



# **Environmental Mitigation Payment Processing Handbook**

**July 2015**



## *Table of Contents*

<b>Section 1</b>	<b>Overview .....</b>	<b>2</b>
<b>Section 2</b>	<b>Mitigation Requirements.....</b>	<b>2</b>
2.1	Determining the appropriate Mitigation Option .....	2
2.2	The Inventory and Mitigation Plan .....	2
2.3	Funding .....	3
2.3.1	Mitigation Services through DEP and WMDs – Prior to July 1, 2014 .....	3
2.3.2	Mitigation Services through DEP and WMDs – On or after July 1, 2014 .....	4
2.3.3	Mitigation Credits.....	4
<b>Section 3</b>	<b>Department’s Office of Comptroller Requirements .....</b>	<b>4</b>
3.1	Encumbering Funds for Mitigation Services .....	5
3.2	Encumbering Funds for Mitigation Credits .....	7
<b>Section 4</b>	<b>Purchasing Mitigation Services .....</b>	<b>7</b>
4.1	Invoices for Mitigation Services .....	7
<b>Section 5</b>	<b>Purchasing Mitigation Credits.....</b>	<b>11</b>
5.1	Invitation to Bid/Purchase Order.....	11
<b>Appendix A</b>	<b>– Section 373.4137, F.S. Mitigation requirements for specified transportation projects .....</b>	<b>12</b>
<b>Appendix B</b>	<b>– Memorandum of Understanding between FDOT and WMDs .....</b>	<b>17</b>
<b>Appendix C</b>	<b>– Inventory Spreadsheet.....</b>	<b>18</b>
<b>Appendix D</b>	<b>– Invoicing Form.....</b>	<b>19</b>



## Section 1 Overview

In 1996, the State Legislature established a mitigation program to meet the needs of the Florida Department of Transportation (Department). It was determined that wetland mitigation would be more effectively achieved with regional, long range mitigation planning instead of conducting mitigation on a project by project basis. This program is codified in section 373.4137, F.S. and provides the Department flexibility when considering compensatory mitigation options. The purpose of this handbook is to provide guidance for determining the appropriate mitigation option and processing of mitigation payments. See Appendix A for the statutory mitigation language.

The Department has an agreement with the Florida Department of Environmental Protection (DEP) and each of the five Water Management Districts (WMD) detailing how mitigation will be planned and constructed by the DEP or WMDs and funded by the Department. See Appendix B for individual agreements between the Department and the WMDs.

## Section 2 Mitigation Requirements

### 2.1 Determining the appropriate Mitigation Option

In accordance with Section 373.4137, F.S., compensatory mitigation of wetland and other surface water impacts resulting from FDOT projects will “be funded by the Department of Transportation and be carried out by the use of mitigation banks and any other mitigation options that satisfy state and federal requirements in a manner that promotes efficiency, timeliness in project delivery, and cost-effectiveness”. All funding for environmental mitigation must be based on scientifically valid analysis and must show documented support of how the cost was arrived to mitigate the adverse impact. Multiple issues should be evaluated when determining which mitigation option is appropriate to offset adverse impacts. The three main issues include, but are not limited to:

1. Does the mitigation option comply with the mitigation requirements adopted under 33 U.S.C. s.1344? (This is only for projects requiring a federal permit)
2. Is the mitigation option the most cost effective option?
3. Is the mitigation option readily available?

### 2.2 The Inventory and Mitigation Plan

By July 1<sup>st</sup> of each year, the Department is mandated to submit to the WMDs a copy of its Work Program to be adopted on July 1st and an Environmental Impact Inventory of habitats which may be impacted by the construction of transportation projects in the next 3 years of the Department’s Tentative Work Program (i.e., if the Adopted Work



Program is for FY 2015-2020, the next three years of the Tentative would be fiscal years 2016, 2017 and 2018). In developing the Tentative Work Program, FDOT Districts must program environmental mitigation to be accomplished by DEP, WMDs and Mitigation Banks. The inventory should include all projects requiring mitigation and the mitigation option used. (Refer to Chapter 11 of the Work Program Instructions.) The WMDs use the Inventory to develop a Mitigation Plan. This plan should be received by the Department by March 1<sup>st</sup> of each year.

The Inventory includes a description of habitat impacts, their basin, acreage, and type. It should also include the state water quality classification of impacted wetlands and other surface waters, any other state or regional designations for these habitats, and a list of threatened and endangered species and species of special concern affected by the proposed project. The Project Inventory should be updated quarterly to reflect the most current FDOT work program, and be amended throughout the year to anticipate schedule changes or additional projects which may arise. See Appendix C for the Project Inventory spreadsheet.

The WMD Mitigation plan must identify each site where the WMD will mitigate for a transportation project. For each mitigation site, the water management district shall provide the scope of the mitigation services; provide the functional gain as determined through the Uniform Mitigation Assessment Method; describe how the mitigation offsets the impacts of each transportation project as permitted; and provide a schedule for the mitigation services.

## 2.3 Funding

### 2.3.1 Mitigation Services through DEP and WMDs – Prior to July 1, 2014

For projects identified in the FDOT Environmental Impact Inventory submitted to the DEP or WMD prior to July 1, 2014, the Department pays the DEP or WMD \$75,000 [adjusted annually based on the percentage change in the Consumer Price Index (CPI) listed] for each wetland acre impacted. Below are the costs per acre to be used in programming and encumbering payments to DEP and the WMDs. These amounts are updated annually in the Chapter 11 of the Work Program Instructions. The first year presented is the actual CPI adjusted payment amount and the remaining years are an estimate to be used for programming purposes. Based upon the project's year of permit, the current year programmed amounts should be adjusted for the actual CPI adjusted cost per acre.

<u>Fiscal Year</u>	<u>Cost per Acre</u>
2015/16	\$113,156
2016/17	\$113,975
2017/18	\$115,131
2018/19	\$117,551
2019/20	\$120,441



(These figures are for illustrative purposes only. Refer to the official Work Program instructions for the most current costs per acre.)

Each WMD shall be paid a lump-sum amount per acre based on the above table for federally and non-federally funded transportation projects that have an approved mitigation plan. All mitigation costs including, but not limited to, the costs of preparing conceptual plans and the costs of design, construction, staff support, future maintenance, and monitoring the mitigation areas shall be funded through these lump-sum amounts. Note: The price per acre of impact should be established at the time the WMD Mitigation Plan incorporating the project is approved.

## ***2.3.2 Mitigation Services through DEP and WMDs – On or after July 1, 2014***

For projects identified in the Environmental Impact Inventory on or after July 1, 2014, the Department will provide funding to the DEP or WMD to offset only the impacts of transportation projects identified including planning, design, construction, maintenance and monitoring, and other costs necessary. Payments to DEP or the WMD can be processed as a Cost Reimbursement or Lump Sum Advance Payment. See **Section 4.1 Invoices for Mitigation Services**.

## ***2.3.3 Mitigation Credits***

Section 373.4137, F.S. does not specify a mitigation cost per credit when the Department selects to purchase mitigation credits through a Mitigation Bank or In Lieu Fee entity. The FDOT District should advertise the need for mitigation credits through an Invitation to Bid (ITB). District Environmental and or Permitting staff should coordinate with District Legal Counsel prior to advertising the need for mitigation credits.

## **Section 3 Department's Office of Comptroller Requirements**

The Comptroller certifies that funds are or will be available prior to entering into any contract or other binding commitment of funds. Although the Environmental Mitigation program is statutorily required and does not fit the typical contract "mold," the Comptroller must still ensure that funds are available for all planned mitigation projects. The governing Florida Statute is Section 339.135(6)(a), which is excerpted below:

"The department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The department shall require a statement from the comptroller of the department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all



contracts of the department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year.”

## 3.1 Encumbering Funds for Mitigation Services

Mitigation services are generally purchased through a contract with the DEP or WMDs. When the approved mitigation plans are received from the DEP or WMDs, it is the responsibility of each FDOT District to reconcile the approved plan to the current work program (i.e., ensure that the programming and encumbrances agree to the approved plan.) Each FDOT District should also ensure the Contract Funds Management (CFM) Section within the Office of Comptroller has been sent a Funds Approval Request for each FDOT financial project number on the plan that may have work started, be permitted, or have an anticipated invoice pending for the current fiscal year. Additionally, for projects not in the current fiscal year, a “reviewed” encumbrance must be requested. Districts must also ensure that the request was approved by the CFM Section (i.e. the encumbrance was established). These requests should be sent to the “CFM Section” email address, [CFMSection@dot.state.fl.us](mailto:CFMSection@dot.state.fl.us). Funds approval should be sought for the highest total amount of acreage on the plan, subject to quarterly adjustment. The Contract/Encumbrance Numbers are listed below:

### Contract/Encumbrance Numbers:

NWWMD	Northwest Florida Water Management District
SFWMD	South Florida Water Management District
SJWM2	St. Johns River Water Management District – D2
SJWM4	St. Johns River Water Management District – D4
SJWM5	St. Johns River Water Management District – D5
SJWM8	St. Johns River Water Management District – Turnpike
SRWMD	Suwannee River Water Management District
SWWM1	Southwest Florida Water Management District – D1
SWWM5	Southwest Florida Water Management District – D5
SWWM7	Southwest Florida Water Management District – D7
SWWM8	Southwest Florida Water Management District – Turnpike
DEPXX	Department of Environmental Protection (where XX = FDOT District Number)

*The contract/encumbrance numbers are available to aid each FDOT District in tracking cumulative payments for reporting to the Florida Department of Financial Services.*

**The following Organizational Codes and expansion options are associated with the Environmental Mitigation Projects:**

District One	55 01 30 70 142 PD
District Two	55 02 30 10 248 PD
District Three	55 03 30 40 345 PD
District Four	55 04 30 10 401 PD
District Five	55 05 30 10 542 PD
District Seven	55 07 30 60 743 PD





## For payments to DEP or WMD, use the following:

Object code: 139900

Object Description: Contracted Services - Other

Category: 088849

Category Description: Preliminary Engineering Consultant

With initial encumbrance requests, please also request the CFM section include the project number and mitigation number in the description field. This will aid in tracking projects.

