

1 SOUTH FLORIDA WATER MANAGEMENT DISTRICT

2
3 RESOLUTION NO. 2008 528

4
5 A RESOLUTION OF THE GOVERNING BOARD OF THE SOUTH
6 FLORIDA WATER MANAGEMENT DISTRICT APPROVING AN
7 AMENDMENT TO CONTRACT NO. 3600001384 (EVERGLADES
8 AGRICULTURAL AREA RESERVOIR A-1 PROJECT) WITH BARNARD-
9 PARSONS JOINT VENTURE TO SUSPEND CONSTRUCTION OF THE
10 PROJECT; PROVIDING AN EFFECTIVE DATE

11
12 WHEREAS, in 2000, the State of Florida entered into a 50-50 cost share
13 partnership with the federal government to restore America's Everglades through the multi-
14 decade, \$10.9 billion Comprehensive Everglades Restoration Plan (CERP); and

15
16 WHEREAS, as the largest environmental restoration project in the nation's history,
17 CERP provides the roadmap for reviving the habitat for more than 60 threatened and
18 endangered species as well as providing water for other water-related needs; and

19
20 WHEREAS, in the absence of a Water Resources Development Act authorizing the
21 federal agencies to build projects, the South Florida Water Management District, in
22 collaboration with the State of Florida and federal government, took steps to construct
23 restoration projects and achieve ecological returns earlier; and

24
25 WHEREAS, the State of Florida and the South Florida Water Management District
26 entered into a Memorandum of Agreement on October 14, 2004 to expedite environmental
27 restoration through early design and construction of eight Everglades restoration projects
28 identified by the U.S. Congress as priorities; and

29
30 WHEREAS, by issuing Certificates of Participation -- a funding technique never
31 before utilized for environmental restoration -- the South Florida Water Management
32 District generated \$572 million to begin building the suite of expedited projects; and

33
34 WHEREAS, the Everglades Agricultural Area A1-Reservoir is a major project for
35 Everglades restoration and, when complete, will be one of the largest above-ground
36 reservoirs in the world, providing 190,000 acre-feet of water storage south of Lake
37 Okeechobee; and

38
39 WHEREAS, in July 2006, the U.S. Army Corps of Engineers completed its public
40 process and issued a permit to the South Florida Water Management District under
41 Section 404 of the Clean Water Act to begin construction of the Everglades Agricultural
42 Area A1-Reservoir; and

43
44 WHEREAS, in June 2006, the South Florida Water Management District executed a
45 contract with the Barnard Parsons Joint Venture to design and begin constructing the
46 Everglades Agricultural Area-A1 Reservoir; and

1 **WHEREAS**, the District has invested more than \$250 million to execute the first
2 three phases of the reservoir's construction; and
3

4 **WHEREAS**, to complete construction of more than 22 miles of reservoir
5 embankment, the Governing Board of the South Florida Water Management District has
6 authorized a further investment of more than \$330 million, which represents a substantial
7 outlay of public resources; and
8

9 **WHEREAS**, the Governing Board of the South Florida Water Management District
10 memorialized its commitment to maintain consistency with the federal process outlined in
11 the 2000 Water Resources Development Act when constructing the CERP-related
12 expedited projects through a series of assurances of project benefits codified in resolution;
13 and
14

15 **WHEREAS**, in May 2007, the Natural Resources Defense Council filed a lawsuit
16 challenging decisions made by the U.S. Army Corps of Engineers associated with the
17 Everglades Agricultural Area-A1 Reservoir, including its issuance of a permit to the South
18 Florida Water Management District under Section 404 of the Clean Water Act; and
19

20 **WHEREAS**, the litigation remains unresolved and the outcome uncertain while
21 mediation is undertaken by the involved parties; and
22

23 **WHEREAS**, the South Florida Water Management District shares the commitment
24 of environmental groups to protecting Florida's natural resources and restoring the natural
25 system; and
26

27 **WHEREAS**, the South Florida Water Management District is charged with
28 managing taxpayer dollars and in the current fiscal climate must engage in prudent
29 financial planning to protect the public's long-term investment in environmental restoration;
30 and
31

32 **WHEREAS**, the South Florida Water Management District recognizes the risk and
33 public expense associated with executing the next phase of reservoir construction without
34 legal certainty from the conclusion of the pending legal proceedings; **now therefore**
35

