

INTERGOVERNMENTAL AGREEMENT
AMONG
THE U.S. DEPARTMENT OF THE ARMY,
THE U.S. DEPARTMENT OF THE INTERIOR, AND
THE STATE OF FLORIDA
FOR

ESTABLISHMENT OF AN INDEPENDENT SCIENTIFIC REVIEW PANEL PURSUANT TO
SECTION 601 OF THE WATER RESOURCES DEVELOPMENT ACT OF 2000

ARTICLE I - PURPOSE AND AUTHORITY

This Intergovernmental Agreement ("Agreement") is entered into amongst the U.S. Department of the Army ("DA"), the U.S. Department of the Interior ("DOI"), and the State of Florida (collectively referred to as the "Implementing Parties") for the purpose of establishing an Independent Scientific Review Panel ("Panel") to be convened by the National Academy of Sciences ("NAS") for the sole purpose of reviewing the Comprehensive Everglades Restoration Plan's ("Plan") progress towards achieving the natural system restoration goals of the Plan. This Agreement is entered into by the Implementing Parties, represented by the signatories hereto, pursuant to Section 601(j)(1) of the Water Resources Development Act of 2000 (WRDA 2000) and the programmatic regulations promulgated pursuant to section 601(h) of WRDA 2000.

ARTICLE II – MISSION OF THE PANEL

The Implementing Parties agree, pursuant to Section 601(j)(1) of WRDA 2000, that the sole mission of the Panel shall be to review the Plan's progress towards achieving the natural system restoration goals of the Plan. The Implementing Parties further agree that, pursuant to the Section 601(j)(1) of WRDA 2000, the Panel will submit a biennial report to Congress and the Implementing Parties that includes an assessment of the ecological indicators and other measures of progress in restoring the ecology of the natural system based on the Plan. The Implementing Parties agree that the Panel will be independent of any other panel convened by NAS, the Implementing Parties, or any other entity associated with implementing or reviewing the Plan.

ARTICLE III – RESPONSIBILITIES OF THE IMPLEMENTING PARTIES

A. In support of the efforts outlined in Article II, the Implementing Parties agree to the Scope of Work for the Panel set forth in Attachment A to this Agreement. This Scope of Work will be incorporated into a cooperative agreement between the NAS and DA. The Implementing Parties acknowledge that they have consulted with the South Florida Ecosystem Restoration Task Force ("TF") on this Scope of Work for the mission of the panel.

B. The Implementing Parties agree to confer with one another and consult with the TF on the proposed list of Panel members prepared by NAS prior to NAS convening the Panel.

C. The Implementing Parties agree that they will not attempt to influence the Panel or assign any other work items or request any advice on matters that are outside the mission of the Panel as specified in Article II of this Agreement.

D. The Implementing Parties agree to cooperate with and be responsive in a timely manner to reasonable requests from the Panel for information the Panel needs to complete the objectives set forth in Article II of this Agreement.

E. The Implementing Parties and NAS will jointly establish annual activities plans and budgets to fulfill the requirements of the Panel's mission as set forth in Article II of the Agreement.

F. The Implementing Parties agree that the DA, U.S. Army Corps of Engineers, Jacksonville District shall enter into a cooperative agreement with NAS on behalf of the Implementing Parties that will set forth the understandings of the Jacksonville District and NAS concerning the accomplishment of the review and production of the biennial report envisioned in Article II of this Agreement.

G. NAS shall appoint a committee in accordance with its policies and procedures implementing Section 15 of the Federal Advisory Committee Act, 5 U.S.C. App. Section 15 (FACA). The Implementing Parties shall have an opportunity to provide input to the Academy's committee selection process to the fullest extent available under Section 15 of the Federal Advisory Committee Act ("FACA") and NAS's policies and procedures implementing Section 15 of FACA.

ARTICLE IV - INTERGOVERNMENTAL COMMUNICATIONS

To provide for consistent and effective communication between the Implementing Parties, each party shall appoint a Technical Representative to serve as its central point of contact on matters relating to this Agreement.

ARTICLE V - FUNDING

Subject to the availability of appropriations, the Implementing Parties agree that all costs associated with establishing the Panel and with the Panel carrying out its duties as outlined in the attached Scope of Work will be paid by the DA pursuant to a separate cooperative agreement between the DA and the NAS. The Implementing Parties further agree that these costs shall be shared 50 percent by the DA and DOI, and 50 percent by the State of Florida. To meet requirements of Florida law, the State of Florida's liability each year shall be limited to a "not to exceed" amount established through the Annual Budget and Activities Plan to be jointly approved by the Implementing Parties. The total estimated cost of performance of the cooperative agreement for the five (5) year period of performance is expected to be \$ 2.3 million. However, the final amount shall be established through the Annual Budget and Activities Plan. The DOI liability will be paid each

year on a reimbursable basis. The DA and the State of Florida's financial obligations under this Agreement shall be included as part of the costs of design as covered in the Design Agreement dated May 12, 2000 between the U.S. Army Corps of Engineers and the South Florida Water Management District.

