

RESOLUTION NO. 08-170

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED LETTER OF AGREEMENT TO MAINTAIN A 1.576 ACRE MITIGATION POND, WETLAND AND UPLAND HAMMOCK IN PERPETUITY; AND APPROVING THE ATTACHED CAPITAL IMPROVEMENT PLAN LETTER FOR THE BOARDWALK, POND AND LANDSCAPE PROJECT AT THE MERILI MCCOY KEY WEST BOTANICAL GARDEN ON THE PROPERTY LOCATED AT 5210 COLLEGE ROAD; PROVIDING CONDITIONS; PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, a South Florida Water Management Permit for development of a 1.576 acre pond with wetland and upland hammock at the Merili McCoy Key West Botanical Garden Addition can be obtained only if the property owner, the City of Key West, agrees to maintain the pond in perpetuity; and

WHEREAS, City staff recommends approval of the attached Letter of Agreement to maintain a 1.576 acre mitigation pond, wetland and upland hammock in perpetuity, with the understanding that such duties and costs will be covered by the current tenant, and future tenants, and not the taxpayers of Key West; and

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

Section 1: That the City Manager is hereby authorized to execute on behalf of the City of Key West the attached Letter of

Agreement to maintain a 1.576 acre mitigation pond, wetland and upland hammock in perpetuity at the Merili McCoy Key West Botanical Garden.

Section 2: That as a specific contingency and condition of approval, the application and permit shall provide that there will be no pump out from the pond.

Section 3: That the attached Capital Improvement Plan Letter is approved.

That as a condition of approval, the application and permit shall provide that there will be no pump out from the pond.

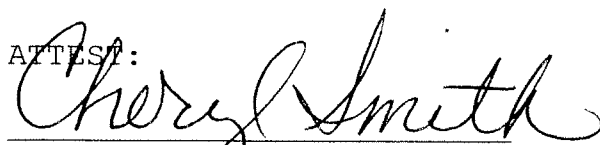
Section 4: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

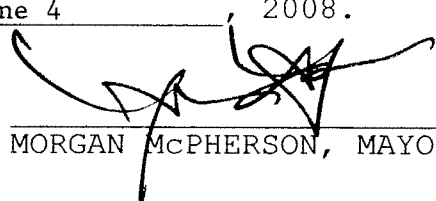
Passed and adopted by the City Commission at a meeting held this 3rd day of June, 2008.

Authenticated by the presiding officer and Clerk of the Commission on June 4, 2008.

Filed with the Clerk June 4, 2008.

ATTEST:

  
CHERYL SMITH, CITY CLERK

  
MORGAN MCPHERSON, MAYOR



THE CITY OF KEY WEST

Post Office Box 1499 Key West, FL 33041-1499 305-892-5700

MEMORANDUM

To: Jim Scholl, City Manager

From: Annalise Mannix

CC: Amy Kimball-Murley  
Larry Erskin  
Joe April

Date: May 29, 2008

Reference: Executive Summary for Pond Maintenance Agreement and Construction Improvement Plan (CIP) Approval at the Key West Tropical Forest and Garden

**ACTION STATEMENT:**

Resolution authorizing the City Manager to execute a letter of agreement to maintain a 1.576 acre mitigation pond, wetland and upland hammock in perpetuity at the Key West Tropical Forest and Garden, and approving the \$1,260,900 Capital Improvement Plan (CIP) for the boardwalk, pond and landscape project.

**IMPACT ON RESIDENTS**

The additional gardens are, pond and boardwalks will provide for a serene botanical spot that can improve ones quality of life, for no direct cost to the city or taxpayer.

**PROJECT ISSUE:**

The Key West Botanical Gardens Society leases land from the City on Stock Island for the purposes of operating botanical gardens. The KWBGS has a 10 year lease. The KWBGS approached the City of Key West asking for permission, through the planning process, to use the land for creating a lake and boardwalk, in addition to gardens. The Commission gave approval pending City staff investigation if the proposed pond may affect the adjacent golf course pond, as well as a variety of other conditions to be implemented prior to building permitting.

