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**CITY OF MARATHON, FLORIDA  
RESOLUTION 2005-040**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO A GRANT AGREEMENT WITH FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION, FOR CONSTRUCTION OF MARINA IMPROVEMENTS IN THE AMOUNT OF \$100,000**

**WHEREAS**, the City of Marathon, Florida (the "City") applied to the Florida Fish and Wildlife Conservation Commission (the "FFWCC") for a grant to fund certain marina improvements; and

**WHEREAS**, the FFWCC has approved a grant in the amount of \$100,000.00 subject to the City and FFWCC entering into a grant agreement.

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

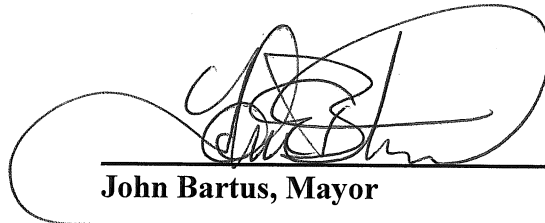
**Section 1.** The above recitals are true and correct and are incorporated herein.

**Section 2.** The grant agreement between the City of Marathon and FFWCC, for construction of marina improvements in the amount of \$100,000.00 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.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED** by the City Council of the City of Marathon, Florida, this 12<sup>th</sup> day of April, 2005.

**THE CITY OF MARATHON, FLORIDA**

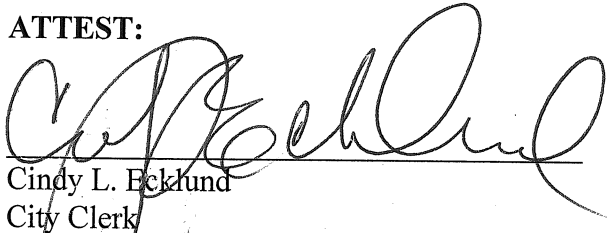


\_\_\_\_\_

**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:**



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CITY ATTORNEY



**FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION  
BOATING INFRASTRUCTURE GRANT PROGRAM**

**COOPERATIVE AGREEMENT**

THIS AGREEMENT is entered into by and between the FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION, whose address is 620 South Meridian Street, Tallahassee, FL 32399-1600 hereafter "COMMISSION," and the CITY OF MARATHON, whose address is 10045-55 Overseas Highway, Marathon, Florida 33050, hereafter "GRANTEE," to conduct a two phase project at **Boot Key Harbor City Marina**, hereinafter referred to as the "Project," under the Boating Infrastructure Grant Program, hereinafter referred to as the "Program."

NOW THEREFORE, the COMMISSION and the GRANTEE, for the considerations hereafter set forth, agree as follows:

**PROJECT DESCRIPTION**

1. It is understood and agreed that this Agreement shall consist of two phases: Phase I – Project Construction, and Phase II – Project Management. During Phase I the GRANTEE shall construct and implement its project proposal, as described in Attachment A-2, Boating Infrastructure Grant Program Application for **Boot Key Harbor City Marina Tier I FY 2003-2004**. The Federal aid grant for this project is attached hereto and made a part hereof. Also during Phase I, the COMMISSION shall reimburse the GRANTEE for the costs of construction upon satisfactory completion and approval of the Project by the COMMISSION as provided herein. All Phase I activities must be completed during the time span provided herein for that portion of the Agreement. During Phase II the parties shall cooperate in the ongoing and continuous management of the Project under the terms and conditions provided herein.

**DUTIES OF THE GRANTEE**

2. The GRANTEE shall perform the services and specific responsibilities as set forth in Attachment A, entitled Scope of Services attached hereto and made a part hereof.
3. The GRANTEE shall perform the services in a proper and satisfactory manner as determined by the COMMISSION. Any and all such equipment, products or materials necessary to perform these services, or requirements as further stated herein, shall be supplied by the GRANTEE. The GRANTEE shall perform as an independent GRANTEE and not as an agent, representative or employee of the COMMISSION.
4. The GRANTEE shall commence work on the Project within six (6) months of execution of this Agreement. Failure by the GRANTEE to begin work shall constitute a breach of the Agreement and result in termination of the Agreement by the COMMISSION.
5. The GRANTEE agrees to construct, operate and maintain the "Project" according to all provisions of Attachment B, Boating Infrastructure Grant Program Final Rule, 50 CFR Part 86, attached and made part of this Agreement.
6. **STATE HISTORICAL REQUIREMENTS:** GRANTEE agrees to follow and abide by all recommendations and comments made by Frederick Gaske in the Division of Historical

Resources Project File No. 2004-1924 letter dated March 9, 2004. A copy of said letter is attached and made a part of this Agreement as Attachment A-1.

