

STATE OF FLORIDA
AND
U. S. ARMY CORPS OF ENGINEERS

Mitigation Bank Endowment Fund Agreement to Demonstrate
Perpetual Management Financial Assurance

This _____ (Bank Name) Perpetual Funding Agreement (“Agreement”) is entered by and among the _____ (“Fund Holder”), and the _____ (“Bank Permittee” or “Bank Sponsor”) and the _____ (Perpetual Management Steward, if separate from the Bank Permittee or Bank Sponsor, “Recipient”), (together, the “Parties,” and individually, a “Party”), as of the date of the signature of the last Party to sign (such date, the “Effective Date”).

WHEREAS, the Mitigation Bank Permit as approved by the _____ (“Agency”) requires the Bank Permittee to establish a perpetual financing or funding mechanism, and the Mitigation Banking Instrument (“MBI”) approved by the U.S. Army Corps of Engineers (“Corps”) requires the Bank Sponsor to establish a long-term management fund, for the _____ (“Bank”) to provide ongoing payment for specified land management, maintenance, and monitoring of the real property comprising the Bank (“Bank Property”), located in _____ County, Florida, in accordance with the Mitigation Bank Permit Number _____, the MBI Permit Number _____, and associated Perpetual Management Plan (referred to as the “Long-term Management Plan” in the MBI) that identifies the specific land management activities that are required to be performed on the Bank Property to assure the perpetual maintenance, protection, and long-term viability of the aquatic resources, habitat, and other ecological values of the Bank Property (“Perpetual Management Plan”). The Bank Property, comprised of approximately _____ acres, will be managed in accordance with the Mitigation Bank Permit, the MBI, and associated Perpetual Management Plan.

WHEREAS, if the Bank Permittee chooses to transfer its responsibility to manage the Mitigation Bank Perpetual Phase, the Perpetual Management Steward is the Recipient under this Agreement and is responsible for the perpetual maintenance, protection, and long-term viability of the protected resource, the Bank Property, in accordance with the Mitigation Bank Permit, the MBI, and the Perpetual Management Plan. If the Bank Permittee retains the responsibility to manage the Perpetual Phase, the Bank Permittee is the Recipient.

WHEREAS, the Foundation is a [description of foundation/legal status], and is authorized under [applicable law/statute], to hold and administer funds for the long-term management and maintenance of mitigation lands and mitigation and conservation bank properties.

WHEREAS, the Mitigation Bank Permit, the MBI, and/or associated Perpetual Management Plan provides for the establishment of a fund to pay the costs of the Perpetual Management of the Bank Property (“PM Fund”) to be held and managed by the Fund Holder in trust as a neutral fiduciary.

WHEREAS, the Mitigation Bank Permit, the MBI, and/or associated Perpetual Management Plan incorporates by reference and attaches this Agreement, or it has otherwise been approved by the Agency and the Corps as the document governing the intent, uses, benefits, purposes, and duration of the PM Fund, and the terms and conditions under which it will be established, held, and administered by the Fund Holder.

NOW, THEREFORE, in consideration of the mutual promises made herein and for other and further consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

I. PURPOSES

- A. The purposes of this Agreement are to establish a PM Fund for the Bank to be held by the Fund Holder in trust for the benefit of the Bank Property in satisfaction of the applicable requirements of the Mitigation Bank Permit and MBI, and to set forth the Parties' respective responsibilities to the funds held in and administered by the PM Fund.
- B. To the extent the funds are subject to the Uniform Prudent Management of Institutional Funds Act ("UPMIFA"), this Agreement is the record under which the funds are transferred to, and held by, the Fund Holder, and as such shall be considered the "gift instrument" for purposes of UPMIFA. As reflected by its incorporation into the Mitigation Bank Permit and MBI, this Agreement shall be deemed in all respects to set forth the Agency's and the Corps' approval as to the intent, uses, benefits, purposes, and duration of the PM Fund.

