



South Florida Water Management District

3301 Gun Club Road, West Palm Beach, Florida 33406 • (561) 686-8800 • FL WATS 1-800-432-2045
TDD (561) 697-2574

ADM-28

September 25, 1997

Mr. Raymond A. Pavelka, President
Mariner Properties Development, Inc.
12800 University Drive, Suite 675
Fort Myers, Florida 33907-5343

*Executed
Jan 1998*

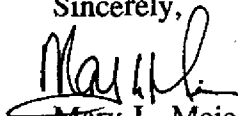
**Subject: Contract No. C-8302
Corkscrew Regional Mitigation Bank**

Dear Mr. Pavelka:

Enclosed please find two (2) original copies of the Corkscrew Mitigation Bank Contract containing revisions as agreed upon by both the District and Mariner as of June 11, 1997.

Please sign both copies on behalf of Mariner Properties and return both to my attention along with a Certificate of Insurance reflecting the required coverages specified in Exhibit "B". As you know, this contract is being placed on the Governing Board agenda for re-authorization approval at the October meeting. Once Governing Board approval has been secured, a fully executed copy will be returned to your attention.

Sincerely,


Mary L. Meier
Contracts Manager

c: M. Moore, Project Manager
A. Cooper, Office of Counsel

Sent Via Federal Express 9/25/97

Governing Board:

Frank Williamson, Jr., Chairman
Eugene K. Pettis, Vice Chairman
Mitchell W. Berger

Vera M. Carter
William E. Graham
William Hammond

Richard A. Machek
Michael D. Minton
Miriam Singer

Samuel E. Poole III, Executive Director
Michael Slayton, Deputy Executive Director

Mailing Address: P.O. Box 24680, West Palm Beach, FL 33416-4680

ORIGINAL

CONTRACT
BETWEEN THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
AND
MARINER PROPERTIES DEVELOPMENT, INC.

This **CONTRACT** is entered into on _____, 19____, between "the Parties," the South Florida Water Management District ("the **DISTRICT**"), and Mariner Properties Development, Inc., a Florida Corporation, Federal Employer Number 65-0453300, ("the **BANKER**").

WITNESSETH THAT:

WHEREAS, the **DISTRICT** is a public corporation of the State of Florida, created by the Florida Legislature and given those powers and responsibilities enumerated in Chapter 373, Florida Statutes to include entering into contracts with public agencies, private corporations or other persons; and

WHEREAS, the **DISTRICT** desires to secure the services of a mitigation banker to design, permit and implement a mitigation bank site; and

WHEREAS, the **BANKER** has submitted a proposal dated November 5, 1996 in response to the **DISTRICT'S** solicitation for such services under RFP C-8302 dated September 6, 1996; and

WHEREAS, the **DISTRICT** recognizes that there are certain benefits to having one banker provide all the **DISTRICT'S** requirements under a single contract which assures the **DISTRICT** of timely restoration of a specified mitigation bank site, sale of mitigation credits (Bank Credits) pursuant to Credit Sales Agreements and recovery of its investment in such site, all of such services which are more fully detailed in Exhibit "A" attached hereto; and

WHEREAS, the **BANKER** receives funding from the sale of Bank Credits to third parties pursuant to Credit Sales Agreements for the services provided to the **DISTRICT** hereunder; and

WHEREAS, the **DISTRICT** in order to induce the **BANKER** to provide the services detailed in Exhibit "A", desires to enter into this contract to give the **BANKER** the right to provide such specified services; and

WHEREAS, the **BANKER**, in consideration of the value of the right to provide a **DISTRICT'S** mitigation bank on the specified property, is willing to provide the services detailed in Exhibit "A" attached hereto; and

WHEREAS, the **BANKER** warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms and conditions of this **CONTRACT**; and

WHEREAS, the Governing Board of the **DISTRICT**, at its October, 1997 meeting, has awarded this **CONTRACT** to the **BANKER**;

NOW THEREFORE, the **DISTRICT** and the **BANKER**, in consideration of the mutual benefits flowing from each to the other, do hereby agree as follows:

ARTICLE 1 - STATEMENT OF WORK

- 1.1 The **BANKER** shall, to the satisfaction of the **DISTRICT**, fully and timely perform all work items described in the "Statement of Work," attached hereto as Exhibit "A," and made a part of this **CONTRACT**.

ARTICLE 2 - TERM OF THE CONTRACT

- 2.1 The period of performance of this **CONTRACT** shall commence on the date of this **CONTRACT** and continue until December 31, 2008, or until completion of all obligations by the parties hereunder, whichever occurs later. Completion of the **CONTRACT** is hereby defined as when all payments pursuant to Section IV of Exhibit "A" have been made, the last Bank Credit has been sold, all revenue has been distributed and the **DISTRICT** has accepted the Project for long-term maintenance in accordance with the terms of this **CONTRACT**.
- 2.2 The parties agree that time is of the essence in the performance of each and every obligation under this **CONTRACT**.

ARTICLE 3 - COMPENSATION/CONSIDERATION

- 3.1 For and in consideration of the covenants herein contained, the **DISTRICT** grants the **BANKER** the right to sell mitigation credits for the Project. In exchange, the **BANKER** shall provide the **DISTRICT** revenues as specified in Schedule "A," Gross Revenue Distribution Plan, to Exhibit "A" and also as specified in Schedule "B", Distribution of Additional Revenue, when applicable.
- 3.2 The **BANKER** must adhere to generally accepted accounting principles and financial reporting standards as promulgated by the Financial Accounting Standards Board capable of withstanding an audit by either the **DISTRICT** or by an independent Certified Public Accountant, licensed in good standing with the Florida State Board of Accountants, in order to support the Exhibit "A", Statement of Work requirements for providing a monthly and quarterly accounting of project costs, and as justification for net revenue distribution pursuant to Exhibit "A", Schedules "A" and "B". Although the **BANKER** is not being directly reimbursed by the **DISTRICT** for travel expenditures under this **CONTRACT**, the **DISTRICT** shall use its Travel Policy No. 14.5000 as the standard for determining allowability when monitoring **BANKER** expenditure of funds for travel expenses including transportation, lodging, food, and incidental expenses. The **DISTRICT** hereby expressly authorizes required travel by members of the **BANKER'S** staff to fulfill its performance obligations under the terms and conditions of this **CONTRACT**, for the term of this **CONTRACT**. The **BANKER** shall maintain detailed travel expense information, together with copies of receipts to support travel expenses shown as part of its monthly and quarterly accounting reports. Such detailed information must be available for **DISTRICT** review, upon request. Net revenue calculations shall be subject to adjustment in the event the **DISTRICT** determines that costs are not allowable, reasonable, or reported in accordance with generally accepted accounting principles and financial reporting standards as promulgated by the Financial Accounting Standards Board.

ARTICLE 4 - PAYMENT

- 4.1 The **BANKER** shall advise the **DISTRICT'S** Project Manager as well as the Division of Procurement and Contract Administration in writing when any payments are made to the **DISTRICT**. **BANKER'S** payments shall reference the **DISTRICT'S** Contract Number C-8302 and shall be sent to the following address:

South Florida Water Management District
Attn: Division of Treasury Management
P.O. Box 16606
3301 Gun Club Road
West Palm Beach, FL 33416-6606

- 4.2 The **BANKER** acknowledges that any failure to make timely periodic payments of consideration to the **DISTRICT**, as required under the terms of this **CONTRACT**, shall constitute a material default of this **CONTRACT** for which the **DISTRICT** may exercise such rights, including termination of the **CONTRACT**, as provided for herein.

