

PROFESSIONAL MANAGEMENT SERVICES AGREEMENT

THIS PROFESSIONAL MANAGEMENT SERVICES AGREEMENT dated this ____ day of _____, 2023, is by and between the City of Key West, a political subdivision of the State of Florida (hereinafter "CITY") and Rams Head Promotion of Key West, LLC, a Florida Limited Liability Company _____ (hereinafter the "MANAGER"), collectively, the "Parties".

RECITALS

WHEREAS, the principal purpose of CITY in entering into this AGREEMENT is to serve the public by providing management at the Truman Waterfront Amphitheater (VENUE); and

WHEREAS, the CITY has determined that it would be in the best interest of the citizens that the CITY utilize the services of private persons for management, operations, and promotional services at the VENUE when such services cannot be reasonably provided by the CITY; and

WHEREAS, the CITY has determined that it would be better to contract for these services than to hire the necessary personnel to satisfy the needs of the CITY in this regard.

WHEREAS, MANAGER is in the business of providing venue management services, including operations and marketing services, for public assembly facilities; and

WHEREAS, This Agreement sets out the terms and conditions by which the CITY engages MANAGER to provide professional management services at the VENUE for concerts and other live events, as well as for certain events other than concerts and live events

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the sufficiency of which being acknowledged hereby, the Parties agree as follows:

1. PROFESSIONAL MANAGEMENT SERVICES

The MANAGER shall work independently to ensure proper operation of the VENUE while minimizing CITY involvement in event operations. The MANAGER will be responsible for the administration, financial management, marketing/outreach, venue operations and certain maintenance as further described herein, and coordination with CITY services. The scope of these services is presented in further detail in RFP No. 006-018 KEY WEST AMPHITHEATER MANAGEMENT and shall hereinafter be referred to as "Professional Management Services".

A. Administration

The MANAGER will prepare and coordinate a master calendar of amphitheater events, venue operations and bookings as reserved by event organizers. The master calendar will be open for all event producers, promoters, and organizers to allow scheduling of a wide variety of events. The calendar shall incorporate annual CITY events that may impact use of the VENUE and surrounding Truman Waterfront Park grounds. The VENUE shall be available for booking

concerts and other live events year-round, except for 10 days (10 events)] that will be used exclusively by the CITY at the CITY'S sole cost. The MANAGER and the CITY will coordinate with each other to assign the days and place them on the master calendar.

MANAGER shall negotiate, administer, and execute in MANAGER's name, agreements reasonably necessary for the operation of the VENUE where such agreements may include licenses, occupancy agreements, rental agreements, booking commitments, supplier agreements, and service contracts, and may include license agreements with event organizers, where such license agreements may be directed by the City; provided, however, that in the event that any such agreements extend beyond the then-current term of this Agreement, advance written approval is obtained from the City and provided, further, that such agreements are otherwise consistent with the terms of this Agreement. . Notwithstanding the aforementioned, the CITY shall, to the extent required, cooperate with MANAGER if the City signature is required on any agreement listed above.

Provide day-to-day administrative services in support of the Professional Management Services, including the maintenance of records as required herein.

Collect and remit to the proper governmental authorities any taxes, including, but not limited to, sales tax, where such taxes arise out of goods or services sold by MANAGER as part of its Professional Management Services.

Establish reasonable rules for the use of the VENUE including applicable laws, policies and guidelines established by the CITY, where such rules address issues of health, safety, welfare, and decorum.

The MANAGER, in conjunction with the event organizer, will determine all aspects of the venue set up and desired contracted services. A proposed plan addressing traffic, security, sound levels and desired CITY support services will be submitted to the CITY Special Events Coordinator by the Event Organizer for compliance with pre-established parameters developed by the MANAGER in conjunction with the CITY. The plan must include CITY coordination and any additional approvals that may be necessary.

The MANAGER and/or Event Organizer shall be responsible for talent, advertising, cost of all contracted and CITY services and venue fees.

B. Financial Management

Financial Plan

The MANAGER will submit a financial management plan for the CITY's approval. The plan will include a five-year operational financial forecast/proforma and will be updated annually. The MANAGER will provide quarterly financial reports to the CITY. Key performance indicators will be established so that operations are financially stable and business plan goals

are met. The MANAGER will be responsible for developing and implementing a plan to increase revenues over time.

1. Annual Reports.

Upon request of the City, within ninety (90) days after the end of a Fiscal Year, MANAGER shall provide an annual report to the CITY in a form satisfactory to the CITY.