II. ACCOUNT ESTABLISHMENT, INVESTMENT, AND ADMINISTRATION

- A. This Agreement, through its approval in the Mitigation Bank Permit and MBI, authorizes the Fund Holder to hold the PM Fund, as requested by and received from the Bank Permittee/Bank Sponsor, in the amount of _____ (\$XX), to be deposited either as a lump sum or in installments, as described in Specific Condition _____ of the Mitigation Bank Permit and Section _____ of the MBI, until fully funded. The PM is to be held in trust for the perpetual management, maintenance, and monitoring of the Bank Property in accordance with the Mitigation Bank Permit and MBI, including this Agreement, the Perpetual Management Plan, and the currently approved costs of perpetual management, maintenance, and monitoring of the Bank Property ("Endowment Assessment"), dated [insert date], as approved by the Agency as part of the Mitigation Bank Permit and by the Corps as part of the MBI.
- B. Bank Permittee/Bank Sponsor shall pay (or cause to be paid) to the Fund Holder a single, one-time payment of _____ (\$XX) ("Account Establishment Fee") for the Fund Holder's establishment of a uniquely identifiable financial account constituting the PM Fund. The Fund Holder's receipt of the Account Establishment Fee is an express condition precedent to the effectiveness of the Fund Holder's obligations under this Agreement. The Account Establishment Fee is in addition to the PM Fund amount as set forth in Section II.A. above and the "Annual Fee" as set forth in Section II.C. below. The Parties agree, as soon as practicable

after the Fund Holder's receipt of both the Account Establishment Fee and funds for deposit into the PM Fund, that the Fund Holder shall invest the funds comprising the PM Fund in accordance with the Fund Holder's prevailing Investment Policy Statement for mitigation endowment funds, as the same may be modified from time to time in accordance with its terms. The Recipient shall have no right or responsibility with respect to the investment or financial management of the PM Fund under this Agreement or otherwise.

- C. The PM Fund shall be subject to an annual fee of ____ (__%) ("Annual Fee") of the PM Fund's balance for the Fund Holder's annual administration, operation, reporting, and accounting of the PM Fund.
- D. The Fund Holder shall submit to the Recipient and to the Agency (and the Corps if requested), an activity report for the PM Fund by May 15 of each calendar year the PM Fund is in existence. In each activity report, the Fund Holder shall report on the balance of the PM Fund at the beginning of the calendar year, deposits, disbursements, fees, earnings, gains, losses, and other investment activity accruing to the PM Fund during the previous calendar year; the balance of the PM Fund at the end of the calendar year; and the specific asset allocation percentages of the portfolio in which the PM Fund is invested. If requested, the Fund Holder shall also provide to the Agency and the Corps, a copy of its most recent financial statement as prepared by an independent auditor.
- E. Disbursements from the PM Fund shall be made in accordance with Section IV of this Agreement, titled Recipient Land Management.

III. FUND HOLDER'S FIDUCIARY OBLIGATIONS AND LIMITATIONS ON LIABILITY

- A. The Fund Holder shall have a duty of loyalty to the Bank Property with respect to the PM Fund and shall not use or borrow against funds in the PM Fund for its own benefit, except for assessment and collection of the fees specified in Section II of this Agreement, or as otherwise directed by the Agency and the Corps pursuant to this Agreement.
- B. The Fund Holder shall not be liable to the Agency, the Corps, the Bank Permittee/Bank Sponsor, the Recipient, or any other entities or persons for losses arising from investment of funds in the PM Fund consistent with this Agreement.

IV. RECIPIENT LAND MANAGEMENT

- A. Performance of Land Management Activities. The Recipient has agreed to perform the specific land management activities set forth in the Perpetual Management Plan ("Land Management Activities") on the Bank Property as part of its obligations under the Mitigation Bank Permit and MBI. Funding to pay the costs of the Land Management Activities shall be provided in accordance with the terms and conditions set forth below. If at any time the Perpetual Management Plan, the Land Management Activities, the Endowment Assessment, or Endowment Payment Schedule (as such term is defined below) is amended or otherwise

modified as permitted by the Mitigation Bank Permit, the MBI, and applicable law, then:

