BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: APRIL 19, 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 Dolphin Research Center, Inc. to extend Agreement for the Fish Freezer and the Restoration of the Front Sign project to March 31, 2007.

ITEM BACKGROUND:

PREVIOUS RELEVANT BOCC ACTION:
BOCC approved original Agreement at their meeting of October 19, 2005

CONTRACT/AGREEMENT CHANGES:
Amendment to extend

STAFF RECOMMENDATIONS:
Approval

TOTAL COST: $93,962 **BUDGETED:** Yes X No ___

COST TO COUNTY: $93,962 **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: Dolphin Research Center, Inc. Contract #_____

Effective Date: 4/19/06

Expiration Date: _____

Contract Purpose/Description:

Approval of an Amendment to Agreement with the Dolphin Research Center, Inc. to extend Agreement for the Fish Freezer and the Restoration of the Front Sign project to March 31, 2007.

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

for BOCC meeting on 4/19/06 Agenda Deadline 4/4/06

CONTRACT COSTS

Total Dollar Value of Contract: $ 93,962 Current Year Portion: $ 93,962

Budgeted? Yes ☒ No ☐ Account Codes 119-79040-530340-T69B-569X-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	3/10/06	Yes ☐ No ☑	[signature]	3/10/06
Risk Management	3/13/06	Yes ☐ No ☑	[signature]	3-13-06
O.M.B./Purchasing	3/13/06	Yes ☐ No ☐	[signature]	3/10/06
County Attorney	3/8/06	Yes ☐ No ☑	S.Hutton	3/8/06

Comments: _____

OMB Form Revised 2/27/01 MCP #2

ADDENDUM TO AGREEMENT

THIS ADDENDUM is entered into this _____ day of _____, 2006, by and between the BOARD OF COUNTY COMMISSIONERS, Monroe County, Florida, hereinafter referred to as the COUNTY and Dolphin Research Center, Inc.

WITNESSETH

WHEREAS, there was a contract entered into on October 19, 2005, between the parties, to allocate $93,962 to the Dolphin Research Center for the Replacement of the Fish Freezer and the Restoration of the Front Sign project ; and

WHEREAS, it has become necessary to extend the agreement termination date due to project delays;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to hereby amend the agreement entered into on October 19, 2005, as follows:

1. Paragraph 1. GRANT AGREEMENT PERIOD, shall read: This Agreement is for the period of October 19, 2005 through March 31, 2007. 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, and 13 below.
2. The remaining provisions of the contract dated October 19, 2005 shall remain in full force and effect.

Attest: DANNY L. KOLHAGE, Clerk

Board of County Commissioners of Monroe County

_____
Deputy Clerk

BY: _____
Mayor/Chairman

(CORPORATE SEAL)
Attest:

Dolphin Research Center, Inc.

_____
Witness

BY: Dayne Shannon-Rodriguez
President

_____
Witness

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM
SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 3/08/06

DOLPHIN RESEARCH CENTER

Teaching . . . Learning . . . Caring
For Marine Mammals and the Environment We Share

February 9, 2006

Monroe County
Tourist Development Council
1201 White Street, Suite#102
Key West, FL 33050

Re: FY 2004 Projects: Dolphin Habitat & Causeway Tiki Structure
FY 2006 Projects: Restore Fish Freezer & Restore Front Sign

Dear TDC Representatives:

Per your request we are informing you in writing that the FY 2004 projects mentioned above will be completed and submitted for payment by the March 31, 2006 deadline. The 2004 projects require no further extensions.

Due to overwhelming demands on contractors and the permitting process, the above-mentioned FY 2006 Fish Freezer Project will not be completed by September 30, 2006 and we are requesting a 6-month extension, until March 31, 2007 in order to complete this project. Of the $86,942.50 awarded by the TDC for the Fish Freezer Project, $42,150.00 will be spent and submitted for reimbursement by the TDC's fiscal year end of September 30, 2006. The remaining $44,792.50 will be spent and submitted for payment between October 1, 2006 and March 31, 2007. The Front Sign Project will be completed and submitted prior to the September 30, 2006 deadline.

Sincerely,

Armando Rodriguez
Executive Vice President

RECEIVED
FEB 2006

RECEIVED
2006

58901 Overseas Highway, Grassy Key, Florida 33050-6019
Phone: (305) 289-1121 Fax: (305) 743-7627 www.dolphins.org

Grant Award Agreement

This AGREEMENT dated the 19th day of October 2005, is entered into by and between the BOARD OF COUNTY COMMISSIONERS FOR MONROE COUNTY, hereinafter "County" or "GRANTOR," on behalf of the TOURIST DEVELOPMENT COUNCIL, hereinafter "TDC" and Dolphin Research Center, Inc., hereinafter "Grantee".

WHEREAS, the third penny 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 and beaches which are publicly owned and operated or owned and operated by not-for-profit corporations, and

WHEREAS, Grantee owns and contracts to a not-for-profit corporation for the operation of a zoological park open to the public; and

WHEREAS, Grantee has applied for funding for the Replacement of the Fish Freezer and the Restoration of the Front Sign project; and

WHEREAS, the Grantor 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 and restore the property for use as a zoological park which is 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 October 19, 2005 through to September 30, 2006. 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 and 13 below.

