



AMY HEAVILIN, CPA

CLERK OF CIRCUIT COURT & COMPTROLLER

MONROE COUNTY, FLORIDA

DATE: September 14, 2016

TO: Doug Sposito, Director
Project Management

ATTN: Alice Steryou, Contract Monitor

FROM: Cheryl Robertson Executive Aide to the Clerk of Court & Comptroller *CR*

At the July 20, 2016 Board of County Commissioner's meeting the Board granted approval and execution of the following Items:

C22 Approval to enter into a 15 year agreement commencing October 1, 2016 with Monroe Council of the Arts Corporation d/b/a Florida Keys Council of the Arts ("MCAC") to facilitate the MCAC purposes and to benefit the cultural environment and arts community of Monroe County. Monroe County to provide one office in Key West, limited support services and priority in donation to non-profits organizations of surplus County property.

C23 Approval of First Amendment to Agreement for Air Conditioning Maintenance and Repair with SUB-ZERO, Inc. to increase the contract total compensation amount from \$70,000.00/year to \$120,000.00/year for Lower Keys facilities central air conditioning maintenance and repair.

Enclosed is a duplicate original of the above-mentioned for your handling. Should you have any questions, please feel free to contact our office.

cc: County Attorney
Finance
File ✓

**AGREEMENT BETWEEN THE BOARD OF COUNTY COMMISSIONERS OF
MONROE COUNTY, FLORIDA AND MONROE COUNCIL OF THE ARTS
CORPORATION D/B/A FLORIDA KEYS COUNCIL OF THE ARTS**

THIS AGREEMENT made this 20th day of JULY, 2016, by and between the Board of County Commissioners of Monroe County, Florida ("BOCC") and Monroe Council of the Arts Corporation d/b/a Florida Keys Council of the Arts ("MCAC"), a not-for-profit corporation incorporated in the State of Florida.

WHEREAS, the BOCC is authorized to contract for the provision of cultural facilities and programs; and

WHEREAS, the MCAC was created for the purpose of promoting, coordinating, educating and otherwise enhancing cultural enrichment and the arts in Monroe County; and

WHEREAS, the MCAC is the designated local arts agency in Monroe County; and

WHEREAS, the BOCC and the MCAC have determined that it is in the best interests of Monroe County to enter into this agreement to facilitate the MCAC purposes and to benefit the cultural environment and arts community of Monroe County.

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

1. Agreement Period: This Agreement is for the period commencing October 1, 2016 and through October 1, 2031, unless earlier terminated pursuant to paragraphs 6 or 22 below. Upon providing written notice to MCAC at least sixty days prior to the expiration date, BOCC may exercise an option to extend this Agreement for fifteen years.

2. Scope of Services: MCAC shall provide the program development and sponsorship necessary to accomplish within Monroe County the goals and purposes set forth by the State Legislature in Florida Statutes section 265.32 (the Florida Fine Arts Act of 1980).

3. BOCC Responsibility: The BOCC shall direct its County Administrator, Department Directors, County Attorney and staff to provide certain facilities and support to MCAC as can be provided without requiring an increase in personnel or any purchase or lease of real property. The BOCC shall provide to MCAC, within the aforementioned limitation, as well as all rules applicable to County, the following:

a) One office in Key West.

b) Support services from County departments to assist in such activities as moving office furniture, and equipment, preparing legal documents, risk management (insurance) consultation, and any other activities which are already performed by County staff which can be performed to further the goals of this agreement without requiring any increase in County staff.

c) Inclusion of said office space in BOCC's provisions for cleaning and maintenance of County offices; and

d) Priority in donation to non-profit organizations of any surplus County property which can be utilized by MCAC to further the purposes of the Florida Fine Arts Act of 1980.

4. Records: MCAC shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Each party to this Agreement or their authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for four years following the termination of this Agreement. If an auditor employed by the County or Clerk determines that monies paid to MCAC pursuant to this Agreement were spent for purposes not authorized by this Agreement, the MCAC shall repay the monies together with interest calculated pursuant to Sec. 55.03, FS, running from the date the monies were paid to MCAC.

In addition, if MCAC is required to provide an audit as set forth in Section 9(d) below, the audit shall be prepared by an independent certified public accountant (CPA) with a current license, in good standing with the Florida State Board of Accountancy, and maintain malpractice insurance covering the audit services provided. If the MCAC receives \$100,000 or more in grant funding from the County, the CPA must also be a member of the American Institute of Certified Public Accountant (AICPA). The County shall be considered an "intended recipient" of said audit.