ARTICLE VI – ABILITY TO ESTABLISH OTHER INDEPENDENT SCIENTIFIC REVIEW PANELS

Nothing in this Agreement shall affect the rights of the Implementing Parties in their individual capacities to convene independent scientific or peer review panels on matters not covered by this Agreement when deemed necessary to conduct scientific and technical reviews for effective implementation of the Plan.

ARTICLE VII – AMENDMENT AND TERMINATION

This Agreement and all attachments hereto may be modified or amended only by written, mutual agreement of the Implementing Parties. This Agreement shall terminate five (5) years from its effective date, unless extended in writing in five (5) year increments after consultation with the TF. Any party may terminate its participation in this Agreement at any time by providing ninety days written notice to the other parties. Termination of this Agreement by individual parties shall not constitute termination of the Agreement between the remaining parties.

ARTICLE VIII - MISCELLANEOUS

A. Other Relationships or Obligations

This Agreement shall not affect any pre-existing or independent relationships or obligations between and among the Implementing Parties.

B. Survival

Performance of obligations incurred prior to the expiration or termination of this Agreement shall remain in force notwithstanding the expiration or termination of this Agreement.

C. Severability

If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

ARTICLE IX - EFFECTIVE DATE

This Agreement shall become effective when signed by all Implementing Parties. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile copy of this Agreement and any signatures hereon shall be considered for all purposes as originals.

U.S. Department of the Army

By: John Paul Woodley, Jr.
John Paul Woodley, Jr.

Title: Assistant Secretary of the Army
(Civil Works)

Date: June 14, 2004

U.S. Department of the Interior

By: _____

Title: _____

Date: _____

State of Florida

By: _____

Title: _____

Date: _____

C. Severability

If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

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U.S. Department of the Army

By: _____

Title: _____

Date: _____

U.S. Department of the Interior

By: *[Signature]*
Assistant Secretary

Title: Fish and Wildlife and Parks

Date: 6-11-04

State of Florida

By: _____

Title: _____

Date: _____

C. Severability

If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

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U.S. Department of the Army

By: _____

Title: _____

Date: _____


U.S. Department of the Interior

By: _____

Title: _____

Date: _____

State of Florida

By: 

Executive Director

Title: South Florida Water Management District

Date: 6/11/04

**Scope of Work
Independent Scientific Review Panel
Comprehensive Everglades Restoration Plan**

Introduction

The Department of the Army (Army), Department of the Interior (Interior) and the Governor of the State of Florida (State) have considered various options for establishing an independent scientific review panel to conduct an ongoing review of the progress achieved by the implementation of the Comprehensive Everglades Restoration Plan (the Plan) in achieving the restoration goals of the plan. Following these deliberations, the Army, Interior, and State have agreed that through an agreement with the National Academy of Sciences (NAS), the NAS shall conduct the initial review of progress because of its scientific expertise, reputation for objectivity, and its lack of direct involvement in implementing the Plan. This initial review of progress will cover a five-year period. As required by section 601(j) of the Water Resources Development Act of 2000, the panel will produce a biennial report to Congress that includes an assessment of ecological indicators and other measures of progress in restoring the ecology of the natural system, based on the Plan.

Background

The Comprehensive Everglades Restoration Plan provides a blueprint for the restoration and preservation of the south Florida ecosystem, while providing for other water-related needs of the region, including water supply and flood protection. This nationally and internationally known ecosystem that comprises south Florida has deteriorated significantly over the past 50 years, and the outlook for the future, without implementation of the Plan, shows further degradation. Water management practices have disrupted the natural timing, quantity, quality and distribution of water to the natural system and the size of the remaining natural system has been substantially reduced as a result of development in south Florida.

On December 11, 2000, the Water Resources Development Act of 2000 (WRDA 2000) (Public Law 106-541) was enacted. WRDA 2000 approved the Comprehensive Everglades Restoration Plan, authorized an initial set of projects, and included a number of provisions concerning implementation of the plan. Section 601(j) of WRDA 2000 states:

“INDEPENDENT SCIENTIFIC REVIEW-

(1) IN GENERAL- The Secretary, the Secretary of the Interior, and the Governor, in consultation with the South Florida Ecosystem Restoration Task Force, shall establish an independent scientific review panel convened by a body, such as the National Academy of Sciences, to review the Plan's progress toward achieving the natural system restoration goals of the Plan.

(2) REPORT- The panel described in paragraph (1) shall produce a biennial report to Congress, the Secretary, the Secretary of the Interior, and the Governor that includes an assessment of ecological indicators and other measures of progress in restoring the ecology of the natural system, based on the Plan.”

WRDA 2000 also requires the promulgation of programmatic regulations to ensure that the goals and purposes of the Plan are achieved. The programmatic regulations, effective on December 12, 2003, establish processes and procedures that guide the U.S. Army Corps of Engineers in the implementation of the Plan. Section 385.22 of the programmatic regulations provides specific direction concerning the independent scientific review panel.

