

RESOLUTION NO. 18-146

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED LEASE AGREEMENT BETWEEN THE CITY AND OLD FIRE HOUSE PRESERVATION, INC. FOR 1026 GRINNELL STREET; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Old Firehouse Preservation, Inc. has requested a below-market lease in order to continue to operate a museum for the display of the history of the Key West Fire Department for public benefit consistent with City Code of Ordinances section 2-941(c); and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached Lease Agreement between the City and Old Fire House Preservation, Inc. is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held
this 1st day of May, 2018.

Authenticated by the Presiding Officer and Clerk of the
Commission on 2nd day of May, 2018.

Filed with the Clerk on May 2, 2018.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Clayton Lopez	<u>Yes</u>
Commissioner Sam Kaufman	<u>Yes</u>
Commissioner Richard Payne	<u>Yes</u>
Commissioner Margaret Romero	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK

EXECUTIVE SUMMARY

TO: City Commission

CC: Jim Scholl

FR: Marilyn Wilbarger, RPA, CCIM

DT: April 2, 2018

RE: Renewal of the Lease Agreement for Old Fire House Preservation Inc. at 1026 Grinnell Street.



ACTION STATEMENT:

This is a request to enter into an under-market lease renewal agreement with Old Fire House Preservation Inc. a Florida Non-Profit Corporation, for the occupancy of the city owned property at 1026 Grinnell Street.

BACKGROUND:

The tenant has occupied space at the Grinnell Street location for several years and is requesting a lease renewal, as follows:

PREMISES: 1026 Grinnell Street building and land as shown on Exhibit "A" of the lease.

TERM: Five (5) years with a ninety (90) day cancellation provision by either party.

USE: Continuous operation of a museum for the display of the history of the Key West Fire Department with the ability to host events on site. The museum will be open, at a minimum, five days a week, Tuesday through Saturday from 10:00 AM to 3:00 PM. Tenant may permit a caretaker to reside on the property for the purposes of safeguarding the museum property.

RENT: \$1.00 per year

AUDIT: The rent subsidy is subject to City Ordinance Sec. 2-872 Audits and Inspections, which provides that the city may inspect the books and records of the tenant and audit the program results to determine whether the objectives of funding established by the city are being met.

INSURANCE: Tenant must provide a commercial liability policy naming the City of Key West as an additional insured

EXPENSES: The Tenant will pay for operating costs including all utilities, repairs and maintenance, replacements and renovations necessary to keep the premises in good repair and condition.

IMPROVEMENTS: The Tenant will accept the space in an "as is" condition

FINANCIAL: The Tenant shall pay the costs of utilities, maintenance and repairs to the demised premises eliminating those City expenses which is consistent with the financial treatment of other non- profit enterprises that occupy city property.

RECOMMENDATION:

Staff recommends the continued support of the Old Fire House Museum as an integral part of our island's history.

ATTACHMENTS:

Lease

Corporate Filings

Lease Agreement

between

City of Key West

as Landlord

and

Old Fire House Preservation, Inc.

as Tenant

Dated May 1, 2018

THIS LEASE, made and entered into at Key West, Monroe County, Florida, this 1st day of May, 2018 by and between THE CITY OF KEY WEST, a Municipal Corporation whose address is P.O. Box 1409, Key West, Florida, 33041, (hereinafter "LANDLORD"), and Old Fire House Preservation, Inc. a Florida 501 (C)(3) Not for Profit exempt corporation whose address is 1024 Grinnell Street Key West, Fl 33040 (hereinafter "TENANT").

WITNESSETH:

That the LANDLORD and the TENANT, for and in consideration of their respective obligations contained herein, agree as follows:

1. DEMISE. The LANDLORD does hereby lease to the TENANT, and the TENANT does hereby lease from the LANDLORD, the following described premises, situated at 1024 Grinnell Street Key West, in Monroe County, Florida (hereinafter referred to as "Premises") pursuant to the drawing attached hereto and incorporated as **Exhibit A**.

2. TERM. The term of this Lease shall be for five (5) years, which term shall commence on April 1, 2018, and shall end at midnight on March 31, 2023. Either party may terminate this lease by giving the other party ninety (90) days advance written notice by certified mail return receipt requested.

