

ORIGINAL

DESIGN AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
FOR THE DESIGN OF ELEMENTS OF THE
COMPREHENSIVE PLAN FOR THE EVERGLADES AND SOUTH FLORIDA
ECOSYSTEM RESTORATION PROJECT

THIS AGREEMENT entered into this 12th day of May, 2000, 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 the Chairman of its Governing Board.

WITNESSETH, THAT:

WHEREAS, the Energy and Water Development Appropriations Act for Fiscal Year 2000, Public Law 106-50, included funds for the Government to initiate design (as defined in Article I.B. of this Agreement) of elements of the Comprehensive Plan for the Everglades and South Florida Ecosystem Restoration Project (hereinafter the "Program" as defined in Article I.A. of this Agreement) at South Florida;

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

WHEREAS, Section 528(e) of the Water Resources Development Act of 1996, Public Law 104-303, and Government policy requires that the Non-Federal Sponsor cost share shall be 50 percent for the Program; and

WHEREAS, Section 208(d) of the Water Resources Development Act of 1999, Public Law 106-53, provides that the Secretary of the Army shall afford credit for work performed by Non-Federal interests at the request of the Secretary of the Army in furtherance of the design of Program features; and

WHEREAS, the Government and the Non-Federal Sponsor agree that the Non-Federal Sponsor shall contribute 50 percent of the financial obligations for design of the Program; and

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in contributing to the design in accordance with the terms of this Agreement.

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

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Program" shall mean those separable elements listed in Attachment "A" and incorporated herein by reference as if set out verbatim. Each separable element is generally described in the Central and Southern Florida Project, Comprehensive Review Study, Final, Integrated Feasibility Report and Programmatic Environmental Impact Statement, dated April 1999 and approved by the Assistant Secretary of the Army (Civil Works), on July 1, 1999 ("Comprehensive Plan"). Each separable element of the Program is also sometimes referred to herein as a "Project".

B. The term "design" shall mean all activities directly related to planning, engineering and design of the Program for which financial obligations are made or for which work is performed by either party's own forces in accordance with the terms of this Agreement, including, but not limited to the following: (1) during the period of design, preparation of the Master Program Management Plan and annual updates to the Master Program Management Plan, Project Management Plans, Project Implementation Reports, general and detailed design memoranda, plans, drawings, and specifications; (2) during the period of design, preparation of required documentation for compliance with National Environmental Policy Act, and other applicable Federal and state laws; (3) preparation and processing of applications for any Federal, State or local permits required for the design of the Program through the period of construction set forth in applicable Project Cooperation Agreements for construction of the separable Program elements and any activities required to comply with the conditions of such permit(s) during the period of construction as appropriate; (4) during the period of design, attendance by the appropriate representatives of the Non-Federal Sponsor at pre-application conferences with applicable state and federal regulatory agencies in accordance with section 373.1501, F.S. (1999) and attendance by Government representatives, as appropriate; (5) during the period of design, the legal defense of design activities in administrative hearings and in judicial proceedings, including the selection of outside counsel and expert witnesses where both parties agree such outside assistance is necessary and economical; (6) during the period of design, activities related to restoration, coordination, and verification as identified in the Comprehensive Plan, which includes, but is not limited to, adaptive assessment, monitoring, peer review, development and refinement of system level analytical model tools, and continuing review and refinement of the Comprehensive Plan; and (7) engineering and design through the period of construction set forth in applicable Project Cooperation Agreements for construction of the separable Program elements. The term shall not include any activities performed as part of reconnaissance or feasibility studies, or activities conducted as part of negotiation of Project Cooperation Agreements for separable elements of the Program, or any permits required for the operation and maintenance of a separable element of the Program after the period of construction of each separable element.