The CFM Section will process the request manually, applying all the required work program and FLAIR edits to the project. Any failed edit checks will result in an email back to the requestor for resolution. Successful requests will result in an email back to the requestor with the funds approved and a standardized contract (encumbrance) number.

As indicated previously, once the mitigation plan is developed, no programming changes for mitigation funds should be made until the WMD is contacted and a determination is made as to the status of the mitigation.

Any required changes to the mitigation plan and work program may also necessitate an encumbrance change. The District should review the approved mitigation plan on a quarterly basis (at a minimum) and make any work program and encumbrance changes at that time. Below is an example schedule that could be used to send the CFM Section an email to process encumbrance changes:

*The following environmental mitigation projects need encumbrances adjusted by the stated amount.*

CONTRACT #	PROJECT #	MIT#	Amount	ORG CODE	OBJECT	EOB	LINE
SJWMD	238422 1 C8 01	<b>SJ40</b>	(574,778.72)	55 05 30 10 542 PD	139959	135	143
SJWMD	239535 4 C8 01	<b>SJ41</b>	(30,749.62)	55 05 30 10 542 PD	139959	135	144
SJWMD	241221 1 C8 01	<b>SJ48</b>	(6,742.78)	55 05 30 10 542 PD	139959	135	102
SJWMD	242484 5 C8 01	<b>SJ47</b>	(138,839.43)	55 05 30 10 542 PD	139959	135	200
SJWMD	242716 1 C8 01	<b>SJ41</b>	(533.72)	55 05 30 10 542 PD	139959	135	145
SJWMD	405506 5 C8 01	<b>SJ48</b>	(310,860.56)	55 05 30 10 542 PD	139959	135	162
	TOTAL		(1,062,504.83)				

Please remember to include the previously provided contract/encumbrance number with all change requests.



When requesting a reduction of an encumbrance, the requestor will be asked to certify that the mitigation inventory has been reduced to reflect the request. If the inventory has not been reduced, the encumbrance reduction request will not be processed.

## 3.2 Encumbering Funds for Mitigation Credits

The encumbrance process for Mitigation credits is the same for as those described for mitigation services except the following object code should be used. Also, it is important to note that payments are calculated on a cost per credit basis and not per impacted acre.

**For Mitigation Credits, use the following:**

Object code: 461010

Object Description: Fees – Registration/License/Permit - Environment

Category: 088849

Category Description: Preliminary Engineering Consultant

## Section 4 Purchasing Mitigation Services

Generally, the Department purchases mitigation services from DEP or the WMD. The Department has established mitigation agreements with the DEP and the five WMDs. Please see Appendix B. Use the appropriate contract number (as detailed in Section 4.1) for the DEP or the WMD providing mitigation services. The contract between the Department and the DEP or the WMD must comply with requirements under the Florida Accountability Contract Tracking System (FACTS). See the Department's Procurement Office website <http://infonet.dot.state.fl.us/procurement/> for more information.

### 4.1 Invoices for Mitigation Services

All invoices and supporting information from DEP or the WMDs for compensatory wetland mitigation must be submitted to the District Permit Coordinator at the appropriate FDOT District. The invoice submittal requirements for cost reimbursement or lump sum advance payment are below:

#### Guidelines for Cost Reimbursement

This guideline should be followed when implementation of a DEP or WMD mitigation project will involve periodic invoicing for cost reimbursement. See Appendix D - Invoicing Form.

Information to be included in the invoice:

1. WMD or DEP and associated contract number
2. Invoice number and date





3. Invoice period
4. Identify FDOT project(s) individually, specify
  - a. FDOT project number(s)
  - b. FDOT project name (if available)
  - c. Amount of mitigation needed for the project(s) as **permitted** including total cost
  - d. Amount of mitigation being met by this invoice for the FDOT project(s)
5. Identify the mitigation project(s) individually by FDOT project, specify
  - a. Mitigation Site name(s) – provide mitigation plan for site
  - b. Type of mitigation (enhancement, preservation, etc.)
  - c. Complete descriptions of services/commodities/activities performed include the date rendered and cost
6. Total cost being invoiced
7. Brief Progress Report
8. Supporting documentation should be submitted with the invoice
  - a. Receipts
  - b. Mitigation site pictures
  - c. Permit required documents such as, summary reports, monitoring reports, etc.

## Guidelines for Lump Sum Advance Payments

Lump Sum payment as described in Section 373.4137, F.S., provides a mechanism for the advance payment for mitigation projects. All advance payments requests must be approved by the Department of Financial Services (DFS). This takes time so advance payment requests from the WMD must be made at least 30 days prior to the expected request date. The WMDs can submit advance payment requests only after DFS approval. Once approved, the WMDs will request advance payment in their initial invoice. Subsequent invoices must demonstrate how those funds have been used. Any funds that are not used must be returned to the Department. Please see FDOT's Disbursement Handbook for Employees and Managers for detailed information on the Advance Payment requirements.

Requests for advance payment and supporting information from DEP or WMDs for mitigation services must be submitted to the appropriate District Permit Coordinator. When requesting advance payment for mitigation services, sufficient information should be provided the Department to understand the scope of services that will be performed for the funding being requested. The DEP or WMD submitting the request must provide the following information with their lump sum advance payment request:

1. WMD and associated contract number
2. Request for lump sum advance payment
3. Identify FDOT project(s) individually, specify



- a. FDOT project number(s)
  - b. FDOT project name (if available)
  - c. Amount of mitigation needed for the FDOT project(s) as **permitted** including total cost
  - d. Amount of mitigation being met by this invoice for the FDOT project(s) (e.g., percent completion)
4. Identify the WMD project(s) individually by FDOT project, specify
  - a. WMD Site name(s) – provide mitigation plan for site
  - b. Type of mitigation (enhancement, preservation, etc.)
  - c. Complete descriptions of services/commodities/activities that will be performed include estimated timeframes for implementation and completion. Examples of activities may include:
    - i. Early Plan Development – Review of FDOT inventory, field review of impact sites, identification of conceptual plans and sites, preparation of plans
    - ii. Plan Development – Mitigation plan development to between thirty to forty percent completion, field review of mitigation sites, appraisals and surveys, purchase of lands, easements, and conservation easements
    - iii. Final Plan Development – Completion of plan development, preparation of pay item quantities, preparation of contract provisions, and preparation of bid packages
    - iv. Letting – Project advertisement, acceptance of bids, and award of project
    - v. Construction – Earth moving, fencing, mitigation site establishment, construction inspection, and final project acceptance
    - vi. Post Construction Activities – Success criteria monitoring, maintenance and removal of exotic species, replanting, site modifications, and preparation of post construction reports and documents
    - vii. Long-term maintenance – Activities associated with ensuring success, elimination of exotics, site protection measures, etc.
  - d. Based on timeframes provide a status report including percent completion periodically
5. Total amount

The Districts should follow the instructions below when processing invoices from WMDs and DEP:

1. Receive an invoice from the WMD or DEP. When a WMD provides services to multiple FDOT Districts the WMD must submit separate invoices to each FDOT District. Each FDOT District has its own unique encumbrance/contract number from which to pay and track payments. (See Office of Comptroller Requirements section.)



2. FDOT District project manager should review the invoice and supporting documentation. The project manager should certify that the invoice is accurate and the appropriate mitigation activities have been performed for the project.
3. FDOT District project manager should:
  - a. Review the encumbrance level to ensure there is enough to pay the invoice.
  - b. Complete the Summary of Contractual Services Agreement/Purchase Order form – available through FACTS system
  - d. Include all relevant supporting documentation with the invoice.

*Please note that you must include life-to-date payments on the “Summary of Contractual Services” form for the contract number you are paying. The OOC-Financial Management Office will provide you the life-to-date amount for your first district processed payment and each district must establish a payment tracking process in order to report this amount with each invoice payment. (An Excel schedule of payments is recommended.)*

The appropriate Memorandum of Understanding between the WMD and the Department and the Summary of Contractual Services Agreement/Purchase Order Form should be included with each request for payment.

**Please note the following regarding payments to DEP or WMDs:**

The DEP or WMD can be paid a lump-sum amount for federally and non-federally funded transportation projects that have an approved mitigation plan.

Mitigation costs including, but not limited to, the costs of preparing conceptual plans and the costs of design, construction, staff support, future maintenance and monitoring the mitigation areas is considered to be included through these lump-sum amounts.

When payments have been remitted to the District in accordance with the lump sum guidelines, and subsequently it is determined those funds will not be used due to deletion of a mitigation project or a reduction of acreage from the inventory, the applicable payment (including any interest earned) must be used for other transportation projects requiring compensatory mitigation for environmental impacts as agreed to by both parties. The change must be documented and if applicable, involve coordination with the United States Army Corps of Engineers. If a modification to the mitigation permit is needed, the DEP or WMD must coordinate with the appropriate regulatory agencies and the Department.

In order to ensure the Department receives credit for what is paid, each FDOT District and DEP or the appropriate WMD should track ‘excess credits’ and use them as soon



as they are eligible for other projects. This tracking is necessary to ensure mitigation credits purchased by the Department are used as intended.

## Section 5 Purchasing Mitigation Credits

### 5.1 Invitation to Bid/Purchase Order

When the Department determines that mitigation credits should be purchased, the District should advertise for the purchase of credits through an Invitation to Bid (ITB).

When purchasing mitigation credits FDOT Districts must use the My Florida Marketplace (MFMP) process. All vendors are required to register in the MFMP system. Note that only governmental entities are exempt from the 1% processing fee (See 60A-1.032, Florida Administrative Code). Districts must use commodity code 312-280 when inputting information into MFMP for the purchase of mitigation credits.

All payments are processed through MFMP and encumbrance requests are submitted through CFM. Encumbrance changes must still be submitted to the CFM Section as previously noted. The encumbrance information will be input into MFMP upon requisition creation to ensure the encumbrance is reduced in FLAIR when the payment is made.



