

AGENDA ITEM SUMMARY

Department

Submitted For: Discover Palm Beach County, INC.

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: An amended and restated agreement (R2007-1623) with Discover Palm Beach County, Inc., d.b.a. Palm Beach County Convention & Visitors Bureau (CVB) for the provision of services under the County's Tourist Development Plan during the period of October 1, 2008 through September 30, 2012 in the amount of \$9,425,528.

Summary: The amended and restated agreement updates for Fiscal Year 2009 Exhibit "A" – Annual Budget, Exhibit "F" - Performance Measures, Exhibit "T" – Salary Ranges, increased upper limit of a purchase from \$30,000 to \$50,000 that requires the approval of the TDC director in addition to all other purchasing requirements, new requirement to coordinate with appropriate parties for Product and Airlift Development and revisions to conflict of interest procedures. This will be the second year of the five year agreement between CVB and the County. This agreement is for the amount of \$9,425,528. In addition, the following accounts are under the purview of Discover; indirect costs of \$525,000 and other marketing and promotional expenses of \$100,000 for a total of \$10,050,528. (TDC) Countywide (MC)

Background and Justification: Under the current Agreement, the CVB develops and implements the Annual Tourism Marketing Plan for the County. The amended and restated agreement provides for the continuation of these services with an updated scope of services that adopt Fiscal Year 2009 Exhibit “A” – Annual Budget, Exhibit “F” - Performance Measures, Exhibit “I” – Salary Ranges, increased upper limit of purchases from \$30,000 to \$50,000 that requires the approval of the TDC director in addition to all other purchasing requirements, new requirement to coordinate with appropriate parties for Product and Airlift Development and revisions to conflict of interest procedures. This will be the second year of the five year agreement between CVB and the County.

Attachments: Amended and Restated Agreement

Recommended by: _____ **Date** _____
Department Director

Approved By:  Date 9/22/08
Deputy County Administrator

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	\$ 10,050,528	<u>tbd</u>	<u>tbd</u>	<u>tbd</u>	<u>tbd</u>
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	-----	-----	-----	-----	-----
In-Kind Match (County)	-----	-----	-----	-----	-----
NET FISCAL IMPACT	\$ 10,050,528	<u>tbd</u>	<u>tbd</u>	<u>tbd</u>	<u>tbd</u>

ADDITIONAL FTE

POSITIONS (Cumulative) - 0- 0--- 0--- 0--- 0---

Is Item Included In Current Budget Yes X No _____

Budget Account No.: Fund- 1454 Dept 710 Unit 7420 Object 3401
Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Discover receives 52.47% of the 2nd, 3rd, and 5th cent of the local option bed tax.

C. Department Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Administration Comments:

Although the contract spans five years, the fiscal impact shown reflects only FY 2009. The out years will be included in subsequent budget submissions.

Arnold White 9-19-08

OFMB

Dr. J. Jones 9/19/08
Contract Dev. ad Control

This Contract complies with our contract review requirements.

B. Approved as to form and Legal Sufficiency:

Maureen Cullen
Assistant County Attorney

At the time of our review, there was no proof of insurance or Fidelity Bond.

C. Approved as to Terms and Conditions:

Department Director

This summary is not to be used as a basis for payment.

AMENDED
AND
RESTATED
AGREEMENT

Between

PALM BEACH COUNTY
A POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA

On behalf of the

TOURIST DEVELOPMENT COUNCIL

And

DISCOVER PALM BEACH COUNTY, INC.

Table of Contents

AGREEMENT WITH DISCOVER PALM BEACH COUNTY, INC.	1
1. Functions and Services.....	1
A. Annual Marketing Plan.	2
B. The Annual Marketing and Business Plan	2
C. In Kind Goods & Services/Cooperative Marketing Programs.	4
D. Human Resources.....	4
E. Product Development.....	6
F. Airlift Development.	6
G. Other Duties.	6
2. Selection and Termination of Contractors.	7
3. Compensation and Method of Payment.	7
4. Reserved.....	9
5. Reporting.....	9
6. Policies and Procedures; Performance Criteria.....	10
A. Policies and Procedures.....	10
B. Annual review: Performance Measure.....	10
C. Contracts: Independent Contractor.....	11
D. Approvals by County.....	11
E. Property Control.....	11
F. Financial Procedures; Accounting and Use of Non-Public Funds.....	12
G. Audit/Role of Audit & Finance/Budget Standing Committees.....	12
H. Legal Counsel.....	13
I. Certifications.....	14
7. Independent Contractor.....	14
8. Non-Discrimination.....	14
9. Non-Competition.	15
10. Certification of Conduct.....	15
11. Certificate of Authority and No Conflict	15
12. Availability of Records.	15
13. Findings Proprietary.....	16
14. Intellectual Property.	16
15. Prohibition of Assignment.	17

16. Conflict of Interest.17

17. Authority to Practice.17

18. Insurance.18

 A. Certificate of Insurance.....18

 B. Comprehensive General Liability Insurance.....18

 C. Comprehensive Automobile Liability Insurance.18

 D. Workers' Compensation Insurance.19

 E. Fidelity Bond.....19

 F. Directors and Officers Insurance.19

19. Indemnification.19

20. Term of Agreement.20

21. Termination.....20

22. Ordinance Amendment.20

23. Performance and Obligation to Pay.....20

24. Amendment.....21

25. Notices.....21

26. Public Entity Crimes.21

 EXHIBIT "A"23

 EXHIBIT "B"24

 EXHIBIT "C"28

 EXHIBIT "D"32

 EXHIBIT "E".....35

 EXHIBIT "F"36

 EXHIBIT "G"39

 EXHIBIT "H"40

 EXHIBIT "I"41

 EXHIBIT "J"43

**AMENDED AND RESTATED AGREEMENT WITH DISCOVER PALM BEACH
COUNTY, INC.**

THIS AMENDED AND RESTATED AGREEMENT ("Agreement") to that Agreement dated September 25, 2007, is made and entered into effective October 1, 2008, by and between Palm Beach County, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, (hereinafter referred to as the "COUNTY") and Discover Palm Beach County, Inc., a Florida not-for-profit corporation, whose Federal I.D. number is 59-232-1112, (hereinafter referred to as the "Bureau").

WHEREAS, pursuant to the Local Option Tourist Development Act, the COUNTY has by Ordinance No. 95-30, as amended, established the Palm Beach County Tourist Development Council (hereinafter referred to as the "TDC"); has levied and imposed a tourist development tax; and has established a Tourist Development Plan for use of the funds derived from the tax; and

WHEREAS, the Tourist Development Plan currently provides that a percentage of the funds derived from such tax designated as "Category A" shall be used to promote, advertise and optimize Palm Beach County tourism in the State of Florida, and nationally and internationally; and

WHEREAS, on September 25, 2007, the parties entered into five-year agreement ("Original Agreement") whereby the Bureau, as an independent contractor, furnished the professional services necessary to assist the COUNTY in carrying out projects of the Tourist Development Plan; and

WHEREAS, the parties now wish to make certain revisions to the "Original Agreement" including the provision of a new budget for FY '09 in an Amended and Restated Agreement.

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

- 1. Functions and Services.** The Bureau shall provide Destination Marketing and Tourism Development Services for national and international markets on behalf of the COUNTY by

performing the following functions and services, all being subject to the overall direction and guidance of the TDC, through the Executive Director of the TDC:

- A. **Annual Marketing Plan.** The Bureau shall develop and implement an Annual Marketing and Business Plan with a supportive budget, (hereinafter referred to as the “Annual Marketing Plan”) for accomplishing the purposes of Category “A” of the Tourist Development Plan. Such a plan will include the full range of services typical of a professional destination marketing organization and in accordance with DMAI (Destination Marketing Association International) guidelines. In addition the Bureau shall to the extent possible establish cooperative ventures with other TDC-funded entities. The Bureau will submit an Annual Marketing Plan to the TDC’s Executive Director and the County Administrator or his/her designee for review, modification and adoption by the TDC in conformance with COUNTY’s annual budget approval process. Such Plan may be amended from time to time with the approval in the same manner as its adoption and in accordance with the approved Annual Budget.
- B. **The Annual Marketing and Business Plan** components must contain information for promoting the awareness of all tourism regions, including the North, South and Central areas of Palm Beach County and the region bordering Lake Okeechobee (“Glades region”) and products throughout Palm Beach County and the Palm Beach County Convention Center in markets within and outside the United States. It shall include, but not be limited to, the following components.
 - 1. Development and implementation of a Creative advertising, Promotion and Media Plan. This plan will include, but not be limited to, traditional print and online media.

