

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: Keys Association of Dive Operators Contract # _____ TDC #: _____
 Effective Date: 12/19/07
 Expiration Date: 9/30/09

Contract Purpose/Description:
Approval of an Amendment to Agreement with Keys Association of Dive Operators (KADO) to revise the Recommendation Committee Member name for DAC IV.

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

for BOCC meeting on 12/19/07 Agenda Deadline 12/4/07

CONTRACT COSTS

Total Dollar Value of Contract: \$ 400,000 Current Year Portion: \$ _____
 Budgeted? Yes No Account Codes : 115-75033-530340-T/5D-239-X-530480
 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>9/22/07</u> | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | <u>M. Stinson</u> | <u>9/25/07</u> |
| Risk Management | <u>9-27-07</u> | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | <u>M. Stinson</u> | <u>9-27-07</u> |
| O.M.B./Purchasing | <u>9-25-07</u> | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | <u>T. T. T.</u> | <u>10/11/07</u> |
| County Attorney | <u>9/21/07</u> | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | <u>S. Grimsley</u> | <u>9/21/07</u> |

Comments: _____

AMENDMENT #3 TO AGREEMENT

THIS AMENDMENT #3 to Agreement is made and entered into this ____ day of _____, 2007, A.D., by and between MONROE COUNTY, FLORIDA (County), and Keys Association of Dive Operators (KADO).

WHEREAS, an Agreement was entered into on November 17, 2004 and amended on August 17, 2005, September 20, 2006 and May 16, 2007, between the parties authorizing KADO to oversee the TDC Dive Umbrella, an advisory committee which makes recommendations to the TDC and BOCC concerning dive related marketing activities; and

WHEREAS, it is necessary to appoint a new TDC Dive Umbrella Recommendation Committee member from District IV;

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

1. Exhibit A of the Agreement entered into on November 17, 2004 and amended on August 17, 2005, September 20, 2006 and May 16, 2007 shall be revised to name Tom Timmerman as the KADO Recommendation Committee member for District IV. (See revised Exhibit A-4).

2. The remaining provisions of the contract dated November 17, 2004 and Amended on August 17, 2005, September 20, 2006 and May 16, 2007, 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.

Attest: Danny L. Kolhage,
Clerk of Monroe County

Deputy Clerk

(CORPORATE SEAL)
Attest:

By _____
Secretary

Print Name

OR TWO WITNESSES

(1) _____

Print Name: _____

Amendment # 3: KADO

Mayor/Chairman

Keys Association of Dive Operators

By 
President

R.W. Holston
Print Name

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
Date: 8/2/07
SUSAN M. GRIMSLEY
ASSISTANT COUNTY ATTORNEY

EXHIBIT A-4

DIVE UMBRELLA RECOMMENDATION COMMITTEE

The Recommendation Committee is established to recommend appropriations for Dive related marketing activities to the TDC and BOCC.

The Recommendation Committee of KADO, as Dive Umbrella, an advisory committee to the Monroe County TDC and BOCC, is comprised of five (5) members, with one member representing each of the five TDC districts throughout the Florida Keys. Each member shall be engaged in business in the district which said member represents, such business being related to the Dive industry. The members shall be appointed by KADO and confirmed by the TDC and BOCC.

As of this revised recommendation committee list approved November 21, 2007, the members shall be:

| | |
|--------------|------------------|
| District I | Cece Roycroft |
| District II | Maryanne Rockett |
| District III | Heidi Ferrell |
| District IV | Tom Timmerman |
| District V | Amy Slate |

Upon the cessation of operations of a member's dive related business in the District for which appointed, a member shall be immediately terminated from the Recommendation Committee and KADO shall appoint a replacement and process the appointment for TDC and BOCC approval. Additionally, KADO may request approval from TDC and BOCC for a replacement member of the Recommendation Committee for any reason it deems appropriate.

Pacini-Maxine

From: Wheeler-Harold
Sent: Saturday, September 08, 2007 11:07 AM
To: Pacini-Maxine
Subject: FW: DAC 4 Replacement

FYI

Harold Wheeler
Director
Florida Keys & Key West Tourist Development Council
1201 White Street, Suite 102
Key West, FL 33040
(305) 296-1552
(305) 296-0788

-----Original Message-----

From: Bob Holston [mailto:bob@divekeywest.com]
Sent: Thursday, September 06, 2007 7:28 AM
To: 'Harold Wheeler'
Subject: DAC 4 Replacement

Hi We have picked Tom Timmerman to replace Kristi Newth on the Dive Umbrella. Please submit Tom's name to the BOCC for approval. Thanks Bob

Bob Holston
3128 N. Roosevelt Blvd.
Key West, FL 33040
(305) 296-3823 ~ (800) 426-0707
Fax: (305) 296-0609

AMENDMENT (3rd AMENDMENT) TO AGREEMENT

THIS AMENDMENT to agreement dated the 16th day of May 2007, is entered into by and between the Board of County Commissioners for Monroe County, on behalf of the Tourist Development Council, and **Keys Association of Dive Operators (KADO)**.


