

Sponsored by: Janke

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2004-057**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING CITY MANAGER TO ENTER INTO AGREEMENT WITH LEISURE GRANTS SERVICE, INC., FOR GRANT ADMINISTRATION OF \$200,000 FLORIDA RECREATIONAL DEVELOPMENT ASSISTANCE PROGRAM (FRDAP) GRANT AWARDED FOR AQUACENTER PURCHASE IN THE AMOUNT OF \$5,500**

**WHEREAS**, in December, 2003, the City of Marathon (the "City") entered into a continuing services agreement with Leisure Grants Services, Inc. (the "Consultant") for the management and preparation of grant applications for park and recreation capital improvements within the City; and

**WHEREAS**, in fiscal year 2004, the City received a Florida Recreational Development Assistance Program ("FRDAP") grant in the amount of \$200,000 (the "Grant") for the aquacenter purchase; and

**WHEREAS**, the City desires to engage the professional services of Consultant for the administration of the Grant; and

**WHEREAS**, the Consultant's fee for this Project Authorization is \$5,500.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:**

**Section 1.** The above recitals are true and correct and are incorporated herein by this reference.

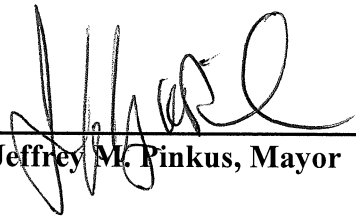
**Section 2.** The professional services agreement between the City of Marathon and Leisure Grants Service, Inc. in the amount of \$5,500, to administer a \$200,000 grant from the FRDAP Program of the FDEP for purchase of the aquacenter property, a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is approved.

**Section 3.** The City Manager is authorized to execute the agreement on behalf of the City.

**Section 4.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED** by the City Council of the city of Marathon, Florida, this 8th day of June, 2004.

**THE CITY OF MARATHON, FLORIDA**

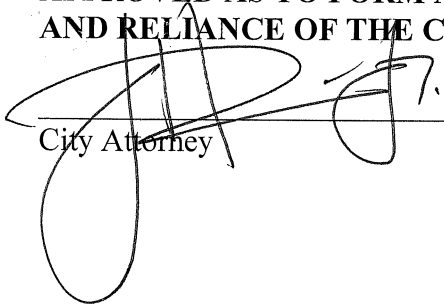
  
\_\_\_\_\_  
**Jeffrey M. Pinkus, Mayor**

AYES: Bartus, Bull, Mearns, Miller, Pinkus  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

  
\_\_\_\_\_  
Cindy L. Ecklund  
City Clerk  
  
(City Seal)

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

  
\_\_\_\_\_  
City Attorney

# GRANTS COMMUNICATION

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TO: SUSIE THOMAS

DATE: MAY 5, 2004

FROM: STAN HEMPHILL *Stan*

RE: FRDAP GRANT ADMINISTRATION  
SERVICES AGREEMENT

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\$200,000  
GRANT FOR  
MARATHON COMMUNITY PARK EXPANSION

Congratulations again on the \$200,000 grant the Florida Legislature appropriated last Friday through the Florida Recreation Development Assistance Program for this City project. During this summer we will obtain for you the fully executed agreement for this State funding.

Your City desires to close out all of the administrative requirements of this forthcoming grant as quickly as possible following the execution of the grant agreement. Attached are three (3) signed originals of the Professional Services Agreement for our provision of the required grant administration services for this project. Please have this Agreement executed by your City Manager.

Please mail one executed original of the Agreement to us for our files. Receipt of this document will allow us to begin working with you at the earliest possible date to document this grant's administration and to obtain the \$200,000 reimbursement payment as quickly as possible.

Please note that we do not desire to be compensated for our grant administration services until beginning in calendar year 2005. Please call us if you have any questions about this Agreement.

SAH:jh

Attachments: 3 Agreement Originals

Leisure Grants Service, Inc.  
12300 N.W. 10th Street  
Plantation, Florida 33323-2504  
Tel (954) 474-2421 Fax (954) 474-4721

**PROFESSIONAL SERVICES AGREEMENT BETWEEN  
THE CITY OF MARATHON  
AND  
LEISURE GRANTS SERVICE, INC.**

**THIS AGREEMENT** is made between **LEISURE GRANTS SERVICE, INC.**, a Florida corporation, (hereinafter the “Consultant”), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

**WHEREAS**, the Consultant and City, through mutual negotiation, have agreed upon a scope of services and fees for grants management services in administering a \$200,000 grant from the Florida Department of Environmental Protection – Florida Recreation Development Assistance Program for the Marathon Community Park Expansion (the “Project”); and

**WHEREAS**, the City desires to engage the Consultant to perform the services specified below.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the Consultant and the City agree as follows.

