BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: MARCH 15, 2006 Division: TDC

Bulk Item: Yes X No ___ Department: _____

Staff Contact Person: Maxine Pacini

AGENDA ITEM WORDING:
Approval of an Amendment to Agreement with The City of Marathon to extend the Community Park Phase III project to acquire land for the purpose of constructing an aquatic center to September 30, 2006.

ITEM BACKGROUND:

PREVIOUS RELEVANT BOCC ACTION:
BOCC approved original Agreement at their meeting of January 28, 2004
BOCC approved amendment to Agreement at their meeting of November 16, 2005

CONTRACT/AGREEMENT CHANGES:
Amendment to Extend

STAFF RECOMMENDATIONS:
Approval

TOTAL COST: $120,000 **BUDGETED:** Yes X No ___

COST TO COUNTY: $120,000 **SOURCE OF FUNDS:** TDC

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

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

DIVISION DIRECTOR APPROVAL: _____
(Lynda Stuart)

DOCUMENTATION: Included X Not Required _____

DISPOSITION: _____ **AGENDA ITEM #** _____

Revised 2/05

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: City of Marathon

Contract #_____

Effective Date: 3/15/06

Expiration Date: _____

Contract Purpose/Description:

Approval of an Amendment to Agreement with The City of Marathon to extend the Community Park Phase III project to acquire land for the purpose of constructing an aquatic center to September 30, 2006.

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

for BOCC meeting on 3/15/06 Agenda Deadline 2/28/06

CONTRACT COSTS

Total Dollar Value of Contract: $ 120,000 Current Year Portion: $ 2

Budgeted? Yes ☒ No ☐ Account Codes 119-79040-530340-T49M-495~~A~~-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	1-24-06	Yes ☐ No ☑	[signature]	1/24/06
Risk Management	1-27-06	Yes ☐ No ☑	[signature]	1-27-06
O.M.B./Purchasing	1-24-06	Yes ☐ No ☑	[signature]	1/26/06
County Attorney	2/08/06	Yes ☐ No ☑	S.Hutton	2/08/06

Comments: _____

OMB Form Revised 2/27/01 MCP #2

AMENDMENT TO INTER-LOCAL AGREEMENT

THIS ADDENDUM to agreement is made and entered into this ____ day of _____ 2006, between the County of Monroe and The City of Marathon.

WHEREAS, there was a contract entered into on January 28, 2004, between the parties, to fund the Community Park Phase III project to acquire land for the purpose of constructing an aquatic center; and

WHEREAS, the scope of services in addition to the acquisition of the land requires that the Grantee execute a contract for design of the aquatic center; and

WHEREAS, the contract was amended on November 16, 2005 to extend the contract; and

WHEREAS, it has become necessary to extend the contract for a second time to allow for the Grantee to execute a contract for design of the aquatic center due to a delay because of recent hurricanes;

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

1. Contract period as outlined in Paragraph 1 shall be extended to September 30, 2006 to allow for the Grantee to execute a contract for the design of the aquatic center, and any contractual statements of progress or phased dates shall be adjusted accordingly.

2. All references to the date of September 30, 2005 in the original contract shall now become September 30, 2006.

2. The remaining provisions of the contract dated January 28, 2004, and amended November 16, 2005, not inconsistent herewith, remain in full force and effect.

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

City of Marathon

Mayor

(SEAL)
ATTEST: City of Marathon Clerk

Lilley Fragen for Cindy Ecklund
Clerk

(SEAL)
ATTEST: DANNY L. KOLHAGE, CLERK

Deputy Clerk

BOARD OF COUNTY
COMMISSIONERS OF
MONROE COUNTY, FLORIDA

Mayor/Chairman

MONROE COUNTY ATTO
APPROVED AS TO FO
SUZANNE A. HUTTO
ASSISTANT COUNTY ATTO

Susie Thomas Maxine 296-0788

From: Susie Thomas
Sent: Thursday, January 19, 2006 9:58 AM
To: 'adminasst@fla-keys.com'
Subject: TDC Grant Contract for the Community Park Phase III Project

Pursuant to our telephone conversation yesterday I would like to request the proffered extension of the contract on the above referenced grant contract to Sept. 30, 2006.
FEMA trailers are being set up on this property for displaced persons. The pull out date for these trailers is May 31, 2006.

