

In-Lieu-Fee Program Instrument
For The
Everglades National Park In-Lieu-Fee Program

Sponsored By
United States Department of Interior
National Park Service
at
Everglades National Park

Effective Date: 08/14/2015

Submitted to:

Regulatory Division
U.S. Army Corps of Engineers
Jacksonville District
701 San Marco Blvd.
Jacksonville, FL 32207

Submitted by:

U.S. Department of Interior
National Park Service
Everglades National Park
40001 SR 9336
Homestead, FL 33034
305-242-7710

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I. INTRODUCTION

This In-Lieu Fee Program Instrument (ILF Instrument), establishing the Everglades National Park (ENP) In-Lieu Fee Program (hereinafter referred to as the ENP ILF Program), is made and entered into by and among the United States Department of Interior, National Park Service (Sponsor), and the U.S. Army Corps of Engineers, Jacksonville District (Corps or USACE). The Sponsor and the Corps are hereinafter referred to jointly as the “Parties” to this agreement. This ILF Instrument is a regulatory agreement between the Corps and the other Parties and incorporates all appendices and attachments to this ILF Instrument as a part hereof. Guidelines and responsibilities for the establishment, use, operation, protection, monitoring and maintenance of the ENP ILF Program are set forth in this ILF Instrument.

II. PURPOSE OF THE IN-LIEU FEE PROGRAM INSTRUMENT

The purpose of this ILF Instrument is to establish guidelines and responsibilities for the establishment, operation, protection, monitoring, maintenance and use of the ENP ILF Program in accordance with 33 CFR 332 *et seq.* The ENP ILF Program has been established to provide compensatory mitigation for unavoidable impacts to waters of the United States, including wetlands, authorized by Department of the Army permits issued pursuant to Section 404 of the Clean Water Act (33 USC 1344) and/or Section 10 of the Rivers and Harbors Act (33 USC 403).

USACE approval of this Instrument constitutes the regulatory approval required for the ENP ILF Program to be used to provide compensatory mitigation for Department of the Army permits pursuant to 33 C.F.R. 332.8(a)(1). This Instrument is not a contract between the Sponsor or Property Owner and USACE or any other agency of the federal government. Any dispute arising under this Instrument will not give rise to any claim by the Sponsor or Property Owner for monetary damages. This provision is controlling notwithstanding any other provision or statement in the Instrument to the contrary.

III. AUTHORITIES

The establishment, operation and use of the ENP ILF Program, and the development of each ILF Mitigation Project included therein is governed by one or more of the following statutes, rules, regulations, authorities, policies and guidance (not all inclusive):

- a) Everglades National Park Act (16 USC § 410 *et seq.*)
- b) National Park Service Organic Act (16 USC § 1 *et seq.*)
- c) Wilderness Act (16 USC § 1131 *et seq.*)
- d) Regulatory Programs of the United States Army Corps of Engineers (33 CFR 320-332);
- e) Clean Water Act (33 USC 1251 *et. seq.*);
- f) National Environmental Policy Act (NEPA) (42 USC § 4321 *et seq.*);
- g) Executive Order 11990; Protection of Wetlands;
- h) Executive Order 11988; Floodplain Management;
- i) Rivers and Harbors Act (33 USC § 403)

- j) Endangered Species Act (16 USC § 1531 *et seq.*);
- k) National Historic Preservation Act (16 USC § 470);
- l) U.S. Army Corps of Engineers Regulatory Guidance Letter 05-1, Guidance on Use of Financial Assurances, and Suggested Language for Special Conditions for Department of the Army Permits Requiring Performance Bonds, U.S. Army Corps of Engineers, February 14, 2005.
- m) Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 CFR 230);
- n) Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army Concerning Determination of Mitigation Under the Clean Water Act, Section 404(b)(1) Guidelines (February 6, 1990)
- o) Fish and Wildlife Coordination Act (16 USC § 661 *et seq.*);

IV. DEFINITIONS

“Adaptive Management” related to ILF Mitigation Projects involves the Corps, IRT, Sponsor and/or Property Owner discussing problems occurring on the ILF Mitigation Project Site and coming to agreement on possible solutions or alternative approaches necessary to bring the site into compliance or meet performance objectives.

“Construction” means all activities used to create, restore, enhance and preserve an ILF Mitigation Project Site for use as compensation for unavoidable wetland impacts. Construction associated with ILF Mitigation Project development may include but is not limited to activities such as moving earth, building weirs, plugging ditches, breaking drain tiles, removing dikes, planting vegetation, and removing cattle.

"Credits" are units of measure representing the accrual, attainment, or protection of aquatic functions in accordance with the employed functional assessment method.

“Credit Ledger” means the official accounting record that documents beginning and ending credit balances, all addition and subtraction of credits and changes in credit availability. The credit ledger will be maintained by the ILF Program sponsor and audited by the Corps on an annual basis.

“Credit Release” means an action by the Corps to make specified Credits available pursuant to the credit release schedule and full achievement of associated performance standards. Credit releases are documented by a Credit Release Letter from the Corps.

“Credit Transaction” means the approved use, transfer, or conveyance of Credits by the Sponsor to satisfy compensatory mitigation requirements of a Department of the Army permit if the use of credits has been approved by the District Engineer. Each instance of a credit transaction or any other transfer of ILF Program credits to a third party shall be documented with a Credit Transaction Letter to be maintained by the Sponsor and provided to the Corps.

“Credit Transaction Letter” means the official documentation of the use, transfer or conveyance of ILF Program credits. Each Credit Transaction Letter must be signed by the sponsor or its designee and include the name and permit number of the impacting project, number and type of credits involved and must include language expressly specifying that the Sponsor, and its successors and assigns assume legal responsibility for accomplishment and maintenance of the transferee’s compensatory mitigation requirements

“Deficiency” means the ILF Mitigation Project has failed to meet a function, value or component which was expect to be attained.

“Ecoregion” means geographic regions where climatic conditions are similar and the ecosystems (including wetlands) are relatively homogeneous. The Jacksonville District utilizes Level IV Ecoregions of Florida in evaluating mitigation service areas.

“Enhancement” means the manipulation of the physical, chemical or biological characteristics of an aquatic resource to heighten, intensify or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention or wildlife habitat. Activities may include but are not limited to planting vegetation, controlling non-native or invasive species, and modifying site elevations or the proportion of open water to influence hydroperiods.

“Establishment (Creation)” means the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource on an upland or deep water site, where the aquatic resource did not previously exist.

“Functional Assessment” means the process by which the capacity of aquatic resources to perform a function is measured or characterized. This approach analyzes the capacity to perform a function often using a numeric model. Assessments are methods that generate a number that represents an estimate of the performance of an aquatic resource function. The number generated is relative to a predetermined standard. (e.g., level of function provided by reference wetlands or other aquatic resource).

“Hydrologic Unit Code” (HUC) means a hierarchical system created by the United States Geological Survey utilizing a sequence of numbers to identify hydrological features like drainage basins or watersheds.

“Implementation Phase” means the period of time from the establishment date of the ILF Mitigation Project until all credits have been sold or relinquished. This phase includes all construction, maintenance, and monitoring activities necessary to ensure the ILF Mitigation Project Site achieves and maintains the established ecological performance standards.

“Implementation Financial Assurance” means the financial assurances required to ensure all required components of the Implementation Phase are successfully completed and maintained in accordance with established performance standards.

“In-Lieu Fee Mitigation Project” (ILF Mitigation Project) means a compensatory mitigation project reviewed and approved by the Corps, in consultation with the IRT, implemented by the Sponsor under the parent In-Lieu Fee Program.

“In-Lieu Fee Program” (ILF Program) means a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for Department of the Army permits. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu fee program sponsor. However, the rules governing the operation and use of in-lieu fee programs are somewhat different from the rules governing operation and use of mitigation banks. The operation and use of an in-lieu fee program are governed by an in-lieu fee program instrument.

“In-Lieu Fee Program Account” (ILF Program Account) means an account established at a financial institution that is a member of the Federal Deposit Insurance Corporation for the selection, design, acquisition, implementation, and management of in-lieu fee compensatory mitigation projects.

“In-Lieu Fee Program Area” (ILF Program Area) means the area within which an In-Lieu Fee Mitigation Project can be implemented.

“In-Lieu Fee Program Instrument” (ILF Instrument) means the legal document for the establishment, operation, and use of an in-lieu fee program

“In-Lieu Fee Program Service Area” (ILF Program Service Area) means the watershed, ecoregion, physiographic province and/or other geographic area within which the ILF Program is authorized to provide compensatory mitigation required by Department of the Army permits. ILF Programs may have multiple service areas governed by its instrument.

“Interagency Review Team” (IRT) means an interagency group of federal, state, tribal, and/or local regulatory and resource agencies that review documentation and information pertaining to the establishment, operation, protection, maintenance, monitoring and use of mitigation banks and in-lieu fee programs.

“Long-term Financial Assurance” means a funding mechanism held by an entity approved by the Corps to generate income to fund perpetual management, maintenance, monitoring, and other activities on the mitigation bank or in-lieu fee program project site consistent with the Long-term Management Plan. Funding should be at a level such that the principal amount and any additions to the principal that are made from earnings, subsequent deposits for the purpose of compensating for inflation, or other income sources to ensure real value of the principal does not decline over time.

“Long-term Management Plan” means a document which provides a description of long-term management needs; annual cost estimates to address those needs and identifies the proposed funding mechanism. It may include provisions to address inflationary adjustments and other contingencies.

“Mitigation Work Plan” means detailed written specifications and work descriptions for the mitigation project. Activities include, but are not limited to, construction methods, timing, and sequence; source(s) of water, including connections to existing waters and uplands; methods for

establishing the desired plant community; plans to control invasive plant species; proposed grading plan, including elevations and slopes of the substrate; soil management and erosion control measures.

“Monitoring” means a data collection plan developed for the purpose of determining if the mitigation activities are on track to meet performance standards and if adaptive management is needed. Monitoring will include both qualitative and quantitative data collection activities.

“Notification of Deficiency” means a document produced by the Sponsor intended to advise the Corps that success criteria have not been met or may not be met. The Notice will include a detailed explanation of the deficiency, identify specific measures to be taken, and include a timetable for implementing work to correct the deficiency.

“Phasing” means the implementation of construction activities in distinct components of overall ILF Mitigation Project development.

“Performance Standards” means the measurable criteria for determining if the ILF Program’s goals and objectives are being achieved. They document a desired state, threshold value, or amount of change necessary to indicate that a particular function is being performed or structure has been established as specified in the Mitigation Work Plan for each ILF Mitigation Project.

“Preservation” means the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources.

“Re-establishment (Restoration)” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former aquatic resource. Examples include removing fill material or plugging ditches.

“Service Area” means the geographic area(s) within which authorized impacts to Waters of the U.S. may be mitigated through the purchase of credits at an approved mitigation bank or in-lieu fee program.

“Sponsor” means the public or private entity with the legal and financial responsibility for the establishment, operation and maintenance of a mitigation bank or in-lieu fee program.

“Watershed” means a geographic area of land bounded by topographic high points in which water drains to a common destination.

“Waters of the U.S.” means all waters and wetlands over which the Corps and the USEPA is granted jurisdiction in the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, and the River and Harbor Act, 33 U.S.C. § 401, *et seq.* This definition encompasses both the term “waters of the United States” as defined in 33 CFR. Part 328 and “navigable waters” as defined in 33 CFR Part 329.

V. QUALIFICATIONS OF THE SPONSOR

National Park Service
Everglades National Park
40001 State Road 9336
Homestead, FL 33034
POC - Jonathan Taylor, Restoration Program Manager
305-242-7876
305-242-7836
Jonathan_E_Taylor@nps.gov

The National Park Service Organic Act (16 USC 1 *et seq.*) provides for the core authority for the mission of the National Park Service:

“Section 1. There is created in the Department of the Interior a service to be called the National Park Service, which shall be under the charge of a director who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall have substantial experience and demonstrated competence in land management and natural or cultural resource conservation. The Director shall select two Deputy Directors. The first Deputy Director shall have responsibility for National Park Service operations, and the second Deputy Director shall have responsibility for other programs assigned to the National Park Service. There shall also be in said service such subordinate officers, clerks, and employees as may be appropriated for by Congress. The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified, except such as are under the jurisdiction of the Secretary of the Army, as provided by law, by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”

The Sponsor has successfully managed the 6,250 acre Hole-In-the-Donut mitigation project (HID) under Department of the Army (DA) permit #SAJ-1993-01691 since 1996 and Florida Department of Environmental Protection (FDEP) permit (1995 Permit # 132416479). A modification of the DA permit on July 19, 2007, authorized the expansion of the HID to 6,600 acres, which includes 6300 acres of wetland restoration. HID has provided compensatory mitigation for DA, FDEP and County authorized impacts within the Miami-Dade County area. HID is the only ILF Mitigation Project currently in the ENP ILF Program. The development of this ILF Mitigation Project and mitigation plan is in accordance with the guidelines and responsibilities found in this ILF Instrument for the ENP ILF Program. HID was one of the first mitigation projects of its kind in the state of Florida and the scope and scale of the restoration project made it precedent-setting. HID was chosen as an area to provide compensatory mitigation because it provided successful ecological lift through restoration. The wetland functions restored include hydrology, wetland soil formation processes, natural colonization of native wetland plants, the development of freshwater herbaceous wetland plant communities and improved wildlife utilization. HID mitigation funds collected prior to the effective date of the ENP ILF Instrument have been used for the restoration, monitoring, management and

maintenance of the HID. Mitigation activities carried out through 2014 have resulted in the restoration of 4,895 wetland acres (out of 6,300).