2. Quarterly Reports.

MANAGER shall submit quarterly reports to the CITY, no later than thirty (30) days after the end of the quarter in a format approved by the CITY. The quarterly reports shall show revenues and expenses for VENUE events held in the quarter just ended and for the fiscal year to date, shall explain any variances to MANAGER's annual estimate of revenues and expenses and shall make year-end projections of revenues and expenses.

3. Financial Records

The MANAGER agrees:

- a) To establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all revenues and expenditures of funds reflected herein.
- b) To retain all Managers records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement for a period of five (5) years after termination of the Agreement, or if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Agreement.
- c) Upon completion or termination of the Agreement and at the request of the CITY, the MANAGER will cooperate with the CITY to facilitate the duplication and transfer of any said records or documents during the required retention period as specified in paragraph b). above. The CITY may reproduce any written materials generated as a result of the MANAGER's work, at the City's sole cost and expense.
- d) To assure that all records required to be maintained by the MANAGER hereby shall be subject at all reasonable times to inspection, review, or audit by CITY, Federal, State, or other personnel duly authorized by the CITY, at the City's sole cost and expense.
- e) Persons duly authorized by the CITY and Federal auditors, pursuant to 45 CFR, Part 92.36(1)(10), shall have full access to and the right to examine any of the MANAGER's records and documents related to this Agreement, regardless of the form in which kept, at all reasonable times for as long as those records are

retained, at the City's sole cost and expense.

- f) To include these aforementioned audit and record keeping requirements in all approved subcontracts and assignments.

4. Capital Expenditures

Capital Equipment; Capital Improvements. The terms "Capital Equipment" and "Capital Improvements" shall mean any and all furniture, fixtures, machinery, or equipment, either additional or replacement, and any and all building additions, alterations, renovations, repairs or improvements.

The obligation to pay for, and authority to perform, direct and supervise Capital Equipment and Capital Improvements purchases, including repairs and maintenance of such Capital Equipment and Capital Improvements, shall remain with the CITY. MANAGER shall make an annual recommendation to the City for Capital Equipment and Capital Improvements purchases to be accomplished during the year and shall be accompanied by an estimate of the cost of all such items and projects and a request that the City budget funds therefor. The City shall retain the discretion to determine whether and to what level to fund Capital Equipment and Capital Improvements purchases to the VENUE.

5. Venue Fees

All events will be charged a fee based on a rate structure agreed upon by the CITY and the MANAGER. The fee will be commensurate with the market rate for the various proposed uses but will also consider overall benefit and contribution to the community. VENUE use fees and/or ticket surcharges are attached hereto and incorporated herein as the "Fee Schedule" and are the basis for payment for use of the VENUE. VENUE use fees and/or ticket surcharges may be amended from time to time, as agreed to by the parties. Additional revenue sharing, performance guaranties, and any other sources of revenue that will accrue to the financial benefit of the VENUE may be considered; however, it is not the intent of the CITY to rely on percentage of the sale of food, beverages, merchandise or parking for revenue. The MANAGER will collect all up-front fees and settlement with event organizers following each event. The MANAGER will provide a financial accounting of each event and submit payment to the CITY as required herein.

C. Marketing/Outreach

1. The MANAGER will prepare a broad usage plan that is active and diverse with the goal to fully realize the VENUE'S economic potential. The MANAGER will actively market the VENUE to concert and event promoters and will provide outreach to develop community and other cultural programming. The MANAGER will coordinate with the CITY to help develop and maintain a Venue website, as well as social media accounts on behalf of the Venue.
2. MANAGER shall engage in such advertising, solicitation, and promotional activities as MANAGER deems necessary or appropriate to develop the potential of the VENUE and

the cultivation of broad community support, consistent with the scope of services under this Agreement, at MANAGERS sole cost and expense.

3. MANAGER will hire a dedicated Key West based Marketing Manager at MANAGER'S expense, who will be responsible for maximizing marketing reach and penetration into desired markets. The local Manager will lead all marketing efforts for the VENUE and VENUE events, supported by MANAGER'S corporate marketing experts.
4. All signage (interior, exterior, permanent, temporary), including signage provided under the terms of sponsorship agreements, shall comply with applicable law, and shall be maintained in good and clean condition, reasonable wear and tear excepted.
5. The City shall take steps as may be reasonable to provide MANAGER with required advance written permission to execute any proposed agreements that would change the name of the VENUE, including corporate sponsorship agreements, consistent with applicable law.

