

**COMMISSION**  
Mariella Smith, *Chair*  
Pat Kemp, *Vice Chair*  
Harry Cohen  
Ken Hagan  
Gwendolyn “Gwen” W. Myers  
Kimberly Overman  
Stacy White



**Executive Director**  
Janet L. Dougherty

**General Counsel**  
Ricardo Muratti

**Meeting time**  
9:00 a.m.

## **COMMISSION AGENDA**

### **April 15, 2021**

**Location**  
Virtual meeting via communications  
media technology – details below

- 1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, and INVOCATION**
- 2. ROLL CALL**
- 3. CHANGES TO THE AGENDA**
- 4. REMOVAL OF CONSENT ITEM FOR QUESTION, COMMENT, or SEPARATE VOTE**
- 5. RECOGNITIONS and PROCLAMATIONS**
- 6. PUBLIC COMMENT** - *Each speaker is allowed 3 minutes unless the Commission directs differently. If you wish to provide public comment please submit the online [public comment form](#) at least 30 minutes prior to the start of the meeting.*
- 7. APPROVAL OF CONSENT AGENDA**
  - Consent Agenda Items**
  - a. Approval of EPC Meeting Minutes – February 18, 2021 ..... 2
  - b. Monthly Activity Report FY2021 (February and March 2021) ..... 6
  - c. FY2021 Pollution Recovery Fund Budget..... 9
  - d. Legal Case Notification ..... 11
  - e. Renewal of 3-year Microsoft License Agreement ..... 13
  - f. Tampa Bay Estuary Program Interlocal Agreement Renewal ..... 19
  - g. Granicus Website Agreement Revision ..... 72
- 8. PUBLIC HEARING** (*None*)
- 9. REGULAR AGENDA**
  - a. Section 9 Appeal, Manuel and Tammy Criollo v. Peder Johnsen and EPC, Case No. 20- EPC-015 - Final Order Proceeding ..... 79
  - b. Piney Point Gypsum Stack Update..... 97
  - c. Gopher Resource (a/k/a EnviroFocus Technologies, LLC) Lead Smelting Plant Update ..... 98
  - d. Legislative Update ..... 101
  - e. Executive Director’s Report
- 10. DISCUSSION OF FUTURE AGENDA ITEMS**

## **ADJOURN**

Any person who might wish to appeal any decision made by the EPC regarding any matter considered at the forthcoming public hearing or meeting is hereby advised that they will need a record of the proceedings, and for such purpose they may need to ensure that a verbatim record of the proceedings is made which will include the testimony and evidence upon which such appeal is to be based.

This meeting will be available LIVE as follows: Spectrum - Channel 637, Frontier - Channel 22, Comcast - Channel 22, PC: <http://www.hcflgov.net/HTVlive>, and iOS: <http://65.49.32.149/iosvideo/ios.htm>



# ENVIRONMENTAL PROTECTION COMMISSION

## AGENDA ITEM COVER SHEET

Agenda Item # 7.a.

**Date of EPC Meeting:** April 15, 2021

**Subject:** Approval of February 18, 2021 EPC meeting minutes

**Agenda Section:** Consent Agenda

**Division:** Administration Division

**Recommendation:** Approve the February 18, 2021 EPC meeting minutes.

**Brief Summary:** Staff requests the Commission approve the meeting minutes from the Commission meeting held on February 18, 2021.

**Financial Impact:** No Financial Impact

**List of Attachments:** Draft copy of the February 18, 2021 EPC meeting minutes.

**Background:** None

FEBRUARY 18, 2021 - ENVIRONMENTAL PROTECTION COMMISSION

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting scheduled for Thursday, February 18, 2021, at 9:00 a.m., held virtually.

The following members were present: Chair Mariella Smith (via telephone) and Commissioners Harry Cohen, Ken Hagan, Pat Kemp (via telephone), Gwen Myers, Kimberly Overman (via telephone), and Stacy White.

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND INVOCATION

▶ Chair Smith called the meeting to order at 9:02 a.m. ▶ Commissioner White led in the pledge of allegiance to the flag and gave the invocation.

2. ROLL CALL

▶ The Deputy Clerk called the roll and noted a quorum was present.

3. CHANGES TO THE AGENDA

▶ Ms. Janet Dougherty, EPC Executive Director, stated there were no changes to the agenda.

4. REMOVAL OF CONSENT ITEM FOR QUESTION, COMMENT, OR SEPARATE VOTE - None.

5. RECOGNITIONS and PROCLAMATIONS

Congratulations to Ojas Kalia winner of the 2020 Science, Technology, Engineering, and Mathematics (STEM) Fair and the recipient of EPC's Environmental Merit Award.

▶ Ms. Dougherty provided the presentation. Remarks followed.

Memorial to Kent Bailey for his dedication to preserving and protecting the environment for all Hillsborough County residents.

▶ Chair Smith introduced Commissioner Kemp, who expounded on the item. Supportive comments continued.

6. PUBLIC COMMENT - ▶ None.

7. APPROVAL OF CONSENT AGENDA

Consent Agenda Items

a. Approval of EPC Meeting Minutes - January 14, 2021

b. Monthly Activity Report Fiscal Year (FY) 2021 (January 2021)

THURSDAY, FEBRUARY 18, 2021

- c. FY 2021 Pollution Recovery Fund Budget
- d. Legal Case Notification
- e. Request Authorization for Legal Action Regarding Noise Violations
- f. Action Plans Quarterly Update
- g. Select Performance Measure Goals Quarterly Update

▶ Chair Smith sought a motion to approve the Consent Agenda. **Commissioner Kemp so moved, seconded by Commissioner Overman.** Upon roll call vote, ▶ **the motion carried seven to zero.**

8. PUBLIC HEARING - None.

9. REGULAR AGENDA

- a. Presentation on the Petroleum Restoration Program

▶ Ms. Steffanie Wickham, EPC, supplied a presentation. ▶ Chair Smith inquired on remediating the petroleum contamination. Commissioner Cohen asked about qualifying requirements for the program. Commissioner Kemp wondered if the markers on the map were active cases and sought clarification if the map showed what items were remedied and needed to be rectified. Talks occurred.

- b. Executive Director's Report

▶ Ms. Dougherty shared the presentation. Dialogue ensued on solar panels.

10. DISCUSSION OF FUTURE AGENDA ITEMS - ▶ None.



THURSDAY, FEBRUARY 18, 2021

11. ADJOURN

▶ There being no further business, the meeting was adjourned at 10:23 a.m.

READ AND APPROVED: \_\_\_\_\_  
CHAIR

ATTEST:  
CINDY STUART, CLERK

By: \_\_\_\_\_  
Deputy Clerk

ad

DRAFT



# ENVIRONMENTAL PROTECTION COMMISSION

## AGENDA ITEM COVER SHEET

Agenda Item # 7.b.

**Date of EPC Meeting:** April 15, 2021

**Subject:** Agency Monthly Activity Report

**Agenda Section:** Consent Agenda

**Division:** All five EPC Divisions

**Recommendation:** None. Informational report.

**Brief Summary:** The Agency-wide report represents the total number of select divisional activities that were tracked within a specific month.

**Financial Impact:** No financial impact.

**List of Attachments:** Agency monthly report for February and March FY21

**Background:** Select data that is associated with the EPC's five core functions; outreach, monitoring, compliance and enforcement, is tracked monthly by each Division. These monthly activity reports are then tallied to generate one final Agency-wide report.

**EPC STAFF ACTIVITIES - AGENCY-WIDE**  
**Monthly Activity Report**  
**FY21**

		<b>February</b>	<b>March</b>	<b>FISCAL YEAR TO DATE</b>
<b>A.</b>	<b><u>Core Function: Citizen Support &amp; Outreach</u></b>			
1	Environmental Complaints Received (see attached Divisional breakdown)			see attached
2	Number of Presentations/Outreach Events	1	9	25
3	Citizen Support (walk-ins, file reviews, email/letter correspondence, etc.)	349	456	2296
<b>B.</b>	<b><u>Core Function: Air &amp; Water Monitoring</u></b>			
1	Air Monitoring Data Completeness (Note: reflects previous month due to data acquisition delay)	97.1%	95.5%	N/A
2	Water Quality Monitoring Data Completeness (Note: reflects previous month due to data acquisition delay)	99.4%	97.8%	N/A
3	Number of Noise Monitoring Events	1	7	16
<b>C.</b>	<b><u>Core Function: Environmental Permitting</u></b>			
1	Permit/Authorization Applications Received	161	213	1034
2	Applications In-house >180 days	5	3	N/A
3	Permits/Authorizations Issued	157	177	944
4	Petroleum Cleanup Cases	120	167	697
<b>D.</b>	<b><u>Core Function: Compliance Assurance</u></b>			
1	Compliance Inspections	487	426	2323
2	Compliance Test Reviews (NOTE: Wetlands reviews included under D.1)	166	172	788
3	Compliance Assistance Letters Issued	120	26	687
4	Warning Notices Issued	20	17	113
<b>E.</b>	<b><u>Core Function: Enforcement</u></b>			
1	New Cases Initiated	3	4	20
2	Active Cases	61	61	N/A
3	Tracking Cases	50	47	N/A



# Citizen Support & Outreach

## Environmental Complaints Received for FY2021

04/08/2021 09:50 AM

Environmental Complaints Received	Feb	Mar	FY2021
<b>Agency Total</b>	<b>146</b>	<b>150</b>	<b>761</b>
<b>Air Division</b>	<b>64</b>	<b>50</b>	<b>275</b>
General	1	6	29
Noise	44	31	180
Open Burning	8	6	37
Pollution	11	7	29
<b>Waste Division</b>	<b>12</b>	<b>18</b>	<b>95</b>
General			1
Solid & Hazardous Waste	11	13	76
SQG	1	4	17
Wastewater		1	1
<b>Water Division</b>	<b>25</b>	<b>34</b>	<b>139</b>
General	1	2	9
Unauthorized Discharge/Disposal	4	5	24
Wastewater	17	19	81
Water Pollution/Quality	3	8	25
<b>Wetlands Division</b>	<b>45</b>	<b>48</b>	<b>252</b>
Dredge & Fill	11	10	59
General			5
Mangrove Impacts	6	7	31
Unauthorized Seawall/Dock	7	6	28
Water Pollution/Quality	1	2	9
Wetland Clearing	16	18	96
Wetland Flooding/Drainage	4	5	24



# ENVIRONMENTAL PROTECTION COMMISSION

## AGENDA ITEM COVER SHEET

Agenda Item # 7.c.

**Date of EPC Meeting:** April 15, 2021

**Subject:** Pollution Recovery Fund Budget

**Agenda Section:** Consent Agenda

**Division:** Administration Division

**Recommendation:** Informational Report Only

**Brief Summary:** The EPC staff provides a monthly summary of the funds allocated and available in the Pollution Recovery Fund.

**Financial Impact:** No Financial Impact

**List of Attachments:** PRF Budget Spreadsheet

**Background:** The EPC staff provides a monthly summary of the funds allocated and available in the Pollution Recovery Fund (PRF). The PRF funds are generated by monetary judgments and civil settlements collected by the EPC staff. The funds are then allocated by the Commission for restoration, education, monitoring, the Artificial Reef Program, and other approved uses.

