

**DELEGATION AGREEMENT  
BETWEEN  
THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
AND  
THE ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY**

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**TABLE OF CONTENTS**

**PART I  
ADMINISTRATION OF THE AGREEMENT**

SECTION 1 -	INTRODUCTION, PARTIES, AND PURPOSE
SECTION 2 -	DEFINITIONS
SECTION 3 -	EFFECTIVE DATE
SECTION 4 -	DURATION OF AGREEMENT
SECTION 5 -	AMENDMENT OF AGREEMENT
SECTION 6 -	CONFLICT BETWEEN AGREEMENTS
SECTION 7 -	REVIEW OF AGREEMENT
SECTION 8 -	SEVERABILITY
SECTION 9 -	TERMINATION OF AGREEMENT

**PART II  
PROGRAM RESPONSIBILITIES**

SECTION 10 -	SCOPE OF DELEGATION
SECTION 11 -	TECHNICAL CRITERIA AND STANDARDS
SECTION 12 -	PERMIT APPLICATION PROCESSING
SECTION 13 -	COMPLIANCE AND ENFORCEMENT ACTIVITIES
SECTION 14 -	SPECIAL CASE AGREEMENTS
SECTION 15 -	NOTICES

**PART III  
PROGRAM MANAGEMENT**

SECTION 16 -	BUDGET
SECTION 17 -	PERSONNEL
SECTION 18 -	COMPUTER, SOFTWARE, DATA ENTRY, AND OTHER EQUIPMENT
SECTION 19 -	STAFF TRAINING
SECTION 20 -	RECORDS MANAGEMENT
SECTION 21 -	PUBLICATION OF PRECEDENTIAL ORDERS
SECTION 22 -	REPORTING REQUIREMENTS TO THE DEPARTMENT
SECTION 23 -	PROGRAM OVERSIGHT AND COORDINATION

**PART IV  
MISCELLANEOUS PROVISIONS**

**SECTION 24 - RIGHTS OF OTHERS**

**EXHIBITS**

- EXHIBIT A - GEOGRAPHICAL BOUNDARY OF THE EPCHC DELEGATED AUTHORITY**
- EXHIBIT B - AGREEMENT BETWEEN DEP, SWFWMD, AND THE U.S. ARMY CORPS OF ENGINEERS REGARDING WATER QUALITY CERTIFICATION**
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**PART I ADMINISTRATION OF AGREEMENT**

**SECTION 1 - INTRODUCTION, PARTIES AND PURPOSE**

A. This is an Agreement between the FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (hereinafter referred to as DEPARTMENT), a state agency created under Section 20.255 of the Florida Statutes (F.S.), and the ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY (hereinafter referred to as EPCHC), a political subdivision of the State of Florida, created by the Hillsborough County Environmental Protection Act Chapter 84-446, Laws of Florida, as amended (EPCHC Act). Section 5 of the EPCHC Act grants the EPCHC the authority to adopt rules and regulations necessary to exercise the powers delegated by this Agreement, and further grants the EPCHC the authority to work in cooperation with the DEPARTMENT and other appropriate agencies and groups interested in the field of water pollution.

B. The Secretary of the DEPARTMENT and the EPCHC are empowered to execute this Agreement and carry out the responsibilities discussed herein.

C. The delegation will be implemented by the EPCHC Executive Director and the Wetlands Management Division.

D. The purpose of this Agreement is to delegate to the EPCHC under authority contained in Section 373.441, F.S., and subparagraph 62-344.400(1)(d)2, Florida Administrative Code (F.A.C.), certain permitting, compliance, and enforcement responsibilities, within the geographical area of Hillsborough County, associated with implementation of the Environmental Resource Permit (ERP) program under Part IV of Chapter 373, F.S., as it relates to those activities identified in Section II.A.1.i, Section II.A.1.n and Section II.A.1.o of the "Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S. Between Southwest Florida Water Management District and

Department of Environmental Protection" (Operating Agreement) dated July 1, 2007. This Agreement also describes the guidance and oversight responsibilities of the DEPARTMENT as it relates to the delegated programs. Further, the Agreement establishes the responsibilities of the EPCHC regarding maintaining adequate levels of administrative, technical, and financial capabilities to implement and enforce the ERP, and Wetlands Resource Management (WRM) programs, and responsibilities for reporting to and maintaining communication with the DEPARTMENT.

E. Pursuant to Section IX of the Operating Agreement between the U.S. Army Corps of Engineers (USACE), the DEPARTMENT, and the Water Management Districts Concerning Regulatory Programs for Activities in Wetlands and Other Surface Waters dated November 30, 1998, the EPCHC shall be subject to the terms and conditions of that agreement (Exhibit B).

## **SECTION 2 - DEFINITIONS**

For purposes of implementing the delegated program, the definitions to be used are those in Sections 373.019, 373.403, 403.031, 403.813, F.S., subsection 62-330.200(3), F.A.C., Chapters 62-160, 62-4.242, 62-4.244, 62-4.246, 62-302, 62-312, 62-340, 62-341, 62-343, 62-344, 62-345, 40D-1, 40D-4, and 40D-40, F.A.C., the Southwest Florida Water Management District Basis of Review for Environmental Resource Permits, Chapter 84-446, Laws of Florida (EPCHC Act), EPCHC Wetland Rule Chapter 1-11, Rules of the EPCHC, and the EPCHC Delegation Rule Chapter 1-13, Rules of the EPCHC. Should a conflict exist under this Agreement between the definitions in the EPCHC Special Act or EPCHC rules and the definitions in any of the above statutes or rules of the DEPARTMENT or Southwest Florida Water Management District (DISTRICT) when the EPCHC is acting under the authority of this Agreement, the definitions in the above noted statutes and rules of the DEPARTMENT and the DISTRICT shall govern.

## **SECTION 3 - EFFECTIVE DATE**

This Agreement shall become effective after the Agreement is fully executed by all parties and on the effective date of the rules that adopt it by reference by the DEPARTMENT.

## **SECTION 4 - DURATION OF AGREEMENT**

This Agreement shall remain in effect until terminated by any party in accordance with Section 9 of this Agreement.

## **SECTION 5 - AMENDMENT OF AGREEMENT**

This Agreement, including its referenced Exhibits, may be modified in writing at any time as necessary by mutual consent of all parties. Any amendment may be made in whole, by part, or by section, and upon execution by the parties and adoption by the DEPARTMENT by rule, shall supersede the corresponding provisions of previous versions of this Agreement.

## **SECTION 6 - CONFLICT BETWEEN AGREEMENTS**

This Agreement shall supersede any prior understanding, agreement, memorandum, letter, rule, ordinance, or other written or oral arrangement between the DEPARTMENT and the EPCHC regarding the delegation of authority to issue, process, or enforce requirements relating to Environmental Resource Permits under part IV of Chapter 373, F.S. This Agreement shall not affect the existing delegation agreement between the EPCHC and the DEPARTMENT concerning mangrove trimming and alteration.

