

RESOLUTION NO. 10-165

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT WITH THE BOARD OF COUNTY COMMISSIONERS FOR MONROE COUNTY (BOCC) ON BEHALF OF THE TOURIST DEVELOPMENT COUNCIL (TDC) TO EXERCISE AN OPTION TO EXTEND THE AGREEMENT FOR A FIVE (5) YEAR PERIOD FOR FUNDING IN AN AMOUNT UP TO \$380,000.00 PER YEAR FOR CLEANING AND MAINTENANCE OF SMATHERS BEACH AND REST BEACH; PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, in Resolution 05-218, the City Commission authorized the City to apply for grant funding through the TDC to pay for cleaning and maintenance of Smathers Beach and Rest Beach; and

WHEREAS, the grant was awarded, and the City entered into an interlocal agreement with the BOCC on behalf of the TDC, which included one option to extend the Interlocal Agreement for a five-year period; and

WHEREAS, in order to make effective use of the third penny of the Tourist Development Tax, the City Commission finds that it is in the best interests of the citizens and visitors of Key West, to extend the Interlocal Agreement in an amount up to \$380,000 per year;

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

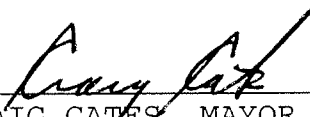
Section 1: That the First Amendment to Interlocal Agreement with the Board of County Commissioners for Monroe County, on behalf of the Tourist Development Council, for Smathers Beach and Rest Beach cleaning in an amount up to \$380,000 per year is hereby approved.

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 18 day of May, 2010.

Authenticated by the presiding officer and Clerk of the Commission on May 19, 2010.

Filed with the Clerk May 19, 2010.

  
\_\_\_\_\_  
CRAIG CATES, MAYOR

ATTEST:

  
\_\_\_\_\_  
CHERYL SMITH CITY CLERK

**AMENDMENT (1st AMENDMENT) TO INTER-LOCAL AGREEMENT**

THIS AMENDMENT to agreement dated the 16<sup>th</sup> day of June 2010, is entered into by and between the Board of County Commissioners for Monroe County, on behalf of the Tourist Development Council, and **The City of Key West**, a municipal corporation;

WHEREAS, there was an agreement entered into on October 19, 2005 between the parties, awarding \$380,000 to the City of Key West for the Smathers and Rest Beach Maintenance Services; and

WHEREAS, the agreement has an option to extend for a five year period; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein the parties agree to the amended agreement as follows:

1. The agreement period as outlined in Paragraph 1 is extended to September 30, 2015.
2. The reference to the Project Manager as Roland Flowers, City Engineer, along with his contact information, contained in the second sentence of paragraph 2(a) is deleted and replaced with Greg Vellz, Director of Community Services, telephone: (305) 809-3767; email: gvellz@keywestcity.com.
3. The reference to section 286.28, Florida Statutes, contained in the first sentence of paragraph 9(a) is deleted and replaced with section 768.28, Florida Statutes.
4. The language contained in paragraph 10 is deleted in its entirety and replaced with the following:

**NON-DISCRIMINATION.** The parties 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. The parties 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 VII of the Civil Rights Act of 1964 (PL 88-352), which prohibit discrimination in employment on the basis of race, color, religion, sex, and national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC §§ 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 § 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC §§ 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, §§ 523 and 527 (42 USC §§ 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 §§ 3601 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 §§ 1201), as amended from time to time,

relating to nondiscrimination in employment on the basis of disability; 10) Monroe County Code Chapter 13, Article VI, which prohibits discrimination on the basis of race, color, sex, religion, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; and 11) any other nondiscrimination provisions in any federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

- 5. The contact information for written notice to the Grantee as Roland Flowers, City Engineer, along with his contact information, in paragraph 21 is deleted and replaced with Greg Veliz, Director of Community Services, P.O. Box 1409, Key West, FL, 33041.
- 6. The remaining provisions of the agreement dated October 19, 2005, remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands and seal on the day and year first above written.



