

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: November 17, 2015

Department: TDC

Bulk Item: Yes No

Staff Contact /Phone #: Ammie Machan 269-1552

AGENDA ITEM WORDING:

Approval of an Agreement with Florida Keys Community College and The Letters "FKCC" covering FKCC Swim Around Key West in an amount not to exceed \$10,000, DAC I, FY 2016 Event Resources

ITEM BACKGROUND:

TDC approved same at their meeting of September 8, 2015

PREVIOUS RELEVANT BOCC ACTION:

CONTRACT/AGREEMENT CHANGES:

New Agreement

STAFF RECOMMENDATIONS:

Approval

TOTAL COST: \$10,000 **INDIRECT COST:** _____ **BUDGETED:** Yes No

DIFFERENTIAL OF LOCAL PREFERENCE: _____

COST TO COUNTY: No Cost

SOURCE OF FUNDS: TDC

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

APPROVED BY: County Attorney OMB/Purchasing Risk Management

DOCUMENTATION: Included Not Required

DISPOSITION: _____

AGENDA ITEM # _____

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY			
Contract with:	Florida Keys Community College and The Letters "FKCC"	Contract #	<u>1586</u>
		Effective Date:	<u>11/17/2015</u>
		Expiration Date:	<u>11/29/2016</u>
Contract Purpose/Description: <u>Approval of an Agreement with Florida Keys Community College and The Letters "FKCC" covering FKCC Swim Around Key West in June - September 2016 in an amount not to exceed \$10,000.00, DAC I, FY 2016, Event Resources.</u>			
Contract Manager:	<u>Ammie Machan</u> (Name)	<u>3523</u> (Ext.)	<u>TDC #3</u> (Department/Stop #)
for BOCC meeting on:	<u>11/17/15</u>	Agenda Deadline: <u>11/3/15</u>	

CONTRACT COSTS	
Total Dollar Value of Contract: \$	<u>\$10,000.00</u> Current Year Portion: \$ _____
Budgeted? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Account Codes: <u>115-75360-530340-TM65-673-X-530340</u>
Grant: \$ _____	
County Match: \$ _____	
ADDITIONAL COSTS	
Estimated Ongoing Costs: \$ ____/yr (Not included in dollar value above)	For: _____ (e.g. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW				
	Date In	Changes Needed	Reviewer	Date Out
Department Head	<u>9/18/15</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>9/18/15</u>
Risk Management	<u>9-24-15</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>M. Slued</u>	<u>9-24-15</u>
O.M.B./Purchasing	<u>9/24/15</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>10/5/15</u>
County Attorney	<u>9/23/15</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>C.Limbert-Barows</u>	<u>9/23/15</u>
Comments: _____				

Destination Event Agreement

THIS Agreement is made and entered into by and between Monroe County, Florida, a political subdivision of the State of Florida (County), and Florida Keys Community College and The Letters "FKCC" (Event Contractor) on this ____ day of _____, 2015.

WITNESSETH:

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

1. The County agrees to pay up to \$10,000 (Ten Thousand Dollars – Monroe County Tourist Development Council (TDC) District I Funding Allocation) for **FKCC Swim Around Key West in June-Sept 2016** from tourist development tax funds (see Exhibit C). Of this amount, no more than 10% or \$1,000 of the total allocated funds 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 agreement. A list of Acceptable Event Marketing Expenses is attached to the agreement as Exhibit A.**

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

- a) FKCC Swim Around Key West in June 2016 – three (3) day event to include: opening party; swim race and post-race party; swim meet and awards ceremony.
- b) Pentathlon Swim Meet in September 2016 – two (2) day event to include swim meet and awards ceremony; open water swim and awards ceremony.

3. Event Budget: Exhibit C attached hereto shall be reviewed and approved by the TDC Agencies of record.

4. Invoicing: Event Contractor agrees to submit all invoices and support documentation as required by the County's Finance Department rules and policies no later than **November 29, 2016** unless the date of the event is amended upon approval of the Advisory Committee and TDC Director. Event Contractor shall not be reimbursed nor will Event Contractor's vendors be paid directly for any invoices received by the County after **November 29, 2016** unless the date of the event is amended upon approval of the Advisory Committee and TDC Director, and the County shall not be obligated to pay for any services provided by Event Contractor under this agreement if documentation as noted above is not received on or before this reimbursement deadline date. To be eligible for reimbursement, the request for reimbursement and supporting documents (checks, invoices, credit card statements, bank statements, etc.) must show that the items were paid for directly by the same entity named on the contract with the County. For clarification on reimbursements, please refer to the reimbursement packet provided to you upon execution of your funding agreement.

5. Expiration of Agreement: This agreement expires on **November 29, 2016** unless the date of the event is amended upon approval of the Advisory Committee and TDC Director and the County

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shall not be obligated to pay for any services provided by Event Contractor under this agreement if documentation as noted above is not received on or before this reimbursement deadline date.

6. Duties of Event Contractor: Event Contractor shall provide promotion and related services as described in paragraph 2 – Scope of Services, and outlined in Exhibit C (Event Budget). All advertising and public relations services or supervision of advertising and public relations will be provided through the contracted agencies of the TDC and County.

