

RESOLUTION NO. 06-374

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED AGREEMENT FOR KEY WEST CEMETERY LANDSCAPING SERVICES BETWEEN THE CITY AND MONROE ASSOCIATION FOR RETARDED CITIZENS, INC. ("MARC"); PROVIDING FOR AN EFFECTIVE DATE

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

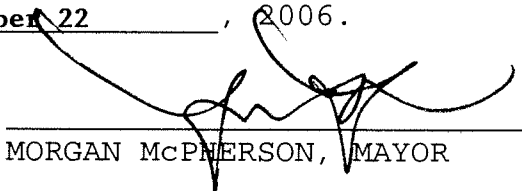
Section 1: That the attached Agreement between the City and MARC is hereby approved. The term shall be for one year in the amount of \$46,942.00.

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 21 day of November, 2006.

Authenticated by the presiding officer and Clerk of the Commission on November 22, 2006.

Filed with the Clerk November 22, 2006.

  
MORGAN McPHERSON, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK



## Executive Summary

**RECEIVED**  
NOV 27 2006

ASSISTANT CITY MANAGER

**TO:** Julio Avel, City Manager

**FROM:** Russell Brittain, Sexton Historic City Cemetery

**DATE:** Nov. 6, 2006

**CC:** Roger Whittenberg, Finance Director  
Bob Tischenkel, City Attorney

**RE:** Renewal of Agreement between Monroe Association of Retarded Citizens and City of Key West

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### **ACTION STATEMENT:**

As described in Resolution No 03-066, annual renewal of the agreement dated February 20, 2003 between the City of Key West and the Monroe Association of Retarded Citizens, Inc. for landscaping and maintenance services at the City Cemetery for the amount of \$46,942.00 is recommended.

### **STRATEGIC PLAN:**

Continuing landscaping and maintenance of the City's two cemeteries has been identified as a major priority in the Cemetery section of the Strategic Plan.

### **BACKGROUND:**

The City of Key West entered into an agreement with the Monroe Association of Retarded Citizens, Inc. on February 20, 2003 for landscaping and maintenance services at the City Cemetery for the amount of \$45,942.99, with a waiver of competitive bidding. The agreement may be renewed annually for four years, and the cost adjusted according to the Consumer Price Index figures as provided by the City Finance Office. This is a mutually beneficial arrangement as the Cemetery requires constant care and the MARC House seeks employment for their continual operation.

### **OPTIONS/ADVATAGES/DISADVANTAGES:**

The 16+ acres of the Key West City Cemetery and the Peary Court Cemetery requires continual landscaping and maintenance. At present two City Associates are assigned for this purpose to the City Cemetery and Peary Court Cemetery. The MARC House has provided the additional help required for grounds maintenance.

Option 1 - Do not approve the Resolution.

- Staff does not recommend this option. This would require the City to provide these services in-house by hiring five (5) additional associates dedicated to work in the cemetery. This option would also be more costly as wages and benefits must be considered.

Option 2 - Go through competitive bid process to obtain a provider for these services.

- Staff does not recommend this option. It is likely that these services would cost a good deal more as bidders would represent for-profit organizations.

Option 3 - Renew the current agreement.

- Staff recommends this option. This provides a means for the City to give back to the community by working with this worthwhile non-for-profit organization.

### **FINANCIAL IMPACT:**

The FY 06-07 General Fund - City Cemetery approved budget, line item # 539.34, contains an allocation of \$46,942.00 for these services.

### **RECOMMENDATION:**

Finance has reviewed the attached proposal. It is recommended that the City of Key West renew the agreement with the Monroe Association of Retarded Citizens, Inc. for landscaping and maintenance at the City Cemetery as this would be the least and most community-minded option.

## AGREEMENT

This Agreement is between the City of Key West, Florida (hereinafter "CITY") and Monroe Association for Retarded Citizens, Inc., 812 Southard Street, Key West, Florida, 33040 (hereinafter "MARC").

