

## LEASE AGREEMENT – POCKET PARKS

This Lease Agreement is made the 10<sup>th</sup> day of October, 2012, between the UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA (KEYS ENERGY SERVICES), Lessor, hereinafter called "KEYS" and the CITY OF KEY WEST, FLORIDA, Lessee, hereinafter called "City."

### WITNESSETH:

1. **Description of Premises.** KEYS does hereby lease to the City the "Premises" located in Key West, Monroe County, Florida, described as:

LOCATION	ADDRESS	PROPERTY SIZE	REAL ESTATE NUMBER
Lowisa Street	600 Block Lowisa St. Key West, Florida 33040	30'X30' = 900 Sq. Ft.	RE# 00028400-000000
Flagler Avenue & 18 <sup>th</sup> Street	3541 Flagler Avenue Key West, Florida 33040	50'X50' = 2,500 Sq. Ft.	RE# 00052460-000000
Grinnell Street & Angela Street	627 Grinnell Street Key West, Florida 33040	50'X95' = 4,750 Sq. Ft.	RE# 00010990-000000

2. **Term.** KEYS leases the above described Premises to the City for a term of five (5) years commencing the 1<sup>st</sup> day of October, 2012, and ending on the 30<sup>th</sup> day of September, 2017. This lease is not assignable. The agreement shall have three (3) mutual agreed upon option extensions. Each extension shall be for a period of five (5) years.
3. **Rents and Security.** The City, in consideration of the leasing of the Premises does hereby covenant and agree to pay Ten Dollars total (\$10.00) per year and other consideration for each site.
4. **Taxes.** It is hereby covenanted, stipulated and agreed between the parties hereto that the City will agree to pay all taxes, fees, licenses or charges whatsoever on the real property, buildings or improvements as they become due, upon presentation of evidence of such amounts owed.
5. **Use of Premises.** The Premises shall be used for "Park and Recreation" use only, unless prior written approval is granted by KEYS. It is KEYS' intent that each listed property shall be used for the "betterment" of the community. KEYS has the sole right to deny any improvements that are not in accordance with the above.
6. **Utilities.** The City agrees to comply with all applicable federal, state and local codes and the proper use of electricity, gas, water, sewer and other

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utilities to the subject property. The City agrees to pay all monthly fees for any and all water, sewer, electric, telephone, and similar utilities for each property.

**7. Design Review.** KEYS shall be given the opportunity to review and comment on the plans and design for the Premises. Final approval by KEYS will be required.

**8. Improvement/Funding.** All improvements shall be the responsibility of the City unless as stated herein. Signage is required to be installed at each site by the City and, at a minimum, shall make reference to KEYS involvement/ownership of the property. KEYS shall approve any signage placed at each site. In addition, KEYS agrees to provide three (3) trees per site (approximate height of 15 feet). The selections of the type of trees are to be made by the City. The City shall be responsible for the planting and their care. KEYS agrees to install fencing and to remove any existing barbed wire on fences. The City agrees to maintain said fencing.

**9. Maintenance and Security.**

**a. Maintenance.**

1. The City shall perform and be responsible for the cost of all repair and/or maintenance necessary to keep the Premises in good order, repair and conditions and in a clean, sanitary and safe condition in accordance with all directions, rules, and regulations of governmental agencies having jurisdiction. The City agrees to maintain the entire site.
2. KEYS and the City will both appoint a Liaison to handle maintenance and to create a process to address any concerns in a timely manner.

**b. Security.**

1. The City shall be responsible for providing security for the site as needed.

**10. Manner of Payment and Giving Notice.** The checks for rental occurring hereunder shall be forwarded to Keys Energy Services, 1001 James Street, Key West, Florida 33041-6100. All notices by the City, to KEYS hereunder shall be forwarded to KEYS, "Return Receipt Requested," until the City is notified otherwise in writing. Notice to the City by KEYS shall be forwarded to City Manager, City of Key West, PO Box 1409, Key West, FL 33040.

**11. KEYS Covenant.** Upon the payment by the City of the rents provided, and upon the observation and performance of all the covenants, terms and conditions on the City's part to be observed and performed, the City shall peacefully and quietly hold and enjoy the subject Premises for the term hereby demise without hindrance or interruption by KEYS or any other person

or persons lawfully or equitably claiming by, through or under KEYS subject nevertheless, to the terms of this lease agreement.

