

EPC
SPECIAL
4/12/00

**ARBITRATION SETTLEMENT AGREEMENT
ALAFIA RIVER PUMP STATION AND INTAKE STRUCTURE
ENVIRONMENTAL RESOURCE PERMIT APPLICATION**

THIS AGREEMENT is made and entered into this _____ day of April, 2000, by and among **TAMPA BAY WATER**, A Regional Water Supply Authority (formerly known as the West Coast Regional Water Supply Authority) ("Tampa Bay Water"), an interlocal governmental agency created and existing pursuant to Sections 373.1962 and 163.01, Florida Statutes, acting by and through its Board of Directors, the governing board thereof, **HILLSBOROUGH COUNTY**, a political subdivision of the State of Florida ("Hillsborough County"), acting by and through its Board of County Commissioners, and the **ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY**, a governmental entity created by Special Act of the Florida Legislature ("EPC") collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS an arbitration proceeding is pending before a duly convened Arbitration Panel, Arbitration Case No.: TBW-A-2000-1, involving Tampa Bay Water's application for an Environmental Resource Permit ("ERP") for the Alafia River Pump Station and Intake Facility (the "Project"); and

WHEREAS, Tampa Bay Water, the EPC and Hillsborough County desire to avoid the expense and uncertainty of arbitration and to resolve any and all controversies and disputes among them with respect to the Project in a manner consistent with the Amended and Restated Interlocal Agreement executed on June 10, 1998, and have therefore agreed to settle this controversy and dismiss the pending arbitration proceeding involving the Project.

NOW, THEREFORE, in consideration of the premises set forth above and the covenants and agreements set forth below, which each of the Parties acknowledges and agrees is good and valuable consideration, and receipt of which is hereby acknowledged by each of the Parties, the Parties agree as follows:

SECTION 1. PROJECT DESIGN MODIFICATIONS - Tampa Bay Water agrees to modify the design of the Alafia River Intake Structure and Pump Station, hereinafter referred to as "the Project," in accordance with the plans and drawings attached hereto and incorporated herein as Exhibit "A." EPC and Hillsborough County have reviewed Exhibit "A" and, after review, agree that the Intake Structure should be modified in accordance therewith.

SECTION 2. ALAFIA RIVER WITHDRAWALS - Unless required for Tampa Bay Water to meet its obligations under the *Amended and Restated Interlocal Agreement executed June 10, 1998*, Tampa Bay Water agrees not to seek a modification of its withdrawal schedule which would allow for an increase in permitted withdrawals from the Alafia River for the duration of the current WUP# 2011794.00.

SECTION 3. FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION REVIEW – Tampa Bay Water agrees to request review of and comment on the modified Intake Structure set forth in Exhibit "A" from the Florida Fish and Wildlife Conservation Commission ("FWCC") and to present any report, comments, or recommendations made by FWCC to the Board of Directors of Tampa Bay Water as an action item on the month's agenda following receipt of said report, comments, or recommendations. Tampa Bay Water staff shall recommend that Tampa Bay Water make every reasonable effort to implement any recommendations of FWCC with respect to the Project.

SECTION 4. EXPEDITED REVIEW OF EPC PERMITS: EPC agrees to expedite its review and issuance of any permits necessary under the applicable rules of the EPC for the Project.

SECTION 5. OTHER PERMITS: EPC and Hillsborough County each agree that with regard to Tampa Bay Water's applications for permits for the Project from the Tampa Port Authority, SWFWMD, and the Army Corps of Engineers, EPC and Hillsborough County will not oppose or delay applications, or the issuance of permits, that are consistent with this Settlement Agreement.

SECTION 6. CITIZEN PARTICIPATION: Tampa Bay Water, EPC and Hillsborough County agree to each appoint up to two citizens to serve on a committee, and to work cooperatively with that committee of citizens to design a fascia for the structure and contouring of the river bank that will complement the natural setting while not impairing the function or utility of the Intake Structure and to plan for the re-vegetation of any impacted areas resulting from the construction of the Project. The committee's recommendation or suggestions should be provided to Tampa Bay Water no later than May 19, 2000.

SECTION 7. NOISE ABATEMENT: Tampa Bay Water agrees to incorporate noise abatement principles into the design, construction and operation of the Pump Station in order to reduce noise emissions from the facility. Tampa Bay Water agrees to meet the strictest standards currently in effect in the Hillsborough County Land Development Code, Section 6.09.03 for noise associated with "manufacturing facilities." In addition, Tampa Bay Water will consider additional noise abatement measures beyond regulatory requirements if such additional measures are determined by Tampa Bay Water to be technically and financially feasible.

