BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: FEBRUARY 15, 2012 Division: TDC

Bulk Item: Yes X No ___ Department: _____

Staff Contact Person/Phone #: Maxine Pacini
296-1552

AGENDA ITEM WORDING:
Approval of a five (5) year Inter-local Agreement with the City of Marathon to provide beach cleaning and maintenance services at Sombrero Beach in an amount not to exceed $65,194 per year from DAC III Capital Resources.

ITEM BACKGROUND:
TDC approved same at their meeting of December 13, 2011

PREVIOUS RELEVANT BOCC ACTION:

CONTRACT/AGREEMENT CHANGES:
New Agreement

STAFF RECOMMENDATIONS:
Approval

TOTAL COST: **$65,194 per year** **BUDGETED:** Yes X No ___

COST TO COUNTY: **$65,194 per year** **SOURCE OF FUNDS:** TDC

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

APPROVED BY: County Atty X OMB/Purchasing X Risk Management MS X

DOCUMENTATION: Included X Not Required_____

DISPOSITION:_____ **AGENDA ITEM #**_____

Revised 11/06

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: **City of Marathon**

Contract # **1002**

Effective Date: 1/1/12

Expiration Date: 3/31/17

Contract Purpose/Description:

Approval of a five (5) year Inter-local Agreement with the City of Marathon to provide beach cleaning and maintenance services at Sombrero beach in an amount not to exceed $65,194 per year from DAC III Capital Resources.

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

for BOCC meeting on 2/15/12 Agenda Deadline 1/31/12

CONTRACT COSTS

Total Dollar Value of Contract: $ 65,194 p.y Current Year Portion: $ 65,194

Budgeted? Yes ☒ No ☐ Account Codes : 119-79040-530340-TM-29406-X-530340

Grant: $ _____

County Match: $ _____ _____-_____-_____-_____-_____

_____-_____-_____-_____-_____

ADDITIONAL COSTS

Estimated Ongoing Costs: $_____/yr For: _____

(Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	12/8/11	Yes ☐ No ☑	[signature]	12/12/11
Risk Management	12-12-11	Yes ☐ No ☑	[signature]	12-12-11
O.M.B./Purchasing	12-12-11	Yes ☐ No ☑	[signature]	12/13/11
County Attorney	12/7/11	Yes ☐ No ☑	C. Hall	12/7/11

Comments: _____

OMB Form Revised 2/27/01 MCP #2

Inter-local Grant Award Agreement

THIS AGREEMENT (Agreement) is entered into this _____ day of _____, 2012 by and between MONROE COUNTY, a political subdivision of the State of Florida (County or Grantor) and **City of Marathon,** a municipal corporation under the laws of the State of Florida (Grantee).

WHEREAS, the district pennies of Tourist Development Tax may be used to acquire, construct, extend, enlarge, remodel, repair or improve, convention centers, sports stadiums, sports arenas, coliseums, auditoriums, fishing piers, museums, zoological parks, nature centers, beach improvements and beach park facilities which are publicly owned and operated or owned and operated by not-for-profit corporations, and

WHEREAS, Grantee has applied for funding for the beach cleaning and maintenance services at Sombrero Beach; and

WHEREAS, the Grantor and Tourist Development Council (TDC) have determined that it is in the best interest of the County, for purposes of promoting tourism and preserving the heritage of the community, to attract tourists, and improve the property for use as beach and beach park facilities that are open to the public;

NOW, THEREFORE, in consideration of the mutual covenants and payments contained herein, the Grantee and the Grantor have entered into this agreement on the terms and conditions as set forth below.

1. GRANT AGREEMENT PERIOD. This agreement is for the period of **January 1, 2012 through to December 31, 2016**. This agreement shall remain in effect for the stated period unless one party gives to the other written notification of termination pursuant to and in compliance with paragraphs 7, 12 or 13 below.

2. SCOPE OF AGREEMENT. The representations made by the Grantee in its proposal submitted to the TDC are incorporated herein by reference. The Grantee shall provide the following scope of services: Materials and labor required to complete the cleaning and maintenance as described in Exhibit A of this agreement at Sombrero Beach. All contracts between the City of Marathon and contractual vendors to provide services outlined in Exhibit A must be provided to the TDC administrative office.

