BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: NOVEMBER 17 2004 Division: TDC

Bulk Item: Yes X No ___ Department: _____

AGENDA ITEM WORDING:

Approval of an Agreement the City of Marathon for the design and construction of a Birdair architectural tensile membrane structure amphitheatre with climate controlled storage/dressing rooms, lighting, sound and a minimum of 2000 sq. ft. stage area contingent upon the City of Marathon providing three additional sets of bleachers upon the completion of the project in an amount not to exceed $250,000, FY 2005, DAC III, Capital Resources

ITEM BACKGROUND:

DAC III approved recommendation at their meeting of August 11, 2004, TDC approved same at their meeting of August 25, 2004

PREVIOUS REVELANT BOCC ACTION:

CONTRACT/AGREEMENT CHANGES:

New agreement

STAFF RECOMMENDATIONS:

Approval

TOTAL COST: $250,000 **BUDGETED:** Yes X No ___

COST TO COUNTY: $250,000 **SOURCE OF FUNDS:** TDC

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

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

DIVISION DIRECTOR APPROVAL: _____
Lynda M. Stuart

DOCUMENTATION: Included X To Follow _____ Not Required _____

DISPOSITION: _____ **AGENDA ITEM #** G7

Revised 2/27/01

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: City of Marathon

Contract #_____

Effective Date: 10/1/04

Expiration Date: 9/30/05

Contract Purpose/Description:

Approval of a capital grants agreement with the City of Marathon for the design and construction of a Birdair architectural tensile membrane structure amphitheatre with climate controlled storage/dressing rooms, lighting, sound and a minimum of 2000 sq. ft. stage area contingent upon the City of Marathon providing three additional sets of bleachers upon the completion of the project in an amount not to exceed $250,000, FY 2005, DAC III, Capital Resources

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

for BOCC meeting on 11/17/04 Agenda Deadline: 11/2/04

CONTRACT COSTS

Total Dollar Value of Contract: $ $250,000 Current Year Portion: $ $250,000

Budgeted? Yes ☒ No ☐ Account Codes:

Grant: $ $250,000

County Match: $ _____

119-79040-530340 –T59M 467X-530340

ADDITIONAL COSTS

Estimated Ongoing Costs: $_____/yr (Not included in dollar value above)

For: _____ (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	9/24/04	Yes ☐ No ☑	[signature]	9/27/04
Risk Management	10-5-04	Yes ☐ No ☑	[signature]	10-5-04
O.M.B./Purchasing		Yes ☐ No ☑	Sheila A Barker	10/4/04
County Attorney	9/27/04	Yes ☐ No ☑	S.Hutton	9/27/04

Comments:

Grant Award Agreement

This Interlocal AGREEMENT dated the____day of _____200_, 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 CITY OF MARATHON, a municipal 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 included operations and maintenance costs of the facility in its annual budget; and

WHEREAS, Grantee owns and operates the Marathon Community Park; and

WHEREAS, Grantee has applied for funding for the Coliseum at Marathon Community Park hereinafter "the Property"; and

WHEREAS, the District Advisory Committee (DAC III) and TDC recommend funding of the project as an amphitheater; 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 improve, repair and rehabilitate the property for use as an amphitheater 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 October 1, 2004 through September 30, 2005. This agreement shall remain in effect for the stated period unless one party gives to the other written notification of termination pursuant to and in compliance with paragraphs 7, 12 and 13 below.

2. SCOPE OF AGREEMENT. The Grantee shall provide design and construction of an amphitheater consisting of a Birdair architectural tensile membrane structure amphitheater with climate controlled storage/dressing rooms, lighting, sound, and a minimum 2,000 square foot stage area, as described in the funding application, and four pads for wheelchair handicap seating and portable bleachers to provide seating for amphitheater as well as other park events as described in the Grantee's Project Manager's undated letter regarding response to July 26, 2004, request for information and addressed to the Tourist development Council. All work for

which grant funds are to be expended must be completed by the stated termination date of September 30, 2005 and all invoices pertaining to this project shall be submitted to the Finance Department of Monroe County no later than September 30, 2005 to be considered for payment, **unless pursuant to circumstances noted in paragraph 26, a contract amendment duly executed by both parties is entered allowing an extension of the contract terms.**

a) There shall be a project manager to acknowledge receipt of goods or work performed. This Project Manager shall be Susie Thomas, City of Marathon, whose address and phone number are 10045-55 Overseas Highway, Marathon, Fl. 33050, and 305-743-0033. 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 the contract and shall require the contractor 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 the contractor, Grantee shall provide County with an amended contract executed by Grantee and its contractor. Failure to provide County with an amended contract decreasing the scope of the work to be performed by the contractor may render any goods or services provided other than through the contractor of record as not reimbursable.

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, equipment and other fixtures and personal property covered by this agreement are delivered to and installed in the project site.