As evidenced by the ongoing success of HID, the sponsor has the capability and means to implement ILF Mitigation Projects that are consistent with 33 CFR Part 332. The sponsor also possesses the authority to implement these projects when they are consistent with the mission of the National Park service.

VI. RESPONSIBILITIES OF THE SPONSOR

a. The Sponsor will, after receipt of funds by permittees, provide compensation for wetland impacts as required in DA permits and commit to restore wetland functions and maintain wetland habitats in accordance with the provisions of this ILF Instrument.

b. The Sponsor will assume the responsibility for compensatory mitigation requirements of DA permits for which it transfers credits once a permittee has secured the appropriate number and type of credits from the Sponsor. The Sponsor will provide documentation to the Corps that confirms that the Sponsor has accepted the responsibility for providing the required compensatory mitigation. Legal responsibility for providing the compensatory mitigation lies with the Sponsor once a permittee secures credits from the Sponsor.

c. The Sponsor will perform all necessary work to restore, monitor and maintain wetland habitats as described in the ILF Instrument or Mitigation Plan associated with each ILF Mitigation Project, until the Sponsor has demonstrated to the satisfaction of the Corps, in consultation with the IRT that the ILF Mitigation Projects comply with all provisions contained therein.

d. The Sponsor will be responsible for maintaining account records, notifying the Corps of the credits acquired by permittees, monitoring for project success, conducting remedial action as necessary to insure project success, and providing this information to the Corps in reports documenting project usage and the results of monitoring in accordance with the provisions of this ILF Instrument and Mitigation Plan associated with each ILF Mitigation Project.

e. The Sponsor shall obtain all appropriate environmental documentation, permits and other authorizations necessary to allow for the establishment, operation and maintenance of the ENP ILF Program. Compliance with this ILF Instrument does not fulfill the requirement, or substitute for such authorization.

f. The Sponsor will be responsible for the compensatory mitigation requirements for each credit where the compensatory cost of restoration, monitoring, long-term management and protection has been received.

g. The Sponsor will be responsible for notifying the Corps of any pending modifications to the ENP ILF Program at least 60 days prior to the effective date.

VII. INTERAGENCY REVIEW TEAM

Designated representatives of the Corps shall serve as the Chair of the IRT. All decisions, approvals, consents and other actions of the IRT are implemented by the Chair, and all references in this ILF Instrument to a decision, approval, consent or other action by the IRT shall

be deemed to refer to the Chair, unless the context clearly indicates otherwise. The Corps, representatives from the U.S. Environmental Protection Agency ("EPA"), the U.S. Fish and Wildlife Service ("FWS"), and other state, local and federal agencies, as appropriate, may participate in the IRT as consulting members. The Corps will retain final authority over the IRT composition, but shall not unreasonably exclude any government agency with an interest in IRT matters.

VIII. IN-LIEU FEE PROGRAM AREA

ENP is located in south Florida, spanning the southern tip of the Florida Peninsula and most of Florida Bay. The 1,509,000-acre park lies in portions of three counties: Miami-Dade, Monroe, and Collier. ENP is the largest designated Wilderness reserve on the North American continent. It is the only place in the United States designated as a World Heritage Site, an International Biosphere Reserve and a Wetland of International Importance. ENP is also the third largest national park in the contiguous United States. The principal ecosystem types within ENP include shallow water marine habitats (558,458 acres), saltwater wetland forests and marshes (449,731 acres), freshwater marshes and prairies (572,212 acres) and upland complex of pine and hardwood forests (19,768 acres).

ENP's natural landscape is adversely impacted by invasive exotic plants and at least 8,000 acres of anthropogenically disturbed land. The latter, for example, includes abandoned unimproved roads, canals, acquired homesteads, and agricultural fields. These disturbed sites are often heavily infested with invasive exotic plants, which adversely alter natural hydrology and diminish the wilderness and natural character of ENP. It is the objective of the Sponsor to remove both invasive exotic plants and disturbed unnatural features from the park's natural landscape. The Sponsor will accomplish these two objectives by identifying ILF Mitigation Projects for the ENP ILF Program that create, restore or enhance freshwater herbaceous wetlands and possibly associated upland buffers found within ENP.

The ENP ILF Program will be comprised of ILF Mitigation Projects that are located only within the Miami-Dade County portion of the ENP. The projects would only be for the purposes of enhancing, creating or restoring freshwater herbaceous wetlands (including adjacent buffer areas). HID is a useful example of the type of projects the ENP ILF Program would include. HID is located in Miami-Dade County, is within the Everglades Watershed, and falls on both the Everglades and Miami Ridge Eco-Regions (Figure 1, Appendix A).

The ENP ILF Program contributes to a regionally integrated ecological network as evidenced by the Program's location within the ENP and the larger matrix of preserved lands within the greater Everglades Watershed. ILF Mitigation Projects included in the ENP ILF Program, such as HID, will improve the environment of ENP by removing significantly large stands of invasive exotic plant species and restoring disturbed unnatural areas in the landscape. The United States Government through NPS is and will be the long-term owner of any ILF Mitigation Project accepted by the Corps under this ILF Instrument for the ENP ILF Program. Public Law 85-482 (1958), codified at 16 U.S.C. §410i, established the boundaries of the ENP.

IX. IN-LIEU FEE PROGRAM MITIGATION SERVICE AREA

The Mitigation Service Area (MSA) for the ENP ILF Program will encompass most of Miami-Dade, and a portion of Broward counties. The northern limit of the MSA is bounded by the Interstate 75/Interstate 595 complex (Figure 2, Appendix B), in central Broward County. The MSA is based on the Everglades Watershed approach and includes two south Florida Eco-Regions (level III Ecoregions), as developed in Compensation Planning Framework (Appendix A). The MSA conforms to the boundaries of Miami-Dade County and within Broward County it conforms to the Miami Ridge/Atlantic Coastal System eco-region. The MSA encompasses a total of approximately 1,517,000 acres. The MSA does not include any saline or tidally influenced wetlands. Similarly, it does not include barrier islands as it is difficult to establish a hydrological connection. Each ILF Mitigation Project will have a project specific service area approved by the Corps.

X. IN-LIEU FEE PROGRAM ACCOUNT

The Sponsor has established an ILF Program Account managed by the National Park Foundation (ENP ILF Financial Manager), a qualified 501(c)(3) entity that provides support for the National Park Service, to receive compensatory mitigation in-lieu fees from Department of the Army permittees (Appendix C). Those fees are held in the ILF Program Account or may be in subsidiary mitigation project accounts through which the National Park Foundation will manage monies transferred from requests by mitigation applicants, or their intermediaries on behalf of mitigation applicants, to be utilized for ILF Mitigation Projects in the ENP such as, but not limited to the HID. Those fees are held by the ENP ILF Financial Manager as restricted assets solely to identify, design, construct/undertake, monitor, maintain and administer compensatory mitigation projects within the ENP ILF Program area upon approval by the Corps. In-lieu fee payments received will be deposited into the ILF Program Account. All interest accruing from in-lieu fee funds becomes part of the ILF Program Account. The amount paid into the ILF Program Account or subsidiary ILF Mitigation Project accounts is based on the number of compensatory mitigation credits required to compensate for the authorized impacts and the fees established under Section XII In-Lieu Fee Mitigation Project Establishment and Operation of this ILF Instrument. The Corps will determine the number and type of compensatory mitigation credits required by the permittee. DA permit applicants seeking mitigation credits shall receive a reservation letter that includes the following mailing address for submitting mitigation funds:

National Park Foundation
1110 Vermont Avenue NW, Suite 200
Washington, DC 20005

The ENP ILF Financial Manager shall hold any funds collected pursuant to this ILF Instrument in the interest bearing ILF Program Account or in interest bearing subsidiary ILF Mitigation Project accounts. The Sponsor shall account for the funds in a program account table or subsidiary project account tables (if created) and the information collected and held will be in accordance with generally accepted accounting principles at a minimum recording all deposits

and expenditures (Appendix D). The ILF Program Account shall be subject to audit by the Corps from time to time, as determined by the Corps. Interest and any other earnings produced by the ENP ILF Program shall remain in the ILF Program Account. Funds paid into the ILF Program Account may only be used to identify, assess and plan (including NEPA planning and compliance) ecologically appropriate wetland restoration and protection opportunities in the ENP ILF Program Area; to implement practical planning to protect, purchase, enhance, restore, and monitor selected sites; and to establish financial, technical, and legal mechanisms to ensure long-term success of the ILF Mitigation Projects. This means the selection, design, acquisition (i.e., appraisals, surveys, title insurance, etc.), implementation, and management of ILF Mitigation Projects. This may include fees associated with securing a permit for conducting mitigation activities, activities related to the restoration, enhancement, creation, and/or preservation of aquatic resources, maintenance and monitoring of ILF Mitigation Project sites, and the purchase of credits from mitigation banks. Requests to expend funds for the Long-Term Management of an ILF Mitigation Project must be accompanied by a description of needs, annual cost estimates for these needs and a discussion of inflationary adjustments and other contingencies, as appropriate. Use of ENP ILF Program fees for research, education and outreach is explicitly prohibited.

Funds received by the ENP ILF Program in excess of the amount needed for ILF Mitigation Projects shall remain with the ENP ILF Program, and shall be disbursed in accordance with this ILF Instrument for other ILF Mitigation Projects or other uses approved by the Corps. The Sponsor shall be required to provide financial assurances by setting aside contingency funds from the ILF Program Account sufficient to guarantee the success of each ILF Mitigation Project undertaken in accordance with the Corps including long-term management of each ILF Mitigation Project. The Sponsor may, as appropriate and with Corps approval 1) delay until sufficient fee monies are available in a watershed to implement a specific project; 2) divide a specific project into phases to allow funding in phases; or 3) seek to leverage monies with other appropriate sources of funds to expand and complement the scope of proposed projects as long as the other funds are maintained in one or more accounts separate from the ILF Program Account.

The ENP ILF Financial Manager shall receive an annual administrative fee at the start of the fiscal year amounting to a maximum of 1% of the Program Account balance at that time. The fee will come from the deposited funds and interest accruing upon the deposited funds and is deemed to represent and reimburse reasonable overhead and related administrative costs of administering the ILF Program Account to accomplish the ILF Mitigation Projects described herein. The ENP ILF Financial Manager's administrative fees do not require approval for expenditure. Separate project accounting will be established to record expenditures for other program administrative costs. Such costs include, but may not be limited to the following: staff time for carrying out ENP ILF Program responsibilities such as annual report preparation, initial site visits to investigate potential projects, development of a conceptual project plan for review by the Corps, development of general language for conservation easements, preliminary negotiations with landowners, ILF Program related meetings, and expenses for day to day management of the ENP ILF Program. The administrative costs of the ENP ILF program are expected to amount to approximately 13% of the price of mitigation credits. This assessment is based on HID administrative costs incurred prior to the establishment of this ILF instrument.

The Corps shall have oversight of the ILF Program Account. Complete budgets for ILF Mitigation Projects must be approved by the Corps. The Sponsor shall submit to the Corps an Annual Report by March 31 of each year. The Annual Report shall include detailed summaries of ILF Program Account deposits and disbursements made for each ILF Mitigation Project over the previous federal fiscal year (October 1- September 30). Any increase in excess of ten percent (10%) from the total approved budget for a Mitigation Plan will require Corps approval before additional funds may be disbursed. Increases to Mitigation Plan budgets that are ten percent (10%) or less do not require approval by the Corps. The Corps may review ILF Program Account records within 14 days of providing written notice to the Sponsor. When so requested by the Corps, the Sponsor shall provide all books, accounts, reports, files, and other records relating to the ILF Program Account.

