
William Barry, President



Susan P. Harrison

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Susan P. Harrison, Sr. Deputy City Clerk

Dated this 3rd day of June 2016