GOVERNING BOARD MONTHLY MEETING
EXECUTIVE SUMMARY AGENDA

This meeting is open to the public
July 10, 2014
9:00 AM
District Headquarters - B-1 Auditorium
3301 Gun Club Road
West Palm Beach, FL 33406

FINAL REVISED 07/09/2014 3:53 PM

Pursuant to Section 373.079(7), Florida Statutes, all or part of this meeting may be conducted by means of communications media technology in order to permit maximum participation of Governing Board members.

The Governing Board may take official action at this meeting on any item appearing on this agenda and on any item that is added to this agenda as a result of a change to the agenda approved by the presiding officer of the meeting pursuant to Section 120.525, Florida Statutes. The order of items appearing on the agenda is subject to change during the meeting and is at the discretion of the presiding officer. Public Comment will be taken after each presentation and before any Governing Board action(s) except for Governing Board hearings that involve the issuance of final orders based on recommended Orders received from the Florida Division of Administrative Hearings.

1. Call to Order - Dan O'Keefe, Chairman, Governing Board
2. Pledge of Allegiance - Dan O'Keefe, Chairman, Governing Board
3. Oath of Office - Administered by Marcia Kivett, Director, Office of Governing Board & Executive Services
4. Recognition of Tim Sargant - Dan O'Keefe, Chairman, Governing Board
5. Employee Recognitions - Presented by Blake Guillory, Executive Director
   - June Employee of the Month - Marjorie Moore, Lead Scientist, Field Operations & Land Management Division
   - July Team of the Month - FPL Site Certification Team
• 40-Year Service Award - Richard Champlin, Superintendent, Clewiston Field Station, Field Operations & Land Management Division

6. Agenda Revisions - Jacki McGorty, District Clerk
7. Abstentions by Board Members from items on the Agenda
9. Big Cypress Basin Board Report - Rick Barber, Chair
Consent Agenda

Members of the public wishing to address the Governing Board are to complete a Public Comment Card and submit the card to the front desk attendant. You will be called by the Board Chair or designee to speak. If you want to request that an item be removed from the Consent Agenda and be discussed by the Governing Board, please advise the Governing Board when you are called upon to speak. Governing Board directives limit comments from the public to 3 minutes unless otherwise determined by the Governing Board Chair. Your comments will be considered by the Governing Board prior to adoption of the Consent Agenda.

Unless otherwise determined by the Chair, Board action on pulled Consent Agenda items will occur at or after 9:00 a.m. on Thursday. Regulatory items pulled from the Consent Agenda for discussion will be heard during the Discussion Agenda. Unless otherwise noted, all Consent Agenda items are recommended for approval.

10. Public Comment on Consent Agenda

11. Pull Items for Discussion from Consent Agenda

12. Board Comment on Consent Agenda

13. Approval of the Minutes for the June 12, 2014 Regular Business Governing Board meeting held in Kissimmee, Florida

14. Waivers for Water Resource Advisory Commission (WRAC) members pursuant to Section 112.313, Florida Statutes

15. Regulatory Consent Items - ITEM REVISED

- Consent Orders
  - Club Everglades, Inc; Pleasure Island at Club Everglades (Collier County) - Settlement of an enforcement action regarding non-compliance with permit conditions for mangrove trimming outside the designated trimming area.
  - Ryland Group, Inc; Friars Cove Phase 4, 5 and 6 (Osceola County) - Settlement of an enforcement action regarding non-compliance with permit conditions due to turbid water off-site discharge and failure to comply with the District’s Best Management Practices.
  - KB Home Orlando, LLC; Enclave at Tapestry (Osceola County) - Settlement of an enforcement action regarding non-compliance with permit conditions due to unpermitted off-site discharge and failure to comply with the District’s Best Management Practices.

- Conservation Easements, Amendments and Releases
  - Martin County Board of County Commissioners, Bessey Creek HWTT (Martin County) - Staff recommends the approval of a request for the release of a 22.654 acre area of conservation easement within an overall 56.1338 acre conservation easement for the Bessey Creek Hybrid Wetland Treatment Technology (HWTT) Project in Martin County. The release is requested in order to authorize construction
and operation of the project for water quality improvement and is being processed concurrently with an Environmental Resource Permit Modification (Application No. 140611-16). The HWTT Project will be a retrofit of the existing water quality treatment marsh previously constructed as part of the Western Palm City Corridor Project (Permit No. 43-01748-P).

- Water Use Variances
  - Mahlbacher Residence; James C. Mahlbacher (Palm Beach County) - Enter a Final Order granting a variance to James C. Mahlbacher, authorizing a variance from the day of the week landscape irrigation measures specified in Chapter 40E-24, F.A.C., to provide for water conservation through implementation of an advanced irrigation system.

- Seminole Tribe Work Plans
  - Staff recommends concurrence with the Ninth Amendment to the Twenty Seventh Annual Work Plan for the Seminole Tribe of Florida. Works in the Brighton Reservation include the replacement of culvert HP02 and HP03 with upgraded structures to be renamed S-287 and S-286 respectively at the current existing locations, construction of a catwalk on the L-61 Canal for the purpose of installing a tailwater level recorder of the Seminole Tribe of Florida "D" Pump Station; works in the Hollywood Reservation include the phased construction of five (5) townhomes in approximately 2.71 acres.

16. Resolution No. 2014 - 0701 Approving release of canal reservations and issuance of non-use commitments. (OMC, Kathy Massey, ext. 6835)

Summary
The District has jurisdiction over certain reserved rights to construct canal right of ways, and mineral rights, together with the right of ingress, egress and exploration. Applications requesting releases of these reservations are routinely received from landowners, attorneys, title companies and lending institutions, who consider the reservations to be title defects. Applications are reviewed by appropriate District staff and applicable local governmental agencies to determine that there is no present or future need for the reservations.

Staff Recommendation
Staff recommends approval of the following:

- Release of Trustees canal reservations and issuance of non-use commitment to Weston Commercial Properties, Ltd. (File Nos. 5-14-1 and NUC 1650) for 16.62 acres in Broward County
- Release of District canal reservations and issuance of non-use commitment to Direct Property Investments, Inc. (File Nos. 18591 and NUC 1652) for 1.00 acre in Palm Beach County
17. Resolution No. 2014 - 0702 Approve the acquisition of a revocable temporary license, at no cost, over a portion of Collier County’s Freedom Park for the installation and monitoring of a rain gauge and associated telemetry equipment in Collier County, Big Cypress Basin. (OMC, Bruce Hall, ext. 6541)

Summary
This Revocable Temporary License Agreement will allow the District to install and monitor a rain gauge and associated telemetry equipment and provide future routine and emergency repair services on public property at Collier County’s Freedom Park. This rain gauge and associated telemetry equipment replaces a rain gauge that had been installed on nearby private lands since the 1940’s and is an important area to continue to monitor for the successful decision making and operation of both the primary and secondary flood control systems in the Big Cypress Basin and Collier County. District and County staff have reviewed and agreed upon the location for this rain gauge and associated telemetry equipment. (See attached map) However, the District’s rights under this proposed license agreement are subordinate and subject to Collier County’s right to terminate this license agreement upon sixty (60) days written notice. Additionally, the City of Naples has superior rights as to location of ASR Wells within Freedom Park. Also, Florida Power & Light Company has easements rights within the park. The potential exists for the District to be required at a future date to remove and/or relocate this proposed rain gauge and associated telemetry equipment. The removal and/or relocation would be at District expense.

Staff Recommendation
Approve the acquisition of a revocable temporary license from Collier County, at no cost, over a portion of Collier County’s Freedom Park for the installation and monitoring of a rain gauge and associated telemetry equipment in Collier County, Big Cypress Basin.

18. Resolution No. 2014 - 0703 Approving a new 10-year lease agreement for approximately 670.31 acres in St. Lucie County, with Diamond 3 Cattle Co. LLC, the highest responsive and responsible bidder, with a bid amount of $22,260.00 annually, as more particularly described herein. (Contract No. 46000003076) (OMC, Ray Palmer, ext. 2246)

Summary
As part of the Indian River Lagoon - South (IRL) Comprehensive Everglades Restoration Project (CERP), the District acquired various properties in St. Lucie County containing approximately 5,744 acres. The properties were acquired to construct Storm Water Treatment Areas (STAs) to reduce sediment, phosphorus and nitrogen entering the IRL and to construct surface water reservoirs for increased water storage.

The properties offered for lease are abandoned fallow citrus groves. The District desires to lease a 670.31 acre property identified as Encumbrance ID KE10E-048 (See Exhibit “A”) for cattle grazing. The revenues generated from this lease will assist Land Management with maintenance and management of other District lands.

Request for bid 600000638 for a new agricultural grazing lease with a ten year term for the subject lands was issued May 13, 2014. Responsive bids were due June 20, 2014. The winning bid was submitted by Diamond 3 Cattle Co. LLC in the annual amount of $22,260.00. Diamond 3 Cattle Co. LLC is the proposed Lessee for the
new ten-year term grazing lease with contract number 4600003076 (the “New Lease”).

There is one Special Provision in the New Lease. The Lessee shall construct perimeter fencing on the property, with respect to which the Lessee will be granted a fencing credit of $26,247.50, which will be deducted proportionally from the annual rent due for the first seven years of the New Lease. The resulting net revenue to the District during the 10 year lease term will be approximately $196,353.00, subject to a market rent adjustment after year five.

**Staff Recommendation**
Staff recommends approval of ten year cattle grazing lease.

19. **Resolution No. 2014 - 0704** Approving a new 10-year lease agreement for approximately 651.52 acres in St. Lucie County, with Diamond 3 Cattle Co. LLC, the highest responsive and responsible bidder, with a bid amount of $17,490.00 annually, as more particularly described herein. (Contract No. 4600003079) (OMC, Ray Palmer, ext. 2246)

**Summary**
As part of the Indian River Lagoon - South (IRL) Comprehensive Everglades Restoration Project (CERP), the District acquired various properties in St. Lucie County containing approximately 5,744 acres. The properties were acquired to construct Storm Water Treatment Areas (STAs) to reduce sediment, phosphorus and nitrogen entering the IRL and to construct surface water reservoirs for increased water storage.

The properties offered for lease are abandoned fallow citrus groves. The District desires to lease a 651.52 acre property identified as Encumbrance ID KE10E-049 (See Exhibit “A”) for cattle grazing. The revenues generated from this lease will assist Land Management with maintenance and management of other District lands.

Request for bid 6000000638 for a new agricultural grazing lease with a ten year term for the subject lands was issued May 13, 2014. Responsive bids were due June 20, 2014. The winning bid was submitted by Diamond 3 Cattle Co. LLC in the annual amount of $17,490.00. Diamond 3 Cattle Co. LLC is the proposed Lessee for the new ten-year term grazing lease with contract number 4600003079 (the “New Lease”).

There is one Special Provision in the New Lease. The Lessee shall construct perimeter fencing on the property, with respect to which the Lessee will be granted a fencing credit of $26,351.25, which will be deducted proportionally from the annual rent due for the first seven years of the New Lease. The resulting net revenue to the District during the 10 year lease term will be approximately $148,549.00, subject to a market rent adjustment after year five.

**Staff Recommendation**
Staff recommends approval of ten year cattle grazing lease.
20. **Resolution No. 2014 - 0705** Approving a new 10-year lease agreement for approximately 1,422.28 acres in Martin County, with Albert J. Gamot, the highest responsive and responsible bidder, with a bid amount of $34,604.00 annually, as more particularly described herein. (Contract No. 4600003065) (OMC, Ray Palmer, ext. 2246)

**Summary**
As part of the 2007 Northern Everglades & Estuaries Protection Program, the District acquired approximately 2,600 acres in western Martin County to construct a water clean-up project known as the Lakeside Ranch Project. Phase I of the Lakeside Ranch Stormwater Treatment Area (STA) is featured in the Lake Okeechobee Watershed Construction Project Phase II Technical Plan and consists of canals, embankments, water control structures and the S-650 Pump Station. Phase II portion of the STA is not ready to begin construction, and as an interim land management tool, the District desires to lease the 1,422.28 acre Property (See Exhibit “A”) for cattle grazing. The revenues generated from this lease will assist Land Management in managing this and other District-owned Interim and Restoration lands.

Request for bid 6000000635 for a new agricultural grazing lease with a ten year term for the subject lands was issued May 6, 2014. Responsive bids were due June 10, 2014. The winning bid was submitted by Albert J. Gamot in the annual amount of $34,604.00. Mr. Gamot is the proposed Lessee for the new ten-year term grazing lease with contract number 4600003065 (the “New Lease”).

There is one Special Provision in the New Lease. The Lessee shall construct perimeter fencing on the property, with respect to which the Lessee will be granted a fencing credit of $69,513.75, which will be deducted proportionally from the annual rent due for the first five years of the New Lease. The resulting net revenue to the District during the first 5 years will be approximately $103,506.00 and approximately $173,000.00 net revenue during the second 5 years, subject to a market rent adjustment.

**Staff Recommendation**
Staff recommends approval of ten year cattle grazing lease.

21. **Resolution No. 2014 - 0706** Approving a new 10-year lease agreement for approximately 1,202.40 acres in St. Lucie County, with Mancil’s Tractor Service Inc., the highest responsive and responsible bidder, with a bid amount of $26,425.00 annually, as more particularly described herein. (Contract No. 4600003074) (OMC, Ray Palmer, ext. 2246)

**Summary**
As part of the Indian River Lagoon - South (IRL) Comprehensive Everglades Restoration Project (CERP), the District acquired various properties in St. Lucie County containing approximately 5,744 acres. The properties were acquired to construct Storm Water Treatment Areas (STAs) to reduce sediment, phosphorus and nitrogen entering the IRL and to construct surface water reservoirs for increased water storage.

The properties offered for lease are abandoned fallow citrus groves. The District desires to lease a 1,202.40 acre property identified as Encumbrance ID KE10E-047 (See Exhibit “A”) for cattle grazing. The revenues generated from this lease will assist Land Management with maintenance and management of other District lands.
Request for bid 6000000638 for a new agricultural grazing lease with a ten year term for the subject lands was issued May 13, 2014. Responsive bids were due June 20, 2014. The winning bid was submitted by Mancil’s Tractor Service Inc. in the gross annual amount of $26,425.00. Mancil’s Tractor Service, Inc. is the proposed Lessee for the new ten-year term grazing lease with contract number 4600003074 (the “New Lease”).

There are two Special Provisions in the New Lease. First, the property is subject to an additional property assessment imposed by the North St. Lucie River Water Control District. The assessment rate is approximately $11.25 per acre. Secondly, the Lessee shall construct perimeter fencing on the property, with respect to which the Lessee will be granted a fencing credit of $69,836.25, which will be deducted proportionally from the annual rent due for the first seven years of the New Lease. The resulting net revenue to the District during the 10 year lease term will be approximately $194,414.00, subject to a market rent adjustment after year five.

