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**CITY OF MARATHON, FLORIDA
RESOLUTION 2007-158**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING FWC CONTRACT NO. 07091 WITH THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION; AUTHORIZING ACCEPTANCE OF \$200,000 IN GRANT FUNDING FOR 33RD STREET BOAT RAMP REPAIRS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR CONFLICTS; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the Florida Fish and Wildlife Conservation Commission (FWC) administers the Florida Boating Improvement Program (FBIP) to enhance boating access and other boating-related activities; and

WHEREAS, the City of Marathon submitted a grant application to FWC for funds to apply towards the repair of the 33rd Street Boat Ramp; and

WHEREAS, the Florida Fish and Wildlife Conservation Commission awarded the City of Marathon a grant of \$200,000 to apply towards the repair of the 33rd Street Boat Ramp.

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 incorporated herein.

Section 2. Council hereby approves Agreement No. 07091 with the FWC, attached hereto as exhibit A, and authorizes the acceptance of \$200,000 in grant funding for 33rd Street boat repairs, and authorizes the city manager to execute the agreement.

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 13th day of November , 2007.

THE CITY OF MARATHON, FLORIDA



Edward P. Worthington, Mayor

AYES: Vasil, Bull, Cinque, Tempest, Worthington
NOES: None
ABSENT: None
ABSTAIN: None

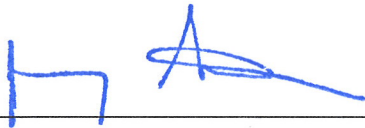
ATTEST:



Diane Clavier, City Clerk

(City Seal)

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



City Attorney

**FLORIDA BOATING IMPROVEMENT PROGRAM
GRANT AGREEMENT**

THIS AGREEMENT is entered into by and between the FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION, whose address is 620 South Meridian Street, Tallahassee, Florida 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 entitled **33rd Street Boat Ramp Hurricane Recovery**, hereafter "Project," using funds from the Florida Boating Improvement Program, hereafter "Program."

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

GRANTEE ELIGIBILITY

1. By acceptance of this Agreement, the GRANTEE warrants that it has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good-faith performance as a responsible recipient, and that the GRANTEE shall comport with Chapter 287, F.S., and all other applicable rules and laws.
2. 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.

SCOPE OF SERVICES

3. 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 complete the project, as described in Attachment A, *Scope of Work*, attached hereto and made a part hereof, and *Florida Boating Improvement Program (FBIP) Grant Application No. 07-037*, incorporated herein by reference. 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.
4. 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.
5. The GRANTEE agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be fully responsible for the payment of all monies due under any subcontract. It is understood and agreed by the GRANTEE that the COMMISSION shall not be liable to any sub-grantee (or subcontractor) for any expenses or liabilities incurred under the subcontract and that **the GRANTEE shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.**
6. The GRANTEE shall comply with all applicable federal, state, and local rules and regulations in providing services to the COMMISSION under this Agreement. The GRANTEE acknowledges that this requirement includes compliance with all applicable federal, state and local health and safety rules and regulations. The GRANTEE further agrees to include this provision in all subcontracts issued as a result of this Agreement.

7. The GRANTEE shall commence work on Phase I of the Project within six (6) months of execution of the Agreement. Failure by the GRANTEE to begin work shall constitute a breach of the Agreement and may result in termination of the Agreement by the COMMISSION.
8. 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 30 working days for review. This review shall ensure that minimum guidelines for the Project's scope of work are adhered to.
9. The GRANTEE shall provide a draft of any study or brochure to be produced with grant funds to the COMMISSION for approval prior to final printing and submission for payment. Further, at least 21 days prior to printing the COMMISSION shall review and approve all proposed publications that will be funded by this Agreement to ensure that environmental and boating safety issues are effectively addressed. At its discretion, the COMMISSION may elect to have its representative inspect printed material prior to its release from the printing vendor. The GRANTEE agrees to inform the COMMISSION at the completion of printing of any materials so that the COMMISSION may exercise this option.
10. The GRANTEE agrees not to proceed with Phase I construction until all necessary permits are obtained.
11. The GRANTEE, at its expense, shall purchase, erect and maintain a permanent sign, not less than four (4) feet by six (6) feet in size, displaying the COMMISSION's official logo for launching projects, or shall attach a permanent plaque for marine projects, or use some other manner of acknowledgement for non-construction projects, approved by the COMMISSION, identifying the COMMISSION as a funding source for the Project. Such 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.
12. 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.
13. 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.
14. For Phase II of this 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.
15. 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.