1. The Recipient shall immediately notify the Fund Holder in writing of such amendment or modification;
 2. The Recipient shall transmit to the Fund Holder as soon as practicable the amended Perpetual Management Plan, Land Management Activities, Endowment Assessment, or Endowment Payment Schedule, as applicable, along with any corresponding written approval by the Agency or the Corps of each such amended document; and
 3. Any amended Perpetual Management Plan, Land Management Activities (and associated costs), Endowment Assessment, and Endowment Payment Schedule shall, upon receipt by the Fund Holder, supersede and replace their original counterparts and shall thereafter govern as the "Perpetual Management Plan," "Land Management Activities," "Endowment Assessment," and "Endowment Payment Schedule" under this Agreement.
- B. Funding for Land Management Activities. The Fund Holder hereby agrees to disburse funds from the PM Fund to the Recipient to pay the costs of Recipient's performance of the Land Management Activities on the Bank Property upon the terms and conditions set forth below.
- C. Scope of Services to be Performed. The Recipient will perform the Land Management Activities as set forth in the Perpetual Management Plan and the Endowment Assessment. The Recipient will pay for the costs of such Land Management Activities using the funds disbursed to it under this Agreement. The Parties agree and acknowledge that the Perpetual Management Plan and the Endowment Assessment were created by or on behalf of the Bank Permittee/Bank Sponsor and jointly approved by the Agency and the Corps. The Fund Holder is expressly entitled to rely on the validity of the Agency's and the Corps' approval and the accuracy and validity of the Perpetual Management Plan and the Endowment Assessment without independent verification. The Fund Holder shall not be liable in any respect to the Agency, the Corps, the Recipient, or to any other entities or persons for errors, omissions, inaccuracies, or other elements of the Perpetual Management Plan or the Endowment Assessment, whether contained therein or omitted therefrom, including but not limited to the sufficiency or adequacy of the PM Fund calculated pursuant to the Endowment Assessment. The Parties agree and acknowledge that the Recipient is required to perform Land Management Activities on the Bank Property only to the extent funds are made available to the Recipient under this Agreement to pay for performance of such Land Management Activities. In addition, in the event an amendment is made to the Perpetual Management Plan that changes the Land Management Activities identified in the Endowment Assessment or Endowment Payment Schedule thereby requiring an amendment to the Endowment Assessment, the Fund Holder shall not be liable to Agency, the Corps, the Recipient, or to any other entities or persons for any decision by Agency and the Corps to approve the amendment to the Endowment Assessment or the Endowment Payment Schedule in any way that impairs the viability of the PM Fund as a source of perpetual funding for the Land Management Activities on the Bank Property.

D. Payment.

1. *Payment in the Ordinary Course.*

- a. Unless approved otherwise by the Agency and the Corps in writing, the Fund Holder shall not make any disbursement of funds from the PM Fund unless and until it receives from the Bank Permittee, a copy of the Agency's written confirmation that performance standards have been attained or that the Mitigation Bank Perpetual Phase has commenced, and receives from the Corps written confirmation that Bank Closure has occurred and the Bank has entered the Long-Term Management Phase. The Fund Holder's receipt of the Agency's and the Corps' written confirmation (or other written approval) in this respect is an express condition precedent to the Fund Holder's initial disbursement of funds from the PM Fund.
- b. In consideration of the Land Management Activities to be performed by the Recipient, the Fund Holder shall disburse annual advanced payments (individually, "Endowment Payment") to the Recipient from the PM Fund to pay the costs of Land Management Activities to be performed by the Recipient throughout the forthcoming calendar year. Unless the Agency and the Corps direct or approve otherwise in a written instrument delivered to the Fund Holder, each Endowment Payment will be made in the amount requested by the Recipient through a written payment request (hereinafter, a "Payment Request") submitted to the Fund Holder pursuant to this Section D (as adjusted by a measure of inflation as described below in this subsection). Each Payment Request is subject to a maximum annual dollar limit calculated as the total dollar value of Land Management Activities, exclusive of any contingency amount or any incremental amount for non-annual work items (the funds for such non-annual work items to be paid in full in the calendar year immediately preceding the calendar year in which the applicable work item is to be performed), for the applicable calendar year as set forth in the Endowment Assessment. An Endowment Payment Schedule (as hereinafter defined), created or proposed by the Recipient and approved by the Agency and the Corps, set forth in the Endowment Assessment approved by the Agency and the Corps ("Endowment Payment Schedule") is attached to this Agreement as Attachment B, and incorporated herein by reference. Payment Requests shall be made in accordance with the Endowment Payment Schedule except as otherwise provided in this Agreement. Each Endowment Payment shall be adjusted by a measure of inflation over the period of time since the year the Endowment Assessment was approved by the Agency and the Corps (i.e. insert year). The measure of inflation shall be calculated using the United States Department of Labor's Bureau of Labor Statistics' Consumer Price Index – South Region (1982-1984=100), or the successor of such index over the same period of time.