C. The term "total design costs" shall mean all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to design of the Program. The term includes but is not necessarily limited to, costs associated with completing all aspects of the design as delineated in Article I.B of this Agreement; applicable planning and evaluation; applicable engineering and design; environmental assessment and documentation; the identification, survey, and evaluation of historic properties; participation in the Design Coordination Team in accordance with Article III of this Agreement; costs of the interim and final accounting in accordance with Article IV.D. of this Agreement; and costs of maintenance of records and audit in accordance with Article VII of this Agreement. Design costs include, but are not necessarily limited to, labor charges, direct costs, overhead expenses, supervision and administrative costs, costs of contracts with third parties, including costs incurred with regard to contract disputes, suspensions, or terminations. 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 permit application fees charged to the Non-Federal Sponsor for Federal, State and local permits, except to the extent those fees would apply equally to the Government if it were seeking the permit in its own name; or any costs of negotiating Project Cooperation Agreements for separable elements of the Program.

D. The term "period of design" shall mean the time period for designing Program elements commencing on April 7, 1999 when the Notice of Intent from the Division Engineer of the U.S. Army Corps of Engineers, South Atlantic Division to submit the Comprehensive Plan to Congress was released and ending when the design of all Program elements are completed or when this Agreement is terminated by the parties in accordance with Article XI of this Agreement, whichever is sooner.

E. The term "in-kind services" shall mean work items to be performed by the Non-Federal Sponsor's own forces or performed by Non-Federal Sponsor's contractor(s) in furtherance of the design of separable Program elements.

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

G. 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.

H. The term "betterment" shall mean a change in the design of an element of the Program 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 Program that the Government would not otherwise accomplish.

I. The term "financial obligations for design" shall mean a financial obligation of the Government and/or the Non-Federal Sponsor that results or would result in a cost that is or would be included in total design costs in accordance with paragraph C of this Article.

J. The term "non-Federal proportionate share" shall mean the ratio of the Non-Federal Sponsor's total contribution required in accordance with Article II.C. of this Agreement to total financial obligations for design, as projected by the Government.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. In accordance with Article XIII of this Agreement, the Government and the Non-Federal Sponsor shall expeditiously design the Program, applying those procedures usually applied to the engineering and design of Federal projects, pursuant to applicable Federal and State laws, regulations, and policies. Each party shall perform or cause to be performed certain design work as further described in this Article. To facilitate completion of the Program design, the parties intend to cooperate closely to minimize disputes and mutually agree upon the work to be performed by each party.

B. No later than ninety (90) days after the Effective Date of this Agreement, the parties, in consultation with the Design Coordination Team referred to in Article III of this Agreement, shall complete a Master Program Management Plan. The Master Program Management Plan shall set forth the parties' expectations for proceeding with the design of the Program and establish a framework for managing and monitoring the Program design effort. Prior to the beginning of each fiscal year, the Master Program Management Plan shall be updated to incorporate any changes. The parties shall proceed in accordance with the Master Program Management Plan and any updates thereto to the maximum extent practicable. The parties will cooperate in revising or adjusting the Master Program Management Plan to ensure that the goals and objectives of the Program are met. All updates, adjustments, changes or revisions to the Master Program Management Plan shall be mutually agreed to in writing by the parties' authorized representatives.

1. The Master Program Management Plan shall include i) descriptions and cost estimates of the design work to be performed by either party, whether through third party contractors or using either party's own forces, ii) performance schedules with deadlines, including schedules for developing Project Management Plans, Project Implementation Reports, and Detailed Design Reports, iii) a schedule for planning and implementing restoration, coordination, and verification activities described in the Comprehensive Plan and the work assignments for each party for implementing these activities, and iv) a budget for the first two fiscal years of the period of design (fiscal years 1999 and 2000) and a budget for each subsequent fiscal year during the period of design.

2. As will be set forth in the Master Program Management Plan, the parties, in consultation with the Design Coordination Team, shall develop a Project Management Plan for each Project covered by this Agreement. The Project Management Plan shall include a detailed scope of work, schedules and cost estimates covering all planning, engineering and design efforts, and shall identify the work assigned to each party. Once a Project Management Plan is approved by the parties, work assigned in a Project Management Plan to the Non-Federal Sponsor shall be

deemed requested by the Secretary of the Army as in-kind services for which the Non-Federal Sponsor is entitled to receive credit in accordance with Section 208(d) of the Water Resource Development Act of 1999, Public Law 106-53. The parties shall then proceed with design of separable Program elements and produce a Project Implementation Report for each Project in accordance with the approved Project Management Plan. Subsequent design products for each Project shall include, as necessary, a Detail Design Report and construction plans and specifications.

