

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
FOR CONSTRUCTING AND OPERATING, MAINTAINING, REPAIRING,
REPLACING, AND REHABILITATING
THE CENTRAL EVERGLADES PLANNING PROJECT (EVERGLADES AGRICULTURAL
AREA PHASE)

THIS AGREEMENT is entered into this _____ day of _____, 20__, by and between the DEPARTMENT OF THE ARMY (hereinafter the “Government”), represented by the Acting Assistant Secretary of the Army (Civil Works), and the SOUTH FLORIDA WATER MANAGEMENT DISTRICT (hereinafter the “Non-Federal Sponsor”), represented by the Chairman of its Governing Board.

WITNESSETH, THAT:

WHEREAS, the Government and the Non-Federal Sponsor (hereinafter the “Parties”) entered into an agreement on August 13, 2009 (hereinafter the “Master Agreement”) that sets forth the terms of participation for the construction, operation, maintenance, repair, replacement and rehabilitation of projects implemented under the Comprehensive Everglades Restoration Plan (hereinafter “CERP”) so as to promote uniformity of terms, ease of administration, and efficiency in execution of such projects;

WHEREAS, Section 324 of Water Resources Development Act (hereinafter “WRDA”) of 2020, Public Law 116-260, modified the original Central Everglades Planning Project authorization in Section 1401(4) of WRDA of 2016, Public Law 114-322, to include the project for ecosystem restoration, Central and Southern Florida, Everglades Agricultural Area authorized by Section 1308 of WRDA 2018, Public Law 115-270 (hereinafter “the Central Everglades Planning Project (Everglades Agricultural Area Phase)”);

WHEREAS, the Central Everglades Planning Project (Everglades Agricultural Area Phase) is subject to the Final Environmental Impact Statement for the Non-Federal Sponsor’s Section 203 Study, dated May 2020, and the report prepared by the Secretary of the Army that is required in Section 1308(b)(1) to address the concerns, recommendations, and conditions identified by the Secretary in the review assessment;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Partnership Agreement (hereinafter the “PPA” as defined in Article I.C. of the Master Agreement) for construction of the Central Everglades Planning Project (Everglades Agricultural Area Phase) (hereinafter the “*authorized CERP Project*”, as defined in Article 2.1. of this PPA);

WHEREAS, Section 528(e) of WRDA of 1996, Public Law 104-303, and Section 601(e) of WRDA of 2000, Public Law 106-541, specify the cost-sharing requirements applicable to the *authorized CERP Project*;

WHEREAS, pursuant to Section 1308 of WRDA 2018, the *authorized CERP Project*

includes *recreation features*, as defined in Article 2.12. of this *PPA*, for which the Non-Federal Sponsor is solely responsible for all costs of operation, maintenance, repair, replacement and rehabilitation;

WHEREAS, Section 601(e)(5) of WRDA 2000, Public Law 106-541, as amended by Section 6004 of WRDA 2007, Public Law 110-114, authorizes the Secretary to provide credit toward the non-Federal share of the cost of the *authorized CERP Project* for the value of work performed by the Non-Federal Sponsor in accordance with the provisions of this *PPA* for certain work (hereinafter the “*In-kind Work*” as defined in Article 2.2. of this *PPA*) that on April 21, 2021 was determined to be integral to the *authorized CERP Project*;

WHEREAS, Section 902 of WRDA 1986, Public Law 99-662, as amended (33 U.S.C. 2280), establishes the maximum amount of costs for the Central Everglades Planning Project and sets forth procedures for adjusting such maximum amount;

WHEREAS, Section 601(h)(4)(B)(ii) of WRDA 2000, Public Law 106-541, specifies that the Secretary shall not execute an agreement for a project to be implemented under CERP until any reservation or allocation of water for the natural system identified in the project implementation report is executed under State law. For the *authorized CERP project*, this necessary reservation or allocation is identified in Annex B of the Section 203 Study, Feasibility Study and Draft Environmental Impact Statement prepared by the Non-Federal Sponsor and modified by the Final Environmental Impact Statement for the Non-Federal Sponsor’s Section 203 Study, dated May 2020;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, and Section 103 of WRDA 1986, Public Law 99-662, as amended, provide that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element; 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 cost-sharing and financing of the construction of the *authorized CERP Project* in accordance with the terms of this *PPA*.