**Danny L. Kolhage, Clerk**  
*Danny L. Kolhage*  
Deputy Clerk

**Board of County Commissioners  
of Monroe County**  
*Sylvia J. Murphy*  
Mayor/Chairman

FILED FOR RECORD  
2010 JUN 22 AM 10:02  
DANNY L. KOLHAGE  
CLERK  
MONROE COUNTY, FL



**The City of Key West**  
By *Craig Cates*  
Mayor

*Cheryl Smith*  
Cheryl Smith  
Print Name

*Craig Cates*  
Craig Cates  
Print Name

**MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:**  
*Cynthia L. Hall*  
CYNTHIA L. HALL  
**ASSISTANT COUNTY ATTORNEY**  
Date 4-29-2010

**Sue Harrison**

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**From:** Carolyn Sheldon  
**Sent:** Thursday, July 08, 2010 9:04 AM  
**To:** Sue Harrison  
**Cc:** Margaret Scanlan  
**Subject:** FW: Final TDC Funding Amendment - Smathers and Rest Beach Maintenance Services  
**Importance:** High  
**Attachments:** #134 Smathers and Rest Beach Maintenance, Amend. #1.pdf

The attached is a fully executed Amendment #1 to the interlocal agreement b/n the City & Monroe County TDC for beach cleaning (Smathers & Rest).

Thanks,  
*Carolyn D. Sheldon*  
Grants Administrator, General Services Dept.  
City of Key West  
305.809.3741

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**From:** Payne-Kelly [mailto:Payne-Kelly@MonroeCounty-FL.Gov]  
**Sent:** Tuesday, July 06, 2010 11:11 AM  
**To:** Carolyn Sheldon  
**Subject:** Final TDC Funding Amendment - Smathers and Rest Beach Maintenance Services  
**Importance:** High

Good Morning Ms. Sheldon,  
In an effort to cut back on the use of paper and to stream line the contract process, we will now be providing final approved contracts and amendments via email. Attached please find for your files, the fully executed Amendment to Agreement with The City of Key West, which was approved by the Board of County Commissioners at their June 16<sup>th</sup> meeting. A hard copy of the attached may be provided upon request.

We do request that you **reply to this email** to confirm that you have received and were able to open the attachment. Please feel free to contact the TDC Administrative office if you have any questions at 296-1552.

Thank you and have a great day!  
Sincerely,  
Kelly Payne  
Tourist Development Council  
(305) 296-1552  
1201 White Street, Suite 102  
Key West, FL 33040



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

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## EXECUTIVE SUMMARY

**TO:** Jim Scholl, City Manager  
E. David Fernandez, Asst. City Manager

**FROM:** Gary W. Bowman, General Services and Engineering Director

**DATE:** April 15, 2010

**SUBJECT:** Approval of an amendment (1<sup>st</sup> amendment) to the interlocal agreement with the Board of County Commissioners for Monroe County on behalf of the Tourist Development Council (TDC) to exercise the option to extend the agreement for a five (5) year period to receive funding in an amount up to \$380,000 per year to pay for cleaning and maintenance for Smathers Beach and Rest Beach

### ACTION STATEMENT:

This resolution will approve an amendment (1st amendment) to the interlocal agreement with the Board of County Commissioners for Monroe County on behalf of the Tourist Development Council (TDC) to exercise the option to extend the agreement for a five (5) year period to receive funding in an amount up to \$380,000 per year to pay for cleaning and maintenance for Smathers Beach and Rest Beach.

### BACKGROUND:

Resolution 05-218 authorized a grant application to the Monroe County Tourist Development Council for funding up to \$548,071.60 for Smathers Beach and Rest Beach cleaning. Subsequently, an interlocal agreement was entered into on October 19, 2005 for funding to be provided to the City at an amount of \$380,000 per year for the period beginning October 1, 2005 and ending September 30, 2010 for cleaning and maintenance of Smathers Beach and Rest Beach. The interlocal agreement contains an option to extend the agreement for one additional five year period.

*Key to the Caribbean - Average yearly temperature 77° F.*

**PURPOSE & JUSTIFICATION:**

The funds the City receives through this interlocal agreement with the TDC provides significant assistance with the cost of cleaning and maintaining Smathers Beach and Rest Beach at a rate of approximately 50% of the cost.

**OPTIONS:**

1. Approve the amendment to the interlocal agreement with the Board of County Commissioners for Monroe County / TDC to exercise the option to extend the agreement for a five (5) year period. This option will allow the City to continue receiving funding in an amount up to \$380,000 per year to pay for cleaning and maintenance for Smathers Beach and Rest Beach.
2. Decline to approve the amendment to the interlocal agreement with the Board of County Commissioners / TDC. This option will forego grant funding in an amount up to \$380,000 per year for a five year period and places the entire burden on the City to clean and maintain Smathers Beach and Rest Beach.

**FINANCIAL IMPACT:**

There is no cost associated with exercising the option to extend the interlocal agreement. However, the cost of cleaning and maintaining Smathers Beach and Rest Beach will, of course, continue to impact the budget line items currently in place. It should be noted that without the funding received through the interlocal agreement (up to \$380,000 per year for a five year period), the City would bear 100% of the beach cleaning and maintenance costs.