2. Development and implementation of a Fulfillment Plan and Visitor Services strategy.
3. Design and production of state-of-the-art Web Resources and Collateral Materials.
4. Development and implementation of Public Relations/Communications Plan.
5. Development of packaged travel and on line travel related services.
6. Attendance and representation at Consumer and Trade Shows.
7. Promotion and coordination of Destination Reviews and site visits.
8. Staffing and coordination of Sales Missions in targeted key markets.
9. Administration of grants and sponsorships for cooperative marketing activities, special and group events.
10. Production and distribution of promotional items.
11. Development and implementation of a Groups and Conventions Sales & Marketing Plan. This Plan will include, but is not limited to, working with the Palm Beach County Convention Center in booking "long-term" events more than 18 months in advance for which the Bureau will handle center space and room block coordination efforts as more specifically set forth in Exhibit "E", Convention Center Booking Policy.
12. Management of a business intelligence and research effort that promotes best use of resources and brand development strategies for the County's Tourism product.

C. In Kind Goods & Services/Cooperative Marketing Programs. The Bureau shall obtain and coordinate, as necessary to perform the duties and services set forth in this Agreement and for the benefit of the COUNTY's Tourist Development Plan, private contributions of funds, goods and services, including, but not limited to, the provision or furnishing of meals, receptions, transportation, lodging, admissions, promotional materials, amenities, give-aways and beverages. Such private sector contributions will largely depend on comprehensive membership and community relations strategies which are considered fundamental and necessary to the execution of the Bureau's contractual obligations and the County's tourism industry success.

D. Human Resources.

President and CEO. The Bureau's Board of Directors shall hire and evaluate a President & Chief Executive Officer (CEO) who shall have day to day responsibility for the performance and execution of the Bureaus' mission and contract compliance. The TDC Executive Director and County Administrator or his/her designee shall participate in the selection process for the President & CEO as voting members of any committee/task force appointed for such purposes. The President & CEO shall fully cooperate with and work with the Executive Director of the TDC to insure that the activities of the Bureau and the contractors provided for herein are in conformance with the Annual Marketing Plan. The activities of the President & CEO shall be of a daily operational, marketing brand and product development nature while the activities of the Executive Director (on behalf of the County) shall focus on, but may not be limited to, contract compliance and managerial, administrative and policy-oriented duties and responsibilities. The Bureau will keep the Executive Director informed as to the activities of the Bureau. The Executive Director may serve as an ex officio member of all committees and subcommittees of the Bureau. The Chair of the Bureau's Board of Directors or his/ her Board designee will report the results of the annual performance and salary review of the

President & CEO to the TDC no later than sixty (60) days after the end of the corresponding COUNTY fiscal year. The car allowance provided to the President of the Bureau which is funded from revenues derived from the Tourist Development Tax shall be in conformity with the COUNTY's policy on car allowances for County department heads.

Bureau Staff. The President & CEO of the Bureau shall employ, subject to the availability of funds allocated for such purpose as contained within its Annual Budget, sufficient staff and support personnel to perform and properly execute the Annual Marketing Plan. The Bureau shall make good-faith efforts to attract the best available employees by advertising in appropriate publications. The Bureau may use the services of an outside search firm to assist in the selection of employees at the level of director or higher. Any new full-time equivalent position during the term of this Agreement shall be approved by the TDC; provided, however, the Bureau may reclassify or consolidate positions upon approval of the Executive Director of the TDC. The payment of Bureau Personnel will be in line with industry practices in similar Destination Marketing Organizations and regional hotel sales and marketing entities and as set forth in the Salary Ranges set forth in Exhibit "H" and in accordance with the Compensation Policy set forth in Exhibit "I". The Salary Ranges, Compensation Policy and the Bureau's Organizational Chart (Exhibit "J") as set forth in Exhibits "H" through "J" shall remain in full force and effect until the County's budget process at which time the Salary Ranges, Compensation Policy and Organizational Chart shall be established as part of the Bureau's policies and procedures after approval by the TDC and the County Administrator or his/her designee. Any changes to the Salary Ranges, Compensation Policy or Organizational Chart during the year shall be made only upon approval of the Executive Director of the TDC and the County Administrator or his/her designee. The Bureau may provide its employees a qualified defined contribution retirement plan. Contributions to such plan shall not exceed ten percent of the employees' actual salaries.

The Bureau shall incorporate the provisions of such plan into the policies and procedures of the Bureau, and shall notify and receive approval of the TDC of any proposed revision to the plan prior to implementation. The Bureau personnel shall be located in the office space or remote locations as approved by the COUNTY.

E. Product Development. The Bureau shall assist and encourage Countywide product development such as new hotels, attractions and infrastructure improvements in conjunction with the Executive Director of the TDC, County Economic Development and City/Town CRA's (Community Redevelopment Agencies), Chambers of Commerce or any other such entities in order to increase the County's competitiveness as a travel destination. Such assistance may include the development of collateral materials and coordination of meetings with County & City/Town entities among others.

F. Airlift Development. The Bureau may carry out an airlift development strategy in collaboration with the County's Department of Airports/PBIA. Such strategy may include domestic and international airline service whether scheduled or charter that will enhance visitation to the area.

G. Other Duties. The Bureau shall perform such additional related duties and services as may be required from time to time by the COUNTY. Such duties shall include the operation and maintenance of a computer network for the CVB, the TDC and participating entities funded by the COUNTY's Tourist Development Tax, on terms consistent with this Agreement and in accordance with the budget for each such entity as approved by the TDC. Such services will not detract from the Bureau's core mission to enhance the Brand of Palm Beach County and increase visitors from all key markets. The Bureau may charge a prorated fee to such entities for this service. Revenues from such

services shall be in compliance with the Bureau's financial policies on the treatment of the Bureau's operating account.

2. Selection and Termination of Contractors. The services described in paragraph 1 may be provided by independent/professional services contractors under contract with the Bureau in accordance with the Annual Marketing Plan and the Annual Budget of the Bureau. The terms of any such contracts shall not extend beyond the expiration or earlier termination of this Agreement or any renewal thereof, and all such contracts shall expressly provide such limitation. No such contract or agreement shall obligate the COUNTY in any manner to any third party.

All contractors shall be solicited and selected in accordance with procedures for the procurement of goods and services attached hereto as Exhibit "C" and as listed in the Bureau's financial policies and procedures manual with procedures for maximization of participation of small business enterprises attached hereto as Exhibit "D". Any personnel or entities with which the Bureau enters into contracts for services shall be specifically experienced in, and qualified for the provision of such services. The Bureau shall monitor and evaluate the performance of all such contractors. The Bureau shall insure that all parties to such contracts document and/or report on the duties performed and services provided. The Bureau shall provide to the TDC, at the TDC's request, a summary report of the results of such monitoring and evaluation, and shall take reasonable measures to assure the continued satisfactory performance of all contractors. The Bureau shall consult with the Executive Director of the TDC before such contract is terminated.

3. Compensation and Method of Payment. Costs incurred by the Bureau in performing the duties and providing the goods and services described in the Agreement will be paid by the COUNTY solely from Tourist Development Tax revenues designated for Category "A" of the Tourist Development Plan. Payments to the Bureau shall be consistent with the Annual Marketing Plan, as approved by the Bureau's Board of Directors and adopted by the TDC and the Annual

Budget adopted by the COUNTY, and shall be made only for expenditures which are specifically authorized by the COUNTY. The Bureau's Annual Budget as set forth in the attached Exhibit "A," shall constitute, as between the COUNTY and the Bureau, authorization of the expenditures provided for therein, provided that such expenditures are made in accordance with this Agreement.

Payments by the COUNTY shall be made to the Bureau in accordance with the fiscal procedures of the COUNTY as payment for authorized expenditures or provision of goods or services, following the Bureau's determination that the goods and services have been properly provided, and upon submission of invoices by the Bureau to the Executive Director of the TDC or the County Administrator or his/her designee, and a determination by the Executive Director of the TDC or the County Administrator or his/her designee that the invoiced payments are authorized as defined above, that the goods or services covered by such invoice have been provided or performed in accordance with such authorization, and that there has been no offset or reduction of the claimed expense by non public funding or contribution of goods and/or services.

Each invoice submitted by the Bureau shall be itemized in sufficient detail for audit thereof, and shall be supported by copies of the corresponding vendor invoices and proof of receipt or performance of the goods or services invoiced.

The Bureau shall certify in writing any subcontractors, subconsultants and suppliers that have not been paid for invoiced work and materials from previous progress payment reports received by the Bureau prior to receipt of any further progress payments. During this Agreement and upon completion of this Agreement, the COUNTY may request documentation to certify payment to subcontractors, subconsultants or suppliers. This provision in no way shall create any contractual relationship between any subcontractor, subconsultant or supplier or any liability on the COUNTY for the Bureau's failure to make timely payments to the subcontractor, subconsultant or supplier.