ARTICLE 5 - PROJECT MANAGEMENT/NOTICE

- 5.1 The Project Manager for the **DISTRICT** is Marjorie Moore, at 3301 Gun Club Road, West Palm Beach, telephone (561) 687-6104. The Project Manager for the **BANKER** is Raymond A. Pavelka, at 12800 University Drive, Suite 675 Fort Myers, Florida 33907, telephone (941) 481-2011. The parties shall direct all matters arising in connection with the performance of this **CONTRACT**, other than payments and notices, to the attention of the Project Managers for attempted resolution or action. The Project Managers shall be responsible for overall coordination and oversight relating to the performance of this **CONTRACT**. To the extent reasonable and practical, all administrative and technical issues pertaining to the **CONTRACT** shall be documented in written correspondence between the parties.
- 5.2 All notices and demands to the **BANKER** under this **CONTRACT** shall be in writing and shall be deemed received if sent by certified mail, return receipt requested, to:

Mariner Properties Development, Inc.
12800 University Drive, Suite 675
Fort Myers, FL 33907
Attention: Raymond A. Pavelka, President

All notices and demands to the **DISTRICT** under this **CONTRACT** shall be in writing and shall be deemed received if sent by certified mail, return receipt requested to:

South Florida Water Management District
Attn: Division of Procurement and Contract Administration
3301 Gun Club Road
P. O. Box 24680
West Palm Beach, FL 33416-4680

The **BANKER** shall also provide a copy of all notices to the **DISTRICT'S** Project Manager. All notices required by this **CONTRACT** shall be considered delivered *upon receipt*. Should either party change its address, written notice of such new address shall promptly be sent to the other party.

All correspondence to the **DISTRICT** under this **CONTRACT** shall reference the **DISTRICT'S** Contract Number **C-8302**.

ARTICLE 6 - INDEMNIFICATION & INSURANCE

- 6.1 For value received, which is hereby acknowledged, the **BANKER** shall defend, indemnify, save, and hold the **DISTRICT**, its agents, assigns, and employees, harmless from any and all claims or causes of action, including without limitation, all damages, losses, liabilities, expenses, costs, and attorney's fees related to such claims, resulting from any negligent or intentional act or omission, or the violation of any federal, state, or local law or regulation, by the **BANKER**, its subcontractors, agents, assigns, invitees, or employees in connection with this **CONTRACT**. The **BANKER** further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, agents, assigns, invitees and employees with the terms of this **CONTRACT**.
- 6.2 The **BANKER** shall procure and maintain, through the term of this **CONTRACT**, insurance coverage reflecting, at a minimum, the limits and coverage conditions identified on the **DISTRICT'S** Certificate of Insurance, attached as Exhibit "B," and made a part of this **CONTRACT**. The coverage required shall extend to all employees and subcontractors of the **BANKER**. The attached **DISTRICT** Certificate of Insurance shall be completed in full, indicating the producer, insured, carrier's name and Best rating, policy numbers and effective and expiration dates of each type of coverage required. The Certificate shall be signed by the insurance carrier's authorized representative.

ARTICLE 7 - TERMINATION/REMEDIES AND CONTRACT COMPLETION

*Termination
Cause* 7.1 If either party fails to fulfill its obligations under the **CONTRACT** in a timely and proper manner, the other party shall have, in addition to any other remedies at law or in equity, the right to terminate this **CONTRACT** which shall be initiated by giving written notice of any deficiency. The notified party shall have ten (10) calendar days from receipt of notice to correct the deficiency or to submit a Plan including a time frame for bringing the party's performance into compliance, which Plan shall be mutually agreed upon in writing within thirty (30) days. If the deficiency cannot be corrected within either the ten (10) calendar day period or within the time frame agreed upon in the Plan, this **CONTRACT** may be terminated by the party not in default. The **BANKER** shall not, without prior **DISTRICT** approval, execute any further Credit Sales Agreements, or amend any existing Credit Sales Agreements or extend the payment due date(s) after the effective date of termination but shall continue to be obligated to make payments to the **DISTRICT** for the **DISTRICT'S**

share from Credit Sales Agreements executed prior to the effective date of termination. In the event of termination, the **DISTRICT** will cooperate with the **BANKER** in facilitating the closing of the Credit Sales Agreements executed prior to the effective date of termination.

The obligations which, if not fulfilled by the **BANKER**, constitute a default include, but are not limited to, the following: i) failure to obtain the Permit within three (3) years from the date of **CONTRACT** execution; ii) failure in any year to meet the Payment Schedule in Part II, Section IV of the Statement of Work; iii) the Permit terminates, expires, or is surrendered; iv) the Site is no longer used for the mitigation banking purposes by abandonment of the **CONTRACT** by the **BANKER**; or v) the **BANKER** is insolvent, as defined by law.

7.2

termination for convenience
At any time from the date of **CONTRACT** execution up until fifteen (15) days following issuance of all required Mitigation Bank Instrument, State and/or Federal Permits, whichever occurs last, either party may terminate this **CONTRACT** for convenience, upon thirty (30) calendar days prior written notice to the other party. The **BANKER'S** right to terminate may be exercised without obligation to compensate the **DISTRICT** and must be based either on a bona fide, good faith determination that the Project, as defined in Exhibit "A", is no longer considered economically viable or that one of the **BANKER'S** key personnel is no longer able to participate in the Project due to death or permanent physical disability. Key personnel are hereby identified as: Ray Pavelka. Subject to Governing Board budgetary appropriation, the **DISTRICT** may terminate for convenience and in such event shall be obligated to compensate the **BANKER** for its reasonable and actual costs incurred up through the effective date of termination and not previously compensated through revenue generated by the sale of Bank Credits. Any such termination shall be effected by delivery to the other party of a Notice of Termination specifying the reasons for such termination, which shall not be arbitrary or capricious, and the date upon which such termination becomes effective.

After receipt of notice of termination for convenience, the parties shall be relieved of any and all future obligations under this **CONTRACT**, other than those specified herein and in Article 7.3, including but not limited to lost profits and consequential damages.

7.3 In the event of **CONTRACT** termination for any reason, or upon completion of the **CONTRACT**:

A. No later than thirty (30) days after the termination or completion date the **BANKER**, without charge to the **DISTRICT**, shall:

1) request from the Regulatory Agencies written confirmation to be sent

to the **DISTRICT** and **BANKER** as to the total number of Bank Credits deducted or withdrawn by DEP from the aggregate total of Bank Credits available under the Permit (hereinafter "DEP Confirmation").

