BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: OCTOBER 19, 2005 Division: TDC

Bulk Item: Yes X No ___ Department: _____

Staff Contact Person: Maxine Pacini

AGENDA ITEM WORDING:
Approval of a Destination Agreement with Hog's Breath Saloon of Key West, Inc. covering the Key West Songwriters Festival on May 3-7, 2006 in an amount not to exceed $24,000, DAC I, FY 2006, Third Penny Event Resources.

ITEM BACKGROUND:
TDC approved same at their meeting of August 31, 2005

PREVIOUS RELEVANT BOCC ACTION:

CONTRACT/AGREEMENT CHANGES:
New Agreement

STAFF RECOMMENDATIONS:
Approval

TOTAL COST: $24,000 **BUDGETED:** Yes X No ___

COST TO COUNTY: $24,000 **SOURCE OF FUNDS:** TDC

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

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

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: Hog's Breath Saloon of Key West, Inc.

Contract #_____

Effective Date: 10/19/05

Expiration Date: _____

Contract Purpose/Description:

Approval of a Destination Agreement with Hog' Breath Saloon of Key West, Inc. covering the Key West Songwriters Festival on May 3-7, 2006 in an amount not to exceed $24,000, DAC I, FY 2006, Third Penny Event Resources.

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

for BOCC meeting on 10/19/05 Agenda Deadline 10/4/05

CONTRACT COSTS

Total Dollar Value of Contract: $ 24,000 Current Year Portion: $ _____

Budgeted? Yes ☒ No ☐ Account Codes 115-75360-530340-T65M485X-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	9/15/05	Yes ☐ No ☑	[signature]	9/15/05
Risk Management	9/23/05	Yes ☐ No ☑	[signature]	9/23/05
O.M.B./Purchasing EC	9-15-05	Yes ☐ No ☑	[signature]	9/22/05
County Attorney	9/14/05	Yes ☐ No ☑	S.Hutton	9/14/05

Comments: _____

OMB Form Revised 2/27/01 MCP #2

Destination Events Agreement

THIS AGREEMENT is entered into this _____ day of _____, 2005 by and between BOARD OF COUNTY COMMISSIONERS (County or BOCC), MONROE COUNTY, FLORIDA, and the Hog's Breath Saloon of Key West, Inc. (Event Sponsor).

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

1. The BOCC agrees to pay from tourist development tax funds up to $24,000 (Twenty Four Thousand Dollars) for advertising and public relations for the Key West Songwriters Festival on May 3-7, 2006 (See Exhibit A).

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

a). Opening party/reception to meet the performers

b). Meet and greet sessions with fans

c). Five (5) concerts

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 BOCC. The agencies of record shall receive payment of work in progress upon submission of documented invoices associated with said event.

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

Event Sponsor shall submit to TDC an invoice which shall indicate the task completed for which payment is sought, with proper documentation attached. No more than 10% of the total advertising and promotional costs paid under this agreement shall be attributable to in-county activity. County shall pay Event Sponsor, or directly to vendor upon request of Event Sponsor, pursuant to the Florida Prompt Payment Act upon receipt of a proper invoice.

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

5. Accounting: Event Sponsor 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 Event Sponsor r pursuant to this Agreement were spent for purposes not authorized by this Agreement, the Contractor shall repay the

monies together with interest calculated pursuant to Sec. 55.03, FS, running from the date the monies were paid to Event Sponsor.

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 BOCC approval of the particular change.

7. Breach and Penalties: The parties agree to full performance of the covenants contained in this agreement, and the BOCC 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 Event Sponsor.

8. Termination: This Agreement will terminate on September 30, 2006, unless earlier terminated pursuant to paragraph 7 or 9. All invoices must be submitted prior to September 30, 2006.

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 BOCC any amounts already paid under this agreement, and relieve the BOCC from any further payments.

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: Event Sponsor 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 the services provided, event sponsored, or other activities and funding associated with this agreement, except those losses or damages caused by BOCC or its agents.

11. Insurance Requirements: Event Sponsor, as a pre-requisite of the Special Event governed by this agreement, shall obtain, at its own expense, insurance as specified in this section.

Work associated with the Event (including pre-staging of personnel and material) shall not commence until satisfactory evidence of the required insurance has been furnished to the county as specified below. Event Sponsor shall maintain the required insurance throughout the entire duration of the Special Event and any extensions specified in any attached schedules. Failure to comply with this provision may result in the immediate suspension of the Event until the required insurance has been reinstated or replaced. Event Sponsor shall provide, to the County, as satisfactory evidence of the required insurance, either:

* Certificate of Insurance

  or

* Certified copy of the actual insurance policy

A certified copy of any or all insurance policies required by this contract shall be filed with the Clerk of the BOCC prior to the Event.

All insurance policies must specify that they are not subject to cancellation, non-renewal, material change or reduction in coverage unless a minimum of thirty (30) days prior notification is given to the County by the insurer.

Acceptance and/or approval of Event Sponsor's insurance shall not be construed as relieving Event Sponsor from any liability or obligation assumed under this contract or imposed by law.

The Monroe County Board of County Commissioners, its employees and officials will be included as "Additional Insured" on all policies.

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

Event Sponsor shall furnish the County with a certificate evidencing the insurance required by this paragraph not later than twenty (20) days prior to the event.

