

**AMENDED AND RESTATED
INTERLOCAL AGREEMENT**

Between the

TAMPA PORT AUTHORITY

and the

**ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH
COUNTY**

**Delegation of Permitting and Regulation of Certain Minor Work Permits from the Tampa
Port Authority to the Environmental Protection Commission of Hillsborough County**

THIS AMENDED AND RESTATED INTERLOCAL AGREEMENT, hereinafter referred to as the "Agreement," made and entered into this 23rd day of June, 2009, by and between the Tampa Port Authority, a body politic and corporate organized and existing under the laws of the State of Florida, hereinafter referred to as "TPA", the address of which is 1101 Channelside Drive, Tampa, Florida 33602, and the Environmental Protection Commission of Hillsborough County, a political subdivision of the State of Florida, hereinafter referred to as "EPC", the address of which is 3629 Queen Palm Drive, Tampa, Florida 33619.

WITNESSETH:

WHEREAS, it is the purpose and intent of this Agreement, the parties hereto, and Section 163.01, Florida Statutes, known and referred to as the Florida Interlocal Cooperation Act of 1969, to permit and authorize the TPA and the EPC to enter into this interlocal agreement wherein the TPA's authority to issue and regulate certain Minor Work Permits be delegated to the EPC for issuance, regulation and enforcement by the EPC Executive Director and thereby provide the services and efforts provided for herein in the manner that will best utilize existing resources, powers and authority available to each of them; and,

WHEREAS, the EPC is a local government environmental agency created by Special Act Chapter 84-446, Laws of Florida as amended ("EPC Special Act"), which implements various environmental regulatory programs and conducts activities designed to monitor, prevent, and minimize pollution; and

WHEREAS, the TPA is an independent special district created by Special Act Chapter 95-488, Laws of Florida ("TPA Special Act") and by virtue of Section 25 of this act, the TPA has permitting authority over the filling, dredging, development and construction of submerged lands located within the boundary of the port district in Hillsborough County; and

WHEREAS, pursuant to Section 7(z) of the TPA Special Act, the TPA has the authority to enter into interlocal agreements for the transfer of responsibility for the control and regulation of the issuance of minor work permits; and

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WHEREAS, the EPC has authority pursuant to Section 5 of the EPC Special Act and Section 163.01, Florida Statutes, to cooperate with the TPA and implement portions of the TPA Submerged Lands Management Rules on behalf of the TPA, and

WHEREAS, in order to increase agency efficiency, eliminate confusion as to which agency the applicant should submit their application and to expedite permit issuance; permit issuance can be consolidated into one agency;

NOW, THEREFORE, the TPA and the EPC hereby agree as follows:

1. **PURPOSE**: This Agreement supersedes, in its entirety, the TPA and EPC Interlocal Agreement dated November 15, 2007 which delegated limited minor work permitting authority from the TPA to the EPC. Pursuant to the terms and conditions set forth herein, the EPC Executive Director will have all authority to issue certain "Minor Work Permits", grant variances and take appropriate regulatory and enforcement actions set forth herein. This includes setting and collecting the permit application fee, intake of applications, conducting the review, and preparing and issuing certain Minor Work Permits, granting or denying variances, processing appeals and taking appropriate enforcement actions for certain marine construction activities in Hillsborough County, as set forth below.

2. **DEFINITIONS and ABBREVIATIONS**: Definitions in this Agreement shall be those as set forth in the TPA Special Act, as this act may be amended from time to time. Additional terms include:

- a. Standard Work Permits: are those permits which exceed the criteria for Minor Work Permits as set forth in the TPA Special Act.

3. **MARINE CONSTRUCTION PROJECTS ELIGIBLE FOR PERMIT ISSUANCE BY THE EPC ("The EPC Permits")**:

- a. The EPC Executive Director shall have the complete authority to issue TPA Minor Work Permits pursuant to the substantive standards provided in the TPA Special Act and the adopted TPA Submerged Lands Management Rules with the exception of those minor work permits set forth in Section 4 herein. "Minor Work Permits" are those permits which are defined in Section 25(m) of the TPA Special Act as follows:

- (1) Private and commercial docks of less than 2,500 square feet (232.25 square meters) in area and less than 300 feet (91.44 meters) in length.

- (2) Dredging or filling projects involving the removal from or replacement on submerged lands of less than 1,000 cubic yards (764.55 cubic meters) of material.

- (3) Maintenance dredging of less than 10,000 cubic yards (7,645.5 cubic meters) of material from existing canals, channels, turning basins, or

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berths, where dredged material is to be removed and deposited on self-contained upland sites.

(4) New seawalls or similar shoreline structures not exceeding 400 feet (121.92 meters) of shoreline, as measured prior to the commencement of work.

(5) Restoration of seawalls or similar shoreline structures at their previous locations or upland of or within 1 foot (0.305 meter) waterward of their previous locations.