WHEREAS, there was a contract entered into on November 17, 2004 and amended on August 17, 2005 and September 20, 2006 between the parties, for KADO to oversee the TDC Dive Umbrella, an advisory committee which makes recommendations to the TDC and BOCC concerning dive related marketing activities, and

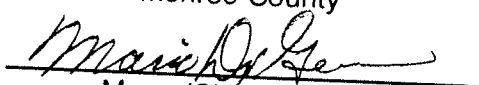
WHEREAS, the original agreement with KADO has an option to extend agreement for two additional years beyond the expiration date of September 30, 2007;

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

1. Paragraph 3 of the contract shall read: The contract shall expire on September 30, 2009.
2. The remaining provisions of the contract dated November 17, 2004 and amended on August 17, 2005 and September 20, 2006 remain in full force and effect.

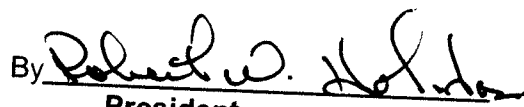
IN WITNESS WHEREOF, the parties have set their hands and seal on the day and year first above written.

(SEAL)
 Attest: Danny L. Mohage, Clerk

 Deputy Clerk

Board of County Commissioners
 of Monroe County

 Mayor/Chairman

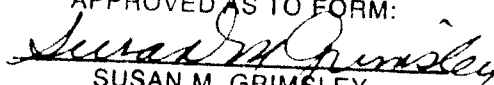
(CORPORATE SEAL)
 Attest:
 By: _____
 Secretary

 Print Name

Keys Association of Dive Operators
 By: 
 President
Robert W. Holston
 Print Name

OR TWO WITNESSES
 (1) _____
 (1) _____
 Print Name

(2) _____
 (2) _____
 Print Name

MONROE COUNTY ATTORNEY
 APPROVED AS TO FORM:

 SUSAN M. GRIMSLEY
 ASSISTANT COUNTY ATTORNEY
 Date 3-19-07

AMENDMENT #2 TO AGREEMENT

THIS AMENDMENT #2 to Agreement is made and entered into this 9th day of Sept; 2006, A.D., by and between MONROE COUNTY, FLORIDA (County), and Keys Association of Dive Operators (KADO).

WHEREAS, an Agreement was entered into on November 17, 2004 and amended on August 17, 2005, between the parties authorizing KADO to oversee the TDC Dive Umbrella, an advisory committee which makes recommendations to the TDC and BOCC concerning dive related marketing activities; and

WHEREAS, it is necessary to appoint a new TDC Dive Umbrella Recommendation Committee member from District III;

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

1. Exhibit A of the Agreement entered into on November 17, 2004 and amended on August 17, 2005 shall be revised to name Heidi Ferrell as the KADO Recommendation Committee member for District III. (See revised Exhibit A-3).
2. The remaining provisions of the contract dated November 17, 2004 and Amended on August 17, 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.

Attest: Danny L. Kolhage,
Clerk of Monroe County

Isabel C. DeSantis
Deputy Clerk

[Signature]
Mayor/Chairman

(CORPORATE SEAL)

Attest:

By. _____
Secretary

Keys Association of Dive Operators

By [Signature]
President

BW Holston
Print Name

Print Name

OR TWO WITNESSES

(1) _____

(2) _____

Print Name: _____

Print Name: _____

EXHIBIT A-3

DIVE UMBRELLA RECOMMENDATION COMMITTEE

The Recommendation Committee is established to recommend appropriations for Dive related marketing activities to the TDC and BOCC.

The Recommendation Committee of KADO, as Dive Umbrella, an advisory committee to the Monroe County TDC and BOCC, is comprised of five (5) members, with one member representing each of the five TDC districts throughout the Florida Keys. Each member shall be engaged in business in the district which said member represents, such business being related to the Dive industry. The members shall be appointed by KADO and confirmed by the TDC and BOCC.