**Staff Recommendation**
Staff recommends approval of ten year cattle grazing lease.

22. **Resolution No. 2014 - 0707** Revising Chapter 101, Article II, Division 2, Section 101-41 of the District Policies Code revising delegations to the Executive Director for the taking of final action under Part IV of Chapter 373, Florida Statutes and Chapter 403, Florida Statutes and any Rules promulgated thereunder, providing for inclusion in the District Policies Code; providing for severability; providing an effective date. (REG, Anita Bain, ext. 6866) - ITEM REVISED

**Summary**
This revision of the District Policies Code regarding delegations to the Executive Director clarifies the existing policy contained in Chapter 101, Article II, Division 2, Section 101-41 of the District Policies Code to specifically include verification of exemptions to permitting criteria under Part IV of Chapter 373, Florida Statutes, and Chapter 403, Florida Statutes, and any rules promulgated thereunder.

**Staff Recommendation**
Staff recommends approval of this revision to existing District Policy.

23. Adopt amendments to Rule 40E-1.607, F.A.C., for CUPcon with change based on comment received from the Joint Administrative Procedures Committee. (REG, Maria Clemente, ext. 2308)

**Summary:**
The Florida Department of Environmental Protection (DEP) is leading a statewide effort (referred to as CUP consistency) to improve consistency in the consumptive use permitting programs implemented by the water management districts (WMDs). The individual water management district consumptive use permitting rules, while all developed under the authority of Chapter 373, Florida Statutes, are inconsistent among the WMDs. Some differences are based on differing physical and natural characteristics; others result from development of separate rules and procedures over time.

**Staff Recommendation:**
Adopt amendments to Rule 40E-1.607, F.A.C., with change based on comment received from the Joint Administrative Procedures Committee.
24. Authorize publication of Notice of Rule Development in the Florida Administrative Register (FAR), and request review by the Office of Fiscal Accountability and Regulatory Reform, to create and implement the newly passed legislation regarding the lobbyist registration process for Water Management Districts, in an effort to provide a uniform system of lobbyist registrations. (OC, Derek Brown, ext. 6278)

Summary
The Legislature passed and the Governor signed into law with an effective date of July 1, 2014, Senate Bill 846 which requires all Water Management Districts to implement a Lobbyist registration process. District staff is requesting authority to initiate rule development to implement this requirement. This will include a website and online database that is available to the public which allows individuals to register with the District as Lobbyists and view such registrations. The District’s rules will be consistent with other Water Management District rules and relate to the Executive Branch’s requirements on lobbyist registration in an effort to provide a uniform system of lobbyist registrations. The Florida Commission on Ethics has authority to investigate complaints pertaining to lobbyist registrations. At this time the District is not implementing any costs to individuals to register as a lobbyist.

Staff Recommendation
Authorize publication of Notice of Rule Development in the Florida Administrative Register (FAR), and request for review by the Office of Fiscal Accountability and Regulatory Reform, to implement the newly passed legislation and create a rule regarding the lobbyist registration process. The District will work with the other Water Management Districts in an effort to provide a uniform system of lobbyist registrations.

25. Resolution No. 2014 - 0708 Authorizing a settlement agreement for $836,125, inclusive of $620,900 for acquisition in fee simple of 62.09 acres, more or less (Tract SG100-132), and $215,225 for attorney’s fees, expert’s fees, and costs, for which Save Our Everglades Trust Funds are budgeted, for the Picayune Strand Restoration Project, in Circuit Court case styled VIBID Group, Inc. v. South Florida Water Management District, et al., filed in the 20th Judicial Circuit for Collier County, Florida, Case No. 07-3329-CA. (OC, Keith L. Williams, ext. 2791)

Summary
VIBID Group Inc. (VIBID) sued the District in November 2007, alleging a taking of 62.09 acres, more or less (Tract SG100-132), located in the Southern Belle Meade portion of the Picayune Strand Restoration Project. In January 2014, the District Governing Board approved by resolution (Resolution No. 2014-0114), inclusion of property within the Southern Belle Meade portion of the Picayune Strand Restoration Project in its Florida Forever Work Plan for future land acquisition planning purposes. In May 2014, District staff reached a settlement agreement with VIBID to acquire its property within the Picayune Strand Restoration Project area and resolve all issues of compensation for condemnation of the 62.09 acres.

Staff Recommendation
Authorize approval of the settlement agreement to acquire the property interests owned by VIBID Group, Inc. This settlement is inclusive of all attorneys’ fees, experts’ fees, and costs that have been incurred by VIBID since November 2007.

Summary
FY2014-2015 State Appropriation 1622A allocated $3 million from the Florida Department of Environmental Protection for Dispersed Water Management. This proposed budget amendment is to recognize $2,759,684 out of the $3,000,000 and to reduce Save Our Everglades Trust Fund (SOETF) funding for the same amount to fund continuation of Dispersed Water Management projects. These projects facilitate multi-purpose water management operations, water storage and water quality improvement within the Northern Everglades and Estuaries Protection Area.

Staff Recommendation
Staff recommends Governing Board approval of this budget amendment.

27. Resolution No. 2014 - 0710  Authorizing a transfer of funds within the District FY2013-2014 budget to fund District fuel & electric demands as needed to respond to operational requirements. (AS, Candida Heater, ext. 6486).

Summary
The fuel and electric needs of the District fluctuate in response to a number of factors including weather; wet or dry events, water quality, and fuel prices. The purpose of this resolution is to provide maximum flexibility within the existing budget appropriation to respond to District fuel and electric demands to respond to operational requirements within FY2014. The $50M Economic Stabilization Reserve will be accessed only as a last resort because that would trigger repayment requirements within a three year period per District policy.

Staff Recommendation
Staff recommends approval to transfer funds up to $3,000,000 among the Districts Divisions, District Programs and from Managerial Reserves (as a last resort) as needed to respond to District fuel and electric demands in support of operational requirements, primarily for pumping operations.

28. Board Vote on Consent Agenda

29. General Public Comment

30. Board Comment
**Discussion Agenda**

31. Technical Reports
   A) Water Conditions Report - Jeff Kivett, Division Director, Operations, Engineering and Construction Division (ext. 2680)
   
   B) Ecological Conditions Report - Terrie Bates, Division Director, Water Resources Division (ext. 6952)

32. Lower Kissimmee Basin Water Supply Plan Status Update - Cynthia Gefvert, Section Leader, Water Supply Planning (ext. 2610)

**Summary**
The Lower Kissimmee Basin Draft Water Supply Plan is being developed for the Lower Kissimmee Basin (LKB), which includes portions of Okeechobee, Highlands, and Glades counties, which formerly was included in the Kissimmee Basin Water Supply Plan. The Draft Plan was released for public review in mid-June and is currently scheduled for approval in September. The water supply plan purpose is to identify options for an adequate supply of water to meet existing and future reasonable-beneficial uses while protecting the environment and water resources. This presentation is for information only and will provide an overview of the Draft LKB Water Supply Plan.

**Staff Recommendation**
This item is for information only; no action is required

33. **Resolution No. 2014 - 0711** Authorizing entering into Amendment No. 1 to the Project Partnership Agreement with the U.S. Department of the Army for construction, operation, maintenance, repair, replacement and rehabilitation of the Indian River Lagoon South Phase 1 Project, a component of the Comprehensive Everglades Restoration Plan; to amend the South Florida Water Management District’s construction responsibilities and to update the project cost estimates, for which the South Florida Water Management District will be responsible for 50 percent cost-share; affirming South Florida Water Management District’s financial capability to satisfy the obligations of the Non-Federal Sponsor described in the Project Partnership Agreement, as amended, for which funding, if any, is subject to approval of future fiscal year state budgets by the State Legislature and Governor, and District budgets for the Indian River Lagoon South Phase 1 Project by the State Legislature, Governor and District Governing Board. (Contract Number 4600002153-A01) (EPC, Tom Teets, ext. 6993) - **SUPPORTING DOCUMENTS ADDED**

**Summary**
The South Florida Water Management District (SFWMD) entered into a Project Partnership Agreement (PPA) with the U.S. Department of the Army for the Indian River Lagoon South Phase 1 Project on September 9, 2010. Under this Project Partnership Agreement, the SFWMD is responsible for providing 50 percent of the cost for constructing, operating, maintaining, repairing, replacing and rehabilitating the Indian River Lagoon South Phase 1 Project. The SFWMD’s 50% cost-share is to be provided through acquisition of lands needed for the project, constructing portions...
of the project, or providing cash contributions, if necessary. The Indian River Lagoon South Phase 1 Project includes the following project components:

- C-44 Reservoir and Stormwater Treatment Areas
- C-23/C-24 Reservoir and Stormwater Treatment Area
- C-25 Reservoir and Stormwater Treatment Area.

At the time of signing the original Project Partnership Agreement, the U.S. Army Corps of Engineers (Corps) had planned to construct the entire C-44 Reservoir and Stormwater Treatment Areas Project. However, in order to expedite completion of the C-44 Reservoir and Stormwater Treatment Areas Project and help balance the 50-50 programmatic cost-share for the Comprehensive Everglades Restoration Plan (CERP), the SFWMD recently agreed to construct the C-44 stormwater treatment areas, the pump station and a portion of the system discharge canal. Under Corps policy requirements, the Project Partnership Agreement must be amended to identify the construction “In-kind Work” to be provided by the SFWMD. In order to qualify for credit, the PPA must be amended prior to SFWMD awarding a contract for construction.

Additionally, the estimated Project construction cost has been updated from $1.133 Billion to $1.387 Billion and the estimated Project design cost has been updated from $48 Million to $111 Million.

**Staff Recommendation**

Staff recommends approving Amendment No. 1 to the Project Partnership Agreement with the U.S. Department of the Army for the Indian River Lagoon South Phase 1 Project.

**Resolution No. 2014 - 0712** Authorize entering into a First Amendment to the Project Cooperation Agreement between the U.S. Department of the Army and the South Florida Water Management District for construction of modifications to the C-111 Project at a total estimated project cost of $300,996,000; for which the South Florida Water Management District will be responsible for providing a 50% cost-share; for which South Florida Water Management District is also responsible for performing operations and maintenance with reimbursement by the U.S. Army Corps of Engineers of sixty percent of annual pumping costs; affirming South Florida Water Management District's financial capability to satisfy its obligations as the Non-Federal Sponsor; for which funding, if any, is subject to approval of future fiscal year state budgets by the State Legislature and Governor, and future fiscal year SFWMD budgets by the State Legislature, Governor and Governing Board. (Contract number C-6021/360000228-A01) (EPC, Tom Teets, ext. 6993) - **SUPPORTING DOCUMENTS ADDED**

**Summary**

In January 1995, the U.S. Department of the Army and the South Florida Water Management District (SFWMD) entered into a Project Cooperation Agreement (PCA) for construction of modifications to the C-111 Project as set forth in the May 1994 Final Integrated General Re-Evaluation Report and Environmental Impact Statement, and approved by the Secretary of the Army on July 1, 1994 (“1994 GRR”).

Section 316 of the Water Resources Development Act of 1996 changed the cost-sharing obligations for the Project, thereby requiring an amendment to the PCA.
Numerous unresolved issues over the years prevented the parties from amending the PCA. Over the past year, these issues have been resolved enabling the parties to move forward with execution of the First Amendment to the PCA. This makes it possible to construct the northern detention area (Contract 8), which is critical to operation of the C-111 Project and provides operational flexibility for the Modified Water Deliveries to Everglades National Park Project.

Staff Recommendation
Staff recommends approval of the First Amendment to the PCA.


**Summary**
Each year, the Governing Board discusses proposed millage rates as part of the statutorily mandated Truth-in-Millage (TRIM) process. These rates are then provided to each county property appraiser within the boundaries of the District for inclusion on TRIM required proposed property tax notices.

The millage rates proposed for FY2014-2015 have been calculated to comply with the TRIM process to calculate the rolled-back rate. To achieve the proposed level of ad valorem revenues, the following millage rates are proposed consistent with Governing Board strategic guidance:

- District-at-Large: 0.1577 mils
- Okeechobee Basin: 0.1717 mils
- Everglades Construction Project: 0.0548 mils
- Big Cypress Basin: 0.1520 mils

**Staff Recommendation**
Approval of the proposed millage rates.

36. **Resolution No. 2014 - 0714** Authorizing the official ranking of firms and entering into a three-year contract, with two (2) one-year extensions, with Mock, Roos & Associates, Inc.; AECOM Technical Services, Inc.; Stanley Consultants, Inc.; R. J. Behar & Co., Inc.; Atkins North America, Inc.; King Engineering Associates, Inc.; Parsons Environment & Infrastructure Group, Inc.; Hazen and Sawyer PC; CSA Central, Inc.; EAC Consulting, Inc.; Burns and McDonnell Engineering Co., Inc.; CES Consultants, Inc.; T.Y. Lin International; A.D.A. Engineering, Inc.; and Black and Veatch Corporation; subject to successful negotiations to provide professional engineering services for the District OMRR&R Project, in an amount not-to-exceed $75,000,000 for all 15 contracts, for which $4,000,000 in ad valorem funds are budgeted in FY14 and the remainder is subject to Governing Board approval of the FY15-FY20 budgets; providing an effective date. (Contract Number 4600003085, 4600003094, 4600003086, 4600003087, 4600003095, 4600003088, 4600003096, 4600003089, 4600003098, 4600003090, 4600003091, 4600003099, 4600003092, 4600003093, 4600003097) (OMC, John Mitnik, ext. 2679)

**Summary**
The purpose of this Request For Proposals was to solicit qualifications and technical proposals to provide engineering services for the District’s Operations, Maintenance, Repair, Rehabilitation, and Replacement (OMRR&R) project. Multiple contract awards are anticipated. Contracts will be for a three-year period with two (2) one-year options to renew.

Staff Recommendation

37. General Public Comment
Staff Reports

38. Monthly Financial Report - Doug Bergstrom, Division Director, Administrative Services Division

39. General Counsel's Report - Ed Artau

40. Executive Director's Report - Blake Guillory
   Report on permits issued by authority delegate to the Executive Director from June 1-30, 2014

41. Board Comment
Attorney Client Sessions

42. Attorney Client Session - USA - *ITEM DELETED*

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2013), to discuss strategy related to litigation expenditures and/or settlement negotiations in United States of America v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 88-1886-CIV-Moreno.


Action Items, (if any), Stemming from Attorney/Client Session

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2013), to discuss strategy related to litigation expenditures and/or settlement negotiations in United States of America v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 88-1886-CIV-Moreno. (Edward L. Artau, ext. 6431)

43. Attorney Client Session - FEMA - *ITEM DELETED*

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2013), to discuss strategy related to litigation expenditures and/or settlement negotiations in South Florida Water Management District v. FEMA, et al., United States District Court, Southern District of Florida, Case No. 13-80533-CIV-Middlebrooks/Brannon.


Action Items, (if any), Stemming from Attorney/Client Session

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2013), to discuss strategy related to litigation expenditures and/or settlement negotiations in South Florida Water Management District v. FEMA, et al., United States District Court, Southern District of Florida, Case No. 13-80533-CIV-Middlebrooks/Brannon. (Edward L. Artau, ext. 6431)

44. Attorney Client Session - Montoya Ranch

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2013), to discuss strategy related to litigation expenditures and/or settlement negotiations in South Florida Water Management District v. Montoya Ranch, Inc., et al., Circuit Court of the Nineteenth Judicial Circuit in and for Okeechobee County, Florida, Case No. 2012-CA-251-Judge Gary L. Sweet.