## Appendix A – Section 373.4137, F.S. Mitigation requirements for specified transportation projects

(1) The Legislature finds that environmental mitigation for the impact of transportation projects proposed by the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 can be more effectively achieved by regional, long-range mitigation planning rather than on a project-by-project basis. It is the intent of the Legislature that mitigation to offset the adverse effects of these transportation projects be funded by the Department of Transportation and be carried out by the use of mitigation banks and any other mitigation options that satisfy state and federal requirements in a manner that promotes efficiency, timeliness in project delivery, and cost-effectiveness.

(2) Environmental impact inventories for transportation projects proposed by the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 shall be developed as follows:

(a) By July 1 of each year, the Department of Transportation, or a transportation authority established pursuant to chapter 348 or chapter 349 which chooses to participate in the program, shall submit to the water management districts a list of its projects in the adopted work program and an environmental impact inventory of habitat impacts and the anticipated mitigation needed to offset impacts as described in paragraph (b). The environmental impact inventory must be based on the rules adopted pursuant to this part, s. 404 of the Clean Water Act, 33 U.S.C. s. 1344, and the Department of Transportation's plan of construction for transportation projects in the next 3 years of the tentative work program. The Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 may also include in its environmental impact inventory the habitat impacts and the anticipated amount of mitigation needed for any future transportation project. The Department of Transportation and each transportation authority established pursuant to chapter 348 or chapter 349 may fund any mitigation activities for future projects using current year funds.

(b) The environmental impact inventory must include a description of habitat impacts, including location, acreage, and type; the anticipated mitigation needed based on the functional loss as determined through the uniform mitigation assessment method adopted by the Department of Environmental Protection by rule pursuant to s. 373.414(18); identification of the proposed mitigation option; state water quality classification of impacted wetlands and other surface waters; any other state or regional designations for these habitats; and a list of threatened species, endangered species, and species of special concern affected by the proposed project.

(c) Before projects are identified for inclusion in a water management district mitigation plan as described in subsection (4), the Department of Transportation must consider using credits from a permitted mitigation bank. The Department of Transportation must consider the availability of suitable and sufficient mitigation bank credits within the transportation project's area, the ability to satisfy commitments to regulatory and resource agencies, the availability of suitable and sufficient mitigation purchased or developed under this section, the ability to complete suitable existing water management district or Department of Environmental Protection mitigation sites initiated with Department of Transportation mitigation funds, and the ability to satisfy state and federal requirements, including long-term maintenance and liability.

(3)(a) To implement the mitigation option identified in the environmental impact inventory described in subsection (2), the Department of Transportation may purchase credits for





current and future use directly from a mitigation bank, purchase mitigation services through the water management districts or the Department of Environmental Protection, conduct its own mitigation, or use other mitigation options that meet state and federal requirements. Funding for the identified mitigation option as described in the environmental impact inventory must be included in the Department of Transportation's work program developed pursuant to s. [339.135](#). The amount programmed each year by the Department of Transportation and participating transportation authorities established pursuant to chapter 348 or chapter 349 must correspond to an estimated cost to mitigate for the functional loss identified in the environmental impact inventory described in subsection (2).

(b) Each transportation authority established pursuant to chapter 348 or chapter 349 which chooses to participate in this program shall create an escrow account within its financial structure and deposit funds in the account to pay for the environmental mitigation phase of projects budgeted for the current fiscal year. The escrow account shall be maintained by the authority for the benefit of the water management districts. Any interest earnings from the escrow account must remain with the authority.

(c) For mitigation implemented by the water management district or the Department of Environmental Protection, as appropriate, the amount paid each year must be based on mitigation services provided by the water management districts or the Department of Environmental Protection pursuant to an approved water management district mitigation plan, as described in subsection (4). The water management districts or the Department of Environmental Protection, as appropriate, may request payment no sooner than 30 days before the date the funds are needed to pay for activities associated with development or implementation of permitted mitigation that meets the requirements of this part, 33 U.S.C. s. 1344, and 33 C.F.R. part 332, in the approved water management district mitigation plan described in subsection (4) for the current fiscal year. The projected amount of mitigation shall be reconciled each quarter with the actual amount of mitigation needed for projects as permitted, including permit modifications, pursuant to this part and s. 404 of the Clean Water Act, 33 U.S.C. s. 1344. The subject year's programming of funds shall be adjusted to reflect the mitigation as permitted. If the water management district excludes a project from an approved water management district mitigation plan, if the water management district cannot timely permit a mitigation site to offset the impacts of a Department of Transportation project identified in the environmental impact inventory, or if the proposed mitigation does not meet state and federal requirements, the Department of Transportation may use the associated funds for the purchase of mitigation bank credits or any other mitigation option that satisfies state and federal requirements. Upon final payment for mitigation of a transportation project as permitted, the obligation of the Department of Transportation or the participating transportation authority is satisfied, and the water management district or the Department of Environmental Protection, as appropriate, has continuing responsibility for the mitigation project.

(d) Beginning with the March 2015 water management district mitigation plans, each water management district or the Department of Environmental Protection, as appropriate, shall invoice the Department of Transportation for mitigation services to offset only the impacts of a Department of Transportation project identified in the environmental impact inventory, including planning, design, construction, maintenance and monitoring, and other costs necessary to meet the requirements of this section, 33 U.S.C. s. 1344, and 33 C.F.R. part 332. If the water management district identifies the use of mitigation bank credits to offset a Department of Transportation impact, the water management district shall exclude that purchase from the mitigation plan, and the Department of Transportation shall purchase the bank credits.





(e) For mitigation activities occurring on existing water management district or Department of Environmental Protection mitigation sites initiated with Department of Transportation mitigation funds before July 1, 2013, the water management district or the Department of Environmental Protection, as appropriate, shall invoice the Department of Transportation or a participating transportation authority at a cost per acre of \$75,000 multiplied by the projected acres of impact as identified in the environmental impact inventory. The cost per acre must be adjusted by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 1996. When implementing the mitigation activities necessary to offset the permitted impacts as provided in the approved mitigation plan, the water management district shall maintain records of the costs incurred in implementing the mitigation. The records must include, but are not limited to, costs for planning, land acquisition, design, construction, staff support, long-term maintenance and monitoring of the mitigation site, and other costs necessary to meet the requirements of 33 U.S.C. s. 1344 and 33 C.F.R. part 332.

(f) For purposes of preparing and implementing the mitigation plans to be adopted by the water management districts on or before March 1, 2014, for impacts based on the July 1, 2013, environmental impact inventory, the funds identified in the Department of Transportation's work program or participating transportation authorities' escrow accounts must correspond to a cost per acre of \$75,000 multiplied by the projected acres of impact as identified in the environmental impact inventory. The cost per acre must be adjusted by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 1996. Payment under this paragraph is limited to mitigation activities that are identified in the first year of the 2013 mitigation plan and for which the transportation project is permitted and are in the Department of Transportation's adopted work program, or equivalent for a transportation authority. When implementing the mitigation activities necessary to offset the permitted impacts as provided in the approved mitigation plan, the water management district shall maintain records of the costs incurred in implementing the mitigation. The records must include, but are not limited to, costs for planning, land acquisition, design, construction, staff support, long-term maintenance and monitoring of the mitigation site, and other costs necessary to meet the requirements of 33 U.S.C. s. 1344 and 33 C.F.R. part 332. To the extent moneys paid to a water management district by the Department of Transportation or a participating transportation authority are greater than the amount spent by the water management districts in implementing the mitigation to offset the permitted impacts, these funds must be refunded to the Department of Transportation or participating transportation authority. This paragraph expires June 30, 2015.

(4) Before March 1 of each year, each water management district shall develop a mitigation plan to offset only the impacts of transportation projects in the environmental impact inventory for which a water management district is implementing mitigation that meets the requirements of this section, 33 U.S.C. s. 1344, and 33 C.F.R. part 332. The water management district mitigation plan must be developed in consultation with the Department of Environmental Protection, the United States Army Corps of Engineers, the Department of Transportation, participating transportation authorities established pursuant to chapter 348 or chapter 349, other appropriate federal, state, and local governments, and other interested parties, including entities operating mitigation banks. In developing such plans, the water management districts shall use sound ecosystem management practices to



address significant water resource needs and consider activities of the Department of Environmental Protection and the water management districts, such as surface water improvement and management (SWIM) projects and lands identified for potential acquisition for preservation, restoration, or enhancement, and the control of invasive and exotic plants in wetlands and other surface waters, to the extent that the activities comply with the mitigation requirements adopted under this part, 33 U.S.C. s. 1344, and 33 C.F.R. part 332. The water management district mitigation plan must identify each site where the water management district will mitigate for a transportation project. For each mitigation site, the water management district shall provide the scope of the mitigation services; provide the functional gain as determined through the uniform mitigation assessment method adopted by the Department of Environmental Protection by rule pursuant to s. [373.414\(18\)](#); describe how the mitigation offsets the impacts of each transportation project as permitted; and provide a schedule for the mitigation services. The water management districts shall maintain records of costs incurred and payments received for providing these services. Records must include, but are not limited to, planning, land acquisition, design, construction, staff support, long-term maintenance and monitoring of the mitigation site, and other costs necessary to meet the requirements of 33 U.S.C. s. 1344 and 33 C.F.R. part 332. To the extent moneys paid to a water management district by the Department of Transportation or a participating transportation authority are greater than the amount spent by the water management districts in providing the mitigation services to offset the permitted transportation project impacts, these moneys must be refunded to the Department of Transportation or participating transportation authority. The mitigation plan shall be submitted to the water management district governing board or its designee for review and approval. At least 14 days before approval by the governing board, the water management district shall provide a copy of the draft mitigation plan to the Department of Environmental Protection and any person who has requested a copy. Subsequent to the governing board approval, the mitigation plan shall be submitted to the Department of Environmental Protection for approval. The plan may not be implemented until it is submitted to, and approved in part or in its entirety by, the Department of Environmental Protection.