## **SECTION 7 - REVIEW OF AGREEMENT**

This Agreement shall be jointly reviewed quarterly by the parties the first year following the effective date of this Agreement and biannually thereafter. The purpose of the review is to determine the effectiveness and efficiency of this Agreement and to identify and implement any needed modifications. Subsequent reviews shall be conducted periodically as necessary.

## **SECTION 8 - SEVERABILITY**

If any part of this Agreement is judicially, administratively, or otherwise determined to be invalid or unenforceable, the other provisions of this Agreement shall remain in full force and effect, provided that all parties agree that the material purposes of this Agreement can be implemented.

## **SECTION 9 - TERMINATION OF AGREEMENT**

A. Any party may terminate this Agreement without cause upon 90 days prior written notice to the other parties. Within 30 days of a notice of intent to terminate this Agreement, all parties shall make good faith efforts to preserve the Agreement through a negotiated resolution. If after such negotiations, one or more of the parties still wish to terminate this Agreement, EPCHC shall not accept any further applications under this Agreement, but, except as otherwise agreed upon by the parties, the EPCHC shall complete processing of any pending applications submitted to the EPCHC in

accordance with this Agreement. Notwithstanding the other provisions of this paragraph, upon the issuance of notice of intent to terminate the Agreement, the DEPARTMENT may require transfer to the DEPARTMENT any one or more pending ERP or WRM permit applications or enforcement cases, and copies of the files (or the original files at the discretion of the EPCHC) on prior applications reviewed by the EPCHC under this Agreement.

B. In the event of termination of this Agreement, the EPCHC will transfer all files or copies thereof relating to permits issued, applications under review, or activities for which enforcement action has been taken under this Agreement to the DEPARTMENT (in accordance with the "Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S. Between Southwest Florida Water Management District and Department of Environmental Protection") within 30 days of the termination.

C. Any notice of termination shall be delivered by certified mail.

## **PART II PROGRAM RESPONSIBILITIES**

### **SECTION 10 - SCOPE OF DELEGATION**

A. Geographical Extent of this Agreement

This Agreement shall cover all of Hillsborough County (Exhibit A).

B. Program Activities over which Authority is Retained by the DEPARTMENT.

The DEPARTMENT shall retain authority for permitting<sup>1</sup>, compliance, and enforcement for:

(1) Activities that require a Joint Coastal Permit under Section 161.041, F.S., and part IV of Chapter 373, F.S.;

(2) All projects requiring a Management and Storage of Surface Waters (MSSW) permit review under Sections 373.414(11)-(16), F.S.

(3) Projects owned, operated, or controlled by the EPCHC or Hillsborough County such that, if the EPCHC did the permitting, compliance, or enforcement, there would be an appearance of a conflict of interest, and all projects owned and operated by the DISTRICT;

(4) Activities proposed by the Tampa Port Authority and Tampa Bay Water;

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<sup>1</sup> For purposes of this agreement, the term "permitting" shall include the actions of acknowledging qualification for exemptions, no-notice general permits, and noticed general permits.

(5) Hazardous waste facilities required to obtain a permit pursuant to Chapter 62-730, F.A.C.;

(6) Industrial wastewater treatment facilities required to obtain a permit pursuant to Chapters 62-660 or 62-670, F.A.C., including aquaculture facilities;

(7) Mining projects;

(8) Mitigation banks;

(9) Activities proposed by the U.S. Coast Guard or the Department of Defense;

(10) Activities proposed by the Florida Department of Transportation;

(11) Electrical distribution and transmission lines and other facilities related to the distribution of electricity;

(12) Natural gas or petroleum exploration, production, transmission, or distribution activities including pipelines, associated facilities, and product pipelines;

(13) Except as provided in Section 10.C(4), petitions to process waivers and variances under Section 120.542, F.S., and petitions for declaratory statements under Section 120.565, F.S., except such declaratory statements shall not address the applicability of stricter local standards;

(14) Domestic wastewater treatment facilities and solid waste management facilities;

(15) Aquaculture activities as defined in Section 597.0015(1), F.S.;

(16) Activities located on lands owned by the Board of Trustees of the Internal Improvement Trust Fund.

(17) Formal determinations of the landward extent of wetlands and other surface waters under Section 373.421, F.S. However, this shall not preclude EPCHC from performing informal determinations or from establishing a binding determination on the landward extent of wetlands and other surface waters associated with permitting, compliance, and enforcement activities under this Agreement or under its own authority.

(18) All other permitting, compliance, and enforcement responsibilities associated with implementation of the regulatory and proprietary programs under part IV of Chapter 373, F.S., and Chapters 253 and 258, F.S., not specifically delegated to the EPCHC in Section 10.C of this Agreement, including responsibilities for rulemaking,

establishing state water quality standards, and granting exceptions or variances thereto; and

**C. Activities over which Authority is Delegated to the EPCHC.**

Except for those activities over which authority is retained by the DEPARTMENT in Section 10.B of this Agreement or are retained by the DISTRICT under the Operating Agreement, the EPCHC shall be responsible for:

(1) Permitting, compliance, and enforcement for all applications and notices under part IV of Chapter 373, F.S., including permit modifications, for the following activities reviewed during the term of this Agreement when they are not part of a larger plan of development that requires a permit for a new stormwater management system or alteration of an existing stormwater management system under subsection 62-330.200(3), F.A.C.:

(a) Construction, alteration, maintenance or repair, removal, and abandonment of an individual, private residential single family residence, duplex, triplex or quadruplex (hereinafter "dwelling unit"), including a docking facility or pier, boardwalk, shore protection structure, and navigational dredging associated with the dwelling unit, and any associated dredging or filling in wetlands and other surface waters required for the dwelling unit and its ancillary appurtenances, subject to the limitations in Section 10.C.(2), below, and provided:

1. The dwelling unit is not associated with a larger plan of common development proposed by the applicant or any surface water management system serving or consisting of three or more contiguous parcels of land under single ownership where each parcel contains or is proposed to contain one or more dwelling units; or

2. The dwelling unit is not on agricultural lands for which a permit has been issued or is required under Part IV, Chapter 373, F.S., except when it is only an incidental part of the agricultural activity.

