

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: January 18, 2012

Division: Public Works/Engineering

Bulk Item: Yes X No

Department: Project Management

Staff Contact Person/Phone #: Jerry Barnett X4416

AGENDA ITEM WORDING: Approval of an Agreement with the Sugarloaf Key Volunteer Fire Department for repairs at the station located at 17175 Overseas Highway in Sugarloaf Key.

ITEM BACKGROUND: The Sugarloaf Volunteer Fire Station contributes toward protecting the lives and property in the Florida Keys. In order to continue operating as a viable fire station the building is in need of dire repair.

PREVIOUS RELEVANT BOCC ACTION: This project budget was approved at the BOCC's annual budget meeting held on 09/21/11.

CONTRACT/AGREEMENT CHANGES: N/A

STAFF RECOMMENDATIONS: Approval as stated above.

TOTAL COST: \$150,000.00 **INDIRECT COST:** **BUDGETED:** Yes X No

DIFFERENTIAL OF LOCAL PREFERENCE: N/A

COST TO COUNTY: \$150,000.00 **SOURCE OF FUNDS:** Fire & Rescue

REVENUE PRODUCING: Yes No X **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty OMB/Purchasing Risk Management MS

DOCUMENTATION: Included X Not Required

DISPOSITION:

AGENDA ITEM #

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: Sugarloaf Fire Station Contract # _____
 Effective Date: 01/18/12
 Expiration Date: _____

Contract Purpose/Description:
For repairs to the Fire Station located at 17175 Overseas Highway, Sugarloaf

Contract Manager: Ann Riger X4439 Facilities Devel/Stop #1
 (Name) (Ext.) (Department/Stop #)

for BOCC meeting on 01/18/12 Agenda Deadline: 01/03/12

CONTRACT COSTS

Total Dollar Value of Contract: \$ 150,000.00 Current Year Portion: \$ 150,000.00
 Budgeted? Yes No Account Codes: 141-11500-560620- _____
 Grant: \$ N/A _____
 County Match: \$ N/A _____

ADDITIONAL COSTS

Estimated Ongoing Costs: \$ _____/yr For: _____
 (Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	_____	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<i>[Signature]</i>	<u>31st 2012</u>
Risk Management	<u>12/20/11</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<i>[Signature]</i>	<u>12-30-11</u>
O.M.B./Purchasing	<u>12-29-11</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<i>[Signature]</i>	<u>12-29-11</u>
County Attorney	<u>12/29/11</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<i>[Signature]</i>	<u>12/29/2011</u>

Comments: _____

**AGREEMENT BETWEEN MONROE COUNTY AND
SUGARLOAF KEY VOLUNTEER FIRE DEPARTMENT, INC.**

This Agreement is made and entered into this _____ day of _____, 2011, between the MONROE COUNTY, FLORIDA (“COUNTY”), a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida 33040, and the SUGARLOAF KEY VOLUNTEER FIRE DEPARTMENT INC. (“SUGARLOAF”), a Florida Corporation, whose address is 17175 Overseas Highway, Sugarloaf Key, Florida 33042.

WHEREAS, SUGARLOAF is a volunteer fire department, serving portions of the Florida Keys; and

WHEREAS, SUGARLOAF operates a volunteer fire department from a building located at is 17175 Overseas Highway, Sugarloaf Key, Florida; and

WHEREAS, the building , owned by SUGARLOAF, is in need of repair in order to continue operating as a viable fire station; and

WHEREAS, the COUNTY recognizes the contribution that SUGARLOAF has made and continues to make toward the protection of lives and property in the Florida Keys; and

WHEREAS, it serves a legitimate public purpose for COUNTY to contribute to the cost of repair of the building in order for SUGARLOAF to continue to provide such services

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, it is agreed as follows:

1. **THE AGREEMENT.** This Agreement consists of this Agreement and its exhibits, sealed Drawings provided by SUGALOAF’s licensed Architect, Engineer, or contractor, Specifications provided by SUGALOAF’s licensed Architect, Engineer, or contractor, and Modifications, if any, issued after execution of this Agreement. The Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

2. **SCOPE OF THE WORK AND SUGARLOAF RESPONSIBILITIES.** SUGARLOAF agrees to the following list of requirements and responsibilities:

