



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

July 17, 2024

The Honorable Michael L. Connor
Assistant Secretary of the Army for Civil Works
Department of the Army
108 Army Pentagon
Washington, DC 20310-0108

Subject: Section 203 C&SF Flood Resiliency Study for South Florida, Reach A, Broward County Basins

Dear Secretary Connor:

Flood risk management is a primary focus for both the South Florida Water Management District (District) and the U. S. Army Corps of Engineers (USACE). It encompasses the development of approaches and solutions to reduce the risks of flooding and storm impacts. The District and the USACE have made significant progress in recent years on the Central and Southern Florida (C&SF) Flood Resiliency Study, authorized under Section 216 of the Flood Control Act of 1970 ("Section 216 Study"). The purpose of the Section 216 Study is to provide continued flood risk management in Broward and Miami-Dade Counties (Planning Reaches A-D) and to reduce the most immediate risk to the C&SF Project due to changing conditions, including climate change, sea level change, land development, and population growth in the lower east coast of Florida.

Expediently modifying C&SF coastal infrastructure in highly vulnerable areas is critical to reducing the risk of harmful and damaging flooding and impacts to our communities. The District recognizes that flood risk management cannot be accomplished by the USACE alone and that flood risk management is a shared responsibility. Collaborating with state, local, and other federal partners is essential for success. As a partner, the District is prepared to assist in advancing part of the feasibility assessment and initial engineering studies on key C&SF water control coastal structures in the vulnerable areas of Broward County, Florida, specifically Reach A of the C&SF Flood Resiliency Study. The District proposes utilizing Section 203 of the Water Resources Development Act (WRDA) of 1986, as amended, to advance a flood risk management study for this area of Broward County by submitting an integrated feasibility study report and environmental impact study report directly to you for review and submittal to Congress for authorization as a part of WRDA 2026. This study will recommend necessary infrastructure adaptation to reduce flood risk and increase flood resiliency in these urbanized basins. The District is partnering with Broward County to advance this Section 203 effort in parallel with the ongoing Section 216 Study and accelerate the implementation of key resiliency projects within their communities.

Secretary Michael L. Connor

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The District will need the USACE to provide the increased technical and federal assistance afforded under WRDAs 2018 and 2020, including conducting the National Environmental Policy Act (NEPA) and Section 106 Tribal consultations. This technical work and the District's ability to nimbly leverage resources for this effort will ensure a successful feasibility study.

To that end, the District requests that USACE initiate the analyses, reviews, and compliance processes described in Section 1152 of WRDA 2018 and Section 161 of WRDA 2020, to be conducted to support the District with the Section 203 Study to achieve a NEPA-compliant feasibility study. The District also requests your prompt direction to the Jacksonville District Commander to quickly enter into two Memorandums of Agreement (MOAs), attached for your reference, between the Department of the Army and the District for the undertaking of federal activities and for the provision of USACE technical assistance to support the Section 203 study. The District is prepared to provide the funds and any resources necessary to expedite this important work.

It is exciting that our organizations are keenly positioned to significantly advance flood risk management opportunities with truly meaningful resiliency projects. The District is proud to partner with the USACE in flood risk management and resiliency.

Sincerely,



Drew Bartlett
Executive Director

Enclosure:

- 203 MOA for Federal Activities Flood Resiliency Feasibility Study for South Florida
- 203 MOA for Technical Assistance Flood Resiliency Feasibility Study for South Florida

DRAFT DOCUMENT – PENDING REVIEW

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
FOR THE UNDERTAKING OF FEDERAL ACTIVITIES
RELATING TO THE
FLOOD RESILIENCY STUDY FOR SOUTH FLORIDA SECTION 203 STUDY

This MEMORANDUM OF AGREEMENT (hereinafter the “Agreement”) is entered into this ___ day of _____, 2024, by and between the Department of the Army (hereinafter the “Government”), represented by the District Commander for Jacksonville District (hereinafter the “District Commander”), and the South Florida Water Management District (hereinafter the “Non-Federal Interest”), represented by its Executive Director.

