



October 25, 2011

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MyFWC.com

Jim Scholl, City Manager
City of Key West
525 Angela Street
Key West, Florida 33040

RE: Contract No. 11135
Florida Boating Improvement Program (FBIP) Grant Agreement
Truman Presidential Waterfront Park

Dear Mr. Scholl:

Enclosed are two (2) originals of the Grant Agreement for the FY 11/12 FBIP grant awarded to the City of Key West. Please have the Grant Agreement reviewed, signed by the authorized designee and return all originals to me. Upon full execution, an original will be returned to your office.

If you have any questions or need further information, please call me at (850) 617-9593, or email katrina.thompson@MyFWC.com. You may also contact Tim Woody at (850) 617-9559, or e-mail tim.woody@MyFWC.com.

Sincerely,

A handwritten signature in black ink that reads "Katrina Thompson".

Katrina Thompson, Grants Specialist
Florida Boating Improvement Program
Boating and Waterways Section

/kt
Enclosures

**FLORIDA BOATING IMPROVEMENT PROGRAM
GRANT AGREEMENT**

THIS AGREEMENT is entered into by and between the FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION, whose address is 620 South Meridian Street, Tallahassee, Florida 32399-1600, hereafter "COMMISSION," and the CITY OF KEY WEST whose address is 525 Angela Street, Key West, Florida 33040, hereafter "GRANTEE" to conduct a project entitled **Truman Presidential Waterfront Park**, hereafter "Project," using funds from the Florida Boating Improvement Program, hereafter "Program."

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

SCOPE OF WORK

1. The GRANTEE shall implement and complete the project as described in Attachment A, *Scope of Work* and Attachment A-1 *Federal Grant Agreement F-183-B*, attached hereto and made a part hereof, and in *Florida Boating Improvement Program (FBIP) Grant Application No. 11-023*, incorporated herein by reference. All project activities must be completed during the time span provided herein for that portion of the Agreement.
2. It is understood and agreed that this Agreement shall consist of three phases: Phase I – Project Design and Permitting, Phase II – Project Construction, and Phase III – Project Management. During Phase I the GRANTEE shall complete the tasks as described herein by reference. All tasks described in the Scope of Work must be completed during the time span provided herein for that portion of the Agreement. Each party hereto understands and agrees that upon completion of Phase I of the project the GRANTEE must apply to the Program to receive additional Program funds for Phase II of the Project. If awarded a grant, this Agreement may be amended to include an additional scope of work and funds for Phase II project construction. During Phase III the parties shall cooperate in the ongoing and continuous management of the Project under the terms and conditions provided herein.
3. The GRANTEE shall commence work on Phase I of the Project within 90 days of execution of the Agreement. Failure by the GRANTEE to begin work shall constitute a breach of the Agreement and may result in termination of the Agreement by the COMMISSION.
4. The GRANTEE shall comply with all applicable federal, state, and local rules and regulations in providing services to the COMMISSION under this Agreement. The GRANTEE acknowledges that this requirement includes compliance with all applicable federal, state and local health and safety rules and regulations. The GRANTEE further agrees to include this provision in all subcontracts issued as a result of this Agreement.
5. The GRANTEE shall be required to procure goods and services through the competitive solicitation process defined by Chapter 287, Florida Statutes. The GRANTEE shall forward one copy of any solicitation to the COMMISSION's Program Administrator for review prior to soliciting for quotations or commencing any work. The COMMISSION's Program Administrator shall have 30 working days for review. This review shall ensure that minimum guidelines for the Project's scope of work are adhered to. The GRANTEE shall forward one copy of the bid tabulation, or similar list of responses to the solicitation, along with the award recommendation to the COMMISSION's Program Administrator.
6. The GRANTEE, at its expense, shall acknowledge the COMMISSION and the Program as a funding source for the Project as described in Attachment A, *Scope of Work*. Any other form of acknowledgement must be approved by the COMMISSION's Program Administrator. Such acknowledgement shall be maintained for the duration of the Agreement. Failure by the GRANTEE to maintain such acknowledgement shall be considered a breach of the Agreement.

7. The GRANTEE shall provide a draft of any printed materials to be produced with grant funds to the COMMISSION for approval prior to final printing and submission for payment. Further, at least 21 days prior to printing the COMMISSION shall review and approve all proposed publications that will be funded by this Agreement to ensure that environmental and boating safety issues are effectively addressed. At its discretion, the COMMISSION may elect to have its representative inspect printed material prior to its release from the printing vendor. The GRANTEE agrees to inform the COMMISSION at the completion of printing of any materials so that the COMMISSION may exercise this option

REPORTING REQUIREMENTS

8. The GRANTEE shall submit to the COMMISSION, on a monthly basis, project progress reports outlining the progress of the Project, identifying any problems that may have arisen, and actions taken to correct such problems. Such reports shall be submitted on the Project Progress Report Form attached hereto and made a part hereof as Attachment B. Reports are due to the COMMISSION's Program Administrator by the 15th of each month until the *Certification of Completion* is submitted.
9. Upon completion of the tasks described in Attachment A, *Scope of Work*, the Project Manager for the GRANTEE shall sign a *Certification of Completion* form, Attachment C, attached hereto and made a part hereof, that certifies the Project was completed in accordance with the *Scope of Work* and the Agreement.

PERFORMANCE AND MONITORING

10. The GRANTEE shall perform the services in a proper and satisfactory manner as determined by the COMMISSION.
11. By acceptance of this Agreement, the GRANTEE warrants that it has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good-faith performance as a responsible recipient, and that the GRANTEE shall comport with Chapter 287, F.S., and all other applicable rules and laws.
12. The GRANTEE shall be licensed as necessary to perform under this Agreement as may be required by law, rule, or regulation, and shall provide evidence of such compliance to the COMMISSION upon request.
13. It is the GRANTEE's responsibility to contract, manage and inspect all aspects of the Project, including the construction contract, materials purchase, engineering, master plan or force account labor performed at any Project site.
14. For the entire term of the Agreement, the GRANTEE shall provide and be responsible for any and all costs associated with ordinary and routine operations and maintenance of the Project, including any and all personnel, equipment, service or supplies costs beyond the costs approved herein for reimbursement.
15. The GRANTEE agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be fully responsible for the payment of all monies due under any subcontract. It is understood and agreed by the GRANTEE that the COMMISSION shall not be liable to any sub-grantee (or subcontractor) for any expenses or liabilities incurred under the subcontract and that **the GRANTEE shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.**
16. If applicable, all engineering must be completed by a professional engineer or architect registered in the State of Florida. All work must meet or exceed minimum design standards and guidelines established by all applicable local, state and federal laws.

17. The GRANTEE shall allow unencumbered access to the Project site to the COMMISSION, its employees or agent for the duration of the Agreement for the purpose of site visit or inspection to verify the facility is being maintained, in operation and is open and available to the public. As part of the inspection, the COMMISSION may request maintenance and use information from the GRANTEE to validate the condition of the facility.
18. The COMMISSION may, inspect the Project site prior to and, if applicable, during the construction of the Project. The GRANTEE shall notify the COMMISSION's Program Administrator when the Project has reached substantial completion so that inspection may occur in a timeframe allowing for the timely submission and processing of the final invoice. The COMMISSION's Program Administrator, or designee, shall inspect the work accomplished on the Project and, if deemed complete and in compliance with the terms of the Agreement, approve the request for payment.

SITE DEDICATION

19. The GRANTEE agrees to dedicate the Project site as a boat access facility for the use and benefit of the public for the duration of the Agreement, as specified in Attachment A, *Scope of Work*. Such dedication must occur before any grant funds are reimbursed. A Site Dedication Form is included as Attachment D as an example for form and content. Land under control other than by ownership by the GRANTEE (i.e. lease, management agreement, cooperative agreement, inter-local agreement or other similar instrument) shall be managed by the GRANTEE as a boat access facility for the duration of the Agreement. Title to all improvements shall be retained by the GRANTEE upon final payment by the COMMISSION.
20. Should the GRANTEE convert all or any part of the Project to other than COMMISSION approved uses within the term of the Agreement, the GRANTEE shall replace the area, facilities, resource or site at its own expense with a project acceptable to the COMMISSION of comparable scope and quality. In the event the Project is converted to use for other purposes during this period and not replaced with a like project acceptable to the COMMISSION, the GRANTEE agrees to return to the COMMISSION all funds tendered for the original Project.
21. Site dedication survives any contract termination. If mutually agreed upon by both parties in writing the site dedication may be rescinded by the COMMISSION. The COMMISSION shall rescind the site dedication if no program funds were dispersed.

