

**CITY OF MARATHON, FLORIDA
RESOLUTION 2018-10**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AGREEMENT NO. MV272 FOR CVA 17-823 WITH THE DEPARTMENT OF ENVIRONMENTAL PROTECTION CLEAN VESSEL ACT GRANT PROGRAM AND AUTHORIZING ACCEPTANCE OF \$77,578.50 IN GRANT FUNDING FOR REPLACEMENT PUMP OUT VESSEL; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; PROVIDING FOR CONFLICTS; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the Florida Department of Environmental Protection (the “DEP”) administers the Clean Vessel Act (CVA) Grant Program for pumpout and waste dump reception facilities.

WHEREAS, the City of Marathon (the “City”) submitted a grant application to the DEP for funds to apply towards a replacement pumpout vessel; and

WHEREAS, the DEP awarded the City a grant of \$77,578.50 from the CVA Program, which is seventy five percent of the total project costs; and

WHEREAS, the CITY has determined that it is in the best interest of the City to enter into Agreement No. MV272 for CVA 17-823 with the DEP CVA Grant Program to set forth the terms and conditions of the grant funding.

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. The City Council hereby approves Agreement No. MV272 for CVA 17-823 between the City and the DEP that is attached as Exhibit “A” hereto.

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 FEBRUARY, 2018.

THE CITY OF MARATHON, FLORIDA



Michelle Coldiron, Mayor

AYES: Bartus, Cook, Senmartin, Zieg, Coldiron
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:



David Migut, City Attorney

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Standard Grant Agreement**

This Agreement is entered into between the Parties named below, pursuant to Section 215.971, Florida Statutes:

1. Project Title (Project) Agreement Number
Clean Vessel Act Grant; CVA17-823, City of Marathon dba Boot Key Harbor City Marina **MV272**

2. Parties **State of Florida Department of Environmental Protection,
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000** (Department)

Grantee Name: **City of Marathon dba Boot Key Harbor City Marina** Entity Type: **Local Government**
 Grantee Address: **9805 Overseas Highway, Marathon, FL 33050** FEID: **65-0984873** (Grantee)

3. Agreement Begin Date: **Upon Execution** Date of Expiration: **August 30, 2018**

4. Project Number: **MV272** Project Location(s): **800 35th Street Ocean, Marathon, FL 33050**
(If different from Agreement Number)

Project Description: **Replacement Pumpout Vessel**

5. Total Amount of Funding:	Funding Source?	Award #s or Line Item Appropriations:	Amount per Source(s):
\$77,578.50	<input type="checkbox"/> State <input checked="" type="checkbox"/> Federal	CVC14	\$77,578.50
	<input type="checkbox"/> State <input type="checkbox"/> Federal		
	<input type="checkbox"/> State <input type="checkbox"/> Federal		
	<input type="checkbox"/> State <input type="checkbox"/> Federal		

6. Department's Grant Manager Name: Deneka Smith Address: 3900 Commonwealth Blvd MS#30 Tallahassee, FL 32399 Phone: 850-245-2171 Email: deneka.smith@dep.state.fl.us	Grantee's Grant Manager Name: Katrina Spelker Address: 800 35th Street Ocean Marathon, FL 33050 Phone: 305-289-8877 Email: spelker@ci.marathon.fl.us
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7. The Parties agree to comply with the terms and conditions of the following attachments and exhibits which are hereby incorporated by reference:

<input checked="" type="checkbox"/> Attachment 1: Standard Terms and Conditions Applicable to All Grants Agreements
<input checked="" type="checkbox"/> Attachment 2: Special Terms and Conditions
<input checked="" type="checkbox"/> Attachment 3: Grant Work Plan
<input checked="" type="checkbox"/> Attachment 4: Public Records Requirements
<input checked="" type="checkbox"/> Attachment 5: Special Audit Requirements
<input checked="" type="checkbox"/> Attachment 6: Program-Specific Requirements
<input checked="" type="checkbox"/> Attachment 7: Grant Award Terms (Federal)
<input checked="" type="checkbox"/> Attachment 8: Federal Regulations and Terms (Federal)
<input type="checkbox"/> Additional Attachments (if necessary):
<input checked="" type="checkbox"/> Exhibit A: Progress Report Form
<input type="checkbox"/> Exhibit B: Disclosure of Lobbying Activities (Federal)
<input checked="" type="checkbox"/> Exhibit C: DEP Property Reporting Form
<input checked="" type="checkbox"/> Exhibit D: Payment Request Summary Form
<input type="checkbox"/> Exhibit E: Quality Assurance Requirements
<input type="checkbox"/> Exhibit F: Advance Payment Terms and Interest Earned Memo
<input type="checkbox"/> Additional Exhibits (if necessary):

8. The following information applies to Federal Grants only and is identified in accordance with 2 CFR 200.331(a)(1):

Federal Award Identification Number(s) (FAIN):	F14AP00978
Federal Award Date to Department:	9/9/14
Total Federal Funds Obligated by this Agreement:	\$1,410,561.00
Federal Awarding Agency:	U.S. Fish and Wildlife Service
Award R&D?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A

IN WITNESS WHEREOF, this Agreement is being executed by the Parties and is effective on the date in the Agreement Begin Date above or the last date signed below, whichever is later.

9. City of Marathon dba Boot Key Harbor City Marina

GRANTEE

Grantee Name

By

(Authorized Signature)

Date Signed

Charles Lindsey, City Manager

Print Name and Title of Person Signing

10.

State of Florida Department of Environmental Protection

DEPARTMENT

By

Secretary or Designee

Date Signed

BRENDA LEONARD, PROGRAM ADMIN

Print Name and Title of Person Signing

Additional signatures attached on separate page.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STANDARD TERMS AND CONDITIONS
APPLICABLE TO GRANT AGREEMENTS**

ATTACHMENT 1

1. Entire Agreement.

This Grant Agreement, including any Attachments and Exhibits referred to herein and attached hereto (Agreement), constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any preprinted terms and conditions included on Grantee's forms or invoices shall be null and void.

2. Grant Administration.

- a. Order of Precedence. If there are conflicting provisions between the documents that make up the Agreement, the order of precedence for the documents is as follows:
 - i. Attachments other than Attachment 1, in numerical order as designated in the Standard Grant Agreement
 - ii. Standard Grant Agreement
 - iii. Attachment 1, Standard Terms and Conditions
 - iv. The Exhibits in the order designated in the Standard Grant Agreement
- b. All approvals, written or verbal, and other written communication between the parties, including all notices, shall be obtained by or sent to the parties' Grant Managers. All written communication shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient.
- c. If a different Grant Manager is designated by either party after execution of this Agreement, notice of the name and contact information of the new Grant Manager will be submitted in writing to the other party and maintained in the respective parties' records. A change of Grant Manager does not require a formal amendment or change order to the Agreement.
- d. This Agreement may be amended, through a formal amendment or a change order, only by a written agreement between both parties. A formal amendment to this Agreement is required for changes which cause any of the following: an increase or decrease in the Agreement funding amount; a change in the Grantee's match requirements; a change in the expiration date of the Agreement; and/or changes to the cumulative amount of funding transfers between approved budget categories, as defined in Attachment 3, Grant Work Plan, that exceeds or is expected to exceed ten percent (10%) of the total budget as last approved by the Department. A change order to this Agreement may be used when task timelines within the current authorized Agreement period change, and/or when the cumulative transfer of funds between approved budget categories, as defined in Attachment 3, Grant Work Plan, are less than ten percent (10%) of the total budget as last approved by the Department, or without limitation to changes to approved fund transfers between budget categories for the purchases of meeting match requirements. This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.
- e. All days in this Agreement are calendar days unless otherwise specified.

3. Agreement Duration.

The term of the Agreement shall begin and end on the dates indicated in the Standard Grant Agreement, unless extended or terminated earlier in accordance with the applicable terms and conditions. The Grantee shall be eligible for reimbursement for work performed on or after the date of execution through the expiration date of this Agreement, unless otherwise specified in Attachment 2, Special Terms and Conditions. However, work performed prior to the execution of this Agreement may be reimbursable or used for match purposes if permitted by the Special Terms and Conditions.

4. Deliverables.

The Grantee agrees to render the services or other units of deliverables as set forth in Attachment 3, Grant Work Plan. The services or other units of deliverables shall be delivered in accordance with the schedule and at the pricing outlined in the Grant Work Plan. Deliverables may be comprised of activities that must be completed prior to the Department making payment on that deliverable. The Grantee agrees to perform in accordance with the terms and conditions set forth in this Agreement and all attachments and exhibits incorporated by the Standard Grant Agreement.

5. Performance Measures.

The Grantee warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Grant Work Plan; (3) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (4) the services shall not and do not infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (5) its employees, subcontractors, and/or subgrantees shall comply with any security and safety requirements and processes, if provided by the Department, for work done at the Project Location(s). The Department reserves the right to investigate or inspect at any time whether the services or qualifications offered by the Grantee meet the Agreement requirements. Notwithstanding any provisions to the contrary, written acceptance of a particular deliverable/minimum requirement does not foreclose the Department's remedies in the event those performance standards that cannot be readily measured at the time of delivery are not met.

6. Acceptance of Deliverables.

- a. **Acceptance Process.** All deliverables must be received and accepted in writing by the Department's Grant Manager before payment. The Grantee shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable time at the Grantee's expense. If the Department's Grant Manager does not accept the deliverables within 30 days of receipt, they will be deemed rejected.
- b. **Rejection of Deliverables.** The Department reserves the right to reject deliverables, as outlined in the Grant Work Plan, as incomplete, inadequate, or unacceptable due, in whole or in part, to the Grantee's lack of satisfactory performance under the terms of this Agreement. The Grantee's efforts to correct the rejected deliverables will be at the Grantee's sole expense. The Grantee shall only invoice the Department for deliverables that are completed in accordance with the Grant Work Plan. Failure to fulfill the applicable technical requirements or complete all tasks or activities in accordance with the Grant Work Plan will result in rejection of the deliverable and the associated invoice. Payment for the rejected deliverable will not be issued unless the rejected deliverable is made acceptable to the Department in accordance with the Agreement requirements. The Department, at its option, may allow additional time within which the Grantee may remedy the objections noted by the Department. The Grantee's failure to make adequate or acceptable said deliverables after a reasonable opportunity to do so may constitute an event of default.