All invoices pertaining to this project shall be submitted to the Finance Department of Monroe County as outlined under paragraph 3, Amount of Agreement and Payment.

Acknowledgement: Grantee shall be required to permanently display and maintain at Grantee's expense, public acknowledgement of the support of the Monroe County Tourist Development Council in a publicly prominent area of their facility in the following form: "The cleaning and maintenance of this beach area has been made possible with the financial support of the Monroe County Tourist Development Council." If the Grantee has

already complied with this requirement through previous funding, said acknowledgement fulfills this condition. A photograph of said acknowledgment shall be provided with the initial request for reimbursement outlined in Exhibit A of this agreement.

a) There shall be a project manager to acknowledge receipt of goods or work performed. This Project Manager shall be Susie Thomas, 9805 Overseas Highway, Marathon, FL 33050 (e-mail: thomass@ci.marathon.fl.us / tel: (305) 481-6315). Should there be a change in the project manager specified in the Grantee's application, a new project manager shall be designated, and notice with new contact information shall be provided in writing to the TDC administrative office.

b) If, and to the extent that, Grantee contracts for any of the work funded under this agreement to be performed or completed, Grantee shall give notice to County of the contractual relationship, provide County with a copy of any and all contracts and shall require the contractor(s) to comply with all the terms of this contract. Should Grantee contract the work and then decrease the scope of work to be performed by a contractor, Grantee shall provide County with an amended contract executed by Grantee and its contractor.

(i) A Grantee which is a governmental entity shall comply with the procurement regulations and policies to which it is subject, and shall provide Grantor documentation of the procurement requirements applicable to the project and compliance therewith.

(ii) A Grantee which is a not-for-profit entity shall use procurement processes for those parts of the project to be contracted (not performed by the entity's employees) as follows. For work expected to be under $25,000, the not-for-profit shall document in the file two written quotes or a notarized statement as to why such written quotes were not feasible for the goods or services. For work expected to be $25,000 or more, a competitive bid process must be performed following Monroe County's procurement policies and procedures must be followed, unless the commodities or services will be provided by a "sole source" provider, in which case the not-for-profit must submit a notarized statement with its request for payment explaining why the vendor is the only source for the commodities or services.

c) Grantee shall exercise good internal controls to assure that the project as described in the funding application shall be completed on a timely basis within the proposed budget and shall provide to County any certifications, including those by the architect, engineer, contractor or an independent consultant if necessary, required to establish that materials which are purported to be applied to the project are in fact so applied. Further verification shall be required to show that equipment and other fixtures and personal property covered by this agreement are delivered to and installed in the project site. When any permit is required by any governmental agency, copies of plans and other documents which are submitted to the applicable

agency shall be submitted to the County Engineering Division to enable verification that the scope of services under this agreement has been provided.

3. AMOUNT OF AGREEMENT AND PAYMENT. For the services described in paragraph 2 of agreement the County shall provide an amount not to exceed **$65,194** per year for the period of January 1, 2012 through December 31, 2016. Grantee shall be reimbursed upon receipt of invoices showing payment for services relating to the provision and completion of the scope of services outlined in Exhibit A together with supporting receipts and other applicable documents for each expense. Grantee shall be reimbursed an amount not to exceed that shown in Exhibit A for each of the vendor services, upon receipt of invoices, together with supporting receipts and other documentation, showing prior payment for services relating to the provision and completion of the scope of services outlined in Exhibit A. Payment will be made periodically, but no more frequently than monthly. Grantee shall provide original copies of the invoices paid, copy of the cleared check paying for said services, and a signed letter stating that the contractor has complied with the scope of services as outlined in Exhibit A of this agreement. Documentation shall also include a notarized statement signed by the project manager as to the completion of the services for which Grantee is invoicing the County.

Monroe County's performance and obligation to pay under this agreement is contingent upon an annual appropriation by the BOCC. Said payment shall occur in compliance with the Local Government Prompt Payment Act. The Board of County Commissioners and the Tourist Development Council assume no liability to fund this agreement for an amount in excess of this award.