TERM OF AGREEMENT

22. This Agreement shall begin upon execution by both parties and end **March 30, 2033**, inclusive. **However, the GRANTEE shall complete all tasks described in Attachment A, *Scope of Work*, on or before March 30, 2013.** The GRANTEE shall not be eligible for reimbursement for services rendered prior to the execution date of this Agreement nor after the termination date of the Agreement.
23. The GRANTEE shall execute this Agreement within 90 days of formal COMMISSION approval. Failure to execute this Agreement shall render the award of funds null and void, and shall result in termination of this Agreement.

COMPENSATION

24. For satisfactory completion of the tasks described in Attachment A, *Scope of Work*, by the GRANTEE under the terms of this Agreement, the COMMISSION shall pay the GRANTEE on a cost reimbursement basis in an amount not to exceed \$312,000.
25. The GRANTEE agrees to provide 45.83% of the total cost for Phase I of the Project as indicated in *FBIP Grant Application No. 11-023*, incorporated herein by reference. The total cost for Phase I

includes \$144,075.20 in pre-award costs for preliminary design and drawings, and an economic impact study. The total compensation by the COMMISSION shall not exceed 54.17% of the total cost for Phase I.

PAYMENTS

26. The COMMISSION shall pay the GRANTEE for satisfactory performance upon submission of invoices, accompanied by required reports or deliverables, and after acceptance of services and deliverables in writing by the COMMISSION's Program Administrator. Each invoice shall include the FWC Contract Number and the GRANTEE's Federal Employer Identification (FEID) Number and should be in a format similar to Attachment E, *Sample Invoice Form*. An original and three (3) copies of the invoice shall be submitted. The COMMISSION shall not provide advance payment. All bills for amounts due under this Agreement shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Invoices may be submitted at the completion of the Project or quarterly on the following schedule:

First invoice due six months from the date of execution,
Second invoice due nine months from the date of execution,
Third invoice due twelve months from the date of execution,
Final invoice must be submitted within 30 days after completion of the tasks described in Attachment A, *Scope of Work*.

27. Program funds shall be disbursed to the GRANTEE only after pre-approved phase or final completion of the Project occurs and work is verified by COMMISSION staff. Payment will be made only for documented and verified costs. **The COMMISSION will not pre-approve or disburse any Program funds in advance. Failure to complete the Project and make final payment request to the COMMISSION within the stipulated period shall result in termination of this Agreement. Any funds not disbursed or expended by the end of the stipulated period are subject to the provisions of Chapter 216.301, Florida Statutes.**

28. No travel expenses are authorized under the terms of this Agreement.

29. The GRANTEE shall be reimbursed on a cost reimbursement basis in accordance with Comptroller Contract Payment Requirements as shown in the Department of Financial Services, Bureau of Accounting and Auditing, Voucher Processing Handbook, Chapter 4., C., I., attached hereto and made a part hereof as Attachment F.

30. The COMMISSION shall have 45 working days to inspect and approve goods and services.

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

32. For contracts whose term extends beyond the State fiscal year in which encumbered funds were appropriated, the State of Florida's performance and obligation to pay is contingent upon an annual appropriation by the Legislature.

33. Invoices, including backup documentation, shall be submitted to:

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

TERMINATION

34. This Agreement shall terminate immediately upon the COMMISSION giving written notice to the GRANTEE in the event of fraud, willful misconduct, or breach of this Agreement. The COMMISSION may terminate this Agreement at any time with or without cause by a written notice by certified mail, return receipt requested, from the COMMISSION to the GRANTEE. Upon receipt of such notice, the GRANTEE shall, unless the notice directs otherwise, immediately discontinue all grant activities authorized hereunder. Upon termination of this Agreement, the GRANTEE shall promptly render to the COMMISSION all property belonging to the COMMISSION. For the purposes of this section, property belonging to the COMMISSION shall include, but shall not be limited to, all books and records kept on behalf of the COMMISSION.
35. Either party may terminate this Agreement by giving written notice to the other party, at least 30 days prior to the termination date, by certified mail, return receipt requested. The COMMISSION reserves the right to restrict any or all payment of Program funds if the Agreement is terminated at the convenience of the GRANTEE.
36. The PARTIES agree that site dedication survives all termination of this agreement as provided by paragraph 21 above.

TAXES

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

NOTICES

38. Any and all notices shall be delivered to the parties at the following addresses (or such changed address or addressee as may be provided by notice). A notice or other communication shall be deemed received by the addressee on the next business day after having been placed in overnight mail with the U. S. Postal Service, or other overnight express service such as FedEx, UPS, or similar service. Notices sent by means other than overnight delivery shall be deemed received when actually received by the addressee:

GRANTEE

City of Key West
 525 Angela Street
 Key West, FL 33040
 Phone: (305) 809-3888
 Fax: (305) 809-3886
 Email: jscholl@keywestcity.com
 Attn: Jim Scholl, Project Manager

COMMISSION

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

AMENDMENT OR MODIFICATION

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

RELATIONSHIP OF THE PARTIES

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

INSURANCE REQUIREMENTS

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

PUBLIC RECORDS

44. All records in conjunction with this Agreement shall be public records and shall be treated in the same manner as other public records are under Chapter 119, Florida Statutes. This Agreement may be unilaterally canceled by the COMMISSION for refusal by the GRANTEE to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the GRANTEE in conjunction with this Agreement.

RECORD KEEPING REQUIREMENTS

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

LIABILITY

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

NON-DISCRIMINATION

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

PROHIBITION OF DISCRIMINATORY VENDORS

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

PROHIBITION OF UNAUTHORIZED ALIENS

49. In accordance with Executive Order 96-236, the COMMISSION shall consider the employment by the GRANTEE of unauthorized aliens a violation of section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this Agreement if the GRANTEE knowingly employs unauthorized aliens. The GRANTEE shall be responsible for including this provision in all subcontracts with private vendors issued as a result of this Agreement.

EMPLOYMENT ELIGIBILITY VERIFICATION

50. The GRANTEE shall enroll in and use the U.S. Department of Homeland Security's E-Verify Employment Eligibility Verification System (<http://www.uscis.gov/portal/site/uscis>) to verify the employment eligibility of all new employees hired by the GRANTEE during the term of this Agreement.
51. The GRANTEE shall include in any subcontracts for the performance of work or provision of services pursuant to this Agreement the requirement that the subcontractor use the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
52. The GRANTEE further agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the COMMISSION or other authorized state entity consistent with the terms of the GRANTEE's enrollment in the program. This includes maintaining a copy of proof of the GRANTEE's and subcontractors' enrollment in the E-Verify Program (which can be accessed from the "Edit Company Profile" link on the left navigation menu of the E-Verify employer's homepage).
53. Compliance with the terms of the Employment Eligibility Verification provision is made an express condition of this Agreement and the COMMISSION may treat a failure to comply as a material breach of the Agreement.

NON-ASSIGNMENT

54. This Agreement is an exclusive contract for services and may not be assigned in whole or in part without the written approval of the COMMISSION. Any such assignment or attempted assignment shall be null and void.

PROHIBITION OF CONTINGENT FEES

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

SEVERABILITY AND CHOICE OF VENUE

56. This Agreement has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Any action in connection herewith, in law or equity, shall be brought in Leon County, Florida.

NO THIRD PARTY RIGHTS

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

JURY TRIAL WAIVER

58. As part of the consideration for this Agreement, the parties hereby waive trial by jury in any action or proceeding brought by any party against any other party pertaining to any matter whatsoever arising out of or in any way connected with this Agreement, or with the products or services provided under this Agreement, including but not limited to any claim by the GRANTEE of quantum meruit.

