

**AGREEMENT BETWEEN BROWARD COUNTY AND [REDACTED] FOR THE BROWARD BOATING
IMPROVEMENT PROGRAM FY [REDACTED]**

This Agreement Between Broward County and [REDACTED] for the Broward Boating Improvement Program FY [REDACTED] (“Agreement”) is made and entered by and between Broward County, a political subdivision of the State of Florida (“County”), and [REDACTED], a [State of Florida nonprofit corporation / municipal corporation of the State of Florida] (“Grantee”) (each a “Party” and collectively referred to as the “Parties”).

RECITALS

A. County is the recipient of Florida Boating Improvement Program (“BBIP”) funds pursuant to Section 328.72, Florida Statutes, for the purpose of constructing, providing, maintaining, or operating recreational channel markers and other uniform waterway markers, public boat ramps, lifts, and hoists, marine railways, boat piers, docks, mooring buoys, and other public launching facilities; and removing derelict vessels, debris that specifically impedes boat access (not including the dredging of channels), and vessels and floating structures deemed a hazard to public safety and health for failure to comply with the requirements under Section 327.53, Florida Statutes.

B. In accordance with Section 9½-16 of the Broward County Code of Ordinances, the Broward County Marine Advisory Committee (“MAC”) recommended to the Broward County Board of County Commissioners (the “Board”) that County provide grant funding to Grantee for Services (as hereinafter defined) under the BBIP program for fiscal year (“FY”) _____, which grant funding was approved by the Board as part of the annual budget for FY ____.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1. **Applicable Law** means all applicable laws, codes, advisory circulars, rules, regulations, or ordinances of any federal, state, county, municipal, or other governmental entity, as may be amended.
- 1.2. **Code** means the Broward County Code of Ordinances.
- 1.3. **Contract Administrator** means the Director of the Broward County Parks and Recreation Division, or such other person designated by the Broward County Director of Parks and Recreation in writing.
- 1.4. **County Business Enterprise** or **CBE** means an entity certified as meeting the applicable requirements of Section 1-81 of the Code.

- 1.5. **Designated Representative** means Grantee’s _____ or such other person designated by Grantee’s _____ to the Contract Administrator by written notice in accordance with Section 12.8 of this Agreement.
- 1.6. **Grant Application** means the grant funding application for the Program submitted by Grantee to County, including any amendments thereto, which is incorporated herein by reference.
- 1.7. **Vessel Registration Fees** means the fees collected by the State of Florida and distributed to County in accordance with Section 328.72, Florida Statutes.
- 1.8. **Program** means the Broward Boating Improvement Program established under Chapter 33, Part VIII of the Broward County Administrative Code.
- 1.9. **Program Funds** means the funding received by County from Vessel Registration Fees and provided to Grantee on a reimbursement basis under this Agreement.
- 1.10. **Services** means all work required by Grantee under this Agreement, including without limitation all reports, consulting, training, Program management, the purchase of approved goods, or performance of other services specified in Article 3 and in the Scope of Services, attached as Exhibit A.
- 1.11. **Subcontractor** means an entity or individual providing Services to County through Contractor. The term “Subcontractor” includes all subconsultants providing Services to County through Grantee.

ARTICLE 2. EXHIBITS

Exhibit A	Scope of Services
Exhibit B	Prevailing Wage Statement of Compliance
Exhibit C	Certification of Payments to Subcontractors and Suppliers
Exhibit D	Minimum Insurance Requirements

ARTICLE 3. SCOPE OF SERVICES

- 3.1. Scope of Services. Grantee shall perform all Services, including, without limitation, the work specified in Exhibit A (the “Scope of Services”). The Scope of Services describes Grantee’s obligations and responsibilities and includes preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks that are such an inseparable part of the work described that exclusion would render performance by Grantee impractical, illogical, or unconscionable.
- 3.2. Any requested changes to the Services for which the Grant Funds were awarded to Grantee, the Scope of Services, the performance deadlines, or the maximum reimbursement amount under Section 5.1 must be submitted by Grantee to County in accordance with the “Notices” section of this Agreement at least six (6) months in advance of the completion dates stated in this Agreement, as required by Section 33.77 of the Broward County Administrative

Code. If the requested change is approved by County, the change must be set forth in an amendment to this Agreement in accordance with Section 12.18, which may be executed by the County Administrator on behalf of County.

ARTICLE 4. TERM AND TIME OF PERFORMANCE

4.1. Term. This Agreement begins on October 1, 20__ (“Effective Date”), and continues through ____ (the “Term”), unless otherwise terminated as provided in this Agreement.

4.2. Fiscal Year. The continuation of this Agreement beyond the end of any County fiscal year is subject to both the appropriation and the availability of funds pursuant to Chapter 129 and, if applicable, Chapter 212, Florida Statutes.

