BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: JUNE 21, 2006 Division: TDC

Bulk Item: Yes X No ___ Department: _____

Staff Contact Person: Maxine Pacini

AGENDA ITEM WORDING:
Approval of a contract with 3406 North Roosevelt Boulevard Corporation d/b/a Visit Florida Keys for the provision of services for operating an executive office for tourism promotion by Monroe County Code Sections 2-299 (D)(E).

ITEM BACKGROUND:
TDC approved same at their meeting of May 23, 2006

PREVIOUS RELEVANT BOCC ACTION:

CONTRACT/AGREEMENT CHANGES:
New Contract

STAFF RECOMMENDATIONS:
Approval

TOTAL COST: $1,107,000.00 **BUDGETED:** Yes X No ___

COST TO COUNTY: $1,107,000.00 **SOURCE OF FUNDS:** TDC

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

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

DIVISION DIRECTOR APPROVAL: _____
(Lynda Stuart)

DOCUMENTATION: Included X Not Required ___

DISPOSITION: _____ **AGENDA ITEM #** _____

Revised 2/05

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: 3406 North Roosevelt Blvd Corporation

Contract # _____

Effective Date: 6/21/06

Expiration Date: _____

Contract Purpose/Description:

Approval of a contract with 3406 North Roosevelt Boulevard Corporation d/b/a Visit Florida Keys for the provision of services for operating an executive office for tourism promotion by Monroe County Code Sections 2-299 (D)(E).

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

for BOCC meeting on 6/21/06 Agenda Deadline 6/6/06

CONTRACT COSTS

Total Dollar Value of Contract: $ 1,107,000 Current Year Portion: $ _____

Budgeted? Yes ☒ No ☐ Account Codes : SEE ATTACHED SHEET

Grant: $ _____

County Match: $ _____

_____-_____-_____-_____-_____

_____-_____-_____-_____-_____

ADDITIONAL COSTS

Estimated Ongoing Costs: $_____/yr (Not included in dollar value above)

For: _____ (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	5/11/06	Yes ☐ No ☑	[illegible]	5/11/06
Risk Management	5/12/06	Yes ☐ No ☑	M Schmidt	5-12-06
O.M.B./Purchasing	5/11/06	Yes ☐ No ☑	[illegible]	5/12/06
County Attorney	5/5/06	Yes ☐ No ☑	S.Grimsley	5/5/06

Comments: _____

OMB Form Revised 2/27/01 MCP #2

CORPORATION CONTRACT LINE ITEM NUMBERS

115	75035	530340	T75M205X	530480
115	75035	530340	T75E203X	530340
116	76065	530340	T76G218X	530340
116	76065	530340	T76G219X	530340
116	76065	530340	T76G099X	530340
116	76065	530510	T76O246X	530510
116	76065	530340	T76G219X	530340
116	76007	530340	T76O243X	530340
116	76007	530340	T76O213X	530340
116	76065	530340	T76G221X	530340
116	76065	530340	T76G250X	530340
116	76007	530340	T76O236X	530340
117	77003	530340	T77O236X	530340
118	78003	530340	T78A236X	530340
119	79003	530340	T79O236X	530340
120	70003	530340	T70A236X	530340
121	71003	530340	T71A236X	530340

THE FLORIDA KEYS & KEY WEST
MONROE COUNTY TOURIST DEVELOPMENT COUNCIL
Come as You are.®

1201 White Street, Suite 102, Key West, Florida 33041 U.S.A.
(305) 296-1552 (305) 296-0788 (fax)
http://www.fla-keys.com sales@fla-keys.com

MEMORANDUM

DATE: **May 3, 2006**

TO: **Monroe County Board of County Commissioners**

FROM: **Michael Ingram, TDC Chairman**

RE: **3406 North Roosevelt Blvd. Corp. (dba Visit Florida Keys)**

The Monroe County Tourist Development Council (TDC) has unanimously approved the agreement with the North Roosevelt Blvd. Corporation (dba Visit Florida Keys) to provide the services of operating an executive office for tourism promotion for Monroe County.

Since the Monroe County Board of County Commissioners approved the appointed Tourist Development Council members to serve as the board of directors of the 3406 North Roosevelt Blvd. Corp., in October, 1992, to provide the executive office services, the corporation has been authorized to contract for the tourism promotion of Monroe County.

