BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: NOVEMBER 17, 2004 Division: TDC

Bulk Item: Yes X No ___ Department: _____

AGENDA ITEM WORDING:
Approval of Florida Keys Council of the Arts Cultural Umbrella Representative for District II.

ITEM BACKGROUND:
TDC approved same at their meeting of October 13, 2004
Current Agreement with Florida Keys Council of the Arts requires TDC and BOCC approval of any new district appointment.

PREVIOUS REVELANT BOCC ACTION:
BOCC approved original Agreement at their meeting of November 21, 2003.
BOCC approved Amendment to Agreement at their meeting of August 18, 2004.

CONTRACT/AGREEMENT CHANGES:
New District Representative

STAFF RECOMMENDATIONS:
Approval

TOTAL COST: $ **BUDGETED:** Yes X No ___

COST TO COUNTY: $ _____ **SOURCE OF FUNDS:** TDC

REVENUE PRODUCING: Yes X No _____ **AMOUNT PER MONTH** ____ **Year** ____

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

DIVISION DIRECTOR APPROVAL: _____
(Lynda Stuart)

DOCUMENTATION: Included X To Follow _____ Not Required _____

DISPOSITION: _____ **AGENDA ITEM #** G-9

Revised 2/27/01

Florida Keys Council of the Arts

October 1, 2004

Harold Wheeler, Executive Director
Monroe County Tourist Development Council
1201 White Street, Suite #102
Key West, FL 33040

Dear Harold:

I'm pleased to let you know that the Florida Keys Council of the Arts recommends Sherry Phillips of Big Pine Key to fill the vacant **District 2** position on the **Cultural Umbrella.** The approval occurred at the board workshop on September 23 and will be ratified by the full FKCA board November 18.

Here's a little about Ms. Phillips:

She resides in Big Pine Key and has been a full time resident of the Florida Keys for 28 years. According to Nancy Herlihy at the Lower Keys Chamber of Commerce, Sherry has served on many community projects over the years such as the highway beautification committee and has a deep understanding of the unique environmental qualities of the Big Pine and the lower Keys.

Ms. Phillips says, "I realize the importance of cultural arts to any society and in particular, its importance to our economy and quality of life here in the Florida Keys.

"I am the president of the Board of my professional association, The Craniosacral Therapy Association of North America. I also sit as a director of a few other non-profit organizations. Because of this involvement I am experienced at working within the context of groups to come to a mutual understanding through the decision making process."

Sherry meets all the criteria for a committee member and we will be very pleased to work with her. Please pass this recommendation on to the boards of the Tourist Development Council and the Board of Monroe County Commissioners for approval.

Sincerely,

Monica Haskell
Executive Director & President

cc:
Shirley Freeman
Dist. 3 Lois Wolfe
Dist. 4 Claire Lang
Dist. 5 Tom Butler
Rocky Hubert
file

AMENDMENT TO AGREEMENT

THIS ADDENDUM to agreement is made and entered into this 18th day of AUG 2004, between the Board of County Commissioners, Monroe County, Florida and Monroe Council of the Arts Corporation, d/b/a Florida Keys Council of the Arts.

WHEREAS, there was a contract entered into on November 21, 2001, between the parties, awarding an agreement for the Florida Keys Council of the Arts to act as a County wide Cultural Umbrella to make recommendations to the Monroe County Tourist Development Council concerning funding for Tourism related Cultural activities; and

WHEREAS, original agreement allows for an extension of agreement for an additional two (2) year period beyond the initial award period;

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

1. Contract period as outlined in Paragraph 1 be extended to September 30, 2006.

2. The remaining provisions of the contract dated November 21, 2001 remain in full force and effect.

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

Florida Keys Council of the Arts

President

(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

Deputy Clerk

BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA

Mayor/Chairman

FILED FOR RECORD
2004 AUG 20 AM 10:07
DANNY L. KOLHAGE
CLERK CIR. CT.
MONROE COUNTY, FLA.

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
7/20/04

CULTURAL UMBRELLA AGREEMENT

THIS AGREEMENT is entered into this 21st day of Nov 2001, by and between the BOARD OF COUNTY COMMISSIONERS, Monroe County, Florida, hereinafter referred to as the COUNTY and the MONROE COUNCIL OF THE ARTS CORPORATION d/b/a FLORIDA KEYS COUNCIL OF THE ARTS, a non-profit corporation hereinafter referred to as the FLORIDA KEYS COUNCIL OF THE ARTS;

WITNESSETH

WHEREAS, the County wishes to enter into this agreement with the Florida Keys Council of the Arts so that the Florida Keys Council of the Arts will act as a county- wide Cultural Umbrella to make recommendations to the MONROE COUNTY TOURIST DEVELOPMENT COUNCIL (TDC) and COUNTY concerning funding for Tourism related Cultural activities.