Action Items, (if any), Stemming from Attorney/Client Session
Attorney client session pursuant to Section 286.011(8), Florida Statutes (2013), to discuss strategy related to litigation expenditures and/or settlement negotiations in South Florida Water Management District v. Montoya Ranch, Inc., et al., Circuit Court of the Nineteenth Judicial Circuit in and for Okeechobee County, Florida, Case No. 2012-CA-251-Judge Gary L. Sweet. (Edward L. Artau, ext. 6431)

45. Attorney Client Session - Caloosahatchee
Attorney client session pursuant to Section 286.011(8), Florida Statutes (2013), to discuss strategy related to litigation expenditures and/or settlement negotiations in Florida Wildlife Federation et al. v. U. S. Army Corps of Engineers et al., United States District Court, Northern District of Florida, Case No. 4:12-cv-00355-RH-CAS.


Action Items, (if any), Stemming from Attorney/Client Session
Attorney client session pursuant to Section 286.011(8), Florida Statutes (2013), to discuss strategy related to litigation expenditures and/or settlement negotiations in Florida Wildlife Federation et al. v. U. S. Army Corps of Engineers et al., United States District Court, Northern District of Florida, Case No. 4:12-cv-00355-RH-CAS.

46. Adjourn
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CONSENT AGENDA TABLE OF CONTENTS
REGULATORY ITEMS FOR GOVERNING BOARD ACTION
July 10, 2014
REVISED
JULY 8, 2014
REGULATION AGENDA ITEMS

PERMIT DENIAL: Those listed on the consent agenda are routine in nature and non-controversial. Such denials are typically due to failure of applicant to complete the application. Unique or controversial projects or those requiring a policy decision are normally listed as discussion items. Permit types include:

- **Environmental Resource (ERP):** Permits that consider such factors as the storage of storm water to prevent flooding of a project (upstream or downstream projects); the treatment of stormwater prior to discharge from the site to remove pollutants; and the protection of wetlands on the project site.

- **Surface Water Management:** Permits for drainage systems, which address flood protection, water quality, and environmental protection of wetlands.

- **Water Use:** Permits for the use of ground and/or surface water from wells, canals, or lakes.

- **Lake Okeechobee Works of the District:** Permits that set concentration limits for total phosphorus in surface discharge from individual parcels in the Lake Okeechobee Basin.

- **EAA Works of the District:** Permits to reduce the total phosphorus load from the EAA by 25 percent in water discharged to Works of the District.

- **Wetland Resource:** Permits for dredge and fill activities within Waters of the State and their associated wetlands.

ADMINISTRATIVE HEARING: A case in litigation conducted pursuant to the Administrative Procedures Act (Chapter 120, Florida Statutes) involving the determination of a suit upon its merits. Administrative hearings provide for a timely and cost effective dispute resolution forum for interested persons objecting to agency action.

FINAL ORDER: The Administrative Procedures Act requires the District to timely render a final order for an administrative hearing after the hearing officer submits a recommended order. The final order must be in writing and include findings of fact and conclusions of law.

CONSENT ORDER: A voluntary contractual agreement between the District and a party in dispute which legally binds the parties to the terms and conditions contained in the agreement. Normally used as a vehicle to outline the terms and conditions regarding settlement of an enforcement action.

CONSERVATION EASEMENT: A perpetual interest to the District in real property that retains land or water areas in their existing, natural, vegetative, hydrologic, scenic, open or wooded condition and retains such areas as suitable habitat for fish, plants, or wildlife in accordance with Section 704.06, F.S.

TECHNICAL DENIAL: This action normally takes place when a proposed project design does not meet water management criteria or the applicant does not supply information necessary to complete the technical review of an application.

EMERGENCY ORDER and AUTHORIZATION: An immediate final order issued without notice by the Executive Director, with the concurrence and advice of the Governing Board, pursuant to (Section 373.119(2), Florida Statutes, when a situation arises that requires timely action to protect the public health, safety or welfare and other resources enumerated by rule and statute.

MEMORANDUM OF AGREEMENT/UNDERSTANDING: A contractual arrangement between the District and a named party or parties. This instrument typically is used to define or explain parameters of a long-term relationship and may establish certain procedures or joint operating decisions.
**PETITION:** An objection in writing to the District, requesting either a formal or an informal administrative hearing, regarding an agency action or a proposed agency action. Usually a petition filed pursuant to Chapter 120, Florida Statutes, challenges agency action, a permit, or a rule. Virtually all agency action is subject to petition by substantially affected persons.

**SEMINOLE TRIBE WORK PLAN:** The District and the Seminole Indians signed a Water Use Compact in 1987. Under the compact, annual work plans are submitted to the District for review and approval. This plan keeps the District informed about the tribe plans for use of their land and the natural resources. Although this is not a permit, the staff has water resource related input to this plan.

**SITE CERTIFICATIONS:** Certain types of projects (power plants, transmission lines, etc.) are permitted by the Governor and Cabinet under special one-stop permitting processes that supercede normal District permits. The Water Management Districts, DEP, DCA, FGFWFC, and other public agencies are mandatory participants. DEP usually coordinates these processes for the Governor and Cabinet.

**VARIANCES FROM, OR WAIVERS OF, PERMIT CRITERIA:** The Florida Administrative Procedures Act provides that persons subject to an agency rule may petition the agency for a variance from, or waiver of, a permitting rule. The Governing Board may grant a petition for variance or waiver when the petitioner demonstrates that 1) the purpose of the underlying statute will be or has been achieved by other means and, 2) when application of the rule would create a substantial hardship or would violate principles of fairness.
CONSENT ORDERS

1. RESPONDENT: CLUB EVERGLADES, INC.
   PROJECT: PLEASURE ISLAND AT CLUB EVERGLADES
   SEC 14 TWP 53S RGE 49E COLLIER COUNTY
   SETTLEMENT OF AN ENFORCEMENT ACTION REGARDING NON-COMPLIANCE WITH PERMIT
   CONDITIONS FOR MANGROVE TRIMMING OUTSIDE OF THE DESIGNATED TRIMMING AREA

2. RESPONDENT: RYLAND GROUP, INC.
   PROJECT: PRIARS COVE PHASE 4, 5 AND 6
   SEC 34,35 TWP 26S RGE 30E OSCEOLA COUNTY
   SETTLEMENT OF AN ENFORCEMENT ACTION REGARDING NON-COMPLIANCE WITH PERMIT
   CONDITIONS DUE TO TURBID WATER OFF-SITE DISCHARGE AND FAILURE TO COMPLY WITH THE
   DISTRICT'S BEST MANAGEMENT PRACTICES

3. RESPONDENT: KB HOME ORLANDO, LLC
   PROJECT: ENCLAVE AT TAPESTRY
   SEC 7,8 TWP 25S RGE 29E OSCEOLA COUNTY
   SETTLEMENT OF AN ENFORCEMENT ACTION REGARDING NON-COMPLIANCE WITH PERMIT
   CONDITIONS DUE TO UNPERMITTED OFF-SITE DISCHARGE AND FAILURE TO COMPLY WITH THE
   DISTRICT'S BEST MANAGEMENT PRACTICES
1. PERMITTEE: MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS
PROJECT: BESSEY CREEK H W T T

MARTIN COUNTY
APPROVE A REQUEST FOR RELEASE OF A 22.654 ACRE AREA OF CONSERVATION EASEMENT WITHIN
AN OVERALL 56.1338 ACRE CONSERVATION EASEMENT FOR THE BESSEY CREEK HYBRID WETLAND
TREATMENT TECHNOLOGY (HWTT) PROJECT IN MARTIN COUNTY. THE RELEASE IS REQUESTED
IN ORDER TO AUTHORIZE CONSTRUCTION AND OPERATION OF THE PROJECT FOR WATER
QUALITY IMPROVEMENT AND IS BEING PROCESSED CONCURRENTLY WITH AN ENVIRONMENTAL
RESOURCE PERMIT MODIFICATION (APPLICATION NO. 140611-16). THE HWTT PROJECT WILL
BE A RETROFIT OF THE EXISTING WATER QUALITY TREATMENT MARSH PREVIOUSLY
CONSTRUCTED AS PART OF THE WESTERN PALM CITY CORRIDOR PROJECT (PERMIT NO. 43-
01748-P).
1. PERMITTEE: JAMES C. MAHLBACHER
PROJECT: MAHLBACHER RESIDENCE

VARIENT NO. 140515-3

PALM BEACH COUNTY

ENTER A FINAL ORDER GRANTING A PETITION FOR VARIANCE TO JAMES C. MAHLBACHER AUTHORIZING A VARIANCE FROM THE DAY OF THE WEEK LANDSCAPE IRRIGATION MEASURES SPECIFIED IN CHAPTER 40E-24, F.A.C., TO PROVIDE FOR WATER CONSERVATION THROUGH IMPLEMENTATION OF AN ADVANCED IRRIGATION SYSTEM.
1. CONCUR WITH THE NINTH AMENDMENT TO THE TWENTY SEVENTH ANNUAL WORK PLAN FOR THE SEMINOLE TRIBE OF FLORIDA. WORKS IN THE BRIGHTON RESERVATION INCLUDE THE REPLACEMENT OF CULVERT HP02 AND HP03 WITH UPGRADED STRUCTURES TO BE RENAMED S-287 AND S-286 RESPECTIVELY AT THE CURRENT EXISTING LOCATIONS, CONSTRUCTION OF A CATWALK ON THE L-61 CANAL FOR THE PURPOSE OF INSTALLING A TAILWATER LEVEL RECORDER OF THE SEMINOLE TRIBE OF FLORIDA & PUMP STATION; WORKS IN THE HOLLYWOOD RESERVATION INCLUDE THE PHASED CONSTRUCTION OF FIVE (5) TOWNHOMES IN APPROXIMATELY 2.71 ACRES.
MEMORANDUM

TO: Governing Board Members
FROM: Temperince Morgan, Division Director
DATE: July 10, 2014
SUBJECT: C-111 South Dade PCA Amendment

Summary
In January 1995, the U.S. Department of the Army and the South Florida Water Management District (SFWMD) entered into a Project Cooperation Agreement (PCA) for construction of modifications to the C-111 Project as set forth in the May 1994 Final Integrated General Re-Evaluation Report and Environmental Impact Statement, and approved by the Secretary of the Army on July 1, 1994 (“1994 GRR”).

Section 316 of the Water Resources Development Act of 1996 changed the cost-sharing obligations for the Project, thereby requiring an amendment to the PCA. Numerous unresolved issues over the years prevented the parties from amending the PCA. Over the past year, these issues have been resolved enabling the parties to move forward with execution of the First Amendment to the PCA. This makes it possible to construct the northern detention area (Contract 8), which is critical to operation of the C-111 Project and provides operational flexibility for the Modified Water Deliveries to Everglades National Park Project.

Staff Recommendation
Staff recommends approval of the First Amendment to the PCA.

Additional Background
Key obligations under the original PCA included:
- The USACE was responsible for designing and constructing the modifications and for paying 80 percent of total project construction cost, which at that time was estimated to total approximately $58,481,000;
- The SFWMD was responsible for providing all real estate interests for the project (with no credit provided for real estate acquisition costs) plus 20 percent of the construction cost (approximately $11,696,000);
- The SFWMD was responsible for operation, maintenance, repair, replacement and rehabilitation (OMRR&R) of the C-111 Project features and the USACE was responsible for reimbursing the SFWMD for 60 percent of the annual pumping costs, including costs for fuel, lubricants, proportional depreciation and repairs, and operating labor.

Section 316 of WRDA 1996 modified the project cost-sharing as follows:
- The authorized project cost-share was changed to 50-50, with the value of lands provided by SFWMD being credited toward SFWMD’s 50 percent share; and
- The USACE was directed to reimburse the SFWMD for 60 percent of the costs of operating and maintaining pump stations that pump water into Taylor Slough located in Everglades National Park.
Implementing the Section 316 project authorization changes required an amendment to the PCA; however, numerous unresolved issues prevented the amendment. Since that time, the estimated project cost has increased to approximately $301 Million because of the addition of an estimated $133 Million in land acquisition costs, increased planning and design costs, and significant increases in the costs of construction since the 1994 GRR. Additionally, the USACE installed temporary pump stations S-332B and S-332C along with associated detention areas to avoid jeopardy to the Cape Sable Seaside Sparrow.

After lengthy discussions with USACE Headquarters and the Office of Assistant Secretary of the Army for Civil Works, the parties have reached agreement on the terms of the First Amendment to the PCA. As part of the approval of this item, the Governing Board is also requested to affirm that the South Florida Water Management District has the financial capability to satisfy its obligation as the Non-Federal Sponsor under the First Amendment to the PCA. The proposed amendment to the PCA includes the following:

- SFWMD’s 50% of the total project cost-share is estimated to be approximately $150.5 Million, which includes an estimated $133 Million credit for past and future acquisition of Project lands and a future cash contribution estimated at $11.3 Million. Expenditures over FY 2014 - FY 2017 includes acquisition of approximately 530 acres of land in the Southern Glades at an estimated cost of $3.2 Million and the first cash payment of $5 Million is scheduled for FY 2016.
- SFWMD will receive an estimated $133 Million credit for the acquisition of Project lands. This includes credit based on SFWMD’s acquisition costs for the Frog Pond lands (approximately 5,275 acres) and Southern Glades lands (approximately 29,500 acres) and the market value of the Rocky Glades lands (approximately 6,000 acres). Market value will be determined at the time SFWMD certified to the USACE availability of the Rocky Glades lands for the Project. SFWMD is obtaining an updated appraisal for the Rocky Glades subject to USACE review.
- SFWMD can receive credit for in-kind work so long as such credit combined with its real estate credit and cash contribution does not exceed its 50% cost-share estimated at approximately $150.5 Million.
- SFWMD is responsible for OMRR&R of Project features subject to a USACE reimbursement of 60 percent of the costs for operation, maintenance and repair of all three C-111 Project pump stations (i.e., S-332B, S-332C and S-332D), as well as annual depreciation payments for future replacement and/or rehabilitation of these pump stations.
- Under a separate cost-sharing agreement to be negotiated in the future, the parties will develop a post authorization change report, which will require Congressional authorization to modify the Project. The post-authorization change report will evaluate various alternatives, including:
  - Construction of new hardened, hurricane resistant pump stations to replace temporary pump stations S-332B and S-332C.
  - Construction of new concrete-lined discharge canals to replace the corrugated steel pipes
  - USACE contributing 60% to SFWMD’s OMRR&R of Project features

The next steps to complete actions identified in the First Amendment to the PCA and to complete construction of remaining C-111 Project features include the following:

- SFWMD and the U.S. Department of the Army execute the First Amendment to the PCA
- Update real estate credit estimate within 90 days, which may result in an increase or decrease in the projected SFWMD cash contribution
• USACE to estimate construction cost estimate for remaining features
• USACE to estimate of annual depreciation payments for future replacement of pump stations
• SFWMD continue acquisition of approximately 530 acres in Southern Glades
• USACE scheduled to award Contract No. 8 in FY15

Core Mission and Strategic Priorities
The C-111 Project is critical to completion and effective operation of the Modified Water Deliveries to Everglades National Park Project and providing the operational flexibility for restoration benefits to Everglades National Park including Florida Bay. It is a foundation project for the Comprehensive Everglades Restoration Plan (CERP) providing significant hydrologic restoration for the Taylor Slough portion of Everglades National Park. Many of the anticipated CERP projects would not be technically feasible without implementation of the C-111 Project or would cost significantly more to provide the same benefits.