As of the commencement of the contract effective October 1, 2004 (Amended August 17, 2005 and September 20, 2006) the members shall be:

| | |
|--------------|------------------|
| District I | Cece Roycroft |
| District II | Maryanne Rockett |
| District III | Heidi Ferrell |
| District IV | Kristi Newth |
| District V | Amy Slate |

Upon the cessation of operations of a member's dive related business in the District for which appointed, a member shall be immediately terminated from the Recommendation Committee and KADO shall appoint a replacement and process the appointment for TDC and BOCC approval. Additionally, KADO may request approval from TDC and BOCC for a replacement member of the Recommendation Committee for any reason it deems appropriate.

AMENDMENT TO AGREEMENT

THIS ADDENDUM to Agreement is made and entered into this 12 day of July, 2005, A.D., by and between MONROE COUNTY, FLORIDA, (hereinafter called "County"), and Keys Association of Dive Operators, (hereinafter called the "KADO").

WHEREAS, there was a contract entered into on November 17, 2004, between the parties for KADO to oversee the TDC Dive Umbrella, an advisory committee to make recommendations to the TDC and BOCC concerning dive related marketing activities, and

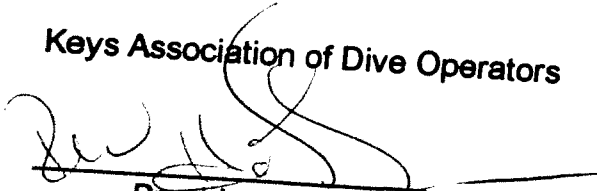
WHEREAS, it has become necessary to place a new recommendation committee member for District V;

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

1. Exhibit A of the Agreement entered into on November 17, 2004 shall be revised to name Amy Slate as the KADO Recommendation Committee member for District V. (See Revised Exhibit A).
2. The remaining provisions of the contract dated November 17, 2004, remain in full force and effect.

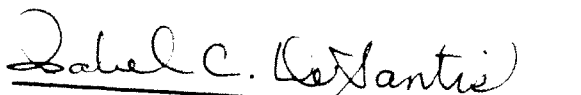
IN WITNESS WHEREOF, the parties have set their hands and seal on the day and year first above written.

Keys Association of Dive Operators



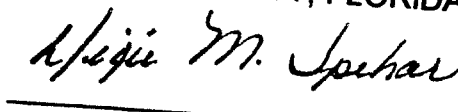
President

(SEAL)
ATTEST: DANNY L. KOLHAGE, CLERK



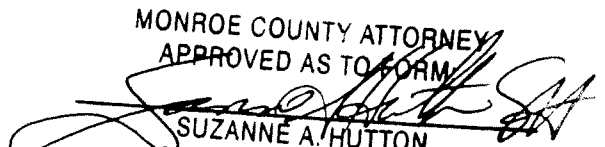
Deputy Clerk

BOARD OF COUNTY
COMMISSIONERS OF
MONROE COUNTY, FLORIDA



Mayor/Chairman

Amendment: KADO

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM


SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 7/11/05

EXHIBIT A

DIVE UMBRELLA RECOMMENDATION COMMITTEE

The Recommendation Committee is established to recommend appropriations for Dive related marketing activities to the TDC and BOCC.

The Recommendation Committee of KADO, as Dive Umbrella, an advisory committee to the Monroe County TDC and BOCC, is comprised of five (5) members, with one member representing each of the five TDC districts throughout the Florida Keys. Each member shall be engaged in business in the district which said member represents, such business being related to the Dive industry. The members shall be appointed by KADO and confirmed by the TDC and BOCC.

As of the commencement of the contract effective October 1, 2004 (Amended August 17, 2005 (BOCC)) the members shall be:

| | |
|--------------|------------------|
| District I | Cece Roycroft |
| District II | Maryanne Rockett |
| District III | Sally Billiter |
| District IV | Kristi Newth |
| District V | Amy Slate |

Upon the cessation of operations of a member's dive related business in the District for which appointed, a member shall be immediately terminated from the Recommendation Committee and KADO shall appoint a replacement and process the appointment for TDC and BOCC approval. Additionally, KADO may request approval from TDC and BOCC for a replacement member of the Recommendation Committee for any reason it deems appropriate.

CONTRACT FOR DIVE UMBRELLA SERVICES

THIS AGREEMENT, made and entered into this 12 day of NOV, 2004, A.D., by and between MONROE COUNTY, FLORIDA, (hereinafter called County"), and Keys Association of Dive Operators, (hereinafter called the "KADO").