**RECOMMENDATION:**

Staff recommends the City Commission select option 1, approve the amendment to the interlocal agreement with the Board of County Commissioners for Monroe County on behalf of the Tourist Development Council (TDC) to exercise the option to extend the agreement for a five (5) year period to receive funding in an amount up to \$380,000 per year to pay for cleaning and maintenance for Smathers Beach and Rest Beach

GWB/cds

**Smathers and Rest Beaches**

Projected increase % per year: 3.5%

**Beach cleaning cost projections**

Payment Description	5-Year Projection									
	2006	2007	2008	2009	2010 <sup>1</sup>	2011	2012	2013	2014	2015
EE&G - TDC	323,941.69	349,369.56	355,601.73	356,374.52	368,847.63	381,757.30	395,118.80	408,947.96	423,261.14	438,075.28
EE&G - City	219,991.38	212,309.81	216,256.55	252,427.32	261,262.28	270,406.46	279,870.68	289,666.16	299,804.47	310,297.63
In kind <sup>2</sup> - City	103,950.29	137,059.77	140,156.52	103,947.20	107,585.35	111,350.84	115,248.12	119,281.80	123,456.67	127,777.65
<b>Totals</b>	<b>647,883.36</b>	<b>698,739.14</b>	<b>712,014.80</b>	<b>712,749.04</b>	<b>737,695.26</b>	<b>763,514.59</b>	<b>790,237.60</b>	<b>817,895.92</b>	<b>846,522.27</b>	<b>876,150.55</b>
TDC max amount	380,000.00	380,000.00	380,000.00	380,000.00	380,000.00	380,000.00	380,000.00	380,000.00	380,000.00	380,000.00
Amt of TDC share unfunded	-	-	-	-	-	(1,757.30)	(15,118.80)	(28,947.96)	(43,261.14)	(58,075.28)
% TDC funded	50%	50%	50%	50%	50%	50%	48%	46%	45%	43%

**Notes:**

<sup>1</sup> The figures listed for 2010 contain actual figures through February 2010 and projected figures for the remaining FY (based on the 3.5% for March 2010 through Sep 2010)

<sup>2</sup> "In kind" costs include: 2 to 3 City employees from the Recreation Dept. (charged at their current hourly rate X # of hours spent cleaning the beach) to pick up misc trash, empty trash cans, clean bathroom facilities, etc.; Waste Management trash pick up (\$1.16/can X 26 cans 7 days per week); and cleaning supplies such as bleach and Pine Sol



RESOLUTION NO. 05-218

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AUTHORIZING A GRANT APPLICATION TO THE MONROE COUNTY TOURIST DEVELOPMENT COUNCIL (TDC) FOR FUNDING UP TO \$548,071.60 FOR SMATHERS BEACH AND REST BEACH CLEANING IN FY 2005-06; PROVIDING FOR AN EFFECTIVE DATE

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

Section 1: That a TDC grant application for up to \$548,071.60 for Smathers Beach and Rest Beach cleaning in FY 2005-06 is hereby authorized.

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.

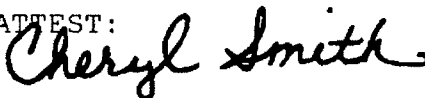
Passed and adopted by the City Commission at a meeting held this 21st day of June, 2005.

Authenticated by the presiding officer and Clerk of the Commission on June 22, 2005.

Filed with the Clerk June 22, 2005.

  
JIMMY WEEKLEY, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK



## UTILITIES DEPARTMENT MEMORANDUM EXECUTIVE SUMMARY

**TO:** Julio Arael, City Manager  
**FROM:** Annalise Mannix-Lachner, P.E.  
**VIA:** E. David Fernandez, Utilities Director  
**DATE:** June 13, 2005

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**ACTION STATEMENT:** A resolution approving a grant request for **UP TO \$584,071.60** to the Monroe County Tourist Development Council (TDC) for the purpose of funding annual Smathers and Rest Beach cleaning in FY 2005-06.

**BACKGROUND:**

Smathers and Rest Beaches are important to the city's tourism and therefore the TDC has been funding most of the beach cleaning and daily maintenance costs (7days per week). The last funding contract expires September 30 and a new contract is necessary to allow for any continued funding by the TDC. A resolution permitting application to the TDC for grant funding is required should beach cleaning grant funds be desired for next fiscal year.