PROPERTY/EQUIPMENT

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

FEDERAL/FLORIDA SINGLE AUDIT ACTS REQUIREMENTS

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

FEDERAL FUNDS

62. This Agreement is funded in whole or in part by a grant from the US Fish and Wildlife Service, Sport Fish Restoration – Boat Access program, CFDA No. 15.605. Therefore, the GRANTEE shall be responsible for complying with all federal grant requirements as provided in the grant, a copy of which is attached hereto and made a part hereof as Attachment A-1. It is understood and agreed that the GRANTEE is not authorized to expend any federal funds under this Agreement to a federal agency or employee without the prior written approval of the US Fish and Wildlife Service. A copy of Title 50 C.F.R., Part 80, is included as Attachment H for reference to requirements included in the federal grant.

DEBARMENT AND SUSPENSION

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

PROHIBITION AGAINST LOBBYING

64. The GRANTEE certifies that no Federal appropriated funds have been paid or will be paid, on or after December 22, 1989, by or on behalf of the GRANTEE, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding, renewal, amending or modifying of any Federal contract, grant, or cooperative agreement. If any non-Federal funds are used for lobbying activities as described above in connection with this Agreement, the GRANTEE shall submit Attachment I, Standard Form-LLL, "Disclosure Form to Report Lobbying", and shall file quarterly updates of any material changes. The GRANTEE shall require the language of this certification to be included in all subcontracts, and all subcontractors shall certify and disclose accordingly.

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

ENTIRE AGREEMENT

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

(Remainder of page intentionally left blank.)

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

CITY OF KEY WEST

**FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION**

Mayor, or designee*

Executive Director, or designee

Date

Date

Name (Print)

Name (Print)

Grantee Name

Address

City, State, and Zip Code

Federal Employer Identification Number (FEID)

Approved to form and legality:

Approved as to form and legality:

Grantee Attorney



Commission Attorney

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

- Attachment A: Scope of Work
- Attachment A-1: Federal Grant Agreement F-183-B
- Attachment B: Project Progress Report Form
- Attachment C: Certification of Completion Form
- Attachment D: Site Dedication Form
- Attachment E: Sample Invoice Form
- Attachment F: Comptroller Cost Reimbursement Requirements
- Attachment G: Federal/Florida Single Audit Act Requirements
- Exhibit 1: Funds awarded pursuant to agreement
- Attachment H: Title 50 C.F.R., Part 80
- Attachment I: Certification Regarding Debarments, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Federally Funded Transactions

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

SCOPE OF WORK

INTRODUCTION

The purpose of the project is to provide the design, engineering, and permitting needed to construct a new marina facility with moorings for 61 vessels, restrooms, a fueling dock, a pump-out, and a breakwater. The City of Key West provides marina services in both public and private facilities, but there are no real services for large vessels. Vessels up to and over 120 feet have limited services available in Key West. The Truman Presidential Waterfront Park Marina will be a full-service marina facility designed to provide services and moorings for vessels up to 250 feet in length. The City will hire a consulting engineer to study site conditions, including wind and wave forces, and complete environmental studies necessary for permitting. In addition, the consultant will complete all structural engineering for the dock system and utilities. The City of Key West has already developed a conceptual plan for the marina.

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

TASKS

The GRANTEE shall be responsible for completion of the following tasks:

Task 1 - Design/Engineering

Complete the design and engineering needed to construct a new marina facility with moorings for 61 vessels, restrooms, a fueling dock, a pump-out, and a breakwater.

- A. Develop preliminary design plans
- B. Submit preliminary design plans to the COMMISSION for review and approval. Preliminary plans must be submitted to the COMMISSION on CD in .pdf file format or a file format compatible with AutoCAD. Any other type of submission must be approved by the COMMISSION's Program Administrator.
- C. Upon COMMISSION approval of preliminary design plans, complete final design plans, and submit to the COMMISSION. Final design plans must be submitted to the COMMISSION on a CD in a format as described in B., or printed on paper no larger than 11 inches by 17 inches.

Task 2 - Permitting

- A. Apply for all permits required to construct the project
- B. Submit to the COMMISSION copies of all permit applications

ACKNOWLEDGEMENT

- A. Upon completion of Phase II construction, the GRANTEE, at its expense, shall purchase, erect and maintain a permanent sign, not less than three (3) feet by four (4) feet in size, displaying the COMMISSION's logo and the Sport Fish Restoration (U.S. Fish and Wildlife Service) official logo acknowledging both as a funding source for the Project.
- B. The GRANTEE shall provide to the COMMISSION a draft copy of the permanent sign for approval prior to displaying on site.

SITE DEDICATION

Upon completion of Phase I, the GRANTEE shall complete the *Site Dedication*, attached hereto and made a part hereof as Attachment D, and record the dedication in the public property records. A copy of

the recorded dedication must be submitted to the COMMISSION before any Program funds will be disbursed to the GRANTEE.

REPORTS

A. Monthly Activity Reports

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

B. Bid Package

The GRANTEE shall forward one copy of the bid package to the COMMISSION's Program Administrator for review prior to soliciting for quotations or commencing any work. The COMMISSION's Program Administrator shall have 30 working days for review. This review shall ensure that minimum guidelines for the Project's scope of work are adhered to. The GRANTEE shall forward one copy of the bid tabulation to the COMMISSION's Program Administrator to ensure the requirements of Chapter 287, F.S., have been met.

C. Certification of Completion

Upon completion of the tasks described above, the engineer, architect or other appropriate professional for the GRANTEE shall sign a *Certification of Completion* form, provided by the COMMISSION, that certifies the Project was completed in accordance with this Scope of Work and the Agreement.

INVOICES AND PAYMENTS

For satisfactory completion of the above services, the COMMISSION agrees to pay the GRANTEE on a cost reimbursement basis an amount not to exceed \$312,000. The GRANTEE shall submit a request for reimbursement, accompanied by the required reports, no later than 30 days following completion of the project. The request for reimbursement shall include the following: an invoice in a form similar to Attachment E, Sample Invoice Form; a signed Certification of Completion form, Attachment C; and required documents as described in Attachment F, Comptroller Contract Payment Requirements.

U.S. Fish and Wildlife Service
Grant Agreement



United States Department of the Interior

FISH AND WILDLIFE SERVICE

1875 Century Boulevard
Atlanta, Georgia 30345

AUG 23 2011

IN REPLY REFER TO:
FWS/R4/MS - FA

Mr. Nick Wiley, Executive Director
Florida Fish and Wildlife Conservation Commission
620 South Meridian Street
Tallahassee, Florida 32399-1600

Dear Mr. Wiley: *NICK*

The Project Proposal for F-183-B, "Key West - Truman Presidential Waterfront Park," and the Grant Award for Segment 1 have been approved effective October 1, 2011. The Grant Award is approved for the period from October 1, 2011, to September 30, 2012, in the amount of \$575,925 of which the Federal Share is \$312,000.

Copies of the Grant Award documents and Special Conditions have been e-mailed to your grant coordinator.

Terms of Acceptance: Per <http://www.doi.gov/pam/TermsandConditions.html>, 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. Grantees are also required to comply with the requirements for safeguarding the integrity of scientific and scholarly activities as listed in the recently published Department Manual Chapter 305 DM 3.

Please contact me at (404) 679-4154 or Mr. Torre' Anderson at (404) 679-4159, if you have any questions.

Sincerely yours,

Michael L. Piccirilli
Michael L. Piccirilli
Chief - Federal Assistance

STATE GRANT AWARD: FL F-183-B

TITLE: : Key West - Truman Presidential Waterfront Park

**SPECIAL CONDITIONS TO THE GRANT AWARD (SF 424)
All Grants Administered by the Wildlife and Sport Fish Restoration Program**

Interim-Final Performance/Financial Reporting Requirements:

Final Performance and Final Financial Status Reports will be due no later than December 29, 2012.

Please note that Annual Interim Performance Reports should include only information and data that have become available since the end of the period covered by the last interim report. Annual Interim Financial Status Reports are cumulative and should include all information and data from the beginning of a funding period even if such information and data were included in a previous interim report. Final Performance/Financial Status Reports should include all activities that occurred during the grant period.

