

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: 11/16/11 - KL

Division: County Attorney

Bulk Item: Yes XX No XX Staff Contact Person: Suzanne Hutton, 292-3470

AGENDA ITEM WORDING:

Approval of a license agreement with Friends of the Key Largo Cultural Center, Inc., for management and operation of a variety of cultural, recreational, and related programs at the Murray E. Nelson Government and Cultural Center

ITEM BACKGROUND:

The Murray E. Nelson Government and Cultural Center, was built in 2009 for use by the COUNTY for government offices and meeting rooms and use by the public for cultural programs. A private donor previously funded lighting for performances, and a not-for-profit corporation was formed by local residents to provide cultural, educational, social and recreational programs for the benefit of the residents and visitors of/to the Keys. This organization has been using the County's facilities use forms and procedures but approached the administration regarding a more structured and continuous arrangement for use of the auditorium and supporting facilities (lobby, restrooms, concession booth) so that they can schedule rehearsals and performances on an ongoing and regular basis. The agreement provides that continuity and sets forth conditions of use to benefit the general public in allowing regular scheduled performance and programs while preserving the auditorium for necessary government purposes.

PREVIOUS RELEVANT BOCC ACTION: 3/18/2011, approval of waiver of most facilities use fees for MEN auditorium.

CONTRACT/AGREEMENT CHANGES: N/A

STAFF RECOMMENDATIONS: APPROVAL

TOTAL COST: TBD **INDIRECT COST:** _____ **BUDGETED:** Yes ___ No ___

DIFFERENTIAL OF LOCAL PREFERENCE: _____

COST TO COUNTY: TBD **SOURCE OF FUNDS:** _____

REVENUE PRODUCING: Yes xx No _____ **AMOUNT PER MONTH** _____ **Year** _____

At this point for remainder of 2 years, paying just labor costs as needed

APPROVED BY: County Atty X OMB/Purchasing _____ Risk Management MS

DOCUMENTATION: Included X Not Required

DISPOSITION: _____ **AGENDA ITEM #** _____

LICENSE AGREEMENT

(Murray E. Nelson Government and Cultural Center)

This Agreement is made and entered into this _____ of _____, 2011, by and between MONROE COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter COUNTY, and FRIENDS OF THE KEY LARGO CULTURAL CENTER, INC., hereinafter LICENSEE or FRIENDS, for management and operation of a variety of cultural programs at the Murray E. Nelson Government and Cultural Center

WITNESSETH:

WHEREAS, the Murray E. Nelson Government and Cultural Center, was built in 2009 for use by the COUNTY for government offices and meeting rooms and use by the public for cultural programs; and

WHEREAS, the Murray E. Nelson Government and Cultural Center is the only COUNTY facility designed to provide a cultural center; and

WHEREAS, the COUNTY normally requires every user of a COUNTY facility, with the exception of licensees and lessees of certain COUNTY facilities in Key Largo, to bear the full costs of their impacts on maintenance, repairs and operations of the facilities; and

WHEREAS, the Friends of the Key Largo Cultural Center, Inc. incorporated for the following purposes: 1.To create public interest and awareness of the Key Largo Cultural Center located in the Murray E. Nelson Government Center ; 2.To foster support for the enhancement, improvement and operations of the Key Largo Cultural Center; 3.To assist the Monroe County government in attracting affordable cultural and educational programs for the Key Largo Cultural Center; 4. To raise funds for ongoing and special projects pertinent to the use and programming of the Key Largo Cultural Center; 5.To engage in activities in furtherance of the foregoing purposes.