(b) Construction, alteration, maintenance or repair, removal, and abandonment of docking facilities, piers, boardwalks, shore protection structures, boat ramps, and navigational dredging. However, this does not include structures or dredging associated with adjacent docking and boating related development such as parking areas for docking facilities, dry storage facilities, boat sale and supply facilities, maintenance and repair facilities, associated seafood loading and processing facilities, restaurants, harbor master and marina administration facilities, or any other work that requires the construction, alteration, removal, or abandonment of stormwater management systems associated with activities. It is the intent of this exception for the DEPARTMENT to be responsible for the above activities when they are associated with other activities requiring a permit under subsection 62-330.200(3), F.A.C.; and

(c) Construction, alteration, maintenance or repair, removal, and abandonment of fences, ski jumps, ski slalom courses, aids to navigation, signs, buoys, mooring fields, piling supported structures that are not physically connected to uplands, aquatic plant management activities regulated under Chapter 369, F.S., fish attractors, artificial reefs, treasure salvage, archaeological research or exploration, and removal of organic detrital material.

(2) The activities listed in Section 10.C.(1)(a) through (1)(c), above, located on the submerged lands under permitting jurisdiction of the Tampa Port Authority shall not exceed any of the following thresholds:

(a) Any dock or pier associated with the dwelling unit shall not be more than 2,500 square feet in area and must be less than 300 feet in length;

(b) Any dredging or filling involving the removal from or replacement on submerged lands, other than maintenance dredging of existing canals, channels, turning basins, or berths, involves less than 1,000 cubic yards of material;

(c) Any maintenance dredging of existing canals, channels, turning basins, or berths involves less than 10,000 cubic yards of material, and all dredged material must be removed and deposited on self-contained uplands;

(d) Any new seawall or similar shoreline structure does not exceed 400 feet of shoreline, as measured prior to the commencement of work; or

(e) Any restoration of a seawall or similar shoreline structure is limited to their previous location, or upland, or within 1 foot waterward of their previous location.

(3) Compliance and enforcement for all unpermitted activities for which EPCHC has received delegated authority under Section 10.C;

(4) Processing and issuance or denial of requests for project specific variances for mixing zones, turbidity, and dissolved oxygen associated with ERP or WRM permits for which authority is delegated to EPCHC;

(5) Compliance and enforcement for ERP or WRM permits issued by the DEPARTMENT prior to the effective date of the Agreement that are specifically agreed upon by the parties;

(6) Issuing, waiving, or denying state water quality certification for those activities over which the EPCHC has permitting responsibility under this Agreement in accordance with the Memorandum of Agreement between the DEPARTMENT, DISTRICT, and the U.S. Army Corps of Engineers.



(7) Performing the duties and obligations of the DEPARTMENT in accordance with the procedures established by the Florida Department of Community Affairs and the DEPARTMENT for;

(a) The determination of consistency or inconsistency of a proposed activity with the federal and Florida Coastal Zone Management Acts; and

(b) Distributing copies of received ERP and WRM applications to the USACE, the Fish and Wildlife Conservation Commission, the Department of State, the Department of Community Affairs, and other persons who have specifically requested a copy of the application in accordance with Rule 62-343.090, F.A.C.

(8) Following the terms and provisions of the USACEs' State Programmatic General Permit to the extent the DEPARTMENT is given authority by the USACE to allow EPCHC to implement its provisions.

D. Additional Conformance with the EPCHC Wetland Rule Chapter 1-11, Rules of the EPCHC.

Applications for projects or activities identified under Sections 10.B and 10.C of this Agreement shall continue to be submitted to EPCHC for any Executive Director authorization required under the EPCHC Wetland Rule Chapter 1-11, Rules of the EPCHC. For activities reviewed under Section 10.B of this Agreement, the application to the EPCHC under the EPCHC Wetland Rule Chapter 1-11, Rules of the EPCHC, shall be in addition to, and not in lieu of, any permits or authorizations required from the DEPARTMENT.

E. Mangroves

EPCHC has an existing delegation agreement from the DEPARTMENT concerning mangrove trimming and alteration. In accordance with Section 403.9328(5), F.S., EPCHC shall include in any permit or enforcement action that is the responsibility of EPCHC under this Agreement any mangrove trimming or alteration activities that are the responsibility of EPCHC under that delegation agreement, such that EPCHC shall not require a separate mangrove trimming and alteration permit or enforcement action.

## **SECTION 11 - TECHNICAL CRITERIA AND STANDARDS**

A. When acting under this Agreement, the EPCHC shall apply the provisions of the EPCHC Water Quality Standards Rule Chapter 1-5, the Wetlands Rule Chapter 1-11, and the EPCHC Delegation Rule Chapter 1-13, Rules of the EPCHC, which incorporate directly or by reference, the relevant portions of the DEPARTMENT's environmental resource permit program rules. The EPCHC shall process reviews of state exempt activities and general permits related to activities that are the responsibility of EPCHC under Section 10.C of this Agreement using the applicable state rules for

those activities, but shall also continue to review those under Chapter 1-11. However, to the extent an activity that requires a permit under subsection 62-330.200(3), F.A.C., qualifies for an exemption under Section 1-11.11, Rules of the EPCHC, the rules under subsection 62-330.200(3), F.A.C., shall control. In addition, EPCHC shall apply the stricter rule as it applies to either the DEPARTMENT or EPCHC rules; however, to the extent there is an irreconcilable conflict between any other rules of the EPCHC and the rules under subsection 62-330.200(3), F.A.C., or the statutory criteria in Part IV of Chapter 373, F.S., the rules under subsection 62-330.200(3), F.A.C., and the statutory criteria in part IV of Chapter 373, F.S., shall control.

B. When acting under this Agreement EPCHC shall also apply the stricter standards provided in Chapter 1-11.07, Rules of the EPCHC, within the meaning of subsection 62-344.200(9), F.A.C., relating to water resource related environmental criteria adopted in the EPCHC Wetland Rule Chapter 1-11, Rules of the EPCHC.

C. In addition to EPCHC Wetland Rule Chapter 1-11 and EPCHC Delegation Rules Chapter 1-13, Rules of the EPCHC, final action taken by EPCHC regarding the issuance or denial of environmental resource permits, or compliance and enforcement of activities regulated under the authorities delegated in this Agreement, shall be governed by the provisions of Section 9 of the EPCHC Act and Chapter 1-2, Rules of the EPCHC, which are substantially equivalent, as determined by the DEPARTMENT, to the provisions of Sections 120.52, 120.53, 120.533, 120.565, 120.57, 120.62, 120.66, 120.69, 373.114(1), and 373.413(3), F.S. In addition, as provided in Section 1-13.20(3), Rules of the EPCHC, the EPCHC shall be governed by the applicable provisions of Section 120.60, F.S., and timeframes provided in Chapter 62-343, F.A.C.

D. No permit shall be issued by EPCHC until the proposed activity has been determined to be consistent with the future land use element of the applicable Hillsborough County or applicable municipality's comprehensive plan.

