

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: November 17, 2015
Bulk Item: Yes No

Department: TDC
Staff Contact /Phone #: Ammie Machan 296-1552

AGENDA ITEM WORDING:

Approval of a Turnkey Event Agreement with Friends of the Pool, Inc covering 4th Swim for Alligator Light House in September 2016 in an amount not to exceed \$50,000, DAC IV, FY 2016 Event Resources

ITEM BACKGROUND:

TDC approved same at their meeting of September 8, 2015

PREVIOUS RELEVANT BOCC ACTION:

CONTRACT/AGREEMENT CHANGES:

New Agreement

STAFF RECOMMENDATIONS:

Approval

TOTAL COST: \$50,000 **INDIRECT COST:** _____ **BUDGETED:** Yes No

DIFFERENTIAL OF LOCAL PREFERENCE: _____

COST TO COUNTY: No Cost **SOURCE OF FUNDS:** TDC

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

APPROVED BY: County Attorney _____ OMB/Purchasing [Signature] Risk Management [Signature]

DOCUMENTATION: Included Not Required

DISPOSITION: _____

AGENDA ITEM # _____

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY			
Contract with:	Friends of the Pool, Inc.	Contract #	1630
		Effective Date:	11/17/15
		Expiration Date:	11/29/16
Contract Purpose/Description: <u>Approval of a Turnkey Agreement with Friends of the Pool, Inc. covering 4th Swim for Alligator Lighthouse in September 2016 in an amount not to exceed \$50,000, DAC IV, FY 2016 Event Resources</u>			
Contract Manager:	<u>Ammie Machan</u>	<u>3523</u>	<u>TDC #3</u>
	(Name)	(Ext.)	(Department/Stop #)
for BOCC meeting on:	<u>11/17/15</u>	Agenda Deadline:	<u>11/3/15</u>

CONTRACT COSTS	
Total Dollar Value of Contract: \$	<u>50,000</u> Current Year Portion: \$ _____
Budgeted? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Account Codes: 115-75360-530340-TM65-826-X-530340
Grant: \$ _____	_____
County Match: \$ _____	_____

ADDITIONAL COSTS	
Estimated Ongoing Costs: \$ _____/yr	For: _____
(Not included in dollar value above)	(e.g. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW				
	Date In	Changes Needed	Reviewer	Date Out
Department Head	<u>9/18/15</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>9/18/15</u>
Risk Management	<u>9-24-15</u>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<u>[Signature]</u>	<u>9-24-15</u>
O.M.B./Purchasing	<u>9/24/15</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>10/5/15</u>
County Attorney	<u>9/23/15</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>C.Limbert-Barows</u>	<u>9/23/15</u>
Comments: _____				

Turnkey Event Agreement

THIS Agreement is made and entered into by and between Monroe County, Florida, a political subdivision of the State of Florida (County), and Friends of the Pool, Inc. (Event Contractor) on this ____ day of _____, 2015.

WITNESSETH:

In consideration of the mutual covenants contained herein the parties agree as follows:

1. **Payment:** A Turnkey event shall be considered an all-inclusive event where the Event Contractor has financial responsibility for every facet of the production, promotion and management of the event. Payment under a contract for a Turnkey event will be made only after completion of the event and proof that the scope of services as described below in paragraph 2 has been completed. If a Turnkey event is delayed or canceled for any reason, **no payment shall be forthcoming**, even if the Event Contractor has out-of-pocket expenses leading up to the actual event. The Tourist Development Council (TDC), therefore, strongly recommends that the Event Contractor purchase insurance that covers the cancellation or delay of an event due to "force majeure" or unforeseen circumstances (see paragraph 8).

The County agrees to pay \$50,000 (Fifty Thousand Dollars – TDC District IV Funding Allocation) for: **4th Swim for Alligator Light House in September 2016**, from tourist development tax funds upon receipt of documentation from Event Contractor, on or before the expiration date of agreement in paragraph 3, that they have met its obligations under this agreement. Said documentation shall also include samples of the Event Contractor's marketing program as outlined in their application. Documentation submitted by Event Contractor will be reviewed and verified by the Tourist Development Council (TDC) Administrative Office, at which time, County shall pay the sum noted above.

Monroe County's performance and obligation to pay under this contract is contingent upon an annual appropriation by the County.

2. **Scope of Services:** The Event Contractor agrees to provide the County with an event as specified in the Scope of Services below (Event):

a) A three (3) day event to include meet and greet with local artist; warm up swim and safety meeting; open water race to Alligator Reef Lighthouse; awards banquet.

3. **Expiration of Agreement:** This agreement expires on **November 29, 2016** unless the date of the event is amended upon approval of the Advisory Committee 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.

4. **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

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Director. Any changes to said contract other than stated above require approval by the Advisory Committee, TDC and the County.

5. 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.

6. 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 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 County or its agents.