7. **SITE DEDICATION AND CONVERSION:** Grantee shall ensure that facilities built pursuant to this Agreement must be substantial structures lasting at least 20 years and operated and maintained for their intended purpose during that period. The GRANTEE agrees that land owned by the GRANTEE that is developed with Program funds shall be dedicated for a minimum of twenty (20) years as a site for the use and benefit of the public. The dedication shall be recorded in public property records by the GRANTEE. Land under control other than by ownership by the GRANTEE (i.e. lease, management agreement, cooperative agreement, inter-local agreement or other similar instrument) and developed with Program funds shall be managed by the GRANTEE for a minimum period of twenty (20) years from the completion date set forth in the *Project Certification of Completion*. Title to all improvements shall be retained by the GRANTEE upon final payment by the COMMISSION.
8. Should the GRANTEE, within the 20-year period set forth above, convert all or any part of the Project to other than COMMISSION approved uses, the GRANTEE shall replace the area, facilities, resource or site at its own expense with a Project acceptable to the COMMISSION of comparable scope and quality. In the event the Project is converted to use for other purposes during this period and not replaced with a like Project acceptable to the COMMISSION, the GRANTEE agrees to return to the COMMISSION all funds tendered for the original Project.
9. **ACKNOWLEDGEMENT:** The GRANTEE, at its expense, shall purchase, erect and maintain a permanent sign, not less than 4 feet by 8 feet in size, displaying the COMMISSION's official logo and, approved by the COMMISSION, identifying the COMMISSION as a funding source for the Project. Also, the Sport Fish Restoration Fund logo and the Boating Infrastructure Grant Program must be included in such acknowledgement. This acknowledgement shall be maintained for a period of 20 years or the duration of the Agreement. Failure by the GRANTEE to maintain such acknowledgement shall be considered a breach of the Agreement.
10. **SIGNAGE:** The GRANTEE, at its expense, shall purchase, erect and maintain directional signs, approved by the COMMISSION, on main public highways to direct public users to each boating facility funded through the Program. The GRANTEE agrees to provide and maintain such signs at its expense for a period of 20 years or the duration of the Agreement. Failure by the GRANTEE to erect and maintain such signs shall be considered a breach of the Agreement.
11. **OPERATION AND MAINTENANCE:** For Phase II of the Agreement, which shall include the entire term of the Agreement, the GRANTEE shall provide and be responsible for any and all costs associated with ordinary and routine operations and maintenance of the Project, including any and all personnel, equipment or service and supplies costs beyond the costs approved for reimbursement in Phase I of this Agreement.
12. The GRANTEE shall assume responsibility for provision of any and all ongoing maintenance and operation activities necessary to protect, preserve and provide quality boating facilities constructed through the use of Program funds for use and enjoyment by the public. Any significant events (vandalism, flood, fire, or closures) that require corrective actions shall be promptly reported to the COMMISSION.
13. **TRANSIENT DOCK FEES:** GRANTEE agrees that all fees derived from use of the transient dock facilities during Phase II will be used for the operation and maintenance of the transient dock facilities and support facilities created from each Federal Aid Grant. GRANTEE agrees to maintain and submit quarterly income and usage records during the grant period to the COMMISSION Boating Infrastructure Grant Program Administrator. Reports must clearly show income collected via each grant project and show the type and cost of maintenance performed.

14. **THIRD PARTY AGREEMENTS:** Grantee agrees that facilities operated or maintained by third parties must be covered by a written agreement [50 CFR 80.20]. The agreement must include a provision that revenues from user fees must be used to offset operation and maintenance costs and a stipulation prohibiting uses of the facility that may conflict with its intended purposes. [50 CFR 80.14(b) (2); 80.14(c)].
15. **COMMISSION ACCESS:** The GRANTEE shall allow unencumbered access to the Project site to the COMMISSION, its employees or agent for the duration of the Agreement for the purpose of site visit or inspection to verify the facility is being maintained, in operation and is open and available to the public. As part of the inspection, the COMMISSION may request maintenance and use information from the GRANTEE to validate the condition of the facility.