Funding Source
The Construction of Modifications to the C-111 Project will become a 50-50 cost share project with the approval of the First Amendment to the PCA. As per the Resolution, future financial commitments are subject to approval of future fiscal year state budgets by the State Legislature and Governor, and future fiscal year SFWMD budgets by the State Legislature, Governor, and Governing Board. It is anticipated that future funding required under this PCA will be provided from Save Our Everglades Trust Fund and Alligator Alley Toll Road Funds.

Staff Contact and/or Presenter
Tom Teets, Federal Policy Chief, Office of Everglades Policy & Coordination
561-682-6993/ tteets@sfwmd.gov <mailto:tteets@sfwmd.gov>
A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a First Amendment to the Project Cooperation Agreement between the U.S. Department of the Army and the South Florida Water Management District for construction of modifications to the C-111 Project at a total estimated project cost of $300,996,000; for which the South Florida Water Management District will be responsible for providing a 50% cost-share; for which South Florida Water Management District is also responsible for performing operations and maintenance with reimbursement by the U.S. Army Corps of Engineers of sixty percent of annual pumping costs; affirming South Florida Water Management District’s financial capability to satisfy its obligations as the Non-Federal Sponsor; for which funding, if any, is subject to approval of future fiscal year state budgets by the State Legislature and Governor, and future fiscal year SFWMD budgets by the State Legislature, Governor and Governing Board; providing an effective date. (Contract number C-6021/360000228-A01)

WHEREAS, on January 13, 1995, the U.S. Department of the Army and the South Florida Water Management District (SFWMD) entered into a Project Cooperation Agreement (Contract No. C-6021/360000228) for construction of modifications to the C-111 Project based on project features as set forth in the Final Integrated General Re-Evaluation Report and Environmental Impact Statement, dated May 1994 and approved by the Secretary of the Army on July 1, 1994 (“1994 GRR”);

WHEREAS, in Section 316 of the Water Resources Development Act of 1996, Congress modified the Federal cost-share for implementing the C-111 Project to 50 percent and authorized the U.S. Army Corps of Engineers (USACE) to credit the SFWMD for the value of real estate interests provided toward the SFWMD’s 50 percent cost-share; and

WHEREAS, an amendment to the Project Cooperation Agreement is required that includes: establishing the parties 50/50 cost share responsibility, providing SFWMD credit for lands acquired for the Project, updating the estimated total Project costs to $300,996,000 based on design modifications contained in the authorized 1994 GRR to optimize water deliveries to Everglades National Park, and clarifying USACE’s responsibility to reimburse SFWMD for 60% of annual pump station operation and maintenance costs.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT:
Section 1. The Governing Board of the South Florida Water Management District hereby authorizes entering into a First Amendment to the C-111 Project Cooperation Agreement (Contract No. C-6021/360000228-A01) at a total estimated project cost of $300,996,000. The Governing Board affirms the South Florida Water Management District’s financial capability as the Non-Federal Sponsor to satisfy its obligations under the First Amendment to the Project Cooperation Agreement, for which funding, if any, is subject to approval of future fiscal year state budgets by the State Legislature and Governor, and future fiscal year SFWMD budgets by the State Legislature, Governor and Governing Board.

Section 2. The Executive Director may execute the First Amendment on behalf of the South Florida Water Management District.

Section 3. This resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this 10th day of July, 2014.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT, BY ITS GOVERNING BOARD
By: ________________________________

Chairman

Attest: ________________________________

Legal form approved:
By: ________________________________

Office of Counsel

Print name: ________________________________
I, Douglas Bergstrom, do hereby certify that I am the Division Director for Administrative Services of the South Florida Water Management District (the "Non-Federal Sponsor"); that I am aware of the financial obligations that the Non-Federal Sponsor will incur in the First Amendment to the Project Cooperation Agreement for Construction of Modifications to the C-111 Project, if the First Amendment to the Project Cooperation Agreement is approved by the Non-Federal Sponsor’s Governing Board and signed by the Chair; and I certify that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor’s obligations under that First Amendment to the Project Cooperation Agreement for Construction of Modifications to the C-111 Project, for which funding, if any, is subject to approval of future fiscal year state budgets by the State Legislature and Governor, and future fiscal year SFWMD budgets by the State Legislature, Governor and Governing Board.

IN WITNESS WHEREOF, I have made and executed this certification this
__________ day of ____________, 2014

BY: ______________________________________
    Douglas Bergstrom

TITLE: Division Director, Administrative Services

DATE: ________________
6/18/2014

AMENDMENT NO. 1
TO THE
PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
FOR CONSTRUCTION OF MODIFICATIONS TO
THE
C-111 PROJECT

THIS AMENDMENT No. 1, entered into this _________ day of ______________, 2014, by and between the Department of the Army (hereinafter the “Government”), represented by the Assistant Secretary of the Army (Civil Works), and the South Florida Water Management District (hereinafter the “Non-Federal Sponsor”), represented by its Executive Director.

WITNESSETH THAT:

WHEREAS, the C-111 South Dade Project is part of the Central and Southern Florida Project authorized by Section 203 of the Flood Control Act of 1948, Public Law 80-858 as modified by Section 203 of the Flood Control Act of 1968, Public Law 90-483;

WHEREAS, the Government and the Non-Federal Sponsor entered into an agreement on January 13, 1995 (hereinafter the “Agreement”) for the construction of modifications to the C-111 Project as generally described in the “Central and Southern Florida Project, Final Integrated General Reevaluation Report and Environmental Impact Statement, Canal 111 (C-111), South Dade County, Florida,” dated May 1994 (hereinafter the “Project GRR”) and approved by the Assistant Secretary of the Army (Civil Works) on July 1, 1994 (hereinafter the “Project” as defined in Article I.A. of the Agreement);

WHEREAS, consistent with the Project GRR and as described in Article VII.A.1. of the Agreement, the Government shall pay the Non-Federal Sponsor an amount equal to 60 percent of annual pumping costs, including fuel, lubricants, proportional depreciation and repairs, and operating labor;

WHEREAS, Section 316(b)(1) of the Water Resources Development Act of 1996, Public Law 104-303, modifies the Federal cost-share of implementing the Project to 50 percent;

WHEREAS, the Department of Interior has paid a percentage of the cost of acquiring such portions of the Frog Pond area as are needed for the Project and contributed the Department of Interior’s share of Program Income in accordance with the Grant Agreement, Number L-2 “Frog Pond Project Land Acquisition” between the Non-Federal Sponsor and the Department of Interior
and these contributions shall be included as part of the Federal share of the cost of implementing the Project pursuant to Section 316(b)(2) of the Water Resources Development Act of 1996, Public Law 104-303, as amended, by Section 4013(e) of the Water Resources Reform and Development Act of 2014, Public Law 113-121;

WHEREAS, on January 3, 2012, the Assistant Secretary of the Army (Civil Works) approved an exception to the proportional cost share policy for the Project;

WHEREAS, the Non-Federal Sponsor requested that the Southern Glades lands be included as a component of the Project and the Non-Federal Sponsor be credited for the acquisition costs of such lands and on April 29, 2014, the Assistant Secretary of the Army (Civil Works) approved this request;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended by Section 1018 of the Water Resources Reform and Development Act of 2014, Public Law 113-121, authorizes the Secretary of the Army, subject to certain limitations and conditions, to afford credit toward the non-Federal share of the cost of the project for the value of in-kind contributions that the Secretary of the Army determines are integral to the Project;

WHEREAS, the Non-Federal Sponsor desires to receive credit toward its required contribution of funds for the Project in accordance with the provisions of this Agreement for certain work (hereinafter the “in-kind contributions” as defined in Article I.L. of this Agreement); and

WHEREAS, the Government and the Non-Federal Sponsor desire to amend the Agreement to reflect these changes and to provide additional detail with respect to annual pumping costs.

NOW, THEREFORE, the Government and Non-Federal Sponsor agree to amend the Agreement as follows:

1. The fourth Whereas Clause is amended by striking the current clause and replacing it with the following 3 clauses:

   “WHEREAS, Section 316(b) of the Water Resources Development Act of 1996, Public Law 104-303, as amended, specifies the cost-sharing applicable to the Project;

   WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended by Section 1018 of the Water Resources Reform and Development Act of 2014, Public Law 113-121, authorizes the Secretary of the Army, subject to certain limitations, and conditions, to afford credit toward the non-Federal share of the cost of the project for the value of in-kind contributions that the Secretary of the Army determines are integral to the Project;
WHEREAS, the Non-Federal Sponsor desires to receive credit toward its required contribution of funds for the Project in accordance with the provision of this Agreement for certain work (hereinafter the “in-kind contributions” as defined in Article I.L. of this Agreement);

2. Throughout the Agreement, all occurrences of the term “total project construction costs” are replaced with “total project costs”.

3. Article I.A. of the Agreement is amended by adding “The term includes the in-kind contributions as defined in paragraph I.L. of this Article.” at the end of the paragraph.

4. Article I.B. of the Agreement is amended by striking the current paragraph and replacing it with the following:

   “B. The term “total project costs” shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to construction of the Project. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s engineering and design costs incurred after May 31, 1994; the Non-Federal Sponsor’s and the Government’s costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; the Government’s costs of historic preservation activities in accordance with Article XVII.A., Article XVII.C.1., and Article XVII.C.4. of this Agreement; the Government’s actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; the amount of credit that the Government affords for in-kind contributions in accordance with Article I.I.D.5. of this Agreement; the Government’s supervision and administration costs; the Non-Federal Sponsor’s and the Government’s costs of participation in the Project Coordination Team in accordance with Article IV of this Agreement; the Government’s costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, relocations, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for which the Government affords credit in accordance with Article XXI of this Agreement; the Non-Federal Sponsor’s and the Government’s costs of audit in accordance with Article IX of this Agreement; and the amount contributed by the Department of Interior for the cost of acquiring such portions of the Frog Pond area as are needed for the Project, including the Department of Interior’s share of Program Income. The term does not include any costs for operation, maintenance, repair, replacement or rehabilitation of the Project; any costs due to betterments; any costs of dispute resolution under Article VI of this Agreement; any engineering and design costs incurred on or prior to May 31, 1994; any value for lands, easements, rights-of-way, relocations, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that exceeds 50 percent of total project costs; the Government’s costs for data recovery activities associated with historic preservation in accordance with Article XVII.C.3. of this Agreement; any costs of in-kind contributions or other construction work on the Project performed by the Non-Federal Sponsor that were determined in accordance with Article II.D.4. of this Agreement to not be eligible for credit; or the Non-Federal Sponsor’s costs of negotiating this Agreement.”
5. Article I.C. of the Agreement is amended by striking the current paragraph and replacing it with the following:

“C. The term “financial obligation for construction” shall mean a financial obligation of the Government that results or would result in costs that are or would be included in total project costs except for obligations pertaining to the provision of lands, easements, and rights-of-way, the performance of relocations, and the construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material. The term does not include the costs of the Non-Federal Sponsor’s contributions under Article IV, Article IX.B. and Article XIV.A. of this Agreement or any costs of in-kind contributions.”

6. Article I.D. of the Agreement is amended by striking the current paragraph and replacing it with the following:

“D. The term “Federal program funds” shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.”

7. Article I of the Agreement is further amended by adding the following as new Articles I.K. through I.M.:

“K. The term “sufficient invoice” shall mean documentation provided by the Non-Federal Sponsor for pumping costs containing the following: (1) a written certification by the Non-Federal Sponsor to the Government that it has made specified payments to contractors, suppliers, or employees for performance of work in accordance with this Agreement; (2) copies of all relevant invoices and evidence of such payments; (3) written identification of costs that have been paid with Federal program funds; and (4) a written request for reimbursement of a sum certain amount not in excess of such specified payments.

L. The term “in-kind contributions” shall mean the work to be performed by the Non-Federal Sponsor after Amendment No. 1 to this Agreement, that is described in an Integral Determination Report, and determined by the Assistant Secretary of the Army, in writing, to be integral to the Project.

M. The term “Non-Federal Sponsor’s credit request(s)” shall mean documentation provided by the Non-Federal Sponsor containing the following: (1) a written certification by the Non-Federal Sponsor to the Government that it made specified payments to contractors, suppliers, or employees for in-kind contributions and the Non-Federal Sponsor’s contributions under Article IV, Article IX.B. and Article XIV.A. of this Agreement in accordance with the provisions of this Agreement; (2) copies of all relevant invoices and evidence of such payments; (3) written identification of costs that have been paid with Federal program funds; and (4) a written request for credit of a specific amount not in excess of such specified payments.”
8. Article II.A. of the Agreement is amended by striking the current paragraphs and replacing them with the following:

“A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”) and using those funds and funds provided by the Non-Federal Sponsor, expeditiously shall construct the Project (including alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto), except for the in-kind contributions, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies. The Non-Federal Sponsor expeditiously shall perform or provide the in-kind contributions that will be performed or provided after the effective date of Amendment No. 1 to this Agreement in accordance with applicable Federal, State, and local laws, regulations, and policies.

1. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all Government contracts and the relevant plans and specifications prior to the Government’s issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Non-Federal Sponsor with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. In the event the Government performs all or some of the construction for the Project using its own forces, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the relevant plans and specifications prior to the commencement of such work using the Government’s own forces. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, plans and specifications, award of contracts, execution of contract modifications, resolution of contract claims, and performance of all work on the Project, except for the in-kind contributions, shall be exclusively within the control of the Government.

2. At the time the District Engineer furnishes the contractor with the Government’s Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the Project, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

3. The Non-Federal Sponsor shall obtain all permits and licenses necessary for the design and construction of the in-kind contributions, and in the exercise of their rights and obligations under this Agreement, shall comply with all applicable Federal, State, and local laws, regulations, and policies including the laws and regulations specified in Article X of this Agreement.

4. The Non-Federal Sponsor shall not commence activities required to provide the in-kind contributions until the Assistant Secretary of the Army for Civil Works determines that the in-kind contributions are integral to the Project and the designs, detailed plans and
specifications, and arrangements for the prosecution of such in-kind contributions have been approved by the Government in writing. Changes proposed by the Non-Federal Sponsor to approved designs and plans and specifications also must be approved by the Government in writing in advance of the related construction. The Non-Federal Sponsor shall afford the Government the opportunity to review and comment on the solicitations for all contracts for the in-kind contributions, including relevant plans and specifications, prior to the Non-Federal Sponsor’s issuance of such solicitations and to be represented on the technical evaluation team for Requests for Proposals in accordance with the Non-Federal Sponsor’s procurement rules and Florida public records law. To the extent possible, the Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Government with notification of a contract modification is not possible prior to execution of the contract modification, the Non-Federal Sponsor shall provide such notification in writing at the earliest date possible. To the extent possible, the Non-Federal Sponsor also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non-Federal Sponsor shall consider in good faith the comments of the Government but the contents of solicitations, award of contracts, execution of contract modifications, resolution of contract claims, and performance of all work on the in-kind contributions shall be exclusively within the control of the Non-Federal Sponsor, except as otherwise required by the provisions of this Agreement, including compliance with applicable Federal, State, or local laws or regulations. The Non-Federal Sponsor shall include appropriate provisions in its contracts for the design and construction of the in-kind contributions, as necessary, to ensure compliance with such laws, regulations, ordinances, and policies.