**PURPOSE & JUSTIFICATION:**

The City of Key West and TDC fund City of Key West beach cleaning and maintenance activities annually. It is economically beneficial to have the TDC fund much of the seagrass removal on Smathers and Rest Beaches.

The City of Key West went out for a Request for Proposal for beach cleaning services and the highest proposal for full service cleaning by and seaweed disposal is \$584,071.60 per year. The proposals have not yet been fully reviewed and a vendor selected, however, the City is required to present a resolution to the TDC on July 6, 2005 authorizing application.

The requested resolution states only that the city may opt to apply for up to \$584,071.60 for FY 2005-06. This does not state we will apply for that entire amount. The beach cleaning procedure and costs will be evaluated at a meeting on June 15 and will be forwarded to the City Commission promptly.

**OPTIONS:**

The City can apply for this grant, or the City may wish to fully fund the project. The City may decide not to fund the project at all, however, this would not be helpful to beach users.

**FINANCIAL IMPACT:**

If the TDC authorizes a grant award the City will save up to \$584,071.60. The city will continue to fund the bathroom cleaning, afternoon walkway cleaning, and other miscellaneous seaweed cleaning, as well as cleaning at three other City beaches

**RECOMMENDATION:**

Staff recommends that the City proceed with a grant request for \$584,071.60.



March 30, 2010

Ms. Carolyn Sheldon  
City of Key West  
PO Box 1409  
Key West, FL 33041

Dear Ms. Sheldon,

Attached, please find five (5) original copies of an Amendment to Agreement with They City of Key West, covering the Smathers and Rest Beach Maintenance Services.

Please review carefully and if there are no changes have the **President of your organization sign all five copies.** If other than the President of your organization signs the attached, documentation in the manner of approved minutes or resolution identifying said individual as an authorized person to sign on behalf of the organization must accompany the Agreement. If other than the President's signature appears on the Agreement as stated above, this signature must be witnessed. **If there are any inaccuracies, please advise immediately so the correct information is reflected in the Agreement.**

Please note that when submitting for reimbursement against this Agreement the information provided must reflect the manner in which the Agreement is written.

Return all (5) five signed copies to my attention **no later than Friday April 9, 2010.** If you have any questions, please do not hesitate to call me at (305) 296-1552.

Yours sincerely,

Maxine Pacini,  
Administrative Assistant

/MP

Attachments (5)

## Inter-local Agreement With The City of Key West

This AGREEMENT dated the 19<sup>th</sup> day of October 2005, is entered into by and between the BOARD OF COUNTY COMMISSIONERS FOR MONROE COUNTY, hereinafter "County" or "GRANTOR," on behalf of the TOURIST DEVELOPMENT COUNCIL, hereinafter "TDC" and the City of Key West, hereinafter "Grantee".

WHEREAS, the third penny of Tourist Development Tax may be used to acquire, construct, extend, enlarge, remodel, repair or improve, convention centers, sports stadiums, sports arenas, coliseums, auditoriums, fishing piers, museums, zoological parks, nature centers, beach improvements and beach park facilities which are publicly owned and operated or owned and operated by not-for-profit corporations, and

WHEREAS, Grantee owns and contracts to a not-for-profit corporation for the operation of a beach facility which is open to the public; and

WHEREAS, Grantee has applied for funding for Smathers and Rest Beach Maintenance Services; and

WHEREAS, the Grantor and TDC have determined that it is in the best interest of the County, for purposes of promoting tourism and preserving the heritage of the community, to maintain the property for use as a beach which is open to the public;

NOW, THEREFORE, in consideration of the mutual covenants and payments contained herein, the Grantee and the Grantor have entered into this Agreement on the terms and conditions as set forth below.

1. **GRANT AGREEMENT PERIOD.** This Agreement is for the period of October 1, 2005 through to September 30 2010 with one option to extend for a five year period. This Agreement shall remain in effect for the stated period unless one party gives to the other written notification of termination pursuant to and in compliance with paragraphs 7, 12 and 13 below.