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY  
FY 21 POLLUTION RECOVERY FUND  
10/1/2020 through 3/31/2021**

REVENUE		EXPENDITURES		RESERVES		NET PRF
Beginning Balance	\$ 766,982	Artificial Reef	\$ 33,338	Minimum Balance	\$ 120,000	
Interest	\$ 579	Open Projects	\$ 439,936	Est. FY 22 Budget	\$ 33,338	
Deposits	\$ 128,468			Asbestos Removal	\$ 5,000	
Total	\$ 896,029	Total	\$ 473,274	Total	\$ 158,338	\$ 264,417

PROJECT	Project Amount	Project Balance
<b>FY18 Projects</b>		
Audubon Florida Invasive Removal	10131.102063.582990.5370.1293 \$ 50,000	\$ 45,611
TBW MacDill AFB Living Shoreline	10131.102063.582990.5370.1294 \$ 49,324	\$ 11,963
UF Small Farms For Clean Water	10131.102063.581990.5370.1295 \$ 15,750	\$ 14,269
	\$ 115,074	\$ 71,843
<b>FY21 Projects</b>		
TBW 2D Island Living Shoreline	10131.102063.582990.5370.1350 \$ 49,560	\$ 49,560
Eckerd College Microplastic Pollution	10131.102063.582990.5370.1351 \$ 49,450	\$ 49,450
Sun City Audubon Phase 2 Nature Trail	10131.102063.582990.5370.1352 \$ 20,000	\$ 20,000
USF Multidrug Resistant Bacteria	10131.102063.581990.5370.1353 \$ 50,000	\$ 50,000
Tampa P&R Ignacio Haya Park	10131.102063.581001.5270.1354 \$ 50,000	\$ 50,000
USF Fecal Source Detection	10131.102063.581990.5370.1355 \$ 50,000	\$ 50,000
ERI MacDill AFB Saltern Restoration	10131.102063.582990.5370.1356 \$ 37,000	\$ 37,000
ERI FWC Living Shoreline Demo Site	10131.102063.582990.5370.1357 \$ 42,000	\$ 42,000
UF/IFAS Florida Friendly Landscaping	10131.102063.581990.5370.1358 \$ 8,600	\$ 8,600
	\$ 356,610	\$ 356,610



# ENVIRONMENTAL PROTECTION COMMISSION

## AGENDA ITEM COVER SHEET

Agenda Item # 7.d.

**Date of EPC Meeting:** April 15, 2021

**Subject:** Legal Case Notification

**Agenda Section:** Consent Agenda

**Division:** Legal Department

**Recommendation:** None. Informational.

**Brief Summary:** This notification is to assist Commissioners in identifying potential conflicts of interest that may exist and that may require disclosure prior to taking action in a quasi-judicial administrative matter. It is also intended to assist Commissioners in avoiding discussing matters with parties during administrative or civil litigation.

**Financial Impact:** Standard litigation costs are included in the Legal Department's operating budget, but any individual case may require a future budget amendment.

**List of Attachments:** None

**Background:** The EPC Legal Department primarily handles litigation in administrative and civil forums. A list of new litigation cases the EPC is involved in since the previous Commission meeting is provided below.

Administrative appeals (a/k/a administrative hearings, petitions, challenges, or Section 9 Appeals) involve challenges to agency actions such as permit application decisions or administrative enforcement actions (e.g. – citation or consent order). These proceedings are conducted before an appointed hearing officer who enters a recommended order after an evidentiary hearing. After the hearing officer issues the recommendation, the administrative appeal is transferred back to the Commission to render a final order. Acting in this quasi-judicial capacity, the Commission and all parties are subject to ex-parte communication restrictions. After receipt of an appeal or a request for an extension of time to file an appeal, the Commission should avoid discussing those cases. The below list of cases can assist Commissioners in identifying persons or entities that may present a conflict of interest. Certain conflicts may require the Commission to recuse themselves from voting on a final order. Please note, the Legal Department provides notice of sufficient appeals to the Commission via e-mail to assist in the conflict check process and as a reminder to limit communications; therefore, the Commission may have already received prior notification of the administrative case(s) listed below.

If the EPC becomes a party in civil litigation either through an approved Request for Authority to Initiate Litigation or by receipt of a lawsuit, the case will also be listed below. Any attorneys representing opposing party(ies) must communicate through the EPC counsel and should not contact the Commission directly. It also recommended that the Commissioners avoid discussing litigation prior to consulting with EPC counsel.

Please direct any calls or e-mails concerning administrative or civil litigation to the EPC Legal Department.

**NEW LITIGATION CASES OPENED SINCE LAST EPC COMMISSION MEETING:**

<b>EPC Case No.</b>	<b>Date Opened</b>	<b>Case Type</b>	<b>Case Style</b>	<b>Division</b>
21-EPC-004	2021-02-18	Civil Lawsuit	EPC v. Jezebell, LLC	Air
21-EPC-005	2021-04-06	Administrative	Pradeep Vaish v. Jack Sanders and EPC	Wetlands





# ENVIRONMENTAL PROTECTION COMMISSION

## AGENDA ITEM COVER SHEET

Agenda Item # 7.e.

**Date of EPC Meeting:** April 15, 2021

**Subject:** Approve renewal of 3-Year Microsoft License Agreement

**Agenda Section:** Consent Agenda

**Division:** Administration Division

**Recommendation:** Approve renewal and purchase of the 3-Year Microsoft License Agreement and authorize the EPC Chairperson to execute any necessary agreement with vendor, SHI International Corp. Additionally, authorize the Executive Director to approve any future amendments or renewals below the \$100,000 threshold.

**Brief Summary:** Agency-wide Microsoft License Agreement expires July 31, 2021. A new 3-year agreement with SHI International Corp. is required for the EPC staff to continue the use of Microsoft Office.

**Financial Impact:** Funds for purchase (\$155,005.08) are within existing budgets. No additional funds required.

**List of Attachments:** 3-Year Microsoft License Quote #19931316

**Background:** The Agency's current Microsoft License Agreement is scheduled to expire on July 31, 2021. The current licensed vendor of the product is SHI International Corp. In order to continue operation of the EPC's Microsoft Office licenses, a new 3-Year Microsoft License Agreement is required. The new 3-Year agreement will cover the timeframe from August 1, 2021 through July 31, 2024.

Pursuant to EPC policy, agreement execution and purchase authorization is to be authorized by the Commission since the amount exceeds \$100,000 (total cost - \$155,005.08). This agreement was anticipated and funds were allocated by the BOCC within the FY21 budget. The Microsoft License agreement allows the EPC staff to use Microsoft products such as Word, Excel, PowerPoint, and Outlook. Staff request the Commission approve the purchase of the 3-year Microsoft License Agreement from SHI International Corp. and authorize the EPC Chair to execute an agreement that reflects the services and costs noted in the attached quote.

Staff request the Commission approve the purchase of the 3-year Microsoft License Agreement from SHI International Corp. and authorize the EPC Chair to execute an agreement that reflects the services and costs noted in the attached quote. Additionally, authorize the Executive Director to approve any future amendments or renewals below the \$100,000 threshold.



Pricing Proposal  
 Quotation #: 19931316  
 Created On: Jan-15-2021  
 Valid Until: May-31-2021

**Environmental Protection Commission of Hillsborough County**

**Inside Account Manager**

**Elaine DeLeeuw**  
 Phone: (813) 627-2600 x1044  
 Fax:  
 Email: Deleeuw@epchc.org

**Shaina Chinchilla**  
 290 Davidson Avenue  
 Somerset, NJ 08873  
 Phone: 800-543-0432  
 Fax: 732-868-6055  
 Email: Shaina\_Chinchilla@shi.com

All Prices are in US Dollar (USD)

Product	Qty	Your Price	Total
1 Azure prepaymentG ShrdSvr ALNG SubsVL MVL Commit Provision Microsoft - Part#: J5U-00004 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2021 – Jul-31-2022 <b>Note: EA# 53861245</b>	1	\$0.00	\$0.00
2 CoreCALBridgeO365 ALNG SubsVL MVL PerUsr Microsoft - Part#: AAA-12414 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2021 – Jul-31-2022 <b>Note: EA# 53861245</b>	10	\$19.17	\$191.70
3 CoreCALBridgeO365 ALNG SubsVL MVL Pltfrm PerUsr Microsoft - Part#: AAA-12415 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2021 – Jul-31-2022 <b>Note: EA# 53861245</b>	150	\$18.29	\$2,743.50
4 Defender for O365 Plan 1 GCC SubVL Per User Microsoft - Part#: 3GU-00001 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2021 – Jul-31-2022 <b>Note: EA# 53861245</b>	160	\$18.58	\$2,972.80
5 O365GCCE1 ShrdSvr ALNG SubsVL MVL PerUsr Microsoft - Part#: U4S-00002 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2021 – Jul-31-2022	10	\$78.24	\$782.40

**Note:** EA# 53861245

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6	O365GCCE3 ShrdSvr ALNG SubsVL MVL PerUsr Microsoft - Part#: AAA-11894 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2021 – Jul-31-2022 <b>Note:</b> EA# 53861245	150	\$215.16	\$32,274.00
7	SQLSvrStdCore ALNG SA MVL 2Lic CoreLic Microsoft - Part#: 7NQ-00292 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2021 – Jul-31-2022 <b>Note:</b> EA# 53861245	6	\$573.76	\$3,442.56
8	WinE3 ALNG SubsVL MVL PerUsr Microsoft - Part#: AAA-10787 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2021 – Jul-31-2022 <b>Note:</b> EA# 53861245	10	\$60.64	\$606.40
9	WinE3 ALNG SubsVL MVL Pltfrm PerUsr Microsoft - Part#: AAA-10798 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2021 – Jul-31-2022 <b>Note:</b> EA# 53861245	150	\$57.70	\$8,655.00
10	Azure prepaymentG ShrdSvr ALNG SubsVL MVL Commit Provision Microsoft - Part#: J5U-00004 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2022 – Jul-31-2023 <b>Note:</b> EA# 53861245	1	\$0.00	\$0.00
11	CoreCALBridgeO365 ALNG SubsVL MVL PerUsr Microsoft - Part#: AAA-12414 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2022 – Jul-31-2023 <b>Note:</b> EA# 53861245	10	\$19.17	\$191.70
12	CoreCALBridgeO365 ALNG SubsVL MVL Pltfrm PerUsr Microsoft - Part#: AAA-12415 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2022 – Jul-31-2023 <b>Note:</b> EA# 53861245	150	\$18.29	\$2,743.50
13	Defender for O365 Plan 1 GCC SubVL Per User Microsoft - Part#: 3GU-00001 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services	160	\$18.58	\$2,972.80

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Contract #: 43230000-15-02  
Coverage Term: Aug-01-2022 – Jul-31-2023  
**Note:** EA# 53861245

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14	O365GCCE1 ShrdSvr ALNG SubsVL MVL PerUsr Microsoft - Part#: U4S-00002 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2022 – Jul-31-2023 <b>Note:</b> EA# 53861245	10	\$78.24	\$782.40
15	O365GCCE3 ShrdSvr ALNG SubsVL MVL PerUsr Microsoft - Part#: AAA-11894 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2022 – Jul-31-2023 <b>Note:</b> EA# 53861245	150	\$215.16	\$32,274.00
16	SQLSvrStdCore ALNG SA MVL 2Lic CoreLic Microsoft - Part#: 7NQ-00292 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2022 – Jul-31-2023 <b>Note:</b> EA# 53861245	6	\$573.76	\$3,442.56
17	WinE3 ALNG SubsVL MVL PerUsr Microsoft - Part#: AAA-10787 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2022 – Jul-31-2023 <b>Note:</b> EA# 53861245	10	\$60.64	\$606.40
18	WinE3 ALNG SubsVL MVL Pltfrm PerUsr Microsoft - Part#: AAA-10798 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2022 – Jul-31-2023 <b>Note:</b> EA# 53861245	150	\$57.70	\$8,655.00
19	Azure prepaymentG ShrdSvr ALNG SubsVL MVL Commit Provision Microsoft - Part#: J5U-00004 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2023 – Jul-31-2024 <b>Note:</b> EA# 53861245	1	\$0.00	\$0.00
20	CoreCALBridgeO365 ALNG SubsVL MVL PerUsr Microsoft - Part#: AAA-12414 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2023 – Jul-31-2024 <b>Note:</b> EA# 53861245	10	\$19.17	\$191.70
21	CoreCALBridgeO365 ALNG SubsVL MVL Pltfrm PerUsr Microsoft - Part#: AAA-12415	150	\$18.29	\$2,743.50