(a) Specific projects may be excluded from the mitigation plan, in whole or in part, and are not subject to this section upon the election of the Department of Transportation, a transportation authority if applicable, or the appropriate water management district. The Department of Transportation or a participating transportation authority may not exclude a transportation project from the mitigation plan if mitigation is scheduled for implementation by the water management district in the current fiscal year unless the transportation project is removed from the Department of Transportation's work program or transportation authority funding plan, the mitigation cannot be timely permitted to offset the impacts of a Department of Transportation project identified in the environmental impact inventory, or the proposed mitigation does not meet state and federal requirements. If a project is removed from the work program or the mitigation plan, costs spent by the water management district before removal are eligible for reimbursement by the Department of Transportation or participating transportation authority.

(b) When determining which projects to include in or exclude from the mitigation plan, the Department of Transportation shall investigate using credits from a permitted mitigation bank before those projects are submitted for inclusion in a water management district mitigation plan. The Department of Transportation shall exclude a project from the mitigation plan if the investigation undertaken pursuant to this paragraph results in the conclusion that the use of credits from a permitted mitigation bank promotes efficiency,



timeliness in project delivery, cost-effectiveness, and transfer of liability for success and long-term maintenance.

(5) The water management district shall ensure that mitigation requirements pursuant to 33 U.S.C. s. 1344 and 33 C.F.R. part 332 are met for the impacts identified in the environmental impact inventory for which the water management district will implement mitigation described in subsection (2), by implementation of the approved mitigation plan described in subsection (4) to the extent funding is provided by the Department of Transportation, or a transportation authority established pursuant to chapter 348 or chapter 349, if applicable. In developing and implementing the mitigation plan, the water management district shall comply with federal permitting requirements pursuant to 33 U.S.C. s. 1344 and 33 C.F.R. part 332. During the federal permitting process, the water management district may deviate from the approved mitigation plan in order to comply with federal permitting requirements upon notice and coordination with the Department of Transportation or participating transportation authority.

(6) The water management district mitigation plans shall be updated annually to reflect the most current Department of Transportation work program and project list of a transportation authority established pursuant to chapter 348 or chapter 349, if applicable, and may be amended throughout the year to anticipate schedule changes or additional projects that may arise. Before amending the mitigation plan to include new projects, the Department of Transportation must consider mitigation banks and other available mitigation options that meet state and federal requirements. Each update and amendment of the mitigation plan shall be submitted to the governing board of the water management district or its designee for approval. However, such approval shall not apply to a deviation as described in subsection (5).

(7) Upon approval by the governing board of the water management district and the Department of Environmental Protection, the mitigation plan shall satisfy the mitigation requirements under this part for impacts specifically identified in the environmental impact inventory described in subsection (2) and any other mitigation requirements imposed by local, regional, and state agencies for these same impacts. The approval of the governing board of the water management district and the Department of Environmental Protection authorizes the activities proposed in the mitigation plan, and no other state, regional, or local permit or approval is necessary.

(8) This section does not eliminate the need for the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 to comply with the requirement to implement practicable design modifications, including realignment of transportation projects, to reduce or eliminate the impacts of its transportation projects on wetlands and other surface waters as required by rules adopted pursuant to this part, or to diminish the authority under this part to regulate other impacts, including water quantity or water quality impacts, or impacts regulated under this part which are not identified in the environmental impact inventory described in subsection (2).

History.—s. 1, ch. 96-238; s. 36, ch. 99-385; s. 1, ch. 2000-261; s. 93, ch. 2002-20; s. 39, ch. 2004-269; s. 30, ch. 2005-71; s. 12, ch. 2005-281; s. 1, ch. 2009-11; s. 3, ch. 2012-174; s. 22, ch. 2014-223.



## Appendix B – Memorandum of Understanding between FDOT and WMDs



**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
FLORIDA DEPARTMENT OF TRANSPORTATION  
AND  
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

THIS MEMORANDUM OF UNDERSTANDING is entered into by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (the "Department") and the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (the "Agency").

**WITNESSETH**

WHEREAS, Section 373.4137, Florida Statutes, directs the Department to furnish the Water Management Districts, and the Agency information concerning planned construction for transportation projects, including an inventory of habitats which may be impacted by the planned construction; and

WHEREAS, Section 373.4137, Florida Statutes, directs the Department to identify funds for the mitigation of environmental impacts from planned transportation projects; and

WHEREAS, Section 373.4137, Florida Statutes, directs the Water Management Districts, in consultation with the Agency, the Department, and other agencies and interested parties, to develop a plan (hereinafter referred to as the "Plan") for mitigating the environmental impacts of the transportation projects proposed by the Department within the Water Management Districts jurisdictional boundaries; and

WHEREAS, the Agency may be instrumental in the completion of projects identified in the Plan and is therefore entitled to the receipt of funding from the Department; and

WHEREAS, Section 373.4137, Florida Statutes, requires the District to submit the mitigation plan to the Agency for approval; and

WHEREAS, Section 373.4137, Florida Statutes, requires the Agency to ensure that the mitigation requirements pursuant to 33 U.S.C. s. 1344 are met by implementation of the approved mitigation plan to the extent funding is provided by the Department; and

WHEREAS, Section 373.4137, Florida Statutes, authorizes the Agency to request a transfer of funds from the Department to pay for development and implementation of the approved mitigation plan for the current fiscal year; and

WHEREAS, the parties wish to agree on the procedures by which payment will be made to the Agency from the Department to pay for development and implementation of approved mitigation plans;



NOW THEREFORE, the parties hereby agree as follows:

1. The Agency shall be authorized to pursue environmental projects funded under this Agreement as directed by an executed Project Authorization Form, attached hereto and made a part hereof as **Attachment A**. This form shall identify the Water Management District plan the project was identified in, the funding authorized for the project, the project completion date and the Agency and Department project managers assigned to the project. The Agency's Agreement Manager is Bonnie Lawhon, Finance and Accounting Director II, phone number 850/245-2414 or SunCom 205-2414. The Department's Agreement Manager is Joshua Boan, Phone number 850/922-7208 or SunCom 292-7208.

2. Changes to impacted acres or anticipated permit date or deletion of a project may be made on a quarterly basis. An Adjustment Request Form (attached hereto and made a part hereof as **Attachment B**) must be completed by the Department's District Environmental or Permit Office and signed by the Water Management District, the Department's District Work Program Manager, and the Agency. Once all signatures are complete, the form will be forwarded to the Department's Comptroller's Office, Financial Management Section so that the funds can be adjusted.

3. Requests for transfer of funds required under Section 373.4137, Florida Statutes, must include an itemized invoice that indicates the portion of the mitigation plan for which funds are requested, the stages completed on that portion of the mitigation plan, and the costs incurred within those stages, allocated to one of the following categories: salaries; travel; administrative; contractual; attorney/appraisal fees; equipment; and supplies. The invoice must indicate the Department's financial project to which the mitigation relates and must also indicate whether it is the final invoice for mitigation related to that financial project. The Agency Project Manager designated on the Project Authorization Form (**Attachment A**) shall be responsible for developing each invoice for the project authorized. Said invoice will be forwarded to the Agency's Agreement Manager identified in paragraph 1. for review and submittal to the Department in accordance with the instructions contained in paragraph 14. Each Project Authorization Form shall identify the invoicing frequency authorized for the project, which shall be no more frequently than monthly and no less frequently than quarterly.

4. The total transfers requested for mitigation efforts identified with a particular Department financial project will not exceed the amount of funds established for that financial project for the current fiscal year.

5. The mitigation stages that will be used to identify the stage to which a transfer request relates are:

a. Early Plan Development - The review of Department inventory, field review of impact sites, identification of conceptual plans and mitigation sites, and preparation of plans for approval by the Water Management Districts and the Agency;



b. Plan Development - Mitigation plan development to thirty to forty percent (30%/40%) completion, identification of land requirements, field review of mitigation sites, property appraisals and surveys, preparation of right of way maps and legal documents, and purchase of lands, easements, and conservation easements;

c. Final Plan Development - Completion of mitigation plan development, preparation of pay item quantities, preparation of special contract provisions, and preparation of bid packages;

d. Letting - Project advertisement; acceptance of bids, and award of project;

e. Construction - Purchase of mitigation bank credits, financial contributions to water management district regional watershed projects, earth moving, fencing, mitigation site establishment, maintenance and removal of exotic species, structures relating to the mitigation plan, construction inspection, and final project acceptance; and

f. Post Construction Activities - Success criteria monitoring, maintenance and removal of exotic species, vegetation replanting, site modifications to slope and adjustments to control and drainage structures, and preparation of post construction reports and documents.

6. Requests for transfer of funds to reimburse for actual conceptual plan preparation costs that are submitted to the Department and the Agency by November 1 of each year must also indicate the Department's financial project to which the costs relate.

7. Any invoices or requests for transfer shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.

8. Upon receipt of invoice, the Department has five (5) working days to inspect and approve the services. The Department has 20 days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 20 days are measured from the latter of the date the invoice is received or the services are received, inspected and approved.

9. If payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the Agency. Interest penalties of less than one (1) dollar shall not be enforced unless the Agency requests payment. Invoices that have to be returned to the Agency because of Agency preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

10. A vendor ombudsman has been established within the department of Banking and Finance. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 410-9724 or by calling the State Comptroller's Hotline, 1-800-848-3792.



11. Records of costs incurred shall be maintained and made available upon request to the Department for three years after final payment for the work pursuant to Florida Statute 337.4137. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred shall include the Agency's general accounting records and the project records, together with supporting documents and records, of the Agency and all subcontractors considered necessary to the Department for a proper audit of project costs.

12. The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executed only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the Department's performance and obligation to pay under this understanding is contingent upon an annual appropriation by the Legislature.

13. This Agreement shall become effective upon the date of execution. This Agreement shall continue on a year-to-year basis unless it is agreed, through mutual consent of the parties, to cancel this Agreement. The parties hereto understand and agree that the authorized project performance period established in each executed Project Authorization Form (Attachment A) shall survive the completion date of this Agreement, unless otherwise stipulated by mutual consent of the parties.