3. The following work products shall be subject to approval by the Government and Non-Federal Sponsor: the initial Master Program Management Plan, including a detailed budget for the upcoming fiscal year and a 5-year budget forecast; annual updates of the Master Program Management Plan, including a detailed budget request for the upcoming fiscal year and updated 5-year budget forecasts; Project Management Plans for Projects; Project Implementation Reports for Projects, if developed; Detailed Design Reports, if developed, to the 30 per cent level of detail, and construction plans and specifications, if developed.

4. The award and management of any contract by the Government with a third party in furtherance of this Agreement which obligates Federal appropriations shall be exclusively within the control of the Government but shall be subject to applicable laws and regulations. The award and management of any contract by the Non-Federal Sponsor with a third party in furtherance of this Agreement which obligates funds of the Non-Federal Sponsor shall be exclusively within the control of the Non-Federal Sponsor but shall be subject to applicable Federal and State laws, regulations, and Executive Orders of the Governor of the State of Florida. The Government and the Non-Federal Sponsor shall offer each other the opportunity to review and comment on the solicitations for all contracts, including relevant scopes of work, prior to the issuance of such solicitations. To the extent possible, the Government and the Non-Federal Sponsor shall afford each other the opportunity to review and comment on all contracts modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing each other with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the issuing party shall provide such notification in writing at the earliest date possible. To the extent possible, the Government and the Non-Federal Sponsor shall afford each other the opportunity to review and comment on all contract claims prior to resolution thereof. Each party shall consider in good faith the comments of the other, 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 (whether the work is performed under contract or by in-house personnel), shall be exclusively within the control of the party that is responsible for the design of the particular Project or separable element.

C. The Non-Federal Sponsor shall provide, during the period of design, a contribution of in-kind services and, if necessary, cash contribution(s) equal to 50 percent of the total design costs, in accordance with the provisions of this paragraph.

1. As authorized by Section 208 of Public Law 106-53, the Government may afford credit for the in-kind services. The affording of such credit shall be subject to a technical review

by the Government to verify that the credited work was accomplished in a satisfactory manner and in accordance with the limitations contained in this Agreement. To afford any such credit, the Government shall apply the amount of credit toward the Non-Federal Sponsor's share of total design costs and such credit shall likewise be applied toward the cash contribution required by paragraph C.2. of this Article. The amount of credit shall not exceed the Non-Federal Sponsor's actual costs attributable to the in-kind services. The amount of credit shall be subject to an audit in accordance with Article VII.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The amount of credit shall not exceed the Non-Federal Sponsor's share of total design costs.

2. If the Government projects that the value of the Non-Federal Sponsor's contributions under paragraph C.1. of this Article and Articles III and VII of this Agreement will be less than 50 percent of total design costs, the Non-Federal Sponsor shall provide a cash contribution, in accordance with Article IV.B. of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total contribution of in-kind services and cash equal to 50 percent of total design costs.

3. If the Government determines that the value of the Non-Federal Sponsor's contributions provided under paragraphs C.1. and C.2. of this Article and Articles III and VII of this Agreement has exceeded 50 percent of total design costs, the procedures specified in Article IV.D.2. of this Agreement shall govern.

D. The Government and the Non-Federal Sponsor shall perform a final accounting in accordance with Article IV.D. of this Agreement to determine the contributions provided by the Non-Federal Sponsor in accordance with paragraphs C. and F. of this Article and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs C. and F. of this Article.

E. The Non-Federal Sponsor shall not use Federal funds to meet the Non-Federal 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.

F. The Non-Federal 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 Non-Federal 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 Non-Federal 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.

G. This Agreement shall not be construed as obligating either party to seek funds for, or to participate in, construction or implementation of the Program or a separable element thereof.