7. Financial Consequences for Nonperformance.

- a. **Withholding Payment.** In addition to the specific consequences explained in the Grant Work Plan and/or Special Terms and Conditions, the State of Florida (State) reserves the right to withhold payment when the Grantee has failed to perform/comply with provisions of this Agreement. These consequences for nonperformance shall not be considered penalties.
- b. **Corrective Action Plan.** If the Grantee fails to correct all the deficiencies in a rejected deliverable within the specified timeframe, the Department may, in its sole discretion, request that a proposed Corrective Action Plan (CAP) be submitted by the Grantee to the Department. The Department shall provide the Grantee with a written request for a CAP that specifies the outstanding deficiencies. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.
 - i. The Grantee shall submit a CAP within ten (10) calendar days of the date of the written request from the Department. The CAP shall be sent to the Grant Manager for review and approval. Within ten (10) calendar days of receipt of a CAP, the Department shall notify the Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, the Grantee shall have ten (10) calendar days from receipt of the Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain the Department approval of a CAP as specified above shall result in the Department's termination of this Agreement for cause as authorized in this Agreement.
 - ii. Upon the Department's notice of acceptance of a proposed CAP, the Grantee shall have ten (10) calendar days to commence implementation of the accepted plan. Acceptance of the proposed CAP by the Department does not relieve the Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, the Department shall retain the right to require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by the Department or steps taken by the Grantee shall preclude the Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to the Department as requested by the Department Grant Manager.
 - iii. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by the Department may result in termination of the Agreement.

8. Payment.

- a. **Payment Process.** Subject to the terms and conditions established by the Agreement, the pricing per deliverable established by the Grant Work Plan, and the billing procedures established by the Department, the Department agrees to pay the Grantee for services rendered in accordance with Section 215.422, Florida Statutes (F.S.). To obtain the applicable interest rate, please refer to:
<http://www.myfloridacfo.com/Division/AA/Vendors/default.htm>.
- b. **Taxes.** The Department is exempted from payment of State sales and use taxes and Federal excise taxes. The Grantee, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by the Grantee to suppliers for taxes on materials used to fulfill its contractual obligations with the Department. The Grantee shall not use the Department's exemption number in securing such materials. The Grantee shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.
- c. **Maximum Amount of Agreement.** The maximum amount of compensation under this Agreement, without an amendment, is described in the Standard Grant Agreement. Any additional funds necessary for the completion of this Project are the responsibility of the Grantee.
- d. **Reimbursement for Costs.** The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on **Exhibit D, Payment Request Summary Form**. To be eligible for reimbursement, costs must be in compliance with laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: http://www.myfloridacfo.com/aadir/reference_guide/.
- e. **Invoice Detail.** All charges for services rendered or for reimbursement of expenses authorized by the Department pursuant to the Grant Work Plan shall be submitted to the Department in sufficient detail for a proper pre-audit and post-audit to be performed.
- f. **Interim Payments.** Interim payments may be made by the Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by the Department's Grant Manager.
- g. **Final Payment Request.** A final payment request should be submitted to the Department no later than sixty (60) calendar days following the completion date of the Agreement to ensure the availability of funds for payment. However, all work performed pursuant to the Grant Work Plan must be performed on or before the completion date of the Agreement.
- h. **Annual Appropriation Contingency.** The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the Department if the Legislature reduces or eliminates appropriations.
- i. **Interest Rates.** All interest rates charged under the Agreement shall be calculated on the prevailing rate used by the State Board of Administration.

9. Documentation Required for Cost Reimbursement Grant Agreements and Match.

If Cost Reimbursement or Match is authorized in Attachment 2, Special Terms and Conditions, the following conditions apply. Supporting documentation must be provided to substantiate cost reimbursement or match requirements for the following budget categories:

- a. **Salary/Wages.** Grantee shall list personnel involved, position classification, direct salary rates, and hours spent on the Project in accordance with Attachment 3, Grant Work Plan in their documentation for reimbursement or match requirements.
- b. **Overhead/Indirect/General and Administrative Costs.** If the Grantee is being reimbursed for or claiming match for multipliers, all multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If the Department determines that multipliers charged by the Grantee exceeded the rates supported by audit, the Grantee shall be required to reimburse such funds to the Department within thirty (30) calendar days of written notification. Interest shall be charged on the excessive rate.
- c. **Contractual Costs (Subcontractors).** Match or reimbursement requests for payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from the Grantee. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the Project. All eligible multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If the Department determines that multipliers charged by any subcontractor exceeded the rates supported by audit, the Grantee shall be required to reimburse such funds to the Department within thirty (30) calendar days of written notification. Interest shall be charged on

the excessive rate. Nonconsumable and/or nonexpendable personal property or equipment costing \$1,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in Chapters 273 and/or 274, F.S., and Chapter 69I-72, Florida Administrative Code (F.A.C.) and/or Chapter 69I-73, F.A.C., as applicable. The Grantee shall be responsible for maintaining appropriate property records for any subcontracts that include the purchase of equipment as part of the delivery of services. The Grantee shall comply with this requirement and ensure its subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors.

- i. For fixed-price (vendor) subcontracts, the following provisions shall apply: The Grantee may award, on a competitive basis, fixed-price subcontracts to consultants/contractors in performing the work described in Attachment 3, Grant Work Plan. Invoices submitted to the Department for fixed-price subcontracted activities shall be supported with a copy of the subcontractor's invoice and a copy of the tabulation form for the competitive procurement process (e.g., Invitation to Bid, Request for Proposals, or other similar competitive procurement document) resulting in the fixed-price subcontract. The Grantee may request approval from the Department to award a fixed-price subcontract resulting from procurement methods other than those identified above. In this instance, the Grantee shall request the advance written approval from the Department's Grant Manager of the fixed price negotiated by the Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor. Upon receipt of the Department Grant Manager's approval of the fixed-price amount, the Grantee may proceed in finalizing the fixed-price subcontract.
 - ii. If the procurement is subject to the Consultant's Competitive Negotiation Act under section 287.055, F.S. or the Brooks Act, the Grantee must provide documentation clearly evidencing it has complied with the statutory or federal requirements.
- d. Travel. All requests for match or reimbursement of travel expenses shall be in accordance with Section 112.061, F.S.
- e. Direct Purchase Equipment. For the purposes of this Agreement, Equipment is defined as capital outlay costing \$1,000 or more. Match or reimbursement for the Grantee's direct purchase of equipment is subject to specific approval of the Department, and does not include any equipment purchased under the delivery of services to be completed by a subcontractor. Include copies of invoices or receipts to document purchases, and a properly completed Property Reporting Form.
- f. Rental/Lease of Equipment – Match or reimbursement requests for rental/lease of equipment must include copies of invoices or receipts to document charges.
- g. Miscellaneous/Other Expenses. If miscellaneous or other expenses, such as materials, supplies, non-excluded phone expenses, reproduction, or mailing, are reimbursable or available for match or reimbursement under the terms of this Agreement, the documentation supporting these expenses must be itemized and include copies of receipts or invoices. Additionally, independent of the Grantee's contract obligations to its subcontractor, the Department shall not reimburse any of the following types of charges: cell phone usage, attorney's fees or court costs, civil or administrative penalties, or handling fees, such as set percent overages associated with purchasing supplies or equipment.
- h. Land Acquisition. Reimbursement for the costs associated with acquiring interest and/or rights to real property (including access rights through ingress/egress easements, leases, license agreements, or other site access agreements; and/or obtaining record title ownership of real property through purchase) must be supported by the following, as applicable: Copies of Property Appraisals, Environmental Site Assessments, Surveys and Legal Descriptions, Boundary Maps, Acreage Certification, Title Search Reports, Title Insurance, Closing Statements/Documents, Deeds, Leases, Easements, License Agreements, or other legal instrument documenting acquired property interest and/or rights. If land acquisition costs are used to meet match requirements, the Grantee agrees that those funds shall not be used as match for any other Agreement supported by State or Federal funds.

10. Status Reports.

The Grantee shall submit status reports quarterly, unless otherwise specified in the Attachments, on **Exhibit A, Progress Report Form**, to the Department's Grant Manager describing the work performed during the reporting period, problems encountered, problem resolutions, scheduled updates, and proposed work for the next reporting period. Quarterly status reports are due no later than twenty (20) calendar days following the completion of the quarterly reporting period. For the purposes of this reporting requirement, the quarterly reporting periods end on March 31, June 30, September 30 and December 31. The Department will review the required reports submitted by the Grantee within thirty (30) days.

11. Retainage.

The following provisions apply if the Department withholds retainage under this Agreement:

- a. The Department reserves the right to establish the amount and application of retainage on the work performed under this Agreement to a maximum percentage described in the Special Terms and Conditions. Retainage may be withheld from each payment to Grantee pending satisfactory completion of work and approval of all deliverables.
- b. The Department reserves the right to withhold payment of retainage for Grantee's failure to respond to or correct identified deficiencies within the timeframe stipulated in the Grant Work Plan. The Department shall provide written notification to Grantee of identified deficiencies and the Department's intent to withhold retainage. Grantee's failure to rectify the identified deficiency within the timeframe stated in the Department's notice will result in forfeiture of retainage by Grantee.
- c. If Grantee fails to perform the requested work, or fails to perform the work in a satisfactory manner, Grantee shall forfeit its right to payment for the work and the retainage called for under the entire Grant Work Plan. Failure to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed.
- d. No retainage shall be released or paid for incomplete work while this Agreement is suspended.
- e. Except as otherwise provided above, Grantee shall be paid the retainage associated with the work, provided Grantee has completed the work and submits an invoice for retainage held in accordance with the invoicing procedures under this Agreement.

12. Insurance.

- a. Required Coverage. At all times during the Agreement the Grantee, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. The limits of coverage under each policy maintained by the Grantee shall not be interpreted as limiting the Grantee's liability and obligations under the Agreement. All insurance policies shall be through insurers licensed and authorized to issue policies in Florida, or alternatively, Grantee may provide coverage through a self-insurance program established and operating under the laws of Florida. Additional insurance requirements for this Agreement may be required elsewhere in this Agreement, however the minimum insurance requirements applicable to this Agreement are:
 - i. Commercial General Liability Insurance.
The Grantee shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Agreement. The Department of Environmental Protection, its employees, and officers shall be named as an additional insured on any general liability policies. The minimum limits shall be \$200,000 each individual's claim and \$300,000 each occurrence.
 - ii. Workers' Compensation and Employer's Liability Coverage.
The Grantee shall provide workers' compensation, in accordance with Chapter 440, F.S., and employer's liability insurance with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any work under the Agreement.
 - iii. Commercial Automobile Insurance.
If the Grantee's duties include the use of a commercial vehicle, the Grantee shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The Department of Environmental Protection, its employees, and officers shall be named as an additional insured on any automobile insurance policy. The minimum limits shall be as follows:

\$300,000	Automobile Liability Combined Single Limit for Company-Owned Vehicles, if applicable
\$300,000	Hired and Non-owned Automobile Liability Coverage
 - iv. Other Insurance.
Additional insurance may be required by federal law, where applicable, if any work proceeds over or adjacent to water, including but not limited to Jones Act, Longshoreman's and Harbor Worker's, or the inclusion of any applicable rider to worker's compensation insurance, and any necessary watercraft insurance, with limits of not less than \$300,000 each. Questions concerning required coverage should be directed to the U.S. Department of Labor (<http://www.dol.gov/owcp/dlhwc/lscntac.htm>) or to the parties' insurance carrier.
- b. Insurance Requirements for Sub-Grantees and/or Subcontractors. The Grantee shall require its sub-grantees and/or subcontractors, if any, to maintain insurance coverage of such types and with such terms and limits as

described in this Agreement. The Grantee shall require all its sub-grantees and/or subcontractors, if any, to make compliance with the insurance requirements of this Agreement a condition of all contracts that are related to this Agreement. Sub-grantees and/or subcontractors must provide proof of insurance upon request.