1. **Scope of Services/Deliverables.**

- 1.1 The Consultant shall furnish professional grant management services to the City as set forth in the Scope of Services for the Project as specified in Exhibit “A” attached to this Agreement.
- 1.2 The “Scope of Services” includes a Project Schedule for the Project which includes a breakdown of tasks, timeline and deliverables to the City.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect for a sufficient time period to complete all of the herein described grant services, unless earlier terminated in accordance with Paragraph 8. The City Manager, at his sole option, may extend this Agreement for a period of one (1) year.
- 2.2 The Consultant agrees that time is of the essence. The Consultant shall complete each deliverable for each authorized service within the applicable timeframe set forth in the applicable Schedule, unless extended by the City Manager.

3. **Compensation and Payment.**

- 3.1 The Consultant shall be compensated a lump sum of \$5,500.00 for the completion of the Project.
- 3.2 The Consultant shall invoice the City on a quarterly basis, beginning December 15, 2004 through December 15, 2005, for five equal payments.
- 3.3 The City shall pay Consultant in accordance with the Florida Prompt Payment Act.
- 3.4 If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the Consultant the undisputed portion of the invoice. Upon written request of the Finance Director, the Consultant shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.
- 3.5 The Consultant shall use its best efforts to successfully fulfill any and all grant services authorized by the City. However, both the City and the Consultant fully understand and accept that payment of the herein described fees is not contingent upon the outcome of such services. In accordance with Sections 11.047 and 112.3217 of the Florida Statutes, no contingency fee is agreed to by either the City or the Consultant, nor will any contingency fee be paid by the City or be received by the Consultant for services related to any authorized grant project.

4. **Subconsultants.**

- 4.1 The Consultant shall be responsible for all payments to any subconsultants and shall maintain responsibility for all work related to the Project.
- 4.2 Any subconsultants used on the Project must have the prior written approval of the City Manager.

5. **City's Responsibilities.**

- 5.1 The City shall furnish the Consultant the necessary quantities of (a) location maps, (b) aerials, (c) aerial photographs, (d) on-site photographs, (e) boundary maps or surveys, (f) site control instruments, (g) site plans, (h) project schedules, (i) cost estimates, (j) organization charts, (k) partnership agreements or letters, (l) narrative information, (m) mounted visuals and (n) any other documents pertinent to the services to be provided by Consultant.
- 5.2 The City shall arrange for access to and make all provisions for the Consultant to enter upon real property as required for the Consultant to perform services as may be requested in writing by the Consultant.

6. **Consultant's Responsibilities.**

6.1 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the Project as is ordinarily provided by a professional under similar circumstances. If at any time during the term of this Agreement or within one (1) year from the completion of the Project, it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the Scope of Services of the Project, upon written notification from the City Manager, the Consultant shall at the Consultant's sole expense, immediately correct the work.

7. **Conflict of Interest.**

7.1 To avoid any conflict of interest or any appearance thereof, the Consultant shall not, for the term of this Agreement, represent any private sector entities (developers, corporations, real estate investors, etc.), with regard to any adversarial planning issues in the City. For the purposes of this section "adversarial" shall mean any development application where staff is recommending denial or denied the application; administrative appeal or court action wherein the City is a party.

8. **Termination.**

8.1 The City Manager without cause may terminate this Agreement upon thirty (30) days written notice to the Consultant, or immediately with cause.

8.2 Upon receipt of the City's written notice of termination, the Consultant shall stop work on the Project unless directed otherwise by the City Manager.

8.3 In the event of termination by the City, any amounts due and owing by the City to the Consultant prior to the termination shall survive the termination and continue to be due and owing until paid in full, provided that the Consultant has first complied with the provisions of Paragraph 8.4.

8.4 The Consultant shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Project to the City, in a hard copy and electronic format within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

9. **Insurance.**

The Consultant shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by the City

Manager. The underwriter of such insurance shall be qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida. If requested by the City Manager, the insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers. The insurance coverage shall include a minimum of:

- 9.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.
- 9.2 Professional Liability: The Consultant shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$500,000.
- 9.3 The Certificate of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

10. **Nondiscrimination.**

- 10.1 During the term of this Agreement, the Consultant shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and abide by all Federal and State laws regarding nondiscrimination

11. **Attorneys Fees and Waiver of Jury Trial.**

- 11.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 11.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

12. **Indemnification.**

- 12.1 Consultant shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's performance or non-performance of any provision of this Agreement

including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the City for all its expenses including reasonable attorneys fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with the Consultant's performance or non-performance of this Agreement.