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Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services

Contract #: 43230000-15-02

Coverage Term: Aug-01-2023 – Jul-31-2024

**Note:** EA# 53861245

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22	Defender for O365 Plan 1 GCC SubVL Per User Microsoft - Part#: 3GU-00001 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2023 – Jul-31-2024 <b>Note:</b> EA# 53861245	160	\$18.58	\$2,972.80
23	O365GCCE1 ShrdSvr ALNG SubsVL MVL PerUsr Microsoft - Part#: U4S-00002 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2023 – Jul-31-2024 <b>Note:</b> EA# 53861245	10	\$78.24	\$782.40
24	O365GCCE3 ShrdSvr ALNG SubsVL MVL PerUsr Microsoft - Part#: AAA-11894 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2023 – Jul-31-2024 <b>Note:</b> EA# 53861245	150	\$215.16	\$32,274.00
25	SQLSvrStdCore ALNG SA MVL 2Lic CoreLic Microsoft - Part#: 7NQ-00292 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2023 – Jul-31-2024 <b>Note:</b> EA# 53861245	6	\$573.76	\$3,442.56
26	WinE3 ALNG SubsVL MVL PerUsr Microsoft - Part#: AAA-10787 Contract Name: Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract #: 43230000-15-02 Coverage Term: Aug-01-2023 – Jul-31-2024 <b>Note:</b> EA# 53861245	10	\$60.64	\$606.40
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			Total	\$155,005.08

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#### Additional Comments

Thank you for choosing SHI International Corp! The pricing offered on this quote proposal is valid through the expiration date listed above. To ensure the best level of service, please provide End User Name, Phone Number, Email Address and applicable Contract

Number when submitting a Purchase Order. For any additional information including Hardware, Software and Services Contracts, please contact an SHI Inside Sales Representative at (888) 744-4084. SHI International Corp. is 100% Minority Owned, Woman Owned Business. TAX ID# 22-3009648; DUNS# 61-1429481; CCR# 61-243957G; CAGE 1HTF0

Hardware items on this quote may be updated to reflect changes due to industry wide constraints and fluctuations.

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*The products offered under this proposal are resold in accordance with the terms and conditions of the Contract referenced under that applicable line item.*



# ENVIRONMENTAL PROTECTION COMMISSION

## AGENDA ITEM COVER SHEET

Agenda Item # 7.f.

**Date of EPC Meeting:** April 15, 2021

**Subject:** Renewal of Tampa Bay Estuary Program Interlocal Agreement

**Agenda Section:** Consent Agenda

**Division:** Water Division

**Recommendation:** Recommend Commission approval and authorize Chair's signature to execute the document on behalf of EPC.

**Brief Summary:** The Commission is requested to continue EPC's participation as a party to the Tampa Bay Estuary Program by Executing the latest 5-year Renewal of the TBEP Interlocal Agreement

**Financial Impact:** \$10,000 annual contribution to the Tampa Bay Environmental Restoration Fund (TBERF) from Pollution Recovery Funds.

**List of Attachments:** Tampa Bay Estuary Program Amended and Restated Interlocal Agreement

**Background:** As a member government of the Tampa Bay Estuary Program, EPC agrees to work together in good faith and through their best efforts to address actions and recommendations in the Comprehensive Conservation and Management Plan (CCMP) for Tampa Bay. This includes, among other things, supporting CCMP habitat goals for Tampa Bay by assisting the Tampa Bay Estuary Program in implementing and recording habitat protection and restoration activities. These goals focus on issues that must be addressed to sustain a healthier bay that will support both recreation and commerce, including but not limited to: clean water and sediments; thriving habitats and abundant wildlife; and an informed, engaged and responsible community.

**Staff Recommendation:** Commission approval to enter into the Tampa Bay Estuary Program Amended and Restated Interlocal Agreement and to authorize the Chair's signature to execute the document on behalf of EPC.

**TAMPA BAY ESTUARY PROGRAM  
AMENDED AND RESTATED INTERLOCAL AGREEMENT**

**THIS TAMPA BAY ESTUARY PROGRAM INTERLOCAL AGREEMENT** (the “Agreement”) is executed and made effective by and among the following governmental entities:

1. CITY OF CLEARWATER, a Florida municipal corporation; 2. CITY OF ST. PETERSBURG, a Florida municipal corporation; 3. CITY OF TAMPA, a Florida municipal corporation; 4. FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, a Florida state agency; 5. FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION’S FISH AND WILDLIFE RESEARCH INSTITUTE, an institute; 6. HILLSBOROUGH COUNTY, a political subdivision of the State of Florida; 7. THE ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY, a political subdivision of the State of Florida; 8. MANATEE COUNTY, a political subdivision of the State of Florida; 9. PINELLAS COUNTY, a political subdivision of the State of Florida; 10. SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT, a public corporation of the State of Florida; 11. the TAMPA PORT AUTHORITY, an independent special district of the State of Florida; 12. the TAMPA BAY REGIONAL PLANNING COUNCIL, a Florida regional planning council; 13. TAMPA BAY WATER, a regional water supply authority; 14. PASCO COUNTY, a political subdivision of the State of Florida; and, 14 15. the MANATEE COUNTY PORT AUTHORITY, a dependent special district of the State of Florida, (collectively the “Parties” and each singularly a “Party”), and the following recitation of facts are provided in support of this Agreement:

(A) The Tampa Bay National Estuary Program (hereinafter, “Tampa Bay Estuary Program” or “Program”) was established in 1991 to assist the Tampa Bay area in developing a



comprehensive plan to restore and protect Tampa Bay. The Tampa Bay Estuary Program was created by Interlocal Agreement dated February 27, 1998 (the “Original Interlocal Agreement”), as amended and restated August 10, 2015, and is governed by a Policy Board and advised by a Management Board. The Tampa Bay Estuary Program is a part of a national network of twenty-eight (28) National Estuary Programs established under the Federal Clean Water Act and administered nationally by the United States Environmental Protection Agency.

(B) Local government and regulatory agency participants in the Tampa Bay Estuary Program consisting of the Parties described in the Preamble above, as well as the United States Environmental Protection Agency and the United States Army Corps of Engineers, have developed and unanimously adopted a Comprehensive Conservation & Management Plan for Tampa Bay, known as Charting the Course, dated December 1996, which was updated in May 2006, amended in February 2013, and updated again in 2017 (the “CCMP”), and are committed to its successful implementation. The CCMP seeks to ensure that Tampa Bay remains a vibrant part of the region's environmental and economic landscape by preserving and enhancing its roles as a recreational resource, international seaport and home for fish and wildlife.

(C) The CCMP presents goals for clean water and sediments; thriving habitats and abundant wildlife; and an informed, engaged and responsible community which will be re-examined at least once every five (5) years and updated as appropriate. To achieve the CCMP goals, this Agreement emphasizes regional cooperation and regulatory flexibility that allows the Parties to select cost-effective and environmentally beneficial bay improvement options for their communities, so long as the goals of the CCMP are met.

(D) The parties to the CCMP and the Original Interlocal Agreement, established the Tampa Bay Estuary Program as the first National Estuary Program to adopt a binding agreement for implementation of the CCMP, and now seek to ensure that the CCMP continues to be properly and effectively implemented.

**NOW THEREFORE**, in consideration of the mutual promises contained in this Agreement, the receipt and adequacy acknowledged by them, the Parties agree as follows:

### **ARTICLE ONE – INTRODUCTORY PROVISIONS**

1.1 **Recitals.** The statements contained in the recitation of facts set forth above (collectively the "Recitation of Facts") are true and correct, and are hereby made a part of this Agreement by this reference.

1.2 **Exhibits.** The exhibits which are attached to this Agreement are by this reference made a part hereof.

1.3 **Abbreviations and Definitions.** The following abbreviations and definitions will be used for purposes of this Agreement:

(a) The abbreviations and definitions contained in the Preamble will be used for purposes of this Agreement.

(b) The abbreviations and definitions contained in the Recitals will be used for purposes of this Agreement.

(c) The term “Act” shall mean Section 163.01, Florida Statutes, the Florida Interlocal Cooperation Act of 1969.

(d) The term “Action Plan(s)” shall mean the comprehensive action plans set forth in the CCMP, including initiatives and strategies to be undertaken to attain the CCMP Goals.

(e) The term “Agreement” shall mean this Amended and Restated Interlocal Agreement between the Parties as it is presently constituted or as it may be amended from time to time.

(f) The term “Army Corps” shall mean the United States Army Corps of Engineers, a federal agency.

(g) The term “CCMP” shall mean the Comprehensive Conservation and Management Plan, dated December 1996, unanimously approved by the Parties, as updated in May 2006, amended in February 2013, and again updated in 2017, and as it may be amended from time to time.

(h) The term “CCMP Goals” or “Goals” shall mean those goals and priorities of the CCMP set forth in Section 4.1 below, as amended from time to time.

(i) The term “Clearwater” shall mean the City of Clearwater, a Florida municipal corporation.

(j) The term “Cities” shall mean collectively Clearwater, St. Petersburg, and Tampa.

(k) The term “Contribution” includes funding of the Tampa Bay Estuary Program, the Tampa Bay Environmental Restoration Fund, the Bay Mini Grant Program and/or projects which support the goals of the CCMP and are included in the approved Work Plan.

(l) The term “Counties” shall mean collectively Hillsborough, Manatee, Pasco and Pinellas.

(m) The term “DEP” shall mean the Florida Department of Environmental Protection, a Florida state agency.

(n) The term “Effective Date” shall mean the date that all Parties have duly executed this Agreement and filing has been completed under Section 11.14 below.

(o) The term “EPA” shall mean the United States Environmental Protection Agency, a federal agency.

(p) The term “EPC” shall mean the Environmental Protection Commission of Hillsborough County, a political subdivision of the State of Florida.

(q) The term “Full Budget” includes the Work Plan Budget and all other funding received by the Tampa Bay Estuary Program for projects, programs, operations and staffing.

(r) The term “Funding Entity” shall mean and include Local Governments and SWFWMD.

(s) The term “Hillsborough” shall mean Hillsborough County, a political subdivision of the State of Florida.

(t) The term “Institute” shall mean the Florida Fish and Wildlife Conservation Commission’s Fish and Wildlife Research Institute.

(u) The term “Local Governments” shall mean collectively the Cities and the Counties.

(v) The term “Management Board” shall mean a board of the Tampa Bay Estuary Program, as set forth and described in Article Five below.

(w) The term “Manatee” shall mean Manatee County, a political subdivision of the State of Florida.

(x) The term “Manatee Port Authority” shall mean Manatee County Port Authority, a dependent special district of the State of Florida.

(y) The term “Original Interlocal Agreement” shall mean the Interlocal Agreement dated February 27, 1998.

(z) The term “Tampa Bay Nitrogen Management Consortium” or “Consortium” shall mean an ad hoc task force of representatives from the currently existing Management Board, other municipalities and counties located within the Tampa Bay watershed, private entities, electric utility industry, fertilizer industry, other industries with permitted nitrogen discharges, agriculture representatives, and regulatory agencies.

