

RESOLUTION NO. 12-009

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "AGREEMENT TO PROVIDE MARKETING AND ADVERTISING SERVICES TO THE CITY OF KEY WEST IN SUPPORT OF THE CLIMATE ACTION PLAN," BETWEEN THE CITY AND THE CUNNINGHAM GROUP; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in Resolution No. 11-294, the City Commission ranked responses to RFP 011-11 for Climate Action Plan Marketing and Advertisement, and authorized City staff to negotiate an agreement with the top ranked firm, and each firm thereafter, until an acceptable agreement is reached;

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

Section 1: That the attached "Agreement to Provide Marketing and Advertising Services to the City of Key West in Support of Climate Action Plan" is hereby approved between the City and The Cunningham Group.

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 3rd day of January, 2011.

Authenticated by the Presiding Officer and Clerk of the Commission on 4th day of January, 2011.

Filed with the Clerk on January 4, 2011



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK



THE CITY OF KEY WEST

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

TO: Jim Scholl, City Manager

FROM: Birchard Ohlinger, P.E., Engineering

CC: E. David Fernandez, Assistant City Manager

DATE: 6 December 2011

SUBJECT: Awarding of Contract to The Cunningham Group for RFP 011-11:
Climate Action Plan.

ACTION STATEMENT:

That City Staff is authorized to execute the attached contract to The Cunningham Group in the amount of \$55,000 dollars to provide Marketing and Advertising in support of the Climate Action Plan.

BACKGROUND:

On the 18th of October, the City Commission evaluated and ranked firms to perform the work called out in RFP 011-11. As a result, Resolution 11-294 was passed that authorized City Staff to enter into negotiations with firms in the following order:

- Firm #1: The Cunningham Group
- Firm #2: Progressive Strategy Group
- Firm #3: The Tree Institute

PURPOSE & JUSTIFICATION:

Negotiations with The Cunningham Group have been successful and the attached contract with letter dated 4 November 2011 outlines the deliverables and project schedule proposed by the Cunningham Group.

OPTIONS:

1. Approve the attached contract.
2. Reject the attached contract and request that staff re-enter negotiations

MEMORANDUM

FINANCIAL IMPACT:

This project will be funded in the amount of \$55,000 dollars under budget line item 001-1906-519-3400.

RECOMMENDATION:

City Staff recommends that the commission approved the attached contract.

- 1.12 Organize press conference to announce initiative launch
- 1.13 Monitor launch activities and issue final report to the City of Key West

CONTRACTOR is responsible for all costs of carrying out these responsibilities, including, but not limited to, the costs of staff, facilities, equipment, postage (limited to standard, U.S. Postal first-class rates), and consumable supplies.

Article 2. Compensation

- 2.1 CONTRACTOR shall be entitled to receive payment upon completion of the following deliverables:
 - Completion of items 1.1 through 1.3 in the Scope of Services: \$15,000 dollars
 - Completion of items 1.4 through 1.8 in the Scope of Services: \$30,000 dollars
 - Completion of items 1.9 through 1.13 in the Scope of Services: \$10,000 dollars

Article 3. Invoicing and Payment

Payments to the CONTRACTOR by the CITY shall be remitted upon approval of the CITY of the invoice prepared by CONTRACTOR.

Article 4. Obligations of the Contractor

- 4.1. General
 - A. The CONTRACTOR will serve as CITY'S professional representative under this AGREEMENT, providing marketing and advertising services. CONTRACTOR represents and warrants to the City that: (i) CONTRACTOR possesses all qualifications, licenses and expertise required for the provision of Services, with personnel having such licenses as may be required by the State of Florida; (ii) CONTRACTOR is not delinquent in the payment of any sums due the City, including payment of permit fees, local business taxes, or in the performance of any obligations to the City; (iii) all personnel assigned to perform work shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; and (iv) the person executing this Agreement on behalf of CONTRACTOR is duly authorized to execute same and fully bind CONTRACTOR as a party to this Agreement.
- 4.2. Standard of Care
 - A. The standard of care applicable to CONTRACTOR'S services will be the degree of skill and diligence normally employed by consultants performing the same or

similar services at the time said services are performed. The CONTRACTOR will perform any services not meeting this standard without additional compensation.