1. Term: The term of this agreement is for a period of thirty-three (33) months commencing January 1, 2002 and terminating September 30, 2004. Upon the recommendation of the Tourist Development Council, the COUNTY may exercise an option for an additional two (2) years upon giving written notice to the Florida Keys Council of the Arts no less than sixty (60) days prior to September 30, 2004. Monroe County's performance and obligation to pay under this agreement, is contingent upon an annual appropriation by the COUNTY.

2. Scope of Services: The Florida Keys Council of the Arts will provide the following services:

a) The Florida Keys Council of the Arts shall administer TDC policies and procedures which will distribute on an equitable district-wide percentage basis those monies recommended for all qualified Cultural activities. The Florida Keys Council of the Arts will accept applications on an annual basis. The Florida Keys Council of the Arts shall make recommendations for changes in TDC policies pertaining to the Cultural Umbrella as it deems appropriate and shall submit such recommendations for TDC and County approval.

b) The Florida Keys Council of the Arts shall advertise the availability of the Cultural Umbrella program (request for applications) through which event sponsors may apply for promotional funding. The advertisement shall be placed at a minimum, in a newspaper of general circulation, in each of the three primary areas of the County, to wit: Lower Keys, Middle Keys and Upper Keys. The advertisement shall notify of the availability of funding, the restriction of such funding to promotional expenditures and any other information which the Florida Keys Council of the Arts deems necessary to conduct the Cultural Umbrella program. The Florida Keys Council of the Arts may place the advertisements and be reimbursed pursuant to paragraph 3 or may request TDC to place the advertisements and direct pay the newspapers.

c) The Florida Keys Council of the Arts shall conduct at least three (3) workshops each year, one per area of the Florida Keys (Lower Keys, Middle Keys, Upper Keys), within two weeks after the release of the request for application, to explain the application process to all potential applicants.

d) All meetings related to the administration of the Cultural Umbrella shall be open to the public and properly noticed, in conformity with the same rules as required for all governmental meetings under F.S. 286.011. The TDC administrative office shall

e) receive a copy of the agenda of any Cultural Umbrella meetings/workshop seven (7) days prior to said meeting/workshop.

f) The Florida Keys Council of the Arts shall administer policies and procedure will distribute on an equitable district-wide basis those monies recommendec qualified Cultural activities. Funds shall be allocated to events in each proportionate to the total revenues generated by each district. If funding ava under this plan to any district is not allocated for specific events, the m remaining shall be allocated to the county-wide Cultural Umbrella adverti campaign.

g) The recommendations of the Cultural Umbrella Committee shall be submitted to t TDC for consideration prior to adoption of TDC annual budget each year, but tl Florida Keys Council of the Arts has no final authority to require TDC to adopt it recommendations. TDC will then make recommendations to the COUNTY fo allocation of funds and contracts with each individual recipients.

h) Composition- The Florida Keys Council of the Arts shall, in collaboration with the community, develop criteria for selection of the members of the Recommendation Committee for approval by the TDC and the COUNTY before any appointments are made. Recommended appointments will be approved by the TDC and COUNTY and will be referenced in Exhibit A.

3. Funding:

a. The COUNTY shall allocate from tourist development tax funds, an amount not to exceed five hundred and fifty thousand and eight hundred dollars ($550,800) for the agreement year ending September 30, 2002. For each of the remaining years, under the agreement, County shall allocate from tourist development tax funds such amounts as are established within the TDC budget approved by the County prior to each fiscal year. The budget for period ending September 30, 2002 is attached hereto as Exhibit B and incorporated herein. Monroe COUNTY and TDC will fund through its Advertising and Public Relations agencies of record costs of promotion and advertising of cultural events; (1) directly to vendors upon receipt of properly approved invoices or (2) reimburse the event coordinator upon receipt of properly approved paid invoices and evidence of payment, subject to availability of funds.

b. No salary, bonus or other compensation will be paid directly or indirectly, out of the Cultural Umbrella funds and no Cultural Umbrella funds shall be used in the computation of any salary, bonus or other compensation to any person.

c. Administrative costs, including but not limited to salaries, transportation costs, and mailing were previously paid by the predecessor contractor and therefore pursuant to BOCC Resolution No. 316-2001, shall be borne entirely by the Florida Keys Council of the Arts.

d. There shall be no action by Florida Keys Council of the Arts which has the effect of reducing in anyway the amount of TDC and Florida Keys Council of The Arts money used for advertising, promotion or any programs of either entity.

4. Termination: The agreement can be terminated by either party with or without cause with 120 days prior written notice.

5. Accounting: Records of the Florida Keys Council of the Arts pertaining to agreement shall be kept on generally recognized accounting principals, acceptable to Mo County, and shall be available to the COUNTY or to an authorized representative for audit.

6. Modification: Additions to, modification to or deletions from the provisions set forth this agreement shall be effective only in writing and approved by COUNTY.

7. Indemnification and Hold Harmless: The Florida Keys Council of the Arts agrees to indemnify and hold Monroe County and the Monroe County Tourist Development Council harmless for any and all claims, liability, losses and causes of action which may arise out of its fulfillment of the agreement. It agrees to pay all claims and losses, including related court costs and reasonable attorneys fees, and shall defend all suits filed due to the negligent acts, errors or omissions of the Florida Keys Council of the Arts employees and/or agents.