#### GRANTEE ELIGIBILITY

16. The GRANTEE shall be licensed as necessary to perform under this Agreement as may be required by law, rule, or regulation, and shall provide evidence of such compliance to the COMMISSION upon request.
17. By acceptance of this Agreement, the GRANTEE warrants that it has the capability in all respects to fully perform the Agreement requirements and the integrity and reliability that will assure good-faith performance as a responsible recipient.

#### DUTIES OF THE COMMISSION

18. The COMMISSION shall, within budgetary constraints inspect the Project prior to and during the construction of the Project. The GRANTEE shall notify the COMMISSION when the Project has reached substantial completion so that inspection may occur in a time frame allowing for the timely submission and processing of the final invoice. The COMMISSION shall inspect the work accomplished on the Project and, if deemed complete and in compliance with the terms of the Agreement, approve the request for payment.

#### TERM OF AGREEMENT

19. This Agreement shall begin upon execution by both parties and end 20 years after the Phase I completion date, inclusive. **However, the GRANTEE shall complete all Phase I project services on or before August 31, 2006.** Under Phase I, the GRANTEE'S final invoice must be received by the COMMISSION no later than 30 days after the phase I completion date. **Failure by the GRANTEE to execute this Agreement within 120 days of formal COMMISSION approval shall render the award of Program funds null and void, and shall result in termination of this Agreement.**

#### COMPENSATION

20. As consideration for the services rendered by the GRANTEE under the terms of this Agreement, the COMMISSION shall compensate the GRANTEE on a cost reimbursement basis in an amount not to exceed \$100,000.

## PAYMENTS

21. The total approved estimated project cost for Phase I of the Tier I, FY 2003-2004 is \$205,000. The COMMISSION agrees to reimburse the GRANTEE for an amount not to exceed \$100,000 for satisfactory completion by the GRANTEE of Phase I of this project as indicated on the attached Grant agreement between the COMMISSION and the US Fish and Wildlife Service. The GRANTEE agrees to provide a minimum of \$105,000 toward completion of Phase I of the project, and shall be responsible for any additional costs that exceed the total approved estimated project cost for Phase I. The COMMISSION shall provide funds to the GRANTEE on a cost reimbursement basis in the form of a single payment made within 30 days of receipt and approval of a properly certified invoice. The GRANTEE understands and agrees that there shall be no reimbursement of funds for expenses incurred prior to the execution of this Agreement unless a retroactive waiver for Project work has been approved by the COMMISSION. All bills for amounts due under this Agreement shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.
22. Program funds shall be disbursed to the GRANTEE only after pre-approved phase or final completion of Phase I of the Project occurs and work is verified by COMMISSION staff. Payment will be made only for **documented and verified** costs. **The COMMISSION will not pre-approve or disburse any Program funds in advance. Failure to complete the Project and make final payment request to the COMMISSION within the stipulated period shall result in termination of this Agreement. Any funds not disbursed or expended by the end of the stipulated period are subject to the provisions of Chapter 216.301, Florida Statutes.**
23. No travel expenses are authorized under the terms of this Agreement.
24. The GRANTEE shall be reimbursed on a cost reimbursement basis in accordance with Comptroller Contract Payment Requirements as shown in the Department of Financial Services, Bureau of Accounting and Auditing, Voucher Processing Handbook, Chapter 4., C., I., attached hereto and made a part hereof as Attachment C.
25. For Agreements whose term extends beyond the State fiscal year in which encumbered funds were appropriated, the State of Florida's performance and obligation to pay is contingent upon an annual appropriation by the Legislature.
26. Invoices, including backup documentation, shall be submitted to:  
  
Boating Infrastructure Grant Program  
Florida Fish and Wildlife Conservation Commission  
Division of Law Enforcement  
620 South Meridian Street  
Tallahassee, FL 32399-1600

## DEFICIENCIES

27. Any Phase I Project deficiencies, as noted in the final Project inspection, shall be corrected by the GRANTEE prior to final Project acceptance and payment by the COMMISSION. The COMMISSION may restrict any or all payment of Program funds pending correction of such deficiencies.