WHEREAS, it is a legitimate public purpose to provide facilities and services for recreational and cultural uses and social functions of the community; and

WHEREAS, COUNTY does not have the funds to hire an employee to be responsible for developing, programming and organizing recreational, cultural, and related activities for the Murray E. Nelson Government and Cultural Center: and

WHEREAS, the Friends has offered to assist the COUNTY in developing and managing recreational, cultural, events and programming for the Murray E. Nelson Government and Cultural Center: and

WHEREAS, COUNTY has determined that it is in the interest of the public for the FRIENDS and any other individual or organization to use the Murray E. Nelson Government and Cultural Center at limited cost for a twenty-four (24) month period ending on March 17,2013 to determine the fiscal impact of the increased use of the facility and to enable the FRIENDS to establish itself as a responsible and consistent provider of recreational, cultural, charitable and educational programs for the residents of, and tourists to, Key Largo; and

WHEREAS, the COUNTY routinely allows its facilities to be used by other governmental agencies, not-for-profit entities, and individuals upon submission of a Request For Use document and appropriate insurance and indemnification documents; and

WHEREAS, The FRIENDS want to have assurances of the ability to regularly use the Facility for recreational, cultural, charitable and educational events; and

WHEREAS, it is necessary for the COUNTY to preserve its ability to provide at the MEN Bldg. all government functions that it currently provides, including regular uses by the county and other governmental agencies, and uses related to emergency responses to disaster and disaster-preparedness;

NOW, THEREFORE, in consideration of the covenants hereinafter to be kept and preformed, the COUNTY and the LICENSEE agree that the LICENSEE shall manage and schedule recreational, cultural, and related activities as follows:

1. PREMISES. The premises which are the subject of this agreement are the auditorium and lobby portion of the MEN Bldg., with access to bathrooms, and landscaped grounds, located at 102050 Overseas Highway, Key Largo, Florida (2nd Amended & Revised Plat of Lee Shores, PB 2-97, N1/2 TR 8 & TRs 9-10, Section 22, Township 61S, Range 39E, Monroe COUNTY, Florida). (hereinafter MEN Bldg.). Should the building be expanded to provide a Green Room or other amenities related to theatrical, musical or other artistic performances, the expansion shall be added to this agreement through written amendment setting forth any conditions related to the use of same.
2. TERM. The term of this agreement shall be a period commencing November 17, 2011, and terminating on March 17, 2013. On or before the end of the term of this Agreement, the COUNTY shall consider the regular reports of LICENSEE regarding their uses and participation by the public, and COUNTY staff information regarding any issues, including but not limited to adequacy of LICENSEE insurance coverage, facility maintenance and utility costs in excess of fees received from LICENSEE. The COUNTY, in its discretion, may extend this agreement for a time period to be determined upon determining that the uses of the Premises by LICENSEE are in the best interest of the public, and upon written approval by both parties. Any extension of this Agreement may modify the terms of this agreement as set forth in writing and executed by both parties.
3. USE OF PREMISES. The MEN Bldg. shall be actively used to provide recreational, cultural, and related programs for the Upper Keys area on a coordinated basis with COUNTY staff to insure that no COUNTY government functions are displaced as a result of programs scheduled by LICENSEE. During the operation of programs, the LICENSEE will be held responsible for reasonable supervision of the programming area, including security against predators for children and the elderly for any programs provided for same. If the LICENSEE observes any activity which it reasonably believes to be a nuisance or an illegal activity, including alcoholic beverages or unlawful narcotics being possessed, used or consumed by persons on the premises, the LICENSEE will promptly contact the Public Works representative listed in Section 28 of this agreement and the Monroe COUNTY Sheriff's Office. LICENSEE may serve liquor on the premises only at such functions as it provides the COUNTY with a liquor license and evidence of liquor liability insurance coverage with the COUNTY being named as an additional insured.

4. **HOURS OF OPERATION.** LICENSEE's programs are not limited to the hours that the MEN Bldg. is regularly open. . LICENSEE programs shall take place only during the hours scheduled in advance between the parties and approved in advance in writing by the COUNTY Administrator or his designee. Arrangement will be made by the COUNTY to provide the LICENSEE with keys to the front door, the auditorium and to the outside doors to the restrooms, as well as access to the technical booth for use of the lighting equipment. Other audio/visual equipment in the technical booth is expressly reserved for County purposes and shall not be moved, operated or otherwise accessed by LICENSEE without prior written approval by the County Administrator or his designee for specified uses on an event-by-event basis, for which County staff will activate and deactivate the equipment remotely. LICENSEE may use the County's facilities use form to request specific permissions for equipment use.