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

ARTICLE 1 - INCORPORATION OF MASTER AGREEMENT PROVISIONS

Except as provided expressly in Articles 2 and 3 of this *PPA*, all the terms, conditions, and provisions of the Master Agreement are hereby incorporated into this *PPA* and shall apply, as if fully set forth herein, to the construction, operation, maintenance, repair, replacement, and rehabilitation of the *authorized CERP Project* under this *PPA*. In the event of a conflict between this *PPA* and the Master Agreement, this *PPA* shall control.

ARTICLE 2 – MODIFICATIONS AND SUPPLEMENTAL PROVISIONS

The terms, conditions, and provisions of the Master Agreement incorporated into this *PPA* pursuant to Article 1 of this *PPA* are modified and supplemented by the following provisions for purposes of this *PPA*:

2.1. The term “*authorized CERP Project*” shall have the meaning as defined in Article I.B. of the Master Agreement and, for the purpose of this *PPA*, specifically shall mean construction of an 11,300 (10,500 acres of storage) acre A-2 Reservoir, approximately 23 feet deep (240,000 acre-foot storage capacity), which includes a perimeter seepage cutoff wall made of soil-cement bentonite; a 6,600 (6,500 acres of treatment) acre A-2 Stormwater Treatment Area (hereinafter “STA”) (3,600 acres on existing Central Everglades Planning Project A-2 Flow Equalization Basin footprint, additional 3,000 acres on A-2 Expansion lands); conveyance improvements to the Miami and North New River Canals (1,000 cfs and 200 cfs respectively); multi-purpose project operations; a new conflict structure to route treated STA water under the STA 3/4 intake canal and discharge to the Miami Canal south of the G-373 divide structure; approximately 12.5 miles of a “secondary” seepage canal that will offset by approximately 185 feet and be parallel to the Inflow/Outflow Canal between the Miami and North New River Canals; water quality and ecosystem monitoring, and adaptive management; and *recreation features* as generally described in the Final Environmental Impact Statement for the Non-Federal Sponsor’s Section 203 Study, dated May 2020, and the report prepared by the Secretary of the Army that is required in Section 1308(b)(1) of WRDA 2018.

2.2. The term “*In-kind Work*” shall have the meaning as defined in Article I.Q. of the Master Agreement and, for the purpose of this *PPA*, specifically shall mean the following items that were determined to be integral to the *authorized CERP Project* on April 21, 2021:

2.2.1. the work carried out pursuant to the *Pre-Partnership Credit Agreement* between the Government and the Non-Federal Sponsor dated May 29, 2020 consisting of preparation of lands for project purposes (e.g., vegetation and trash removal, demolition of structures, removal of septic tanks), which does not include removal of any hazardous substances as provided under Article XV of the Master Agreement, investigations necessary to identify the existence and extent of hazardous substances, investigations to determine the presence of cultural or historical resources, and monitoring to meet permit requirements and to determine the impacts and restoration benefits of the Central and Southern Florida, Everglades Agricultural Area Project, construction of approximately 4.3 miles of an approximately 3,000 cfs canal for the inflow to and outflow from the A-2 Stormwater Treatment Area (Inflow-Outflow canal), construction of approximately 4.3 miles of a seepage canal north of and parallel to the Inflow-Outflow canal, and construction of the 6,500 acre A-2 Stormwater Treatment Area; and

2.2.2 the work that will be performed or provided after the effective date of this *PPA* consisting of construction of modifications to the North New River Canal for an estimated additional 200 cfs capacity; construction of modifications to the Miami Canal for an estimated additional 1,000 cfs capacity; and work under Article 2.2.1. that was initiated pursuant to the *Pre-Partnership Credit Agreement* but not completed as of the effective date of this *PPA* and that will be performed or provided after the effective date of the *PPA*.

2.3. The term “*Operational Testing and Monitoring Period*” shall have the meaning as defined in the first sentence of Article I.G. of the Master Agreement and, for the purpose of this *PPA*, the length shall not exceed the time specified in the Central Everglades Planning Project Final Integrated Project Implementation Report and Environmental Impact Statement, dated July 2014, revised December 2014, and approved by the Chief of Engineers on December 23, 2014, and modified by the Section 203 Study, Feasibility Study and Draft Environmental Impact Statement prepared by the Non-Federal Sponsor.