H. In addition to any other limitations contained in this Agreement, the affording and the amount of credit for in-kind services is subject to the following additional limitations.

1. No credit shall be given unless and until the District Engineer has certified that the in-kind services subject to credit pursuant to this Agreement have been performed in accordance with this Agreement.

2. The amount of credit for which the Non-Federal 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 services are completed and the time that the credit is afforded.

3. The Non-Federal Sponsor shall obtain all applicable Federal, State and local permits required for the performance of the in-kind services related to design of the Program.

ARTICLE III - DESIGN COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal 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. A technical representative of the Florida Department of Environmental Protection shall be invited to participate in Design Coordination Team activities. The Government's Program Manager and the Non-Federal Sponsor's Program Manager shall co-chair the Design Coordination Team.

B. The Government's Program Manager and the Non-Federal Sponsor's Program Manager 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 review of: 1) design schedules and budgets; 2) design plans and work products including, Project Management Plans, Project Implementation Reports, and Detailed Design Reports; 3) construction plans and specifications; 4) proposed updates of the Master Program Management Plan; 5) real property and relocation requirements for construction or implementation of the Program; 6) contract scopes of work, modifications and contract costs; 7) Program and Project cost projections; 8) anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement and rehabilitation of a Project; 9) restoration, coordination, and verification as described in the Comprehensive Plan; and 10) other related matters. The goal of this review, among other things, shall be to ensure, to the maximum extent practicable, that the Government and the Non-Federal Sponsor agree on the design work that is to be performed under this Agreement and the scheduling and total design costs for that work.

D. Until the end of the period of design, the Design Coordination Team shall regularly review the following items to assure that the design work is proceeding cost-effectively and within budget: 1) each party's contribution of funds and services to the Program; 2) total costs due to betterments; 3) a comparison of the total design cost estimates to the actual total design costs when incurred; 4) updated projections of separable Program element costs and total design costs, and the amount of funding and in-kind services required from the parties for the upcoming fiscal year; and 5) staff time and design expenses incurred by each party. The parties also agree to work together towards maximizing opportunities for participation by small businesses and minority/women owned businesses in accordance with each party's respective policies and programs for such initiatives.

E. The Design Coordination Team may make recommendations that it deems warranted to the District Engineer and the Non-Federal Sponsor's Executive Director or their designees on matters that the Design Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government and the Non-Federal Sponsor in good faith shall consider the recommendations of the Design Coordination Team.

F. The costs of participation of the Government and the Non-Federal Sponsor 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 Non-Federal Sponsor with the results of the final accounting, the Government and the Non-Federal Sponsor shall maintain current records of contributions provided by each other and current projections of total design costs and costs due to additional work under Articles II.F. and XIV of this Agreement. At least quarterly, the Government and the Non-Federal Sponsor shall provide each other with a report setting forth all contributions provided to date and the current projections of the following: (1) total design costs; (2) total costs due to additional work under Articles II.F. and XIV of this Agreement; (3) each party's share of total design costs; (4) the non-Federal proportionate share; (5) the Non-Federal Sponsor's total contributions required in accordance with Articles II.C., II.F., and XIV of this Agreement; and (6) the funds to be required from the Non-Federal Sponsor in accordance with Articles II.C., II.F., and XIV of this Agreement for the upcoming fiscal year. On the Effective Date of this Agreement, total design costs are projected to be \$712,466,028, and the Non-Federal Sponsor's total contribution, including cash and in-kind services, required under Article II.C. of this Agreement is projected to be \$356,233,014. Such amounts are estimates subject to adjustment by the Government and the Non-Federal Sponsor and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. If necessary, the Non-Federal Sponsor shall provide the cash contribution required under Article II.C. of this Agreement in accordance with the provisions of this paragraph.