5. **SCHEDULING OF ACTIVITIES.** For purposes of this agreement the term activities shall include performances, programs, events and any other term related to FRIENDS' use of the premises. LICENSEE will schedule all its activities at the MEN Bldg. in coordination with the COUNTY's Facilities Maintenance coordinator for the MEN Bldg. and secure a written schedule approved in writing by the COUNTY Administrator before the FRIENDS' programs or events are performed at the MEN Bldg. LICENSEE acknowledges that the MEN Bldg. is a government building with a COUNTY Commission meeting room doubling as an auditorium for cultural uses and that the COUNTY has routine use of the MEN Bldg. for meeting purposes as well as many government functions such as the issuance of building permits, meetings between COUNTY staff and other governmental agencies as well as members of the public. The LICENSEE will be exempt from liability for incidents not directly related to LICENSEE scheduled activities and/or events, unless due to its negligence or omission. Further, LICENSEE agrees to the COUNTY having the right to take precedence in scheduling authorized activities or events, with notice by the COUNTY to LICENSEE prior to the time that the LICENSEE has begun to advertise an event(s) and/or prior to the time that LICENSEE has made financial commitments for the event(s) unless a governmental agency needs the building for purposes of responding to an imminent or existing disaster. In the event that a governmental entity needs to use previously scheduled facilities of the MEN Bldg., COUNTY will make every reasonable effort to reschedule the LICENSEE'S event at the LICENSEE's convenience. LICENSEE and COUNTY acknowledges that the COUNTY regular commission meetings are scheduled at the MEN Bldg. on the third Wednesdays and Thursdays of August, November, February, and May; at least one budget hearing is scheduled in August or September of each year at the MEN Bldg., and that three public elections will be scheduled during 2012, as follows: January 31, 2012, which may be changed by the Presidential Primary Preference Committee as late as October 1, 2011; August 14, 2012; and November 6, 2012. LICENSEE shall not schedule any events during these times and shall coordinate scheduling of all other events with the Facilities Maintenance coordinator so that the LICENSEE does not schedule an event for a date already scheduled for another use.

6. **FEES AND PROGRAMS.** LICENSEE shall establish its program fees, and shall provide such information to COUNTY in its quarterly reports. No participant will ever be turned away from the LICENSEE'S programs unless such participant fails to pay the applicable fees for such program or fails to meet program eligibility and participation requirements. Should the LICENSEE decide to establish program eligibility requirements (such as residency, medical condition, age, etc.), the requirements shall be drafted and submitted to the COUNTY and shall not be effective until approved in writing by the County Administrator or the Board of County Commissioners. The LICENSEE agrees to offer programs at reasonable rates and to allow all persons into their programs as long as they pay the required fees.

7. **CONCESSION STAND.** The LICENSEE shall operate the concession stand located at the MEN Bldg. during its scheduled activities. The LICENSEE may also operate the concession stand during scheduled activities of other community groups (co-operating group) which are given permission for use by the COUNTY for cultural, educational and charitable and social events and for which the co-operating group has requested LICENSEE to provide the concessions. The co-operating group shall indicate in its facilities use application its intent to use the concession stand and to have the LICENSEE operate it for the cooperating group's event. If the decision by the cooperating group to use LICENSEE's services for this purpose is made after submission of the application, the cooperating group shall provide the Facilities Maintenance coordinator information about the use of the concession stand by LICENSEE at least three calendar days prior to the event. COUNTY may also operate the concession stand at times other than when LICENSEE or a cooperating group has a scheduled activity on the premises. It is therefore necessary that both parties coordinate uses and secure any equipment or products which it does not intend for the other party to use. Commodities to be sold at the concession stand shall and must be sold at prices comparable with other like concessions in the Florida Keys. No items may be sold in glass containers. The LICENSEE will furnish all necessary equipment and furnishings that it needs to operate the concession stand, and upon termination of this agreement, all such equipment and furnishings will become the property of the LICENSEE. The COUNTY has installed all electrical wiring and plumbing needed to allow LICENSEE to have the concession equipment properly installed. Revenues from all sales from the concession stand and related expenditures shall be included in the LICENSEE's quarterly reports to the COUNTY

