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 Amendment to Agreement with the City of Marathon for the Sombrero Beach Injection Well project to extend the Agreement period to terminate on December 31, 2004.

ITEM BACKGROUND:

PREVIOUS REVELANT BOCC ACTION:
BOCC approved original Agreement at their meeting of April 21, 2004.

CONTRACT/AGREEMENT CHANGES:
Amendment to extend

STAFF RECOMMENDATIONS:
Approval

TOTAL COST: $31,644 **BUDGETED:** Yes X No ___

COST TO COUNTY: $31,644 **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 #** G8

Revised 2/27/01

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: The City of Marathon

Contract #_____

Effective Date: _____

Expiration Date: _____

Contract Purpose/Description:

Approval of an Amendment to Agreement with the City of Marathon for the Sombrero Beach Injection Well project to extend the Agreement period to terminate on December 31, 2004.

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: $ 31,644 Current Year Portion: $ _____

Budgeted? Yes ☒ No ☐ Account Codes: 119-79040-530340-T49M-496Y-530340

Grant: $ _____

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

____-____-____-____-____

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	10/22/04	Yes ☐ No ☑	[illegible]	10/22/04
Risk Management	10-29-04	Yes ☐ No ☑	M. Slavik	10/29/04
O.M.B./Purchasing	10/25/04	Yes ☐ No ☐	[illegible]	10/26/04
County Attorney	10/21/04	Yes ☐ No ☑	P. Mercado	10/21/04

Comments: _____

OMB Form Revised 2/27/01 MCP #2

AMENDMENT TO AGREEMENT

THIS ADDENDUM to agreement is made and entered into this ____ day of _____ 2004, between the County of Monroe and The City of Marathon.

WHEREAS, there was a contract entered into on April 21, 2004, between the parties, awarding $31,644 to The City of Marathon for the Sombrero Beach Injection Well project, and

WHEREAS, it has become necessary to extend the contract for an additional period to allow time for The City of Marathon to complete the project;

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

1. Contract period as outlined in Paragraph 1 be extended to December 31, 2004.
2. The project outlined in paragraph 2 of the Agreement shall be completed by December 31, 2004 and invoices submitted to the County Finance Department no later than September 30, 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.

3. The remaining provisions of the contract dated April 21, 2004, remain in full force and effect.

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

The City of Marathon

(SEAL)
ATTEST: CITY CLERK

_____ Mayor

_____ City Clerk

(SEAL)
ATTEST: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA

_____ Deputy Clerk

_____ Mayor/Chairman

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
BY _____
ATTORNEY'S OFFICE
DATE 10/21/04

CITY OF MARATHON, FLORIDA

10045-55 Overseas Highway, Marathon, Florida 33050
Phone: (305) 743-0033 Fax: (305) 743-3667

September 7, 2004

RECEIVED SEP 1 5 2004

Harold Wheeler
Tourist Development Council
P.O. Box 866
Key West, Florida 44041

RE: Sombrero Beach Injection Well
119 79040 530340 T49M496X 530340

Dear Mr. Wheeler:

Due to the recent hurricane activity this project is behind schedule. The well is drilled but we are having trouble getting the well box delivered. Had it not been for the storm delays the project would have been completed on schedule easily.

Please let me know what I need to do in order to extend the funding period approximately 30 days for this grant. I apologize for the delay.

Sincerely,

Susie Thomas

Susie Thomas
Project Manager
City of Marathon

INTERLOCAL AGREEMENT
FOR
GRANT IN AID FUNDS

This AGREEMENT dated the 21st day of APRIL 2004, is entered into by and between the BOARD OF COUNTY COMMISSIONERS FOR MONROE COUNTY, hereinafter "County," on behalf of the TOURIST DEVELOPMENT COUNCIL, hereinafter "TDC" and The City of Marathon, hereinafter " Grantee".