5. At the time the Non-Federal Sponsor furnishes a contractor with a notice of acceptance of completed work for each contract awarded by the Non-Federal Sponsor for the in-kind contributions, the Non-Federal Sponsor shall furnish a copy thereof to the Government. Upon completion of the in-kind contributions, the Non-Federal Sponsor shall furnish to the Government a copy of all final as-built drawings for the construction portion of such work.

6. Notwithstanding paragraph A.1. and A.4. of this Article, if, upon the award of any contract for the construction of the Project, cumulative total project costs would exceed $310,026,000, the Non-Federal Sponsor may request in writing that the Government defer award of that contract and all subsequent contracts for construction of the Project until such time as the Government and the Non-Federal Sponsor agree to proceed with further contract awards for the Project.”

9. Article II.C. of this Agreement is amended by adding at the end of the paragraph the following.

“Further, after completion of all contracts for the Project, copies of all of the Government’s and Non-Federal Sponsor’s Written Notices of Acceptance of Completed Work for all contracts for the Project that have not been provided to the other party previously shall be provided to the Non-Federal Sponsor or the Government, as applicable.”
10. Article II.D. and Article II.E. of the Agreement are amended by striking the current paragraphs and replacing them with the following paragraphs:

“D. The Non-Federal Sponsor shall contribute 50 percent of total project costs in accordance with this paragraph.

1. Once the Government projects that obligations for the Project made by the Government and the contributions of the Department of Interior will equal the collective value of the Non-Federal Sponsor’s contributions listed in the following sentence, the Non-Federal Sponsor shall provide funds as determined in accordance with paragraph D.2. of this Article. As of the effective date of Amendment No. 1 to this Agreement, the Non-Federal Sponsor’s contributions toward total project costs are estimated to be $139,235,000 and consist of: (a) the actual value of the Non-Federal Sponsor’s contributions under paragraph E. of this Article determined in accordance with Article XXI of this Agreement, for which credit has been afforded in accordance with Article XXI of this Agreement, including incidental costs, if applicable; (b) the estimated value of the Non-Federal Sponsor’s contributions under paragraph E. of this Article, where a credit determination has not been completed under Article XXI of this Agreement, including incidental costs, if applicable; (c) the amount of cash provided by the Non-Federal Sponsor prior to the effective date of Amendment No. 1; (d) the amount of credit projected to be afforded for in-kind contributions pursuant to paragraph D.5. of this Article; and (e) the value of the Non-Federal Sponsor’s contributions under Article IV, Article IX, and Article XIV.A. of this Agreement.

2. The Non Federal Sponsor shall provide a contribution of funds to be determined as follows:

   a. The Government shall determine the amount of funds that would be necessary to meet 50 percent of total project costs prior to the Government affording credit for the in-kind contributions pursuant to paragraph D.5. of this Article. To determine such amount, the Government shall subtract from an amount equal to 50 percent of total project costs the collective value of the following: (a) the actual value of the Non-Federal Sponsor’s contributions under paragraph E. of this Article determined in accordance with Article XXI of this Agreement, for which credit has been afforded in accordance with Article XXI of this Agreement, including incidental costs, if applicable; (b) the estimated value of the Non-Federal Sponsor’s contributions under paragraph E. of this Article, where a credit determination has not been completed under Article XXI of this Agreement, including incidental costs, if applicable; and (c) the value of the Non-Federal Sponsor’s contributions under Article IV, Article IX, and Article XIV.A. of this Agreement.

   b. The Non Federal Sponsor shall provide the contribution of funds in the amount determined by this paragraph in accordance with Article V.B. of this Agreement. To determine such required contribution of funds, the Government shall reduce the amount determined in accordance with paragraph D.2.a. of this Article by the amount of cash provided by the Non-Federal Sponsor prior to the effective date of Amendment No. 1 and the credit the
Government projects will be afforded for the in-kind contributions pursuant to paragraph D.5. of this Article.

3. The Government, subject to the availability of funds, shall refund to the Non-Federal Sponsor any excess cash contributions provided by the Non-Federal Sponsor if the Government determines that the collective value of the following contributions has exceeded 50 percent of total project costs: (a) the actual value of the Non-Federal Sponsor’s contributions under paragraph E. of this Article that is included in total project costs as determined in accordance with Article XXI of this Agreement, including incidental costs, if applicable; (b) the amount of cash provided by the Non-Federal Sponsor prior to the effective date of Amendment No. 1; (c) the amount of cash, if any, provided by the Non-Federal Sponsor after the effective date of Amendment No. 1 pursuant to paragraph D.2.b. of this Article; (d) the amount of credit afforded for in-kind contributions pursuant to paragraph D.5. of this Article; and (e) the value of the Non-Federal Sponsor’s contributions under Article IV, Article IX, and Article XIV.A. of this Agreement. After such a determination, the Government, in its sole discretion, may acquire any remaining lands, easements, and rights-of-way required for the Project, perform any remaining relocations necessary for the Project, or construct any remaining improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required for the Project on behalf of the Non-Federal Sponsor. Notwithstanding the acquisition of lands, easements, and rights-of-way, performance of relocations, or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material by the Government under this paragraph, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

4. The Government shall determine, in accordance with the conditions and limitations of this paragraph, the amount of the costs for in-kind contributions that may be eligible for credit.

   a. The Non-Federal Sponsor in a timely manner shall provide the Government with Non-Federal Sponsor’s credit request(s) and any other documents required by the Government to enable the Government to determine the costs of in-kind contributions that may be eligible for credit. It is acknowledged and understood that the inability to provide necessary information to the Government to enable its review may result in the denial of credit in accordance with the provisions of this Agreement.

   b. The Non-Federal Sponsor’s costs for in-kind contributions that may be eligible for credit pursuant to this Agreement shall be subject to an audit in accordance with Article IX.C. of this Agreement to determine the reasonableness, allocability, and allowability of such costs.

   c. The Non-Federal Sponsor’s costs for in-kind contributions that may be eligible for credit pursuant to this Agreement are not subject to interest charges, nor are they
subject to adjustment to reflect changes in price levels between the time the in-kind contributions are completed and the time the credit is afforded.

d. None of the costs for in-kind contributions paid by the Non-Federal Sponsor using Federal program funds are eligible for credit pursuant to this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to carry out the Project.

e. Costs for in-kind contributions that are in excess of the Government’s estimate of the costs for the Government to have performed or provided such work or materials are not eligible for credit pursuant to this Agreement.

f. Costs for betterments, the provision of lands, easements, rights-of-way, relocations, or the construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material are not eligible for credit as in-kind contributions.

g. In the performance of the construction portion of the in-kind contributions, the Non-Federal Sponsor must comply with applicable Federal labor laws covering Non Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a et seq.), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 et seq.), and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). The Government may determine that costs for the construction portion of the in-kind contributions, in whole or in part, are not be eligible for credit pursuant to this Agreement, as a result of the Non-Federal Sponsor’s failure to comply with its obligations under these laws.

h. Costs for in-kind contributions are not eligible for credit pursuant to this Agreement unless the Government determines through a review or on-site inspection, as applicable, performed by the Government that the work was accomplished in a satisfactory manner and in accordance with the applicable permits and the plans and specifications approved by the Government and the provisions of this Agreement.

i. No costs for in-kind contributions performed prior to the effective date of Amendment No. 1 to this Agreement or performed prior to compliance with all applicable environmental laws and regulations covering such work, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. §1251-1387, 200b) are eligible for credit pursuant to this Agreement.

j. In-kind contributions that were obtained at no cost to the Non-Federal Sponsor are not eligible for credit pursuant to this Agreement.
k. No credit will be afforded unless the Assistant Secretary of the Army for Civil Works has determined, in writing, that the work is integral to the Project.

5. The Government, in accordance with this paragraph, shall afford credit toward the amount of funds determined in accordance with paragraph D.2.a. of this Article for the costs of the in-kind contributions determined in accordance with paragraph D.4. of this Article. However, the maximum amount of credit afforded under this Agreement shall not exceed the lesser of the following amounts as determined by the Government: (a) the amount of funds determined in accordance with paragraph D.2.a. of this Article; or (b) the costs of the in-kind contributions determined in accordance with paragraph D.4. of this Article.

6. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to reimbursement of any costs for in-kind contributions that exceed the amount of credit afforded pursuant to paragraph D.5. of this Article. However, subject to compliance with Section 1020 of the Water Resources Reform and Development Act of 2014, Public Law 113-121 and implementing guidance to be promulgated by the Government prior to the initiation of construction of the in-kind contributions, the Secretary may apply credit for the eligible costs of in-kind contributions that exceed the amount of credit afforded pursuant to paragraph D.5. of this Article toward the required non-Federal cost share for a different water resources project.

E. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those required for relocations, the borrowing of material, and the disposal of dredged or excavated material, shall perform or ensure performance of all relocations, and shall construct improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Government determines to be required or to be necessary for construction, operation, and maintenance of the Project. Such lands to be provided for the Project also include the approximately 29,500 acres identified as Southern Glades lands in Exhibit A, approximately 6,000 acres identified as Rocky Glades in Exhibit B, and approximately 5,275 acres identified as Frog Pond in Exhibit C.”

11. Article II.F. of the Agreement is amended as follows:

(1) Strike the current first sentence and replace it with:

“The Non-Federal Sponsor may request the Government to provide or perform on behalf of the Non-Federal Sponsor: the acquisition of lands, easements, and rights-of-way; performance of relocations; or to construct improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for the Project.”

(2) Strike the current last sentence and replace it with:

“Notwithstanding the acquisition of lands, easements, and rights-of-way, performance of relocations, or construction of improvements by the Government under this paragraph, the Non-
Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.”

12. Article II.H. of the Agreement is amended by striking the current paragraph and replacing it with the following:

   “H. The Non-Federal Sponsor shall not use Federal program funds to meet any of its obligations for the Project under this Agreement unless the Federal agency providing the funds verifies in writing that such funds are authorized to carry out the Project.”

13. Article II of the Agreement is further amended by adding the following as new Articles II.L. and II.M. of the Agreement:

   “L. In accordance with Section 316(b)(2) of the Water Resources Development Act of 1996, Public Law 104-303, as amended, the amount contributed by the Department of Interior for the cost of acquiring such portions of the Frog Pond area as are needed for the Project, including the Department of Interior’s share of Program Income, shall be included as part of the Federal share of the cost of implementing the Project. This amount shall not be credited toward the Non-Federal Sponsor’s share of total project costs.

   M. The Government and the Non-Federal Sponsor agree to enter into an agreement for equal cost sharing for preparation of a post-authorization change report (PACR) to evaluate various alternatives to replace pump stations S-332B and S-332C and associated discharge pipes including an alternative with pump stations with hardened outer structures for additional protection during hurricanes and concrete-lined conveyance canals. The PACR shall consider seeking authorization for cost sharing of recommended features in accordance with Section 316 of the Water Resources Development Act of 1996; appropriate cost sharing for the operation, maintenance, repair, replacement and rehabilitation of project features; and the provision of credit for proportional depreciation payments made by the Government to the Non-Federal Sponsor under Article VII.A.1.a of this Agreement for Pump Stations S-332B and S-332C toward the Federal share of the replacement costs for S-332B and S-332C.”

14. Article III.A. of the Agreement is amended as follows:

   (1) By inserting the following sentence after the first sentence:

   “Such lands to be provided for the Project also include the approximately 29,500 acres identified as Southern Glades lands in Exhibit A, approximately 6,000 acres identified as Rocky Glades in Exhibit B, and approximately 5,275 acres identified as Frog Pond in Exhibit C.”

   (2) By inserting the following at the end of the paragraph:

   “The Government recognizes that the Non-Federal Sponsor will be entering into a supplemental agreement with Miami-Dade County whereby: (1) Miami-Dade County, rather than the Non-
Federal Sponsor, has acquired or will acquire required lands, easements, and rights-of-way in the Southern Glades, and (2) Miami-Dade County will dedicate the land interests it owns in the Southern Glades to the Project and ensure that such lands, easements, and rights-of-way are retained in public ownership for uses compatible with the purposes of the Project and shall not be conveyed, transferred, altered, or otherwise encumbered without the advance written consent of the Non-Federal Sponsor and the Government. This supplemental agreement shall be limited in effect to the signatory parties of the supplemental agreement and shall not reduce or alter in any way the requirements of this Agreement that make the Non-Federal Sponsor solely responsible for providing lands, easements, and rights-of-way that are required for the construction, operation, maintenance, repair, replacement and rehabilitation of the Project.”

15. Article IV.C. of the Agreement is amended by inserting the following after “contract costs;” and before “the Government’s cost projections”:

“the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a et seq.), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 et seq.), and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c) for relocations, improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, and the construction portion of the in-kind contributions; the performance of, scheduling for and determining eligibility of costs of in-kind contributions;”

16. Article V.A. of the Agreement is amended as follows:

(1) By striking “of the non-Federal proportionate share,” in the second sentence and replacing it with “of the amount of credit to be afforded for in-kind contributions pursuant to Article II.D.5. of this Agreement.”.

(2) By striking the current third sentence and replacing it with:

“The effective date of Amendment No. 1 to this Agreement, total project costs are estimated to be $300,996,000; the Non-Federal Sponsor’s share of total project costs is estimated to be $150,498,000; the value of the lands, easements, and rights-of-way, improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, and relocations, to be provided by the Non-Federal Sponsor are estimated to be $133,057,000; the amount of credit for Non-Federals Sponsor’s activities under Articles IV, IX, and XIV.A to be afforded towards the Non-Federal-Sponsor’s share of the total project costs is estimated to be $3,185,000; the Non-Federal Sponsor’s cash contribution provided prior to the effective date of Amendment No. 1 to this Agreement is $2,993,000; the amount of funds determined in accordance with Article II.D.2.a. of this Agreement is projected to be $14,256,000; the amount of credit to be afforded for in-kind contributions pursuant to Article II.D.5. of this Agreement is estimated to be $0; and Non-Federal Sponsor’s remaining cash contribution required under Article II.D.2.b. of this Agreement is projected to be $11,263,000. Such amounts are estimates subject to adjustment by the Government, in consultation with the Non-Federal Sponsor, and are
not to be construed as the total financial responsibilities of the Government and Non-Federal Sponsor.”

17. Articles V.B. and V.B.1. through V.B.4. of the Agreement are amended by striking the current paragraphs and replacing them with the following paragraphs:

“B. The Non-Federal Sponsor shall provide the cash contribution required by Article II.D.2.b. of this Agreement in accordance with the provisions of this paragraph.

