

**DESIGN AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
LEE COUNTY, FLORIDA
FOR DESIGN OF THE
LAKES PARK RESTORATION PROJECT
OF THE
COMPREHENSIVE EVERGLADES RESTORATION PLAN**

THIS AGREEMENT, entered into this 17th day of January, 2003, by and between the Department of the Army (hereinafter the "Government") represented by the U.S. Army Engineer for Jacksonville District and Lee County, Florida (hereinafter the "Local Sponsor"), represented by the Chairman of its Board of County Commissioners,

WITNESSETH, THAT:

WHEREAS, Section 601(c) of the Water Resources Development Act of 2000, Public Law 106-541, authorizes the Secretary of the Army to approve project features in the Comprehensive Everglades Restoration Plan (hereinafter "the Plan") as modifications of the Central and Southern Florida Project, if the modifications will produce a substantial benefit to the restoration, preservation and protection of the South Florida ecosystem, but the Secretary of the Army must review and approve a project implementation report for any such project feature prior to implementation thereof;

WHEREAS, the Energy and Water Development Appropriations Act for Fiscal Year 2001, Public Law 106-377, includes funds for detailed studies, and plans and specifications, of projects (including those for development with participation or under consideration for participation by States, local governments, or private groups) authorized or made eligible for selection by law, including the preparation of project implementation reports;

WHEREAS, the Lakes Park Restoration Project, which is located in Lee County, Florida, is a project feature described in the Plan, for which detailed studies, and plans and specifications, and the preparation of a Project Implementation Report are required prior to approval and implementation;

WHEREAS, Section 105(c) of Public Law 99-662 (33 U.S.C. Section 2215) [100 Stat 4089] provides that the costs of design of a water resources project shall be cost shared in the same percentage as the purposes of the project;

WHEREAS, Section 601(e) of the Water Resources Development Act of 2000, Public

Law 106-541, provides that the Secretary may provide credit for in-kind contributions towards the Local Sponsor's share of design for the reasonable cost of any work performed during the period of design that is determined to be necessary and integral for the implementation of the Project;

WHEREAS, the Local Sponsor has performed certain work and proposes to perform certain work (hereinafter referred to as the "in-kind contributions") which is a part of the Project;

WHEREAS, the Government and the Local Sponsor agree that the Local Sponsor shall contribute 25 percent of the financial obligations for design of the Project;

WHEREAS, Section 102 of the Energy and Water Development Appropriations Act, 2000, Public Law 106-60, provides that credits and reimbursements afforded under certain general authorities and under project specific authority, such as Section 601 of the Water Resources Development Act of 2000 shall not exceed \$10,000,000 per project in each fiscal year, nor shall they exceed \$50,000,000 for all applicable projects in each fiscal year;

WHEREAS, the Government and Local Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in paying for design in accordance with the terms of this Agreement.

NOW, THEREFORE, the Government and the Local Sponsor agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement

A. The term "Project" shall mean the design of an approximately 40-acre marsh/flowway in an abandoned rock mine, removal of exotic vegetation, and planting native vegetation on approximately 11 acres of uplands and approximately 9 acres of littoral zone with the purpose of enhancing surface water runoff quality by creating a meandering flowway with shallow littoral zones to enhance pollution removal and oxygen content, removing aquatic and upland exotic infestation while allowing public access into upland areas of improved native habitat, including water quality monitoring as generally described in the Central and Southern Florida Project Comprehensive Review Study Final Integrated Feasibility Study and Programmatic Environmental Impact Statement, dated April, 1999 and approved by Assistant Secretary of the Army (Civil Works)/Chief of Engineers.

B. The term "design" shall mean all activities directly related to planning, engineering, environmental coordination, including the preparation of the Project Implementation Report, and design of the Project for which financial obligations are made during the period of design in accordance with the terms of this Agreement; the final accounting in accordance with Article

IV.D. of this Agreement, any audit in accordance with Article VII of this Agreement, and the Government's activities conducted as part of negotiating this Agreement. The term shall not include any activities performed as part of reconnaissance or feasibility studies, activities conducted as part of negotiation of a project cooperation agreement for the Project, or separable element thereof, or the Local Sponsor's activities conducted as part of negotiating this Agreement.