- c. **Exceptions to Additional Insured Requirements.** If the Grantee's insurance is provided through an insurance trust, the Grantee shall instead add the Department of Environmental Protection, its employees, and officers as an additional covered party everywhere the Agreement requires them to be added as an additional insured. Further, notwithstanding the requirements above, if Grantee is self-insured, then the Department of Environmental Protection, its employees, and officers do not need to be listed as additional insureds.
- d. **Deductibles.** The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Grantee providing such insurance.
- e. **Proof of Insurance.** Upon execution of this Agreement, the Grantee shall provide the Department documentation demonstrating the existence and amount for each type of applicable insurance coverage *prior to* performance of any work under this Agreement. Upon receipt of written request from the Department, the Grantee shall furnish the Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.
- f. **Failure to Maintain Coverage.** In the event that any applicable coverage is cancelled by the insurer for any reason, the Grantee shall immediately notify the Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) calendar days after the cancellation of coverage.

13. Termination.

- a. **Termination for Convenience.** The Department may terminate the Agreement in whole or in part by giving 30 days' written notice to the Grantee, when the Department determines, in its sole discretion, that it is in the State's interest to do so. The Department shall notify the Grantee of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Agreement is to be terminated. The Grantee shall not furnish any service or deliverable after it receives the notice of termination, unless otherwise instructed in the notice. The Grantee shall not be entitled to recover any cancellation charges or lost profits. If the Agreement is terminated before performance is completed, the Grantee shall be paid only for that work satisfactorily performed for which costs can be substantiated.
- b. **Termination for Cause.** The Department may terminate this Agreement if any of the events of default described below occur or in the event that the Grantee fails to fulfill any of its other obligations under this Agreement. The Grantee shall continue work on any portion of the Agreement not terminated. If, after termination, it is determined that the Grantee was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Department. The rights and remedies of the Department in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
- c. **Grantee Obligations upon Notice of Termination.** After receipt of a notice of termination or partial termination, and except as otherwise directed by the Department, the Grantee shall stop performing services on the date, and to the extent specified, in the notice.

14. Notice of Default.

If the Grantee defaults in the performance of any covenant or obligation contained in the Agreement, including, without limitation, any of the events of default listed below, the Department shall provide notice to the Grantee and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Grantee fail to perform within the time provided, the Grantee will be found in default, and the Department may terminate the Agreement effective as of the date of receipt of the default notice.

15. Events of Default.

Provided such failure is not the fault of the Department or outside the reasonable control of the Grantee, the following non-exclusive list of events, acts, or omissions, shall constitute events of default:

- a. The commitment of any material breach of this Agreement by the Grantee, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Agreement;
- b. The commitment of any material misrepresentation or omission in any materials, or discovery by the Department of such, made by the Grantee in this Agreement or in its application for funding.

- c. Failure to submit any of the reports required by this Agreement or having submitted any report with incorrect, incomplete, or insufficient information.
- d. Failure to honor any term of the Agreement;
- e. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Grantee by a state or other licensing authority;
- f. Failure to pay any and all entities, individuals, and the like furnishing labor or materials, or failure to make payment to any other entities as required herein in connection with the Agreement;
- g. Employment of an unauthorized alien in the performance of the work, in violation of Section 274 (A) of the Immigration and Nationality Act;
- h. Failure to maintain the insurance required by this Agreement; and
- i. One or more of the following circumstances, uncorrected for more than 30 calendar days unless, within the specified 30-day period, the Grantee (including its receiver or trustee in bankruptcy) provides to the Department adequate assurances, reasonably acceptable to the Department, of its continuing ability and willingness to fulfill its obligations under the Agreement:
 - i. Entry of an order for relief under Title 11 of the United States Code;
 - ii. The making by the Grantee of a general assignment for the benefit of creditors;
 - iii. The appointment of a general receiver or trustee in bankruptcy of the Grantee's business or property; and/or
 - iv. An action by the Grantee under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

16. Suspension of Work.

The Department may, in its sole discretion, suspend any or all activities under the Agreement, at any time, when it is in the best interest of the State to do so. The Department shall provide the Grantee written notice outlining the particulars of suspension. Examples of reasons for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Grantee shall comply with the notice. Within 90 days, or any longer period agreed to by the parties, the Department shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or (2) terminate the Agreement. If the Agreement is terminated after 30 days of suspension, the notice of suspension shall be deemed to satisfy the thirty (30) days' notice required for a notice of termination for convenience. Suspension of work shall not entitle the Grantee to any additional compensation.

17. Force Majeure.

The Grantee shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Grantee or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Grantee's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Grantee. In case of any delay the Grantee believes is excusable, the Grantee shall notify the Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first arose, if the Grantee could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five days after the date the Grantee first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Department. The Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from the Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Grantee shall perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to the Department, in which case the Department may (1) accept allocated performance or deliveries from the Grantee, provided that the Grantee grants preferential treatment to Department with respect to products subjected to allocation; (2) contract with other sources (without recourse to and by the Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity; or (3) terminate the Agreement in whole or in part.

18. Indemnification.

- a. The Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the Department and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:
 - i. personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, or subcontractors; provided, however, that the Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the Department;
 - ii. the Grantee's breach of this Agreement or the negligent acts or omissions of the Grantee.
- b. The Grantee's obligations under the preceding paragraph with respect to any legal action are contingent upon the Department giving the Grantee (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense; and (3) assistance in defending the action at Grantee's sole expense. The Grantee shall not be liable for any cost, expense, or compromise incurred or made by the Department in any legal action without the Grantee's prior written consent, which shall not be unreasonably withheld.
- c. Notwithstanding sections a. – b. above, the following is the sole indemnification provision that applies to Grantees that are governmental entities: 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, F.S. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract or this Agreement.
- d. No provision in this Agreement shall require the Department to hold harmless or indemnify the Grantee, insure or assume liability for the Grantee's negligence, waive the Department's sovereign immunity under the laws of Florida, or otherwise impose liability on the Department for which it would not otherwise be responsible. Any provision, implication or suggestion to the contrary is null and void.

19. Limitation of Liability.

The Department's liability for any claim arising from this Agreement is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Agreement. Such liability is further limited to a cap of \$100,000.

20. Remedies.

Nothing in this Agreement shall be construed to make the Grantee liable for force majeure events. Nothing in this Agreement, including financial consequences for nonperformance, shall limit the Department's right to pursue its remedies for other types of damages under the Agreement, at law or in equity. The Department may, in addition to other remedies available to it at law or in equity and upon notice to the Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it.

21. Waiver.

The delay or failure by the Department to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of the Department's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

22. Statutory Notices Relating to Unauthorized Employment and Subcontracts.

- a. The Department shall consider the employment by any Grantee of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Grantee/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Grantee shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Agreement.
- b. Pursuant to Sections 287.133 and 287.134, F.S., the following restrictions apply to persons placed on the convicted vendor list or the discriminatory vendor list:
 - i. **Public Entity Crime.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime 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 Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

- ii. **Discriminatory Vendors.** 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.
- iii. **Notification.** The Grantee shall notify the Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

23. Compliance with Federal, State and Local Laws.

- a. The Grantee and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Grantee shall include this provision in all subcontracts issued as a result of this Agreement.
- b. No person, on the grounds of race, creed, color, religion, national origin, age, gender, 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.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- d. Any dispute concerning performance of the Agreement shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts of the State, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

24. Scrutinized Companies.

Grantee certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, F.S. In addition, Grantee agrees to observe the requirements of Section 287.135, F.S., for applicable sub-agreements entered into for the performance of work under this Agreement. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement for cause if the Grantee, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Grantee, its affiliates, or its subcontractors are placed on any applicable scrutinized companies list or engaged in prohibited contracting activity during the term of the Agreement. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

25. Lobbying and Integrity.

The Grantee agrees that no funds received by it under this Agreement will be expended for the purpose of lobbying the Legislature or a State agency pursuant to Section 216.347, F.S., except that pursuant to the requirements of Section 287.058(6), F.S., during the term of any executed agreement between the Grantee and the State, the Grantee may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Grantee shall comply with Sections 11.062 and 216.347, F.S.

26. Record Keeping.

The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. In the event that any work is subcontracted, the Grantee shall similarly require each subcontractor to maintain and allow access to such records for audit purposes. Upon request of the Department's Inspector General, or other authorized State official, the Grantee shall provide any type of information the Inspector General deems relevant to the Grantee's integrity or responsibility. Such information may include, but shall not be limited to, the Grantee's business or financial records, documents, or files of any type or form that refer to or relate to the Agreement. The Grantee shall retain such records for the longer of: (1) three years after the expiration of the Agreement; or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>).

27. Audits.

- a. **Inspector General.** The Grantee understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Grantee will comply with this duty and ensure that its Subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its sub-grantees.
- b. **Physical Access and Inspection.** Department personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:
 - i. Grantee shall provide access to any location or facility on which Grantee is performing work, or storing or staging equipment, materials or documents;
 - ii. Grantee shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
 - iii. Grantee shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.
- c. **Special Audit Requirements.** The Grantee shall comply with the applicable provisions contained in **Attachment 5, Special Audit Requirements.** Each amendment that authorizes a funding increase or decrease shall include an updated copy of Exhibit 1, to Attachment 5. If the Department fails to provide an updated copy of Exhibit 1 to include in each amendment that authorizes a funding increase or decrease, the Grantee shall request one from the Department's Grants Manager. The Grantee shall consider the type of financial assistance (federal and/or state) identified in Attachment 5, Exhibit 1 and determine whether the terms of Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, the Grantee shall utilize the guidance provided under 2 CFR §200.330 for determining whether the relationship represents that of a subrecipient or vendor. For State financial assistance, the Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website: <https://apps.fldfs.com/fsaa>.
- d. **Proof of Transactions.** In addition to documentation provided to support cost reimbursement as described herein, the Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Agreement pursuant to State and Federal guidelines (including cost allocation guidelines). The Department may also request a cost allocation plan in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). The Grantee must provide the additional proof within thirty (30) calendar days of such request.
- e. **No Commingling of Funds.** The accounting systems for all Grantees must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, the Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.
 - i. If the Department finds that these funds have been commingled, the Department shall have the right to demand a refund, either in whole or in part, of the funds provided to the Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from the Department shall refund, and shall forthwith pay to the Department, the amount of money demanded by the Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from the Department by the Grantee to the date repayment is made by the Grantee to the Department.
 - ii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by the Department, from another source(s), the Grantee shall reimburse the Department for all recovered funds originally provided under this Agreement and interest shall be charged for those recovered costs as calculated on from the date(s) the payment(s) are recovered by the Grantee to the date repayment is made to the Department.