1. Once the Government projects that obligations for the Project made by the Government and the contributions of the Department of Interior will equal the collective value of the Non-Federal Sponsor’s contributions listed in Article II.D.1. of this Agreement, the Government shall notify the Non-Federal Sponsor of the funds to be required from the Non-Federal Sponsor to meet its 50 percent share of any projected financial obligations for an upcoming contract or fiscal year.

a. For each remaining contract, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the scheduled date for issuance of the solicitation for such contract, of the funds the Government determines to be required from the Non-Federal Sponsor for such contract. No later than the scheduled date for issuance of the solicitation for such contract, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds available to the Government through any of the payment mechanisms specified in paragraph B.1.c. of this Article.

b. Where the Government projects that it will make any financial obligations for construction of the Project using the Government’s own forces, the Government shall notify the Non-Federal Sponsor in writing, no later than 90 calendar days prior to the beginning of each fiscal year, of the funds the Government determines to be required from the Non-Federal Sponsor for that fiscal year. No later than 30 calendar days prior to the beginning of that fiscal year, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government through any of the payment mechanisms specified in paragraph B.1.c. of this Article.

c. Payment shall be made by delivering a check payable to “FAO, USAED, Jacksonville” to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary, when considered with the value of the Non-Federal Sponsor’s other contributions, to cover the Non-Federal Sponsor’s share of financial obligations for construction as they are incurred. If at any time during the period of
construction the Government determines that additional funds will be needed from the Non-
Federal Sponsor to cover the Non-Federal Sponsor’s share of such financial obligations in the
current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the
additional funds required and provide an explanation of why additional funds are required.
Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the
Government with the full amount of such additional required funds through any of the payment
mechanisms specified in paragraph B.1. of this Article.”

18. Article V of the Agreement is further amended by adding the following as new Article V.E.
of the Agreement:

   “E. Not later than 30 calendar days after the effective date of Amendment No. 1 to this
   Agreement, the Government shall initiate an interim accounting and furnish the Non-Federal
   Sponsor with a written notice of the results of such interim accounting within 120 calendar days
   from the initiation of this action. Such interim accounting shall determine total project costs
   incurred by the Government and the Department of Interior as of the effective date of
   Amendment No. 1 to this Agreement and the costs due to any additional work provided in
   accordance with Article II.B. and Article II.F. of this Agreement incurred as of the effective date
   of Amendment No. 1 to this Agreement.”

19. Article VII.A. of the Agreement is amended by adding the following as new Articles
VII.A.1.a. through VII.A.1.k. of the Agreement:

   “a. The annual proportional depreciation payment by the Government for each pump
   station will be computed in accordance with Exhibit D attached hereto and made a part hereof.
   Subject to the availability of funds, proportional depreciation shall be paid by the Government to
   the Non-Federal Sponsor commencing October 1, 2015 for the remaining useful life of each
   pump station and shall apply to Pump Stations S-332B, S-332C, and S-332D. In no event shall
   the Government pay as proportional depreciation more than 60 percent of the “VALUE” input
   for a pump station, as determined below.

   (i) The first computation of annual proportional depreciation payment shall be
   completed no later than 90 calendar days after the effective date of Amendment No. 1 to this
   Agreement. The Government shall determine, in consultation with the Non-Federal Sponsor, the
   “VALUE” and “LIFE” inputs used in the proportional depreciation computations contained in
   Exhibit D. The “LIFE” input for a pump station shall be the remaining useful life of that pump
   station. The “VALUE” input for a pump station shall be the reasonable, allocable, and allowable
   replacement costs of constructing the pump station in the year in which the depreciation payment
   is computed, which is then inflated based on the Government’s Civil Works Construction Cost
   Index System through the end of the pump station’s useful life. This estimate shall not include
   any costs associated with an increase in the quality, function, or scope of the existing pump
   station.
(ii) The Government shall recalculate the annual proportional depreciation payments at five year intervals, commencing October 1, 2020 and shall adjust the amount of the remaining annual depreciation payment for the applicable pump station accordingly. The recalculation shall adjust the “VALUE” input by determining the reasonable, allocable, and allowable costs of constructing the pump station in the year in which the recalculated depreciation payment is computed, which is then inflated based on the Government’s Civil Works Construction Cost Index System through the end of the pump stations’ useful life. During the recalculation, the Government may, in consultation with the Non-Federal Sponsor, adjust the replacement costs of constructing the pump station for unanticipated market conditions not captured by the Government’s Civil Works Construction Cost Index System index or for environmental considerations. The “LIFE” input for a recalculation shall be the remaining portion of the useful life determined in paragraph A.1.a.(i) of this Agreement for such pump station. Upon recalculation of the annual proportional depreciation payments, the Government shall notify the Non-Federal Sponsor in writing of the recalculated annual proportional depreciation payments.

b. Periodically, but not more frequently than once every 90 calendar days, the Non-Federal Sponsor shall provide the Government with a sufficient invoice for costs that it has incurred, or have been incurred on its behalf, by quarter for pumping costs described in Article VII.A.1. of this Agreement, other than proportional depreciation, and that were not included in a previous sufficient invoice.

c. Upon receipt of a sufficient invoice, the Government shall conduct an accounting for pumping costs described in Article VII.A.1. of this Agreement, other than proportional depreciation, performed during that period. The Government may perform an audit at any time in accordance with Article IX.C. of this Agreement to determine that the costs are reasonable, allocable, and allowable.

d. Not later than 60 calendar days after receipt of each sufficient invoice, the Government shall review the costs identified therein and shall provide documentation stating: (1) the amount to be included as part of pumping costs described in Article VII.A.1. of this Agreement, other than proportional depreciation; (2) the total amount of payments the Government has made to date for its responsibilities under Article VII.A.1. of this Agreement; and (3) the balance of Federal funds available for the Government to meet its responsibilities under Article VII.A.1. of this Agreement in the current fiscal year, as of the date of such review.

e. No later than 30 days after such determination has been made in paragraph A.1.d. of this Article, the Government shall pay the Non-Federal Sponsor such amount plus one quarter of the annual proportional depreciation determined in accordance with Article VII.A.1.a. of this Agreement. If the amount of payment due cannot be fully paid due to an insufficiency of available Federal funds, the Government shall pay the amount that it actually can pay and seek funds as are necessary to make the payment. In no event shall the amount paid to the Non-Federal Sponsor in a fiscal year exceed the actual Federal funds available for the Government responsibilities under Article VII.A.1. of this Agreement. The Government shall send payments
to the Non-Federal Sponsor by delivering a check payable to the “South Florida Water Management District” to the Executive Director of the Non-Federal Sponsor or a designee or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

f. The amount of payment to the Non-Federal Sponsor is not subject to interest charges, nor is it subject to adjustment to reflect changes in price levels between the time the costs are incurred and the time that the payment is made. In addition, the amount of payment to the Non-Federal Sponsor is subject to the Non-Federal Sponsor’s satisfactory compliance with applicable Federal labor laws including, but not limited to applicable Federal labor standards in 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 USC 276a et seq.), the Contract Work Hours and Safety Standards Act (formerly 40 USC 327 et seq.), and the Copeland Anti-Kickback Act (formerly 40 USC 276c)).

g. Except as provided in Article VII.A.1. of this Agreement, the Non-Federal Sponsor is responsible for all costs to operate, maintain, repair, replace, and rehabilitate the Project. No costs incurred by the Non-Federal Sponsor to accomplish such responsibilities or any annual pumping costs to be paid by the Government shall be credited toward the Non-Federal Sponsor’s share of construction of this Project or any other project.

h. The Government shall notify the Non-Federal Sponsor in writing, no later than 90 calendar days prior to the end of each fiscal year, of the amount of anticipated Federal funds available to meet the Government’s responsibilities under Article VII.A.1. of this Agreement for the next fiscal year.

i. No later than 30 calendar days following receipt of appropriations for that fiscal year, the Government shall notify the Non-Federal Sponsor of the actual Federal funds available to meet the Government’s responsibilities under Article VII. A.1. of this Agreement.

j. The Non-Federal Sponsor, in contracting for the performance of work under this Agreement, shall include provisions in such contracts consistent with all applicable Federal laws and regulations.

k. The Government’s responsibilities under Article VII.A.1. of this Agreement shall not include any costs for work that, in the judgment of the Government, is not in accordance with the OMRR&R Manual and any subsequent amendments thereto.”

20. Article VII.A. of the Agreement is further amended by adding the following as new Article VII.A.2. of the Agreement:

“2. The Government and the Non-Federal Sponsor agree that construction of pump stations S-332B, S-332C and S-332D is complete and that the Non-Federal Sponsor is performing its responsibility to operate, maintain, repair, replace and rehabilitate the pump
stations in accordance with Article VII of this Agreement. The Government and the Non-
Federal Sponsor further agree that notification of completion of construction under Article II.C. 
of this Agreement and commencement of the Non-Federal Sponsor’s responsibilities under 
Article VII.A. of this Agreement occurred in 2010 for pump stations S-332B and S-332C and 1996 for pump station S332-D.”

21. Article X of the Agreement is amended by striking the current paragraph and replacing it 
with the following:

“In the exercise of their respective rights and obligations under this Agreement, the Non-
Federal Sponsor and the Government shall comply with all applicable Federal and State laws and 
regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public 
Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant 
thereto; Army Regulation 600-7, entitled “Nondiscrimination on the Basis of Handicap in 
Programs and Activities Assisted or Conducted by the Department of the Army”; and all 
applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-
3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the 
provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a et seq.), the Contract Work Hours 
and Safety Standards Act (formerly 40 U.S.C. 327 et seq.), and the Copeland Anti-Kickback Act 
(formerly 40 U.S.C. 276c)).”

22. Article XVII is amended by striking the current paragraphs A. through C. and replacing 
them with the following:

“A. Except as provided in paragraph B. below, the Government shall perform any 
identification, survey, or evaluation of historic properties that it determines is necessary for the 
Project. Any costs incurred by the Government for such work shall be included in total project 
costs and shared in accordance with the provisions of this Agreement.

B. In the event that the Government determines that any identification, survey, or 
evaluation of historic properties is required for construction of the in-kind contributions, and if 
the Government and the Non-Federal Sponsor agree in writing that the Non-Federal Sponsor 
should perform such identification, survey, or evaluation of historic properties, the Non-Federal 
Sponsor shall perform such identification, survey, or evaluation in accordance with this 
paragraph and other written directions of the Government.

1. The Non-Federal Sponsor shall ensure that its studies are conducted by 
qualified archaeologists, historians, architectural historians and historic architects, as appropriate, 
who meet, at a minimum, the Secretary of the Interior's Professional Qualifications Standards. 
The Non-Federal Sponsor shall submit study plans and reports to the Government for review and 
approval and the Non-Federal Sponsor shall be responsible for resolving any deficiencies 
identified by the Government.
2. Any costs of identification, survey, or evaluation of historic properties incurred by the Non-Federal Sponsor pursuant to this paragraph shall be included in the costs for in-kind contributions subject to an audit in accordance with Article IX.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

C. Except as provided in paragraph C.2. below, the Government, as it determines necessary for the Project, shall perform or ensure the performance of any mitigation activities or actions for historic properties or that are otherwise associated with historic preservation including data recovery activities.

1. Any costs incurred by the Government for such mitigation activities, except for data recovery activities associated with historic preservation, shall be included in total project costs and shared in accordance with the provisions of this Agreement.

2. In the event that the Government determines that mitigation activities or actions other than data recovery activities associated with historic preservation are required for construction of the in-kind contributions, and if the Government and the Non-Federal Sponsor agree in writing that the Non-Federal Sponsor should perform such activities or actions, the Non-Federal Sponsor shall perform such activities or actions in accordance with the written directions of the Government. The Non-Federal Sponsor shall perform the agreed upon activities or actions prior to construction of such in-kind contributions. Any costs incurred by the Non-Federal Sponsor in accordance with the provisions of this paragraph shall be included in the costs for in-kind contributions subject to an audit in accordance with Article IX.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

3. As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in total project costs, up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the Project.

4. The Government shall not incur costs for data recovery activities associated with historic preservation that exceed the statutory one percent limit specified in paragraph C.3. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit and the Secretary of the Interior has concurred in the waiver in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. 469c-2(3)). Any costs of data recovery activities associated with historic preservation that exceed the one percent limit shall be included in total project costs and shared in accordance with the provisions of this Agreement.

D. If, during its performance of relocations, construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material in accordance with Article III of this Agreement, or performance of the in-kind contributions, the Non-Federal Sponsor discovers historic properties or other cultural resources that have not been evaluated in accordance with this Article, the Non-Federal Sponsor shall provide prompt written
notice to the Government of such discovery. The Non-Federal Sponsor shall not proceed with performance of the relocation, construction of the improvement, or performance of such in-kind contributions related to such discovery until the Government provides written notice to the Non-Federal Sponsor that it should proceed with such work.

E. The Non-Federal Sponsor shall include provisions in all of its construction contracts for in-kind contributions for the protection of cultural resources discovered during construction. These provisions shall include, at a minimum, the requirement to cease all work in the immediate area of a discovered cultural resource until the situation is properly evaluated, and the requirement to immediately provide verbal and written notice to the Non-Federal Sponsor and the Government in the event of such discovery. Upon receipt of notice that cultural resources have been discovered, the Government, pursuant to its responsibilities under the National Historic Preservation Act, must authorize further action or study before construction may continue. If the Government concludes that such discovery warrants consultation under the National Historic Preservation Act, the Non-Federal Sponsor shall participate as a consulting party. In such a case, construction of the in-kind contributions shall not continue until the Government sends written notification to the Non-Federal Sponsor. Where the Non-Federal Sponsor elects to perform the construction of the in-kind contributions using their own forces, the same procedures shall be followed.”

23. Article XX of the Agreement is amended by striking the current paragraph and replacing it with the following:

“A. Nothing herein shall constitute nor be deemed to constitute, an obligation of future appropriations by the Legislature of the State of Florida.

B. Nothing herein shall constitute, nor be deemed to constitute an obligation of future appropriations by the Government. The Department of the Army agrees that, consistent with applicable Federal law and the rules that govern the Executive Branch budget requests, it shall exert its best efforts to obtain the appropriations to pay for the Federal financial obligations under this Agreement. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Non-Federal Sponsor or the Legislature of the State of Florida. The Non-Federal Sponsor shall exert its best efforts to obtain the appropriations to pay the Non-Federal Sponsor’s financial obligations under this Agreement, consistent with applicable law and rules. Further, if the Non-Federal Sponsor is unable to fulfill these obligations, the Government may exercise any legal rights it has to protect the Government’s interests related to this Agreement.”