It is mutually agreed that the Bureau shall promptly review and submit to the COUNTY invoices received in good order, and that the COUNTY shall promptly pay to the Bureau on a

continual basis amounts properly payable under this Agreement and supported by receipted invoices submitted by the Bureau. Any travel and entertainment expenses incurred by the Bureau may be reimbursed to the Bureau by the COUNTY only upon the express written approval of the Executive Director of the TDC or his/her designee and within the limitations imposed by law upon the COUNTY. Moreover, COUNTY shall not reimburse the Bureau unless and until the Clerk and Controller of the Board of County Commissioners pre-audits payment invoices in accordance with law, and subject to the conditions, if any, attached to said approval. Where the Bureau is able to establish that payment of expenditures in advance will provide a cost savings, the Bureau shall be paid in advance.

The Bureau shall be paid for its actual costs not to exceed the total amount for the various items, and up to the maximum amounts budgeted therefore, as set forth in the Bureau's Annual Budget, included in the attached Exhibit "A". The amounts applicable to the various line items of Exhibit "A" can, subject to the maximum total amount, be increased or decreased by up to 10% at the discretion of the Bureau; adjustment in excess of 10% of any line item must be authorized by the TDC and the County Administrator or his/her designee.

In the event the Bureau encounters unanticipated necessary expenses in performing services to be provided by the Bureau under this Agreement, the Bureau may request said expenses to be included on an amended Exhibit "A" for reimbursement by COUNTY from available tourist tax revenues and COUNTY shall consider, but shall not be obligated to grant, said request.

4. Reserved.

5. Reporting. The Bureau shall provide certain reports to the TDC, through the TDC's Executive Director, on a regular basis. These reports shall consist of (1) monthly reports which shall consist of a summary of the duties and services which have been performed pursuant to this Agreement; (2) semi-annual reports relating to Performance Measures as specified in paragraph 6.B and semi-annual report relating to the Bureau's Conflict of Interest policy in a form and as detailed

as required by the TDC and, (3) any other reports as may be requested by the TDC's Executive Director that relate to the duties and responsibilities of the Bureau under this Agreement.

6. Policies and Procedures; Performance Criteria.

A. Policies and Procedures. The Bureau shall develop guidelines, policies and procedures which, upon approval by the TDC/ COUNTY, shall further govern the Bureau in its performance of the duties and services contemplated by this Agreement. The guidelines, policies and procedures shall be reviewed at least annually to determine if they are appropriate and accomplishing their intended purposes. Revisions may be made when deemed necessary by the parties. The Bureau shall in the performance of its duties provided for in this Agreement, adhere to and act in conformity with the policies set forth in the following attachments:

- Exhibit "A" – Budget
- Exhibit "B" - Conflicts of Interest Policy
- Exhibit "C" - Procurement Policy
- Exhibit "D" - SBE Policy
- Exhibit "E" – Convention Center Booking Policy
- Exhibit "F" – Travel and Entertainment Policy
- Exhibit "G" – Performance Measures
- Exhibit "H" -Salary Ranges
- Exhibit "I"- Compensation Policy
- Exhibit "J"- Organizational Chart

The provisions of this Agreement, including the policies set forth in the Exhibits listed above shall have control over any provisions of the Bureau's guidelines, policies and procedures which may be in conflict with the provisions, except any guideline, policy or procedure which may hereafter be adopted by the Bureau and approved by the COUNTY.

B. Annual review: Performance Measure The Executive Director of the TDC will prepare and submit to the TDC and Chair of the Bureau's Board an annual evaluation of the Bureau's performance of its duties under this agreement. Such evaluation

will be discussed with the Executive Committee of the Bureau's Board and its President & CEO prior to submission to the TDC. In the performance of its duties under this Agreement, the Bureau agrees to make good faith efforts to achieve the performance measures established at the beginning of the fiscal year, in keeping with industry standards. Such performance measures are attached hereto and incorporated herein as Exhibit "G". Such exhibit shall be updated annually as part of the annual Marketing Plan approved by the TDC under paragraph 1-A.

C. Contracts: Independent Contractor. All contracts for professional and consulting services entered into by the Bureau under this Agreement shall be in writing and shall state that the Bureau is an independent service contractor of COUNTY and does not have the authority to enter into any contract on COUNTY's behalf or to bind COUNTY to any such contract and shall further state, unless consented to by COUNTY, that COUNTY shall not be liable for any services rendered or goods delivered under said contracts regardless of the receipt by COUNTY of any benefits thereunder.

D. Approvals by County. Any approvals, adoptions, consents or acceptances of COUNTY required by this Agreement shall require the prior written approval, adoption, consent or acceptance of the Board of County Commissioners of Palm Beach County, unless otherwise provided herein, and shall as a condition precedent to said approval, adoption, consent or acceptance of the Board of County Commissioners of Palm Beach County require action and endorsement by the TDC in accordance with Ordinance No. 95-30, as amended, (as set forth in Palm Beach County Code Chapter 17, Article III) and Resolution R-83-944, as it may be amended from time to time. The Executive Director of the TDC shall place all items to be considered by the TDC on the meeting agenda thereof and shall make his/her recommendation to the TDC on any item.

E. Property Control. All furniture or equipment acquired by or for the use of the Bureau which was or will be paid for by or reimbursed from Tourist Development Tax funds shall be purchased in accordance with the COUNTY's purchasing procedures

and guidelines and shall be subject to the tagging and inventory requirements of Chapter 274, Florida Statutes, and applicable property control procedures of the COUNTY. Said furniture and equipment shall be and remain the property of COUNTY. The Bureau shall use the furniture and equipment in a careful and prudent manner and shall maintain it in good repair and condition ordinary wear and tear excepted.

F. Financial Procedures; Accounting and Use of Non-Public Funds. The Bureau's policies and procedures shall make provision for one or more separate accounts for receipt of non-public revenues received by the Bureau such as membership dues, referral fees, participation fees, event fees and any other non-public funds (NPF) and contributions which may be used for the payment from such expenses of the Bureau that are not reimbursed pursuant to paragraph 3 of this Agreement regarding compensation and method of payment. Private (NPF) contributions may augment Category A funds, reduce and/or offset requests for County payment or reimbursement or be used to pay for expenses which are not eligible for Tourist Development Tax revenues. The Bureau shall incur and pay only such expenses as are lawful, ordinary and necessary administrative and operating expenses incurred in connection with the marketing and promotion of Palm Beach County tourism, including, when applicable, marketing of the Palm Beach County Convention Center and long-term sales of the Center as described herein.

The Bureau has established a written policy which sets forth financial procedures for the handling and management of "Non-Public Funds". The Bureau has submitted such policy to the Executive Director of the TDC and the County Administrator and/or his/her designee, for review and approval. The Bureau shall comply with such policy and shall review and provide proposed updates to the policy to the TDC and/or County Administrator or his/her designee annually.

G. Audit/Role of Audit & Finance/Budget Standing Committees. The Bureau shall maintain the following committees, as established in its bylaws and shall carry out the following functions:

The Audit Committee shall ensure that the Bureau has an independent audit of its financial statements annually, conducted by a qualified independent auditor/firm in accordance with generally accepted accounting principles, recommends the independent auditor/firm for full Bureau Board approval, receives the audit report and any other reports relating to the audit or to the assets and collection management practices of the Bureau, and periodically reports the auditor's findings and recommendations to the Bureau's Board of Directors. The auditor and the Chair of the Bureau's Board or his/her Board designee shall present the audit to the TDC audit committee and the TDC.

The Finance/Budget Committee shall coordinate the Board's financial oversight responsibilities by recommending policy to the Bureau's Board, interpreting it for the staff, and monitoring its implementation. The Finance/Budget Committee shall monitor the Corporation's financial records; review and oversee the creating of accurate, timely, and meaningful financial statements to be presented to the Board; review the annual budget and recommend it to the full Board for approval; monitor budget implementation and financial procedures; review internal financial controls; monitor budget assets; monitor compliance with federal, state, and other reporting requirements; reviews the organization's insurance coverage; and help the full Board understand the organization's finances. The Bureau shall provide a copy of the audit along with the accompanying management letter to the TDC. The report of the audit shall be available for inspection pursuant to paragraph 12 of this agreement. The auditor/auditing firm shall be replaced every seven (7) years under contract which shall be for an initial three (3) year period with four (4) one-year renewals at the option of the Bureau.