1. Not later than 30 calendar days after the completion of the Master Program Management Plan, the Government shall notify the Non-Federal Sponsor in writing of the cash contribution the Government, after consideration of any in-kind services contributions by the Non-Federal Sponsor pursuant to Article II.C. of this Agreement, determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for design through the first two fiscal years of the period of design (fiscal years 1999 and 2000), including the non-Federal proportionate share of expended financial obligations for design. Not later than 60 calendar days after such notice the Non-Federal Sponsor shall provide the Government on a quarterly basis the amount of the required cash contribution, in a manner to meet all third party obligations and in-house labor, by delivering a check payable to "FAO, USAED, JACKSONVILLE" to the District Engineer, or verify to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in the existing escrow account which the Non-Federal Sponsor maintains on behalf of the Government, with interest accruing to the Non-Federal 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. If necessary, for the third (fiscal year 2001) and subsequent fiscal years of design, the Government shall notify the Non-Federal Sponsor in writing, no later than 120 calendar days prior to the beginning of that fiscal year, of the cash contributions the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for design for that fiscal year. In calculating the amount of the cash contribution, the Government shall take into consideration the Non-Federal Sponsor's in-kind services and cash contributions for prior fiscal years as well as projected in-kind service and cash contributions for the next two fiscal years. On October 1, or the first business day of the fiscal year, the Non-Federal Sponsor shall, on a quarterly basis, make the amount of the required cash contribution for that fiscal year available to the Government through the funding mechanisms specified in paragraph B.1. of this Article in a manner to meet all third party obligations and in-house labor.

3. The Government and the Non-Federal Sponsor acknowledge that the progress of orderly work may require the Non-Federal Sponsor to provide cash or in-kind services at a rate that may result in the Non-Federal Sponsor temporarily diverging from the cost sharing obligations specified in Article II.C. of this Agreement. Such temporary divergences shall not alter the cost sharing obligations specified in Article II.C. of this Agreement. The Government shall monitor the provision of cash and in-kind services and manage, to the maximum extent practicable, the Non-Federal Sponsor's requirement to provide cash and in-kind services so that the Non-Federal Sponsor's contributions equal a 50 percent proportionate share during each three year fiscal period beginning with commencement of design of the Program.

4. If necessary, the Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for design incurred during the first two fiscal years of the period of design (fiscal years 1999 and 2000); and (b) the non-Federal proportionate share of financial obligations for design as they are incurred during the remainder of the period of design.

5. If necessary, after consideration of any cash and/or in-kind services contributions by the Non-Federal Sponsor pursuant to Article II.C. and Article IV.B.2. of this Agreement, if at any time during the period of design the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the non-Federal proportionate share of projected financial obligations for design for the current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required together with an explanation of why additional funds are required. The Non-Federal Sponsor may review and comment in writing on the request for additional funds no later than 30 days from receipt of Government's notification. The Government shall respond in writing to the Non-Federal Sponsor's comments before it is required to make payment. The Non-Federal Sponsor shall, no later than 30 calendar days from receipt of the Government's response, make the additional required funds available through the payment mechanisms specified in paragraph B.1. of this Article. The Design Coordination Team shall carry out its duties under Article III of this Agreement to provide the parties with timely cost and budgeting information to optimize the use of available funds and to prevent the award of any contract or performance of any work that would exceed available funding and to provide adequate advance notice to the Non-Federal Sponsor of any anticipated cash payment well in advance of the written notice from the Government.

C. In advance of the Government incurring any financial obligation associated with additional work under Articles II.F. and XIV of this Agreement, the Non-Federal 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 Non-Federal Sponsor has deposited the full amount of the funds required to pay for such additional work in the existing escrow account which the Non-Federal Sponsor maintains, with interest accruing to the Non-Federal 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 Non-Federal 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 Non-Federal Sponsor must provide additional funds to pay for such additional work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required. The Non-Federal Sponsor may review and comment in writing on the request for additional funds no later than 30 days from receipt of Government's notification. The Government shall respond in writing to the Non-Federal Sponsor's comments before it is required to make payment. The Non-Federal Sponsor shall, no later than 30 calendar days from receipt of the Government's response, provide the Government with the full amount of the additional required funds through the funding mechanisms specified above.