REPORTING REQUIREMENTS

16. The GRANTEE shall submit to the COMMISSION monthly activity reports outlining the progress of Phase I of the Project, identifying any problems that may have arisen, and actions taken to correct such problems. Such reports shall be submitted on the form provided by the COMMISSION,

Attachment B, attached hereto and made a part hereof, and due to the COMMISSION's Program Administrator by the 15th of each month until the *Certification of Completion* is submitted.

17. 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.
18. Upon completion of Phase I, the Project Manager for the GRANTEE shall sign a *Certification of Completion* form, Attachment C, attached hereto and made a part hereof, that certifies Phase I of the Project was completed in accordance with the prepared plans and specifications and the terms of this Agreement.

PROJECT INSPECTION

19. The COMMISSION may inspect the Project site prior to and during the construction of the Project. The GRANTEE shall notify the COMMISSION's Program Administrator when the Project has reached substantial completion so that inspection may occur in a timeframe allowing for the timely submission and processing of the final invoice. The COMMISSION's Program Administrator, or designee, 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.

SITE DEDICATION

20. 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, interlocal 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* (Attachment C). Title to all improvements shall be retained by the GRANTEE upon final payment by the COMMISSION.
21. 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.

TERM OF AGREEMENT

22. This Agreement shall begin upon execution by both parties and end **June 15, 2029**, inclusive. **However, the GRANTEE shall complete all Phase I project services on or before June 15, 2009.** The GRANTEE shall not be eligible for reimbursement for services rendered prior to the execution date of this Agreement nor after the termination date of the Agreement.
23. The GRANTEE shall execute this Agreement within 90 days of formal COMMISSION approval. Failure to execute this Agreement shall render the award of funds null and void, and shall result in termination of this Agreement.

COMPENSATION

24. For satisfactory completion of Phase I of the Project, **33rd Street Boat Ramp Hurricane Recovery**, by the GRANTEE under the terms of this Agreement, the COMMISSION shall pay the GRANTEE on a cost reimbursement basis in an amount not to exceed \$ 200,000.

25. The maximum amount of compensation shown in paragraph 24 is based on the GRANTEE's estimated total project cost of \$462,570 in FBIP application # 07-037. If the actual cost of the project is less than the estimated total project cost, compensation by the COMMISSION shall not exceed 43% of the actual total project cost.

PAYMENTS

26. The COMMISSION shall pay the GRANTEE for satisfactory service upon submission of a final invoice, accompanied by required reports or deliverables, and after acceptance of services and deliverables in writing by the Commission's Grant Manager. **The invoice must be submitted within 30 days after completion of Phase I of the Project.** The invoice shall include the FWC Contract Number and the Grantee's Federal Employer Identification (FEID) Number and should be in a format similar to Attachment D, sample invoice form. An original and three (3) copies of the invoice shall be submitted. The COMMISSION shall not provide advance payment. All bills for amounts due under this Agreement shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.
27. 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.**
28. No travel expenses are authorized under the terms of this Agreement.
29. 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 E.
30. The COMMISSION shall have 45 working days to inspect and approve goods and services.
31. 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.
32. For contracts 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.
33. In order to make best use of the agency's resources, the COMMISSION reserves the right to utilize Federal funds for payments under this Agreement. In the event Federal funds become available for such use, and subject to the mutual agreement of the parties hereto, the Agreement shall be amended to include applicable Federal Requirements.
34. Invoices, including backup documentation, shall be submitted to:

Florida Fish and Wildlife Conservation Commission
Division of Law Enforcement
Boating and Waterways Section
Florida Boating Improvement Program
620 South Meridian Street
Tallahassee, FL 32399-1600

TERMINATION

- 35. 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.
- 36. 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.
- 37. 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

- 38. 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

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

GRANTEE

City of Marathon
 10045-55 Overseas Highway
 Marathon, FL 33050

 Phone: (305) 289-5001
 Fax: (305) 289-4123
 Email: tookesc@ci.marathon.fl.us
 Attn: Curtis Tookes, Project Manager

COMMISSION

Fish and Wildlife Conservation Commission
 Division of Law Enforcement
 Boating and Waterways Section
 620 South Meridian Street
 Tallahassee, FL 32399-1600
 Phone: (850) 488-5600
 Fax: (850) 488-9284
 Email: fbjp@MyFWC.com
 Attn: Susanna Stephens, Program Administrator

AMENDMENT OR MODIFICATION

- 40. 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.
- 41. 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

- 42. The GRANTEE shall perform as an independent agent and not as an agent, representative, or employee of the COMMISSION.
- 43. The GRANTEE covenants that it presently has no interest and shall not acquire any interest that would conflict in any manner or degree with the performance of services required.