C. The term "total design costs" shall mean all costs incurred by the Local Sponsor and the Government as a consequence of financial obligations for design. The term includes but is not necessarily limited to, the Government's costs of negotiating this Agreement, applicable planning and evaluation, applicable engineering and design, environmental assessment and documentation, the identification, survey, and evaluation of historic properties, the credit amount for the in-kind contributions performed by the Local Sponsor in accordance with Article II.B. of this Agreement, participation in the Design Coordination Team in accordance with Article III of this Agreement, costs of the final accounting in accordance with Article IV.D. of this Agreement, and costs of audit in accordance with Article VII of this Agreement. The term does not include any costs related to betterments, any costs of dispute resolution under Article V of this Agreement, any costs incurred as part of reconnaissance studies or feasibility studies, any costs (other than audit) resulting from financial obligations after the period of design, any costs of negotiating a project cooperation agreement for the Project or separable element thereof, or the Local Sponsor's costs of negotiating this Agreement.

D. The term "period of design" shall mean the time period for designing Project elements commencing on April 7, 1999 when the Notice of Intent from the Division Engineers of the U.S. Army Corps of Engineers, South Atlantic Division to submit the Comprehensive Plan to Congress was released and ending when a project cooperation agreement for the Project, or a separable element thereof, is executed between the Government and a non-Federal entity or entities.

E. The term "District Engineer" shall mean the U.S. Army Engineer for the Jacksonville District.

F. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

G. The term "betterment" shall mean a change in the design of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element, or the addition of an element of the Project that the Government would not otherwise accomplish.

H The term "local proportionate share" shall mean the ratio of the Local Sponsor's total

funds and in-kind contributions required in accordance with Article II.B. of this Agreement to total financial and in-kind obligations for design, as projected by the Government.

I. The term “in-kind contributions” shall mean shall mean water quality monitoring including the collection of water samples and testing the water quality parameters thereof.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE LOCAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress and using those funds and funds provided by the Local Sponsor, shall expeditiously share the design of the Project, applying those procedures usually applied to the engineering and design of Federal projects pursuant to Federal laws, regulations, and policies.

1. To the maximum extent possible, the Government and the Local Sponsor shall design the Project in accordance with the Project Management Plan for the Project and, if applicable, a Project Study Plan for any reevaluation during design, developed and updated as required by the Government after consultation with the Local Sponsor.

2. The Government shall afford the Local Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant scopes of work, prior to the Government’s issuance of such solicitations. To the extent possible, the Government shall afford the Local Sponsor the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Local 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 Local Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Local Sponsor, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all design (with the exception of the in-kind contributions, whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

3. For the in-kind contributions of the Local Sponsor, the Government shall be afforded an opportunity to review and comment on solicitations for all contracts, including relevant scopes of work, prior to the Local Sponsor’s issuance of such solicitations. To the extent possible, the Local Sponsor shall afford the Government the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Government with

notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Local Sponsor shall provide such notification in writing at the earliest date possible. To the extent possible, the Local Sponsor also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Local Sponsor shall consider in good faith the comments of the Government, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all design of the in-kind contributions shall be exclusively within the control of the Local Sponsor. However, failure of the Local Sponsor to comply with direction received from the Government, with respect to the in-kind contributions, may result in the costs associated with such work being determined ineligible for credit towards the Local Sponsor's share of the total design costs.

4. The Government shall also be afforded an opportunity to review and comment before the Local Sponsor provides any in-kind contributions using labor or material resources owned by, or under the control or direction of, the Local Sponsor (hereinafter referred to as "in-house resources"). To the extent possible, the Local Sponsor shall afford the Government the advance opportunity to review and comment on the proposed use of in-house resources. In any instance where providing the Government with advance notification of the contributions of in-house resources is not possible, the Local Sponsor shall provide such notification in writing at the earliest date possible. The Local Sponsor shall consider in good faith the comments of the Government with regard to the proposed use of in-house resources, but the performance, direction, control, and use of such in-house resources shall be exclusively within the control of the Local Sponsor. However, failure of the Local Sponsor to comply with direction received from the Government with respect to in-house resources may result in the costs associated with such work being determined ineligible for credit as in-kind contributions towards the Local Sponsor's share of the total design costs.

