

## 7.0 RECOMMENDATIONS

I recommend that the MWD to ENP, C&SF project be modified to allow for improved water deliveries to ENP by modification, construction and implementation of the following items to Tamiami Trail in accordance with the Everglades National Park Protection and Expansion Act (P.L. 101-229, Section 104, 16 U.S.C. Part 410r-5 *et seq.*), December 1989.

The TSP includes features to convey the additional flows from L-29 Canal, north of the Tamiami Trail, south to the ENP. The TSP consists of the following components, which are described in Section 6, Tentatively Selected Plan.

1. Acquisition of the necessary real estate interests required for construction of the project from the Airboat Association of Florida, Florida Power and Light Co. and FDOT.
2. Compensation to FDOT as owner of a transportation facility within the project's construction footprint that would require alteration/modification. Compensation would be in the form of either monetary remuneration and/or by means of construction and repair of a substitute facility. The substitute facility would be comprised of construction of a one mile bridge and repair, milling and resurfacing the remainder of the Tamiami Trail within the project area in order to counteract the project's higher water levels in the L-29 Canal.
3. Improvement easement from the FDOT by means of relocation contract as well as the FDOT for entire within the project area. Acquisition of these rights from FDOT arising from an executed relocation contract.

The total estimated project cost of the TSP is \$177,000,000.

The above recommendations are made with the provision that prior to project implementation, SFWMD, the non-Federal sponsor, shall enter into a binding agreement, most likely in the form of a PCA or PCA amendment, between the Department of the Army and SFWMD for modification of the C&SF project, MWD to ENP project, which provides for the following regarding the conveyance features for the project:

- a. Operate, maintain, repair, replace and rehabilitate (OMRR&R) the project, or functional portion of the project, in a manner compatible with the project's authorized purposes and in accordance with applicable Federal and State laws and regulations and any specific directions prescribed by the Federal government;
- b. Provide 25 percent of the cost of OMRR&R the project's conveyance features. The Non-Federal Sponsor shall have no responsibility for OMRR&R of the substitute facilities, those being the modified roadway,

the constructed bridge and its ramps/approaches which shall become the responsibility of FDOT;

- c. Do not use Federal funds to meet the non-Federal sponsor's share of project OMRR&R costs unless the Federal granting agency verifies in writing that the expenditure of such funds is authorized;
- d. Give the Federal government a right to enter, at reasonable times and in a reasonable manner, upon property that the non-Federal sponsor, now or hereafter, owns or controls for access to the project for the purpose of inspecting, OMRR&R, or completing the project. No completion, OMRR&R by the Federal government shall relieve the non-Federal sponsor of the responsibility to meet the non-Federal sponsor's obligations, or to preclude the Federal government from pursuing any other remedy at law or equity to ensure faithful performance;
- e. Hold and save the United States free from all damages arising from the construction, OMRR&R of the project and any project-related betterments, except for damages due to the fault or negligence of the United States or its contractors;
- f. Perform, or cause to be performed, any investigations for hazardous substances that are determined necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Public Law 96-510, as amended (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, or rights-of-way that the Federal government determines to be required for the initial construction, operation, and maintenance of the project. However, for lands that the Federal government determines to be subject to the navigation servitude,, only the Federal government shall perform such investigations unless the Federal government provides the non-Federal sponsor with prior specific written direction, in which case the non-Federal sponsor shall perform such investigations in accordance with such written direction;
- g. Assume, as between the Federal government and the non-Federal sponsor, complete financial responsibility for all necessary cleanup and response costs of any CERCLA regulated materials located in, on, or under lands, easements, or rights-of-way that the Federal government determines to be necessary for the initial construction, operation, or maintenance of the project;
- h. Agree that, as between the Federal government and the non-Federal sponsor, the non-Federal sponsor shall be considered the operator of the project for the purpose of CERCLA liability, and to the maximum extent practicable, operate, maintain, and repair the project in a manner that will not cause liability to arise under CERCLA;
- i. Prevent obstructions of or encroachments on the project (including prescribing and enforcing regulations to prevent such obstruction or encroachments) which might reduce the level of protection it affords,

- hinder operation and maintenance, or interfere with its proper function, such as any new developments on project lands or the addition of facilities which would degrade the benefits of the project;
- j. Not less than once each year, inform affected interests of the extent of protection afforded by the project;
  - k. Keep and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the project, for a minimum of three years after completion of the accounting for which such books, records, documents, and other evidence is required, to the extent and in such detail as will properly reflect total costs of construction of the project, and in accordance with the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 Code of Federal Regulations (CFR) Section 33.20;
  - l. Comply with Section 221 of P.L. 91-611, Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5), and Section 103 of the WRDA 1986, P.L. 99-662, as amended (33 U.S.C. 2213), which provides that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof, until the non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;
  - m. Comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, P.L. 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army," and all applicable Federal labor standards and requirements, including but not limited to 40 U.S.C. 3141- 3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantial change the provisions of the Davis-Bacon Act [formerly 40 U.S.C. 276a et seq.], the Contract Work Hours and Safety Standards Act [formerly 40 U.S.C. 327 et seq.] and the Copeland Anti-Kickback Act [formerly 40 U.S.C. 276c et seq.] ;
  - n. Comply with Section 402 of the WRDA 1986, as amended (33 U.S.C. 701b-12), which requires a non-Federal interest to participate in and comply with applicable Federal floodplain management and flood insurance programs, prepare a flood plain management plan within one year after the date of signing a PCA Amendment,, and implement the plan not later than one year after completion of construction of the project; and,
  - o. Comply with all applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights-of-way, necessary for the initial construction, operation, and maintenance of

the project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

The recommendations contained herein reflect the information available at this time and departmental policies governing formulation of individual projects. They do not reflect program and budgeting priorities inherent in the formulation of a national Civil Works construction program nor the perspective of higher review levels within the Executive Branch. Consequently, the recommendations may be modified before they are transmitted to the Office of Management and Budget (OMB) as proposals for implementation funding. However, prior to transmittal to the OMB, any sponsor, the state, interested federal agencies, and other parties will be advised of any modifications and will be afforded an opportunity to comment further.

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