44. The parties agree that there is no conflict of interest or any other prohibited relationship between the GRANTEE and the COMMISSION.

INSURANCE REQUIREMENTS

45. 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 Agreement, 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 Agreement 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.
46. 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.
47. 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.

CANCELLATION UNDER CHAPTER 119, FLORIDA STATUTES

48. 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

49. 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 principals. 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

50. 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

- 51. 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

- 52. 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

- 53. This Agreement is an exclusive contract for services and may not be assigned in whole or in part without the written approval of the COMMISSION.

PERFORMANCE AND REMEDIES

- 54. The GRANTEE shall perform the services in a proper and satisfactory manner as determined by the COMMISSION.
- 55. 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

- 56. 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

- 57. 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

- 58. 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

- 59. 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

60. In accordance with section 215.97, Florida Statutes, the Florida Single Audit Act requires all non-State organizations that are recipients of State financial assistance to comply with the audit requirements of the Act. 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 F, titled Requirements of the Federal and Florida Single Audit Acts, attached hereto and made a part of the Agreement, as applicable.
61. 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.

RIGHTS IN PROPERTY, COPYRIGHTS, AND INVENTIONS

62. All items, materials or products, of any description, produced or developed by the GRANTEE on behalf of the COMMISSION in connection with this Agreement shall be the exclusive property of the COMMISSION and may be copyrighted, patented, or otherwise restricted by the COMMISSION as provided by Florida law. Neither the GRANTEE nor any of its subcontractors shall have any proprietary interest in the products and materials developed under this Agreement.
63. The COMMISSION reserves the right to determine the disposition of title and rights to any inventions and/or processes that may result from any experimental or developmental research performed under this Agreement. If Federal funding is involved in support of this Agreement, the Federal Government may reserve ultimate jurisdiction over title and right privileges.
64. Regardless of title or ownership of the products and materials developed under this Agreement, the COMMISSION and the State of Florida shall reserve a royalty-free, nonexclusive, irrevocable right to reproduce, publish; or otherwise use said work for governmental purposes. If Federal funding is involved in support of this Agreement, the Federal Government shall also reserve a royalty-free, nonexclusive, irrevocable right to reproduce, publish, or otherwise use said work for governmental purposes.

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 page intentionally left blank.)

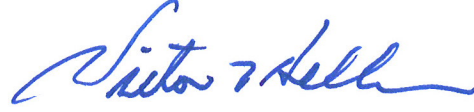
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed through their duly authorized signatories on the day and year last written below.

CITY OF MARATHON

FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION



Mayor*



For Kenneth D. Haddad, Executive Director

11-14-07

Date

21 Nov. 2007

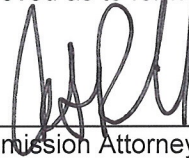
Date

Edward P. Worthington
Name (Print)

Approved as to form and legality:

City of Marathon

Grantee Name



Commission Attorney

10045 Overseas Hwy.

Address

Marathon, FL 33050

City, State, and Zip Code

65-0984873

Federal Employer Identification Number (FEID)

Approved to form and legality:



Grantee Attorney

List of attachments/exhibits included as part of this Agreement:

- Attachment A: Scope of Work
- Attachment B: Monthly progress report form
- Attachment C: Certification of Completion form
- Attachment D: Sample invoice form
- Attachment E: Comptroller Cost Reimbursement Requirements
- Attachment F: Federal/Florida Single Audit Act Requirements
- Exhibit 1: Funds awarded pursuant to agreement

*If someone other than the Mayor signs the Agreement, a resolution, statement or other document authorizing the person to sign the Agreement on behalf of the local governing body must accompany the Agreement.