28. Conflict of Interest.

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.

29. Independent Contractor.

The Grantee is an independent contractor and is not an employee or agent of the Department.

30. Subcontracting.

- a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by the Grantee and may not be subcontracted or assigned without the prior written consent of the Department.
- b. The Department may, for cause, require the replacement of any Grantee employee, subcontractor, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.
- c. The Department may, for cause, deny access to the Department's secure information or any facility by any Grantee employee, subcontractor, or agent.
- d. The Department's actions under paragraphs b. or c. shall not relieve the Grantee of its obligation to perform all work in compliance with the Agreement. The Grantee shall be responsible for the payment of all monies due under any subcontract. The Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract and the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract.
- e. The Department will not deny the Grantee's employees, subcontractors, or agents access to meetings within the Department's facilities, unless the basis of the Department's denial is safety or security considerations.
- f. The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Agreement embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State of Florida. A list of minority-owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.
- g. The Grantee shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Grantee and the subcontractor(s), and without the fault or negligence of either, unless the subcontracted products or services were obtainable from other sources in sufficient time for the Grantee to meet the required delivery schedule.

31. Guarantee of Parent Company.

If the Grantee is a subsidiary of another corporation or other business entity, the Grantee asserts that its parent company will guarantee all of the obligations of the Grantee for purposes of fulfilling the obligations of the Agreement. In the event the Grantee is sold during the period the Agreement is in effect, the Grantee agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of the Grantee.

32. Survival.

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

33. Third Parties.

The Department shall not be deemed to assume any liability for the acts, failures to act or negligence of the Grantee, its agents, servants, and employees, nor shall the Grantee disclaim its own negligence to the Department or any third party. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. If the Department consents to a subcontract, the Grantee will specifically disclose that this Agreement does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Agreement.

34. Severability.

If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

35. Grantee's Employees, Subcontractors and Agents.

All Grantee employees, subcontractors, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Agreement must comply with all security and administrative requirements of the Department and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement.

36. Assignment.

The Grantee shall not sell, assign, or transfer any of its rights, duties, or obligations under the Agreement, or under any purchase order issued pursuant to the Agreement, without the prior written consent of the Department. In the event of any assignment, the Grantee remains secondarily liable for performance of the Agreement, unless the Department

expressly waives such secondary liability. The Department may assign the Agreement with prior written notice to the Grantee of its intent to do so.

37. Prohibited Local Government Construction Preferences.

Pursuant to Section 255.0991, F.S., for a competitive solicitation for construction services in which 50 percent (50%) or more of the cost will be paid from state-appropriated funds that have been appropriated at the time of the competitive solicitation, a state college, county, municipality, school district, or other political subdivision of the state may not use a local ordinance or regulation that provides a preference based upon:

- i. The contractor's maintaining an office or place of business within a particular local jurisdiction;
- ii. The contractor's hiring employees or subcontractors from within a particular local jurisdiction; or
- iii. The contractor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

For any competitive solicitation that meets the criteria of this section, a state college, county, municipality, school district, or other political subdivision of the state shall disclose in the solicitation document that any applicable local ordinance or regulation does not include any preference that is prohibited by this section.

38. Prohibited Governmental Actions for Public Works Projects.

Pursuant to Section 255.0992, F.S., state and political subdivisions that contract for public works projects are prohibited from imposing restrictive conditions on certain contractors, subcontractors, or material suppliers and prohibited from restricting qualified bidders from submitting bids.

- a. "Political subdivision" means separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body thereof authorized to expend public funds for construction, maintenance, repair or improvement of public works.
- b. "Public works project" means an activity of which fifty percent (50%) or more of the cost will be paid from state-appropriated funds that were appropriated at the time of the competitive solicitation and which consists of construction, maintenance, repair, renovation, remodeling or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision.
- c. Except as required by federal or state law, the state or political subdivision that contracts for a public works project may not require that a contractor, subcontractor or material supplier or carrier engaged in such project:
 - i. Pay employees a predetermined amount of wages or prescribe any wage rate;
 - ii. Provide employees a specified type, amount, or rate of employee benefits;
 - iii. Control, limit, or expand staffing; or
 - iv. Recruit, train, or hire employees from designated, restricted, or single source.
- d. For any competitive solicitation that meets the criteria of this section, the state or political subdivision that contracts for a public works project may not prohibit any contractor, subcontractor, or material supplier or carrier able to perform such work who is qualified, licensed, or certified as required by state law to perform such work from submitting a bid on the public works project, except for those vendors listed under Section 287.133 and Section 287.134, F.S.
- e. Contracts executed under Chapter 337, F.S. are exempt from these prohibitions.

39. Execution in Counterparts and Authority to Sign.

This Agreement, any amendments, and/or change orders related to the Agreement, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
GRANT AGREEMENT
SPECIAL TERMS AND CONDITIONS
AGREEMENT # MV272**

ATTACHMENT 2

These Special Terms and Conditions shall be read together with general terms outlined in the Standard Terms and Conditions, Attachment 1. Where in conflict, these more specific terms shall apply.

1. Scope of Work.

The Project funded under this Agreement is replacement pumpout vessel. The Project is defined in more detail in the Attachment 3, Grant Work Plan.

2. Duration.

a. Reimbursement Period.

The reimbursement period for this Agreement begins upon execution through August 30, 2018, which shall be defined as the Project Completion Date. All work, eligible for reimbursement under this Agreement, must be completed by the Project Completion Date.

b. Extensions. There are extensions available for this Project.

c. Service Periods. Additional service periods are not authorized under this Agreement.

3. Payment Provisions.

a. Compensation. This is a cost reimbursement agreement. The Grantee shall be compensated under this Agreement as described in Attachment 3.

b. Invoicing. Invoicing will occur as indicated in Attachment 3.

c. Advance Pay. Advance Pay is not authorized under this Agreement.

4. Costs Eligible for Reimbursement or Matching Requirements.

Reimbursement for costs or availability for costs to meet matching requirements shall be limited to the following budget categories, as defined in the Reference Guide for State Expenditures, as indicated:

<u>Reimbursement</u>	<u>Match</u>	<u>Category</u>
<input type="checkbox"/>	<input type="checkbox"/>	Salaries/Wages
		Overhead/Indirect/General and Administrative Costs:
<input type="checkbox"/>	<input type="checkbox"/>	a. Fringe Benefits, N/A.
<input type="checkbox"/>	<input type="checkbox"/>	b. Indirect Costs, for actual costs not to exceed the budget amount identified in Attachment 3.
<input type="checkbox"/>	<input type="checkbox"/>	Contractual (Subcontractors)
<input type="checkbox"/>	<input type="checkbox"/>	Travel
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Equipment
<input type="checkbox"/>	<input type="checkbox"/>	Rental/Lease of Equipment
<input type="checkbox"/>	<input type="checkbox"/>	Miscellaneous/Other Expenses
<input type="checkbox"/>	<input type="checkbox"/>	Land Acquisition

5. Equipment Purchases for Purchases Made Directly and Disposed or Retained by Grantee.

The purchase of non-expendable personal property or equipment costing \$1,000 or more purchased for purposes of this Agreement remains the property of the Grantee. Upon satisfactory completion of this Agreement, the Grantee may retain ownership or determine the disposition of the non-expendable personal property or equipment purchased under this Agreement. However, the Grantee is required to account for and report on all nonexpendable and/or nonconsumable personal property or equipment purchased under this Agreement in accordance with the Grantee's financial reporting and inventory control requirements. Based on the report, the Grantee will submit **Exhibit C, Property Reporting Form**, along with the appropriate invoice(s) to the Department's Grant Manager with any applicable requests for reimbursement. The following terms shall apply:

- a. The Grantee shall have use of the non-expendable personal property or equipment for the authorized purposes of the contractual arrangement as long as the required work is being performed.
- b. The Grantee is responsible for the implementation of adequate maintenance procedures to keep the non-expendable personal property or equipment in good operating condition.
- c. The Grantee is responsible for any loss, damage, or theft of, and any loss, damage or injury caused by the use of, non-expendable personal property or equipment purchased with state funds and held in Grantee's possession for use in a contractual arrangement with the Department.

The Grantee is responsible for keeping a current and accurate inventory of any nonexpendable and/or nonconsumable personal property or equipment in accordance with its financial reporting and inventory control requirements. The Department may request an annual copy of these inventory records for the life of the Agreement.

There will be no Land Acquisitions funded under this Agreement.

6. Match Requirements.

The Agreement requires at least a 25% match on the part of the Grantee. Therefore, the Grantee is responsible for providing \$25,859.50 through cash or third party in-kind towards the work funded under this Agreement.

The Grantee may claim allowable project expenditures made upon execution or after for purposes of meeting its match requirement as identified above.

Each payment request submitted shall document all matching funds and/or match efforts (i.e., in-kind services) provided during the period covered by each request. The final payment will not be processed until the match requirement has been met.

7. Quality Assurance Requirements.

There are no special Quality Assurance requirements under this Agreement.

8. Additional Lobbying Requirements for Federally-Funded Agreements

The federally-funded portion of this Agreement is \$100,000 or less, therefore disclosure of lobbying activities is not required by 31 U.S. Code § 1352.

9. Miscellaneous Contract Terms.

a. Retainage.

No retainage is required under this Agreement.

b. Subcontracting.

Subcontracting is not permitted under this Agreement.

c. State-owned land.

The work will not be performed on State-owned land.

d. Office of Policy and Budget Reporting.

There are no special Office of Policy and Budget reporting requirements for this Agreement.

10. Additional Terms.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
GRANT WORK PLAN
CLEAN VESSEL ACT GRANT PROGRAM
DEP AGREEMENT #: MV272**

ATTACHMENT 3

PROJECT TITLE: Clean Vessel Act Grant; CVA17-823, City of Marathon dba Boot Key Harbor City Marina (“Project”)

PROJECT LOCATION: 800 35th Street Ocean, Marathon, FL 33050 (“Project site”)

TASKS AND DELIVERABLES

The following is a schedule of tasks/deliverables and budget detail for the completion of the tasks required to complete this Project. Payment may be requested upon submission, review, and approval of the deliverables assigned to each task.

Permits

The Grantee is responsible for obtaining all state and local permits and approvals required for installation and operation of pumpout equipment prior to commencement of this Project. Copies of permits, letters of permit issuance, and inspections reports, as applicable, will need to be submitted to the Department before the Grantee commences any work on the subsequent permit-related tasks/activities below.

Task 1: Equipment Purchase

The Grantee will purchase authorized pumpout equipment or waste receptacle equipment and ensure its delivery to the Project site. Authorized equipment includes: pumpout vessel in accordance with the minimum requirements specified in the approved design and permits. All nonexpendable and/or nonconsumable equipment purchased under this Agreement is subject to the five (5) year Quarterly Pumpout Report requirements set forth above under Attachment 6, Project-Specific Requirements, paragraph 8.C. The Grantee will maintain compliance with these requirements for the life of the Agreement.