D. Event Operations

1. The MANAGER will contract with event organizers for the VENUE usage. The MANAGER will develop standard operating procedures for event operations and will work with the CITY to develop/modify contracts, establish insurance requirements and necessary forms for event related services based upon and more particularly described in the CITY Rental Guide for the Truman Waterfront Amphitheater, attached hereto. The MANAGER will assemble and maintain a listing of service providers which may be contracted by the MANAGER or event organizer to provide necessary services. The MANAGER or event organizer will be responsible for negotiating and contracting for such services, commensurate with market rates therefor, which may include but are not limited to the following:

- Sound System
- Lighting
- Ticketing/box office operations
- VIP Services
- Pre-post show VIP event
- Talent support spaces for dressing rooms, green room, showers, etc.
- Security/ Crowd Control
- Event Staff / Ushers
- Food and Beverage Vendors
- Merchandise Vendors
- Seating-set up and take down
- Transportation/wayfinding
- Traffic/parking plan and control
- Site Control: barricades, gates, points of entry
- Sound levels: control, monitoring
- Portable Sanitation

- Cleanup on site and affected neighborhood areas
- Trash/ recycle on site and in neighborhood travel routes
- Perform an after-event review of CITY improvements to check for damages and repair as soon as practical

MANAGER shall employ, supervise, and direct all of MANAGER's employees and personnel; provide adequate and qualified staffing during concerts and other events at the VENUE which such may include any periods of loading-in, loading-out, and event-related cleaning.

1. Food and Beverage

With respect to any food and beverage services at the VENUE, MANAGER shall at all times bear sole responsibility for and execute all management activities related to food and beverage sales and operations at the VENUE, including, but not limited to, the acquisition and distribution of alcohol and supervision of serving and sales staff. MANAGER shall be responsible for the hiring, firing, and supervision of any personnel, specifically including those who handle food and beverage sales and operations at the VENUE. MANAGER shall be responsible for obtaining any licenses or permits as may be required by applicable law, rule, or regulation, including, but not limited to, food operating permits and liquor licenses. The City shall not bear responsibility with respect to such food and beverage sales and operations.

- 2. Merchandise Sales.** MANAGER will work with event organizers and local vendors to provide a wide variety of merchandise for VENUE events pertinent to and when practical for each type of event. MANAGER will develop and maintain a merchandise vendor list that event organizers can use for their events.
- 3. Parking.** MANAGER will implement a parking and traffic plan that will encourage and accommodate the use of shuttle buses, bicycles, foot traffic, taxis and ride share companies that enable the efficient movement of multiple passengers and lessen the number of vehicles on the roads to the Venue and in the VENUE parking areas. The Parking Plan shall be developed and approved with the City Parking Director's Office prior to submitting to the City Manager. All metered parking revenue will accrue to the benefit of the CITY and all other parking revenue will accrue to local non-profit organizations. Local non-profit parking is 100% for non-profits and is subject to audit. City parking lots are typically any lot that is paved.

The MANAGER shall comply with all CITY rules, regulations, and procedures governing the operation of the VENUE, and ensure compliance by all Vendors or contracted services. Additionally, the MANAGER shall require all professional entertainment to comply with any noise ordinance enacted by the CITY. The MANAGER shall ensure event organizers obtain a Special Events Permit, if necessary.

E. Venue Operations and Maintenance

Consistent with the terms of this Agreement, MANAGER shall ensure that the VENUE is in compliance with applicable law, including, but not limited to, providing access for persons with disabilities consistent with the Americans with Disabilities Act (as amended) to the extent that such access can reasonably be provided utilizing such Capital Improvements and Capital Equipment as has been provided by the City.

The CITY will be responsible for the routine maintenance, grounds management and repair of the Venue and shall perform, or contract, all maintenance and repairs related to events held at the Premises. The MANAGER will be responsible for cleaning and custodial services, including pressure washing and event cleanup at the Amphitheatre. All maintenance, storage of cleaning chemicals and gear shall be in compliance with all applicable law, where such law includes federal, state, and local laws, rules, and regulations.

The MANAGER shall collect on behalf of the City a maintenance fee added to each ticket sold in order to provide funding for all regular maintenance and upkeep of the VENUE pursuant to the Fee Schedule attached hereto and incorporated herein. The CITY shall provide grass mowing and other landscaping services and pay all related charges. Damages caused during events and costs associated with such damages shall be the sole responsibility of the MANAGER.

The MANAGER will be responsible for all aspects of setup and breakdown for each event. City staff will not be involved in the day-to-day operational functions of the Amphitheatre. This includes setting up and breaking down chairs.