- 2) vacate the Site, remove and appropriately dispose of all personal property, tanks, trucks, trailers, discarded machinery; scrap metal, debris, trash, or liquid or solid waste on the Site.
- 3) furnish the **DISTRICT** with copies of all documents reflecting work performed up until the termination or completion date, including research, data, studies, designs, surveys, photographs, and all items of any other description relating to the Project and, if requested by the **DISTRICT**, apply for transfers of the DEP permit and Mitigation Banking Instrument (MBI) to the **DISTRICT**, or other party as directed by the **DISTRICT**.
- 4) as an authorized representative of the **BANKER**, the **BANKER's** Project Manager shall certify the following in writing:
 - i) that the **BANKER** has obtained and is in full compliance with any Permit(s) relating to this Contract,
 - ii) that the **BANKER** is not aware nor does it have any notice, actual or constructive, of any past, present or future events, conditions, activities or practices which is or was not in compliance with any law, regulation, code or policy of any federal, state or local government or authority which may give rise to any liability or form a basis for any claim, demand, cost or action relating to this Contract or the Disposal of Pollutants on the Site or contiguous property, and
 - iii) that **BANKER** is not aware of any civil, criminal or administrative action, suit, claim, demand, investigation or notice of violation pending against the **BANKER** relating in any way to **BANKER's** use of the Site or the Disposal of Pollutants on the Property or any contiguous land.
 - iv) that all payments due to the **DISTRICT** for the **DISTRICT's** share of Credit Sales Agreements executed prior to the effective date of termination either have been made to the **DISTRICT** or will be made to the **DISTRICT** in accordance with the terms of the outstanding credit sales agreements and the time frame requirements established by Section IV (B) of Exhibit "A". The **BANKER** shall provide the

DISTRICT with detailed information on outstanding payment obligations including applicable Credit Sales Agreements, payment amounts, and due dates.

B. The **BANKER** shall deliver to the **DISTRICT** within thirty (30) after the receipt of the DEP Confirmation, a final Accounting Report which shall include:

- 1) The information required in Part I and Part II, Section IV of the Statement of Work for the last accounting period through the date of receipt of the DEP Confirmation.
- 2) A certification by a Certified Public Accountant, licensed in good standing with the Florida State Board of Accountants, that the accountant has reviewed all the Reports submitted to the **DISTRICT** under Part I and Part II, Section IV of the Statement of Work and that the Reports are accurate and meet generally accepted accounting principles and financial reporting standards as promulgated by the Financial Accounting Standards Board.

C. All improvements to the Site, as defined in the Statement of Work or documents referenced therein, and all information provided in accordance with this **CONTRACT**, shall remain the property of the **DISTRICT**, without further cost.

7.4 If either party initiates legal action, including appeals, to enforce this **CONTRACT**, the prevailing party shall be entitled to recover a reasonable attorney's fee, based upon the fair market value of the services provided.

7.5 In the event a dispute arises which the project managers cannot resolve between themselves, the parties shall have the option to submit to nonbinding mediation. The mediator or mediators shall be impartial, shall be selected by the parties, and the cost of the mediation shall be borne equally by the parties. The mediation process shall be confidential to the extent permitted by law.

ARTICLE 8 - RECORDS RETENTION/OWNERSHIP

8.1 The **BANKER** shall maintain records and the **DISTRICT** shall have inspection and audit rights as follows:

A. Maintenance of Records: The **BANKER** shall maintain all financial and non-financial records and reports directly related to the negotiation and performance of this

CONTRACT including supporting documentation for any service rates, revenue calculations, expenses, research or reports. Such records shall be maintained and made available for inspection by the **DISTRICT** at any time throughout the period of performance of this **CONTRACT** and for a period of five years from the date of completion of all performance obligations under this **CONTRACT**. The **DISTRICT** shall not copy or retain any records which fall within the attorney/client privilege.

B. Examination of Records: The **DISTRICT** or its designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly related to this **CONTRACT**. Such examination may be made at any time throughout the period of performance hereunder and up until five years from the completion date of all performance obligations under this **CONTRACT** and upon reasonable notice, time and place. The **DISTRICT** shall not copy or retain any records which fall within the attorney/client privilege.

C. Extended Availability of Records for Legal Disputes: In the event that the **DISTRICT** should become involved in a legal dispute with a third party arising from performance under this **CONTRACT**, the **BANKER** shall extend the period of maintenance for all records relating to the **CONTRACT** until the final disposition of the legal dispute, and all such records shall be made readily available to the **DISTRICT**.

ARTICLE 9 - M/WBE COMPLIANCE

- 9.1 **M/WBE Goal:** The **DISTRICT** actively encourages the participation of Minority-owned and Woman-owned Business Enterprises (M/WBE'S) in the **DISTRICT'S** procurement and contracting activity. The **BANKER** shall take all reasonable steps to achieve and maintain a minimum of 3% M/WBE participation for engineering services and 1% M/WBE participation for land surveying services under this **CONTRACT**. The foregoing goals are percentages of the **BANKER'S** actual restoration/creation costs incurred pursuant to Exhibit "A". At any time during the term of this **CONTRACT**, the **DISTRICT** may request information on the minority participation of this **CONTRACT** and may request the **BANKER** to increase its efforts and volume of awards to certified minority firms.
- 9.2 The **BANKER** agrees to submit with each Accounting Report, a completed *Minority Business Utilization Report* form, attached hereto as Exhibit "C" and made a part of this **CONTRACT**. The **BANKER** understands that each M/WBE utilized for the **CONTRACT** must be certified by the **DISTRICT**.
- 9.3 **Compliance.** The **DISTRICT** shall monitor and evaluate compliance with the

provisions of the M/WBE Rule. During the term of this **CONTRACT**, the **BANKER** shall comply with all M/WBE plans made in its proposal, as may have been amended in negotiations. Compliance for use of M/WBE's shall include tasks and proportionate dollar amounts throughout the term of the **CONTRACT**, including amendments. The **BANKER** shall maintain the level of M/WBE participation as established above.

- 9.4 M/WBE Substitution. The **BANKER** must contact the **DISTRICT's** SDO Office when the need to replace an M/WBE subcontractor arises. The **BANKER** must submit to the **DISTRICT's** SDO Office an **updated** version of the following:
- 1) *Schedule of Subcontractor/Minority Women Business Enterprise (M/WBE) Participation* form.
 - 2) *Statement of Intent to Perform as a M/WBE Subcontractor* form for each substitute firm.
- 9.5 Records. The **BANKER** shall maintain records, and information necessary to document compliance with **CONTRACT** requirements, and shall include the right of the **DISTRICT** to inspect such records.
- 9.6 False Representation. The **BANKER**, or any individual who falsely represents any entity as a M/WBE or does not fulfill the contractual obligations, is subject to be penalties under Section 287.094, F.S.
- 9.7 Review of Performance: To ensure that all obligations under this **CONTRACT** awarded to M/WBE's are met, the **BANKER'S** M/WBE efforts throughout the performance of the contract shall be reviewed by the **DISTRICT**. The **BANKER** shall advise the **DISTRICT** of any situation in which regularly scheduled progress payments are not made to M/WBE subcontractors.
- 9.8 Compliance provisions. The **DISTRICT** retains the right to initiate any of the following provisions to ensure **BANKER** compliance with the **DISTRICT'S** M/WBE Rule:
- (a) refusal of all future proposals or offers submitted to the **DISTRICT** by the **BANKER** for a period of three (3) years;
 - (b) initiation of decertification action.
- 9.9 M/WBE certification suspension or debarment of firms for activity contrary to the Program, and the appeal process, shall be carried out pursuant to **DISTRICT** Rule 40E-7.664, F.A.C.
- 9.10 Failure to comply with the M/WBE requirements of the **CONTRACT** will be

considered a breach of **CONTRACT**, and may further result in M/WBE certification suspension of the firms or individuals involved and/or termination of the **CONTRACT** for cause.

