

RESOLUTION NO. 09-056

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AUTHORIZING THE EXECUTION OF THE ATTACHED INTERLOCAL AGREEMENT BETWEEN THE CITY AND MONROE COUNTY BOCC RECOGNIZING CERTAIN USE OF COUNTY PROPERTY AS A "HOMELESS SAFE ZONE"; PROVIDING FOR AN EFFECTIVE DATE

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

Section 1: That the attached Interlocal Agreement between the City and Monroe County BOCC is hereby approved.

Section 2: 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 3rd day of March 2009.

Authenticated by the presiding officer and Clerk of the Commission on March 4, 2009

Filed with the Clerk March 4, 2009.


MORGAN McPHERSON, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

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 525 Angela Street, Key West, Florida 33040 (the "CITY").

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

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

WHEREAS, the COUNTY owns a parcel of land situated on Norman Key that includes the Premises used hereunder and more particularly described in Exhibit "A"; and

WHEREAS, the parties desire to enter into an interlocal agreement for the CITY's use of the COUNTY's Premises as a homeless persons safe zone.

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 for a term of five years commencing as of the 22nd day of March, 2009 and ending on the 21st day of March, 2014.
- B. There shall be no option to renew this agreement after the expiration of the term described herein.

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 in any way involving hazardous materials or 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. 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 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. COUNTY reserves the right to inspect the area and to require whatever adjustment to structures or improvements as 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.

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 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.

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 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 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 LESSEE 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 County Commission, COUNTY officers and employees, and the Sheriff's Office, its officers and employees, from and against any and all claims, demands, causes of action, losses, costs and expenses of whatever 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 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 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 sixty (60) 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 natural expiration or early termination of this agreement, the operation of a homeless safe zone shall immediately be ceased and all improvements, equipment, and other personalty 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. Should the CITY determine to cease operation of the homeless safe zone prior to the natural termination of this agreement, the CITY shall give COUNTY prior written notice of such intended cessation sixty (60) days before the effective date of the cessation of operation. The purpose of this Agreement is to provide the LESSEE with a solution to its homeless situation and the COUNTY shall not operate a homeless safe zone at this site upon the expiration or termination of this lease.

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 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
Key West, FL 33040

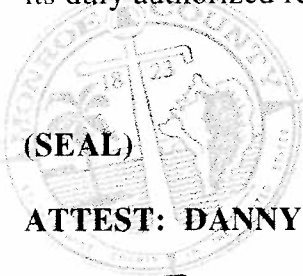
CITY:

City Manager
525 Angela Street
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, 2009.

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



(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: *Jamela Danvers D.C.*
Clerk

By: *George R. Neugebaur*
Mayor/Chairman



(SEAL)

ATTEST:

By: *Cheryl Smith*
Clerk

CITY OF KEY WEST

By: *[Signature]*
Mayor

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM
[Signature]
PEDRO J. MERCADO
ASSISTANT COUNTY ATTORNEY
Date 3/12/09

EXECUTIVE SUMMARY

TO: Jim Scholl, City Manager
FROM: Mark Finigan, Assistant City Manager
DATE: February 18, 2009
SUBJECT: Interlocal Agreement (ILA) – Homeless Safe Zone



Action statement:

Approval is requested by the City Commission of an Interlocal Agreement (ILA) between the City of Key West and the Board of County Commissioners of Monroe County authorizing the use of County property for a “Homeless Safe Zone”.

Background:

City Resolution 04-130 was the initial ILA between the City and Monroe County recognizing the City’s exclusive use of County owned land as a Homeless Safe Zone. The initial term was for five (5) years, ending March 21, 2009. The County property in question is a tract of land on Norman Key, more commonly recognized as property situated to the north / northeast of the Monroe County Sheriffs Office Administration Building.