3. RENT. The TENANT agrees to pay to the LANDLORD an annual rent for the Premises of One Dollar (\$1.00) per year, which rental amount shall be paid on an annual basis each year of the term of this Lease. The TENANT additionally agrees

to pay to LANDLORD any sales, use, excise, ad valorem, or other tax imposed or levied against rent or any other charge or payment which tax has been imposed or levied by any governmental agency having jurisdiction thereof, including any new taxes imposed during the term of this Lease which are in addition to or in substitution for any such tax which is presently imposed, and the TENANT agrees to make payment at the time said tax becomes due.

4. USE OF THE PREMISES. The TENANT shall use the Premises for the continuous operation of a museum for the display of the history of the Key West Fire Department. TENANT may also hold events that comply with all applicable laws, statutes and ordinances governing such use. Further, should TENANT receive all planning and other governmental approvals (including BPAS unit if deemed applicable), TENANT may permit a caretaker or other individual to reside on the property in conjunction with safeguarding museum property. It is understood that any fees, taxes or other costs associated with such use are solely the responsibility of the TENANT.

In addition, TENANT further agrees:

A. To operate 100% of the museum for the entire term of the lease during all reasonable hours established by the LANDLORD which will be, at a minimum, five days a week -Tuesday through Saturday from 10:00 AM to 3:00 PM which may be changed, from time to time, by written approval of the City Manager or the City Manager's Designee. TENANT shall operate the museum pursuant to the highest reasonable standards of its business category;

B. Not to commit waste in the Premises and to keep the Premises in a safe, neat, clean and orderly condition and to maintain the Premises in good condition;

C. Not to use the Premises or permit the same to be used in any manner that violates any law, ordinance, rules, or regulation of the LANDLORD, or other governmental agencies, as existing or promulgated during the term hereof, or in a manner that would constitute a hazardous use of the Premises or violate any insurance policy of the TENANT or the LANDLORD;

D. To take no action that would: (i) violate the LANDLORD's contracts or (ii) cause any work stoppage or cause any manner of interference with LANDLORD;

E. To abide by and observe all rules and regulations established from time to time by the LANDLORD and the LANDLORD's insurance carrier;

F. To obtain and maintain all licenses, permits, and other approvals necessary to conduct the TENANT's business during the Lease term.

G. TENANT shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances or materials which TENANT or its agents brought onto the Property. TENANT shall not allow storage or use of such materials or substances in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into the Demised Premised or the Property any such materials or substances except to use in the ordinary course of TENANT'S business, and then only after written notice is given to LANDLORD of the identity of such substances or materials. Without limitation, hazardous substances and materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., any applicable state or local law and

the regulations adopted under these acts. In addition, TENANT shall execute affidavits, representations and the like from time to time at LANDLORD'S request concerning TENANT'S best knowledge and belief regarding the presence of hazardous substances or materials in the Demised Premises. In all events, TENANT shall indemnify LANDLORD in the manner elsewhere provided for in this Lease against any liability resulting from any release of hazardous substances or materials in the Demised Premises or Property by TENANT or its agents, while TENANT is in possession or caused by TENANT or persons acting under TENANT which is due to hazardous substances that TENANT or its agents brought onto the Demised Premises or Property.

5. COVENANT OF QUIET POSSESSION. So long as the TENANT pays all of the rent and charges due herein, TENANT shall peaceably and quietly have, hold, and enjoy the Premises throughout the term of this Lease without interference or hindrance by the LANDLORD or LANDLORD's agents.

6. INSURANCE; INDEMNIFICATION.

A. Tenant will be required to comply with the following minimum insurance requirements:

Commercial General Liability Limits:

\$2,000,000 Aggregate

\$1,000,000 Each Occurrence

\$2,000,000 Products-Comp / Op Aggregate

\$1,000,000 Personal & Advertising Injury

\$300,000 Fire Damage / Legal

Coverage must include the following:

- Contractual Liability
- Commercial Form
- CG2010 (1185) or Equivalent
- Broad Form Property Damage
- No exclusion for XCU
- Premises / Operations
- Products / Completed Operations
- Independent Contractors (if any part of the work is to be subcontracted out)
- Personal Injury

The above reflects the minimum requirements for tenancy in the City of Key West. Any requirements found in a contract that are of a higher standard will prevail.

