

**DEPARTMENT OF NATURAL RESOURCES
MEMORANDUM OF UNDERSTANDING
REV. 12/2011
[For Contracts Exempt From Procurement]**

THIS MEMORANDUM OF UNDERSTANDING is entered into this _____ day
of _____, 20____, by and between the

STATE OF MARYLAND
DEPARTMENT OF NATURAL RESOURCES

Chesapeake and Coastal Service

Tawes State Office Building, E -2

Annapolis, MD 21401

hereinafter ("Department"),

and

XXXXXXX
XXXXXXX

Federal ID # XXXXXXXXXX

DUN# _____

UEI# _____

hereinafter ("Contractor" or "Subgrantee").

WHEREAS, the Department is an agency of the State of Maryland;

WHEREAS, the Contractor is an agency of the State of Maryland, or a political subdivision of the State, or another government as defined in State Finance and Procurement Article, §11-203 of the Annotated Code of Maryland;

(((WHEREAS, the Contractor is a privately owned business as the subgrantee of the Department's Boating Infrastructure Grant (BIG) Program. (for privately owned marinas))))

WHEREAS, the Contractor has agreed to perform work for the Department in accordance with this Memorandum of Understanding ("Memorandum", or "MOU");

NOW, THEREFORE, the Department and the Contractor agree as follows:

ARTICLE I - SCOPE OF WORK

The Contractor shall: XXXXXXXX. This work is more particularly described in the attached Scope of Work identified as Exhibit A.

ARTICLE II - COMPENSATION AND METHOD OF PAYMENT

The services set forth above shall be performed for a total payment not to exceed XXXXXXXX dollars (\$XXXXXX). The Contractor shall submit billings for all costs expended in the performance of this Memorandum in accordance with a payment schedule set forth in the attached Scope of Work. In the absence of a payment schedule, billing shall be monthly. If the Scope of Work contains a schedule for completion of various components of the work, each monthly billing shall identify the progress made in relation to the schedule and the payment being requested. The Contractor shall follow cost accounting practices acceptable to the Department. Billings shall be due and payable within thirty (30) days of receipt by the Department.

ARTICLE III - TERM

The term of this Memorandum shall be from XXXXXXXX through XXXXXXXX, or the date that the U.S. Fish and Wildlife Service closes the federal grant; whichever date is earlier. No work may be initiated under this Memorandum until it has been fully executed by all parties and the Contractor has been instructed to proceed by the Department.

ARTICLE IV - GENERAL CONDITIONS

The Department of Natural Resources, General Conditions, Memoranda of Understanding (Rev. 05/2012), are attached and made a part of this Memorandum.

ARTICLE V - CONTRACT REPRESENTATIVES

The following individuals are designated as contract representatives for their respective parties:

Department xxxx (and/or his/her designee)
 Chesapeake and Coastal Service
 Tawes State Office Building, E-2
 Annapolis, MD 21401
 Phone: (410) 260-xxxx; Email: xxxxxx

Contractor: XXXXXXXX
 XXXXXXXX

The scope of authority of the designated Contract Representatives to act for their respective parties is set forth in the attached General Conditions.

ARTICLE VI - KEY PERSONNEL

The Contractor agrees that the following named individuals are considered to be essential to the work being performed hereunder, and are designated as Key Personnel who shall be made available to the full extent required to carry out the work under this Memorandum:

- XXXXXXXX
- XXXXXXXX
-

Should any of these individuals become unavailable during the term of this Memorandum, personnel of equivalent capability shall be assigned to the project. Any such substitutions shall require prior written approval by the Department, which approval may be denied by the Department at its sole discretion. Should the Contractor be unable to provide substitutes acceptable to the Department, the Department may terminate this MOU, or, at its option, negotiate with the Contractor for an equitable adjustment under the MOU relative to the loss of such Key Personnel.

ARTICLE VII- MERGER

This Memorandum embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations regarding the parties' agreement other than those contained herein or incorporated herein by reference.

This document may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures, including notary signatures, provided by electronic means including, by way of example and not of limitation, facsimile, Adobe, PDF, and sent by electronic mail, or via an electronic signature program, shall be deemed to be original.

IN WITNESS WHEREOF, the parties have executed this Memorandum by causing the same to be signed on the day and year first above written.