(aa) The term “Pasco” shall mean Pasco County, a political subdivision of the State of Florida.

(bb) The term "Pinellas" shall mean Pinellas County, a political subdivision of the State of Florida.

(cc) The term "Policy Board" shall mean a board of the Tampa Bay Estuary Program, as set forth and described in Article Five below.

(dd) The term "Tampa Port Authority" shall mean the Tampa Port Authority, a Florida port authority.

(ee) The term "Regulatory Agencies" shall mean the governmental agencies with regulatory authority as identified in each agency’s authorizing law or document creating such agency, district or commission, including EPA, DEP, EPC, Tampa Port Authority, and SWFWMD.

(ff) The term "St. Petersburg" shall mean the City of St. Petersburg, a Florida municipal corporation.

(gg) The term "SWFWMD" shall mean the Southwest Florida Water Management District, a public corporation of the State of Florida.

(hh) The term "Tampa" shall mean the City of Tampa, a Florida municipal corporation.

(ii) The term "Tampa Bay Water" shall mean a regional water supply authority formed pursuant to Sections 373.713, 373.715 and 163.01, Florida Statutes.

(jj) The term "TBRPC" shall mean the Tampa Bay Regional Planning Council, a Florida regional planning council.

(kk) The term "Work Plan" shall mean the annual document outlining the previous year's accomplishments and the upcoming year's priorities, projects, funding partners and expenditures to meet the requirements of the EPA's Cooperative Agreement with the Tampa Bay Estuary Program pursuant to CWA 320, and adopted by the Policy Board.

(ll) The term "Work Plan Budget" shall mean that portion of the Full Budget which includes the funding for projects identified in the Tampa Bay Estuary Program Work Plan.

## **ARTICLE TWO – AMENDED AND RESTATED INTERLOCAL AGREEMENT**

2.1 **Authority.** This Agreement is an interlocal agreement, as contemplated by the Act, and pursuant to the authority of subsection (4) of the Act, all of the Parties qualify to be a part of this Agreement under such Act.

2.2 **Immunity.** Pursuant to subsection (9) of the Act, all of the privileges and immunities from liability, exemptions from laws, ordinances and rules, and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents or employees of any public agent or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, or employees extraterritorially under the provisions of this Agreement.

2.3 **Amendment and Restatement of Original Interlocal Agreement.** This Agreement amends and restates the Original Interlocal Agreement in its entirety such that the Original Interlocal Agreement and all exhibits thereto are hereby superseded and subsumed into this Agreement, and all terms, obligations, powers and responsibilities regarding matters addressed herein and in the Original Interlocal Agreement shall be governed solely by this Agreement. All acts and omissions of the Parties hereto, their officers, employees, agents and assigns, and all of the officers, employees, agents and assigns of the Tampa Bay Estuary Program established as a legal entity pursuant to the Original Interlocal Agreement, taken or carried out pursuant to the Original Interlocal Agreement, are hereby ratified and affirmed under this Agreement.

### **ARTICLE THREE – TERM**

3.1 **Term.** The term of this Agreement is perpetual, commencing on the Effective Date (the "Term"), unless earlier terminated as provided herein. The first day of the Term (the "Effective

Date") will be referred to below as the "Commencement Date." The last day of the Term will be referred to below as the "Termination Date."

3.2 **Sundown Review.** This Agreement shall be subject to a review by the Policy Board five (5) years from the Effective Date of this Agreement and on the same day of each five (5) year period thereafter at which time the Policy Board shall evaluate the appropriateness and effectiveness of this Agreement and the Tampa Bay Estuary Program. The Policy Board shall vote by majority vote on whether to submit a recommendation to the Parties to terminate this Agreement, amend this Agreement or to let the status quo prevail. Should no action by the Parties occur, this Agreement shall continue for another five (5) year period.

#### **ARTICLE FOUR – CCMP**

4.1 **Adoption of CCMP Goals and Priorities.** The Parties hereby agree that the Goals for Tampa Bay described in the CCMP are approved and adopted by each of them. The Goals for Tampa Bay are to maintain important water quality and seagrass gains achieved since 1991 and to maintain seagrass acreage at or above levels observed in 1950. The Goals focus on issues that must be addressed to sustain a healthier bay that will support both recreation and commerce, including but not limited to: clean water and sediments; thriving habitats and abundant wildlife; and an informed, engaged and responsible community. The Goals shall be achieved in the manner described in Section 4.3 below. The Parties shall use their best efforts to achieve the Goals within the time periods prescribed, and shall work cooperatively to attempt to achieve all of the Goals applicable to them in a cost-effective manner. Additionally, the Parties agree to work together in



good faith and through their best efforts to address other actions and recommendations in the CCMP.

4.2 **Modification.** The CCMP and its incorporated Goals for Tampa Bay shall not be amended, changed, extended, modified or supplemented without the unanimous written consent of all of the Parties, to be decided in their respective sole and absolute discretion. The Goals shall be re-examined by the Tampa Bay Estuary Program at least once every five (5) years in light of new knowledge or changed circumstances and updated accordingly. The Policy Board may elect by a majority vote to re-examine the Goals more frequently if warranted by them. When it has been determined by the Policy Board unanimously that a Goal has been met, the Policy Board will thereafter support efforts by the Parties and the Consortium, as appropriate, that provide for the ongoing maintenance of the resource.

4.3 **Goals: Achievement.** The only CCMP Goal that is to be achieved individually by any of the Parties is the nitrogen loading reduction/management, to be accomplished by the Local Governments and other members of the Consortium, as described in the “Reasonable Assurance Addendum: Allocation and Assessment Report” dated September 11, 2009, updated in the “2012 Reasonable Assurance Update” dated December 14, 2012, the “2017 Reasonable Assurance Update” dated September 29, 2017, and subsequent Reasonable Assurance Updates, and implemented through actions identified in the Consortium’s Action Plan Database (“Action Plan Database”). The Tampa Bay Estuary Program shall facilitate and assist the Parties to collectively address the remaining CCMP Goals. If a cumulative Goal is not met within its stated goal period, then the Tampa Bay Estuary Program will develop the additional projects necessary to address the

shortfall, including the funding sources, which projects and funding are subject to the approval of the Policy Board.

4.4 **Nitrogen Management Consortium Responsibilities.** The Consortium participants have made and are expected to continue to make significant contributions toward achieving the CCMP goal of nitrogen loading management by meeting entity-specific nitrogen load allocations as identified in the “Reasonable Assurance Addendum: Allocation and Assessment Report” dated September 11, 2009, updated in the “2012 Reasonable Assurance Update” dated December 14, 2012, the “2017 Reasonable Assurance Update” dated September 29, 2017, and approved by the Consortium participants.

4.5 **Existing Projects.** The Parties shall be able to take into account, in their nutrient management actions, projects that accomplish their designated responsibilities to the extent that such projects were completed and became operational on or after January 1, 1995.

## **ARTICLE FIVE – STRUCTURE OF THE TAMPA BAY ESTUARY PROGRAM**

5.1 **Tampa Bay Estuary Program.** The Tampa Bay Estuary Program was created and continues under authority of Section 163.01(7), Florida Statutes. The Tampa Bay Estuary Program shall have those powers specifically described in or contemplated by this Agreement, which shall be exercised by, or in accordance with policies or procedures approved by, the Policy Board.

- (a) The Tampa Bay Estuary Program shall:

(i) Have the powers and be in compliance with subsection (5) of the Act;

(ii) Determine, adopt and implement a personnel policy for the recruitment, retention, supervision, discipline and evaluation of Tampa Bay Estuary Program employees and be solely responsible for any claims by its employees;

(iii) Make purchases and enter into contracts in the manner determined and, adopted by the Policy Board in the operating procedures for the Tampa Bay Estuary Program;

(iv) Determine the manner of acquisition, ownership, custody, operation, maintenance, lease or sale of real or personal property;

(v) Determine the manner of the acceptance of gifts, grants, assistance funds or bequests;

(vi) Determine the making of requests for federal, state, regional, local government or other aid or grants for the Tampa Bay Estuary Program, except as otherwise specifically described in this Agreement;

(vii) Determine Tampa Bay Estuary Program's manner of responding for any liabilities, debts, mortgages or claims that may be incurred through performance under this Agreement, provided that the Tampa Bay Estuary Program shall be solely liable and responsible for any such liabilities, debts, mortgages or claims incurred by or resulting from actions taken by the Tampa Bay Estuary Program;

(viii) Determine the manner in which strict accountability of all funds shall be provided and the manner in which reports, including an annual independent audit, of all receipts and disbursements shall be prepared and presented to the Tampa Bay Estuary Program and all Parties; and,

(ix) Determine, adopt and implement all other necessary and proper matters not otherwise covered above.

(b) The Tampa Bay Estuary Program will not promulgate, issue or make rules or regulations, bonds, tax, charge rates, fees or rents, condemn or possess any of the other governmental powers possessed by the other Parties except as specifically allowed by this Agreement.

(c) In the event there is an undesignated fund balance held by the Tampa Bay Estuary Program, it shall be used in the manner determined by the Policy Board.

(d) The adjudication of disputes or agreements, the effects of failure of adjudicated Parties to pay their share of the cost or expenses and the rights of other Parties in such cases shall be governed by this Agreement and applicable law.

**5.2 Tampa Bay Estuary Program Functions and Responsibilities.** The Tampa Bay Estuary Program shall have the following functions and responsibilities, which are not inconsistent with the Act or any provision of applicable law, and which shall be carried out by, or in accordance with, policies or procedures approved by the Policy Board:

(a) To make and enter into contracts and assume such other functions as are necessary to carry out the provisions of any contracts entered into by the Tampa Bay Estuary Program;

(b) To employ agencies or employees and establish salaries and personnel and employee benefit programs for such full time and temporary employees as are necessary to carry out the functions of the Tampa Bay Estuary Program; provided that the Tampa Bay Estuary Program shall be solely responsible for any claims by its employees;

(c) To acquire, lease, construct, manage, maintain or operate buildings, works or improvements;

(d) To purchase, receive, or otherwise acquire, own, hold, sell, convey, lend, or otherwise dispose of, real, tangible or intangible personal property, or any legal or equitable interest in such property wherever located, and to the extent the Parties all have such power, to mortgage, pledge, or create a security interest in such property;

(e) To incur debts, liabilities, obligations, borrow money, issue its notes and other obligations, and to the extent the Parties all have such power, to secure any of its obligations by mortgage or pledge of any of its property, income and make contracts of guaranty and suretyship which do not constitute the debts, liabilities or obligations of any of the Parties;

(f) To adopt policies or procedures or rules pertaining to any of its operations and to conduct its business, locate offices, and exercise the powers granted by law;

(g) To acquire and to perform all the things necessary to carry out the purposes of this Agreement separately or in conjunction with any of the Parties;

(h) To conduct and pay for studies, plans and designs to effectuate the purpose of the Tampa Bay Estuary Program, which action may include, but is not limited to, plans for staffing, financing, research, advertising and marketing projects;

(i) To enter into interlocal agreements, or other contracts with public or private entities, if necessary, for the purposes described in this Agreement;

(j) To establish any future plan for participation of the Parties to effectuate the terms and provisions of this Agreement, which shall include plans for any additional funding for the purpose of performance of this Agreement; provided that any change, modification or

amendment to the method of funding set forth herein must be approved by all of the Funding Entities;

(k) To appear on its own behalf before boards, commissions, departments, or other agencies of municipal, county, state, or federal government; provided, however, members of the Management Board, Technical Advisory Committee and Community Advisory Committee shall not support or oppose specific projects or permits when acting as, on behalf of, or representing said Board or Committees; provided further that Tampa Bay Estuary Program employees can provide scientific and technical information and participate in technical discussions, but shall not oppose or support specific projects or permits;

(l) To request or accept any grant, payment, or gift, of funds or property made by the State of Florida, or by the United States or any department or agency thereof or by any individual, firm, corporation, municipality, county, or organization for any or all of the purposes of the Tampa Bay Estuary Program; and to expend such funds in accordance with the terms and conditions of any such grant, payment, or gift, in the pursuit of its administration or in support of the terms and provisions of this Agreement. The Tampa Bay Estuary Program shall separately account for the public funds and the private funds deposited into any authorized public depository;

(m) To recommend changes, amendments or modifications to this Agreement, which will become effective only upon approval by all Parties;

(n) To sue and be sued, complain, and defend in its entity name;

(o) To transact any lawful business that will aid governmental policy; and

(p) To make payments or donations or do any other act not inconsistent with law that furthers the affairs of the Tampa Bay Estuary Program.