4.3. Time of the Essence. Time is of the essence for Grantee’s performance of the duties, obligations, and responsibilities required by this Agreement.

ARTICLE 5. PROGRAM FUNDS

5.1. Program Funds. County will provide Program Funds to Grantee up to a maximum amount of _____ dollars (\$____.00), on a reimbursement only basis, in the manner specified in Section 5.2, for eligible goods purchased and Services actually performed and completed during the Term of this Agreement. Grantee acknowledges that the amount stated in this section is the maximum amount payable and constitutes a limitation upon County’s obligation to provide funding or compensation of any kind to Grantee for all goods, Services, and expenses, related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon Grantee’s obligation to perform all Services.

5.2. Method of Billing and Payment.

5.2.1. Grantee may submit invoices for reimbursement by County after the applicable Services are completed as described in Exhibit A. Invoices for partially completed work may only be invoiced upon prior written approval by the Contract Administrator. All invoices are subject to approval by the Contract Administrator prior to reimbursement by County. All invoices must be received no later than sixty (60) days after expiration or earlier termination of this Agreement. Invoices must include supporting documentation as described in Exhibit A, describe the nature of the Services performed and, as applicable, the personnel, hours, tasks, or other details as requested by the Contract Administrator, including, but not limited to, a copy of any underlying invoices for Subcontractors or reimbursable expenses incurred by Grantee. Grantee must also submit a Certification of Payments to Subcontractors and Suppliers (Exhibit B) with each invoice that includes Services performed by a Subcontractor. The certification must be accompanied by a copy of the notification sent to each unpaid Subcontractor listed on the form, explaining the good cause why payment has not been made to that Subcontractor. No reimbursement will be made to Grantee for amounts due but unpaid to a Subcontractor.

5.2.2. County will reimburse Grantee within thirty (30) days after receipt of Grantee's proper invoice in accordance with the "Broward County Prompt Payment Ordinance," Section 1-51.6 of the Code. To be deemed proper, all invoices must: (a) comply with all applicable requirements set forth in this Agreement and the Code, if applicable; and (b) be submitted on the then-current County form and pursuant to instructions prescribed by the Contract Administrator. Reimbursement may be withheld for failure of Grantee to comply with a term, condition, or requirement of this Agreement. Reimbursement shall be made to Grantee at the address designated in the "Notice" section of this Agreement.

5.2.3. As all payments to Grantee by County are on a reimbursement basis, Grantee shall pay Subcontractors and suppliers prior to receipt of reimbursement from County for such subcontracted work or supplies. Grantee agrees that if it withholds an amount as retainage from Subcontractors or suppliers, it will release such retainage and pay same within fifteen (15) days after receipt of reimbursement of retained amounts from County. Failure to pay a Subcontractor or supplier in accordance with this subsection shall be a material breach of this Agreement unless Grantee demonstrates to Contract Administrator's satisfaction that such failure to pay results from a bona fide dispute with the Subcontractor or supplier and, further, Grantee promptly pays the applicable amount(s) to the Subcontractor or supplier upon resolution of the dispute. Grantee shall include requirements substantially similar to those set forth in this subsection in its contracts with Subcontractors and suppliers.

5.3. Subcontractors. Contractor shall invoice Subcontractor fees only in the actual amount paid by Contractor, without markup or other adjustment.

5.4. Withholding by County. Notwithstanding any provision of this Agreement to the contrary, County may withhold reimbursement to Grantee, in whole or in part, (a) if required by Applicable Law, or (b) to the extent necessary to protect County from loss on account of (i) inadequate or defective work by Grantee that has not been remedied or resolved in a manner satisfactory to the Contract Administrator, or (ii) Grantee's failure to comply with any term, condition, or requirement of this Agreement. All amounts withheld by County shall not be subject to payment of interest by County.

5.5. Refunds. If County demands a refund, in accordance with Sections 9.6 or 10.6, of any or all amounts paid to Grantee under this Agreement, Grantee shall return those amounts to County within sixty (60) days after written notification provided by County. If Grantee does not refund to County any or all of the amounts for which a refund is demanded, then in addition to any other legal remedies that may be available to County, any invoices, payment, or requests for funding by Grantee under this Agreement or under any other contract or program administered by County shall be denied until Grantee refunds the demanded amounts to County.

5.6. Grantee's Match. In order for Grantee to be eligible for any reimbursement from County under this Agreement, Grantee must utilize its own (or separately obtained) matching funds towards the Services in the amount of [REDACTED] dollars (\$ [REDACTED].00) ("Grantee's Match"). County may, in its sole and absolute discretion, approve invoices for reimbursement from Program Funds

only up to the proportionate amount of Program Funds that equals the proportion of Grantee's Match actually utilized for Services.