14. All invoices and requests for transfer shall be submitted, in triplicate, to the Department at the following address: Department of Transportation, Office of Comptroller, Financial Management Section, 3717 Appalachian Parkway, Suite E, Tallahassee, Florida, 32311.

15. Any invoices or requests for transfer that include travel expenses shall be submitted and paid in accordance with Section 112.061, Florida Statutes.


16. The Agency and the Department will allow public access to all documents and materials relating to this agreement in accordance with the provisions of Chapter 119, Florida Statutes. Should the Agency or the Department assert any exemption to the requirements of Chapter 119, Florida Statutes, the burden of establishing such exemption, by way of injunctive relief or as otherwise provided by law, shall be upon that party.

17. The Agency and the Department agree that the projects authorized for funding under this Agreement shall not be used to offset the Agency's outstanding debt to the Florida Department of Transportation pursuant to 373.4137(4)(c), Florida Statutes.

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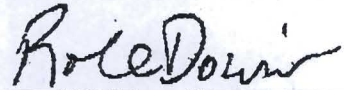
IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed effective as of the date and year last written below.

**FLORIDA DEPARTMENT OF TRANSPORTATION**

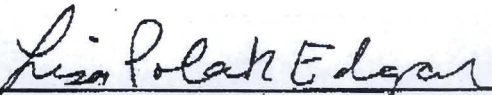
By:   
Thomas F. Barry, Jr., P.E., Secretary

Date: 10/19/02

Approved as to form and legality:

  
DOT Attorney

**FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

By:   
Lisa Polak Edgar, Deputy Secretary  
Planning and Management

Date: 10-09-02

Approved as to form and legality:

  
DEP Attorney

**List of Attachments to this Agreement:**

- |              |                                     |
|--------------|-------------------------------------|
| Attachment A | Project Authorization Form (1 Page) |
| Attachment B | Adjustment Request Form (1 Page)    |

AGREEMENT  
BETWEEN  
FLORIDA DEPARTMENT OF TRANSPORTATION  
AND  
NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (the Department) and the NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT (the NFWFMD).

WITNESSETH

WHEREAS, Section 373.4137, Florida Statutes, directs the Department to furnish the NFWFMD information concerning planned construction for transportation projects including an inventory of habitats which may be impacted by the planned construction;

WHEREAS, Section 373.4137, Florida Statutes, directs the Department to identify funds in an escrow account for the mitigation of environmental impacts from planned transportation projects;

WHEREAS, Section 373.4137, Florida Statutes, directs the NFWFMD, the Department, and other agencies and interested parties, to develop a plan for mitigating the environmental impacts of the transportation projects proposed by the Department within the NFWFMD;

WHEREAS, Section 373.4137, Florida Statutes, requires the NFWFMD to submit the mitigation plan to the NFWFMD Governing Board or its designee for approval;

WHEREAS, Section 373.4137, Florida Statutes, requires the NFWFMD to ensure that the mitigation requirements pursuant to 33 U.S.C. s. 1344 are met by implementation of the approved mitigation plan to the extent funding is provided by the Department;

WHEREAS, 373.4137, Florida Statutes, authorizes the NFWFMD to request a transfer of funds from the Department escrow account to pay for development and implementation of the approved mitigation plan for projects programmed in the current fiscal year; and

WHEREAS, the parties wish to agree on the procedures by which payment will be made to the NFWFMD from the Department's escrow funds to pay for development and implementation of approved mitigation plans for projects in District Three of the Department.

NOW THEREFORE, the parties hereby agree as follows:



1. The foregoing recitals are incorporated into and made a part of this AGREEMENT.
2. Changes to impacted acres or anticipated permit date or deletion of a project by the Department and allowable under Section 373.4137, Florida Statutes, may be made on a quarterly basis. An adjustment request, in accordance with the Department's Environmental Mitigation Payment Processing Handbook, will be submitted with the Quarterly Reconciliation Report. The NFWFMD shall email its response to the Department's District Environmental or Permit Office. Any revised information will be forwarded to the Florida Department of Transportation, District 3 Financial Services Office, so that the escrow account can be adjusted.
3. The Department agrees to pay the NFWFMD for the herein described services as detailed in Section 373.4137, Florida Statutes. The NFWFMD may invoice the Department for lump sum payments once a project has an approved mitigation plan, no earlier than 30 days prior to the date the funds are needed to pay for activities associated with development or implementation of the approved mitigation plan for the current fiscal year.
4. Requests for transfer of funds from the escrow account required under Section 373.4137, Florida Statutes, shall include an itemized invoice that indicates the Department financial project to which the mitigation relates and must also indicate whether it is the final invoice for mitigation related to that financial project.
5. The total transfers requested from the escrow account for mitigation efforts identified with a particular Department financial project may not exceed the amount in escrow for that financial project for the current fiscal year.
6. Transfers shall be made in a lump-sum amount for both federally funded and non-federally funded transportation projects that have an approved mitigation plan which may be found on-line at: [NFWFMDwetlands.com](http://NFWFMDwetlands.com). These lump sum payments will be applied to all mitigation stages including early (conceptual) plan development, plan development, final plan development, letting, construction and post construction activities (long-term perpetual maintenance and monitoring of mitigation projects).
7. Interest earned by the NFWFMD on payments must be used for the original intent of Section 373.4137, Florida Statutes. In the event that a transportation project results in a reduction in impact acreage from the inventory after the NFWFMD receives payment for such impact acreage, the excess mitigation funds and/or credits developed due to the reduction in impact acreage must be utilized for other or future year transportation projects requiring mitigation for environmental impacts to offset payments by the Department as agreed to by both parties. The NFWFMD may otherwise decide to return payments including interest if it has not incurred any expense subsequent to receiving lump sum payments for reduced impact acreage.

8. Any invoices or requests for transfer shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

9. Upon receipt of invoice, the Department has five (5) working days to inspect and approve the invoice. The Department has 20 calendar days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 calendar day period referred to in the previous sentence is measured from the latter of: the date a properly completed invoice is received by the Department; or, the date the services are received, inspected and approved.

10. If a warrant in payment of an invoice is not issued within 40 days after receipt of invoice, a separate interest penalty at a rate as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the NFWFMD. Interest penalties of less than (1) dollar shall not be enforced unless the NFWFMD requests payment. Invoices which must be returned to the NFWFMD because of NFWFMD preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

11. A vendor ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850)413-5516 or by calling the Department of Financial Services Hotline at 1-877-693-5236.

12. Records of costs incurred shall be maintained and made available upon request to the Department for three years after final payment for the work pursuant to Florida Statutes 373.4137. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred shall include the NFWFMD's general accounting records and the project records, together with supporting documents and records of the NFWFMD and all subcontractors considered necessary by the Department for a proper audit of project costs.

13. The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the Department's performance and obligation to pay under this understanding is contingent upon an annual appropriation by the Legislature.



14. The previous agreement on the same subject matter, dated October 27, 1999, between the Department and the NFWFMD is hereby terminated..

15. This AGREEMENT shall be effective from the last date of execution written below until June 30, 2019. This AGREEMENT may be terminated by mutual written consent of the parties. This AGREEMENT may be extended or renewed by mutual written consent of the parties.

16. All invoices and requests for transfer shall be submitted to the Department at the following address: Florida Department Transportation, D-3 District Permits Coordinator, Post Office Box 607, Chipley, FL 32428-0607.

17. The NFWFMD and the Department will allow public access to all documents and material relating to this AGREEMENT in accordance with the provisions of Chapter 119, Florida Statutes. Should the NFWFMD or the Department assert any exemption provided by Chapter 119, Florida Statutes, or otherwise provided by law, the burden of establishing such exemption, by way of injunctive relief or as otherwise provided by law, shall be upon the party asserting the exemption.

18. This AGREEMENT shall be governed by, and interpreted and construed in accordance with, the laws of the State of Florida.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed on the dates set forth below.

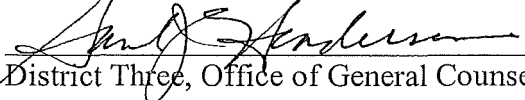
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

By: 

James T. Barfield, District Secretary, District Three

Date: 3/17/10

Legal Review:

  
District Three, Office of General Counsel

NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By: 

Douglas E. Barr, Executive Director

Date: 03/13/10

ORIGINAL

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
FLORIDA DEPARTMENT OF TRANSPORTATION  
AND  
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

THIS MEMORANDUM OF UNDERSTANDING is entered into this 27<sup>th</sup> day of July, 2000, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (the Department) and the SOUTH FLORIDA WATER MANAGEMENT DISTRICT (District).

WITNESSETH

WHEREAS, Section 373.4137, Florida Statutes, directs the Department to furnish the District, and the Department of Environmental Protection (DEP) information concerning planned construction for transportation projects; and

WHEREAS, Section 373.4137, Florida Statutes, directs the Department to identify funds in an escrow account for the mitigation of environmental impacts from planned transportation projects; and

WHEREAS, Section 373.4137, Florida Statutes, directs the District, in consultation with DEP, the Department, and other agencies and interested parties, to develop a plan for mitigating the environmental impacts of the transportation projects proposed by the Department within the District; and

WHEREAS, Section 373.4137, Florida Statutes, requires the District to submit the mitigation plan to DEP for approval; and

WHEREAS, Section 373.4137, Florida Statutes, requires the District to ensure that the mitigation requirements pursuant to 33 U.S.C. s. 1344 are met by implementation of the approved mitigation plan to the extent funding is provided by the Department; and

WHEREAS, Section 373.4137, Florida Statutes, authorizes the District to request a transfer of funds from the Department escrow account to pay for development and implementation of the approved mitigation plan for projects programmed in the current fiscal year; and

WHEREAS, the parties wish to agree on the procedures by which payment will be made to the District from the Department's escrow funds to pay for development and implementation of approved mitigation plans;

NOW THEREFORE, the parties hereby agree as follows:

1. Changes to impacted acres or anticipated permit date or deletion of a project may be made on a quarterly basis. An adjustment request form (see attached) must be completed by the Department's District Environmental or Permit Office and signed by the District and the Department's District Work Program Manager. Once all signatures are complete, the form will be forwarded to the Florida Department of Transportation Office of Comptroller, Financial Management Office, so that the escrow account can be adjusted.