H. Legal Counsel. The contract of the Bureau's legal counsel shall be rebid at least every seven (7) years; however the Bureau will not be required to hire different counsel at the time of rebid. The contract with the lawyer or legal firm shall consist of an initial term of three (3) years with two (2) options on the part of the Bureau for two (2) year extensions.

I. Certifications. The Bureau will achieve certification by Destination Marketing Association International by the end of Fiscal Year 2009.

7. Independent Contractor. The Bureau is and shall be in the performance of all work, services and activities under this Agreement an independent contractor and not an agent or servant of the COUNTY. The officers, employees, servants and agents of the Bureau shall not be considered to be officers, employees, servants or agents of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Bureau's sole direction, supervision and control. The Bureau shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Bureau's relationship and the relationship of its employees to the COUNTY shall be that of an independent contractor and not as officers, employees, agents or servants of Palm Beach County.

8. Non-Discrimination. During the performance of this Agreement, the Bureau agrees as follows:

A. The Bureau will not discriminate against any employee or applicant for employment upon the grounds of race, religion, color, national origin, sex, age, handicap, disability, sexual orientation, or marital status, with respect to, but not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. The Bureau will provide to the TDC an annual report which will then be submitted to COUNTY's Board of County Commissioners at its request on the ethnic/racial composition of the Bureau's staff. Such report shall be based upon a survey in which each employee's participation is voluntary, and shall include the categories of white, black, Asian, Hispanic, Native American, and "other".

C. The Bureau will not discriminate against any subcontractor, potential contractor or participant hereunder, upon any of the above prohibited grounds.

9. **Non-Competition.** The Bureau shall not provide services or perform duties of a nature substantially similar to those contained in this Agreement regarding any resort area or tourist attraction on behalf of any association, corporation, person, group, or public or private agency or any other legal entity, other than Palm Beach County except that the Bureau may enter into strategic alliances with other Bureaus and entities in the region with the goal of attracting regional events, group bookings or international airline service, among others. Alliances with other bureaus relative to Convention Sales and other cross promotional programs shall also be exempt from this provision.

10. **Certification of Conduct.** The Bureau hereby certifies that it will not attempt in any manner to improperly influence any specifications, or be unlawfully restrictive regarding any purchase of services or commodities by the COUNTY.

11. **Certificate of Authority and No Conflict.** The Bureau hereby certifies that it is legally entitled to enter into this Agreement with the COUNTY, and that it is not and will not be violating either directly or indirectly any conflict of interest statute or any other applicable statute by the performance of this Agreement.

12. **Availability of Records.**

A. The Bureau shall maintain and preserve records, books, documents, papers and financial information pertaining to work performed under this Agreement. The Bureau agrees that the COUNTY, or any of its duly authorized representatives, until the expiration of three (3) years after final payment under this Agreement or until the expiration of three (3) years after the termination of this Agreement, whichever occurs last, shall have access to, and the right to examine, any pertinent books, documents, papers, and records of the Bureau. In the event that such audit is in progress at the expiration of the aforementioned three (3) year period, access to and the right to examine will continue until completion of such audit.

B. The parties expressly agree that any and all records of the Bureau relating to this Agreement are to be considered public records, subject to the provisions of Chapter 119, Florida Statutes and provided such records are not otherwise exempt from disclosure under Chapter 119 or any other applicable provision of law.

C. During the term of this Agreement, the COUNTY is hereby granted the power to designate any or all records of the Bureau as public records under Chapter 119, Florida Statutes, by resolution of the Board of County Commissioners, making such designation, regardless of whether said records are presently deemed public records by law.

13. Findings Proprietary. Any reports, information or data given to, prepared or assembled for or by the Bureau under this Agreement which the COUNTY requests be kept as proprietary shall not be made available to any individual or organization without the prior written approval of the COUNTY, unless otherwise required by law. No material produced in whole or in part hereunder shall be subject to copyright in the United States or in any other country by any party other than by the COUNTY or by the Bureau under conditions specified herein. The COUNTY shall have the unrestricted authority to publish, disclose, distribute, and otherwise use any reports, data, or other materials prepared under this Agreement.

14. Intellectual Property. All logos, slogans, trademarks, trade names, written copy, layout, production materials, formulas, recipes, and other intellectual property created by or on behalf of the Bureau or the COUNTY under this Agreement or otherwise under Category "A" of the COUNTY's Tourist Development Plan shall be the property of the COUNTY, and the Bureau hereby assigns to the COUNTY any and all rights the Bureau has or may acquire in such intellectual property, including, but not limited to, the trade name "Palm Beach County Convention and Visitors Bureau". The COUNTY hereby grants a exclusive license to the Bureau for the use of such intellectual property during the term of this Agreement for the purpose of carrying out the Bureau's duties under this Agreement;

provided, that such use shall be subject to the terms of this Agreement including required approvals by the COUNTY, and provided further, that any and all revenues derived from such use by the Bureau shall be applied solely to the performance enhancement of the Bureau's duties under this Agreement in accordance with its terms, and any such revenue not so applied shall be remitted by the Bureau to the COUNTY. The Bureau shall take no action inconsistent with the COUNTY's rights in such intellectual property, and will take reasonable actions, including registration or assignment of trademarks and trade names, as necessary and appropriate to protect the COUNTY's rights in such property. The Bureau is authorized and directed to include the COUNTY's name and logo and the names of the current members of the COUNTY's Board of County Commissioners in any publications of the Bureau primarily intended for local in county distribution.

15. Prohibition of Assignment. The Bureau shall not assign, sublet, convey or transfer in whole or in part its interest in this Agreement, without the prior written consent of the COUNTY.

16. Conflict of Interest. Neither the Bureau, nor its officers, directors, agents or employees shall acquire any interest, either directly or indirectly, which would conflict in any manner with the duties, obligations or the performance of services provided for in this Agreement. In addition, the Bureau's bylaws or policies and procedures shall incorporate the Conflicts of Interest Policy attached hereto as Exhibit "B". The Bureau shall act in compliance with and enforce such policy.

17. Authority to Practice. The Bureau hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business. Proof of such licenses and approvals shall be submitted to the COUNTY upon request. In addition Bureau shall at all times, conduct its business activities in a responsible manner and in compliance with any and all applicable ordinances, statutes, laws or regulations.

18. Insurance. The Bureau shall maintain the types of insurance required in this paragraph and has been approved by the COUNTY in order to execute its role under this contract.

A. Certificate of Insurance. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Bureau shall furnish Certificates of Insurance to the COUNTY prior to the commencement of operations. The certificates shall name the COUNTY as an additional insured, and shall clearly indicate that the Bureau has obtained insurance of the type, amount, and classification as required for strict compliance with this paragraph and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the COUNTY. Compliance with the foregoing requirements shall not relieve the Bureau of its liability and obligations under this Agreement.

B. Comprehensive General Liability Insurance. The Bureau shall maintain during the life of this Agreement and any renewal thereof, comprehensive general liability insurance, including contractual liability insurance, in an amount no less than \$1,000,000 per occurrence to protect the Bureau from claims for damages for bodily and personal injury, including death, as well as from claims for property damage which may arise from any operations by the Bureau or by anyone directly employed by or contracting with the Bureau.

C. Comprehensive Automobile Liability Insurance. The Bureau shall maintain, during the life of this Agreement and any renewal thereof, comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit for bodily injury and property damage liability to protect the Bureau from claims for damages for bodily and personal injury, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles, whether the operation of such automobiles be by the Bureau or by anyone directly or indirectly employed by the Bureau.

D. Workers' Compensation Insurance. The Bureau shall maintain during the life of this Agreement, or any renewal thereof, adequate workers' compensation insurance and employers' liability insurance in at least such amounts as are required by law for all of its employees in accordance with Chapter 440, Florida Statutes.

E. Fidelity Bond. The Bureau shall maintain in force during the life of the Agreement a Third Party Commercial Fidelity Bond in the amount of One Million Dollars (\$1,000,000) written on a blanket basis covering all officers, directors, employees and agents who have custody of or access to any revenues, monies or finances; provided, however, the County Administrator or his/her designee may authorize a bond in such lesser amount (but in no event less than Three Hundred Thousand Dollars (\$300,000)) as may be available in the marketplace after diligent effort; and provided further, however, that in such case the Bureau will reapply for coverage in an amount not less than One Million Dollars (\$1,000,000) within one hundred and twenty (120) days from the effective date of this Amended and Restated Agreement. Such bond shall include or be endorsed to cover "third party" liability and include a third party beneficiary endorsement in favor of the County.

F. Directors and Officers Insurance. The Bureau shall maintain during the life of this Agreement Directors and Officers Insurance in amount of One Million Dollars (\$1,000,000).