ARTICLE 10 - STANDARDS OF COMPLIANCE

- 10.1 The **BANKER**, its employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this **CONTRACT**. The **BANKER** shall comply with all federal and state securities laws in regard to the offer and sale of credits (Bank Credits) under reservation or credit sales agreements (Credit Sales Agreements). In addition, the

not occur before the

~~shall be subject to the provisions of the Securities Act of 1933, as amended, and of any applicable state securities laws, that compliance is unnecessary because no offer or sale of a security is involved, or that exemption from registration is available.~~

shall be subject to the provisions of the Securities Act of 1933, as amended, and of any applicable state securities laws, that compliance is unnecessary because no offer or sale of a security is involved, or that exemption from registration is available.

- 10.2 The **BANKER** hereby assures that no person shall be discriminated against on the grounds of race, color, creed, national origin, handicap, age, or sex, in any activity under this **CONTRACT**. The **BANKER** shall take all measures necessary to effectuate these assurances.
- 10.3 The laws of the State of Florida shall govern all aspects of this **CONTRACT**. In the event it is necessary for either party to initiate legal action regarding this **CONTRACT**, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims which are justiciable in federal court.
- 10.4 The **BANKER**, by its execution of this **CONTRACT**, acknowledges and attests that neither he, nor any of his suppliers, subcontractors, or consultants who shall perform work which is intended to benefit the **DISTRICT** is a convicted vendor or, if the **BANKER** or any affiliate of the **BANKER** has been convicted of a public entity crime, a period longer than 36 months has passed since that person was placed on the convicted vendor list. The **BANKER** further understands and accepts that this **CONTRACT** shall be either voidable by the **DISTRICT** or subject to immediate termination by the **DISTRICT**, in the event there is any misrepresentation or lack of compliance with the mandates of Section 287.133, F.S. The **DISTRICT**, in the event of such termination, shall not incur any liability to the **BANKER** for any work

or materials furnished.

- 10.5 The **BANKER** shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the **CONTRACTOR** assert any exemptions to the requirements of Chapter 119 and related Statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the **BANKER**.

ARTICLE 11 - RELATIONSHIP BETWEEN THE PARTIES

- 11.1 The **BANKER** is an independent contractor and is not an employee or agent of the **DISTRICT**. Nothing in this **CONTRACT** shall be interpreted to establish any relationship other than that of an independent contractor, between the **BANKER** and the **DISTRICT**, its employees, agents, subcontractors, or assigns, during or after the performance of this **CONTRACT**. The **BANKER** is free to provide similar services for others.
- 11.2 The **BANKER** shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this **CONTRACT** without the prior written consent of the **DISTRICT**. Any attempted assignment in violation of this provision shall be void.

ARTICLE 12 - GENERAL PROVISIONS

- 12.1 Notwithstanding any provisions of this **CONTRACT** to the contrary, the parties shall not be held liable for any failure or delay in the performance of this **CONTRACT** that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. Failure to perform shall be excused during the continuance of such circumstances, but this **CONTRACT** shall otherwise remain in effect. This provision shall not apply if the "Statement of Work" of this **CONTRACT** specifies that performance by **BANKER** is specifically required during the occurrence of any of the events herein mentioned. The affected parties time to perform shall be extended for a period of time sufficient to compensate for actual time lost, and any associated schedule impacts resulting therefrom.
- 12.2 The documents listed below, by this reference, shall become a part of this **CONTRACT** as though physically attached:

The **DISTRICT'S** Request for Proposals - C-8302, issued September 6, 1996.
The **BANKER's** Proposal dated November 5, 1996.

- 12.3 The **DISTRICT** is not obligated to contribute funds or incur any financial liability in connection with the Bank or with the obligations of **BANKER** under this Contract, other than obligations which may accrue pursuant to Article 7. The **BANKER** shall be solely responsible, at **BANKER's** expense, for the design, construction and implementation of the Mitigation Plan, obtaining the Permit, marketing and sale of Bank Credits, and managing, operating and maintaining the Site until such time as the Project is accepted by the **DISTRICT** and the Site is turned over to the **DISTRICT** for long-term management. The **BANKER** and its employees, agents, and subcontractors shall not pledge the **DISTRICT's** credit nor make the **DISTRICT** a guarantor of payment or surety for any contract, debt, obligation, judgment, or lien.
- 12.4 For purposes of this **CONTRACT**, "Pollutant" shall mean any hazardous or toxic substance, material, or waste of any kind, petroleum, petroleum product or by-product, or contaminant or pollutant as defined or regulated by environmental laws. "Disposal" shall mean the release, storage, use, handling, discharge or disposal of such Pollutants. "Environmental Laws" shall mean any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restriction.
- 12.5 The **BANKER** shall not cause or permit the Disposal of a Pollutant upon the Site. **BANKER** shall use the Site in compliance with all Environmental Laws. Any such Disposal of a Pollutant, whether caused by **BANKER** or any other third party, shall be reported to the **DISTRICT** immediately upon the knowledge thereof by the **BANKER**. The **BANKER** shall be solely responsible for the entire cost of cleanup of any Pollutant disposed of or otherwise introduced on the Site as a result of **BANKER** or **BANKER's** employees, agents, or subcontractors use of the Site or adjacent lands. **BANKER** shall indemnify and hold harmless **DISTRICT**, from and against any claims, suits, judgments, loss, damage, and liability including, but not limited to, **DISTRICT's** reasonable attorney's fees and costs, which arises directly or indirectly from the Disposal of a Pollutant on the Property as a result of **BANKER's** or **BANKER's** employees, agents, or subcontractors use of the Property or adjacent lands. This responsibility shall continue to be in effect for any such Pollutants so disposed of or introduced, as are discovered after the date of termination of this **CONTRACT**. While this paragraph establishes contractual liability for the **BANKER** regarding pollution of the Property as provided herein, it does not alter or diminish any statutory or common law liability of the **BANKER** for such pollution.
- 12.6 The **BANKER** shall not convey, assign, transfer, delegate, lease, mortgage, or otherwise encumber any interest in the Site. The **BANKER** shall keep the Site free from any liens, including mechanic's liens arising out of any work performed,

materials furnished, or obligations incurred by **BANKER**, its agents, or subcontractors. In the event **BANKER** fails, within 10 days following the imposition of any lien, to cause the same to be released of record, **DISTRICT** shall have, in addition to all other remedies provided herein and by law, the right to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by **DISTRICT**, including reasonable attorney's fees and costs, in connection therewith, together with interest at the maximum allowable rate, shall be payable to **DISTRICT** by the **BANKER** on demand.

- 12.7 In the event any provisions of this **CONTRACT** shall conflict, or appear to conflict, the **CONTRACT**, including Exhibits "A", "B" and "C" shall take precedence over the documents listed in Article 12.2 above.
- 12.8 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **CONTRACT** by the parties, their successors and assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this **CONTRACT**. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this **CONTRACT** specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.
- 12.9 Should any term or provision of this **CONTRACT** be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this **CONTRACT**, to the extent that the **CONTRACT** shall remain operable, enforceable and in full force and effect to the extent permitted by law.
- 12.10 This **CONTRACT** may be amended only with the written approval of the parties hereto.
- 12.11 This **CONTRACT** states the entire understanding and agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or agreements previously existing between the parties with respect to the subject matter of this **CONTRACT**. The **BANKER** recognizes that any representations, statements or negotiations made by **DISTRICT** staff do not suffice to legally bind the **DISTRICT** in a contractual relationship unless they have been reduced to writing and signed by an authorized **DISTRICT** representative. This **CONTRACT** shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

- 12.12 Prior to ~~BANKER'S~~ pledging or creating a security interest in the Bank Credits, the parties shall execute and record appropriate document(s) for establishing third party notice as to a real property and a personal property transaction. The document(s) shall contain notice of the basic requirements in the **CONTRACT**, including that any pledge or security interest in the Bank Credits to be given by the **BANKER** as authorized by the **CONTRACT** is subject and subordinate to the terms of the **CONTRACT** between the parties. The document shall also indicate that a copy of the **CONTRACT** is available for review by contacting the South Florida Water Management District.