City staff determined that the licensed hydrologist reports are thorough and the proposed pond is not expected to have any negative repercussions. The remaining conditions will be satisfied prior to permitting.

The lease with the KWBGS requires the City Manager to approve any Capital Improvement Plans (CIP). The KWBGS submitted the \$1,260,900 plan for the boardwalk, pond and landscaping. Staff analyzed the plans and concluded that the cost estimate is



## THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33441-1409 (305) 851-5700

MEMORANDUM

accurate and the plans acceptable. The City Attorney considered the plan and determined that the plan is a significant change to the property and the improvements are not specifically indicated the lease. He recommended that the City Commission authorize the CIP.

Another requirement to complete the project is a South Florida Water Management Permit. The permit requires that if the pond is built it must be maintained. They require a letter stating that the operator/owner will maintain the pond properly in perpetuity. This is a possible liability for the City since the pond could require maintenance if debris enters the pond, or conditions in the pond cause too much or too little growth of vegetation. The operator, KWBGS, has only has a 10 year lease and the City would be responsible for the remainder of perpetuity. Due to this possible long term maintenance requirement the City Manager feels it prudent to obtain City Commission authorization of the agreement.

The \$1,260,900 project is funded by the garden and a variety of grants. One grant, a TDC Grant has been extended once already and the District One Advisory Council has indicated they will not authorize an extension of the \$380,000 grant if that component is not complete by August. In order to start and complete the project by August, the SFWMD permit must be issued, the contract for construction executed and the construction work complete. **Due to the thorough approval process for the hydrologic study, the Capital Improvement Plan and obtaining legal and staff input for the project has pushed back the permit approval and construction start date causing an urgent need for immediate approval if the project is to move forward.**

### OPTIONS:

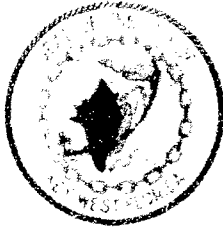
- Approve the CIP and maintenance letter, by so doing allow the project to move forward.
- Do not authorize either or both and the project will not be performed.

### FINANCIAL IMPACT:

Assuming the KWBGS continues its lease to operate the gardens the project will have no added financial burden for the City. If the City ever determines it should operate the gardens there is a possibility that the maintenance of the pond may be slightly more expensive then the maintenance of gardens in its stead. However, maintenance of the gardens may be equal or more expensive due to watering, trimming and re-planting.

### RECOMMENDATION:

Staff acknowledges that the City Commission has already approved the scope of the project as part of a development plan on the City's property, and therefore assumes the scope of work is desirable. Staff recommends approval of the CIP and execution of the maintenance letter.



THE CITY OF KEY WEST

P.O. Box 1409 Key West, FL 33040-1409

May 22, 2008

Ms. Amy Kimball-Murley  
Planning Director  
City of Key West  
P.O. Box 1409  
Key West, FL 33040

Ms. Vicki Grant  
Executive director  
Key West Botanical Garden Society  
PO Box 2436  
Key West, FL 33040-2436

**Re: Key West Botanical Garden Addition Phase One Pond – CIP Plan**

Dear Ms. Kimball-Murley and Ms. Vicki Grant:

The City Manager's office has examined the plans for the proposed phase one pond and boardwalk improvements on the Addition parcel (RA#72080.0018) and the funding awarded to the Key West Botanical Garden Society, Inc. for this purpose. KWBGs has been awarded:

TDC grant One	\$380,000
TDC grant Two	\$265,000
SFWMD grant	\$100,000
Dept of Agriculture	\$35,000
donated materials	\$76,000
donated plants/trees	\$30,000
Americorp	\$4,000
Arborist services	\$5,000
IBI Group	\$30,000
consultants	\$30,000
KWBG operating	\$105,075
volunteer hours in-kind	\$90,000
<u>KWBGs capital contribution</u>	<u>\$110,825</u>
<b>TOTAL:</b>	<b>\$1,260,900</b>

The project estimates appear to be consistent with current construction and landscape pricing. There appear to be are sufficient funds to construct the proposed capital improvements on the Botanical Gardens Addition parcel. Should any funds designated be

MEMORANDUM



THE CITY OF KEY WEST

PO BOX 900 Bayfront Key West FL 33440-0900

not yet received during construction and therefore limit any construction, the City directs that the pond and mitigation area be completed 100% and the boardwalks shortened or additional plants temporarily limited.