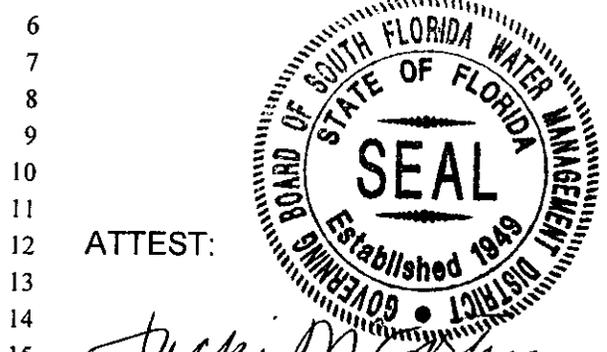
36 **BE IT RESOLVED BY THE GOVERNING BOARD OF THE SOUTH FLORIDA**
37 **WATER MANAGEMENT DISTRICT:**
38

39 **Section 1.** The Governing Board of the South Florida Water Management District finds it
40 in the taxpayer's best interest to temporarily suspend construction of the Everglades
41 Agricultural Area-A1 Reservoir pending the resolution of the aforementioned litigation.
42

43 **Section 2.** The Governing Board of the South Florida Water Management District
44 hereby directs the Executive Director or her designee to execute the attached amendment
45 to contract no. 3600001384 with Barnard Parsons Joint Venture to suspend construction of
46 the Everglades Agricultural Area-A1 Reservoir.
47

1 **Section 2.** This resolution shall take effect immediately upon adoption.
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3
4 PASSED and ADOPTED this 15 day of May, 2008.
5



12 ATTEST:
13
14
15 Jackie McGary
16 District Clerk
17
18

SOUTH FLORIDA WATER MANAGEMENT DISTRICT, BY ITS GOVERNING BOARD

By: [Signature]
Chair

Approved as to form:
By: [Signature]



SOUTH FLORIDA WATER MANAGEMENT DISTRICT AMENDMENT

00001384-A17

AGREEMENT TO SUSPEND FOR CONVENIENCE

CONTRACT NO. 3600001384 (OLD NO. CN060044)

BETWEEN THE

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

AND

BARNARD-PARSONS JOINT VENTURE

This **AGREEMENT**, entered into on _____, between "the Parties," the South Florida Water Management District (**DISTRICT**), and Barnard-Parsons Joint Venture, the Construction Manager at Risk (**CMR**).

WITNESSETH THAT:

RECITALS

WHEREAS, the Parties have entered into Contract No 00001384-A17 (**CONTRACT**) for the construction of the Everglades Agricultural Area Reservoir A-1 Project ("Project"); and

WHEREAS, the **DISTRICT** wishes to suspend construction of the Project, and the Parties acknowledge that the **DISTRICT** may suspend the Project for its convenience pursuant to Article 15.02 of the General Conditions of the **CONTRACT** ("the Suspension"); and

WHEREAS, the Parties agree that the Suspension is not the result of errors or omissions by the Design Consultant, nor impacts resulting from the **DISTRICT**'s Back-up Contractor; and

WHEREAS, the Parties agree that the Suspension is not the result of any fault or negligence of the **CMR**; and

WHEREAS, the **CMR** will incur increased costs of performance as a result of the Suspension; and

WHEREAS, the **CMR** may seek recovery of certain costs under the **CONTRACT** arising from the Suspension, or arising from other matters during the period of the Suspension by submitting a claim in accordance with the **CONTRACT**; and



SOUTH FLORIDA WATER MANAGEMENT DISTRICT AMENDMENT

WHEREAS, the Parties wish to enter into a negotiated suspension period including a lump sum agreement of all costs to be paid by the **DISTRICT** as a result of the Suspension and any other matters either known by the **CMR** as of the date of this Agreement or arising during the period of the Suspension or for which a claim could be asserted under the **CONTRACT** against the **DISTRICT**, except as otherwise stated herein; and

