BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: FEBRUARY 19, 2003 Division: TDC

Bulk Item: Yes X No ___ Department: _____

AGENDA ITEM WORDING:
Approval of an Agreement with City of Marathon for the Phase II project to construct an Amphitheater in an amount not to exceed $47,200, DAC III, FY 2003 Capital Project Resources.

ITEM BACKGROUND:
TDC approved same at their meeting of January 29, 2003.

PREVIOUS REVELANT BOCC ACTION:

CONTRACT/AGREEMENT CHANGES:
New Agreement

STAFF RECOMMENDATIONS:
Approval

TOTAL COST: $47,200 **BUDGETED:** Yes X No ___

COST TO COUNTY: $47,200 /TOURIST PAY SOURCE OF FUNDS: TDC

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

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

DIVISION DIRECTOR APPROVAL: _____
(Lynda Stuart)

DOCUMENTATION: Included X To Follow ____ Not Required ____

DISPOSITION: _____ **AGENDA ITEM #** E19

Revised 2/27/01

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: City of Marathon

Contract #_____

Effective Date: 2/19/03

Expiration Date: 9/30/03

Contract Purpose/Description:

Approval of an Agreement with City of Marathon for the Phase II project to construct an Amphitheater in an amount not to exceed $47,200, DAC III, FY 2003 Capital Project Resources.

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

for BOCC meeting on 2/19/03 Agenda Deadline: 2/5/03

CONTRACT COSTS

Total Dollar Value of Contract: $ 47,200 Current Year Portion: $ _____

Budgeted? Yes ☒ No ☐ Account Codes: 119-79040-530340-T39M467X-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	12/19/02	Yes ☐ No ☑	[signature]	12/19/02
Risk Management	1/14/03	Yes ☐ No ☑	Bill Gunhas	1/15/03
O.M.B./Purchasing	1/13/03	Yes ☐ No ☑	[signature]	1/14/03
County Attorney	_____	Yes ☐ No ☐	S.Hutton	_____

Comments: _____

OMB Form Revised 2/27/01 MCP #2

INTERLOCAL AGREEMENT
FOR
GRANT OF FUNDS

This AGREEMENT dated the_____day of _____2003, 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 " Contractor".

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, Contractor has applied for funding for the Amphitheater at Community Park Phase II project to construct an Amphitheater, hereinafter "the Project"; and

WHEREAS, Contractor has the ability to act as manager for the project; 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 construct the project for use as an auditorium open to the public;

NOW, THEREFORE, in consideration of the mutual covenants and payments contained herein, the Contractor 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 19, 2003 through September 30, 2003. 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. The Contractor shall provide such services that are required to develop Phase II of the City of Marathon Community Park which will require engineering and architectural design services for an amphitheatre.

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.

3. AMOUNT OF AGREEMENT AND PAYMENT. The County shall provide an amount not to exceed $47,200 in reimbursement design services used in Phase II Amphitheater Project with the stipulation that payment will only be made upon approval of the plans by the City of Marathon. 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 Contractor 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 Contractor 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). Application of matching funds requires actual payment of the matching funds, or, in the alternative, a commitment of said funds and that the portion of the project for which the matching funds are to be used has been sufficiently completed to require payment of said matching funds. Mere obligation through execution of a contract or approval of a budget item to be paid from matching funds will not suffice.

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.

4. REPORTS. The Contractor 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 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. It is the responsibility of the Contractor to maintain appropriate records to insure a proper accounting of all funds and expenditures. The Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor.

8. RESTRICTIONS ON AGREEMENTS ENTERED PURSUANT TO THIS AGREEMENT. The Contractor 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, 2003. 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 Contractor. 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 Contractor after Contractor has received written notice of termination.

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 Contractor 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 Contractor 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: Contractor 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: Contractor 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 Contractor below certifies and warrants that the Contractor'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 Contractor, and this agreement has been approved by the Board of Directors of Contractor or other appropriate authority.

18. 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.

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 Contractor 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 City of Marathon:

Susie Thomas
City of Marathon
10045-55 Overseas Highway, 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: CLERK OF CITY OF MARATHON

By: _____
Clerk

City of Marathon

By: _____
Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY.
BY _____
SUZANNE A. HUTTON
DATE 11/07/03