E. Permits issued by EPCHC under this Agreement shall be consolidated in a single document reviewed under Chapter 1-11, Chapter 1-13, and, if necessary, Chapter 1-14, Rules of the EPCHC. In the event an applicant chooses to deem an application complete under the EPCHC Delegation Rule Chapter 1-13, the Executive Director shall issue a decision solely based on review under that rule. At that time the review process will be bifurcated and the Executive Director's decision will in no way affect the review under Chapter 1-11 or Chapter 1-14. This Agreement in no way affects the authority of EPCHC to require authorizations under its independent authority under EPCHC Wetland Rule Chapter 1-11, Rules of the EPCHC for an activity that is exempt under Section 373.406 or 403.813(1), F.S., or otherwise meets the applicable ERP requirements. As referenced in Section 11.C above, the EPCHC shall be governed by the applicable provisions of Section 120.60, F.S., for the review under Chapter 1-13. In the event the application is complete under Chapter 1-13 but information is still lacking under Chapter 1-11, the EPCHC will unilaterally bifurcate the review process before the deadline for taking agency action expires in accordance with Section 120.60, F.S., and the EPCHC will issue a decision pursuant to Chapter 1-13.

## **SECTION 12 - PERMIT APPLICATION PROCESSING**

A. Those applications for activities under part IV of Chapter 373 submitted to the DEPARTMENT prior to the effective date of this Agreement and that fall within the scope of delegation described herein shall continue to be reviewed and processed by DEPARTMENT staff until issued, denied, or withdrawn. Compliance and enforcement responsibilities for these permitted activities also shall remain with the DEPARTMENT, unless such responsibilities are specifically delegated to the EPCHC under Section 10.C(6).

B. Permit applications, petitions for variances or waivers, and petitions for formal determinations submitted to the incorrect agency pursuant to the terms of this Agreement shall be returned to the applicant or, with the applicant's concurrence, be forwarded to the correct agency. This shall include situations where EPCHC receives or begins processing an application for an activity that is later determined to be outside the scope of this delegation agreement, in which case the EPCHC shall return the application to the applicant, or with the applicant's concurrence, forward the application to the DEPARTMENT in accordance with the Operating Agreement dated July 1, 2007. The application shall not be considered received for purposes of Sections 120.60 and 373.4141, F.S., until it is received by the correct agency. A refund of any submitted fee shall be made to the applicant. Prior to transferring the application, the incorrect receiving agency shall coordinate with the proper reviewing agency and the applicant in order to inform all parties that the application has been submitted incorrectly and is being either returned or forwarded. The correct agency receiving the application will be responsible for sending copies of the application to the USACE, in accordance with the Operating Agreement between the USACE, the DEPARTMENT, and the Water Management Districts Concerning Regulatory Programs for Activities in Wetlands and Other Surface Waters.

C. Fees shall be established by the EPCHC under its local authority as provided in EPCHC Services - Fee Schedule Rule Chapter 1-6, Rules of the EPCHC.

## **SECTION 13 - COMPLIANCE AND ENFORCEMENT ACTIVITIES**

A. EPCHC shall be responsible for conducting compliance inspections on all permits issued by the EPCHC pursuant to this Agreement. At a minimum, each project shall be inspected upon completion of construction. EPCHC also shall be responsible for inspections on complaints and sites of potential unauthorized activities and for referrals to the DEPARTMENT as appropriate.

B. EPCHC shall be responsible for compliance and enforcement of any activity that is the responsibility of EPCHC under Section 10.C of this Agreement conducted in violation of Part IV of Chapter 373, F.S., and subsection 62-330.200(3),

F.A.C., that is discovered by or reported to EPCHC, where the activity occurred after the effective date of this Agreement.

C. EPCHC shall be responsible for implementation of this Agreement and any ordinance, rule, or order adopted by the EPCHC in order to fulfill its responsibilities under this Agreement, as described herein. Under Sections 373.103(8), 373.129, and 373.441, F.S., the EPCHC has all rights, power, and authority to enforce the provisions of Chapter 373, F.S., and any rules and regulations adopted thereunder that are delegated under this Agreement. The DEPARTMENT shall not file a separate enforcement action when the EPCHC has resolved a violation under its delegated authority through a final order or judgment. The DEPARTMENT may initiate an enforcement action when requested by the EPCHC or when the EPCHC is not resolving the violations in a timely or appropriate manner.

D. Where appropriate, the DEPARTMENT and the EPCHC shall coordinate their enforcement activities in order to maximize the staff resources available to each.

E. The EPCHC has established a local Pollution Recovery Fund in which all moneys recovered in any enforcement action will be deposited. Moneys in the EPCHC's Pollution Recovery Fund shall be used exclusively to restore polluted areas in the EPCHC's geographical jurisdiction to the conditions that existed before pollution occurred or to otherwise enhance pollution control activities or the environment, pursuant to Section 19 of the EPCHC Act.

F. Except as provided herein, nothing in this Agreement shall limit the authority of any party.

#### **SECTION 14 - SPECIAL CASE AGREEMENTS**

By written Agreement between the Executive Director of EPCHC and the Secretary of the DEPARTMENT, as appropriate, or their designees, the responsibility of the parties to review and act on applications or enforcement cases for specific projects may deviate from the responsibilities outlined in this Agreement. Instances where this may occur include:

A. An extensive permitting or enforcement history by the DEPARTMENT or the EPCHC exists with a particular project such that a deviation would result in more efficient and effective permitting;

B. A conflict of interest, or the appearance thereof, exists that could be resolved by deviating from this Agreement;

C. The incorrect agency has begun processing an application or petition and transfer of the application or petition would be inefficient; or

D. In cases of emergencies, such as natural disasters, where processing by any of the agencies would expedite work required to abate the emergency.

## **SECTION 15 - NOTICES**

All notices, reports, or permits required to be given under the terms and provisions of this Agreement amongst the parties shall be in writing and addressed as follows:

To the DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Office of Submerged Lands & Environmental Resources, MS 2500  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

- and -

Department of Environmental Protection  
Environmental Resource Management Program  
Southwest District  
13051 N. Telecom Parkway  
Tampa, FL 33637-0926

To the EPCHC:  
Executive Director  
Environmental Protection Commission  
3629 Queen Palm Dr.  
Tampa, Florida 33619

or to such other address as may hereafter be provided by the parties in writing.

## **PART III PROGRAM MANAGEMENT**

### **SECTION 16 - BUDGET**

The EPCHC shall provide a summary to the DEPARTMENT of its approved budget outlining funding and staffing relevant to the delegated program no later than 30 days after budget adoption of each year. The EPCHC shall maintain adequate program funding, staffing, and equipment to comply with all statutes, rules, and policies pertaining to the delegated programs.

## **SECTION 17 - PERSONNEL**

The EPCHC shall hire and maintain a staff capable of performing the duties specified in this Agreement. A Table of Organization and descriptions of positions provided as part of the petition shall be updated at least annually or more frequently as appropriate and be provided to the DEPARTMENT within thirty days of any modifications.