7. Accounting and Records: Event Contractor shall maintain records pursuant to generally accepted accounting principles for four (4) years after the event and shall permit County and its agents and employees access to said records at reasonable times.

8. Modification: The event name, time & date of the event and Schedule of Activities may be amended upon written approval of the Advisory Committee and TDC Director. Any changes to said contract other than stated above require approval by the Advisory Committee, TDC and the County.

9. Reimbursement to County: Event Contractor shall reimburse County for any amount of funds expended by County in connection with an event which does not occur as a result of any act or omission by Event Contractor.

10. 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 Contractor.

11. Non Occurrence of Event: The Event Contractor shall give written notice to the TDC if it is found necessary to cancel an event. The notice shall contain the reason for the cancellation. If the event does not take place for any reason under control of Event Contractor except for those reasons in paragraph 21, then Event Contractor agrees to refund to the County any amounts already paid to them under this agreement, and relieve the County from any further payments.

12. Claims and Venue: Event Contractor agrees to notify County immediately of any claims, suits or action made against the Event Contractor that is related to the activity under this agreement, and will cooperate with County in the investigation arising as a result of any action, suit or claim related to this agreement. Any legal proceedings arising out of this agreement shall be in accordance with the laws of the State of Florida in the 16th Judicial Circuit for Monroe County; venue shall be in Monroe County, Florida.

13. Indemnification and Hold Harmless: The Event Contractor covenants and agrees to indemnify and hold harmless and defend Monroe County, its officers, employees and agents including the TDC 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 by Event Contractor, or other activities and funding associated with this agreement, except those losses or damages caused by County or its agents.

14. Permits: The Event Contractor will secure all required permits, licenses and shall pay all appropriate business taxes.

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15. Taxes: The County and TDC are exempt from Federal Excise and State of Florida Sales Tax, but this in no way exempts the Event Contractor from applicable Federal and State taxes.
16. Finance Charges: The County and TDC shall not be responsible for any finance charges.
17. Relation of County/TDC: It is the intent of the parties hereto that the Event Contractor shall be legally considered as an independent Event Contractor 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 Contractor, its employees or agents, resulting in either bodily or personal injury or property damage to any individual, firm or corporation.
18. Disclosure: The Event Contractor shall be required to list any or all potential conflicts of interest, as defined by Florida Statutes Chapter 112 and Monroe County Code. The Event Contractor 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.
19. Assignment: The Event Contractor shall not assign, transfer, convey, sublet or otherwise dispose of this agreement, or of any or all of its rights, 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.
20. Compliance with Laws - Nondiscrimination: The Event Contractor, shall comply with all Local, State and Federal laws, regulations 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 Local, State and Federal laws, regulations and ordinances.
21. Force Majeure: The Event Contractor 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 Contractor 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 Contractor 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.
22. 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 Event Contractor 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.

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23. **Security Protection:** The Event Contractor agrees to provide adequate security for the event. No TDC funds will be used for this purpose.

24. **Media Rights:** The TDC shall have the right under this agreement to broadcast or rebroadcast, for any purpose whatsoever, radio, television, sound, video or film production, and still photographs, paid by the TDC and County, and produced by the TDC agencies of record.

25. **Logo:** **Logo Usage guidelines are attached to this agreement as Exhibit B.** All promotional literature and display advertising must display the "Key West – Close to Perfect - Far From Normal" logo/trademark (as per attached logo sample). This logo/trademark was adopted by the TDC and County in April, 2010.

26. **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.

27. **Authority:** Each of the signatories for the Event Contractor below certifies and warrants that: a) the Event Contractor'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 Event Contractor and c) this agreement has been approved by the Event Contractor's governing board.

28. **Ethics Clause:** The Event Contractor warrants that it has not employed, retained or otherwise had act on its behalf, any former County officer or employee in violation of Section 2 of 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.

29. **Public Entities 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 a period of 36 months from the date of being placed on the convicted vendor list.

30. **Laws and Regulations:** Any and all services, materials and equipment shall comply fully with all Local, State and Federal laws and regulations.

31. **Termination of Agreement:** County may terminate this agreement without cause by providing written notice to Event Contractor, through its officer, agent or representative, no less than sixty (60) days prior to the event and may terminate for breach upon providing to Event Contractor, through its officer, agent or representative, notice at least seven (7) days prior to the effective date of the termination. Notice is deemed received by Event Contractor when hand delivered, delivered by national

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courier with proof of delivery, or by U.S. mail upon verified receipt or upon the date of refusal or non-acceptance of delivery.