SECTION 8. LIGHTING - Tampa Bay Water agrees to comply with those lighting standards currently in effect in the Hillsborough County Land Development Code, Section 6.09.02 with respect to lighting of the Project. Tampa Bay Water agrees to incorporate directional lighting, and any navigational lighting, as may be required by the FWCC or the Tampa Port Authority.

SECTION 9. BELL SHOALS BRIDGE RIVER STAGE GAUGE - Tampa Bay Water agrees to continue its funding of the operations and maintenance of the existing USGS river stage gauging device at the Bell Shoals Bridge (USGS # 02301638). Should the USGS discontinue its operation and maintenance of said gauging device, then Tampa Bay Water agrees to assume and continue the operation and maintenance of said gauging device. Tampa Bay Water agrees to analyze stage data from said gauging device during the first twelve (12) months of withdrawals and prepare a report to be completed by a qualified professional in order to determine if actual stage impact is consistent with stage impact calculations offered in support of WUP #2011794.00.

SECTION 10. POSTING OF MONTHLY COMPLIANCE REPORTS - Tampa Bay Water agrees to post on its web site, within 48 hours of submission to the Southwest Florida Water Management District, its monthly compliance reports required under WUP # 2011784.00

SECTION 11. ADDITIONAL MONITORING - Prior to withdrawals, Tampa Bay Water agrees to install and monitor, or to contract for the installation and monitoring of devices to detect upstream changes in pH and turbidity and install an automatic shut-off or alarm for the Pump Station in the event a water quality problem is indicated or detected by such devices. In the event a water quality problem is indicated or detected by the upstream monitors which necessitates a cessation of pumping, Tampa Bay Water shall provide monitoring for pH and turbidity until such time as background water quality conditions are achieved, from the pump station downstream to U.S. 41, and shall make such information available to the County and EPC.

SECTION 12. SUPPORT OF PORT AUTHORITY PERMITS AND ERP - EPC and Hillsborough County agree to make their respective staff and consultants available, at Tampa Bay Water's expense, as witnesses to the positions of EPC and Hillsborough County consistent with this Settlement Agreement.

SECTION 13. DISMISSAL OF PENDING ARBITRATION PROCEEDING - Upon approval for filing by Tampa Bay Water of amendments or modifications to the ERP application that are consistent with and comply with the terms of this Agreement, EPC and Hillsborough County agree to voluntarily dismiss with prejudice their respective requests for arbitration regarding the Project, with all Parties bearing their own attorney's fees and costs. Each party shall pay the agreed upon fee for its designated arbitrator. Tampa Bay Water shall

pay one-half and EPC/Hillsborough County shall pay one-half of the agreed upon fees and costs for the Chairman of the Arbitration Panel.

SECTION 14. NO FURTHER DEMAND FOR ARBITRATION - EPC and Hillsborough County agree not to request arbitration of any modifications or amendments to either Tampa Bay Water's ERP application for the Project or Tampa Bay Water's Army Corps of Engineers Section 404 permit application for the Project that are necessary to implement or accomplish the terms of this settlement, including, any redesign of the Project as shown in Exhibit "A" or any reconfiguring the site as shown in the attached Exhibit "B." EPC and Hillsborough County hereby accept and consent to such modifications and amendments, recognizing and acknowledging that they are necessary to effectuate this Settlement Agreement.

SECTION 15. SCOPE OF SETTLEMENT AGREEMENT - The Parties acknowledge and agree that this Settlement Agreement represents, applies to and shall govern their respective actions and positions regarding the Alafia River Intake Structure and Pump Station permit applications identified or referred to herein and resolves all issues and disputes regarding said permits, but does not represent, address or affect their respective positions regarding water withdrawal quantities for the Alafia River Project.

SECTION 16. AUTHORITY - The Parties hereto each represent that their signing representatives have the authority to enter into and execute this Settlement Agreement as a binding and enforceable legal contract.

SECTION 17. DEFAULT AND REMEDY - Enforcement of this Settlement Agreement shall be by specific performance, or such other legal or equitable remedies that may be available, in a court of competent jurisdiction, with the prevailing party in any such action being entitled to recover from the non-prevailing party or parties its attorneys fees and costs of litigation.

SECTION 18. EFFECTIVENESS - The Settlement Agreement shall take effect upon execution by all Parties hereto.

SECTION 19. COUNTERPART ORIGINALS - This Settlement Agreement may be executed in counterpart originals in order that each party might retain a fully executed original. Any all the fully executed counterpart originals shall be deemed for all purposes to be an original Settlement Agreement.

SECTION 20. GOVERNING LAW - This Settlement Agreement shall be construed, interpreted and enforced in all respects according to the laws of the State of Florida.