2. **SCOPE OF AGREEMENT.** The Grantee shall provide cleaning and maintenance services for Smathers Beach from waters edge (the mean water line) to the edge of the bike/pedestrian walk (approximately 3,000 feet beach frontage) and up to the end of the wall on the eastern most portion, seven days a week; and for C.B Harvey/Rest Beach (approximately 800 feet beach frontage), seven days a week, including but not limited to: trash and debris removal, sweeping of walkovers, management of environmental hazards, erosion control and beach repair, coordination of all activities with the Florida Department of Environmental Protection, and notices to appropriate state agencies regarding any sea turtle nesting activity. Grantee shall provide for seaweed clean up from below the high water mark and around the groins for both beaches and disposal of the seaweed. The Grantee may fulfill this obligation through use of its own employees and/or by contracting with an independent contractor.

a) There shall be a project manager to acknowledge receipt of goods or work performed. This Project Manager shall be Roland Flowers, City Engineer, 604 Simonton Street, Key West, FL 33040 (Telephone: 305-809-3965/Fax: 305-809-3978/e-mail: [rflowers@keywestcity.com](mailto:rflowers@keywestcity.com)). Should there be a change in the project manager, a new project manager shall be designated and notice of the designation shall be provided to TDC/County.

b) If, and to the extent that, Grantee contracts for any of the work funded under this Agreement to be performed or completed, Grantee shall give notice to County of the contractual relationship, provide County with a copy of any and all contracts and shall require the contractor(s) to comply with all the terms of this contract. Should grantee contract the work and then decrease the scope of work to be performed by a contractor, Grantee shall provide County with an amended contract executed by Grantee and its contractor.

Grantee is a governmental entity which shall comply with the procurement regulations and policies to which it is subject, and shall provide Grantor documentation of the procurement requirements applicable to the project and compliance therewith.

c) Grantee shall exercise good internal controls to assure that the project as described in the funding application shall be completed on a timely basis within the proposed budget and shall provide to County any certifications, including those by the architect, engineer, contractor or an independent consultant if necessary, required to establish that materials which are purported to be applied to the project are in fact so applied. Further verification shall be required to show that equipment and other fixtures and personal property covered by this Agreement are delivered to and installed in the project site. When any permit is required by any governmental agency, copies of plans and other documents which are submitted to the applicable agency shall be submitted to the County Engineering Division to enable verification that the scope of services under this Agreement has been provided.

3. **AMOUNT OF AGREEMENT AND PAYMENT.** The Grantor shall provide the amount of \$380,000 per year to pay for cleaning and maintenance as outlined in the scope of services for Smathers and Rest Beach. Payment shall be made in twelve (12) equal installments on a monthly basis, in arrears. Payment will be made directly to the Grantee. The Grantee shall, commencing November 1, 2005, provide a monthly invoice on the 1<sup>st</sup> day of each month to the Grantor's administrative office for the Tourist Development Council, with documentation showing the work which was performed during the preceding month, and payment shall be made in accordance with the Florida Prompt Payment Act. Grantee shall submit original copy of paid invoice, copy of cleared check paying for services, and a signed letter stating that the contractor has complied with the scope of services as outlined in paragraph 2. of this Agreement. Documentation shall include a notarized statement signed by the project manager as to the completion of the services for which Grantee is invoicing the County. Payment for each fiscal year outlined in paragraph 1 of this agreement, ending September 30, 2010, shall not exceed \$380,000, and no payment shall be made for any documentation and invoice received after the close of the fiscal year of September 30, 2010. If option to extend agreement is exercised by Grantee

and Grantor for one additional five year period, compensation for the additional term may be negotiated prior to approval of extension.

Should this agreement be terminated pursuant to Section 13, The Grantor will not be obligated to pay for any services provided by the Grantee after the effective termination date for which Grantee has received written notice.

The Board of County Commissioners and the Tourist Development Council assume no liability to fund this Agreement for an amount in excess of this award. Monroe County's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the BOCC.

**4. RECORDS AND REPORTS.** The Grantee shall keep such records as are necessary to document the performance of the Agreement and expenses as incurred, and give access to these records at the request of the TDC, the County, the State of Florida or authorized agents and representatives of said government bodies. The Grantee shall also provide such access to the personal property and equipment purchased under this Agreement. It is the responsibility of the Grantee to maintain appropriate records in accordance with generally accepted accounting principles consistently applied to insure a proper accounting of all funds and expenditures. The Grantee understands that it shall be responsible for repayment of any and all audit exceptions which are identified by the Auditor General for the State of Florida, the Clerk of Court for Monroe County, the Board of County Commissioners for Monroe County, or their agents and representatives. In the event of an audit exception, the current fiscal year grant award or subsequent grant awards will be offset by the amount of the audit exception. In the event the grant is not renewed or supplemented in future years, the Grantee will be billed by the Grantor for the amount of the audit exception and shall promptly repay any audit exception.

(a) **Public Access.** The County and Grantee shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and Grantee in conjunction with this Agreement; and the County shall have the right to unilaterally cancel this Agreement upon violation of this provision by Grantee.