The TDC recommends approval of this agreement between the provider and the Board of County Commissioners of Monroe County.

AGREEMENT FOR EXECUTIVE OFFICE SERVICES
MONROE COUNTY TOURIST DEVELOPMENT COUNCIL

THIS AGREEMENT is made this _____ day of _____, 2006, by and between the Board of County Commissioners of Monroe County, Florida (County) and the 3406 North Roosevelt Boulevard Corporation d/b/a Visit Florida Keys (Provider), a corporation incorporated in the State of Florida.

WHEREAS, the County is authorized to contract for the provision of services for operating an executive office for tourism promotion by Monroe County Code Sections 2-299 (D)(E);

WHEREAS, Provider was created for the purpose of continuity in the provision of said services; and

WHEREAS, Provider has satisfactorily provided such services for fourteen years; and

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Contract Period: This agreement is for the period commencing October 1, 2006 through September 30, 2009, unless earlier terminated pursuant to paragraphs 9 and 10 below. The County has an option to extend this contract for an additional (2) year period beyond the initial award period, upon agreement of both parties.
2. Scope of Services: The Provider shall provide the work plan and services described in detail in Exhibit A, attached hereto and incorporated herein by reference. The Provider shall provide competent personnel necessary to perform this agreement and shall be wholly responsible for the successful completion of services required under this agreement.
3. Payment:

   A) County shall pay from tourist development tax funds, an amount not to exceed One Million, One Hundred and Seven Thousand Dollars ($1,107,000.00) for the contract year ending September 30, 2007. For each of the remaining years, under the agreement, County shall pay from tourist development tax funds such amounts as are established within the TDC budget approved by the County prior to each fiscal year. The budget for period ending September 30, 2007 is attached hereto as Exhibit B and incorporated herein. Payment is contingent upon an annual appropriation by the Board of County Commissioners of Monroe County.

   B) Payment shall be made as follows:

      i) Provider shall submit monthly, to the County's finance office, an estimate of payroll costs, including salaries and related fringe benefits, necessary to be paid during the following month. The submitted documentation shall include an accounting for the monies advanced previously for the payroll costs. Payment for the following month's payroll cost will be remitted to Provider in advance for the corporate employee pay dates

provided the request for advance with necessary documentation has been submitted to County's finance department in a timely manner prior to said pay date.

ii) Provider shall be reimbursed for all reasonable & permissible corporate expenditures reimbursable under County's guidelines and policies as applied to the 3406 North Roosevelt Boulevard Corporation. Provider may submit bills for reimbursable expenditures to the County's finance office to be paid directly from County to any payee entitled to said reimbursement.

4. Records – Access and Audits: The Provider shall maintain adequate and complete records to justify all charges, expenses and costs incurred in performing the work for at least three (3) years after completion of this agreement. The County shall have access to such books, records, and documents concerning the contracted services. The access to and inspection of such books, records, and documents by the TDC or County shall occur at any reasonable time. Provider understands that it shall be responsible for any and all audit exceptions identified by TDC or County. Any current or subsequent contract awards will be offset by the amount of any audit exceptions.

5. Personnel/Principals:

A) The Provider acknowledges that a major reason for its selection by the County to perform the services described in this agreement is the qualification and experience of the principal personnel and board of directors of Provider. The Provider therefore agrees that the directors and officers shall be primarily responsible for the performance of this agreement.

B) The Provider may employ such personnel as are necessary to provide the services subject to availability of funding by County. The Provider may establish employee contracts for the principal personnel needed to provide the services. Provider agrees to provide documentation or evidence of the actual amounts of time expended by its personnel upon request from County.

C) Directors and Officers of the Provider are the same individuals who have been appointed by County as TDC members.

6. Offices: County shall provide in addition to the sum in paragraph 3(A) such premises, equipment and supplies as are required for the day to day operation of the executive office pursuant to County policy and guidelines. As of the commencement of this agreement, said premises, equipment, and existing supplies are located at 1201 White Street, Suite 102, Key West, Florida. All additional procurement for use by the executive office shall comply with all statutes, ordinances, rules and regulations governing such procurement by the County.