Deliverables: Purchase of the authorized equipment, as evidenced by a copy of paid invoice(s), delivery receipt(s) and a completed **Property Reporting Form (Attachment G)**. The Grantee will submit the appropriate documentation to demonstrate its compliance with the property reporting and property management (paragraph 5 of Attachment 2, Special Terms and Conditions) requirements of this Agreement. A final inventory report shall be due at the end of the Agreement.

Performance Standard: The Department’s Grant Manager will review documentation to verify authorized equipment has been purchased and delivered in accordance with this task, and will review the **Property Reporting Form** for accuracy and completion. Upon review and written acceptance by the Department’s Grant Manager of all deliverables under this task, the Grantee may proceed with payment request submittal.

Task Deadline: August 15, 2018

Budget: Allowable costs for this task are for Equipment; in accordance with the above deliverables. Equipment purchase and equipment installation may be included on one invoice.

CVA TASK BUDGET TABLE:

Tasks	Allowable Budget Categories	Total Project (100%)	Grant Award Amount (75%)	Grantee Match Amount (25%)
1. Equipment Purchase	Equipment	\$103,438.00	\$77,578.50	\$25,859.50
Total Grant Award Amount (no greater than 75%)			\$77,578.50	
Total Match Amount (no less than 25%)				\$25,859.50
Total Project (100%):		\$103,438.00		

PROJECT BUDGET SUMMARY: Cost reimbursable grant funding must not exceed the category totals for the project as indicated below.

Category Totals	Grant Funding, Not to Exceed, \$	Match Funding
Equipment Total	\$77,578.50	\$25,859.50
Total:	\$75,578.50	\$25,859.50
Total Project Cost:	\$103,438.00	
Percentage Match:	75%	25%

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DEPARTMENT OF ENVIRONMENTAL PROTECTION

Public Records Requirements

Attachment 4

1. Public Records

- a. If the Agreement exceeds \$35,000.00, and if the Grantee is acting on behalf of the Department in its performance of services under the Agreement, the Grantee must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by the Grantee in conjunction with the Agreement (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Agreement if the Grantee refuses to allow public access to Public Records as required by law.

2. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.

For the purposes of this paragraph, the term “contract” means the “Agreement.” If the Grantee is a “contractor” as defined in section 119.0701(1)(a), F.S., the following provisions apply:

- a. Keep and maintain Public Records required by the Department to perform the service.
- b. Upon request, provide the Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- c. A contractor who fails to provide the Public Records to the Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- d. Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the Public Records to the Department.
- e. Upon completion of the contract, transfer, at no cost, to the Department all Public Records in possession of the contractor or keep and maintain Public Records required by the Department to perform the service. If the contractor transfers all Public Records to the Department upon completion of the contract, the contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the contractor keeps and maintains Public Records upon completion of the contract, the contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the Department, upon request from the Department’s custodian of Public Records, in a format specified by the Department as compatible with the information technology systems of the Department. These formatting requirements are satisfied by using the data formats as authorized in the contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the contractor is authorized to access.
- f. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE**

**CONTRACT, CONTACT THE DEPARTMENT'S CUSTODIAN OF
PUBLIC RECORDS AT:**

Telephone: (850) 245-2118

Email: public.services@dep.state.fl.us

Mailing Address: Department of Environmental Protection
ATTN: Office of Ombudsman and Public
Services
Public Records Request
3900 Commonwealth Boulevard, MS 49
Tallahassee, Florida 32399

ATTACHMENT 5

SPECIAL AUDIT REQUIREMENTS

The administration of resources awarded by the Department of Environmental Protection (*which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the contract/agreement*) to the recipient (*which may be referred to as the "Contractor", Grantee" or other name in the contract/agreement*) may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

MONITORING

In addition to reviews of audits conducted in accordance with OMB Circular A-133, as revised, 2 CFR Part 200, Subpart F, and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, 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 Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department 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 Chief Financial Officer 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 (for fiscal year start dates prior to December 26, 2014), or as defined in 2 CFR §200.330 (for fiscal year start dates after December 26, 2014).

1. In the event that the recipient expends \$500,000 (\$750,000 for fiscal year start dates after December 26, 2014) 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, and 2 CFR Part 200, Subpart F. EXHIBIT 1 to this Attachment indicates Federal funds awarded through the Department of Environmental Protection 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 the Department of Environmental Protection. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F. An audit of the recipient conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, will meet the requirements of this part.
2. 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, and 2 CFR Part 200, Subpart F.
3. If the recipient expends less than \$500,000 (or \$750,000, as applicable) in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, is not required. In the event that the recipient expends less than \$500,000 (or \$750,000, as applicable) 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, and 2 CFR Part 200, Subpart F 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).
4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at www.cfda.gov

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2)(n), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 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 Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this Attachment indicates state financial assistance awarded through the Department of Environmental Protection 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 Department of Environmental Protection, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. 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), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$750,000 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 \$750,000 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).
4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa> for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at <http://www.leg.state.fl.us/Welcome/index.cfm>, State of Florida's website at <http://www.myflorida.com/>, Department of Financial Services' Website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

PART IV: REPORT SUBMISSION

- I. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F and required by PART I of this Attachment shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director
Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

- B. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised, and 2 CFR §200.501(a) (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, and 2 CFR §200.501(a) 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

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/facweb/>

- C. Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised, and 2 CFR §200.512.
2. Pursuant to Section .320(f), OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, the recipient shall submit a copy of the reporting package described in Section .320(c), OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, and any management letters issued by the auditor, to the Department of Environmental Protection at one the following addresses:

By Mail:

Audit Director
Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

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

- A. The Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director
Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:
FDEPSingleAudit@dep.state.fl.us

B. The Auditor General's Office at the following address:

State of Florida Auditor General
Room 401, Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

4. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director
Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:
FDEPSingleAudit@dep.state.fl.us

5. Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, Florida Statutes, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
6. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with OMB Circular A-133, as revised and 2 CFR Part 200, Subpart F, 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.

PART V: RECORD RETENTION

The recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of **5** years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of **3** years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

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EXHIBIT - 1

FUNDS AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
Original Agreement	Department of Interior, U.S. Fish and Wildlife Service	15.616	Clean Vessel Act	\$77,578.50	140122

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:					
Federal Program Number	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:						
State Program Number	Funding Source	State Fiscal Year	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category

Total Award					\$77,578.50	
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For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [www.cfda.gov] and/or the Florida Catalog of State Financial Assistance (CSFA) [https://apps.fldfs.com/fsaa/searchCatalog.aspx]. The services/purposes for which the funds are to be used are included in the Contract scope of services/work. Any match required by the recipient is clearly indicated in the Contract.

ATTACHMENT 6

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION PROGRAM-SPECIFIC REQUIREMENTS

FOR THE CLEAN VESSEL ACT GRANT PROGRAM

1. Purpose.

The primary goal of the Clean Vessel Act (CVA) is to reduce overboard sewage discharge from recreational boats by providing pumpout and dump stations for recreational boaters to dispose of human waste in an environmentally safe manner. The purpose of the CVA Grant Program ("Program") is to establish or restore pumpout facilities that are operational and accessible to the general boating public for the useful life of the facilities. The Program also provides educational materials for boaters on the hazards of boater sewage, when applicable.

2. Pumpout Station Operation Plan.

The Grantee shall operate each pumpout facility or dump station funded under this Agreement so that it is open and available to the recreational boating public. Each pumpout facility, pumpout vessel, or dump station shall be operated, maintained, and continue to be reasonably accessible to all recreational vessels for the period of time set forth in the Agreement. The Grantee will conduct operations of the pumpout facility, pumpout vessel, or dump stations in accordance with the Pumpout Station Operational Plan, available for download from the Department's Clean Vessel Act Program website (see **Exhibit 1** of this Attachment). Pumpout vessels are to be used solely for the collection and hauling of recreational boat sewage.

3. Program Guidelines.

The Agreement shall be performed in accordance with the Federal CVA Grant Program Guidelines (50 Code of Federal Regulations (CFR) Parts 80 and 85) which are hereby incorporated by reference as if fully set forth herein. The Grantee acknowledges that receipt of this grant does not imply nor guarantee that a federal, state or local permit will be issued for a particular activity. Further, the Grantee agrees to ensure that all necessary permits are obtained prior to implementation of any grant-funded activity that may fall under applicable federal, state or local laws.

4. Reporting Requirements.

Some CVA-funded projects have a five (5) year reporting requirement. If required by Attachment 3, the Grantee shall provide a quarterly pumpout report (available online at the Department's Clean Vessel Act Program website, listed in Exhibit 1 of this Attachment, and hereby incorporated by reference) in accordance with the requirements and timeframes set forth in Attachment 3. In addition to the obligations listed in Section 32 of Attachment 1 of this Agreement, the reporting obligations of the Grantee in this Section, shall survive expiration of this Agreement for five years from the date of completion of the Project.

5. Fees for Pumpout Services.

Pumpout facilities, pumpout vessels, or dump station services will be provided free of charge or for a fee not to exceed \$5 per vessel. Fees greater than \$5 require prior written cost justification approval by the Department. If pumpout fees are collected, such proceeds shall be accounted for, and must be deducted from any reimbursement requests submitted by the Grantee for expenses associated with conducting operations and maintenance activities. An accounting of all fees collected will be provided on the quarterly pumpout report described in **Attachment 3**.

6. Project Completion Certification.

Project completion means the project is open and available for use by the public. Project must be designated complete prior to release of final reimbursement. In order to certify completion, the Grantee shall submit a completed and signed Pumpout Project Certification of Completion (available online at the Department's Clean Vessel Act Program website (see **Exhibit 1** of this Attachment), and hereby incorporated by reference) with final invoice to the Department.

7. Program Crediting and Signage.

The Grantee should display the appropriate pumpout symbol on facilities, such as pumpout and portable toilet dump stations, or on printed material or other visual representations relating to Project accomplishments or education/information (50 CFR §85.43 and 50 CFR §85.47). Signage specifications and crediting text can be found online at the Department's Clean Vessel Act Program website (see **Exhibit 1** of this Attachment). Required logos and graphics must be requested from the Department; requests can be made by email: Clean.Vessel.Act@dep.state.fl.us, by phone: (850) 245-2100, or through the Department's Grant Manager.

- A. If specified in **Attachment 3**, the following signage is required:
- i. One (1) three-foot (3') by four-foot (4') sign of the International Pumpout Symbol to be located on a dock or on land facing the waterway and clearly visible to boaters.
 - ii. One (1) informational sign, to be posted in a clearly visible location adjacent to the pumpout equipment, must state: fees, restrictions, hours of operation, operating instructions, an operator name and phone number, emergency phone numbers for reporting service problems, and include the following statement:

“Funded in part by the U.S. Fish and Wildlife Service, Clean Vessel Act through the Florida Department of Environmental Protection.”