WITNESSETH:

WHEREAS, CITY desires to contract for landscape and maintenance services at the City Cemeteries; and

WHEREAS, MARC agrees to provide these services;

NOW, THEREFORE, in mutual consideration of the promises contained herein, CITY and MARC agree as follows:

1. Scope of Work

- A. MARC shall provide a crew of five (5) MARC workers with appropriate professional supervision on a 150 hour per week basis to maintain cleanliness of the City Cemeteries and assist the Public Works Department in Cemetery landscaping functions. MARC shall provide a truck and all tools, work clothing, and training and supervision for the crew.
- B. The MARC crew shall clear overgrowth, prune, trim and cut trees, hoe and remove weeds, cut and weed-whack grass, and remove all trash and cuttings to the appropriate disposal area.

2. Payment

CITY agrees to pay MARC Nine hundred two and 73/100 per week. CITY shall pay this amount within forty-five (45) days of invoice.

3. Term

The term of this Agreement is for one (1) year, commencing Oct. 1, 2006, and ending Sept. 30, 2007.

4. Indemnification

MARC shall indemnify and hold harmless the CITY, its officers and employees, from liabilities, property damage, losses, personal injuries, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of MARC, its employees or agents, in the performance of this Agreement.

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, MARC shall, upon written notice from the CITY, resist and defend such action or proceeding by counsel satisfactory to the CITY. MARC 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 arising out of this agreement. MARC's obligation under this provision shall not be limited in any way by the agreed upon payment as shown in this Agreement, or the limit of or lack of sufficient insurance protection.

In all instances where MARC may be required to indemnify CITY, CITY shall give MARC prompt and timely notification of any claims. CITY shall not enter into any settlement agreement or otherwise terminate this action without the consent of, and at its option, participation by MARC or its legal representative.

5. Insurance

MARC agrees to provide at its expense comprehensive liability insurance insuring itself and CITY against all claims of damages or injury to persons or property arising from any reason out of its activities related to this agreement, or otherwise arising from its exercise of rights or failure to perform obligations pursuant to this Agreement. The insurance policy shall be written by a solvent insurance company in good standing and fully licensed to do business in Florida, and shall provide a minimum of \$300,000.00 coverage for bodily injury and property damage. The CITY shall be named as an additional insured on the policy. MARC shall provide a copy of the certificate of insurance to the City Clerk within 10 days of execution of this agreement. The insurance amounts herein provided shall not in any way operate to limit or release MARC from any obligation to indemnify CITY as provided therein.

6. Termination

The parties hereto may terminate this Agreement at any time upon written notice mailed to each other at the addresses provided below. Upon such termination, CITY shall not be obligated to make any further payments to MARC, other than money due and payable at the time of termination.

7. Addresses for Notices

FOR CITY

City Manager  
City of Key West  
PO Box 1409  
Key West, FL 33041-1409

FOR MARC

Director, MARC  
812 Southard St.  
Key West, FL 33040

Copy to  
Director of Public Works  
Address as above

8. Independent Contractor

MARC clients/workers shall not be deemed to be employees of CITY, and shall not accrue any of the rights of CITY's employees under CITY ordinances or personnel policies and procedures.

9. Jurisdiction and Severability

The laws of the State of Florida govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. The venue for mediation, arbitration or any other legal proceeding shall be Monroe County, Florida. 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 not affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained therein.

10. Entire Agreement

This agreement sets forth all the covenants, promises, agreements and understanding between CITY and MARC. No subsequent alteration, amendment, change or addition to this agreement shall be binding upon CITY or MARC unless reduced to writing and duly executed by both parties.

ATTEST

CITY OF KEY WEST

Cheryl Smith  
Cheryl Smith, City Clerk

Date 11-27-06

Julio Avel  
Julio Avel, City Manager

Date 11-27-06

MONROE ASSOCIATION FOR RETARDED CITIZENS, INC.

Diana Flenard  
President/Authorized Agent

Date 11/28/06

Diana Flenard  
Print Name of President/Authorized Agent

Samuel S. DeMaio  
Witness

Date 11/28/06