Grantee shall submit final reimbursement request for payment no later than March 31, 2017.

a) If in-kind services were noted within your application, and you are applying them to this project, documentation shall be submitted to the TDC Administrative Office to show the receipt and application of in-kind donations of goods, professional services, and materials. Said documentation should include invoices, bills of lading, etc., and be verified as received and applied to the project through a notarized statement of the project architect, engineer, general contractor or project manager. The receipt and application to the project of volunteer labor are to be documented and verified by notarized signature of the project architect, engineer, general contractor or project manager, and said documentation submitted to the TDC Administrative Office. All submissions shall identify the items included in Exhibit A and grantee shall complete the Application for Payment form which is provided within the payment/reimbursement kit provided to the grantee, listing the schedule of values which are sought to be reimbursed and shall indicate the percentage of completion of the overall project as of the submission. This document should be signed by the project architect, engineer, general contractor or project manager.

All work performed and goods received on site and incorporated into the project shall be verified by one of the foregoing. Submission of any documentation which is untrue, falsified, or otherwise misrepresents the work which has been completed, paid, or donated shall constitute a breach of agreement, for which breach the contract may be immediately terminated at the discretion of the County, whose decision shall be final.

4. RECORDS AND REPORTS. The Grantee shall keep such records as are necessary to document the performance of the agreement and expenses as incurred, and give access to these records at the request of the TDC, the County, the State of Florida or authorized agents and representatives of said government bodies. The Grantee shall also provide such access to the personal property and equipment purchased under this agreement. It is the responsibility of the Grantee to maintain appropriate records in accordance with generally accepted accounting principles consistently applied to insure a proper accounting of all funds and expenditures. The Grantee understands that it shall be responsible for repayment of any and all audit exceptions which are identified by the Auditor General for the State of Florida, the Clerk of Court for Monroe County, the Board of County Commissioners for Monroe County, or their agents and representatives. In the event of an audit exception, the current fiscal year grant award or subsequent grant awards will be offset by the amount of the audit exception. In the event the grant is not renewed or supplemented in future years, the Grantee will be billed by the Grantor for the amount of the audit exception and shall promptly repay any audit exception.

(a) Public Access. The County and Grantee 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 Grantee in conjunction with this agreement; and the County shall have the right to unilaterally cancel this agreement upon violation of this provision by Grantee.

5. MODIFICATIONS AND AMENDMENTS. Any and all modifications of the terms of this agreement shall be only amended in writing and approved by the Board of County Commissioners for Monroe County. The terms, covenants, conditions, and provisions of this agreement shall bind and inure to the benefit of the County and Grantee and their respective legal representatives, successors, and assigns.

6. INDEPENDENT CONTRACTOR. At all times and for all purposes hereunder, the Grantee is an independent contractor and not an employee of the Board of County Commissioners of Monroe County. No statement contained in this agreement shall be construed as to find the Grantee or any of its employees, contractors, servants or agents to the employees of the Board of County Commissioners of Monroe County, and they shall be entitled to none of the rights, privileges or benefits of employees of Monroe County.

(a) 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.

7. COMPLIANCE WITH LAW. In carrying out its obligations under this agreement, the Grantee shall abide by all statutes, ordinances, rules and regulations pertaining to or regulating the provisions of this agreement, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules or regulations shall constitute a material breach of this agreement and shall entitle the Grantor to terminate this agreement immediately upon delivery of written notice of termination to the Grantee.

8. RESTRICTIONS ON AGREEMENTS ENTERED PURSUANT TO THIS AGREEMENT. The Grantee shall include in all agreements funded under this agreement the following terms:

a) Anti-discrimination. Contractor agrees that it will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this agreement because of their race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

b) Anti-kickback. Contractor warrants that no person has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the Contractor has any interest, financially or otherwise, in County. For breach or violation of this warranty, the County shall have the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee. Contractor acknowledges that it is aware that funding for this agreement is available at least in part through the County and that violation of this paragraph may result in the County withdrawing funding for the Project.

c) Hold harmless/indemnification. Contractor acknowledges that this agreement is funded at least in part by the County and agrees to indemnify and hold harmless the County and any of its officers and employees from and against any and all claims, liabilities, litigation, causes of action, damages, costs, expenses (including but not limited to fees and expenses arising from any factual investigation, discovery or preparation for litigation), and the payment of any and all of the foregoing or any demands, settlements or judgments (collectively claims) arising directly or indirectly from any negligence or criminal conduct on the part of Contractor in the performance of the terms of this agreement. The Contractor shall immediately give notice to the County of any suit, claim or action made against the Contractor that is related to the activity under this agreement, and will cooperate with the County in the investigation arising as a result of any suit, action or claim related to this agreement.