- B. If required by **Attachment 3**, all other printed materials or visual representations related to the Project, including education and instructional materials shall include the following statement:

“Funded in part by the U.S. Fish and Wildlife Service, Clean Vessel Act through the Florida Department of Environmental Protection.”

8. Project Required Submittals and Requirements.

The following documents are required submittals under this Agreement. Failure to provide any of the following in the time frames provided may result in denial of reimbursement request. These provisions also represent requirements under this Agreement that must be complied with for the term of this Agreement. Referenced documents and plan/log sheet samples are available online at the Department's Clean Vessel Act Program website (see **Exhibit 1** of this Attachment).

- A. The Grantee shall submit a copy of executed subcontracts within ten (10) days after execution.
- B. In addition to the detailed supporting documentation required for reimbursement as described the Agreement, the Grantee shall, with the final reimbursement request, submit all of the following:
1. A completed and signed Pumpout Project Certification of Completion Form to be submitted with the final invoice.
 2. Photographic documentation that the Grantee has completed the appropriate program crediting and signage as required under this Agreement.
 3. Quarterly Progress Reports (**Exhibit C**).
 4. As described in the appropriate Tasks/Deliverables in **Attachment 3**, a pumpout log sample, which shall provide for daily logging of vessels pumped, total gallons pumped per vessel, out of state vessels, fees collected, and maintenance costs. The actual daily log is not required to be submitted to the Department. However, the Grantee must keep the logs as backup documentation for five (5) years following the Project completion date.
 5. As described in the appropriate Tasks/Deliverables in **Attachment 3**, a Pumpout Station Operational Plan that specifies hours of operation, maintenance principles, methods in determining volume of material pumped including the use of flow meters as may be

necessary, informational/educational materials on pumpout operation and assurances that the pumpout facility, pumpout vessel, or dump station will be used solely for the collection of recreational boat sewage.

- C. In addition to the submittal requirements identified above, the Grantee is required to submit Quarterly Pumpout Reports (available for download from the Department's Clean Vessel Act Program website, listed on **Exhibit 1** of this Attachment) when one or both of the following apply:
- I. As described in the Tasks/Deliverables **Attachment 3**, when the Project includes the purchase and/or installation of pumpout equipment, the Grantee is responsible for submitting Quarterly Pumpout Reports for a period of five (5) years. The five (5) year reporting period begins upon the receipt of the Certificate of Completion and submittal of the final invoice, and the Quarterly Pumpout Reports are due every quarter thereafter for the next five (5) years.
 2. As described in the Tasks/Deliverables **Attachment 3**, when the Project includes operations and/or maintenance and repair, the Grantee is responsible for submitting Quarterly Pumpout Reports every quarter beginning upon execution of this Agreement, more specifically the first quarter of operations, through the expiration of this Agreement.

9. State Funds (FIND).

If this Agreement includes Florida Inland Navigation District (FIND) funding, the following provisions also apply:

- A. FIND Rules.
The Agreement shall also be performed in accordance with the rules governing the FIND Cooperative Assistance Program (Chapter 66B-1, F.A.C.), which are hereby incorporated by reference as if fully set forth herein.
- B. FIND Signage Requirements.
Notwithstanding the requirements above, all of the signage requirements and other printed materials or visual representations related to the Project, including education and instructional materials must include the following statement:

“Funded in part by the U.S. Fish and Wildlife Service, Clean Vessel Act and Florida Inland Navigation District through the Florida Department of Environmental Protection.”

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EXHIBIT 1

The following information is available on the Department's Clean Vessel Act Grant Program website (Main Page: <http://www.floridadep.gov/osi/cva>)

Pumpout Station Operational Plan

Plan must include hours of operation, equipment maintenance schedule, phone number(s), emergency phone number(s), pumpout operation directions, cleaning instructions and VHF channels monitored. A Sample Plan is available at: <http://www.floridadep.gov/osi/cva/documents/sample-operational-plan>.

Quarterly Pumpout Report

For a period of five (5) years after completion of the installation of any pumpout project a Grantee is responsible for submitting quarterly pumpout gallon reports to the Department. You may email Pumpout gallon reports may be emailed to: Clean.Vessel.Act@dep.state.fl.us or faxed to: 1-866-340-4683. The Quarterly Pumpout Report may be downloaded at: <http://www.floridadep.gov/osi/cva/forms/5-year-quarterly-pumpout-reporting-form>.

Pumpout Project Certification of Completion

The Certificate of Completion Form must be completed and submitted with the final invoice to the Department. The form may be downloaded at: <http://www.floridadep.gov/osi/cva/forms/certificate-completion-form>.

Signage Specifications

Grantees are required to display signs to inform boaters about a pumpout facility. Specifications are listed online at: <https://floridadep.gov/osi/cva/content/pumpout-signage-requirements> and the required logos must be requested from the Department.

Contact the Department's Grant Manager or request the logos by:

Email: Clean.Vessel.Act@dep.state.fl.us

Phone: (850) 245-2100

Pumpout Logsheets

Logs must be kept as backup documentation for a period of five (5) years. A Sample Pumpout Logsheet may be downloaded at: <https://floridadep.gov/osi/cva/documents/pumpout-log-sheet-sample>.

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United States Department of the Interior

FISH AND WILDLIFE SERVICE

1875 Century Boulevard

Atlanta, Georgia 30345

In Reply Refer To:
FWS/R4/WSFR

Mr. Jon Steverson, Secretary
Department of Environmental Protection
3900 Commonwealth Boulevard
Mail Stop 10
Tallahassee, Florida 32399-3000
DUNS #: 80936690

Subject: Notice of Amendment to Grant Award for F14AP00978

Dear Mr. Steverson:

Your organization's amended application for Federal financial assistance titled "Florida Clean Vessel Act Grant Program – Coastal CVC14" submitted to the U.S. Fish and Wildlife Service, CFDA Program 15.605 is approved effective January 13, 2016. This award is made under the authority of Section 5604 of the Clean Vessel Act (Pub. L. 102-587, Subtitle F); and 50 CFR Part 85-Clean Vessel Act Pumpout Grant Program March 10, 1994. This award is made based on Service review of your organization's proposal, hereby incorporated by reference into this award. The purpose of this amendment is to extend the grant for time so that the approved activities will be completed.

The performance period of this award is October 1, 2014 to September 30, 2018. If you need more time to complete project activities, you must submit an Amendment request to extend the performance period to the Wildlife and Sport Fish restoration Program Chief at r4federalassistance@fws.gov before the end of the stated performance period (see Performance Period Extension sections in enclosure). Only allowable costs resulting from obligations incurred during the project period and any authorized pre-award costs may be charged to this award. All obligations incurred under the award must be liquidated no later than 90 calendar days after the end of the project period, unless the Service approves a final financial reporting period extension (see Reporting Requirements section in enclosure).

The table below documents the approved funding for this award, including the Federal share and non-Federal match:

ASAP Accounting Information	Funding Sub Account	Federal Share	% of Federal Share	State Share	% of State Share	Total Award
1217194	9310	\$1,410,561	75%	\$470,187	25%	\$1,880,748
Totals:	9310	\$1,410,561	75%	\$470,187	25%	\$1,880,748

Prior Approvals: Recipients are required to request prior approvals for project and budget revisions in accordance with 2 CFR 200.308 unless otherwise specifically waved in this award. (See Project and Budget Revisions section in enclosure).

Financial and Performance Reporting Requirements:

Report Title	Report Period:	Due Date
Interim Federal Financial Report (SF-425)	October 1, 2014 to September 30, 2016	December 29, 2016
Interim Performance Report	October 1, 2015 to September 30, 2016	December 29, 2016
Interim Federal Financial Report (SF-425)	October 1, 2014 to September 30, 2017	December 29, 2017
Interim Performance Report	October 1, 2016 to September 30, 2017	December 29, 2017
Final Federal Financial Report (SF-425)	October 1, 2014 to September 30, 2018	December 29, 2018
Final Performance Report	October 1, 2014 to September 30, 2018	December 29, 2018

All Reports should be sent to r4federalassistance@fws.gov. Performance reports should be entered into Wildlife TRACS at https://tracs.fws.gov/data_tracs/dt/dashboard.

Acceptance of this federal assistance award carries with it the responsibility to be aware of and comply with the terms and conditions, attached, applicable to the award. In addition, the following Special Conditions apply:

Special Conditions and Provisions:

Pursuant to Section 7 of the Endangered Species Act of 1973, as amended: the U.S. Fish and Wildlife Service has requested informal consultation with the National Marine Fisheries Service (NMFS) to concur with our determination that the activities funded under this award *may affect but are not likely to adversely affect* threatened or endangered species or critical habitat listed under their jurisdiction. Section 9 of the Endangered Species Act and Federal regulation pursuant to section 4(d) of the act prohibit the take of endangered and threatened species, respectively, without special exemption. Therefore, if: (1) any threatened or endangered species are incidentally taken, (2) new information reveals effects of the agency action may affect listed species or critical habitat, or (4) a new species is listed or critical habitat designated that may be affected by activities funded under this award, this information must be immediately reported to the NMFS, Florida Ecological Services Field office(s), and the Wildlife and Sport Fish Restoration Program.

Pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (U.S.C. 403), and Section 404 of the Clean Water Act (33 U.S.C. 1344): No construction activity may take place until our office has received and reviewed any required U.S. Army Corps of Engineers permit(s).

Real Property should be identified: with appropriate signs (Wildlife and Sport Fish Restoration logo) as to the WSFR Program under which the property was acquired (in part or whole). Provisions must be made to inform the public of the location, boundaries, and any restrictions on use.

Grant Approval Level: Cost accounting is required at the Grant level (50 CFR Part 80.55-56).

Equipment Purchased: Equipment purchased with grant funds shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project continues to be supported by federal funds. When the equipment is no longer needed for the original program purposes, the equipment may be used in other activities currently or previously supported by the Federal agency.

Integrated Pest Management: The Wildlife and Sport Fish Restoration Program encourages all grantees to comply with all of their State laws, regulations, and policies regarding pest management, pesticide application, invasive species management, disease control, and best management practices when conducting pest management actions using funding associated with a Wildlife and Sport Fish Restoration Program grant. This includes compliance with the Federal Insecticide, Fungicide and Rodenticide Act as your State implements it. For further information, contact your State agency that manages pest control issues and/or visit the U.S. Fish and Wildlife Service Environmental Quality site at: <http://www.fws.gov/contaminants/Issues/IPM.cfm>.

Project Contacts:

The Service Project Officer for this award is:	The Recipient Project Officer for this award is:
Scott White U.S. Fish and Wildlife Service Wildlife and Sport Fish Restoration Program 1875 Century Blvd. Suite 240 Atlanta, GA 30345 (404) 679-7113 - office (404) 679-4160 - fax	Brenda Leonard Department of Environmental Protection Mail Stop 10 3900 Commonwealth Blvd Tallahassee, FL 32399 (850) 245-2847

Copies of the Grant Award documents have been e-mailed to your grant coordinator. Please contact me at (404) 679-4154 or Scott White at (404) 679-7113 if you have any questions.