**12. Indemnification/Insurance.**

- a. The City shall hold harmless, indemnify and defend KEYS, its directors, officers, employees and agents against any claim, action, loss, damage, injury, liability, cost and expense of whatever kind or nature (including, but not by way of limitation, attorney's fees and court costs) arising out of or incidental to this agreement, excluding only the negligence of KEYS, its directors, officers, employees or agents, to the extent permitted by Florida law. It is expressly agreed and understood that City does not waive sovereign immunity as provided under Florida law.
- b. The City shall purchase and maintain, at a minimum, the following insurance coverages throughout the term of the lease. In addition, property insurance shall be maintained during construction.

**Commercial General Liability**

- I. The City's insurance shall cover those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance Services Office, with out the attachment of restrictive endorsements other than the elimination of Coverage C. Medical Payments.
- II. The City shall maintain minimum limits of:

General Aggregate Limit (Other than Products/Completed Operations)	\$1,000,000
Products-Completed Operations Aggregate Limit	\$1,000,000
Personal & Advertising Injury Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000
Fire Legal Liability Limit	\$ 50,000
- c. All policies shall provide (to the extent such provisions are obtainable) the City and KEYS with at least forty-five (45) days written notice of cancellations, non-renewal or restriction in coverage. A certificate or certificates of insurance shall be provided to the KEYS prior to the

effective date of the lease and at least thirty (30) days prior to each renewal.

- d. In the event the City refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this lease, KEYS may, at their option, procure, or renew such insurance and all amounts of money paid therefore, shall be payable for with by the party who has failed to procure such insurance with interest at the current highest legal rate allowed in the State of Florida on the date of such purchase.
- e. The City shall be responsible for the cost to repair or replace any of their contents or improvements and betterments in the event of damage or destruction.
- f. The City will add "The Utility Board of the City of Key West, Florida" as an Additional Insured on all insurance policies.

**13. Observation of Laws and Ordinances.** The City agrees to observe, comply with and execute promptly, at their expense, during the term hereof all laws, rules, requirements, orders, directives, ordinances and regulations and any and all governmental authorities or agencies and of all municipal departments, bureaus, boards and officials due to its use or occupancy of the subject premises, and to obtain and maintain during the term thereof any and all certificates, licenses, and other documents necessary for lawful occupation and operation.

**14. Surrender at End of Term.** Upon the expiration of the term hereof or sooner termination of this lease as herein provided, the City agrees to surrender and yield possession of the Premises peacefully and without further notice, and in good order and condition but subject to ordinary wear and reasonable use thereof. In the event the City discontinues use, refuses to repair or abandons the site; the City shall be responsible for cost of demolition and disposal of the site.

**15. Entire Agreement.** This lease sets forth all covenants, promises, agreements and understandings between KEYS and the City concerning the subject Premises. Except as here and otherwise provided, no subsequent alteration, amendment, change, or addition to this lease shall be binding upon KEYS and the City unless reduced to writing and signed by both parties.

**16. Partial Invalidity.** If any term, covenant or addition of this lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, insofar as is reasonable the remainder of this lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable,

shall not be affected thereby and each term, covenant or condition of this lease shall be valid and be enforced to the fullest extent permitted by law.

**17. Termination of Lease.** Either party has the right to terminate this lease agreement, with or without cause, upon ten- (10) month's prior written notice.

IN WITNESS THEREOF, the parties hereunto executed this lease the day and year first written above.

**WITNESSES**

Sign: Susan P. Harrison  
Print: SUSAN P. HARRISON  
Sign: Angela Buode  
Print: ANGELA BUODE

**WITNESSES**

Sign: Edie Delph  
Print: EDIE DELPH  
Sign: Lynne Tejeda  
Print: LYNNE TEJEDA

**LESSEE**

City of Key West, Florida

By: Craig Cates  
Craig Cates, Mayor  
Date: 1/8/13

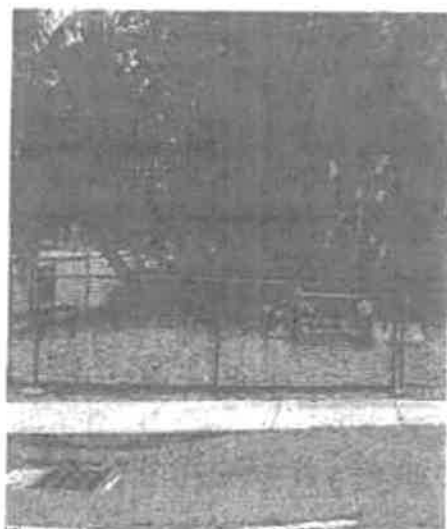
**LESSOR**

UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA

By: Lou Hernandez  
Lou Hernandez  
Chairman  
Date: 10/10/2012



**600 BLOCK LOUISA STREET - RE# 00028400-000000**



**FLAGLER AVENUE & 18<sup>TH</sup> STREET - RE# 00052460-000000**