

## CULTURAL EVENT FUNDING AGREEMENT

THIS Agreement is made and entered into by and between Monroe County, Florida, a political subdivision of the State of Florida (County), and (Event Contractor) on this \_\_\_\_ day of \_\_\_\_\_, 2018.

WHEREAS, Florida Keys Council of the Arts, the Umbrella organization under contract with the County, has recommended to the Monroe County Tourist Development Council (TDC), which has endorsed the recommendation, that certain monies be allocated for promotion of an event by Event Contractor; and

WHEREAS, the Umbrella organization recommends allocation of funds for the (Event) on \_\_\_\_\_.

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

1. Amount: County shall pay a sum not to exceed (**Dollars** – TDC District **district** funding Allocation) effective **Effective Date** for promotion and related expenditures, as described in the event budget, attached hereto as Exhibit D, for production of the Event. Of this amount, no more than 30% or \$\_\_\_\_\_ shall be expended on advertising media placement and production costs line item attributable to in-county placement. **No amendments shall be made to the Budget as set forth in Exhibit D after approval of agreement.** Payment will be made only after Event Contractor submits invoices and supporting documentation acceptable to the County's Finance Department. The advertising and promotion budget using county funding may be altered as to the individual line items, or components, within 10% of the amount stated for that item or component, without increasing the total dollar amount and without requiring a written amendment to this agreement. The general non-allocated section of an Umbrella event budget shall not exceed 15% of the total budget and may be utilized for unforeseen permissible expenditures and for those budget lines that may require additional funds. Monroe County's performance and obligation to pay under this agreement is contingent upon an annual appropriation by the Board of County Commissioners.

2. Duties of Event Contractor: Event Contractor shall provide promotion and related services as described in the Schedule of Events, Exhibit C, attached hereto. All advertising and public relations services or supervision of advertising and public relations will be provided through the contracted agencies of the TDC and County.

3. Invoicing: Event Contractor agrees to submit all invoices and supporting documentation as required by the County's Finance Department rules and policies no later than **EXPIRATION DATE** unless the date of the event is amended upon written approval of the Cultural Umbrella and TDC Director. Event Contractor shall not be reimbursed nor will Event Contractor's vendors be paid directly for any invoices received by the County after **EXPIRATION DATE** unless the date of the event is amended upon written approval of the Cultural Umbrella and TDC Director, and the County shall not be obligated to pay for any services provided by Event Contractor under this agreement if documentation as noted above is not received on or before this reimbursement deadline date. To be eligible for reimbursement, the request for reimbursement and supporting documents (checks, invoices, credit card statements, bank statements, etc.) must show that the items were paid for

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directly by the same entity named on the agreement with the County. For clarification on reimbursements, please refer to the reimbursement packet provided to you upon execution of your funding agreement.

4. Expiration of Agreement: This agreement expires on **EXPIRATION DATE** and the County shall not be obligated to pay for any services provided by Event Contractor under this agreement if documentation as noted above is not received on or before this reimbursement deadline date, unless the date of the event is amended upon written approval of the Cultural Umbrella and TDC Director.

5. Reimbursement to County: Event Contractor shall reimburse County for any amount of funds expended by County in connection with an event which does not occur as a result of any act or omission by Event Contractor.

6. Media Rights: The TDC shall have the right under this agreement to broadcast or rebroadcast, for any purpose whatsoever, radio, television, sound, video or film production, and still photographs, paid by the TDC and County, and produced by the TDC agencies of record.

7. Indemnification and Hold Harmless: The Event Contractor covenants and agrees to indemnify and hold harmless and defend Monroe County, its officers, employees and agents including the TDC and 3406 North Roosevelt Boulevard Corporation d/b/a Visit Florida Keys from any and all claims for bodily injury (including death), personal injury, and property damage (including property owned by Monroe County) and any other losses, damages, and expenses (including attorney's fees) which arise out of, in connection with, or by reason of the services provided by Event Contractor, or other activities and funding associated with this agreement, except those losses or damages caused by the negligent or wrongful act or omission of County or its agents.