8. Taxes: The COUNTY and TDC are exempt from Federal Excise and State Florida Sales Tax.

9. Finances Charges: The COUNTY and TDC will not be responsible for any finance charges.

10. Relation of COUNTY/TDC: It is the intent of the parties hereto that the Florida Keys Council of the Arts shall be legally considered as an independent contractor and that neither it nor its employees or agents shall, under any circumstance, be considered servants or agents of the COUNTY and TDC shall at no time be legally responsible for any negligence on the part of said successful proposer, its employees or agents, resulting in either bodily or personal injury or property damage to any individual, firm, or corporation.

11. Disclosure: The Florida Keys Council of the Arts shall be required to list any or all potential conflicts of interest, as defined by Florida Statute 112 and Monroe County Ethics Ordinance. The Florida Keys Council of the Arts shall disclose all actual or proposed conflicts of interest, financial or otherwise, direct or indirect, involving any client's interest which may conflict with the interests of the COUNTY and TDC.

12. Assignment: the Florida Keys Council of the Arts shall not assign, transfer, convey, sublet or otherwise dispose of this agreement, or of any or all of its right, title or interest therein, or his or its power to execute such contract to any person, company or corporation without prior written consent of the COUNTY and TDC.

13. Compliance with Laws - Nondiscrimination: The Florida Keys Council of the Arts 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 or work under this agreement. This agreement shall be subject to all federal, state, and local laws and ordinances.

14. Force Majeure: The Florida Keys Council of the Arts 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 subcontractors 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 Florida Keys Council of the Arts has exercised reasonable care in the prevention thereof, and any such delay or failure shall not constitute a breach of this agreement.

15. Governing Law/Venue: This agreement shall be governed and construed by ar accordance with the laws of the State of Florida and constitutes the entire agreement betwe the COUNTY and TDC and Florida Keys Council of the Arts. Venue of any court action file relative to this agreement shall lie in Monroe County, Florida.

16. Antisolicitation: The Florida Keys Council of the Arts warrants that no person has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee and that no member of the Monroe County government or the TDC has any interest, financially or otherwise in the Florida Keys Council of the Arts or its subcontractors.

17. Severability: If any provision of the 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 the agreement shall be valid and enforceable to the fullest extent permitted by law.

18. 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 party as follows:

For COUNTY:
Monroe County Administrator
5100 College Road
Key West, FL 33040

For TDC:
Director, Tourist Development Council
1201 White Street, Suite 102
Key West, FL 33040

For FLORIDA COUNCIL OF THE ARTS:
President, Florida Keys Council of the Arts
5100 College Road
Key West, FL 33040

TDC shall give notice to Florida Keys Council of the Arts of any meetings at which there is an agenda item pertaining to Cultural Umbrella.

19. Ethics Clause: The Florida Council of the Arts warrants that it has not employed, retained or other wise had act on its behalf, any former COUNTY office or employee in violation of Section 2 or Ordinance No. 10-1990 or any COUNTY officer or employee in violation of Section 3 of Ordinance No. 10-1990. For breach or violation of the provision the COUNTY may, at its discretion terminate this agreement without liability and may also, at 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 or present COUNTY officer or employee.

20. 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.

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

(SEAL)
Attest:

FLORIDA KEYS COUNCIL OF THE ARTS

_____

By _____

(SEAL)
Attest: DANNY L. KOLHAGE, Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

_____

_____
Mayor/Chairman

By _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY.
BY _____
SUZANNE A. HUTTON
DATE 10/11/01

EXHIBIT A

RECOMMENDATION COMMITTEE

The Recommendation Committee of the Florida Keys Council of the Arts Cultural Umbrella is comprised of five (5) members, with one member representing each of the five TDC Districts throughout the Monroe County. The members shall be appointed by the Florida Keys Council of the Arts and confirmed by the TDC and COUNTY.

As of the commencement of the agreement effective January 1, 2002, the members shall be:

District I	**To Be Announced**
District II	**To Be Announced**
District III	**To Be Announced**
District IV	**To Be Announced**
District V	**To Be Announced**

The term of a Recommendation Committee member shall be for one (I) year terminating September 30th of each year of the agreement. New appointees, re-appointees and replacement members shall be confirmed by the Florida Keys Council for the Arts, TDC and COUNTY.

EXHIBIT B

Budget as of January 1, 2002

Allocations for Events:	385,560 ~~$244,800~~
Allocation for Cultural Advertising Campaign	$165,240
Sub Total	$550,800
*Balance Brought Forward from FY 2001	$122,940

* Represents event funding brought forward from current year to next fiscal year (October 1, 2001) for contractual agreements.

296.314 events
39945.20 V
45122.80 IV
418.00 VI } district specific
89246 Given
165240
+ 550,800