Failure to Report:

In accordance with the U. S. Fish and Wildlife Service, Wildlife and Sport Fish Restoration Program Interim Guidance for Financial Status and Performance Reporting, dated May 12, 2009, failure to submit reports by the required due dates may result in the following progressive actions including but not limited to:

- (a) notifying your director in writing that a Financial Status and/or Performance Report has not been received,
- (b) withholding cash payment pending receipt of the required report,
- (c) denying the use of Federal funds and all forms of match,
- (d) whole or partial suspension or termination of the current award,
- (e) withholding of further awards for the program, and
- (f) other legal actions as stated in the guidance.

Approval Level – Grant Award:

Please note substantiality (50 CFR Part 80.13), is determined at the Grant Award Level. Fiscal accountability is assessed to be at the Grant Award Level. Your agency should track costs accordingly and report them as part of the performance report and final financial report.

STATE GRANT AWARD: FL F-183-B

TITLE: Key West - Truman Presidential Waterfront Park

Approval Level - Project/Study/Job/Activity:

Please note that we have reviewed activities within this grant award and discussed these activities with your coordinator and concluded that substantiality (50 CFR Part 80.13) is assessed at the Project/Study/Job/Activity level (*circle level*). The approved level of fiscal and performance accountability should be at the Project/Study/Job/Activity level (*circle level*). Please track costs at this levels, and report the costs as part of the performance report. The following list is to clarify the Project/Study/Job/Activity level (*circle level*):

1. Heritage
2. Newfoundland
3. _____
4. _____
5. _____
6. _____

Approval of Partial Amount: Wildlife and Sport Fish Restoration

The U.S. Fish and Wildlife Service approves this Grant Award subject to the availability of funds. The **Grant Award** has been approved in the amount of \$ _____ of which the Federal Share is \$ _____; however, only \$ _____ of the Federal share has been obligated at this time. The remaining Federal share balance of \$ _____ is subject to the availability of Wildlife Restoration/Sport Fish Restoration (*circle one*) funds.

Stewardship Investments

This grant award contains Stewardship Investments. On Financial Status Reports (SF-425), the grantee must report the federally funded portion of the full cost of acquisition or construction of non-Federal physical property in item 12 *Remarks* on

(a) **Annual Interim Financial Status Reports** if the Federal share of the award is \$200,000 or greater, and

(b) **Final Financial Status Reports** regardless of the amount of the Federal share. Full cost must include direct and indirect costs and the cost of supporting services. Grantee must report costs by CFDA Number and classify them as:

- (a) dams and other water structures,
- (b) land (including easements),
- (c) roads and bridges;
- (d) schools and public buildings; or
- (e) not classified.

10 percent waiver:

In accordance with Service Manual Part 522 FW 23 (May 22, 2006) - This Grant Award is not

STATE GRANT AWARD: FL F-183-B

TITLE: : Key West - Truman Presidential Waterfront Park

subject to the prior written approval requirements of 43 CFR 12.70(c)(1)(ii), therefore funds greater than 10 percent of the Grant Award total may be transferred within project or activities without prior approval.

Equipment Requirements:

- The purchase of equipment has an expected life beyond the extent of the Grant Award. When the equipment is no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by the Federal agency. Because the expected life of the equipment is longer than the grant award period, we request that information on the future use of the equipment be included in the final report.

Ratio State/Federal Share:

- FEDERAL SHARE NOT TO EXCEED 75 PERCENT:** Grant is eligible for reimbursement of amount obligated, not to exceed 75 percent of total expenditures.
- FEDERAL SHARE NOT TO EXCEED 50 PERCENT:** Grant is eligible for reimbursement of amount obligated, not to exceed 50 percent of total expenditures.

STATE GRANT AWARD: FL F-183-B

TITLE: Key West - Truman Presidential Waterfront Park

SPECIAL CONDITIONS TO THE GRANT AWARD

Wildlife/Sport Fish Restoration, State Wildlife Grants (SWG), Landowner Incentive (LIP),

Tribal Wildlife Grants and Tribal LIP Programs:

Land Acquisition Requirements:

- The Grant Award is approved in the amount of \$ _____, of which the Federal Share is \$ _____. Of this total, \$ _____ of the Federal Share has been obligated, with the understanding that the balance of \$ _____ is contingent upon our receipt and approval of an appraisal and review appraisal report by a State licensed appraiser. When these documents have been completed, you must attach these documents to an amendment of the Grant Award requesting the remaining funds (\$ _____) to complete the land purchase.
- The following language inserted on the recorded deed:
"This property was acquired (in part) with funds provided by the U. S. Department of Interior, Fish and Wildlife Service, pursuant to _____ (Program), covered under grant award _____ and will be managed for the purpose of this Grant Award, in accordance with applicable federal and State law. Property may not be disposed of in any manner, or used for purposes inconsistent with the Program for which it was acquired, without the prior written approval of the Regional Director - Southeast Region, U. S. Fish and Wildlife Service."
- The land must be acquired and managed for the purposes identified in the Grant Award. In the event that the terms and conditions set forth in this Grant Award are not fully complied with, the property acquired with Federal Assistance Funds from the FWS, and the property used as a match for the Grant Award dollars will be subject to transfer, replacement or repayment to the United States in accordance with 43 CFR 12.71 or 50 CFR 80.14. (50CFR 80.14 applies to Sportfish and Wildlife Restoration Programs)
- For Land Acquisition, include in the final performance report a copy of the following documents: a recorded deed, title insurance policy or State's final title opinion, and a copy of a registered land survey, if any.
- Real property should be identified with appropriate signs (*Federal Assistance Logo*) as to the Federal Assistance Program under which the property was acquired (in part or whole). If the areas are open to the public, provisions must be made to inform the public of the location, boundaries, and any restrictions on use.
(Does not apply to Section 6, HCP, and Recovery Land Acquisition. Grant Awards)
- Income generated outside the grant period from this Federal Assistance supported land acquisition should be treated as "**license revenue**" and must/should be used to support the administration of the _____ (State Fish and Wildlife Agency) in accordance with the Service Manual Part 522 FW 19.9 (December 19, 2005).
- Income generated outside the grant period from this Federal Assistance supported land acquisition should be treated as "**program income**" and must/should be used for purposes consistent with the grant or the program that generated the income in accordance with 43 CFR 12.65(h) and the Service Manual Part 522 FW 19.9 (December 19, 2005).

STATE GRANT AWARD: FL F-183-B

TITLE: : Key West - Truman Presidential Waterfront Park

SPECIAL CONDITIONS TO THE GRANT AWARD

Wildlife/Sport Fish Restoration, State Wildlife Grants (SWG), Landowner Incentive (LIP), Tribal Wildlife Grants and Tribal LIP Programs

Program Income Requirements:

Revenue generated by the State from the sale of timber on Federal Assistance Lands during the acquisition Grant Award period shall be treated as program income. Program income is subject to the Federal assistance regulations at 43 CFR 12.65 and the Service Manual Part 522 FW 19 (December 19, 2005). Timber revenues realized after the acquisition Grant Award period are required to be fully used in perpetuity for the administration of the applicable State fish and wildlife agency and may not be diverted to other purposes. Furthermore, any program income generated from economic activity on acquired lands should be credited to the _____ (State) as long as the lands are part of the Federal Assistance Program.

Revenue generated by the State from the sale of timber managed under an O&M Grant Award on Federal Assistance or State Lands shall be treated as program income. Program income is subject to the Federal assistance regulations at 43 CFR 12.65 and the Service Manual Part 522 FW 19 (December 19, 2005). Furthermore, any program income generated from economic activity on acquired lands should be credited to the _____ (State) as long as the lands are part of the Federal Assistance Program.

All other revenue generated by the State as a result of a Grant Award during the Grant Award period or the defined period in the Grant Award documents shall be treated as program income. Program income is subject to the Federal assistance regulations at 43 CFR 12.65 and the Service Manual Part 522 FW 19 (December 19, 2005). Furthermore, any program income generated from economic activity of the Grant Award should be credited to the _____ (State) as long as the Grant Award results are part of the Federal Assistance Program.