SCOPE OF WORK**33rd Street Boat Ramp Hurricane Recovery****INTRODUCTION**

The purpose of the project is to increase and enhance boating access in the City of Marathon by replacing the existing boat ramp on 33rd Street with a new, wider ramp, repairing the existing concrete dock and installing a new wooden dock, repairing the seawall, repairing the parking lot, and installing a new composting toilet. After incorporating in 1999, the City of Marathon acquired the 33rd Street Boat Ramp from Monroe County. When acquired, the 33rd Street Boat Ramp was in poor shape. Subsequently, Hurricane Wilma did additional damage to the boat ramp and surrounding area. The facilities damaged by the hurricane included the boat ramp, the boarding docks, the seawall, the parking lot, and the bathroom. The boat ramp contains potholes and lacks proper traction to load and unload boats safely. A wooden boarding dock was destroyed by Hurricane Wilma, and a cement boarding dock was severely damaged. There is currently no area to tie off a boat. The seawall has been completely washed away in two places and contains holes in several other locations creating safety hazards. Cracks, crevices, and potholes have developed in the parking lot because of Hurricane Wilma. Also, the lack of an adequate number of parking spaces creates congestion and corresponding safety hazards.

Repairing the damage at the 33rd Street Boat Ramp caused by Hurricane Wilma will restore full capability to Marathon's largest public boat ramp, energize Marathon public boating, and remove safety hazards. The new two lane boat ramp will have the proper traction and be in good order to support safe boat loading and removal. The replaced wooden boarding dock and repaired cement dock will not contain tripping hazards and will alleviate congestion at the boat ramp entrance by providing a place to tie off boats when parking or retrieving trailers. The new seawall will protect the boat ramp area against the erosion affects of future storms and not contain tripping hazards. The additional parking spaces in the new parking lot will help alleviate parking lot congestion.

This project shall consist of two phases: Phase I – Project Construction, and Phase II – Project Management. During Phase I, the City of Marathon (GRANTEE) shall complete the tasks in this scope of work. During Phase II, the GRANTEE and the Florida Fish and Wildlife Conservation Commission (COMMISSION) shall cooperate in the ongoing and continuous management of the Project for the term of the Agreement.

TASKS

During Phase I of the project, the GRANTEE shall be responsible for completion of the following tasks:

Task 1 – Boat Ramp

Remove existing boat ramp located on Gulf side of 33rd Street in Marathon and replace with a new two-lane, concrete boat ramp

Task 2 – Boarding Docks

- A. Repair existing concrete boarding dock at 33rd Street boat ramp in Marathon
- B. Construct and install new wooden boarding dock at 33rd Street boat ramp in Marathon

Task 3 – Seawall

Repair holes in existing seawall and replace or rebuild any sections of the seawall that have been washed away

Task 4 – Restroom

- A. Demolish and remove existing restroom
- B. Purchase and install new composting toilet

Task 5 - Parking

Re-grade, pave, and stripe parking lot to provide a minimum of 14 boat trailer parking spaces and 5 vehicle parking spaces

Task 6 – Acknowledgement Sign

The GRANTEE, at its expense, shall purchase, erect and maintain a permanent sign, not less than four (4) feet by six (6) feet in size, displaying the COMMISSION's official logo identifying the COMMISSION as a funding source for the Project.

REPORTS

A. Monthly Activity Reports

The GRANTEE shall submit to the COMMISSION monthly activity reports outlining the progress of Phase I of the Project, identifying any problems that may have arisen, and actions taken to correct such problems. Such reports shall be submitted on the form provided by the COMMISSION and due to the COMMISSION's Program Administrator by the 15th of each month until the *Certification of Completion* is submitted.

B. 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.

C. Certification of Completion

Upon completion of Phase I, the engineer, architect or other appropriate professional for the GRANTEE shall sign a *Certification of Completion* form, provided by the COMMISSION, that certifies Phase I of the Project was completed in accordance with the prepared plans and specifications.

INVOICES AND PAYMENTS

For satisfactory completion of the above services, the COMMISSION agrees to pay the GRANTEE on a cost reimbursement basis an amount not to exceed \$200,000. The GRANTEE shall submit a request for reimbursement, accompanied by the required reports, no later than 30 days following completion of Phase I. The request for reimbursement shall include the following: an invoice in a form similar to Attachment D, Sample Invoice Form; a signed Certification of Completion form, Attachment C; final photographs; required documents as described in Attachment E, Comptroller Contract Payment Requirements.

