

USE AGREEMENT

This Use Agreement is entered into by and between the City of Key West (hereinafter the "City"), and The Florida Division of Alcoholic Beverages and Tobacco, an administrative agency of the State of Florida (hereinafter "ABT") on this ____ day of _____, 2011.

WHEREAS, City is currently in possession of facilities capable of housing a Regulatory Specialist employed by ABT, including an office desk suitable for conducting activities pertaining to ABT business; and

WHEREAS, ABT is an administrative agency of the State of Florida which conducts business in the City of Key West; and

WHEREAS, ABT desires to obtain office space for its Regulatory Specialist in close proximity to City's law enforcement personnel; and

WHEREAS, the parties desire to enter into a Use Agreement in order to establish the terms and conditions whereby ABT can utilize City's facilities to conduct activities pertaining to ABT's business.

NOW, THEREFORE, the parties to this Use Agreement agree as follows:

1. **AVAILABILITY OF FACILITIES.** City shall make facilities consisting of an office desk on the first floor of the Public Safety Building located at 1604 North Roosevelt Boulevard, Key West, Florida to ABT at no cost during regular business hours for the purpose of conducting activities pertaining to ABT's business.
2. **HOLD HARMLESS.** ABT is liable for and must fully defend, release, discharge, indemnify and hold harmless the CITY, the members of the City Commission, City officers and employees, City agents and contractors, from and against any and all claims, demands, causes of action, losses, costs and expenses of whatever type, including investigation and witness costs and expenses and attorneys' fees and costs, that arise out of or are attributable to ABT's operations on the premises except for those claims, demands, damages, liabilities, actions, causes of action, losses, costs and expenses that are the result of the sole negligence of the CITY.
3. **EXPENSES OF ABT.** ABT shall not be liable for rent or utilities. Further, ABT may use City data and telephone networks of City with no charge from City. However, ABT shall be responsible for any cost of installation and any additional costs billed to or incurred by City as a result of ABT's use of City's premises. City makes no representation that its data or telephone networks are secure. ABT is solely responsible for its use of City networks. ABT may not make any change to any City network.

4. **INSURANCE.** ABT agrees that City is not in any way an insurer of ABT's property, invitees, employees, agents, or guests. ABT shall indemnify and hold harmless City from all liability for injury to any persons or property which may arise in connection with the operation of or conduct of ABT or its equipment, agents, invitees, guests or employees.

5. **ABT ACCESS TO PREMISES.** ABT agents with ABT written authorization to access City space will be provided key card access. ABT guests and members of the general public conducting ABT business will be personally escorted by ABT agents at all times while on City premises.

6. **PARKING.** All parking on City property shall be on a first come, first served basis. There are no reserved spaces. Parking is at the sole risk of the vehicle owner.

7. **ALTERATIONS OF CITY PROPERTY.** ABT shall make no alterations to City property without the expressed written consent of City, which consent may be withheld by City for any reason whatsoever.

8. **RETURN OF PREMISES.** Upon expiration or termination of this Agreement, ABT SHALL return the premises to City in substantially the same condition as it was when ABT arrived, reasonable wear and tear excepted.

9. **TERM AND TERINATION.** Subject to the provision for termination contained in this paragraph, the term of this Agreement shall be for a period of two years commencing upon the date of the last party's execution of this Agreement. City may terminate this agreement upon 60 days written notice to ABT. ABT may terminate this agreement upon 10 days written notice to City.

10. **NON-DISCRIMINATION.** The CITY and ABT, each for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, do hereby covenant and agree that no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of premises.

CITY and ABT agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. City and ABT agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis

of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patent records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; and 10) any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

11. **SUBORDINATION.** This Agreement is subordinate to the laws and regulations of the United States, the State of Florida, and the City of Key West, whether in effect on commencement of this Agreement or adopted after that date.

12. **GOVERNING LAWS/VENUE.** This Agreement is governed by the laws of the State of Florida and the United States. Venue for any dispute arising under this Agreement must be in Monroe County, Florida. In the event of any litigation, the prevailing party is entitled to a reasonable attorney's fee and costs.

13. **CONSTRUCTION.** This Agreement has been carefully reviewed by the CITY and ABT. Therefore, this Agreement is not to be construed against any party on the basis of authorship.

14. **NOTICES.** Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the following:

ABT:

CITY:

City Manager
P.O. Box 1409
Key West, FL 33041

15. **FULL UNDERSTANDING.** This Agreement is the parties' final mutual understanding. It replaces any earlier agreements or understandings, whether written or oral. This Agreement cannot be modified or replaced except by another written and signed agreement.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

ATTEST:

CITY OF KEY WEST

City Clerk

By: _____
Jim Scholl, City Manager

THE FLORIDA DIVISION OF
ALCOHOLIC BEVERAGES AND
TOBACCO

By: _____