Respectfully,

Jim Scholl  
City Manager  
City of Key West

MEMORANDUM



THE CITY OF KEY WEST

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

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May 21, 2008

Robert Hopper  
SFWMD  
3301 Gun Club Road  
West Palm Beach, Florida 33406

**Re: #060711-17 Key West Botanical Garden Addition Phase One Pond**

Dear Mr. Hopper,

We hereby affirm that we will maintain the 1.576 acre mitigation pond, wetland and upland hammock in perpetuity.

The area that is covered by this pledge covers the improvements permitted by the SFWMD under the above number.

See the attached surveyor's sketch of "Mitigation Area One" which identifies the 1.576 acre project.

Respectfully,

Key West Botanical Garden Society, Inc.

By: *Vicki Grant*  
Vicki grant,  
Executive Director and Secretary

City of Key West

By: *J. K. Scholl*  
Jim Scholl,  
City Manager

JS/am



**IBI GROUP, Inc.**

AUTHORIZATION # LB 5610

ENGINEERS SURVEYORS PLANNERS  
LANDSCAPE ARCHITECTS ENVIRONMENTAL CONSULTANTS

2200 PARK CENTRAL BLVD. N.  
SUITE 100  
POMPANO BEACH, FLORIDA, 33064  
(954) 974-2200

2603 WATLAND CENTER PARKWAY  
SUITE C  
MAITLAND, FLORIDA, 32751  
(407) 660-2120

**LEGAL DESCRIPTION: MITIGATION AREA ONE**

Being a part of land located on Stock Island, Monroe County, Florida, and being more particularly described as follows:

COMMENCING at coordinates of which are N 87,268.27 and E 407,559.07, based on the United States Coast and Geodetic Survey's Mercator Grid Coordinate System, Florida East Zone, 1983, which has for its zero coordinates a point of Latitude 24°20'00" North and 500,000 feet West of Longitude 81°00'00", said point being the intersection of the Easterly Right-of-Way Line of Junior College Road and the Northerly Right-of-Way Line of U.S. Highway No. 1 (State Road No. 5), at the Westerly end of Junior College Road; Thence North 70°40'03" East along said Northerly Right-of-Way Line of U.S. Highway No. 1, a distance of 21.39 feet; Thence North 04°20'14" West, a distance of 604.65 feet to the POINT OF BEGINNING; Thence South 58°11'42" West, a distance of 199.85 feet; Thence North 31°48'18" West, a distance of 27.14 feet; Thence South 58°11'42" West, a distance of 87.80 feet; Thence North 31°48'24" West, a distance of 189.52 feet; Thence North 58°05'53" East, a distance of 275.22 feet; Thence North 89°21'03" East, a distance of 111.41 feet; Thence South 04°20'14" East, a distance of 179.75 feet to the POINT OF BEGINNING.

Containing 1.576 acres (68,653 square feet), more or less.

Subject to existing easements, rights-of-way, covenants, reservations and restrictions of record, if any.

Said lands situate, lying and being in the City of Key West, Monroe County, Florida.

**NOTES:**

(NOT A SURVEY-SKETCH AND DESCRIPTION ONLY)

- UNLESS IT BEARS THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER THIS DRAWING, SKETCH, PLAT OR MAP IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT VALID. ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES.
- LANDS SHOWN HEREON WERE NOT ABSTRACTED BY IBI GROUP, INC. FOR EASEMENTS AND RIGHTS-OF-WAY OF RECORD.
- DATA SHOWN HEREON WAS COMPILED FROM OTHER INSTRUMENTS AND DOES NOT CONSTITUTE A FIELD SURVEY.
- BEARINGS ARE ASSUMED, THE NORTHERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 1 BEARING N 70°40'03" E.
- IBI GROUP, INC'S CERTIFICATE OF AUTHORIZATION No. 5610, IS ISSUED BY THE FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION.