8. Non-Waiver of Immunity: Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the Event Contractor and the County in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the County be required to contain any provision for waiver.

9. Ethics Clause: The Event Contractor warrants that it has not employed, retained or otherwise had act on its behalf, any former County officer or employee in violation of Section 2 of 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.

10. Claims and Venue: Event Contractor agrees to notify County immediately of any claims suits or action made against the Event Contractor that is related to the activity under this agreement and will cooperate with County in the investigation arising as a result of any action, suit or claim related to this agreement. Any legal proceedings arising out of this agreement shall be in accordance

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with the laws of the State of Florida in the 16<sup>th</sup> Judicial Circuit for Monroe County; venue shall be in Monroe County, Florida.

11. Severability: If any provision of this agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall not be affected thereby; and each provision of this agreement shall be valid and enforceable to the fullest extent permitted by law.

12. Governing Law/Venue: 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 the agreement, the County and Event Contractor agree that venue shall lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida. This agreement shall not be subject to arbitration.

13. Accounting and Records: Event Contractor shall maintain records pursuant to generally accepted accounting principles for four (4) years after the event and shall permit County and its agents and employees access to said records at reasonable times.

14. Termination of Agreement: County may terminate this agreement without cause by providing written notice to Event Contractor, through its officer, agent or representative, no less than sixty (60) days prior to the event and may terminate for breach upon providing to Event Contractor, through its officer, agent or representative, written notice at least seven (7) days prior to the effective date of the termination. Notice is deemed received by Event Contractor when hand delivered, delivered by national courier with proof of delivery, or by U.S. mail upon verified receipt or upon the date of refusal or non-acceptance of delivery.

15. Public Entities Crimes: 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.

16. Logo: **Logo Usage guidelines are attached to this agreement as Exhibit "B"**. All promotional literature and display advertising must display the "Florida Keys & Key West Come As You Are" logo/trademark (**as per attached logo sample – Exhibit B**). This logo/trademark was adopted by the TDC and County in April, 2010.

**In-County Logo**: The logo that includes the "Monroe County Tourist Development Council" designation is to be utilized on in-county print newspaper and magazine ads, brochures, postcards, pamphlets, programs, posters, banners (hanging and displayed outdoors) and digital advertising on websites, website links, pre roll video, banners, mobile and email blasts. Radio commercials should include "Brought to you by The Monroe County Tourist Development Council". To seek approval, clarification and/or logo in electronic format (eps or jpg file), contact Karen Piedra or John Underwood with Tinsley Advertising at 305-856-6060.

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**Out-of-County Logo:** The logo that does NOT include the “Monroe County Tourist Development Council” designation is to be utilized in out-of-county newspapers and magazines, brochures, postcards, pamphlets, programs, posters and digital advertising on websites, website links, pre roll video, banners, mobile and email blasts. Radio commercials should include “Brought to you by The Monroe County Tourist Development Council”. To seek approval, clarification and/or logo in electronic format (eps or jpg file), contact Karen Piedra or John Underwood at Tinsley Advertising at 305-856-6060.

17. **Permits:** The Event Contractor will secure all required permits, licenses and shall pay all appropriate business taxes.

18. **Assignment:** The Event Contractor 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 agreement to any person, company or corporation without prior written consent of the County.

19. **Modification:** The event name, time & date of the event and Schedule of Activities may be amended upon written approval of the Advisory Committee and TDC Director. Any changes to said contract other than stated above require approval by the Advisory Committee, TDC and the County.

20. **Non Occurrence of Event:** The Event Contractor shall give written notice to the TDC if it is found necessary to cancel an event. The notice shall contain the reason for the cancellation. If the event does not take place for any reason under control of Event Contractor, then Event Contractor agrees to refund to the County any amounts already paid to them under this agreement and relieve the County from any further payments.

21. **Laws and Regulations:** Any and all services, materials and equipment shall comply fully with all Local, State and Federal laws and regulations.

22. **Taxes:** The County and TDC are exempt from Federal Excise and State of Florida Sales Tax, but this in no way exempts the Event Contractor from applicable Federal and State taxes.