2.4. The term “*monitoring*” shall have the meaning as defined in Article I.T. of the Master Agreement and, for the purpose of this *PPA*, shall include the specific activities described in the Monitoring Plan as contained in the document entitled Annex D of the Section 203 Study, Feasibility Study and Draft Environmental Impact Statement prepared by the Non-Federal Sponsor dated March 2018, as modified by the Final Environmental Impact Statement for the Non-Federal Sponsor’s Section 203 Study, dated May 2020, and the report prepared by the Secretary of the Army that is required in Section 1308(b)(1) of WRDA 2018, or any subsequent amendments thereto.

2.5. The term “*project construction costs*” shall have the meaning as defined in Article I.D. of the Master Agreement, and for the purpose of this *PPA*, also shall include the Government’s costs of vegetation management that the Parties agree in writing are necessary and appropriate during the *period of construction* to achieve the *authorized CERP Project* purposes and benefits and the costs to construct the *recreation features* of the *authorized CERP Project*.

2.6. The term “*project OMRR&R costs*” shall have the meaning as defined in Article I.E. of the Master Agreement, and for the purpose of this *PPA*, also shall include the Government’s and the Non-Federal Sponsor’s costs of the necessary and appropriate vegetation management to maintain the benefits of the *authorized CERP Project* as described in the approved MRR&R Manual but shall not include any costs for operation, maintenance, repair, replacement, and rehabilitation of the *recreation features* of the *authorized CERP Project*.

2.7. On the effective date of this *PPA*, *project construction costs* for the *authorized CERP Project* are estimated to be \$3,402,742,000; the Non-Federal Sponsor’s share of *project construction costs* required by Article II.G. of the Master Agreement is estimated to be \$1,701,371,000; the value of lands, easements, rights-of-way, and *relocations*, including incidental costs for which the Government shall afford credit in accordance with Article IV of the Master Agreement is estimated to be \$96,746,000; the amount of credit for *In-kind Work* to be afforded toward the Non-Federal Sponsor’s share of the *project construction costs* is estimated to be \$316,678,019; the annual *project OMRR&R costs* are estimated to be \$10,329,000; and the annual *OMRR&R costs of the recreation features* are estimated to be \$68,000. The Parties acknowledge that such amounts are estimates subject to adjustment by the Government, in full cooperation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and Non-Federal Sponsor.

2.8. Implementation of the *authorized CERP Project* shall be consistent with Section 601(h)(5) of WRDA 2000, Public Law 106-541.

2.9. The Non-Federal Sponsor acknowledges that it has executed under State law the reservation or allocation of water for the natural system as identified in Annex B of the Section 203 Study, Feasibility Study and Draft Environmental Impact Statement prepared by the Non-Federal Sponsor and modified by the Final Environmental Impact Statement for the Non-Federal Sponsor's Section 203 Study, dated May 2020 for this *authorized CERP Project* as required by Section 601(h)(4)(B)(ii) of WRDA 2000 and the Non-Federal Sponsor has provided information to the Government regarding such execution. In compliance with 33 CFR 385, the U.S. Army Engineer, Jacksonville District (hereinafter the "District Engineer") has verified such reservation or allocation in writing, a copy of which is attached hereto as Exhibit A. Any change to such reservation or allocation of water shall require an amendment to this *PPA* after the District Engineer verifies in writing in compliance with 33 CFR 385 that the revised reservation or allocation continues to provide for an appropriate quantity, timing, and distribution of water dedicated and managed for the natural system after considering any changed circumstances or new information since completion of Annex B of the Section 203 Study, Feasibility Study and Draft Environmental Impact Statement prepared by the Non-Federal Sponsor and modified by the Final Environmental Impact Statement for the Non-Federal Sponsor's Section 203 Study, dated May 2020 for the *authorized CERP Project*.

2.10. The Non-Federal Sponsor agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs consistent with its statutory authority.

2.10.1. Not less than once each year the Non-Federal Sponsor shall inform affected interests of the extent of protection afforded by the *authorized CERP Project*.

2.10.2. The Non-Federal Sponsor shall publicize flood plain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the *authorized CERP Project*.