I will not need an extension on the Amphitheatre contract.

I'll be at the February meeting to answer any questions.

Susie Thomas

Project Manager

City of Marathon

305-289-4103

305-481-6315 (cell)

305-289-4123 (fax)

thomass@ci.marathon.fl.us

AMENDMENT TO INTER-LOCAL AGREEMENT

THIS ADDENDUM to agreement is made and entered into this 16th day of November 2005, between the County of Monroe and The City of Marathon.

WHEREAS, there was a contract entered into on January 28, 2004, between the parties, to fund the Community Park Phase III project to acquire land for the purpose of constructing an aquatic center; and

WHEREAS, it has become necessary to extend the contract due to construction and design delays;

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

1. Contract period as outlined in Paragraph 1 shall be extended to March 31, 2006.

2. The remaining provisions of the contract dated January 28, 2004 remain in full force and effect.

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

City of Marathon

Mayor

(SEAL)
ATTEST: City of Marathon Clerk

Clerk

(SEAL)
ATTEST: DANNY L. KOLHAGE, CLERK

Deputy Clerk

BOARD OF COUNTY
COMMISSIONERS OF
MONROE COUNTY, FLORIDA

Mayor/Chairman

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM

SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 9/14/05

INTERLOCAL AGREEMENT
FOR
GRANT IN AID FUNDS

This AGREEMENT dated the 28 day of Jan 2004, is entered into by and between the BOARD OF COUNTY COMMISSIONERS FOR MONROE COUNTY, hereinafter "County," on behalf of the TOURIST DEVELOPMENT COUNCIL, hereinafter "TDC" and The City of Marathon, hereinafter " Grantee".

WHEREAS, the third penny of Tourist Development Tax may be used to acquire, construct, extend, enlarge, remodel, repair, or improve museums, zoological parks, fishing piers, nature centers or sports arenas which are publicly owned and operated or owned and operated by not-for-profit corporations, and

WHEREAS, Grantee has applied for Grant in Aid funding for the Community Park Phase III project to acquire land for the purpose of constructing an aquatic center, hereinafter "the Project"; and

WHEREAS, Grantee has the ability to act as manager for the project; and

WHEREAS, District III Advisory Committee has recommended certain conditions to insure that the proposed project is completed and that the property is used solely for the purpose of establishing an aquatic center; and

WHEREAS, the County and 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 acquire the project for use as a sports arena open to the public;

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

1. AGREEMENT PERIOD. This agreement is for the period February 18, 2004 through September 30, 2005. 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 7,11 and 12 below.

2. SCOPE OF AGREEMENT.

a). Grantee shall acquire 1.10 acres of land which shall be dedicated to the public for the purpose of establishing and constructing an aquatic center contiguous to the existing community park, and shall enter into a contract for design of an aquatic center. The land shall be acquired by September 30, 2004. A restrictive covenant, enforceable by the County, shall be filed in the Official Records of Monroe County, Florida, for the purpose of insuring that tourist development dollars are expended for a project permissible under State Statute and County Code. The restrictive covenant shall provide that in the event the property to be acquired under this agreement is ever sold or is diverted to any use other than an aquatic center and accessory uses, the monies paid under this agreement from the tourist development revenue shall be repaid to the County. Failure of the Grantee to allocate sufficient funds to close on the purchase of the property

on or before September 30, 2004 shall constitute a breach of this agreement for which the agreement shall terminate immediately at 12:01 a.m., October 1, 2004, without any notice other than this agreement, and County's obligation to pay shall terminate at that time.

b). Grantee shall, by September 30, 2005, execute a contract for the design of the aquatic center.

c). Grantee shall provide the District III Advisory Committee with quarterly reports as the different phases of the plan develop, as well as quarterly reports of the grantee's expectations from the District III Advisory Committee in relation to marketing and advertising for the project.