23. **Finance Charges:** The County and TDC will not be responsible for any finance charges.

24. **Relation of County/TDC:** It is the intent of the parties hereto that the Event Contractor shall be legally considered as an independent contractor and that neither it nor its employees shall, under any circumstances, be considered servants or agents of the County and TDC, and the County and TDC shall at no time be legally responsible for any negligence on the part of said Event Contractor, its employees or agents, resulting in either bodily or personal injury or property damage to any individual, firm or corporation.

25. **Disclosure:** The Event Contractor shall be required to list any or all potential conflicts of interest, as defined by Florida Statutes Chapter 112 and Monroe County Code. The Event Contractor shall disclose to the County and TDC all actual or proposed conflicts of interest, financial

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or otherwise, direct or indirect, involving any client's interest which may conflict with the interest of the County and TDC.

26. Compliance with Laws - Nondiscrimination: County and Event Contractor 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 VI 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) Monroe County Code Chapter 14, Article II, which prohibits discrimination on the basis of race, color, sex, religion, 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.

27. Security Protection: The Event Contractor agrees to provide adequate security for the event. No TDC funds will be used for this purpose.

28. Authority: Each of the signatories for the Event Contractor below certifies and warrants that: a) the Event Contractor's name in the agreement is the full name as designated in its corporate charter (if a corporation), and b) they are empowered to act and execute the agreement for the Event Contractor and c) this agreement has been approved by the Event Contractor's governing board or other appropriate authority.

29. Miscellaneous: As used herein, the terms "contract" and "agreement" shall be read interchangeably.

30. Breach and Penalties: The parties agree to full performance of the covenants contained in this agreement, and the County reserves the right at its discretion, provided such breach is material, to terminate this agreement for any misfeasance, malfeasance or nonperformance of the agreement terms or negligent performance of the agreement terms by the Event Contractor.

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31. Notice: Any notice required or permitted under this agreement shall be in writing and hand delivered, emailed or mailed, postage prepaid, to the other party by certified mail, returned receipt requested to the following:

**For Grantee:**

**For Grantor:** Maxine Pacini  
Monroe County Tourist Development Council  
1201 White Street, Suite 102  
Key West, FL 33040

**And**

Christine Limbert-Barrows, Asst. County Attorney  
P.O. Box 1026  
Key West, FL 33041-1026

32. Force Majeure: The Event Contractor 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 Event Contractor has exercised reasonable care in the prevention or mitigation of damages and delay, any such delay or failure shall not constitute a breach of the agreement. Upon demand of TDC or County, the Event Contractor must furnish evidence of the causes of such delay or failure. County shall not pay for any services or activities, promotional or otherwise, connected with an event produced after the date(s) described in paragraph 1.

33. Entire Agreement: The parties agree that the agreement above constitutes the entire agreement between the County and Event Contractor.

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

(SEAL)  
Attest: Kevin Madok, Clerk

Board of County Commissioners  
of Monroe County

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
Mayor/Chairman

**Organization Name**

By \_\_\_\_\_  
**President**

\_\_\_\_\_  
Print Name

Date: \_\_\_\_\_

**AND TWO WITNESSES**

(1) \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

(2) \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Acceptable Event Marketing Expenses for Cultural Events**

Within the Cultural Umbrella events funding category, the allocation received by the Event Contractor is to be spent on the list of items that have been approved. Only the TDC expenses listed below may be included in the proposed budget. The following are the only acceptable expenses:

**Media Placement & Production Costs:** Newspapers and magazines (inserts will also be considered), radio and TV. The TDC will pay for the following digital advertising on websites, website links, pre roll video, banners, mobile, social media promoted posts, and email blasts. Digital advertising links may go to the event website. The TDC Logo must be placed on all print, TV, websites, social media promoted posts, pre roll video, banners and email blasts. Radio advertising does not require the logo but all radio announcements must say “Brought to you by the Monroe County Tourist Development Council”. No payment will be made for development or operations (hosting) of websites. No more than 30% of the Media Placement and Production Costs line item shall be expended on advertising media costs attributable to in-county placement.