2.10.3. The Non-Federal Sponsor shall comply with Section 402 of WRDA 1986, as amended (33 U.S.C. 701b-12), which requires a non-Federal interest to have prepared, within one year after the date of signing a Project Partnership Agreement for the *authorized CERP Project*, a floodplain management plan. The plan shall be designed to reduce the impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood protection provided by the *authorized CERP Project*. As required by Section 402, as amended, the non-Federal interest shall implement such plan not later than one year after completion of construction of the *authorized CERP Project*. The Non-Federal Sponsor shall provide an information copy of the plan to the Government upon its preparation.

2.10.4. The Non-Federal Sponsor shall prescribe and enforce regulations to prevent obstruction of or encroachment on the *authorized CERP Project* or on the lands, easements, and rights-of-way determined by the Government to be required for the construction, operation, maintenance, repair, replacement, and rehabilitation of the *authorized CERP Project*,

that could reduce the level of protection the *authorized CERP Project* affords, hinder operation or maintenance of the *authorized CERP Project*, or interfere with the *authorized CERP Project's* proper function.

2.11. The Non-Federal Sponsor shall not use the *authorized CERP Project* features or the lands, easements, and rights-of-way required for the *authorized CERP Project* as a wetlands bank or mitigation credit for any non-CERP project.

2.12. The term “*recreation features*” means a boat ramp facility with ramps over a high embankment at the A-2 Reservoir site with parking that includes vehicle gates and pedestrian pass-throughs, a two-lane gravel road from US 27 for public access, a vehicle bridge with pedestrian walkway and access ramps up the high levee, dual gender vault toilets, bike racks, and an information kiosk with rules and interpretive signage included in Site A, an information kiosk in the southeast corner of the A-2 Reservoir with signage, bike racks, and picnic tables included in Site B, a public access point at the A-2 STA including a sloped access ramp and gates, parking, an information kiosk with signage, bike racks, picnic tables, and restroom included in Site C, and a trail rest area in the southeast corner of the A-2 STA with a kiosk shelter and bike racks, on a small gravel area included in Site D, as generally described in Appendix F of the Section 203 Study, Feasibility Study and Draft Environmental Impact Statement prepared by the Non-Federal Sponsor and dated March 2018.

2.13. The term “*OMRR&R costs of the recreation features*” means the sum of costs to operate, maintain, repair, replace and rehabilitate the *recreation features* of the *authorized CERP Project* as described in the approved MRR&R Manual.

2.14. Notwithstanding any other provision of this agreement, the Government’s share of the cost to construct the *recreation features* shall not exceed an amount equal to 10 percent of the Government’s share of the cost to construct the project without recreation features included. The Non-Federal Sponsor shall be responsible for all costs in excess of this amount.

2.15. The Non-Federal Sponsor shall be solely responsible for any costs of *OMRR&R* of the *recreation features* of the *authorized CERP Project*. Further, the Non-Federal Sponsor shall keep the *recreation features*, and access roads, parking areas, and other associated public use facilities open and available to all on equal terms.

2.16. The Parties agree that during the planning, design, and operation of the STA and the reservoir of the *authorized CERP Project*:

2.16.01. The *authorized CERP Project* cannot be used for state restoration purposes as set forth below. The *authorized CERP Project* should be designed with the capability to prevent the flow of new water captured for the *authorized CERP Project* from entering into any of the State of Florida facilities constructed to assist the state in its Everglades Construction Project, as identified within Section 528(e)(2)(B)(ii) of P.L. 104-303 (110 STAT. 3770) of WRDA 1996, or the State’s Restoration Strategies as represented to U.S. District Courts and in discussions of associated federal and state consent decrees. The *authorized CERP Project* shall be designed so the flow connections between the *authorized CERP Project* and the state facilities

can be “opened” and “closed” so that the *authorized CERP Project* has the ability to prevent any water from the project from entering these state facilities which are required to treat the existing flow of waters. Until the State of Florida has completed all of its Restoration Strategies and those Restoration Strategies meet all requirements of the National Pollutant Discharge Elimination System and Everglades Forever Act permits and their accompanying 2012 Consent Orders as determined by Florida Department of Environmental Protection and the U.S. Environmental Protection Agency, and the State of Florida meets the requirements of the 1992 federal consent decree (*United States v. South Florida Water Management District, et al.*, Case No. 88-CV-1886-FAM (S.D. Fla.)), the EAA reservoir may only be operated to flow the amount of water that the new EAA STA A-2 alone can treat to meet all applicable federal and state water quality standards as well as any additional treatment necessary for passage of water to Everglades restoration. During this time, flows shall be released from Lake Okeechobee into the EAA reservoir through the Miami or North New River canal system.