7. Independent Contractor Relationship: The Provider, is and shall be, in the performance of all works, services, and activities under this agreement, an independent contractor and not an employee, agent or servant of the County. The Provider shall exercise control, direction, and supervision over the means, manner and personnel in which it and its employees perform the work. In all respects, the Provider's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees or agents of the County. Moreover, the Provider shall have no authority whatsoever to act on behalf and/or as agent for the County in any promise, agreement, or representation other than specifically provided for in this agreement. The County shall at no time be legally responsible for any negligence on the part of Provider, its employees or agents, resulting in either bodily or personal injury or property damage to any individual, Provider or corporation.

8. Modification: Additions to, modification to, or deletions from the Scope of Work and/or costs of work set forth in this agreement may be made only by amendment to this agreement which must be approved in writing by the County. No modification shall become effective without written approval of County.

9. Termination for Breach: The Provider may immediately terminate this agreement for any breach of the terms contained herein. Such termination shall take place immediately upon receipt of written notice of said termination. Any waiver of any breach of covenants herein contained to be kept and performed by Provider shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the County from declaring a forfeiture for any succeeding breach either of the same conditions or of any other conditions.

10. Termination: Termination of this agreement shall occur at the natural ending date, or earlier should County determine that there has occurred any material breach of any covenants herein contained, a change in organization of either Provider or TDC occurs, or the source of funds be exhausted, eliminated or otherwise cease, or the County otherwise deems it is in the best interest of the County to terminate. Termination by County may be with or without cause.

A) In the event that funds are partially reduced, the parties hereto shall negotiate the terms of this agreement. If no agreement can be reached within sixty (60) days of notice of reduction of funds, this agreement may be terminated at the County's option upon written notification to the Provider.

B) In the event County terminates for breach of contract, termination shall be effective immediately or at such time as County shall declare in its act to terminate for cause.

C) In the event County terminates without cause, the termination shall not take effect until at least one hundred and twenty (120) days subsequent to written notice to Provider.

County shall not be obligated to pay for any services or expenses incurred after the effective date of termination except for those expenses incurred to terminate the corporate existence and to file returns and reports required by governmental agencies.

11. Indemnification and Hold Harmless: This Provider will be required to indemnify and hold harmless the County and provide insurance as per Exhibit C.

12. Permits: The Provider shall secure all required permits, and/or licenses necessary for this agreement, subject to reimbursement or direct pay provisions of paragraph 3.

13. Laws and Regulations:

A) This Agreement shall be construed by and governed under the laws of the state of Florida unless in an area of law pre-empted by federal law. Provider agrees that the venue of any dispute shall be in Monroe County, Florida.

B) Provider shall comply with all laws including but not limited to those listed in Exhibit D.

C) The Provider 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, gender preference, gender identity or national origin in the performance of work under this agreement.

D) Any violation of statutes, ordinances, rules, regulations and executive orders shall constitute a material breach of this Agreement and shall entitle the County to terminate this Agreement immediately upon delivery of written notice to the Provider.

14. Taxes: The County is exempt from federal, excise and state of Florida sales tax.

15. Finance Charges: The County shall not be responsible for any finance charges.

16. Severability: If any provision of this agreement shall be held in a court of competent jurisdiction to be invalid or unenforceable, the remainder of this agreement, or the application of such provision other than those as to which it is invalid or unenforceable, shall not be affected thereby; and each provision of this agreement shall be valid and enforceable to the fullest extent permitted by law.

17. Force Majeure: The Provider 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 is 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 Provider has exercised reasonable care in the prevention thereof, and any such delay or failure shall not constitute a breach of this agreement.

18. Assignment: Provider shall not assign, transfer, sublease, pledge, hypothecate, surrender, or otherwise encumber or dispose of this agreement or any estate created by this agreement or any interest in any portion of same, or permit any other person or persons, company or corporation to perform services under this agreement without first obtaining the written consent of the County. In the event of such consent, this agreement shall be binding upon the Provider's successors or assigns.

19. Disclosure: The Provider shall be required to list any or all potential conflicts of interest, as defined by Florida Statute 112 and Monroe County Ethics Ordinance. The Provider shall disclose to the County 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 TDC or County.