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

WHEREAS, Grantee has applied for Grant in Aid funding for the Sombrero Beach Injection Well project to construct the Injection well, hereinafter "the Property"; and

WHEREAS, Grantee 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 acquire the project for use as a beach open to the public;

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

1. AGREEMENT PERIOD. This agreement is for the period of April 21, 2004, through September 30, 2004. 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 Grantee shall provide such services and materials as are required to install an injection well for the purpose of absorbing excessive storm water and draining the east end of the park and parking lot at the Sombrero Beach. The project shall include the following work items: Engineering, DEP borehole permit package, Borehole for stormwater disposal, Tanks, shipping and setting, Piping connections of tanks, borehole, Repair landscape, fence and elements disturbed by construction.

A schedule of values is attached hereto as Exhibit A and shall be used as a guideline in determining contract compliance for reimbursement purposes.

This project shall be completed and invoices submitted to the County Finance Department no later than September 30, 2004. The Grant in Aid funds must be expensed in the fiscal year ending September 30, 2004. No funds will be available for use for this project agreement after September 30, 2004.

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

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 terroris damage, to the public purpose for which the funds are hereunder to be paid by County. If projec encompasses acquisition of personalty (property other than realty) rather than or in addition tc 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 acquired under this agreement shall be used for purposes which are related to the promotion of tourism in Monroe County, by retention by grantee and use for proper purposes in another location, or delivered to the County or a not-for-profit organization to be used for purposes of promoting tourism.

3. AMOUNT OF AGREEMENT AND PAYMENT. The County shall provide an amount not to exceed $31,644 in reimbursement for materials and services used to construct 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 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 County. Submission of invoices must be certified through a statement signed by an officer of the organization and notarized, declaring that representations in the invoice are true and factual.

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

c). Documentation shall be submitted to the TDC Administrative Office to show the receipt and application of in-kind donations of goods, professional services, and materials. Said documentation should include invoices, bills of lading, etc., and be verified as received and applied to the project through a notarized statement of the project architect, engineer, general contractor or project manager. The receipt and application to the project of volunteer labor are to be documented and verified by notarized signature of the project architect, engineer, general contractor or project manager, and said documentation submitted to the TDC Administrative Office. All submissions should have a proposed schedule of values for phases and indicate the percentage of completion of the overall project as of the submission. This document should be signed by the project architect, engineer, general contractor or project manager.

d) Funding granted under this Grant in Aid Agreement must be expended by the Coun no later than September 30, 2004. Any amount of the grant funds not expended by County l that date shall no longer be available to Grantee, unless prior to September 30, 2004, a amendment extending this agreement has been approved in writing and executed by both parties

4. REPORTS. The Grantee shall provide financial reports in summary of activity on forms provided or approved by the TDC, and quarterly narrative reports of activity under the approved work plan. The Grantee shall keep such records as are necessary to document the performance of the agreement and expenses as incurred, and give access to these records at the request of the TDC, the County, the State of Florida or authorized agents and representatives of said government bodies. It is the responsibility of the Grantee to maintain appropriate records to insure a proper accounting of all funds and expenditures. The Grantee understands that it shall be responsible for repayment of any and all audit exceptions which are identified by the Auditor General for the State of Florida, the Clerk of Court for Monroe County, the Board of County Commissioners for Monroe County, or their agents and representatives. In the event of an audit exception, the current fiscal year grant award or subsequent grant awards will be offset by the amount of the audit exception. In the event the grant is not renewed or supplemented in future years, the Grantee will be billed by the County for the amount of the audit exception and shall promptly repay any audit exception.

5. MODIFICATIONS AND AMENDMENTS. Any and all modifications of the terms of this agreement shall be only amended in writing and approved by the Board of County Commissioners for Monroe County.

6. INDEPENDENT CONTRACTOR. At all times and for all purposes hereunder, the Grantee is an independent contractor and not an employee of the Board of County Commissioners of Monroe County. No statement contained in this agreement shall be construed as to find the Grantee or any of its employees, contractors, servants or agents to the employees of the Board of County Commissioners of Monroe County, and they shall be entitled to none of the rights, privileges or benefits of employees of Monroe County.

