

**CITY OF MARATHON, FLORIDA
RESOLUTION 2005-073**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH LEISURE GRANTS SERVICE, INC., FOR SERVICES IN ASSOCIATION WITH THE FLORIDA RECREATION DEVELOPMENT ASSISTANCE PROGRAM APPLICATION AND GRANT ADMINISTRATION IN AN AMOUNT NOT TO EXCEED \$29,500

WHEREAS, the City of Marathon (the "City") wishes to apply for a grant from the Florida Department of Environmental Protection – Florida Recreation Development Assistance Program (the "Grant") for the Marathon Community Park Upgrades; and

WHEREAS, the City wishes to enter into a Professional Services Agreement (the "Agreement") with Leisure Grant Services, Inc. ("LGS") for application and management of the Grant; and

WHEREAS, the services to be rendered by LGS are professional consulting services and, therefore, exempt from the competitive bidding requirements in the City's Policies and Procedures for City Employees and Officials Regarding Purchasing (the "Purchasing Procedures").

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

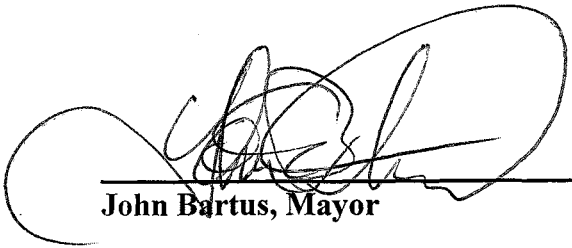
Section 1. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. The professional services agreement between the City and Leisure Grant Service, Inc., for application and management of the FRDAP Grant in an amount not to exceed \$29,500.00 as attached hereto 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. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 14th day of June, 2005.

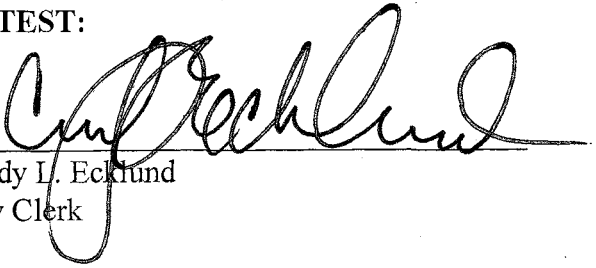
THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

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

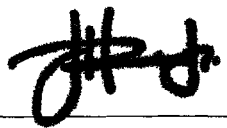
ATTEST:



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

**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 obtaining funding from the Florida Department of Environmental Protection – Florida Recreation Development Assistance Program for the Marathon Community Park Upgrades (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 \$24,000.00 for the completion of the Project.
- 3.2 The Consultant shall invoice the City on a quarterly basis, beginning August 1, 2005 through November 1, 2006, for six 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: Mike Puto, 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
Cindy L. Ecklund, City Clerk

CITY OF MARATHON

By: Michael Puto
Mike Puto, City Manager

Date: 06/15/05

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

J.H.J.
City Attorney

CONSULTANT

By: Stan A. Hemphill
Stan A. Hemphill, President

Date: June 6, 2005

EXHIBIT "A"

SCOPE OF SERVICES

GRANT PLANNING AND GENERATION

The following specific services shall be performed:

Site Information, Capital Programming, Needs, & Available Funding

- * Visit the project site to become familiar with its location, configuration, surrounding features, natural features and man-made features.
- * Review any available project information, including location maps, aerials, aerial photographs, on-site photographs, site control instruments, boundary maps or surveys, and other narrative or visual information.
- * Review the types of experiences programmed for the site.
- * Review the types of recreation facilities and support improvements programmed for the site.
- * Analyze the site's general capitalization needs for acquisition, planning, design, development, equipment and landscaping.
- * Analyze the specific work scope, work phases, work schedule and work budget for the site.
- * Analyze the City's funding source(s) and amount(s) for the project budget.

Grant Department/Division/Bureau, Program, Legislation, Administrative Rule, Schedules, Forms And Instructions, Training Workshops And Educational Sessions, & Program Administrator

- * Monitor the park and recreation philosophies and approaches of (1) the funding department, (2) the funding division and (3) the funding bureau, all of which are responsible for the ongoing management of the targeted grant program.
- * Review the recent history of the grant program, monitor its current changes and anticipate its future trends.
- * Monitor any legislation that impacts the grant program.
- * Obtain, analyze and monitor any revisions to the grant program's administrative rule.
- * Obtain, analyze and monitor any revisions to the grant program's schedules that affect such items as (1) the grant application submission period, (2) the maximum time frame for eligi-

ble retroactive expenses, (3) the maximum time frame for implementation of a grant funded project, etc.

- * Obtain, analyze and secure any necessary clarification of the grant program's application forms and instructions.
- * Obtain, analyze and secure any necessary clarification of the grant program's administration forms and instructions to be used for the (1) project commencement, (2) status reports and (3) project completion of an awarded grant.
- * Attend any grant program training workshops or educational sessions, particularly as they relate to the program's (1) grant application and (2) grant administration requirements.
- * Establish and strengthen a long lasting productive relationship with the grant program administrator(s).

Grant Strategy, Management Schedule, Capital Improvements, Personnel Roles, & Application Notification

- * Conduct a grant strategy meeting with the City to outline the (1) pursuit, (2) approval, (3) implementation and (4) administration of the grant project.
- * Prepare an overall Grant Management Schedule for the (1) planning, (2) generation and (3) administration of the grant funding.
- * Analyze the site's future capital improvements and identify the optimum combination of (1) primary recreation areas and facilities and (2) support facilities and improvements that will be the most competitive through the grant program's scoring system.
- * Clarify the grant project team members' roles regarding (1) narrative and visual information items, (2) document signatures, (3) document mailings, and (4) communication channels required for the grant.
- * Notify the grant program administrator(s) that a grant application will be submitted during the forthcoming submission period.

Application Preparation

- * Prepare a detailed table of contents for the grant application.
- * Prepare a detailed list of the types, descriptions and quantities of narrative and visual information required for the grant application.
- * Gather, organize and integrate narrative data and visual documents for the grant application.
- * Prepare the grant application in a tailored manner to document the project's service and

financial needs.

- * Obtain all necessary signatures for the grant application documents.
- * If necessary, mobilize community based group, government agency and/or legislative support for the grant application.

Application Submission

- * Submit the appropriate quantities of the grant application to the required delivery location prior to the submission deadline.
- * Confirm that the grant application was received in a timely manner.
- * Prepare and submit any supplemental grant application information requested by the grant program personnel.
- * Provide a copy of the grant application and any supplemental information to the City.

Application Competition

- * Obtain information concerning the amount of competition for the requested grant revenues.
- * If necessary, present the grant application through a dynamic approach to showcase the project's service and financial needs to the grant decision makers at one or more public review meetings.
- * Obtain a copy of the ranking of the grant application among all competing projects.
- * Maintain ongoing communications with the grant program personnel to maximize the approval competitiveness of the grant project.

Grant Commitment

- * Obtain the grant program personnel's commitment to financing the grant project.
- * Obtain a written notification of the grant's availability.
- * Provide a written acceptance of the grant to the grant program personnel.

Grant Approval

- * Obtain a draft grant agreement from the grant program personnel.
- * Work with the City Attorney to review and negotiate the draft grant agreement to clarify all language, terms, conditions and attachments.

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

GRANT ADMINISTRATION

Should the grant be awarded, these additional services will be provided only after the City signing a grant administration authorization for an additional \$5,500.00. 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 grant payment(s) 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.