**5. MODIFICATIONS AND AMENDMENTS.** Any and all modifications of the terms of this Agreement shall be only amended in writing and approved by the Board of County Commissioners for Monroe County. The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the County and Grantee and their respective legal representatives, successors, and assigns.

**6. INDEPENDENT CONTRACTOR.** At all times and for all purposes hereunder, the Grantee is an independent contractor and not an employee of the Board of County Commissioners of Monroe County. No statement contained in this Agreement shall be construed as to find the Grantee or any of its employees, contractors, servants or agents to the employees of the Board of County Commissioners of Monroe County, and

they shall be entitled to none of the rights, privileges or benefits of employees of Monroe County.

(a) **No Personal Liability.** No covenant or Agreement contained herein shall be deemed to be a covenant or Agreement of any member, officer, agent or employee of Monroe County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

**7. COMPLIANCE WITH LAW.** In carrying out its obligations under this Agreement, the Grantee shall abide by all statutes, ordinances, rules and regulations pertaining to or regulating the provisions of this Agreement, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules or regulations shall constitute a material breach of this Agreement and shall entitle the Grantor to terminate this Agreement immediately upon delivery of written notice of termination to the Grantee.

**8. RESTRICTIONS ON AGREEMENTS ENTERED PURSUANT TO THIS AGREEMENT.** The Grantee shall include in all Agreements funded under this Agreement the following terms:

a) **Anti-discrimination.** Contractor agrees that they will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this Agreement because of their race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

b) **Anti-kickback.** Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon an Agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the Contractor has any interest, financially or otherwise, in contractor. For breach or violation of this warranty, the Contractor shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee. Contractor acknowledges that it is aware that funding for this Agreement is available at least in part through the County and that violation of this paragraph may result in the County withdrawing funding for the Project.

c) **Hold harmless/indemnification.** Contractor acknowledges that this Agreement is funded at least in part by the County and agrees to indemnify and hold harmless the County and any of its officers and employees from and against any and all claims, liabilities, litigation, causes of action, damages, costs, expenses (including but not limited to fees and expenses arising from any factual investigation, discovery or preparation for litigation), and the payment of any and all of the foregoing or any demands, settlements or judgments (collectively claims) arising directly or indirectly from any negligence or criminal conduct on the part of Contractor in the performance of the terms of this Agreement. The Contractor shall immediately give notice to the County of any suit, claim or action made against the Contractor that is related to the

activity under this Agreement, and will cooperate with the County in the investigation arising as a result of any suit, action or claim related this Agreement.

d) Insurance. Contractor agrees that it maintains in force at its own expense a liability insurance policy which will insure and indemnify the Contractor and the County from any suits, claims or actions brought by any person or persons and from all costs and expenses of litigation brought against the Contractor for such injuries to persons or damage to property occurring during the Agreement or thereafter that results from performance by Contractor of the obligations set forth in this Agreement. At all times during the term of this Agreement and for one year after acceptance of the project, Contractor shall maintain on file with the County a certificate of the insurance of the carriers showing that the aforesaid insurance policy is in effect. The following coverage's shall be provided:

1. Workers Compensation insurance as required by Florida Statutes.
2. Commercial General Liability Insurance with minimum limits of \$500,000 per occurrence for bodily injury, personal injury and property damage.
3. Comprehensive Auto Liability Insurance with minimum limits of \$300,000 combined single limit per occurrence.

The Contractor, the County and the TDC shall be named as additional insured, except workers compensation. The policies shall provide no less than 30 days notice of cancellation, non-renewal or reduction of coverage.

At all times during the term of this Agreement and for one year after acceptance of the project, Contractor shall maintain on file with the County a certificate of insurance showing that the aforesaid insurance coverage's are in effect.

e) Licensing and Permits. Contractor warrants that it shall have, prior to commencement of work under this Agreement and at all times during said work, all required licenses and permits whether federal, state, County or City.

f) Right to Audit. The Contractor shall keep such records as are necessary to document the performance of the Agreement and expenses as incurred, and give access to these records at the request of the TDC, the County, the State of Florida or authorized agents and representatives of said government bodies.

9. HOLD HARMLESS/INDEMNIFICATION. The Grantee hereby agrees to indemnify and hold harmless the COUNTY/TDC and any of its officers and employees from and against any and all claims, liabilities, litigation, causes of action, damages, costs, expenses (including but not limited to fees and expenses arising from any factual investigation, discovery or preparation for litigation), and the payment of any and all of the foregoing or any demands, settlements or judgments arising directly or indirectly under this Agreement. The Grantee shall immediately give notice to the Grantor of any suit, claim or action made against the Grantor that is related to the activity under this Agreement, and will cooperate with the Grantor in the investigation arising as a result of any suit, action or claim related to this Agreement.