D. Upon completion of design for all projects or termination of this Agreement, and upon resolution of all relevant proceedings, claims and appeals, the Government and the Non-Federal Sponsor shall conduct a final accounting. The final accounting shall determine total design costs, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine total costs due to additional work under Articles II.F. and XIV of

this Agreement and the Non-Federal Sponsor's contribution provided pursuant to Articles II.F. and XIV of this Agreement. The Non-Federal Sponsor may request that the Government perform an interim accounting upon completion of the design of each separable element of the Program.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor under Article II.C. of this Agreement is less than its required 50 percent share of total design costs plus costs due to additional work under Articles II.F. and XIV of this Agreement, the Non-Federal Sponsor may no later than 30 calendar days after receipt of written notice (which provides an explanation of why additional funds are required) review and comment in writing on the request for additional funds. The Government shall respond in writing to the Non-Federal Sponsor's comments before the Non-Federal Sponsor is required to make payment. The Non-Federal Sponsor shall, no later than 30 calendar days from receipt of the Government's response, make a payment to the Government of whatever sum is required to meet the Non-Federal Sponsor's required 50 percent share of total design costs plus costs due to additional work under Articles II.F. and XIV of this Agreement. The Design Coordination Team shall carry out its duties under Article III of this Agreement to provide the parties with timely cost and budgeting information to optimize the use of available funds and to prevent the award of any contract or performance of any work that would exceed available funding and to provide adequate advance notice to the Non-Federal Sponsor of any anticipated cash payment well in advance of the written notice from the Government.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor exceeds its required 50 percent share of total design costs plus costs due to additional work under Articles II.F. and XIV of this Agreement, the Government shall, subject to the availability of funds, refund the amount of the excess contribution to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or the Non-Federal Sponsor may elect to apply the amount in excess of its required 50 percent contribution as a credit attributable to the Program during the construction or implementation of a separable element of the Program.

ARTICLE V - DISPUTE RESOLUTION

A. The parties shall cooperate in good faith in resolving disputes under this Agreement at the lowest organizational level before seeking to elevate a dispute. With regard to any dispute under this Agreement, including but not limited to: 1) the failure to complete or update the Master Program Management Plan or Project Management Plans; 2) a dispute with regard to a proposed change to the Master Program Management Plan or a Project Management Plan; or 3) a party's failure to approve a matter as provided under this Agreement, and as a condition precedent to a party bringing any suit for breach of this Agreement, the party must first notify the other party in writing of the nature of the purported breach or other dispute and seek in good faith to resolve the dispute through negotiation. The parties shall first refer the matter for resolution to the Program managers in consultation with the Design Coordination Team. If not resolved, the matter shall be elevated for resolution to the Deputy District Engineer for Programs and Project

Management for the Jacksonville District and the Non-Federal Sponsor's Deputy Executive Director for Water Resource Management, or their designees. If not resolved, the matter shall be elevated to the District Engineer, U.S. Army Corps of Engineers, Jacksonville District, and the Non-Federal Sponsor's Executive Director, or their designees. If not resolved, the matter may be further elevated to the Division Engineer of the U.S. Army Corps of Engineers, South Atlantic Division, or a designee. If not resolved, the matter may be further elevated to the Chief of Engineers, or a designee. If not resolved, the matter may be further elevated to the Assistant Secretary of the Army for Civil Works, or a designee, for a decision on the dispute and whose decision shall be final.

B. At any time, the parties 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.

C. Once dispute resolution has been exhausted, the parties may avail themselves of any remedies available at law or in equity. Either party may also elect not to initiate follow-on work relating to separable Program elements at the following decision points: (1) after completion of a Project Management Plan; or (2) after completion of a Project Implementation Report; or (3) after completion of a Detailed Design Report to the 30 percent level of detail.