2. Requests for transfer of funds from the escrow account required under Section 373.4137, Florida Statutes, must include an itemized invoice that indicates the portion of the mitigation plan for which funds are requested, the stages completed, if any, on that portion of the mitigation plan, and the costs incurred within those stages, allocated to one of the following categories: salaries; travel; administrative; contractual; attorney/appraisal fees; planning and land acquisition; District restoration; maintenance and monitoring; equipment; and supplies. The invoice must indicate the Department transportation project to which the mitigation relates and must also indicate whether it is the final invoice for mitigation related to that financial project. The District shall request the transfer of funds from the escrow account no sooner than 30 days prior to the date the funds are needed.

3. The total transfers requested from the escrow account for mitigation efforts identified with a particular Department transportation project will not exceed the amount in escrow for that project for the current fiscal year.

~~4. The maximum the escrow account will be funded on July 1 of each fiscal year for projects with a scheduled permit date is the amount of funding for that fiscal year as reflected in the DEP final order of adjustment for the project reflected herein. The scheduled production date is defined as the date of the Environmental Resource Permit (ERP) application submittal to the District. Funding amounts shall be \$75,000 per acre of environmental impact, adjusted for the CPI applicable to the year in which the transportation project application is submitted, in accordance with Section 373.4137(3) Florida Statutes.~~

5. The District shall implement approved mitigation plans based upon the funding provided in the escrow account. Funding in the escrow account shall be deemed to provide the reasonable assurance to the District, as part of the (ERP) process, to ensure that mitigation will be completed; this does not relieve the Department from addressing the full wetland impact avoidance/minimization and mitigation requirements of the ERP review process.

~~6. Should mitigation performed or credits obtained by the District for any given fiscal year exceed the amount of mitigation required at the end of that same year, a credit value will be recognized which may be used to reduce the amount of escrow account funding required in subsequent fiscal years. Until an appropriate project is identified for the utilization of unused credits, the overage shall be carried as a separate item on all escrow and reconciliation reports.~~

The amount of funding for the escrow account shall only be adjusted to reflect use of unused credits when the use of these credits is approved by the District and DEP, in consultation with those agencies and interested parties referenced in Section 373.4137(4), Florida Statutes, to offset the proposed impacts of a specific project. Adjustment shall be made in the fiscal year within which the scheduled production date of the project falls.

7. Funds will remain in the escrow account and will be rolled over from year to year until such time as the District submits an invoice to the Department that is identified as the "final invoice". At that time any balance in the account will be credited towards the \$12 million advance in accordance with Section 373.4137(4)(c), Florida Statutes.

8. The phases of mitigation development that will be used to identify the stage to which a transfer request relates are:

a. Plan Development

(1) Early Plan Development - The review of Department inventory, field review of impact sites, identification of conceptual plans and mitigation sites, and preparation of plans for approval by the District and DEP;

(2) Plan Development - Mitigation plan development to thirty to forty percent (30/40%) completion, identification of land requirements, field review of mitigation sites, property appraisals and surveys, preparation of right of way maps and legal documents, and purchase of lands, easements, and conservation easements;

(3) Final Plan Development - Completion of mitigation plan development, preparation of pay item quantities, preparation of special contract provisions, and preparation of bid packages;

b. Construction/Acquisition - Purchase of real property or mitigation bank credits, financial contributions to water management district regional watershed projects, earth moving, fencing, mitigation site establishment, construction inspection, and final project acceptance; and

c. Monitoring/Maintenance/Management - Success criteria monitoring, maintenance and removal of exotic species, vegetation replanting, site modifications to slope and adjustments to control and drainage structures, preparation of post construction reports and documents, and on-going land management activities.

9. Requests for transfer of funds to reimburse for actual conceptual plan preparation costs that are submitted to the Department by November 1 of each year must also indicate the Department transportation projects to which the costs will be charged.

10. The District agrees that the Department or its duly authorized representatives shall,

until the expiration of three (3) years after expenditure of funds under this MOU, have access to examine any of the District's books, documents, papers, and records involving transactions related to this MOU.

11. Upon receipt of invoice, the Department has five (5) working days to inspect and approve an invoice that has been submitted. The Department has 20 days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 20 days are measured from the latter of the date the invoice is received or the services are received, inspected and approved.

12. If payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the District. Interest penalties of less than one (1) dollar shall not be enforced unless the District requests payment. Invoices which have to be returned to a District because of District preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

13. A vendor ombudsman has been established within the department of Banking and Finance. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 410-9724 or by calling the State Comptroller's Hotline, 1-800-848-3792.

14. Records of costs incurred shall be maintained and made available upon request to the Department for three years after final payment for the work pursuant to Florida Statute 337.4137. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred shall include the District's general accounting records and the project records, together with supporting documents and records, of the District and all subcontractors considered necessary to the Department for a proper audit of project costs.

15. The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement for the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the Department's and the District's performances and obligations under this understanding are contingent upon an annual appropriation by the Legislature.

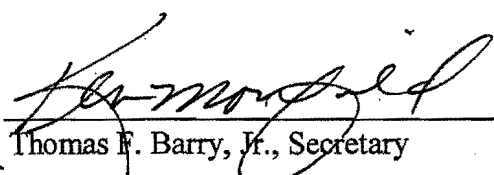
16. All invoices and requests for transfer shall be submitted to the Department at the following address: Florida Department of Transportation, Office of Comptroller, Financial Management Office, 3717 Appalachee Parkway, Suite E, Tallahassee, Florida, 32311.

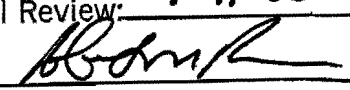
17. Any invoices or requests for transfer that include travel expenses shall be submitted and paid in accordance with Section 112.061, Florida Statutes.

18. The District and the Department will allow public access to all documents and materials relating to this agreement in accordance with the provisions of Chapter 119, Florida Statutes. Should the District or the Department assert any exemption to the requirements of Chapter 119, Florida Statutes, the burden of establishing such exemption, by way of injunctive relief or as otherwise provided by law, shall be upon that party.

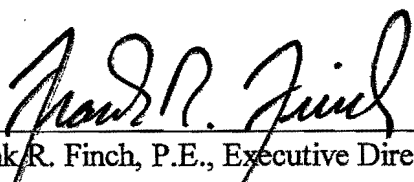
IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed effective as of the date first set forth above.

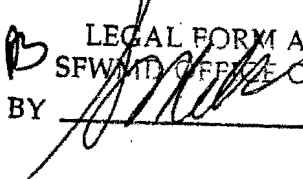
FLORIDA DEPARTMENT OF TRANSPORTATION

By:   
for Thomas F. Barry, Jr., Secretary

Legal Review: 7-11-00  
By:   
Attorney - DOT

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

By:   
Frank R. Finch, P.E., Executive Director

LEGAL FORM APPROVED  
SFWMD OFFICE OF COUNSEL  
BY  DATE 6/27/00

 6-7-00  
Procurement Approved



# ENVIRONMENTAL MITIGATION REQUEST FOR ESCROW ADJUSTMENT

Fin. Project	CURRENT			CHANGE		
	Description	Impact Acres	Permit Date	Impact Acres	Permit Date	Delete Y/N

REASON:

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Permit Office

Signature

Date

WMD Ofc

Signature

Date

Prg Develop Ofc.

Signature

Date

D.E.P.

Signature

Date

Date Comptroller Updated Escrow: \_\_\_\_\_

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
FLORIDA DEPARTMENT OF TRANSPORTATION  
AND  
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

THIS MEMORANDUM OF UNDERSTANDING is entered into this 3rd day of August, 2000, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (the Department) and the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT (the District).

WITNESSETH

WHEREAS, Section 373.4137, Florida Statutes, directs the Department to furnish the District, and the Department of Environmental Protection (DEP) information concerning planned construction for transportation projects; and

WHEREAS, Section 373.4137, Florida Statutes, directs the Department to identify funds in an escrow account for the mitigation of environmental impacts from planned transportation projects; and

WHEREAS, Section 373.4137, Florida Statutes, directs the District, in consultation with DEP, the Department, and other agencies and interested parties, to develop a plan for mitigating the environmental impacts of the transportation projects proposed by the Department within the District; and

WHEREAS, Section 373.4137, Florida Statutes, requires the District to submit the mitigation plan to DEP for approval; and

WHEREAS, Section 373.4137, Florida Statutes, requires the District to ensure that the mitigation requirements pursuant to 33 U.S.C. s. 1344 are met by implementation of the approved mitigation plan to the extent funding is provided by the Department; and

WHEREAS, Section 373.4137, Florida Statutes, authorizes the District to request a transfer of funds from the Department escrow account to pay for development and implementation of the approved mitigation plan for projects programmed in the current fiscal year; and

WHEREAS, the parties wish to agree on the procedures by which payment will be made to the District from the Departments escrow funds to pay for development and implementation of approved mitigation plans.

NOW THEREFORE, the parties hereby agree as follows:

1. Changes to impacted acres or anticipated permit date or deletion of a project may be made on a quarterly basis. An Adjustment request form (see attached) must be completed by the Department's District Environmental or Permit Office and signed by the District, and the Department's District Work Program Manager. Once all signatures are complete, the form will be forwarded to the Florida Department of Transportation Office of Comptroller, Financial Management Office, so that the escrow account can be adjusted.

2. Requests for transfer of funds from the escrow account required under Section 373.4137, Florida Statutes, must include an itemized invoice that indicates the portion of the mitigation plan for which funds are requested, the stages completed on that portion of the mitigation plan, and the costs incurred within those stages, allocated to one of the following categories: salaries; travel; administrative; contractual; land acquisition; District restoration; attorney/appraisal fees; equipment; and supplies. The invoice must indicate the Department financial project to which the mitigation relates and must also indicate whether it is the final invoice for mitigation related to that financial project.