19. Indemnification. The Bureau shall indemnify, save and hold harmless the COUNTY, its officers, employees, servants and agents from and against any and all claims, liabilities, losses and/or causes of actions which may arise from any intentional or negligent act or omission of the Bureau, its officers, directors, employees, and agents in the performance of services under this Agreement. The Bureau further agrees to indemnify, save, hold harmless and defend the COUNTY, its officers, employees, and agents from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the Bureau, for which the COUNTY, its officers, employees, and agents are alleged to be liable.

20. Term of Agreement. Except as provided herein to the contrary, this Agreement shall be in effect until September 30, 2012. This Agreement may be modified only upon mutual agreement in writing.

21. Termination. The COUNTY or the Bureau may terminate this Agreement at any time without cause by giving the other one hundred eighty (180) days advance written notice of such termination and specifying the effective date thereof. If the Bureau or the COUNTY, at any time during this Agreement, or any renewal thereof, should be in default (i.e. a material breach) of any term, provision or covenant of this Agreement, and shall fail to remedy such default within thirty (30) days after written notice from the other then, if such default is not cured, the non-defaulting party may at its option terminate this Agreement by giving the other written notice of its election to terminate this Agreement at least ten (10) days prior to the date of said termination. In the event the Board of County Commissioners shall decide to terminate this Agreement without cause, the Bureau shall have an opportunity to appear before the Board of County Commissioners prior to the effective date of the termination of this Agreement to present its position and obtain clarification as to the reasons for such termination.

22. Ordinance Amendment. Nothing in this Agreement shall impair or prohibit the Board of County Commissioners from amending Palm Beach County Tourist Development Ordinance No. 95-30, as amended, (Palm Beach County Code Chapter 17, Article III), as the COUNTY may from time to time deem appropriate.

23. Performance and Obligation to Pay. The Bureau's performance and the COUNTY's performance and obligation to pay under this Agreement are contingent upon the allocation of Tourist Development Tax funds for the purposes and uses provided in this Agreement, the availability of the Tourist Development Tax funds designated in COUNTY's Tourist Development Plan for Category "A" uses and an annual appropriation by the COUNTY for the purposes and uses provided for in this Agreement and the attached Exhibit "A".

24. Amendment. This Agreement shall constitute the whole Agreement between the parties unless otherwise amended in writing. Any failure by COUNTY to require strict performance by the Bureau or any waiver by the COUNTY of any provision of this Agreement shall not be construed as a consent or waiver of any other breach of the same or any other provision.

25. Notices. All notices required by this Agreement shall be sent by certified mail, return receipt requested, and if sent to the COUNTY, shall be mailed to:

Robert Weisman
County Administrator
301 N. Olive Avenue
West Palm Beach, FL 33401

with a copy to:

Executive Director
Tourist Development Council
1555 Palm Beach Lakes Boulevard, Suite 900
West Palm Beach, FL 33401

and if sent to the Bureau, shall be mailed to:

President & CEO
Discover Palm Beach County, Inc.
1555 Palm Beach Lakes Boulevard
Suite 800
West Palm Beach, FL 33401

26. Public Entity Crimes. As provided in F.S. 287.132-133, by entering into this contract or performing any work in furtherance hereof, the Bureau certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform work hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

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

ATTEST:

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

Sharon Bock, Clerk & Comptroller

By: _____
Deputy Clerk

(SEAL)

By: _____
Addie L. Greene, Chairperson

ATTEST:

DISCOVER PALM BEACH COUNTY, INC.

By: _____
Secretary

(SEAL)

By: 
President & CEO

Approved as to form
and legal sufficiency:

Bureau Attorney

Approved as to terms
and conditions:

TDC Executive Director

Approved as to form
and legal sufficiency:

County Attorney

Exhibit "A"

Department	CVB Program Budget	Direct Pay By PB County	Total
<u>Personnel Expense</u>			
Wages & Salaries	2,853,072.10	-	2,853,072.10
Payroll Taxes	235,095.02	-	235,095.02
Benefits	721,115.45	-	721,115.45
<u>Total Personnel Expense</u>	3,809,282.56	-	3,809,282.56
<u>Marketing & Promotion Expense</u>			
Travel & Entertainment	151,020.00	-	151,020.00
Trade Show Participation	280,355.00	-	280,355.00
FAM Tours/Site Visits	107,225.00	-	107,225.00
Event Hosting, Industry Sales	274,785.00	-	274,785.00
Event Hosting, Local Member/Community	42,685.00	-	42,685.00
Advertising, Media	2,631,266.68	100,000.00	2,731,266.68
Sales Outsourcing (Contracted Services)	514,000.00	-	514,000.00
Tourism Grant Program	118,000.00	-	118,000.00
Advertising, Website (CVB)	6,000.00	-	6,000.00
Advertising, Printed marketing Collateral	271,170.00	-	271,170.00
Promotional Items	89,500.00	-	89,500.00
Merchandise Sold	-	-	-
Ticket Sales	-	-	-
Research	178,500.00	-	178,500.00
Fulfillment	85,000.00	-	85,000.00
Donated Products & Services	-	-	-
Other Promotional Activities	5,000.00	-	5,000.00
<u>Total Marketing & Promotion Expense</u>	4,754,506.68	100,000.00	4,854,506.68
<u>Administrative & General Operations</u>			
Dues & Subscriptions	48,120.00	-	48,120.00
Bad Debt	-	-	-
Data Processing / Computer	157,035.00	-	157,035.00
Office Equipment & Fixtures, Computer Hardware	123,500.00	-	123,500.00
Amortization	-	-	-
Professional Seminars & Conferences	81,899.00	-	81,899.00
Other Equipment Rental & Lease Contracts	-	-	-
Insurance	60,330.24	-	60,330.24
Interest	-	-	-
Professional Services	103,500.00	-	103,500.00
Office Supplies	29,400.00	-	29,400.00
Photocopying	53,400.00	-	53,400.00
Rent	5,000.00	475,000.00	480,000.00
Telecommunications	57,780.00	50,000.00	107,780.00
Postage	113,824.00	-	113,824.00
Maintenance Contracts	-	-	-
Repair & Improvements	7,825.00	-	7,825.00
Bank Fees	14,000.00	-	14,000.00
Donated Products & Services - Non Marketing	-	-	-
Miscellaneous	6,125.38	-	6,125.38
<u>Total Administrative & General Operations</u>	861,738.62	525,000.00	1,386,738.62
<u>Total Expense</u>	9,425,527.86	625,000.00	10,050,527.86

EXHIBIT "B"

CONFLICTS OF INTEREST

Each Director shall be governed by the following Policy with respect to conflicts of interest. Each member of the Board of Directors has a duty to place the interest of the Corporation foremost in any dealings with or on behalf of the Organization. No Director shall use his or her position, or the knowledge gained therefrom, in such a manner that a conflict arises between the interest of the Corporation and his or her personal interests, except as may be permitted by the following Policy.

(1) Potential Conflict of Interest

(a) Any Director has a potential conflict of interest if that Director has a Financial Interest or is a party to any other circumstances substantial enough that such Financial Interest or other circumstance would, or reasonably could, affect his or her judgment as a Director. A Financial Interest exists if the Director has, directly or indirectly, through business, investment or family:

(i) An actual or potential ownership or investment interest in any entity with which the CVB has a transaction or arrangement; or

(ii) An actual or potential compensation arrangement with any entity or individual with which the CVB has or is negotiating a transaction or arrangement.

(b) Compensation includes direct or indirect remuneration, as well as gifts or favors that are substantial in nature. This does not preclude the acceptance of items of nominal or insignificant value, or entertainment of nominal or insignificant value, which are unrelated to any transaction or activity of the CVB.

(2) Procedure for Addressing the Potential Conflict of Interest

(a) Whenever a Director has knowledge of a potential conflict of interest with respect to that Director, the Director must disclose the existence of the potential conflict of interest to the Chair (or, if the Director is the Chair, to the Board). If any Director shall become aware of facts that may constitute a potential conflict of interest by another member of the Board, he or she shall bring such facts to the attention of the Chair (or, if the Director is the Chair, to the Board). Upon receipt of an assertion of a potential conflict of interest involving a Director, from another Director or any other source, the Chair shall notify the Director involved of the asserted potential conflict of interest, and shall determine whether there exists a potential conflict of interest, as defined in this Policy. (If the Director involved is the Chair, the determination shall be made by the Board.)

(b) In any case where a Director contests a determination of the Chair of the existence of a potential conflict of interest (or where the Director involved is the Chair), the Director shall be given the opportunity to disclose all material facts to the Board and to respond to their questions with respect to the matter, and the Board shall determine whether there exists a potential conflict of interest, as defined in this Policy.

