**BOARD OF COUNTY COMMISSIONERS**
**AGENDA ITEM SUMMARY**

Meeting Date: NOVEMBER 16, 2011 Division: TDC

Bulk Item: Yes X No ___ Department: _____

Staff Contact Person/Phone #: Maxine Pacini
296-1552

**AGENDA ITEM WORDING:**
Approval of an Agreement with Key West Bight Preservation Association, Inc. covering The Key West "Bight" Before Christmas Holiday Celebration in November/December, 2012 in an amount not to exceed $17,000, DAC I, FY 2012 Event Resources.

**ITEM BACKGROUND:**
TDC to approve same at their meeting of September 13, 2011

**PREVIOUS RELEVANT BOCC ACTION:**

**CONTRACT/AGREEMENT CHANGES:**
**New Agreement**

**STAFF RECOMMENDATIONS:**
**Approval**

**TOTAL COST:** $17,000 **BUDGETED:** Yes X No ___

**COST TO COUNTY:** $17,000 **SOURCE OF FUNDS:** TDC

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

**APPROVED BY:** County Atty X OMB/Purchasing X Risk Management X

**DOCUMENTATION:** Included X Not Required _____

**DISPOSITION:** _____ **AGENDA ITEM #** _____

Revised 11/06

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

## CONTRACT SUMMARY

Contract with: **Key West Bight Preservation Association, Inc.**

Contract # **990**

Effective Date: 11/16/11

Expiration Date: 3/31/13

Contract Purpose/Description:

Approval of an Agreement with Key West Bight Preservation Association, Inc. covering The Key West "Bight" Before Christmas Holiday Celebration in November/December, 2012 in an amount not to exceed $17,000, DAC I, FY 2012 Event Resources.

Contract Manager: Maxine Pacini (Name) 3523 (Ext.) TDC # 3 (Department/Stop #)

for BOCC meeting on 11/16/11 Agenda Deadline 11/1/11

## CONTRACT COSTS

Total Dollar Value of Contract: $ 17,000 Current Year Portion: $ ✓

Budgeted? Yes ☒ No ☐ Account Codes : 117-77030-530340-TS27-676-X-530340

Grant: $ _____

County Match: $ _____ ____-____-____-____-____

____-____-____-____-____

## 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 | 9/22/11 | Yes ☐ No ☑ | M Wheat | 9/22/11 |
| Risk Management | 9-23-11 | Yes ☐ No ☑ | M Shu | 9-23-11 |
| O.M.B./Purchasing | 9-22-11 | Yes ☐ No ☑ | E Coughen | 9/23/11 |
| County Attorney | 9/21/11 | Yes ☐ No ☑ | C. Hall | 9/21/11 |

Comments: _____

OMB Form Revised 2/27/01 MCP #2

# Destination Events Agreement

THIS AGREEMENT (Agreement) is entered into this _____ day of _____, 2011 by and between MONROE COUNTY, a political subdivision of the state of Florida (County) and **Key West Bight Preservation Association, Inc.** a not for profit corporation organized and operating under the laws of the state of Florida (Event Sponsor).

WITNESSETH:

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. The County agrees to pay up to **$17,000** (Seventeen Thousand Dollars) for **The Key West "Bight" Before Christmas Holiday Celebration in November and December, 2012** from tourist development tax funds (see Exhibit "C"). Of this amount, no more than 10% or $1,700 shall be expended on advertising media costs attributable to in-county placement. The general non-allocated section of an event budget shall not exceed 15% of the total budget and may be utilized for unforeseen permissible expenditures and for those budget lines that may require additional funds. No amendments shall be made to Exhibit "C" after approval of contract. A list of Acceptable Event Marketing Expenses is attached to the agreement as Exhibit "A".