The City of Key West must be named as an additional insured under all policies. Tenant's general liability shall be written on a primary and non-contributory basis. Certificates of insurance must be accompanied by a copy of the additional insured endorsement (CG 20101185 or combination of CG20100704 and CG20370704 will be accepted).

Tenant must obtain an endorsement from their carrier that waives and relinquishes any right of subrogation against the City of Key West and its agents, representatives, employees, and affiliates they might possess for any policy of insurance provided under this requirement or under any state or federal worker's compensation or employer's liability act.

Tenant's policies must be endorsed to give no less than thirty (30) days notice to the City in the event of material change or cancellation.

The City of Key West must be given a certificate of insurance showing that the above requirements have been met. The certificate of insurance must remain current and must include copies of the requested endorsements (additional insured, cancellation notice, and waiver of subrogation) in order to fulfill tenant's lease obligations.

B. To the fullest extent permitted by law, the TENANT 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 TENANT or its subcontractors, 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 TENANT or its subcontractors, material men or agents of any tier or their respective employees.

The indemnification obligations under this Agreement shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits

payable by or for the TENANT under Workers' Compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the TENANT or of any third party to whom TENANT may subcontract a work. This indemnification shall continue beyond the date of termination of the Agreement.

7. ASSIGNMENT AND HYPOTHECATION. This Lease is not transferable or assignable, except as provided by Resolution of the Key West City Commission. The TENANT may not sublet the Premises or any part thereof. Any assignment or sub-letting, even with the LANDLORD's consent, shall not relieve the TENANT from the obligation to keep and be bound by the agreements of this Lease. The acceptance of Rent from any other person shall not be deemed to be a waiver of any of the agreements of this Lease or to be consent to the assignment for benefit of creditors or by operation of law and shall not be effective to transfer any rights to any assignee without prior consent of the LANDLORD.

8. DEFAULT CLAUSE.

A. It is covenanted and agreed by LANDLORD and TENANT that in case at any time default shall be made in the payment of rent, or if the TENANT shall fail to pay any of the taxes or assessments herein provided for, or in case of the sale of or forfeiture of the Premises or any part thereof during the demised term for non-payment of any tax or assessment, or in case the TENANT shall fail to keep the required insurance, or shall fail to spend insurance money, as herein provided for, or if the TENANT shall

fail to perform any of the covenants of this Lease, then, in any of such events, TENANT shall be subject to eviction pursuant to Chapter 83, Florida Statutes.

B. The LANDLORD may have such other remedies as the law and this instrument affords, and the TENANT covenants and agrees that upon the termination of the demised term, at such election of the LANDLORD, or in any other way, the TENANT will surrender and deliver up the Premises and property (real and personal) peaceably to the LANDLORD, its agent, or attorneys, immediately upon the termination

of the demised term. If the TENANT, its agents, attorneys, or tenants shall hold the Premises or any part thereof, one (1) day after the same should be surrendered according to the terms of this Lease, it shall be deemed guilty of forcible detainer of the Premises under the applicable statute and shall be subject to eviction or removal, forcibly or otherwise.

C. Where the alleged default consists of some alleged violation of any term of this Lease, other than the payments of money, including rent and insurance premiums, the LANDLORD may not declare this Lease in default until such violation shall have continued for ten (10) days after the LANDLORD shall have given the TENANT written notice of such violation, and TENANT shall not have undertaken, during this ten (10) days notice period, to cure said violation by vigorous and affirmative action, provided, however, that nothing herein contained shall be construed as precluding the LANDLORD from having such remedy as may be and become necessary in order to preserve the LANDLORD'S right and interest of the LANDLORD in the Premises and in this Lease, even before the expiration of the grace or notice periods provided for in this paragraph, if, under particular circumstances then existing, the allowance of such grace or

the giving of such notice would prejudice or endanger the rights and estate of the LANDLORD in this Lease and in the Premises. With respect to the payment of the insurance premiums, the same must be paid at least thirty (30) days prior to the time when the policies would lapse for the failure to pay premiums thereon, and evidence of such payment given to the LANDLORD without any written notice being required to be served upon the TENANT in connection therewith.