**FLORIDA BOATING IMPROVEMENT PROGRAM
PROJECT PROGRESS REPORT**

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

FWC Contract # _____ Reporting Period (Month/Year): _____

(Due 15 days after the end of each month)

Grantee: _____

Project Title: _____

1. Describe progress of project, including percent completed for each task in the Scope of Work:

2. Is project currently on schedule for completion by Phase I due date? YES NO

Anticipated Phase I completion date: _____

(If project is not on schedule, please explain any problems encountered and/or possible delays)

3. Reporting requirements: (Check all that have been submitted to date)

- Plans / drawings
- Bid package
- Bid tabulation
- Progress photographs
- Final photographs
- Draft acknowledgement
- Site dedication form

Project Manager

Date



FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION

Florida Boating Improvement Program

CERTIFICATION OF COMPLETION STATEMENT

I, _____
(Print Name and Title)

representing _____
(Name of Local Government)

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

(Signature) (Date)

WARNING: "Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083." § 837.06, Florida Statutes.

CERTIFICATE BY COMMISSION

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

Division: _____

By: _____ Date: _____

Name: _____

Title: _____

SITE DEDICATION

This Site Dedication gives notice that the Real Property identified as described in Exhibit A, Legal Description, attached hereto, (the "Property") has been developed with financial assistance provided by the Florida Legislature, through the Fish and Wildlife Conservation Commission, under the grant program called the Florida Boating Improvement Program (FBIP). In accordance with Chapter 68-1.003, F.A.C., and the Program Guidelines of the FBIP, the Property is hereby dedicated to the public as a boating access facility for the use and benefit of the general public for a minimum period of twenty (20) years from the date of this dedication.

DEDICATOR

Original signature

Witness

Printed Name

Printed Name

Title

Witness

Date

Printed Name

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____
by _____, who is personally known to me or who
produced _____ as identification.

Stamp:

Notary Public, State of Florida

SAMPLE INVOICE FORM

Billed to:

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

Remit payment to:

Grantee: _____
 FEID #: _____
 Address: _____

FWC Contract #: _____

Dates of Service:

Amount of Grant Award: \$ _____

From: _____

Invoice Date: _____

To: _____

PROJECT COSTS:

Cost Items: Non-cash	Amount
In-kind service: Administration	\$
In-kind service: Project Management	\$
In-kind service: Other	\$
Cost Items: Cash expenditures	Amount
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$

Total Project Cost: \$ _____

Grantee Matching Funds (_____ %): - \$ _____

Amount for Reimbursement: \$ _____

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

Signed: _____
 Project Manager

Date: _____

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

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

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

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

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

REQUIREMENTS OF THE FLORIDA AND FEDERAL SINGLE AUDIT ACTS

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

MONITORING

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

AUDITS**PART I: FEDERALLY FUNDED**

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

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

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

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

PART II: STATE FUNDED

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

In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such recipient, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Executive Office of the Governor and the Comptroller; and Chapters 10.550 (local governmental entities)

or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this agreement indicates state financial assistance awarded through the Commission by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Commission other state agencies, and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-state entity for Federal program matching requirements.

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

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

PART III: OTHER AUDIT REQUIREMENTS

There are no other audit requirements

PART IV: REPORT SUBMISSION

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

The Commission at the following address:

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

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

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

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

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

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

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

The Commission at the following address:

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

The Auditor General's Office at the following address:

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

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

The Commission the following address:

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

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

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

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

PART V: RECORD RETENTION

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

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

State Agency: Florida Fish and Wildlife Conservation Commission
Federal Agency: Department of the Interior, Fish and Wildlife Service
Federal Program: Sport Fish Restoration-Boat Access Program
CFDA No.: 15.605
Recipient: City of Key West
Amount: \$ 312,000

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

Federal Program: Sport Fish Restoration-Boat Access Program

1. Recipient must comply with requirements found in Title 50 CFR Part 80 attached hereto and made a part of this Agreement as Attachment H.

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

None

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

None.

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

1. Project activities must occur on public lands owned outright or managed under agreement with another party with lease terms exceeding 20 years.
2. Project activities must not create a boating safety hazard and/or increase the potential for damage to natural resources.
3. Recipient must comply with the Florida Boating Improvement Program Guidelines, February 2010.
4. Recipient must comply with all Commission rules, policies and procedures as well as all other state and federal rules.

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

Title 50: Wildlife and Fisheries**PART 80—ADMINISTRATIVE REQUIREMENTS, PITTMAN-ROBERTSON WILDLIFE RESTORATION AND DINGELL-JOHNSON SPORT FISH RESTORATION ACTS****Section Contents:**

- § 80.1 Definitions.
- § 80.2 Eligibility.
- § 80.3 Assent legislation.
- § 80.4 Diversion of license fees.
- § 80.5 Eligible undertakings.
- § 80.6 Prohibited activities.
- § 80.7 Appeals.
- § 80.8 Availability of funds.
- § 80.9 Notice of desire to participate.
- § 80.10 State certification of licenses.
- § 80.11 Submission of proposals.
- § 80.12 Cost sharing.
- § 80.13 Substantiality in character and design.
- § 80.14 Application of Wildlife and Sport Fish Restoration Program funds.
- § 80.15 Allowable costs.
- § 80.16 Payments.
- § 80.17 Maintenance.
- § 80.18 Responsibilities.
- § 80.19 [Reserved]
- § 80.20 Land control.
- § 80.21 Assurances.
- § 80.22 [Reserved]
- § 80.23 Allocation of funds between marine and freshwater fishery projects.
- § 80.24 Recreational boating access facilities.
- § 80.25 Multiyear financing under the Dingell-Johnson Sport Fish Restoration Program.
- § 80.26 Symbols.
- § 80.27 Information collection requirements.

Authority: 16 U.S.C. 777–777n; 16 U.S.C. 669–669k; 18 U.S.C. 701.

Source: 47 FR 22539, May 25, 1982, unless otherwise noted.

Note: The information collection requirements in this part have been approved by the Office of Management and Budget under control number 1018–0048.

§ 80.1 Definitions.

As used in this part, the following terms have these meanings:

Common horsepower. Any size motor that can be reasonably accommodated on the body of water slated for development.

Comprehensive fish and wildlife management plan. A document describing the State's plan for meeting the long-range needs of the public for fish and wildlife resources, and the system for managing the plan.

Director. The Director of the Service, or his or her designated representative. The Director serves as the Secretary's representative in matters relating to the administration and execution of the Wildlife and Sport Fish Restoration Acts.

Project. One or more related undertakings necessary to fulfill a need or needs, as defined by the State, and consistent with the purposes of the appropriate Act.

Regional Director. The regional director of any region of the Service, or his or her designated representative.

Resident angler. One who fishes within the same State where legal residence is maintained.

Secretary. The Secretary of the Interior or his or her designated representative.

Service. The U.S. Fish and Wildlife Service.

State. Any State of the United States and the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa. References to "the 50 States" pertain only to the 50 States of the United States and do not include these other six areas.

State fish and wildlife agency. The agency or official of a State designated under State law or regulation to carry out the laws of the State in relation to the management of fish and wildlife resources of the State. Such an agency or official also designated to exercise collateral responsibilities, e.g., a State Department of Natural Resources, will be considered the State fish and wildlife agency only when exercising the responsibilities specific to the management of the fish and wildlife resources of the State.

Wildlife and Sport Fish Restoration Acts or the Acts. Pittman-Robertson Wildlife Restoration Act of September 2, 1937, as amended (50 Stat. 917; 16 U.S.C. 669–669k), and the Dingell-Johnson Sport Fish Restoration Act of August 9, 1950, as amended (64 Stat. 430; 16 U.S.C. 777–777n).

Wildlife and Sport Fish Restoration Program Funds. Funds provided under the Acts.

[73 FR 43127, July 24, 2008]

§ 80.2 Eligibility.

Participation in the benefits of the Acts is limited to State fish and wildlife agencies as specified below:

(a) Dingell-Johnson Sport Fish Restoration—Any of the States as defined in §80.1.

(b) Pittman-Robertson Wildlife Restoration—Any of the States as defined in §80.1, except the District of Columbia.