2. Scope of Services: The event sponsor agrees to provide the County with an event as specified below:

a). A harbor walk of Christmas decorations including lights; Christmas tree; boat parade

3. All advertising and public relations services or supervision of advertising and public relations will be provided through the contracted agencies of the Tourist Development Council (TDC) and COUNTY. The agencies of record shall receive payment for work in progress upon submission of documented invoices associated with the event.

4. Payment: Any payments directly to the event sponsor or vendors associated with said event shall be as follows:

Payment upon presentation of an invoice shall indicate the task completed for which payment is sought, with proper documentation attached.

Monroe County's performance and obligation to pay under this contract is contingent upon an annual appropriation by the COUNTY. Only acceptable expenses listed in the Monroe County Tourist Development Council Operations Manual shall be paid.

5. Accounting: Financial records of the event Sponsor pertaining to this project shall be kept according to generally recognized accounting principles and shall be available to the COUNTY or to an authorized representative for audit.

6. Modification: Line item changes to the advertising and promotion budget may be made up to but not exceeding 10% of the larger line item amount without requiring COUNTY approval of the particular change.

7. Breach and Penalties: The parties agree to full performance of the covenants contained in this agreement, and the COUNTY reserves the right at its discretion, provided such breach is material, to terminate this agreement for any misfeasance, malfeasance, or nonperformance of the agreement terms or negligent performance of the agreement terms by the event sponsor.

8. Termination: This Agreement will be terminated on March 31, 2013. **All invoices must be submitted prior to March 31, 2013.**

9. Non Occurrence of Event: If the event does not take place for any reason under control of Event Sponsor except for those reasons in paragraph 19, then Event Sponsor agrees to refund to the COUNTY any amounts already paid to them under this agreement, and relieve the COUNTY from any further payments.

The event sponsor shall give written notice to the Monroe County Tourist Development Council if it is found necessary to cancel an event. The notice shall contain the following specifics: 1) reason for cancellation, 2) documentation of the reason for cancellation and 3) person authorized to cancel including title and stated affiliation.

10. Indemnification and Hold Harmless: The event sponsor covenants and agrees to indemnify and hold harmless and defend Monroe County, its officers, employees and agents including the Tourist Development Council and Visit Florida Keys 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 the services provided, event sponsored, or other activities and funding associated with this agreement, except those losses or damages caused by COUNTY or its agents.

11. Permits: The event sponsor will secure all required permits, licenses and shall pay all appropriate business taxes.

12. Taxes: The COUNTY and TDC are exempt from Federal Excise and State of Florida Sales Tax.

13. Finance Charges: The COUNTY and TDC shall not be responsible for any finance charges.

14. Relation of COUNTY/TDC: It is the intent of the parties hereto that the event sponsor shall be legally considered as an independent Event Sponsor and that neither it nor its employees shall, under any circumstances, be considered employees, servants or agents of the COUNTY and TDC and the COUNTY and TDC shall at no time be legally responsible for any negligence on the part of said Event Sponsor, its employees or agents, resulting in either bodily or personal injury or property damage to any individual, firm, or corporation.

15. Disclosure: The event sponsor shall be required to list any or all potential conflicts or interest, as defined by Florida Statutes Chapter 112 and Monroe County Code. The event sponsor shall disclose to the COUNTY and TDC all actual or proposed conflicts of interest, financial or otherwise, direct or indirect, involving any client's interest which may conflict with the interest of the COUNTY and TDC.

16. Assignment: The event sponsor shall not assign, transfer, convey, sublet or otherwise dispose of this agreement, or of any or all of its right, title or interest therein, or his or its power to execute such agreement to any person, company or corporation without prior consent of the COUNTY.

17. Compliance with laws - Nondiscrimination: The event sponsor, shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, age, or national origin in the performance of work under this Agreement. This Agreement shall be subject to all federal, state, and local laws and ordinances.