**CERTIFICATION:**

I HEREBY CERTIFY that the attached Sketch and Description is true and correct to the best of my knowledge and belief and that it meets the Minimum Technical Standards set forth by the Florida Board of Professional Surveyors And Mappers in Chapter 61G17-6, Florida Administrative Code.

For The Firm:  
IBI Group, Inc.

REVISIONS

DATE

BY

JAMES A. HAMILTON, III, P.S.M  
PROFESSIONAL SURVEYOR and MAPPER #3406 STATE OF FLORIDA

DATE:	10/03/07	DRAWN BY:	BF	CHECKED BY:	JAH	FIELD BOOK:	N/A
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j:\Pre-Integration\Projects\14811\_KeyWest\_Botanical\_Ph2\_IDC\05.9 Drawings\survey\current\MitigationArea-One-RE V.dwg SHEET 1 OF 2 SKETCH NO. 15178





**IBI GROUP, Inc.**

AUTHORIZATION # LB 5610

ENGINEERS SURVEYORS PLANNERS  
 LANDSCAPE ARCHITECTS ENVIRONMENTAL CONSULTANTS

2200 PARK CENTRAL BLVD. N.  
 SUITE 100  
 POMPANO BEACH, FLORIDA, 33064  
 (954) 974-2200

2603 MAITLAND CENTER PARKWAY  
 SUITE C  
 MAITLAND, FLORIDA, 32751  
 (407) 660-2120

N89°21'03"E  
 111.41'

N 58°05'53" E  
 275.22'

S 04°20'14" E 179.75'

**MITIGATION AREA ONE**

1.576 Acres ±  
 (68,653 Square Feet)

POINT OF BEGINNING

Ingress/Egress &  
 Utility Easement  
 (O.R.B. 2138, PG. 2457, M.C.R.)

N31°48'21"W  
 189.52'

S58°11'42"W  
 87.80'

N31°48'18"W  
 27.14'

S58°11'42"W  
 199.85'

**Key West Botanical Garden Addition**

CONSERVATION EASEMENT  
 (O.R.B. 2136, PG. 2469, M.C.R.)

Key West Golf Club

**STOCK ISLAND  
 MONROE COUNTY, FLORIDA**

JUNIOR COLLEGE ROAD

EASTERLY R/W LINE

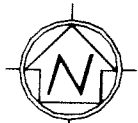
Out Parcel

604.65'

N04°20'14"W

**LEGEND:**

- R/W = RIGHT-OF-WAY
- O.R.B. = OFFICIAL RECORDS BOOK
- PG. = PAGE
- M.C.R. = MONROE COUNTY FLORIDA



SCALE: 1" = 100'

**POINT OF COMMENCEMENT**

INTERSECTION OF EASTERLY R/W LINE OF  
 JUNIOR COLLEGE ROAD AND THE  
 NORTHERLY R/W LINE OF U.S. HIGHWAY  
 NO. 1 (STATE ROAD NO. 5)

(NOT A SURVEY-SKETCH AND DESCRIPTION ONLY)

N 87°26'27"  
 E 407°55'07"

N70°40'03"E  
 21.39'

NORTHERLY R/W LINE

US No. 1 (Overseas Highway)  
 STATE ROAD NO. 5

j:\Pre-Integration\Projects\14811\_KeyWest\_Botanical\_Ph2\_TDC\05.9 Drawings\survey\current\MitigationArea-One-REV.dwg