WITNESS

CONTRACTOR

XXXXXXX

Print Name: _____

By _____

XXXXXXX

Date: _____

WITNESS

STATE OF MARYLAND
DEPARTMENT OF NATURAL
RESOURCES

Print Name: _____

By _____

Matthew J. Fleming
Director, Chesapeake and Coastal
Service

Date: _____

WITNESS

Print Name: _____

By _____

DNR Procurement Officer

Date: _____

Approved as to form and legal sufficiency

this ____ day of _____, 20 ____

Assistant Attorney General

**DEPARTMENT OF NATURAL RESOURCES
GENERAL CONDITIONS FOR
MEMORANDA OF UNDERSTANDING
REV. 5/12
[For Contracts Exempt from Procurement]**

ARTICLE I - TERMS AND APPLICABILITY

These General Conditions apply to contracts exempt from the requirements of State Finance and Procurement Article, §11-101 et seq. of the Annotated Code of Maryland. The General Conditions do not constitute a complete agreement but are part of a Memorandum of Understanding (“Memorandum” or “MOU”) executed by all parties, which identifies the specific work to be performed, compensation, term, and special conditions, if any. The General Conditions and the MOU are intended to be complementary and shall be construed together. In the event of a direct conflict between them, the terms of the Memorandum shall govern and control.

Specific terms used in this document have the following meaning:

- A. “Contract” means the agreement between the Department and the Contractor for performance of services, including the MOU, Scope of Work and these General Conditions.
- B. "Scope of Work" or "Work" refers to the specific contractual obligation of the Contractor as identified in the MOU or other work statement incorporated into the Contract.
- C. "Contractor" means the State agency, political subdivision or government obligated to perform services for the Department under this Contract.
- D. "Department" means the Maryland Department of Natural Resources.

ARTICLE II - THE PARTIES

A. Independent Contractor - The Contractor is not an employee of the Department but is an independent contractor. The Contractor shall be responsible for providing all supplies and materials necessary for performance of all work under the Contract, and for withholding any taxes and social security payments due in relation to the Contract. The Contractor is not an agent of the Department and cannot commit the Department to any expenditure of funds or enter into any contractual obligation on behalf of the Department.

B. Notices - Service of any notice required by the Contract shall be complete upon mailing of such notice, postage prepaid, to the appropriate contract representative at the address indicated in the MOU. If no contract representative is named, then the person executing the MOU for a party shall be the contract representative for purposes of notice.

ARTICLE III - PERFORMANCE

A. Standard of Performance - The Contractor is responsible for the supervision and inspection of, and the technical accuracy and coordination of all data and work pursuant to this

Contract, and shall provide services and products meeting professional standards of quality and methodology.

B. Prosecution of the Work - The Contractor agrees to prosecute all work under this Contract continuously and diligently and to meet all milestones contained in the Contract. The Contractor further agrees that no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

C. Subletting or Assignment - The benefits and obligations hereunder shall inure to and be binding upon the parties hereto and their respective successors, provided the personnel of any such successor, whether such successor be an individual, a partnership or a corporation, is acceptable to the Department. The Contractor shall not hire consultants, sublet, sell, transfer, assign or otherwise dispose of this Contract or any portion thereof, or of its right, title or interest therein, without prior written consent of the Department.

In the case of any subcontract, the Contractor agrees to bind the subcontractor and every subcontractor agrees to be bound by all terms of this Contract unless particular provisions are expressly waived in writing by the Department.

D. Changes - The Department, by written direction to the Contractor, may at any time make any change in the work within the general scope of the Contract. Within fifteen (15) days of receipt of a Notice of Change, the Contractor shall advise the Department of the effect, if any, such changes would have on budgeting, cost, delivery schedules, milestones or any other Contract provisions. If such effects are acceptable to the Department, the Department shall issue a Notice to Proceed With Changes, upon receipt of which the Contractor shall immediately institute all such requested changes. Such directed additions or changes to the Scope of Work shall become part of the contractual obligation. Each contract modification or change order that affects contract price is subject to the prior written approval of the Department.

E. Suspension of Work - The Department unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for a period of time the Department determines to be appropriate.