d) Insurance. Contractor agrees that it maintains in force at its own expense a liability insurance policy which will insure and indemnify the Contractor and the County from any suits, claims or actions brought by any person or persons and from all costs and expenses of litigation brought against the Contractor for such injuries to persons or damage to property occurring during the agreement or thereafter that results from performance by Contractor of the obligations set forth in this agreement. At all times during the term of this agreement and for one year after acceptance of the project, Contractor shall maintain on file with the County a certificate of the insurance of the carriers showing that the aforesaid insurance policy is in effect. The following coverage's shall be provided:

1. Workers Compensation insurance as required by Florida Statutes.

2. Commercial General Liability Insurance with minimum limits of $500,000 per occurrence for bodily injury, personal injury and property damage.

3. Comprehensive Auto Liability Insurance with minimum limits of $300,000 combined single limit per occurrence.

The Contractor, the County and the TDC shall be named as additional insured, exempt workers compensation. The policies shall provide no less than 30 days notice of cancellation, non-renewal or reduction of coverage.

At all times during the term of this agreement and for one year after acceptance of the project, Contractor shall maintain on file with the County a certificate of insurance showing that the aforesaid insurance coverages are in effect.

e) Licensing and Permits. Contractor warrants that it shall have, prior to commencement of work under this agreement and at all times during said work, all required licenses and permits whether federal, state, County or City.

f) Right to Audit. The Contractor shall keep such records as are necessary to document the performance of the agreement and expenses as incurred, and give access to these records at the request of the TDC, the County, the State of Florida or authorized agents and representatives of said government bodies.

9. HOLD HARMLESS/INDEMNIFICATION. The Grantee hereby agrees to indemnify and hold harmless the BOCC/TDC and the 3406 North Roosevelt Blvd. Corporation or any of its officers and employees from and against any and all claims, liabilities, litigation, causes of action, damages, costs, expenses (including but not limited to fees and expenses arising from any factual investigation, discovery or preparation for litigation), and the payment of any and all of the foregoing or any demands, settlements or judgments arising directly or indirectly under this agreement. The Grantee shall immediately give notice to the Grantor of any suit, claim or action made against the Grantor that is related to

the activity under this agreement, and will cooperate with the Grantor in the investigation arising as a result of any suit, action or claim related to this agreement.

(a) Non-Waiver of Immunity. Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the County and the Grantee in this agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the County be required to contain any provision for waiver.

(b) 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.

10. NONDISCRIMINATION. County and Grantee 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 Grantee agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse 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 or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this agreement.

11. ANTI-KICKBACK. The Grantee warrants that no person has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a

commission, percentage, brokerage or contingent fee, and that no employee or officer of the County or TDC has any interest, financially or otherwise, in the said funded project, except for general membership. For breach or violation of this warranty, the Grantor shall have the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

12. TERMINATION. This agreement shall terminate on **December 31, 2016**. Termination prior thereto shall occur whenever funds cannot be obtained or cannot be continued at a level sufficient to allow for the continuation of this agreement pursuant to the terms herein. In the event that funds cannot be continued at a level sufficient to allow the continuation of this agreement pursuant to the terms specified herein, this agreement may then be terminated immediately by written notice of termination delivered in person or by mail to Grantee. The Grantor may terminate this agreement without cause upon giving written notice of termination to Applicant. The Grantor shall not be obligated to pay for any services or goods provided by Grantee after Grantee has received written notice of termination.

13. TERMINATION FOR BREACH. The Grantor may immediately terminate this agreement for any breach of the terms contained herein. Such termination shall take place immediately upon receipt of written notice of said termination. Any waiver of any breach of covenants herein contained to be kept and performed by Grantee shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the Grantor from declaring a forfeiture for any succeeding breach either of the same conditions or of any other conditions. Failure to provide Grantor with certification of use of matching funds or matching in-kind services at or above the rate of request for reimbursement or payment is a breach of agreement, for which the Grantor may terminate this agreement upon giving written notification of termination.