- A. Complete the project scope of work which consists of structural stabilization and repair of east building of the Sugarloaf Fire Station known as the “annex”, and
- B. The scope of work will include, but not necessarily be limited to, the following items :
 - Foundation repair and or replacement
 - Column repair and or replacement
 - Wall repair and or replacement
 - Beam repair and or replacement
 - Ground slab replacement
 - Elevated slab repair
 - Replacement of upper roof supports
 - Demolition of stairs and other areas

- C. Provide COUNTY with an accurate list of necessary repairs being made to the building, this list shall become the "Authorized Repairs", any additions or changes shall be at no additional cost to the COUNTY.
- D. SUGARLOAF may make a determination of whether to use its own forces or it's contractor to perform the repairs; and
- E. SUGARLOAF must comply with all COUNTY permitting requirements and County Code requirements; and
- F. Contract with a licensed Contractor, who will provide the necessary repairs or oversee repairs completed by SUGARLOAF's own forces,
- G. Provide COUNTY with all drawings and specifications which have been prepared by the SUGARLOAF contractor related to this Agreement;
- H. Provide COUNTY representatives with access to the building at any time, as long as the access does not interfere with an ongoing emergency or while actively responding to a fire or emergency;
- I. SUGARLOAF shall be responsible for all interaction with it's own contractor, for all contractual duties related to the agreement between SUGARLOAF and it's contractor, and shall transmit to its contractor and/or to its own forces any requirements of code, permitting requirements, code inspection reports; and
- J. SUGARLOAF shall coordinate between its contractor and Project Management and shall be responsible for the timely transmitting of information from Project Management to thier contractor or its own forces.

3. **COUNTY RESPONSIBILITIES.** COUNTY agrees to the following:

- A. The Contract sum for this Agreement is One Hundred Fifty Thousand Dollars (\$150,000.00), for completed work as described in 2 above, under the conditions and requirements stated herein.
- B. COUNTY'S performance and obligation to pay under this agreement, is contingent upon annual appropriation by the Board of County Commissioners.
- C. Nothing in this Agreement shall be construed to indicate that COUNTY is in privity of contract with the Contractor hired by SUGARLOAF.
- D. Inspections done by Project Management are for the purpose of validating completion of the stages of the work in a manner acceptable to Project Management. Inspection for the purposes of permitting or conformity to the County Code shall not be done by Project Management.

4. **CONDITIONS OF FUNDING AND PAYMENTS TO SUGARLOAF.**

A. SUGARLOAF shall make applications for payment and based upon Applications for Payment submitted by SUGARLOAF to the Director of Project Management, and upon approval for payment issued by the Director of Project Management, the COUNTY shall make progress payments on account of the Contract Sum to SUGARLOAF as provided below and elsewhere in the Contract Documents.

B. The period covered by each Application for payment shall be one calendar month ending on the last day of the month, or as follows:

- 1) Payment will be made by the COUNTY based upon percentage of completed work. The parties agree that the COUNTY shall retain the sum of Fifteen Thousand Dollars (\$15,000) out of the contract sum which shall constitute the final payment to be paid after the work is completed pursuant to the Agreement.

- 2) Each Application for Payment shall be based upon the Schedule of Values submitted by SUGARLOAF and approved by Project Management. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Director of Project Management may require.
- 3) This schedule, unless objected to by the Director of Project Management, shall be used as a basis for reviewing the SUGARLOAF's Applications for Payment.
- 4) Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment and approved by Project Management.
- 5) Subject to the provisions of this Agreement, the amount of each progress payment shall be based on the percentage of completion as determined by Project Management and computed as follows:

Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, subtract the aggregate of previous payments previously made by the County, subtract amounts, if any, for which the Director of Project Management has withheld or nullified an Application for Payment, and subtract the amount retained.

- 6) COUNTY shall not be required to make payments until such time as Project Management or its designee has inspected the repairs and found them acceptable to the COUNTY, however, partial payments may be made for any portion that is completed and approved.
- C. SUGARLOAF shall submit to COUNTY invoices with supporting documentation acceptable to the Clerk, on a monthly schedule in arrears. Acceptability to the Clerk is based on generally accepted accounting principles and such laws, rules and regulations as may govern the Clerk's disbursement of funds.
- D. COUNTY shall not be responsible for unforeseen expenses, costs, fees, additional work or any other compensation over the amount stated above as the contract sum, including and not limited to expenses for travel, lodging, per diem or any other expenses.

