

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: Floridakeys.com and Keywest.com Contract # **TDC #: 119**
 Effective Date: 10/1/08
 Expiration Date: 9/30/10

Contract Purpose/Description:
Approval to amend Agreement with Cooke Communications, L.L.C., a Delaware Limited Liability company doing business as "FloridaKeys.com and Key West.com, to extend term of Agreement to September 30, 2010.

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

for BOCC meeting on 4/16/08 Agenda Deadline 4/1/08

CONTRACT COSTS

Total Dollar Value of Contract: \$ 35,000 Current Year Portion: \$
 Budgeted? Yes No Account Codes : 115-75035-530340-T85M-230-X-530340
 Grant: \$
 County Match: \$

ADDITIONAL COSTS

Estimated Ongoing Costs: \$ /yr For:
 (Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>3/7/08</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>3/7/08</u>
Risk Management	<u>3-13-08</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>3-13-08</u>
O.M.B./Purchasing	<u>3/10/08</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>3/12/08</u>
County Attorney	<u>2/21/08</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>C.Hall</u>	<u>2/21/08</u>

Comments: _____

AMENDMENT (1st AMENDMENT) TO AGREEMENT

THIS AMENDMENT to agreement dated the ____ day of _____ 2008, is entered into by and between the Board of County Commissioners for Monroe County, on behalf of the Tourist Development Council, and **Cooke Communications L.L.C., a Delaware Limited Liability company doing business as "FloridaKeys.com and Key West.com"** (hereinafter called the "FIRM").

WHEREAS, there was a contract entered into on September 28, 2005 between the parties, for the "Firm" to act as a website provider for the Monroe County Tourist Development Council, and

WHEREAS, the original agreement with the "Firm" has an option to extend agreement for two additional years beyond the expiration date of September 30, 2008;

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

1. Paragraph 5 of the contract shall read: The contract shall expire on September 30, 2010.
2. The remaining provisions of the contract dated September 28, 2005 remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands and seal on the day and year first above written.

(SEAL)
Attest: Danny L. Kolhage, Clerk

Board of County Commissioners
of Monroe County

Deputy Clerk

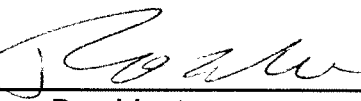
Mayor/Chairman

(CORPORATE SEAL)

**Cooke Communications L.L.C., a Delaware
Limited Liability Company Doing Business
as FloridaKeys.com/KeyWest.com**

Attest:

By _____
Secretary

By 

President

Print Name

THOMAS K COOKE

Print Name

OR TWO WITNESSES

(1) _____

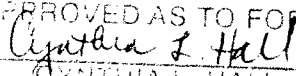
(2) _____

(1) _____

(2) _____

Print Name

Print Name

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:


CYNTHIA L. HALL
ASSISTANT COUNTY ATTORNEY
Date 2-21-08

CONTRACT

THIS CONTRACT, made and entered into this 28th day of September, 2005, A.D., by and between MONROE COUNTY, FLORIDA, (hereinafter sometimes called the "COUNTY"), and Cooke Communications L.L.C., a Delaware Limited Liability company doing business as "FloridaKeys.com and Key West.com", (hereinafter called the "FIRM").

WHEREAS, FIRM is qualified to provide website services which promote tourism, and

WHEREAS, the Tourist Development Council (TDC) has recommended to COUNTY that FIRM be awarded a contract for website services, and

WHEREAS, the COUNTY has determined it to be in the interest of tourism promotion to enter into this Contract for website provider services with the FIRM,

NOW THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties agree as follows: That the parties hereto, for the consideration hereinafter set forth, mutually agree as follow:

1. THE CONTRACT

The Contract between the COUNTY and the FIRM, of which this Contract is a part, consists of the Contract documents, which are as follows: This Contract and any amendments executed by the parties hereafter, together with the response to RFP and all required insurance documentation. In the event of a discrepancy between the documents, precedence shall be determined by the order of the documents as just listed.