18. Force Majeure: The event sponsor shall not be liable for delay in performance or failure to perform in whole or in part, the services due to the occurrence of any contingency beyond its control or the control of any of its subcontractors or suppliers, including labor dispute, strike, labor shortage, war or act of war whether an actual declaration thereof if made or not, insurrection, sabotage, riot or civil commotion, act of public enemy, epidemic, quarantine restriction, accident, fire, explosion, storm, flood, drought or other act of God, act of any governmental authority, jurisdictional action, or insufficient supply of fuel, electricity, or materials or supplies, or technical failure where the event sponsor has exercised reasonable care in the prevention or mitigation of damages and delay, any such delay or failure shall not constitute a breach of the Agreement. Upon demand of TDC or COUNTY, the event sponsor must furnish evidence of the causes of such delay or failure. COUNTY shall not pay for any services or activities, promotional or otherwise, connected with an event produced after the date(s) described in paragraph 1 and Scope of Services.

19. Governing Law/Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of the agreement, the County and Sponsor agree that venue shall lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida. This Agreement shall not be subject to arbitration.

20. Security Protection: The event sponsor agrees to provide adequate security for the event. No TDC funds will be used for this purpose.

21. Ownership: All advertising and promotion work performed under the agreement and paid for by the COUNTY and TDC shall be the property of the COUNTY and TDC, for whatever use and/or disposition the COUNTY and TDC may deem appropriate.

22. Media rights: The TDC shall have the right to broadcast, rebroadcast, use, reproduce or transmit for any purpose whatsoever, radio, television, pictures, sound, film and tape motion pictures and still photographs paid by the COUNTY and TDC under this agreement.

23. **Logo**: Logo Usage guidelines are attached to this contract as Exhibit "B". For all promotional literature and display advertising with the exception of generic advertising must display the "Key West – Close to Perfect-Far from Normal" logo/trade mark (**as per attached logo sample**). This logo/trade mark was adopted by the TDC and County in April, 2010.

24. Severability: If any provision of this Agreement shall be held by a Court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall not be affected thereby; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

25. Authority: Each of the signatories for the sponsor below certifies and warrants that:

a) The Sponsor's name in the agreement is the full name as designated in its corporate charter, and b) they are empowered to act and execute the Agreement for the Sponsor and c) this Agreement has been approved by the Sponsor's governing board.

26. Ethics Clause: The event sponsor warrants that it has not employed, retained or other wise had act on its behalf, any former County office or employee in violation of Section 2 or Ordinance No. 10-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 10-1990. For breach or violation of the provision the County may, at its discretion terminate this agreement without liability and may also, at its discretion, deduct from the agreement or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former or present County officer or employee.

27. Public Entity Crimes: "A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 Florida Statutes, for CATEGORY TWO for period of 36 months from the date of being placed on the convicted vendor list."

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

**For Grantee**:

Tom Stroh
P.O. Box 674
Key West, FL 33041

**For Grantor**:

Lynda Stuart
Monroe County Tourist Development Council
1201 White Street, Suite 102
Key West, FL 33040

**And**

Cynthia Hall, Asst. County Attorney
P.O. Box 1026
Key West, FL 33041-1026

29. Entire Agreement: The parties agree that the Agreement above constitutes the entire agreement between the COUNTY and event sponsor. Except as provided in paragraph 6 of this Agreement, this Agreement can never be amended or modified except in a writing signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

(SEAL)
Attest: Danny L. Kolhage, Clerk

_____
Deputy Clerk

Board of County Commissioners
of Monroe County

_____
Mayor/Chairman

(CORPORATE SEAL)
Attest:

By. _____
Secretary

_____
Print Name

**Date:** _____

**Key West Bight Preservation Association, Inc.**

By _____
**President**

Jack Anderson
**Print Name**

**Date:** Oct 7 2011

OR TWO WITNESSES

(1) _____

Print Name: TOM STROH

**Date:** 10-7-11

(2) _____

Print Name: Becky Hernandez-Birner

**Date:** 10-7-11

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
CYNTHIA L. HALL
ASSISTANT COUNTY ATTORNEY
Date 9-27-2011