This project shall be completed and invoices submitted to the County Finance Department no later than September 30, 2005. The Grant in Aid funds must be expended by the end of the fiscal year ending September 30, 2005. No funds will be available for use for this project agreement after September 30, 2005.

The recipient of TDC capital project funding shall designate a project manager if no licensed architect, engineer or general contractor is involved in the project. If the project is performed by County or City personnel, the project manager shall be the Engineer, Building Official or Construction Manager of that local government. Should any signage be erected acknowledging the development of the project, said signage shall acknowledge the Tourist Development Council of Monroe County.

3. AMOUNT OF AGREEMENT AND PAYMENT. The County shall provide an amount not to exceed $120,000 in reimbursement for the acquisition of the property, conditioned upon the recordation in the Official Records of Monroe County, Florida, of restrictive covenants, dedicating the property to the public for purposes of an aquatic center, and upon the execution of one or more contracts for the design of the aquatic center. 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. Monroe County's performance and obligation to pay under this agreement is contingent upon an annual appropriation by the BOCC.

a) Payment for expenditures permissible by law and County policies shall be made through reimbursement to Grantee upon presentation of invoices, canceled checks and other documentation necessary to support a claim for reimbursement. Included in said documentation shall be proof that the above stated conditions have been met and that the Grantee has received and applied to the property matching funds equivalent to or greater than the amount invoiced to the County. Submission of invoices must be certified through a statement signed by an officer of the organization and notarized, declaring that representations in the invoice are true and factual.

b) Matching funds in an amount no less than the funds provided under this agreement are required to be applied to the project. Application of matching funds requires actual payment of the matching funds. Mere obligation through execution of a contract or approval of a budget item to be paid from matching funds will not suffice. In order for funds to be deemed matching, they shall have been expended for the services and materials required for the specific project described in the Scope of Services paragraph. Any funds applied to any use on the real property other than the project shall not be used as matching funds required under this agreement. In order to be considered matching funds for the project funded by grant under this agreement, the matching funds must be applied to the project during the term of this agreement.

c) 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 should have a proposed schedule of values for phases and 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.

d) Funding granted under this Grant in Aid Agreement must be expended by the County no later than September 30, 2005. Any amount of the grant funds not expended by County by that date shall no longer be available to Grantee, unless prior to September 30, 2005, an amendment extending this agreement has been approved in writing and executed by both parties.

4. REPORTS. The Grantee shall provide financial reports in summary of activity on forms provided or approved by the TDC, and quarterly narrative reports of activity under the approved work plan. 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. It is the responsibility of the Grantee to maintain appropriate records 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 County for the amount of the audit exception and shall promptly repay any audit exception.

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.

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.

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 County 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 they 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 Contractor. For breach or violation of this warranty, the Contractor 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) 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.

9. ANTI-DISCRIMINATION. The Contractor agrees that they will not discriminate against any of their employees or applicants for employment or against persons for any benefit or service 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.

10. ANTI-KICKBACK. The 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 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 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.

11. TERMINATION. This agreement shall terminate on September 30, 2005. 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 County may terminate this agreement without cause upon giving written notice of termination to provider. The County shall not be obligated to pay for any services or goods provided by Grantee after Grantee has received written notice of termination. If the Agreement does not receive an approved extension beyond the grant agreement period, as defined in-paragraph 1, the grant in aid funds will expire on the fiscal year ending date of September 30, 2005.

12. TERMINATION FOR BREACH. The County 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 County from declaring a forfeiture for any succeeding breach either of the same conditions or of any other conditions. Failure to provide County with certification of use of matching funds or matching in-kind services at or above the rate

of request for reimbursement or payment by is a breach of agreement, for which the County may terminate this agreement upon giving written notification of termination.