2. SCOPE OF THE WORK

The FIRM shall provide Website Provider services for the Monroe County TDC as described below:

- a) Key Personnel: This Contract is a "professional services Contract" with the expectation that principal personnel will be performing the services. A list of the principal personnel will be given to the TDC for their record and the TDC shall be informed of any changes in TDC Account Managers position.
- b) At least one account manager(s) shall meet with the Monroe County TDC at all regularly scheduled meetings of the TDC and at any other times as directed by the TDC.
- c) The FIRM agrees to assign a Website Account Manager who will devote such time and effort as necessary to the account on a priority basis, including full time and emergency situations when required. Duties of the Account Manager or FIRM's assigned representative will include contact as required with the Chairman of the TDC and Marketing Director or other designee. Other duties include consultations with TDC staff, TDC Advisory Committees from the five districts and Umbrella Committees within the Keys as directed by the TDC; participation in, and coordination of other related areas of tourism development as it relates to the development of an effective website marketing program to the TDC as designated in Section within the Scope of Services.

3. The FIRM agrees to the following services:

- a) The FIRM shall design, program and maintain host site (the Worldwide Web) for the COUNTY on behalf of the TDC who retains all approvals.
- b) The site shall be comprehensive including a home page, TDC district content, special umbrella sections, places to stay, things to do and see, a calendar of events, accommodations search programs, transportation, news releases, emergency crisis management situation changes, electronic brochures, videos, live cams, and other site categories which may require regular updating as deemed appropriate for marketing purposes by the TDC.
- c) The FIRM must be available to meet with District Advisory Committees, Umbrella Committees, marketing agencies of record, TDC board and TDC staff at regular set meetings or upon request.
- d) The FIRM agrees that the TDC will have editorial control and approval of the site and all contents.
- e) The FIRM agrees that the TDC along with their marketing agencies of record have the right to provide input into the design and creative content of the site. This shall be done by FIRM upon approval of the TDC and direction by the TDC director.
- f) The FIRM shall furnish and maintain real time images (live web cams) on the TDC website at different locations or events in Monroe County as mutually agreed by all parties.
- g) The FIRM shall furnish the setup and the capability to download any of the TDC promotional collateral products as on-line electronic fulfillment. These should be in portable document format (PDF) and the FIRM shall provide a monthly report on the number of downloads of each category
- h) The FIRM shall provide a search mechanism for the site.
- i) The FIRM shall furnish the setup and capability to develop travel trade fulfillment such as travel agent request forms and meeting planner's RFP forms to be sent electronically.
- j) The FIRM shall furnish a list server service to capture e-mail addresses for Monroe County TDC promotions. The TDC will own the e-mail addresses for their promotional use only.
- k) The FIRM must host the site with state of the art equipment connected to high tier of the Internet backbone. The FIRM should host the site on redundant drives or redundant services.
- l) The FIRM shall guarantee service uptime at over 99% except as excused by the conditions of the Force Majeure paragraph of this Contract.

- m) The FIRM agrees to identify and furnish safe guards and backups located in different geographical areas to protect electronic data and programming from both natural and manmade disasters so to provide continuous service.
- n) The FIRM shall submit the site to all major search engines on a regular basis to be determined by meeting the submission policies each of the various search engines.
- o) The FIRM shall furnish monthly reports to the TDC which will track the number of user sessions, most requested pages, top referring URLs, top search engines, top search keywords or phrase, and other requested TDC research assessment of services reports. The report numbers may be audited and verified by an independent entity.
- p) The FIRM shall have the right to create websites, click-throughs and Internet ads for our tourism industry partners and charge the industry for those services. The FIRM agrees to have dedicated sales staff to adequately cover all of Monroe County in equal marketing sales distribution efforts.
- q) The FIRM shall implement a password protected content management interface capability to be utilized by the FIRM, TDC director and TDC marketing agencies of record.
- r) The TDC shall have the sole and exclusive right to the authorization of sales, merchandising, reservation system or any mode of revenue producing program, which authorization shall be established through guidelines approved by the TDC as shown in Exhibit A.
- s) The TDC agrees that the artwork, editorial and photographic material – to be commonly known as 'data' collected or prepared by the TDC and/or its contracted agencies will be released to FIRM at no charge for use solely in the official web site, unless protected by copyrights, exclusive-use agreement.
- t) The TDC shall have the ability for the TDC Web Editor to manage free listings on the site in tourism categories approved by the TDC.