XI. IN-LIEU FEE PROGRAM ACCOUNTING PROCEDURES

The Sponsor will accept in-lieu fees as restricted assets for the sole use of completing Corps approved ILF Mitigation Projects intended to meet the compensatory mitigation obligations of permittees participating in the ENP ILF Program. The Sponsor shall adopt and update the system for tracking the production of mitigation credits, credit transactions, and financial transactions between the Sponsor and permittees that have been developed and approved by the Corps. Credit production (the generation of an amount of Credits based on Projects), Credit transactions (securing Credits by permittees and debit by the Sponsor of Credits from the ledger), and financial transactions (the exchange of money in relation to Credits) shall be tracked both on a programmatic basis (i.e., the number of available credits for the entire ENP ILF Program by service area) and separately for each ILF Mitigation Project undertaken by the ENP ILF Program.

The conveyance, or transfer of Credits includes all natural services, functions and values associated with the natural resources (*e.g.* wetlands) from which Credits were derived. Credits may be used to compensate for environmental impacts under other programs (civil works, Superfund Program, removal and remedial actions), but Credits may not simultaneously serve as mitigation for more than one activity; *e.g.*, a Credit may be used to offset impacts under any Federal, State, or local program related to wetlands, however that credit may only be counted against permitted impacts one time.

XII. IN-LIEU FEE MITIGATION PROJECT ESTABLISHMENT AND OPERATION

- A. GENERAL MITIGATION SITE REVIEW PROCEDURES: The primary emphasis of the ENP ILF Program is on aquatic resource restoration and protection. The use of this ENP ILF Program for compensatory mitigation shall occur only after the relevant permitted activity has complied with Corps regulations and policies regarding avoidance and minimization of impacts or as stated in Section I A, "Purpose and Goals" or otherwise herein. The Sponsor, in conjunction with the project's Financial Manager and pursuant to the terms of this ENP ILF Instrument, will act as a recipient of compensatory mitigation funds that are required of permittees and other parties as identified by the Corps.

1. As detailed in Section B-REPORTING PROTOCOLS below, the Sponsor shall provide several types of annual reports pertaining to the ENP ILF Program. Based on those reports, the Corps may meet with the Sponsor on a regular basis to review the overall program and to discuss relevant issues with ENP ILF Program. Additionally, if any new ILF Mitigation Projects have been identified, the Sponsor may choose to provide the Corps with a conceptual mitigation plan for comment and consultation. The Corps will provide the conceptual mitigation plan to the IRT for review. Any comments will be provided to the Sponsor for consideration within 30 days of receipt of the conceptual mitigation plan.
2. To offset impacts to aquatic resources which resulted in payments into the ENP ILF Program Account, the Sponsor shall submit proposed ILF Mitigation Projects to the Corps for review and, if approved, funding authorization. The proposed Mitigation Plan for each ILF Mitigation Project will be evaluated in accordance with the provisions of 33 CFR 332.8(g)(1) and/or any subsequent regulations established for the review of modifications to ILF programs. Mitigation Plans shall include all applicable items identified at 33 CFR 332.4(c)(2) through (14) and a credit release schedule consistent with 33 CFR 332.8(o)(8).

B. REPORTING PROTOCOLS: The Sponsor will report to the Corps the following information:

- Monitoring reports, on a schedule and for a period as defined by project specific Mitigation Plan(s).
 - Credit transaction notifications
 - An annual program report summarizing activity from the ILF Program Account (financial and credit accounting) as detailed below
 - A mitigation project ledger for each ILF Mitigation Project
1. **Project Monitoring:** Monitoring will be completed on each ILF Mitigation Project to determine if the project is meeting its performance standards, or if any additional measures are necessary to ensure the success of the project. Monitoring requirements for each ILF Mitigation Project will be described in the associated Mitigation Plan. Each Mitigation Plan will describe the scope of monitoring activities, the frequency of monitoring activities, the length of the monitoring period, a schedule for reporting to the Corps, and the party responsible for submitting monitoring reports. Monitoring activities will continue on each compensatory mitigation project until the Corps provides the Sponsor with a determination that the project has achieved its performance standards. The Sponsor will coordinate project site visits with the Corps, as requested, to ensure the projects are meeting their stated success criteria.
 2. **Credit Transaction Notification:** Each time the Sponsor accepts fees from a permittee in exchange for advance or released mitigation credits from the ILF Program, it will provide a letter to the Corps. Each Credit Transaction Letter must be signed by the sponsor or its designee and include the name and permit number of the impacting project, number and type of credits involved and must

include language expressly specifying that the Sponsor, and its successors and assigns assume legal responsibility for accomplishment and maintenance of the transferee's compensatory mitigation requirements. The Credit Transaction Notification letter will be submitted within 10 days of receipt of payment (Appendix E).

3. Annual ILF Program Report: The Sponsor will prepare and submit an annual program report to the Corps within six months after the end of the federal fiscal year in accordance with Paragraph X, above. The report will include five components:
 - a. A financial report for the ILF Program Account and any subsidiary project accounts, describing the beginning balance, revenues collected for the year, expenditures for the federal fiscal year, any revenue returned to the Fund from conservation buyer transactions or through other means, interest earned, and an ending balance. The statement and all reports pertaining to the In-lieu Fee Fund will be prepared according to generally accepted accounting procedures.
 - b. A list of all permits for which funds were accepted to the ILF Program Account or any subsidiary project accounts, including the Corps permit number, the service area in which the authorized impacts are located, the amount of authorized impacts, the amount of required compensatory mitigation by resource type, the amount paid to the ILF Program, and the date the funds were received from the permittee.
 - c. A description of ILF Program expenditures/disbursements from the ILF Program Account or any subsidiary project accounts (i.e., the costs of land acquisition, planning, construction, monitoring, maintenance, contingencies, adaptive management, and administration) for the program and by service area.
 - d. A ledger (credit) report that details: the balance of advance credits and released credits at the end of the report period for the ILF Program and by service area, the permitted impacts for each resource type, all additions and subtractions of credits, and other changes in credit availability (e.g., additional credits released, credit transactions suspended).
 - e. Any other reasonable information required by the Corps pertaining to the ILF Program.
4. Mitigation Project Ledger: The Sponsor shall maintain a separate ledger for each ILF Mitigation Project. This ledger shall depict all Credit releases and Credit withdrawals by compensation resource type associated with the Mitigation Project. This ledger shall be maintained on the Regulatory In lieu fee and Bank Information Tracking System (RIBITS) a web-based mitigation tracking system,. The Corps shall be responsible for creating a record in RIBITS for each ILF

Mitigation Project and for uploading all appropriate associated data and documentation.

- C. COMPENSATION PLANNING FRAMEWORK: All ILF Mitigation Projects provided by the ILF Program under the terms of the ILF Instrument will comply with the Compensation Planning Framework (Appendix A).
- D. SPECIFICATION OF INITIAL ALLOCATION OF ADVANCE CREDITS: The Sponsor does not anticipate the use of advance credits; however this ILF Instrument does not preclude advance credits for new ILF Mitigation Projects developed in the future, or for substantial expansion of existing ILF Mitigation Projects. In such cases, the Corps may allow, on a project by project basis, advance credits. If advance credits are allowed by the Corps for new or substantially expanded projects, the initial allocation of advance credits will be specified, a credit release schedule for the fulfillment of advance credits included, and an explanation of the basis for the allocation and fee schedule provided.

Advance Credits as used in this ILF Instrument, are Credits that are available for a compensatory ILF Mitigation Project prior to initiation of a ILF Mitigation Project in accordance with an approved Mitigation Plan.

Any debited Advance Credits must be fulfilled, or *offset*, by Released Credits associated with mitigation sites in a given service area before Released Credits are available. Once the mitigation obligations associated with debited Advance Credits have been satisfied by Released Credits, that corresponding amount of Advance Credits may again be available for use.

The initial physical and biological improvements associated with a ILF Mitigation Project must be completed by the third full growing season after the first Advance Credit in that Service Area is sold or debited, unless the Corps determines that more time is needed to plan and implement an ILF Mitigation Project in that Service Area. If the Corps determines that there is a compensatory mitigation deficit in a specific Service Area by the third growing season after the first Advance Credit was secured, then the Corps may direct the disbursement of funds from the ILF Program Account to provide alternative compensatory mitigation to fulfill those mitigation obligations. In that case, the mitigation liability to the ILF Program Account shall be reduced accordingly and transferred to the receiving party. If such project or proposal will be accomplished by another organization, the Sponsor will transfer from the ILF Program Account an amount of funds not to exceed the original amount paid for the impacts as directed by the Corps to that other organization.

In Service Areas where the Sponsor has met all mitigation obligations, any remaining monies that were paid into the ILF Program Account because of impacts in those Service Areas may be used to establish additional mitigation sites, as approved by the Corps, in advance of a mitigation liability. Remaining monies may also be used in other watersheds where insufficient funds are available to accomplish suitable

mitigation projects, or to expand the size and ecological value of ILF Mitigation Projects.

E. **METHODOLOGY FOR DETERMINING PROJECT SPECIFIC CREDITS AND FEES:** The number of Credits allowed or assigned for each ILF Mitigation Project shall be based on the compensation activity and must be included and approved in each Mitigation Plan. Wetland Credits shall be determined using the Uniform Mitigation Assessment Method (UMAM) outlined in Florida Administrative Code 62-345 or another method approved by the Corps to determine the amount and resource type of compensatory mitigation needed to offset adverse impacts to wetlands and other surface waters and to award and deduct mitigation bank credits. UMAM analysis will evaluate the potential functional lift that is anticipated to be generated by the proposed compensatory mitigation activities. The resulting wetland Relative Functional Gain (RFG) quantifies the difference in wetland function between the pre-restoration scenario and the post-restoration scenario to determine the number of credits to be gained. The gain in functions provided by a mitigation assessment area is determined using the following formula: Functional Gain (FG) = RFG x Mitigation Acres. The UMAM assessment will include evaluating the following categories for each community type:

1. **Location and Landscape Support:** The value of functions provided by an assessment area to fish and wildlife are influenced by the landscape position of the assessment area and its relationship with the surrounding areas. The availability, connectivity, and quality of offsite habitats and offsite land uses that might adversely affect fish and wildlife utilizing these habitats, are attributes to be considered when evaluating the location of the assessment area. There are eight (8) attributes identified in UMAM to evaluate this category. These attributes are the support to wildlife by outside habitat; invasive exotics or other invasive plant species in proximity of the assessment area; wildlife access to and from outside (distance and barriers); functions that benefit fish and wildlife downstream (distance and barriers); impacts of land uses outside assessment area on fish and wildlife; benefits to downstream or other hydrologically connected areas; and, benefits to downstream habitats from discharges and protection of wetland functions by upland mitigation assessment areas.
2. **Water Environment:** The quantity of water in an assessment area, including the timing, frequency, depth and duration of inundation or saturation, flow characteristics and the quality of that water, may facilitate or preclude its ability to perform certain functions and may benefit or adversely impact its capacity to support certain wildlife. There are twelve (12) attributes identified in UMAM to evaluate this category. These attributes are seasonal water levels and flows; tides, wave energy; soil moisture/ erosion/ deposition; fire history; plant community zonation (appropriate for all strata); vegetative indicators of hydrologic stress (leaning or falling trees, insect damage); use by wildlife with specific hydrologic requirements; plant community composition; water quality degradation or alteration; standing water; water quality data; and, appropriate water depth, current, and light penetration.

3. **Community Structure:** The wetland is characterized either by plant cover or by open water with a submerged benthic community. When a plant cover is present, the area is assessed using the “Vegetation and Structural Habitat” section and when benthic communities are present the site is assessed using the “Benthic Communities” section. Vegetation and Structural Habitat is the presence, abundance, health, condition, appropriateness and distribution of plant communities in wetlands used as indicators to determine the degree to which the functions of the community type are provided. There are ten (10) attributes identified in UMAM to evaluate the Vegetation and Structural Habitat category. These attributes are appropriate and desirable plant species composition; absence of exotic invasive plants; normal regeneration and recruitment; appropriate age/size class distribution; density and quality of coarse woody debris (snag, den and cavity); plant condition (no evidence of insect damage, spindly growth); land management potential; topographic features present (refugia ponds, creek channels, flats or hummocks); low siltation or algal growth in submerged vegetation; and, upland buffers.
4. **Time Lag:** Implementation of UMAM by the Corps included changes from the State rule. Specifically, the Corps continues to use the Temporal Lag Table – Corps 3% discount rate, rather than the State’s time lag table, based on a 7% rate. The T-factor associated with mitigation equates to the period of time between the loss of functions at an impact site and the replacement of those functions through the implementation of mitigation. The time lag, in years, gives a value to the amount of additional mitigation needed to account for the deferred replacement of wetland functions, considering nutrient cycling, hydric soil development, and succession and community development of a mitigation area.
5. **Risk:** Will be incorporated into the UMAM analysis to account for the amount of uncertainty that a particular mitigation activity will not achieve the desired results. To that end, there are two components of risk. First, there is the risk that the mitigation activity will not succeed in the short term defined by performance criteria have not yet been met. Second, there is risk that the desired outcome of the mitigation activity will not persist in perpetuity, due to long-term management decisions or adjacent land uses.

