BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: JANUARY 21, 2004 Division: TDC

Bulk Item: Yes X No ___ Department: _____

AGENDA ITEM WORDING:
Approval of an Agreement with Dolphin Research Center for the Dolphin Habitat and Tiki Structure projects in an amount not to exceed $64,908, DAC III, FY 2004 Capital Project Resources.

ITEM BACKGROUND:
TDC approved same at their meeting of November 12, 2003.

PREVIOUS REVELANT BOCC ACTION:

CONTRACT/AGREEMENT CHANGES:
New Agreement

STAFF RECOMMENDATIONS:
Approval

TOTAL COST: $64,908 **BUDGETED:** Yes X No ___

COST TO COUNTY: $64,908 **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 To Follow ___ Not Required ___

DISPOSITION: _____ **AGENDA ITEM #** D7

Revised 2/27/01

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: Dolphin Research Center

Contract #____

Effective Date: 1/21/04

Expiration Date: _____

Contract Purpose/Description:

Approval of an Agreement with Dolphin Research Center for the Dolphin Habitat and Tiki Structure projects in an amount not to exceed $64,908, DAC III, FY 2004 Capital Project Resources.

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

for BOCC meeting on 1/21/04 Agenda Deadline: 1/6/04

CONTRACT COSTS

Total Dollar Value of Contract: $ 64,908 Current Year Portion: $ _____

Budgeted? Yes ☒ No ☐ Account Codes: 119-79040-530340-T49M-432 X 530340

Grant: $ _____

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

____-____-____-____-____

ADDITIONAL COSTS

Estimated Ongoing Costs: $____/yr For: _____

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

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	12/15/03	Yes ☐ No ☑	[signature]	12/15/03
Risk Management	12/18/03	Yes ☐ No ☑	[signature]	12/18/03
O.M.B./Purchasing	12/16/03	Yes ☐ No ☑	[signature]	12/17/03
County Attorney	12/12/03	Yes ☐ No ☑	S.Hutton	12/12/03

Comments: _____

OMB Form Revised 2/27/01 MCP #2

Grant In Aid Award Agreement

This AGREEMENT dated the_____day of _____2004, 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, a Florida not-for-profit corporation, 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 has applied for Grant in Aid funding for the Dolphin Habitat and Tiki Structure projects to repair and replace the Dolphin Habitat fences and gates and repair and improve the Tiki Structure over causeway, hereinafter "the Property"; 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 repair the property for use as a zoological park 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 January 21, 2004 through January 31, 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 7,12 and 13 below. All work for which grant funds are to be expended must be completed by the stated termination date.

2. SCOPE OF AGREEMENT. The Grantee shall provide such materials and services as are required to repair and replace the fencing & gates around the dolphins' and sea lions' habitat, repair and improve the existing shade structure on the Causeway.

This project shall be completed and invoices submitted to the County Finance Department no later than January 31, 2005. The Grant in Aid funds must be expensed in the fiscal year ending September 30, 2005. No funds will be available for use for this project agreement after September 30, 2005.

The Grantee 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 agency. This designation must be made and notice pursuant to paragraph 20 provided to TDC/County prior to commencement of work covered by this agreement. Documentation of said notice shall be submitted in the first payment application.

Should any signage be erected acknowledging the development of the project, said signage shall acknowledge the Tourist Development Council of Monroe County.

If the amount of award exceeds $25,000, the Grantee agrees to dedicate the project property for a period of ten years, absent any acts not in control of the Grantee such as hurricane or terrorist damage, to the public purpose for which the funds are hereunder to be paid by County. If, project does not encompass structural improvements to real property and for any reason the project property ceases such public purpose use before the expiration of the ten years, the personalty (property other than realty) acquired under this agreement shall be delivered to the County or a not-for-profit organization which shall use the items for purposes which are related to the promotion of tourism in Monroe County.

3. AMOUNT OF AGREEMENT AND PAYMENT. The Grantor shall provide an amount not to exceed $64,908 for materials and services used to repair the property. 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 Application for Payment Summary– AIA Document G702, invoices, canceled checks and other documentation necessary to support a claim for reimbursement. Included in said documentation shall be proof that the Grantee has received and applied to the property matching funds equivalent to or greater than the amount invoiced to the Grantor. 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 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. 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
Final Release of Lien		

Affidavit and Partial Release of Lien

All payment requests must be submitted no later than 60 days after the completion of project

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 shall identify the items included in the schedule of values attached hereto and incorporated herein as Exhibit A 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.

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 January 31, 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 Grantor 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 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.

All insurance certificates should be mailed directly to:

Monroe County Board of County Commissioners
C/O Risk Management
1100 Simonton Street
Room 2-277
Key West, FL 33040

Re-imbursement shall not move forward until the above insurance certificates have been received and approved by the County Risk Management Department.

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.

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.

10. ANTI-DISCRIMINATION. The Grantee 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.

11. ANTI-KICKBACK. The Grantee warrants that no person has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the County or TDC has any interest, financially or otherwise, in the said funded project, except for general membership. For breach or violation of this warranty, the Grantor shall have the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

12. TERMINATION. This agreement shall terminate on January 31, 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 Grantor may terminate this agreement without cause upon giving written notice of termination to Applicant. The Grantor shall not be obligated to pay for any services or goods provided by Grantee after Grantee has received written notice of termination. 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.

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

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

15. 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.

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.

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.

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 insurance showing that the aforesaid insurance coverage's are in effect.

All insurance certificates should be mailed directly to:

Monroe County Board of County Commissioners
C/O Risk Management
1100 Simonton Street
Room 2-277
Key West, FL 33040

Re-imbursement shall not move forward until the above insurance certificates have been received and approved by the County Risk Management Department.

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
Executive Director 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

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)

Dolphin Research Center

By: _____
President

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM
SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 12/12/03

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.

(1) Construction materials for dolphin habitat repair - $28,823.00
Tools for dolphin habitat repair - $2,500.00
Labor for dolphin habitat repair - $17,433.00
(3) Labor for tiki construction and causeway repair - $7,300.00
Contractor for construction of causeway tiki - $23,760.00
Contractor for causeway repair - $50,000.00

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

(1)	a)Phase	$24,378	(2)	a)Phase	$40,530
	b)Project	$24,378		b)Project	$40,530

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

(1)	a)Phase	50%	(2)	a)Phase	50%
	b)Project	50%		b)Project	50%

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

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 (1) $24,378 DRC match from our operating budget (2) $15,000 in-hand from Peter Lappin; $10,000 additional pledge by Peter Lappin, $15,530 DRC match from operating budget.

b) In-Kind (50%) limit:

Total confirmed matching Hard-dollar funds: $64,908.00
Total confirmed matching In-kind funds: **N/A**

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:

NOT APPLICABLE

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

DRC's development staff will be aggressively fundraising for these projects with our existing and new donors; Mr. Lappin has pledged an additional $10,000 towards the Causeway Tiki Shelter project.