WHEREAS, the County wishes to enter into this agreement with Keys Association of Dive Operators, so that KADO will oversee the TDC Dive Umbrella, an advisory committee to make recommendations to the TDC and BOCC concerning dive related marketing activities,

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:

2. SCOPE OF THE WORK

KADO shall provide Dive Umbrella services for the County as described below:

- A. The Dive Umbrella shall plan and budget recommendations with respect to Dive related marketing activities, on behalf of Monroe County Tourist Development Council.
- B. The Dive Umbrella shall recommend to the TDC with respect to diving:
 1. Media placement advertising for Florida Keys diving industry.
 2. Any diving event to be sponsored by the TDC.
 3. Assist with the public relations for the Florida Keys diving industry.
- C. KADO while overseeing the Dive Umbrella shall represent all Florida Keys diving industry.
- D. KADO shall establish and administer policies and procedures which will distribute on an equitable district-wide basis those monies recommended for all qualified diving marketing activities.
- E. The Dive Umbrella may solicit sponsors for programming and events to contribute sponsorship funds toward the operating expenses for diving events and activities. No TDC funds will be used to cover administrative or operating costs.
- F. All Dive Umbrella meetings will be open to the public and properly noticed under the same rules as required for all governmental meetings under F.S. 286.011.
- G. KADO may provide research information and contribute statistics and scientific information for the TDC and the dive industry.

H. Monroe County BOCC and TDC will fund through its Advertising and Public Relations agencies of record the costs of promotion and advertising directly to vendors upon receipt of properly approved invoices.

I. Funding: a) The TDC/BOCC will allocate to the Dive Umbrella funding amounts for advertising, sales, events, public relations and other promotional activities on an annual basis during the budget and marketing plan process. Budget funding is subject to availability of TDC funds. The recommendations of the Dive Umbrella Committee shall be submitted to the TDC for consideration but Dive Umbrella has no final authority to require TDC to adopt its recommendations.

J. The Dive Umbrella Composition: See Exhibit A.

KADO warrants that it is authorized by law to engage in the performance of the activities herein described, subject to the terms and conditions set forth in these contract documents. KADO shall at all times exercise independent, professional judgment and shall assume professional responsibility for the services to be provided. KADO shall provide services using the following standards, as a minimum requirement:

I. KADO shall maintain adequate staffing levels to provide the services required under the contract.

II. The personnel shall not be employees of or have any contractual relationship with the County. [IF APPROPRIATE: To the extent that KADO uses subcontractors or independent contractors, this contract specifically requires that the level of independence normally exercised by such subcontractors and independent contractors be curtailed and that they be supervised by the KADO.]

III. All personnel engaged in performing services under this contract shall be fully qualified, and, if required, to be authorized or permitted under State and local law to perform such services.

3. TERM OF CONTRACT

The term of this contract is for three years, commencing on the 1st day of October, 2004, and ending on the 30th day of September, 2007, with an option to extend for an additional two (2) year period.

4. KADO'S ACCEPTANCE OF CONDITIONS

A. KADO hereby agrees to carefully examine the specifications for which KADO 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 KADO.

- B. Any ambiguity or uncertainty in the specifications shall be interpreted and construed by the TDC and County, and the County's decision shall be final and binding upon all parties.
- C. The passing, approval, and/or acceptance by the TDC or County of any of the services furnished by the KADO 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 KADO, immediately after Notice to Correct shall entitle the County, if it sees fit, to correct the same and recover the reasonable cost of such replacement and/or repair from KADO, who in any event shall be jointly and severally liable to the County for all damage, and loss.
- D. Expense caused to the County by reason of the Keys Association of Dive Operator's breach of this Contract and/or his failure to comply strictly and in all things with this Contract and with the specifications.
- E. KADO 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.

5. KADO'S FINANCIAL RECORDS

KADO 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 KADO pursuant to this Agreement were spent for purposes not authorized by this Agreement, KADO shall repay the monies together with interest calculated pursuant to Sec. 55.03, FS, running from the date the monies were paid to KADO.

6. PUBLIC ACCESS

The County and KADO 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 KADO in conjunction with this Agreement; and the County shall have the right to unilaterally cancel this Agreement upon violation of this provision by KADO.

7. HOLD HARMLESS

The KADO 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

KADO or any of its Subcontractor(s) in any tier, occasioned by the negligence, errors, or other wrongful act of omission of the KADO 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 agreement.

8. INDEPENDENT CONTRACTOR

At all times and for all purposes under this agreement KADO is an independent Keys Association of Dive Operators and not an employee of the Board of County Commissioners of Monroe County. No statement contained in this agreement shall be construed so as to find KADO or any of his employees, contractor's, servants, or agents to be employees of the Board of County Commissioners of Monroe County.