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

1. The above-referenced RECITALS are hereby incorporated and made a part of this **AGREEMENT**.
2. Regardless of the actual date of execution, this **AGREEMENT** shall be effective as of June 1, 2008.
3. Without invalidating the Contract the Work is suspended for convenience, effective June 1, 2008, in accordance with Article 15.02 of the General Conditions of the **CONTRACT** 00001384-A17. All Work under the **CONTRACT** shall be suspended as of this date, including Pre-Construction Services and any and all Work being performed pursuant to GMP #2 and GMP #3. The **CMR** agrees that its previously established price to perform GMP #4, (\$330,926,958.38), shall remain firm and shall be honored by the **CMR** for a period of six months from June 1, 2008.
4. The **DISTRICT** has agreed to pay, and the **CMR** has agreed to accept, as full and final settlement of any and all claims that may be brought by the **CMR** against the **DISTRICT** as a result of the Suspension and any other matters giving rise to a claim under the **CONTRACT**, except as otherwise stated herein, the total lump sum amount of One Million Nine Hundred Thousand Dollars (\$1,900,000.00) per month, for each calendar month that the Project is suspended, commencing June 1, 2008. This figure will be pro-rated to a daily dollar amount in the event that the Suspension is lifted prior to the end of a month. This monthly lump sum payment is not subject to adjustment by the **DISTRICT** for any reason. Costs related to maintaining the **DISTRICT**'s field offices, and/or for obligations and payments pursuant to the New Hope Lease, will be the sole and exclusive responsibility of the **DISTRICT** during the full period of the Suspension. Notwithstanding any other provision in this Agreement or the **CONTRACT**, the **CMR** shall have the right to submit a claim pursuant to the **CONTRACT** for the cost of any work it considers additional that it performs for any reason during the Suspension Period relating to or arising from any weather, abnormal or not.
5. It is understood by the **DISTRICT** that invoices and requests for payment for Project work prior to the Suspension may not be received/prepared by the **CMR** in some cases until after June 1, 2008. The **CMR** agrees to promptly submit for payment these invoices and costs for work performed prior to June 1, 2008 and the **DISTRICT** agrees to make payment of these costs and invoices pursuant to the terms of the **CONTRACT**, in addition to the monthly lump sum



SOUTH FLORIDA WATER MANAGEMENT DISTRICT AMENDMENT

Suspension payment described in Paragraph 4 herein. None of payments pursuant to Paragraphs 4, 5 and 6 herein shall have retainage withheld from them.

6. It is anticipated that the Project may be suspended through December 1, 2008. Pursuant to its rights under the **CONTRACT**, the **DISTRICT** may convert the Suspension to a Termination for Convenience at any time. In the event that the **DISTRICT** converts the Suspension to a Termination for Convenience, the **CMR** shall receive from the **DISTRICT** any pro-rated sums due pursuant to Paragraph 4 above, and an additional Two Hundred Thousand Dollars (\$250,000) per month for each month that the Suspension was in effect (also pro-rated to a daily rate as appropriate). In the event the **DISTRICT** converts the Suspension to a Termination for Convenience, the **CMR** shall also be compensated in accordance with Article 15.04 of the **CONTRACT**. The **CMR** and the **DISTRICT** commit to working together in good faith to attempt to agree on a Termination for Convenience settlement amount by June 10, 2008, which settlement amount will be the full and complete cost to be paid by the **DISTRICT** to the **CMR** in the event that a Termination for Convenience is issued by the **DISTRICT**.

7. In the event that GMP #4 is not fully executed by the Parties by December 1, 2008, then this Agreement shall automatically convert to a Termination for Convenience, with the **CMR** to be compensated pursuant to Paragraph 6 herein.

8. Other than the rights specifically preserved in paragraphs 4, 5 and 6 above, the **CMR** hereby waives, releases and discharges the **DISTRICT** from liability for any other costs, damages, claims, etc., of whatever type or nature, in any way arising from the facts or circumstances surrounding or involving the **CONTRACT** or the Project known to the **CMR** as of the date of this Agreement or arising during the period of the Suspension. However, the **CMR** does not waive or release the **DISTRICT** from liability to the **CMR** for any third party claims involving the **CONTRACT** or the Project.

9. Except as modified by the provisions of this Amendment, the other terms and conditions of the **CONTRACT** remain unchanged and the Parties agree that this Agreement shall be incorporated into the Contract as an Exhibit to an Amendment.

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

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

BY: _____

DATE: _____

By: _____

Frank Hayden
Procurement Director



SOUTH FLORIDA WATER MANAGEMENT DISTRICT AMENDMENT

BARNARD-PARSONS JOINT VENTURE

a Florida Partnership,
Jointly and Severally

By:
BARNARD CONSTRUCTION COMPANY, INC.
a Montana Corporation,
Partner

By:
PARSONS WATER & INFRASTRUCTURE, INC.
a Delaware Corporation,
Partner

By: _____
Printed Name: _____
Title: _____
Date: _____

By: _____
Printed Name: _____
Title: _____
Date: _____