E. All default and grace periods shall be deemed to run concurrently and not consecutively.

F. It is mutually covenanted and agreed that the various rights, powers, options, elections, privileges, and remedies of the LANDLORD contained in this Lease shall be construed as cumulative and no one of them shall be construed as being exclusive of the other or exclusive of any rights or priorities allowed by law.

G. It is further covenanted and agreed by and between the parties hereto that the right given to the LANDLORD in this Lease to collect the rent that may be due under the terms of this Lease by any proceeding under same, or the right to collect any additional rent, money, or payments due under the terms of this Lease by any proceedings under same, or the right given the LANDLORD to enforce any of the terms and provisions of this Lease shall not in any way affect the right of such LANDLORD to declare this Lease void and the terms ended hereby, as herein provided, when default is made in the payment of rent or when default is made by the TENANT in any of the terms and provisions of this Lease.

H. If at any time, by reason of the failure of the TENANT to keep and perform any covenant or agreement which, under the terms of this Lease, the TENANT is bound and obligated to keep and perform, it becomes necessary for the LANDLORD to

employ an attorney to protect the rights and interests of the LANDLORD in the property demised or to enforce the Lease or proceed under it in any particular, then in any of such events, the TENANT will owe and will pay unto the LANDLORD all costs of Court and reasonable attorney's fees incurred or expended by the LANDLORD in taking such actions, including actions taken in all trial and appellate courts.

9. TENANT'S DUTY TO KEEP PREMISES IN GOOD REPAIR. The TENANT covenants and agrees with the LANDLORD that during the term of this Lease, the TENANT will keep in good state of repair and in current condition, the Premises, the HVAC equipment, and the fixtures serving the Demised Premises, and all furnishings brought or placed upon the Premises by the TENANT; nor will the TENANT suffer or permit any strip, waste, or neglect of any such property to be committed; and the TENANT will repair, replace, and renovate the property as often as it maybe necessary in order to keep the property in good repair and condition, at TENANT'S sole cost and expense. Tenant shall only utilize licensed contractors and shall apply for all permits, as required, to complete the necessary repairs.

10. ADDITIONAL COVENANTS OF THE TENANT.

A. The TENANT shall pay for all utilities associated with the use of the Premises including, but not limited to, water, electricity, sewer gas and solid waste. In the event that a separate bill for the Premises is not available for one or more of the utility services required by the Premises, then the TENANT shall pay a pro-rated share of that particular utility based on the square footage of the Premises and/or the parties'

estimated usage of that particular utility, calculation of which to be mutually agreed upon.

B. The TENANT covenants and agrees with the LANDLORD that no damage or destruction to any building or improvement by fire, windstorm, or any other casualty shall be deemed to entitle the TENANT to surrender possession of the Premises or to terminate this Lease or to violate any of its provisions or to cause any abatement or rebate in the rent then due or thereafter becoming due under the terms hereof, unless otherwise specifically provided for herein. If the Lease is canceled for the TENANT's default at any time while there remains outstanding any obligation from any insurance company to pay for the damage or any part thereof, then the claim against the insurance company shall, upon the cancellation of the Lease, be deemed immediately to become absolute and unconditional property of the LANDLORD. In the event of destruction of the Premises by casualty or hazard, the LANDLORD will have the option of canceling the Lease.

C. The TENANT covenants and agrees with the LANDLORD that nothing in this Lease shall ever be construed as empowering the TENANT to encumber or cause the TENANT to encumber the title or interest of the LANDLORD.

D. The TENANT covenants and agrees with the LANDLORD that, at the termination of this Lease, the TENANT will peaceably and quietly deliver unto the LANDLORD, possession of the Premises and all improvements located thereon, as well as the LANDLORD's interest in all fixtures and equipment appertaining thereto.

E. The TENANT agrees not to make any changes or alterations without written approval of the LANDLORD.

11. LANDLORD'S RIGHT OF ENTRY. The LANDLORD or its agents shall have the right to enter upon the Premises at all reasonable times to examine the condition and use thereof, provided only that such right shall be exercised in such manner as not to interfere with the TENANT in the conduct of the TENANT's business on the Premises.