F. Disputes - If the Contractor intends to assert a claim against the Department, the Contractor shall do so within 30 days of the date the Contractor knows, or should know, of the basis of the claim. Failure to file a claim within the 30-day period is a complete bar to the claim. The claim shall consist of a written statement to the Department setting forth the nature and

monetary extent of the claim, and the facts on which the claim is based. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract.

ARTICLE IV - PROPERTY

The Contractor shall notify the Department in advance of public disclosure of any information related to this Contract, unless such disclosure is compelled by legislative or judicial process. The Contractor shall in all cases submit to the Department three (3) copies of any scientific or technical paper, abstract, report or other vehicle pertaining in whole or in part to this Contract which the Contractor desires to publish, submit for publication, distribute or otherwise publicly disseminate. Such submission shall be made by the Contractor to the Department at least thirty (30) days prior to its planned initial public dissemination, disclosure, or submission for publication. The Contractor shall include in any such documents or vehicles of public disclosure a statement which acknowledges the Department, the specific programs therein, and the financial support provided by this Contract. Furthermore, upon receipt of a written request from the Department, the Contractor shall also provide a disclaimer stating that the contents of the aforesaid document or vehicle of public disclosure do not in any way reflect the views, opinions, or policies of the Department.

B. Patents and Copyrights - The Contractor may retain the entire right, title, and interest throughout the world to each subject invention associated with or reduced to practice in the course of performance under this Contract. With respect to any subject invention in which the Contractor retains title, the Department, and in those cases where federal money is involved, the federal government, shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced the subject invention throughout the world.

The Contractor shall have the duty to disclose to the Department any invention associated with or reduced to practice in the course of performance under this Contract. Furthermore, the Contractor agrees that, if at any time during the course of performance of this Contract, it should become aware of a potential conflict between the rights of the Department under this Contract, and those of any other party or entity, as to ownership of any patent or copyright interests developing in relation to said performance, then the Department shall be immediately notified of such conflict. In such a case, it is agreed and understood that the terms of this Contract may be adjusted to provide for an equitable relationship between monies expended hereunder in pursuit of such patent or copyright interests and benefits to be obtained therefrom by the Department.

The Contractor assumes the risk that any materials, equipment, process, or other items required under the Contract or furnished by the Contractor are subject to any patent, copyright, trademark, trade secret or other property right of another. The Contractor shall pay for all royalties and license fees and shall obtain all necessary licenses or permits to permit use of any such item by the Department. The Contractor shall defend all suits or claims of infringement of any patent, copyright, trademark, trade secret or other property right of another and shall save the Department harmless from loss or expense on account thereof.

C. Equipment - Unless otherwise provided in the MOU, all non-expendable equipment, including major equipment as defined in this Article, procured with funds from this Contract, shall be Department property and shall be used primarily for work under this Contract. Prior written

approval of the Department shall be required for use of the equipment, on a non-interference basis, for other work of the Contractor. The Contractor shall use all effort to care for and maintain the equipment. Upon termination of this Contract, the Department shall determine what disposition shall be made of the equipment and shall so notify the Contractor within thirty (30) days. The Contractor shall report its acquisition of non-expendable equipment covered by this Contract to the Department annually. Non-expendable equipment is that which: 1) has a probable useful life in excess of one year beyond the date of acquisition, and 2) costs at least \$500, either as an individual piece or as a group of pieces intended to be used together.

All items of Major Equipment to be procured with funds from this Contract shall be itemized in the budget of this Contract to the extent possible. "Major Equipment" shall be defined as any item of equipment costing Two Thousand Dollars (\$2,000.00) or more. Unless itemized in the budget approved by the Department, purchase of each item of Major Equipment shall require prior written approval of the Department.

ARTICLE V - INDEMNIFICATION

A. Department Saved Harmless - Recognizing that the Contractor is a government agency and, as such, is subject to limitations on the indemnity that it can legally provide, the Contractor agrees, to the fullest extent permitted by law, to indemnify and save harmless and defend the Department and all of its representatives from all suits, actions, or claims of any character, brought on account of any injuries or damage sustained by any person or property in consequence of any work performed under this Contract, either by the Contractor or any subcontractor, or their employees, agents, or representatives. This responsibility is not to be deemed as a waiver of any immunity which may exist in any action against the Department.

B. Insurance - If specified in the MOU, the Contractor shall provide insurance protecting the Department from bodily injury and property damage. Certificates of such insurance acknowledging the foregoing "Department Saved Harmless" clause shall be filed with the Department.