The price charged to permittees and others by the Sponsor for Credits is determined by the Sponsor. The cost per unit of Credit must take into account the expected costs associated with the restoration, establishment, enhancement and/or preservation of aquatic resources in a particular Service Area. Such costs must be based on full cost accounting according to 33 CFR §332.8(o)(5)(ii) and will reflect, as appropriate, Project planning and design, construction, plant materials, labor, legal fees, monitoring, remediation or adaptive management activities, long-term management, as well as costs associated with the administration of the ILF Program. The cost per unit Credit shall also take into account contingency costs appropriate to the stage of ILF Mitigation Project planning, including uncertainties in construction and real estate expenses. In addition, the cost must also include the cost of providing financial assurances that are necessary to ensure successful completion of ILF Mitigation Projects, and may reflect other factors as

deemed appropriate by the Sponsor and the Corps. The prices charged to permittees or others by the Sponsor for Credits shall be reviewed by the Sponsor and the Corps on at least an annual basis.

Currently, the ENP ILF Program has credits available only for the HID. Based on the requirements above, and a review of the HID's past and projected costs and the Sponsor's best professional judgment, the payment for the HID is currently \$32,500.00/credit. The amount to be paid by permittees shall be reviewed by the Sponsor and the Corps on at least an annual basis, after the Corps has reviewed the annual financial report. Based on the review, the cost per credit may be adjusted to reflect current cost requirements and savings. The amount will be provided to DA permit applicants, who will make payments to the designated ENP ILF financial manager.

- F. **CREDIT RELEASES:** Credit releases (indicating satisfaction of responsibility) must be approved by the Corps and will be reviewed upon submittal of documentation to the Corps for each ENP ILF Mitigation Project demonstrating that appropriate expenses have been accrued, and milestones for credit and fund releases have been achieved. Credits may be released as milestones are achieved in the Credit Release schedule approved for each ENP ILF Mitigation Project. Credit release schedules may vary by project and will vary between creation/restoration and enhancement. However, credits shall not be released for any ENP ILF Mitigation Project until the Corps evaluates all required documentation and has determined that it sufficiently supports the proposed credit release. The Sponsor shall maintain a separate ledger for each ENP ILF Project that will depict all Credit releases and Credit withdrawals associated with each ENP ILF Project.
- G. **PROTECTION OF MITIGATION SITES:** The United States Government through the Sponsor is, and will, be the long-term owner of the ILF Mitigation Projects accepted via this agreement. Public Law 85-482 (1958), codified at 16 U.S.C. §410i, established the boundaries of the ENP. ENP staff is responsible for resource management within ENP, and have a permanent on-site presence that ensures site security and the integrity of project areas and ensures all activities such as monitoring and maintenance activities are carried out.

Since the ILF Mitigation Projects are or will be in public ownership there are many laws, policies, regulations, guidance documents, and procedures of government agencies and government commissioned groups, which are relevant and appropriate to the NPS's protection and management of those projects. The following is not an exhaustive summary but only identifies the more important and pertinent authorities that ensure that ENP will retain, in perpetuity, the land within the project areas in its natural condition or as restored through the activities authorized in the instrument and that ENP will prevent any use of the project area that impairs the environmental value. Many of these authorities establish a mandate that is not specifically funded.

Everglades National Park Act (16 USC 410 et seq.)

In 1934 Congress established ENP and provided that:

“...shall be permanently reserved as a wilderness, and no development or the project or plan...will interfere with the preservation intact of the unique flora and fauna and the essential primitive natural conditions now prevailing in this area.” 16 USC 410c.

Public Law 90-583 43 USC 1241 et seq.

This law directs federal agencies to control exotic plants and

“provide for the control of noxious plants on lands under the control or jurisdiction of the Federal Government.”

Executive Order 11987, Exotic Organisms (May 24, 1977)

This order established the responsibility to develop policy to control invasive exotics. The National Park Service Policy (NPS-77 and the NPS Management Objectives of 1988), and the Everglades National Park General Management Plan provide that:

“...exotic plants and animals shall be controlled when necessary to prevent disruption to native communities....”

Executive Order 11988, Floodplain Management: and Executive Order 11990, Protection of Wetlands

These orders direct federal agencies to enhance flood plain and wetland values and to avoid adverse impacts associated with modification of floodplains or wetlands.

Protecting America's Wetland (White House Office On Environmental Policy, August 24, 1993)

In “Protecting America's Wetlands” the Clinton Administration committed to an interim “no net loss” of wetland goal and a long-term goal of increasing both the quality and the quantity of the nation's wetlands. The National Park Service, in an August 1994 memorandum from the Director, indicated that the NPS would continue policies currently in place that would restore wetlands or compensate acre for acre any wetland degradation or loss.

- H. FINANCIAL ASSURANCES: Financial assurances will be provided for construction and implementation and long-term management of each ENP ILF Mitigation Project. Each ENP ILF Mitigation Project site will be protected in perpetuity and a long-term management mechanism will be established sufficient to provide annual maintenance and management for all aspects of the sites. A long-term management plan will be developed for each ILF Mitigation Project which will define how the site will be managed after performance standards have been achieved to ensure the long-term sustainability of the resources, including long-term. The long-term management plan will be developed when a portion of the project area has met final success criteria, and

will include a description of the long-term management activities, including remediation of catastrophic events, annual cost estimates for those activities.

The Sponsor will provide financial assurances to ensure project completion and long-term management and oversight by setting aside adequate funds in the ENP ILF Program account or its subsidiary accounts (if created), maintained by the designated financial manager, that are sufficient to guarantee the success of each ILF Mitigation Project site. Specific detailed information about the long-term financing will be proposed in each specific ILF Mitigation Project site long-term management plan and will explicitly describe the long-term financing mechanisms. The amount paid per unit credit will factor in the need for contingency costs that are appropriate to the scale and nature of the project, the stage of project planning, and include uncertainties in construction. The Corps shall have the authority to approve specific activities and proposals by the Sponsor that will entail expenditure of funds from the ENP ILF Program Account, or subsidiary project accounts (if created), on alternative compensatory mitigation projects. Long-term management funding refers to funds set aside from credit fees to ensure that monies will be available to support the annual long-term management needs of the mitigation project. It is anticipated that specific project plans reviewed by the Corps, in consultation with the IRT, will include these mechanisms and levels of assurances.

As a part of the ENP ILF Program's annual financial report, the Sponsor will include annual financial assurances and long-term management funding levels for individual projects and an accounting of fees and debits and credits. The report will be provided to the Corps so that they are able to ensure that financial assurances are maintained for each project and will include but not be limited to:

- Beginning and ending balance of the funds in the Program Account and subsidiary project accounts (if created) to demonstrate financial assurances for implementation and long-term management of each project;
- Deposits into and any withdrawals from the Program Account and subsidiary project accounts (if created) and providing information on the amount of required financial assurances for implementation and long-term management, and the status of those assurances for each project;
- Any anticipated changes in funding that is needed to meet financial assurances for both implementation and long-term management for each project.

All monies and fees collected by the National Park Foundation for the HID prior to the effective date of this ILF Instrument shall be managed in accordance with this ILF Instrument.

- I. **LONG-TERM MANAGEMENT and MAINTENANCE PLANS:** The Long-Term Management and the Maintenance Plan for each ILF Mitigation Project shall contain specific objectives that address the long-term management requirements of the ILF Mitigation Project Site. The Sponsor shall provide the Corps with 60 days advance notice before any actions are taken to void or modify the Long-Term Management and the Maintenance Plan including transfer of title to, or establishment of any other legal

claims over, the compensatory mitigation site. The Long-Term Management and the Maintenance Plan may only be amended or modified with the written approval of the Corps. The Sponsor shall document that it is achieving each objective or standard by submitting status reports to the Corps on a schedule approved in each specific ILF Mitigation Project.

- J. **VALIDITY, AMENDMENT OR MODIFICATION, AND TERMINATION OF MITIGATION PROJECTS AND MITIGATION PLANS:** Any proposed modification to a Mitigation Plan, including, but not limited, to addition of lands to a project site, establishment of additional projects, additions of different types of mitigation Credit resources (*e.g.* mangrove or seagrass Credits) or alteration of success criteria shall require review and approval of the Corps, in consultation with the IRT. Such modification shall require an amendment to the ILF Mitigation Plan to comply with the Corps regulations at 33 CFR 332.8(g). Physical improvements identified in Mitigation Plans approved under this ILF Instrument must be completed within three years of the last date of signature or approval of the Mitigation Plan. Failure to do so may result in the Mitigation Plan no longer being valid.

XIII. CULTURAL RESOURCES

To ensure that cultural resources that may be affected by mitigation projects are identified, all information about existing or known sites on federal and non-federal lands will be gathered, to include historic properties/cultural resources listed in or determined eligible for the National Register of Historic Places, all known historic and archeological sites and locations that are potentially eligible for the National Register, and areas that have been surveyed, even if no sites were found. A historic property does not need to be formally listed on the National Register to receive NHPA protection. It need only be eligible for listing under one of the four National Register criteria. Historic property includes properties of traditional cultural importance to an Indian tribe or that meet the National Register criteria (36 CFR 800.16(l)). The Sponsor will undertake no restoration measures that will adversely affect such sites. The Sponsor will undertake planning to avoid adversely affecting any known archaeological sites recorded in the Florida Master Site File inventory and will implement the “unexpected discovery plan” to be included in the final Mitigation Plan associated with each ILF Mitigation Project, approved by the Corps, in consultation with the IRT. Sources for information on cultural resources include:

- State Historic Preservation Office Archeological Site Files
- NPS Site Files and the Archeological Site Management Information System
- SEAC-GIS
- NPS List of Classified Structures (LCS)
- National Register of Historic Places
- National Historic Landmarks

XIV. DEFAULT AND CLOSURE PROVISIONS

- A. **Default Provisions:** If the Corps determines that the Sponsor has failed to provide the required compensatory mitigation in a timely manner, the Corps shall provide the Sponsor with written notice of said default. Situations where default could occur include:

- 1) the Sponsor fails to meet performance based milestones or ecological performance standards as set forth in the project-specific mitigation plan
- 2) the Sponsor fails to submit monitoring reports in a timely manner
- 3) the Sponsor fails to establish and maintain an annual ledger report and individual ledgers for each project in accordance with the provisions in Section XI (In-Lieu Fee Program Accounting Procedures)
- 4) the Sponsor fails to submit an annual financial assurances and long-term management funding report
- 5) the Sponsor fails to report approved credit transactions
- 6) the Sponsor fails to complete initial physical and biological improvements by the third full growing season after the first advance credit in that service area is secured by a permittee and/or
- 7) the Sponsor otherwise does not comply with the terms of the ILF Instrument

If the Sponsor fails to remedy such default within sixty (60) days after its receipt of such notice, or if such default cannot reasonably be cured within sixty (60) days, or if the Sponsor fails to commence and diligently pursue remediation of such default during such thirty (30) day period, the Corps may, immediately upon written notice to the Sponsor, suspend credit transactions or transfer of any Credits until the appropriate deficiencies have been remedied to the satisfaction of the Corps. Upon notice of such suspension, the Sponsor agrees to immediately cease all credit transactions or transfers of Credits until the Corps informs the Sponsor that the Corps has approved the Sponsor's resolution of deficiencies and that credit transactions or transfers may be resumed. Should the Sponsor remain in default, the Corps may terminate all future Credit transactions from the ILF Mitigation Project in question, or initiate other measures including decreasing available credits, requiring adaptive management measures, utilizing financial assurances or contingency funds, terminating the Instrument, using the financial assurances or contingency funds to provide alternative compensation, directing the use of ILF Program Account funds to provide alternative mitigation (e.g., securing credits from another third party mitigation provider), or take other compliance action.

The Corps will evaluate the circumstances of any delay or failure of the Sponsor to comply with the terms of this ILF Instrument primarily caused by conditions beyond the Sponsor's reasonable control (e.g., flood, drought, lightning, earthquake, fire, landslide, condemnation or other taking by any governmental body) and determine whether it would be appropriate and practicable to require measures to address those deficiencies. The Sponsor shall give written notice to the Corps if the performance of any of its ILF Mitigation Projects is affected by any such event as soon as is reasonably practicable.

Funds remaining in the ILF Program Account after these obligations are satisfied must continue to be used for the restoration, establishment, enhancement, and/or preservation of aquatic resources. The Corps may request the ILF Program to use these funds to

secure credits from another source of third-party mitigation, such as another in-lieu fee program, mitigation bank, or another entity such as a governmental or non-profit natural resource management entity willing to undertake the compensation activities consistent with the requirements of the Corps' regulations. The funds should be used, to the maximum extent practicable, to provide compensation for the amount and type of aquatic resource for which the fees were collected. The Corps, itself, cannot accept directly, retain, or draw upon those funds in the event of a default.