Key West Bight Before Christmas
Destination Event: FY 2012
Contract ID#: **990**

# EXHIBIT A

## Acceptable Event Marketing Expenses for Destination Events

**Approved by BOCC 4/20/11**

**ADVISORY COMMITTEES (UMBRELLAS/DISTRICT ADVISORY COMMITTEES) AND EVENT COORDINATORS' RESPONSIBILITY:** It is the responsibility of the Advisory Committees (Umbrella/District Advisory Committees (DAC) and Event Coordinators to keep apprised of all Monroe County Tourist Development Council's policies and procedures pertaining to event funding. 01/22/92

When DAC event proposals are received, they will be distributed to DACs for review and recommendations to the TDC. Upon approval of the TDC of any event funding recommendations, a contract will be entered into by the applicant and BOCC. The BOCC has final approval of all contracts.

Any Request for Proposal (RFP) response received after the specified deadline, as determined within the RFP, will not be accepted. TDC 7/21/93 This policy mirrors that of the Board of County Commissioners. BOCC 9/8/93

**EVENT FUNDING:** The TDC has established several categories of events that may receive funding. There are four categories of events that may receive funding from the TDC; Destination Events; Turnkey Events; Cultural Events and Fishing Events.

All advertising and promotional items shall follow the logo/guidelines found in Section II of the Operations Manual for the Monroe County Tourist Development Council.

TDC funded items are **NOT** to be sold. 9/14/94

Only the items listed will be reimbursed for the described events. All event coordinators will receive a reimbursement/direct payment packet that includes an executed copy of the funding agreement. The packet provides guidelines required for reimbursement/direct payment of Acceptable Event Marketing Expenses.

No individual applications for Event funding will be considered out of the Two Penny Event Fund other than the Umbrellas (Cultural, Fishing & Diving). 7/26/95

Marketing expenses for events held outside Monroe County shall not be reimbursed/direct paid. 5/19/10

**DESTINATION EVENTS:** Destination events as defined under Section IV-A of the Operations Manual will be paid as per the scope of services within the contract and those acceptable items/expenses listed below. Destination events may utilize up to 10% of their approved line item budgets for in-county hard media and public relations. A general non-allocated line item is not to exceed 15% of the total budget and can only be utilized for

acceptable TDC items as listed in this section. There cannot be more than a 10% deviation on the approved line item budget.

Media Placement & Production Costs: newspaper; magazines, radio; TV; website/internet advertising only[2]

Promotional Signs: posters and banners

Promotional Items: T-shirts; hats; jackets; koozie cups. Refer to Sales/Resale statement in Section II of the Operations Manual.

Direct Mail Promotions: brochures and pamphlets including postage/shipping. This is a direct mail promotional brochure/pamphlet utilized for pre-event advertising.

Programs: TDC will pay for an event program of listed or schedule of activities and information on the event, an amount not to exceed 50% of cost, including production and printing, of program as outlined in contract budget.

Public Relations (PR): Print and broadcast public relations materials for distribution to media, such as but not limited to press releases, public service announcements, photography to be utilized in PR releases and video news releases **as approved** by the public relations agency of record. Only permissible PR material produced by the agency of record and/or a professional public relations agency shall be acceptable. BOCC 7/21/10

In-House Production: In-house production of any permissible expenditures will not be considered for reimbursement. BOCC 7/21/10

Event Promotions: TDC funding is intended for promotion of events as opposed to the ongoing programs of an organization or promotion of the facility. TDC will only consider reimbursement of advertising and promotional materials that highlight the event versus the regular programming of an organization or facility. BOCC 7/21/10

**Items that have not been approved by the appropriate agency of record prior to production/placement shall not be considered for reimbursement/direct payment.** BOCC 7/21/10

[2] **ADVERTISING THROUGH THE INTERNET**: The TDC will pay for Internet advertising on web sites (banners, buttons, website links), and E-mail blasts. Internet advertising links may go to the event website. Logo is required on banners and E-blasts. No payment will be made for development or operation (hosting) of website. BOCC 5/16/06