## **SECTION 18 - COMPUTER, SOFTWARE, DATA ENTRY SYSTEMS, AND OTHER EQUIPMENT**

The EPCHC agrees to maintain all computer hardware and software necessary to enter data into the DEPARTMENT'S permit tracking systems, including PA and ERPce, as those systems currently exist or are modified in the future. The DEPARTMENT agrees to provide the necessary access and training in the use of those systems.

## **SECTION 19 - STAFF TRAINING**

The DEPARTMENT will timely invite EPCHC representatives to attend appropriate training sessions or workshops held by the DEPARTMENT. The EPCHC's staff responsible for implementing the terms of this Agreement shall regularly attend training sessions and workshops related to the ERP program, including wetland delineation training, at the expense of the EPCHC to maintain and improve their knowledge and competence in implementing the programs delegated by this Agreement. The DEPARTMENT and the EPCHC also agree to conduct periodic meetings to ensure program implementation consistency and resolve issues of mutual interest to the parties, with particular emphasis during the initial implementation of this Agreement. The DEPARTMENT shall provide the EPCHC with a copy of the SLER Operations and Procedures Manuals and subsequent updates to these manuals. The EPCHC will be responsible for distributing copies of these manuals and their subsequent updates to staff.

## **SECTION 20 - RECORDS MANAGEMENT**

The EPCHC shall maintain organized files of all public records and materials prepared or received in connection with any official business taken pursuant to this Agreement that is intended to perpetuate, communicate, or formalize knowledge, in accordance with Chapter 119, F.S.

## **SECTION 21 - PUBLICATION OF PRECEDENTIAL ORDERS**

Orders entered by the EPCHC pursuant to administrative hearings shall be published in the Florida Administrative Law Reporter, or on the EPCHC internet site in a manner that is searchable in conformance with Section 120.53(1)(a)2.b, F.S., if they have precedential significance. All final orders entered after an administrative hearing under Section 9 of Chapter 84-446, Laws of Florida, shall be published as appropriate and copies provided to the DEPARTMENT within 30 days of publication.

## **SECTION 22 - REPORTING REQUIREMENTS TO THE DEPARTMENT**

A. The EPCHC shall submit an annual report to the DEPARTMENT's Office of Submerged Lands and Environmental Resources, or its successor, describing EPCHC's permitting and enforcement activities for the previous year for its responsibilities in this Agreement. The report shall include:

(1) Applications, notices, and petitions processed by the EPCHC on behalf of the DEPARTMENT under this Agreement, identified by permit or file number, and including: date of receipt of application, notice, or petition; date(s) of request(s) for additional information; date the application, notice, or petition was deemed complete under Part IV of Chapter 373, F.S., and, as applicable under EPCHC's local regulations; date agency action was taken, type of action (verification or denial of qualification for exemption or noticed general permit with citation to rule or statute, permit issued or denied [broken down, as applicable by type of EPCHC local authorization and type of permit under Chapters 62-330 and 62-343, F.A.C.], and type of variance granted or denied); dates of any hearings, recommended orders, and final orders, including DOAH file numbers; and any notes to explain unusual events or other items related to documenting why the file was processed in the way it was (such as instances where the ERP permit had to be issued to meet Chapter 120, F.S., timeclocks before action on the local permit could be taken).

(2) A listing of all EPCHC enforcement and compliance activities undertaken by EPCHC on behalf of the DEPARTMENT under this Agreement, following a similar format as described in (1), above.

B. EPCHC shall provide a copy of each *de minimis* exemption determination made under Section 373.406(6), F.S., , and each variance granted or denied under Section 403.201, F.S., to the DEPARTMENT's Office of Submerged Lands and Environmental Resources within 30 days of taking such action.

C. The EPCHC shall provide electronic data to the DEPARTMENT as described below. However, the EPCHC may ultimately implement a compatible database system to accomplish the transferring of the requested electronic data to the DEPARTMENT.

(1) For activities delegated under this Agreement, the EPCHC shall enter permit application data into the DEPARTMENT's Permit Application tracking system or its successor.

(2) For activities delegated under this Agreement, the EPCHC shall enter permit compliance and enforcement data into the DEPARTMENT's ERPce system or its successor.

(3) EPCHC shall annually provide the DEPARTMENT's Office of Submerged Lands and Environmental Resources with an inventory of wetland impacts authorized by EPCHC using a format provided by the DEPARTMENT.

### **SECTION 23 - PROGRAM OVERSIGHT AND COORDINATION**

A. In order to promote consistency, the DEPARTMENT may review, upon reasonable notice to the EPCHC, any delegated ERP application that the EPCHC is reviewing pursuant to this Agreement. The DEPARTMENT may also randomly inspect project sites for which an application is being processed by the EPCHC, in cooperation with the EPCHC and (as necessary) with the applicant.

B. The DEPARTMENT will periodically conduct programmatic performance evaluations of the EPCHC's implementation of the delegated program. The purpose of the performance evaluations is to determine if permit applications, monitoring programs, compliance efforts, and enforcement actions are being managed in accordance with applicable rules and statutes, and that appropriate files are being maintained for all delegated permitting actions taken, monitoring programs, enforcement actions, and other responsibilities delegated to the EPCHC. The files shall be maintained for the period required. The EPCHC will be given adequate time to complete pre-audit surveys and to comment on draft audit findings.

C. In the event that an informal delineation or determination of the landward extent of wetlands and other surface waters performed by EPCHC is disputed by the property owner, the EPCHC shall advise the land owner that he or she may request that the Wetland Evaluation and Delineation Section of the DEPARTMENT resolve the dispute. The EPCHC may at anytime request assistance or advice from the DEPARTMENT in resolving a dispute.

D. The parties shall conduct regular quarterly meetings to ensure program implementation consistency and resolve issues of mutual interest to the parties for the first year following the effective date of this Agreement and biannually thereafter.



**PART IV MISCELLANEOUS PROVISIONS**

**SECTION 24 - RIGHTS OF OTHERS**

Nothing in this Agreement express or implied is intended to confer upon any person other than the parties hereto any rights or remedies under or by reason of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representative(s) on the latest day and year noted below:


**ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY**

  
\_\_\_\_\_  
Dr. Richard D. Garrity  
Executive Director

  
\_\_\_\_\_  
Chair

13 day of October, 2011.

Approved as to form by Legal Department  
Environmental Protection  
Commission of Hillsborough County  
3629 Queen Palm Dr.  
Tampa, Florida 33619

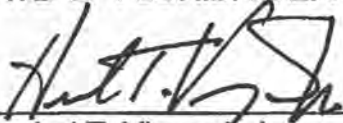
  
\_\_\_\_\_  
By  
General Counsel

14<sup>th</sup> day of October, 2011.