The Sponsor or the Corps, acting independently or in concert, may force closure or terminate this Instrument within 60 days of written notification to the other party. In the event that the ENP ILF Program operated by the Sponsor is terminated, the Sponsor is responsible for providing to the Corps reports detailing credit and fee ledger balances, as well as status reports for all ILF Mitigation Projects. The Sponsor will remain responsible for fulfilling any outstanding or pre-existing project obligations including the successful completion of ongoing ILF Mitigation Projects, relevant maintenance and monitoring, reporting, and long-term management requirements. With funding from the ILF Project accounts, the Sponsor will remain responsible for fulfilling these obligations. Any funds remaining after meeting all mitigation obligations will be handled as outlined in the preceding paragraph. If default is determined, financial assurances should be executed to achieve compliance with the terms of the instrument and all approved mitigation plans.

- B. Closure Provisions: The Sponsor shall submit a written request to the Corps for closure of an ILF Mitigation Project upon satisfaction of the following actions for that ILF Mitigation Project:
- 1) All applicable success criteria have been achieved and all potential credits have been released or the credit release schedule has been modified to adjust the potential number of credits to match the amount released;
 - 2) All released Credits for that ILF Mitigation Project have been debited or have been expressly relinquished;
 - 3) A Long-Term Management Plan is in place;
 - 4) The terms and conditions of the Mitigation Plan and this ILF Instrument have been achieved.

Prior to closure of an ILF Mitigation Project, the Corps may perform a final compliance inspection to evaluate whether all success criteria have been achieved. The Corps shall issue a written certification of satisfaction to the Sponsor and thereafter any remaining contingency funds for that ILF Mitigation Project shall be made available to the general balance of the Fund, or to the Sponsor for use in long-term management of the ILF Mitigation Project Site. Once the ILF Mitigation Project closes Long-Term Management of the ILF Mitigation Project shall commence.

XV. MODIFICATION

This ILF Instrument, including its Appendices, Tables, Figures or Exhibits may be modified with the written approval by the Corps. Modification of the approved ENP ILF Program and ILF Instrument will follow the procedures outlined in 33 CFR 332.8 (d) and will utilize the streamlined review process (33 CFR 332.8(g)(2)) when deemed appropriate by the Corps. The

streamlined process will be proposed for ILF Instrument modifications that reflect adaptive management of the overall ILF Program, changes in credit releases or release schedules, and any other changes the Corps deems not significant.

XVI. THIRD PARTY RESALE OR BROKERAGE OF CREDITS

The resale, brokering, or transfer of Credits to any entity for resale or re-transfer from one permittee to another permittee is not authorized. Credits may not be sold unless associated with a DA permit or enforcement case.

At the Sponsor's sole discretion, the Sponsor may refund Credit purchases, minus the Administrative costs plus any accumulated interest, at the request of such purchaser, if the impacts for which the purchaser paid into the ILF Program have not occurred, and the Sponsor has not already obligated the funds. If the refund is made, the Sponsor will no longer be responsible for providing compensatory mitigation for the DA permit for which the credits were originally purchased.

XVII. OTHER PROVISIONS

A. SPECIFIC LANGUAGE OF INSTRUMENT SHALL BE CONTROLLING: To the extent that specific language in this Instrument changes, modifies or deletes terms and conditions contained in those documents that are incorporated into the Instrument by reference, the specific language within the Instrument and any associated Mitigation Plans is controlling.

B. NOTICE: Any notice required or permitted hereunder shall be deemed to have been received when delivered by hand, transmitted electronically with verified receipt, after three days following the date deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, or on the day received by Federal Express or similar next day nationwide delivery system, addressed as follows (or addressed in such other manner as the party being notified shall have requested by written notice to the other party):

National Park Service
Everglades National Park
40001 State Road 9336
Homestead, Florida 33034

U.S. Army Corps of Engineers
Regulatory Division
Special Projects & Enforcement Branch
701 San Marco Blvd, Rm 372
Jacksonville, Florida 32207-8175

C. ENTIRE INSTRUMENT: This ILF Instrument constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements or undertakings.

D. INVALID PROVISIONS: In the event any one or more of the provisions contained in this ILF Instrument are held to be invalid, illegal or unenforceable in any respect, such invalidity,

illegality or unenforceability will not affect any other provisions hereof and this Instrument shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

E. HEADINGS AND CAPTIONS: Any paragraph heading or captions contained in this ILF Instrument shall be for convenience of reference only and shall not affect the construction or interpretation of any provisions of this ILF Instrument.

F. COUNTERPARTS: This ILF Instrument may be executed by the parties in any combination, in one or more counterparts, all of which together shall constitute but one and the same instrument.

G. TRANSFER OF MITIGATION RESPONSIBILITY: For projects in the service area of this ILF Program that require DA authorization pursuant to Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act of 1899, Credits from this ILF Program may be used to satisfy those compensatory mitigation requirements if the Sponsor and the permittee reach a mutually acceptable financial agreement. Notwithstanding anything in this ILF Instrument, the Corps has sole discretion over how many and what type of Credits are required for DA permits issued and whether Credits from this ILF Program are acceptable as mitigation.

H. APPROVALS: For purposes of this ILF Instrument, any approval required hereunder must be in writing and expressly approve the action or other matter for which approval is sought. Written approval may be transmitted by letter, electronic mail or facsimile transmission.

IN THE TESTIMONY WHEREOF United States Department of Interior, National Park Service
has hereunto set their hands this 5th day of June, 2015.

Your signature below, as the Sponsor, indicates the following:

That you have read, understood, accepted, and agreed to comply with the terms and provisions of
the In-Lieu Fee Program Instrument (ILF Instrument), and any associated Department of the
Army permit for the Everglades National Park In-Lieu Fee Program (ENP ILF Program).

United States Department of Interior
National Park Service

Pedro Ramos

Typed/Printed Name

Signature

Superintendent

Title

IN THE TESTIMONY WHEREOF THE U.S. ARMY CORPS OF ENGINEERS has hereunto
set their hands this 14th day of August, 2015.

U.S. Army Corps of Engineers
Jacksonville District

DONALD W. KINARD

Typed/Printed Name

DW Kinard

Signature

Chief, Regulatory Division, USACE

Title

APPENDIX A: COMPENSATION PLANNING FRAMEWORK

The purpose of the ENP ILF Program is to offset impacts to freshwater herbaceous wetlands authorized by DA permits. Therefore, priority is given to mitigation that improves or replaces lost functions and values of ENP freshwater herbaceous wetlands and upland buffer areas as determined by the Corps, in consultation with the IRT. No credits will be approved unless and until the Corps determines that the restoration work constitutes compensatory mitigation for the lost functions and values for permitted impacts to wetlands. The Compensation Planning Framework for the ENP ILF Program is based on a landscape/watershed approach and outlines the framework for selecting, securing, and implementing wetland restoration and enhancement projects, and possibly, associated upland buffer enhancement or restoration. The Compensation Planning Framework describes program elements designed to meet requirements of 33 CFR 332.8(c).

Element 1: Watershed and Eco-Region based rationale for the delineation of the Mitigation Service Area 332.8(d)(6)(ii)(A).

The Mitigation Service Area (MSA) was developed in accordance with 332.8(d)(6)(ii)(A) which states that 1) “The service area must be appropriately sized to ensure that the aquatic resources provided will effectively compensate for adverse environmental impacts across the entire service area”; 2) “Delineation of the service area must also consider any locally-developed standards and criteria that may be applicable”, and; 3) “The economic viability of the mitigation bank may also be considered in determining the size of the service area.” The MSA is in accordance with these points and are addressed below.

The MSA for the ENP ILF Program will encompass most of Miami-Dade, and a portion of Broward, the northern limit of the MSA is bounded by the Interstate 75/Interstate 595 complex (Figure 2, Appendix B). The MSA is based on the Everglades Watershed and two south Florida Eco-Regions (level III Ecoregions). The MSA encompasses a total of approximately 1,503,940 acres. The MSA does not include any saline or tidally influenced wetlands. Similarly, it does not include barrier islands as it is difficult to establish a hydrological connection. Each ILF Mitigation Project will have a project specific service area approved by the Corps.

Everglades Watershed

The Everglades Watershed is expansive and larger than the MSA for the ENP ILF Program. The Everglades Watershed encompasses the Everglades ecosystem including the Kissimmee River watershed and other smaller watersheds north of Lake Okeechobee that ultimately supply water to the Everglades Ecosystem, and ultimately ends in Florida Bay

The Everglades Watershed has been altered from historic pre-drainage flows but still has hydrologic connectivity across the system. The Everglades Watershed is characterized by low-lying, relatively flat terrain with pronounced wet and dry seasons. During the longer wet season eighty per cent of the rain in this region falls between May and December and the average rainfall is sixty inches per year. The soils consist of relatively thin layers of poorly drained marls and mucks over the porous limestone bedrock. The fluctuation in surface water levels between the wet and dry season play an important role in the existence of the marsh. Water levels are at their highest in the summer and gradually begin to recede as winter approaches. In general, the

wetland basins can have a hydroperiod of one to twelve months though standing water is not usually present by midwinter. Many of the species that inhabit a marsh have evolved to require this water fluctuation for their survival. The marshes are often dominated by only a few species such as saw grass (*Cladium jamaicense*) or Muhly (*Muhlenbergia capillaries*), but the variety can be quite large.

A joint effort by the state and federal government called the Comprehensive Everglades Restoration Plan (CERP) seeks to reverse these alterations and restore the watershed to near historic conditions. CERP restoration efforts aside, the Everglades Watershed as it is today supports the basis for the ENP ILF Program MSA. There is a clear watershed nexus between the location of any current or future ENP ILF Program project and unavoidable wetland loss within the MSA that is permitted by the Corps.

Ecoregions

The MSA for the ENP ILF Program conforms to the boundaries of the level III Everglades and Miami Ridge/Atlantic Coastal System eco-regions. Ecoregions are defined as regions of relative homogeneity in ecological systems; they depict areas within which the mosaic of ecosystem components (biotic and abiotic as well as terrestrial and aquatic) is different than adjacent areas in a holistic sense. Geographic phenomena such as soils, vegetation, climate, geology, land cover, and physiology that are associated with spatial differences in the quantity and quality of ecosystem components are relatively similar within each ecoregion.

ENP as a whole is in the Southern Florida Coastal Plain Ecoregion (SFCP). The SFCP is comprised of 4 level III sub-regions. However, ENP ILF Program projects will be located only within the Miami-Dade County portion of ENP. Miami-Dade County is comprised of only two sub-regions of the SFCP; the Everglades and the Miami Ridge Ecoregions. The HID mitigation project, as an example, falls within both of these eco-regions. Therefore the MSA for the ENP ILF Program should only be comprised of these two sub-regions of the SFCP. This rationale establishes a clear eco-region nexus between the location of any current or future ENP ILF Program project and unavoidable wetland loss within the MSA that is permitted by the Corps.

Additional Rationale for the MSA

The biological and hydrological resources of the freshwater herbaceous wetlands within the MSA, are similar to the biological and hydrologic resources being restored in the ENP Program Area. Using the HID as an example, the restored habitats within the HID adequately provide compensatory mitigation for wetlands that are adversely impacted within its MSA. The HID has been suitable as an offsite mitigation area for unavoidable impacts to freshwater herbaceous wetlands in Miami-Dade County since 1996.

The economic viability of the ENP ILF Program was taken into account when the MSA was established. Many areas within the MSA are likely to experience additional growth in years to come. Major infrastructure that occurs within MSA includes, but is not limited to portions of Tamiami Trail, Interstate 75, the Florida Turnpike, and a number of State and local roads and highways. Future expansion of transportation infrastructure and associated wetland impacts within the MSA would be adequately offset by ENP ILF Program projects like the HID.

Element 2: A description of the threats to the freshwater herbaceous aquatic resources in the service area, including how the in-lieu fee program will help offset impacts resulting from those threats.

The need for the ENP ILF Program is to provide compensatory mitigation for the loss of freshwater herbaceous wetland functions and values within MSA associated with unavoidable wetland impacts authorized by Section 404 dredge and fill permits. There is considerable pressure and incentive to develop all available land within the MSA. The development activities filling the freshwater herbaceous wetlands in the MSA include residential, office and industrial, some farming and roads. The generally small size of the parcels being developed make on site preservation or enhancement of the existing wetlands incompatible with the anticipated land uses. Furthermore, well field operations, at least in the Bird Drive Basin of Miami-Dade County would make on-site mitigation difficult if not impossible to accomplish. Development activities explain most of the threat to aquatic resources however water management infrastructure and decisions about water management, invasive exotic plants, global climate change (sea level rise and salt water intrusion) nutrient and contamination loading due to stormwater runoff and recreational use also threaten the aquatic resources of the MSA.