IN WITNESS WHEREOF, the parties or their duly authorized representatives hereby execute this **CONTRACT** on the date first written above.

LEGAL FORM APPROVED
SFWMD OFFICE OF COUNSEL

BY: Albe Cooper

DATE: 9/25/97

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
BY ITS GOVERNING BOARD**

By: _____
Deputy Executive Director

MARINER PROPERTIES DEVELOPMENT, INC.

By: _____
Title:

EXHIBIT "A"
STATEMENT OF WORK
CORKSCREW MITIGATION BANK SITE

I. Overview

The South Florida Water Management District ("District") is entering into this Contract to allow Mariner Properties Development, Inc. ("Banker") to develop the Corkscrew Mitigation Bank ("Bank") on District property. This Contract authorizes the Banker to design, construct and implement a mitigation bank restoration plan ("Plan") on the Bank site ("Site"), obtain required governmental permits and authorizations, market and sell mitigation bank credits, and manage, operate and maintain the Site until such time as the Plan is successfully implemented and the Site is turned over to the District for long-term management (such activities collectively referred to as the "Project"). The Site, as legally described in the Document referred to below, comprises a total of 632 acres located off Corkscrew Road, approximately 4.75 miles east of its junction with Alico Road. The Plan will have two major components produced consecutively. In the first component of the Plan the Banker will prepare a restoration plan for the Bank Site, develop the construction permit application package and the mitigation banking instrument and process them through the applicable permitting/regulatory agencies, including the Mitigation Bank Review Team ("MBRT"), an inter-agency Federal and State review team including but not limited to, the Florida Department of Environmental Protection ("DEP") and the Army Corps of Engineers ("COE"). The second component of the Plan will consist of developing the Site in accordance with the mitigation banking instrument/permit requirements, the marketing/sale of Bank Credits and the operation, monitoring and initial management of the site. Bank Credits shall be offered and sold pursuant to Credit Sales Agreements as described in Section IV (B) herein.

II. Objective

The objective of the District's mitigation banking program is to provide an implementation mechanism for the restoration of regionally significant lands and to satisfy mitigation requirements for public and private sponsored impacts to wetlands. Through a contractual relationship, mitigation banking will facilitate the restoration efforts and generate a revenue stream to the District to recover costs associated with the project including land acquisition, management and staff costs. Revenue generated will also be used to initiate future acquisition, restoration and management projects.

The Technical Support Document ("Document", Attachment 1 in the Request For Proposals) dated August 1996 as prepared by the District's Construction and Land Management Department provides information on the inventory, analysis and preliminary design of the Site. The District's objective in providing the information is to set forth the footprint for the restoration design based on best available information. The Banker is

to develop a mitigation bank restoration plan that substantially conforms to the design concept set forth in the Document and in the Banker's proposal set forth in the Request For Proposal response dated November 5, 1996 ("Response"). The District does not represent that conformance with the Document will ensure permissibility or success of the preliminary design concept included in the Document. The Banker has the flexibility to develop design alternatives, provided the goals set forth in the Document are achieved and the design alternatives are approved by the District and permitting agencies. The specific goals for the bank site are as follows:

- To enhance and/or restore historic wetland diversity, habitat value and function;
- To expand habitat area for listed wildlife species and to increase the quality and duration of use by these and other important wildlife;
- To restore historic hydrologic connections and patterns of flow;
- To promote the development of a self-sustaining ecosystem, with minimal long-term management needs.

III. Scope Of Work

The Banker shall design a detailed ecological and engineering restoration plan. The restoration plan shall meet the requirements of the COE and DEP, and all other applicable permitting/regulatory agencies (collectively referred to as the "Regulatory Agencies") and shall comply with applicable State, political subdivision, and Federal laws, rules, and regulations. The Banker shall closely coordinate with the District and Regulatory Agencies in the development of the Plan.

The restoration plan shall include excavation and grading plans, planting plans, necessary cross sections or profiles and adequately define all required ground elevations, water levels, pump sizes and other pertinent physical characteristics to adequately permit and construct the restoration plan. The Banker shall prepare a strategic operations, phasing, management, monitoring plan and work schedule as part of the permit package. This shall include specific goals addressing restoration/enhancement, recruitment of listed wildlife species, exotic species control, success criteria, security and long term maintenance.

The design engineering services shall include, but not be limited to, detail surveys (to provide adequate information for the development of a restoration/enhancement plan), subsurface geologic investigations, hydraulic analyses, preparation of permit drawings, final detailed construction drawings, technical specifications and contract documents, and related services associated with the project construction. The Banker shall also insure that the design meets the requirements of the Regulatory Agencies, proper engineering design standards and applicable codes. All engineering services shall be performed under the direction of a Professional Engineer registered in the State of Florida and qualified in the appropriate discipline. All survey related activities required by the permit shall be performed under the direction of a Florida licensed Surveyor and Mapper in

accordance with statutory Minimum Technical Standards.

A. PART I: The Banker shall prepare the following as part of the Scope of Services for the first component of the Plan:

1. The Banker shall conduct a start-up meeting with the District, during which, the Banker shall review with the District the validity of the preliminary design set forth in the Technical Support Document and any proposed design alternatives.
2. Collect all available data - The Banker shall exercise their best professional efforts in collecting all available data to develop the base mapping and engineering design. The Banker shall provide to the District a list of information stored by the District that the Banker deems essential to develop the base mapping and engineering design. The District shall assist the Banker by retrieving and compiling said information.
3. Permit requirements - The Banker shall coordinate closely with the Regulatory Agencies to satisfy regulatory requirements for the Project, obtain all applicable Regulatory Agency permit(s) (collectively referred to as the "Permit"), and facilitate cooperation among the agencies and the Banker.
4. Based on information obtained in items (2) and (3) above, the Banker shall prepare for use during the pre-application phase of the MBRT process a mitigation bank construction permit application package ("Package") and/or MBRT Mitigation Bank Prospectus ("Prospectus"), as applicable. The Banker shall provide the District a copy of the Package and/or Prospectus, as applicable, for review and approval, prior to submittal. Pursuant to the Prospectus process utilized by the Federal agencies, e.g. the COE, upon approval of the bank concept the Banker shall begin preparation of the Mitigation Banking Instrument ("MBI"). The District shall review the Package/Prospectus and MBI and provide comments to the Banker within ten (10) business days after receipt by the District. Following the District's review, the Banker shall revise the Package/Prospectus and MBI to address the District's comments and questions. After all comments have been addressed and upon the District's review and written approval of the Package/Prospectus and MBI, the Banker shall submit and present as necessary, the Package/Prospectus and MBI to the Regulatory Agencies for review. The Banker shall coordinate closely with the MBRT and the District throughout the review process and provide copies of the MBRT and Banker correspondence to the District. Any proposed amendment of the Package/Prospectus and MBI shall also follow the above review and approval procedure.
5. Throughout the entire term of the Contract, the Banker shall conduct monthly progress meetings with District staff, unless the parties mutually agree to a different meeting schedule. Throughout the duration of the contract, Banker shall provide to the District's Project Manager a monthly written report of project costs, including

staff/labor, overhead, travel, materials and other direct costs utilized in the implementation of the Statement of Work.