ATTEST:

  
\_\_\_\_\_  
By  
Clerk

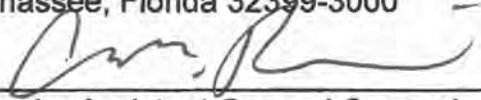
STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Herschel T. Vinyard, Jr.  
Secretary

13<sup>th</sup> day of December, 2011.

Approved as to form by  
Office of General Counsel  
Department of Environmental Protection  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

By   
Senior Assistant General Counsel

14<sup>th</sup> day of December, 2011.

ATTEST:

By   
Deputy Clerk

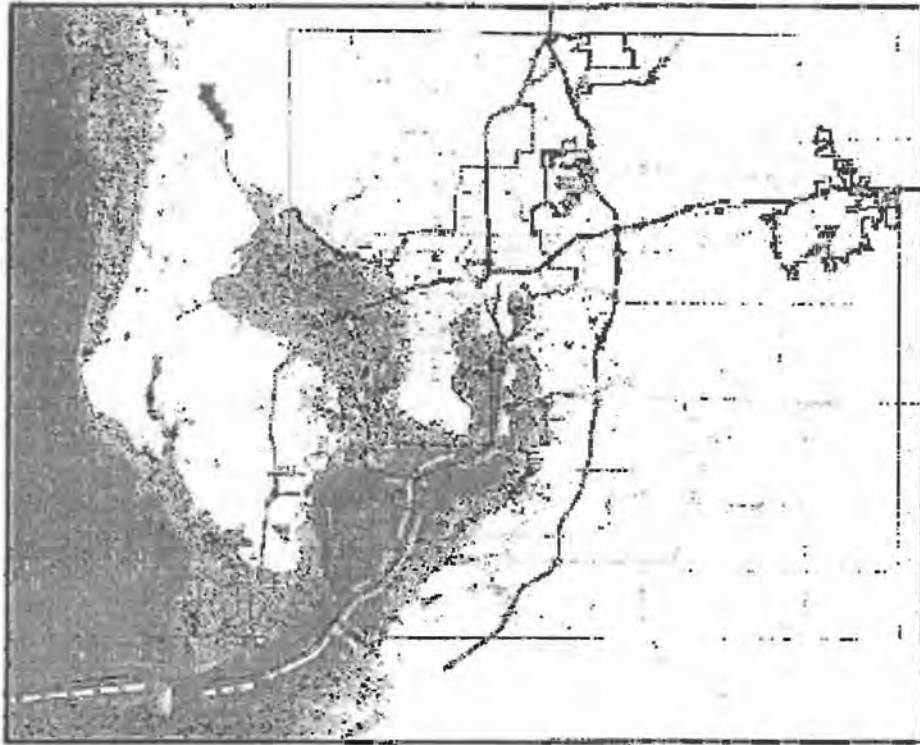
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OCT 27 2011

OFFICE OF SUBMERGED LANDS AND ENVIRONMENTAL RESOURCES

II. Map

EXHIBIT A



\* EPC Jurisdiction includes the municipalities of Tampa, Temple Terrace and Plant City as well as all of unincorporated Hillsborough County

EXHIBIT B

OPERATING AGREEMENT BETWEEN THE U.S. ARMY CORPS OF ENGINEERS,  
THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,  
THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT,  
THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT,  
THE SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT, AND  
THE SUWANNEE RIVER WATER MANAGEMENT DISTRICT  
CONCERNING REGULATORY PROGRAMS FOR  
ACTIVITIES IN WETLANDS AND OTHER SURFACE WATERS

I. PARTIES, PURPOSE AND GOALS

A. The Parties

The parties to this agreement are the United States Army Corps of Engineers (Corps), the Florida Department of Environmental Protection (Department), the South Florida Water Management District (SFWMD), the St. Johns River Water Management District (SJRWMD), the Southwest Florida Water Management District (SWFWMD), and the Suwannee River Water Management District (SRWMD) (collectively referred to as "Districts").

B. Purpose

The purpose of this agreement is to coordinate the permitting, compliance and enforcement programs of the parties concerning regulation of activities which affect wetlands and other surface waters within the state of Florida. This agreement shall apply to federal dredge and fill permits issued by the Corps pursuant to Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899 or Section 103 of the Marine Protection, Research and Sanctuaries Act and to permits issued by the Districts or the Department pursuant to part IV of chapter 373, F.S.

This agreement supersedes the December 2, 1982, amended agreement entitled: "Memorandum of Understanding Between U.S. Army Corps of Engineers, Florida Department of Natural Resources and Florida Department of Environmental Regulation on Permit Processing in the Waters of the State." This agreement shall also supersede the agreement entered into by the Florida Department of Environmental Regulation and the Jacksonville District, United States Army Corps of Engineers on January 20, 1983. This agreement spells out the interaction between the parties and does not change any of the existing regulatory requirements adopted by the parties.

C. Goals

It is a goal of the parties to this agreement to effectuate efficient, streamlined regulatory programs to govern activities which affect wetlands and other surface waters. Towards this goal, the parties have established joint application forms and agree to coordinate the distribution and review of information received during the permit application review process. Other streamlining measures to be explored and further developed by the parties include joint field inspections and pre-application meetings, coordinated, complementary enforcement efforts, and Corps' state programmatic and regional general permits. Additionally, in order to further streamline the permitting process, the agencies agree to continue to jointly review the wetland delineation methodologies of the state and the Corps to identify any differences and explore ways to further resolve or overcome these differences. Further, the parties will explore methods to integrate the principles of ecosystem management within their existing legal authority in order to achieve more effective environmental protection.

H. WATER QUALITY CERTIFICATION

By letter dated January 15, 1988, to the Secretary of the Department of Environmental Protection, the Governor of the State of Florida, under the authority in 33 U.S.C., Sections 1341 and 1362 (the Clean Water Act), and 40 C.F.R. 121.1(e), designated the Department as the agency responsible for certifying compliance with applicable state water quality standards for federal licenses or permits issued by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act, 33 U.S.C. 1344. That letter granted the Department the authority to issue, deny, or waive certification of compliance with water quality standards, the authority to identify categories of activities for which water quality certification is waived, and the authority to establish categories of permits or other authorizations for which the issuance (or denial) of the permit or authorization constitutes a certification (or denial of certification) that the permitted or authorized activity complies with (or falls to comply with) applicable state water quality standards. By letter dated February 2, 1988, to the Administrator of the Environmental Protection Agency, the Secretary of the Department of Environmental Protection, as delegated by the Governor of the State of Florida, designated certain

permits under part IV of chapter 373, F.S., and other authorizations as constituting state certification of compliance with state water quality standards unless the permit or other authorization specifically states otherwise, established categories of activities for which water quality certification is waived, and delegated concurrent authority to issue, deny or waive water quality certifications to a District created under section 373.069, F.S., or to the head of a county, municipality or local government local pollution control program where such county, municipality, or local government pollution control program has received delegation of the permitting authority from the Department or a District under section 373.441, F.S. In accordance with these letters, the parties agree to the following regarding water quality certification.

