BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date 12/21/05 - MAR
Bulk Item: Yes ____ No X

Division: COUNTY ATTORNEY
Staff Contact Person: Natileene W. Cassel

AGENDA ITEM WORDING:
Approval of contract between *Monroe County* and *Currie Sowards Aguila Architects*, as the new Architects to complete the construction of the Freeman Justice Building based upon the recommendation of the County Engineer.

ITEM BACKGROUND:
Construction is ongoing on the Freeman Justice Building. Due to problems with the prior architect the construction was in a critical phase and delay was occurring. After the dismissal of the prior architect, *Currie Sowards Aguila Architects*, agreed to come on board and assist in completion of the building. This firm is presently under contract with the County on the construction of the Murray Nelson Justice Center.

PREVIOUS RELEVANT BOCC ACTION:
In October the BOCC approved the dismissal of the prior architect on the Freeman Justice Building .

CONTRACT/AGREEMENT CHANGES
This is a new contract for the Freeman Justice Building architect, replacing the prior architect.

STAFF RECOMMENDATIONS:
Approve recommendation at meeting.

TOTAL COST: $250,000 **BUDGETED:** YES X NO ____

COST TO COUNTY: _____ **SOURCE OF FUNDS:** _____

REVENUE PRODUCING: YES ___ NO X **AMOUNT PER MONTH**___ **Year**____

APPROVED BY: County Atty X OMB/Purchasing ____ Risk Management_____

DIVISION DIRECTOR APPROVAL: John R Collins 12/07/05
JOHN R. COLLINS, COUNTY ATTORNEY

DOCUMENTATION: *Included_____ Not Required _____

DISPOSITION: _____ **AGENDA Item#** _____

*Documentation to follow.

AGREEMENT BETWEEN OWNER AND
ARCHITECT CONSULTANT
FOR SPECIAL SERVICES

This **AGREEMENT** made as of the _____ day of December, 2005, between **MONROE COUNTY** ("OWNER"), whose address is 100 Simonton Street, Key West Florida, 33040 and the architect, **CURRIE SOWARDS AGUILA ARCHITECTS** ("ARCHITECT"), whose address is 134 Northeast First Avenue, Delray Beach, Florida 33444, for **THE FREEMAN JUSTICE BUILDING** ("PROJECT") in Key West, Florida 33040.

WITNESSETH:

WHEREAS, on October 12, 2005, the COUNTY dismissed Gonzalez Architects from the PROJECT, thus requiring another architect in order to complete the PROJECT; and

WHEREAS, it was an emergency to hire another architect to proceed with the construction of the PROJECT and to avoid a work stoppage: and

WHEREAS, the ARCHITECT, **CURRIE SOWARDS AGUILA ARCHITECTS,** was available and willing to complete the PROJECT;

NOW THEREFORE, the OWNER and the ARCHITECT agree as follows:

ARTICLE 1
Architect Consulting Services

1. ARCHITECT'S services consist of those described in Paragraphs 2 to 8.

2. **Review and Advise.** ARCHITECT shall review all documents provided OWNER by prior architect, including but not limited to plans, schematics, specifications, and drawings and shall identify and document errors, discrepancies and deficiencies on the documents. ARCHITECT shall advise and recommend any alterations, additions, and/or corrections to said documents that ARCHITECT feels appropriate and/or necessary to complete the building in a manner consistent with the standards of the industry; where appropriate ARCHITECT shall prepare plans, schematics, specifications, and drawings for the building.

3. **Resolution of Documents.** ARCHITECT shall assist the General Contractor and OWNER by responding to questions and assisting in resolution of discrepancies and problems in the construction documents drafted by and provided to the OWNER by Gonzalez Architects, including but not limited to plans, schematics, specifications, and drawings; and in providing alternative solutions as requested by the General Contractor and the OWNER.