ARTICLE VI - WARRANTIES AND DISCLOSURES

A. Nondiscrimination in Employment - The Contractor agrees: (1) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (2) to include a provision similar to that contained in subsection (1), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (3) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

B. Compliance with Laws - The Contractor hereby represents and warrants that:

1. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract;

and

2. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

ARTICLE VII - ACCOUNTING

A. Retention of Records - Audit - The Contractor shall retain and maintain all records and documents relating to this Contract for three years after final payment by the Department hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the Department, including the procurement officer or designee, at all reasonable times. The Department shall have the right, during usual business hours, to examine and audit pertinent records of the Contractor to verify invoices submitted pursuant to this Contract.

B. Payment of State Obligations - Payments to the Contractor shall be made in accordance with the terms of the MOU. Charges for late payment are prohibited.

ARTICLE VIII - DURATION

A. Effective Date - It is understood and agreed by the parties hereto that this Contract and any modification thereof shall not become effective or enforceable until executed by the Department.

B. Termination for Convenience - The performance of work under this Contract may be terminated by the Department in accordance with this clause in whole, or from time to time in part, whenever the Department shall determine that such termination is in the best interest of the Department. The Department will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

C. Termination for Default - If the Contractor fails to fulfill its obligation under this Contract properly and on time, or otherwise violates any provision of the Contract, the Department may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination and shall provide the Contractor with thirty (30) days to cure before terminating the Contract. All finished or unfinished work provided by the Contractor shall, at the Department's option, become the Department's property. The Department shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the Department can affirmatively collect damages.

D. Multi-Year Restriction - If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available. The Contractor may not recover anticipatory profits or costs incurred after termination.

ARTICLE IX - LEGAL

A. Severability - If any of these provisions shall contravene, or be invalid under, the laws of the particular state, Town or jurisdiction where used, such contravention or invalidity shall not invalidate the whole agreement, but the Contract shall be construed as if not containing the particular provision or provisions held to be invalid in the particular state, Town, or jurisdiction, and the rights and obligations of the parties shall be construed and enforced accordingly.

B. Law Applicable - Unless otherwise authorized by the Board of Public Works, this Contract shall be governed by the laws of the State of Maryland, and the parties hereby expressly agree that the courts of the State of Maryland shall have exclusive jurisdiction to decide any question arising hereunder.

APPROVED as to form and legal sufficiency
Office of the Attorney General
Department of Natural Resources
May 2012

Exhibit A

Scope of Work

Task Title: XXXXXXXX

Funding: Federal: \$XXXXXX (XX%)
Match: \$XXXXXX(XX%)
Total: \$XXXXXX

MOU Term: XXXXXX – XXXXXX

Funding Recipient: XXXXXX

GENERAL

XXXXXXX shall aid the Department in renovating the recreational boating access facility at XXXXXX (the “Project”) as described below.

The Project will be XX% funded by federal Boating Infrastructure Grant (BIG) FXXXXXXXXXX (not to exceed \$XXXXXXXX). The XX% match (not to exceed \$XXXXXXXX) will come from State Waterway Improvement Funds (or private funds). The total Project cost shall not exceed \$XXXXXXXX.

It is anticipated that all construction will be completed and all expenses both incurred and paid by the XXXXXXXX by the end of the Performance Period (XXXXXXX). The Period of Performance (PoP) for this project is from XXXXXX to XXXXXX. If reasonable progress is being made by XXXXXXXX but unforeseen circumstances delay the Project, the Department may, at its discretion, request a time extension of the federal grant from the grant award agency the U.S. Fish and Wildlife Service (USFWS). There is, however, no guarantee that this request will be approved by the USFWS. The CFDA number for the grant is 15.622.

AGREEMENT REQUIREMENTS

There are two sets of federal/state requirements that XXXXXXXX understands and agrees to:

Memorandum of Understanding (MOU)

The first set of requirements applies to all activities that occur prior to the Department’s final inspection of the completed Project (i.e., design, construction, payments made by XXXXXX, and reimbursements by the Department to XXXXXX). These requirements are detailed in this MOU and Scope of Work (Exhibit A).

