

**KEYS OVERNIGHT TEMPORARY SHELTER (KOTS)AND ESSENTIAL
GOVERNMENTAL EMPLOYEE HOUSING
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 1300 White Street, Key West, Florida 33040 (the “CITY”).

WHEREAS, the COUNTY, in general, and the CITY of Key West, specifically, 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 North Stock Island that includes the Premises used hereunder and more particularly described in Exhibit “A”; 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 main jail since 2004; and

WHEREAS, the County assisted the City’s operation of KOTS by providing land and payment of certain utilities since 2004; and

WHEREAS, the CITY has requested that KOTS remain on the COUNTY property that also serves as the Headquarters for the SHERIFF and the County Jail; and

WHEREAS, Monroe County Sheriff’s Office (“SHERIFF”), finds it difficult to recruit and retain personnel due to the high cost of living in Monroe County; and

WHEREAS, on September 27, 2017, the Sheriff requested authorization from the County to build approximately 30 units of housing for his employees on the current site of KOTS; and

WHEREAS, on September 27, 2017, the COUNTY authorized staff to begin working with the CITY to develop the property where KOTS is currently located to build employee housing for the SHERIFF; and

WHEREAS, on September 27, 2017, the County Commission voted to advise the City that it had one year to vacate the premises of the current KOTS facility; and

WHEREAS, on July 18, 2018, the County Commission voted to extend the deadline for the City to vacate the premises until September 27, 2019; and

WHEREAS, the CITY has identified a parcel of CITY owned land on Trumbo Road on which the contemplated units of housing for Sheriff's employees can be built; and

WHEREAS, the City has represented to the COUNTY and the SHERIFF that the Trumbo property is in the process of being re-zoned to be eligible for constructing approximately 40 units of affordable housing under the CITY's Land Development Code and Comprehensive Plan; and.

WHEREAS, the parties agree that a land swap is the best mechanism to ensure each governmental entity of its ability to achieve its mutual goals of building a new KOTS facility on a suitable location and creating at least 30 units of affordable housing for the Sheriff's employees; and

WHEREAS, by approving this agreement, the County Commission rescinds all prior votes to direct the City to vacate the County's property current KOTS location; and

WHEREAS, CITY has agreed to bear the costs of construction of the "NEW KOTS" facility and the County has agreed to bear the costs of removing its sheds from the subject parcel in order to provide the City a site that is ready for the City to build upon; and

WHEREAS, Section 7.03(a) of the City Charter authorizes the City to convey City owned property to the County without a referendum; and

WHEREAS, Section 1.08 of the City Charter currently requires approval of the voters by referendum for acquisition of real property by any means; and

WHEREAS, the parties desire to enter into an interlocal agreement that would permit the CITY to use a portion of the COUNTY's Premises as a homeless persons safe zone commonly referred to as KOTS until such time as the City can formally accept conveyance of that portion of property from the County in exchange for a conveyance of the Trumbo property to the COUNTY for use as an affordable housing site for Sheriff's office and other public employees.

NOW, THEREFORE IT IS AGREED:

1. **PROPERTY**. The properties covered by this agreement include the following parcels:
 - A. "NEW KOTS" – a parcel of land shown on Exhibit A that is a portion of the parcel where the Monroe County Detention Center and Monroe County Sheriff's Headquarters Building is located.
 - B. "Trumbo Road" – the approximately 1.1 acre of vacant land on Trumbo Road that has a current street address of 250 Trumbo Road, Key West, and parcel number 00001720-000200.

The COUNTY agrees to lease to the CITY for its exclusive use the land designated as “NEW KOTS”, hereafter “the Premises,” as shown on Exhibit “A,” which shall be made available to CITY in a scarified condition free of any existing utility installations or other structures. (Existing City improvements excluded.)

2. **DESIGN AND CONSTRUCTION.** The parties to this Agreement will work together to design and build at CITY’S sole expense the NEW KOTS facility taking into consideration the concerns of neighboring property owners and will design a staging area and adequate screening and landscaping so as to minimize visual or noise impacts on the neighboring properties.

The parties agree that the NEW KOTS facility will be completely fenced and have two gated entrances referred to as a main entrance and a service entrance. Both gated entrances are depicted on Exhibit A. The service entrance shall not be used by KOTS clients or staff except for deliveries or emergencies.

3. **SEQUENCE OF ACTIONS.**

A. Within 90 days of the effective date of this agreement, the CITY shall deed the Trumbo Property to the County free of all liens and encumbrances, in a form acceptable to the County Attorney. The deed shall contain a reversionary clause in favor of the City should the County abandon its intended use as affordable housing for the Sheriff and other public employees. The City’s failure to convey the Trumbo property within 90 days of the effective date of this agreement, shall render the agreement void at the discretion of County. Prior to the conveyance the City shall record a Declaration of Restriction restricting the use of the property, in perpetuity, to workforce affordable housing as defined in Section 122-1465 through 122-122-1472 of the Land Development Regulations of the City.