4. **Modification of Documents.** ARCHITECT shall assist the General Contractor and OWNER by preparation of modifications to the construction documents drafted by Gonzalez Architects and shall provide revised construction documents when requested by the General Contractor or as needed for implementation of the construction of the PROJECT. The ARCHITECT shall assist in construction administration services

including responses to Request For Information (RFI) by the General Contractor and the OWNER as expeditiously as necessary for the orderly progress of the work.

5. **Attendance at Meetings**. ARCHITECT, either the Principal Architect or the Project Architect, shall attend weekly site meetings in Key West. The Project Architect shall report immediately on the weekly site meeting to the Principal Architect.

6. **Document Review.** ARCHITECT shall review shop drawings and submittals, and review applications for payments. The ARCHITECT shall advise the General Contractor regarding the review of shop drawings and submittals, and applications for payments and notify of his approval, disapproval, and any suggested modifications in a timely manner for the orderly progress of the work.

7. **Subcontractors.** ARCHITECT shall procure, with the authorization of the OWNER, on an as needed basis the services of a landscape architect, interior designer, structural engineer, and/or mechanical engineer to further expand on the design and the plans.

8. **Construction Completion.** Upon completion of construction, the ARCHITECT will perform a close-out review of the project for determination of substantial and final completion.

ARTICLE 2
Owner's Responsibilities

9. **Furnish Information.** OWNER shall provide full information regarding requirements of the project. OWNER shall furnish required information as expeditiously as necessary for the orderly progress of the work.

10. **Designation of Representative.** OWNER shall designate a representative authorized to act on the OWNER'S behalf with respect to the Project. The OWNER or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the ARCHITECT in order to avoid unreasonable delay in the orderly sequential progress of the ARCHITECT'S services.

11. **Prior Architect.** OWNER agrees to the extent permitted by law to hold harmless and to indemnify the ARCHITECT from liability and damages arising from negligent acts, or errors or omissions of the prior ARCHITECT, so long as that negligence or errors or omissions are solely those of the prior ARCHITECT.

12. **Limited Hold Harmless**. OWNER agrees to the extent permitted by law to hold harmless and to indemnify the ARCHITECT from claims arising out of the use of the documents prepared by the prior ARCHITECT. OWNER and ARCHITECT agree that ARCHITECT remains responsible and potentially liable to OWNER for ARCHITECTS own negligence, errors or omissions, or liability. Nothing in AGREEMENT is meant to release ARCHITECT from his own negligence, errors or omissions, or liability for his work or supervision of Subcontractors on PROJECT.

ARTICLE 3
Subcontractors

13. **Definition of Subcontractor.** A subcontractor is a person or organization who has a direct contract with the ARCHITECT to perform any of the work at the site. Nothing in AGREEMENT shall create any contractual relation between the COUNTY and any subcontractor hired by the ARCHITECT.

14. **Subcontractor Insurance**. ARCHITECT shall require the subcontractors to have insurance coverage as set out in ARTICLE 5 of AGREEMENT.

ARTICLE 4
Payments to the Architect

15. **Hourly Rate.** The ARCHITECT shall be compensated for services performed at the following standard hourly rates not to exceed the amount of **TWO HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS ($225,000.00).** Hourly rates are listed as follows:

Principal Architect, Robert G. Currie	$175.00
Project Architect, Hank Goldman	$150.00
Mechanical Engineer	$175.00
Structural Engineer	$150.00
Landscape Architect	$150.00
Interior Designer	$150.00
Project Manager	$125.00
CADD Technician	$80.00
Support Staff	$45.00

16. **Reimbursable Expenses.** Reimbursable Expenses include expenses incurred by the ARCHITECT and ARCHITECT'S employees in the interest of the PROJECT. All expenses shall be requested by the ARCHITECT in writing and authorized by the OWNER in writing. All reimbursable expenses are to be paid on the basis of and in the amounts authorized pursuant to Section 112.061, Florida Statutes.
    a. Expense of transportation and living expenses, in writing, in connection with out-of-County travel authorized by the OWNER, but only to the extent and in the amounts authorized by Section 112.061, Florida Statutes. It is understood that the ARCHITECT has other projects in the Florida Keys with the OWNER; if the ARCHITECT visits more than one project he shall prorate the travel expenses between the projects.
    b. Expenses such as long distance telephone calls, mail, shipping and courier service, copies, and postage to be billed at cost.
    c. In–house black and white plotting at a rate of $8.00 per sheet.
    d. In-house color plotting at a rate of $36.00 per sheet.