8. **PROGRAM REVENUES/CONCESSION REVENUES.** LICENSEE shall provide COUNTY with a quarterly report of revenues generated at the MEN Bldg. The quarterly reports shall include revenues and expenditures related to the LICENSEE's activities at and use of the MEN Bldg., and shall include statistical information including, but not limited to: the numbers of attendees at the programs sponsored by LICENSEE, number of hours/time duration of each event, performers and other participants in the provision of the programs at the MEN Bldg.. It is the intent of both parties that costs related to increased maintenance and repairs of the MEN Bldg. due to the increased use by LICENSEE not be borne by county-wide taxpayers but shall be paid by LICENSEE after the initial term of this agreement and included in contract extensions after the initial term of this agreement. The LICENSEE shall not be responsible for ordinary wear and tear of the facilities. All LICENSEE revenue records and accounts for programs at the MEN Bldg. must be kept according to generally accepted accounting principles and made available during regular business hours (Monday-Friday, 9:00 a.m. - 5:00 p.m., holidays excepted) to auditors employed by either Monroe COUNTY or the State of Florida. The LICENSEE shall be given reasonable notice of the request for review of the revenue records and accounts for programs. If an auditor employed by the COUNTY or the State determines that the LICENSEE records and accounts contain substantial and material misrepresentations and/or or substantial and material omissions of revenue generated at the MEN Bldg., the COUNTY may terminate this agreement immediately for cause.

9. **REIMBURSEMENT TO COUNTY FOR CERTAIN COSTS.** During the initial term of this agreement, LICENSEE shall reimburse COUNTY for costs, if any of personnel necessary to accommodate the opening, closing, cleaning of the MEN Bldg. at times other than regularly scheduled hours of the personnel. Further, should any act or omission of LICENSEE result in damage to the premises, FRIENDS will reimburse the COUNTY for its costs upon presentation of an invoice and supporting documentation for repairs. Any extension of this agreement shall

incorporate any other reimbursement or fees that LICENSEE shall be required to provide. LICENSEE is authorized to directly hire county employees to accommodate the opening, closing and cleaning of the MEN Bldg. but shall also be authorized to hire non-county personnel to handle necessary cleaning. In the event that LICENSEE hires any County employees for any services to be performed at the MEN Bldg., the employee shall be required by LICENSEE to sign a notarized statement that he/she understands that he/she is being hired by LICENSEE as an independent contractor and therefore the individual employee cannot use any supplies or equipment that the employee would use in his/her County job, and the employee cannot work for LICENSEE in any manner that interferes with his/her County job, in accordance with County Personnel Policies and Procedures.

10. . UTILITIES. The COUNTY will be responsible for electric, water and sewer utility charges associated with the use of the premises by the LICENSEE during the first year of this agreement. In any extension hereof, COUNTY shall consider the increased costs of utilities (electric, water and sewer) indicated by the comparison of equivalent months in the year of this agreement to years prior to the inception of the FRIENDS' use of the premises, which pre-dates the commencement date of this agreement by several months. In computing the increased costs, the COUNTY shall consider any changes in the rates for the utilities that apply to the COUNTY use as well as any increased use by other public and/or private groups other than the FRIENDS.

11. SIGNAGE. The LICENSEE shall install signs only upon approval, in writing, by the Building Administrator, contingent upon LICENSEE receiving any necessary permits from the Growth Management Division, Building Department, as well as appropriate approvals and clearances from utility companies, if needed.

12. COMPLAINTS. LICENSEE shall inform COUNTY immediately of any incidents, accidents and calls to law enforcement, and shall cooperate in any investigation of complaints about the use or condition of the MEN Bldg.