Land Control Agreement (LCA)

The second set of requirements (Exhibit B) applies to all activities that occur after the Department's final inspection of the completed Project. These requirements ensure that the Project continues to be used for its intended purpose and is in compliance with all applicable federal and state requirements for the Project's useful life. The useful life is determined by the design engineer. **The LCA is a separate document with separate signature requirements.** No work shall be initiated (except the engineering which is not included in this grant) by XXXXX until the MOU has been fully executed by all parties and XXXXX has been instructed to proceed by the Department.

Note: Language from standardized federal/state forms is included in both the MOU and LCA. These standardized forms contain requirements that address both "pre" and "post" construction activities so there is some overlap/duplication of requirements.

PROJECT DESCRIPTION

XXXXX will renovate/upgrade the XXXXXXXXXXXX to provide/improve tie ups for recreational transient vessels of 26 feet or larger. Project improvements will include:

- XXXXXXXX
- XXXXXXXX
- XXXXXXXX

PROGRESS REPORTS AND INVOICING

The Contractor will submit reports and deliverables to the CCS contact for this project which is Li Lan Carson (lilan.carson@maryland.gov). Please contact this person with any questions or issues as they arise.

Quarterly reports will be required to ensure projects are on task to meet milestone target dates. Recipients should briefly report on project status, budgets, and identification of problems or other concerns. Include sample products as appropriate.

Time Frame

Due Date

September 1, 2020 – December 31, 2020	January 15, 2021
January 1, 2021 – March 31, 2021	April 15, 2021
April 1, 2021 – June 30, 2021	July 15, 2021
July 1, 2021 – September 30, 2021	October 15, 2021
October 1, 2021 – December 31, 2021	January 15, 2022
January 1, 2022 – March 31, 2022	April 15, 2022
April 1, 2022 – June 30, 2022	July 15, 2022

July 1, 2022 – September 30, 2022	October 15, 2022
October 1, 2022 – December 31, 2022	January 15, 2023
January 1, 2023 – March 31, 2023	April 15, 2023
April 1, 2023 – June 30, 2023	July 15, 2023
July 1, 2023 – August 31, 2023	August 31, 2023

Invoices with appropriate back-up documentation shall be submitted for periods ending 12/31, 3/31, 6/30 and 9/30, unless monthly invoicing is needed.

Invoices with appropriate back-up documentation may be submitted to the project manager on a monthly basis with a corresponding report when necessary.

The funding recipient shall not incur costs or obligate funds for any purpose pertaining to the operation of the project beyond the end date stipulated in the contract. The final invoice with appropriate back-up documentation shall be submitted to the Chesapeake and Coastal Service no later than thirty days after the end date of the MOU.

BUDGET

After the Contractor has been paid an amount equal to ninety percent (90%) of the funds initially allocated and approved for this contract, the Department of Natural Resources Chesapeake & Coastal Services may withhold from payment an amount of not more than ten percent (10%) of the total contract price, until satisfactory completion and submission by the Contractor of all tasks described under this agreement.

Insert budget detail here

CONSIDERATION AND METHOD OF PAYMENT

No reimbursement shall be initiated by XXXXX until both the MOU and LCA have been fully executed by all parties and the XXXXX has been instructed to proceed by the Department.

The Project set forth above shall be performed during the Project Term as stated herein for an amount to include reimbursement from the Department to XXXXX for allowable costs not to exceed XXXXX (\$XXXXX) in federal funding with a non-federal match of XXXXX (\$XXXXX) in match funding (from the state or private funds) for a total project cost of XXXXXX (\$XXXXX). The federal share shall not exceed XX% of the actual construction contract amount, as determined through the competitive bid process, up to the amount approved. XXXXX must follow the procurement standards in 2 CFR §§ 200.318 through 200.327.

XXXXX shall submit billings for all eligible costs expended by XXXXX in the performance of this Contract. A standard billing format shall be followed including, but not limited to, any Contract Identifying Number. Billings shall be due and payable within thirty (30) days of receipt by the Department. The payment of any invoice for costs incurred or progress claimed shall not be deemed to convey the Department's acceptance of the legitimacy or accuracy of the costs or progress represented by that invoice.

Should the Department determine that a cost, even if paid, should be disallowed, and should XXXXX not timely tender full payment or satisfaction, this determination of disallowance shall be considered a "claim" for purposes of the Article entitled disputes. XXXXX agrees to follow a cost accounting practice which is in accordance with the standards, principles and procedures in COMAR 21.09 and the uniform practices of the profession as acceptable to the Department. For Contracts which provide for reimbursement for allowable costs, positive time records shall be provided with each progress report.