**FLORIDA BOATING IMPROVEMENT PROGRAM
PROJECT PROGRESS REPORT**

Mail to FWC at 620 South Meridian Street, Tallahassee, FL 32399-1600 or fax to (850) 488-9284.

FWC Contract # _____

Reporting Period (Month/Year): _____
(Due 15 days after the end of each month)

Project Title: _____

1. Describe tasks completed this month:

2. List deliverables provided to FWC this month:

3. List tasks scheduled to be completed during next month:

4. Is project currently on schedule for completion by June 15, 2009? YES _____ NO _____
(If No, please explain any problems encountered and/or possible delays)

Project Manager

Date



**FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION**
FLORIDA BOATING IMPROVEMENT PROGRAM

CERTIFICATION OF COMPLETION STATEMENT

I, _____
(Print Name and Title)

representing _____
(Name of Local Government)

do hereby certify under penalties of perjury, as provided in s. 837.012, Florida Statutes, that the Florida Boating Improvement Program project funded by FWC Contract No. _____ has been completed in compliance with all terms and conditions of said Agreement; that all amounts payable for materials, labor and other charges against the project have been paid; and that no liens have been attached against the project.

(Signature) (Date)

STATE OF FLORIDA, COUNTY OF (_____)

Personally appeared before me this _____ day of _____, 200____, who subscribed and swore to the above instrument in my presence.

Notary Public Name: _____

My commission expires: _____ (SEAL)

CERTIFICATE BY COMMISSION

I certify: That, to the best of my knowledge and belief, the work on the above-named project has been satisfactorily completed under the terms of the Agreement.

Division: _____

By: _____ Date: _____

Name: _____

Title: _____

Florida Fish and Wildlife Conservation Commission
 Florida Boating Improvement Program
 620 South Meridian Street
 Tallahassee, Florida 32399-1600

INVOICE

Date: _____

FWC Contract #: _____

Remit payment to:

Grantee:

Address:

City, State:

Zip:

FEID #:

GRANT REQUEST

Cost Item	Applicant	Other	FBIP Grant	TOTAL
Permitting/Planning/Engineering	\$	\$	\$	\$
Implementing/ Construction	\$	\$	\$	\$
Other:	\$	\$	\$	\$
Total Hard Funds	\$	\$	\$	\$

Amount of Grant Award: \$ _____

PROJECT COSTS

Cost Item	Amount
Permitting/Planning/Engineering	\$
Implementing/ Construction	\$
Other:	\$

Total Costs: \$

Grantee Matching Funds: \$

Amount for Reimbursement: \$

I hereby certify that the above costs are true and valid costs incurred in accordance with the project Agreement, and that the matching funds, in-kind or cash, were utilized toward the project in this Agreement.

Signed: _____
 Project Manager

Date: _____

Comptroller Contract Payment Requirements
Department of Financial Services, Bureau of Accounting and Auditing
Voucher Processing Handbook (10/07/97)
Cost Reimbursement Contracts

Invoices for cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.) Supporting documentation must be provided for each amount for which reimbursement is being claimed indicating that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for categories in the approved contract budget should be reimbursed.

Listed below are examples of types of documentation representing the minimum requirements:

- (1) Salaries: A payroll register or similar documentation should be submitted. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.
- (2) Fringe Benefits: Fringe Benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.

Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.
- (3) Travel: Reimbursement for travel must be in accordance with Section 112.061, Florida Statutes, which includes submission of the claim on the approved State travel voucher or electronic means.
- (4) Other direct costs: Reimbursement will be made based on paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, Florida Administrative Code, regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in Section 273.02, Florida Statutes, for subsequent transfer to the State.
- (5) In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units times the rate being charged. The rates must be reasonable.
- (6) Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

REQUIREMENTS OF THE FLORIDA AND FEDERAL SINGLE AUDIT ACTS

The administration of resources awarded by the Florida Fish and Wildlife Conservation Commission (Commission) to the Contractor/Grantee (recipient) may be subject to audits and/or monitoring by the Commission as described in this section.

Monitoring

In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by Commission staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Commission. In the event the Commission determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Commission staff to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Comptroller or Auditor General.

AUDITS**PART I: FEDERALLY FUNDED**

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in OMB Circular A-133, as revised.

