

RESOLUTION NO. 21-008

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "POINCIANA GARDENS FUNDING INTERLOCAL AGREEMENT" BETWEEN MONROE COUNTY (COUNTY), THE CITY OF KEY WEST (CITY) AND THE HOUSING AUTHORITY OF THE CITY OF KEY WEST (KWH); AUTHORIZING ANY NECESSARY BUDGET TRANSFERS OR ADJUSTMENTS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution 13-256, the City encouraged KWH to develop and construct an assisted living facility at Poinciana Plaza, and in Resolution 20-031 the City Commission acknowledged the significant management challenges faced by the Poinciana Gardens senior living facility, and found that the Poinciana Gardens facility provides safe and affordable housing for senior citizens in Key West; and

WHEREAS, the CITY and the COUNTY have committed to providing funding to KWH for FY 2021 for the continued operation of Poinciana Gardens.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the City Commission hereby approves the attached "Poinciana Gardens Funding Interlocal Agreement" among the City, the COUNTY and KWH for funding for the KWH continuing operation of the Senior living facility at Poinciana Gardens through FY 2021.

Section 2: That funds in an amount up to \$400,000.00 for this project are budgeted in General Government/Grants & Aid Account #001-1900-519.82. Any necessary transfers or adjustments are hereby approved.

Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 20th day of January, 2021.

Authenticated by the Presiding Officer and Clerk of the Commission on 21st day of January, 2021.

Filed with the Clerk on January 21, 2021.

Mayor Teri Johnston	<u>Yes</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weasley	<u>Yes</u>

  
TERI JOHNSTON, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK

**POINCIANA GARDENS FUNDING**  
**INTERLOCAL AGREEMENT**

**THIS INTERLOCAL AGREEMENT** is made and entered into this 20th day of January, 2021 by and between MONROE COUNTY, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, FL, 33040, (hereinafter "COUNTY"), the CITY OF KEY WEST, a municipal corporation of the State of Florida, whose address is 1300 White Street, Key West, Florida 33040 (hereinafter "CITY"), and the HOUSING AUTHORITY OF THE CITY OF KEY WEST, a body politic created by the City of Key West through F.S. 421.05 under the laws of the State of Florida, whose address is 1400 Kennedy Drive, Key West, Florida 33040 (hereinafter "KWH").

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

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

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

WHEREAS, the CITY, the KWH and the COUNTY have expressed a shared interest in providing an ALF facility for the residents of the CITY and COUNTY; and

WHEREAS, the COUNTY has operated an ALF for many years and has the knowledge, experience and personnel needed to operate an ALF; and

WHEREAS, the KWH, the CITY and the COUNTY have entered into discussions over the ownership and operation of Poinciana Gardens being transferred to the COUNTY; and

WHEREAS, Poinciana Gardens provides the senior citizens of Monroe County with the ability to age in place by assisting with elder care needs such as well-being checks, around the clock caregiver services and supervision of medications; and

WHEREAS, Monroe County finds that providing these elder cares services serve an invaluable public purpose for the senior citizens of Monroe Country; and

WHEREAS, in the interim, the COUNTY and the CITY have committed to providing funds for one year (fiscal year 2021) for the continued operation of Poinciana Gardens;

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

1. **TERM.** This term of this agreement shall be one year, beginning October 1, 2020 and terminating on September 30, 2021.
2. **FUNDING AND PAYMENT.** The COUNTY and the CITY shall each pay to the KWHa \$400,000 for ALF operations during fiscal year 2021. Said payments shall be made in 1/12 increments. KWHa shall submit to COUNTY and CITY invoices with current financial statements as acceptable to the County Clerk and the City on a MONTHLY schedule in arrears. Acceptability to the Clerk and City is based on generally accepted accounting principles and such laws, rules and regulations as may govern the Clerk's and City's disbursement of funds.
3. **MANAGEMENT.** The KWHa shall be solely responsible for the operation, management and administration of the Poinciana Gardens ALF facility. The COUNTY's and CITY's sole obligation and duty pursuant to this agreement is to provide the funding as set forth in the terms of this agreement.
4. **RECORDS - ACCESS AND AUDITS.** All parties shall maintain adequate and complete records for a period of four years after termination of this Agreement. Each party, its officers, employees, agents and auditors shall have access to the other parties' books, records, and documents, related to this Agreement upon request. The access to and inspection of such books, records, and documents by the parties shall occur during the regular office hours or as agreed.
5. **RELATIONSHIP OF PARTIES.** The parties to the Agreement are independent of each other and shall at no time be legally responsible for any negligence on the part of the other parties, their employees, agents of volunteers resulting in either bodily or personal injury or property damage to any individual, property or corporation.
6. **TAXES.** The parties are not subject to taxes and assessments.
7. **INSURANCE.** The parties to this agreement stipulate that each is a state 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.