**A. Grants or Waivers of Water Quality Certification**

1. The following will constitute the granting of water quality certification by the Department or Districts, unless a permit is issued pursuant to the net improvement provisions for water quality provided by paragraph 373.414(1)(b), F.S., or unless otherwise specifically stated in the permit or authorization:

- (a) noticed general environmental resource permits and wetland resource general permits issued under part IV of chapter 373, F.S.;
- (b) standard general, individual, or conceptual approval environmental resource permits, and individual wetland resource permits issued under part IV of chapter 373, F.S.;
- (c) management and storage of surface waters permits for agricultural activities or agricultural water management systems issued under part IV of chapter 373, F.S.;
- (d) joint coastal permits issued under section 161.055 and part IV of chapter 373, F.S.; and
- (e) individual and conceptual mitigation bank permits issued under part IV of chapter 373, F.S.;
- (f) a written final order granting "certification" under one of the following siting acts by the Governor and Cabinet as the Siting Board, the Florida Land and Water Adjudicatory Commission, or by the Department of Environmental Protection, as appropriate:
  - (1) The Florida High-Speed Rail Transportation Act, sections 341.3201-386, F.S. (1997), as amended (if the certification exempts the activity from the requirement to obtain a permit under part IV of chapter 373, F.S.—see 341.363(5), F.S.);
  - (2) The Florida Electric Power Plant Siting Act, sections 403.501-539, F.S. (1997), as amended;
  - (3) The Transmission Line Siting Act, sections 403.52-5385, F.S. (1997), as amended;
  - (4) The Statewide Multipurpose Hazardous Waste Facility Siting Act, sections 403.73-7895, F.S. (1997), as amended;
  - (5) The Natural Gas Transmission Pipeline Siting Act, sections 403.9401-9425, F.S. (1997), as amended; or
  - (6) The Florida Jobs Siting Act, sections 403.952-973, F.S. (1997), as amended;
- (g) consent decrees, orders, or agreements issued by the Department, a water management district created under section 373.069, F.S., or their delegates under section 373.441, F.S., where such consent decree, order, or agreement authorizes activities which would otherwise require a permit under part IV of chapter 373, F.S.

2. Water quality certification will be considered waived for the following:

- (a) activities, other than agricultural activities or agricultural water management systems, exempt by rule or statute from the requirement to obtain an environmental resource permit and a wetland resource permit under part IV of chapter 373, F.S., including activities that fall below permitting thresholds;
- (b) agricultural activities or agricultural water management systems exempt by rule or statute from the requirement to obtain an environmental resource permit and a management and storage of surface waters permit under part IV of chapter 373, F.S., including activities that fall below permitting thresholds;
- (c) activities permitted or authorized as described in Sections II. A. 1(a) through (g) when the permit or authorization is issued pursuant to the net improvement provisions for water quality provided by paragraph 373.414(1)(b), F.S.; and

- (d) activities permitted or authorized in Sections II. A. 1(a) through (g) when the permit or authorization expressly waives water quality certification.

**B. Denial of Water Quality Certification**

Unless otherwise stated in the denial, the denial of the permit or authorization listed in Section II.A.1. of this agreement shall constitute denial of the state water quality certification. Where a final agency action on an application for a permit listed in Section II.A.1. of this agreement cannot be made within the time frames specified in Section II.C. of this agreement and the application otherwise does not meet the criteria for issuance of a permit, the Department or Districts may deny water quality certification for the activity described in the permit application in order to meet the federal time clock requirements discussed in Section II.C.

**C. Time Frames**

Once the Department or the District determines that an application for a permit listed under Section II.A.1. of this agreement is complete, it shall have 180 days to act on the certification, or the certification shall be considered waived.

**D. Corps Nationwide General Permits**

For nationwide permits which have received water quality certification by Florida, or where water quality certification has been waived, no individual water quality certification is necessary. For those Corps nationwide permits which were conditioned upon individual review of the water quality certification by the state of Florida, or which have been denied by Florida, state water quality certification for an individual proposed activity shall be dealt with in accordance with Section II. A-C.

**III. COASTAL ZONE CONSISTENCY CONCURRENCE (CZCC)**

In accordance with section 373.428, F.S., final agency action on a permit application submitted under part IV of chapter 373, F.S., that is subject to a consistency review under section 380.23, F.S., shall constitute the state's determination as to whether the activity is consistent with the federally approved Coastal Management Program. The agencies agree to the following procedures regarding coastal zone consistency determinations:

**A. Determination of Concurrence**

- 1. The following will constitute a finding of concurrence with the state's coastal zone management program for the activity authorized thereby:
  - (a) noticed general environmental resource permits and wetland resource general permits;
  - (b) standard general, individual, or conceptual approval environmental resource permits and individual wetland resource permits;
  - (c) joint coastal permits;
  - (d) individual and conceptual mitigation bank permits; and
  - (e) general, individual, or conceptual approval management and storage of surface waters permits.

**B. Determination of Inconsistency**

The denial of a permit listed in Section III. A. of this agreement shall constitute a finding that the activity is inconsistent with the state's coastal zone management program.

**C. Time Frames**

The time frame for a coastal zone concurrence begins upon a determination by the Department or the District that an application for a permit listed in Section III.A. of this agreement is complete. The coastal zone consistency decision must be made within 180 days after the application is considered complete by the Department or District and in accordance with the procedures in 15 CFR 950.63. At the end of 180 days, if a determination of coastal zone consistency has not been made, concurrence will be conclusively presumed.

**D. Corps Nationwide General Permits**

For nationwide permits which have been determined to be consistent with the state's coastal zone management program, no individual coastal zone consistency concurrence determination is necessary. For those Corps nationwide permits where consistency with the state coastal zone management program is conditioned upon individual review of the coastal zone management consistency by the state of Florida, or has been denied by Florida, the final consistency

concurrence determination for a proposed activity shall be made in accordance with Section III. A-C.

#### **IV. PERMIT APPLICATION COORDINATION**

##### **A. Joint Application Forms**

The parties have developed comprehensive, integrated joint permit application forms to initiate processing of permit applications required by each of the parties. For activities which require a federal dredge and fill permit and an environmental resource permit under part IV of chapter 373, F.S., that are not grandfathered under sections 373.414(11)-(16), F.S., and that are not within the Northwest Florida Water Management District, the "Joint Application for Environmental Resource Permit/Authorization to Use State Lands/Federal Dredge and Fill Permit or the Application for a Joint Coastal Permit will be used, as applicable. For activities which require a federal dredge and fill permit and a wetland resource permit under the grandfathering provisions of sections 373.414(11)-(16), F.S., or that are within the Northwest Florida Water Management District, the "Joint Application For Works in the Waters of Florida" and the "Notice of Intent to Construct Works Pursuant to a Wetland Resource General Permit" will be used.