SHEET 2 OF 2

SKETCH NO. 15178

REVISIONS	DATE	BY
REVISE BOUNDARY & DESCRIPTION	3/05/08	JAH

DATE:	DRAWN BY:	CHECKED BY:	FIELD BOOK:
10/03/07	BF	JAH	N/A





# SOUTH FLORIDA WATER MANAGEMENT DISTRICT AGREEMENT

# ORIGINAL

<p><b>THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT</b> (hereinafter referred to as <b>DISTRICT</b>) <b>HEREBY ENTERS INTO THIS AGREEMENT WITH:</b></p> <p><b>Name:</b> KEY WEST TROPICAL FOREST &amp; BOTANICAL GARDEN SOCIETY</p> <p><b>Address:</b> 5210 College Road</p> <p style="text-align: center;">Key West, FL 33041</p> <p><b>Project Manager:</b> Carol Ann Sharkey, Ceo</p> <p><b>Telephone No:</b> (305) 296-1504</p> <p><b>Fax No:</b> (305) 296-2242</p> <p><b>Hereinafter referred to as: ENTITY</b></p>	<p>This number must appear on all Invoices and Correspondence</p> <p style="font-size: 1.5em; font-weight: bold;">4600001132</p> <hr/> <p><b>COST SHARING INFORMATION</b></p> <p><b>Total Project Cost: \$ \$750,000.00</b></p> <p><b>ENTITY Contribution \$650,000.00</b></p>
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**PROJECT TITLE: KEY WEST TROPICAL FOREST AND GARDEN STORMWATER IMPROVEMENT PROJECT - FY 2008**

**The following Exhibits are attached hereto and made a part of this AGREEMENT:**

Exhibit "A" - Not Applicable	Exhibit "H" - Not Applicable
Exhibit "B" - General Terms and Conditions	Exhibit "I" - Not Applicable
Exhibit "C" - Statement of Work	Exhibit "J" - Not Applicable
Exhibit "D" - Payment and Deliverable Schedule	Exhibit "K" - Not Applicable
Exhibit "E" - Not Applicable	Exhibit "L" - Not Applicable
Exhibit "F" - Not Applicable	Exhibit "M" - Audit Requirements
Exhibit "G" - Not Applicable	

<p><b>TOTAL DISTRICT AMOUNT:</b> \$100,000.00</p> <p><b>Multi-Year Funding (If Applicable)</b></p> <p><b>Fiscal Year:</b></p> <p><b>Fiscal Year:</b></p> <p><b>Fiscal Year:</b></p> <p><b>*Subject to District Governing Board Annual Budget Approval</b></p>	<p><b>CONTRACT TYPE:</b> Not-to-Exceed</p> <p><b>Fiscal Year:</b></p> <p><b>Fiscal Year:</b></p> <p><b>Fiscal Year:</b></p>
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<p><b>CONTRACT TERM:</b> One (1) Year</p> <p><b>District Project Manager:</b> Cecelia Weaver</p> <p><b>Telephone No:</b> (305) 853-3219 Ext. 2286</p> <p><b>Fax No.</b> (305) 853-3221</p>	<p><b>EFFECTIVE DATE:</b> Last Date of Execution by the Parties</p> <p><b>District Contract Specialist:</b> Rupert Giroux</p> <p><b>Telephone No.:</b> (561) 682-2532</p> <p><b>Fax No.:</b> (561) 682-6397 or (561) 681-6275</p>
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<p><b>SUBMIT INVOICES AND NOTICES TO THE DISTRICT AT:</b></p> <p>South Florida Water Management District 3301 Gun Club Road West Palm Beach, Florida 33406 <b>Attention:</b> Procurement Department - Notices Accounts Payable - Invoices</p>	<p><b>SUBMIT NOTICES TO THE ENTITY AT:</b></p> <p>KEY WEST TROPICAL FOREST &amp; BOTANICAL GARDEN SOCIETY 5210 College Road</p> <p>Key West, FL 33041 <b>Attention:</b> Carol Ann Sharkey, Ceo</p>
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IN WITNESS WHEREOF, the authorized representative hereby executes this **CONTRACT** on this date, and accepts all Terms and Conditions under which it is issued.