4. TERM OF AGREEMENT. This Agreement shall commence on the date of execution by both parties, and ends when substantial completion for all work has been achieved not later than Three Hundred Sixty Five (365) calendar days after the date of execution, unless terminated earlier under the provisions of this Agreement.

5. ACCEPTANCE OF CONDITIONS BY SUGARLOAF. SUGARLOAF shall obtain from its Contractor all current appropriate licenses and shall require in its contract with the Contractor that the contractor shall maintain the appropriate licenses throughout the term of this Agreement. Proof of such licenses shall be provided to Project Management prior to any payments from the COUNTY.

6. FINANCIAL RECORDS OF SUGARLOAF. SUGARLOAF shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Each party to this Agreement or their authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for four years following the termination of this Agreement. If an auditor employed by the COUNTY or Clerk determines that monies paid to SUGARLOAF pursuant to this Agreement were spent for purposes not authorized by this Agreement, the SUGARLOAF shall repay the monies within 60 days of written notice from COUNTY to SUGARLOAF which notice shall be in writing and shall outline the amount of money to be repaid and the reason for same

7. PUBLIC ACCESS. The COUNTY and SUGARLOAF 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 SUGARLOAF in conjunction with this Agreement; and the COUNTY shall have the right to unilaterally cancel this Agreement upon violation of this provision by SUGARLOAF.

8. HOLD HARMLESS AND INSURANCE. SUGARLOAF covenants and agrees to indemnify and hold harmless Monroe County Board of County Commissioners from any and all claims for bodily injury (including death), personal injury, and property damage (including property owned by Monroe County) and any other losses, damages, and expenses (including attorney's fees) which arise out of, in connection with, or by reason of services provided by SUGARLOAF occasioned by the negligence, errors, or other wrongful act of omission of SUGARLOAF, its employees, visitors, contractors, subcontractors or agents.

9. NON-WAIVER OF IMMUNITY. Notwithstanding the provisions of Sec. 786.28, Florida Statutes, the participation of COUNTY and SUGARLOAF 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 Agreement entered into by the COUNTY be required to contain any provision for waiver.

10. INDEPENDENT SUGARLOAF. At all times and for all purposes under this agreement SUGARLOAF 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 so as to find SUGARLOAF or any of his employees, subs, servants, or agents to be employees of the Board of County Commissioners of Monroe County.

11. NONDISCRIMINATION. COUNTY and SUGARLOAF 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 or SUGARLOAF agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination.

12. ASSIGNMENT/SUBCONTRACT. SUGARLOAF shall not assign or subcontract its obligations under this agreement to others, except in writing and with the prior written approval of the Board of County Commissioners of Monroe County and SUGARLOAF, which approval shall be subject to such conditions and provisions as the Board may deem necessary. This paragraph shall be incorporated by reference into any assignment or subcontract and any assignee or sub shall comply with all of the provisions of this agreement. Unless expressly provided for therein, such approval shall in no manner or event be deemed to impose any additional obligation upon the board.

13. COMPLIANCE WITH LAW AND LICENSE REQUIREMENTS. In providing all services/goods pursuant to this agreement, SUGARLOAF shall abide by all statutes, ordinances, rules and regulations pertaining to, or regulating the provisions of, such services, including those now in effect and hereinafter adopted. Any violation of said statutes, ordinances, rules and regulations shall constitute a material breach of this agreement and shall entitle the Board to terminate this Agreement. SUGARLOAF, and its agents, employees, and officers shall possess proper licenses to perform work in accordance with these specifications throughout the term of this Agreement.

Compliance with all laws includes, but is not limited to, the immigration laws of the Federal and State government. Any violation of said statutes, ordinances, rules and regulations shall constitute a material breach of this agreement and the agreement shall entitle the Board in its discretion to terminate this Agreement immediately. This paragraph shall be incorporated by reference into any agreement, assignment or subcontract and any assignee or sub shall comply with all of the provisions of this agreement.