- c. The Recipient must submit to the Foundation the written confirmation specified in Section IV.D.1.a. (or the Foundation must have received another applicable written approval from the Regulatory Agency) on or before the date of its first Payment Request. The Recipient must submit to the Foundation a Payment Request between July 1 and November 15 of a calendar year and must comply with the reporting requirement in Section E below in order to receive an Endowment Payment to fund Land Management Activities in the immediately following calendar year. Absent the express written approval of the Regulatory Agency, the Recipient will not be eligible to receive an Endowment Payment for the immediately forthcoming calendar year if the Recipient has failed to submit to the Foundation a Payment Request between July 1 and November 15 of the current calendar year. The Foundation will disburse Endowment Payments in December for Payment Requests properly submitted to the Foundation immediately prior July 1 to November 15.
- d. The Recipient shall submit all Payment Requests via email or certified mail to the Fund Holder. In the event an alternate method of requesting payment becomes available in the future, such as an online payment request system, the Fund Holder will notify the Recipient and provide appropriate instructions. All Payment Requests must include a written statement by the Recipient that (1) the Endowment Payment will be used exclusively for payment of expenses of Recipient for Land Management Activities and (2) the Recipient reasonably expects the Land Management Activities specified in the Endowment Assessment to be necessary for the applicable calendar year.
2. *Agency Suspension or Reduction of Payments for Performance Reasons.* In accordance with the terms of the Mitigation Bank Permit and MBI, the Agency and the Corps may conduct periodic site visits and/or other evaluations of the Bank Property in order to monitor the progress and effectiveness of Land Management Activities performed by the Recipient. If at any time the Agency or the Corps determines that the Land Management Activities are not being performed in a satisfactory manner (including, without limitation, that the Land Management Activities are not being performed in accordance with the Perpetual Management Plan or applicable laws or regulations), the Agency or the Corps may issue a written stop-payment notice (hereinafter a “Stop Payment Notice”) to the Fund Holder. A Stop Payment Notice will instruct the Fund Holder either to suspend or reduce Endowment Payments to the Recipient until the Fund Holder is otherwise notified in writing by the Agency or the Corps (i.e., by whichever agency or agencies initiated the Stop Payment Notice). The Fund Holder shall be entitled to rely on any Stop Payment Notice received from the Agency or the Corps and shall be obligated to follow the instructions contained therein. The Fund Holder shall not be liable in any manner to the Recipient or to any other entities or persons by virtue of following the instruction of the Agency or the Corps contained in any Stop Payment Notice. Upon issuing a Stop Payment Notice, the Agency or the Corps may approve a replacement Recipient (“Replacement Recipient”) in accordance with Section IV.D.6. below.