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

For Grantee: Lori Bosco
5901 College Road
Key West, FL 33040

For Grantor: Maxine Pacini
Monroe County Tourist Development Council
1201 White Street, Suite 102
Key West, FL 33040

And

Christine Limbert-Barrows, Asst. County Attorney
P.O. Box 1026
Key West, FL 33041-1026

33. Miscellaneous: As used herein, the terms "contract" and "agreement" shall be read interchangeably.

34. Entire Agreement: The parties agree that the agreement above constitutes the entire agreement between the County and Event Contractor.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

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

(SEAL)
Attest: Amy Heavilin, Clerk

Board of County Commissioners
of Monroe County

Deputy Clerk

Mayor/Chairman

IN WITNESS

Florida Keys Community College and The Letters "FKCC"

By: [Signature] 09/24/2015
President

JONATHAN GUEVERA
Print Name

Date: _____

AND TWO WITNESSES

(1) Debra Leonard

(2) Carrie E. Grooms

Print Name: Debra Leonard

Print Name: CARRIE E. GROOMES

Date: 9/24/15

Date: 9/24/15

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

Christine M. Limbert-Barrows
CHRISTINE M. LIMBERT-BARROWS
ASSISTANT COUNTY ATTORNEY
to 9/24/15

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Acceptable Event Marketing Expenses for Destination Events

Only the TDC expenses listed below may be included in the proposed budget. A general non-allocated line item is not to exceed 15% of the total budget and can only be utilized for acceptable TDC marketing items listed in this section. There cannot be more than a 10% deviation from the approved line item budget. The following are the only acceptable expenses:

Media Placement & Production Costs: Newspapers and magazines (inserts will also be considered), radio and TV. The TDC will pay for the following digital advertising on websites, website links, pre roll video, banners, mobile and email blasts. Digital advertising links may go to the event website. The TDC Logo must be placed on all print, TV, websites, pre roll video, banners and email blasts. Radio advertising does not require the logo but all radio announcements must say "Brought to you by the Monroe County Tourist Development Council". No more than 10% of the total allocated funds shall be expended on advertising media costs attributable to in-county placement.

Promotional Signs: Posters and banners (hanging and displayed outdoors).

Promotional Items: T-shirts and hats*.

***Sales/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.

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

Programs: TDC will pay up to fifty percent (50%) of the cost of production and printing of an event program showing scheduled activities and information on the event, as outlined in contract budget.

Public Relations (PR): Print and electronic public relations materials for distribution to media, such as, but not limited to, press releases, public service announcements, photography and videography as approved by the public relations agency of record. Only permissible PR material produced by the TDC agency of record and/or a professional public relations agency shall be acceptable.

In-House Production: In-house production of any permissible expenditure will not be considered for reimbursement.

Event Marketing Reimbursement: TDC will only consider reimbursement of permissible marketing expenditures that highlight the special event versus the regular programming of a business, organization or the facility.

Amendments to Contract Budgets: No amendments to the line item budgets will be permitted after the contract has been reviewed and approved.

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Logo/Acknowledgement Usage Guidelines For District I Destination Events

Color ads four (4) color processing printing

Black & white ads shall include the Florida Keys and Key West logo in high resolution

Use on all printed material as listed under the Acceptable Event Marketing Expenses list

TV: logo must appear at the conclusion of commercial

Hats and t-shirts: must carry the "The Florida Keys & Key West" Out-of-County 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 logo below indicating the "Monroe County Tourist Development Council" designation is to be utilized on in-county print newspaper and magazine ads, brochures, postcards, pamphlets, programs, posters, banners (hanging and displayed outdoors), and digital advertising on websites, website links, pre roll video, banners, mobile and email blasts. 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 Ashley Miller or John Underwood with Tinsley Advertising at 305-856-6060.



Out-of-County Logo

The logo below that does NOT include the "Monroe County Tourist Development Council" designation is to be utilized in out-of-County newspapers and magazines, brochures, postcards, pamphlets, programs, posters, and digital advertising on websites, website links, pre roll video, banners, mobile and email blasts. 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 Ashley Miller or John Underwood at Tinsley Advertising at 305-856-6060.



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DESTINATION EVENT BUDGET - FISCAL YEAR 2016

Applicant is advised prior to completing this budget to refer to Exhibit A of the Sample Contract showing the Allowable Marketing Expenses. This can be found online at: <http://fl-monroeCounty.civicplus.com/index.aspx?nid=328>

THERE WILL BE NO AMENDMENTS TO THIS BUDGET (EXHIBIT C) AFTER BOCC APPROVAL OF AGREEMENT

FKCC Swim Around Key West

EVENT NAME

MEDIA PLACEMENT & PRODUCTION COST:	\$7,000
PROMOTIONAL SIGNS:	
PROMOTIONAL ITEMS:	\$2,000
DIRECT MAIL PROMOTIONS:	
PROGRAMS	
PUBLIC RELATIONS:	
*GENERAL NON-ALLOCATED:	\$1,000
<u>TOTAL</u>	\$10,000

*The General Non-Allocated line item should not exceed 15% of the total funding allocation, and may only be utilized for acceptable event marketing expenses (see Exhibit A of Application).

Actual expenditures may deviate no more than 10% from the budgeted line items noted above.

TDC will only consider reimbursement of permissible marketing expenditures that highlight the special event versus the regular programming of a business, organization or the facility.

The County shall pay no more than 10% of the total allocated funds on advertising media costs attributable to in-county placement.

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