Sincerely yours,

A handwritten signature in cursive script that reads "Michael L. Piccirilli".

Michael L. Piccirilli
Chief - Wildlife and Sport Fish Restoration Program

Enclosure



United States Department of the Interior

FISH AND WILDLIFE SERVICE

1875 Century Boulevard
Atlanta, Georgia 30345

IN REPLY REFER TO:
FWS/R4/WSFR

SEP 9 2014

Mr. Herschel T. Vineyard, Jr., Secretary
Department of Environmental Protection
3900 Commonwealth Boulevard
Mail Stop 10
Tallahassee, Florida 32399-3000

Dear Mr. Vineyard:

Your Clean Vessel Act Program proposal for a coastal grant is approved. The Grant Award Number FL-V-F14AP00978, "Florida Clean Vessel Act Program – Coastal CVC14," is approved for the 24-month period from October 1, 2014, to September 30, 2016, for the sum of \$1,880,748 of which the Federal Share is \$1,410,561.

Special Conditions to this Grant Award:

Annual Interim Fiscal and Project Performance Reports are due on **December 29, 2015**.
Final Project Performance and Final Fiscal Reports are due on **December 29, 2016**.

Failure to Report: In accordance with the U.S. Fish and Wildlife Service Manual chapter 516 FW 2 *Performance Reporting for Grant and Cooperative Agreement Awards*, failure to submit reports by the required due dates may result in the following progressive actions pending receipt of the required report (s), including but not limited to:

- a) notifying in writing that a Financial Status and/or Project Performance Report was not received;
- b) withholding obligations and payments on the award
- c) withholding of future awards for the program
- d) denying the use of Federal funds and all forms of matching funds
- e) whole or partial suspension
- f) termination of the current grant award; and,
- g) other legal actions as stated in the guidance.

The Grant Approval Level: is determined to be at the Project Level (50 CFR 80.55-80.56). This grant consists of the following three projects: 1. Construction, 2. Administration, and 3. Outreach/Education. Your agency should track costs at the project level and report them in the Final Financial Report.

Equipment Purchased: Equipment purchased with grant funds shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project continues to be supported by federal funds. When the equipment is no longer needed for the original program purposes, the equipment may be used in other activities currently or previously supported by the Federal agency.

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Integrated Pest Management: The Wildlife and Sport Fish Restoration Program encourages all grantees to comply with all of their State laws, regulations, and polices regarding pest management, pesticide application, invasive species management, disease control, and best management practices when conducting pest management actions using funding associated with a Wildlife and Sport Fish Restoration Program grant. This includes compliance with the Federal Insecticide, Fungicide and Rodenticide Act as your State implements it. For further information, contact your State agency that manages pest control issues and/or visit the U.S. Fish and Wildlife Service Environmental Quality site at: <http://www.fws.gov/contaminants/Issues/IPM.cfm>.

National Historic Preservation Act (NHPA): In the event that archaeological deposits, including any Native American pottery, stone tools, bones, or human remains, are uncovered during implementation of the proposed project, the applicant will stop all work immediately in the vicinity of the discovery and take reasonable measures to avoid or minimize harm to the finds. All archaeological findings will be secured and access to the sensitive area restricted. The Florida Department of Environmental Protection (FDEP) will inform the USFWS immediately, and the FDEP and the USFWS will consult with the SHPO.

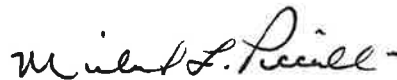
Terms of Acceptance:

Per http://www.doi.gov/pam/programs/financial_assistance/TermsandConditions.cfm, acceptance of a Federal Financial award from the Department of the Interior (DOI) carries with it the responsibility to be aware of and comply with the terms and conditions of the award. Acceptance is defined as the start of work, drawing down funds, or accepting the award via electronic means. Awards are based on the application submitted to, and as approved by DOI and are subject to the terms and conditions incorporated either directly or by reference to the following: Program legislation/regulation, Assurances, Special Conditions and Code of Federal Regulations and other Regulatory Requirements, as applicable.

A copy of the Grant Award letter, which includes the Special Conditions, was e-mailed to Mrs. Brenda Leonard, your Clean Vessel Act Coordinator.

Please contact me at (404) 679-4154 or Mr. Scott White at (404) 679-7113, if you have any questions.

Sincerely yours,



Michael L. Piccirilli
Chief-Wildlife and Sport Fish Restoration Program

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Subpart C—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

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GENERAL

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§12.41 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

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§12.42 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

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§12.43 Definitions.

As used in this part:

Accrued expenditures mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

Accrued income means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

Acquisition cost of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

Administrative requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "programmatic" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

Cash contributions means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

Contract means (except as used in the definitions for "grant" and "subgrant" in this section and except where qualified by "Federal") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

Cost sharing or matching means the value of the third party in-kind contributions and the portion of the costs of a Federally assisted project or program not borne by the Federal Government.

Cost-type contract means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

Expenditure report means: (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

Federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Government means a State or local government or a Federally recognized Indian tribal government.

Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

OMB means the U.S. Office of Management and Budget.

Outlays (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

Percentage of completion method refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

Prior approval means documentation evidencing consent prior to incurring specific cost.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Share, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "grant" in this part.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Supplies means all tangible personal property other than "equipment" as defined in this part.

Suspension means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

Termination means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "Termination" does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms of a grant or subgrant mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

Third party in-kind contributions mean property or services which benefit a Federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

Unliquidated obligations for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

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§12.44 Applicability.

(a) *General.* Subparts A-D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of §12.46, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV-E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section.

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits.

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641 (a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in §12.44(a) (3) through (8) are subject to subpart E.

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§12.45 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in §12.46.

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§12.46 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

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PRE-AWARD REQUIREMENTS

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§12.50 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

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§12.51 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

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§12.52 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

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POST-AWARD REQUIREMENTS

Financial Administration

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§12.60 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

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§12.61 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions, or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with §12.83(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 *et seq.*) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to \$100 per year for administrative expenses.

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§12.62 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
State, local or Indian tribal government	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular	OBM Circular A-122.
Educational institutions.	OMB Circular A-21.
For-profit organization other than a hospital and an organization named in OBM Circular A-122 as not subject to that circular	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

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§12.63 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

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§12.64 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions—*(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in §12.65, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in §12.65(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services—(1) Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-Federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in §12.62, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-Federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

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§12.65 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See §12.74.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§12.71 and 12.72.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

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§12.66 Non-Federal audit.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act Amendments of 1996, that provide Federal awards to a subgrantee, which expends \$300,000 or more (or other amount as specified by OMB) in Federal awards in a fiscal year, shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," have met the audit requirements of the Act. Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, §12.36 shall be followed.

[53 FR 8077, 8087, Mar. 11, 1988, as amended at 62 FR 45939, 45945, Aug. 29, 1997]

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CHANGES, PROPERTY, AND SUBAWARDS

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§12.70 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see §12.62) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes—(1) Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds \$100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of §12.76 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget form the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see §12.62) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

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§12.71 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the

cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

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§12.72 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in §12.65(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided Federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow 12.72 (e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

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§12.73 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not

needed for any other Federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

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§12.74 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

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§12.76 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or

breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §12.76. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed*—(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) *Procurement by sealed bids (formal advertising).* Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in §12.76(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals*. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see §12.62). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

[53 FR 8077, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19644, Apr. 19, 1995]

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§12.77 Subgrants.

(a) *States.* States shall follow State law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with §12.82 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 12.50;

(2) Section 12.51;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in §12.61; and

(4) Section 12.90.

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REPORTS, RECORDS RETENTION, AND ENFORCEMENT

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§12.80 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or

termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

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§12.81 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report*—(1) *Form*. Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with §12.81(e)(2)(iii).

(2) *Accounting basis*. Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency*. The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date*. When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form*. (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements*. Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement—(1) Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in §12.81(b)(3).

(e) *Outlay report and request for reimbursement for construction programs—(1) Grants that support construction activities paid by reimbursement method.* (i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in §12.81(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in §12.81(b)(3).

(2) *Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.* (i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by §12.81(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in §12.81(d).

(iii) The Federal agency may substitute the Financial Status Report specified in §12.81(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by §12.81(b)(2).

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§12.82 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see §12.76(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.


(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

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§12.83 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §12.75).

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§12.84 Termination for convenience.

Except as provided in §12.83 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be

terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §12.83 or paragraph (a) of this section.

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AFTER-THE-GRANT REQUIREMENTS

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§12.90 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) Final performance or progress report.

(2) Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable.)

(3) Final request for payment (SF-270) (if applicable).

(4) Invention disclosure (if applicable).

(5) *Federally-owned property report:* In accordance with §12.72(f), a grantee must submit an inventory of all Federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

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§12.91 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in §12.82;

(d) Property management requirements in §§12.71 and 12.72; and

(e) Audit requirements in §12.66.

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§12.92 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

- (1) Making an administrative offset against other requests for reimbursements,
- (2) Withholding advance payments otherwise due to the grantee, or
- (3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

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ENTITLEMENTS [RESERVED]

ATTACHMENT 8
Contract Provisions for DOI-Funded Agreements

The Department, as a Non-Federal Entity as defined by 2 CFR §200.69, shall comply with the following provisions, where applicable. For purposes of this Grant Agreement between the Department and the Grantee, the term "Recipient" shall mean "Grantee."

Further, the Department, as a pass-through entity, also requires the Grantee to pass on these requirements to all lower tier subrecipients, and to comply with the provisions of the award, including applicable provisions of the OMB Uniform Guidance (2 CFR Part 200), and all associated terms and conditions. Therefore, Grantees must include these requirements in all related subcontracts and/or sub-awards. Grantees can include these requirements by incorporating this Attachment in the related subcontract and/or sub-awards, however for all such subcontracts and sub-awards, the Grantee shall assume the role of the Non-Federal Entity and the subrecipients shall assume the role of the Recipient.

2 CFR PART 200 APPENDIX 2 REQUIREMENTS

1. Administrative, Contractual, and Legal Remedies

The following provision is required if the Agreement is for more than \$150,000. In addition to any of the remedies described in the elsewhere in the Agreement, if the Recipient materially fails to comply with the terms and conditions of this Contract, including any Federal or State statutes, rules or regulations, applicable to this Contract, the Non-Federal Entity may take one or more of the following actions.

- i. Temporarily withhold payments pending correction of the deficiency by the Recipient.
- ii. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- iii. Wholly or partly suspend or terminate this Contract.
- iv. Take other remedies that may be legally available.

The remedies identified above, do not preclude the Recipient from being subject to debarment and suspension under Presidential Executive Orders 12549 and 12689. The Non-Federal entity shall have the right to demand a refund, either in whole or part, of the funds provided to the Recipient for noncompliance with the terms of this Agreement.

2. Termination for Cause and Convenience

Termination for Cause and Convenience are addressed elsewhere in the Agreement.