(c) In any case in which --

(i) a Director has declared the existence of a potential conflict of interest;

(ii) the Chair has made an uncontested determination of the existence of a potential conflict of interest; or

(iii) the Board has made a determination of the existence of a potential conflict of interest,

then

(iv) during any Board consideration of any Board action relating to the potential conflict of interest, the Director shall declare the potential conflict of interest, shall make a full disclosure of all material facts with respect to the potential conflict of interest, shall absent himself or herself from Board consideration of the matter, and shall record a vote of abstention on any vote respecting the matter, such declaration, disclosure, absence, and abstention to be reflected in the minutes of the meeting, and

(v) the Board shall take any such other action as may be necessary or appropriate under applicable law and contractual obligations of the Corporation.

(d) As much as is possible, conflicts of interest are to be avoided, and in each case the Board shall where feasible make reasonable efforts to enter into an equally or more advantageous transaction or arrangement with a person or entity that would not give rise to a potential conflict of interest. However, the fact that a Director has a potential conflict of interest with the Corporation does not necessarily mean that a transaction or arrangement cannot occur. There may be occasions when the Board desires to engage in the transaction or arrangement, even with the potential conflict of interest. Transactions or arrangements are permissible if:

(i) Material facts are disclosed, and a majority of the disinterested Directors approves the transaction or arrangement in good faith; and

(ii) The transaction or arrangement is fair to the Corporation and in the best interests of the Corporation.

(e) The procedure to be used for determining that a particular transaction or arrangement is fair to the Corporation and in the best interests of the Corporation is a favorable vote, as provided under these Bylaws, by those Directors who are not involved in the potential conflict of interest. Nevertheless, if required in the judgment of the Board, resolution of any potential conflict of interest may necessitate -

(i) not entering into the transaction or arrangement;

(ii) the termination of a Director' s relationship with a particular vendor or other entity, or

(iii) resignation by a Director as a member of the Board of Directors.

(3) Noncompliance with Policy

(a) If the Chair has reasonable cause to believe that a Director has failed to disclose a potential conflict of interest as defined in this Policy, the Chair shall inform the Director of the basis for such belief and afford the Director an opportunity to explain the alleged failure to disclose.

(b) If the Chair determines that the Director has in fact failed to disclose a potential conflict of interest as defined in this Policy, the matter will be referred to the Board and the Board shall take appropriate disciplinary or corrective action.

(4) Annual Disclosure; Annual Review

(a) Each Director shall annually complete a disclosure form identifying any relationships, positions, or circumstances which he/she believes, could contribute to a potential conflict of interest as defined herein.

(b) Each new Director shall be required to review a copy of this Policy and to acknowledge in writing that he/she has done so.

(c) This Policy on Conflicts of Interest shall be reviewed annually by the Board.

#

EXHIBIT "B"

BOARD OF DIRECTORS OF
DISCOVER PALM BEACH COUNTY, INC.
dba
PALM BEACH COUNTY CONVENTION & VISITORS BUREAU
CONFLICTS OF INTEREST

Disclosure Form for the Fiscal Year beginning: _____

Name: _____

Please describe any relationships, positions or circumstances in which you are involved that could contribute to a potential conflict of interest as defined in the Policy on Conflicts of Interest as adopted by the Board of Directors of the Discover Palm Beach County, Inc. dba Palm Beach County Convention & Visitors Bureau (the "CVB"). Such relationships, positions, or circumstances might include service as a director of or consultant to a nonprofit organization receiving a grant from the CVB, or ownership of a business that might provide goods or services to the CVB. All information regarding business interests shall be treated as confidential to the extent permitted by law¹ and shall be made available only to the Chair except to the extent disclosure is necessary in connection with the implementation of this Policy.

☐ I am not aware of any potential conflicts of interest.

☐ The following relationships may give rise to a potential conflict of interest:

I hereby certify that the above information is true and complete to the best of my knowledge, and agree to abide by the CVB Policy on Conflicts of Interest.

Signature: _____ Date: _____

EXHIBIT "C"

PROCUREMENT POLICY

Contracts entered into by the Bureau in accordance with this Agreement shall be subject to the following guidelines and requirements. It shall be the responsibility of Bureau Management to educate staff who makes purchases as to the Bureau's obligations under this Contract. Failure to follow these guidelines may result in non-reimbursement of Bureau Expenses. Procurement shall be conducted for the following categories hereof:

Awards will be made to the lowest responsive, responsible bidder or proposer whose offer is determined to be the most advantageous to the Bureau in its performance of its duties in accordance with the terms of this Agreement. Evaluation of bids, offers and proposals shall be based upon the criteria established by the Bureau and any other relevant information obtained through the evaluation process. Such criteria may include but need not be limited to price. Discussions or negotiations with the most qualified vendor based upon its offer may be conducted for the purpose of obtaining a contract which is in the best interests of the Bureau in the performance of its duties, obligations and functions as provided in this Agreement.

A. Contracts and purchases shall be made in accordance with the following procedures:

1. Between \$1,000 and \$5,000. The Bureau may contract to purchase goods or services between \$1,000 and \$5,000 by obtaining oral quotes for the goods or services. The Bureau will make every effort to obtain a minimum of three (3) oral quotes.
2. Over \$5,001 and up to \$10,000. The Bureau may contract to purchase goods or services between \$5,001 and up to \$10,000 by obtaining a minimum of three (3) written quotations for each item or group of items needed. The Bureau will make every effort to obtain a minimum of three (3) written quotes. Requests for quotations will be mailed, faxed, or e-mailed to all prospective bidders, as feasible.
3. Over \$10,001 and up to \$50,000. The Bureau may contract to purchase goods and services between over \$10,001 and up to \$50,000 by obtaining a minimum of three (3) written proposals. Any bid or request for proposals for the purchase of goods or services over \$50,000 shall require the prior approval of the Executive Director of the TDC. The Bureau shall make every effort to secure at least three (3) written proposals for each item or group of items needed. Advertisements for written requests for proposals will be published no less than one time in a newspaper of general daily circulation, trade publication, or other appropriate vehicle distributed in Palm Beach County or the locale where the service will be

provided, as appropriate. Requests for proposals will be mailed to all prospective bidders, as feasible.

4. Exceeding \$50,000. Contracts for purchases exceeding \$50,000 will be entered into according to the following procedures:
 - a. The Bureau is responsible for drafting the Request for Proposal ("RFP") or Invitation for Bid ("IFB") to secure needed goods or services, and shall forward the IFB/RFP to the Executive Director of the TDC, with copy to the Assistant County Attorney assigned to the TDC.
 - b. The Executive Director of the TDC will review and must approve the IFB/RFP to assure that the IFB/RFP meets the applicable requirements of this Agreement.
 - c. The Bureau is responsible for placing the advertisement and notifying prospective bidders.
 - d. Responses will be evaluated by a Selection Committee composed of the following six individuals:
 - Bureau President
 - Executive Director of TDC
 - Bureau Chair or designee Board member
 - TDC Member
 - Bureau Committee member
 - County Administrator or Designee

Once a committee for a specific procurement has been chosen, the committee may convey and make a recommendation provided there is a majority of members present.

The recommendation of the Selection Committee will be acted on by the Bureau's Executive Committee.

- e. Upon approval by the Bureau's Executive Committee, its recommendation will be placed on the agenda for the next scheduled meeting of the TDC.
- f. Upon approval by the TDC, the Executive Director of the TDC will place the item on the agenda for action by the Board of County Commissioners.
- g. If the Bureau's Board or the TDC does not approve a recommended contract, then the matter will be referred back to the Selection Committee, which may select the second choice or re-advertise the RFP. The determination of the Board of County Commissioners shall be final.