5.3 **Policy Board.** The Policy Board of the Tampa Bay Estuary Program shall serve as the governing board of the Program and shall be made up of nine (9) voting directors appointed by and representing the Cities, Counties, DEP and SWFWMD (collectively the "Policy Board Member(s)"), and one non-voting participant representing the EPA, and shall be known as the "Policy Board". The representative of each Policy Board Member and the EPA shall be appointed by such Policy Board Member or the EPA, respectively, from time to time. Each Policy Board Member and the EPA shall also appoint an alternate director for the Policy Board from time to time to serve when their director is not available. Each Policy Board Member and the EPA may change either their director or alternate director from time to time with prior written notice by a duly authorized representative of any change to the Policy Board before any meeting. The Policy Board shall have policy making powers for the Tampa Bay Estuary Program in addition to those powers explicitly set forth in this Agreement. Except as otherwise specifically set forth herein, a quorum for meetings shall be five (5) voting members and all action taken by the Policy Board shall be by a majority vote of the Policy Board directors in attendance, with the exception of the EPA representative who will not vote nor be counted for purposes of a quorum. All directors of the Policy Board shall serve without compensation.

5.4 **Management Board.** The Management Board of the Tampa Bay Estuary Program shall consist of representatives of each of the Parties (each of which shall be voting members), one of each of the existing Co-Chairs of the TAC and CAC (both referred to in Section 5.6 below) and the Industry Co-Chair of the Consortium (each of which shall be voting members), and representatives of the Army Corps and EPA (who will be nonvoting members) (the "Management Board"). The actual representatives of each of the Parties and the Army Corps and EPA shall be

appointed by such Management Board member from time to time. Each of the Parties and the Army Corps and EPA shall also appoint an alternate member to the Management Board from time to time, to serve when the actual representative is not available. Each of the Parties and EPA may change either their initial or alternate representatives from time to time with prior written notice by a duly authorized representative, to the Management Board before any meeting. The TAC and CAC shall not have alternate members, with only the alternating Co-Chairs being a member of the Management Board. The Management Board shall have managerial powers for the Tampa Bay Estuary Program to the extent delegated by the Policy Board, in addition to those powers explicitly set forth in this Agreement. Except as otherwise specifically set forth herein, a quorum for meetings shall be ten (10) voting members and all action taken by the Management Board shall be by a majority vote of the board members, with the exception of the Army Corps and EPA representatives who will not vote nor be counted for purposes of a quorum. New members may be added to the Management Board with Policy Board approval, and the Policy Board shall specify whether such new members shall be voting or nonvoting members. All directors of the Management Board shall serve without compensation.

5.5 **Officers.** The Policy Board shall elect (i) a Chair or Chairs of the Policy Board; and (ii) other Policy Board officers. The Management Board shall elect (i) a Chair or Chairs of the Management Board; and (ii) other Management Board officers.

5.6 **Committees.** The Policy Board, or the Management Board at the direction of the Policy Board, shall continue such existing advisory committees as it deems necessary, including without limitation, the Technical Advisory Committee ("TAC") and the Community Advisory Committee ("CAC"). All members of committees shall serve without compensation.



5.7 **Limitations of Powers.** The Tampa Bay Estuary Program shall have no powers of taxation, regulation or eminent domain.

5.8 **Additional Board Members.** The Tampa Bay Estuary Program may allow other governmental entities, regulatory agencies, or other entities, to the extent allowed by law, to participate in the Program as members of the Policy Board, provided they are unanimously approved by the Policy Board in their respective sole and absolute discretion. Upon unanimous approval of the Policy Board, such Party must execute a Joinder Agreement by which it agrees to comply with all of the provisions of this Agreement and agree to contribute to funding of the Tampa Bay Estuary Program. The funding amounts in Exhibit A will be amended accordingly to add the funding obligation of the new Policy Board Member, all as of the first day of the next fiscal year of the Tampa Bay Estuary Program. Once an entity is approved and has executed a Joinder Agreement, it will become a member of the Tampa Bay Estuary Program, of the Policy Board and of the Management Board with the same voting rights as the existing members of such entities or boards. The Policy Board may also allow other governmental entities or regulatory agencies to participate in the Program as members of the Management Board, provided that they must be unanimously approved by the Policy Board and the Management Board in their respective sole and absolute discretion and execute a Joinder Agreement. Once an entity has such approval and has executed a Joinder Agreement, it will become a member of the Management Board with the same voting rights as the existing members of such entities or board all as of the first day of the next fiscal year of the Tampa Bay Estuary Program.

5.9 **Fiscal Year.** The Tampa Bay Estuary Program shall observe a fiscal year beginning on October 1 and ending September 30 of each year, or such other fiscal year as may be required for special districts pursuant to Florida law.

5.10 **Budgets.**

(a) No later than the last day of the month of February each year, the Policy Board shall review the Tampa Bay Estuary Program tentative Work Plan Budget, and shall thereafter approve the Work Plan Budget no later than the last day of May each year. The approved Work Plan Budget shall be included in the Tampa Bay Estuary Program Full Budget.

(b) No later than the last day of the month of August and following preparation of a tentative Full Budget, the Policy Board shall publish a notice of its intention to adopt the Tampa Bay Estuary Program Full Budget. Following an appropriate public hearing, the Policy Board shall adopt the Tampa Bay Estuary Program Full Budget each year no later than the month of September covering its proposed operation and requirements for the fiscal year commencing on October 1 of that year.

(c) The Policy Board shall give consideration to objections filed against the budget and in its discretion, may amend, modify or change the tentative Full Budget. The Policy Board, by September 30 following appropriate notice and hearing, shall adopt a Full Budget for the Tampa Bay Estuary Program, which shall thereupon be the operating and fiscal budget for the Tampa Bay Estuary Program for the ensuing fiscal year.

(d) The Policy Board shall provide copies of the Work Plan and Full Budgets to the Parties, as well as the Army Corps and EPA, and such Work Plan and Full Budgets shall be accompanied by the estimated annual contribution of each of the Policy Board Members. The

notice of public hearing to adopt the Tampa Bay Estuary Program Full Budget shall be published in accordance with Florida law and shall inform the public that: (i) the tentative Full Budget shall be posted on the Tampa Bay Estuary Program website at least two (2) days before the public hearing; (ii) the Full Budget shall be posted on the Tampa Bay Estuary Program website within thirty (30) days following adoption; and (iii) the public will be afforded an opportunity to appear before the Policy Board and express support or objection to the Full Budget.

5.11 **Bylaws.** The Policy Board by unanimous vote shall create, adopt, amend and update Bylaws or appropriate rules of procedure for the Tampa Bay Estuary Program for its governance and which shall remain in effect until modified by the Policy Board.

5.12 **Policies.** The Tampa Bay Estuary Program shall adopt its operating rules and internal procedures as provided in Section 5.2(f) above.

## **ARTICLE SIX – RESPONSIBILITIES OF THE PARTIES**

6.1 **Responsibilities of all Parties.** By entering into this Agreement, the Parties intend to recommend actions and adjust strategies as needed to keep Tampa Bay's recovery on track. To that end, each of the Parties hereby agrees to:

(a) Assist in implementing the CCMP nitrogen loading reduction/management Goal, to be accomplished by the Parties and other members of the Consortium, as described in the “Reasonable Assurance Addendum: Allocation and Assessment Report” dated September 11,

2009, and as updated in the “2012 Reasonable Assurance Update” dated December 14, 2012 and the “2017 Reasonable Assurance Update” dated September 29, 2017;

(b) Report in the Action Plan Database, which supports the CCMP and is maintained by the Tampa Bay Estuary Program, all available information about projects and actions that address nutrient reduction in Tampa Bay;

(c) Assist in supporting CCMP habitat goals for Tampa Bay by assisting the Tampa Bay Estuary Program in implementing and recording habitat protection and restoration activities; and

(d) Participate, as “responsible parties” identified in the CCMP, to implementation of Action Plans identified in the CCMP.

**6.2 Additional Responsibilities of the Regulatory Agencies.** The Regulatory Agencies agree that they will extend as much flexibility as is legally permissible under circumstances deemed appropriate by such agencies for projects that are part of an approved Action Plan set forth in the CCMP.

**6.3 Regulatory Process Review.** Subject to the above limitations, all Regulatory Agencies and all other Parties having regulatory functions agree to periodically review their regulatory processes and consider changes in statutes, ordinances, rules or policies that would assist in meeting the goals of the CCMP. Any such changes shall be made in keeping with the cooperative intent of this section and otherwise in this Agreement.

**6.4 Responsibilities of the Tampa Bay Estuary Program.** The Tampa Bay Estuary Program shall:

- (a) Serve as the coordinating body for the CCMP and assist the Parties in implementation thereof;
- (b) Prepare, every two (2) years, a progress report on the status of CCMP implementation;
- (c) Assist the Parties in locating grants and other funds to aid in implementation of the projects set forth in the CCMP;
- (d) Coordinate outreach programs to promote public participation and facilitate restoration activities that support the CCMP Goals;
- (e) Coordinate the re-examination and updating of the CCMP every five (5) years;
- (f) Facilitate resolution of conflicts among the Parties;
- (g) Oversee atmospheric deposition, toxic contamination, climate change, habitat assessments, water quality evaluations and other research projects;
- (h) Develop Action Plans to address goals not currently being addressed in the CCMP; and,
- (i) If requested by any Party, the Tampa Bay Estuary Program Executive Director shall appear before that Party's governing body to report on the Work Plan and any other matters of interest pertaining to the Tampa Bay Estuary Program.

6.5 **Tampa Port Authority.** The Tampa Port Authority is an independent special district created by the Florida Legislature under Chapter 95-488, Laws of Florida, as amended from time to time (the "Port Authority Enabling Act"). The Port Authority Enabling Act provides in part the Tampa Port Authority is responsible for regulating marine construction and

management of sovereign submerged lands within the Hillsborough County Port District (the "Port Authority Regulatory Capacity"). Notwithstanding any provisions in this Agreement to the contrary, the Tampa Port Authority is entering into this Agreement only to the extent of its Port Authority Regulatory Capacity.

**ARTICLE SEVEN – BUDGETING AND FUNDING**

7.1 **Tampa Bay Estuary Program Budget.** The Policy Board is responsible for establishing the budget for the Tampa Bay Estuary Program and shall annually review and approve the budget. The budget will require approval by two-thirds (2/3) of all members of the Policy Board.