6. Subsequent to Permit issuance, the Banker shall submit to the District upgraded construction plans and specifications to meet the requirements for construction of the Project. The design plans shall be of a level of detail and professional quality to reflect the required work clearly and in a professional manner. The technical specifications shall be in Construction Specifications Institute (CSI) standard format and be of sufficient detail to convey the required product performance in accordance with good engineering practices. The Banker shall provide the District with a copy of the Construction Bid Documents on reproducible paper (velum or mylar) and a 3 1/2" floppy diskette (Autocad Release 12) together with corresponding technical specifications in CSI format on 8 1/2" x 11" paper and 3 1/2" floppy diskette (in Word Perfect for Windows Version 5.2). Additionally, the Banker shall provide the District with copies of all the Regulatory Agency permit(s) obtained by the Banker.

B. PART II: The Scope of Services for the second component of the Plan shall include:

1. Develop the Site in accordance with Regulatory Agency requirements.
2. Bond and/or fund any construction implementation fund and Management Fund (referred to below) required by the Regulatory Agencies.
3. The Banker shall establish prior to the Banker's withdrawal of credits from the Bank a long-term management trust fund ("Management Fund") for use by the District to maintain and manage the Site in accordance with Permit requirements. The Banker shall fully fund the trust in accordance with Permit requirements. Notwithstanding any terms in the Permit to the contrary, District's acceptance of the Project as complete is conditioned upon Banker's properly establishing and fully funding the Management Fund with the District named as the beneficiary so that Management Funds are available for use by the District for management and maintenance of the Site.
4. Market/sell the mitigation bank credits and maintain the Bank Credit ledger accounting.
5. Develop the time zero report of the Site. Prepare monitoring plan reports as detailed and permitted in the monitoring plan component of the Permit. Manage and maintain the Site until the Site has achieved 100% success per the terms of the Permit. The District shall provide final written acceptance of the Project. Such written notice shall be provided by the District within thirty (30) days following a determination that project success criteria are met and the Management Fund is properly established

and fully funded. Acceptance of the Project by the District shall not be unreasonably withheld.

6. Upon final written acceptance of the Project by the District, the District shall be responsible for performing long-term maintenance upon the Site in accordance with the Permit requirements. The expenses to accomplish long-term management and maintenance by the District shall be paid from the Management Fund. The District shall thereafter manage and maintain the Site in accordance with the Permit without waiving any other obligations of the Banker under the Contract.

IV. Financial Requirements

- A. **Payments.** The Banker shall provide a revenue stream to the District through the sale of Bank Credits by the Banker. The Banker shall make payments to the District no less than the amounts indicated in the following Payment Schedule which identifies cumulative payments to be made by the Banker to the District by the end of each year from Year "1" through the end of Year "5" in the cumulative amount of \$2,700,000. The payments in Year "6" and Year "7" represent additional payments, also cumulative, to be received by the District through the end of Year 7:

Year 1 - \$270,000
Year 2 - \$540,000 (cumulative)
Year 3 - \$1,080,000 "
Year 4 - \$1,890,000 "
Year 5 - \$2,700,000 "
Year 6 - \$150,000 minimum
Year 7 - \$300,000 minimum (cumulative)

Year 1 of the Payment Schedule commences one year after the date of the Regulatory Agencies' release of the first wetland restoration/creation credit. "Release of wetland restoration/creation credit" does not mean a release of credits solely for recording a conservation easement or the first set of credits released for initiating construction.

This Payment Schedule sets forth a minimum performance standard for contract enforcement purposes as further explained in Article 7 of the Contract. The parties acknowledge that the Payment Schedule through Year 5 represents reimbursement of the District's land acquisition and administrative costs in full. Depending on the success of the Bank, such reimbursement may have to be made earlier than Year 5 based on the requirements of Section IV (B) and (C) below. The amounts in Payment Schedule Years 6 and 7 represent a minimum payment. The timing and actual amounts of such payments are controlled by the requirements of Section IV (B) and (C) below.

The Payment Schedule and/or amounts therein may be renegotiated if the following actions of the District materially affect the customer base of the Bank: 1) District sponsors a mitigation bank with a service area that overlaps any part of the service area of the Bank prior to the sell out of Bank Credits (this would not include banks permitted by the District Regulation Department); 2) District accepts funds from permittees with mitigation requirements for use in support of the District's sponsored portion of the CREW project, or a similar District sponsored mitigation area within the service area of the Bank, after all Bank permits are issued and during the time when Permit conditions allow or provide for the release of Bank Credits. Nothing in this Contract prohibits the District's Regulation Department from determining the appropriate type and quantity of mitigation necessary to offset impacts to wetlands or from accepting offsite mitigation within the service area of the Bank on land not sponsored by the District.

- B. Bank Credits/Credit Sales Agreements.** Without the prior written consent of the District, the only Bank Credit transactions permitted under this Contract are bona fide, arms length, cash transactions for the sale and conveyance of Bank Credits at not less than fair market value pursuant to an executed written Credit Sales Agreement, between the Banker and purchaser of Bank Credits to secure a particular type and number of Bank Credits which may or may not be refundable and may or may not be subject to interest. ~~The Banker shall not sell, exchange, pledge, secure mortgage, or otherwise encumber the Bank Credits in any way so as to avoid payments to the District, except as noted below:~~ *

1. The Banker may pledge, subject to and controlled by the terms of this Contract, Bank Credits as collateral to the Surety providing restoration/construction and/or long-term maintenance bonding for the Bank or any phase thereof. ~~In the event of a default by the Banker whereby the Surety steps in and assumes the performance obligations of the Banker, the Surety's performance shall be governed by the terms of this Contract.~~
2. The Banker may pledge, subject to and controlled by the terms of this Contract, Bank Credits as collateral to the Lender that is providing restoration/construction financing for the Bank or any phase thereof. In the event of a default by the Banker whereby the Lender steps in and assumes the performance obligations of the Banker, the Lender's performance shall be governed by the terms of this Contract.

~~The gross sales price of each Bank Credit sold as well as any interest accruing thereon, any lease revenue, any sale of resources associated with the property, and any forfeited deposits ("Gross Revenue"), shall be allocated by the Banker between the parties in accordance with the attached Schedule "A" Gross Revenue Distribution Plan. The portion of the Gross Revenue to be paid by the Banker to the District is~~

referred to as the "District's Share" and that portion to be kept by the Banker is referred to as the "Banker's Share". The District's Share becomes due sixty (60) days after Banker withdraws the Bank Credit from the Bank. The Banker shall pay the District the District's Share of all Bank Credits sold and for which the District's Share is due on a quarterly basis beginning with the first District fiscal year quarter following the first sale of Bank Credits, and payment to be made no later than ten (10) calendar days following the end of the previous quarter.