3. *Suspension or Reduction of Payments for Financial Reasons.* If the Fund Holder's financial advisors advise that the PM Fund has decreased to levels that may threaten its continued existence as a source of perpetual funding for Land Management Activities, the Fund Holder shall notify the Agency, the Corps, and Recipient of any such appraisal. Upon receipt of such notice, the Recipient shall propose appropriate modifications to continued Endowment Payments and associated Land Management Activities, if any, in order to protect the perpetual viability of the PM Fund. The Agency and the Corps will approve or disapprove such proposal and shall so notify the Recipient and Fund Holder in writing. The Fund Holder will be obligated to follow the written response of the Agency and the Corps with respect to any such modifications. Neither the Fund Holder nor the Recipient shall be liable in any manner to the Agency and the Corps or any other entities or persons by virtue of following the approval of the Agency and the Corps contained in any notice issued under this Subsection 3.
4. *One-time Payments.* Whether upon request by the Recipient or otherwise, the Agency and the Corps may give written approval to the Fund Holder to disburse a specific amount of funding from the PM Fund (which may or may not be contemplated by the Perpetual Management Plan or Endowment Assessment to the Recipient) so that the Recipient may perform an activity or activities which the Agency and the Corps determine to be consistent with the management of the Bank Property. The Fund Holder will disburse any such one-time payment within thirty (30) business days of receipt of the Agency's and the Corps' approval. A one-time payment may fund, but is not necessarily restricted to fund, activities in response to a catastrophic event and/or a contingency. Upon receipt of such one-time payment, the Recipient shall, as soon as practicable, perform whatever activity or activities the one-time payment is intended to fund as directed or approved by the Agency or the Corps. The Recipient and the Fund Holder hereby acknowledge that any approval by the Agency or the Corps under this Subsection 4 for the Fund Holder to disburse a one-time payment not contemplated by the Perpetual Management Plan or Endowment Assessment may impair or preclude the viability of the PM Fund as a source of perpetual funding for the Land Management Activities on the Bank Property. The Fund Holder shall not be liable to the Agency, the Corps, Bank Permittee/Bank Sponsor, Recipient, or to any other entities or persons for any decision by the Agency or the Corps to approve a one-time payment under this Subsection 4 that impairs the viability of the PM Fund as a source of perpetual funding for the Land Management Activities on the Bank Property.
5. *Overages in Payments.* Any portion of an Endowment Payment that remains unspent and unobligated by the Recipient as of the end of the calendar year for which such amount was paid shall be deemed an "overage" for purposes of this subsection. Any overage shall be (a) retained and accounted for by the Recipient; (b) used by the Recipient exclusively for payment of costs of Land Management Activities for the immediately following year; (c) reflected as a deduction from the amount of the Payment Request submitted by the Recipient for the immediately following year; and (d) deducted from the amount of the Endowment Payment made by the Fund Holder for such following year.

6. *Agency Assignment of Replacement Recipient.* The Agency and the Corps may (a) pursuant to Section IV.D.2. above, issue a Stop Payment Notice that requires the appointment of a Replacement Recipient, which Replacement Recipient shall be identified by the Agency in consultation with Bank Permittee/Bank Sponsor and approved by the Corps; or (b) at the request of Bank Permittee/Bank Sponsor, as applicable, approve the appointment of a Replacement Recipient proposed by Bank Permittee and approved by the Agency and the Corps in the absence of the issuance of a Stop Payment Notice. Any Replacement Recipient duly appointed through action of the Agency, the Corps, and Bank Permittee/Bank Sponsor, as applicable, shall assume the rights and responsibilities of the "Recipient" hereunder including, but not limited to, the right to receive Endowment Payments and other payments under this Agreement and the obligation to perform the Land Management Activities. In the event the Agency and the Corps appoint or approve the appointment of a Replacement Recipient, written notification of the Replacement Recipient will be provided by the Agency and the Corps to the Fund Holder, the Bank Permittee/Bank Sponsor, Recipient, the Replacement Recipient, and the Conservation Easement Grantee, if any. The Fund Holder shall have no obligation to make disbursements from the PM Fund to the Replacement Recipient unless and until: (a) the Replacement Recipient agrees to accept such Assignment and assumes all rights, obligations, title, and interest of the Recipient Replacement; or (b) this Recipient Agreement is terminated and the Replacement Recipient enters into a substitute Recipient Agreement with the Fund Holder. Under no circumstances will any funds be released to the Corps.
- E. Review and Reporting Requirements. The Recipient shall submit to the Fund Holder, the Corps, and the Agency, an annual funding report ("Annual Funding Report") for each calendar year this Agreement is in effect. Each Annual Funding Report shall be submitted by the Recipient before March 31 or at least thirty (30) days prior to the effective date of termination of this Agreement. The Annual Funding Report shall (1) describe in reasonable detail the Land Management Activities performed by the Recipient during the immediately preceding calendar year or, in the event of termination, the then-current calendar year (in either case, the "Reporting Period"); (2) detail all expenses incurred by or on behalf of the Recipient for Land Management Activities performed during the Reporting Period; (3) describe any discrepancy between the Land Management Activities expected to be performed during the Reporting Period in accordance with the Perpetual Management Plan and the Endowment Assessment and the Land Management Activities actually performed during the Reporting Period; and (4) describe any discrepancy between the costs of Land Management Activities as assumed in the Endowment Assessment and the costs of Land Management Activities actually performed during the Reporting Period.