F. CITY SERVICES

The MANAGER will work with the CITY to establish a security plan and program for the VENUE and cooperate as necessary with EMS, Fire and Police Departments and other responding agencies in public safety emergencies; The MANAGER will act as liaison for Event Organizers to plan and coordinate with the CITY for services which may include:

- Police
- Fire
- EMS/ First Aid
- Permits, Licenses
- Noise Exemption/Control/Monitoring
- Community Services

The CITY Manager shall have the final decision-making authority on the approval of all professional entertainment to be booked at the VENUE, and all Event Ticket Surcharges. The City Manger's final decision shall be communicated to the Manager within two days of request for approval.

2. WORK

The MANAGER shall perform the Professional Management Services for which it is retained utilizing criteria from the RFP Anticipated Scope of Services as well as the MANAGER'S proposal and the review process.

3. EFFECTIVE DATE AND TERM

This Agreement shall be effective commencing _____, 2023 and shall continue for three (3) years until _____, 20___. After the initial term, this Agreement may be extended for up to one (1) additional three (3) year terms provided same is agreed to by the Parties in writing.

4. MANAGEMENT FEE

In exchange for providing Professional Management Services herein described the VENUE use fees will be waived by the CITY for events organized by the MANAGER, except for ticket fees as described on the Fee Schedule as One Day Event Ticket Fees and Maintenance Fees.

It is expressly understood and agreed that the MANAGEMENT fees will be derived from the waiver of venue use fees for MANAGER organized events, provision of services to other event organizers, sales of sponsorships, food and beverage, ticket surcharges and merchandise sales.

The performance of the CITY of any of its obligations under this Agreement shall be subject to and contingent upon the availability of funds lawfully expendable for the purposes of this Agreement for the current term and any future term.

5. PAYMENTS

The MANAGER shall collect all fees due and owing to the City as described herein and deliver to the CITY within ten (10) business days of the completion of said Event.

6. INSURANCE

The MANAGER shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the MANAGER, its agents, representatives, employees, or subcontractors. The cost of such insurance shall be the sole responsibility of the MANAGER. Such insurance shall be in accord with the following:

A. General Insurance Requirements

1. During the term of the Agreement, the MANAGER shall provide, pay for, and maintain with insurance companies reasonably satisfactory to the CITY of Key West (CITY), the types of insurance described herein.
2. All insurance shall be from responsible insurance companies eligible to do business in the

State of Florida. The required policies of insurance shall be performable in Monroe County, Florida, and shall be construed in accordance with the laws of the State of Florida.

3. The CITY shall be specifically included as an additional insured on the MANAGER's Commercial General Liability, Umbrella Liability and Business Automobile Liability policies and shall also provide the "Severability of Interest" provision (a/k/a "Separation of Insured's" provision). The CITY's additional insured status should be extended to the Completed Operations coverage. ISO's standard "Blanket Additional Insured" will not be acceptable.
4. The MANAGER shall deliver to the CITY, prior to the CITY issuing the Notice to Proceed, properly executed "Certificate(s) of Insurance", setting forth the insurance coverage and limits required herein. The Certificates must be personally, manually signed by the authorized representative of the insurance company(s) shown on the Certificate of Insurance. In addition, certified, true and exact copies of the insurance policies required herein shall be provided to the CITY, on a timely basis, if requested by the CITY.
5. The MANAGER shall take immediate steps to make up any impairment to any Aggregate Policy Limit upon notification of the impairment. If at any time the CITY requests a written statement from the insurance company(s) as to any impairment to the Aggregate Limit, the MANAGER shall promptly authorize and have delivered such statement to the CITY.
6. The MANAGER authorizes the CITY and/or its insurance consultant to confirm all information furnished to the CITY, as to its compliance with its Bonds and Insurance Requirements, with the MANAGER's insurance agents, brokers, surety, and insurance carriers.
7. All insurance coverage of the MANAGER shall be primary to any insurance or self-insurance program carried by the CITY. The CITY's insurance or self-insurance programs or coverage shall not be contributory with any insurance required of the MANAGER in this Agreement.
8. The acceptance of delivery to the CITY of any Certificate of Insurance evidencing the insurance coverage and limits required in the Agreement does not constitute approval or agreement by the CITY that the insurance requirements in the Agreement have been met or that the insurance policies shown in the Certificates of Insurance are in compliance with the Agreement requirements.
9. No work or occupancy of the premises shall commence or continue at the site unless and until the required Certificate(s) of Insurance are in effect and the written Notice to Proceed is issued to the MANAGER by the CITY.
10. The insurance coverage and limits required of the MANAGER under this Agreement are designed to meet the minimum requirements of the CITY. They are not designed as

a recommended insurance program for the MANAGER. The MANAGER alone shall be responsible for the sufficiency of its own insurance program. Should the MANAGER have any question concerning its exposures to loss under this Agreement or the possible insurance coverage needed therefore, it should seek professional assistance.