13. IMPROVEMENTS. The COUNTY may remodel, renovate or reconstruct any part of the premises; provided that if such remodeling, renovation or reconstruction prevents or materially interferes with the LICENSEE'S use of the premises, LICENSEE shall be given notice at least 60 days in advance of the commencement of the remodeling, renovation or reconstruction, and shall give notice to LICENSEE of prospective project upon issuing a competitive selection solicitation for any work which could disrupt the scheduled events, which should be in the range of 120 to 180 days in advance of commencement of the project. The county shall consider the existing schedule for the use of the premises in timing the remodeling, renovation or reconstruction of any part of the premises. In addition, the COUNTY is responsible for all resurfacing and major work at the MEN Bldg. The LICENSEE may only make such improvements as are approved by the COUNTY in writing.

14. MAINTENANCE. COUNTY staff will perform and be responsible for all maintenance of the buildings, improvements, and grounds at the MEN Bldg. and will maintain and stock the bathrooms daily. The COUNTY will accept any and all responsibility for accidents and incidents related to maintenance, repairs and renovation of the facility unless caused by LICENSEE'S negligence. In the event that the LICENSEE observes any conditions on site which it reasonably believes are dangerous, the LICENSEE shall promptly contact the Public Works representative indicated in Section 28 of this agreement.

15. **FUNDRAISING.** All fees charged and funds raised in connection with the FRIENDS' activities at the MEN Bldg. shall be accounted for and reported to the COUNTY in the LICENSEE's quarterly report. Any funds collected by the LICENSEE through program fees and fundraising activities at the MEN Bldg. shall be used for funding future events or to benefit the MEN Bldg. While the LICENSEE agrees that all fees and funds raised shall be used to produce services and programs or to benefit the MEN Bldg., it shall be the choice of the LICENSEE as to how the funds contributed to the COUNTY shall be used. Alternatively the LICENSEE shall be permitted to use the fees and funds raised for purchasing equipment or other items that are then contributed to the COUNTY. The LICENSEE will be responsible for the collection of the above-mentioned fundraising and fees, but shall have no obligation to pursue any person for collection of bounced checks or other non-payment. Any audit by COUNTY or its agents which discloses improper application of such funds to any use other than the uses permitted by this agreement shall be paid to COUNTY by the LICENSEE. It is also understood that the LICENSEE may use a reasonable portion of the fees and funds for expenditures including, but not limited, to expenses such as office rent for an office off of the premises of the facility or facility usage fees and/or rent for events which cannot be scheduled at the MEN Bldg. The LICENSEE may also conduct charitable events on its own or in co-operation with other not for profit entities and use the fees and fundraising related to the charitable event for the benefit of the stated charitable purpose of the FRIENDS and/or the not for profit entities for which the events is produced. Until such time as the waiver of fees (March 17, 2013) expires, LICENSEE shall provide to COUNTY financial records for All income and expenditures.

16. **ACCOUNTING/INSPECTION OF BOOKS/ANNUAL AUDIT.** The LICENSEE shall maintain its financial records in accordance with generally accepted accounting principles and allow the COUNTY to inspect its books and records at any reasonable time upon reasonable advance notice, generally 9:00 AM to 5:00 PM, Monday through Friday, upon at least ten calendar days notice, unless otherwise arranged through mutual accord.. The LICENSEE shall provide a copy of its annual IRS Form 990 within one week of it being filed with the Internal Revenue Service. The LICENSEE shall retain all records pertaining to this agreement for a period of four years after the term expires.

17. **CANCELLATION/TERMINATION.** Either party may give notice to the the other party of breach of the terms of this agreement. If the noticed breach is not cured within 30 days of receipt of the notice, the non-breaching party may terminate the agreement effective fifteen calendar days after notice that the breach has not been cured and notice of the termination. Any waiver by either party of any covenants of this agreement shall not be deemed or considered to be a continuing waiver and shall not operate to bar or prevent either party from declaring a forfeiture for any succeeding breach either of the same conditions or of any other conditions. Either party may cancel this agreement without cause by providing at least 180 days prior written notice to the other party. All contractual obligations of either party remain in full force up to the effective date of termination. Both parties shall remain liable after termination of this agreement for all obligations, including but not limited to any outstanding payments, through the effective date of termination.