(6) The installation of buoys, signs, fences, ski ramps, and aids to navigation.

4. MARINE CONSTRUCTION PROJECTS TO BE PERMITTED BY THE TPA:

a. Notwithstanding anything to the contrary, EPC delegated areas from the TPA and associated permitting authority do not extend to the following:

1. Standard Work Permits;
2. Utility crossings;
3. Any permit which requires a submerged land lease;
4. Any permit which requires a submerged land easement;
5. Commercial Tidal lands (as set forth in TPA Submerged Lands Management Rules) (except for Seddon Channel)
6. TPA owned uplands:
 - a) including but not limited to Fantasy Islands, D2 and D3 and other dredge spoil islands;
 - b) any permits over or across uplands created from accretion. These lands are the property of the TPA
 - c) any uplands created by dredge overfill. These uplands become the property of the TPA;
7. Port of Tampa berths or Port of Tampa related marine structures;
8. Any permits that the TPA requires for its development.

5. PERMIT ISSUANCE AND RESPONSIBILITIES OF THE PARTIES:

- a. Fees: The EPC shall collect both the current TPA and EPC permit fees for the EPC Permits it may issue in accordance with the existing fee schedules until such time as EPC adopts its own fee schedule under its applicable rules. The TPA shall collect the permit fees for all other permits, including without limitation, Standard Work Permits, which it may issue.
- b. Easements, Variances and Leases: Issuance of Minor Work Permits involving easements, (including but not limited to utility easements), variances or leases:

- (1) The TPA retains the authority to approve all submerged land easements and leases.
 - (2) The EPC has the authority to determine, pursuant to its rules, including but not limited to Section 1-2.50, Rules of the EPC, whether a variance should be granted or denied on applicable EPC Permits.
- c. Technical Support: The TPA agrees to provide continuing technical support to EPC staff should specific questions arise.

6. PERMIT TRANSFER:

In the event the EPC or the TPA issues a permit outside of its respective jurisdiction the entity shall take the following remedial actions:

- a. The entity shall inform the permittee and the other entity in writing within 10 days of the discovery of the error that the permit was improperly issued; and
- b. The permit fee to the permittee shall be refunded; and
- c. Each entity shall provide all information that the applicant submitted, including any and all correspondence related to the permit to the other entity within 10 days of the notification in 6.a (above).
- d. The entity shall review all information and determine whether a permit should be issued and any and all other remedies.

7. CONTESTING OF EPC PERMIT ISSUANCE OR DENIAL:

- a. All procedures relating to permit submittal, resubmittal, and the appeal or denial of the issuance of the EPC Permits shall be pursuant to Section 9 of the EPC Act and its rules, including but not limited to Part IV of Chapter 1-2, Rules of the EPC.

8. INVESTIGATION OF UNAUTHORIZED MARINE CONSTRUCTION:

The EPC shall investigate and complete Warning Notices and any other compliance and/or enforcement documents for activities that qualify for the EPC Permits as defined in Section 3 herein and the EPC shall take the appropriate enforcement actions pursuant to Sections 17 through 19 but not limited to those sections of the EPC Special Act, and as such act may be amended from time to time. The TPA will investigate all permits for which it has retained jurisdiction.

9. TERMINATION: Either party may terminate this agreement without cause upon 60 days written notice. The 60 days shall commence upon the non-terminating party's receipt of the written notice.

10. NOTICE: Written notices shall be provided via U.S. mail or hand delivery to the following:

FOR TPA:

Environmental Director
Tampa Port Authority
1101 Channelside Drive
Tampa, FL 33602

WITH A COPY TO:

Port Counsel
Tampa Port Authority
1101 Channelside Drive
Tampa, FL 33602

FOR EPC:

Division Director
Wetlands Management Division,
3629 Queen Palm Drive
Tampa, FL 33619

WITH A COPY TO:

EPC Legal Department
3629 Queen Palm Drive
Tampa, FL 33619

11. LIABILITY: Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its respective officers, agents, and employees arising from the duties related to this Agreement. Notwithstanding any provision in this Agreement, all issues relating to liability, including but not limited to waivers or assumptions of liability, in this Agreement are subject to the sovereign immunity laws, including but not limited to section 768.28, Florida Statutes.

12. NON-EXCLUSIVITY OF AGREEMENT: The EPC understands and agrees that this Agreement is non-exclusive and the TPA reserves the right to seek similar or identical services elsewhere if deemed in the best interest of the TPA.

13. COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS: The EPC shall comply fully with all applicable federal, state, county, municipal and other governmental laws, executive orders, rules and regulations relating to wage, hour and labor, workers' compensation, equal opportunity, and women and minority business enterprises. All applicable

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Federal and Florida laws, statutes, rules and regulations shall apply to this Agreement as though written therein. Florida law shall govern all questions concerning implementation and execution of this Agreement and shall also be controlling in any cause of action brought pursuant to this Agreement.