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

8. Insurance Requirements: Event Contractor as a pre-requisite of the Special Event governed by this agreement shall obtain, at its own expense, insurance as specified in this section. If a Turnkey event is delayed or canceled for any reason, **no payment shall be forthcoming**, even if the Event Contractor has out-of-pocket expenses leading up to the actual event. The TDC, therefore, strongly recommends that the Event Contractor purchase insurance that covers the cancellation or delay of an event due to "force majeure" or unforeseen circumstances.

Event Contractor shall furnish the County with a certificate evidencing the insurance required by this paragraph not later than twenty (20) days prior to the event.

Event Contractor must have their insurance agency email the certificates of insurance directly to Maria Slavik in the Monroe County Risk Management Department. Slavik-Maria@MonroeCounty-FL.Gov – **The email must state that this is a certificate for a TDC event (state name of event as written within your contract) and should be forwarded to Kelly Scarbrough at the TDC administrative office. Your certificate must state that the Monroe County Board of County Commissioners is a "Certificate Holder" and that Monroe County, its employees and officials will be included as "additional insured". If you or your insurance agency needs to speak with Maria Slavik regarding the insurance requirements, she can be contacted by telephone at (305) 295-3178, or by email at the address stated above.**

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It is the Event Contractor's responsibility to confirm that the insurance has been received and approved. You can do this by contacting Kelly Scarbrough at AdminAsst@fla-keys.com or by calling (305) 296-1552.

Event Contractor will not be permitted to commence work associated with the Event (including pre-staging of personnel and material) until satisfactory evidence of the required insurance has been furnished to the County as specified below. Event Contractor shall maintain the required insurance throughout the entire duration of the Special Event and any extensions specified in any attached schedules. Failure to comply with this provision may result in the immediate suspension of the Event until the required insurance has been reinstated or replaced. Event Contractor shall provide, to the County, as satisfactory evidence of the required insurance, either:

- * Original certificate of Insurance
or
- * Certified copy of the actual insurance policy

A certified copy of any or all insurance policies required by this contract shall be filed with the Clerk of the County prior to the Event.

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.

Acceptance and/or approval of Event Contractor's insurance shall not be construed as relieving Event Contractor from any liability or obligation assumed under this contract or imposed by law.

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

Prior to commencement of work governed by this contract, Event Contractor shall obtain 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

The minimum limits acceptable shall be:

- * \$1,000,000.00 Combined Single Limit (CSL)

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

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- * \$ 500,000.00 per Person
- * \$1,000,000.00 per Occurrence
- * \$ 100,000.00 Property Damage

An Occurrence Form policy is preferred. If coverage is provided on a Claims Made policy, its provisions 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. Recognizing that the work governed by this contract involves the sales and/or distribution of alcoholic beverages, the Contractor's General Liability Insurance policy shall include Liquor Liability with limits equal to those of the basic coverage.

A separate Liquor Liability policy is acceptable if the coverage is not more restrictive than the contractor's General Liability policy.

A Workers' Compensation insurance is required by Florida Statutes.

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

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

11. 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.

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

13. 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.

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

15. 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 consent of the TDC and County.

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16. Compliance with Laws - Nondiscrimination: The Event Contractor shall comply with all Local, State and Federal laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, age or national origin in the performance of work under this agreement. This agreement shall be subject to all Local, State and Federal laws and regulations and ordinances.

17. Security Protection: The Event Contractor agrees to provide adequate security for the event.

18. Ethics Clause: The Event Contractor warrants that it has not employed, retained or otherwise had act on its behalf, any former County office 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.

19. 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.

20. Logo: Marketing promotions that display our logo must use the "The Florida Keys - Islamorada" logo/trademark (as per attached logo sample – Exhibit A). Electronic format (eps or jpg file) of the appropriate logo may be obtained by contacting Ashley Miller or John Underwood with Tinsley Advertising at 305-856-6060.

21. 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.

22. 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, 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.

23. 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.

24. 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.

25. 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.

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

For Grantee: Rob Dixon
127 Matecumbe Ave
Islamorada, FL 33036

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

27. 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.

28. 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, 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.

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

30. **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: Amy Heavilin, Clerk

Board of County Commissioners
of Monroe County

Deputy Clerk

Mayor/Chairman

Friends of the Pool, Inc

By [Signature]
President

ROBERT DIXON

Print Name

Date: 10/06/15

AND TWO WITNESSES

(1) [Signature]

Print Name: Travis Yednat

Date: 10/6/15

(2) [Signature]

Print Name: Lincoln Ellis

Date: 10/6/15

MONROE COUNTY ATTORNEY

APPROVED AS TO FORM:

[Signature]

CHRISTINE M. LIMBERT-BARROWS
ASSISTANT COUNTY ATTORNEY

Date: 10/21/15

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Color ads four (4) color processing printing

Black & white ads shall include the appropriate generic or district logo in high resolution

TV: logo must appear at the conclusion of commercial

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

Marketing promotions that display our logo must use the "The Florida Keys - Islamorada" logo/trademark. Electronic format (eps or jpg file) of the appropriate logo may be obtained by contacting Ashley Miller or John Underwood with Tinsley Advertising at 305-856-6060.

The Florida Keys
Islamorada