(a) **Non-Waiver of Immunity.** Notwithstanding the provisions of Sec. 286.28, Florida Statutes, the participation of the County and the Grantee in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the County be required to contain any provision for waiver.

(b) **Privileges and Immunities.** All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the County, when performing their respective functions under this Agreement within the territorial limits of the County shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the County.

**10. NONDISCRIMINATION.** County and Grantee 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. County and Grantee 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 patient 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; 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. ANTI-KICKBACK.** The Grantee warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the County or TDC has any interest, financially or otherwise, in the said funded project, except for general membership. For breach or violation of this warranty, the Grantor shall have the right to annul this Agreement without liability or, in its discretion,

to deduct from the Agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

12. **TERMINATION.** This Agreement shall terminate on September 30, 2010. Termination prior thereto shall occur whenever funds cannot be obtained or cannot be continued at a level sufficient to allow for the continuation of this Agreement pursuant to the terms herein. In the event that funds cannot be continued at a level sufficient to allow the continuation of this Agreement pursuant to the terms specified herein, this Agreement may then be terminated immediately by written notice of termination delivered in person or by mail to Grantee. The Grantor may terminate this Agreement without cause upon giving written notice of termination to Applicant. The Grantor shall not be obligated to pay for any services or goods provided by Grantee after Grantee has received written notice of termination.

13. **TERMINATION FOR BREACH.** The Grantor may immediately terminate this Agreement for any breach of the terms contained herein. Such termination shall take place immediately upon receipt of written notice of said termination. Any waiver of any breach of covenants herein contained to be kept and performed by Grantee shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the Grantor from declaring a forfeiture for any succeeding breach either of the same conditions or of any other conditions. Failure to provide Grantor with certification of use of matching funds or matching in-kind services at or above the rate of request for reimbursement or payment by is a breach of Agreement, for which the Grantor may terminate this Agreement upon giving written notification of termination.

14. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement of the parties hereto with respect to the subject matter hereof and supersedes any and all prior Agreements with respect to such subject matter between the Grantee and the Grantor.

15. **GOVERNING LAW, VENUE, INTERPRETATION, COSTS, AND FEES.**  
This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State.

(a) **Venue.** In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the County and Grantee agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.

(b) **Mediation.** The County and Grantee agree that, in the event of conflicting interpretations of the terms or a term of this Agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding.

(c) **Severability.** If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the

enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The County and Grantee agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

(d) **Attorney's Fees and Costs.** The County and Grantee agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, courts costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

(e) **Adjudication of Disputes or Disagreements.** County and Grantee agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board of County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.

(f) **Cooperation.** In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, County and Grantee agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. County and Grantee specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

16. **ETHICS CLAUSE:** Grantee warrants that he has not employed, retained or otherwise had act on his behalf any former County officer or employee in violation of Section 2 or Ordinance No. 10-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 10-1990. For breach or violation of the provision the Grantor may, at its discretion terminate this Agreement without liability and may also, at its discretion, deduct from the Agreement or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former or present County officer or employee. The County and Grantee warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, the Grantee agrees that the County shall have the right to terminate this Agreement without liability and, at its discretion, to offset

from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

(a) **Covenant of No Interest.** County and Grantee covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

(b) **Code of Ethics.** County agrees that officers and employees of the County recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

**17. PUBLIC ENTITY CRIME STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on an Agreement to provide any goods or services to a public entity, may not submit a bid on a Agreement with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a Agreement with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for **CATEGORY TWO** for a period of 36 months from the date of being placed on the convicted vendor list.

**18. AUTHORITY:** Grantee warrants that it is authorized by law to engage in the performance of the activities encompassed by the project herein described. Each of the signatories for the Grantee below certifies and warrants that the Grantee's name in this Agreement is the full name as designated in its corporate charter (if a corporation); they are empowered to act and contract for the Grantee, and this Agreement has been approved by the Board of Directors of Grantee or other appropriate authority.

**19. LICENSING AND PERMITS:** Grantee warrants that it shall have, prior to commencement of work under this Agreement and at all times during said work, all required licenses and permits whether federal, state, County or City.