5.7. Under no circumstances will the lobbying of the Florida Legislature or state agency be considered part of the Services contemplated by this Agreement.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES

6.1. Representation of Authority. Grantee represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of Grantee, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Grantee has with any third party or violates Applicable Law. Grantee further represents and warrants that execution of this Agreement is within Grantee's legal powers, and each individual executing this Agreement on behalf of Grantee is duly authorized by all necessary and appropriate action to do so on behalf of Grantee and does so with full legal authority.

6.2. Application Representations. Grantee represents and warrants that all statements and representations made in the Grant Application submitted to County in connection with the negotiation or award of this Agreement were true and correct when made and are true and correct as of the date Grantee executes this Agreement, unless otherwise expressly disclosed in writing by Grantee.

6.3. Contingency Fee. Grantee represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Grantee, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

6.4. Truth-In-Negotiation Representation. Grantee's funding under this Agreement is based upon its representations to County, and Grantee certifies that the wage rates, factual unit costs, and other information supplied to substantiate the award to Grantee, including without limitation those representations made by Grantee during the negotiation of this Agreement, are accurate, complete, and current as of the date Grantee executes this Agreement. Grantee's reimbursements under this Agreement may be reduced by County, in its sole discretion, to correct any inaccurate, incomplete, or noncurrent information provided to County as the basis for the Program Funds awarded in this Agreement.

6.5. Public Entity Crime Act. Grantee represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. Grantee further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Grantee has been placed on the convicted vendor list.

6.6. Discriminatory Vendor and Scrutinized Companies Lists; Countries of Concern. Grantee represents that it has not been placed on the “discriminatory vendor list” as provided in Section 287.134, Florida Statutes, and that it is not a “scrutinized company” pursuant to Sections 215.473 or 215.4725, Florida Statutes. Grantee represents and certifies that it is not, and for the duration of the Term will not be, ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes. Grantee represents that it is, and for the duration of the Term will remain, in compliance with Section 286.101, Florida Statutes.

6.7. Claims Against Grantee. Grantee represents and warrants that there is no action or proceeding, at law or in equity, before any court, mediator, arbitrator, governmental or other board or official, pending or, to the knowledge of Grantee, threatened against or affecting Grantee, the outcome of which may (a) affect the validity or enforceability of this Agreement, (b) materially and adversely affect the authority or ability of Grantee to perform its obligations under this Agreement, or (c) have a material and adverse effect on the consolidated financial condition or results of operations of Grantee or on the ability of Grantee to conduct its business as presently conducted or as proposed or contemplated to be conducted.

6.8. Verification of Employment Eligibility. Grantee represents that Grantee has registered with and use the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this Agreement will not violate that statute. If Grantee violates this section, County may immediately terminate this Agreement for cause and Grantee shall be liable for all costs incurred by County due to the termination.

6.9. Warranty of Performance. Grantee represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all Services and that each person and entity that will provide Services is duly qualified to perform such Services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render Services. Grantee represents and warrants that the Services shall be performed in a skillful and respectful manner, and that the quality of all Services shall equal or exceed prevailing industry standards for the provision of such services.

6.10. Prohibited Telecommunications Equipment. Grantee represents and certifies that Grantee and all Subcontractors does not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26. Grantee represents and certifies that Grantee and all Subcontractors shall not provide or use such covered telecommunications equipment, system, or services during the Term.

6.11. Criminal History Screening Practices. If this Agreement is subject to the requirements of Section 26-125(d) of the Code, Grantee represents and certifies that Grantee will comply with Section 26-125(d) of the Code for the duration of the Term.

6.12. Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of the “Broward County Domestic Partnership Act,” Section 16½-157 of the Code (“Act”), Grantee certifies and represents that it shall at all times comply with the provisions of the Act. The contract language referenced in the Act is deemed incorporated in this Agreement as though fully set forth in this section.

6.13. Breach of Representations. Grantee acknowledges that County is materially relying on the representations, warranties, and certifications of Grantee stated in this article, and County shall be entitled to exercise any or all of the following remedies if any such representation, warranty, or certification is untrue: (a) recovery of damages incurred; (b) termination of this Agreement without any further liability to Grantee; (c) set off from any amounts due Grantee the full amount of any damage incurred; and (d) debarment of Grantee.

ARTICLE 7. SOVEREIGN IMMUNITY; INDEMNIFICATION

9.1. Sovereign Immunity. Except to the extent sovereign immunity may be deemed waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County (or Grantee, if Grantee is a Florida municipality, state agency, or political subdivision as defined in Section 768.28, Florida Statutes), nor shall anything included herein be construed as consent by either Party to be sued by third parties in any matter arising out of this Agreement.

