DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
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WASHINGTON DC 20310-0108
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MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS

SUBJECT: Implementation Guidance for Section 6004 of the Water Resources Development Act of 2007 (WRDA 2007)[1] – Comprehensive Everglades Restoration Plan (CERP) Work In-Kind Credits

1. Background: Section 6004 of WRDA 2007 modifies Section 601 of WRDA 2000, which authorized the CERP. Under that section of the law, the Secretary may provide credit, toward the non-Federal share for the reasonable cost of any work performed in connection with a project that is necessary for the implementation of the Plan if certain conditions are met. This includes work completed during the period of design or period of construction, as well as work carried out before the date of the partnership agreement for a project, to include work carried out prior to a project being authorized by Congress. However, in order to be eligible for credit, certain terms and conditions must be met and those terms and conditions must be specified in an agreement between the non-Federal sponsor and the Assistant Secretary of the Army for Civil Works. The relevant section of law, Section 601(e)(5)(B) as amended by P.L. 110-114, Section 6004) reads as follows:

(B) Work-- The Secretary may provide credit, including in-kind credit, toward the non-federal share for the reasonable cost of any work performed in connection with a study, preconstruction engineering and design, or construction that is necessary for the implementation of the Plan if --

(i)(I) the credit is provided for work completed during the period of design, as defined in a design agreement between the Secretary and the non-Federal sponsor;

(II) the credit is provided for work completed during the period of construction, as defined in a project cooperation agreement for an authorized project between the Secretary and the non-Federal sponsor; or

(III) the credit is provided for work carried out before the date of the partnership agreement between the Secretary and the non-Federal sponsor, as defined in an agreement between the Secretary and the non-Federal sponsor providing for such credit; and

(ii) the agreement prescribes the terms and conditions of the credit, including in the case of credit provided under clause (i)(III) conditions relating to design and construction; and

[1] In Section 6004 of the Water Resources Development Act (WRDA) of 2007 (P.L. 110-114 (November 8, 2007)), the statute amends Section 601(e)(5)(B) of WRDA of 2000 (P. L. 106-541). This section provides crediting authority for work in-kind associated with CERP.

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(iii) the Secretary determines that the work performed by the non-Federal sponsor is integral to the project.

2. Requirements: By law, before any credit may be afforded the non-Federal sponsor for work carried out under the above section, the following conditions must be met:

a. the work must be defined in an agreement between the Secretary and non-Federal sponsor providing for such credit;

b. the agreement must prescribe the terms and conditions of the credit;

c. the project must ultimately be authorized by Congress as a Federal project; and

d. the Secretary must determine that the work performed by the non-Federal sponsor is integral to the project.

3. Agreements: Under the above statute, work completed during the period of design will be subject to a design agreement with the non-Federal sponsor, work completed during the period of construction will be subject to a project cooperation agreement or partnership agreement with the non-Federal sponsor, and for work carried out prior to a partnership agreement the work shall be subject to an agreement with the non-Federal sponsor which pursuant to this policy shall be called a "Pre-Partnership Credit Agreement (or PPCA)" (see paragraph 4). It is clear from the statute that to be eligible for credit under either a design agreement or a project cooperation agreement/ partnership agreement, the agreement must be completed before work by the non-Federal sponsor is begun. Existing regulations and policies for such agreements shall be followed under CERP.

4. Policy: As a matter of policy, a PPCA shall be required for all CERP projects where the non-Federal sponsor seeks credit under the provisions of Section 601(e)(5)(B)(i)(III) as amended by P.L. 110-114, Section 6004. While it is not required by law that such a separate agreement be completed prior to the signing of the normal partnership agreement, this policy is in keeping with the intent of Congress and in the interest of both the Army and the non-Federal sponsor. Setting forth the intentions of the parties with respect to performance of the work and the affording of credit at the earliest date possible, shall ensure a common understanding and efficient execution of work.

a. A model PPCA (Model) shall be developed for use with CERP projects. While the terms and conditions contained in this Model may be less than those contained in a

normal project cooperation/partnership agreement, they must meet statutory requirements and will be sufficient to ensure that the work to be completed is agreed upon by USACE or was previously agreed to by USACE, meets adequate standards and engineering, is subject to audits and inspections, and any other terms necessary to ensure the credit will be acceptable and the work will be integral to the project that is authorized or which will be recommended to Congress for authorization. Unless otherwise specifically approved by this office, the Model shall be the only agreement used for such purposes and may not contain any substantive deviations. If the Model is used, then signature authority is delegated to the District Commander.

b. For construction work completed prior to or ongoing on the date of enactment of WRDA 07 (November 8, 2007), a PPCA should be executed as soon as possible, following the completion of the Model. The Model may be altered to reflect the fact that the work has already been completed or is ongoing. The Agreement may address such work on either a project by project basis or if practicable and agreed to by both the Government and the non-Federal sponsor, one Agreement may be executed for the work already completed and/or still ongoing for several projects.

c. For construction work to be begun on a project after the date of enactment of WRDA 07 (November 8, 2007), the Government and the non-Federal sponsor shall execute a PPCA before such work is begun. For such work, PPCAs are to be executed for each individual project on which the non-Federal sponsor executes such work.

John Paul Woodley, Jr.

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(Civil Works)