WITNESSETH, THAT:

WHEREAS, the Central and Southern Florida (C&SF) Flood Resiliency Study, authorized under Section 216 of the Flood Control Act of 1970, is the framework for flood risk management measures to the C&SF Project that are needed to provide continued flood risk management to reduce the most immediate risk to the C&SF Project and the south Florida communities due to changing conditions including climate change, sea level change, land development, and population growth in the lower east coast of Florida;

WHEREAS, the Broward County urban drainage basins within the C&SF Flood Resiliency Study Area are part of Planning Reach A, which is under consideration for a focused flood risk management study,]y; and

WHEREAS, Section 203 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2231), authorizes the Non-Federal Interest to undertake a federally authorized feasibility study of a proposed water resources development project, or, upon written approval by the Assistant Secretary of the Army (Civil Works) (hereinafter the “ASA(CW)”), to undertake a feasibility study on modifications to a water resources development project constructed by the Government (hereinafter the “Section 203 Study”) and to submit the completed non-Federal report of that study (hereinafter the “Section 203 Report”) to the ASA(CW) for review and assessment; and

WHEREAS, the Government is authorized pursuant to Section 203(e)(1) of the Water Resources Development Act of 1986 (33 U.S.C. 2231(e)(1)) to accept and expend funds provided by the Non-Federal Interest to undertake Federal Activities, which may include inspections, technical and policy compliance reviews, certifications, and other inherently Federal government functions, such as completion of Federal environmental compliance requirements, related to the Section 203 Study for use by the Non-Federal Interest in completing the Section 203 Report; and

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WHEREAS, the Non-Federal Interest made a written offer to the ASA(CW) to provide funds for the Government to undertake the Federal Activities for the Section 203 Study, and on _____, 2024, the ASA(CW) determined that Non-Federal Interest funds can be accepted by the Government for such purpose.

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

1. The Government shall undertake the Federal Activities in accordance with a scope of work (SOW) developed by the Government and Non-Federal Interest, and any modifications thereto. The SOW shall provide a detailed description of the Federal Activities, including a detailed estimate of cost for each activity and schedules, and identification of travel by Government personnel that may be necessary for the activities covered under this Agreement, with such travel to be undertaken in accordance with 41 C.F.R. Chapters 300-304, and estimated separately. The Government and Non-Federal Interest shall regularly review and update, as necessary, the SOW.

2. The Non-Federal Interest shall provide to the Government funds to pay all costs associated with the Federal Activities, including the costs of supervision and administration, in accordance with the provisions of this paragraph:

a. Within 15 calendar days after the effective date of this Agreement, the Non-Federal Interest shall provide to the Government \$250,000 to develop the SOW.

b. Within 30 calendar days after the SOW has been agreed upon by the Government and the Non-Federal Interest and prior to initiating any activities identified in the SOW, the Non-Federal Interest shall provide to the Government the amount specified in the SOW to carry out the Federal Activities for the Section 203 Study. If at any time the Government determines that additional funds are needed, the Government shall notify the Non-Federal Interest in writing of the amount, and no later than 30 calendar days from receipt of such notice, the Non-Federal Interest shall provide to the Government the full amount of the additional funds.

c. The Non-Federal Interest shall provide the funds to the Government by delivering a check payable to “FAO, USAED, Jacksonville (K3)” to the District Commander or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government.

3. The Government shall provide the Non-Federal Interest with quarterly financial reports of costs incurred for the Federal Activities to date and the estimated remaining costs for completing the Federal Activities.

4. Following provision of the Federal Activities and resolution of all relevant claims and appeals, the Government shall conduct a final accounting of the costs of the Federal Activities and furnish the Non-Federal Interest with written results of such final accounting. Should the final accounting determine that additional funds are required from the Non-Federal Interest,

the Non-Federal Interest, within 60 calendar days of written notice from the Government, shall provide the Government with the full amount of such additional funds. Should the final accounting determine that the Non-Federal Interest has provided funds in excess of the costs of the Federal Activities, the Government shall refund the excess amount, subject to the availability of funds. Such final accounting does not limit the Non-Federal Interest's responsibility to pay all costs of the Federal Activities, including contract claims or any other liability that may become known after the final accounting.

5. No credit or repayment shall be provided for any funds provided by the Non-Federal Interest and obligated by the Government for the Federal Activities.

6. The acceptance of funds for the Federal Activities will not impact impartial decision making at any level of the Government with respect to the Section 203 Report, either substantively or procedurally.

7. Non-Federal Interest shall submit the completed Section 203 Report to the ASA(CW) for review and assessment. After the ASA(CW) submits its assessment of the Section 203 Report to the Congress, no further Federal Activities, including completion of environmental compliance requirements, using funds provided by the Non-Federal Interest under this Agreement will be undertaken.