5. Notwithstanding paragraph A.1. of this Article, if the award of any contract for design or continuation of design, together with total contributions made using in-house resources, would result in cumulative financial obligations for design exceeding \$895,432.00, the Government and the Local Sponsor agree to defer award of that contract, all subsequent contracts for design, design using the Government's own forces, and contributions made using in-house resources until such time as the Government and the Local Sponsor agree regarding how further to proceed with design, but in no event shall the award of contracts or design using the Government's own forces be deferred for more than three years. Notwithstanding this general provision for deferral of contract awards or design, the Government, after consultation with the Local Sponsor, may award a contract or contracts or continue with design using the Government's own forces after the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts or continuation of design using the Government's own forces must proceed in order to comply with law or to protect human life or property from imminent and substantial harm.

B. The Local Sponsor shall provide during the period of design funds or in-kind contributions equal to 25 percent of total design costs. If the Government projects that the value of the Local Sponsor's contributions under Articles III and VII will be less than 25 percent of total design costs, the Local Sponsor shall provide a contribution, in accordance with Article IV.B. of this Agreement, in the amount necessary to meet its 25 percent share of total design costs.

C. The Government shall perform a final accounting in accordance with Article IV.D. of this Agreement to determine the contributions provided by the Local Sponsor in accordance with paragraphs B. and E. of this Article and Articles III and VII of this Agreement and to determine whether the Local Sponsor has met its obligations under paragraphs B. and E. of this Article.

D. The Local Sponsor shall not use Federal funds to meet the Local Sponsor's share of total design costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

E. The Local Sponsor may request the Government to design betterments. Such requests shall be in writing and shall describe the betterments requested to be designed. If the Government in its sole discretion elects to design the requested betterments or any portion thereof, it shall so notify the Local Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Local Sponsor shall be solely responsible for all costs due to the requested design of betterments and shall pay all such costs in accordance with Article IV.C. of this Agreement.

F. In accordance with Article IV.E. of this Agreement, the Government shall afford credit, toward the share of total project costs for the Project that is required of the Local Sponsor, or entity or entities executing the Project Cooperation Agreement or Agreements for the Project or separable element thereof, for the Local Sponsor's 25 percent share of total design costs required under paragraph B. of this Article. The affording of such credit shall be subject to inspection by the Government to verify that the contribution was accomplished in a satisfactory manner and is suitable for inclusion in the Project Design. The actual amount of credit shall be subject to an audit in accordance with Article VII of this Agreement to determine reasonableness, allocability, and allowability of costs.

G. This Agreement shall not be construed as obligating either party to seek funds for, or to participate in, construction or implementation of the Project or a separable element thereof or as relieving the Local Sponsor of any future obligation under the terms of any Project Cooperation Agreement.

ARTIC III DESIGN COORDINATION TEAM

A. To provide for consistent and effective communication, the Local Sponsor and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Design Coordination Team. Thereafter, the Design Coordination Team shall meet regularly until the end of the period of design. The Government's Project Manager and a counterpart named by the Local Sponsor shall co-chair the Design Coordination Team. The Design Coordination Team shall develop a design scope and schedule for the Project. The design scope and schedule shall set forth the specific work to be accomplished by each party and shall indicate in-kind contributions to be provided by the Local Sponsor.

B. The Government's Project Manager and the Local Sponsor's counterpart shall keep the Design Coordination Team informed of the progress of the design and of significant pending issues and actions, and shall seek the views of the Design Coordination Team on matters that the Design Coordination Team generally oversees.

C. Until the end of the period of design, the Design Coordination Team shall generally oversee issues related to design, including scheduling of reports and work products, development of plans and specifications, anticipated real property and relocation requirements for construction or implementation of the Project, contract awards and modifications, contract costs, the Government's cost projections, anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement and rehabilitation of the Project, and other related matters.