7.2 **Funding.** Subject to the provisions of Section 7.3 below, all non-federal Tampa Bay Estuary Program Work Plan budgeted costs shall be funded by the Funding Entities and allocated in accordance with Schedules 1 and 2 of Exhibit “A” hereto, as follows:

(a) To support additional projects and CCMP implementation, all Funding Entities are encouraged to contribute to the Tampa Bay Estuary Restoration Fund (“TBERF”) at the following levels based upon current (2021) Tampa Bay Estuary Program dues:

	<u>Dues</u>	<u>TBERF Contribution</u>
Level A:	Less than \$40,000 per year	At least \$25,000
Level B:	Between \$40,000 and \$65,000	At least \$75,000
Level C:	Greater than \$65,000	At least \$100,000

(b) Annual dues for Funding Entities will be determined by Schedule 1 of Exhibit “A” under the following conditions:

(i) If a Funding Entity contributes to the TBERF at the above levels in a particular year; or,

(ii) In the case of SWFWMD, if SWFWMD provides funding to the Tampa Bay Estuary Program at the above levels through cooperative funding projects; or

(iii) If a Funding Entity contributes to the Tampa Bay Estuary Program at the above levels through projects which support the goals of the CCMP, are included in the approved Work Plan, and include a ten percent (10%) administrative fee for the Tampa Bay Estuary Program.

(c) Annual dues for Funding Entities will be determined by Schedule 2 of Exhibit “A” if section 7.2(b), above, does not apply.

(d) On or before the end of fiscal year 2026, and every five (5) years thereafter, the Policy Board shall initiate review and approval of draft revisions to Schedules 1 and 2, and thereafter shall submit said revisions to the Funding Entities for their review and approval, with the option to amend or modify. If no action is taken by the end of fiscal year 2026, and every five (5) years thereafter, the funding levels shown in each Schedule shall continue at the same level (the then current Year Five level) until amended or modified by the Policy Board and the Funding Entities;

(e) Management Board members that are not on the Policy Board are encouraged to contribute directly to the operations of Tampa Bay Estuary Program or to the TBERF; and,

(f) The Funding Entities agree that if federal and other external funding increases beyond the levels on the Effective Date, and if the Tampa Bay Estuary Program's undesignated fund balance reaches a level that is sufficient to support a full fiscal year of program operations, then the Policy Board shall consider reducing their dues to the levels in place on the Effective Date.

7.3 **Annual Approval.** Each Policy Board director shall present for consideration and approval to its applicable legislative or governing body each fiscal year the funding levels described in Schedules 1 or 2 of Exhibit "A" hereof, but which funding decision is in the sole discretion of such applicable body. Such funding approval is a condition precedent to the funding obligation by such Funding Entity each year under Section 7.2 and Schedules 1 and 2 of Exhibit "A" attached hereto.

7.4 **Non-Appropriation.**

(a) The obligations of the Funding Entities as to any funding required pursuant to this Agreement shall be limited to an obligation in any given year to budget, appropriate, and pay from legally available funds, after monies for essential services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Further, the Funding Entities shall not be prohibited from pledging any legally available non ad valorem revenues for any obligations prior to or after the execution of this Agreement and not including the commitments pursuant to this Agreement, which pledge shall be prior and superior to any commitments of the Funding Entities pursuant to this Agreement.

(b) Notwithstanding any other provisions of this Agreement, the obligations undertaken by the Funding Entities hereto shall not be construed to be or constitute general



obligations', debts or liabilities of any Funding Entity or the State of Florida or any political subdivision, municipal corporation or agency thereof within the meaning of the Constitution and laws of the State of Florida, but shall be payable solely in the manner and to the extent provided in or contemplated by this Agreement. The obligations of the Funding Entities hereunder are subject to annual appropriation of legally available non ad valorem funds by their respective governing boards, and shall not constitute or create a pledge, lending of credit or lien, either legal or equitable, of or on any of their ad valorem revenues or funds, or upon any other revenues or funds of the Funding Entities, as may be construed under the laws or the Constitution of the State of Florida. Neither any Funding Entity nor any other person or entity shall ever have the right to compel any exercise of ad valorem taxing power by any other Funding Entity to make the payments herein provided, nor shall this Agreement constitute a charge, lien or encumbrance, either legal or equitable, upon any property or funds of any Funding Entity.

(c) Notwithstanding anything contained herein, each of the Funding Entities reserves the right, in its sole discretion, to pay the funding obligations contemplated by this Agreement from any Funds legally available for such purpose.

#### **ARTICLE EIGHT – DEFAULT**

In the event any Party is determined to be in willful and significant noncompliance with the CCMP Goals or with the terms of this Agreement, the Policy Board may, by a unanimous vote by all Parties except the Party charged with being in default, recommend the removal of such non-complying Party from this Agreement. Prior to any such vote by the Policy Board, the non-complying Party shall be given a notice of its non-compliance and an opportunity to remedy the

problem within a reasonable period or to a public hearing before the Policy Board if there is a dispute whether a default exists. If a Party is found to be in noncompliance with permits by the applicable Regulatory Agency(ies), the permit granting agencies may take actions to enforce their permits against such non-complying Party under their own respective laws and regulations. If any Party is discharged under this Article Eight, (i) all monies previously paid hereunder shall be conclusively deemed earned and not subject to return to such Party, (ii) any future funding responsibility of such party shall terminate, and (iii) this Agreement shall continue as to the remaining Parties. Provided, however, any funds paid before termination but not expended shall only be used by the Tampa Bay Estuary Program in accordance with the approved budget for which such contribution was made.

#### **ARTICLE NINE – NOTICE**

Any and all notices required or permitted to be given hereunder shall be in writing, and shall be provided if either personally delivered to the Party at the addresses set forth in Exhibit "B," transmitted by electronic facsimile machine to the fax numbers listed, or sent by U.S. certified or registered mail, postage prepaid, return receipt requested, to such addresses, all such notices being effective upon delivery to and receipt by the Parties, unless the respective Party or Parties notify all other Parties in writing in accordance herewith of a change of address and/or representative at such address authorized to receive any and all such notices, in which case any and all such notices shall be delivered and/or mailed as aforesaid to said Party or Parties at such new address with respect to such Party.

## **ARTICLE TEN – WITHDRAWAL OF A PARTY**

Notwithstanding anything contained in this Agreement to the contrary, any Party hereto shall have the right to withdraw as a Party to this Agreement by providing one hundred eighty (180) days prior written notice as set forth in Article Nine above. Such withdrawal of a Party shall occur only if the withdrawing Party provides one hundred eighty (180) days prior written notice to the other Parties. On the day following the end of such one hundred eighty (180) day period, the withdrawing Party shall no longer be considered a Party to this Agreement. Provided however, even though such withdrawing Party shall have withdrawn as a Party to this Agreement as set forth above in this Article, such withdrawing Party shall continue to be subject to all applicable laws and regulations, without the benefit of being a Party hereto to this Agreement. If a Party withdraws under this Article Ten, (i) all monies previously paid hereunder shall be conclusively deemed earned and not subject to return to such Party; (ii) the future funding responsibility of such Party shall continue for the longer of the period of such one hundred eighty (180) days or until the end of the current fiscal year, and (iii) this Agreement shall continue as to the remaining Parties.

## **ARTICLE ELEVEN – MISCELLANEOUS PROVISIONS**

11.1 **No Third Party Beneficiaries.** This Agreement shall inure to the benefit of the Parties. This Agreement is for the exclusive benefit of the Parties, and shall not be deemed to be made for the benefit of any other persons not so specified.

11.2 **Modification.** This Agreement may be modified, altered or amended only by a written instrument recommended by the Policy Board and subsequently approved and executed by the Parties hereto.

11.3 **Complete Agreement.** This Agreement constitutes the full, complete and wholly independent agreement among the Parties with regard to the matters addressed herein. This Agreement also supersedes all prior agreements, memorandums of understanding, representations, and statements among the Parties with respect to the matters addressed herein, either written or oral.

11.4 **Severability Clause.** If any clause, provision or section of this Agreement shall be held to be illegal or invalid by any court, the invalidity of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections hereof, and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained herein.

11.5 **Governing Law.** Existing and future laws, rules and regulations of the United States and its agencies, the State of Florida and its agencies and the other Parties to this Agreement shall take precedence over the terms and provisions of this Agreement in case of conflict or inconsistencies between them. The laws of the United States or State of Florida as appropriate and applicable, shall govern the validity, performance and enforcement of this Agreement, regardless of the state in which this Agreement is being executed.

11.6 **Public Purpose.** This Agreement satisfies, fulfills and is pursuant to and for a public purpose and municipal purpose and is in the public interest, and is a proper exercise of each Party's power and authority under each Party's individual municipal or governmental authority.

11.7 **Performance Standards.** None of the provisions in this Agreement shall be deemed in any manner to amend, modify or otherwise change any of the provisions or regulations or ordinances of any municipality or governmental agency which is a Party to this Agreement to allow a performance standard less than is otherwise required under the terms of those provisions or regulations or ordinances.

11.8 **Survival.** All of the representations and warranties set forth in this Agreement shall survive the consummation of any and all of the transactions described in this Agreement and the termination of this Agreement, and shall not be deemed to be merged in this Agreement or any other instrument which may be executed and delivered pursuant to this Agreement.

11.9 **Authority.** None of the Parties has any authority to bind or make any oral or written representations on behalf of the other Parties, and nothing contained in this Agreement shall designate any one or more of the Parties as partners with or agents for any one or more of the other Parties.

11.10 **Headings Not a Part Hereof.** The headings preceding the several articles and sections hereof (and any table of contents hereto) are solely for convenience of reference, do not constitute a part of this Agreement, and shall not affect its meaning, construction or effect.

11.11 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which may be executed by less than all of the parties but all of which shall be construed together as a single instrument. This Agreement shall become effective upon the exchange of original counterpart signature pages signed by all of the parties, but if such initial exchange occurs by facsimile, original signature pages will be exchanged within ten days of the date hereof.

11.12 **Binding Effect.** This Agreement shall bind the successors and assigns of the Parties.

11.13 **Execution.** This Agreement shall not be effective nor shall it have any force and effect whatsoever until all of the Parties have duly executed this Agreement and filed the Agreement pursuant to Section 11.14 below.

11.14 **Filing.** The Tampa Bay Estuary Program shall, pursuant to Section 163.01(11), Florida Statutes, file a copy of this Agreement and any amendments thereto with the Clerk of the Circuit Court of each County where the Parties are located.

11.15 **Conditions Precedent.** The Parties encourage the Army Corps to execute a Joinder to this Agreement and encourage the EPA to enter into a Memorandum of Understanding with the Tampa Bay Estuary Program concerning this Agreement, but said Joinder and Memorandum of Understanding shall not be a precondition to the effectiveness of this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto caused this Agreement to be executed, under seal, and it shall become effective upon completion of filing in accordance with Section 11.14, hereto.