14. ENTIRE AGREEMENT. This agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements with respect to such subject matter between the Grantee and the Grantor.

15. GOVERNING LAW, VENUE, INTERPRETATION, COSTS, AND FEES. 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. This agreement is not subject to arbitration. 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.

(a) Venue. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this agreement, the County and Grantee agree that venue shall lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.

(b) 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 Grantee 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.

(c) Attorney's Fees and Costs. The County and Grantee 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.

(d) Adjudication of Disputes or Disagreements. County and Grantee 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 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. This agreement shall not be subject to arbitration.

(e) 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 Grantee 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 Grantee specifically agree that no party to this agreement shall be required to enter into any arbitration proceedings related to this agreement.

16. ETHICS CLAUSE: Grantee warrants that he has not employed, retained or otherwise had act on his behalf any former County officer or employee in violation of Section 2 or Ordinance No. 10-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 10-1990. For breach or violation of the provision the Grantor may, at its discretion terminate this agreement without liability and may also, at its discretion, deduct from the agreement or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former or present County officer or employee. The County and Grantee 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, the Grantee 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.

(a) Covenant of No Interest. County and Grantee covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this agreement, and that only interest of each is to perform and receive benefits as recited in this agreement.

(b) Code of Ethics. 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.

17. PUBLIC ENTITY CRIME STATEMENT: A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on an agreement to provide any goods or services to a public entity, may not submit a bid on an agreement with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under an agreement with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. By executing this document grantee warrants that it is in compliance with this paragraph.

18. AUTHORITY: Grantee warrants that it is authorized by law to engage in the performance of the activities encompassed by the project herein described. Each of the signatories for the Grantee below certifies and warrants that the Grantee's name in this agreement is the full name as designated in its corporate charter (if a corporation); they are empowered to act and contract for the Grantee, and this agreement has been approved by the Board of Directors of Grantee or other appropriate authority.

19. LICENSING AND PERMITS: Grantee warrants that it shall have, prior to commencement of work under this agreement and at all times during said work, all required licenses and permits whether federal, state, County or City.

20. INSURANCE: Grantee agrees that it maintains in force at its own expense a liability insurance policy which will insure and indemnify the Grantee and the Grantor from any suits, claims or actions brought by any person or persons and from all costs and expenses

of litigation brought against the Grantee for such injuries to persons or damage to property occurring during the agreement or thereafter that results from performance by Grantee of the obligations set forth in this agreement. At all times during the term of this agreement and for one year after acceptance of the project, Grantee shall maintain on file with the Grantor a certificate of the insurance of the carriers showing that the aforesaid insurance policy is in effect. The following coverage's shall be provided:

1. Workers Compensation insurance as required by Florida Statutes.

2. Commercial General Liability Insurance with minimum limits of $500,000 Combined Single Limit (CSL) If split limits are provided, the minimum limits acceptable shall be $250,000 per person $500,000 per occurrence $50,000 property damage.

3. Comprehensive Auto Liability Insurance with minimum limits of $300,000 combined single limit per occurrence.

The Grantee, the Grantor and the TDC shall be named as additional insured, except workers compensation. The policies shall provide no less than 30 days notice of cancellation, non-renewal or reduction of coverage.

Grantee shall provide, to the County, as satisfactory evidence of the required insurance, including the insurance policy application and either:

- Original Certificate of Insurance, OR

- Certified copy of the actual insurance policy, OR

- Certificate of Insurance e-mailed from Insurance Agent/Company to County Risk Management - Telephone Maria Slavik at (305) 295-3178 for details (Certificates can be e-mailed directly from the insurance agency to: Slavik-Maria@MonroeCounty-FL.Gov – The e-mail must state that this is a certificate for a TDC project and should be forwarded to Maxine Pacini at the TDC administrative office)

An original certificate or a certified copy of any or all insurance policies required by this contract shall be filed with the Clerk of the BOCC prior to the contract being executed by the Clerks office. The Insurance policy must state that the Monroe County BOCC and Monroe County TDC is the Certificate Holder and additional Insured for this contract (certificate only for worker's compensation coverage). Insurance information should be mailed to:

Monroe County Board of County Commissioners
c/o Risk Management
P.O. Box 1026
Key West, FL 33041

21. NOTICE. 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 Grantee: Susie Thomas
9805 Overseas Highway
Marathon, FL 33050

For Grantor: Lynda Stuart
Monroe County Tourist Development Council
1201 White Street, Suite 102
Key West, FL 33040
and
Cynthia Hall, Asst. County Attorney
P.O. Box 1026
Key West, FL 33041-1026

22. CLAIMS FOR FEDERAL OR STATE AID. Contractor 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.

23. 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.