4.3 CONTRACTOR'S Insurance

The Consultant shall keep in full force and effect at all times during the effective period of this contract, and at its own cost and expense the following insurance in insurance companies authorized in the State of Florida, with an A.M. Best rating of A-:VI or higher and shall provide evidence of such insurance to the City. The policies or certificates shall provide thirty (30) days prior to cancellation notices of same shall be given to the City by U.S. Mail for all of the required insurance policies stated below. All notices shall name the Consultant and identify the contract number. The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees are to be added as "additional insured" as respects liability arising out of activities performed by or on behalf of the Consultant. Waiver of Subrogation in favor of the City of Key West City Government is required on all policies except Workers' Compensation.

Consultant shall maintain limits no less than those stated below:

1. **Worker's Compensation** – Statutory – in compliance with the Compensation law of the State of Florida. The coverage must include Employer's Liability with a limit of One Million (\$1,000,000) Dollars each accident.
2. **Commercial General Liability** The Consultant's Commercial General Liability (CGL) shall be in an amount acceptable to the City of Key West but not less than Five Hundred Thousand (\$500,000) Dollars Combined Single Limit per occurrence and One Million (\$1,000,000) Dollars annual aggregate. The coverage must include:
 - Commercial Form
 - Premises/Operations
 - Products/Completed Operations
 - Independent Consultants (if any part of the Work is to be subcontracted)
 - Broad Form Property Damage
 - Personal Injury
3. **Automobile Liability Insurance** with a minimum limit of liability per occurrence of One Million (\$1,000,000) Dollars for bodily injury and property damage. This insurance shall include for bodily injury and property damage the following coverage:
 - Owned automobiles
 - Hired automobiles
 - Non-owned automobiles

4. Certificates of Insurance

Certificates of Insurance shall be filed and maintained throughout the life of this Contract with the City Clerk evidencing the minimum limits of insurance cited above. All policies shall provide they may not be terminated or modified without insurer providing the City of Key West at least thirty (30) days advance notice.

Additionally, the Consultant shall immediately notify the City of any cancellation of such insurance.

In addition, it is understood if at any time any of the policies required by City shall become unsatisfactory to the City as to form or substance, or if a company issuing any such policy shall become unsatisfactory to the City, the Consultant shall obtain a new policy, submit the same to the City for approval and submit a certificate of insurance as which may be required by the contract. It is understood that upon failure of the Consultant to furnish, deliver and maintain such insurance as above provided, the contract at the election of the City may be declared suspended, discontinued or terminated. Further, failure of the Consultant to take out and/or maintain any required insurance shall not relieve the Consultant from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligations of the Consultant concerning indemnification.

4.4 Subcontractors

A. The CONTRACTOR shall not assign or subcontract its obligations under this AGREEMENT without the written consent of the CITY, which consent may be withheld for any reason.

4.5 Licenses

A. The CONTRACTOR will be required to obtain a local required license prior to performing any work for the CITY. This license will be a Business Tax Receipt at a cost not to exceed \$98.70.

Article 5. Obligations of the City

The CITY shall be responsible to accomplish the following:

1.1 Appointing a CITY Contract Administrator, who will be the primary point of contact between CONTRACTOR and CITY. The Administrator is responsible for overseeing Contractor's performance of this project. CITY is responsible for the cost of carrying out this responsibility, including, but not limited to the costs of staff, facilities, computer equipment, postage and consumable supplies.

Article 6. General Legal Provisions

6.1 Agreement Period

The duration of the agreement shall be 240 days commencing from the effective date of the Notice to Proceed (NTP).

6.2 Force Majeure

A. The CONTRACTOR is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the CONTRACTOR.

6.3 Termination

A. This agreement may be terminated at any time, with or without cause, by the CITY upon thirty (30) days written notice to CONTRACTOR. No further work will be performed by CONTRACTOR upon receipt of this notice unless specifically authorized by the Administrator.