Since inception in the mid-1990s, the HID has played a vital role in the providing off site compensatory mitigation in Miami-Dade County. By complying with the *2008 Final Mitigation Rule, 33 CFR PART 332, on Compensatory Mitigation for Losses of Aquatic Resources*, the ENP ILF Program will continue to mitigate against further losses to aquatic resources within the MSA.

Element 3: An analysis of historic aquatic resource loss in the service area.

One way to describe the loss of wetlands in Miami-Dade County is through the number of acre credits requested from the HID since its inception in the mid-1990s. To date, 3317.57 acre credits have been requested on behalf of permittees seeking to satisfy the mitigation requirements of their section 404 dredge and fill permits. Therefore, at least 3317.57 acres of wetlands have been authorized per DA permit in the service area. However, ENP considers this number to be an underestimate of the loss of wetlands.

Therefore, ENP has attempted to describe the historic aquatic resource loss within the Urban Development Boundary Zone in Miami-Dade County through the use of both supervised and unsupervised image classification. We attempted to define, extract and compare a marsh land cover class from 1988 and 2008 LandSat5 images using the ESRI's ArcMAP Spatial Analyst Image Classification tool. Three criteria were used to select the images. First, images needed to have similar hydroperiod data. Second, each image needed to be cloud free in the study area. Third, both images had to have the same cell size (30 meter) and number of bands (7 bands).

Using this image classification approach ENP has determined that between 1988 and 2008 approximately 11,331 acres of marsh habitat has been lost within the Urban Development Boundary Zone of Miami-Dade County.

According to a Miami Dade County Department of Environmental Resources Management report (2009), since 1999, the County's wetland regulatory division has issued 521 Class IV permits totaling approximately 13,371 acres of impacts to wetlands. It is difficult to quantify the

exact amount of loss to aquatic resources within the MSA, however this effort demonstrates that aquatic resources within Miami-Dade County have been lost due to development pressure. It is reasonable to think the development pressure threatening aquatic resources in Miami-Dade County is similar across the whole of the ENP ILF Program MSA. It is also likely that development pressure will continue as long as there is land available and public demand.

In addition to the development losses, it is widely recognized that remaining wetlands designated for conservation, including ENP, Water Conservation Area (WCA) 3A and 3B, Pennsuco wetlands, and others, have suffered from wetland resource loss due to alteration of natural hydrology. All of these areas now experience altered hydrologic management regimes that affect the aquatic resources. In ENP, reduced water flow has led to establishment of drier vegetation communities and reduced populations of associated wetland-dependent species. Conversely, southern WCA 3A now experiences prolonged hydroperiods and deeper waters than historically occurred, and a resulting change in the aquatic resource conditions. While these areas still support considerable aquatic resources, for many years, multi-agency restoration efforts have sought to improve the condition of the resources by restoring hydrologic conditions through projects including Modified Water Deliveries, Comprehensive Everglades Restoration Plan (CERP), and many other smaller projects.

Element 4: An analysis of current aquatic resource conditions in the service area supported by an appropriate level of field documentation.

While Wetland Basin maps show areas that are likely to contain wetlands, the boundaries shown are approximate and do not encompass all possible wetlands areas within the County. Therefore it is difficult to quantify how many freshwater aquatic resources exist. However, a Miami-Dade County Department of Environmental Resources Management report (2009) estimates that there are approximately 148,200 acres of wetlands within the County, presumably excluding those in Everglades National Park and the Water Conservation Areas. Much of the remaining wetlands are part of the current ENP and Biscayne National Park, or were historically part of the original natural boundaries of these two protected areas. Additional remaining wetlands occur within the Bird Drive Basin, which has mixed ownership with an emphasis on conservation and recharge of wellfields, the Pennsuco wetlands, which are primarily owned and managed by the South Florida Water Management District in a natural or restored state, and Water Conservation Areas 3A and 3B, also known as Everglades and Francis Taylor Wildlife Management Areas. These areas are managed as conservation and water storage areas, and also provide recreational opportunities that are consistent with the primary management objectives.

East of the Eastern protective levee system composed primarily of levees L-37, L-33, L-30, and L-31, wetlands consistently experience shorter hydroperiods than historically, and generally result in a degraded conditions, being subject to oxidation of organic soils, invasion by invasive woody plants, and a variety of other anthropogenic impacts. Within development boundaries established by County zoning, a large percentage of developable lands have been filled or modified, leaving generally small, isolated, and impacted wetlands. A large area has been permitted for limestone mining, and similarly, these areas have been impacted by mining activities and alteration of remaining wetlands that are planned for future mining.

West of the Eastern protective levee, the wetlands of the WCAs and ENP are contiguous and generally support aquatic resources in various conditions. As a result of Everglades restoration,

these areas are expected to generally improve in condition over time as the combination of resource management and ecosystem restoration combine. The ENP ILF program area lies within this area where improvements are expected.

Element 5: A statement of aquatic resource goals and site selection/prioritization criteria in the service area, including a description of the general amounts, types and locations of aquatic resources the program will seek to provide.

The aquatic resource goals of the ENP ILF are to restore wetland function to areas within ENP that have been significantly altered by past anthropogenic activities and invasive plants. Restored areas are intended to become self-sustaining, and are expected to continue to benefit from the continued protection, management, and restoration that is planned in ENP in coming decades. Many acres of ENP wetlands are adversely affected by invasive exotic plants, altered by agricultural activities, filled, hydrologically altered or some combination of these. It is the objective of ENP to improve the natural character and wilderness value of these wetlands through enhancement or restorative methods. The following is a description of two primary approaches:

- 1) Removing invasive exotic plants from the natural landscape is an enhancement approach. The exotic species that would be prioritized for removal are listed invasive exotic plants categorized according to the threat they pose to natural areas (Category I and II) by the Florida Exotic Pest Plant Council (FLEPPC). The prioritized for removal includes Brazilian pepper (*Schinus terebinthifolius*), Ardisia (*Ardisia elliptica*), Melaleuca (*Melaleuca quinquenervia*), and Australian pine (*Casuarina equisetifolia*). The desired management goal is to ensure that the cumulative cover of exotic plant species is at the lowest feasible level or does not exceed 1% cover. Herbicides are the primary method of control used in ENP. The following is a brief description of some exotic plant treatment methods. For Melaleuca, the cut-stump or hack and squirt technique followed by the application of 25% Habitat[®] and 25% Rodeo[®] is the primary method used. Most other exotic woody species such as Schinus, Australian pine and Ardisia, if encountered in dry conditions with no danger of runoff, are treated using a basal bark application of 10% Garlon 4[®] herbicide in JLB Improved oil or an equivalent vegetable or citrus carrier oil. Brazilian pepper trees are also susceptible to a foliar application of 2% Rodeo[®] in the surfactant Kinetic if the entire crown is sprayed to wet. Invasive graminoids are treated with a foliar application of 2% Rodeo[®] in the surfactant Kinetic. Contractors are most often used to help ENP control exotic plants.
- 2) Removal of agricultural substrate to as near historic elevations as possible restores hydrology and historic flows. Complete restoration of historic hydrologic conditions will be the goal of all restoration projects, but may not be possible in all cases (for reasons including, but not limited to, conflicts with the management of adjacent areas, historical sites, or ecologically desirable habitats such as a tropical hardwood hammock, thereby making restoration counterproductive). Once historic hydrologic conditions have been restored to the maximum extent possible, sites with suitable substrates may be planted with appropriate native species in order to restore ecosystem functions as quickly as possible, however, with the HID as a model, most sites would be left to natural colonization of wetland plant species.

Mitigation plans for each type of ENP ILF Program project will outline in more detail which of the above approaches or combination of approaches are necessary and appropriate for each site. Upon completion, each project will typically be monitored for a minimum of five years in order to ensure that quantifiable success criteria have been met, or to implement adaptive management techniques for projects that are not meeting quantifiable success criteria. These criteria will be established for each project through coordination with and input from the Corps, in consultation with the IRT.

There are opportunities to provide both small and large-scale habitat restoration and enhancement in ENP. The sites would often be remote with limited access. The Sponsor may submit to the Corps multiple potential wetland mitigation project proposals for approval in accordance with this ILF Instrument. Coordination by the Sponsor with local, state, and federal agencies and other interests will be ongoing as a means of identifying new potential wetland sites as new information become available. Ultimately, project sites will be located where they are most likely to successfully replace lost functions and services taking into account aquatic habitat diversity, habitat connectivity, relationships to hydrologic sources, trends in land use, ecological benefits, and compatibility with adjacent land uses. Project proposals will be based on the Compensation Planning Framework that follows. Each plan and associated funding requires approval by the Corps, in consultation with the IRT.

The Sponsor will select for the ENP ILF Program only project sites that are within the boundaries of ENP and in permanent ownership by the NPS, or on inholdings within the ENP authorized boundary with the formal agreement of landowners, or on inholdings which NPS intends to acquire. Site selection will generally be based on the following criteria:

- **Connectivity** - Projects will be selected where they pose minimal conflicts with adjacent land uses and where they meet regional conservation priorities related to unique habitats/plant communities and listed species, improves or protects on-going mitigation efforts and enhances and expands the natural character and wilderness value of ENP.
- **Multiple Objectives** - Projects will be evaluated for their ability to address multiple functions and services such as improvement of fish and wildlife habitat, wilderness value, support for listed species, water quality improvement and improvement natural character of ENP. Projects will target native plant community diversity and natural processes and the overall driver will be the ability to replace lost ecological services in perpetuity.
- **Leveraging of Costs** - ENP ILF Program projects may utilize collaborative funding from multiple sources in order to reduce the time between resource impact from development and full restoration and mitigation of ecosystem functions. The Sponsor will maintain fully separate ledgers for documentation of fees (and credits) from the ENP ILF Program and from other funding sources. The Sponsor will maintain separate accounts for the ENP ILF Program and for other sources of funds (such as grants, appropriations, and donations).
- **Timing of Projects** - Effort will be made to complete mitigation work within a period of 3 years from the time of the resource impacts being mitigated.
- **Likelihood of Success** - Proposed projects must demonstrate the potential for a high likelihood of success through a sound wetland habitat restoration or enhancement concept

and design. Threats from invasive species or vandalism should be low or manageable. The project will be evaluated for its ability to result in successful and sustainable net gain of resource acreage and function as required, with limited maintenance. Projects that can demonstrate a high likelihood of success and low maintenance requirements will receive priority due to the higher lift in ecological function.

The ENP ILF Program currently only has the HID (see HID Mitigation Plan). The number of freshwater credits available for this project is being determined. The rate ENP will provide compensatory services will depend on the level of permitting activity and the amount of mitigation required to offset the permitted impacts. However, when the project is complete, 6300 acres of formerly disturbed farmed land will be restored to freshwater herbaceous wetlands.

Any additional enhancement or restoration project submitted by ENP for consideration by the Corps for inclusion in the ENP ILF Program will be located within ENP and provide freshwater herbaceous wetland services. Potential projects include approximately 70 acres of disturbed farm land dominated by Brazilian pepper owned by the Boy Scouts of America that is adjacent the HID, or approximately 500 acres of disturbed farm and filled land in the northeastern portion of ENP. Finally, there are thousands of acres of land adversely affected by invasive exotics that could be proposed as part of the ENP ILF Program.

All ILF Mitigation Projects will be in public ownership, or for inholdings, a conservation agreement will be sought, and will complement adjacent land use by improving the natural character and wilderness value of ENP. The project with the highest priority at the moment for being submitted to the Corps for consideration is the land owned by the U.S Boy Scouts of America. This area is immediately adjacent to the HID and has approximately 2 miles of interface. The area is dominated by Brazilian pepper and is a considerable seed source for this invasive plant. Restoring this area would provide a long-term benefit to the both the HID and to the natural and wilderness value of ENP.

Element 6: A prioritization strategy for selecting and implementing compensatory mitigation activities.

ENP will prioritize projects using the following considerations:

- acreage (size) affected.
- resource types to be restored or enhanced, or and the degree to which the proposed project improves the functional benefits of impacted resources based on a functional assessment of the project (functional lift).
- potential to include upland areas sufficient to protect, buffer, or support identified resource functions and ecological connectivity to other conservation areas or undeveloped large blocks of habitat.
- level of project urgency.
- likelihood that the proposed actions will achieve the anticipated ecological benefits and results.
- level of support and involvement of other relevant agencies, organizations, and the local community.

- adequacy of long-term stewardship to ensure the project is sustainable over time and funding mechanisms for the associated costs are available (e.g., endowment or trust).
- extent to which a project represents an efficient use of funds expended, and matches the availability and sufficiency of funds available in the applicable eco-region.
- extent of threats from invasive species or vandalism should be low or manageable.

Element 7: An explanation of how any preservation objectives identified in §332.8 (c)(2)(v) and addressed in the prioritization strategy in §332.8 (c)(2)(vi) satisfy the criteria for use of preservation in §332.3(h);

Since every ILF Mitigation Project is or will be in public ownership preservation will not be used to provide compensatory mitigation for activities authorized by DA permits.