**SALE/RESALE OF TDC FUNDED ITEMS:** Items funded, including creative and resulting work product, by the BOCC/TDC, in accordance with Florida Public Records Law, are owned by the BOCC/TDC *and as such may not be sold.* 09/14/94

# EXHIBIT B

## Logo/Acknowledgement Usage Guidelines For District I Destination Events

BOCC 4/21/10

Color ads four (4) color processing printing 06/12/91
Black & white ads shall include the Florida Keys and Key West logo in PMS black. 06/12/91
Use on all printed material as listed under the Acceptable Event Marketing Expenses list
TV: logo must appear at the conclusion of commercial
Hats/t-shirts/jackets/koozie cups: must carry the "The Florida Keys & Key West" logo

**Radio Advertising**: No logo is required. All radio announcements must say "Brought to you by the Monroe County Tourist Development Council"

**In-County Logo**

The below logo that includes the "Monroe County Tourist Development Council" designation is to be utilized in all approved in-county print newspaper ads, magazine ads, street banners, posters and other approved signage efforts. Radio commercials should include "Brought to you by The Monroe County Tourist Development Council". To seek approval, clarification and/or logo in electronic format (eps or jpg file), contact Sharon Joseph or John Underwood with Tinsley Advertising at 305-856-6060.

KeyWest
Close to Perfect-Far From Normal
MONROE COUNTY TOURIST DEVELOPMENT COUNCIL

**Out-of-County Logo**

The below logo that does NOT include the "Monroe County Tourist Development Council" designation is to be utilized in all other efforts including any approved out-of-county print newspaper ads, magazine ads, television commercials, internet advertising (banners, buttons, e-mail blasts), direct mail promotions (brochures and pamphlets) and any approved promotional items including programs, T-shirts, hats, jackets and koozie cups. Radio commercials should include "Brought to you by The Monroe County Tourist Development Council". To seek approval, clarification and/or logo in electronic format (eps or jpg file), contact Sharon Joseph or John Underwood at Tinsley Advertising at 305-856-6060.

KeyWest
Close to Perfect-Far From Normal

Key West Bight Before Christmas
Destination Event: FY 2012
Contract ID#: **990**

**EXHIBIT C**

MONROE COUNTY TOURIST DEVELOPMENT COUNCIL
DESTINATION EVENT BUDGET
**BUDGET BREAKDOWN**
line items listed below must be approved by the appropriate agency of record

**There will be no amendments to this budget (Exhibit C) after BOCC approval of Agreement**

FISCAL YEAR 2012

EVENT NAME: Key West "Bight" Before Christmas Holiday Celebration

| | |
|---|---|
| **MEDIA PLACEMENT & PRODUCTION COSTS: newspaper, radio, magazines, TV, website/internet advertising only** | 13000 |
| **PROMOTIONAL SIGNS: posters/banners** | $1,500 |
| **PROMOTIONAL ITEMS: t-shirts, hats, jackets, koozie cups** | $500 |
| **DIRECT MAIL PROMOTIONS: brochures/pamphlets/ postage & shipping** | $ |
| **PROGRAMS:** | $ |
| **PUBLIC RELATIONS** | $ |
| ***GENERAL NON-ALLOCATED** | $2,000 |
| TOTAL: | $17,000 |

***GENERAL NON ALLOCATED MAY NOT EXCEED 15% OF THE ABOVE BUDGET. AND CAN ONLY BE UTILIZED FOR ACCEPTABLE TDC ITEMS.**

**ACTUAL EXPENDITURES MAY DEVIATE NO MORE THAN 10% FROM THE BUDGETED LINE ITEMS NOTED ABOVE.**

**MARKETING EXPENSES FOR EVENTS HELD OUTSIDE MONROE COUNTY SHALL NOT BE REIMBURSED/DIRECT PAID**