18. **RETURN OF PREMISES.** At the end of the term of this agreement or any extensions thereof, the LICENSEE shall vacate and peacefully surrender the premises to the COUNTY.

19. **INDEPENDENT LICENSEE.** At all times and for all purposes hereunder, the LICENSEE is an independent LICENSEE and not an employee of the Monroe County Board of COUNTY Commissioners. No statement contained in this management agreement shall be

construed so as to find the LICENSEE or any of its employees, licensees, servants or agents to be employees of the Board of County Commissioners.

20. **INDEMNIFICATION AND HOLD HARMLESS.** The LICENSEE covenants and agrees to indemnify and hold harmless Monroe County Board of County Commissioners, its officers, agents, servants and employees, from any and all claims for bodily injury (including death), personal injury, and property damages (including property owned by Monroe County), ordinary wear and tear excepted, and any other losses, damages, and expenses (including reasonable attorney's fees) which arise out of, in connection with, or by reason of services provided by the LICENSEE or any of its sub-licensee(s) in any tier, occasioned by the negligence, errors, or other wrongful act or omission of the LICENSEE or its sub-licensees in any tier, their employees, or agents. In the event that the service is delayed or suspended as a result of the LICENSEE'S failure to purchase or maintain the required insurance, the LICENSEE shall indemnify the COUNTY from any and all increased expenses resulting from such delay. The first ten dollars (\$10.00) of remuneration paid to the LICENSEE is for the indemnification provided above. The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere with this agreement. This provision shall survive the expiration or earlier termination of this agreement.

21. **INSURANCE.** Prior to the LICENSEE commencing its operations at the MEN Bldg. under this agreement, the LICENSEE shall obtain, at its own expense, insurance as follows:

a. General Liability Insurance. Coverage shall be maintained throughout the life of the contract and include, as a minimum:

- Premises Operations
- Products and Completed Operations
- Blanket Contractual Liability
- Personal Injury Liability
- Expanded Definition of Property Damage
- Liquor Liability

The minimum limits acceptable shall be:

\$1,000,000 Combined Single Limit (CSL)

If split limits are provided, the minimum limits acceptable shall be:

\$ 500,000 per Person

\$1,000,000 per Occurrence

\$ 100,000 Property Damage

An Occurrence Form policy is preferred. If coverage is provided on a Claims Made policy, its provision should include coverage for claims filed on or after the effective date of this contract. In addition, the period for which claims may be reported should extend for a minimum of twelve (12) months following the acceptance of work by the COUNTY.

The Monroe COUNTY Board of COUNTY Commissioners shall be named as Additional Insured on all policies issued to satisfy the above requirements.

b. Vehicle Liability Insurance. Recognizing that the work governed by this contract requires the use of vehicles, the LICENSEE, prior to commencement of work, shall obtain

Vehicle Liability Insurance. Coverage shall be maintained throughout the life of the contract and include, as a minimum, liability coverage for:

- Owned, Non-Owned, and Hired Vehicles

The minimum limits acceptable shall be:

\$1,000,000 Combined Single Limit (CSL)

If split limits are provided, the minimum limits acceptable shall be:

\$ 500,000 per Person
\$1,000,000 per Occurrence
\$ 100,000 Property Damage

The Monroe County Board of County Commissioners shall be named as Additional Insured on all policies issued to satisfy the above requirements.

c. Workers' Compensation. Prior to commencement of work governed by this agreement, the LICENSEE shall obtain Workers' Compensation Insurance with limits sufficient to respond to the applicable state statutes or provide COUNTY with a notarized statement that the LICENSEE has no employees. All extensions of this Agreement shall require that this statement or proof of insurance be provided at the time of extension.

d. Employer's Liability Insurance. The provision in sub-section c, above, for a notarized statement that LICENSEE has no employees shall apply to this requirement until such time as LICENSEE does hire any employee, at which time, the LICENSEE shall obtain Employers' Liability Insurance with limits of not less than:

\$500,000 Bodily Injury by Accident
\$500,000 Bodily Injury by Disease, policy limits
\$500,000 Bodily Injury by Disease, each employee

Coverage shall be maintained throughout the entire term of the contract.