**TERMINATION**

- 28. This Agreement shall terminate immediately upon the COMMISSION giving written notice to the GRANTEE in the event of fraud, willful misconduct, or breach of this Agreement.
- 29. The COMMISSION may terminate this Agreement at any time with or without cause by a written notice by certified mail, return receipt requested, from the COMMISSION to the GRANTEE. Upon receipt of such notice, the GRANTEE shall, unless the notice directs otherwise, immediately discontinue all work and services.
- 30. Upon termination of this Agreement, the GRANTEE shall promptly render to the COMMISSION all property belonging to the COMMISSION. For the purposes of this section, property belonging to the COMMISSION shall include, but shall not be limited to, all books and records kept on behalf of the COMMISSION.

**TAXES**

- 31. The GRANTEE recognizes that the State of Florida, by virtue of its sovereignty, is not required to pay any taxes on the services or goods purchased under the terms of this Agreement.

**NOTICE**

- 32. Unless a notice of change of address is given, any and all notices shall be delivered to the parties at the following addresses:

**GRANTEE**

Harry Delashmutt, Ports Manager  
City of Marathon, Florida  
10045-55 Overseas Highway  
Marathon, Florida 33050  
Phone: (305) 743-0033  
Fax: (305) 743-3667  
Email: [delashmutth@ci.marathon.fl.us](mailto:delashmutth@ci.marathon.fl.us)

**COMMISSION**

Mahmoud Madkour, Program Administrator  
Boating Infrastructure Grant Program  
Fish and Wildlife Conservation Commission  
Division of Law Enforcement  
620 South Meridian Street  
Tallahassee, FL 32399-1600  
Phone: (850) 488-5600  
Fax: (850) 488-9284  
Email: [BigP@MyFWC.com](mailto:BigP@MyFWC.com)

**AMENDMENT OR MODIFICATION**

- 33. No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and lawfully executed by the parties.
- 34. The COMMISSION may at any time, by written order designated to be a Modification, make any change in the work within the general scope of this Agreement (e.g., specifications, schedules, method or manner of performance, requirements, etc.). However, all Modifications are subject to the mutual agreement of both parties as evidenced in writing. Any Modification that causes an increase or decrease in the GRANTEE 's cost or the term of the Agreement shall require a formal amendment.



### RELATIONSHIP OF THE PARTIES

35. The GRANTEE shall perform as an independent agent and not as an agent, representative, or employee of the COMMISSION.
36. The GRANTEE covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.
37. The parties agree that there is no conflict of interest or any other prohibited relationship between the GRANTEE and the COMMISSION.

### INSURANCE REQUIREMENTS

38. The GRANTEE warrants and represents that it is self-funded for liability insurance, appropriate and allowable under Florida law, and that such self-insurance offers protection applicable to the GRANTEE 's officers, employees, servants and agents while acting within the scope of their employment with the GRANTEE.
39. To the extent required by law, the GRANTEE will either be self-insured for Worker's Compensation claims, or will secure and maintain during the life of this Contract, Workers' Compensation Insurance for all of its employees connected with the work of this project. If any work is subcontracted, the GRANTEE shall require the subcontractor similarly to provide Workers' Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the GRANTEE. Such self-insurance program or insurance coverage shall comply fully with the Florida Workers' Compensation law. In case any class of employees engaged in hazardous work under this Contract is not protected under Workers' Compensation statutes, the GRANTEE shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to the COMMISSION, for the protection of his employees not otherwise protected.
40. Employers who have employees who are engaged in work in Florida must use Florida rates, rules, and classifications for those employees. In the construction industry, only corporate officers of a corporation or any group of affiliated corporations may elect to be exempt from workers' compensation coverage requirements. Such exemptions are limited to a maximum of three per corporation and each exemption holder must own at least 10% of the corporation. Independent contractors, sole proprietors and partners in the construction industry cannot elect to be exempt and must maintain workers' compensation insurance.

### CANCELLATION UNDER CHAPTER 119, FLORIDA STATUTES

41. This Agreement may be unilaterally canceled by the COMMISSION for refusal by the GRANTEE to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the GRANTEE in conjunction with this Agreement.

### RECORD KEEPING REQUIREMENTS

42. The GRANTEE shall maintain accurate books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs of any nature expended in the

performance of this Agreement, in accordance with generally accepted accounting principles. The GRANTEE shall allow the COMMISSION, the State, or other authorized representatives, access to periodically inspect, review or audit such documents as books, vouchers, records, reports, canceled checks and any and all similar material. Such audit may include examination and review of the source and application of all funds whether from the state, local or federal government, private sources or otherwise. These records shall be maintained for five (5) years following the close of this Agreement. In the event any work is subcontracted, the GRANTEE shall require each subcontractor to similarly maintain and allow access to such records for audit purposes.