17. **Payment.** Payments are due and payable FORTY (40) days from the date of the ARCHITECT'S invoice. All payments due for construction services and not made

within the applicable time limits shall bear interest at the rate of one percent (1 %) per month. If the OWNER disputes a portion of the payment request, the undisputed portion must be timely paid.

18. **Maintenance of Books.** ARCHITECT shall maintain all books, records, and documents directly pertinent to performance under AGREEMENT in accordance with generally accepted accounting principles consistently applied.

19. **Inspection of Books and Audits.** During the term of Agreement and for four (4) years following the termination of the Agreement, the OWNER, acting through its designated financial officer or other authorized representative, shall have the right to inspect and audit ARCHITECT'S books of account and other records directly generated regarding the Project. The ARCHITECT retains the right to have its controller or an authorized representative to be present during the inspection or audit by the OWNER. Ten (10) business days notice must be given of intent to audit by the OWNER to allow for scheduling of said presence. Nothing contained within this section waives attorney/client work product privilege.

20. **Access to Books under Chapter 119**. COUNTY and ARCHITECT shall allow and permit reasonable access to, and inspection of all documents, papers, letter or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by either party in conjunction with AGREEMENT.

ARTICLE 5
Insurance

21. ARCHITECT shall provide insurance at the beginning of any work in connection with AGREEMENT. All insurance policies shall be with insurers authorized and doing business in Florida. ARCHITECT shall be solely responsible for any and all deductibles and self insured retentions that the required policies may contain.

    a. **Worker's Compensation and Employers Liability Insurance** - ARCHITECT shall take out and maintain during the life of AGREEMENT Worker's Compensation Insurance for all his employees connected with the work of this Project and, in case any work is sublet, the ARCHITECT shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the ARCHITECT. Such insurance shall comply with the Florida Worker's Compensation Law. The minimum limits of such insurance shall be:
    (a) Part One – Workers Compensation – Statutory
    (b) Part Two – Employers Liability
    Bodily Injury by Accident, each accident - $1,000,000
    Bodily Injury by Disease, each employee - $1,000,000
    Bodily Injury by Disease, policy limit - $1,000,000

    b. **ARCHITECT'S Public Liability and Property Damage Insurance**- ARCHITECT shall take out and maintain during the life of this Agreement Comprehensive General Liability and Comprehensive Automobile Liability Insurance as shall protect him from claims for

damage for personal injury, including accidental death, as well as claims for property damages which may arise from operating under AGREEMENT whether such operations are by himself or by anyone directly or indirectly employed by him, and the amount of such insurance shall be minimum limits as follows:

c. **Architect's Comprehensive General Liability**
$1,000,000 Combined Single limit (CSL) Each Occurrence,

d. **Automobile Liability Coverages.**
$1,000,000 Combined Single limit (CSL) Each Occurrence,
Coverage under (a), and (b), shall be provided on an occurrence basis unless otherwise accepted by the OWNER.

e. **Subcontractor's Insurance** - The ARCHITECT shall require each of his subcontractors to procure and maintain during the life of this subcontract, insurance of the type specified above with limits of liability acceptable to the ARCHITECT and the COUNTY.

f. **Broad Form Property Damage Coverage, Products & Completed Operations Coverages** - Architect's General Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages.

g. **Contractual Liability Work Contracts** - The Architect's General Liability Policy shall include Contractual Liability Coverage designed to protect the ARCHITECT for contractual liabilities assumed by the ARCHITECT in the performance of this Agreement.