11. The CITY and its Tenants may continue to operate their businesses on the CITY's premises during the activities of the MANAGER. No property used in connection with their activities shall be considered by the MANAGER's insurance company as being in the care, custody, or control of the MANAGER.
12. Should any of the required insurances specified in this Agreement provide for a deductible, self-insured retention, self-insured amount, or any scheme other than a fully insured program, and the insurance company providing the coverage will not agree in writing to pay the deductible or retention including the costs of defense as provided for in its policy without consideration of the deductible or retention in the settlement of insured claims, then the MANAGER agrees, if required by the CITY, to provide, pay for, and maintain a surety bond acceptable to the CITY from an insurance company acceptable to the CITY (or a standby irrevocable Letter of Credit acceptable to the CITY) in the amount of the deductible or retention, guaranteeing payment of the deductible or retention. Said guarantee is to continue for four (4) years following completion of the Work.
13. Should any of the required insurances specified in this Agreement provide for a deductible, self-insured retention, self-insured amount, or any scheme other than a fully insured program, and the insurance company providing the coverage will not agree in writing to pay the deductible or retention including the costs of defense as provided for in its policy without consideration of the deductible or retention in the settlement of insured claims, then the MANAGER agrees, if required by the CITY, to provide, pay for, and maintain a surety bond acceptable to the CITY from an insurance company acceptable to the CITY (or a standby irrevocable Letter of Credit acceptable to the CITY) in the amount of the deductible or retention, guaranteeing payment of the deductible or retention. Said guarantee is to continue for four (4) years following completion of the Work.
14. All the required insurance coverage shall be issued as required by law and shall be endorsed, where necessary, to comply with the minimum requirements contained herein.
15. All policies of insurance required herein shall require that the insurer give the CITY thirty (30) days advance written notice of any cancellation, intent not to renew any policy and/or any change that will reduce the insurance coverage required in this Agreement, except for the application of the Aggregate Limits Provisions.
16. Renewal Certificate(s) of Insurance shall be provided to the CITY at least twenty (20) days prior to expiration of current coverage so that there shall be no interruption in the work due to lack of proof of the insurance coverage required of the MANAGER in this Agreement.

17. If the MANAGER utilizes subcontractors to perform any work governed by this Agreement, the MANAGER will make commercially reasonable efforts to ensure all subcontractors maintain the same types and amounts of insurance required of the MANAGER. In addition, the MANAGER will ensure that the MANAGERs and subcontractors insurances comply with all the Insurance Requirements specified for the MANAGER contained within this Agreement. The MANAGER shall obtain Certificates of Insurance comparable to those required of the MANAGER from all subcontractors. Such Certificates of Insurances shall be presented to CITY upon request. MANAGER's obligation to ensure that all sub-contractor's insurance as provided herein shall not exculpate MANAGER from the direct primary responsibility MANAGER has to CITY hereunder. CITY may look directly to MANAGER for any such liability hereunder and shall not be obligated to seek recovery from any sub-contractor or under such subcontractor's insurance coverages.

B. Specific Insurance Coverages and Limits

1. All requirements in this Insurance Section shall be complied with in full by the MANAGER unless excused from compliance in writing by the CITY.
2. The amounts and types of insurance must conform to the following minimum requirements. Current Insurance Service Office (ISO) or National Council on Compensation Insurance (NCCI) policies, forms, and endorsements or broader shall be used where applicable. Notwithstanding the foregoing, the wording of all policies, forms, and endorsements must be acceptable to the CITY.
3. Workers' Compensation and Employers' Liability Insurance shall be maintained in force during the term of this Agreement for all employees engaged in this work under this Agreement, in accordance with the laws of the State of Florida, and, if applicable to the Work involved, shall include U.S. Longshore and Harbor Workers' Compensation Act Coverage. The minimum acceptable limits shall be:

| | |
|-----------------------|--|
| Workers' Compensation | Florida Statutory Requirements |
| Employer's Liability | \$1,000,000.00 Limit Each Accident |
| | \$1,000,000.00 Limit Disease Aggregate |
| | \$1,000,000.00 Limit Disease Each Employee |