#### **LIABILITY**

43. Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, Florida Statutes.

#### **NON-DISCRIMINATION**

44. No person, on the grounds of race, creed, color, national origin, age, sex, or disability, shall be excluded from participation in, be denied the proceeds or benefits of, or be otherwise subjected to discrimination in performance of this Agreement.

#### **PROHIBITION OF DISCRIMINATORY VENDORS**

45. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

#### **NON-ASSIGNMENT**

46. This is an exclusive Agreement with the GRANTEE and may not be assigned in whole or in part without the written approval of the COMMISSION.

#### **PERFORMANCE AND REMEDIES**

47. It is understood by the parties that remedies for damages or any other remedies provided for herein shall be construed to be cumulative and not exclusive of any other remedy otherwise available under law.

#### **SEVERABILITY AND CHOICE OF VENUE**

48. This Agreement has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be

ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Any action in connection herewith, in law or equity, shall be brought in Leon County, Florida.

#### **NO THIRD PARTY RIGHTS**

49. The parties hereto do not intend nor shall this Agreement be construed to grant any rights, privileges or interest to any third party.

#### **JURY TRIAL WAIVER**

50. As consideration of this Agreement, the parties hereby waive trial by jury in any action or proceeding brought by any party against any other party pertaining to any matter whatsoever arising out of or in any way connected with this Agreement.

#### **PROPERTY/EQUIPMENT**

51. The GRANTEE is not authorized to use funds provided herein for the purchase of any non-expendable equipment or personal property valued at \$1,000 or more for performance under this Agreement.

#### **FEDERAL/FLORIDA SINGLE AUDIT ACTS REQUIREMENTS**

52. The Florida Single Audit Act requires all non-State organizations who are recipients of State financial assistance to comply with the audit requirements of the Act, pursuant to Section 215.97, Florida Statutes. In addition, recipients and subrecipients of federal financial assistance must comply with the Federal Single Audit Act requirements of OMB Circular A-133. Therefore, the GRANTEE shall be required to comply with the audit requirements outlined in Attachment D, titled Requirements of the Federal and Florida Single Audit Acts, attached hereto and made a part of the Agreement, as applicable.
53. In accordance with Section 216.347, Florida Statutes, the GRANTEE is hereby prohibited from using funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or a state agency.

#### **CERTIFICATE OF COMPLETION**

54. The GRANTEE will be required to complete the Certification of Completion Statement form when all work has been completed and accepted. This form must be submitted to the Commission's Program Administrator with the GRANTEE's invoice for payment to be authorized. The Commission's Program Administrator shall submit the executed form with the invoice to Accounting Services.

#### **FEDERAL FUNDS**

55. This Agreement is funded in whole or in part by a grant from the Department of the Interior, Fish and Wildlife Service, CFDA #15.622. Therefore, the GRANTEE shall be responsible for complying with all federal grant requirements as provided in the grant, a copy of which is attached hereto and made a part hereof as Attachment E. It is understood and agreed that the

GRANTEE is not authorized to expend any federal funds under this Agreement to a federal agency or employee without the prior written approval of the Department of the Interior, Fish and Wildlife Service.

56. This Agreement shall be performed pursuant to the Federal Aid in Sport Fish Restoration Act of 1950 (A.K.A. Dingell-Johnson Act), as amended, (64 Stat. 430; 16 U.S.C. 777-777k) and The Deficit Reduction Act of 1984 (Pub. L 98-369) also known as the Wallop-Breaux Act 1984, in accordance with general provisions for such agreements prescribed by the United States Department of the Interior. The GRANTEE acknowledges that by entering into this Agreement and accepting the benefits and duties imposed hereunder, it occupies the status of a sub-grantee or sub-recipient of Federal Aid Funds, and is therefore obligated, and hereby agrees to comply with all terms of the foregoing Acts of Congress and applicable regulations pertaining thereto.
57. By acceptance of this Agreement, the GRANTEE agrees to comply with the requirements of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, as amended, the 1990 American Disabilities Act, and further agrees to cooperate with the COMMISSION in all aspects of compliance with all laws relating to use of Program funds.
58. In the event of a penalty being imposed by the Department of Interior due to GRANTEE'S non-compliance with applicable Federal Aid regulations, GRANTEE agrees to indemnify the COMMISSION for any such penalties. If that Grantee does not comply with Federal Aid rules and the Boating Infrastructure Grant Program final Rule as published in the Federal Register ,volume 66, number 12, on January 18, 2001 the Grantee agrees to reimburse the entire grant amount of \$100,000 for the boating facilities improvements.