[INTENTIONALLY LEFT BLANK]

PB APPROVED 2/19/21

CITY OF CLEARWATER, a Florida  
municipal corporation

Countersigned:

By: \_\_\_\_\_  
Frank Hibbard, Mayor

By: \_\_\_\_\_  
William B. Horne II, City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

Attest:

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
City Clerk

(SEAL)

PB APPROVED 2/19/21



CITY OF ST. PETERSBURG, a Florida  
municipal corporation

Attest:

By: \_\_\_\_\_

\_\_\_\_\_  
City Clerk

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
City Attorney (Designee)

\_\_\_\_\_  
City Clerk

(SEAL)

PB APPROVED 2/19/21

CITY OF TAMPA, a Florida  
municipal corporation

Attest:

\_\_\_\_\_  
City Clerk or Deputy Clerk

By: \_\_\_\_\_  
Jane Castor, Mayor

Date: \_\_\_\_\_

APPROVED AS TO FORM:

(SEAL)

\_\_\_\_\_  
Janice M. McLean, Senior Assistant City Attorney

PB APPROVED 2/19/21

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Attest:

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

(SEAL)

\_\_\_\_\_

Assistant General Counsel

PB APPROVED 2/19/21

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION'S  
FISH AND WILDLIFE RESEARCH INSTITUTE

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

(SEAL)

\_\_\_\_\_  
FWC Legal Counsel

PB APPROVED 2/19/21

HILLSBOROUGH COUNTY, a political  
subdivision of the State of Florida

Attest: Cindy Stuart, Clerk

\_\_\_\_\_  
By: Deputy Clerk

Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Chairperson

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

(SEAL)

\_\_\_\_\_  
Vivian Arenas-Battles  
Senior Assistant County Attorney

PB APPROVED 2/19/21

THE ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY, a political subdivision  
of the State of Florida

Attest:

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

(SEAL)

\_\_\_\_\_

EPC Attorney

PB APPROVED 2/19/21

MANATEE COUNTY, a political  
subdivision of the State of Florida

Attest:

\_\_\_\_\_  
Angelina Coloneso,  
Clerk of the Circuit Court

\_\_\_\_\_  
Deputy Clerk

By its Board of County Commissioners

By: \_\_\_\_\_  
Chairperson

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

(SEAL)

PB APPROVED 2/19/21

MANATEE COUNTY PORT  
AUTHORITY, a dependent special district  
of the State of Florida

Attest:

\_\_\_\_\_  
Clerk of the Circuit Court

\_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chairperson

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

(SEAL)

\_\_\_\_\_  
Attorney for Manatee County Port Authority

PB APPROVED 2/19/21



PASCO COUNTY, a political  
subdivision of the State of Florida

Attest:

\_\_\_\_\_  
Clerk & Comptroller

By: \_\_\_\_\_

Title: Chairperson

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

(SEAL)

\_\_\_\_\_  
Assistant County Attorney

PB APPROVED 2/19/21

PINELLAS COUNTY, a political  
subdivision of the State of Florida

Attest:

\_\_\_\_\_  
Clerk of the Circuit Court

By: \_\_\_\_\_  
Barry Burton

Title: County Administrator

Date: \_\_\_\_\_

APPROVED AS TO FORM:

(SEAL)

\_\_\_\_\_  
Assistant County Attorney

PB APPROVED 2/19/21

SOUTHWEST FLORIDA WATER MANAGEMENT  
DISTRICT, a public corporation of the State of Florida

By: \_\_\_\_\_  
Chair

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

(SEAL)

\_\_\_\_\_  
Assistant General Counsel

PB APPROVED 2/19/21

TAMPA PORT AUTHORITY, an  
independent special district of the State of  
Florida

Attest:

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

(SEAL)

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

PB APPROVED 2/19/21

TAMPA BAY REGIONAL PLANNING  
COUNCIL, a Florida regional planning council

By: \_\_\_\_\_  
Sean Sullivan

Title: Executive Director

Date: \_\_\_\_\_

APPROVED AS TO FORM:

(SEAL)

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

PB APPROVED 2/19/21

ATTEST:

TAMPA BAY WATER, a Regional  
Water Supply Authority

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_

Its: Chairman

Date: \_\_\_\_\_

APPROVED AS TO FORM:

(SEAL)

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

PB APPROVED 2/19/21

**EXHIBIT "A"**

PB APPROVED 2/19/21

**SCHEDULE 1 (with consideration of a TBERF contribution)**

GOAL: Maintain program operations with funding entities adjusting the base local dues (Schedule 2) annually by 2.5% and subtracting 10% TBERF administration contributions through FY2026. Maintain SWFWMD funding level at FY2021 rate. Funding schedule for other entities in FY2022 adjusted to 2018 American Community Survey, US Census Bureau, Census Tract population estimates (Table B00001)<sup>a</sup>.

<b><u>Funding Entity</u></b>	<b><u>FY2022</u></b>	<b><u>FY2023</u></b>	<b><u>FY2024</u></b>	<b><u>FY2025</u></b>	<b><u>FY2026</u></b>
SWFWMD	\$156,513	\$156,513	\$156,513	\$156,513	\$156,513
City of Clearwater	\$18,488	\$19,074	\$19,786	\$20,516	\$21,264
City of St. Petersburg	\$42,076	\$43,410	\$45,030	\$46,691	\$48,394
City of Tampa	\$62,361	\$64,337	\$66,739	\$69,201	\$71,724
Pasco County	\$34,536	\$35,630	\$36,960	\$38,324	\$39,721
Manatee County	\$45,829	\$47,282	\$49,047	\$50,856	\$52,710
Pinellas County	\$65,730	\$67,813	\$70,345	\$72,939	\$75,599
Hillsborough County	\$156,491	\$161,452	\$167,479	\$173,657	\$179,989
Total Local Dues	\$582,023	\$595,511	\$611,899	\$628,696	\$645,914
Projected Total Funds Needed for Program Operations (FY2021)	\$966,239	\$990,395	\$1,015,155	\$1,040,534	\$1,066,547
Funding shortfall needed for Program Operations (in addition to funding entities listed above + 10% TBERF Contributions)	\$326,716	\$334,884	\$343,256	\$351,838	\$360,633

<sup>a</sup> US Census Bureau Data Portal: <https://data.census.gov/> .



**SCHEDULE 2 (without consideration of a TBERF contribution)**

GOAL: Maintain program operations with funding entities adjusting annually by 2.5% through FY2026. Maintain SWFWMD levels at FY2021 rate. Funding schedule for other entities in FY2022 adjusted to 2018 American Community Survey, US Census Bureau, Census Tract population estimates (Table B00001)<sup>b</sup>.

<b><u>Funding Entity</u></b>	<b><u>FY2022</u></b>	<b><u>FY2023</u></b>	<b><u>FY2024</u></b>	<b><u>FY2025</u></b>	<b><u>FY2026</u></b>
SWFWMD	\$202,505	\$202,505	\$202,505	\$202,505	\$202,505
City of Clearwater	\$18,988	\$19,683	\$20,395	\$21,125	\$21,873
City of St. Petersburg	\$43,214	\$44,795	\$46,415	\$48,076	\$49,779
City of Tampa	\$64,047	\$66,390	\$68,792	\$71,254	\$73,777
Pasco County	\$35,470	\$36,767	\$38,097	\$39,461	\$40,858
Manatee County	\$47,068	\$48,790	\$50,555	\$52,365	\$54,219
Pinellas County	\$67,507	\$69,977	\$72,509	\$75,103	\$77,763
Hillsborough County	\$160,724	\$166,604	\$172,631	\$178,808	\$185,140
Total Local Dues	\$639,523	\$655,511	\$671,899	\$688,696	\$705,914
Projected Total Funds Needed for Program Operations	\$966,239 (FY2021)	\$990,395	\$1,015,155	\$1,040,534	\$1,066,547
Funding shortfall needed for Program Operations (in addition to funding entities listed above)	\$326,716	\$334,884	\$343,256	\$351,838	\$360,633

<sup>b</sup> US Census Bureau Data Portal: <https://data.census.gov/> .

**EXHIBIT “B”**

If to Clearwater: City of Clearwater  
P. O. Box 4748  
Clearwater, FL 34618-4748  
Attn: City Attorney

If to St. Petersburg: City of St. Petersburg  
One Fourth Street North  
St. Petersburg, FL 33701  
Attn: City Attorney

If to Tampa: City of Tampa  
306 E. Jackson Street  
Tampa, FL 33602  
Attn: City Attorney

If to FDEP Florida Department of Environmental Protection  
Southwest District Office  
13051 N. Telecom Parkway  
Temple Terrace, FL 33637  
Attn: District Director

If to Fish & Wildlife Research Institute Florida Fish & Wildlife Conservation Commission’s  
Fish and Wildlife Research Institute  
100 8th Avenue SE  
St. Petersburg, FL 33701  
Attn: Director

If to Hillsborough County: Hillsborough County  
Environmental Management Division  
601 E. Kennedy Blvd.  
Tampa, FL 33602  
Attn: Director

If to EPC Environmental Protection Commission of  
Hillsborough County  
3629 Queen Palm Drive  
Tampa, FL 33619  
Attn: General Counsel

If to Manatee County Manatee County  
1112 Manatee Avenue West, Suite 920  
Bradenton, FL 34205  
Attn: County Administrator

If to Manatee Port Authority

Manatee County Port Authority  
300 Tampa Bay Way  
Palmetto, FL 34221  
Attn: Executive Director

If to Pasco County

Pasco County  
8731 Citizens Dr., Suite 340  
New Port Richey, FL 34654  
Attn: County Administrator

If to Pinellas County

Pinellas County  
315 Court Street, Room 601  
Clearwater, FL 33756  
Attn: County Administrator

If to SWFWMD:

Southwest Florida Water Management District  
2379 Broad Street  
Brooksville, FL 34609  
Attn: General Counsel

If to Tampa Port Authority:

Tampa Port Authority  
P.O. Box 2192  
Tampa, FL 33601  
Attn: General Counsel

If to TBRPC:

Tampa Bay Regional Planning Council  
4000 Gateway Centre Blvd., Suite 100  
Pinellas Park, FL 33782  
Attn: Executive Director

If to Tampa Bay Water:

Tampa Bay Water  
2575 Enterprise Road  
Clearwater, FL 33763  
Attn: General Manager



# ENVIRONMENTAL PROTECTION COMMISSION

## AGENDA ITEM COVER SHEET

Agenda Item # 7.g.

**Date of EPC Meeting:** April 15, 2021

**Subject:** Approve Extension of an Agreement for Website Services with Granicus Inc

**Agenda Section:** Consent Agenda

**Division:** Administration Division

**Recommendation:** Approve an agreement with Granicus, Inc. to extend website services and maintenance. Additionally, authorize the Executive Director to execute this agreement, future amendments and renewals that are below the \$100,000 threshold.

**Brief Summary:** In 2016, EPC entered a 5-year agreement with Vision Technology Solutions for website development and maintenance services. In 2018, Vision Technology Solutions was purchased by Granicus Inc. This request is to continue website services and maintenance with Granicus Inc.

**Financial Impact:** Yearly cost between \$20,000-\$30,000 which is already budgeted

**List of Attachments:** Second Amendment to the Granicus Service Agreement

**Background:** In December of 2016, the EPC entered an agreement with Vision Technology Solutions, LLC (Vision Technology) for their website development, hosting, and maintenance services. The agreement was for 5 years at a total cost of \$150,417.

In February of 2018, Vision Technology was purchased by Granicus Inc (Granicus). The initial 5-year agreement is ending and we are requesting approval to continue using Granicus for our website services, maintenance and hosting. The below chart is a breakdown of annual costs.

Term	Hosting	GovDelivery	Total
12/15/2020 - 12/15/2021	\$ 16,786.00	\$2900 + Prorated subscription from date of signature	TBD
12/15/2021 - 12/14/2022	\$ 17,625.30	\$ 6,000.00	\$ 23,625.30
12/15/2022 - 12/14/2023	\$ 18,506.57	\$ 6,300.00	\$ 24,806.57
12/15/2023 - 12/14/2024	\$ 19,431.89	\$ 6,615.00	\$ 26,046.89
12/15/2014 - 12/14/2025	\$ 20,403.49	\$ 6,945.75	\$ 27,349.24

Staff requests that the Commission approve an agreement with Granicus, Inc. to extend website services and maintenance. Additionally, authorize the Executive Director to execute this agreement and future amendments and renewals that are below the \$100,000 threshold.