9. NONDISCRIMINATION

County and KADO 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 KADO 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 then 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 of 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.

10. ASSIGNMENT/SUBCONTRACT

KADO shall not assign or subcontract its obligations under this agreement, except in writing and with the prior written approval of the Board of County Commissioners of Monroe County and KADO, 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 agreement. Unless expressly provided for therein, such approval shall in no manner or event be deemed to impose any additional obligation upon the board.

11. COMPLIANCE WITH LAW

In providing all services/goods pursuant to this agreement, KADO 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 agreement and shall entitle the Board to terminate this contract immediately upon delivery of written notice of termination to KADO. KADO shall possess proper licenses to perform work in accordance with these specifications throughout the term of this contract.

12. DISCLOSURE AND CONFLICT OF INTEREST

The Keys Association of Dive Operators 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, KADO shall notify the County of any financial interest it may have in any and all programs in Monroe County which KADO 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 KADO 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, KADO 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.

13. ARREARS

KADO 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. KADO further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this contract.

14. NOTICE REQUIREMENT

Any notice required or permitted under this agreement 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: Suzanne Hutton, Assistant County Attorney
PO Box 1026
Key West, Fl. 33041-1026

FOR KADO: Mr. Bob Holston
3128 North Roosevelt Blvd
Key West, FL 33040

FOR TDC: Harold Wheeler
1201 White Street, Suite 102
Key West, FL 33040

15. TAXES

The County is exempt from payment of Florida State Sales and Use taxes. KADO 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 KADO authorized to use the County's Tax Exemption Number in securing such materials. KADO shall be responsible for any and all taxes, or payments of withholding, related to services rendered under this agreement.

16. TERMINATION

- A. The County may terminate this contract for cause with seven (7) days notice to KADO. Cause shall constitute a breach of the obligations of KADO to perform the services enumerated as KADO obligations under this contract.
- B. Either of the parties hereto may terminate this contract without cause by giving the other party sixty (60) days written notice of its intention to do so.

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

- A. 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.
- B. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the County and KADO agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.
- C. The County and KADO 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.
- D. 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 KADO 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.
- E. Attorney's Fees and Costs. The County and KADO 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.

F. Adjudication of Disputes or Disagreements. County and KADO 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.

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 Agreement, County and KADO 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 Agreement or provision of the services under this Agreement. County and KADO specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

18. BINDING EFFECT

The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the County and KADO and their respective legal representatives, successors, and assigns.

19. AUTHORITY

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

20. CLAIMS FOR FEDERAL OR STATE AID

KADO 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.

21. 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.

22. 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.

23. 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 KADO agree that neither the County nor the KADO 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.

24. ATTESTATIONS

KADO 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.

25. 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 Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

26. EXECUTION IN COUNTERPARTS

This Agreement 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 Agreement by signing any such counterpart.

27. 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.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first written above in four (4) counterparts, each of which shall, without proof or accounting for the other counterparts, be deemed an original contract.

(SEAL)
Attest:
DANNY L. KOLHAGE, Clerk



Clerk 11.17.04

Monroe County Board of County
Commissioners



Mayor/Chairman

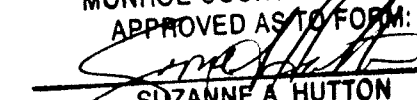
(SEAL)
Attest:

Keys Association of Dive Operators

By: 

President

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:



SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 11/01/04

EXHIBIT A

DIVE UMBRELLA RECOMMENDATION COMMITTEE

The Recommendation Committee is established to recommend appropriations for Dive related marketing activities to the TDC and BOCC.

The Recommendation Committee of KADO, as Dive Umbrella, an advisory committee to the Monroe County TDC and BOCC, is comprised of five (5) members, with one member representing each of the five TDC districts throughout the Florida Keys. Each member shall be engaged in business in the district which said member represents, such business being related to the Dive industry. The members shall be appointed by KADO and confirmed by the TDC and BOCC.

As of the commencement of the contract effective October 1, 2004 the members shall be:

| | |
|--------------|------------------|
| District I | Cece Roycroft |
| District II | Maryanne Rockett |
| District III | Sally Billiter |
| District IV | Kristi Newth |
| District V | Joe Dowda |

Upon the cessation of operations of a member's dive related business in the District for which appointed, a member shall be immediately terminated from the Recommendation Committee and KADO shall appoint a replacement and process the appointment for TDC and BOCC approval. Additionally, KADO may request approval from TDC and BOCC for a replacement member of the Recommendation Committee for any reason it deems appropriate.