PROGRAM INCOME

As stipulated in 50 CFR Part 86 §86.77, any fees collected by the Subgrantee or its agent during the grant performance period must be tracked and reported as Program Income. The Subgrantee must notify the Department if program income is anticipated and then cooperate with the Department with all applicable program income requirements.

Rules for Modifying a Grant-Funded, Federally-Approved Budget

To modify a federally-approved budget, scope of work, or schedule, please follow these Guidelines:

Prior approval from the CCS Contact is necessary if:

- (a) you need to increase your budget; OR
- (b) you need to add a new line-item to the existing budget (e.g., add equipment or subcontractor to the budget); OR
- (c) you need a no-cost extension; OR
- (d) the modification will result in substantive changes to the project's goals, objectives, milestones or deliverables.

The modifications described above may also require prior approval by the Federal funding agency. If it is necessary to seek federal approval, please be aware that it can take up to three months to obtain final federal approval. Therefore, as a general guideline, requests for modifications should be submitted sixty (60) days prior to the desired effective date. There is no guarantee that such requests will be approved.

Additional terms and conditions, and obligations of the Subgrantee are specified in the Exhibit B Land Control Agreement (LCA). Exhibit B is explicitly incorporated as part of this MOU and will be executed separately once the design engineer determines the useful life of the facility.

ADDITIONAL TERMS AND CONDITIONS

Obligations of the Contractor/Subgrantee

1. The Subgrantee will not discriminate against any person based on race, color, creed or national origin, in the use of any property or facility acquired or developed pursuant to this project.
2. The design and construction of the project will be by or under the supervision of the Subgrantee. Prior to the start of construction, the Subgrantee must secure all necessary permits. The Subgrantee will bid the project, and the selected contractor will abide by the ASSURANCES --CONSTRUCTION PROGRAMS attached to these Terms and Conditions and made a part of this contract as Exhibit C.
3. The Subgrantee must submit the project plans and specifications, including all contract documents and any subsequent changes, to the Department for timely review and approval, which shall not be unreasonably denied.
4. The project must be in compliance with the Forest Conservation Act of 1991 and the Maryland Economic Growth, Resource Protection, and Planning Act of 1992 prior to the reimbursement of any State (Department) funds.
5. The Department reserves the right to revert any unexpended federal or state funding or unencumbered balance from this contract during the duration of the project.
6. The Subgrantee will publicly advertise the project for bids. Bids will then be received, reviewed, and compiled by the Subgrantee. The Department reserves the right to have a representative present at the bid opening.
7. The Subgrantee will prepare a tabulation of bids and submit it to the Department with comments and recommendations **prior to the award of any contract**.
8. The Subgrantee must submit project invoices illustrating percentage of project completed, percentage of project spending by task category and a copy of paid canceled check(s) for reimbursement.
9. The project shall be completed in accordance with the terms and conditions of any Maryland Department of Natural Resources Waterway Improvement Fund Applications and Grant Agreement, if applicable.
10. The project and facilities and all records, books, papers or documents pertaining thereto shall at all reasonable times be open and available for inspection by the Department, its agents and designees.
11. The Subgrantee shall post signs about the project, in a prominent location, identifying the project as a "Public Facility" and shall place a permanent sign, approved by the Department, acknowledging funding by the BIG and crediting the federal Sport Fish Restoration

program. The Department may provide generic premade crediting signs, if so, the Subgrantee shall post.

The Subgrantee must give clear information using signs or other methods to direct BIG eligible users to the facility, include restrictions and operating periods and restrict ineligible use at any part of the BIG-funded facility designated only for BIG eligible use.

All press releases and grant related events shall be coordinated with the Department.