14. DISCLOSURE AND CONFLICT OF INTEREST. SUGARLOAF represents that it, its directors, principles and employees, presently have no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required by this contract, as provided in Sect. 112.311, et. seq., Florida Statutes. Upon execution of this contract, and thereafter, as changes may require, SUGARLOAF shall notify the COUNTY of any financial interest it may have in any and all programs in Monroe County which the SUGARLOAF sponsors, endorses, recommends, supervises, or requires for counseling, assistance, evaluation, or treatment.

COUNTY and SUGARLOAF 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 SUGARLOAF 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.

15. NO PLEDGE OF CREDIT. SUGARLOAF shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. SUGARLOAF further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this contract.

16. NOTICE REQUIREMENT. Any notice required or permitted under this agreement shall be in writing and hand delivered or mailed, postage prepaid, to the other party by certified mail, returned receipt requested, to the following:

FOR COUNTY:
Director of Project Management
1100 Simonton Street #2-216
The Gato Building
Key West, Fl. 33041

County Administrator
1100 Simonton Street
The Gato Building
Key West, Fl. 33041

FOR SUGARLOAF:
President Sugarloaf Key
Volunteer Fire Department, Inc
17174 Overseas Highway
Sugarloaf Key, Fl 33042

Chief of Sugarloaf Key
Volunteer Fire Department, Inc
17174 Overseas Highway
Sugarloaf Key, Fl 3304

17. **TAXES.** COUNTY is exempt from payment of Florida State Sales and Use taxes. SUGARLOAF shall not be exempted by virtue of the COUNTY'S exemption from paying sales tax to its suppliers for materials used to fulfill its obligations under this contract, nor is SUGARLOAF authorized to use the COUNTY'S Tax Exemption Number in securing such materials. SUGARLOAF shall be responsible for any and all taxes, or payments of withholding, related to services rendered under this agreement.

18. **TERMINATION.** The COUNTY may terminate this Agreement with or without cause prior to the beginning of construction. The COUNTY or SUGARLOAF may terminate this Agreement for cause with seven (7) days notice to the other party. Cause shall constitute a breach of the obligations of either party to perform the obligations enumerated under this Agreement.

19. **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, the County of Monroe, and the parties agree that venue will lie in the lower Keys or before the appropriate administrative body or court in Monroe County, Florida.

20. **MEDIATION.** The COUNTY and SUGARLOAF 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. 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.

21. **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 SUGARLOAF 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.

22. **ATTORNEY'S FEES AND COSTS.** COUNTY and SUGARLOAF 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 and court costs. Each party agrees to pay its own investigative, and out-of-pocket expenses whether it is the prevailing party or not, through all levels of the court system.

23. **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 SUGARLOAF agree that neither the COUNTY nor the SUGARLOAF 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.

24. **ATTESTATIONS.** SUGARLOAF 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.

25. **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.

26. **EXECUTION IN COUNTERPART.** 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 COUNTY and SUGARLOAF hereto may execute this Agreement by signing any such counterpart.

IN WITNESS WHEREOF COUNTY and SUGARLOAF hereto have executed this Agreement on the day and date first written above.

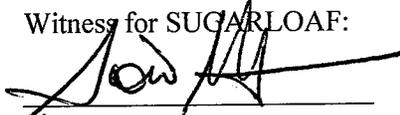
(SEAL)
Attest: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY
COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Deputy Clerk
Date: _____

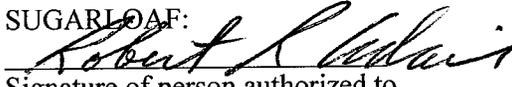
By: _____
Mayor
Date: _____

Witness for SUGARLOAF:


Signature

Date: 12/23/11

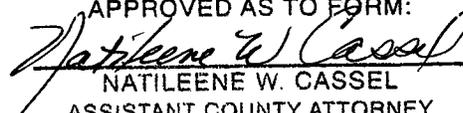
SUGARLOAF:


Signature of person authorized to
legally bind Corporation

Robert R Adair
Print Name

Date: 12-23-2011

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:


NATILEENE W. CASSEL
ASSISTANT COUNTY ATTORNEY
Date: 12-29-2011