13. 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 County.

14. CONSENT TO JURISDICTION. This agreement, its performance, and all disputes arising hereunder, shall be governed by the laws of the State of Florida, and both parties agree that the proper venue for any actions shall be in Monroe County.

15. 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 County may, at its discretion terminate this agreement without liability and may also, at its discretion, deduct from the agreement or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former or present County officer or employee.

16. 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 a 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 a 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, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

17. 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.

18. 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.

19. INSURANCE: The parties to this agreement stipulate that each is a state governmental agency as defined by Florida Statutes and represents to the other that it has purchased suitable Public Liability, Vehicle Liability, and Workers' Compensation insurance, or is self-insured, in amounts adequate to respond to any and all claims within the limitations of Florida Statute 768.28 and 440, arising out of the activities governed by this agreement. The Grantee shall immediately give notice to the County of any suit, claim or action made against the County 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.

Each party shall be responsible for any acts of negligence on the part of its employees, agents, contractors, and subcontractors and shall defend, indemnify and hold the other party harmless from all claims arising out of such actions.

20. NOTICE. Any written notice to be given to either party under this agreement or related hereto shall be addressed and delivered as follows:

For Grantee:

Susie Thomas
Executive Program Coordinator
City of Marathon
10045-55 Overseas Hwy
Marathon, FL 33050

For County:

Lynda Stuart
Monroe County Tourist Development Council
1201 White Street, Suite 102
Key West, FL 33040
and
Suzanne Hutton, Asst. County Attorney
P.O. Box 1026.
Key West, FL 33041-1026

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

By: _____
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Mayor/Chairman

(SEAL)
ATTEST:

By: _____
City Clerk

City of Marathon

By: _____
Mayor

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
_____
SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 1/15/08

PART V:

PROJECT BUDGET AND TIMETABLE - ALL PROJECTS

1. Cost Estimates: List all major work items and the estimated costs of each. If the project is phased, segregate clearly those costs for the phase to be assisted by the TDC funds requested. All phases and total estimated cost of the entire project must be listed here.

Phase I = Purchase of Property in the amount of $400,000.00 plus closing costs
(this is the cost of the current application request)

Phase II = Develop Design/Build Performance Criteria and put out RFP for project design/build $26,000.00
Phase III = Select Design/Build firm to construct project $900,000 to $1.3 million

Total cost of phase/project for which funds are requested: (not to exceed 50% of the total project cost:

a)Phase I
b)Project $400,000.00 plus closing costs

Percentage of TDC funds requested of Total Budget: (not to exceed 50% of the total project cost)

a)Phase I
b)Project $200,000.00

2. Confirmation that signed, sealed bid process was utilized for acquiring architectural services, or that project does not require architectural services.

3. Matching Funds. List the sources and amounts of confirmed matching funds. (For items involving personnel, include the number of hours to be spent on the project activities and their per-hour value). These funds must not be expended before execution of a Capital Project Agreement. Prior donated services or expenditures are not acceptable as match for grant funds. No more than fifty (50%) percent of matching funds or twenty-five (25%) percent of the total project shall be in-kind services.

a) Hard-dollar $200,000.00 from City of Marathon Capital Infrastructure funding (see attached 2004 Capital Improvement schedule; schedule f)
b) In-Kind (50%) limit: _____

Total confirmed matching Hard-dollar funds: $200,000.00
Total confirmed matching In-kind funds: _____

This amount should equal or exceed TDC Funds requested.

Projected in-kind services and goods shall be allocated the following values, subject to negotiation with TDC/County. List here all such anticipated values:

4. Outline of expansion opportunity for acquiring further match grants.

The City of Marathon is applying for a Florida Recreation Development Assistance Program (FRDAP) grant for acquisition in the amount of $200,000.00.