**20. INSURANCE:** Grantee agrees that it maintains in force at its own expense a liability insurance policy which will insure and indemnify the Grantee and the Grantor from any suits, claims or actions brought by any person or persons and from all costs and expenses of litigation brought against the Grantee for such injuries to persons or damage to property occurring during the Agreement or thereafter that results from performance by Grantee of the obligations set forth in this Agreement. At all times during the term of this Agreement and for one year after acceptance of the project, Grantee shall maintain on file with the Grantor a certificate of the insurance of the carriers showing that the aforesaid insurance policy is in effect. The following coverage's shall be provided:

1. Workers Compensation insurance as required by Florida Statutes.

2. Commercial General Liability Insurance with minimum limits of \$500,000 per occurrence for bodily injury, personal injury and property damage.

3. Comprehensive Auto Liability Insurance with minimum limits of \$300,000 combined single limit per occurrence.

The Grantee, the Grantor and the TDC shall be named as additional insured, except workers compensation. The policies shall provide no less than 30 days notice of cancellation, non-renewal or reduction of coverage.

Grantee shall provide, to the County, as satisfactory evidence of the required insurance, including the insurance policy application and either:

- Original Certificate of Insurance  
or
- Certified copy of the actual insurance policy  
Or
- Certificate of Insurance e-mailed from Insurance Agent/Company to County Risk Management (Telephone Maria Slavik at 295-3178 for details)

**An original certificate or a certified copy of any or all insurance policies required by this contract shall be filed with the Clerk of the BOCC prior to the contract being executed by the Clerks office. The Insurance policy must state that the Monroe County BOCC and Monroe County TDC is the Certificate Holder and additional Insured for this contract. Insurance should be mailed to:**

**Monroe County Board of County Commissioners  
C/O Risk Management  
P.O. Box 1026  
Key West, FL 33041**

21. NOTICE. Any written notice to be given to either party under this Agreement or related hereto shall be addressed and delivered as follows:

For Grantee: Mr. R. Flowers  
City Engineer  
604 Simonton Street  
Key West, FL 33040

For Grantor: Lynda Stuart  
Monroe County Tourist Development Council  
1201 White Street, Suite 102  
Key West, FL 33040

and

Suzanne Hutton, Asst. County Attorney  
P.O. Box 1026  
Key West, FL 33041-1026

22. **CLAIMS FOR FEDERAL OR STATE AID.** Contractor and County agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission.
23. **NON-DELEGATION OF CONSTITUTIONAL OR STATUTORY DUTIES.** This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the County, except to the extent permitted by the Florida constitution, state statute, and case law.
24. **NON-RELIANCE BY NON-PARTIES.** No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and the Grantee agree that neither the County nor the Grantee or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.
25. **ATTESTATIONS.** Grantee agrees to execute such documents as the County may reasonably require, to include a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement.
26. **NO PERSONAL LIABILITY.** No covenant or Agreement contained herein shall be deemed to be a covenant or Agreement of any member, officer, agent or employee of Monroe County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.
27. **FORCE MAJEURE.** The Grantee shall not be liable for delay in performance or failure to complete the project, in whole or in part, due to the occurrence of any contingency beyond its control or the control of its contractors and subcontractors, including war or act of war whether an actual declaration thereof is made or not, act of terrorism impacting travel in the United States, insurrection, riot or civil commotion, act of public enemy, epidemic, quarantine restriction, storm, flood, drought or other act of God, or act of nature (including presence of endangered animal species which cannot be timely removed in a safe manner or any act of any governmental authority which

prohibits the project from proceeding as described in the scope of services and incorporated references and which the Grantee has exercised reasonable care in the prevention thereof. However, lack of planning for normal and expected weather conditions for the time of year the project is to be executed shall not constitute an act of God excusing a delay. Any delay or failure due to the causes stated shall not constitute a breach of the Agreement; however, the BOCC shall have the right to determine if there will be any reduction to the amount of funds due to the Grantee after consideration of all relevant facts and circumstances surrounding the delay in performance or failure to complete the project within the contract period. Upon demand of TDC or BOCC, the Grantee must furnish evidence of the causes of such delay or failure. BOCC shall not pay for any goods received or services provided after the date(s) described in paragraph 1 and Scope of Services.

28. EXECUTION IN COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

29. SECTION HEADINGS. Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

By: *Daniel C. DiSantis*  
Deputy Clerk

BOARD OF COUNTY  
COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By: *Miguel M. Lopez*  
Mayor/Chairman

(SEAL)

ATTEST:

By: *Cheryl Smith*  
Clerk

CITY OF KEY WEST

By: *James ...*  
Mayor

MONROE COUNTY ATTORNEY  
APPROVED AS

*Suzanne ...*  
SUZANNE ...  
MONROE COUNTY ATTORNEY

9/28/05