h. **Architects Errors and Omissions Liability Insurance.** Recognizing that the work governed by this contract involves the furnishing of Architectural services, ARCHITECT shall purchase and maintain, throughout the life of the contract, Architects Errors and Omissions Liability Insurance which will respond to damages resulting from any claim arising out of the performance of professional services or any error or omission of the ARCHITECT arising out of the work ARCHITECT performs governed by this contract. This insurance shall be maintained in force for a period of two years after the date of Substantial Completion of the Project. The minimum limits of liability shall be:
$1,000,000 per occurrence /$1,000,000 Aggregate

i. **Certificate of Insurance** - OWNER shall be furnished proof coverage of Insurance as follows. Certificate of Insurance form will be furnished to the OWNER along with the Contract Documents.
This Certificate shall be dated and show:

(1) The name of the insured ARCHITECT, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.

(2) Certificate of Insurance shall be in the form as approved by

Insurance Standards Office (ISO) and such Certificate shall clearly state all the coverages required in this Section.

(3) Certificate of Insurance shall state that the Monroe County Board of County Commissioners is listed as additional insured on all policies except for Workers Compensation, Automobile Liability, and ARCHITECT Errors and Omissions Liability.

(4) Owner retains the right to require a certified copy of any policy required under AGREEMENT and ARCHITECT agrees to furnish said certified copy within thirty (30) days of request.

22. **Equipment Damage.** OWNER and ARCHITECT waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. ARCHITECT shall require similar waivers from all subcontractors and their sub-subcontractors.

23. **Waiver of Subrogation**. OWNER waives subrogation against ARCHITECT on all property and consequential loss policies carried by the OWNER on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

24. **Endorsement.** If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owner of such policies will cause them to be so endorsed, failure to obtain proper endorsement nullifies the waiver of litigation.

ARTICLE 6
Adjudication of Disputes or Disagreements and Mediation

25. **Adjudication of Disputes or Disagreements.** OWNER and ARCHITECT agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between the representatives of each of the parties. Either OWNER or ARCHITECT may request a meet and confer session. If a session date and time cannot be agreed upon within ten (10) days from the date of the request or if no resolution can be agreed upon within twenty (20) days after the first meet and confer session, either party shall have the right to submit the unresolved issue(s) to mediation.

26. **Mediation.** OWNER and ARCHITECT 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 shall be scheduled as soon as possible to avoid a stoppage of work on PROJECT. Either party may institute litigation prior to mediation if timing for mediation would cause the statute of limitations to run before the parties could mediate. Mediation either pre-suit or post –suit initiated and conducted pursuant to 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.

27. **No Arbitration.** In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of

AGREEMENT, OWNER and ARCHITECT agree that no party to AGREEMENT shall be required to enter into any arbitration proceedings related to AGREEMENT.

ARTICLE 7
Termination or Suspension

28. **Failure to Substantially Perform.** AGREEMENT may be terminated by either party upon thirty (30) days' written notice should the other party fail substantially to perform in accordance with the terms of AGREEMENT through no fault of the party initiating the termination.

29. **Failure to Make Payment**. If Owner fails to make payment when due ARCHITECT may upon seven (7) days' written notice to OWNER, suspend performance of services under AGREEMENT. Unless payment in full is received by ARCHITECT within seven (7) days of the date of the notice, the suspension shall take effect without further notice. IN the event of a suspension of services, the ARCHITECT shall have no liability to OWNER for delay or damage caused OWNER because of such suspension of services.

30. **Termination Expenses.** In the event of termination not the fault of ARCHITECT, ARCHITECT shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due. Additional Termination Expenses shall be computed as ten percent (10%) of the hourly rate but not to exceed ten percent (10%) of the amount of **TWO HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS ($225,000.00).** No Termination Expenses shall be paid in the event of termination which is the fault of the ARCHITECT.