Coverage shall be provided by a company or companies authorized to transact business in the State of Florida and acceptable to the COUNTY.

The LICENSEE shall maintain the required insurance throughout the entire term of this management agreement and any extension specified in the attached schedules. Failure to comply with this provision may result in the immediate termination of the management agreement and the return of all property owned by the COUNTY.

The LICENSEE shall provide to the COUNTY, as satisfactory evidence of the required insurance, either a certificate of insurance or a certified copy of the actual insurance policy.

The COUNTY, at its sole option, has the right to request a certified copy of any or all insurance policies required by this contract.

All insurance policies must specify that they are not subject to cancellation, non-renewal, material change, or reduction in coverage unless a minimum of thirty (30) days prior notification is given to the COUNTY by the insurer.

The acceptance and/or approval of the LICENSEE'S insurance shall not be construed as relieving the LICENSEE from any liability or obligation assumed under this management agreement or imposed by law.

The Monroe County Board of County Commissioners will be included as an "Additional Insured" on all policies including the policies of all organizations utilizing the MEN Bldg. for scheduled programs. Subject to review and agreement by the LICENSEE'S insurance carrier, the COUNTY will also be named as "Loss Payee" with respect to Fire Legal Exposure.

Any deviations from these General Insurance Requirements must be requested in writing on the COUNTY prepared form entitled "Request for Waiver of Insurance Requirements" and approved by Monroe County Risk Management.

22. **COMPLIANCE WITH LAW.** In providing all services pursuant to this management agreement, the LICENSEE shall abide by all statutes, ordinances, and rules and regulations pertaining to or regulating the provisions of such services, including those in effect and those hereinafter adopted. Any violation of said statutes, ordinances, resolutions or rules and regulations shall constitute a material breach of this agreement and shall entitle the COUNTY to terminate this agreement if such breach remains uncured thirty (30) days after delivery of written notice of termination to the LICENSEE. The COUNTY may thereupon remove from the premises any personal property of the LICENSEE

23. **PROFESSIONAL RESPONSIBILITY/LICENSING/ARTICLES OF INCORPORATION.** The LICENSEE shall maintain Directors and Officers errors and omissions insurance. Upon execution of this license agreement, the LICENSEE will provide the COUNTY with a copy of its Articles of Incorporation and a list of its Board of Directors.

24. **NO ASSIGNMENT.** The LICENSEE shall not assign this agreement except in writing and with prior written approval of the Board of County Commissioners, which approval shall be subject to such conditions and provisions as the Board may deem necessary. Any assignment of this agreement is subject to sixty (60) days prior written notice to the COUNTY, which shall agree to the assignment in writing before it is effective. This agreement shall be incorporated by reference into any assignment and any assignee shall comply with all provisions herein. Unless expressly provided for therein, such approval shall in no manner or event be deemed to impose any additional obligation upon the COUNTY.

25. **NON-DISCRIMINATION.** COUNTY and LICENSEE 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 and LICENSEE 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; Monroe County Code Ch. 13, Art. VI, prohibiting discrimination on the basis of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age. 11) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

26. **AUTHORIZED SIGNATORY.** The signatory for the LICENSEE, below, certifies and warrants that:

- a) The LICENSEE'S name in this management agreement is its full name as designated in its corporate charter, if a corporation, or the full name under which LICENSEE is authorized to do business in the State of Florida.
- b) He or she is empowered to act and contract for the LICENSEE.
- c) This agreement has been approved by the Board of Directors of the LICENSEE.