9.2. Indemnification. Grantee shall indemnify, hold harmless, and defend County and all of County’s current, past, and future officers, agents, and employees (collectively, “Indemnified Party”) from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys’ fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any breach of this Agreement by Grantee, or any intentional, reckless, or negligent act or omission of Grantee, its officers, employees, or agents, arising from, relating to, or in connection with this Agreement (collectively, a “Claim”). If any Claim is brought against an Indemnified Party, Grantee shall, upon written notice from County, defend each Indemnified Party with counsel satisfactory to County or, at County’s option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. If considered necessary by the Contract Administrator and the County Attorney, any sums due Grantee under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

ARTICLE 8. LIABILITY PROTECTION; INSURANCE

8.1. Public Entities. If Grantee is a municipality, state agency, or political subdivision subject to Section 768.28, Florida Statutes, in lieu of the insurance requirements provided for in this article, Grantee shall furnish the Contract Administrator with written verification of liability protection in accordance with state law prior to final execution of this Agreement.

8.2. Throughout the Term, Grantee shall, at its sole expense, maintain the minimum insurance coverages stated in Exhibit D in accordance with the terms and conditions of this article. Grantee shall maintain insurance coverage against claims relating to any act or omission by Grantee, its agents, representatives, employees, or Subcontractors in connection with this Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required under this article.

8.3. Grantee shall ensure that "Broward County" is listed and endorsed as an additional insured as stated in Exhibit D on all policies required under this article.

8.4. On or before the Effective Date or at least fifteen (15) days prior to commencement of Services, as may be requested by County, Grantee shall provide County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article. If and to the extent requested by County, Grantee shall provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after County's request.

8.5. Grantee shall ensure that all insurance coverages required by this article remain in full force and effect without any lapse in coverage throughout the Term and until all performance required by Grantee has been completed, as determined by Contract Administrator. Grantee or its insurer shall provide notice to County of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s).

8.6. All required insurance policies must be placed with insurers or surplus line carriers authorized to conduct business in the State of Florida with an A.M. Best rating of A- or better and a financial size category class VII or greater, unless otherwise approved by County's Risk Management Division in writing.

8.7. If Grantee maintains broader coverage or higher limits than the insurance requirements stated in Exhibit D, County shall be entitled to all such broader coverages and higher limits. All required insurance coverages shall provide primary coverage and not require contribution from any County insurance, self-insurance, or otherwise, which shall be in excess of and shall not contribute to the required insurance provided by Grantee.

8.8. Grantee shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit D and submit to County for approval at least fifteen (15) days prior to the Effective Date or commencement of Services. Grantee shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Grantee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Grantee agrees that any deductible or self-insured retention may be

satisfied by either the named insured or County, if so elected by County, and Grantee agrees to obtain same in endorsements to the required policies.

8.9. Unless prohibited by the applicable policy, Grantee waives any right to subrogation that any of Grantee's insurers may acquire against County, and agrees to obtain same in an endorsement of Grantee's insurance policies.

8.10. Grantee shall require that each Subcontractor maintains insurance coverage that adequately covers the Services provided by that Subcontractor on substantially the same insurance terms and conditions required of Grantee under this article. Grantee shall ensure that all such Subcontractors comply with these requirements and that "Broward County" is named as an additional insured under the Subcontractors' applicable insurance policies. Grantee shall not permit any Subcontractor to provide Services unless and until all applicable requirements of this article are satisfied.

8.11. If Grantee or any Subcontractor fails to maintain the insurance required by this Agreement, County may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Grantee. If requested by County, Grantee shall provide, within one (1) business day, evidence of each Subcontractor's compliance with this article.

8.12. If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the Effective Date; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in Exhibit D; and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date, Grantee must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Agreement for at least the duration stated in Exhibit D.

ARTICLE 9. TERMINATION

9.1. Availability of Funds. The continuation of this Agreement is subject to the availability of Program Funds. If Program Funds are no longer available, County may terminate this Agreement with at least twenty-four (24) hours' prior written notice to Grantee, with the termination date specified in such notice. The Contract Administrator shall be the final authority as to the availability of funds and is authorized to issue the notice of termination to Grantee in accordance with this section.

9.2. Termination for Cause. This Agreement may be terminated for cause if a Party materially breaches any term, condition, or requirement of this Agreement and such breach is not corrected thirty (30) days after receipt of written notice from the non-breaching Party identifying the breach. This Agreement may also be terminated for cause by County for reasons including, but not limited to, Grantee's failure to suitably or continuously perform the Services in a manner calculated to meet or accomplish the objectives in this Agreement, or repeated submission (whether negligent or intentional) for payment of false or incorrect bills or invoices.

Termination for cause by County may be made by the Board or the County Administrator, or by the Contract Administrator if expressly authorized under this Agreement. If County erroneously, improperly, or unjustifiably terminates this Agreement for cause, such termination shall be deemed a termination for convenience pursuant to Section 9.3 effective thirty (30) days after such notice was provided and Grantee shall be eligible for reimbursement for Services properly performed through the effective termination date as provided in Section 9.3 as its sole remedy.