B. On termination, the CONTRACTOR will be paid for all authorized services performed up to the termination date plus, if terminated for the convenience of the CITY, reasonable expenses incurred during the close-out of the AGREEMENT. The CITY will not pay for anticipatory profits.

6.4 Suspension, Delay, or Interruption of Work

A. The CITY may suspend, delay, or interrupt the services of the CONTRACTOR for the convenience of the CITY. In the event of such suspension, delay, or interruption, or any other act or neglect of CITY or CITY's subcontractors, CITY will pay CONTRACTOR for work performed to date. An equitable adjustment in CONTRACTOR'S compensation will be made as agreed to by both parties.

6.5 Third Party Beneficiaries

A. This Agreement gives no rights or benefits to anyone other than the CITY and CONTRACTOR and has no third party beneficiaries. CONTRACTOR'S services are defined solely by this proposed scope of services, and not by any other contract or agreement that may be associated with the Project. All work products will be prepared for the exclusive use of CITY for specific application as described in the proposed scope of services. No warranty, expressed or implied, is made. There are no beneficiaries of the work products other than CITY, and no other person or entity is entitled to rely upon the work products without the written consent of CONTRACTOR. Any unauthorized assignment of related work product shall be void and unenforceable.

6.6 Indemnification

A. CONTRACTOR agrees to protect, defend, indemnify, save and hold harmless The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees, including volunteers, from and against any and all claims, demands, expense and liability arising out of injury or death to any person or the damage, loss of destruction of any property which may occur or in any way grow out of any act or omission of the CONTRACTOR, its agents, servants, and employees, or any and all costs, expense and/or attorney fees incurred by the City as a result of any claim, demands, and/or causes of action except of those claims, demands, and/or causes of action arising out of the negligence of The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees. The CONTRACTOR agrees to investigate, handle, respond to, provide defense for and defend any

such claims, demand, or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if it (claims, etc.) is groundless, false or fraudulent.

Nothing in this indemnification is intended to act as a waiver of the City's sovereign immunity rights, including those provided under section 768.28, Florida Statutes.

- B. This indemnification shall survive the expiration or termination of this Agreement. In the event that any action or proceeding is brought against the CITY by reason of such claim or demand, CONTRACTOR shall, upon written notice from the CITY, resist and defend such action or proceeding by counsel satisfactory to the CITY. The CONTRACTOR shall defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the CITY's option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the CITY whether performed by CONTRACTOR, or by persons employed or used by CONTRACTOR.

6.7 Limitation of Liability

- A. CONTRACTOR's services shall be governed by the negligence standard for professional services, measured as of the time those services are performed.
- B. This Provision takes precedence over any conflicting Provision of this Agreement or any document incorporated into it or referenced by it.
- C. This limitation of liability will apply whether CONTRACTOR'S liability arises under breach of contract or warranty; tort; including negligence; strict liability; statutory liability; or any other cause of action, and shall include CONTRACTOR'S officers, affiliated corporations, employees, and subcontractors.

6.8 Assignment

- A. CONTRACTOR shall not assign all or any part of this Agreement without the prior consent of the CITY by Resolution of the Key West City Commission, which consent may be withheld for any reason.

6.9 Jurisdiction

- A. The law of the state of Florida and Monroe County will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it. Venue for any proceedings between the Parties shall be in Key West, Monroe, Florida.

6.10 Severability and Survival

- A. If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

B. ARTICLES 4, 5, and 6 will survive termination of this AGREEMENT for any cause.

6.11 Dispute Resolution

A. The parties will use their best efforts to resolve amicably any dispute, including the use of alternative dispute resolution options.

B. Unless otherwise agreed in writing, the CONTRACTOR shall continue the Work and maintain the approved schedules during any arbitration proceedings. If the CONTRACTOR continues to perform, CITY shall continue to make payments in accordance with this Agreement.