27. **NOTICE.** Any notice required or permitted under this agreement shall be in writing and hand-delivered, delivered by a courier service with overnight delivery and signed receipt, or mailed, postage pre-paid, by certified mail, return receipt requested, to the other party as follows:

FOR COUNTY
 Monroe COUNTY Public Works
 1100 Simonton St., Rm. 2-231
 Key West, Florida 33040

FOR LICENSEE
 O. Kay Thacker
 9 Snipe Road
 Key Largo, Florida 33037

And
 Monroe COUNTY Administrator
 1100 Simonton St., Rm. 2-205
 Key West, FL 33040

and
 Linda M Kaplan, Esq
 9500 S Dadeland Blvd, Suite 703
 Miami, Florida 33156

28. **CONTACT PERSONS.** The following, or their designees, are the contact persons in connection with this license agreement:

FOR COUNTY
 Robert Glassmer, Building Administrator
 Office Phone: 305-852-7161
 cell Phone: 305-797-146 ??
 If not available:

FOR LICENSEE
 O Kay Thacker
 305-451 - 3929
 If not available:

Public Works Division
Office Phone: 305-292-4560
Or
COUNTY Administrator's Office
Office Phone: 305-292-4441

Linda M Kaplan
Office Phone 1-305-670-7665
Cell Phone 1-305-978-6256
Home Phone 305-396-7000

And
Facilities Maintenance Coordinator
88820 Overseas Highway
Tavernier, Florida 33070
(305)852-7161

and
Linda M Kaplan
9500 S Dadeland Blvd, Suite 703
Miami, Florida 33156
1-305-670-7665

29. **CONSENT TO JURISDICTION.** This agreement shall be construed by and governed under the laws of the State of Florida and venue for any action arising under this management agreement shall be in Monroe County, Florida. This agreement is not subject to arbitration.

30. **NON-WAIVER.** Any waiver or any breach of covenants herein contained to be kept and performed by either party shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the other party from exercising any of its remedies under this agreement, at law or in equity for any succeeding breach, either of the same condition or covenants or otherwise.

31. **FUNDING AVAILABILITY.** In the event that COUNTY incurs increased costs for utilities, maintenance and repairs beyond the amounts budgeted in the Facilities Maintenance portion of the Public Works budget, then COUNTY shall give notice to LICENSEE of the lack of funding and work with LICENSEE to either terminate the agreement as soon as is feasible given the existing schedule of events, but no longer than 180 days, or this agreement may be re-negotiated prior to its termination in order for LICENSEE to pay those costs.

32. **PUBLIC ENTITIES 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 proposal on a contract to provide goods or services to a public entity, may not submit a proposal on a contract with a public entity for construction or repair of a public building or public work, may not submit proposals on leases of real property to public entity, may not be awarded or perform work as a LICENSEE, supplier, sub-licensee, 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, F.S. for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. (CATEGORY TWO: \$25,000.00).

33. **FORCE MAJEURE.** If either party shall be delayed or hindered in, or prevented from, the performance of any work, service, or other act or obligation required under this agreement to be performed by such party and such delay or hindrance is due to a strike, lockout, or other labor difficulty, fire or other casualty, condemnation, war, terrorist or other enemy act, civil commotion, riot, insurrection, a tropical storm or hurricane watch, warning or evacuation, other atypically inclement weather (based on historical weather data), other act of God, the requirements of any local, state or federal law, rule or regulation or other cause of a like nature (other than financial) beyond the control of the party so delayed or hindered, then performance of such work, service or other act or obligation shall be excused for the period of such delay and the period for the performance of such work, service or other act or obligation shall be extended for a period equivalent to the period of such delay.

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

(SEAL)
Attest: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Mayor/Chairman

Witnesses

FRIENDS OF THE KEY LARGO
CULTURAL CENTER, INC.

J. Grootband
Witness 1
J. Grootband
Printed Name of Witness 1

By: Kay Thacker
President

Linda M. Kaplan
Witness 2
LINDA M. Kaplan
Printed Name of Witness 2