

## RESOLUTION #21-2579

### FINAL MILE INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT is entered into as of this 20th day of December, 2021, between the Key West Housing Authority, a political subdivision of the State of Florida (hereinafter, KWHA) and the City of Key West, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter, the CITY).

#### WITNESSETH:

WHEREAS, the City of Key West was awarded the “Final Mile” FDOT grant to increase bike and pedestrian amenities (“Amenities”) along the US1 corridor; and

WHEREAS, in pursuing this grant, the City of Key West committed its own funds towards site plans and federal permitting processes for these Amenities, regardless of their jurisdiction; and

WHEREAS, both KWHA and the City of Key West recognize that these Amenities will help alleviate traffic congestion and increase safety; and

WHEREAS, the areas listed below are within the property line of KWHA and will constitute the project area (“Project”) under this Agreement; and

WHEREAS, KWHA is responsible for the maintenance of their own properties; and

WHEREAS, this Interlocal Agreement is subject to the terms and conditions of the Local Agency Program Agreement (“LAP Agreement”), No. 446126-1-58-01, between FDOT and the City of Key West, which has been executed by the City of Key West and is attached as Exhibit A, for the Amenities to be provided under the abovementioned “Final Mile” Grant;

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

1. The City of Key West will publicly advertise the Project for bidding and enter into a contract with a construction contractor to purchase and install the following Amenities (90% Site plans included as Exhibit ‘B’) within KWHA properties:

Bus Stop Amenities: All include a hailing light and bus map attached to existing signage pole, with a trash can and/or recycling bin.

- Site 11) Senior Center, Kennedy Drive - Includes 5 new bike racks.
- Site 14) Duck & 17<sup>th</sup> (Poinciana Gardens) – Includes replacement of 5 bike racks.

2. KWHA will have the opportunity to review, comment and provide feedback on the locations and the Amenities.

3. The Work will be performed in accordance with Florida Department of Transportation standards and applicable building codes.

4. The City will submit copies of as-built plans to KWHA. The contract for construction will be between the City of Key West and its Contractor; KWHA may monitor the work but is not a party to the contract.
5. The City of Key West's Department of Transportation will be responsible for cleanliness, maintenance and repairs for all Amenities located at bus stops;
6. This agreement in no way relieves or alters the City's liability or responsibility regarding its bus stops related thereto nor does this alter KWHA's liability or responsibility regarding maintenance of their parks, properties or roads.
7. This Agreement shall become effective immediately upon execution.
8. In the event of any failure of compliance by either party hereto with any of its material obligations to the other party as provided for herein, such action shall constitute a default under this Agreement.
9. Upon any such default, the non-defaulting party shall provide to the defaulting party a written Notice of such default, which Notice (a "Default Notice") shall state in reasonable detail the actions the defaulting party must take to cure the same. The defaulting party shall cure any such default, within 30 days following the date of the Default Notice.
10. Notwithstanding the provisions of this Section, if any such default by the defaulting party remains uncured at the conclusion of any specified 30 day cure period, and if the nature of the defaulting party's obligations are such that more than 30 days is required to effect cure, then the defaulting party shall not be in default hereunder and the non-defaulting party shall not have the right to exercise its termination rights granted herein as a result of any such default, if the defaulting party commences cure within the applicable cure period and thereafter diligently pursues cure to completion of performance.
11. In the event the defaulting party fails to affect any required cure as provided for herein, the defaulting party shall be deemed to be in uncured default hereunder, and the non-defaulting party shall have the right, but shall not be obligated, upon written Notice to the defaulting party, to terminate this Agreement.
12. If such Notice is given, this Agreement shall terminate on the date set forth in the Notice and the parties shall be relieved of all rights and obligations hereunder, except for any rights and obligations that expressly survive termination.
13. To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the CITY does hereby agree to defend, indemnify and hold the KWHA its officers, agents, or employees, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the acts or omissions of the CITY or any third party vendor contracted by the CITY in connection with this Agreement.

14. Notices.

All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing and addressed as follows, or to any other address which either party may designate to the other party by mail:

If to KWA: Randy Sterling  
Executive Director  
Key West Housing Authority  
1400 Kennedy Drive  
Key West, FL 33040

With a copy to: Frank Toppino  
Chairman  
Key West Housing Authority  
1400 Kennedy Drive  
Key West, FL 33040

If to City: Patti McLaughlin  
City Manager  
P.O. Box 1409  
Key West, Florida  
33041

With a copy to: Shawn Smith, Esq.  
City Attorney  
P.O. Box 1409  
Key West, Florida 33041

Any Notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered; or sent by overnight delivery service.

**15. Attorneys Fees and Waiver of Jury Trial.**

In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

**16. Governing Law.**

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Lower Keys Division of the Circuit Court or the Southern District of Florida. This Agreement is not subject to arbitration.

**17. Entire Agreement/Modification/Amendment.**

This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

**18. Nonassignability.**

This Agreement shall not be assignable by either party unless such assignment is first approved by both parties.

**19. Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

**20. Independent Contractor.**

The CITY and its employees, volunteers, agents, vendors and subcontractors shall be and remain an independent contractor and not agents or employees of the KWHHA with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise, or venture between the parties.

**21. Waiver.**

The failure of either party to this Agreement to object to or to take affirmative

action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct

**22. Funding.**

The parties agree that the CITY's responsibility under this Agreement is to provide funding for all installation of Amenities associated with this Project.

**23. Survival of Provisions.**

Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

**24. Counterparts.**

This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]**

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day and year first written above.

KEY WEST HOUSING AUTHORITY BOARD

BY:   
Chairperson

(SEAL)

ATTEST:   
BY: \_\_\_\_\_

BY: \_\_\_\_\_  
ATTORNEY'S OFFICE

THE CITY OF KEY WEST, FLORIDA

\_\_\_\_\_  
Teri Johnston, Mayor

ATTEST:

\_\_\_\_\_  
Cheri Smith  
City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALALITY FOR THE USE  
AND RELIANCE OF THE CITY OF KEY WEST, FLORIDA ONLY:

BY: \_\_\_\_\_  
City Attorney