6.12 Attorney's Fees

A. In the event of litigation affecting the rights of either party under this Agreement, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights hereunder, including those pertaining to appeals.

6.13 Independent Contractor

CONTRACTOR has been procured and is being engaged by the CITY as an independent contractor, and not as an agent or employee of the CITY. Accordingly, CONTRACTOR shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the CITY, nor any rights generally afforded classified or unclassified employees of the CITY. CONTRACTOR further understands that Florida workers' compensation benefits available to employees of the CITY, are not available to the CONTRACTOR. Therefore, CONTRACTOR agrees to provide workers' compensation insurance for any employee or agent of CONTRACTOR rendering services to the CITY under this Agreement.

6.14 Conflicts of Interest

CONTRACTOR has been procured and is being engaged by the CITY as an independent contractor, and not as an agent or employee of the CITY. Accordingly, CONTRACTOR shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the CITY, nor any rights generally afforded classified or unclassified employees of the CITY. CONTRACTOR further understands that Florida workers' compensation benefits available to employees of the CITY, are not available to the CONTRACTOR. Therefore, CONTRACTOR agrees to provide workers' compensation insurance for any employee or agent of CONTRACTOR rendering services to the City under this Agreement.

6.15 Notices

All notices, demands, correspondence and communications between the City and CONTRACTOR shall be deemed sufficiently given under the terms of this Agreement when delivered by personal service, faxed, or dispatched by mail or certified mail, addressed as follows:

To Contractor: Cunningham Group, Inc.
Attn: Courtney Cunningham
9100 S. Dadeland Blvd, Suite 1500
Miami, FL 33156
Phone: (786) 497-7275
Fax: (305) 665-2700
Email: Courtney@publicinvolvement.com

To City: City of Key West
Attn: City Manager
3132 Flagler Avenue
Key West, Florida 33040

With a copy to: City Attorney
City of Key West
3132 Flagler Avenue
Key West, Florida 33040

Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee. In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

6.16 Public Records

CONTRACTOR understands that the public shall have access, at all reasonable times, to all documents and information pertaining to CITY contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the CITY and the public to all documents subject to disclosure under applicable law.

6.17 Waiver

No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

6.18 Entire Agreement

This Agreement constitutes the sole and entire agreement between the Parties. No modification or amendments hereto shall be binding on either Party unless in writing and signed by both Parties.

6.19 Audit of Records

The CITY reserves the right to audit the records of the CONTRACTOR covered by this Agreement at any time during the provision of Services and for a period of three years after final payment is made under this Agreement.

6.20 Nondiscrimination

The CONTRACTOR agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

6.21 The professional Services to be provided by CONTRACTOR pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the CITY from engaging other firms to perform Services.

6.22 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

6.23 The CONTRACTOR agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

Article 7. Schedules, and Signatures

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

IN WITNESS WHEREOF, the parties execute below:

THE CITY OF KEY WEST

By: Jim Scholl
Jim Scholl, City Manager

Attest: Cheryl Smith
Name Title

Dated this 4 day of Jan, 2012

Cunningham Group, Inc

By: 
Courtney Cunningham, its President

Dated this 12th day of December, 2011.

Agreement to Provide Marketing and Advertising Services to the City of Key West In Support of the Climate Action Plan

This AGREEMENT made and entered into by and between the City of Key West, a municipal corporation of the State of Florida, whose mailing address is P.O. Box 1409, Key West, Florida 33041, hereafter referred to as the "CITY" and Cunningham Group, Inc., a Florida corporation whose address is 9100 S. Dadeland Blvd, Suite 1500, Miami, Florida 33156, hereafter referred to as the "CONTRACTOR". This agreement shall be effective on the date of execution of the last party to sign the AGREEMENT for the term specified in Paragraph 6.1.