[47 FR 22539, May 25, 1982, as amended at 50 FR 21448, May 24, 1985; 73 FR 43128, July 24, 2008]

§ 80.3 Assent legislation.

A State may participate in the benefits of the Act(s) only after it has passed legislation which assents to the provisions of the Acts and has passed laws for the conservation of fish and wildlife including a prohibition against the diversion of license fees paid by hunters and sport fishermen to purposes other than administration of the fish and wildlife agency. Subsequent legislation which amends these state laws shall be subject to review by the Secretary. If the legislation is found contrary to the assent provisions, the State shall become ineligible.

§ 80.4 Diversion of license fees.

Revenues from license fees paid by hunters and fishermen shall not be diverted to purposes other than administration of the State fish and wildlife agency.

(a) Revenues from license fees paid by hunters and fishermen are any revenues the State receives from the sale of licenses issued by the State conveying to a person the privilege to pursue or take wildlife or fish. For the purpose of this rule, revenue with respect to license sales by vendors, is considered to be the net income to the State after

deducting reasonable vendor fees or similar amounts retained by sales agents. License revenues include income from:

- (1) General or special licenses, permits, stamps, tags, access and recreation fees or other charges imposed by the State to hunt or fish for sport or recreation.
 - (2) Sale, lease, rental, or other granting of rights of real or personal property acquired or produced with license revenues. Real property includes, but is not limited to, lands, building, minerals, energy resources, timber, grazing, and animal products. Personal property includes, but is not limited to, equipment, vehicles, machine, tools, and annual crops.
 - (3) Interest, dividends, or other income earned on license revenues.
 - (4) Project reimbursements to the States to the extent that license revenues originally funded the project for which the reimbursement is being made.
- (b) For purposes of this rule, administration of the State fish and wildlife agency include only those functions required to manage the fish and wildlife-oriented resources of the State for which the agency has authority under State law.
- (c) A diversion of license fee revenues occurs when any portion of license revenues is used for any purpose other than the administration of the State fish and wildlife agency.
- (d) If a diversion of license revenues occurs, the State becomes ineligible to participate under the pertinent Act from the date the diversion is declared by the Director until:

- (1) Adequate legislative prohibitions are in place to prevent diversion of license revenue, and
 - (2) All license revenues or assets acquired with license revenues are restored, or an amount equal to license revenue diverted or current market value of assets diverted (whichever is greater) is returned and properly available for use for the administration of the State fish and wildlife agency.
- (e) Federal funds obligated for projects approved prior to the date a diversion is declared remain available for expenditure on such projects without regard to the intervening period of the State's ineligibility.

[54 FR 15209, Apr. 17, 1989, as amended at 73 FR 43128, July 24, 2008]

§ 80.5 Eligible undertakings.

The following are eligible for funding under the Acts:

(a) *Pittman-Robertson Wildlife Restoration Act.*

- (1) Projects having as their purpose the restoration, conservation, management, and enhancement of wild birds and wild mammals, and the provision for public use of and benefits from these resources.
- (2) Projects having as their purpose the education of hunters and archers in the skills, knowledges, and attitudes necessary to be a responsible hunter or archer.

(b) *Dingell-Johnson Sport Fish Restoration Act.*

- (1) Projects having as their purpose the restoration, conservation, management, and enhancement of sport fish, and the provision for public use and benefits from these resources. Sport fish are limited to aquatic, gill-breathing, vertebrate animals, bearing paired fins, and having material value for sport or recreation.

(2) Additional funds resulting from expansion of the Sport Fish Restoration Program must be added to existing State fishery program funds available from traditional sources and not as a substitute there for.

[47 FR 22539, May 25, 1982, as amended at 50 FR 21448, May 24, 1985; 73 FR 43128, July 24, 2008]

§ 80.6 Prohibited activities.

The following are not eligible for funding under the Acts, except when necessary for the accomplishment of project purposes as approved by the regional director.

- (a) Law enforcement activities conducted by the State to enforce the fish and game regulations.
- (b) Public relations activities conducted to promote the State fish and wildlife agency.

§ 80.7 Appeals.

Any difference of opinion over the eligibility of proposed activities or differences arising over the conduct of work may be appealed to the Director. Final determination rests with the Secretary.

§ 80.8 Availability of funds.

Funds are available for obligation or expenditure during the fiscal year for which they are apportioned and until the close of the succeeding fiscal year except as provided in §80.24. For the purposes of this section, funds become available when the Regional Director approves the grant.

[73 FR 43128, July 24, 2008]

§ 80.9 Notice of desire to participate.

Any State fish and wildlife agency desiring to avail itself of the benefits of the Acts shall notify the Secretary within 60 days after it has received a certificate of apportionment of funds available to the State. Notification to the Secretary may be accomplished by either of the following methods. In either method, the document must be signed by a State official authorized to commit the State to participation under the Act(s).

- (a) Submitting to the regional director within the 60-day period a letter stating the desire of the State to participate in the Act(s); or,
- (b) Having an approved Application for Federal Assistance which contains plans for the use of Wildlife and Sport Fish Restoration Program funds during the period of the apportionment.

[47 FR 22539, May 25, 1982, as amended at 73 FR 43128, July 24, 2008]

§ 80.10 State certification of licenses.

(a) To ensure proper apportionment of Federal funds, the Service requires that each director of a State fish and wildlife agency:

- (1) Specify a license certification period that:
 - (i) Is 12 consecutive months in length;
 - (ii) Is either the State's fiscal year or license year;
 - (iii) Is consistent from year to year; and

(iv) Ends no less than 1 year and no more than 2 years before the beginning of the Federal fiscal year that the apportioned funds first become available for expenditure;

(2) Obtain the Director's approval before changing the State-specified license certification period; and

(3) Annually provide to the Service the following data:

(i) The number of persons who hold paid licenses that authorize an individual to hunt in the State during the State-specified license certification period; and

(ii) The number of persons who hold paid licenses that authorize an individual to fish in the State during the State-specified license certification period.

(b) When counting persons holding paid hunting or fishing licenses in a State-specified license certification period, a State fish and wildlife agency must abide by the following requirements:

(1) The State may count all persons who possess a paid license that allows the licensee to hunt or fish for sport or recreation. The State may not count persons holding a license that allows the licensee only to trap animals or only to engage in commercial activities.

(2) The State may count only those persons who possess a license that produced net revenue of at least \$1 per year returned to the State after deducting costs directly associated with issuance of the license. Examples of such costs are agents' or sellers' fees and the cost of printing, distribution, and control.

(3) The State may count persons possessing a single-year license (one that is legal for less than 2 years) only in the State-specified license certification period in which the license was purchased.

(4) The State may count persons possessing a multiyear license (one that is legal for 2 years or more) in each State-specified license certification period in which the license is legal, whether it is legal for a specific or indeterminate number of years, only if:

(i) The net revenue from the license is in close approximation with the number of years in which the license is legal, and

(ii) The State fish and wildlife agency uses statistical sampling or other techniques approved by the Director to determine whether the licensee remains a license holder.

(5) The State may count persons possessing a combination license (one that permits the licensee to both hunt and fish) with:

(i) The number of persons who hold paid hunting licenses in the State-specified license certification period, and

(ii) The number of persons who hold paid fishing licenses in the same State-specified license certification period.

(6) The State may count persons possessing multiple hunting or fishing licenses (in States that require or permit more than one license to hunt or more than one license to fish) only once with:

(i) The number of persons who hold paid hunting licenses in the State-specified license certification period, and

(ii) The number of persons who hold paid fishing licenses in the same State-specified license certification period.

(c) The director of the State fish and wildlife agency must provide the certified information required in paragraphs (a) and (b) of this section to the Service by the date and in the format that the Director specifies. If the Director requests it, the director of the State fish and wildlife agency must provide documentation to support the accuracy of this information. The director of the State fish and wildlife agency is responsible for eliminating multiple counting of single

individuals in the information that he or she certifies and may use statistical sampling or other techniques approved by the Director for this purpose.

(d) Once the Director approves the certified information required in paragraphs (a) and (b) of this section, the Service must not adjust the numbers if such adjustment would adversely impact any apportionment of funds to a State fish and wildlife agency other than the agency whose certified numbers are being adjusted. However, the Director may correct an error made by the Service.

