

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 3132 Flagler Ave., Key West, Florida 33040 (the “CITY”).

WHEREAS, on March 18, 2009 the CITY and COUNTY entered into a 5 year agreement wherein the CITY operated a homeless safe zone shelter on property owned by the COUNTY; and

WHEREAS, the CITY and COUNTY were named as codefendants in a lawsuit filed by Sunset Marina Residences Of Key West Condominium Association, Inc. alleging that the CITY and COUNTY failed to follow the City’s Land Development Regulations (LDR’s) and that the CITY AND COUNTY created public and private nuisances when it placed the Homeless Safe zone shelter at its current location; and

WHEREAS, the parties have entered into a settlement agreement which requires the CITY to relocate the Homeless Safe Zone Shelter; and

WHEREAS, the current Homeless Safe Zone Interlocal Agreement expires on March 21, 2014; and

WHEREAS, the CITY is currently in the process of identifying suitable alternative locations for the Homeless Safe Zone; and

WHEREAS, the parties desire to enter into a month to month Interlocal agreement for purposes of complying with the settlement agreement and relocating the Homeless Safe Zone Shelter;

NOW, THEREFORE;

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 on a MONTH TO MONTH basis commencing as of the 22nd day of March, 2014, and terminating upon 30 days written notice by either party.

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 that in any way involving 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 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. The 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 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, 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. The COUNTY reserves the right to inspect the 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, unless waived.

C. Portable or temporary advertising signs are prohibited, as referenced in 3.a. herein.

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 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 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.

Pursuant to Florida Statute §119.0701, the City and its subcontractors shall comply with all public records laws of the State of Florida, including but not limited to:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by Monroe County in the performance of this Agreement.
- (b) Provide the public with access to public records on the same terms and conditions that Monroe County would provide the records and at a cost that does not exceed the cost provided in Florida Statutes, Chapter 119 or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Meet all requirements for retaining public records and transfer, at no cost, to Monroe County all public records in possession of the contractor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to Monroe County in a format that is compatible with the information technology systems of Monroe County.

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. 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 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.

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 Monroe County Commission, County officers and employees, and the Monroe County Sheriff's Office, its officers and employees, from and against any and all claims, demands, causes of action, losses, costs and expenses of any 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 sole 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 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 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.

16. **CESSATION OF HOMELESS SAFE ZONE OPERATIONS.** Upon the cessation of homeless safe zone operations, all improvements, equipment, and other personal property 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.

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 Monroe 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, Suite 2-205
Key West, FL 33040

CITY:
City Manager
3132 Flagler Ave.
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, 2014.

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

(SEAL)

ATTEST: AMY HEAVILIN, CLERK

**BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA**

By: _____
Clerk

By: _____
Mayor Sylvia Murphy

(SEAL)

ATTEST:

CITY OF KEY WEST

By: _____
Clerk

By: _____
Mayor