- h. Upon approval of the contract by the Board of County Commissioners, the Bureau's Chair will then execute the contract.
- B. Vendor List. The Bureau will maintain a "vendor list" of those providers of goods or services who desire to be placed on the list. Such list shall include small business enterprises certified by the COUNTY. The Bureau will solicit bids, quotes or proposals from responsible prospective suppliers, vendors or contractors obtained from the Bureau's or the COUNTY's vendor list, publications, catalogues, suggestions from the TDC or its staff, previous suppliers, and the like.
- C. Prohibition of Subdivision of Purchase. No contract or purchase shall be subdivided to avoid the purchasing guidelines and requirements provided for in this Agreement.
- D. Notwithstanding the requirements of Section A, the Bureau may purchase or contract for goods and services without competitive solicitation in the following cases:
 - 1. Sole Source Purchases. The Executive Director of the TDC may authorize the purchase of goods or services without requests for bids, quotes or proposals when the Bureau has provided evidence in writing independent of the vendor that such good or service is the only item that meets the need of the Bureau and is available through only one source. In the event such documentation is not provided or available, proof of appropriate advertising may be used to substantiate a sole source vendor is the only source of goods or services or that only one item meets the need of the Bureau..
 - 2. Business Necessity and Emergency Purchases. The Bureau may purchase goods or services through direct negotiations with the vendor, and without obtaining oral quotations, written quotations, or written bids or proposals, in cases of business necessity or emergency. For purposes of this provision:
 - a. "Business necessity" shall mean that (i) the goods or services are necessary to the provision of contracted services under this Agreement and (ii) sufficient time is not available between the identification of the need for the goods or services and the time for provision of the goods and services to engage in written requests for proposals or bids.
 - b. "Emergency Purchase" shall mean a procurement made in response to a need for goods or services when the delay incident to complying in the requirements of Section A would be detrimental to the interests, health, safety or welfare of the Bureau.
 - 3. Purchasing under Government Price Agreements. The Bureau may procure goods and services hereunder from vendors who provide pricing that is in accord with existing price agreements with the State of Florida, Palm Beach County, or the Palm Beach County

School Board. Contracts and purchases made under such agreements will be deemed as lowest bidder.

- E. Professional and Consulting Services. All contracts for professional or consulting services shall be evidenced by a written agreement which shall specify the services to be performed, the time period during which such services will be performed, the amount and form or method of compensation (e.g., retainer, expense reimbursement, direct cost, hourly or fixed fee, etc.), the method of cancellation or termination, remedies for non-performance, identify ownership of the product, and contain other standard contract language.

* * *

EXHIBIT "D"

SBE POLICY

Pursuant to Palm Beach County Ordinance No. 2002-064, the Bureau agrees to carry out its duties under this Agreement in accordance with the following program to encourage the participation of small business enterprises ("SBEs") in the Bureau's procurement process.

The Bureau will make good faith efforts in providing equal opportunity whereby all Palm Beach County businesses may fully participate in the Bureau's procurement process. The Bureau agrees to take the following steps to insure that Palm Beach County-certified small business enterprises are afforded the opportunity to participate in the Bureau's procurement process:

- A. Analysis of SBE availability to provide the products or services identified for contracting at either the prime or subcontract levels.
- B. Inclusion of SBEs on contract solicitation lists or vendor lists.
- C. Establishment and implementation of goals for SBE participation, and tracking of M/WBE participation, consistent with Ordinance No. 2002-064 and Policies and Procedures adopted by the COUNTY pursuant thereto.
- D. Monitoring and maintenance of records sufficient for verification of steps taken and results achieved to maximize participation.
- E. Dividing purchases and contracts into smaller units, areas, or quantities where feasible and likely to increase participation without substantial adverse fiscal impact.
- F. Setting delivery schedules that do not discourage SBE participation.
- G. Use of services and assistance provided by the COUNTY's Office of Small Business Assistance and other agencies in locating available SBEs.
- H. Utilization of the COUNTY's computerized listing of certified SBEs.

- I. Submission of annual reports to the TDC, and if requested, to the Board of County Commissioners, detailing the results of efforts to obtain SBE participation. This report shall include as a minimum the percentage of SBE participation during the contract term, total expenditures, and dollar amount of contracts awarded to SBEs. If the report indicates that the Bureau is behind in reaching the annual goals, the report shall also discuss the known or possible reasons for the failure to meet the goals.
- J. Providing SBEs with adequate information about plans, specifications, and requirements of Bureau contracts, and following up initial solicitations of interest by SBEs.
- K. Where applicable, negotiating with SBEs in good faith and demonstrating that SBEs were not rejected as unqualified without sound reasons based on thorough investigation of their capabilities.
- L. Using the services of available community and contractors' groups, and local, state, or federal minority and/or woman business assistance offices that provide assistance in the recruitment of SBEs for public sector contracts.
- M. Where applicable, providing assistance to obtain bonding, lines of credit, and insurance.
- N. Where appropriate, scheduling pre-bid or pre-proposal meetings to inform potential subcontractors of SBE requirements and other bid/proposal requirements, and encouraging SBEs to attend the pre-bid or pre-proposal meetings.
- O. Offering instructions and clarification on bid/proposal specifications, procurement policy and procedures, and general bidding requirements.
- P. Maintaining a file of successful bid/proposal documents from past procurement and permitting SBEs to review and evaluate such documents.
- Q. When requested, meeting with unsuccessful bidders/proposers to explain why bids may have been unsuccessful.
- R. Ensuring that bid/proposals specifications and plans are written or drawn so as not to prejudice or unreasonably limit SBE participation. The inclusion of proprietary specifications should be avoided without the establishment of a particular need.

- S. Limiting the use of renewal provisions in subcontracts so as not to inhibit SBE participation.
- T. Placement of bid notices, and where appropriate, in minority, women, and small business-focused media.
- U. Providing adequate time for the submission of bids/proposals so as to facilitate the participation of M/W/SBEs.

For the purposes of this Exhibit, all terms shall have their ordinary meaning, except that any terms defined in Palm Beach County Ordinance No. 2002-064 or any successor ordinance, shall have the meaning provided therein.

* * *

EXHIBIT "E"

CONVENTION CENTER BOOKING POLICY

It is the mission of the Palm Beach County Convention Center to maximize the economic impact generated by out of town visitors' attendance at conventions, trade shows and any other events taking place at the venue. It is the parties' intention that responsibility for events being booked into the Center less than eighteen months prior to the opening date of the event, referred to herein as "short-term-sales," will be responsibility of the management firm operating the Center on behalf of COUNTY. The parties recognize that some events booking more than 18 months in advance but lacking substantial room night use will be treated as "short-term", and some events booking less than 18 months in advance but with substantial room night use will be treated as "long-term". The Bureau will cooperate closely with the management firm operating the Center in making such determinations and in achieving the best possible combination of building revenue, hotel revenue, and economic impact to the County. The Bureau's Convention Center long-term sales will be fully integrated into the Group Sales program, with all group sales staff trained by Center Staff in the Center's Features and Facilities and charged with developing qualified leads for the Center. The Group Sales Staff will provide to the Center and the Executive Director of the TDC an annual schedule of projected sales goals. The group sales component shall also include a program of financial incentives for attracting group business that is competitive with current industry practices. At all times the focus of the Bureau's Convention Center sales and marketing efforts will be on events requiring overnight hotel accommodations and providing the maximum economic impact to the COUNTY.

EXHIBIT "F"

TRAVEL & ENTERTAINMENT POLICY

Florida Statute 125.0104 governs the reimbursement of travel expenses incurred in the course of tourism promotion for Palm Beach County. The statute authorizes reimbursement for "actual and reasonable" expenses. All expenses/purchases must have receipts, with the exception tips to bellman/valets that are less than \$20. (See section on Receipts)

Staff of the Bureau is authorized to provide, arrange and make expenditures for transportation, lodging, meals, and other reasonable and necessary items and services for such persons, as determined by the President/CEO, in connection with the performance of promotional, seminars, conferences, and other duties of the Bureau. However, entertainment expenses shall be authorized only when meeting with travel writers, tour brokers, or other persons connected with the tourist industry. All travel and entertainment-related expenditures in excess of \$20 shall be substantiated by paid (invoices). Palm Beach County PPM CW-F-009 Travel Policy is utilized when Florida Statute Section 125.0104 does not govern this policy.

Tourism Promotion and Convention Sales activities shall include consumer and trade shows, familiarization tours, sales missions, and other travel related and entertainment expenses that are incurred by officers and employees of the Bureau, other authorized persons, travel writers, tour brokers, or other persons connected with the tourist industry, including the convention meeting industry, in the course of promoting Palm Beach County and the Palm Beach County Convention Center.

Travel for staff will be pre-approved by the President/CEO and the President/CEO's travel will be approved by the Bureau's Executive Committee.

DOMESTIC TRAVEL (Including Florida)

Meal expenses will be deemed to be reasonable if they comply with the per diem limit by city as shown in the Business Travel News Per Diem schedule distributed at the beginning of each fiscal year. If a particular city is not listed in the Per Diem schedule, it may be appropriate to use the next closest city as the guide. However, some resorts are adjacent to a city with a per diem meal schedule that may not be on par with the resort. In that case, "actual and reasonable" meal expenses will be accepted. Any departure from the published rates will be deemed to be excessive unless the reasonableness and necessity of the expenditure is satisfactorily proven by the traveler in a written explanation on the expense reimbursement form. Meal expenditures may be combined such that the daily total does not exceed the per diem limit, provided, however, that one does not incur entertainment expenses which include a meal during the same day, or during a day when the traveler arrives or departs from a city. The maximum gratuity on any meal is 15%; provided, however, that in any case where the gratuity is included in the bill presented for the meal, then the gratuity will be paid in the full amount assessed by the serving establishment. Miscellaneous incidental expenses will be reimbursed upon review and justification. Employees may make 1

personal call home per day, excepting unusual circumstances which must be explained and will be subject to review.