4. **COMPENSATION:**

a) The FIRM shall provide all services and support as listed in the Scope of Services at no charge to COUNTY or TDC in exchange for the exclusive right of advertising revenues generated from the website. The TDC shall have the right to place sponsorship or partnership logo signature(s) on the site. The logo signature(s) in a mutually agreed upon format and location will be at no cost to the TDC.

The FIRM may charge the COUNTY for special projects approved by the TDC or Director outside the scope of services such as new site enhancements which require the FIRM to pay for the technology, equipment and production costs needed for use. These special projects shall be paid for through normal COUNTY purchase order procedures.

b) Bandwidth Service – FIRM will be paid on an annual basis, a fee for the service providing electronic brochures and downloading of videos from the website. These downloads are expected to average over 10,000 gigabytes of bandwidth transfer per year with great spike fluctuations occurring with certain events or news. FIRM shall have enough bandwidth capacity to handle this average load in addition to having immediate access to additional bandwidth capacity as such peak times or events dictate. The annual cost for this service will be \$35,000

which shall be paid in eleven (11) monthly payments of \$2,916 and one (1) payment of \$2,924. Upon approval to exercise option to extend this contract for an additional two (2) year period, the annual cost of service may be adjusted. Monroe County's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the BOCC.

c) Advertising sales guidelines are established within Exhibit A.

5. **TERM OF CONTRACT:** The term of this Contract is for three years, commencing on the 1st day of October, 2005, and ending on the 30th day of September, 2008, with an option to extend for an additional two (2) year period.

6. **FIRM'S ACCEPTANCE OF CONDITIONS**

a) The FIRM hereby agrees that it has carefully examined the specifications for which the FIRM shall provide services and assumes full responsibility therefore. The provisions of the Contract shall control any inconsistent provisions contained in the specifications. Under no circumstances, conditions, or situations shall this Contract be more strongly construed against the COUNTY than against the FIRM.

b) Any ambiguity or uncertainty in the specifications shall be interpreted and construed by the COUNTY, and the COUNTY's decision shall be final and binding upon all parties.

c) The passing, approval, and/or acceptance by the COUNTY of any of the services furnished by the FIRM shall not operate as a waiver by the COUNTY of strict compliance with the terms of this Contract, and specifications covering the services. Failure on the part of the FIRM, immediately after Notice to Correct shall entitle the COUNTY, if it sees fit, to correct same and recover the reasonable cost of such replacement and/or repair from the FIRM, who in any event shall be jointly and severally liable to the COUNTY for all damage, loss, and expense caused to the COUNTY by reason of the FIRM's breach of this Contract and/or his failure to comply strictly and in all things with this Contract and with the specifications.

d) The FIRM agrees that the TDC may designate representatives to visit the FIRM's facility(ies) periodically to evaluate operations during the FIRM's normal business hours.

e) The FIRM has, and shall maintain throughout the term of this Contract, appropriate licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY upon request.

7. **FIRM'S FINANCIAL RECORDS**

FIRM shall maintain all books, records, and documents directly pertinent to performance under this Contract in accordance with generally accepted accounting principles consistently applied. Each party to this Contract or their authorized representatives shall have reasonable and timely access to such records of each other party to this Contract for public records purposes during the term of the Contract and for four years following the termination of this Contract. If an auditor employed by the COUNTY or Clerk determines that monies paid to FIRM pursuant to this Contract were spent for purposes not authorized by this Contract, the FIRM shall repay the monies together with interest calculated pursuant to Sec. 55.03, FS, running from the date the monies were paid to FIRM.

8. **PUBLIC ACCESS**

The COUNTY and FIRM 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 FIRM in

conjunction with this Contract; and the COUNTY shall have the right to unilaterally cancel this Contract upon violation of this provision by FIRM.

9. HOLD HARMLESS

The FIRM covenants and agrees to indemnify and hold harmless Monroe County Board of County Commissioners and the TDC 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 services provided by the FIRM or any of its Subcontractor(s) in any tier, occasioned by the negligence, errors, or other wrongful act of omission of the FIRM or its Subcontractors in any tier, their employees, or agents.

The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this Contract.

10. INDEPENDENT CONTRACTOR

At all times and for all purposes under this Contract the FIRM is an independent Contractor and not an employee of the Board of County Commissioners of Monroe County. No statement contained in this Contract shall be construed so as to find the FIRM or any of his employees, Contractors, servants, or agents to be employees of the Board of County Commissioners of Monroe County.