2.16.02. The EAA reservoir may, in turn, not be allowed to store any extra water other than what can be treated and released to all applicable standards (by the current sampling methods/criteria) by the new EAA A-2 STA facility for benefits determined to be essential to Everglades restoration, until the state satisfies the water quality treatment needs of its Everglades Construction Project and meets all of their Restoration Strategies.

2.16.03. The Government cannot implement the *authorized CERP Project* in a way that interferes with or supersedes any pending or future judicial proceedings or agreements related to those proceedings or the state’s independent efforts to meet the state’s water pollution control obligations. The Government must ensure that any construction initiated prior to the completion of the state’s Restoration Strategies does not result in new flows from the *authorized CERP Project* that harm the state’s efforts to comply with applicable water quality standards. All features of the state’s Restoration Strategies must be completed and meet all requirements of the National Pollutant Discharge Elimination System and Everglades Forever Act permits and their accompanying 2012 Consent Orders as determined by Florida Department of Environmental Protection and the U.S. Environmental Protection Agency, and the State of Florida meets the requirements of the 1992 federal consent decree prior to initiating any operations which would allow water from the *authorized CERP Project* to enter any of the state’s Restoration Strategy facilities. The *authorized CERP Project* may operate independently of the state’s Restoration Strategy facilities in accordance with paragraphs 2.16.01. and 2.16.02. and other applicable guidance.

2.16.04. The Government cost share for OMRR&R of the authorized CERP Everglades Agricultural Area Project will be determined in accordance with the results of the report prepared by the Secretary of the Army that is required in Section 1308(b)(1) of WRDA 2018.

2.16.05. The Non-Federal Sponsor shall provide the Government an opportunity to collaborate, review and comment on the State Operations Plans for the state facilities used by the *authorized CERP Project* and the Central Everglades Planning Project, including updates to optimize operations for federal project purposes.

2.16.06. Consistent with the 14 September 2011 Memorandum from the Assistant

Secretary of the Army (Civil Works) the Non-Federal Sponsor shall be 100% responsible for the cost of all actions taken due to the presence of residual agricultural chemicals, at no expense to the Government and any future costs associated with the presence of residual agricultural chemicals at the federal project site are 100% a Non-Federal Sponsor cost and responsibility. As stated in the 14 September 2011 Memorandum, normal project engineering and construction activities will remain part of the total project cost provided that these are the same activities required to implement the project features absent the presence of residual agricultural chemicals.

ARTICLE 3 – MAXIMUM COST LIMITS

The Non-Federal Sponsor has reviewed the provisions set forth in Section 902 of Public Law 99-662, as amended, and understands that Section 902 establishes the maximum amount of *project construction costs* plus *total design costs* for the Central Everglades Planning Project. Notwithstanding any other provision of this *PPA*, the Government shall not make a new financial obligation or expenditure for the *authorized CERP Project*, or afford credit toward *project construction costs* for the value of any contribution provided by the Non-Federal Sponsor, if such obligation, expenditure, or credit would result in *project construction costs* plus the *total design costs* incurred for design of the Central Everglades Planning Project in accordance with the provisions of the Design Agreement exceeding this maximum amount, unless otherwise authorized by law. On the effective date of this *PPA*, this maximum amount is estimated to be \$5,885,405,000, as calculated in accordance with ER 1105-2-100 using October 1, 2021 price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902 of WRDA 1986, Public Law 99-662, as amended.

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

DEPARTMENT OF THE ARMY

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT,
BY ITS GOVERNING BOARD

BY: _____
Jaime A. Pinkham
Acting Assistant Secretary of the Army (Civil Works)

BY: _____
Chauncey P. Goss II
Chairman

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, Carolyn Ansay, do hereby certify that I am the principal legal officer for 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 Project Partnership Agreement between the Department of the Army and the South Florida Water Management District in connection with the Central Everglades Planning Project (Everglades Agricultural Area Phase), and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this Agreement on behalf of the South Florida Water Management District acted within his statutory authority.

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

Carolyn Ansay
General Counsel
South Florida Water Management District

CERTIFICATION REGARDING LOBBYING

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

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

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

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

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

Chauncey P. Goss II
Chairman, Governing Board
South Florida Water Management District

DATE: _____