3. The total transfers requested from the escrow account for mitigation efforts identified with a particular Department financial project will not exceed the amount in escrow for that financial project for the current fiscal year.

4. The phases of development of mitigation implementation that will be used to identify the stage to which a transfer request relates are:

a. Plan Development – The review of Department inventory, field review of impact and mitigation sites, identification of conceptual plans and mitigation sites, preparation of plans for approval by the District and DEP;

b. Plan Implementation – Purchase of lands, easements, and conservation easements or mitigation bank credits, financial contributions to water management district regional watershed projects, earth moving, mitigation site establishment, construction inspection; and

c. ~~Monitoring/Maintenance/Management~~ - Success criteria monitoring, maintenance and removal of exotic species, vegetation replanting, site modifications to slope and adjustments to control and drainage structures, preparation of post construction reports and documents, on-going land management activities, and compliance coordination with federal agencies.

5. Requests for transfer of funds to reimburse for actual conceptual plan preparation costs that are submitted to the Department by November 1 of each year must also indicate the Department financial projects to which the costs will be charged.

6. The District agrees that the Department or its duly authorized representatives shall, until the expiration of three (3) years after expenditure of funds under this MOU,

*4 x ref  
are missing* →

have access to examine any of the District's books, documents, papers, and records involving transactions related to this MOU.

7. Upon receipt of invoice, the Department has five (5) working days to inspect and approve the services. The Department has 20 days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 20 days are measured from the latter of the date the invoice is received or the services are received, inspected and approved.

8. If payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the District. Interest penalties of less than one (1) dollar shall not be enforced unless the District requests payment. Invoices which have to be returned to a District because of District preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

9. A vendor ombudsman has been established within the department of Banking and Finance. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 410-9724 or by calling the State Comptrollers Hotline, 1-800-848-3792.

10. Records of costs incurred shall be maintained and made available upon request to the Department for three years after final payment for the work pursuant to Florida Statute 337.4137. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred shall include the Districts general accounting records and the project records, together with supporting documents and records, of the District and all subcontractors considered necessary to the Department for a proper audit of project costs.

11. The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement for the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the Department's performance and obligation to pay under this understanding is contingent upon an annual appropriation by the Legislature.

12. All invoices and requests for transfer shall be submitted to the Department at the following address: Florida Department of Transportation, Office of Comptroller,

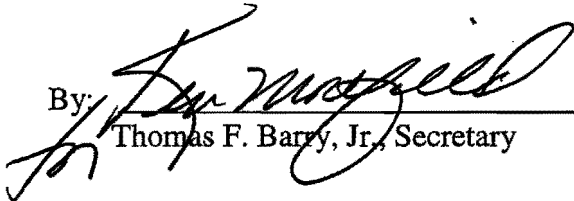
Financial Management Office, 3717 Appalachee Parkway, Suite E, Tallahassee, Florida, 32311.

13. Any invoices or requests for transfer that include travel expenses shall be submitted and paid in accordance with Section 112.061, Florida Statutes.

14. The District and the Department will allow public access to all documents and materials relating to this agreement in accordance with the provisions of Chapter 119, Florida Statutes. Should the District or the Department assert any exemption to the requirements of Chapter 119, Florida Statutes, the burden of establishing such exemption, by way of injunctive relief or as otherwise provided by law, shall be upon that party.

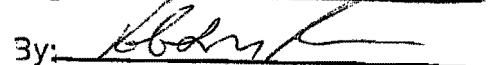
IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed effective as of the date first set forth above.


FLORIDA DEPARTMENT OF TRANSPORTATION

By:   
Thomas F. Barry, Jr., Secretary

Legal Review: 7-28-00

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

By:   
Attorney - DOT

By:   
Executive Director

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
FLORIDA DEPARTMENT OF TRANSPORTATION  
AND  
SUWANNEE RIVER WATER MANAGEMENT DISTRICT**

THIS MEMORANDUM OF UNDERSTANDING is entered into this 1st day of November, 1999, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (the "Department") and the SUWANNEE RIVER WATER MANAGEMENT DISTRICT (the "District").

**WITNESSETH**

WHEREAS, Section 373.4137, Florida Statutes, directs the Department to furnish the District, and the Department of Environmental Protection ("DEP") information concerning planned construction for transportation projects; and

WHEREAS, Section 373.4137, Florida Statutes, directs the Department to identify funds in an escrow account for the mitigation of environmental impacts from planned transportation projects; and

WHEREAS, Section 373.4137, Florida Statutes, directs the District, in consultation with DEP, the Department, and other agencies and interested parties, to develop a plan for mitigating the environmental impacts of the transportation projects proposed by the Department within the District; and

WHEREAS, Section 373.4137, Florida Statutes, requires the District to submit the mitigation plan to DEP for approval; and

WHEREAS, Section 373.4137, Florida Statutes, requires the District to ensure that the mitigation requirements pursuant to 33 U.S.C. s. 1344 are met by implementation of the approved mitigation plan to the extent funding is provided by the Department; and

WHEREAS, Section 373.4137, Florida Statutes, authorizes the District to request a transfer of funds from the Department escrow account to pay for development and implementation of the approved mitigation plan for projects programmed in the current fiscal year; and

WHEREAS, the parties wish to agree on the procedures by which payment will be made to the District from the Department's escrow funds to pay for development and implementation of approved mitigation plans;



NOW THEREFORE, the parties hereby agree as follows:

1. Changes to impacted acres or anticipated permit date or deletion of a project may be made on a quarterly basis. An Adjustment request form (see attached) must be completed by the Department's District Environmental or Permit Office and signed by the District, the Department's District Work Program Manager, and DEP. Once all signatures are complete, the form will be forwarded to the Florida Department of Transportation Office of Comptroller, Financial Management Office, so that the escrow account can be adjusted.

2. Requests for transfer of funds from the escrow account required under Section 373.4137, Florida Statutes, must include an itemized invoice that indicates the portion of the mitigation plan for which funds are requested, the stages completed on that portion of the mitigation plan, and the costs incurred within those stages, allocated to one of the following categories: salaries; travel; administrative; contractual; attorney/appraisal fees; equipment; and supplies. The invoice must indicate the Department financial project to which the mitigation relates and must also indicate whether it is the final invoice for mitigation related to that financial project.

3. The total transfers requested from the escrow account for mitigation efforts identified with a particular Department financial project will not exceed the amount in escrow for that financial project for the current fiscal year.

4. The mitigation stages that will be used to identify the stage to which a transfer request relates are:

a. Early Plan Development - The review of Department inventory, field review of impact sites, identification of conceptual plans and mitigation sites, and preparation of plans for approval by the District and DEP;

b. Plan Development - Mitigation plan development to thirty to forty percent (30/40%) completion, identification of land requirements, field review of mitigation sites, property appraisals and surveys, preparation of right of way maps and legal documents, and purchase of lands, easements, and conservation easements;

c. Final Plan Development - Completion of mitigation plan development, preparation of pay item quantities, preparation of special contract provisions, and preparation of bid packages;

d. Letting - Project advertisement; acceptance of bids, and award of project;

e. Construction - Purchase of mitigation bank credits, financial contributions to water management district regional watershed projects, earth moving, fencing, mitigation site

establishment, construction inspection, and final project acceptance; and

f. Post Construction Activities - Success criteria monitoring, maintenance and removal of exotic species, vegetation replanting, site modifications to slope and adjustments to control and drainage structures, and preparation of post construction reports and documents.

5. Requests for transfer of funds to reimburse for actual conceptual plan preparation costs that are submitted to the Department and DEP by November 1 of each year must also indicate the Department financial projects to which the costs will be charged.

6. Any invoices or requests for transfer shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.

7. Upon receipt of invoice, the Department has five (5) working days to inspect and approve the services. The Department has 20 days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 20 days are measured from the latter of the date the invoice is received or the services are received, inspected and approved.

8. If payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the District. Interest penalties of less than one (1) dollar shall not be enforced unless the District requests payment. Invoices which have to be returned to a District because of District preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

9. A vendor ombudsman has been established within the department of Banking and Finance. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 410-9724 or by calling the State Comptroller's Hotline, 1-800-848-3792.

10. Records of costs incurred shall be maintained and made available upon request to the Department for three years after final payment for the work pursuant to Florida Statute 337.4137. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred shall include the District's general accounting records and the project records, together with supporting documents and records, of the District and all subcontractors considered necessary to the Department for a proper audit of project costs.

11. The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money

may be paid on such contract. The Department shall require a statement for the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the Department's performance and obligation to pay under this understanding is contingent upon an annual appropriation by the Legislature.

12. All invoices and requests for transfer shall be submitted to the Department at the following address: Florida Department of Transportation, Office of Comptroller, Financial Management Office, 3717 Appalachian Parkway, Suite E, Tallahassee, Florida, 32311.

13. Any invoices or requests for transfer that include travel expenses shall be submitted and paid in accordance with Section 112.061, Florida Statutes.

14. The District and the Department will allow public access to all documents and materials relating to this agreement in accordance with the provisions of Chapter 119, Florida Statutes. Should the District or the Department assert any exemption to the requirements of Chapter 119, Florida Statutes, the burden of establishing such exemption, by way of injunctive relief or as otherwise provided by law, shall be upon that party.

IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed effective as of the date first set forth above.

FLORIDA DEPARTMENT OF TRANSPORTATION

By: Thomas F. Barry, Jr.  
Thomas F. Barry, Jr., Secretary

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

By: [Signature]  
Executive Director

Legal Review: [Signature]  
By: [Signature]  
Attorney - DOT

## ENVIRONMENTAL MITIGATION REQUEST FOR ESCROW ADJUSTMENT

Fin. Project	CURRENT			CHANGE		
	Description	Impact Acres	Permit Date	Impact Acres	Permit Date	Delete Y/N

REASON:

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Permit Office \_\_\_\_\_  
Signature Date

WMD Ofc \_\_\_\_\_  
Signature Date

Prg Develop Ofc. \_\_\_\_\_  
Signature Date

D.E.P. \_\_\_\_\_  
Signature Date

Date Comptroller Updated Escrow: \_\_\_\_\_

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
FLORIDA DEPARTMENT OF TRANSPORTATION  
AND  
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT**

THIS MEMORANDUM OF UNDERSTANDING is entered into this 14 day of June, 2001, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (the "Department") and the SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT (the "District").