##### **B. Processing of Applications**

Once a joint application, a request for permit modification, or a request for verification of exempt status is submitted by an applicant to the Department or District in accordance with the division of responsibilities in the operating agreement in effect between these entities, the responsible agency will, within five working days of receipt, for activities in, on, or over wetlands and other surface waters, forward a copy of the application or request, including any Notice of Receipt of the Application, all application drawings, and any other information accompanying the application or request, to the Corps office with responsibility for processing the corresponding federal dredge and fill permit application. An application or request for permit modification sent to the Corps shall include an application processing number. In those cases where the Corps receives a copy of the joint application directly from an applicant, the Corps shall retain one copy of the application and all accompanying materials and send all other copies and materials to the appropriate office of the Department or District with the Corps processing number.

##### **C. Distribution of Final Actions**

The Department and Districts shall forward to the Corps copies of all final permitting actions for activities in, on or over wetlands and other surface waters, including copies of permits, permit modifications, notices of denial, application withdrawals, and exemption verification letters. The Corps shall forward to the Department or Districts, as appropriate, copies of notices of intent to issue standard permits, and final actions on standard permits.

#### **V. MITIGATION BANKS**

##### **A. Joint Review Teams**

Joint review of mitigation bank applications can serve to facilitate more efficient and effective review of such applications. At the request of one or more of the parties which has permitting responsibilities for a proposed mitigation bank, an interagency review team (Team) shall be formed, comprised, at a minimum, of representatives from the Corps, the Department, and the appropriate District.

##### **B. Team Coordination**

The Team shall coordinate the following:

1. Pre-application meetings involving the planning of mitigation banks;
2. Reviewing mitigation bank permit applications;
3. Sharing of relevant application information, including letters and staff reports;
4. Assigning the number and use of available mitigation credits, establishing mitigation service areas, and developing compatible mitigation bank permit conditions, to the extent possible under the applicable rule criteria of the parties;
5. Tracking the withdrawal of mitigation credits;
6. Conducting inspections of the bank; and
7. Determining success of the bank.

#### **VI. COMPLIANCE AND ENFORCEMENT**

##### **A. Discovery of Potential Violations**

The parties shall coordinate their enforcement activities in order to maximize limited agency resources. Upon discovery of an unauthorized activity in wetlands or other surface waters, the party discovering the activity will forward to the appropriate parties all correspondence and supporting materials concerning the unauthorized activity, including warning letters, notices of violation, cease and desist orders, consent orders and emergency orders. If the nature and magnitude of the violation warrants, the initial information provided should also include a case number, a map identifying the location of the site and a sketch of the project area.

**B. Development of Settlement Proposals**

For those settlement proposals that involve activities which may require authorization from other parties to this agreement, the parties agree to coordinate the development of settlement proposals to the extent possible.

**C. Advisory Note**

All consent orders and notices requiring corrective action shall advise the alleged violator that implementation of required corrective action does not relieve the alleged violator of the need to comply with applicable Federal, state or local laws, rules or ordinances.

**VII. INTERAGENCY MEETINGS**

**A. Permitting Meetings**

Each party agrees to host interagency permitting meetings on a rotating basis. The time and place of all the meetings will be addressed at the beginning of each calendar year. Because interagency meetings between the parties and other agencies can serve as a good forum to aid communication, exchange information, conduct pre-application meetings, or to resolve outstanding permitting issues, each party will endeavor to have a representative present at all interagency meetings.

**B. Enforcement Meetings**

Representatives of the parties' enforcement staff shall meet at least annually. If possible, the meeting should take place at the Department's Annual Enforcement Workshop. The meeting should address:

1. priorities for enforcement actions;
2. enforcement procedures;
3. status of particular enforcement cases identified by any party;
4. measures for increasing the public awareness of state and federal regulations; and
5. updated organizational structures, contacts, and related office information.

**C. Cross Training**

The parties agree to provide opportunities for cross training. This may take the form of: providing spaces in formally scheduled training courses; providing training sessions at each others' training events; providing personnel and opportunities for cross-training through developmental assignments; sharing interpretations of agency rules and procedures; and performing joint formal and informal training on other subjects of mutual interest.

**VIII. COMPUTER LINK AND GIS**

All parties agree that it is mutually beneficial to share GIS information and to be linked electronically for the purpose of exchanging information. Each party will participate in any future group whose purpose is to establish electronic connections between the parties. A list of Internet addresses will be developed and shared for each party's Environmental Resource Permit/Section 10 and Section 404 staff.

**IX. DELEGATED PROGRAMS**

Where the Department or Districts delegate to a local government all or a portion of the permitting or enforcement authority under part IV of chapter 373, F.S., the delegation agreement shall include a provision that the local government shall be subject to all the terms and conditions of this Agreement, although the Corps, with the concurrence of the delegating agency, may allow deviations from these terms and conditions.

**X. EFFECTIVE DATE**

This agreement shall take effect upon execution by all the parties.

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**XI. TERMINATION**

Any party who wishes to terminate this agreement with or without cause shall provide 60 days prior written notice to the other parties. The notice submitted by the Corps shall be signed by the District Engineer of the Jacksonville or Mobile District. The notice submitted by a Water Management District shall be signed by the Chair of the Governing Board. The notice submitted by the Department shall be signed by the Secretary. By mutual agreement of all parties, the 60 day notice period may be reduced. Within 30 days of a notice of intent to terminate this agreement, all parties shall make good faith efforts to preserve the agreement by attempting to resolve any basis for the termination. This agreement also may be terminated by future agreements between the parties which expressly provide for superseding of this agreement.

  
Virginia B. Wetherell  
Secretary  
Department of Environmental Protection

30 November 1998  
Date

  
Lynetta Usher Griner  
Chair, Governing Board  
Suwannee River Water Management  
District

\_\_\_\_\_  
Date

  
James L. Allen  
Chair, Governing Board  
Southwest Florida Water

Date: 8/25/98

  
Joe K. Miller  
Col., U.S. Army, District Engineer  
U.S. Army Corps of Engineers

20 NOVEMBER 1998  
Date

  
Daniel Roach  
Chair, Governing Board  
St. Johns River Water  
Management District

\_\_\_\_\_  
Date

  
Frank Williamson, Jr.  
Chair, Governing Board  
South Florida Water Management District  
Management District

Date

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SEP 21 2011

DEPT OF WILDERNESS AND ENVIRONMENTAL RESOURCES

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