Element 8: A description of any public and private stakeholder involvement in plan development and implementation, including, where appropriate, coordination with federal, state, tribal and local aquatic resource management and regulatory authorities;

Since every ILF Mitigation Project is or will be in public ownership, there is an obligation under the National Environmental Policy Act to invite public and stakeholder participation for any action taken by the Sponsor within the ENP ILF Program. Therefore the development of a project is a cooperative effort including at a minimum the public, federal, state, tribal and local resource management and regulatory authorities. The identification, establishment, use and operation of a new project within ENP ILF Program will be develop in accordance with all applicable authorities as described in Section III Authorities, page 4 and Section XIII Cultural Resources, page 18 found herein.

Element 9: A description of the long-term protection and management strategies for activities conducted by the in-lieu fee program sponsor;

The United States Government through the Sponsor is, and will, be the long-term owner of the ILF Mitigation Projects accepted via this agreement. Since every project is or will be in public ownership the long-term protection of the project sites are ensured by many authorities and polices as described in section III and XIX. The establishment, operation and use of the ENP ILF Program, and the development of each project included therein is governed by one or more of the following statutes, rules, regulations, authorities, policies and guidance (not all inclusive):

The *National Park Service Organic Act* (16 USC 1 *et seq.*) provides for the core authority for the mission of the National Park Service:

“...purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”

ENP staff is responsible for resource management within ENP, and have a permanent on-site presence that ensures site security and the integrity of project areas and ensures all activities such as monitoring and maintenance activities are carried out.

Element 10: Reporting protocols and a strategy for periodic evaluation and reporting on the progress of the program in achieving the goals and objectives in §332.8(c)(2)(v), including a process for revising the planning framework as necessary.

The Sponsor will provide annual progress reports, based on federal fiscal years, to the Corps with updates on the progress of mitigation work for each ENP ILF Program project. The report will summarize the successes and the challenges (lessons learned), and ways to improve the program for next year. Since the ENP ILF Program projects may take several years to complete (for example the HID), the Sponsor will summarize monitoring reports and the results of the work accomplished.

An annual ENP ILF Program financial report will accompany the progress report. The content will adhere to the requirements described in the ILF Instrument, Section XII, subpart B, herein.

The Sponsor will provide an annual separate monitoring report (generally prepared by contractors). The Sponsor will monitor ENP ILF Program projects using a mitigation monitoring plan to be developed by the Sponsor in conjunction with the Corps for each ILF Mitigation Project. This mitigation monitoring plan will be consistent with current Corps mitigation guidance. The frequency and duration of monitoring and specific monitoring requirements will be defined in each individual mitigation project plan in accordance with requirements at 33 CFR 332.6. In general, monitoring reports will include plans, maps, and photographs, as necessary to illustrate site conditions (based on a pre-existing conditions as well as a Time Zero report), a narrative summarizing pre- and post-project implementation site conditions, monitoring results as compared to performance standards, and recommendations for contingency or adaptive management if needed. The monitoring duration designated in the mitigation plan may be extended by the Corps if performance standards have not been met. The Corps may also reduce or waive monitoring requirements upon determination that performance standards have been achieved. Monitoring and contingency reports will address adaptive management strategies that provide management guidelines and recommendations for future site restoration and monitoring. The responsibility of each participating party will be clearly defined and address procedures to improve or alleviate unforeseen threats to the restored wetland or shallow water habitat and functions. The monitoring and contingency plan will track progress towards measurable goals and their associated objectives.

APPENDIX B: MAPS AND FIGURES

Figure 1. ENP In-Lieu-Fee Program Area

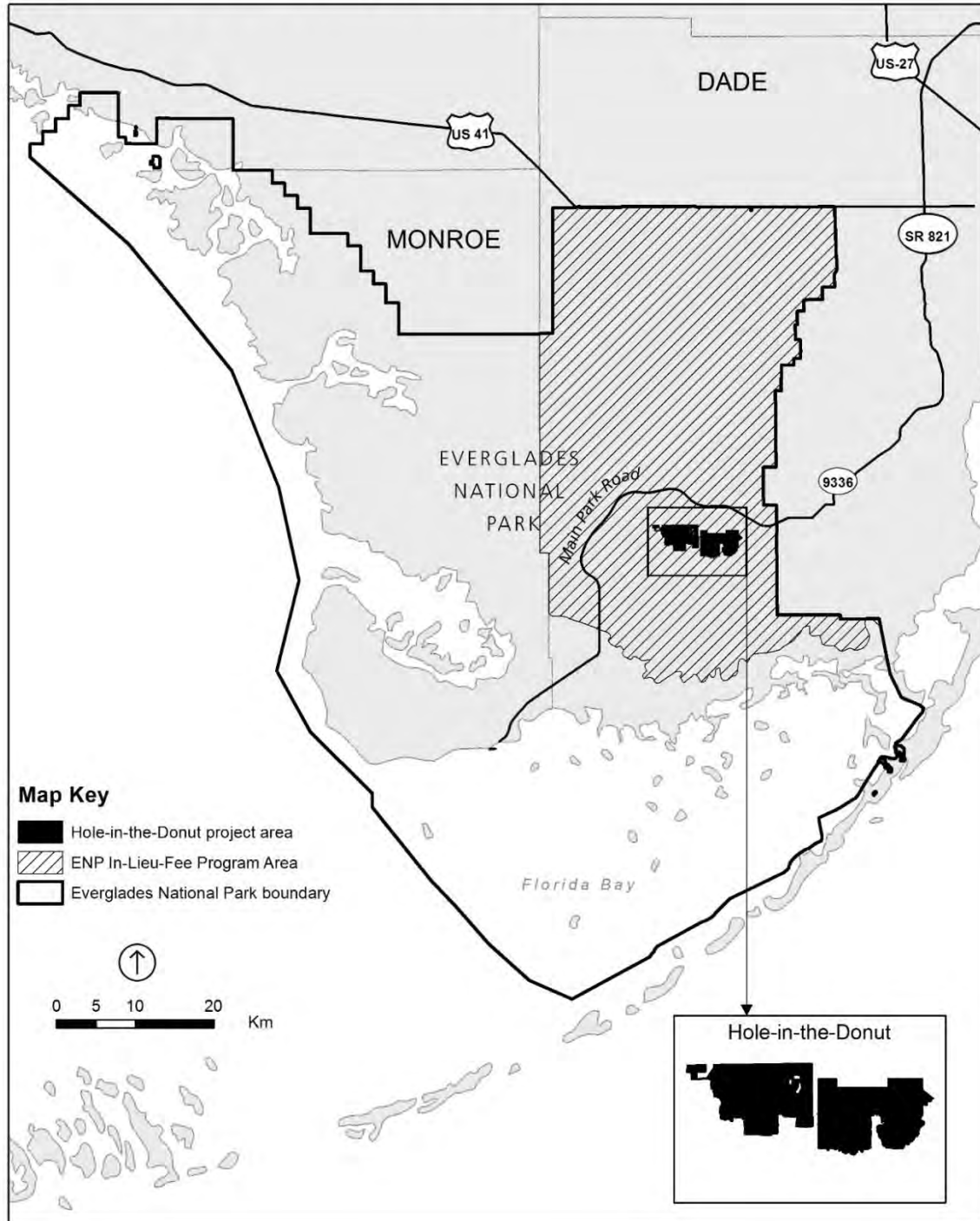
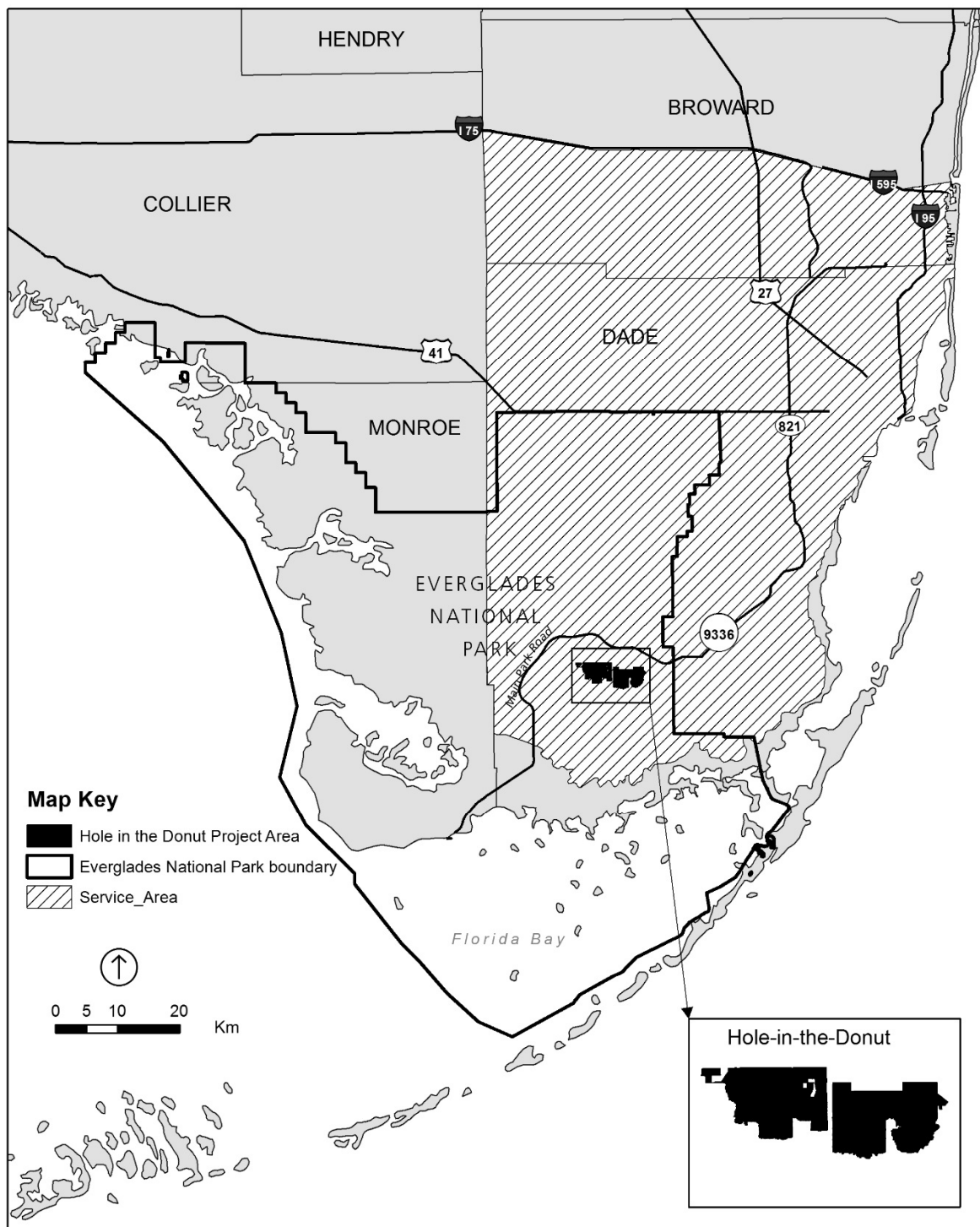


Figure 2. ENP In-Lieu-Fee Program Mitigation Service Area



APPENDIX C: FINANCIAL MANAGER AGREEMENT

MEMORANDUM OF AGREEMENT

THE UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
EVERGLADES NATIONAL PARK
40001 STATE ROAD 9336
HOMESTEAD, FLORIDA 33034-6733

AND

NATIONAL PARK FOUNDATION

This Memorandum of Agreement is between the National Park Service, Everglades National Park (hereinafter the "PARK"), an agency of the United States Department of the Interior, acting through the Superintendent of the PARK, or his designee, and the National Park Foundation (hereinafter the "Foundation").