In the event that the recipient expends \$500,000 or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. EXHIBIT 1 to this agreement indicates Federal resources awarded through the Commission by this agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from Commission. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions OMB Circular A-133, as revised, will meet the requirements of this part.

In connection with the audit requirements addressed in Part I, paragraph 1., the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

If the recipient expends less than \$500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the recipient expends less than \$500,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than Federal entities).

PART II: STATE FUNDED

This part is applicable if the recipient is a non-state entity as defined by Section 215.97(2)(l), Florida Statutes.

In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such recipient, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Executive Office of the Governor and the Comptroller; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this agreement indicates state financial assistance awarded through the Commission by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Commission other state agencies, and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-state entity for Federal program matching requirements.

In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(d), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

If the recipient expends less than \$500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).

PART III: OTHER AUDIT REQUIREMENTS

There are no other audit requirements

PART IV: REPORT SUBMISSION

Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by PART I of this agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the recipient directly to each of the following:

The Commission at the following address:

Audit Director
Florida Fish and Wildlife Conservation Commission
Bryant Building, Room 170
620 S. Meridian St.
Tallahassee, FL 32399-1600

The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised.

Pursuant to Section .320 (f), OMB Circular A-133, as revised, the recipient shall submit a copy of the reporting package described in Section .320 (c), OMB Circular A-133, as revised, and any management letter issued by the auditor, to the Commission at the following address:

Audit Director
Florida Fish and Wildlife Conservation Commission
Bryant Building, Room 170
620 S. Meridian St.
Tallahassee, FL 32399-1600

Copies of financial reporting packages required by PART II of this agreement shall be submitted by or on behalf of the recipient directly to each of the following:

The Commission at the following address:

Audit Director
Florida Fish and Wildlife Conservation Commission
Bryant Building, Room 170
620 S. Meridian St.
Tallahassee, FL 32399-1600

The Auditor General's Office at the following address:

Auditor General's Office
G74 Claude Pepper Building
111 West Madison Street
Tallahassee, FL 32399-1450

Copies of reports or the management letter required by PART III of this agreement shall be submitted by or on behalf of the recipient directly to:

The Commission the following address:

Audit Director
Florida Fish and Wildlife Conservation Commission
Bryant Building, Room 170
620 S. Meridian St.
Tallahassee, FL 32399-1600

Any reports, management letter, or other information required to be submitted to the Commission pursuant to this agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

Recipients, when submitting financial reporting packages to the Commission for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

Contact the Commission's Audit Director by phone at (850) 488-6068.

PART V: RECORD RETENTION

The recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five (5) years from the date the audit report is issued, and shall allow the Commission or its designee, Comptroller, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Commission or its designee, Comptroller, or Auditor General upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by the Commission.

EXHIBIT – 1

**FEDERAL RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT
CONSIST OF THE FOLLOWING:**

None.

**COMPLIANCE REQUIREMENTS APPLICABLE TO THE FEDERAL RESOURCES AWARDED
PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:**

None.

**STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT
CONSIST OF THE FOLLOWING:**

MATCHING RESOURCES FOR FEDERAL PROGRAMS:

None.

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

State Agency:	Florida Fish and Wildlife Conservation Commission
State Program:	Florida Boating Improvement Program
CSFA No.:	77.006
Recipient:	City of Marathon
Amount:	\$200,000.00

**COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED
PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:**

1. Project activities must occur on public lands owned outright or managed under agreement with another party with lease terms exceeding 20 years.
2. Project activities must not create a boating safety hazard and/or increase the potential for damage to natural resources.
3. Recipient must comply with the Florida Boating Improvement Program Policies and Guidelines, Fiscal Year 2007-2008.
4. Recipient must comply with all Commission rules, policies and procedures as well as all other state and federal rules.

NOTE: Section .400(d) of OMB Circular A-133, as revised, and Section 215.97(5)(a), Florida Statutes, require that the information about Federal Programs and State Projects included in Exhibit 1 be provided to the recipient.

**FLORIDA BOATING IMPROVEMENT PROGRAM
PROJECT PROGRESS REPORT**

Mail to FWC at 620 South Meridian Street, Tallahassee, FL 32399-1600 or fax to (850) 488-9284.