2. SCOPE OF AGREEMENT. The Grantee shall provide the following scope of services: Segment 1: For the restoration of the sign such services and materials as are required to accomplish the project which shall include lift rental; reinforcement of frame; restoration of sign faces; hand lettering; lighting. Segment 2: For the Fish Freezer project such services and materials as are required to accomplish the project which shall include preparation of freezer site; drawings and permitting; slab; dock; ramp; freezer panels. Segment 3: For the Fish Freezer project such services and materials as are required to accomplish the project which shall include electrical; purchase and installation of generator; construction of building and roof. All work for which grant funds are to be expended must be completed by the stated termination date of September 30, 2006 and all invoices pertaining to this project shall be submitted to the Finance Department of Monroe County no later than September 30, 2006 to be considered for payment.

a) There shall be a project manager to acknowledge receipt of goods or work performed. This Project Manager shall be Armando Rodriguez, 58901 Overseas Highway, Grassy Key, FL 33050 (Telephone: 305-289-1121 Ext. 220/Fax: 305-743-7627/e-mail: mandy@dolphins.org). Should there be a change in the project manager specified in the Grantee's application, a new project manager shall be designated and notice of the designation shall be provided to TDC/County.

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 undergo procurement processes for those parts of the project to be contracted (not performed by the entity's employees), which shall, at a minimum, require the acquisition of two written quotes for work expected to be under $25,000 or a notarized statement as to why such written quotes were not feasible. For work expected to be $25,000 or more, a competitive bid process must be performed. County procurement policies and procedures may be used by the Grantee as a guideline. In the event that the monetary contractual process commenced prior to the effective date of this funding grant Agreement, and the guidelines above were not followed, Grantee shall submit with its reimbursement request a notarized statement which details the Grantee's procurement efforts to ensure the best service for the most economical price. Grantee shall provide Grantor detailed documentation of the procurement process used.

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. The Grantor shall provide an amount not to exceed $93,962 (Ninety Three Thousand, Nine Hundred and Sixty Two Dollars) for materials and services used to acquire and restore the property.

Reimbursement request must show that Grantee has paid in full for materials and services relating to the segment prior to seeking the 50% (fifty percent) reimbursement from Grantor. Payment shall be 50% (fifty percent) reimbursement of the total cost of the segment, subject to the cap on expenditures for that segment as set forth in Exhibit A. Reimbursement can be sought after each segment of the Agreement is completed and signed by the Monroe County Engineering Department as outlined in 3.a. 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 shall be made upon the completion of a specific segment as outlined in the Scope of Services and Exhibit A. Payment for expenditures permissible by law and County policies shall be made through reimbursement to Grantee upon presentation of Application for Payment Summary– AIA Document G702 or similar certification as required below for governmental entities and not-for-profit entities, invoices, canceled checks and other documentation necessary to support a claim for reimbursement. Payment is a 50% (fifty percent) reimbursement of the total cost of each segment of the project, subject to the cap on expenditures for that segment as set forth in Exhibit A. Reimbursement can be sought after each segment of the Agreement is completed and signed by the Monroe County Engineering Department as outlined in 3.a. Included in said documentation shall be proof that the Grantee has received the property, realty or personalty, for each segment of Agreement as outlined in Exhibit A and paid an amount equal to or greater than the amount invoiced to the Grantor. It shall be necessary for the Grantee to contact the County Engineering Division and to arrange for inspections upon the completion of each segment. The documentation needed to support the payment request shall be in the form necessary for submission and available to the County engineer at the time of inspection. All submissions for payment shall have a proposed schedule of values for segment(s) 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. Photos of the progress of the work shall also be submitted with the payment application. It shall be the responsibility of the project architect, engineer, general contractor or project manager to initiate the communication with the Monroe County Engineering Division to facilitate the inspection(s) of the segment of the project. All submissions requesting payment shall be approved in writing, and signed, by the Monroe County Engineering Division as to the completion of the segment of the project for which payment is requested. The application for payment document 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. Grantee shall also provide partial releases of liens or certifications of non-lien if applicable. Grantor shall retain 10% of any payment on work in progress until the Grantee has provided a Final Release of Lien for each vendor/Contractor for whom payment is requested. For projects exceeding $25,000 in TDC funding under this Agreement, final payment will not be made until the following documents are complete and submitted to the Grantor:

AIA Document	G-702	Application for Payment Summary
AIA Document	G-704	Certificate of Substantial Completion

AIA Document G-706 Contractor's Affidavit of Debts & Claims
AIA Document G-706A Contractor's Affidavit of Release of Liens
AIA Document G-707 Consent of Surety to Final Payment (when applicable)
Final Release of Lien or Affidavit and Partial Release of Lien

For projects for which TDC funding under this Agreement is $25,000 or less, the AIA documentation is not required, but sufficient documentation must be submitted to County to provide similar assurances that the work has been completed and contractors/suppliers paid.