24. The Agreement is further amended by adding the following as Article XXI:

“ARTICLE XXI - CREDIT FOR VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND DISPOSAL AREA IMPROVEMENTS

A. Except as provided otherwise in this Article, the Government shall include in total project costs and afford credit toward the Non-Federal Sponsor’s share of total project costs for the
value of the lands, easements, and rights-of-way that the Non-Federal Sponsor must provide pursuant to Article III.A. of this Agreement or that Miami-Dade County provides by supplemental agreement; for the value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Non-Federal Sponsor must provide pursuant to Article III.B. of this Agreement; and for the value of the relocations that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III.C. of this Agreement. The Government shall include in total project costs the amount contributed by the Department of Interior to the Non-Federal Sponsor to acquire such portions of the Frog Pond area as are needed for the Project, including the Department of Interior’s share of Program Income; however, no credit shall be afforded towards the Non-Federal Sponsor’s share of total project costs for such amount contributed by the Department of Interior, including the Department of Interior’s share of Program Income. In addition, no amount shall be included in total project costs, no credit shall be afforded, and no reimbursement shall be provided for the value of any lands, easements, rights-of-way, relocations, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that: (1) have been provided previously as an item of cooperation for another Federal project; (2) were acquired or performed using Federal program funds unless the Federal agency providing the funds verifies in writing that such funds are authorized to carry out the Project; or (3) exceeds 50 percent of total project costs.

B. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A., Article III.B., or Article III.C. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions for the purpose of including in total project costs such value that does not exceed 50 percent of total project costs and for determining the amount of credit to be afforded in accordance with the provisions of this Agreement.

C. For the purposes of determining the value to be included in total project costs and the amount of credit to be afforded in accordance with this Agreement, the Government and the Non-Federal Sponsor agree and stipulate that the collective value of the Frog Pond lands that are owned by the Non-Federal Sponsor as of the effective date of Amendment No. 1 to this Agreement is $43,000,000, plus any additional amount for incidental costs, determined in accordance with paragraph E.4. of this Article, that were incurred by the Non-Federal Sponsor and not otherwise included in this amount. The Government shall receive a credit toward the Federal share of total project costs in the amount of $5,801,222, which is the amount the Department of Interior provided toward the acquisition of such lands, including the Department of Interior’s share of Program Income in accordance with the Grant Agreement No. L-2, “Frog Pond Project Land Acquisition” between the Non-Federal Sponsor and the Department of Interior.

D. For the purposes of determining the value to be included in total project costs and the amount of credit to be afforded in accordance with this Agreement, the value of all parcels identified as Southern Glades lands shall be the actual acquisition costs of such lands, including all Non-Federal Sponsor incidental costs of acquiring such interests. The Government recognizes that the Non-Federal Sponsor will be entering into a supplemental agreement with Miami-Dade
County whereby: (1) Miami-Dade County, rather than the Non-Federal Sponsor, has acquired or will acquire required lands, easements, and rights-of-way in the Southern Glades, and (2) Miami-Dade County will dedicate the land interests it owns in the Southern Glades to the Project and ensure that such lands, easements, and rights-of-way are retained in public ownership for uses compatible with the purposes of the Project and shall not be conveyed, transferred, altered, or otherwise encumbered without the advance written consent of the Non-Federal Sponsor and the Government. This supplemental agreement shall be limited in effect to the signatory parties of the supplemental agreement and shall not reduce or alter in any way the requirements of this Agreement that make the Non-Federal Sponsor solely responsible for providing lands, easements, and rights-of-way that are required for the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project. The credit afforded for the Southern Glades lands, easements, and rights-of-way owned by Miami-Dade County shall be the documented actual acquisition costs. The Non-Federal Sponsor shall provide the Government with sufficient documentation from Miami-Dade County to allow the Government to determine the actual acquisition costs. The Non-Federal Sponsor shall not be entitled to credit for the incidental costs of Miami-Dade County for acquiring such interests provided by this supplemental agreement.

E. Except as provided in paragraph C. and paragraph D. of this Article, for the purposes of determining the value to be included in total project costs and the amount of credit to be afforded in accordance with this Agreement and except as otherwise provided in paragraph I. of this Article, the value of lands, easements, and rights-of-way, including those required for relocations, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation.

a. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of Amendment No. 1 to this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides or provided the Government with authorization for entry thereto.

b. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of Amendment No. 1 to this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph E.3. or paragraph E.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide the Government with the appraisal no
later than 6 months after the Non-Federal Sponsor provides the Government with an authorization for entry for such real property interest except that, for those real property interests for which the Non-Federal Sponsor has already provided an authorization for entry, the Non-Federal Sponsor shall provide the Government with the appraisal no later than 6 months after the effective date of Amendment No. 1 to this Agreement. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor’s appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor’s appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor’s second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor’s second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government’s appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Government does not approve the Government’s appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government’s and the Non-Federal Sponsor’s appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph E.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph E.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph E.2.a. of this Article.

3. **Eminent Domain Valuation Procedure.** For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of Amendment No. 1 to this Agreement, the Non-Federal Sponsor, prior to instituting such proceedings, shall submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.
b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsor shall consult in good faith to resolve promptly the issues or areas of disagreement that are identified in the Government’s written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph E.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for construction, operation, and maintenance of the Project, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. **Incidental Costs.** For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article IX.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. In the event the Government modifies its determination made pursuant to Article III.A. of this Agreement, the Government shall afford credit for the documented incidental costs associated with preparing to acquire the lands, easements, or rights-of-way identified in the original determination, subject to an audit in accordance with Article IX.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney’s fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.D. of this Agreement, and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of this Agreement shall also include the documented costs of obtaining appraisals pursuant to paragraph E.2. of this Article, as determined by the Government, and subject to an audit in accordance with Article IX.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

5. **Waiver of Appraisal.** Except as required by paragraph E.3. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is $10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of $10,000.
F. After consultation with the Non-Federal Sponsor, the Government shall determine the value of relocations in accordance with the provisions of this paragraph.

1. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a relocation of a highway, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of Florida would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. Relocation costs shall include, but not necessarily be limited to, actual costs of performing the relocation; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, as determined by the Government. Relocation costs shall not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available. Relocation costs shall be subject to an audit in accordance with Article IX.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

G. The value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article IX.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

H. Any credit afforded under the terms of this Agreement for the value of relocations, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, performed within the Project boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a et seq.), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 et seq.) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, credit may be withheld, in whole or in part, as a result of the Non-Federal Sponsor’s failure to comply with its obligations under these laws.

I. Where the Government, on behalf of the Non-Federal Sponsor pursuant to Article II.F. of this Agreement, acquires lands, easements, or rights-of-way, performs relocations, or constructs improvements required on lands, easements, or rights-of-way to enable the disposal of dredged or
excavated material, the value to be included in total project costs and the amount of credit to be included in total project costs and the amount of credit to be afforded in accordance with this Agreement shall be the costs of such work performed or provided by the Government that are paid by the Non-Federal Sponsor in accordance with Article V.C. of this Agreement. In addition, the value to be included in total project costs and the amount of such credit to be afforded in accordance with this Agreement shall include the documented costs incurred by the Non-Federal Sponsor in accordance with the terms and conditions agreed upon in writing pursuant to Article II.F. of this Agreement subject to an audit in accordance with Article IX.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.”

25. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 to the Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

DEPARTMENT OF THE ARMY
Jo Ellen Darcy
Assistant Secretary of the Army (Civil Works)

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
Blake C. Guillory, P.E.
Executive Director
CERTIFICATE OF AUTHORITY

I, Edward L. Artau, do hereby certify that I am the principal legal officer of the South Florida Water Management District, that the South Florida Water Management District is a legally constituted public body with full authority and legal capability to perform the terms of Amendment No. 1 to the Project Cooperation Agreement between the Department of the Army and the South Florida Water Management District For Construction of Modifications to the C-111 Project and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of the Project Cooperation Agreement, as amended, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who has executed this Amendment on behalf of the South Florida Water Management District has acted within his statutory capacity.

IN WITNESS WHEREOF, I have made and executed this certification this ____ day of __________, 20___.

________________________________________
Edward L. Artau
Interim General Counsel
South Florida Water Management District
CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

DATE: _____________________   _______________________

Blake C. Guillory, P. E.
Executive Director
South Florida Water Management District
For copies of this map: I:\arc_data\maps\proj\c111\14-03-15_MAP_SMF_C111_unacq_parcel_labels.mxd) produced by SMF, contact the GIS Section.
IMPORTANT DISCLAIMER:
This map is a conceptual or planning tool only. The South Florida Water Management District does not guarantee or make any representation regarding the information contained herein. It is not self-executing or binding, and does not affect the interests of any persons or properties, including any present or future right or use of real property.
**Exhibit D**

**Depreciation Formula**

The annual depreciation payment is **DEP** which is calculated using the following formula:

\[
\text{DEP} = \frac{(\text{VALUE} \times .60)}{\text{LIFE}}
\]

Where **DEP** is the amount of the annual depreciation payment for the applicable pump station, “LIFE” is the remaining useful life of that pump station, and “VALUE” is the reasonable, allocable, and allowable replacement costs of constructing the pump station in the year in which the depreciation payment is computed, which is then inflated based on the Government’s Civil Works Construction Cost Index System through the end of the pump station’s useful life.

**EXAMPLES:**

1. Example on calculating the annual proportional depreciation payment for Pump Station S-332B:

   For the first calculation of proportional depreciation determined as of the date of this Amendment No. 1, assume Pump Station S-332B has at that time a remaining useful life of 15 years (LIFE Input) and is estimated to cost $17 Million to replace, and that the inflated cost to replace S-332B at the end of 15 years is calculated to be $20 Million (VALUE Input). The annual proportional depreciation payment to be made by the Government for S-332B is ($20 Million x .60) / 15 = $800,000.

2. Example on recalculating the annual proportional depreciation payment for Pump Station S-332B:

   Assume that the annual proportional depreciation payment for the previous 5 years is $800,000, as per the Example 1 above. Assume that the recalculation updates the VALUE input by re-estimating the cost to replace the pump station as of the date of the recalculation to be $19 Million, and that the inflated cost to replace S-332B at the end of 15 year LIFE is calculated to be $22 Million (VALUE Input). The recalculated annual proportional depreciation payment is ($22 Million x .60) / 15 = $880,000. To adjust for annual proportional depreciation payments previously made by the Government, assume that total annual proportional depreciation payments previously made by the Government is $800,000 x 5 = $4 Million and the total recalculated annual proportional depreciation payments is $880,000 x 15 = $13.2 Million. The adjusted recalculated annual proportional depreciation payment would be ($13.2 Million - $4 Million) / 10 (remaining useful life) = $920,000.
MEMORANDUM

TO: Governing Board Members
FROM: Temperince Morgan, Division Director
DATE: July 10, 2014
SUBJECT: IRL-S PPA Amendment

Summary
The South Florida Water Management District (SFWMD) entered into a Project Partnership Agreement (PPA) with the U.S. Department of the Army for the Indian River Lagoon South Phase 1 Project on September 9, 2010. Under this Project Partnership Agreement, the SFWMD is responsible for providing 50 percent of the cost for constructing, operating, maintaining, repairing, replacing and rehabilitating the Indian River Lagoon South Phase 1 Project. The SFWMD’s 50% cost-share is to be provided through acquisition of lands needed for the project, constructing portions of the project, or providing cash contributions, if necessary. The Indian River Lagoon South Phase 1 Project includes the following project components:

- C-44 Reservoir and Stormwater Treatment Areas
- C-23/C-24 Reservoir and Stormwater Treatment Area
- C-25 Reservoir and Stormwater Treatment Area.

At the time of signing the original Project Partnership Agreement, the U.S. Army Corps of Engineers (Corps) had planned to construct the entire C-44 Reservoir and Stormwater Treatment Areas Project. However, in order to expedite completion of the C-44 Reservoir and Stormwater Treatment Areas Project and help balance the 50-50 programmatic cost-share for the Comprehensive Everglades Restoration Plan (CERP), the SFWMD recently agreed to construct the C-44 stormwater treatment areas, the pump station and a portion of the system discharge canal. Under Corps policy requirements, the Project Partnership Agreement must be amended to identify the construction “In-kind Work” to be provided by the SFWMD. In order to qualify for credit, the PPA must be amended prior to SFWMD awarding a contract for construction.

Additionally, the estimated Project construction cost has been updated from $1.133 Billion to $1.387 Billion and the estimated Project design cost has been updated from $48 Million to $111 Million.

Staff Recommendation
Staff recommends approving Amendment No. 1 to the Project Partnership Agreement with the U.S. Department of the Army for the Indian River Lagoon South Phase 1 Project.

Additional Background
The estimated cost of SFWMD’s In-Kind Work is $235 million, which includes the Army Corps’ estimated costs for construction of the C-44 System Discharge, Stormwater Treatment Area, Pump Station and Communications Tower, as well as the costs for operational testing and monitoring of all of the reservoirs and stormwater treatment areas included in the Indian River
The Indian River Lagoon South is a project in the CERP. Implementation of CERP is critical to meeting all elements of the SFWMD's mission and is critical to reducing the intensity of freshwater discharges to the St. Lucie Estuary.
A Resolution of the Governing Board of the South Florida Water Management District authorizing entering into Amendment No. 1 to the Project Partnership Agreement with the U.S. Department of the Army for construction, operation, maintenance, repair, replacement and rehabilitation of the Indian River Lagoon South Phase 1 Project, a component of the Comprehensive Everglades Restoration Plan; to amend the South Florida Water Management District’s construction responsibilities and to update the project cost estimates, for which the South Florida Water Management District will be responsible for 50 percent cost-share; affirming South Florida Water Management District’s financial capability to satisfy the obligations of the Non-Federal Sponsor described in the Project Partnership Agreement, as amended, for which funding, if any, is subject to approval of future fiscal year state budgets by the State Legislature and Governor, and District budgets for the Indian River Lagoon South Phase 1 Project by the State Legislature, Governor and District Governing Board; and providing an effective date. (Contract Number 4600002153-A01)

WHEREAS, the Indian River Lagoon South Project, a component of the Comprehensive Everglades Restoration Plan, was authorized by Congress in Section 1001(14) of the Water Resources Development Act of 2007; and

WHEREAS, on September 9, 2010, the South Florida Water Management District (SFWMD) entered into a Project Partnership Agreement with the U.S. Department of the Army (Contract No. 4600002153) to set forth the parties' responsibilities for the construction, operation, maintenance, repair, replacement and rehabilitation of the Indian River Lagoon South Phase 1 Project; and

WHEREAS, the Project Partnership Agreement required annual review of the status of the 50-50 cost-share balance for authorized projects under the Comprehensive Everglades Restoration Plan, and anticipated the potential for amendments to the Project Partnership Agreement to adjust the amount of construction “In-kind Work” to be provided by the SFWMD to maintain its 50 percent share; and

WHEREAS, the SFWMD and the U.S. Department of the Army desire to amend the Project Partnership Agreement for Phase 1 of the Indian River Lagoon South Project to identify additional “In-Kind Work” to be provided by SFWMD on the C-44 Reservoir and Stormwater Treatment Area and to update the estimated construction cost estimates;

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT:

Section 1. The Governing Board of the South Florida Water Management District
hereby authorizes execution of Amendment No. 1 to Contract No. 4600002153 with the U.S. Department of the Army for construction, operation, maintenance, repair, replacement and rehabilitation of the Indian River Lagoon South Phase 1 Project, a component of the Comprehensive Everglades Restoration Plan, at an updated total estimated construction cost of $1,387,690,000 and an updated estimated annual operations and maintenance cost of $5,000,000, subject to approval of future fiscal year state budgets by the State Legislature and Governor, and District budgets for the Indian River Lagoon South Phase 1 Project by the State Legislature, Governor and District Governing Board.