ARTICLE 8
RETROACTIVE TO START DATE

31. The terms and conditions of AGREEMENT shall be retroactive to the date ARCHITECTS began work on the PROJECT, October 13, 2005.

ARTICLE 9
Miscellaneous Provisions

32. **Jurisdiction and Venue.** AGREEMENT shall be governed by the laws of the State of Florida. Venue for any disputes and/or litigation arising under this AGREEMENT must be in Monroe County, Florida.

33. **Binding Effect.** OWNER and ARCHITECT, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, assigns and legal representatives of such other party with respect to all covenants of this AGREEMENT. Neither OWNER nor ARCHITECT shall assign this AGREEMENT without the written consent of the other.

34. **No Third Party Contractual Rights.** Nothing contained herein shall create any relationship, contractual or otherwise, with any rights in favor of, any third party.

35. **Contract Construction.** AGREEMENT has been carefully reviewed by the OWNER and the ARCHITECT. Therefore, this Agreement is not to be construed against either party on the basis of authorship.

36. **Nondiscrimination.** OWNER and ARCHITECT 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. OWNER and ARCHITECT 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 patient 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) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

37. **Cooperation and Invalidity.** 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 OWNER and ARCHITECT 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.

38. **Notice.** Whenever either party desires to give notice to the other, such notice shall be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended at the place and time specified in this Agreement; and the place for giving notice shall remain such until it is changed by written notice to the other

party. For the present, the parties designate the following as the respective places for giving notice:

FOR OWNER:	FOR ARCHITECT:
Mr. Larry Chalmers	Mr. Robert G. Currie
Facilities Development	Currie Sowards Aguila Architects
100 Simonton Street	134 Northeast First Avenue, Ste 2-216
Key West Florida, 33040	Delray Beach, Florida 33444

39. **Approval for Payment.** COUNTY'S performance and obligation to pay under Agreement is contingent upon an annual appropriation by the Board of County Commissioners and the approval of the Board members at the time of Agreement approval and duration.

40. **Sovereign Immunity**. Nothing in this Agreement shall be construed as a waiver of any sovereign immunity by COUNTY.

41. **Severability.** COUNTY and SUB-LESSEE agree that if any paragraphs or provisions of the Agreement is for any reason unenforceable, the remainder of the Agreement will be valid.

42. **Attorney Fees' and Costs.** The OWNER and ARCHITECT 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 AGREEMENT, the prevailing party shall be entitled to reasonable attorney fee's, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include reasonable attorney fee's, court costs, investigative, and out-of-pocket expenses in appellate proceedings.

43. **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 personally liable on AGREEMENT or be subject to any personal liability or accountability by reason of executing AGREEMENT.

44. **Attestations.** ARCHITECT agrees to execute such documents as OWNER may reasonably require, to include a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement.

45. **Section Headings.** Section headings have been inserted in this Agreement as a matter of convenience for 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.

46. **Authority.** Each party represents and warrants to the other that the execution, delivery and performance of AGREEMENT have been duly authorized by all necessary governmental approval, as required by law.

47. **Entire Agreement.** AGREEMENT represents the entire and integrated agreement between OWNER and ARCHITECT and supersedes all prior negotiations, representations or agreements, either written or oral. Agreement may be amended only be written instrument signed by both OWNER and ARCHITECT with the same formalities of AGREEMENT.

IN WITNESS WHEREOF the parties hereto have executed this AGREEMENT on the _____day of December 2005.

Attest: DANNY L. KOLHAGE, CLERK

By:_____
Deputy Clerk

_____
Witness

_____
Witness

BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA

By:_____
Mayor/Chairman

Attest:

_____
Witness

_____
Witness

ARCHITECT

By:_____
Robert G. Currie

Title:_____

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
Natileene W. Cassel
NATILEENE W. CASSEL
ASSISTANT COUNTY ATTORNEY
Date 12/8/05