5. Relationship of Parties: MCAC is, and shall be, in the performance of all works, services and activities under this Agreement, an independent contractor and not an employee, agent or servant of the BOCC. MCAC shall exercise control, direction, and supervision over the means, manner personnel and volunteers through which it performs the work. Although this Agreement is a cooperative agreement, similar in many respects (but not all) to a partnership, MCAC shall have no authority whatsoever to act on behalf and/or as agent for the BOCC in any promise, agreement or representation other than specifically provided for in this Agreement. The BOCC shall at no time be legally responsible for any negligence on the part of MCAC, its employees, agents or volunteers resulting in either bodily or personal injury or property damage to any individual, property or corporation or any claim of damages whatsoever.

6. Modification: Additions to, modification to, or deletions from the terms and conditions of this contract shall be effective only if made in writing and executed by the BOCC. No addition, modification or deletion shall become effective without written approval of both parties.

7. Breach and Penalties: The parties agree to full performance of the covenants contained in this Agreement. Both parties reserve the right, at the discretion of each, to terminate the services in this Agreement for any misfeasance, malfeasance or nonperformance of the terms or negligent performance of the terms by the other party. 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.

8. Insurance Requirements: MCAC shall carry, during the term of this Agreement, public liability insurance, including bodily injury and property loss damage to cover all claims, demands or actions by any person or entity in any way arising from the operation of the Agreement. Such liability insurance shall meet the requirements of the Insurance Requirement. Monroe County Board of County Commissioners shall be named as an additional insured under the insurance policy and such insurance shall be primary and non-contributing with any insurance carried by the BOCC. MCAC shall furnish the County with a certificate evidencing the insurance required by this paragraph at the time of executing this Agreement.

9. Indemnification and Hold Harmless: MCAC shall indemnify and hold harmless the BOCC, their departments, agencies, officials, employees, agents, servants and contractors against any claims, liabilities, costs, damages, and expenses (including reasonable attorney's fees) arising as a result of any direct and/or indirect action of MCAC, its employees, agents, servants, volunteers and/or contractors in the performance of the terms of this Agreement or otherwise related to activity conducted in the furtherance of this Agreement except to the extent that, in the case of any act of negligence, MCAC reasonably relied upon material or services supplied by the BOCC or any employee of the BOCC. MCAC shall immediately give notice to the BOCC of any suit, claim or action made against it that is related to any activity under this Agreement and will cooperate with the BOCC in the investigation arising as a result of any suit, claim or action related to this Agreement.

10. Permits: MCAC shall secure all required permits and/or licenses necessary to carry out any of the services rendered under this Agreement.

11. Laws and Regulations:

(a) This Agreement shall be construed by and governed under the laws of the State of Florida unless in an area of law pre-empted by federal law. MCAC agrees for venue of any dispute to lie in Monroe County, Florida.

(b) MCAC shall comply with all laws.

(c) MCAC shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, age or national origin in the performance of work under this Agreement.

(d) Any violation of said statutes, ordinances, rules, regulations and executive orders shall constitute a material breach of this Agreement and shall entitle the BOCC to terminate this Agreement immediately upon delivery of written notice to the MCAC.

12. Taxes: The BOCC is exempt from Federal, Excise and State of Florida Sales Tax.

13. Finance Charges: The BOCC will not be responsible for any finance charges.

14. Severability: If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision other than those as to which it is invalid or unenforceable, shall not be affected thereby; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. Assignment: MCAC shall not assign, transfer, sublease, pledge, hypothecate, surrender, or otherwise encumber or dispose of this Agreement or any estate created by this Agreement or any interest in any portion of the same, or permit any other person or persons, company or corporation to perform services under this Agreement without first obtaining the written consent of the BOCC. In the event of such consent, this Agreement shall be binding upon MCAC's successors and assigns.

16. Disclosure: MCAC shall be required to list any or all potential conflicts of interest, as defined by Florida Statutes Chapter 112, Part III and the Monroe County Ethics Ordinance. MCAC shall disclose to the BOCC all actual or proposed conflicts of interest, financial or otherwise, direct or indirect, involving any client's interest which may constitute a conflict under said laws.

17. Additional Conditions: MCAC agrees to accept additional conditions governing the use of funds or performance of work as may be required by federal, state or local statute, ordinance or regulation or by other policy adopted by the BOCC. Such additional conditions shall not become effective until MCAC has been notified in writing and no such additional conditions shall be imposed retroactively.

18. Independent Professional Judgment: MCAC shall at all times exercise independent professional judgment and shall assume full responsibility for the service to be provided and work to be completed.

19. Care of Property: The MCAC shall be responsible to the BOCC for the safekeeping and proper use of the property entrusted to MCAC's care, and to process all documents necessary to continue, without interruptions, any maintenance or service contracts relating to such equipment for its service life.

20. Ethics Clause: The MCAC 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 BOCC 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 MCAC or BOCC officer or employee.