The Secretary of the Army, the Secretary of the Interior, and the Governor of the State of Florida, in consultation with the South Florida Ecosystem Restoration Task Force, agreed to designate NAS to conduct the initial independent scientific review panel (“Panel”) that will perform the tasks required by Section 601(j) of the Water Resources Development Act of 2000. Based on this recommendation, Army, Interior, and the State in consultation with the South Florida Ecosystem Restoration Task Force, have entered into an Intergovernmental Agreement designating the Department of the Army, U.S. Army Corps of Engineers, Jacksonville District as the contracting entity with NAS.

Scope of Work

1. Under the authority of section 601(j) of WRDA 2000 and the Intergovernmental Agreement, the Army shall enter into an agreement with the NAS to conduct an independent scientific review panel to review the Plan's progress toward achieving the natural system restoration goals of the Plan as set forth in the Scope of Work. NAS will accomplish this review using an expert and objective panel convened in accordance with its policies and procedures implementing Section 15 of the Federal Advisory Committee Act, 5 U.S.C. App. Section 15 (FACA).

2. The Panel will review the Plan's progress toward achieving the natural system restoration goals of the Plan and produce a biennial report to Congress, the Secretary of the Army, the Secretary of the Interior, and the Governor that includes an assessment of ecological indicators and other measures of progress in restoring the ecology of the natural system, based on the Plan.

General Provisions

1. This scope of work is for a five-year period commencing with execution of the cooperative agreement. . Upon mutual agreement between Army and NAS, Army may extend this agreement in five-year increments.

2. The Panel's sole mission shall be to review the Plan's progress toward achieving the natural system restoration goals of the Plan and to produce the biennial report.

a. The NAS will not assign the Panel any other tasks, nor request any advice on any other matter, nor will the Panel accept any other tasks nor provide advice on any other matter, to any entity, whether Federal, State or local, whether public or private.

b. The Army, Interior, the State, and the South Florida Ecosystem Restoration Task Force and its members, will not attempt to influence the Panel or assign this panel any other tasks, nor request any advice on any other matter.

3. The Army, Interior, and the State retain the right and ability to establish other independent scientific review panels or external peer reviews when deemed necessary by those agencies for conducting specific scientific and technical reviews concerning other matters not covered by this scope of work.

4. The Army, Interior, and the State will cooperate with the Panel, including responding to reasonable requests for information concerning the implementation of the Plan. Requests should be made through the technical representative of Army.

5. The Panel will meet with the technical representatives from Army, Interior and the State, as needed, to discuss the current status of the Plan and scientific issues involved in implementing the Plan, and to review draft products addressing the assessment of the Plan's progress in meeting the restoration goals and objectives. The number and duration of meetings will be established in the annual activities plans and budgets to be jointly developed and approved by the parties. These meetings will be scheduled and organized with an effort to minimize impacts on the schedules of Army, Interior and State staff.

Schedule

1. NAS will provide a notice of the provisional panel membership when it is posted publicly on the NAS web site; and the NAS will accept comments from Army, Interior and the State in accordance with Section 15 of the Federal Advisory Committee Act ("FACA") and NAS's policies and procedures implementing Section 15 of FACA. The Implementing Parties shall have an opportunity to provide input to the Academy's panel selection process to the fullest extent available under Section 15 of FACA. Additionally, the NRC staff will afford Army, Interior and the State the opportunity to suggest candidates for the panel, early in the process when the NRC endeavors to identify the most complete, qualified pool of candidates for the activity.

2. NAS will appoint the Panel and use its best efforts to convene an initial meeting of the panel within 75 days of execution of the cooperative agreement. During this first meeting and annually thereafter, the Panel will meet with the technical representatives from Army, Interior and the State to develop an annual activities plan and budget.

3. NAS will prepare the initial biennial report and submit it to Congress not later than two years from the date of execution of the cooperative agreement. Subsequent reports will be prepared and submitted at two-year intervals from the date of execution of the cooperative agreement.

Deliverables

1. NAS will provide the biennial reports to Congress and technical representatives at the Army, Interior, and the State. NAS will provide the biennial report to the Senate Environment and Public Works Committee, the House of Representatives Transportation and Infrastructure Committee, the Army, Interior, and the State. The report will also be provided to other committees or members of Congress on request. NAS and technical representatives of Army, Interior and the State will agree on the number of copies during the annual activities plan meeting.

2. To enable Army, Interior and the State to respond promptly to inquiries from Congress, State Legislators and the public, NAS will provide the Army, Interior, and State technical representatives with copies of the biennial reports six (6) business days before the biennial reports are to be submitted to Congress and the public. NAS also will provide an oral briefing to Army, Interior, and the State at least five (5) business days before the biennial reports are to be submitted to Congress and the public, and prior to any press releases related to the conclusions or recommendations of the review. The NAS reserves the right to release the report to Congress, Army, Interior and the State, and the public immediately if it were leaked following briefings to the Army, Interior, and the State, or if requested by Congress.

3. All reports shall be furnished in the electronic and printed format agreed to with the Grants Officer's Technical Representative. The electronic deliverables must be suitable for posting on a Website. Until otherwise agreed, acceptable electronic formats are MS Word 2000 or higher, Adobe Acrobat Version 5.0 or higher. When required, the panel shall furnish maps, images, and presentation data in ARC View 3.1 formats.