8. The parties agree to use their best efforts to resolve any dispute in an informal fashion through consultation and communication. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

9. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Interest each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

10. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as shown below. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this paragraph.

If to the Non-Federal Interest:

Executive Director
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33416

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If to the Government:

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

11. To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

12. Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

13. This Agreement may be modified or amended only by written, mutual agreement of the parties. Either party may unilaterally terminate further performance under this Agreement by providing at least 15 calendar days written notice to the other party. In the event of termination, the Non-Federal Interest remains responsible for any and all costs incurred by the Government under this Agreement and for any and all costs of closing out or transferring any ongoing contracts.

IN WITNESS WHEREOF, the parties have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF ARMY

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT

BY: _____
Brandon Bowman
Colonel, U.S. Army
District Commander

BY: _____
Drew Bartlett
Executive Director

DATE: _____

DATE: _____

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CERTIFICATE OF AUTHORITY

I, Maricruz R. Fincher, do hereby certify that I am the principal legal officer of the South Florida Water Management District, that the South Florida Water Management District is a legally constituted public body with full authority and legal capability to perform the terms of the Memorandum of Agreement between the Department of the Army and the South Florida Water Management District, and that the person who executed the Memorandum of Agreement on behalf of the South Florida Water Management District acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ 2024.

Maricruz R. Fincher
General Counsel
South Florida Water Management District

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CERTIFICATION REGARDING LOBBYING

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

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

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

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

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

Drew Bartlett
Executive Director
South Florida Water Management District

DATE: _____

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MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
FOR THE PROVISION OF TECHNICAL ASSISTANCE
RELATING TO THE
FLOOD RESILIENCY STUDY FOR SOUTH FLORIDA SECTION 203 STUDY

This MEMORANDUM OF AGREEMENT (hereinafter the “Agreement”) is entered into this _____ day of _____, 2024, by and between the Department of the Army (hereinafter the “Government”), represented by the District Commander for Jacksonville District (hereinafter the “District Commander”), and the South Florida Water Management District (hereinafter the “Non-Federal Interest”), represented by its Executive Director.

WITNESSETH, THAT:

WHEREAS, the Central and Southern Florida (C&SF) Flood Resiliency, authorized under Section 216 of the Flood Control Act of 1970, is the framework for the recommendation of flood risk management measures to the C&SF Project that are needed to provide continued flood risk protection and to reduce the most immediate flood risk to the C&SF Project area and the south Florida communities due to changing conditions including climate change, sea level change, land development, and population growth in the lower east coast of Florida;

WHEREAS, the Broward County urban drainage basins within the C&SF Flood Resiliency Study Area are part of Planning Reach A, which is under consideration for a focused flood risk management study, in parallel to the ongoing development of the C&SF Flood Resiliency Study; and

WHEREAS, Section 203 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2231), authorizes the Non-Federal Interest to undertake a Federally authorized feasibility study of a proposed water resources development project, or, upon written approval by the Assistant Secretary of the Army (Civil Works) (hereinafter the “ASA(CW)”), to undertake a feasibility study on modifications to a water resources development project constructed by the Government (hereinafter the “Section 203 Study”) and to submit the completed non-Federal report of that study (hereinafter the “Section 203 Report”) to the ASA(CW) for review and assessment; and

WHEREAS, the Government is authorized pursuant to Section 203(e)(2) of the Water Resources Development Act of 1986 (33 U.S.C. 2231(e)(2)) to provide to the Non-Federal Interest Technical Assistance, which may include discrete work efforts involving analysis or services for which the Government has expertise; factual information related to the Section 203 Study that is not internal, deliberative, or privileged, which the Government developed or possesses; running models using information provided by the Non-Federal Interest and providing model outputs; and providing and clarifying existing guidance and regulations issued by the Government for use by the Non-Federal Interest in completing the Section

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Report, if the Non-Federal Interest pays all costs of providing such Technical Assistance; and

WHEREAS, the Non-Federal Interest made a written offer to the ASA(CW) to provide funds for the Government to undertake the Technical Assistance for the Section 203 Study, and on _____2024, the ASA(CW) determined that Non-Federal Interest funds can be accepted by the Government for such purpose.