Article 1. Scope of Services

The CONTRACTOR will be responsible for providing Marketing and Advertising Services in support of the Climate Action Plan. The specific services, which the CONTRACTOR agrees to furnish, are set forth as follows:

- 1.1 Develop and execute a study to provide a baseline by which to measure the achievement of climate change goals
- 1.2 Conduct brand research
- 1.3 Research potential campaign partners (agencies, government entities, foundations, businesses, etc.) that can provide additional channels for increased outreach free of charge to the City
- 1.4 Create marketing plan
- 1.5 Create public relations plan
- 1.6 Conduct charitable outreach efforts
- 1.7 Design a climate change campaign website
- 1.8 Develop social media tools to promote initiative
- 1.9 Launch initiative website
- 1.10 Implement public relations plan
- 1.11 Implement marketing plan

4 November 2011

Birchard Ohlinger, PE
Engineering Department
City of Key West
PO Box 1409
Key West, FL 33041

SUBJECT: City of Key West
Climate Change Action Plan Marketing Initiative Deliverables and Timeline

Dear Mr. Ohlinger:

On behalf of the Cunningham Group, Inc. and the MarketShare Company, we are pleased to present you with the following deliverables and timeline for the Climate Change Action Plan Marketing Initiative. We developed a multi-phased approach to successfully plan and implement the initiative. As discussed, completion of the following phases will coincide with milestone payments due to the Cunningham Group.

I. Phase One – Research Development

OVERVIEW: In this phase, our team will conduct the research necessary to create a stellar climate change campaign including but not limited to the following:

DELIVERABLE #1: Develop and execute a study to provide a baseline by which to measure the achievement of climate change goals

DELIVERABLE #2: Conduct brand research

DELIVERABLE #3: Research potential campaign partners (agencies, government entities, foundations, businesses, etc.) that can provide additional channels for increased outreach free of charge to the City

TIMELINE:

DELIVERABLE	COMPLETION DATE
Develop and execute study to provide a baseline by which to measure the achievement of climate change goals.	90 days from Notice to Proceed (NTP)
Conduct brand research and present	90 days from NTP

findings	
Research potential campaign partners to provide additional channels for free increased outreach	60 days from NTP

MILESTONE PAYMENT: \$15,000.00

II. Phase Two – Brand Development

OVERVIEW: In this phase, our team, armed with the research garnered in phase one will work closely with the city to development the climate change brand. Our team will perform the following task including but not limited to the following:

DELIVERABLE #1: Create marketing plan
DELIVERABLE #2: Create public relations plan
DELIVERABLE #3: Conduct charitable outreach efforts
DELIVERABLE #4: Design a climate change campaign website
DELIVERABLE #5: Develop social media tools to promote initiative

TIMELINE:

DELIVERABLE	COMPLETION DATE
Create marketing plan	120 days from Notice to Proceed (NTP)
Create public relations plan	120 days from NTP
Conduct charitable outreach efforts	120 days from NTP
Design a climate change campaign website	120 days from NTP
Develop social media tools to promote initiative	120 days from NTP

MILESTONE PAYMENT: \$30,000.00

III. Phase Three – Implementation and Execution

OVERVIEW: In this final phase, our team will launch the initiative to the public. This phase will include a soft launch which will occur three weeks prior to the official launch. During this phase, the team will complete the following task including but not limited to:

- DELIVERABLE #1:** Launch initiative website
- DELIVERABLE #2:** Implement public relations plan
- DELIVERABLE #3:** Implement marketing plan
- DELIVERABLE #4:** Organize press conference to announce initiative launch
- DELIVERABLE #5:** Monitor launch activities and issue final report to the City of Key West

TIMELINE:

DELIVERABLE	COMPLETION DATE
Launch initiative website	160 days from Notice to Proceed (NTP)
Implement public relations plan	160 days from NTP
Implement marketing plan	160days from NTP
Organize press conference to announce initiative launch	160 days from NTP
Monitor launch activities and issue final report to the City of Key West	240 days from NTP

MILESTONE PAYMENT: \$10,000.00

If you have any questions or comments, please contact me. We look forward to working with you on this important project.

Very truly yours,

Courtney Cunningham

President