B. Within 90 days of the effective date of this agreement,

a. The COUNTY shall relocate the existing county-owned storage sheds and related infrastructure that currently exists on the site of the NEW KOTS property depicted in Exhibit A so that the site is suitable for building the NEW KOTS facility. The COUNTY anticipates that it will require no more than six weeks to provide a site that is ready for construction of the NEW KOTS facility.

b. Contemporaneously with or prior to the COUNTY’s efforts to clear the site for the NEW KOTS facility, the CITY may commence or complete the design and permitting process for constructing the NEW KOTS. The City shall provide the COUNTY and SHERIFF an opportunity to review and provide input prior to submitting the plans for approval by the City’s building and planning departments.

- c. The COUNTY may begin the design and permitting process for constructing the affordable housing units on the Trumbo property independent of the design, permitting, and construction of the NEW KOTS facility on the jail property.
 - C. The CITY shall continue to operate the existing KOTS until the NEW KOTS facility is opened and occupied. CITY shall make every reasonable effort to construct the NEW KOTS facility within 36 months of the final execution of this agreement. Both parties acknowledge budgetary funding hurdles remain to be overcome for the construction of NEW KOTS. The parties agree to jointly seek a legislative change to F.S. 380.0666 to insert language that would clearly authorize the use of Land Authority funds to aid in the cost of construction of the NEW KOTS facility.
 - D. Within 60 days of the occupancy of NEW KOTS by the CITY, the CITY shall demolish the old KOTS facility.
 - E. To the extent allowed by law, the COUNTY agrees to convey the NEW KOTS property to the CITY upon demand when the CITY is legally permitted to take title with or without a referendum, free of any liens and encumbrances in a form acceptable to the City Attorney. The deed shall contain a reversionary clause in favor of the County should the CITY abandon use of the property as a homeless shelter or a site for the construction of affordable housing should CITY determine not to continue to provide a homeless shelter at the NEW KOTS location
4. **TERM.** Subject to and upon the terms and conditions set forth herein, this Agreement shall continue in force for a term of 99 years commencing as of the 18th day of September 2019 and ending on the 17th day of September, 2118. Should the City acquire ownership of the NEW KOTS property subsequent to the County obtaining ownership of the Trumbo property, the parties will re-evaluate the continuing need for any portions of this agreement at the request of either party.

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

- A. The Premises shall be used for the purposes of providing a homeless safe zone and provision of related services as determined by CITY. 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.
- 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 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.
- 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 and orderly 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. Unless otherwise agreed by separate agreement or amendment to this interlocal agreement, the CITY or its authorized designee 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.

6. **RENT.** Until such time as the City lawfully takes title to the NEW KOTS property, 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.

7 **UTILITIES.** The CITY shall be provided \$5,000.00 a 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. 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.

8 **ALTERATIONS AND IMPROVEMENTS.**

- A. Until such time as the CITY takes title to the Premises, 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 (which shall not be unreasonably withheld), 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. 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. Portable or temporary advertising signs are prohibited.
- C. Upon occupancy of the NEW KOTS facility, the CITY shall demolish the existing facility at its own expense.

9 **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.

10 **RECORDS – ACCESS AND AUDITS.** The CITY shall maintain adequate and complete records for a period of four years after termination of this Agreement or as otherwise provided by law. 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.

11 **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.

12 **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.

13 **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. Nothing contained herein shall be deemed to waive the CITY's sovereign immunity rights including but not limited to those expressed in Section 768.28, Florida Statutes.

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.

14 **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.

15 **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, and Sheriff's Office, and 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 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. Neither the County nor the CITY waives any of its respective sovereign immunity rights including but not limited to those expressed in Section 768.28, Florida Statutes.

16 **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 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 on the basis of race, color gender, or national origin.

17 **TERMINATION.** The COUNTY may treat the CITY in default and terminate this Agreement upon 90 days written notice, upon failure of the CITY to comply with any provision related to compliance with all laws, rules and regulations, provided CITY is first offered the opportunity to cure any said defaults within a reasonable time after notice of said violation. 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.

18 **CESSATION OF HOMELESS SAFE ZONE OPERATIONS.** If the City has not taken title to the property 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 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. 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.

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.** 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.

23 **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.

24 **NOTICES.** Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the following:

COUNTY:

Monroe County Administrator
1100 Simonton Street
Key West, FL 33040

CITY:

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

25 **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.

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

[signatures on next page]

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

(SEAL)

**ATTEST: KEVIN MADOK,
CLERK OF MONROE COUNTY, FLORIDA**

**MONROE COUNTY BOARD
OF COUNTY COMMISSIONERS**

By: _____
Clerk

By: _____
Mayor Sylvia Murphy

(SEAL)

**ATTEST: CHERYL SMITH,
CITY CLERK**

**CITY COMMISSION
CITY OF KEY WEST**

By: _____
Clerk

By: _____
Mayor Teri Johnston

ACCEPTANCE BY THIRD PARTY BENEFICIARY:

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

MONROE COUNTY SHERIFF'S OFFICE

By: _____
Rick Ramsay, Monroe County Sheriff

EXHIBIT A

SKETCH AND LEGAL DESCRIPTION OF NEW KOTS