#### **DEBARMENT AND SUSPENSION**

59. In accordance with Executive Order 12549, Debarment and Suspension, the GRANTEE shall agree and certify that neither it, nor its principals, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency; and, that the GRANTEE shall not knowingly enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction, unless authorized in writing to the Commission by the federal agency issuing the grant award.
60. Upon execution of this Agreement by the GRANTEE, the GRANTEE shall complete, sign and return a copy of the form entitled "Certification Regarding Debarments, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Federally Funded Transactions", attached hereto and made a part hereof as Attachment F.
61. As required by paragraphs 41 and 42 above, the GRANTEE shall include the language of this section, and Attachment F in all subcontracts or lower tier agreements executed to support the GRANTEE 's work under this Agreement.

#### **PROHIBITION AGAINST LOBBYING**

62. The GRANTEE certifies that no Federal appropriated funds have been paid or will be paid, on or after December 22, 1989, by or on behalf of the GRANTEE, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the

awarding, renewal, amending or modifying of any Federal contract, grant, or cooperative agreement. If any non-Federal funds are used for lobbying activities as described above in connection with this Agreement, the GRANTEE shall submit Standard Form-LLL, "Disclosure Form to Report Lobbying", and shall file quarterly updates of any material changes. The GRANTEE shall require the language of this certification to be included in all subcontracts, and all subcontractors shall certify and disclose accordingly.

63. Pursuant to the Lobbying Disclosure Act of 1995, the GRANTEE agrees to refrain from entering into any subcontracts under this Agreement with any organization described in Section 501(c)(4) of the Internal Revenue Code of 1986, unless such organization warrants that it does not, and will not, engage in lobbying activities prohibited by the Act as a special condition of the subcontract.

#### **SOLICITATION**

64. The GRANTEE warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the GRANTEE 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 the GRANTEE any fee, COMMISSION, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

#### **ENTIRE AGREEMENT**

65. This Agreement with all incorporated attachments and exhibits represents the entire agreement of the parties. Any alterations, variations, changes, modifications or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, and duly signed by each of the parties hereto, unless otherwise provided herein.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed through their duly authorized signatories on the day and year last written below.

CITY OF MARATHON

FLORIDA FISH AND WILDLIFE  
CONSERVATION COMMISSION

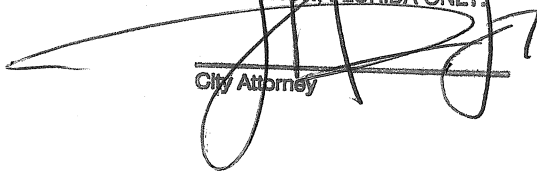
  
\_\_\_\_\_  
Michael H. Puto, City Manager

  
\_\_\_\_\_  
Victor J. Heller, Assistant Executive Director

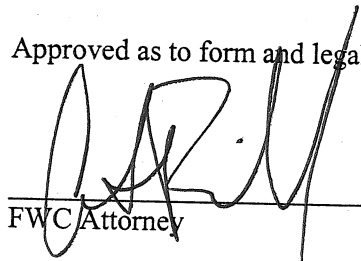
Date: 04/12/05

Date: 27-April-2005

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

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

Approved as to form and legality:

  
\_\_\_\_\_  
FWC Attorney

10045-55 Overseas Hwy  
Address

Marathon FL 33050  
City, State and Zip Code

Federal Employer Identification Number: 65-0984873

List of attachments included as part of this Agreement:

- Attachment A: Scope of Services
- Attachment A-1: Division of Historical Resources Letter
- Attachment A-2: Boating Infrastructure Grant Program Application
- Attachment B: Boating Infrastructure Grant Program Final Rule
- Attachment C: Comptroller Contract Payment Requirements
- Attachment D: Requirements of the Federal and Florida Single Audit Acts
- Exhibit 1: Federal Resources Awarded to the Grantee Pursuant to this Agreement
- Attachment E: United States Department of the Interior Grant Agreement No. Y-7-1
- Attachment F: Certification Regarding Debarments, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Federally Funded Transactions
- Attachment G: Certificate of Completion Statement Form