[73 FR 43128, July 24, 2008]

§ 80.11 Submission of proposals.

A State may apply to use funds apportioned under the Acts by submitting to the Regional Director either a comprehensive fish and wildlife management plan or grant proposal.

(a) Each application must contain such information as the Regional Director may require to determine if the proposed activities are in accordance with the Acts and the provisions of this part.

(b) The State must submit each application and amendments of scope to the State Clearinghouse as required by Office of Management and Budget (OMB) Circular A-95 and by State Clearinghouse requirements.

(c) Applications must be signed by the director of the State fish and wildlife agency or an official delegated to exercise the authority and responsibilities of the State director in committing the State to participate under the Acts. The director of each State fish and wildlife agency must notify the Regional Director, in writing, of the official(s) authorized to sign the Wildlife and Sport Fish Restoration Program documents, and any changes in such authorizations.

[73 FR 43128, July 24, 2008]

§ 80.12 Cost sharing.

Federal participation is limited to 75 percent of eligible costs incurred in the completion of approved work or the Federal share specified in the grant, whichever is less, except that the non-Federal cost sharing for the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa must not exceed 25 percent and may be waived at the discretion of the Regional Director.

(a) A minimum Federal participation of 10 percent of the estimated costs is required as a condition of approval.

(b) The non-Federal share of project costs may be in the form of cash or in-kind contributions.

(c) The non-Federal share of project costs may not be derived from other Federal funds, except as authorized by specific legislation.

[47 FR 22539, May 25, 1982, as amended at 73 FR 43129, July 24, 2008]

§ 80.13 Substantiality in character and design.

All projects proposed for funding under the Acts must be substantial in character and design. A substantial project (for fish and wildlife purposes) is one which:

(a) Identifies and describes a need within the purposes of the relevant Act to be utilized;

(b) Identifies the objectives to be accomplished based on the stated need;

(c) Utilizes accepted fish and wildlife conservation and management principles, sound design, and appropriate procedures; and

(d) Will yield benefits which are pertinent to the identified need at a level commensurate with project costs.

§ 80.14 Application of Wildlife and Sport Fish Restoration Program funds.

(a) States must apply Wildlife and Sport Fish Restoration Program funds only to activities or purposes approved by the Regional Director. If otherwise applied, such funds must be replaced or the State becomes ineligible to participate.

(b) Real property acquired or constructed with Wildlife and Sport Fish Restoration Program funds must continue to serve the purpose for which acquired or constructed.

(1) When such property passes from management control of the State fish and wildlife agency, the control must be fully restored to the State fish and wildlife agency or the real property must be replaced using non-Federal funds not derived from license revenues. Replacement property must be of equal value at current market prices and with equal benefits as the original property. The State may have up to 3 years from the date of notification by the Regional Director to acquire replacement property before becoming ineligible.

(2) When such property is used for purposes that interfere with the accomplishment of approved purposes, the violating activities must cease and any adverse effects resulting must be remedied.

(3) When such property is no longer needed or useful for its original purpose, and with prior approval of the Regional Director, the property must be used or disposed of as provided by 43 CFR 12.71 or 43 CFR 12.932.

(c) Wildlife and Sport Fish Restoration Program funds cannot be used for the purpose of producing income. However, income-producing activities incidental to accomplishment of approved purposes are allowable. Income derived from such activities must be accounted for in the project records and disposed of as directed by the Director.

[73 FR 43129, July 24, 2008]

§ 80.15 Allowable costs.

(a) *What are allowable costs?* Allowable costs are costs that are necessary and reasonable for accomplishment of approved project purposes and are in accordance with the cost principles of OMB Circular A-87 (For availability, see 5 CFR 1310.3.).

(b) *What is required to determine the allowability of costs?* Source documents or other records as necessary must support all costs to substantiate the application of funds. Such documentation and records are subject to review by the Service and, if necessary, the Secretary to determine the allowability of costs.

(c) *Are costs allowable if they are incurred prior to the date of the grant?* Costs incurred prior to the effective date of the grant are allowable only when specifically provided for in the grant.

(d) *How are costs allocated in multipurpose projects or facilities?* Projects or facilities designed to include purposes other than those eligible under either the Dingell-Johnson Sport Fish Restoration or Pittman-Robertson Wildlife Restoration Acts must provide for the allocation of costs among the various purposes. The method used to allocate costs must produce an equitable distribution of costs based on the relative uses or benefits provided.

(e) *What is the limit on administrative costs for State central services?* Administrative costs in the form of overhead or indirect costs for State central services outside of the State fish and wildlife agency must be in accord with an approved cost allocation plan and cannot exceed in any one fiscal year three per centum of the annual apportionment to that State. Each State has a State Wide Cost Allocation Plan that describes approved allocations of indirect costs to agencies and programs within the State.

(f) *How much money may be obligated for aquatic resource education and outreach and communications?*

(1) Each of the 50 States may spend no more than 15 percent of the annual amount apportioned to it under the provisions of the Dingell-Johnson Sport Fish Restoration Act for an aquatic resource education and outreach and communications program for the purpose of increasing public understanding of the Nation's water resources and associated aquatic life forms.

(2) The Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa are not limited to the 15-percent cap imposed on the 50 States. Each of these entities may spend more for these purposes with the approval of the appropriate Regional Director.

[66 FR 18212, Apr. 6, 2001, as amended at 43129, July 24, 2008]

§ 80.16 Payments.

Payments must be made for the Federal share of allowable costs incurred by the State in accomplishing approved projects.

(a) Requests for payments must be submitted on forms furnished by the Regional director.

(b) Payments must be made only to the office or official designated by the State fish and wildlife agency and authorized under the laws of the State to receive public funds for the State.

(c) All payments are subject to final determination of allowability based on audit. Any overpayments made to the State must be recovered as directed by the Regional Director.

(d) The Regional director may withhold payments pending receipt of all required reports or documentation for the project.

[47 FR 22539, May 25, 1982, as amended at 73 FR 43129, July 24, 2008]

§ 80.17 Maintenance.

The State is responsible for maintenance of all capital improvements acquired or constructed with Wildlife and Sport Fish Restoration Program funds throughout the useful life of each improvement. Costs for such maintenance are allowable when provided for in approved projects. The maintenance of improvements acquired or constructed with funds other than funds from the Wildlife and Sport Fish Restoration Program are allowable costs when such improvements are necessary for accomplishment of project purposes as approved by the Regional Director and when such costs are otherwise allowable by law.

[73 FR 43129, July 24, 2008]

§ 80.18 Responsibilities.

In the conduct of activities funded under the Acts, the State is responsible for:

(a) The supervision of each project to assure it is conducted as provided in the project documents, including:

- (1) Proper and effective use of funds.
- (2) Maintenance of project records.
- (3) Timely submission of reports.

(4) Regular inspection and monitoring of work in progress.

(b) The selection and supervision of project personnel to assure that:

(1) Adequate and competent personnel are available to carry the project through to a satisfactory and timely completion.

(2) Project personnel perform the work to ensure that time schedules are met, projected work units are accomplished, other performance objectives are being achieved, and reports are submitted as required.

(c) The accountability and control of all assets to assure that they serve the purpose for which acquired throughout their useful life.

(d) The compliance with all applicable Federal, State, and local laws.

(e) The settlement and satisfaction of all contractual and administrative issues arising out of procurement entered into.

§ 80.19 [Reserved]

§ 80.20 Land control.

The State must control lands or waters on which capital improvements are made with Wildlife and Sport Fish Restoration Program funds. Controls may be exercised through fee title, lease, easement, or agreement. Control must be adequate for protection, maintenance, and use of the improvement throughout its useful life.

[47 FR 22539, May 25, 1982, as amended at 73 FR 43129, July 24, 2008]

§ 80.21 Assurances.

The State must agree to and certify that it will comply with all applicable Federal laws, regulations, and requirements as they relate to the application, acceptance, and use of Federal funds under the Acts. The Secretary shall have the right to review or inspect for compliance at any time. Upon determination of noncompliance, the Secretary may terminate or suspend those projects in noncompliance, or may declare the State ineligible for further participation in program benefits until compliance is achieved.