20. Additional Conditions: The Provider agrees to accept additional conditions governing the use of funds or performance of work as may be required by federal, state or local statute, ordinance or regulation or by other policy adopted by County. Such additional conditions shall not become effective until Provider has been notified in writing and no such additional conditions shall be imposed retroactively.

21. Independent Professional Judgement: Provider shall at all times exercise independent professional judgement and shall assume full responsibility for the service to be provided and work to be completed.

22. Care of Property: The Provider shall be responsible to the TDC and County for the safekeeping and proper use of the property entrusted to Provider's care, and to process all documents necessary to continue, without interruptions, any maintenance or service contracts relating to such equipment for its service life.

23. Ethics Clause: The Provider warrants that it has not employed, retained or otherwise had act on its behalf any former county officer or employee subject to the prohibition of Section 2 of Ordinance No. 010-1990 or any TDC or County officer or employee in violation of Section 3 of Ordinance 010-1990. For breach or violation of this provision the County may, in its discretion, terminate this agreement without liability and may also, in its discretion, deduct from the contract or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift or consideration paid to the former TDC or County officer or employee.

24. Notice: Any notice required or permitted under this agreement shall be in writing and hand-delivered or mailed, postage prepaid by certified mail, return receipt required, to the other party as follows:

To Provider:

TDC Director
3406 North Roosevelt Boulevard Corporation
1201 White St., Suite 102
Key West, Florida 33040

To TDC or County:

County Attorney
P. O. Box 1026
520 Whitehead St., 3rd Floor
Key West, Florida 33040

25. Insurance: The Provider shall maintain the following required insurance throughout the entire term of this contract and any extensions. Failure to comply with this provision may result in the immediate suspension of all work until the required insurance has been reinstated or replaced. Delays in the completion of work resulting from the failure of the PROVIDER to maintain the required insurance shall not extend any deadlines specified in this contract and any penalties and failure to perform assessments shall be imposed as if the work had not been suspended, except for Provider's failure to maintain the required insurance.

The Provider shall provide, to the County, as satisfactory evidence of the required insurance, either:

* Certificate of Insurance

  or

* A Certified copy of the actual insurance policy

The County, at its sole option, has the right to request a certified copy of any or all insurance policies required by this contract.

All Insurance policies must specify that they have a thirty (30) day notice of cancellation, non-renewal, material change in policy language or reduction in coverage.

The acceptance and/or approval of the Providers insurance shall not be construed as relieving the Provider from any liability or obligation assumed under this agreement or imposed by law.

The Monroe County Board of County Commissioners, its employees and officials shall be included as an "Additional Insured" on all insurance policies, (except for Workers' Compensation.) as their interests may appear in all policies issued to satisfy these requirements.

Any deviations from these General Insurance Requirements must be requested in writing on the County prepared form entitled "Request for Waiver of Insurance Requirements". Any deviation must be approved in writing by Monroe County Risk Management.

A. Prior to the commencement of work governed by this agreement the PROVIDER shall obtain Workers' Compensation Insurance with limits sufficient to comply with Florida Statute 440.

In addition, the Provider shall obtain Employers' Liability Insurance with limits of not less than:

$100,000	Bodily Injury by Accident
$500,000	Bodily Injury by Disease
$100,000	Bodily Injury by Disease, each employee

Coverage shall be maintained throughout the entire term of this agreement.

Coverage shall be provided by a company or companies authorized to transact business in the state of Florida and the company or companies must maintain a minimum rating of A-V1, as assigned by the A.M. Best Company.

B. Prior to the commencement of work governed by this agreement the PROVIDER shall obtain General Liability Insurance. Coverage shall be maintained throughout the life of the agreement and include, as a minimum:

* Premises Operations
* Products and Completed Operations
* Blanket Contractual Liability
* Personal Injury Liability
* Expanded Definition of Property Damage

The minimum limits acceptable shall be:

$500,000 combined single limit

If split limits are provided, the minimum limits acceptable shall be:

$ 250,000 per person

$500,000 per Occurrence

$ 50,000 Property Damage

An Occurrence Form policy is preferred. If coverage is provided on a Claims Made policy, its provisions should include coverage for claims filed on or after the effective date of this agreement. In addition, the period for which claims may be reported should extend for a minimum of twelve (12) months following the acceptance of work by the COUNTY.