12. EQUIPMENT, FIXTURES AND SIGNS. All fixtures, equipment, and signs used on the Premises by the TENANT but provided by the LANDLORD will at all times be and remain the property of the LANDLORD. Provided that this Lease is in good standing, the TENANT will have the right to remove any equipment or fixtures provided by the TENANT, or any part thereof, from the Premises during the term of this Lease, at the expiration thereof, or within a reasonable time thereafter; provided, however, that the TENANT, in so doing, does not cause any irreparable damage to the Premises; and provided further, that the TENANT shall pay or reimburse the LANDLORD for the reasonable expense of repairing damage caused by such removal.

13. ACCEPTANCE IN AS-IS CONDITION. The TENANT accepts the Premises in an as-is condition and all improvements and additions shall be at the sole expense of the TENANT. TENANT agrees to repair and maintain the roof and structure at TENANT'S expense.

14. NO MECHANIC'S LIENS. It is hereby covenanted, stipulated and agreed by and between the parties hereto that there shall, during the demised term, be no mechanic's liens upon any buildings or improvements that may at any time be put upon

the demised property, and that in case of any mechanic's liens the TENANT must pay off the same; and that if default in payment thereof shall continue for thirty (30) days after written notice, LANDLORD shall have the right and privilege, at its option, to pay off the same or any portion of the same, and the amount so paid, including expenses, shall at the option of the LANDLORD, be so much additional rent due from the TENANT at the next rent due after such payment, with interest thereon at the maximum rate allowed by law. Nothing herein shall be construed to admit that a mechanic's lien may be enforced against municipal property.

15. MISCELLANEOUS PROVISIONS. It is mutually covenanted and agreed by and between the parties as follows:

A. That no waiver or a breach of any of the covenants in this Lease contained shall be construed to be a waiver of all succeeding breach of the same covenant.

B. That time is of the essence in every particular and particularly where the obligation to pay money is involved.

C. That all arrearages in the payment of rent or in the repayment to the LANDLORD of any sums which the LANDLORD may have paid in order to cure a default of the TENANT (as elsewhere herein provided for), shall bear interest from the date when due and payable at the highest rate permitted by law until paid.

D. That no modification, release, discharge, or waiver of any provision hereof shall be of any force, effect, or value unless in writing and signed by the persons who are then LANDLORD and TENANT.

E. That all covenants, promises, conditions, and obligations contained herein or implied by law, or covenants running with the land, shall attach to and be binding upon the heirs, executors, administrators, successors, legal representatives, and assigns of each of the parties to this Lease.

F. That this instrument contains the entire agreement between the parties as of this date, and that the execution hereof has not been induced by either of the parties by representations, promises or understandings not expressed herein, and that there are not collateral agreements, stipulations, promises, or understandings whatsoever between the representative parties in any way touching the subject matter of this instrument which are not expressly contained in this instrument.

G. That when either of the parties desire to give notice to the other or others in connection with and according to the terms of this Lease, such notice shall be deemed given when it shall have been deposited in the U.S. Registered or Certified mail with sufficient postage pre-paid thereon to carry it to its addressed destination. The notice shall be addressed as follows:

As to LANDLORD: City Manager
City of Key West
P.O. Box 1409
Key West, FL 33041

As to TENANT: Old Fire House Preservation, Inc.
1024 Grinnell Street
Key West, Fl 33040

When the parties on either side (LANDLORD or TENANT) consist of more than one person, notice or default by one of the persons on that side shall constitute notice or default by all of the persons on that side.

H. This Lease and the provisions thereof shall be governed by and construed and enforced in accordance with the laws of the State of Florida; venue for any action regarding this Lease shall be in Monroe County, Florida.

IN WITNESS WHEREOF, the parties hereto have caused the foregoing Lease to be executed on the day and year first above written.



Cheryl Smith, City Clerk

LANDLORD: CITY OF KEY WEST

By: James K. Scholl
James K. Scholl, City Manager

ATTEST:

TENANT: OLD FIRE HOUSE
PRESERVATION, INC.

[Signature]

By: Alex Vega
Alex Vega, President

Exhibit "A"

Parcel ID	00031220-000000
Account #	1032018
Property ID	1032018
Millage Group	10KW
Location Address	1024 GRINNELL St , KEY WEST