ATTACHMENT A

Scope of Services for Project at  
Boot Key Harbor City Marina

1. PROJECT DESCRIPTION  
It is understood and agreed that this Project shall consist of two phases: Phase I – Project Construction, and Phase II – Project Management. During Phase I the GRANTEE shall construct and implement its project proposal, as described in Attachment A-2, Boating Infrastructure Grant Program Application for **Boot Key Harbor City Marina Tier I FY 2003-2004**. During Phase II the parties shall cooperate in the ongoing and continuous management of the Project under the terms and conditions provided herein.
2. PROJECT MANAGEMENT  
It is the GRANTEE'S responsibility to contract, manage and inspect all aspects of the Project, including: the construction contract, materials purchase, engineering, master plan or force account labor performed at any Project site.
3. REVIEW AND APPROVAL  
The GRANTEE shall forward one copy of the bid package to the COMMISSION'S Program Administrator for review prior to soliciting for quotations or commencing any work. The COMMISSION'S Program Administrator shall have 21 working days for review. This review shall ensure that minimum guidelines for the Project's scope of work are adhered to.
4. PROFESSIONAL ENGINEERING  
All engineering must be completed by a professional engineer or architect registered in the State of Florida. All work must meet or exceed minimum design standards and guidelines established by all applicable local, state and federal laws.
5. PERMITS  
The GRANTEE agrees to submit copies of the U.S. Army Corps of Engineers and Department of Environmental Protection permits to the COMMISSION for review and approval prior to initiation of any construction work by the GRANTEE.
6. COST OVERRUNS  
The GRANTEE shall make every effort to avoid cost overruns on Phase I of the Project. If the total cost of Phase I of the Project exceeds the grant amount and any matching funds, the GRANTEE shall assume liability for all additional costs.
7. PHOTOGRAPHS  
During Phase I, the GRANTEE shall provide progress and final photographs of any construction project documenting satisfactory progress and completion prior to requesting payment from the COMMISSION. Final photographs shall be submitted with the *Certification of Completion* form.
8. REPORTING REQUIREMENTS  
The GRANTEE shall submit to the COMMISSION **monthly** activity reports outlining the progress of Phase I of each Project, identifying any problems that may have arisen, and actions taken to correct such problems. Reports shall also include comparison of actual costs incurred

with the Project Costs as submitted in the Grant Application (Attachment A-1). Such reports shall be due by the 15<sup>th</sup> of each month to the COMMISSION'S Program Administrator until the *Certification of Completion* is submitted.

9. REQUEST FOR PAYMENT

For satisfactory performance under Phase I of this Agreement, the GRANTEE shall be paid upon submission of properly certified invoice(s) to the COMMISSION. The request for payment shall consist of an original invoice on the GRANTEE'S official letterhead, clearly marked as invoice, supported by an itemized list, by category, as reflected in Attachment A-2, Grant Application, of all expenditures claimed. **Invoices shall contain detail sufficient for a proper pre-audit and post-audit thereof** and shall contain the Agreement number and the GRANTEE'S **Federal Employer Identification number**. An **original and three (3) copies** of the invoice shall be submitted. The COMMISSION shall not provide advance payment. Upon a desk audit review of the payment request, acceptance of the Project and receipt of all Project closeout documentation, the COMMISSION shall process the final payment.



**Attachment A-1 through G,  
Are available to be viewed at the  
City of Marathon's Clerks  
Office.**

**If you would like to review this  
large item please**

**Contact the Clerks Office.**

# FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION



RODNEY BARRETO  
Miami

SANDRA T. KAUPE  
Palm Beach

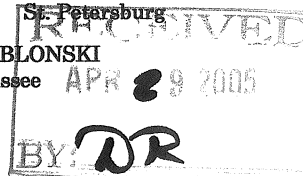
H.A. "HERKY" HUFFMAN  
Enterprise

DAVID K. MEEHAN  
St. Petersburg

KATHY BARCO  
Jacksonville

RICHARD A. CORBETT  
Tampa

BRIAN S. YABLONSKI  
Tallahassee



KENNETH D. HADDAD, Executive Director  
VICTOR J. HELLER, Assistant Executive Director