FOREIGN TRAVEL

Foreign Travel will be reimbursed at the per diem rates as listed in the "Standardized Regulations (Government Civilians Foreign Areas)" publication. This publication breaks down per diem into meals & incidentals (MIE), and lodging. The MIE rate is inclusive of tips for meals and other related expenses.

Lodging may exceed the per diem listed provided there is a valid reason as to why the accommodations exceeded the per diem limits. For example, when staff of the Bureau attends the ITB trade show in Berlin all hotels increase their rates significantly for this event. Since they have little choice but to pay a rate that is well above the rates published in the guide, it will be reimbursed because it is actual and reasonable under the circumstances.

Foreign Exchange Rate: Expense reports containing a mix of cash and credit card expenses will be reimbursed using (a) the actual rate of exchange shown on the credit card statement for each charge and (b) the average of the Interbank Rate for eligible cash expenditures incurred during the time the traveler was in the country, as published by OANDA.com. The average rate as published by OANDA.com shall be attached to each expense report. Expense reports that have only credit card charges shall be reimbursed at the same rate as shown on the credit card statement of the traveler, which shall be attached to the expense report.

When traveling in several countries on the same trip, please submit an expense report for each country along with the exchange rate in effect at the time of travel.

AIR TRAVEL

For international flights outside of North America, full fare coach tickets may be purchased for upgrade to business class/first class, if available through airline programs. For all other air travel, the traveler shall attempt to obtain the most economical means of travel that is reasonable under the circumstances.

RECEIPTS ARE REQUIRED FOR ALL EXPENDITURES

TIPS: All tips for portage, taxi cabs etc., must be detailed on the back page of the travel reimbursement form. Tips over \$20.00 given for portage of large and/or numerous boxes of material or displays, require explanations and receipts. Tips for meals are to be included in the meals column, NOT the tips column of the expense report. The per diem schedule for meals is inclusive of tips.

ENTERTAINMENT

Entertainment expenses are those incurred while meeting with travel writers, tour brokers and other persons connected with the tourist industry. Such expenses shall be limited to the following amounts per person per day.

Breakfast: \$ 30.00	A maximum 20% gratuity
Lunch : \$ 70.00	may be added to these rates.
Dinner : \$100.00	

The above limits do not include taxes and other expenses associated with the event during which the meal is served. Items such as invitations, entertainment, room rental, beverages served at a reception, photography and special decorations are not included.

In cases where a facility has required payment for a guaranteed minimum number of attendees, such limits shall be calculated based on the guaranteed minimum number. Each reimbursement shall include names and affiliations of those entertained, and the staff in attendance

EXPENSE REPORTS

Requests for reimbursement for travel and entertainment expenses are to be made utilizing the standard Bureau expense report form, as updated from time to time. Requests for reimbursement for mileage shall be done using a mileage expense report form as a backup to the standard expense report. Each expense report must be approved by the President/CEO or his/her designee. The appropriate account code should be shown on the expense report.

* * *

EXHIBIT "G"
PERFORMANCE MEASURES

PROGRAM OBJECTIVES FOR FY 2009

- ▶ Consumer & Travel Industry database increase 15%
- ▶ Maximize advertising placement and frequency to generate 320,000 inquiries;
- ▶ Generate 550,000 unique visitors to the Bureau's web site;
- ▶ Book 60,000 room nights for the hotel group sales effort;
- ▶ Issue 45 high-value press releases related to the destination;
- ▶ 55 Destination Review and Site Participation
- ▶ Achieve free press coverage with an advertising equivalent dollar value of \$6.5 million.
- ▶ Document DMAI accreditation elements totaling 59

PERFORMANCE MEASURES	FY 2007 Actual	FY 2008 Budget	FY 2009 Target
Consumer & Travel Industry Database Increase	n/a	n/a	15%
Advertising Inquiries	340,000	339,730	320,000
Unique Visitors to Web Site	573,120	509,760	550,000
Booked Room Nights - Hotel lead program	40,949	65,000	60,000
Press Releases	55	50	45
Destination Review & Site Participation	n/a	n/a	55
Advertising Equivalent Value of Press Coverage	n/a	\$6,500,000	\$6,500,000
Document DMAI Accreditation elements	n/a	n/a	59

Discover Palm Beach County, Inc.

FY 2009 Salary Range- Exhibit "H"

Grade	Minimum	Midpoint	Maximum	Positions
26	\$ 142,105	\$ 177,631	\$ 213,157	President/CEO
22	\$ 70,652	\$ 115,915	\$ 161,178	Vice Presidents & Associate Vice Presidents of: Groups & Convention Sales & Marketing, Convention Sales, Partnership Marketing & Community Relations, Leisure Sales & e-Marketing, Marketing & Brand Management, Finance & Administration
17	\$ 35,127	\$ 63,641	\$ 92,155	Sr. Directors, Directors, and Managers of: Airlift Development, Sales, Destination Services, Public Relations, Destination Services, Partnership Marketing, Leisure Product Development, Media, Network & Operating Systems, Database & Application Support, Accounting, Brand - Events/Services, Brand - Niche Markets, Brand Design, Business Intelligence Sr. Web Master, Web Master, Accounting Specialists
13	\$ 20,084	\$ 32,951	\$ 45,818	Assistant to: President/CEO, Vice Presidents, Directors Sr. Coordinators, Coordinators, Specialists: Destination Services, Administrative, Customer Services, Web Content, Research

EXHIBIT "I"

COMPENSATION POLICY

The salaries provided by the Bureau to its employees shall be in conformity with the specific salary ranges set forth in its guidelines, policies, and procedures. Any increase in annual salary of an employee of the Bureau, other than the President, which is funded from revenues derived from the Tourist Development Tax shall not exceed the amount established for such fiscal year pursuant to the following "pool of funds":

1. For each individual employee paid for by TDC funds, show the name, starting date, position, and salary range for the position, and their gross salary as of September 30th immediately preceding the fiscal year and the anticipated date of any merit increase during the fiscal year.
2. Compute 5% of each individual's salary as of said Sept. 30th.
3. Compute the number of days from the anticipated date of merit increase until the end of the fiscal year, and divide the number of days into 365.
4. Multiply the answer in "3" by the amount in "2".
5. The sum of the amount computed in "4" for each employee shall be the maximum amount that can be used for merit increases during the fiscal year.

Each time an employee is given a merit increase, the Bureau shall submit a report to the TDC Executive Director stating the amount of the increase, along with a running total of any and all previous increases, and the net amount available as of the date of the report.

Increases will be based on merit performance only and not cost of living increases. The limitation on merit increases established by this Salary Policy shall not apply to the promotion of an employee to the minimum salary level of a new job category.

The President of the Bureau shall be eligible for a merit-based increase of up to 5% from revenues derived from the Tourist Development Tax.

Any additional compensation provided the President shall be paid only from private funds and shall not increase the base salary paid from tourist tax revenues. In the event such compensation is paid, the Bureau shall immediately notify the TDC and the County of such payment.

Any salary adjustment for the President shall be effective October 1st of each year. The County Administrator and the TDC Executive Director shall be given an update of all tourist tax funded staff positions along with full disclosure and backup at the end of each fiscal year.

In addition to salaries paid in accordance with this Salary Policy, the Bureau may pay additional compensation to certain management and sales personnel pursuant to a Sales Incentive Program in such form as may be adopted from time to time with notice to the TDC Director and within such dollar amounts as may be provided for such program in the Annual Budget attached hereto as Exhibit "A".

The Bureau may establish benefits for Bureau employees. These benefits may include but not be limited to:

1. A Retirement Plan. The Bureau may establish a qualified defined contribution retirement plan. Contributions to such plan shall not exceed ten percent of the employees' actual salaries.
2. A Car Allowance. A car allowance may be provided to certain staff that use their personal vehicle on a regular basis for business purposes. In setting this allowance, the Bureau will evaluate potential travel and set the allowance accordingly.
3. A Health Plan. The Bureau may establish a health plan that includes medical and dental coverage. As part of said plans the Bureau may establish a qualified Health Savings Account (HSA) with funding support by the Bureau and employees to cover the yearly out of pocket deductibles.
4. Other Insurance plans. The Bureau may establish other insurances plans for the benefit of employees. These plans may include but not be limited to vision, life, AD&D, and long & short term disability.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

Discover Palm Beach County, Inc.
FY 2009 Organizational Chart
Exhibit "J"