11. NONDISCRIMINATION

COUNTY and FIRM 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 Contract automatically terminates without any further action on the part of any party, effective the date of the court order. COUNTY or FIRM 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) 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 Contract.

12. ASSIGNMENT/SUBCONTRACT

The FIRM shall not assign or subcontract its obligations under this Contract, except in writing and with the prior written approval of the Board of County Commissioners of Monroe County and FIRM, which approval shall be subject to such conditions and provisions as the Board may deem necessary and pursuant to the recommendation of the COUNTY Court Administrative Judge. This paragraph shall be incorporated by reference into any assignment or subcontract and any assignee or subcontractor shall comply with all of the provisions of this Contract. Unless expressly provided for therein, such approval shall in no manner or event be deemed to impose any additional obligation upon the board.

13. COMPLIANCE WITH LAW

In providing all services/goods pursuant to this Contract, the FIRM shall abide by all statutes, ordinances, rules and regulations pertaining to, or regulating the provisions of, such services, including those now in effect and hereinafter adopted. Any violation of said statutes, ordinances, rules and regulations shall constitute a material breach of this Contract and shall entitle the Board to terminate this Contract immediately upon delivery of written notice of termination to the FIRM. The FIRM shall possess proper licenses to perform work in accordance with these specifications throughout the term of this Contract.

14. DISCLOSURE AND CONFLICT OF INTEREST

The FIRM represents that it, its directors, principles and employees, presently have no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required by this Contract, as provided in Sect. 112.311, et. seq., Florida Statutes. COUNTY agrees that officers and employees of the COUNTY recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or Contractual relationship; and disclosure or use of certain information.

Upon execution of this Contract, and thereafter as changes may require, the FIRM shall notify the COUNTY of any financial interest it may have in any and all programs in Monroe County which the FIRM sponsors, endorses, recommends, supervises, or requires for counseling, assistance, evaluation, or treatment. This provision shall apply whether or not such program is required by statute, as a condition of probation, or is provided on a voluntary basis.

The COUNTY and FIRM 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 Contract 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 Contract. For the breach or violation of the provision, the FIRM agrees that the COUNTY shall have the right to terminate this Contract 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.

15. ARREARS

The FIRM shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any Contract, debt, obligation, judgment, lien, or any form of indebtedness. The FIRM further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

16. NOTICE REQUIREMENT

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

FOR COUNTY

Mr. Harold Wheeler
Monroe County TDC
1201 White Street, Suite 102
Key West, FL 33040

and

COUNTY Attorney
PO Box 1026
Key West, FL. 33041-1026

FOR FIRM:

Thomas Cooke, CEO
FloridaKeys.com
1201 White Street, Suite 103
Key West, FL 33040

17. TAXES

The COUNTY is exempt from payment of Florida State Sales and Use taxes. The FIRM shall not be exempted by virtue of the COUNTY's exemption from paying sales tax to its suppliers for materials used to fulfill its obligations under this Contract, nor is the FIRM authorized to use the COUNTY's Tax Exemption Number in securing such materials. The FIRM shall be responsible for any and all taxes, or payments of withholding, related to services rendered under this Contract.

18. TERMINATION

- a) The COUNTY may terminate this Contract for cause with seven (7) days notice to the FIRM. Cause shall constitute a breach of the obligations of the FIRM to perform the services enumerated as the FIRM's obligations under this Contract.
- b) Either of the parties hereto may terminate this Contract without cause by giving the other party ninety days (90) days written notice of its intention to do so.

19. GOVERNING LAW, VENUE, INTERPRETATION, COSTS, AND FEES

- a) This Contract 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.
- b) In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Contract, the COUNTY and FIRM agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.
- c) The COUNTY and FIRM agree that, in the event of conflicting interpretations of the terms or a term of this Contract by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding.

d) **Severability.** If any term, covenant, condition or provision of this Contract (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 Contract, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Contract 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 Contract would prevent the accomplishment of the original intent of this Contract. The COUNTY and FIRM agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

e) **Attorney's Fees and Costs.** The COUNTY and FIRM 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 Contract, 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 Contract shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County .

f) **Adjudication of Disputes or Disagreements.** COUNTY and FIRM 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 Contract or by Florida law.

g) **Cooperation.** In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Contract, COUNTY and FIRM agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Contract or provision of the services under this Contract. COUNTY and FIRM specifically agree that no party to this Contract shall be required to enter into any arbitration proceedings related to this Contract.