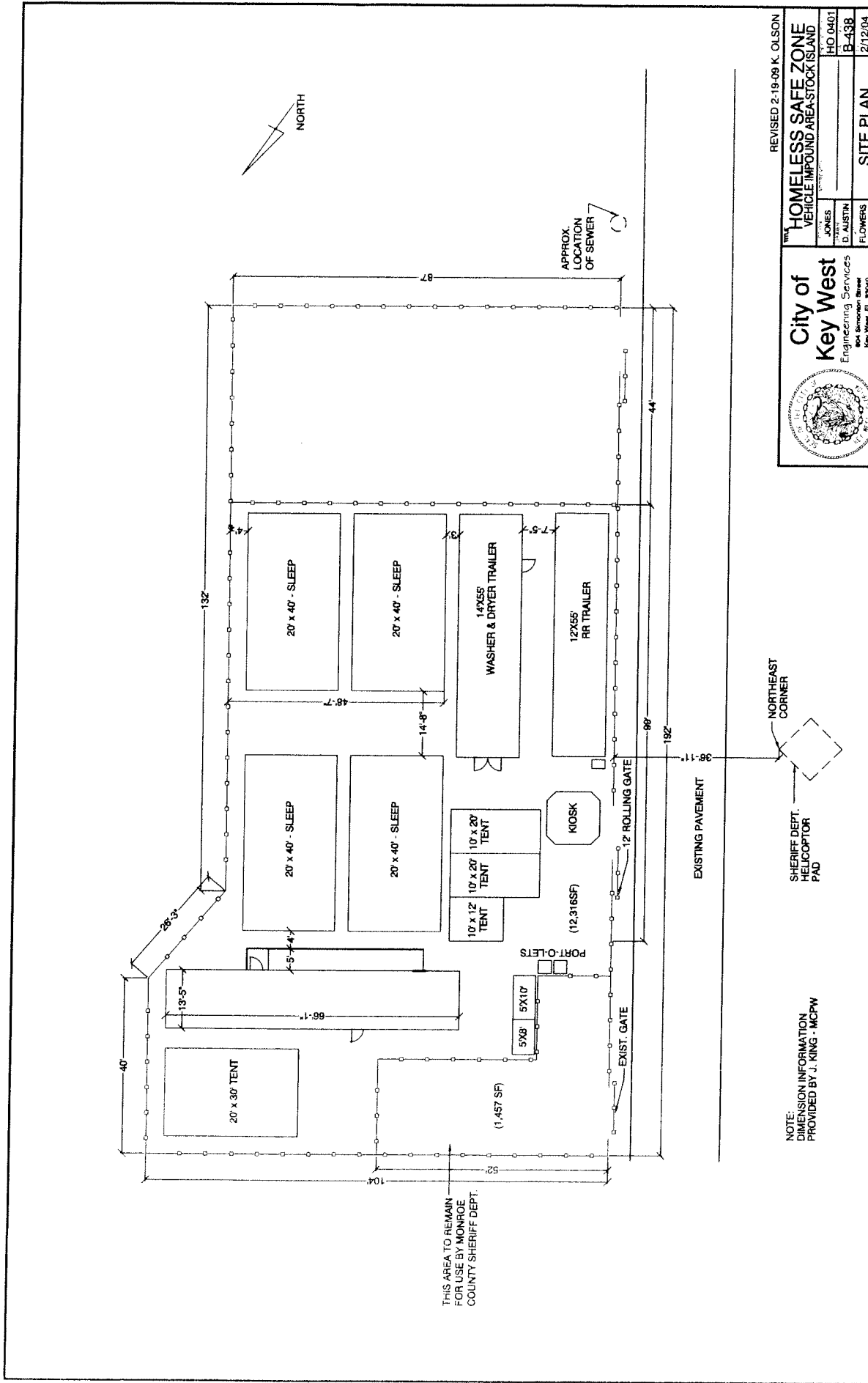
Florida Keys Outreach Coalition (FKOC) is the management entity who administers the ongoing program at the Homeless Safe Zone for the City. The ILA before you would be for an additional five (5) years.

Financial Impact:

The ILA has no financial impact to the City and can be terminated prior to the expiration of any new term without financial commitment – with exception of returning the property to the state it was prior to the 2004 ILA.

Recommendation:

Approve the Interlocal Agreement between the City of Key West and the Board of County Commissioners Monroe County authorizing the use of County property for a “Homeless Safe Zone”.



THIS AREA TO REMAIN FOR USE BY MONROE COUNTY SHERIFF DEPT.

NOTE: DIMENSION INFORMATION PROVIDED BY J. KING - MCPW

NORTHEAST CORNER
SHERIFF DEPT. HELICOPTER PAD

REVISED 2-19-09 K. OLSON

HOMELESS SAFE ZONE		HO 0401
VEHICLE IMPOUND AREA-STOCK ISLAND		2/12/04
DESIGNER	JONES	DATE
DRAWN	D. JUSTIN	NO. OF SHEETS
CHECKED	FLOWERS	B-438
SHEET TITLE		1 OF 1

City of Key West
Engineering Services
400 Sevenson Street
Key West, FL 34290-8180
Phone: 305.296.8180