9.3. Termination for Convenience; Other Termination. This Agreement may also be terminated for convenience by the Board with at least thirty (30) days advance written notice to Grantee. Grantee acknowledges that it has received good, valuable, and sufficient consideration for County's right to terminate this Agreement for convenience including in the form of County's obligation to provide advance notice to Grantee of such termination in accordance with this section. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances, if the County Administrator determines that termination is necessary to protect the public health, safety, or welfare. If this Agreement is terminated by County pursuant to this section, Grantee shall be paid for any Services properly performed through the termination date specified in the written notice of termination, subject to any right of County to retain any sums otherwise due and payable, and County shall have no further obligation to pay Grantee for Services under this Agreement.

9.4. Effect of Termination on Reimbursement. If this Agreement is terminated by either Party, any reimbursement(s) requested by Grantee for Services properly performed prior to the date of written notice of termination shall be reimbursed by County pursuant to the terms of this Agreement, subject to any right of County to retain any sums otherwise due and payable to Grantee. Any Services or expenditures performed or incurred by Grantee after such date will only be subject to reimbursement by County if expressly approved in advance and in writing by the Contract Administrator.

9.5. Notice of termination shall be provided in accordance with the "Notice" section of this Agreement except that notice of termination by the County Administrator to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

9.6. If this Agreement is terminated by County for cause arising from Grantee's noncompliance with its obligations hereunder, County shall have the right to demand refund of all amounts paid to Grantee as provided for in Section 5.5.

9.7. In addition to any termination rights stated in this Agreement, County shall be entitled to seek any and all available contractual or other remedies available at law or in equity.

ARTICLE 10. FINANCIAL STATEMENTS AND MANAGEMENT LETTERS

10.1. Unless otherwise approved by the Contract Administrator in writing, Grantee shall submit the documents required by this article to the Contract Administrator within one hundred twenty (120) days after the close of each of Grantee's fiscal years in which Grantee performs Services or receives any Program Funds.

10.2. Grantee shall provide a copy of Grantee's audited financial statements and any applicable management letters, as well as Grantee's response to any management letters. The audit of the financial statements shall be prepared by an independent certified public accountant in accordance with generally accepted accounting principles for each of Grantee's fiscal years in which Grantee performs Services or receives Program Funds.

10.3. Grantee shall prepare and provide to the Contract Administrator a special report showing all revenues, by source, and all expenditures being funded under this Agreement. The report shall specifically disclose any Program Funds received that were not expended in accordance with the terms of this Agreement or Applicable Law. It shall identify the total of noncompliant expenditures as funds due back to County. If the special report is prepared by an independent certified public accountant, it shall be in accordance with generally accepted auditing standards. If the special report is prepared by an internal auditor, it shall be as nearly in accordance with generally accepted auditing standards as the status of the internal auditor permits, realizing that the internal auditor may not issue the opinions required therein. The special report is to be filed with Grantee's governing body.

10.4. Failure of Grantee to meet the reporting requirements in this article may result in immediate suspension of reimbursement under this and/or any other grant agreement with County then in effect, and disqualify Grantee from obtaining future grant funding until such financial statements have been provided to the Contract Administrator, and, if requested, reviewed and approved by the County Auditor.

10.5. Grantee acknowledges that submission of financial statements to any other Broward County office, agency, or division does not constitute compliance with the requirements of this Agreement to submit that material to the Contract Administrator.

10.6. Grantee shall refund to County any Program Funds that were not used in strict compliance with the terms of this Agreement, without the requirement for demand from County. If County does demand a refund of any Program Funds, Grantee shall return the Program Funds in accordance with Section 5.5.

ARTICLE 11. EQUAL EMPLOYMENT OPPORTUNITY AND CBE COMPLIANCE

11.1. Grantee may not discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Grantee shall include the foregoing or similar language in its contracts with all Subcontractors, except that any project assisted by the U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

11.2. Failure by Grantee to carry out any of the requirements of this article shall constitute a material breach of this Agreement, which shall permit County to terminate this Agreement or to exercise any other remedy provided under this Agreement or Applicable Law, all such remedies being cumulative.

11.3. Although no CBE goal has been set for this Agreement, County encourages Grantee to fully consider the use of CBE firms as Subcontractors to perform Services.

ARTICLE 12. MISCELLANEOUS

12.1. Contract Administrator Authority. The Contract Administrator is authorized to coordinate and communicate with Grantee to manage and supervise the performance of this Agreement. Grantee acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise materially modify the Scope of Services except as expressly set forth in this Agreement. Unless expressly stated otherwise in this Agreement or otherwise set forth in the Code or the Broward County Administrative Code, the Contract Administrator may exercise ministerial authority in connection with the day-to-day management of this Agreement. The Contract Administrator may also, pursuant to input from the MAC, approve minor changes to the Scope of Services so long as there is not an increase in the maximum reimbursement amount in Section 5.1, the revisions are consistent with the Grant Application and the Program guidelines set forth in the Broward County Administrative Code, and the revisions do not diminish the quantity or quality of Services to be provided.