ARTICLE VI - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from the design for the Program and design for any Program-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 Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to total design 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 Non-Federal 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 final accounting for which such books, records, documents, or other evidence were required in accordance with Article IV.D. of this Agreement. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal 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 Non-Federal 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 Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's and the Government's activities under this Agreement. The costs of any audits performed in accordance with this paragraph before the Government furnishes the Non-Federal 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 Program 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 Non-Federal 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 Non-Federal 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 Non-Federal Sponsor and the Government agree to comply with any provisions of Federal and State laws and regulations that apply to each respective party, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army", and Chapter 373, Florida Statutes (1999), including Section 373.1501, Florida Statutes (1999).

ARTICLE IX - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal 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 Non-Federal Sponsor fails to fulfill its obligations under this Agreement, then subject to the provisions of dispute resolution under Article V of this Agreement, the Government may terminate or suspend future performance under this Agreement.

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 Non-Federal 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 Non-Federal 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 Program 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 Non-Federal 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, or by facsimile with confirmed receipt from the recipient, as follows:

If to the Non-Federal Sponsor:

Executive Director or designee
South Florida Water Management District
Post Office Box 24680
West Palm Beach, Florida 24680
Fax Number: (561) 687-6397

If to the Government:

District Engineer or designee
Jacksonville District
P.O. Box 4970
Jacksonville, Florida 32232-0019
Fax Number (904) 232 -3692

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 - OBLIGATIONS OF FUTURE APPROPRIATIONS

Nothing herein shall constitute, nor be deemed to constitute an obligation for future appropriations by the Government. The Department of the Army agrees that, consistent with the authority provided in Section 528(b) of Public Law 104-303, as amended, 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 share of total design costs. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by 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 share of total design costs, consistent with applicable law and rules.

ARTICLE XIV- DESIGN OF PROGRAM FEATURES TO IMPROVE WATER QUALITY

All separable Program elements shall be designed to take into account the improvement and protection of water quality by considering applicable water quality standards. The cost of design of water quality features already included in the Comprehensive Plan have been deemed essential to Everglades Restoration and shall be included in total design costs and cost shared in accordance with the provisions of this Agreement. Any additional water quality features to be added to a Project require the written concurrence of the Government and the Non-Federal Sponsor. Design of additional water quality features shall be paid 100 percent by the Non-Federal Sponsor unless the Government

determines that such features are essential to Everglades Restoration in which case costs for such features shall be included in total design costs and cost shared in accordance with the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date ("Effective Date") it is signed by Assistant Secretary of the Army (Civil Works).

THE DEPARTMENT OF THE ARMY

THE SOUTH FLORIDA WATER
MANAGEMENT DISTRICT, BY ITS
GOVERNING BOARD

BY: *Joseph W. Westphal*
Joseph W. Westphal
Assistant Secretary of the Army
(Civil Works)

BY: *Michael Collins*
Michael Collins
Chairman

Date: 12 May 2000

Date: 12 May 2000

LEGAL FORM APPROVED
SFWMD OFFICE OF COUNSEL
BY *Alan Lopez* DATE 5/10/2000

SFWMD Procurement Approved
By *Maghala*
Date 5/10/2006

CERTIFICATE OF AUTHORITY

I, John Fumero, 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 the Agreement between the Department of the Army and the South Florida Water Management District in connection with design of the Central and South Florida Project, and that the persons who have executed this Agreement on behalf of the South Florida Water Management District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

10th day of May 2000.



John Fumero
General Counsel
South Florida Water
Management District

CERTIFICATION REGARDING LOBBYING

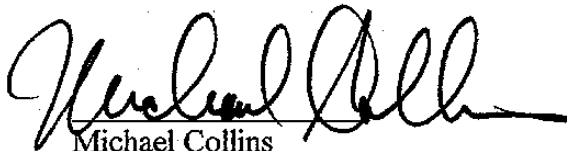
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.