20. BINDING EFFECT

The terms, covenants, conditions, and provisions of this Contract shall bind and inure to the benefit of the COUNTY and FIRM and their respective legal representatives, successors, and assigns.

21. AUTHORITY

Each party represents and warrants to the other that the execution, delivery and performance of this Contract have been duly authorized by all necessary COUNTY and corporate action, as required by law.

22. CLAIMS FOR FEDERAL OR STATE AID

FIRM 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 Contract; provided that all applications, requests, grant Proposals, and funding solicitations shall be approved by each party prior to submission.

23. **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 Contract 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.

24. **LEGAL OBLIGATIONS AND RESPONSIBILITIES**

Non-Delegation of Constitutional or Statutory Duties. This Contract 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 Contract 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.

25. **NON-RELIANCE BY NON-PARTIES.**

No person or entity shall be entitled to rely upon the terms of this Contract 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 FIRM agree that neither the COUNTY nor the FIRM 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 Contract separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Contract.

26. **ATTESTATIONS**

FIRM agrees to execute such documents as the COUNTY may reasonably require, to include a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement.

27. **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 liable personally on this Contract or be subject to any personal liability or accountability by reason of the execution of this Contract.

28. **INSURANCE:** The FIRM 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 FIRM 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 FIRM's failure to maintain the required insurance.

The FIRM 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 FIRM's insurance shall not be construed as relieving the FIRM 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 FIRM shall obtain Workers' Compensation Insurance with limits sufficient to comply with Florida Statute 440.

In addition, the FIRM 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 FIRM 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:

\$1,000,000 per occurrence, and \$1,000,000 aggregate

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

\$ 500,000 per person

\$1,000,000 per Occurrence

\$ 100,000 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.

29. EXECUTION IN COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Contract by signing any such counterpart.

30. SECTION HEADINGS

Section headings have been inserted in this Contract as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Contract and will not be used in the interpretation of any provision of this Contract.

IN WITNESS WHEREOF the parties hereto have executed this Contract on the day and date first written above in five (5) counterparts, each of which shall, without proof or accounting for the other counterparts, be deemed an original Contract.

(SEAL)

Attest: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: *Daniel C. DeSantis*
Deputy Clerk

By: *Haji M. Jakes*
Mayor/Chairman

(SEAL)

Cooke Communications L.L.C., a Delaware
Limited Liability Company Doing Business as
FloridaKeys.com/KeyWest.com

Attest:

By: *Kelly A. Tapp*
WITNESS

By: *[Signature]*
President

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM
Suzanne A. Hutton
SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 8/01/05

Website Provider Sales Guidelines

EXHIBIT A

This document will serve as guidelines and authorization to facilitate the website provider sales for the Monroe County Tourist Development Council (TDC) website.

Advertising:

Banner Ads

The FIRM will have the opportunity to sell and place banner ads on the Web site. The banner ads should conform to Internet standards pertaining to size and functionality to be approved by the TDC. One (1) rotating 468x60 banner ad and one (1) fixed 120x240 banner ad per web page.

Hyperlinks

Advertising in the form of transporting hyperlinks can be sold throughout the Web site. The TDC will allow links to tourist industry associations or organizations such as chambers of commerce, lodging associations, attractions, etc. at no cost at agreeable locations.

Web Cam Sponsorships

FIRM can sell sponsorships for live Web cams at different locations throughout the Keys.

Advertising Allowances and Restrictions

1. FIRM can sell advertising to any national or international business that has a tourist related business interest in the Florida Keys.
2. Local businesses should be limited to advertising in the Web site section relating to the geographical region (TDC District) where the business is conducted. If business is conducted throughout the Keys, then that company can advertise throughout the entire Web site.
3. As new forms of Internet advertising evolve, the FIRM will have the opportunity to incorporate these as well, however, prior to implementation the firm should receive approval from the TDC.

Merchandising

There is to be no TDC related merchandising agreement without TDC approval in advance.

Reservation Services

There is no TDC Web site related reservation service as of this date.