**KEY WEST TROPICAL FOREST & BOTANICAL GARDEN SOCIETY**

Accepted By:   
Signature of Authorized Representative

Title: Chairman, Fulltime Volunteer

Date: \_\_\_\_\_

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

Accepted By:   
**Frank Hayden, Procurement Director**

Date: 2/5/08 RM

SFWMD PROCUREMENT APPROVED  
By:  Date: 12/21/07

Grant Award Agreement

THIS AGREEMENT (Agreement) is entered into this 14<sup>th</sup> day of Nov. 2007 by and between MONROE COUNTY, a political subdivision of the state of Florida (County) and **Key West Botanical Garden Society, Inc.** a not for profit organized and operating under the laws of the state of Florida (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 has applied for funding for the Phase III: Creation of a Nationally Acclaimed Aviary Eco-Tourism Attraction; 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 attract tourists, and improve the property for use as a museum and nature center 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 **November 14, 2007 through to April 30, 2009**. 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 the following scope of services: Project Management; Labor and materials for boardwalks; Labor and material for the bridges and platforms; Labor and material for digging the pond and creating berms or hills (earth moving); Purchase and installation of plants and trees; ADA compliant pathways; security and safety fencing and safety signage; visitor signage (not plant labels or labeling machine); payment of expenses related to updated documents that includes engineering, hydrology, surveys and "as Built" documents deemed necessary for any further permitting and for final Certificate of Occupancy and Inspections. All of the above mentioned work will be completed within the section outlined in Exhibit B of this contract showing TDC '08 project. Segment(s) of the work is/are more particularly described in Exhibit(s) A and B, detailing the work and the cost allocable to each segment, attached hereto and incorporated herein by reference. All work for which grant funds are to be expended must be completed by the stated termination date of April 30, 2009 and all invoices pertaining to this project shall be

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 an amount not to exceed **\$265,000 (Two Hundred and Sixty Five Thousand Dollars)** for materials and services used to improve the property. Reimbursement request must show that Grantee has paid in full for materials and services relating to the segment prior to seeking the 50% (fifty percent) reimbursement from Grantor. Payment shall be 50% (fifty percent) reimbursement of the total cost of the segment, subject to the cap on expenditures for that segment as set forth in Exhibit A. Reimbursement can be sought after each segment of the Agreement is completed and signed by the Monroe County Engineering Department as outlined in 3.a. 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.

a) Payment shall be made upon the completion of a specific segment as outlined in the Scope of Services and Exhibit A. Payment for expenditures permissible by law and County policies shall be made through reimbursement to Grantee upon presentation of Application for Payment Summary- AIA Document G702 or similar certification as required below for governmental entities and not-for-profit entities, invoices, canceled checks and other documentation necessary to support a claim for reimbursement. Payment is a 50% (fifty percent) reimbursement of the total cost of each segment of the project, subject to the cap on expenditures for that segment as set forth in Exhibit A. Reimbursement can be sought after each segment of the Agreement is completed and signed by the Monroe County Engineering Department as outlined in 3.a. Included in said documentation shall be proof that the Grantee has received the property, realty or personalty, for each segment of Agreement as outlined in Exhibit A and paid an amount equal to or greater than the amount invoiced to the Grantor. It shall be necessary for the Grantee to contact the County Engineering Division and to arrange for inspections upon the completion of each segment. The documentation needed to support the payment request shall be in the form necessary for submission and available to the County engineer at the time of inspection. All submissions for payment shall have a proposed schedule of values for segment(s) and indicate the percentage of completion of the overall project as of the submission. This document should be signed by the project architect, engineer, general contractor or project manager. Photos of the progress of the work shall also be submitted with the payment application. It shall be the responsibility of the project architect, engineer, general contractor or project manager to initiate the communication with the Monroe County Engineering Division to facilitate the inspection(s) of the segment of the project. All submissions requesting payment shall be approved in writing, and signed, by the Monroe County Engineering Division as to the completion of the segment of the project for which payment is requested. The application for payment document must be certified through a statement signed by an officer of the organization and notarized, declaring that representations in the invoice are true and factual. Grantee shall also provide partial releases of liens or certifications of

