



MEMORANDUM

Date: November 14, 2024

To: Honorable Mayor and Commissioners

Via: Todd Stoughton
Interim City Manager

From: Gary Moreira
Senior Property Manager

Subject: **File 24-6586 Renewal of Agreement between the City of Key West and the Key West Cultural Preservation Society**

Introduction

This is a request to enter into a First Amendment to Agreement for renewal of the agreement between the City of Key West and the Key West Cultural Preservation Society, Inc., (CPS) a Florida Not-for-Profit Organization for the purposes of providing a public “Sunset Celebration” and artisans market at Mallory Square.

Background

The City previously entered into an agreement with the Cultural Preservation Society, Inc. in 2004, Resolution 04-131, for this use, at this location, in support of the city’s arts and culture. The agreement expired on March 22, 2014, was renewed again for another five years under Resolution 14-349 and again in 2019 under Resolution 19-367. That agreement will expire on November 30, 2024, and a First Amendment to Agreement has been drafted and is presented here, for your consideration.

Members of CPS recently met with Staff to ask for a number of concessions and considerations for the agreement going forward, citing concerns about the viability of the Sunset Celebration under the terms of the current agreement and their struggles since COVID. Among other items, CPS is asking for a 93% reduction in their monthly use fee from \$7,268 to \$500, to “attract more participants” by lowering setup fees and perhaps hire a fundraiser. (See attached from CPS). CPS was previously granted a 14% reduction in user fees in 2019 under the current agreement. Approval of the requested reduction would waive approximately \$81,000.00 per year over a five-year term.

When considering concessions, modifications or renewal of any agreement, Staff reviews payment history and compliance with the current agreement. The current CPS agreement requires CPS to provide an externally prepared audit every three years. The City did not receive an audit as required during year three of the term and while CPS recently provided an “Independent Auditor’s Report” from a CPA, this is a simple 3-page report covering only the period October 2022 thru September 2023. (Also attached). Our agreement also requires CPS to prepare and deliver quarterly financial statements. Approximately one year ago, and at our request, Staff did receive some non-certified financials and tax returns, however no other quarterly reports had or have been received in accordance to the agreement. Finally, under the agreement, CPS is to provide proof of insurance during the entire term of the agreement. CPS has just assured us that coverage has never lapsed, however the City’s finance department had to request an updated certificate over a period of six months before finally receiving the updated certificate.

Staff recommends the following proposed terms for renewal of the agreement currently in place:

Procurement

Demised Premises: Mallory Square and Mallory Square Dock.

Term: One-year commencing December 1, 2024.

Use Fee: \$7,628.31 per month.

Recommendation:

Clearly the Sunset Celebration is a long time Key West tradition celebrating visual and performing arts and Staff is sympathetic to concerns voiced by members of the CPS board related to the ongoing financial viability of the production. However, Staff has reservations concerning the long-term extension of this agreement or granting any concessions, given CPS’ history of non-compliance under the current agreement. Staff has been provided with only 12 out of 60 plus months of certified financial history including nothing more recent than September of 2023. Had CPS been reporting and providing financials as required under the agreement Staff could have drawn a verifiable conclusion as to the viability of the production and then taken under consideration concessions or other modifications to the agreement. Today there is no verifiable way of gauging the viability of the program or having the confidence to recommend changes. In the interest of preserving the program, Staff is recommending the City execute the attached First Amendment to Agreement extending for an additional twelve months as-is. During that time, CPS will have the opportunity to come fully into compliance providing quarterly financial reports plus an Independent Auditor’s Report, (as recently provided), for the period October 1, 2024 through September 30, 2025. At the time of renewal in 2025, staff will be able to consider and make recommendations based on the full financial picture presented by CPS. Any concessions should be tied to agreed upon measurable goals.

Exhibits:

First Amendment to Lease