The Parties expressly agree and acknowledge that the Fund Holder is entitled to rely on the accuracy and validity of the Annual Funding Reports submitted by the Recipient and shall have no duty to independently verify the information set forth therein. The Parties further agree and acknowledge that, except as otherwise expressly permitted or required by this Agreement, the Fund Holder shall have neither the right nor the obligation to reduce, suspend, or otherwise modify Endowment Payments based on the contents of any Annual Funding Report, and that any remedial action under this Agreement or otherwise with respect to Endowment Payments

based on the contents of any Annual Funding Report shall be the exclusive right and/or obligation of the Agency and the Corps.

F. Compliance with Laws; Indemnification.

1. In conducting the Land Management Activities and performing its obligations under this Agreement, the Recipient agrees to conduct all such activities in compliance with all applicable Federal, State, and local laws, regulations, and ordinances; and to secure all appropriate and necessary public or private permits, approvals, and consents, including any consents required by the Conservation Easement.
2. The Fund Holder and Recipient shall indemnify and hold harmless each other and their respective officers, directors, agents, representatives, and employees with respect to any and all claims, injuries, losses, diminution in value, damages, liabilities, whether or not currently due, and related expenses (including, without limitation, settlement costs and any legal or other expenses for investigating or defending any actions or threatened actions) arising from or in connection with any breach by the indemnifying Party of its obligations under this Agreement (including, in the case of the Recipient, its obligation to perform the Land Management Activities).
3. The terms of this Section IV.F. will survive termination of this Agreement.

V. TERM, TERMINATION, AND TRANSFER

- A. This Agreement shall continue in full force and effect unless and until terminated by either Party, which termination shall be effective on the date specified by either party in a written notice delivered to (1) the other party not less than one hundred eighty (180) days prior to the intended date of termination; and (2) the Agency and the Corps not less than one hundred twenty (120) days prior to the intended date of termination. Notwithstanding the immediately preceding sentence, regardless of the date that notice of termination is provided and the passage of the intervening minimum one hundred eighty (180) day notice period, termination is not effective unless and until the Fund Holder has transferred in an orderly fashion the custody, control, or other power necessary for the investment, management, and administration of all the funds in the PM Fund (other than funds in an amount equal to any fees due and owing to the Fund Holder or its financial institutions) to an entity identified or approved in writing by the Agency and the Corps.
- B. Prior to the effective date of termination of this Agreement, the Fund Holder shall transfer all funds remaining in the PM Fund, other than fees due and owing to the Fund Holder or its financial institutions, to an entity approved in writing by the Agency and the Corps, as applicable, to serve as a successor.
- C. Within ninety (90) days following final disbursement of the funds in the PM Fund to any successor, the Fund Holder shall provide to the Recipient, the Corps, and the Agency a final financial activity report on the Account.