14. ATTORNEYS' FEES AND COSTS: The parties agree that in the event that it should become necessary for either party to employ an attorney to enforce any of its rights hereunder, the prevailing party shall be entitled to reimbursement of all costs and expenses, including attorneys' fees and paralegal fees (at both trial and appellate court levels) which may reasonably be incurred or paid at any time or times by it in connection therewith.

15. EQUAL EMPLOYMENT OPPORTUNITY/SBE PROGRAM: The EPC acknowledges that the TPA is an equal employment opportunity employer and encourages the firms with whom it does business to likewise follow these principles. During the performance of this Agreement, the EPC herein assures the TPA that said EPC is in compliance with Title VII of the 1964 Civil Rights Act, as amended and the Florida Civil Rights Act of 1992 in that the EPC does not on the grounds of race, color, national origin, religion, sex, age, handicap or marital status, discriminate in any form or manner against EPC's employees or applicants for employment.

16. MISCELLANEOUS PROVISIONS:

- a. **PARTIES BOUND.** This Agreement shall be binding on and inure to the benefit of the parties and to their respective representatives, successors and permitted assigns.
- b. **SEVERABILITY.** Should any one or more of the provisions contained in this Agreement be declared invalid, void, or unenforceable in any respect, all remaining provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.
- c. **MODIFICATIONS.** Modifications may be presented at any time by either party. However, no waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the parties.
- d. **ENTIRE AGREEMENT.** This Agreement contains the entire Agreement between the parties and supersedes all prior and contemporaneous Agreements, arrangements, negotiations and understandings between the parties hereto relating to the subject matter hereof.
- e. **NO ASSIGNMENT OF AGREEMENT.** The EPC shall not assign this Agreement, in whole or in part, without the prior written authorization of the TPA.
- f. **CHOICE OF LAWS/VENUE.** This Agreement shall be construed under and in accordance with the laws, rules and regulations of the State of Florida and venue shall be in Hillsborough County, Florida.

- g. EXECUTION IN COUNTERPART. The parties hereto may execute this Agreement in counterpart and such signatures shall have the same effect as if signed all at the same time. Regardless of the specific date executed by the EPC, the binding date for purposes of execution shall be the date signed by the TPA.
- h. CONFLICT OF TERMS. If there is a conflict between the terms and conditions of this Agreement and any Exhibits attached hereto, this Agreement shall prevail.
- i. AUTHORITY TO EXECUTE. Each of the parties hereto covenants to the other party hereto that it has lawful authority to enter into this Agreement, that the governing or managing body of each of the parties has authorized the execution of this Agreement in the manner hereinafter set forth.

The County Clerk of HILLSBOROUGH COUNTY is hereby authorized and directed, after execution of this Agreement by the TPA and the EPC, to file this Agreement with the Clerk of the Circuit Court of Hillsborough County, Florida, for recording in the public records of Hillsborough County, Florida.

IN WITNESS WHEREOF, the TPA and EPC have caused this Agreement to be executed as of the date first stated above.

By: Angela A. Cardin
WITNESS
By: Richard MacLeod-Richards
WITNESS

TAMPA PORT AUTHORITY

By: Richard A. Wainio
Richard A. Wainio, Port Director and CEO

By: Jannette Figari
WITNESS
By: Kathy S. Fitzhugh
WITNESS

ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH
COUNTY

By: Rick Spaul
EPC Executive Director

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

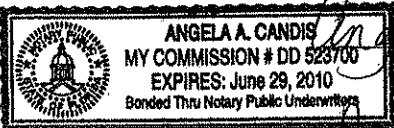
By: [Signature]
EPC Counsel

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: [Signature]
TPA Counsel

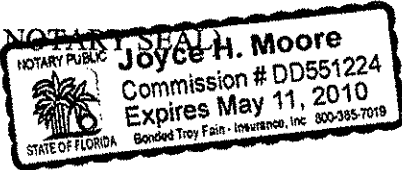
STATE OF FLORIDA
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 23rd day of June, 2009, by RICHARD A. WAINIO as Port Director & CEO of TAMPA PORT AUTHORITY, a body politic and corporate under and by virtue of the laws of the State of Florida, and on behalf of the TAMPA PORT AUTHORITY, who is personally known to me or has produced _____ (state) driver's license or _____ as identification.

My Commission Expires: _____
(AFFIX NOTARY SEAL)  Angela A. Candis
Notary Public (Signature)
Angela A. Candis
(Printed Name)

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this 19th day of June, 2009, by RICHARD D. GARRITY, PH.D as Executive Director of THE ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY, a political subdivision of the State of Florida, on behalf of ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY, who is personally known to me or has produced _____ (state) driver's license or _____ as identification.

My Commission Expires: _____
(AFFIX NOTARY SEAL)  JH
Notary Public (Signature)
Joyce H. Moore
(Printed Name)

KWD