DIVISION OF LAW ENFORCEMENT  
COLONEL JULIE JONES, Director  
LT. COLONEL DON HOLWAY, Deputy Director  
LT. COLONEL JIM McCALLISTER, Deputy Director  
LT. COLONEL MIKE WIWI, Deputy Director  
(850)488-6251, TDD (850)488-9542

April 27, 2005

Mr. Harry Delashmutt, Ports Manager  
City of Marathon  
10045-55 Overseas Hwy  
Marathon FL 33050

RE: Boating Infrastructure Grant Program (BigP) Agreement – No. FWC 04103

Dear Mr. Delashmutt:

Enclosed is an original of the fully-executed Agreement, FWC 04103, for the Boating Infrastructure Grant Program (BigP) Project, Boot Key Harbor City Marina Tier I, City of Marathon. Please note that work for Phase I project services are to begin within six (6) months of execution of this Agreement, April 27, 2005.

It is requested that a Bi-Annual Progress Report be submitted, using the attached form, with the first report due on or before October 27, 2005. This will expedite information needed for the report that must be submitted to the US Fish and Wildlife Service. I will also e-mail you this form and the Certification of Completion Statement form to be used to request for payment upon completion of Phase I.

If you have questions or need further information, please do not hesitate to give me a call at 410-0656 Ext. 17122 or e-mail me at [Patricia.Harrell@MyFWC.com](mailto:Patricia.Harrell@MyFWC.com).

Sincerely,

A handwritten signature in cursive script that reads "Patricia Harrell".

Patricia Harrell, Grants Specialist  
Boating & Waterways

/ph  
Enclosures

# FedEx® US Airbill

FedEx Tracking Number **850443570710**

0200

Sender's Copy

**1 From** Please print and press hard

Date 4-13-05 Sender's FedEx Account Number 265979122

Sender's Name Harry Delashmatt Phone (305) 289-7788

Company City of Marathon Ports Dept.

Address 10045-55 Overseas Hwy.

City Marathon State FL ZIP 33050

**2 Your Internal Billing Reference**

Print characters will appear on invoice. 0P110WAL

**3 To**

Recipient's Name Patricia Harrell Phone ( )

Company Fish & Wildlife Conservation Commission

Recipients Address 620 South Meridian Street

We cannot deliver to P.O. boxes or P.O. ZIP codes. Dept./Floor/Suite/Room

Address Tallahassee State FL ZIP 32399-1600

**TV online shipping at fedex.com**

By using this Airbill you agree to the service conditions on the back of this Airbill and in our current Service Guide, including terms that limit our liability. Questions? Visit our Web site at [fedex.com](http://fedex.com) or call 1.800.GoFedEx.1.800.463.3339.

**4a Express Package Service**

FedEx 2Day  
 Second business day\*  
 FedEx Express Saver  
 Third business day

**4b Express Freight Service**

FedEx 1Day Freight\*  
 Next business day\*\*  
 FedEx 2Day Freight\*  
 Second business day\*\*  
 FedEx 3Day Freight\*  
 Third business day\*\*

**5 Packaging**

FedEx Envelope\*  
 FedEx Pak\*  
 Includes FedEx Small Pak, FedEx Large Pak, and FedEx Study Pak  
 FedEx Box  
 FedEx Tube  
 Other

**6 Special Handling**

SAT/PAV/Delivery Available ONLY for FedEx Priority Overnight, FedEx 2Day, FedEx 1Day Freight, and FedEx 2Day Freight to select ZIP codes  
 HOLD Weekday at FedEx Location NOT Available for FedEx First Overnight  
 HOLD Saturday at FedEx Location Available ONLY for FedEx 2Day to select locations  
 Shipper's Declaration  
 Dry Ice  
 DRY Ice 9 UN 1895  
 Cargo Aircraft Only

**7 Payment Bill to:**

Sender Section 101  
 Recipient  
 Third Party  
 Credit Card  
 Cash/Check

**8 Sign to Authorize Delivery Without a Signature**

By signing you authorize us to deliver this shipment without obtaining a signature and agree to indemnify and hold us harmless from any resulting claims.  
Raw Date 11/03\*Pat\*15261 ©1994-2003 FedEx® PRINTED IN U.S.A. MMVA 04 \*\*\*  
**467**

RETAIN THIS COPY FOR YOUR RECORDS.