The Monroe County Board of County Commissioners shall be named as Additional Insured as their interests may appear (see attached document for full text) on all insurance policies issued to satisfy the above requirements.

C. Recognizing that the work governed by this agreement requires the use of vehicles, the Provider, prior to the commencement of work, shall obtain Vehicle Liability Insurance. Coverage shall be maintain throughout the life of the agreement and include, as a minimum, liability coverage for:

* Owned, Non-Owned, and Hired Vehicles

The Minimum limits acceptable shall be:

$300,000 Combined Single Limit (CSL)

If split limits are provided, the minimum limits acceptable shall be:

$100,000 per Person

$300,000 per Occurrence

$ 50,000 Property Damage

26. Time: Time shall be of the essence as to this agreement.

27. Full Agreement: This agreement constitutes the entire and full understanding between the parties hereto and neither party shall be bound by any representations, statements, promises or agreements not expressly set for herein and in duly executed amendment under paragraph 8 hereof.

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

3406 North Roosevelt Boulevard Corporation

Witness

by: Michael D. Ingram
President

Print Name

Michael Ingram
Print Name

(SEAL)

Monroe County Board
of County Commissioners

Clerk

Mayor/Chairman

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
Susan M. Grimsley
SUSAN M. GRIMSLEY
ASSISTANT COUNTY ATTORNEY
5-5-06

EXHIBIT A

SCOPE OF SERVICES

1. Administration, supervision and maintenance of a full-time office located in Key West, Florida, used exclusively for the marketing activities of the Monroe County Tourist Development Council, an advisory board to the Board of County Commissioners. Regular hours of business shall be from 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays observed by County. Provider shall provide a full staff for executive services of TDC business and shall keep the executive office open to the public and County during regular hours.
2. Implement the policies, procedures and programs established by the TDC under the guidance of the governing board of the County.
3. Promote Monroe County tourism in domestic and international markets within all marketing efforts within authorized uses of revenue pursuant to Florida Statutes and Monroe County ordinances.
4. Supervise all marketing, including advertising, public relations, sales, film commission, website promotions and market research responsibilities for the TDC.
5. Develop and implement an annual marketing plan.
6. Develop, present, and implement the annual TDC budget in accordance with Florida Statutes, Monroe County ordinances and county procedures.
7. Prepare and maintain TDC documents, records and reports required by TDC and/or County.
8. Maintain the existing policy and procedure operations manual, updated as required by TDC and County directives, and adhere to its provisions.

9. Develop and coordinate agreements with any sub-contractors or agencies of record.
10. Place public notices required for all meetings of the Tourist Development Council, District Advisory Committees, Umbrella Advisory Committees and all other committees of the TDC. Prepare and deliver to committee members and designated recipients the agenda packets for the meetings. Attend, record, and transcribe minutes of all such public meetings.
11. Develop and coordinate appropriate requests for proposals/bids and agreements on event and capital project funding, other authorized funding on behalf of the TDC and County.
12. Assist the coordination and communication between and among the Advisory Committees of the TDC.
13. Coordinate public notice of District Advisory Committee member vacancies, receipt of applications, distribution to nomination committee and subsequent approval by the TDC or County as applicable.
14. Provide to TDC and County all financial information available regarding requests for advertising, marketing, public relations, sales and event or capital expenditures
15. Maintain all appropriate insurances required by County and maintenance of corporation fees and tax returns.
16. Produce an annual report for the TDC and the County.

EXHIBIT B

ADMINISTRATIVE BUDGET

Salaries & related costs	$870,000
Insurance & related corporate costs*	$237,000
	$1,107,000

* accounting fees

401(k) Profit sharing plan fees

legal fees

annual corporate fees

bank charges

medical/dental insurance

worker's compensation

general liability & content insurance

directors & officers insurance

professional liability insurance

auto insurance

office supplies & equipment not covered by county

travel expenses: airfare, lodging, meals miscellaneous advance travel costs

familiarization (FAM) related costs not covered under purchase orders

sales missions and promotion costs not covered under purchase orders

educational classes/seminars/workshops to develop & advance work related skills

training and educational aids

cash on delivery (COD) items/postage due

sales related purchases i.e. books, promotional items