D. The Design Coordination Team may make recommendations that it deems warranted to the District Engineer on matters that the Design Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government and Local Sponsor in good faith shall consider the recommendations of the Design Coordination Team. The Government, having the legal authority and responsibility for design, has the discretion to accept, reject, or modify the Design Coordination Team's recommendations.

E. The costs of participation in the Design Coordination Team during the period of design shall be included in total design costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE IV - METHOD OF PAYMENT

A. Until the Government furnishes the Local Sponsor with the results of the final accounting, the Government shall maintain current records of contributions provided by the parties and current projections of total design costs and costs due to additional work under

Article II.E. of this Agreement. At least quarterly until the end of the period of design, the Government and Local Sponsor shall provide a report setting forth all contributions provided to date and the current projections of total design costs, their respective portions of the total design costs (including in-kind contributions), of total costs due to additional work under Article II.E. of this Agreement, of each party's share of total design costs, of the local proportionate share, of the Local Sponsor's total contributions required in accordance with Articles II.B. and II.E. of this Agreement, and of the funds or in-kind contributions the Government projects to be required from the Local Sponsor in accordance with Articles II.B. and II.E. of this Agreement for the upcoming fiscal year. The Local Sponsor shall document the in-kind contributions completed to date and the projected in-kind contributions for the upcoming fiscal year to be considered in the local proportionate share. On the effective date of this Agreement, total design costs are projected to be \$757,932.00, and the Local Sponsor's contribution required under Article II.B. of this Agreement is projected to be \$189,483.00. The amount of credit to be afforded for in-kind contributions is projected to be \$207,932.00. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Local Sponsor.

B. The Local Sponsor shall provide the funds or in-kind contributions required under Article II.B. of this Agreement in accordance with the provisions of this paragraph.

1. Not later than 30 calendar days after execution of this Agreement, the Government shall notify the Local Sponsor in writing of the funds, after consideration of any credit afforded pursuant to Article XV of this Agreement, the Government determines to be required from the Local Sponsor to meet the local proportionate share through the first fiscal year of design, including the local proportionate share incurred prior to such payment. Not later than 30 calendar days after such notice, the Local Sponsor shall confirm the amount of expected funds or in-kind contributions and shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, JACKSONVILLE" to the District Engineer, or verify to the satisfaction of the Government that the Local Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Local Sponsor, or present the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or provide an Electronic Funds Transfer in accordance with procedures established by the Government.

2. For the second and subsequent fiscal years of design, the Government shall notify the Local Sponsor in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds, after consideration of any credit afforded pursuant to Article XV of this Agreement, the Government determines to be required from the Local Sponsor to meet the local proportionate share for design for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Local Sponsor shall confirm the amount of in-kind contributions for the fiscal year, and make the full amount of the required funds for that fiscal year available to the Government through the funding mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Local Sponsor such sums as the Government deems necessary to cover: (a) the cash portion of the local proportionate share for design incurred prior to the payment made under paragraph B.1 of this Article; and (b) the cash portion of the local proportionate share for design as they are incurred during the remainder of the period of design.

4. If at any time during the period of design the Government determines that additional funds, after consideration of any credit afforded pursuant to Article XV of this Agreement, will be needed from the Local Sponsor to cover the local proportionate share for design for the current fiscal year, the Government shall notify the Local Sponsor in writing of the additional funds or in-kind services required together with an explanation of why additional funds or in-kind services are required, and the Local Sponsor, no later than 30 calendar days from receipt of such notice, shall make the additional required funds or in-kind contributions available through the payment mechanisms specified in paragraph B.1. of this Article.

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.E. of this Agreement, the Local Sponsor shall provide the Government with the full amount of the funds required to pay for such additional work by delivering a check payable to "FAO, USAED, JACKSONVILLE" to the District Engineer, or verify to the satisfaction of the Government that the Local Sponsor has deposited the full amount of the funds required to pay for such additional work in an escrow or other account acceptable to the Government, with interest accruing to the Local Sponsor, or present the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or provide an Electronic Funds Transfer in accordance with procedures established by the Government. The Government shall draw from the funds provided by the Local Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the Local Sponsor must provide additional funds to pay for such additional work, the Government shall notify the Local Sponsor in writing of the additional funds required. Within 30 calendar days thereafter, the Local Sponsor shall provide the Government with the full amount of the additional required funds through the funding mechanisms specified above.