WITNESSETH

Whereas, the purpose of the National Park Service is to preserve, interpret, and manage the National Park System for the benefit, education and enjoyment of the people of the United States, as provided for in the Act of August 25, 1916 (codified at 16 U.S.C. §1 et seq.); and

Whereas, 48 STAT. 816, enacted May 30, 1934, provided for the establishment of the PARK in the State of Florida; and

Whereas, the PARK recognizes its responsibilities to control exotic pest plant species to prevent or reverse disruption to native communities; and

Whereas, in the PARK there is a site known as the Hole-in-the-Donut (hereinafter "HID") that is heavily infested with exotic pest plants; and

Whereas, the PARK has developed a mitigation program with the goal of restoring wetlands such as but not limited to the HID, that are adversely impacted by exotic pest plant species, agriculture or other anthropogenic disruptions to native plant communities; and

Whereas, pursuant to the mitigation program the PARK established the HID mitigation project through a Clean Water Act, section 404 permit, issued by the U.S. Army Corps of Engineers and the Florida Department of Environmental Protection, that authorizes the use of mitigation funds from various development actions in the southern Florida area for the removal of exotic plants from and the restoration of the HID, as detailed in the project's Mitigation Instrument, the Department of Army Permit #1993-01691, and the FDEP Permit #132416479; and

Whereas, the FOUNDATION is authorized by Act of Congress to receive and administer donations made for the benefit of units of the National Park System; and

Whereas, the HID mitigation funds were originally managed on behalf of the PARK by the FOUNDATION pursuant to a Memorandum of Agreement dated January 28, 1994 (hereinafter the 1994 MOA); and

Whereas, the FOUNDATION understands that mitigation funds transferred to the FOUNDATION from mitigation applicants under an approved mitigation instrument/agreement will cease when the PARK determines that mitigation project credits and or acres such as those belonging to the HID are no longer available to the public; and

Whereas, the FOUNDATION understands that the mitigation funds it administers on behalf of the mitigation projects, such as the HID and are to meet each project's annual financial obligations in perpetuity; and

Whereas, the 1994 MOA expires after twenty (20) years and must be renewed; and

Whereas, the purpose of this Memorandum of Agreement is to reestablish terms for the FOUNDATION's administration of such mitigation funds such as the HID.

Now, therefore, pursuant to the authorities set forth above, the PARK and the FOUNDATION do hereby agree as follows:

1. FOUNDATION FUND.

The FOUNDATION shall continue to administer the "Everglades National Park Freshwater Wetlands Mitigation Fund" (hereinafter the FUND), which it established pursuant to the 1994 MOA. The FUND shall allow for an account or multiple subsidiary accounts to be established through which the FOUNDATION will manage monies transferred from requests by mitigation applicants, or their intermediaries on behalf of mitigation applicants, to be utilized for mitigation projects in the PARK such as, but not limited to, the HID. Monies in the account(s) from the FUND shall be used solely for activities associated with the mitigation projects including restoration, monitoring, long term and adaptive management.

2. INVESTMENT OF THE FUND.

Monies in the account(s) from the FUND will be invested according to the FOUNDATION's Restricted Short Medium Term Investment Policy ("POLICY") such POLICY having been duly adopted by the FOUNDATION's Board of Directors on the recommendation of the Investment Committee. The POLICY will conform to applicable legal requirements and ethical standards for non-profit organizations, and will be reviewed and adjusted as deemed necessary and appropriate by the Investment Committee of the FOUNDATION's Board. The FOUNDATION will invest and manage monies of the FUND only in accordance with the POLICY. The FOUNDATION will not be liable for the performance of the FUND to the extent it is invested in accordance with the POLICY.

3. REIMBURSEMENT PROCEDURES.

The FOUNDATION will transfer monies from the FUND to the PARK at the written request of the PARK. The FOUNDATION disbursements to the PARK will be no more frequent than monthly and no less frequent than quarterly, unless otherwise agreed in writing by the parties. Monies from the FUND will be placed into a reimbursable account established by the PARK, and will be used solely for activities associated with the mitigation projects including restoration, monitoring, maintenance, long-term management and other related purposes, as determined solely by the PARK. The PARK will retain complete control and discretion over the expenditure of mitigation project funds; the FOUNDATION will have no right, role or responsibility related to the expenditure of those mitigation project funds by the PARK.

4. FINANCIAL OPERATING PROCEEDURES.

The FOUNDATION, in cooperation with the PARK, will prepare written Standard Operating Procedures for the day-to-day receipt of monies from third parties, disbursements, and management of the FUND, to be approved by the PARK. These Standard Operating Procedures may require periodic review and adjustments by the FOUNDATION and the PARK. Pursuant to the Standard Operating Procedures, the FOUNDATION will:

- record all monies received and issue receipts to payees and to the PARK.
- maintain its financial records related to each mitigation project, such as the HID, in accordance with Generally Applicable Accounting Procedures.
- prepare quarterly balance sheets and statement of receipts and disbursement.

5. FOUNDATION DUTIES.

The FOUNDATION will provide additional advisory or other services to the PARK related to the mitigation projects such as the HID, upon request from the PARK by agreement of the parties.

6. FUND AUDIT.

The FOUNDATION will engage an independent Certified Public Accountant to conduct an audit of the account and subsidiary accounts held in the FUND. The audit will be conducted annually for each Federal fiscal year (October 1-September 30). The FOUNDATION shall include the auditor's report and any discussion pertaining to it in the FOUNDATION's annual financial report (see Preparation and Submission of Reports)

7. NEW FINANCIAL MANAGEMENT SYSTEMS.

In the event the FOUNDATION adopts a new financial management system all data shall be transferred from the old financial management system into the new financial management system.

In the event another entity becomes the fiscal agent for the mitigation funds such as those for the HID project, the FOUNDATION shall provide to that entity all records in the FOUNDATION's possession related to the project(s), both digital and hard copy. This

includes but is not limited to the cash receipt journal; general ledger and any subsidiary ledgers; financial reports; and the transaction history of the account(s) held by the FOUNDATION including transfers, deposits, interest and dividends earned, realized losses, unrealized gains and losses and expenditures.

8. ACCESS TO RECORDS.

The FOUNDATION shall allow the PARK access to all written and electronic records in their possession that relates to the project(s) and both past and current agreement.

The FOUNDATION shall retain all written records for a period of seven (7) years. The FOUNDATION shall keep electronic records relating to all years of each project and both the past and current agreement. The FOUNDATION shall keep the electronic records for no less than 5 years beyond the term of this agreement. The FOUNDATION agrees to provide such assistance as may be necessary to facilitate the review of the records regardless of format, by the PARK when deemed necessary by the PARK either to insure compliance with accounting and financial standards.

All records regardless of format shall be considered permanent and will be stored in areas that have the lowest possible risk of damage. Records are most vulnerable to damage from water, high temperatures, humidity and pests, the records shall not be stored in areas where these are known problems.

The FOUNDATION shall provide to and the PARK shall accept all of the FOUNDATION's written records older than 7 years. The FOUNDATION will transfer electronic records according to standards applicable at the time of transfer. Before the FOUNDATION allows records to leave their offices, a chain of custody form must be completed to document and track the disposition of the records. The chain of custody form can be downloaded from the Records Management Program website.

The FOUNDATION shall make all records or documents which relate to this Memorandum of AGREEMENT available to the PARK at the FOUNDATION's offices during regular business hours.

9. PREPARATION AND SUBMISSION OF REPORTS.

The FOUNDATION shall prepare a draft financial report for the federal fiscal year (October 1 - September 30) just ended, and provide it to the PARK for consideration, review and comment by December 1 of each year. The FOUNDATION's reports shall include, at a minimum:

- the general ledger for the current fiscal year and any subsidiary ledgers
- a summary of annual activity including deposits, interest and dividends earned, realized losses, unrealized gains and losses, expenditures and the year's investment performance of accounts under management

a summary of the project(s) activity since inception (all years inception-present) including the general ledger, deposits, interest and dividends earned, realized losses, unrealized gains and losses expenditures and investment performance of accounts under management.

The PARK will provide comments and recommendations, if any, on the draft report to the FOUNDATION by December 15. The FOUNDATION will prepare a final financial report, reflecting PARK comments and recommendations, if any, and provide it to the PARK by December 31. The final financial report shall include the auditor's report and any discussion pertaining to it (see FUND AUDIT above). The PARK may distribute the final report to any parties of its choosing.

10. MEETINGS.

The FOUNDATION shall be available, upon reasonable notice, to attend or facilitate meetings with the PARK, as well as regulatory and enforcement officials if necessary, to discuss, explain, plan or otherwise coordinate any of the FOUNDATION's investment management activities or information related to the Project.

11. FEES.

The FOUNDATION shall receive an annual management fee for its role as fiscal agent for the FUND. This fee will cover all costs and expenses incurred by the FOUNDATION as part of its responsibilities under this Memorandum of Agreement, including any fee charged by a financial consultant or fund administrator. Any operating fees collected by exchange traded funds (ETFs), mutual funds, or other financial products in which Project funds are invested will be borne by the Fund.

The management fee structure will be: 1.0% annual rate on the investment balance of all the funds.

12. CONFLICTS OF INTEREST.

The FOUNDATION must annually review and disclose potential conflicts of interest related to the financial management of the project(s), on its behalf and on the behalf of its subcontractors, if applicable. Disclosure will include relationships between the FOUNDATION Board of Directors and parties seeking mitigation in HID under regulatory authority of Federal, State, and Local entities; between FOUNDATION Board members and investment funds selected by the PARK or recommended by the FOUNDATION; and any other relationships that may entail an appearance of conflict of interest.

13. GENERAL.

(a) Term of Agreement. This term of this Memorandum of Agreement shall be twenty (20) years, beginning on the latest day and year noted on the WITNESS blocks, and may be terminated upon sixty days notice by either party. Termination must be in accordance with applicable provisions of Everglades National Park Mitigation Bank Permit requirements and any other agreements the PARK may have regarding completion of mitigation work for monies already distributed for that purpose related to mitigation projects such as the HID. Any monies contained in the FUND upon such termination will be disposed of as directed the PARK. This Memorandum of Agreement may be renewed and extended by mutual written agreement of both parties.

(b) No member of, or delegate to, Congress, or Resident Commissioner, shall be admitted to any share or part of this Memorandum of Agreement or to any benefit that may arise there from, but this restriction shall not be construed to extend to this Memorandum of Agreement if made with a corporation or company for its general benefits.

(c) The FOUNDATION agrees that all its activities under this Memorandum of Agreement shall be conducted in accordance with all applicable laws and regulations, both State and Federal. Specifically, the FOUNDATION shall comply with the requirements of (a) Executive Order No. 11246 of September 24, 1967, (b) Title V, Section 503 for Government Contractors and Sub-contractors to take affirmative action to employ and to advance in employment qualified handicapped individuals, and (c) with regulations heretofore or hereafter promulgated relating to non-discrimination in employment and in providing facilities and service to the public.

(d) Anti-Deficiency Act: Notwithstanding any provision to the contrary herein, nothing in this Memorandum of Agreement shall be construed as binding the United States of America to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of compliance with the conditions for the agreement for the fiscal year, or bind the United States under any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations; further, nothing in this Memorandum of Agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies.

e) Key Officials for the PARK. The current PARK Superintendent will provide review and approve of terms of all agreements and will exercise the authority to approve conduct of agreements regarding the PARK. The Project manager will act as the Superintendent's authorized and designated representative with regard to implementation and coordination of this Memorandum of Agreement. The PARK shall provide written notice to the FOUNDATION of any changes in key officials within thirty (30) days of such change.

f) Key Officials for the FOUNDATION. The President of the FOUNDATION will provide review and approval of terms of all agreements and will exercise the authority to approve conduct of cooperative projects regarding the FOUNDATION. The Controller of the FOUNDATION will provide contracting authority and fiscal control for the FOUNDATION. The FOUNDATION shall provide written notice to the PARK of any change in key officials within thirty (30) days of such change.

IN WITNESS WHEREOF, the Park and the FOUNDATION, have caused this Memorandum of Agreement to be executed this 23 day of March, 2015.

National Park Foundation

By: 

National Park Service

By: 

Park Superintendent

By: 
APPROVED AS TO LEGAL SUFFICIENCY BY
Attorney-Adviser, DOI Office of the Solicitor

APPENDIX D: PROGRAM ACCOUNT TABLE

| Program Account Table | | | |
|-----------------------|-----------------------|---------------|------------------------|
| Deposits | | | |
| Date of Deposit | Amount of Deposit | Received From | Project ID Reference # |
| | | | |
| | | | |
| Expenditures | | | |
| Date of Expenditure | Amount of Expenditure | Description | |
| | | | |
| | | | |
| | | | |

APPENDIX E: CREDIT TRANSACTION LETTER

date

MRT POC
U.S. Army Corps of Engineers
P.O. Box 4970
Jacksonville, Florida 32232-0019

Re: Credit Transaction of Mitigation Credits from In-Lieu-Fee Mitigation Project,
(ref. SAJ-****-****)

SALUTATION,

This letter shall serve to fulfill the sponsor's obligations, detailed at 33 CFR 332.3(l)(3) and 332.8(p)(1), to notify the U.S. Army Corps of Engineers of the transfer of federal credits from ***** In-Lieu-Fee Mitigation Project (**MP). In support of this, the following information is provided and a copy of the Department of the Army (DOA) permit requiring the credit transaction is attached:

- Project Name: (**use the same name used on the permit**)
- DOA Permit Number:
- Number of Credits:
- Type of Credits:

The cost of restoration for the federal credits noted above have been received in full and we have deducted them from the Federal ledger for **. By action of this credit transaction, the sponsor for the **MB has accepted the responsibility for providing the compensatory mitigation required by special condition ## of the DOA permit noted above. If you have any questions regarding this request, please contact me at ***-***-****.

Sincerely,

Enclosures

cc: