

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: SEPTEMBER 19, 2007

Division: TDC

Bulk Item: Yes No

Department: _____

Staff Contact Person/Phone #: Maxine Pacini
296-1552

AGENDA ITEM WORDING:

Approval of an Agreement with Monroe Council of the Arts commencing October 1, 2007 to fund costs of tourist related programs.

ITEM BACKGROUND:

TDC approved same at their meeting of July 31, 2007.

PREVIOUS RELEVANT BOCC ACTION:

CONTRACT/AGREEMENT CHANGES:

New Agreement

STAFF RECOMMENDATIONS:

Approval

TOTAL COST: \$72,500

BUDGETED: Yes No

COST TO COUNTY: \$72,500

SOURCE OF FUNDS: TDC

REVENUE PRODUCING: Yes No AMOUNT PER MONTH _____ Year _____

APPROVED BY: County Atty OMB/Purchasing Risk Management

DOCUMENTATION: Included Not Required

DISPOSITION: _____

AGENDA ITEM # _____

AGREEMENT

THIS Agreement (Agreement) is entered into this _____ day of _____, 2007 by and between MONROE COUNTY, Florida (County), and Monroe Council of the Arts Corporation, d/b/a Florida Keys Council of the Arts (Provider).

WITNESSETH:

WHEREAS, Provider has requested funding to supplement costs of tourist related programs; and

WHEREAS, County desires to fund tourist related programs;

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

1. **TERM**: The term of this contract is for a period of one year beginning October 1, 2007 and expiring on September 30, 2008.

2. **SCOPE OF SERVICES**: Provider shall provide the following services:

The administration and promotion of cultural/arts tourist related programs, including but not limited to: publishing and distribution for use by tourism industry of annual calendar of cultural events; a gallery guide and the production of an events guide; weekly cultural calendar information provided to print media keys-wide; brochure of locations/map of galleries/museums and other places of historic or cultural interest for tourists; and the maintenance of cultural/arts information services that include Monroe Council of the Arts website (www.keysarts.com). Provider shall maintain rotating displays of visual art at the Key West and Marathon airports and several public buildings, including the historic Gato Cigar Factory County Complex, as well as answering any inquiries from potential travelers or visitors looking for cultural information.

3. **COMPENSATION**: For the services described in paragraph 2 above, the County shall provide an amount not to exceed \$72,500 per year for the period of October 1, 2007 through September 30, 2008, subject to any adjustment for an invoice as described in the last sentence of this paragraph. Payments will be in eleven (11) installments of \$6,040 and one (1) installment of \$6,060. Last payment contingent upon providing proof of the following items: An Arts Gallery Guide, an annual Calendar of events, an Events Guide, Brochure with map of locations of museums & historic/Cultural site for tourists to visit, Web site for visitors. Monroe County's performance and obligation to pay under this agreement is contingent upon an annual appropriation by the BOCC. Said payment shall occur in compliance with the Local Government Prompt Payment Act upon the TDC Administrative Office receiving an invoice as outlined in Exhibit A. Included with the invoice shall be a

statement verifying and certifying that the requirements and duties set forth within this agreement have been fully performed for the month for which the invoice is being submitted and that payment for the services have not been duplicated within other grant contracts with the BOCC, State of Florida Division of Cultural Affairs or the National Endowment of the Arts.

4. **RECORDS – ACCESS AND AUDITS:** The Provider shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. The records to justify all charges, expenses and costs incurred in performing the work shall be maintained by the Provider for at least four (4) years after completion of this contract. The County shall have reasonable and timely access to such books, records, and documents concerning the contracted services. If an auditor employed by the County or Clerk determines that monies paid to Provider pursuant to this Agreement were spent for purposes not authorized by this Agreement, the Provider shall repay the monies together with interest calculated pursuant to Sec. 55.03, FS, running from the date the monies were paid to Provider.

(a) **PUBLIC ACCESS.** The County and Provider shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and Provider in conjunction with this Agreement; and the County shall have the right to unilaterally cancel this Agreement upon violation of this provision by Provider.

5. **INDEPENDENT CONTRACTOR RELATIONSHIP:** The Provider, is and shall be, in the performance of all works, services, and activities under this contract, an independent contractor and not an employee, agent or servant of the County. The Provider shall exercise control, direction, and supervision over the means and manner and personnel in which it and its employees perform the work. In all respects, the Provider's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees or agents of the County. Moreover, the Provider shall have no authority whatsoever to act on behalf and/or as agent for the County in any promise, contract, or representation other than specifically provided for in this contract. The County shall at no time be legally responsible for any negligence on the part of said Provider, its employees or agents, resulting in either bodily or personal injury or property damage to any individual, firm, or corporation.

6. **MODIFICATION:** Additions to, modification to, or deletions from the Scope of Work and/or costs of work set forth in this contract may be made only by amendment to this contract which must be approved in writing by the County. No modification shall become effective without written approval of County.

7. **BREACH AND PENALTIES:** The parties agree to full performance of the covenants contained in this contract, and the County reserves the right at its discretion, provided any breach is material, to terminate the services in this contract for any misfeasance, malfeasance or nonperformance of the contract terms or negligent performance of the contract terms by Provider. Any waiver of any breach of covenants herein contained shall not be deemed to be a continuing waiver and shall not operate to bar the County from declaring a forfeiture for any succeeding breach either of the same conditions or covenants or otherwise.

8. **INDEMNIFICATION AND HOLD HARMLESS:** The Provider shall indemnify and hold harmless the County, its departments, agencies, officials, employees, agents, servants and contractors, against any claims, liabilities and expenses (including reasonable attorney's fees) arising as a result of any direct and/or indirect action of Provider, its employees, agents, servants and/or contractors in the performance of the terms of this contract or otherwise related to activity conducted in the furtherance of this contract. Provider shall immediately give notice to County of any suit, claim or action made against Provider that is related to any activity under this contract and will cooperate with the County in the investigation arising as a result of any suit, claim or action related to this Agreement. The first \$10.00 of compensation shall be consideration for this indemnification. This provision shall survive the termination of this Agreement.

9. **LAWS AND REGULATIONS:** It shall be understood and agreed that any and all services, materials and equipment shall comply fully with all Local, State and Federal laws and regulations.

10. **TAXES:** The County is exempt from Federal, Excise and State of Florida Sales Tax.

11. **FINANCE CHARGES:** The County will not be responsible for any finance charges.

12. **SEVERABILITY:** If any term, covenant, condition or provision of this contract shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining terms, covenants, conditions and provisions of this contract, or the application of such provision other than those as to which it is invalid or unenforceable, shall not be affected thereby; and each remaining term, covenant, condition and provision of this contract shall be valid and enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The County and Provider agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

13. **FORCE MAJEURE**: The Provider shall not be liable for delay in performance or failure to perform in whole or in part, the services due to the occurrence of any contingency beyond its control or the control of any of its sub-Providers or suppliers, including labor dispute, strike, labor shortage, war or act of war whether an actual declaration thereof if made or not, insurrection, sabotage, riot or civil commotion, act of public enemy, epidemic, quarantine restriction, accident, fire, explosion, storm, flood, drought, or other act of God, act of any governmental authority, jurisdictional action, or insufficient supply of fuel, electricity, or materials or supplies, or technical failure where the Provider has exercised reasonable care in the prevention thereof, and any such delay or failure shall not constitute a breach of the contract. The Provider shall notify the TDC of any delay or failure to perform within five (5) days of such action. Upon demand of TDC, the Provider, must furnish evidence of the causes of such delay or failure. The Provider shall not resume its performance hereunder unless provided for in the Scope of Services.

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

15. **DISCLOSURE**: The Provider shall be required to list any or all potential conflicts of interest, as defined by Florida Statute 112 and Monroe County Ethics Ordinances. The Provider shall disclose to the County all actual or proposed conflicts of interest, financial or otherwise, direct or indirect, involving any client's interest which may conflict with the interest of the County.

16. **ADDITIONAL CONDITIONS**: Provider 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 County. Such additional conditions shall not become effective until Provider has been notified in writing and no such additional conditions shall be imposed retroactively.

17. **INDEPENDENT PROFESSIONAL JUDGEMENT**: Provider shall at all times exercise independent professional judgment and shall assume full responsibility for the service to be provided and work to be completed.

18. **CARE OF PROPERTY**: The Provider shall be responsible to the County for the safekeeping and proper use of the property entrusted to Provider's care, to include any and all insurance for the value of the equipment and any maintenance or service contracts relating to such equipment for its service life.

For County: County Attorney
P.O. Box 1026,
Key West, FL 33041-1026

County shall give notice to Provider of any meetings on which is an agenda item pertaining to Providers contract. Said notice shall be given so that Provider has ample time to make travel arrangements for an Executive Board member to attend the meeting.

23. TERMINATION: Either party shall have the right to cancel this contract at its sole discretion with or without cause upon sixty (60) days prior written notice to the other party. Provider shall deliver to the County all papers, equipment and other material related to the work performed under this contract upon termination thereof.

24. PUBLIC ENTITY CRIME STATEMENT: A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

25. APPROVALS AND CHANGES OF SPECIFICATIONS OF SERVICES: The TDC shall have the sole and exclusive right to approve, modify, reject, or cancel any and all plans, proposals, submissions and other work in process, in which event the TDC's directions shall be immediately implemented. However, nothing in this contract shall be construed as requiring the Provider to violate any contractual commitments to vendors contracted on TDC's behalf. All contractual commitments to contracted vendors require the TDC's prior written approval. The County shall only be liable for charges approved in writing prior to the Provider's entering into such contractual commitment.

The performance of all services between Provider as described and otherwise provided under this contract will be in full cooperation with and under the direct supervision of the TDC. Whenever approval is required from the TDC, said approval shall be in writing from the TDC Administrative Director or a designee, according to TDC policy.

26. GOVERNING LAW, VENUE, INTERPRETATION, COSTS, AND FEES: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed

entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the County and Provider agree that venue shall lie in the appropriate court or before the appropriate administrative body in the 16th Judicial Circuit in and for Monroe County, Florida.

27. ATTORNEY'S FEES AND COSTS: The County and Provider agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, courts costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

28. ADJUDICATION OF DISPUTES OR DISAGREEMENTS. County and Provider agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board of County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.

29. COOPERATION. In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, County and Provider agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. County and Provider specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

30. BINDING EFFECT. The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the County and Provider and their respective legal representatives, successors, and assigns.

31. AUTHORITY. Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.

32. NONDISCRIMINATION. County and Provider agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. County or Provider agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VII of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss.

690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

33. NON-RELIANCE BY NON-PARTIES. No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and the Provider agree that neither the County nor the Provider or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

34. ATTESTATIONS. Provider agrees to execute such documents as the County may reasonably require, to include a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement.

35. OWNERSHIP: All work performed under the contract shall be the property of the TDC and County, for whatever use and/or disposition the TDC and County may deem appropriate. Such property shall include: a) all plans, documents

and recommendations; b) All manuscripts, copy, graphics, and videotapes. The TDC and County shall have the full right to reproduce and/or use any products derived from the Provider's work under the contract without payment of any royalties, or fees.

36. FULL CONTRACT: This writing embodies the entire contract and understanding between the parties hereto, and there are not other contracts/agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. In order to be effective, any amendment and/or change to this contract shall be in writing recommended by the TDC and approved by the County and signed by both parties.

37. SECTION HEADINGS: Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

38. CONSTRUCTION: This contract has been carefully reviewed by legal counsel for both parties. Therefore, this contract shall not be strictly construed against either party on the basis of authorship.

(SEAL)
Attest: Danny L. Kolhage, Clerk

Board of County Commissioners
of Monroe County

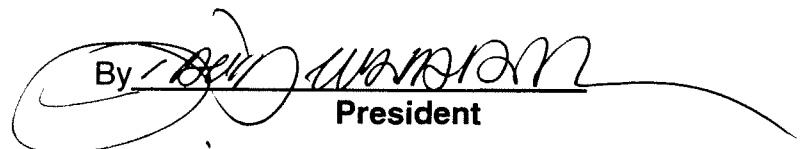
Deputy Clerk

Mayor/Chairman

(CORPORATE SEAL)
Attest:

Florida Keys Council of the Arts

By. _____
Secretary

By. 
President

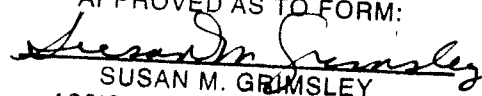
DAVID WHARTON
Print Name

Print Name
OR

(1) Witness

Print Name

(2) Witness
Print Name _____

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

SUSAN M. GRIMSLEY
ASSISTANT COUNTY ATTORNEY
Date July 19, 2007

INVOICE

The administration and promotion of cultural/arts tourist related programs, including but not limited to: publishing and distribution for use by tourism industry of annual calendar of cultural events; a gallery guide; An events guide; weekly cultural calendar information provided to print media keys-wide; brochure of locations/map of galleries/museums and other places of historic or cultural interest for tourists. Maintain cultural/arts information services that include Monroe Council of the Arts website (www.keysarts.com). Answering any inquiries from potential travelers or visitors looking for cultural information.

Monroe Council of the Arts Corporation

The Monroe Council of the Arts Corporation certified that all services and provisions specified within the agreement have been met for the month of _____, 200_____.

The Monroe Council of the Arts Corporation requests payment of \$6,040 for 11 months and \$6,060 for one month made payable to the Monroe Council of the Arts Corporation.

Only for the Invoice dated September 1 – 30, 2008 the following documents must be attached before final payment can be considered:

- ___ Arts Gallery Guide
- ___ Annual Calendar of Events
- ___ Events Guide
- ___ Brochure with map of locations of museums & historic/Cultural site for tourists to visit
- ___ Web site for Visitors

Signature Date

Sworn to and subscribed for me this _____ day of _____, 200__

Notary Public

Personally known ___ or produced identification _

Type of identification produced _____



Monroe County Tourist Development Council Date
Administrative Office