12.2. Rights in Documents and Work. Any and all reports, photographs, surveys, documents, materials, data, or other work created by Grantee in connection with performing Services, whether finished or unfinished (“Documents and Work”), shall be owned by County, and Grantee hereby transfers to County all right, title, and interest, including any copyright or other intellectual property rights, in or to the Documents and Work. Upon expiration or termination of this Agreement, the Documents and Work shall become the property of County and shall be delivered by Grantee to the Contract Administrator within seven (7) days after expiration or termination. Any compensation due to Grantee may be withheld until all Documents and Work are received as provided in this Agreement. Grantee shall ensure that the requirements of this section are included in all agreements with all Subcontractor(s).

12.3. Public Records. Notwithstanding anything else in this Agreement, any action taken by County in compliance with, or in a good faith attempt to comply with, the requirements of Chapter 119, Florida Statutes, shall not constitute a breach of this Agreement. If Grantee is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Grantee shall:

12.3.1. Keep and maintain public records required by County to perform the Services;

12.3.2. Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by Applicable Law;

12.3.3. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by Applicable Law for the duration of this Agreement and after completion or termination of this Agreement if the records are not transferred to County; and

12.3.4. Upon expiration of the Term or termination of this Agreement, transfer to County, at no cost, all public records in possession of Grantee or keep and maintain public records required by County to perform the services. If Grantee transfers the records to County, Grantee shall destroy any duplicate public records that are exempt or confidential and exempt. If Grantee keeps and maintains the public records, Grantee shall meet all requirements of Applicable Law for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

If Grantee receives a request for public records regarding this Agreement or the Services, Grantee must immediately notify the Contract Administrator in writing and provide all requested records to County to enable County to timely respond to the public records request. County will respond to all such public records requests.

Grantee must separately submit and conspicuously label as “RESTRICTED MATERIAL – DO NOT PRODUCE” any material (a) that Grantee contends constitutes or contains its trade secrets under Chapter 688, Florida Statutes, or (b) for which Grantee asserts a right to withhold from public disclosure as confidential or otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (collectively, “Restricted Material”). In addition, Grantee must, simultaneous with the submission of any Restricted Material, provide a sworn affidavit from a person with personal knowledge attesting that the Restricted Material constitutes trade secrets or is otherwise exempt or confidential under Florida public records laws, including citing the applicable Florida statute and specifying the factual basis for each such claim. Upon request by County, Grantee must promptly identify the specific applicable statutory section that protects any particular document. If a third party submits a request to County for records designated by Grantee as Restricted Material, County shall refrain from disclosing such material unless otherwise ordered by a court of competent jurisdiction, authorized in writing by Grantee, or the claimed exemption is waived. Any failure by Grantee to strictly comply with the requirements of this section shall constitute Grantee’s waiver of County’s obligation to treat the records as Restricted Material. Grantee must indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys’ fees, litigation expenses, and court costs, relating to nondisclosure of Restricted Material in response to a third-party request.

IF GRANTEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO GRANTEE’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 357-8100, DANWEST@BROWARD.ORG, 950 NW 38th STREET, OAKLAND PARK, FLORIDA 33309.

12.4. Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of Grantee and all Subcontractors that are related to this Agreement. Grantee and all Subcontractors shall keep such books, records, and accounts as may be necessary to record complete and correct entries related to this Agreement and performance under this

Agreement. All such books, records, and accounts shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Grantee and all Subcontractors shall make same available in written form at no cost to County. Grantee shall provide County with reasonable access to Grantee's facilities, and County shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement.

Grantee and all Subcontractors shall preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for at least three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. This article shall survive any dispute or litigation between the Parties, and Grantee expressly acknowledges and agrees to be bound by this article throughout the course of any dispute or litigation with County. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County). Grantee hereby grants County the right to conduct such audit or review at Grantee's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice. Grantee shall make all such records and documents available electronically in common file formats or via remote access if, and to the extent, requested by County.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry. If an audit or inspection in accordance with this section reveals overpricing or overcharges to County of any nature by Grantee in excess of five percent (5%) of the total contract billings reviewed by County, in addition to making adjustments for the overcharges, Grantee shall pay the reasonable cost of County's audit. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of County's findings to Grantee.

Grantee shall ensure that the requirements of this section are included in all agreements with all Subcontractor(s).