8. **PUBLIC ACCESS.** Pursuant to Florida Statute §119.0701, the parties 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. **HOLD HARMLESS.** COUNTY, as a state agency or subdivision defined in Section 768.28, Florida Statutes, agrees to be fully responsible to the limits set forth in such statute for its own negligent acts or omissions, or intentional tortious actions, which result in claims or suits against either COUNTY, KWH, or CITY, and agrees to be liable to the statutory limits for any damages proximately caused by said acts or omissions, or intentional tortious acts.

KWH, as a political sub-division of the State of Florida, as defined in Section 768.28, Florida Statutes, 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 either the KWH, CITY or COUNTY and agrees to be liable to the statutory limits for any damages proximately caused by said acts or omissions, or intentional tortious acts.

CITY, as a political sub-division of the State of Florida, as defined in Section 768.28, Florida Statutes, 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 either the CITY, COUNTY or KWH, and agrees to be liable to the statutory limits for any damages proximately caused by said acts or omissions, or intentional tortious acts.

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.

10. **NON-DISCRIMINATION.** The parties, each 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 shall be discriminated against in the provision of services or award of contracts under this Agreement as provided under Federal and State law, and applicable local ordinance on the grounds of race, color, or national origin.

The Parties agree that there will be no discrimination against any person, and it is expressly understood that upon determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The Parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VII of the Civil Rights Act of 1964 (PL 88-352), which prohibit discrimination in employment on the basis of race, color, religion, sex, and national origin; 2) The title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to the nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 12101), as amended from time to time, relating to nondiscrimination in employment on the basis of disability; 10) Monroe County Code Chapter 14, Article II, which prohibits discrimination on the basis of race, color, sex, religion, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; (11) Code of Ordinance of the City of Key West Section 38 Article III and Section 38-260 and (12) any other nondiscrimination provision in any Federal or state statutes which may apply to the parties to, or the subject matter of, the Agreement.

11. **TERMINATION.** COUNTY and CITY may terminate this Agreement at any time upon ninety days notice to the other parties. Parties understand that such termination action prior to the effective date of termination will cause KWHa to provide forty-five days

notice to Poinciana Gardens Residents to Quit and Vacate the Facility. Following the effective date of termination, COUNTY and CITY shall have no further funding obligation.

12. **ASSIGNMENT.** No Party may assign this Agreement or assign or subcontract any of its obligations under this Agreement other than as specified without the approval of the governing boards of the other Parties. All the obligations of this Agreement will extend to and bind the legal representatives, successors and assigns of the Parties.
13. **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 shall be in Monroe County, Florida. In the event of any litigation, the prevailing party is entitled to a reasonable attorney's fee and costs subject to the limitations of Section 768.28 Florida Statutes.
14. **ETHICS CLAUSE.** KWAH and the CITY each warrant 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, from the agreed payments or otherwise recover the full amount of any fee, commission, percentage, gift or consideration paid to the former COUNTY officer or employee.
15. **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.
16. **NOTICES.** Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the following:

**COUNTY:**

County Administrator  
1100 Simonton Street  
Key West, FL 33040

**KWAH:**

Executive Director  
1400 Kennedy Drive  
Key West, Florida 33040

**CITY OF KEY WEST**  
City Manager

1300 White Street  
Key West, Florida 33041

17. **FULL UNDERSTANDING.** This Agreement is the parties' final mutual understanding. It replaces any earlier agreements or understanding, whether written or oral. This Agreement cannot be modified or replaced except by another written or signed agreement.

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

(SEAL)  
ATTEST: KEVIN MADOK, CLERK

By: Cheryl Smith

Clerk

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By: [Signature]

Mayor

(SEAL)  
ATTEST:

By: \_\_\_\_\_

Deputy Clerk

CITY OF KEY WEST

By: [Signature]

Mayor

HOUSING AUTHORITY OF THE CITY  
OF KEY WEST, FLORIDA

By: [Signature]

Title: Chairman

STATE OF: Florida

COUNTY OF: Monroe

Subscribed and sworn to (or affirmed) before me, by means of ☒ physical presence or ☐ online notarization, on January 19, 2021 (date) by Frank Toppino  
(name of affiant). He/She is personally known to me or has produced  
(type of identification) as identification.



Vanessa Sellers

NOTARY PUBLIC