Section 2. The Governing Board of the South Florida Water Management District further authorizes SFWMD to construct the system discharge, stormwater treatment area, pump station and communications tower for the C-44 Reservoir and Stormwater Treatment Area. The U.S. Department of the Army will be responsible for constructing the intake canal and reservoir for the C-44 Reservoir and Stormwater Treatment Area and the remaining C-23/C-24 and C-25 reservoirs and stormwater treatment areas.

Section 3. The Governing Board hereby authorizes the Director of Administrative Services Division to sign a Non-Federal Sponsor’s Self-Certification of Financial Capability expressing SFWMD’s financial capability to satisfy the Non-Federal Sponsor’s obligations set forth in Amendment No. 1 to the Project Partnership Agreement for Indian River Lagoon South Phase 1 Project.

Section 4. This resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this 10th day of July, 2014.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT, BY ITS GOVERNING BOARD
By:

_________________________
Chairman

Attest:

Legal form approved:
By:

_________________________
Office of Counsel

Print name:

_________________________
District Clerk/Secretary
INDIAN RIVER LAGOON SOUTH PHASE 1 – FIRST AMENDMENT
NON-FEDERAL SPONSOR’S
SELF-CERTIFICATION OF FINANCIAL
CAPABILITY FOR AGREEMENTS

I, Douglas Bergstrom, do hereby certify that I am the Director for the Administrative Services Division of the South Florida Water Management District (the "Non-Federal Sponsor"); that I am aware of the financial obligations that the Non-Federal Sponsor will incur in the First Amendment of the Project Partnership Agreement for Phase 1 of the Indian River Lagoon South Project, if the First Amendment of the Project Partnership Agreement is approved by the Non-Federal Sponsor’s Governing Board and signed by the Chair; and I certify that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor’s obligations under that First Amendment to the Project Partnership Agreement for Phase 1 of the Indian River Lagoon South Project, subject to approval of future fiscal year state budgets by the State Legislature and Governor, and SFWMD budgets by the State Legislature, Governor and SFWMD Governing Board.

IN WITNESS WHEREOF, I have made and executed this certification this _____________day of __________________, 2014

BY: ______________________
   Douglas A. Bergstrom

TITLE: Director, Administrative Services Division

DATE: ________________
This AMENDMENT NO. 1 is entered into this ____ day of _______________, 2014, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works), and SOUTH FLORIDA WATER MANAGEMENT DISTRICT (hereinafter the "Non-Federal Sponsor"), represented by its Executive Director.

WITNESSETH THAT:

WHEREAS, on August 13, 2009, the Government and the Non-Federal Sponsor (hereinafter the “Parties”) entered into an agreement (hereinafter the “Master Agreement”) that sets forth the terms of participation for the constructions, operation, maintenance, repair, replacement and rehabilitation of projects implemented under the Comprehensive Everglades Restoration Plan (hereinafter “CERP”);

WHEREAS, on September 9, 2010, the Government and the Non-Federal Sponsor entered into a Project Partnership Agreement (hereinafter the “PPA” as defined in Article I.C. of the Master Agreement) for construction, operation, maintenance, repair, replacement, and rehabilitation of Phase 1 of the Indian River Lagoon South Project (hereinafter the “authorized CERP Project”, as defined in Article 2.1. of that PPA);

WHEREAS, Section 601(e)(5) of WRDA 2000, Public Law 106-541, as amended by Section 6004 of WRDA 2007, Public Law 110-114, authorizes the Secretary to provide credit toward the non-Federal share of the cost of the authorized CERP Project for the value of work performed by the Non-Federal Sponsor if determined to be integral to the authorized CERP Project (hereinafter “In-kind Work” as defined in Article 2.2. of that PPA);

WHEREAS, certain In-kind Work was determined on August 12, 2010, to be integral to the authorized CERP Project;

WHEREAS, on __________, the Assistant Secretary of the Army (Civil Works) determined that certain additional In-kind Work is integral to the authorized CERP Project; and

WHEREAS, the Parties desire to amend the PPA to include the additional In-Kind Work that the Non-Federal Sponsor will perform.
NOW, THEREFORE, the Government and the Non-Federal Sponsor agree to amend the Agreement as follows:

1. The sixth WHEREAS clause is amended by inserting “and XXXXX XX, XXXX,” after “August 12, 2010”.

2. Article 2.2. is amended by striking the current paragraph and replacing it with the following:

   “2.2. For the purposes of this PPA, Article I.Q. of the Master Agreement shall not apply and the following Article I.Q. shall apply instead:

   “Q. The term “In-kind Work” shall mean the work described in subparagraphs 1. and 2. below that was determined by the Assistant Secretary of the Army (Civil Works) to be integral to the authorized CERP Project on August 12, 2010, which is to be provided or performed prior to or after the effective date of the PPA for the authorized CERP Project, and the work described in subparagraph 3. below that was determined by the Assistant Secretary of the Army (Civil Works) to be integral to the authorized CERP Project on _______, which is to be provided or performed after the effective date of Amendment No. 1 to the PPA for the authorized CERP Project, by the Non-Federal Sponsor through in-house staff, contracts or other legal agreements with a person, private entity, not-for-profit entity, or governmental entity. The term does not include the construction of betterments or the provision of lands, easements, and rights-of-way, or relocations, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for the authorized CERP Project.

1. The work carried out pursuant to the Pre-Partnership Credit Agreement between the Government and the Non-Federal Sponsor dated August 13, 2009 consisting of: (a) preparation of lands for construction including removal of vegetation (including citrus trees), demolition of structures, removal of trash, removal of septic tanks, and capping of wells, as necessary, but not including removal of any hazardous substances as provided under Article XV of the Master Agreement; (b) investigations to identify the existence and extent of hazardous substances; and (c) investigations to determine the presence of cultural or historical resources.

2. The work that has been or will be performed or provided by the Non-Federal Sponsor after the effective date of the PPA, consisting of: (a) tree clearing required for construction; (b) installation of the C-44 Communication Tower including all equipment required on this tower and other towers to make the tower fully functional; (c) demolition of the Indiantown Tower; and (d) interim operations during the Operations Testing and Monitoring Period; and (e) monitoring.

3. The work that will be performed or provided by the Non-Federal Sponsor after the effective date of Amendment No. 1 to the PPA, consisting of design and construction of the following: (a) stormwater treatment area (STA) for the C-44 Reservoir and Stormwater Treatment Area (RSTA); (b) reservoir pump station for the C-44 RSTA; and (c) large segment of discharge canal for the C-44 RSTA.
3. Article 2.3. is amended by striking the current paragraph and replacing it with the following:

   “2.3. The term “Operational Testing and Monitoring Period” shall have the meaning as defined in the first sentence of Article I.G. of the Master Agreement and, for the purpose of this PPA, as amended, the length shall not exceed the time specified in the Indian River Lagoon South Construction Phasing, Transfer and Warranty Plan dated August 25, 2010, or any subsequent amendments thereto.”

4. Article 2.9. is amended by striking the current paragraph and replacing it with the following:

   “2.9. On the effective date of Amendment No. 1 to this PPA, project construction costs for the authorized CERP Project are estimated to be $1,387,690,000; the Non-Federal Sponsor’s share of project construction costs required by Article II.G. of the Master Agreement is estimated to be $693,845,000; the value of lands, easements, rights-of-way, including incidental costs, and relocations for which the Government shall afford credit in accordance with Article IV of the Master Agreement is estimated to be $406,030,000; the value of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for which the Government shall afford credit in accordance with Article 5.2. of this PPA is estimated to be $0; the amount of credit for In-kind Work to be afforded toward the Non-Federal Sponsor’s share of the project construction costs is estimated to be $235,141,000; and the annual project OMRR&R costs are estimated to be $5,000,000. Further, on the effective date of Amendment No. 1 to this PPA, total design costs for the authorized CERP Project are estimated to be $110,957,000, and the sum of estimates of project construction costs and total design costs for the authorized CERP Project is $1,498,647,000. The Parties acknowledge that such amounts are estimates subject to adjustment by the Government, in full cooperation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and Non-Federal Sponsor.”

5. The following is inserted as Article 2.14.:

   “The parties will use best efforts to complete construction of the reservoir pump station and reservoir as close in time as possible so that testing and commissioning of these features can occur simultaneously.”

6. Article 3 is amended by striking the current paragraph and replacing it with the following:

   “The Non-Federal Sponsor has reviewed the provisions set forth in Section 902 of Public Law 99-662, as amended, and understands that Section 902 establishes the maximum amount of costs for both phases of the Indian River Lagoon South Project, of which the authorized CERP Project is Phase 1. Notwithstanding any other provision of this PPA, as amended, the Government shall not make a new financial obligation or expenditure for the authorized CERP Project, or afford
credit toward project construction costs for the value of any contribution provided by the Non-Federal Sponsor, if such obligation, expenditure, or credit would result in the cumulative amount of project construction costs plus the total design costs incurred for design of the authorized CERP Project in accordance with the provisions of the Design Agreement plus the design and construction costs for Phase 2 of the Indian River Lagoon South Project exceeding this maximum amount, unless otherwise authorized by law. On the effective date of Amendment No. 1 to this PPA, this maximum amount of costs for both phases of the Indian River Lagoon South Project is estimated to be $2,470,413,000, as calculated in accordance with ER 1105-2-100 using October 1, 2013 (FY 2014) price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902 of WRDA 1986, Public Law 99-662, as amended."

7. All other terms and conditions of the Agreement, as amended, remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 to the Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

DEPARTMENT OF THE ARMY

BY: _________________________
Jo-Ellen Darcy
Assistant Secretary of the Army
(Civil Works)

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

BY:_________________________
Blake C. Guillory, P.E.
Executive Director
CERTIFICATE OF AUTHORITY

I, Edward L. Artau, do hereby certify that I am the principal legal officer of the South Florida Water Management District, that the South Florida Water Management District is a legally constituted public body with full authority and legal capability to perform the terms of this Amendment No. 1 to the Project Partnership Agreement Between the Department of the Army and the South Florida Water Management District for Constructing, Operating, Maintaining, Repairing, Replacing and Rehabilitating Phase 1 of the Indian River Lagoon South Project and to pay damages, if necessary, in the event of the failure to perform, in accordance with the terms of this Amendment No. 1 and that the person who has executed this Amendment No.1 on behalf of the South Florida Water Management District has acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this ____ day of __________, 2014.

_____________________
Edward L. Artau
Interim General Counsel
South Florida Water
Management District
CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

DATE: _____________________

_______________________
Blake C. Guillory, P.E.
Executive Director
South Florida Water Management District
CERTIFICATION OF LEGAL REVIEW

The draft Amendment No. 1 to the Project Partnership Agreement Between the Department of the Army and the South Florida Water Management District for Constructing, Operating, Maintaining, Repairing, Replacing and Rehabilitating Phase 1 of the Indian River Lagoon South Project has been fully reviewed by Office of Counsel, USAED, Jacksonville, and is legally sufficient.

______________________
Assistant District Counsel
MEMORANDUM

TO: Governing Board Members

FROM: Sharon M. Trost, P.G., AICP, Director, Regulation Division

DATE: July 10, 2014

SUBJECT: Revising Section 101-41 of District Policy Code clarifying delegations to the Executive Director

Summary
This revision of the District Policies Code regarding delegations to the Executive Director clarifies the existing policy contained in Chapter 101, Article II, Division 2, Section 101-41 of the District Policies Code to specifically include verification of exemptions to permitting criteria under Part IV of Chapter 373, Florida Statutes, and Chapter 403, Florida Statutes, and any rules promulgated thereunder.

Staff Recommendation
Staff recommends approval of this revision to existing District Policy.

Core Mission and Strategic Priorities
This item supports the District’s regulatory program related to Chapter 373, Florida Statutes, and Chapter 403, Florida Statutes.

Funding Source
There is no associated cost with this revision of District Policy.

Staff Contact and/or Presenter
Anita Bain, Bureau Chief, Environmental Resource Permitting (ext. 6866)
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Resolution No. 2014 - 0707

A Resolution of the Governing Board of the South Florida Water Management District revising Chapter 101, Article II, Division 2, Section 101-41 of the District Policies Code revising delegations to the Executive Director for the taking of final action under Part IV of Chapter 373, Florida Statutes and Chapter 403, Florida Statutes and any Rules promulgated thereunder, providing for inclusion in the District Policies Code; providing for severability; providing an effective date.

WHEREAS the Governing Board had determined that it is necessary, appropriate and in the public interest to revise Chapter 101, Article II, Division 2, Section 101-41 of the District Policies Code regarding delegations to the Executive Director for the taking of final action under Part IV of Chapter 373, Florida Statutes to specifically include verification of exemptions to permitting criteria under Part IV of Chapter 373, Florida Statutes and Chapter 403, Florida Statutes, and any rules promulgated thereunder; now therefore

BE IT RESOLVED BY THE GOVERNING BOARD OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT:

Section 1. The Governing Board adopts the following revisions to the District Policies Code:

CHAPTER 101 AGENCY ADMINISTRATION
ARTICLE II. GOVERNING BOARD DELEGATIONS OF AUTHORITY
DIVISION 2. SPECIFIC DELEGATIONS
Sec. 101-41. Agency Administration Delegations.

(a) The Governing Board delegates to the Executive Director its authority to:

(1) Take final action on permit applications under parts II or IV of Chapter 373, Florida Statutes, or petitions for variances or waivers of permitting requirements under parts II or IV of Chapter 373, Florida Statutes or verification of exemptions to permitting criteria under part IV of Chapter 373, Florida Statutes and Chapter 403, Florida Statutes, and any rules promulgated thereunder. The Executive Director may execute this delegated authority through designated staff.

(2) Employ an Ombudsman.

(b) The Governing Board delegates to the Executive Director and General Counsel the authority to:

(1) Accept donations of property to the District, including real property, interests
in real property, and personal property.

(2) Grant rights of entry onto District property and accepting rights of entry onto non-District property.

(3) Execute all permit applications for permits sought by the District.

(4) Certify rules for filing with the Department of State or the District Clerk.

(5) Certify, pursuant to Section 112.31901, Florida Statutes, that investigatory records of the Inspector General require an exemption from disclosure under the Public Records Law, Chapter 119, Florida Statutes, to protect the integrity of an investigation or avoid unwarranted damage to an individual's good name or reputation.

(c) The Governing Board delegates to the General Counsel, and Office of Counsel Attorneys the authority to: Accept service of process for the District or staff acting in their official capacity.

**Section 2.** Inclusion of Sections 1 of this resolution in the District Policies Code is authorized and directed.

**Section 3.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this resolution is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this resolution.

**Section 4.** This resolution shall take effect immediately on adoption.

PASSED and ADOPTED this 10th day of July, 2014.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT, BY ITS GOVERNING BOARD

By: __________________________
Chairman

Attest: _________________________
District Clerk/Secretary

Legal form approved:
By: ___________________________
Office of Counsel

Print name: ______________________