12. The Subgrantee agrees to manage and operate the proposed project in reference to litter, refuse and provide necessary supervision assuring facility improvements will be high in quality.
13. The Subgrantee shall provide and maintain adequate sanitation and sanitary facilities and shall keep them safe for public use and in good, operable condition.
14. The Subgrantee will assure that the Project facility will be designed and constructed for handicapped persons pursuant to MD. Code Ann., State Finance and Procurement Article, §2-501 et seq. and the Americans with Disabilities Act (ADA).
15. The Subgrantee shall adhere to U.S. Fish and Wildlife Service General Award Terms and Conditions attached as Exhibit D.
16. The Subgrantee must submit to the Department a recorded and Registry stamped Notice of Grant Agreement (NOGA) that the Subgrantee has entered into the property's land records. The NOGA must be in a format and must contain wording that is acceptable to both the Department and USFWS. No federal and/or state funding will be expended on this project, and no reimbursements will be processed by the Department, until this requirement has been met.

Additional Terms & Conditions That Apply to subgrantees that are privately Owned entities

In addition to the requirements noted above, privately owned marinas/facilities have the following requirements:

1. In addition to a NOGA, a Record Covenant Agreement detailing the grant conditions must be included in the property records for the marina/facility (if required).
2. PERFORMANCE BOND (((OR PERSONAL GUARANTEE)))
3. The marina/facility must not be sold and there must be no change in the corporate structure/status of the business without DNR and USFWS approval. Permission will only be granted if: 1) the new potential owner/partner signs a legally binding agreement, suitable to DNR, indicating that they will continue to comply with all terms and conditions contained in the LCA and 2) the new potential owner/partner provides DNR with any requested information (including an auditing report) in order to help DNR assess any risk of future non-compliance to the federal grant.

3) A BIG Grant Assignment/Transfer Form must be completed by transferor/transferee and approved by DNR.

4. Each status report (to be submitted by the sub-grantee every five years during the project's useful life) must include a report completed by an independent auditor, at the sub-grantee's expense, certifying that the BIG-funded project continues to be used for its intended purpose, that BIG project income is being kept in a separate account, and that BIG project income is being used only for the operation and maintenance of the BIG funded facility.

Exhibit C

U.S. Fish and Wildlife Service

ASSURANCES - CONSTRUCTION PROGRAMS

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor

standards for federally-assisted construction subagreements.

14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91- 190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
20. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

Exhibit D

U.S. Fish and Wildlife Service

General Award Terms and Conditions

Effective Date: December 31, 2020

Recipients of U.S. Fish and Wildlife Service (Service) grant and cooperative agreement awards (hereafter referred to as 'awards') are subject to the terms and conditions incorporated into their Notice of Award either by direct citation or by reference to Federal regulations; program legislation or regulation; and special award terms and conditions. Award terms and conditions are applicable unless and until the Service removes or revises them in written notice to the recipient. The Service will make such changes by issuing a written notice that describes the change and provides the effective date.

Recipients indicate their acceptance of an award by starting work, drawing down funds, or accepting the award via electronic means. Recipient acceptance of an award carries with it the responsibility to be aware of and comply with all terms and conditions applicable to the award. Recipients are responsible for ensuring that their subrecipients and contractors are aware of and comply with applicable award statutes, regulations, and terms and conditions. Recipient failure to comply with award terms and conditions can result in the Service taking one or more of the remedies and actions described in [2 CFR §§200.339—343](#).

Administrative Requirements, Cost Principles, and Audit Requirements

The requirements in this section do not apply to individuals receiving an award separate from any business or organization he or she may own or operate. The Service will describe all administrative and cost requirements and restrictions for awards to individuals in their Notice of Award. The requirements in this section apply to for-profit entities only when the Service specifically incorporates them by reference in a Notice of Award.

The requirements in this section apply to foreign public entities and foreign organizations, unless otherwise described in this section. Foreign public entities and organizations must comply with any special considerations and requirements specific to their entity type, unless otherwise noted within this document. Foreign public entities must comply with those specific to states. Foreign higher education institutions must comply with those specific to Institutions of Higher Education.

Administrative Requirements

[2 CFR Part 200, Subparts A—D](#), as supplemented by [2 CFR Part 1402—Financial Assistance Interior Regulation](#) and including the provisions in 2 CFR §1402.112 and §1402.315. Foreign public entities must follow payment procedures in 2 CFR §200.305(b). The requirements in 2 CFR §§200.321—323 do not apply to foreign public entities or foreign organizations.

[Appendix XII to 2 CFR Part 200—Award Term and Condition for Recipient Integrity and Performance Matters](#). Applies to awards with a total Federal share of more than \$500,000, except for awards to foreign public entities.