12.2 The provisions of this section shall survive termination of this Agreement.

13. **Notices/Authorized Representatives.**

13.1 Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the City:                   W. Scott Janke, City Manager  
  City of Marathon  
  10045-55 Overseas Highway  
  Marathon, Florida 33050

For The Consultant:   Stan A. Hemphill, President  
  Leisure Grants Service, Inc.  
  12300 N.W. 10th Street  
  Plantation, Florida 33323-2504

14. **Governing Law.**

14.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court or the Southern District of Florida.

15. **Entire Agreement/Modification/Amendment.**

15.1 This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

15.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

16. **Ownership and Access to Records and Audits.**



16.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City.

16.2 The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Consultant involving transactions related to this Agreement.

16.3 The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

17. **Nonassignability.**

17.1 This Agreement shall not be assignable by the Consultant unless such assignment is first approved by the City Manager. The City is relying upon the apparent qualifications and personal expertise of the Consultant, and such firm's familiarity with the City's area, circumstances and desires.

18. **Severability.**

18.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

19. **Independent Contractor.**

19.1 The Consultant and its employees, volunteers and agents shall be and remain an independent contractor and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

20. **Compliance with Laws.**

20.1 The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

21. **Waiver.**

21.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

22. **Survival of Provisions.**

22.1 Any terms or conditions of this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

23. **Prohibition Of Contingency Fees.**

23.1 The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

24. **Counterparts.**

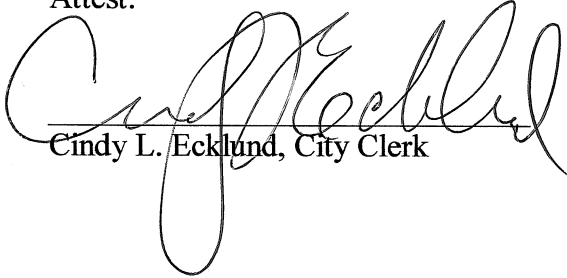
24.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

25. **Cooperative Procurements**

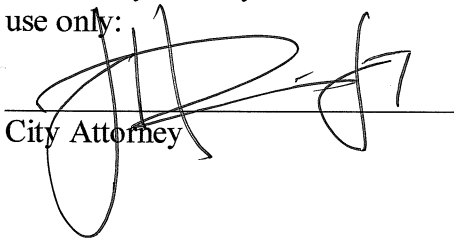
25.1 Should another municipal, county, regional, state or special district governmental agency in the State of Florida desire one or more of the herein described consulting services, the Consultant may provide such service(s) to such agency for the same services compensation outlined in this Agreement.

**IN WITNESS WHEREOF**, the parties execute this Agreement on the respective dates under each signature on the following page. The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same and the Consultant by and through its President, whose representative has been duly authorized to execute same.

Attest:

  
Cindy L. Ecklund, City Clerk

Approved as to form and legal  
sufficiency for City of Marathon  
use only:

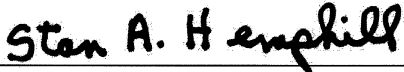
  
City Attorney

CITY OF MARATHON

By:   
W. Scott Janke, City Manager

Date: 6/21/04

CONSULTANT

By:   
Stan A. Hemphill, President

Date: 05/05/04

## EXHIBIT "A"

### SCOPE OF SERVICES

#### GRANT ADMINISTRATION

The Consultant shall prepare and submit all project commencement, progress and close-out administrative documents required by the grant program administrators to determine that the grant project is acceptable and use his best efforts to obtain the \$200,000 grant payment for the City. Such specific services as the following shall be:

##### Project Commencement

- \* Gather information, prepare, obtain all necessary signatures, and submit project commencement documents.

##### Status Reports

- \* Monitor the project's progress in view of the grant expiration date and future grant expiration grant opportunities for the City.
- \* Gather information, prepare, obtain all necessary signatures, and submit project status reports.

##### Recognition Signs

- \* Provide the necessary language for any required grant recognition sign.

##### Project Completion

- \* Gather information, prepare, obtain all necessary signatures, and submit project completion documents.

##### Project Inspection

- \* Facilitate the grant program personnel's inspection and acceptance of the project.

##### Project Amendments

- \* If necessary, gather information, prepare, obtain all necessary signatures, and submit one or more grant agreement amendment requests.
- \* Obtain, review and negotiate any draft grant amendments to clarify all language, terms, conditions and attachments.
- \* Provide any draft grant amendments to the City.

- \* Obtain all necessary signatures for any grant amendments.
- \* Return any signed grant amendments to the grant program personnel.
- \* Obtain a copy of any fully executed grant amendments from the grant program personnel.
- \* Provide a copy of any fully executed grant amendments to the City.

#### **Grant Payments**

- \* Gather information, prepare, obtain all necessary signatures, and submit expenditure documentations.
- \* Gather information, prepare, obtain all necessary signatures, and submit grant payment requests.
- \* Obtain one or more grant payments for the City.

#### **Grant Appreciation**

- \* Express written appreciation and gratitude to the grant program personnel.