FWC Contract # _____

Reporting Period (Month/Year): _____
(Due 15 days after the end of each month)

Project Title: _____

1. Describe tasks completed this month:

2. List deliverables provided to FWC this month:

3. List tasks scheduled to be completed during next month:

4. Is project currently on schedule for completion by June 15, 2009? YES ____ NO ____
(If No, please explain any problems encountered and/or possible delays)

Project Manager

Date

This instrument was prepared by,
Record and return to:

Jose M. Jimenez
Stearns Weaver Miller
Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, FL 33130

(Space reserved for Clerk)

DEDICATION OF LAND FOR PUBLIC USE FOR TWENTY YEARS

KNOW ALL BY THESE PRESENTS THAT the City of Marathon, Florida, (the "City") hereby makes, declares and imposes on the land herein described, these covenants running with the title to the land, which shall be binding on the City, all heirs, successors, and assigns, personal representatives, mortgagees, lessees, and against all persons claiming by, through or under them;

WHEREAS, the City holds the fee simple title to the land in Monroe County, Florida described in Exhibit "A," attached hereto and made a part hereof, hereinafter called the "property,"; and

WHEREAS, the City is applying for a grant from the Florida Fish and Wildlife Conservation Commission for the purpose of developing and improving the Property; and

WHEREAS, the Florida Fish and Wildlife Conservation Commission grant requires that the Property be dedicated as a site for the use and benefit of the public for a minimum period of twenty (20) years; and

WHEREAS, the City wishes to make such dedication for the benefit of its residents and other members of the public.

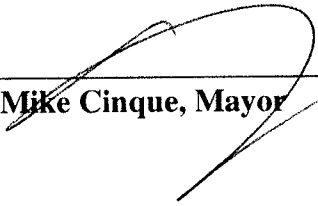
NOW THEREFORE, in consideration of the covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City, its successors and assigns, does hereby covenant and agrees as follows:

1. **General**. The City hereby dedicates the Property as a site for the use and benefit of the public for a period of twenty years.
2. **Covenant Running with the Land**. This covenant shall constitute a covenant running with the land and shall be recorded in the Public Records of Monroe County, Florida, and shall remain in full force and effect and be binding upon the City and its successors and assigns for a period of twenty years from the time of this covenant's recordation at which time the covenant shall be released without the need for any further instrument.

3. **Governing Law.** This covenant shall be governed by and construed in accordance with the laws of the State of Florida, both as to substantive rights and those governing remedies.


4. **Severability.** If any provision of this covenant shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired.

THE CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor

ATTEST:



Diane Clavier
City Clerk

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



City Attorney

**LEGAL DESCRIPTION
33RD STREET BOAT RAMP AND RESTROOMS**

COMMENCE at the intersection of the East line of said Government Lot 3 and the centerline of said US Highway No. 1 (State Road No. 5); thence S 74 degrees 20 minutes W along said centerline of US Highway No. 1 for 2642.55 feet; thence N 15 degrees 40 minutes W for 50.00 feet to an intersection with the Northerly right-of-way line of said US Highway No. 1; thence N 74 degrees 20 minutes E along said Northerly right-of-way line for 10.00 feet; thence N 15 degrees 40 minutes W for 110.00 feet; thence S 74 degrees 20 minutes W for 10.00 feet; thence N 15 degrees 40 minutes W for 625 feet more or less to an intersection with a line that is parallel to said Northerly right-of-way line of US Highway No. 1, said parallel line being 10.00 feet northerly of the Northwesterly corner of the existing "Old Chamber of Commerce Building" as measured at right angles from said parallel line, said intersection being the POINT OF BEGINNING of the hereinafter described Parcel "C"; thence S 74 degrees 20 minutes W along said parallel line for 116.00 feet; thence N 15 degrees 40 minutes W for 117 feet more or less to an intersection with a line bearing N 74 degrees 20 minutes E from the Northerly terminus of an existing concrete dock lying adjacent to the Northeasterly shore of the existing yacht basin; thence S 74 degrees 20 minutes W along said line for 84 feet more or less to the Northwesterly corner of said concrete dock; thence meander northwesterly, northeasterly and southeasterly along the mean high water line along the Northeasterly shore of said yacht basin and the Southerly shore of Florida Bay for 500 feet more or less to an intersection with a line bearing N 15 degrees 40 minutes W from the POINT OF BEGINNING; thence S 15 degrees 40 minutes E along said line for 192 feet more or less to the POINT OF BEGINNING.

EXHIBIT A