Cost Principles

[2 CFR Part 200, Subpart E—Cost Principles](#). These cost principles apply to all domestic and foreign non-Federal entities except non-profit organizations identified as exempt in Appendix VIII to 2 CFR Part 200. The Authorized Representative’s signature on a standard application form submitted to the Service represents their certification that the entity’s financial management system meets 2 CFR §200.302 Financial management requirements. The non-Federal entity’s financial management system must be sufficient to:

- 1) Permit the preparation of required reports;
- 2) Trace funds to a level of expenditures adequate to establish that the entity has used such funds per Federal statutes, regulations, and terms and conditions of the Federal award;
- 3) Provide for the requirements in 2 CFR §200.302(b); and
- 4) Comply with §§200.334 Retention requirements for records, 200.335 Requests for transfer of records, 200.336 Methods for collection, transmission and storage of information, and 200.337 Access to records.

[48 CFR Subpart 31.2—Contracts with Commercial Organizations](#). These cost principles apply to non-profit organizations identified in Appendix VIII to 2 CFR Part 200. They also apply to for-profit entities when specified in their Notice of Award.

Indirect Cost Proposals

- Institutions of Higher Education: [Appendix III to 2 CFR Part 200](#)
- Nonprofit organizations: [Appendix IV to 2 CFR Part 200](#)
- States, local government agencies, and Indian tribes: [Appendix VII to 2 CFR Part 200](#)
- For-profit entities: Contact the [DOI National Business Center, Office of Indirect Cost Rate Services](#)

See also the DOI negotiated indirect cost rate deviation policies at [2 CFR §1402.414](#).

Audit Requirements

[2 CFR Part 200, Subpart F—Audit Requirements](#). These audit requirements apply to U.S. states, local governments, Indian tribes, institutions of higher education, and nonprofit organizations. They do not apply to foreign public entities, foreign organizations, or for-profit entities.

Statutory and National Policy Requirements

The following statutory and national policy requirements apply to all recipients, including individuals, for-profits, foreign public entities, and foreign organizations, unless otherwise described in this section.

[Appendix A to 2 CFR Part 25—Universal Identifier and System for Award Management](#). Does not apply to individuals or any entity with a qualifying condition and exempted by the awarding bureau or office prior to award per 2 CFR §25.110(c)(2) and bureau or office policy.

[Appendix A to 2 CFR Part 170—Award term for reporting subaward and executive compensation](#). Does not apply to any individual receiving a Federal award as a natural person. See 2 CFR 170 for other exceptions.

[2 CFR §175.15—Award Term for Trafficking in Persons](#). Applies to private entities as defined in 2 CFR §175.25(d), and to awards to States, local governments, Indian tribes or foreign public entities, if funding could be provided under the award to a private entity as a subrecipient.

[2 CFR Part 1400—Nonprocurement Debarment and Suspension](#). Recipients are responsible for ensuring they do not enter into any covered transaction with an excluded or disqualified participant or principal. See also [2 CFR Part 180—OMB Guidelines to Agencies on Governmentwide Debarment and Suspension \(Nonprocurement\)](#). See 2 CFR §180.215 for nonprocurement transactions that are not covered transactions.

[2 CFR Part 1401—Requirements for Drug-Free Workplace \(Financial Assistance\)](#). Does not apply to foreign public entities or foreign organizations.

[43 CFR Part 18—New Restrictions on Lobbying](#). The Authorized Representative’s signature on a standard application form submitted to a DOI bureau or office certifies to the statements in [Appendix A to 43 CFR Part 18—Certification Regarding Lobbying](#). These restrictions do not apply to such Indian tribe, tribal organization, or any other Indian organization expenditures specifically permitted by other Federal law.

[41 U.S.C. §6306—Prohibition on Members of Congress Making contracts with Federal Government](#)

National Policy Encouragements

[E. O. 13043—Increasing Seat Belt Use in the United States](#). Non-Federal entities are encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles. Individuals are encouraged to use seat belts while driving in connection with award activities.

[E. O. 13513—Federal Leadership on Reducing Text Messaging While Driving](#). Non-Federal entities are encouraged to adopt and enforce policies that ban text messaging while driving, including conducting initiatives of the type described in section 3(a) of the order. Individuals are encouraged to not text message while driving in connection with award activities.