Michael Collins
Chairman
South Florida Water
Management District

DATE: 12 May 2000

LEGAL FORM APPROVED
SFWMD OFFICE OF COUNSEL
BY Chs Corp DATE 5/10/2000

DESIGN AGREEMENT ATTACHMENT "A"

Project Title	Comp. Plan Section
North of Lake Okeechobee Storage Reservoir	9.1.1.1
Taylor Creek Nubbin Slough Storage and Treatment Area	9.1.1.2
Lake Okeechobee Watershed Water Quality Treatment Facilities	9.1.1.3
Lake Okeechobee Tributary Sediment Dredging	9.1.1.4
Lake Istokpoga Regulation Schedule	9.1.1.5
Lake Okeechobee Aquifer Storage and Recovery	9.1.2.1
C-43 Basin Storage Reservoir and Aquifer Storage and Recovery	9.1.3.1
Caloosahatchee Backpumping with Stormwater Treatment	9.1.3.2
C-44 Basin Storage Reservoir	9.1.4.1
C-23/C-24/C-25/Northfork and Southfork Storage Reservoirs	9.1.4.2
Everglades Agricultural Storage Reservoirs	9.1.5.1
Big Cypress/L-28 Interceptor Modifications	9.1.6.1
Flow to Northwest and Central Water Conservation Area 3A	9.1.7.1
Water Conservation Area 3 Decompartmentalization and Sheetflow Enhancement	9.1.7.2
Loxahatchee National Wildlife Refuge Internal Canal Structures	9.1.7.3
Pal-Mar and J.W. Corbett Wildlife Management Area Hydropattern Restoration	9.1.8.1
Water Preserve Areas/L-8 Basin	9.1.8.2
Acme Basin B Discharge	9.1.8.3
Lake Worth Lagoon Restoration	9.1.8.4
C-17 Backpumping and Treatment	9.1.8.6
C-51 Backpumping and Treatment	9.1.8.7
C-51 Regional Groundwater Aquifer Storage and Recovery	9.1.8.8
Palm Beach County Agricultural Reserve Reservoir and Aquifer Storage and Recovery	9.1.8.9
Protect and Enhance Existing Wetland Systems along Loxahatchee National Wildlife Refuge including the Strazzulla Tract	9.1.8.10
Site 1 Impoundment and Aquifer Storage and Recovery	9.1.8.11
Broward County Secondary Canal System	9.1.8.12
Western C-11 Diversion Impoundment and Canal and Water Conservation Areas 3A and 3B Levee Seepage Management	9.1.8.13
C-9 Stormwater Treatment Area/Impoundment	9.1.8.14
North Lake Belt Storage Area	9.1.8.15
Diverting Water Conservation Area 2 and 3 flows to Central Lake Belt Storage Area	9.1.8.16
Central Lake Belt Storage Area	9.1.8.17
Dade-Broward Levee/Pennsuco Wetlands	9.1.8.18
C-4 Control Structures	9.1.8.19
Bird Drive Recharge Area	9.1.8.20
L-31N Improvements for Seepage Management and S-356 Structures	9.1.8.21
Biscayne Bay Coastal Wetlands	9.1.8.23

Project Title	Comp. Plan Section
C-111N Spreader Canal	9.1.8.26
Southern Golden Gate Estates Restoration	9.1.9.1
Florida Keys Tidal Restoration	9.1.10.1
Lake Okeechobee Regulation Schedule	9.2.1.1
Environmental Water Supply Deliveries to the Caloosahatchee Estuary	9.2.2.1
Environmental Water Supply Deliveries to St. Lucie Estuary	9.2.3.1
Everglades Rain-Driven Operations	9.2.4.1
Modified Holey Land Wildlife Management Area Operation Plan	9.2.4.2
Modified Rotenberger Wildlife Management Area Operation Plan	9.2.4.3
Change Coastal Wellfield Operations	9.2.5.1
Lower East Coast Utility Water Conservation	9.2.5.2
Operational Modification to Southern Portion of L-31N and C-111	9.2.5.3
Lake Okeechobee Aquifer Storage and Recovery Pilot Project	9.3.1
Caloosahatchee River (C-43) Basin Aquifer Storage & Recovery Pilot Project	9.3.2
Site 1 Impoundment and Aquifer Storage and Recovery Pilot Project	9.3.3
In-Ground Reservoir Technology Pilot Project	9.3.4
L-31N Seepage Management Pilot Project	9.3.5
Reuse Technology Pilot Project	9.3.6