**Promotional Signs:** Posters and banners (hanging and displayed outdoors).

**Promotional Items:** T-shirts and hats\*.

**\*Sales/Resale of TDC funded items:** Items funded, including creative and resulting work product, by the BOCC/TDC, in accordance with Florida Public Records Law, are owned by the BOCC/TDC and as such may not be sold.

**Direct Mail Promotions:** Brochures/postcards and pamphlets including postage and shipping. This is a direct mail promotional brochure, postcard or pamphlet utilized for pre-event advertising.

**Programs/Play Bills:** TDC will pay up to fifty percent (50%) of the cost of production and printing of an event program/play bills showing scheduled activities and information on the event as outlined in contract budget.

**Public Relations (PR):** Print and electronic public relations materials for distribution to media, such as, but not limited to, press releases, public service announcements, photography and videography **as approved** by the public relations agency of record. Only permissible PR material produced by the TDC agency of record and/or a professional public relations agency shall be acceptable.

**In-House Production:** In-house production of any permissible expenditure will not be considered for reimbursement.

**Event Marketing Reimbursement:** TDC will only consider reimbursement of permissible marketing expenditures that highlight the special event versus the regular programming of a business, organization or the facility.

**Amendments to Contract Budgets:** No amendments to the line item budget will be permitted after the contract has been reviewed and approved.

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**Logo/Acknowledgement Usage Guidelines For Cultural Events**

Color ads four (4) color processing printing  
Black & white ads shall include the Florida Keys and Key West logo in high resolution  
Use on all printed material as listed under the Acceptable Event Marketing Expenses list  
TV: logo must appear at the conclusion of commercial  
Hats and t-shirts: must carry the “The Florida Keys & Key West” Out-of-County logo

**Radio Advertising:** No logo is required. All radio announcements must say “Brought to you by the Monroe County Tourist Development Council”

**In-County Logo**

The logo below indicating the “Monroe County Tourist Development Council” designation is to be utilized on in-county print newspaper and magazine ads, brochures, postcards, pamphlets, programs, posters, banners (hanging and displayed outdoors) and digital advertising on websites, website links, pre roll video, banners, mobile and email blasts. Radio commercials should include “Brought to you by The Monroe County Tourist Development Council”. To seek approval, clarification and/or logo in electronic format (eps or jpg file), contact Karen Piedra or John Underwood with Tinsley Advertising at 305-856-6060.



**Out-of-County Logo**

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**(SCHEDULE TO BE INSERTED)**

SAMPLE

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CULTURAL UMBRELLA EVENT BUDGET - FISCAL YEAR 2018

APPLICANT IS ADVISED PRIOR TO COMPLETING THIS BUDGET TO REFER TO THE FUNDING APPLICATION SHOWING THE ALLOWABLE MARKETING EXPENSES THAT WILL BE CONSIDERED FOR REIMBURSEMENT

THERE WILL BE NO AMENDMENTS TO THIS BUDGET (EXHIBIT D) AFTER BOCC APPROVAL OF AGREEMENT

EVENT NAME

*MEDIA PLACEMENT & PRODUCTION COST: (Only 30% of this line item may be spent on in-county advertising)	\$
PROMOTIONAL SIGNS:	\$
PROMOTIONAL ITEMS:	\$
DIRECT MAIL PROMOTIONS:	\$
PROGRAMS/PLAY BILLS:	\$
PUBLIC RELATIONS:	\$
**GENERAL NON-ALLOCATED: (Funds applied to Media Placement & Production Cost may only be applied to out-of-county advertising)	\$
<b>TOTAL</b>	\$

\*No more than 30% of the Media Placement and Production Costs line item shall be expended on advertising media costs attributable to in-county placement (see Exhibit A of Application).

\*\*The General Non-Allocated line item should not exceed 15% of the total funding allocation, and may only be utilized for acceptable event marketing expenses (see Exhibit A of application).

Actual expenditures may deviate no more than 10% from the budgeted line items noted above.

TDC will only consider reimbursement of permissible marketing expenditures that highlight the special event versus the regular programming of a business, organization or the facility.

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