- C. Revenue Distribution/Accounting Report. To assure an equitable sharing of profits from the implementation of the Bank, the Schedule "A" Gross Revenue Distribution Plan shall be supplemented by the attached Schedule "B" Distribution of Additional Revenue under the conditions and terms therein identified.

The Banker shall provide to the District a written accounting report certified as true and accurate by an officer of the corporation ("Accounting Report") to justify net revenue distribution including the name of credit purchasers, number of credits, price per credit, total amount, type of credit, basis for calculation of District's and Banker's share - including appropriate cost documentation tied to the monthly written report of project costs referred to under Part I, Item (5) - as well as any income for distribution under Schedule B. The Accounting Report shall be submitted to the District's Project Manager on a quarterly basis along with written notification concerning each quarterly payment.

V. General Requirements

- A. The Banker shall submit any portions of the Scope of Work as soon as they are complete; however these portions must represent one complete section of the Scope such as all of (A) Part I, item (2).
- B. All applicable study maps and geographic information developed in the performance of this Project shall be delivered to the District in ArcInfo Export format or AutoCad DWG Format Version 12 or later.
- C. The Banker shall provide as deliverables to the District any of the items referenced in the Scope of Work or required by the Permit.

VI. Management/Public Access

- A. The site currently has a cattle grazing reservation which has been extended to December 31, 1997. Commencing on January 1, 1998, the Banker shall be responsible for managing the Site in accordance with the land management requirements of section 373.59, F.S., and upon Permit issuance, in accordance with the Permit requirements, including submitting a management plan for approval by the District. The Banker may continue interim use of the Site under a management

agreement, approved in advance by the District, with a third party selected by the Banker, which agreement shall include terms that it is cancelable by 30 days written notice from the Banker or the District. The District encourages the Banker to continue cattlegrazing as a means of controlling exotics until the restoration phases initiate, (e.g., the cattlegrazing will be reduced in phases as the mitigation increases by phase). If the Banker continues interim use of the Site for cattlegrazing purposes, the District shall pay applicable real property taxes (ad valorem and non-ad valorem and special assessments that are assessed against the property) and the Banker shall reimburse the District promptly upon receipt of such proof of payment by the District. The Banker shall not be responsible for reimbursement of any penalties or late fees for failure to pay such taxes or special assessments. When the cattle are removed from the site, the Banker shall promptly notify the District in writing. The District will pay the tax collector the applicable real property taxes and special assessments, if any, for that year and submit proof of payment to the Banker for reimbursement. At that time, the District will remove the Site from the tax rolls.

- B. Commencing with execution of this Contract, the Banker shall take appropriate steps to discourage unauthorized access to the Site. The Banker shall post the Site with signage stating "No Trespassing" in compliance with Florida Statute 810.011. The Banker shall agree to report to the District and the proper authorities where appropriate within one day of its observation any incidence of the following: fire, injury or death, vandalism, theft, poaching or trespassing, any hazard that may become a liability to the District, any violation of State or local laws and disposal of any pollutants or contaminants as defined by any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restriction.

VII. Project Coordination

- A. The Banker shall coordinate with François LaRoche or his successor, of the District Operations and Maintenance Department, Division of Vegetation Management in the preparation of the exotic plant eradication plan for the most updated information on appropriate herbicide treatments.
- B. The Banker shall appropriately recognize the District for their vision in developing the project as a Bank in any promotional or marketing material used by the Banker. However, the District shall not be characterized as a "partner" or "joint-venturer". The Banker and its employees, agents, and subcontractors shall not represent to a third party either for marketing of the Credits or for any other purpose that the Banker has any financial backing from the District or that the District has any financial liability or obligations with regard to the Bank. Mutual review and approval of the Banker's and District's marketing/promotional material by the other party shall occur prior to distribution.
- C. The Banker and the District shall have the opportunity to pursue opportunities for joint

cooperative research or independent research mutually acceptable to both parties, in a manner that does not negatively impact the ability and/or timing of the Banker in achieving success.

VIII. District Responsibilities

- A.** The District will provide to the Banker, an electronic copy of the information provided in the Document including the GIS data in ArcInfo Export Format or AutoCad DWG Format Version 12 or later, to allow the Banker to interpret and manipulate the data.
- B.** The District will grant a conservation easement in accordance with Chapter 373.099 FL Statutes to DEP and/or federal agencies if deemed necessary by the regulatory agencies, and shall do so within the time frames required by the permits.
- C.** The District shall provide the Banker with a copy of the boundary survey as provided to the District by the Seller of the Bank Site.
- D.** The District shall provide the Banker and the Regulatory Agencies the title information and any ownership documentation required by the Regulatory Agencies. The District makes no warranty or representation as to the whether the District's title to the Site will satisfy the requirements of the Regulatory Agencies.
- E.** The District Project Manager or her designated representative shall attend with the Banker any and all agency meetings with the MBRT, COE and DEP as an advocate of the project. Associated travel and/or incidental expenses incurred by the District Project Manager while attending these meetings shall be solely at the District's expense. The Banker shall coordinate with the Project Manager in scheduling the agency meetings and provide reasonable notice.
- F.** Upon the District's acceptance of the Project, the District shall be responsible for performing long-term maintenance upon the Site as shall be required in conformity with the permits issued for the Bank Site. The reasonable expenses to accomplish long term maintenance shall be paid from the Management Fund which shall be established and endowed by the Banker.
- G.** The parties shall avail themselves of District vehicles or aircraft to the extent available in conducting the Statement of Work.

Schedule A
GROSS REVENUE DISTRIBUTION PLAN

FOR THE FIRST 100 CREDITS SOLD:

- 10% to long-term maintenance *
- 17% to District for land/staff reimbursement
- 73% to Banker with budgeted distribution as follows:
 - 5% commission
 - 15% reimbursement of design development/permitting and administrative start-up costs, (including securities counsel opinion letter)
 - 10% administration, project management, marketing
 - 43% cost of restoration/creation construction implementation

FOR THE SECOND 100 CREDITS SOLD:

- 10% to long-term maintenance
- 32% to District for land/staff reimbursement
- 58% to Banker with budgeted distribution as follows:
 - 5% commission
 - 10% administration, project management, marketing
 - 43% to cost of restoration/creation construction implementation

FOR THE THIRD 100 CREDITS SOLD:

- 10% to long-term maintenance *
- 37% to District for land/staff reimbursement
- 53% to Banker with budgeted distribution as follows:
 - 5% commission
 - 10% to administration, project management, marketing
 - 38% to cost of restoration/creation construction implementation

FOR THE REMAINING CREDITS SOLD:

- 10% to long-term maintenance *
- 47% to District for land/staff reimbursement
- 43% to Banker with budgeted distribution as follows:
 - 5% to Banker for commission
 - 10% to administration, project management, marketing
 - 28% to cost of restoration/creation through 100% success

Note: * The Banker will allocate the "long-term maintenance" distribution shown above so as to distribute 5% of gross revenues in the Management Fund and 5% in a Reserve Fund ("Reserve Fund"). The Reserve Fund is created by the Banker and dedicated to provide contingency funding for long term maintenance in case the Management Fund proves to be inadequate. If all or a portion of the Reserve Fund is determined no longer

required by the parties, those dollars will be allocated to a "savings pool" and be distributed quarterly by the Banker to the District and Banker under the payment procedure in Section IV, after the Project or Project phases are mutually accepted by both parties. There will be a minimum of 5% of gross revenues set aside in the Management Fund for perpetual maintenance by the District.