4. Commercial General Liability Insurance shall be maintained by the MANAGER on the Full Occurrence Form. Coverage shall include but not be limited to Premises and Operations, Personal Injury, Contractual for this Agreement, Independent MANAGERs, Broad Form Property Damage, and Products & Completed Operations Coverage and shall not exclude coverage for the "X" (explosion), "C (collapse) and "U" (underground) Property Damage Liability exposures. Limits of coverage shall not be less than:

| | |
|---|---|
| Bodily Injury & Property Damage Liability | \$3,000,000.00 Combined Single Limit each Occurrence and aggregate. |
|---|---|

Completed Operations Liability Coverage shall be maintained by the MANAGER for a period of not less than four (4) years following Final Completion and Acceptance by the CITY.

The use of an Excess and/or Umbrella policy shall be acceptable if the level of protection provided by the Excess and/or Umbrella policy is equal to or more comprehensive than the Primary General Liability policy.

5. Business Automobile Liability Insurance shall be maintained by the MANAGER as to ownership, maintenance, use, loading and unloading of all owned, non-owned, leased or hired vehicles with limits of not less than:

| | |
|--|--|
| Bodily Injury | \$1,000,000.00 Limit Each Accident |
| Property Damage Liability | \$1,000,000.00 Limit Each Accident |
| or Bodily Injury & Property Damage Liability | \$1,000,000.00 Combined Single Limit Each Accident |

6. Full Liquor Liability Insurance shall be maintained by the MANAGER with minimum acceptable limits of \$1,000,000. Host Liquor Liability will not be sufficient to satisfy this requirement.

7. If car valet services will be provided, Garage Keepers Legal Liability Insurance shall be maintained by the MANAGER that will extend coverage for damage to attendee's vehicles. The minimum acceptable limits for such coverage shall be \$1,000,000 Combined Single Limit and a per car limit of no less than \$5,000.

8. Cyber Liability Insurance shall be maintained by the MANAGER that includes coverage for:

- Data Breach
- Network Security Liability
- Internet Media
- Network Extortion
- Regulatory Proceedings
- PCI Fines and Costs

The minimum acceptable limits of such coverage shall not be less than \$2,000,000.

7. INDEMNIFICATION

To the fullest extent permitted by law, the MANAGER expressly agrees to indemnify and hold harmless the City of Key West, their officers, directors, agents and employees (herein called the "indemnitees") from any and all liability for damages, including, if allowed by law, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in establishing the

indemnification and other rights agreed to in this Paragraph, to persons or property, caused in whole or in part by any act, omission, or default by MANAGER or its sub-contractors, material men, or agents of any tier or their employees, arising out of this Agreement or its performance, including any such damages caused in whole or in part by any act, omission or default of any indemnitee, but specifically excluding any claims of, or damages against an indemnitee resulting from such indemnitee's gross negligence, or the willful, wanton or intentional misconduct of such indemnitee or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the MANAGER or its sub-contractors, material men or agents of any tier or their respective employees.

8. AUDITS, RECORDS AND RECORDS RETENTION

The MANAGER agrees:

- A. To establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all revenues and expenditures of funds reflected herein.
- B. To retain all MANAGER records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement for a period of five (5) years after termination of the Agreement, or if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Agreement.
- C. Upon completion or termination of the Agreement and at the request of the CITY and at the CITY'S sole cost and expense, the MANAGER will cooperate with the CITY to facilitate the duplication and transfer of any said records or documents during the required retention period as specified in paragraph B. above. The CITY may reproduce any written materials generated as a result of the MANAGER's work.
- D. To assure that all records required to be maintained by the MANAGER hereby shall be subject at all reasonable times to inspection, review, or audit by CITY, Federal, State, or other personnel duly authorized by the CITY, at CITY's sole cost and expense.
- E. Persons duly authorized by the CITY and Federal auditors, pursuant to 45 CFR, Part 92.36(1)(10), shall have full access to and the right to examine any of the MANAGER's records and documents related to this Agreement, regardless of the form in which kept, at all reasonable times for as long as those records are retained.
- F. To include these aforementioned audit and record keeping requirements in all approved subcontracts and assignments.

9. TERMINATION

The CITY may terminate this Agreement with cause, by giving the MANAGER not less than thirty (30) days prior written notice of its intent to terminate and after expiration of a thirty (30) cure period. The CITY acknowledges that contractual commitments extending beyond the termination may have been made by MANAGER as permitted herein and CITY will cooperate with the MANAGER in providing the services contractually committed. MANAGER may terminate this Agreement for cause by giving the CITY hereto not less than thirty (30) days prior written notice of its intent to terminate.

10. NOTICE

- A. Upon execution of the Agreement, the MANAGER shall provide in writing, the name of the MANAGER's staff member who will be responsible for the submission of all MANAGER's records, reports, invoices, or documents to the CITY for the administration of this Agreement.
- B. All invoices must be submitted electronically to the Finance Director, City of Key West, PO Box 1409, Key West, FL 33040.
- C. All notices, correspondence, documents, records, or reports required hereunder shall be in writing sent by United States certified mail, postage prepaid, return receipt requested, overnight courier or by hand delivery. All notices required under this Agreement shall be given to the Parties at the addresses below or at such other place as the Parties may designate in writing.

Notice to MANAGER: Rams Head Promotions of Key West, LLC
512 Eaton Street
Key West, FL 33040

Notice to the CITY: City Manager
City of Key West
PO Box 1409
1300 White Street
Key West, FL 33040

11. CONTRACT MANAGEMENT

- A. The City Manager or designee shall be and is hereby authorized as the representative of the CITY, responsible for the day-to-day operational management of the provisions of the Agreement, including all matters related to the payment for Professional Management Services rendered by the MANAGER hereunder, unless or until a written notice is provided to the MANAGER stating otherwise.

For the purpose of this section, a MANAGER's representative shall include but not be limited to, the person's employee, partner, officer, director, consultant, lobbyist, or any actual or potential subcontractor or consultant of the MANAGER.

The provisions of this section shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before selection committees, contract negotiations during any public meetings, presentations made to the Board, and protest hearings.

12. INTENTIONALLY OMMITTED

13. MISCELLANEOUS PROVISIONS

A. Status.

The MANAGER at all times relevant to this Agreement shall be an independent MANAGER and in no event shall the MANAGER nor any employees or subconsultant under it be considered to be employees of the CITY.

B. Conflicting Employment.

For the duration of this Agreement, the MANAGER shall not enter into any other agreements that would ethically conflict with its obligations under this Agreement.

C. Licenses.

The MANAGER shall be responsible for obtaining and maintaining its city occupational license and any licenses required pursuant to the laws of Monroe County, the CITY, or the State of Florida. Should the MANAGER, by reason of revocation, failure to renew, or any other reason, fail to maintain its license(s) to operate, the MANAGER shall be in default as of the date such license is lost.

D. Assignments.

This Agreement shall not be assigned or sublet as a whole or in part without the prior written consent of the CITY nor shall the MANAGER assign any monies due or to become due to him hereunder without the prior written consent of the CITY.

E. Monitoring.

The MANAGER shall permit persons duly authorized by the CITY to inspect any records, papers, documents, facilities, goods, and services of the MANAGER which are relevant to this Agreement and interview any clients and employees of the MANAGER to assure the CITY of the MANAGER's satisfactory performance of the terms and conditions of this Agreement.

F. Public Entity Crimes Statement.

In accordance with Section 287.133, Florida Statutes, MANAGER hereby certifies that to the best of his knowledge and belief neither MANAGER nor his affiliates have been convicted of a public entity crime. MANAGER and his affiliates shall provide the CITY with a completed public entity crime statement form no later than January 15 of each year this Agreement is in effect. Violation of this section by the MANAGER shall be cause for termination of this Agreement by the CITY.

G. Unauthorized Alien(s) And E-Verify.

The MANAGER agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this Agreement. The CITY shall consider the employment or

utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for termination of this Agreement by the CITY.

1. MANAGER agrees that it will enroll and participate in the federal E-Verify Program for Employment Verification. MANAGER further agrees to provide to the CITY, within thirty days of the effective date of this contract/amendment/extension, documentation of such enrollment in the form of a copy of the E-Verify "Edit Company Profile" screen", which contains proof of enrollment in the E-Verify Program (this page can be accessed from the "Edit Company Profile" link on the left navigation menu of the E-Verify employer's homepage).
2. MANAGER further agrees that it will require each subcontractor that performs work under this Agreement to enroll and participate in the E-Verify Program within sixty days of the effective date of this Agreement/amendment/extension or within sixty days of the effective date of the Agreement between the MANAGER and the subcontractor, whichever is later. The MANAGER shall obtain from the subcontractor(s) a copy of the "Edit Company Profile" screen indicating enrollment in the E-Verify Program and make such record(s) available to the CITY upon request.
3. MANAGER will utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of: (a) all persons employed during the term of the Agreement by MANAGER to perform employment duties within Florida; and (b) all persons (including subcontractors) assigned by MANAGER to perform work pursuant to the Agreement.
 - a. MANAGER must use E-Verify to initiate verification of employment eligibility for all persons employed during the term of the Agreement by MANAGER to perform employment duties within Florida within 3 business days after the date of hire.
 - b. MANAGER must initiate verification of each person (including subcontractors) assigned by MANAGER to perform work pursuant to the Agreement within 60 calendar days after the date of execution of this Agreement or within 30 days after assignment to perform work pursuant to the Agreement, whichever is later.
4. MANAGER further agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the CITY or other authorized state entity consistent herewith.
5. Compliance with the terms of this Employment Eligibility Verification provision is made an express condition of this Agreement and the CITY may treat a failure to comply as a material breach of this Agreement.

H. Non-Waiver

Failure by the CITY to enforce or insist upon compliance with any of the terms or conditions of this Agreement or failure to give notice or declare this Agreement terminated shall not constitute a general waiver or relinquishment of the same, or of any other terms, conditions or acts but the same shall be and remain at all times, in full force and effect.

I. Modifications.

This Agreement constitutes the entire understanding of the Parties. Any modifications to this Agreement must be in writing.

J. Venue and Waiver of Jury Trial.

Venue for all actions arising out of this Agreement shall lie in Key West, Monroe County, Florida. Both parties to this Agreement waive trial by jury on any action brought to enforce or otherwise related to this agreement.

K. Construction.

The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida.

L. Compliance With Anti-Discrimination Legislation.

In providing, or contracting to provide services, programs or activities, maintaining facilities, and otherwise performing obligations under this Agreement, the MANAGER shall comply with the Americans with Disabilities Act, the Civil Rights Act of 1964, as amended, the Florida Civil Rights Act of 1992, and any other federal or state law that prohibits discrimination on the basis of race, color, national origin, religion, sex, age, marital status, or disability.

M. Headings In This Agreement.

The headings in this Agreement are for convenience only, confirm no rights or obligations in either Party, and do not alter any terms of this Agreement.

N. Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, shall remain in full force and effect as if such invalid or unenforceable term had never been included.

WHERETO, the Parties have set their hands and seals effective the date whereon the last Party executes this Agreement.

Rams Head Promotion of Key West, LLC,
a Florida Limited Liability Company

CITY OF KEY WEST

Bill Muehlhauser
General Manager

Albert Childress,
City Manager

DATE

DATE

WITNESS:

ATTEST:

(Signature of Witness)

Cheryl Smith
City Clerk

(Print Name of Witness)

(Signature of Witness)

(Print Name of Witness)

DRAFT

Fee Schedule

Venue Fees to the City shall be based on the following fee structure. For sake of clarity, either Ticket Fees or Amphitheatre Rental Fee shall apply but not both. For one-day events, Section A below shall apply. For multiple day events, Section B below shall apply.

A. Ticket Fee

The CITY shall receive for the use of the VENUE the following event ticket fees. The MANAGER has the right to distribute 100 complimentary tickets not subject to fees.

One Day Event Ticket Fees:

- \$5.00 per ticket for any tickets sold with a Base Price greater than or equal to \$100.00
- \$3.00 per ticket on all daily tickets sold with a Base Price greater than or equal to \$60.00
- \$2.00 per ticket on all daily tickets sold with a Base Price between \$40.00 - \$59.99
- \$1.00 per ticket on all daily tickets sold with a Base Price less than \$40.00
- \$1.00 per attendee for private events

Base Price is defined as the base price of a ticket but excludes any add-on perks such as meet and greet, early admission or additional merchandise of which is provided to customer at pass through cost.

B. Amphitheatre Rental Fee:

- City to receive 50% of any rental fee paid to MANAGER for the rental of the Amphitheatre to a third party or subcontractor, examples include Mile Zero Fest, Rock Island Fest, Key Western Fest, Key West Literary Seminar Fest, etc.

C. Maintenance Fees:

- \$1.00 per paid ticket as a maintenance fee used for regular upkeep and maintenance of the Amphitheatre. For any venue rental, RENTER will pay said fee to MANAGER who will in turn pay the fee to the CITY. For multi-day events, the fee will apply per attendee, per day.

Food and Beverage

There shall be no fees payable to the CITY from MANAGER'S Food and Beverage Sales.

Merchandise

There shall be no fees payable to the CITY from MANAGER'S Merchandise Sales.