VI. CONTACT INFORMATION AND COMMUNICATIONS

- A. All approvals, notices, reports, and other communications required or permitted under this agreement shall be in writing and delivered by first-class mail, overnight mail, electronic mail, or electronic PDF format. Each Party agrees to notify the other promptly after any change in named representative, address, telephone, or other contact information.
- B. The individuals named below shall be the representatives of the Fund Holder, Bank Permittee/Bank Sponsor, Recipient, Agency, and Corps for purposes of this Agreement:

Fund Holder Primary: Name
Title, Organization
Address
City, State, Zip Code
Phone:
Email:

Bank Permittee/
Bank Sponsor: Name
Title, Organization
Address
City, State, Zip Code
Phone:
Email:

Recipient: Name
Title, Organization
Address
City, State, Zip Code
Phone:
Email:

Agency Lead: Name
Title, Organization
Address
City, State, Zip Code
Phone:
Email:

Corps Lead: Name
Title, Organization
Address:
City, State, Zip Code
Phone:
Email:

- D. The Parties agree and acknowledge that any change to their respective Representatives as set forth in Section VI.B. above shall not constitute an amendment to this Agreement and may be effected through written notice to the other Party.

VII. MISCELLANEOUS PROVISIONS

- A. If any provision of this Agreement is held to be unlawful or invalid by any court of law with duly established jurisdiction over this Agreement, the Parties intend that the remainder of this Agreement shall remain in full force and effect notwithstanding the severance of the unlawful or invalid provision(s).
- B. Except as otherwise provided in this Agreement, this Agreement may be amended only by a written amendment signed by the Parties and approved by the Agency and the Corps. Counterpart originals and/or portable document format (pdf) versions of signed amendments are acceptable and will be treated as binding originals, but this Agreement may not be amended via electronic mail.
- C. Each of the Parties is acting in its independent capacity in entering into and carrying out this Agreement and not as an agent, employee, or representative of any other Party.
- D. The Parties will cooperate in good faith to achieve the objectives of this Agreement and to avoid disputes. The Parties will use good faith efforts to resolve disputes at the lowest organizational level and, if a dispute cannot be so resolved, the Parties will then elevate the dispute to the appropriate officials within their respective organizations.
- E. Nothing contained in this Agreement is intended to unlawfully delegate the Agency's or the Corps' duties or to limit the authority of the Agency or the Corps to fulfill its statutory or regulatory responsibilities.
- F. This Agreement shall not be the basis of any claims, rights, causes of action, challenges, or appeals by any person not a Party to this Agreement, except that the Parties acknowledge that the Agency and the Corps shall have the rights expressly assigned to them hereunder and, for such purposes, shall be intended third party beneficiaries of this Agreement.
- G. This Agreement shall be governed by and interpreted in accordance with the laws of the United States and the State of Florida, disregarding principles of conflicts of law. Venue for any action arising out of this Agreement shall be in the _____ County of _____, Florida.
- H. Any waiver by either Party of any term or provision of this Agreement shall be given in writing. No waiver shall be construed as a waiver of any other provision of this Agreement, nor shall such waiver be construed as a waiver of such provision with respect to any other event or circumstance.
- I. The headings used in this Agreement are for convenience only and shall not determine or limit the interpretation, construction, or meaning of this Agreement.

- J. This Agreement may be executed in one or more counterparts, each of which shall be considered an original, but all of which together shall constitute one and the same instrument.
- K. This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof and may not be amended, except in writing signed by each Party hereto.
- L. Each Party to this Agreement warrants to the other that its respective signatory has full right and authority to enter into and consummate this Agreement and the transactions contemplated hereby.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized representatives, intending to be bound legally.

FUND HOLDER NAME

Signature: _____

Name: _____

Title: _____

Date: _____

Mailing Address: _____

BANK PERMITTEE/BANK SPONSOR NAME

Signature: _____

Name: _____

Title: _____

Date: _____

Mailing Address: _____

RECIPIENT NAME

Signature: _____

Name: _____

Title: _____

Date: _____

Mailing Address: _____

ACKNOWLEDGED AND APPROVED AS TO FORM:

AGENCY

Signature: _____

Name: _____

Title: _____

Date: _____

Mailing Address: _____

U.S. CORPS OF ENGINEERS

Signature: _____

Name: _____

Title: _____

Date: _____

Mailing Address: _____

ATTACHMENT A

Investment Policy Statement for Mitigation Endowment Funds Held by the [Name of Fund Holder]

ATTACHMENT B

Endowment Payment Schedule