Prior to commencement of work governed by this contract, Event Sponsor shall obtain General Liability Insurance. Coverage shall be maintained through out the life of the contract 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:

* $1,000,000.00 combined Single Limit (CSL)

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

* $500,000.00 per person
* $1,000,000.00 per Occurrence
* $100,000.00 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 contract. 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.

Recognizing that the work governed by this contract involves the sales and/or distribution of alcoholic beverages, the Event Sponsor's General Liability Insurance policy shall include Liquor Liability with limits equal to those of the basic coverage.

A separate Liquor Liability policy is acceptable if the coverage is not more restrictive than the contractor's General Liability policy.

12. Permits: Event Sponsor will secure all required permits, licenses including but not limited to occupational licenses.

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

14. Finance Charges: The BOCC and TDC will not be responsible for any finance charges.

15. Relation of BOCC/TDC: It is the intent of the parties hereto that Event Sponsor shall be legally considered as an independent contractor and that neither it nor its employees shall, under any circumstances, be considered servants or agents of the BOCC and TDC and the BOCC 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.

16. Disclosure: Event Sponsor shall be required to list any or all potential conflicts or interest, as defined by Florida Statute 112 and Monroe County Code. Event Sponsor shall disclose to the BOCC 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 BOCC and TDC.

17. Assignment: 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 BOCC.

18. Compliance with laws: Event Sponsor shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work thereof.

19. Nondiscrimination. County and Contractor 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 Contractor agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss.1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patent records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Ch. 13, Art. VI, prohibiting discrimination on the bases of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; and 11) any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

20. Force Majeure: 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 thereof, and any such delay or failure shall not constitute a breach of the Agreement. Upon demand of TDC or BOCC, Event Sponsor must furnish evidence of the causes of such delay or failure. BOCC 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.

21. Governing Law/Venue: This Agreement shall be governed and construed by and in accordance with the laws of the State of Florida and the County of Monroe and Federal law. Venue for any dispute concerning this Agreement shall be in Monroe County.

22. Security Protection: Event Sponsor agrees to provide adequate security for the event. No TDC funds will be used for this purpose.

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

24. Logo: All promotional literature and display advertising with the exception of generic advertising must display the **"Florida Keys & Key West, Monroe County Tourist Development Council Come As You Are"** logo/trade mark (as per enclosed). This logo/trade mark was adopted by the TDC and County in November 2000. No re-imbursement will be provided to those entities utilizing the old logo/trade mark "Florida Keys & Key West Come as you are". **Radio Advertising should read** "Brought to you by the Monroe County Tourist Development Council".

25. 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.

26. 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 agreement for the sponsors and c) this agreement has been approved by the sponsor's Board of Directors.

27. Ethics Clause: Event Sponsor warrants that it has not employed, retained or other wise had act on its behalf, any former COUNTY officer 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.

28. 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 bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids 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, for CATEGORY TWO for period of 36 months from the date of being placed on the convicted vendor list."

29. Federal and State Aid: Event Sponsor and County agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission.

30. Adjudication of Disputes or Disagreements: County and Event Sponsor agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board of County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.

31. Non-Waiver of Immunity: Notwithstanding he provisions of Sec. 286.28, Florida Statutes, the participation of the County and the Contractor 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 contract entered into by the County be required to contain any provision for waiver.

32. Privileges and Immunities: All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the County, when performing their respective functions under this Agreement within the territorial limits of the County shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the County.

33. Legal Obligations and Responsibilities; Non-Delegation of Constitutional or Statutory Duties: This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility.

Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the County, except to the extent permitted by the Florida constitution, state statute, and case law.

34. 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 Contractor agree that neither the County nor the Contractor 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.

35. 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.

36. No Solicitation/Payment: The County and Event Sponsor 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 Contractor 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.

37. Public Access: The County and Event Sponsor 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 Contractor in conjunction with this Agreement; and the County shall have the right to unilaterally cancel this Agreement upon violation of this provision by Contractor.

38. 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 Contractor 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.

39. Attorney's Fees and Costs: The County and Event Sponsor 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, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, courts costs, investigative, and out-of-pocket expenses in appellate proceedings. 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.

40. Entire Agreement: The parties agree that the Agreement above constitutes the entire agreement between the BOCC and Event Sponsor.

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

(SEAL)

_____

Hog's Breath Saloon of Key West, Inc.

By_____
President

(SEAL)
Attest: DANNY L. KOLHAGE, Clerk

By _____
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By _____
Mayor/Chairman

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 9/14/05

EXHIBIT A

TOURIST DEVELOPMENT COUNCIL
BUDGET BREAKDOWN

FY 05/06

EVENT NAME: KEY WEST SONGWRITER'S FESTIVAL

DIRECT MAIL & POSTAGE	$	-
BROCHURES, POSTERS, PRODUCTION & PRINTI	$	8,500
PUBLIC RELATIONS	$	
PHOTO PROGRAM	$	-
MEDIA ADVERTISING	$	15,500
PROMOTIONAL ITEMS (T-SHIRTS, CAPS, JACKETS,ETC.)	$	-
*GENERAL - NON-ALLOCATED	$	-
TOTAL:	$	24,000

*GENERAL NON-ALLOCATED IS NOT TO EXCEED 15% OF THE AMOUNT AWARDED BY THE MONROE COUNTY TOURIST DEVELOPMENT COUNCIL FOR THIS SPECIFIC E

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