12.5. Independent Contractor. Grantee is an independent contractor of County, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. In providing Services, neither Grantee nor its agents shall act as officers, employees, or agents of County. Grantee shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

12.6. Regulatory Capacity. Notwithstanding the fact that County is a political subdivision with certain regulatory authority, County's performance under this Agreement is as a Party to this Agreement and not in its regulatory capacity. If County exercises its regulatory authority, the exercise of such authority and the enforcement of Applicable Law shall have occurred pursuant to County's regulatory authority as a governmental body separate and apart from this Agreement, and shall not be attributable in any manner to County as a Party to this Agreement.

12.7. Third-Party Beneficiaries. Neither Grantee nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

12.8. Notice; Payment Address. Unless otherwise stated herein, for notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). Payments shall be made to the noticed address for Grantee. Addresses may be changed by the applicable Party giving notice of such change in accordance with this section.

FOR COUNTY:

Director
Broward Parks and Recreation Division
950 N.W. 38th Street
Oakland Park, Florida 33309
(954) 357-8107
Email address: parksdirector@broward.org

FOR GRANTEE:

Email address: _____

12.9. Assignment. All Subcontractors must be expressly identified in this Agreement or otherwise approved in advance and in writing by County’s Contract Administrator. Except for approved subcontracting, neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by Grantee without the prior written consent of County. Any assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, constitute a breach of this Agreement, and permit County to immediately terminate this Agreement, in addition to any other remedies available to County at law or in equity. County reserves the right to condition its approval of any assignment, transfer, encumbrance, or subcontract upon further due diligence and an additional fee paid to County to reasonably compensate it for the performance of any such due diligence.

12.10. Conflicts. Neither Grantee nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Grantee’s loyal and conscientious exercise of judgment and care related to its performance under this Agreement. During the Term, none of Grantee’s officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which they or Grantee is not a party, unless compelled by legal process. Further, such persons shall not give sworn testimony or issue a report or writing as an expression of such person’s expert opinion that is adverse or prejudicial to the interests of County in connection with any such pending or

threatened legal or administrative proceeding unless compelled by legal process. The limitations of this section shall not preclude Grantee or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. If Grantee is permitted pursuant to this Agreement to utilize subcontractors to perform any Services required by this Agreement, Grantee shall require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Grantee.

12.11. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term. County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

12.12. Compliance with Laws. Grantee and the Services must comply with all Applicable Law including, without limitation, the Americans with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and the requirements Chapter 33, Part VII of the Broward County Administrative Code, as a condition precedent to the release of Program Funds to Grantee.

12.13. Severability. If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

12.14. Joint Preparation. This Agreement has been jointly prepared by the Parties, and shall not be construed more strictly against either Party.

12.15. Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include any other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all subsections thereof, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" means calendar days, unless otherwise expressly stated. Any reference to approval by County shall require approval in writing, unless otherwise expressly stated.

12.16. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated

in this Agreement and any provision within an article or section of this Agreement, the article or section shall prevail and be given effect.

12.17. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

12.18. Amendments. Unless expressly authorized herein, no modification, amendment, or alteration of any portion of this Agreement is effective unless contained in a written document executed with the same or similar formality as this Agreement and by duly authorized representatives of County and Grantee.

12.19. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding same. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Agreement are contained herein.

12.20. Payable Interest

12.20.1. Payment of Interest. Unless prohibited by Applicable Law, County shall not be liable for interest to Grantee for any reason, whether as prejudgment interest or for any other purpose, and Grantee waives, rejects, disclaims, and surrenders any and all entitlement to interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement.

12.20.2. Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under Applicable Law, one quarter of one percent (0.25%) simple interest (uncompounded).

12.21. Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

12.22. Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, whether signed physically or electronically, each

of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

12.23. Use of County Name or Logo. Grantee shall not use County's name or logo in marketing or publicity materials without prior written consent from the Contract Administrator.

12.24. Drug-Free Workplace. If required under Section 21.23(f), Broward County Administrative Code, or Section 287.087, Florida Statutes, Grantee certifies that it has and will maintain a drug-free workplace program throughout the Term.

12.25. Living Wage Requirement. If Grantee is a "covered employer" within the meaning of the "Broward County Living Wage Ordinance," Sections 26-100 through 26-105 of the Code, Grantee shall fully comply with the requirements of such ordinance and shall pay to all of its employees providing "covered services," as defined in the ordinance, a living wage as defined therein. Grantee shall ensure all Subcontractors that qualify as "covered employers" fully comply with the requirements of such ordinance.

12.26. Prevailing Wage Requirement. If construction work in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) is required of, or undertaken by, Grantee as a result of this Agreement, then Section 26-5 of the Code shall be deemed to apply to such construction work. Grantee shall fully comply with the requirements of such ordinance and shall satisfy, comply with, and complete the requirements set forth in Exhibits B and C.