3. AMOUNT OF AGREEMENT AND PAYMENT. The Grantor shall provide an amount not to exceed $250,000 for materials and services used to improve, rehabilitate, repair and renovate 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 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. 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 September 30, 2005. Invoices received after September 30, 2005 will not be considered for payment.

b) Grantee may elect to have vendors and contractors paid through the direct vendor method, upon submission of appropriate documentation as outlined above and a specific request that payment be made directly to the vendor or contractor rather than to Grantee.

c) 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.

d) 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. 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.

e) Grantee must submit all documentation for final payment on or before the termination of this grant of September 30, 2005. Invoices received after September 30, 2005 will not be considered for payment.

f) At any time that the documentation requirement policies of Monroe County are revised and notice of same is provided to Grantee, Grantee shall comply thereafter with such increased requirements, or the County shall not be required to reimburse for any work subsequent to the notice for which documentation does not comply with the requirements.

g) Upon successful completion of this Grant agreement, the Grantee ~~may~~ **shall** retain ownership of the real and personal property acquired and/or improved with funding under this Grant Agreement. However, the Grantee shall complete and sign a Property Reporting Form 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 retain ownership of said property in the Grantee. The following terms shall apply:

(i) The Grantee shall have the use of the equipment and other personal property 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.

ii) At such time as any of the conditions in sub-paragraph (i) above cease to exist, the Grantee shall transfer ownership and possession of equipment and personal property to a/another not-for-profit organization which is a facility for which tourist development taxes may be used pursuant to Florida Statute; and refund to the County the amount of Tourist Development funding received for the real property phases of the project at such time that the Grantee demolishes the project facility or divests itself of ownership or possession of the real property, or the use of the property no longer has a primary purpose of promoting tourism. 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 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 in accordance with generally accepted accounting principles consistently applied to insure a proper accounting of all funds and expenditures. The Grantee shall also allow access to the same government agents and representatives to inspect any and all equipment, fixtures and personal property acquired through funding under this agreement. 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 material 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 national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-

1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patent records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

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

12. TERMINATION. This agreement shall terminate on September 30, 2005. Termination prior thereto shall occur whenever funds cannot be obtained or cannot be continued at a level sufficient to allow for the continuation of this agreement pursuant to the terms herein. In the event that funds cannot be continued at a level sufficient to allow the continuation of this agreement pursuant to the terms specified herein, this agreement may then be terminated immediately by written notice of termination delivered in person or by mail to Grantee. The Grantor may terminate this agreement without cause upon giving **one hundred twenty (120) prior** written notice of termination to Applicant. The Grantor shall not be obligated to pay for any services or goods provided by Grantee after Grantee has received written notice of termination.

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

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.

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: Susie Thomas
City of Marathon
10045-55 Overseas Highway
Marathon, 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 **and the contract may be amended to extend for an additional period of time, with BOCC approval thereof not to be unreasonably withheld**; 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: _____
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Mayor/Chairman

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 11/01/04

(SEAL)
ATTEST:

By: _____
Clerk

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:

_____
City Attorney

CITY OF MARATHON

By: _____
Mayor

Exhibit A

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.
Architectural services for design (In kind donation) = $40,000
Construction of Birdair Architectural Tensile Membrane Structure Coliseum $460,000

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

a)Phase I
b)Project $500,000

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

a)Phase I
b)Project $250,000

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

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

a) Hard-dollar City of Marathon Capital Infrastructure $210,000

b) In-Kind (50%) limit: Recreation Design & Construction, Inc., architectural design services = $40,000

Total confirmed matching Hard-dollar funds: $210,000 (See exhibit M)

Total confirmed matching In-kind funds: 40,000

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:

Standard acceptable design service contracts run 10% to 12% of the completed project. The in-kind services of Recreational Design and Construction, Inc. for architectural design services fall within these guidelines

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

N/A

3. Tentative timetable. Indicate all major project activities and the anticipated time required to complete each stage of the project on the graph below.

Project Timetable (in months)

Project Activity	1	2	3	4	5	6	7	8	9	10	11	12
a)	Design (60 days)											
b)			Permitting (90 days)									
c)						Construction (210 days)						
d)												
e)												
f)												
g)												
h)												

Please indicate any critical dates and explain why they are critical.

The critical timing of this project is to run concurrently with the design and construction of Community Park Phase II

4. What is the total project cost: $ 500,000

5. Length of time for project completion (months and year(s): One (1) Year

EXHIBIT B

PROPERTY REPORTING FORM FOR TDC CAPITAL PROJECT GRANT AWARD - _____

GRANTEE: List non-expendable equipment/personal property (not including software) costing $1,000 or more and purchased under the above Contract. Complete the serial number, cost, location, address, and control number assigned to item by Grantee in appropriate columns of this form. The Grantee shall establish a unique identifier for tracking all personal property, and shall provide access to said property by the TDC, BOCC, or any agents thereof, or the State Controller, upon request.

DESCRIPTION	SERIAL NO./COST	LOCATION/ADDRESS	GRANTEE ASSIGNED CONTROL NUMBER

Attach copy of invoice, bill of sale, or other documentation to support purchase.

GRANTEE: _____
Signed by Grantee's Project Manager: _____ DATE: _____