D. Upon completion of design or termination of this Agreement, and upon resolution of all relevant proceedings, claims and appeals, the Government shall conduct a final accounting and furnish the Local Sponsor with the results of the final accounting. The final accounting shall determine total design costs, each party's funds and in-kind contributions provided thereto, and each party's required share thereof. The final accounting also shall determine total costs due to additional work under Article II.E. of this Agreement and the Local Sponsor's funds and in-kind contributions provided pursuant to Article II.E. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the Local Sponsor under Articles II.B., II.E., III and VII of this Agreement is less than its required 25 percent share of total design costs plus costs due to additional work under Article II.E. of this Agreement, the Local Sponsor shall, no later than 90 calendar days after receipt of written notice, make a payment to the Government of whatever sum is required to meet the Local Sponsor's required 25 percent share of total design costs plus costs due to additional work under Article II.E. of this Agreement.

2. In the event the final accounting shows that the total funds and in-kind contributions provided by the Local Sponsor under Articles II.B., II.E., III and VII of this Agreement exceeds its required 25 percent share of total design costs plus costs due to additional work under Article II.E. of this Agreement, the Government shall afford credit to the Local Sponsor during the construction or implementation of the Project, or the Government shall, subject to the availability of funds, refund the excess to the Local Sponsor within a reasonable time. In the event existing funds are not available to refund the excess to the Local Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

E. The Government shall afford credit for the Local Sponsor's 25 percent share of total design costs required under Article II.B. of this Agreement, in accordance with this paragraph. The Government shall afford such credit only after any payment to the Government or refund to the Local Sponsor required by paragraph D. of this Article has been made. To afford such credit, the Government shall apply the amount credited toward the share that local entities are required to provide toward total project costs for the Project. Nothing in this Agreement shall be construed to obligate the Government to repay the Local Sponsor, in whole or in part, for its 25 percent share of total design costs.

1. If Federal funds are appropriated for construction or implementation of the Project, and if the Government and a local entity enter into a Project Cooperation Agreement for construction or implementation of the entire Project, then the Government shall afford credit for the entire 25 percent share.

2. If Federal funds are appropriated for construction or implementation of the Project or a separable element thereof, and if the Government and a local entity enter into a Project Cooperation Agreement for construction or implementation of such separable element, then the Government shall afford credit for such portion of the 25 percent share as is allocable to such separable element.

3. If no Federal funds are appropriated for construction or implementation of the Project or a separable element thereof, or if the Government and a local entity do not enter into a Project Cooperation Agreement for construction or implementation of the Project or a separable element, then the Government shall not afford any credit for such 25 percent share.

ARTICLE V - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VI - HOLD AND SAVE

The Local Sponsor shall hold and save the Government free from all damages arising from design for the Project and design for any Project-related betterments, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE VII - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Local Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Local Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Local Sponsor shall each allow the other to inspect such books, documents, records, or other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Local Sponsor is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Local Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Local Sponsor and independent auditors any information necessary to enable an audit of the Local Sponsor's activities under this Agreement. The costs of any local audits performed in accordance with this paragraph before the

Government furnishes the Local Sponsor with the results of the final accounting shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the Project shall be included in total design costs and cost shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Local Sponsor is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph before the Government furnishes the Local Sponsor with the results of the final accounting shall be included in total design costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE VIII - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Local Sponsor and the Government agree to 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, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army."

ARTICLE IX - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Local Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

ARTICLE X - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XI - TERMINATION OR SUSPENSION

A. If at any time the Local Sponsor fails to fulfill its obligations under Articles II.B., II.E. or IV of this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on design of the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet its share of scheduled expenditures for design for the then-current or upcoming fiscal year, the Government shall so notify the Local Sponsor in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Local Sponsor elects to terminate this Agreement, whichever occurs first.

C. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to design of the Project and proceed to a final accounting in accordance with Article IV.D. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment from the Local Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

ARTICLE XII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Local Sponsor:

Engineer Administrator
Lee County Natural Resources
P.O. Box 598
1500 Monroe Street
Ft. Myers, Florida 33092

If to the Government:

Deputy District Engineer
for Programs and Project Management
Jacksonville District
U.S. Army Corps of Engineers
P.O. Box 4970
Jacksonville, Florida 32232-0019

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XIII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XIV - OBLIGATIONS OF FUTURE APPROPRIATIONS

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

B. The Non-Federal Sponsor intends to satisfy its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose, for each fiscal period, appropriations sufficient to cover the Non-Federal Sponsor's obligations under this Agreement for each year, and will use all reasonable and lawful means to secure the appropriations for that year sufficient to make the payments necessary to fulfill its obligations hereunder. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to

discharge these obligations can and will lawfully be appropriated and made available for this purpose. In the event the budget or other means of appropriations does not provide funds in sufficient amounts to discharge these obligations, the Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to satisfy its obligations hereunder, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

ARTICLE XV – CREDIT FOR IN-KIND CONTRIBUTIONS

As provided for in Section 601(c) of the Water Resources Development Act of 2000, Public Law 106-541, the Local Sponsor shall receive credit for its provision of in-kind contributions subject to the following conditions:

- A. In-kind contributions must be for work performed during the period of design
- B. Credit for in-kind contributions for work performed after the date of this Agreement shall require advance approval by the Government of a request for that work.
- C. No final in-kind credit shall be given unless and until the District Engineer has certified that the in-kind contributions subject to credit have been performed in accordance with this Agreement and are necessary and integral to the project and are for a reasonable cost.
- D. The amount of credit for which the Local Sponsor may be eligible pursuant to this Agreement is not subject to interest charges, nor is it 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.
- E. The Local Sponsor shall obtain all applicable Federal, State and local permits required for the performance of the in-kind contributions related to design of the Project.
- F. The amount of credit or reimbursement that the Government may afford the Local Sponsor for the in-kind contributions authorized under Section 601(e) shall be subject to the applicable limitations contained in Section 102 of the Energy and Water Appropriations Act, 2000, Public Law 106-60.

ARTICLE XVI PROGRAM EXPENDITURE LIMITATION

The Government's cost sharing participation in the Project is subject to a current Federal program expenditure limitation of 103 million dollars for all projects undertaken under Section

601(c) of the Water Resources Development Act of 2000, Public Law 106-541, and a maximum Federal contribution of 12.5 million dollars for any single project under Section 601(c) of the Water Resources Development Act of 2000 (Public Law 106-541). Expenditures under this Agreement and other agreements executed for Section 601(c) projects will be cumulatively limited to this expenditure limitation, or as it may be amended. Notwithstanding any other provision of this Agreement, the Local Sponsor shall be responsible for all costs on this Project that exceed 25 million dollars or that exceed the federal program expenditure limitation of 103 million dollars.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

LEE COUNTY, FLORIDA

BY: _____

James G. May
Colonel, U. S. Army
District Engineer

BY: _____

Ray Judah
Chairman, Board of
County Commissioners

DATE: _____

1/17/03


DATE: _____

1/7/03

CERTIFICATE OF AUTHORITY

I, James G. Yaeger, do hereby certify that I am the principal legal officer of Lee County, Florida, that Lee County, Florida is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and Lee County, Florida in connection with design of the Lakes Park Restoration Project, and that the persons who have executed this Agreement on behalf of Lee County, Florida have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
7th day of Jan, 2003.


James G. Yaeger
County Attorney
Lee County, Florida

CERTIFICATION REGARDING LOBBYING

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

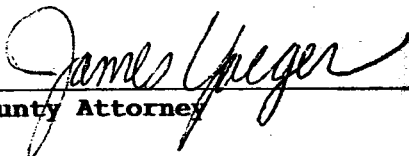
(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection 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.

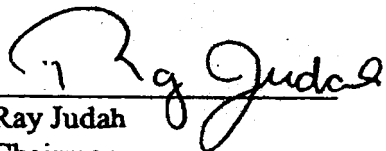
(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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.

APPROVED AS TO FORM:



County Attorney



Ray Judah
Chairman
Board of County Commissioners
Lee County, Florida

DATE: 1/7/03