3. Equal Opportunity Clause

The following provision applies if the agreement meets the definition of "federally assisted construction contract" as defined by 41 CFR Part 60-1.3:

During the performance of this Agreement, the Recipient agrees as follows:

- i. The Recipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Recipient will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
 - a. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Recipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- ii. The Recipient will, in all solicitations or advertisements for employees placed by or on behalf of the Recipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- iii. The Recipient will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired

about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Recipient's legal duty to furnish information.

- iv. The Recipient will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Agreement or understanding, a notice to be provided advising the said labor union or workers' representatives of the Recipient's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- v. The Recipient will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- vi. The Recipient will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- vii. In the event of the Recipient's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Recipient may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- viii. The Recipient will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Recipient will take such action with respect to any subcontractor purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

4. Davis Bacon Act

If the Agreement is a prime construction contract in excess of \$2,000 awarded by the Recipient, and if required by the Federal Legislation, the Recipient must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must pay wages not less than once a week. The Recipient must comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each Recipient or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

5. Contract Work Hours and Safety Standards Act

Where applicable, if the Agreement is in excess of \$100,000 and involves the employment of mechanics or laborers, the Recipient must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each Recipient must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not

less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

6. Rights to Inventions Made Under Agreement

If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the Non-Federal Entity or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Non-Federal Entity or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

7. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387)

If the Agreement is in excess of \$150,000, the Recipient shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).

8. Debarment and Suspension (Executive Orders 12549 and 12689)

The Recipient certifies that it is not listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension."

9. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

The Recipient certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. The Recipient shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

10. Procurement of Recovered Materials

The Recipient must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act as described in 2 CFR part 200.322.

ADMINISTRATIVE

11. General Federal Regulations

Recipients shall comply with the regulations listed in 2 CFR 200, 48 CFR 31, and 40 U.S.C. 1101 *et sequence*.

12. Rights to Patents and Inventions Made Under a Contract or Agreement

Rights to inventions made under this assistance agreement are subject to federal patent and licensing regulations, which are codified at Title 37 CFR Part 401 and Title 35 U.S.C. 200 through 212.

13. Compliance with the Trafficking Victims Protection Act of 2000 (2 CFR Part 175)

Recipients, their employees, subrecipients under this award, and subrecipients' employees may not:

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
- ii. Procure a commercial sex act during the period of time that the award is in effect; or
- iii. Use forced labor in the performance of the award or subawards under the award.

14. Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234)

Recipients must comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234), if applicable. This act requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

15. Water Resources Reform and Development Act (WRRDA) P.L. 113-121

Recipients must comply with the Water Resources Reform and Development Act (WRRDA) P.L. 113-121, if applicable. This act provides for improvements to the rivers and harbors of the United States, to provide for the conservation and development of water and related resources.

16. Whistleblower Protection

Recipients shall comply with U.S.C. §4712, Enhancement of Recipient and Subrecipient Employee Whistleblower Protection. This requirement applies to all awards issued after July 1, 2013 and effective December 14, 2016 has been permanently extended (Public Law (P.L.) 114-261).

(a) This award, related subawards, and related contracts over the simplified acquisition threshold and all employees working on this award, related subawards, and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies in the pilot program on award recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239).

(b) Recipients, their subrecipients, and their contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.

(c) The Recipient shall insert this clause, including this paragraph (c), in all subawards and in contracts over the simplified acquisition threshold related to this award; best efforts should be made to include this clause, including this paragraph (c) in any subawards and contracts awarded prior to the effective date of this provision.

17. Notification of Termination (2 CFR § 200.340)

In accordance with 2 CFR § 200.340, in the event that the Agreement is terminated prior to the end of the period of performance due to the Recipient's or subcontractor's material failure to comply with Federal statutes, regulations or the terms and conditions of this Agreement or the Federal award, the termination shall be reported to the Office of Management and Budget (OMB)-designated integrity and performance system, accessible through System for Award Management (SAM) currently the Federal Awardee Performance and Integrity Information System (FAPIIS). The Non-Federal Entity will notify the Recipient of the termination and the Federal requirement to report the termination in FAPIIS. See 2 CFR § 200.340 for the requirements of the notice and the Recipient's rights upon termination and following termination.

18. Additional Lobbying Requirements

- (a) The Recipient certifies that no funds provided under this Agreement have been used or will be used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.
- (b) The Lobbying Disclosure Act of 1995, as amended (2 U.S.C. §1601 *et seq.*), prohibits any organization described in Section 501(c)(4) of the Internal Revenue Code, from receiving federal funds through an award, grant (and/or subgrant) or loan unless such organization warrants that it does not, and will not engage in lobbying activities prohibited by the Act as a special condition of such an award, grant (and/or subgrant), or loan. This restriction does not apply to loans made pursuant to approved revolving loan programs or to contracts awarded using proper procurement procedures.
- (c) Pursuant to 2 CFR §200.450 and 2 CFR §200.454(e), the Recipient is hereby prohibited from using funds provided by this Agreement for membership dues to any entity or organization engaged in lobbying activities.

COMPLIANCE WITH ASSURANCES

19. Assurances

Recipients shall comply with any and all applicable assurances made by the Department or the Recipient to the Federal Government during the Grant application process.

DEPARTMENT OF INTERIOR-SPECIFIC

20. Department of Interior (DOI) General Terms and Conditions

Recipients shall comply with DOI General Terms and Conditions available at https://www.doi.gov/pam/programs/financial_assistance/TermsandConditions, and incorporated by reference.

21. DOI Regulations

Recipients shall comply with the following regulations: 2 CFR 1400-1402, 43 CFR 9, 43 CFR 17, 43 CFR 18, 43 CFR 41, and 43 CFR 44.

22. Drug-Free Workplace

Recipients must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1401. Additionally, in accordance with these regulations, the recipients must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

23. Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act

As applicable, Recipient shall comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) to provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

24. Deposit of Publications Produced under Grants

Pursuant to Departmental Manual 505 DM4 (DOI) and Service Manual FW1 (USFWS), any grant or cooperative agreement that will produce a publication (other than those listed as exceptions) must provide two copies of each publication to the Department of Interior's Natural Resources Library. For a list of exceptions, transmittal requirements, and delivery information see Departmental Manual 505 DM 4, Deposit of Publications Produced under Grants at: <http://elips.doi.gov/ELIPS/DocView.aspx?id=1671>.

UNITED STATES FISH & WILDLIFE SERVICE-SPECIFIC

25. USFWS Financial Assistance Award Terms and Conditions

Recipients shall comply with the USFWS Financial Assistance Award Terms and Conditions applicable to the specific Federal Award funding source, available at <https://www.fws.gov/grants/atc.html>, and incorporated by reference.

NATIONAL PARKS SERVICE LAND AND WATER CONSERVATION FUND STATE ASSISTANCE PROGRAM-SPECIFIC

26. Land and Water Conservation Fund (LWCF) Project Agreement General Provisions

Recipients shall comply with the LWCF Project Agreement General Provisions available at <https://www.nps.gov/ncrc/programs/lwcf/pub.htm>, and incorporated by reference.

27. LWCF Federal Financial Assistance Manual

As applicable, Recipients shall comply with the LWCF Federal Financial Assistance Manual Effective October 1, 2008, or later, available at <https://www.nps.gov/ncrc/programs/lwcf/pub.htm>, and incorporated by reference.

28. Historic Preservation

As applicable, Recipients shall comply with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), E.O. 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 *et seq.*).

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**EXHIBIT A
PROGRESS REPORT FORM**

Project Number:

CVA17-823

Agreement Number:

MV272

Grantee Name:

City of Marathon dba Boot Key Harbor City Marina

Reporting Period: Year -

2017

Quarter -

1 - January, February, March

Provide a summary of the project's accomplishments to date.

Provide an update on the estimated time for completion of the project, and an explanation if there are any anticipated delays.

Identify below, and attach copies of any relevant work being submitted for this project for the reporting period (e.g. copies of permits, photographs, etc.)

This report is submitted in accordance with the reporting requirements of Clean Vessel Act Project Agreement No. MV272 and accurately reflects the activities and costs associated with the approved project.

Signature of Grantee's Grant Manager

Date



Exhibit C
Florida Department of Environmental Protection
PROPERTY REPORTING FORM FOR
DEP AGREEMENT NO. MV272

Required Signatures: Adobe Signature or Original Ink

CONTRACTOR/GRANTEE: In order to comply with applicable state and/or federal regulations, list non-expendable equipment/personal property costing \$1,000 or more purchased directly or indirectly under the above Agreement. Complete: 1) a description of the property, 2) the serial number or other identification number, 3) the source, 4) who holds title, 5) purchase date, 6) cost, 7) share of that cost, 8) location/address, 9) use and condition, 10) any ultimate disposition data including date of disposal and sale price.

Description	Serial No./ID No.	Source	Owner	Purchase Date	Cost	% Charged to DEP Grant Funds	Location/ Address	Use and Condition	Disposition (if sold, include sale price)
<i>Ex. Rainfall Gauge</i>	<i>12345</i>	<i>Bid</i>	<i>Grantee</i>	<i>MM/DD/YYYY</i>	<i>\$1,000/unit</i>	<i>100%</i>	<i>Project Site- 123 Main Street, Tallahassee, FL</i>	<i>New- Rainfall Measurements</i>	<i>Permanently installed at project site</i>

CONTRACTOR/GRANTEE:	Contract/Project/Grant Manager:	Date:
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BELOW FOR DEP USE ONLY	
DEP MANAGER:	Send invoices supporting the cost of the items to Finance and Accounting for the processing of the Grantee's/Contractor's invoice for payment. Maintain a copy of the invoices supporting the cost of each item identified above in your contract file. Refer to DEP Directive 320 for Property Guidelines.
DEP Manager Signature and Date:	

**EXHIBIT D
PAYMENT REQUEST SUMMARY FORM**

City of Marathon dba Boot Key Harbor City Marina

MV 272

CVA 17-823

Grantee Name

DEP Program: Clean Vessel Act Grant Program

*If reimbursement is being requested, an invoice on facility letterhead **must** accompany this form.*

**Total Project
(100% of cost)**

Permits

Site Preparation

Renovation

Equipment Purchase

Equipment Installation

Operations of Equipment

Maintenance and Repair

Sewage Hauling

Pumpout Signage

Educational and Instructional Materials

Total Project Cost _____ \$0.00

75% Reimbursable to Grantee _____ \$0.00

25% Grantee Match _____ \$0.00

I attest that documentation has been and will be maintained as required by this Agreement to support the amounts reported above and is available for audit upon request. I attest that all expenditures prior to this request have been made and are true and accurate and are only for the purposes as described in Clean Vessel Act Grant Project Agreement No. MV 272. I further attest, that City of Marathon dba Boot Key Harbor City Marina (Grantee) has complied with the terms and conditions of this Agreement.

Grantee's Grant Manager

Date