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

1. The Government shall provide Technical Assistance in accordance with a scope of work (SOW) developed by the Government and Non-Federal Interest, and any modifications thereto. The SOW shall provide a detailed description of Technical Assistance to be undertaken with funds provided by the Non-Federal Interest, including a detailed estimate of cost for each activity and schedules, and identification of travel by Government personnel that may be necessary for the activities covered under this Agreement, with such travel to be undertaken in accordance with 41 C.F.R. Chapters 300-304, and estimated separately. The Government and Non-Federal Interest shall regularly review and update, as necessary, the SOW. The SOW, and any significant modifications thereto, must be approved by the Division Commander for South Atlantic Division (hereinafter the “Division Commander”) before the work identified in the SOW can be funded by the Non-Federal Interest and initiated by the Government.

2. The Non-Federal Interest shall provide to the Government funds to pay all costs associated with the Technical Assistance, including the costs of supervision and administration, in accordance with the provisions of this paragraph:

a. Within 15 calendar days after the effective date of this Agreement, the Non-Federal Interest shall provide to the Government \$250,000 to develop the SOW.

b. Within 30 calendar days after the SOW has been approved by the Division Commander, the Non-Federal Interest shall provide to the Government the funds sufficient to cover the costs of the Technical Assistance specified in the SOW prior to the Government initiating such work. If at any time the Government determines that additional funds are needed, the Government shall notify the Non-Federal Interest in writing of the amount, and no later than 30 calendar days from receipt of such notice, the Non-Federal Interest shall provide to the Government the full amount of the additional funds.

c. The Non-Federal Interest shall provide the funds to the Government by delivering a check payable to “FAO, USAED, Jacksonville (K3)” to the District Commander or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government.

3. The Government shall provide the Non-Federal Interest with quarterly financial reports of costs incurred to date and the estimated remaining costs for completing the Technical Assistance.

4. Following provision of the Technical Assistance and resolution of all relevant claims and

appeals, the Government shall conduct a final accounting of the costs of the Technical Assistance and furnish the Non-Federal Interest with written results of such final accounting. Should the final accounting determine that additional funds are required from the Non-Federal Interest, the Non-Federal Interest, within 60 calendar days of written notice from the Government, shall provide the Government with the full amount of such additional funds. Should the final accounting determine that the Non-Federal Interest has provided funds in excess of the costs of the Technical Assistance, the Government shall refund the excess amount, subject to the availability of funds. Such final accounting does not limit the Non-Federal Interest's responsibility to pay all costs of the Technical Assistance, including contract claims or any other liability that may become known after the final accounting.

5. No credit or repayment shall be provided for any funds provided by the Non-Federal Interest and obligated by the Government for the Technical Assistance.

6. After the ASA(CW) submits its assessment of the Section 203 Report to the Congress, no further Technical Assistance using funds provided by the Non-Federal Interest under this Agreement will be undertaken.

7. Any Technical Assistance that the Government provides pursuant to this Agreement is not an endorsement or approval of the Section 203 Study (or any aspect thereof) and will not affect the impartial decision-making of the ASA(CW), either substantively or procedurally.

8. The parties agree to use their best efforts to resolve any dispute in an informal fashion through consultation and communication. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

9. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Interest each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

10. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as shown below. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this paragraph.

If to the Non-Federal Interest:

Executive Director
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33416

If to the Government:

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

11. To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

12. Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

13. This Agreement may be modified or amended only by written, mutual agreement of the parties. Either party may unilaterally terminate further performance under this Agreement by providing at least 15 calendar days written notice to the other party. In the event of termination, the Non-Federal Interest remains responsible for any and all costs incurred by the Government under this Agreement and for any and all costs of closing out or transferring any ongoing contracts.

IN WITNESS WHEREOF, the parties have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF ARMY

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT

BY: _____

BY: _____

Brandon Bowman
Colonel, U.S. Army
District Commander

Drew Bartlett
Executive Director

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, Maricruz R. Fincher, do hereby certify that I am the principal legal officer of the South Florida Water Management District, that the South Florida Water Management District is a legally constituted public body with full authority and legal capability to perform the terms of the Memorandum of Agreement between the Department of the Army and the South Florida Water Management District, and that the person who executed the Memorandum of Agreement on behalf of the South Florida Water Management District acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this ____ day of _____ 2024.

Maricruz R. Fincher
General Counsel
South Florida Water Management District

CERTIFICATION REGARDING LOBBYING

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

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

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

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

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

Drew Bartlett
Executive Director
South Florida Water Management District

DATE: _____