

Donation Agreement

This AGREEMENT is made and entered into this ___ day of _____, 201_, by and between Robert E. Highsmith, as Personal Representative of the Estate of Joseph R. Liszka, deceased, whose address is 3158 Northside Drive, Key West, Florida, 33040, hereafter referred to as the "DONOR", the City of Key West, Florida, a municipal corporation of the State of Florida, whose address is P.O Box 1409, Key West, Florida 33041, hereafter referred to as the "CITY". This agreement shall be effective on the date of execution of the last party to sign the AGREEMENT.

WHEREAS, DONOR desire to donate to the CITY a fountain to be constructed and installed in the Jose Marti Pond located at the southeast corner of Roosevelt Boulevard and Eisenhower Drive; and

WHEREAS, CITY desires to accept the donation of the fountain along with funding to operate the said fountain; and

WHEREAS, the parties wish to reduce to writing the rights and responsibilities of the parties.

IN CONSIDERATION of the mutual promises and covenants contained herein, the parties agree as follows:

Article 1. Obligations of the Donor

1. DONOR, at his sole cost and expense, will cause to be designed, installed and built in the Jose Marti Pond a fountain and a commemorative plaque/monument associated therewith. Prior to installation, the design and scope of the fountain and commemorative plaque/monument will be approved by the CITY and the Art in Public Places Committee. DONOR shall be responsible for obtaining all necessary permits and other approvals for the installation of the fountain.
2. In addition to the construction and installation of the fountain and commemorative plaque/monument, DONOR shall donate the sum of \$ 8,000.00 to the CITY, which sum shall represent the anticipated

operating expenses, including, but not limited to, electricity, filter cleaning, zinc replacements, valve replacements, and light bulb replacements for of the fountain for the two year period commencing on the effective date of this Agreement. Included in this sum shall be a \$1,000.00 reserve for the removal of the fountain in the event CITY elects to remove the fountain and commemorative plaque/monument as provided for herein below.

3. With the assistance of Beth Moyes and Dan Reynen, DONOR shall use his best efforts attempt to secure additional funding for the maintenance and operating expenses of the fountain through an annual sponsorship program. However, nothing herein shall be interpreted to imply that DONOR guarantees any result and DONOR assumes no additional liability for the success of the sponsorship program.
4. In connection with the fountain, DONOR shall put in place an education/information component through the website www.KeysFountains.com, which will include text, photos, and audio and video clips with information regarding fountains throughout the Florida Keys. Any fountain that is accessible to the general public can be listed with details posted for visitors to get more information. This website shall be maintained at no cost to the CITY.

Article 2. Obligations of the City

5. Upon CITY's acceptance of the delivery of the completed and operational fountain and the funds referred to in paragraph 2 above, and to the extent authorized by law, the City of Key West hereby agrees to defend, indemnify, and hold harmless DONOR from any and all loss, damage, liability, or expense in connection with any action, proceeding, or claim for injury, including death to any person or persons, or damage to, loss of the use of, or loss of tangible property of any person, firm, or corporation, including the parties hereto, arising or resulting out of the performance of this contract, but only to the extent caused or incurred by the negligence or other actionable fault of the City of Key West or its agent. This obligation shall be limited to a maximum amount of the sovereign immunity limits of liability prescribed in 768.28, Florida Statutes, namely \$200,000 per person or \$300,000 per occurrence, and the City of Key West will have no further obligation to defend or hold harmless DONOR in the event said limits are paid or are otherwise exhausted. Nothing contained herein shall be construed to alter or waive the City's sovereign immunity under 768.28, Florida Statutes. DONOR acknowledges that indemnification by the City of Key West may be unenforceable under Florida law, and that the City of Key West does not

waive any legal defense based on the unenforceability of such indemnification position.

6. Upon the CITY's acceptance of the delivery of the completed and operational fountain and the funds referred to in paragraph 2 above, the fountain and commemorative plaque/monument shall become the sole property of the CITY. Thereafter, CITY shall be solely responsible for all expenses associated with operating and maintaining the fountain, and DONOR shall have no further responsibility or liability for those expenses. Further, upon the CITY's acceptance of the delivery of the completed and operational fountain and the funds referred to in paragraph 2 above, the CITY shall have the unfettered right, in CITY's sole discretion, to alter or remove the fountain and commemorative plaque/monument. In the event CITY removes the fountain and commemorative plaque/monument at a time when all or a portion of the funds referred to in paragraph 2 above remain unspent, CITY shall return the balance of those funds to DONOR.

Article 3. General Legal Provisions

7. If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
8. In the event of litigation affecting the rights of either party under this Agreement, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights hereunder, including those pertaining to appeals.

Article 4. Signatures

This AGREEMENT constitutes the entire AGREEMENT, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

IN WITNESS WHEREOF, the parties execute below:

CITY OF KEY WEST, FLORIDA

By: _____
James Scholl, City Manager

ATTEST:

Cheryl Smith, City Clerk

Dated this _____ day of _____, 201_

ROBERT E. HIGHSMITH, AS
PERSONAL REPRESENTATIVE
OF THE ESTATE OF JOSEPH R.
LISZKA, DECEASED

Robert E. Highsmith

Dated this _____ day of _____, 201_