7. COMPLIANCE WITH LAW. In carrying out its obligations under this agreement, the Grantee shall abide by all statutes, ordinances, rules and regulations pertaining to or regulating the provisions of this agreement, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules or regulations shall constitute a material breach of this agreement and shall entitle the County to terminate this agreement immediately upon delivery of written notice of termination to the Grantee.

8. RESTRICTIONS ON AGREEMENTS ENTERED PURSUANT TO THIS AGREEMENT. The Grantee shall include in all agreements funded under this agreement the following terms:

a) Anti-discrimination. Contractor agrees that they will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this agreement because of their race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

b) Anti-kickback. Contractor warrants that no person has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the Contractor has any interest, financially or otherwise, in Contractor. For breach or violation of this warranty, the

Contractor shall have the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee. Contractor acknowledges that it is aware that funding for this agreement is available at least in part through the County and that violation of this paragraph may result in the County withdrawing funding for the Project.

c) Licensing and Permits. Contractor warrants that it shall have, prior to commencement o 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, 2004. Termination prior thereto shall occur whenever funds cannot be obtained or cannot be continued at a level sufficient to allow for the continuation of this agreement pursuant to the terms herein. In the event that funds cannot be continued at a level sufficient to allow the continuation of this agreement pursuant to the terms specified herein, this agreement may then be terminated immediately by written notice of termination delivered in person or by mail to Grantee. The County may terminate this agreement without cause upon giving written notice of termination to provider. The County shall not be obligated to pay for any services or goods provided by Grantee after Grantee has received written notice of termination. If the Agreement does not receive an approved extension beyond the grant agreement period, as defined in-paragraph 1, the grant in aid funds will expire on the fiscal year ending date of September 30, 2004.

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

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

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

15. ETHICS CLAUSE: Grantee warrants that he has not employed, retained or otherwise had act on his behalf any former County officer or employee in violation of Section 2 or Ordinance No. 10-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 10-1990. For breach or violation of the provision the County may, at its discretion terminate this agreement without liability and may also, at its discretion, deduct from the agreement or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former or present County officer or employee.

16. PUBLIC ENTITY CRIME STATEMENT: A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on an agreement to provide any goods or services to a public entity, may not submit a bid on a agreement with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a Contractor, supplier, sub-contractor, or consultant under a agreement with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

17. AUTHORITY: Grantee warrants that it is authorized by law to engage in the performance of the activities encompassed by the project herein described. Each of the signatories for the Grantee below certifies and warrants that the Grantee's name in this agreement is the full name as designated in its corporate charter (if a corporation); they are empowered to act and contract for the Grantee, and this agreement has been approved by the Board of Directors of Grantee or other appropriate authority.

18. LICENSING AND PERMITS: Grantee warrants that it shall have, prior to commencement of work under this agreement and at all times during said work, all required licenses and permits whether federal, state, County or City.

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

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

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

For Grantee:

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

For County:

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

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first above written.

(SEAL)
ATTEST: DANNY L. KOLHAGE, CLERK

By: _____
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
~~Mayor/Chairman~~
Mayor Pro Tem

(SEAL)
ATTEST:

By: _____
~~Secretary~~
City Clerk

CITY OF MARATHON

By: _____
Mayor

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
_____
SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 3/09/04

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.
Engineering, permitting, borehole, tanks, piping, grading, landscape repair

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

a)Phase 1
b)Project $70,000

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

a)Phase 1
b)Project 50%

2. Confirmation that signed, sealed bid process was utilized for acquiring architectural services, or that project does not require architectural services.
Refer to answer # 12 above

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 Maintenance of Structures/Grounds 102-5025-541-330 = $35,000.00**
b) In-Kind (50%) limit:

Total confirmed matching Hard-dollar funds: $35,000

Total confirmed matching In-kind funds: _____

This amount should equal or exceed TDC Funds requested.

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

N/A

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

N/A