

AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, 201_, 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 33040, hereafter referred to as the "CITY" and Reef Relief, Inc., a not for profit corporation of the State of Florida, whose address is 631 Greene Street, Key West, Florida, 33040, hereafter referred to as "REEF RELIEF". This agreement shall be effective on the date of execution of the last party to sign the AGREEMENT for the term specified in Paragraph 3.1.

Whereas, Reef Relief is a not for profit membership organization with headquarters in Key West, Florida, dedicated to protecting coral reef ecosystems and educating the public on coral reef ecosystems; and

Whereas, on March 20, 2001, at the request of Reef Relief, the City Commission of the City of Key West passed Resolution No. 01-89, supporting the development of a marine park on the oceanside of Key West from Duval Street to the White Street Pier; and

Whereas, on September 5, 2001, the City Commission of the City of Key West passed Resolution No. 01-259, approving a Memorandum of Understanding between City and Reef Relief providing for the development of the Key West Marine Park on the oceanside of Key West from Duval Street to the White Street Pier; and

Whereas, the Key West Marine Park is located on state-owned, submerged land; and

Whereas, on June 17, 2011, the Florida Department of Environmental Protection issued its Letter of Consent to City to manage a near shore swimming area in waters located in the Key West Marine Park and adjacent to the southwestern part of Key West in the Atlantic Ocean, a copy of which is attached hereto, incorporated by reference, and more particularly described as Exhibit "A"; and

Whereas, the parties desire to amend the provisions contained in the Memorandum of Understanding referred to herein above; and

Whereas, Reef Relief has the expertise, equipment, and funding to maintain the Key West Marine Park.

NOW THEREFORE, City and Reef Relief agree as follows:

Article 1. Obligations of Reef Relief

- 1.1. At no cost whatsoever to the City, Reef Relief agrees to provide the following services to maintain the Key West Marine Park in accordance with the conditions contained in the Letter of Consent from the Florida Department of Environmental Protection referred to herein above:

- A. Maintenance: Reef Relief agrees to assume responsibility for maintaining and servicing the thirty-four (34) demarcation buoys associated with the Key West Marine Park.
- B. Education: Reef Relief agrees to produce educational materials to be available to residents and visitors to the park containing the rules for ecofriendly snorkeling, boating, and fishing. Reef Relief agrees to install and maintain educational signage along the shoreline on both public and private uplands of the Key West Marine Park.
- C. Reef Relief will become an active participant in the Higgs Beach Park planning efforts to assure continuity and vision for the Higgs Beach Development project.

Article 2. Obligations of the City

- 2.1 Subject to the limitations contained herein, the City herein expressly agrees to grant Reef Relief access to City property for the purpose of fulfilling Reef Relief's obligations as specified herein.
- 2.2 During the term of this Agreement, the City herein expressly agrees to permit Reef Relief to occupy slip Kingfish 1 located at City Marina, 1801 North Roosevelt Boulevard, Key West, Florida, for the purpose of docking the vessel Reef Relief will utilize to perform its obligations pursuant to this Agreement, which vessel is approximately 24 feet in length.

Article 3. General Legal Provisions

3.1. Agreement Period

- A. The duration of this Agreement shall be 5 years commencing from the effective date of this Agreement. The City shall have the option to renew this Agreement for a period of five years upon written notice to Reef Relief no less than 60 days prior to the expiration of the initial term.

3.2. Termination

- A. This agreement may be terminated at any time, with or without cause, by either party hereto upon one hundred eighty (180) days written notice to the other party. No further work will be performed by Reef Relief upon receipt of the City's notice unless specifically authorized by the General Services Department Director of the City of Key West.

3.3. Indemnification

- A. Reef Relief 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 or destruction of any property which may occur or in any way grow out of any act or omission of Reef Relief, 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. Reef Relief 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 contained in this indemnification is intended to act as a waiver of City's right of sovereign immunity pursuant to Florida law, including those rights contained in section 768.28, Florida Statutes. This indemnification shall survive the expiration or termination of this Agreement. Reef Relief 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 Reef Relief, or by persons employed or used by Reef Relief.

3.4. Insurance

- A. Reef Relief 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 Reef Relief 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 Contractor. *Waiver of Subrogation in favor of the City of Key West City Government is required on all policies excepting Workers' Compensation.*

Reef Relief 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 Contractor's Commercial General Liability (CGL) shall be in an amount acceptable to the City of Key West but not less than Five Hundred Thousand Dollars (\$500,000.00) Dollars Combined Single Limit per occurrence and One Million (\$1,000,000.00) Dollars annual aggregate. The coverage must include:

- Commercial Form
 - Premises/Operations
 - Products/Completed Operations
 - Independent Contractors (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 (\$1,000,000.00) 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, Reef Relief 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, Reef Relief 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 Reef Relief 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 Reef Relief to take out and/or maintain any required insurance shall not relieve Reef Relief from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligations of Reef Relief concerning indemnification.

3.1. Assignment

- A. Reef Relief shall not assign all or any part of this Agreement.

3.2. 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.

3.3. 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.

3.4. 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, including those expended on appeal.

IN WITNESS WHEREOF, the parties execute below on this ____ day of _____, 201_.

THE CITY OF KEY WEST, FLORIDA

By: _____
Craig Cates, Mayor

ATTEST:

Cheri Smith
City Clerk

REEF RELIEF, INC.

By: _____
Bob Cardenas, its President