24. 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 Grantee agree that neither the County nor the Grantee 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.

25. ATTESTATIONS. Grantee 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.

26. 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.

27. FORCE MAJEURE. The Grantee shall not be liable for delay in performance or failure to complete the project, in whole or in part, due to the occurrence of any contingency beyond its control or the control of its contractors and subcontractors, including war or act of war whether an actual declaration thereof is made or not, act of terrorism impacting travel in the United States, insurrection, riot or civil commotion, act of public enemy, epidemic, quarantine restriction, storm, flood, drought or other act of God, or act of nature (including presence of endangered animal species which cannot be timely removed in a safe manner or any act of any governmental authority which prohibits the project from proceeding as described in the scope of services and incorporated references and which the Grantee has exercised reasonable care in the prevention thereof. However, lack of planning for normal and expected weather conditions for the time of year the project is to be executed shall not constitute an act of God excusing a delay. Any delay or failure due to the causes stated shall not constitute a breach of the agreement; however, the BOCC shall have the right to determine if there will be any reduction to the amount of funds due to the Grantee after consideration of all relevant facts and circumstances surrounding the delay in performance or failure to complete the project within the contract period. Upon demand of TDC or BOCC, the Grantee must furnish evidence of the causes of such delay or failure. BOCC shall not pay for any goods received or services provided after the date(s) described in paragraph 1 and Scope of Services.

28. 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 singing any such counterpart.

29. 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 caused this agreement to be executed the day and year first above written.

(SEAL)
Attest: Danny L. Kolhage, Clerk

Board of County Commissioners
of Monroe County

_____
Deputy Clerk

_____
Mayor/Chairman

(CORPORATE SEAL)
Attest:

City of Marathon

By Diane Clavier
City Clerk
Diane Clavier
Print Name
Date: Jan. 11, 2012

By Peter Worthington
Mayor
Pete Worthington
Print Name
Date: Jan 11, 2012

OR TWO WITNESSES

(1)_____

(1)_____
Print Name

Date: _____

(2)_____

(2)_____
Print Name

Date: _____

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
Cynthia L. Hall
CYNTHIA L. HALL
ASSISTANT COUNTY ATTORNEY
Date 12-7-2011

City of Marathon Beach Cleaning and Maintenance – Sombrero
Commencing with FY 2012 Funding
Contract ID#: 1002

EXHIBIT A

SOMBRERO BEACH

Vendor	Description of Service	Frequency of Service	Project Application Cost	Amount of Percentage of cost to Marathon	TDC Reimbursement (not to exceed amount)
Gonzalez Brothers Landscaping, Inc.	Landscape maintenance to include beach re-nourishment, thinning or adding vegetation	Daily visits as needed	60% of $85,000	$51,000	$25,500
Universal Beach Cleaning	Beach erosion control & dune restoration – reshaping berms & beach raking	Bi-weekly	50% of $79,000	$39,500	$19,750
Staff/Contracted/ *in-kind	Amenities Improvements: walking trail maintenance, restroom, shower, playground equipment maintenance, sign, fence & pavilion maintenance, manual garbage/trash/litter collection, replacement of liners, palm restoration, pest control Amenities Restoration and Re-nourishment: Paint, repair-replace broken hardware, plumbing, rusty bolts, etc due to extended overuse, sand erosion and salt air deterioration	Daily visits as needed	$39,888	$39,888	$19,944
				$130,388	$65,194

TDC shall pay up to 50% of any of the individual line items as noted above. *In-Kind is a service provided to Grantee at no cost to the Grantee. (Donated/Free/volunteer: labor; materials; goods; services, etc.) The maximum in-kind noted within the application for this funding agreement is **$24,088**.