## Grant Award Agreement

This AGREEMENT dated the 15 day of November 2006, 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 **Key West Botanical Garden Society, Inc.**, 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 has applied for funding for the Creation of a Nationally Acclaimed Aviary Eco-Tourism Attraction Phase II project; 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 construct the property for use as museum and nature center 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 **November 15, 2006 through to December 31, 2007**. 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 the following scope of services: Site development; restoration of a pond; addition of new pond; ADA boardwalk around pond 1 and plantings. Segment(s) of the work is/are more particularly described in Exhibit(s) A, detailing the work and the cost allocable to each segment, attached hereto and incorporated herein by reference. All work for which grant funds are to be expended must be completed by the stated **termination date of December 31, 2007** and all invoices pertaining to this project shall be submitted to the Finance Department of Monroe County no later than **December 31, 2007** to be considered for payment.

a) There shall be a project manager to acknowledge receipt of goods or work performed. This Project Manager shall be Carolann Sharkey, 5210 College Road, Key West, FL 33040 (Telephone: 305-296-1504/Fax: 305-292-9275/E-mail: Sharkeyfun@aol.com). Should there be a change in the project manager specified in

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

Board of County Commissioners  
of Monroe County

*Danny L. Kolhage*  
Deputy Clerk

\_\_\_\_\_  
Mayor/Chairman

(CORPORATE SEAL)  
Attest:

Key West Botanical Garden Society, Inc.

By: \_\_\_\_\_  
Secretary

By: *C. Sharkey*  
President

\_\_\_\_\_  
Print Name

*CAROLANN SHARKEY*  
Print Name

Date: \_\_\_\_\_

Date: 10-19-07

OR TWO WITNESSES

(1) \_\_\_\_\_

(2) \_\_\_\_\_

(1) \_\_\_\_\_  
Print Name

(2) \_\_\_\_\_  
Print Name

Date: \_\_\_\_\_

Date: \_\_\_\_\_

*Copy to [unclear]*  
*[unclear]*  
*[unclear]*

the Grantee's application, 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.

(i) A Grantee which is a governmental entity 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.

(ii) A Grantee which is a not-for-profit entity shall undergo procurement processes for those parts of the project to be contracted (not performed by the entity's employees), which shall, at a minimum, require the acquisition of two written quotes for work expected to be under \$25,000 or a notarized statement as to why such written quotes were not feasible. For work expected to be \$25,000 or more, a competitive bid process must be performed. County procurement policies and procedures may be used by the Grantee as a guideline. In the event that the monetary contractual process commenced prior to the effective date of this funding grant Agreement, and the guidelines above were not followed, Grantee shall submit with its reimbursement request a notarized statement which details the Grantee's procurement efforts to ensure the best service for the most economical price. Grantee shall provide Grantor detailed documentation of the procurement process used.

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 an amount not to exceed **\$380,000 (Three Hundred and Eighty Thousand Dollars)** for materials and services used to construct the property. Reimbursement request must show that Grantee has paid in full for materials and services relating to the segment prior to seeking the 50% (fifty percent) reimbursement from Grantor. Payment shall be 50% (fifty percent) reimbursement of the total cost of the segment, subject to the cap on expenditures for that segment as set forth in Exhibit A. Reimbursement can be sought



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

Board of County Commissioners  
of Monroe County

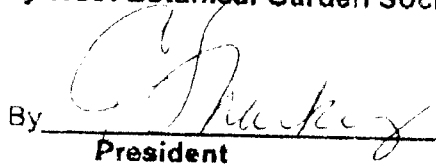
  
Deputy Clerk

  
Mayor/Chairman

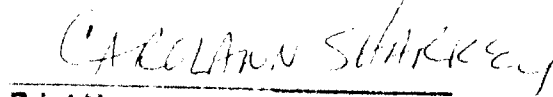
(CORPORATE SEAL)  
Attest:

Key West Botanical Garden Society, Inc.

By \_\_\_\_\_  
Secretary

By   
President

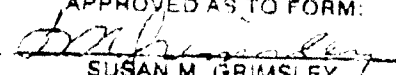
\_\_\_\_\_  
Print Name

  
Print Name

OR TWO WITNESSES

(1) \_\_\_\_\_

(2) \_\_\_\_\_

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:  
  
SUSAN M. GRIMSLEY  
ASSISTANT COUNTY ATTORNEY  
Date 10-18-06