21. Notice: Any notice required or permitted under this Agreement shall be in writing and hand-delivered or mailed, postage prepaid, by certified mail, return receipt requested, to the other as follows:

For MCAC:
Executive Director of Florida Keys
Council of the Arts
1100 Simonton Street
Suite 2-263
Key West, FL 33040

For COUNTY:
County Attorney
1111 12th Street
4th floor, Suite 408
Key West, FL 33040
and
County Administrator
1100 Simonton Street
Suite 2-205
Key West, FL 33040

FILED FOR RECORD
2016 SEP 16 AM 11:48
CLK. CIR. CL.
MONROE COUNTY, FLA

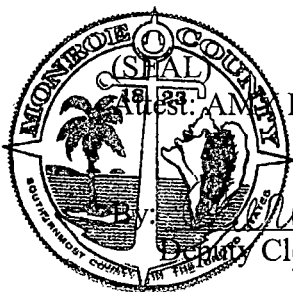
22. Termination: Termination of this Agreement shall occur at the natural ending date or earlier should either party determine that there has occurred any material breach of any covenants herein contained or either party otherwise deems it in their best interest to terminate. Termination may be with or without cause and shall require written notice to be given to the other party as follows:

(a) In the event either party terminates for breach of Agreement termination shall be effective at such time as the terminating party shall declare in its act to terminate for cause with a minimum of fourteen days notice in writing required prior to effective termination.

(b) In the event either party terminates without cause, the termination shall not take effect until at least sixty days subsequent to written notice to the other party and the effective date of termination shall be specified in said notice.

23. Full Agreement: This Agreement constitutes the entire and full understanding between the parties hereto and neither party shall be bound by any representations, statements, promises or agreements not expressly set forth herein and in duly executed amendments under paragraph 6 hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.



HEAVILIN, Clerk

Deputy Clerk
Robertson

9-14-16

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: *[Signature]*

Mayor

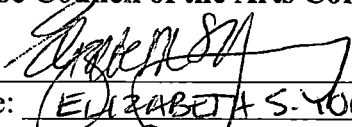
MONROE COUNTY ATTORNEY
APPROVED AS TO FORM

[Signature]

CHRIS AMBROSIO

ASSISTANT COUNTY ATTORNEY

For Monroe Council of the Arts Corporation

Signature: 

Print Name: ELIZABETH S. YOUNG

Title: EXECUTIVE DIRECTOR

Date: JUNE 24, 2016

STATE OF FLORIDA
COUNTY OF Florida

On this 24th day of June, 2016, before me, the undersigned notary public, personally appeared Elizabeth S. Young known to me to be the person whose name is subscribed above or who produced _____ as identification, and acknowledged that he/she is the person who executed the above contract with Monroe County for the purposes therein contained.

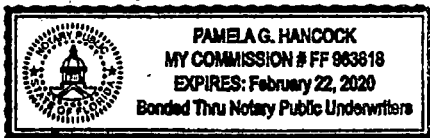


Date: June 24, 2016

Notary Public

Print Name

My commission expires





CERTIFICATE OF LIABILITY INSURANCE

FLORI-6

OP ID: TM

DATE (MM/DD/YYYY)

09/24/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Key West Insurance, Inc. 646 United Street, Suite 1 Key West, FL 33040 Key West Insurance, Inc.	CONTACT NAME: Key West Insurance, Inc.
	PHONE (A/C, No, Ext): 305-294-1096 FAX (A/C, No): 305-294-8016
	E-MAIL ADDRESS:
	INSURER(S) AFFORDING COVERAGE
	INSURER A: National Grange Mutual
	INSURER B:
	INSURER C:
	INSURER D:
	INSURER E:
	INSURER F:

INSURED
FLKeys Council of the Arts Inc
1100 Simonton Street
Key West, FL 33040

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY						
	☐ CLAIMS-MADE ☒ OCCUR	X		BPG48805	09/30/2015	09/30/2016	EACH OCCURRENCE \$ 1,000,000
A	☒ Host Liquor			BPG48805	09/30/2015	09/30/2016	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000
							MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 2,000,000
	☒ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COM/OP AGG \$ 2,000,000
	OTHER:						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	☐ ANY AUTO						BODILY INJURY (Per person) \$
	☐ ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	☐ HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
	☐ SCHEDULED AUTOS						\$
	☐ NON-OWNED AUTOS						\$
	UMBRELLA LIAB						EACH OCCURRENCE \$
	☐ EXCESS LIAB						AGGREGATE \$
	☐ OCCUR						\$
	☐ CLAIMS-MADE						\$
	DED						\$
	RETENTION \$						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A				OTH-ER
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. EACH ACCIDENT \$
							E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate holder is named additional insured as their interest may appear.

APPROVED BY RISK MANAGEMENT
DATE: 11/10/15
WAIVER N/A YES

Org: Clerk
cc: file
TDC

CERTIFICATE HOLDER**CANCELLATION**

Monroe County BOCC & TDC
Attn: Risk Management
1100 Simonton Street
Key West, FL 33040

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Key West Insurance, Inc.

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