Additionally, the line item distribution of gross revenue as outlined above will continue until such time as the District has been fully reimbursed for their cost of land acquisition and expenses (\$2,700,000) and the Banker has been reimbursed for their reasonable design, development, permitting and administrative start-up costs and all reasonable restoration/creation costs in all phases in accordance with submitted and approved Accounting Reports ("Full Recovery"). Upon Full Recovery, all revenue (not subject to distribution in accordance with Schedule B) minus the "10% long-term maintenance" and 5% Banker's commission distribution will be allocated to a "savings pool." The "savings pool" will then be available for quarterly distribution to the District and the Banker on a 50:50 basis under the payment procedure in Section IV.

Schedule B
DISTRIBUTION OF ADDITIONAL REVENUE

- X10*
- I. If the Banker is assigned 400 or more credits, the District and Banker shall share gross revenue dollars as per the Gross Revenue Distribution Plan (Schedule A) up to an average credit sale price of \$30,000:
- a. For credit sales in excess of \$30,000 ("the threshold amount") per credit up to \$40,000 per credit, income in excess of \$30,000 per credit will be shared by the District and Banker on a 65%/35% basis, respectively.
 - b. For credit sales in excess of \$40,000 ("the threshold amount") per credit, income in excess of \$40,000 per credit will be shared by the District and Banker on a 75%/25% basis, respectively.
- yes*
- II. If the Bank is assigned less than 400 credits but more than 320 credits, the District and Banker shall share excess revenue dollars per the Revenue Distribution Plan (Schedule A) up to an average credit price of \$35,000:
- precisely* a. For credit sales in excess of \$35,000 ("the threshold amount") per credit up to \$45,000 per credit, income in excess of \$35,000 per credit will be shared by the District and Banker on a 60%/40% basis, respectively.
 - b. For credit sales in excess of \$45,000 ("the threshold amount") per credit, income in excess of \$45,000 per credit will be shared by the District and Banker on a 70%/30% basis, respectively.
- III. If the Bank is assigned 320 or less credits, all revenue sharing shall be per the base Gross Revenue Distribution Plan (Schedule A).

635,000

Note: Upon Full Recovery, then all revenue generated above the threshold amount shall be subject to Schedule B. At the point of Full Recovery, (coinciding with the end of a quarter) an average credit sale price ("average credit sale price") shall be determined based on all previous credit sales. For purposes of this Schedule, "income" shall be defined to be the actual cumulative average credit sale price, less "the threshold amount" stated in each example, and then less 10% of that amount as a set aside for long-term maintenance with the balance subject to a sharing as described above. Determining the average sale price of a credit and distributing shared revenues based on the above will occur only after Full Recovery; thereafter semi-annually until all credits have been sold. The average credit sale price below the threshold amount shall be subject to Schedule A distribution. Revenue distribution for the Schedule B disbursements shall be semi-annually, coinciding with the due date for the quarterly payments as per Section IV.

If the average price of all sold credits goes up or down, adjustments for prior revenue sharing distributions shall be made at each subsequent semi-annual payment. The threshold amount noted above shall be subject to adjustment by an amount equal to the average per credit increase or decrease in base cost of creating bank credits incurred by the Banker as a result of: permit requirements imposed by Regulatory Agencies over and above those currently required to permit the Bank Site and unexpected circumstances as set out in Article 12 of the Contract, inflation at the rate published by the United States Department of Labor, on an average annual basis, to be applied in accordance with generally accepted accounting principles, or as otherwise agreed upon in writing by both parties. "Base cost," as used in the aforementioned refers to the restoration costs amount estimated by the Banker at \$3,100,000. Income sharing formulas used in Schedule B apply only to that portion of the average credit sale price in excess of the threshold identified therein and/or as they may be adjusted by the increase in the "base cost" number. The source for the disbursement funds for Schedule B are the distributions made to Banker described in Schedule A and no debit or offset shall be made to the District for distributions under Schedule A.

Example: In a hypothetical situation, if the Bank is awarded 400 credits and both parties have achieved Full Recovery when 200 credits are sold, and the average credit sale price is determined to be \$41,000, Category I.a. of Schedule B applies to that portion between \$30,000 and \$40,000, and Category I.b. applies to that portion above \$40,000. A distribution is made based on \$10,000. $(200 \text{ credits}) = \$2,000,000$, for a split of 65%/35% to the District/Banker respectively. Additionally, a distribution is made based on \$1,000 $(200) = \$200,000$ for a split of 75%/25% to the District/Banker respectively, assuming less \$1,100 to the Management Fund. Schedule B supplements Schedule A distribution and is applicable after Full Recovery when the average credit sales price exceeds the threshold pursuant to the number of credits awarded the bank.



Form #0895
Rev. 7/95

EXHIBIT "B"

Certificate of Insurance

PROVIDED TO
South Florida Water Management District

8302

Issue Date (MM/DD/YY)

AGENT/BROKER Name/Address/Telephone Number				COMPANIES AFFORDING COVERAGE AND BEST RATING			
				COMPANY LETTER A	COMPANY LETTER D		
INSUREDS Name/Address/Telephone Number				COMPANY LETTER B	COMPANY LETTER E		
				COMPANY LETTER C	COMPANY LETTER F		
Required Coverage Identified by Letters with ■							
↓	TYPE OF COVERAGE	POLICY NUMBER	EFFECTIVE DATE	EXPIRATION DATE	LIST DEDUCTIBLE/SIR LIMIT	LIABILITY LIMITS IN THOUSANDS	
A	General Liability <input checked="" type="checkbox"/> Comprehensive Form <input checked="" type="checkbox"/> Premises/Operations <input type="checkbox"/> Underground Explosion & Collapse Hazard <input checked="" type="checkbox"/> Products/Completed Operations <input checked="" type="checkbox"/> Contractual <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Broad Form Property Damage <input checked="" type="checkbox"/> Personal Injury <input type="checkbox"/> _____				\$	BI & PD Combined	\$500
B	Automobile Liability <input checked="" type="checkbox"/> Any Auto <input type="checkbox"/> All Owned Autos (Priv Pass) <input type="checkbox"/> All Owned Autos (Other than Priv Pass) <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-owned Autos <input type="checkbox"/> Garage Liability <input type="checkbox"/> _____				\$	LIABILITY LIMITS IN THOUSANDS	
						PER OCCURRENCE	
C	Workers' Compensation & Employers' Liability				\$	STATUTORY LIMITS IN THOUSANDS	
						\$100 (Each Accident) \$500 (Disease - Policy Limit) \$100 (Disease - Each Employee)	
D	Professional Liability				\$	LIABILITY LIMITS IN THOUSANDS	
						BI & PD Combined	\$ 1,000,
E	Builders Risk				\$	100% of Value Value \$ _____	
F					\$		

NOTE: 1) All non-standard exclusions shall be identified on the reverse side of this certificate.
2) South Florida Water Management District shall be included as Additional Insured under General Liability and Auto Liability policies as well as

Certificate Holder
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
P.O. Box 24680
West Palm Beach, FL 33416-4680
Attention: Contract Administrator

Should any of the above coverages be cancelled or modified the Insurance Agent shall notify the Certificate Holder thirty (30) days prior to the effective date of said change. I certify that I have a Certificate of Authority to write insurance in the State of Florida.

Authorized Representative _____

Date _____