12.27. Polystyrene Food Service Articles. Grantee shall not sell or provide for use on County property expanded polystyrene products or food service articles (e.g., Styrofoam), unencapsulated expanded polystyrene products, or single-use plastic straws or stirrers, as set forth in more detail in Section 27.173, Broward County Administrative Code.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its County Administrator or their designee, authorized to execute same by Section 33.79 of the Broward County Administrative Code, and Grantee, signing by and through its _____ duly authorized to execute same.

COUNTY

BROWARD COUNTY, by and through its County Administrator or their designee

By: _____

____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600

By _____
Amanda Tolbert (Date)
Assistant County Attorney

By _____
Nathaniel A. Klitsberg (Date)
Senior Assistant County Attorney

AMT
BBIP Form Agreement
05/25/2023
#1034288v8

AGREEMENT BETWEEN BROWARD COUNTY AND [REDACTED] FOR THE BROWARD BOATING
IMPROVEMENT PROGRAM FY [REDACTED]

GRANTEE

GRANTEE NAME

By: _____
Authorized Signer

Print Name and Title

_____ day of _____, 20____

EXHIBIT A
Scope of Services

I. Project Title: _____ (the "Project")

II. Services provided by Grantee:

A. Grantee shall perform all Services necessary to complete the following Project: [Describe the Project].

B. Grantee shall erect a permanent sign on the Project site identifying the Program and identifying County as a funding source for construction of the Project.

C. Grantee shall be responsible for obtaining all required state, federal, and local permits, licenses, agreements, leases, easements, and any other required authorizations for the Project.

D. Along with Grantee's invoices for reimbursement of funds used to perform the Services, Grantee shall submit documents which reflect the Services accomplished, including, but not limited to communications, invoices from third parties, photographs, or any other information requested by the Contract Administrator.

E. Grantee shall submit to County signed quarterly Project status reports summarizing work or activities accomplished, problems encountered, percentage of Services or activities completed, and other appropriate information, as deemed necessary by the Contract Administrator.

F. Project completion shall occur when the work, Services, and activities described in Section II, A - [redacted] of this Exhibit A have been completed.

III. Following Project Completion

A. Upon Project completion, Grantee shall dedicate the Project for public recreational uses for a minimum of twenty-five (25) years, and the dedication shall be recorded in the Official Records for Broward County, Florida. If the Project is utilized during the dedication period for any purpose other than the intended purpose of the Project under this Agreement, Grantee shall be required to refund to County any Program Funds provided by County for the Project.

B. Grantee shall submit signed as-built site plans including a list of construction facilities and improvements, and color photographs reflecting the work accomplished.

C. Grantee shall provide a signed statement by an engineer, architect, or other appropriate professional, as determined by the Contract Administrator, certifying satisfactory completion of the Project in accordance with the prepared and approved plans and specifications.

EXHIBIT B
Prevailing Wage Statement of Compliance

No. _____

Agreement No. _____

Project Title _____

The undersigned Contractor hereby swears under penalty of perjury that, during the period covered by the application for payment to which this statement is attached, all mechanics, laborers, and apprentices, employed or working on the site of the Project, have been paid at wage rates, and that the wage rates of payments, contributions, or costs for fringe benefits have not been less than those required by Section 26-5, Broward County Code of Ordinances, and the applicable conditions of this Agreement.

Dated _____, _____

Contractor

By _____
(Signature)

By _____
(Name and Title)

STATE OF)
)
COUNTY OF)

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this _____ day of _____, 20__, by _____, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

NOTARY PUBLIC:

Signature: _____

Print Name: _____

State of Florida at Large (Seal)

My commission expires:

**Exhibit C
Certification of Payments to Subcontractors and Suppliers**

RLI/Bid/Contract No. _____
Project Title _____

The undersigned Contractor hereby swears under penalty of perjury that:

1. Contractor has paid all Subcontractors and suppliers all undisputed contract obligations for labor, services, or materials provided on this project in accordance with the "Compensation" article of this Agreement, except as provided in paragraph 2 below.
2. The following Subcontractors and suppliers have not been paid because of disputed contractual obligations; a copy of the notification sent to each, explaining in reasonably specific detail the good cause why payment has not been made, is attached to this form:

Subcontractor or supplier's name and address	Date of disputed invoice	Amount in dispute

3. The undersigned is authorized to execute this Certification on behalf of Contractor.

Dated _____, 20__

Contractor Name
By _____
(Signature)
By _____
(Name and Title)

STATE OF)
COUNTY OF)

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this _____ day of _____, 20__, by _____, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

NOTARY PUBLIC:
Signature: _____
Print Name: _____
State of Florida at Large (Seal)
My commission expires:

**Exhibit D
Minimum Insurance Requirements**

[USE FORM PROVIDED BY RISK FOR ANY NONGOVERNMENTAL ENTITY]