**WITNESSETH**

WHEREAS, Section 373.4137, Florida Statutes, directs the Department to furnish the District, and the Department of Environmental Protection ("DEP") information concerning planned construction for transportation projects; and

WHEREAS, Section 373.4137, Florida Statutes, directs the Department to identify funds in an escrow account for the mitigation of environmental impacts from planned transportation projects; and

WHEREAS, Section 373.4137, Florida Statutes, directs the District, in consultation with DEP, the Department, and other agencies and interested parties, to develop a plan for mitigating the environmental impacts of the transportation projects proposed by the Department within the District; and

WHEREAS, Section 373.4137, Florida Statutes, requires the District to submit the mitigation plan to DEP for approval; and

WHEREAS, Section 373.4137, Florida Statutes, requires the District to ensure that the mitigation requirements pursuant to 33 U.S.C. s. 1344 are met by implementation of the approved mitigation plan to the extent funding is provided by the Department; and

WHEREAS, Section 373.4137, Florida Statutes, authorizes the District to request a transfer of funds from the Department escrow account to pay for development and implementation of the approved mitigation plan for projects programmed in the current fiscal year; and

WHEREAS, the parties wish to agree on the procedures by which payment will be made to the District from the Department's escrow funds to pay for development and implementation of approved mitigation plans;

NOW THEREFORE, the parties hereby agree as follows:



1. Changes to impacted acres or anticipated permit date or deletion of a project may be made on a quarterly basis. An Adjustment request form (see attached) must be completed by the Department's District Environmental or Permit Office and signed by the District, the Department's District Work Program Manager, and DEP. Once all signatures are complete, the form will be forwarded to the Florida Department of Transportation Office of Comptroller, Financial Management Office, so that the escrow account can be adjusted.

2. Requests for transfer of funds from the escrow account required under Section 373.4137, Florida Statutes, must include an itemized invoice that indicates the portion of the mitigation plan for which funds are requested, the stages completed on that portion of the mitigation plan, and the costs incurred within those stages, allocated to one of the following categories: salaries; travel; administrative; contractual; attorney/appraisal fees; equipment; and supplies. The invoice must indicate the Department financial project to which the mitigation relates and must also indicate whether it is the final invoice for mitigation related to that financial project.

3. The total transfers requested from the escrow account for mitigation efforts identified with a particular Department financial project will not exceed the amount in escrow for that financial project for the current fiscal year.

4. The mitigation stages that will be used to identify the stage to which a transfer request relates are:

a. Early Plan Development - The review of Department inventory, field review of impact sites, identification of conceptual plans and mitigation sites, and preparation of plans for approval by the District and DEP;

b. Plan Development - Mitigation plan development to thirty to forty percent (30/40%) completion, identification of land requirements, field review of mitigation sites, property appraisals and surveys, preparation of right of way maps and legal documents, and purchase of lands, easements, and conservation easements;

c. Final Plan Development - Completion of mitigation plan development, preparation of pay item quantities, preparation of special contract provisions, and preparation of bid packages;

d. Letting - Project advertisement; acceptance of bids, and award of project;

e. Construction - Purchase of mitigation bank credits, financial contributions to water management district regional watershed projects, earth moving, fencing, mitigation site establishment, construction inspection, and final project acceptance; and

f. Post Construction Activities - Success criteria monitoring, maintenance and removal of exotic species, vegetation replanting, site modifications to slope and adjustments to control and

drainage structures, and preparation of post construction reports and documents.

5. Requests for transfer of funds to reimburse for actual conceptual plan preparation costs that are submitted to the Department and DEP by November 1 of each year must also indicate the Department financial projects to which the costs will be charged.

6. Any invoices or requests for transfer shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.

7. Upon receipt of invoice, the Department has five (5) working days to inspect and approve the services. The Department has 20 days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 20 days are measured from the latter of the date the invoice is received or the services are received, inspected and approved.

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10. Records of costs incurred shall be maintained and made available upon request to the Department for three years after final payment for the work pursuant to Florida Statute 337.4137. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred shall include the District's general accounting records and the project records, together with supporting documents and records, of the District and all subcontractors considered necessary to the Department for a proper audit of project costs.

11. The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement for the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the Department's performance and obligation to pay under this understanding is contingent upon an annual appropriation by the

Legislature.

12. All invoices and requests for transfer shall be submitted to the Department at the following address: Florida Department of Transportation, Office of Comptroller, Financial Management Office, 3717 Appalachian Parkway, Suite E, Tallahassee, Florida, 32311.

13. Any invoices or requests for transfer that include travel expenses shall be submitted and paid in accordance with Section 112.061, Florida Statutes.

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IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed effective as of the date first set forth above.

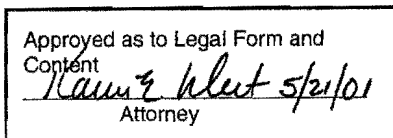
FLORIDA DEPARTMENT OF TRANSPORTATION

By: Thomas F. Barry, Jr.  
Thomas F. Barry, Jr., Secretary

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By: E. D. "Sonny" Vergara  
E. D. "Sonny" Vergara, Executive Director

APPROVED FUNDS AVAILABLE  
ROBIN NAITOVE - COMPTROLLER



JUN 11 2001

BY Robin Naitove

Legal Review: 6-14-01 okpl

By: Robin Naitove  
Attorney - DOT



Appendix C – Inventory Spreadsheet

Project Information								Permit Information											COMMENTS	
FDOT District	FY	FM #	Project Title	Basin	County	Water Management District	Letting Date	Permit Type					Listed Species Affected ? (Y/N)	FLUCC S	Wetland Impact acres		Functional Loss (UMAM score/credit)	Anticipate d Mitigation Type		Selected Mitigation Type
								Agency	Type	App Date	Status	Permit No.			Forested Acres	Herbaceous Acres				
<b>Project Information:</b> <i>If the project has more than one permit, use multiple rows.</i>								<b>Permit Information:</b> <b>Permit Type</b> - Add information for Federal or State permit(s) requiring mitigation											<b>Comments:</b> Provide any additional details as needed	
<b>FY:</b> Identify Fiscal Year of letting (example 12/13)								<b>Agency:</b> Identify DEP, WMD or ACOE (please use a separate row for each permit required)												
<b>FDOT District:</b> Identify FDOT District								<b>Type:</b> Identify permit type ( <i>Do not include NPDES permits</i> ) For ACOE: N = Nationwide; I = Individual												
<b>FM#:</b> Identify project FM number (11 digits)								For DEP or WMD: C = Conceptual; G= General; I = Individual												
<b>Project Title:</b> Identify Project Name								<b>App Date:</b> Identify date of permit application												
<b>Basin:</b> Identify basin of impact								<b>Status:</b> Identify permit status I = Issued (if issued, identify expiration date) A = Applied/Pending M = Modification												
<b>County:</b> Identify project location county								<b>Listed Species Affected?:</b> Yes or No												
<b>Water Management District:</b> Identify WMD where project is located								<b>FLUCCS:</b> Identify FLUCCS code (use separate rows for each FLUCCS)												
<b>Letting Date:</b> Identify letting date								<b>Wetland Impact:</b> Identify acres of impacted forested or herbaceous wetland acres												
								<b>Functional Loss:</b> List UMAM functional loss FL= impact delta x impact acres												
								<b>Anticipated Mitigation Type:</b> Identify the type of mitigation DEP or WMD FDOT Mitigation Bank												
								<b>Selected Mitigation Type:</b> Identify final mitigation option used												



Appendix D – Invoicing Form

Mitigation Invoice for FDOT							Invoice Date:		[xx/xx/xx]	
							Invoice No.:		[xxxxxx]	
FROM: Agency Name (WMD or FDEP):					TO: FDOT District:					
Street Address:					Street Address:					
City, State, ZIP Code:					City, State, ZIP Code:					
Agency Contact Name					District Permit Coordinator:					
Telephone No. (000-000-0000):					Telephone No. (000-000-0000):					
E-mail Address:					Customer ID [ABC12345]:					
Contract Number	FDOT Project FM	Project Information/Description					Invoice Information			
		FDOT Project Name	Mitigation Site Name	Type of Mitigation	Status Report Due Date	% Mitigation Completion (if applicable)	Work Performed	Billing Period	Amount	
[Assigned to FDEP and WMDs]	[1234567]	[Ex. SR 60 FROM PINELLAS/ HILLS CO/ TO ROCKY POINT DR]	[Ex. SW 86 (Mobbey Bayou Wilderness Preserve)]	[Ex. Restoration]	[Ex. January]		[Ex. Long Term Maintenance]	[Date(s)]		
								TOTAL AMOUNT DUE THIS INVOICE:		
							VENDOR/AGENCY SIGNATURE:			

Work Performed:

- 1. Early Plan Development – Review of FDOT inventory, field review of impact sites, identification of conceptual plans and sites, preparation of plans
- 2. Plan Development – Mitigation plan development to thirty to forty percent completion, field review of mitigation sites, appraisals and surveys, purchase of lands, easements, and conservation easements
- 3. Final Plan Development – Completion of plan development, preparation of pay item quantities, preparation of contract provisions, and preparation of bid packages
- 4. Letting – Project advertisement, acceptance of bids, and award of project
- 5. Construction – Earth moving, fencing, mitigation site establishment, construction inspection, and final project acceptance
- 6. Post Construction Activities – Success criteria monitoring, maintenance and removal of exotic species, replanting, site modifications, and preparation of post construction reports and documents
- 7. Long-term maintenance – Activities associated with ensuring success, elimination of exotics, site protection measures, etc.