§ 80.22 [Reserved]

§ 80.23 Allocation of funds between marine and freshwater fishery projects.

(a) Each coastal State, to the extent practicable, must equitably allocate those funds specified by the Secretary, in the apportionment of the Dingell-Johnson Sport Fish Restoration funds, between projects having recreational benefits for marine fisheries and projects having recreational benefits for freshwater fisheries.

(1) Coastal States are: Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington; the territories of Guam, the U.S. Virgin Islands, and American Samoa; and the Commonwealths of Puerto Rico and the Northern Mariana Islands.

(2) The allocation and subsequent obligation of funds between projects that benefit marine and freshwater interests will be in the same proportion as the estimated number of resident marine anglers and resident freshwater anglers, respectively, bears to the estimated number of total resident anglers in the State. The number of marine and freshwater anglers shall be based on a statistically reliable method for determining the relative distribution of resident anglers in the State between those that fish in saltwater and those that fish in freshwater.

(3) To the extent practicable means that the amounts allocated of each year's apportionment may not necessarily result in an equitable allocation for each year. However, the amounts allocated over a period, not to exceed 3 years, must result in an equitable allocation between marine and freshwater fisheries projects. Ongoing marine project costs can be applied toward the State's saltwater allocation.

(4) Failure to provide for an equitable allocation may result in the State's becoming ineligible to participate in the use of those funds specified, until such time as the State demonstrates to the satisfaction of the Director that funds will be allocated equitably.

(b) [Reserved]

[50 FR 21448, May 24, 1985, as amended at 43129, July 24, 2008]

§ 80.24 Recreational boating access facilities.

The State must allocate 15 percent of each annual apportionment under the Dingell-Johnson Sport Fish Restoration Act for recreational boating access facilities. However, a State may allocate more or less than 15 percent of its annual allocation with the approval of the Service's Regional Director. Although a broad range of access facilities and associated amenities can qualify for funding under the 15-percent provision, the State must accommodate power boats with common horsepower ratings, and must make reasonable efforts to accommodate boats with larger horsepower ratings if they would not conflict with aquatic resources management. Any portion of a State's 15-percent set aside for the above purposes that remain unexpended or unobligated after 5 years must revert to the Service for apportionment among the States.

[43139, July 24, 2008]

§ 80.25 Multiyear financing under the Dingell-Johnson Sport Fish Restoration Program.

(a) States may finance the acquisition of lands or interests in lands including water rights and the construction of structures and facilities utilizing multiyear funding as authorized by the Dingell-Johnson Sport Fish Restoration Act in two ways:

(1) States may finance the entire cost of the acquisition or construction from a non-Federal funding source and claim Federal reimbursement in succeeding apportionment years according to a scheduled reimbursement plan.

(2) States may negotiate an installment purchase or contract whereby periodic and specified amounts are paid to the seller or contractor and Federal reimbursements are allowed for each payment from any apportionment year current at the time of payment.

(b) Multiyear financing is subject to the following conditions:

(1) Projects must provide for prospective use of funds and be approved by the Regional Director in advance of the State's obligation or commitment to purchase property or contract for structures or facilities.

(2) States must agree to complete the project even if Federal funds are not available. In the event the project is not completed, those Federal funds expended but not resulting in commensurate sport fishery benefits must be recovered by the State and reallocated to approved State sport fish projects.

(3) Project proposals must include a complete schedule of payments to complete the project.

(4) No costs for interest or financing shall be claimed for reimbursement.

[50 FR 21448, May 24, 1985, as amended at 73 FR 43130, July 24, 2008]

§ 80.26 Symbols.

We have prescribed distinctive symbols to identify projects funded by the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act and items on which taxes and duties have been collected to support the respective Acts.

(a) All recipients identified in §80.2 of this part are authorized to display the appropriate symbol(s) on areas, such as wildlife management areas and fishing access facilities, acquired, developed, operated or maintained by these grants, or on printed material or other visual representations relating to project accomplishments. Recipients may require sub-recipients to display the symbol(s) and may authorize use by others, or for purposes other than as stated above, only with approval of the Director, U.S. Fish and Wildlife Service.

(b) Other persons or organizations may use the symbol(s) for purposes related to the Wildlife and Sport Fish Restoration Program as authorized by the Director. Authorization for the use of the symbol(s) will be by written agreement executed by the Service and the user. To obtain authorization, submit a written request stating the specific use and items to which the symbol(s) will be applied to Director, U.S. Fish and Wildlife Service, Washington, DC 20240.

(c) The user of the symbol(s) shall indemnify and defend the United States and hold it harmless from any claims, suits, losses and damages arising out of any allegedly unauthorized use of any patent, process, idea, method or device by the user in connection with its use of the symbol(s), or any other alleged action of the user and also from any claims, suits, losses and damages arising out of alleged defects in the articles or services with which the symbol(s) is associated.

(d) The appearance of the symbol(s) on projects or items is to indicate that the manufacturer of the product is taxed by, and that the State project was funded through, the respective Act(s). The U.S. Fish and Wildlife Service and the Department of the Interior make no representation or endorsement whatsoever by the display of the symbol(s) as to the quality, utility, suitability or safeness of any product, service or project with which the symbol(s) is associated.

(e) Neither symbol may be used in any other manner except as authorized by the Director, U.S. Fish and Wildlife Service. Unauthorized use of the symbol(s) will constitute a violation of section 701 of title 18 of the United States Code and subject the violator to possible fines and imprisonment as set forth therein.

(f) The symbol pertaining to the Pittman-Robertson Wildlife Restoration Act is below.



(g) The symbol pertaining to the Dingell-Johnson Sport Fish Restoration Act is below.



(h) The symbol pertaining to the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act when used in combination is below.



[52 FR 47571, Dec. 15, 1987, as amended at 73 FR 43130, July 24, 2008]

§ 80.27 Information collection requirements.

(a) Information gathering requirements include filling out forms to apply for certain benefits offered by the Federal Government. Information gathered under this part is authorized under the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777-777n) and the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669-669k). The Service may not conduct or sponsor, and applicants or grantees are not required to respond to, a collection of information unless the request displays a currently valid OMB control number. OMB has approved our collection of information under OMB control number 1018-0007. Our requests for information will be used to apportion funds and to review and make decisions on grant applications and reimbursement payment requests submitted to the Wildlife and Sport Fish Restoration Program.

(b) Submit comments on the accuracy of the information collection requirements to: U.S. Fish and Wildlife Service, Information Collection Clearance Officer, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203.

[73 FR 43130, July 24, 2008]

CERTIFICATION REGARDING DEBARMENTS, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-LOWER TIER FEDERALLY FUNDED TRANSACTIONS

Required for all contractors and subcontractors on procurement (vendor) contracts of \$100,000 or more, and for all contracts and grants with sub-recipients regardless of amount, when funded by a federal grant.

1. The undersigned hereby certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. The undersigned also certifies that it and its principals:
 - (a) Have not within a three-year period preceding this response been convicted of or had a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 - (b) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 2.(a) of this Certification; and
 - (c) Have not within a three-year period preceding this certification had one or more public transactions (Federal, State or local) terminated for cause or default.
3. Where the undersigned is unable to certify to any of the statements in this certification, an explanation shall be attached to this certification.

Dated this _____ day of _____, 20__.

By: _____
Authorized Signature/Contractor / Sub-Recipient

Typed Name/Title

Contractor/ Sub-Recipient Organization Name

Street Address

Building, Suite Number

City/State/Zip Code

Area Code/Telephone Number

**INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-
LOWER TIER FEDERALLY FUNDED TRANSACTIONS**

1. By signing and submitting this form, the certifying party is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the certifying party knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Florida Fish and Wildlife Conservation Commission (FWC) or agencies with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The certifying party shall provide immediate written notice to the person to which this contract is submitted if at any time the certifying party learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this contract is submitted for assistance in obtaining a copy of those regulations.
5. The certifying party agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier contract, or other covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the FWC or agency with which this transaction originated.
6. The certifying party further agrees by executing this contract that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all contracts or lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Telephone No. (202) 501-4740 or (202) 501-4873.)
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the FWC or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.