All payment requests must be submitted no later than the completion of project of September 30, 2006. Invoices received after September 30, 2006 will not be considered for payment.

b) 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.
Photographs showing progress on project shall be included in any payment request. The Project Manager shall certify delivery to the project site and installation therein of any goods or services provided other than through an architect, engineer or contractor. All work performed and goods received on site and incorporated into the project shall be verified by one of the foregoing.

c) Grantee must submit all documentation for final payment on or before the termination date of this grant of September 30, 2006. Invoices received after September 30, 2006 will not be considered for payment.

d) At any time that the documentation requirement policies of Monroe County are revised, such as to require annual inventory reports for equipment purchased under a TDC capital project grant, Grantee shall comply thereafter with such increased requirements, or further funding under the Agreement may be terminated by County.

e) Upon successful completion of this Grant Agreement, the Grantee may retain ownership of the real and personal property acquired and/or improved with funding under this Grant Agreement. However, the Grantee shall maintain, preserve and operate the property which was acquired or improved under this Agreement for the uses and purposes which qualified the Grantee for tourist development tax funding. Grantee

shall complete and sign a Property Reporting Form (provided within payment/reimbursement package) for personal property and forward said completed form with the appropriate invoice to the TDC Administrative Office. Real property acquired or improved through funding under this Agreement shall remain dedicated for the purposes set forth herein or for other purposes which promote tourism and ownership of said property shall be retained by the Grantee. The following terms shall apply:

(i) The Grantee shall have the use of the property, including both realty and personalty acquired with funding under this agreement, at the project site for so long as the facility is operated by Grantee, open to the public, and has a primary purpose of promoting tourism. At such time as any of the conditions in the preceding sentence shall cease to exist, the Grantee shall transfer ownership and possession of equipment and personal property to a local government or another not-for-profit organization which is a facility for which tourist development taxes may be used pursuant to Florida Statute with prior approval from TDC and BOCC.

(ii) At any time that the Grantee: (a) elects to stop the project or otherwise decide not to place into service for tourist-related purposes the facility acquired, constructed, or renovated with tourist development tax funding, (b) demolishes the project facility or divests itself of ownership or possession of the real property, or (c) ceases the use of the property with a primary purpose of promoting tourism, Grantee shall, pursuant to the formula set forth hereafter, refund to the County the Tourist Development funding. This provision shall survive the termination date of all other provisions of this contract for a period of ten years. Should the demolition, transfer of ownership, or change to a non-tourist related purpose occur after the facility has been used for tourist-related purposes for at least three (3) years, the amount of refund shall be pro-rated based on a useful life of ten (10) years.

(iii) The Grantee is responsible for the implementation of adequate maintenance procedures to keep the real and personal property in good operating condition.

(iv) The Grantee is responsible for any loss, damage, or theft of, and any loss, damage or injury caused by the use of, real or personal property or equipment purchased through funding under this Agreement.

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 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) 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 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 coverage's 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 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 he provisions of Sec. 286.28, 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

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.

(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 will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.

(b) Mediation. The County and Grantee agree that, in the event of conflicting interpretations of the terms or a term of this Agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding.

(c) 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.

(d) 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. 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.

(e) 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 no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board of County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have

the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.

(f) 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 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.

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 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 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 295-3178 for details)

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. Insurance 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 written notice to be given to either party under this Agreement or related hereto shall be addressed and delivered as follows:

For Grantee: Armando Rodriguez
Dolphin Research Center
58901 Overseas Highway
Grassy Key, FL 33050

For Grantor: 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

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

By: Isabel C. DuPantis
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: Heather M. Spehar
Mayor/Chairman

(SEAL)
ATTEST:

By: _____
Secretary

Dolphin Research Center, Inc.

By: Dayna Shannon-Rodriguez
President

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 7/09/05

EXHIBIT A

NAME OF ENTITY: Dolphin Research Center **NAME OF PROJECT**: Replacement of Fish Freezer and Sign Restoration

NUMBER OF SEGMENTS TO PROJECT: 3

***Note*: County signoff and submission for reimbursement only allowed after completion of each segment as documented in this exhibit. Grantee must apply for reimbursement utilizing the 'Application for Payment' form included within the Payment/Reimbursement Kit.**

	Schedule of Value	TDC Portion
Segment #: 1 Description: Sign Restoration • Lift Rental • Reinforce frame • Restore sign faces • Hand-letter sign • Install lighting on sign	Total Cost: $14,040	TDC portion: $7,020

EXHIBIT A

Segment # : 2 Description: Fish Freezer • Prep freezer site Demolish and dispose of old shed Grade ground with fill • Engineered drawings and permitting • Form and pour 676 Sq ft slab • Form and pour 400 sq ft dock • Form and pour 72 sq ft ramp • Purchase and receive freezer panels • Erect freezer panels	 $ 2,300 $ 7,000 $17,492 $10,350 $ 1,408 $32,959 $ 2,000 Total Cost: $73,509	 TDC portion: $36,754
Segment # : 3 Description: Fish Freezer • Electrical hook-up to freezer • Purchase, receive and install 3 phase generator • Construct block building and roof	 $ 2,500 $75,000 $22,876 Total Cost: $100,376	 TDC portion: $50,188