408 Saint Peter Street, Suite 600  
Saint Paul, MN 55102  
United States

Amendment  
Prepared for  
**Environmental Protection Commission of  
Hillsborough County**

## **Second Amendment to the Granicus Service Agreement between Granicus, LLC and Environmental Protection Commission of Hillsborough County**

This Second Amendment to the Granicus, LLC Service Agreement is effective on the date this document is signed and entered into by and between Granicus, LLC, a Minnesota Limited Liability Company d/b/a Granicus (hereinafter referred to as "Granicus"), and Environmental Protection Commission of Hillsborough County (hereinafter referred to as "Client"), with reference to the following:

WHEREAS, the Client and Granicus entered into an Agreement effective 12/27/2016 (the "Agreement"); and

WHEREAS, in addition to Client's existing solution, Client wishes to add certain products and services as detailed in Q-135209, which is attached as Exhibit A and incorporated herein by reference; and

NOW, THEREFORE, in consideration of the premises, the parties intend that the Agreement be amended as follows:

1. Compensation shall be amended to include the fees detailed in Exhibit A. Exhibit A is exclusive of applicable state, local, and federal taxes, which, if any, will be included in the invoice. It is the responsibility of the Client to provide applicable exemption certificate(s).
2. Except as amended by this Second Amendment, all other terms and conditions of the Agreement and First Amendment effective 7/19/2019 shall remain in full force and effect.
3. In the event of any inconsistency between the provisions of this Second Amendment and the documents comprising the Agreement, the provisions of this Second Amendment shall prevail.

IN WITNESS WHEREOF, the parties have caused this Second Amendment to be executed by their duly authorized representatives.

### **Agreement and Acceptance**

By signing this document, the undersigned certifies they have authority to enter the agreement. The undersigned also understands the services and terms.

**Environmental Protection Commission  
of Hillsborough County**

**Granicus**

Signature:

Signature:

Name:

Name:

Title:

Title:

Date:

Date:



408 Saint Peter Street, Suite 600  
Saint Paul, MN 55102  
United States

**THIS IS NOT AN INVOICE**

Exhibit A  
Prepared for  
**Environmental Protection Commission of  
Hillsborough County**

## Exhibit A

### ORDER DETAILS

**Prepared By:** Tim Whelan  
**Phone:** 240-418-3619  
**Email:** timothy.whelan@granicus.com  
**Order #:** Q-135209  
**Prepared On:** 03/31/2021  
**Expires On:** 05/10/2021

### ORDER TERMS

**Currency:** USD  
**Payment Terms:** Net 30 (Payments for subscriptions are due at the beginning of the period of performance.)

**The subscription includes the following domain(s) and subdomain(s):**  
<https://www.epchc.org/>

## PRICING SUMMARY

The pricing and terms within this Proposal are specific to the products and volumes contained within this Proposal.

One-Time Fees			
Solution	Billing Frequency	Quantity/Unit	One-Time Fee
Communications Cloud - Setup and Configuration	Up Front	1 Each	\$2,400.00
Communications Cloud - Online Training	Up Front	1 Each	\$500.00
<b>SUBTOTAL:</b>			<b>\$2,900.00</b>

New Subscription Fees			
Solution	Billing Frequency	Quantity/Unit	Annual Fee
Communications Cloud	Annual	1 Each	\$6,000.00
<b>SUBTOTAL:</b>			<b>\$6,000.00</b>

- Please note, annual fees for new subscriptions will be prorated to align to Client's then-current billing term. Exceptions include Recurring Captioning Services, SMS, and Targeted Messages.

Communications Cloud Tier:
for up to 5000 subscribers.

## PRODUCT DESCRIPTIONS

Solution	Description
Communications Cloud	<p>The Cloud is a Software-as-a-Service (SaaS) solution that enables government organizations to connect with more people. By leveraging the Cloud, the client will be able to utilize a number of different outreach mediums, including email, SMS/text messages, RSS feeds, and social media integration to connect with its target audiences. The Cloud includes:</p> <ul style="list-style-type: none"> <li>• Unlimited email sends with industry-leading delivery and management of all bounces</li> <li>• Support to upload and migrate existing email lists</li> <li>• Access to participate in the GovDelivery Network</li> <li>• Ability to send mass notifications to multiple devices</li> <li>• 24/7 system monitoring, email and phone support during business hours, auto-response to inbound messages from end users, and emergency support</li> <li>• Text-to-subscribe functionality</li> <li>• Up to 2 Web-hosted training sessions annually</li> <li>• Up to 50 administrators</li> <li>• Up to 1 GovDelivery account(s)</li> <li>• Access to a complete archive of all data created by the client for 18 months (rolling)</li> <li>• Up to 3 hours of message template and integration development</li> <li>• Up to 100 subscription topics</li> <li>• Up to 100,000 SMS/text messages per year from a shared short code within the United States*</li> </ul> <p>*International numbers are not supported. SMS/text messages not used in the period of performance will not carry over to the following year.</p>



Solution	Description
Communications Cloud - Setup and Configuration	<p>The Cloud is a Software-as-a-Service (SaaS) solution that enables government organizations to connect with more people. By leveraging the Cloud, the client will be able to utilize a number of different outreach mediums, including email, SMS/text messages, RSS feeds, and social media integration to connect with its target audiences. The Cloud setup and configuration includes:</p> <ul style="list-style-type: none"> <li>• The implementation consultant will be assigned to Recipient during the setup process for up to 90 days</li> <li>• Unlimited access to Web-based recorded trainings and online help for administrations on the following topics: standard Messaging, the GovDelivery Network, Automation, Mobile and Analytics</li> <li>• Up to 2 Web-hosted training sessions that must be used within 180 days of Kickoff</li> <li>• Up to 5 hours of message template and integration development that must be used within 90 days of Kickoff</li> </ul>
Communications Cloud - Online Training	Provides a balance of Product knowledge and industry best practices to a specific audience. Sessions are delivered by product experts via videoconferencing technology.

## GRANICUS ADVANCED NETWORK AND SUBSCRIBER INFORMATION

- **Granicus Communications Suite Subscriber Information.**
  - Data provided by the Client and contact information gathered through the Client's own web properties or activities will remain the property of the Client ('Direct Subscriber'), including any and all personally identifiable information (PII). Granicus will not release the data without the express written permission of the Client, unless required by law.
  - Granicus shall: (i) not disclose the Client's data except to any third parties as necessary to operate the Granicus Products and Services (provided that the Client hereby grants to Granicus a perpetual, non-cancelable, worldwide, non-exclusive license to utilize any data, on an anonymous or aggregate basis only, that arises from the use of the Granicus Products by the Client, whether disclosed on, subsequent to, or prior to the Effective Date, to improve the functionality of the Granicus Products and any other legitimate business purpose, including the right to sublicense such data to third parties, subject to all legal restrictions regarding the use and disclosure of such information).
- **Data obtained through the Granicus Advanced Network.**
  - Granicus offers a SaaS product, known as the Communications Cloud, that offers Direct Subscribers recommendations to subscribe to other Granicus Client's digital communication (the 'Advanced Network'). When a Direct Subscriber signs up through one of the recommendations of the Advanced Network, that subscriber is a 'Network Subscriber' to the agency it subscribed to through the Advanced Network.
  - Network Subscribers are available for use while the Client is under an active subscription with

Granicus. Network Subscribers will not transfer to the Client upon termination of any Granicus Order, SOW, or Exhibit. The Client shall not use or transfer any of the Network Subscribers after termination of its Order, SOW, or Exhibit placed under this agreement. Subject to and limited by Florida Public Records law, all information related to Network Subscribers must be destroyed by the Client within 15 calendar days of the Order, SOW, or Exhibit placed under this agreement terminating. Granicus acknowledges that Client has limited ability under the law to destroy records, unless compliant with Florida law.

- o Opt-In. During the last 10 calendar days of the Client's subscription, the Client may send an opt-in email to Network Subscribers that shall include an explanation of the Client's relationship with Granicus terminating and that the Network Subscribers may visit the Client's website to subscribe to further updates from the Client in the future. Any Network Subscriber that does not opt-in will not be transferred with the subscriber list provided to the Client upon termination.



# ENVIRONMENTAL PROTECTION COMMISSION

## AGENDA ITEM COVER SHEET

Agenda Item # 9.a.

**Date of EPC Meeting:** April 15, 2021

**Subject:** Render a Final Order in Manuel and Tammy Criollo v. Peder Johnsen and Environmental Protection Commission of Hillsborough County, Case No. 20-EPC-015

**Agenda Section:** Regular Agenda

**Division:** Wetlands Division

**Recommendation:** Adopt the Hearing Officer's findings of fact, make appropriate conclusions of law, and render a Final Order in the above referenced case.

**Brief Summary:** Manuel and Tammy Criollo (Appellants) filed an appeal of Tampa Port Authority Minor Work Permit Review #69410, which authorizes the construction of an access pier at Appellee Peder Johnsen's (formerly, SJW Group, LLC) property. In accordance with Chapter 1-2, Rules of the EPC, the Appeal was transferred to an EPC Hearing Officer to conduct an evidentiary hearing. The Appellees filed a joint Motion to Dismiss and Motion for Summary Final Order which was heard by the Hearing Officer pursuant to section 1-2.32(f), Rules of the EPC. The Hearing Officer granted the motion, issued a recommended order and the matter was forwarded to the Commission pursuant to section 2.34(d), Rules of the EPC. The Commission must now sit in their quasi-judicial capacity to consider the Hearing Officer's Recommended Order and render a Final Order on the matter.

**Financial Impact:** No financial impact.

**List of Attachments:** Hearing Officer's Recommended Order and Proposed Final Order

**Background:** The Port Tampa Bay a/k/a Tampa Port Authority (TPA) owns and regulates the submerged lands in the majority of Tampa Bay and rivers in Hillsborough County. TPA has Submerged Lands Management Rules that govern the placement and construction of various marine structures, such as docks, on those submerged lands. In 2009 the Environmental Protection Commission (EPC) was delegated certain marine construction permitting authority from the TPA as part of our streamlined wetland permitting program. The TPA delegation authorizes the EPC to administer, with some exceptions, the TPA's minor work permit program. The EPC is authorized under the TPA Delegation Agreement to process permits for private and commercial docks of less than 2,500 square feet.

On December 16, 2019 SJW Group, LLC (referred to as SJW), submitted an application to the EPC to construct a dock and install an 8,000 lb. elevator boat lift at 2216 S. Occident Street, Tampa, Florida. This configuration would have required adjacent property owner approval via an affidavit of no objection. SJW was unable to receive approval for this configuration and revised the proposal to a 4' wide access pier with no proposed mooring area. A Notice of Intent to Issue Minor Work Permit 69410 (Permit) was sent to SJW

for this configuration and, pursuant to Section 25 of Chapter 95-488, copies of the Permit were provided to the adjacent property owners, which included the Appellants, Manuel and Tammy Criollo.

On November 23, 2020, the Appellants, filed a timely request for an extension of time to file an appeal to challenge the issuance of the Permit. Their request was granted and on January 4, 2021, Mr. and Mrs. Criollo filed an appeal. Appellants challenged the permit issuance contesting: 1) the length of the proposed access pier as exceeding the length permissible by the TPA Submerged Lands Management Rules (SLM Rules); and 2) that navigation will be impeded if the mangroves that will surround the access pier die in the future. The Notice of Appeal was deemed sufficient, and a Hearing Officer was appointed to conduct an evidentiary hearing in the matter.

An EPC permit challenge, legally referred to as a “Section 9 Appeal,” is a hearing process established by the Florida Legislature in Chapter 84-446, as amended, Laws of Florida (EPC Act). Specifically, a person who alleges an EPC final action adversely affects them “may obtain administrative review of the basis for the action or decision by appealing to the Commission.” This process is very similar to a civil trial, where a Hearing Officer reviews the arguments of either party for permit issuance.

An evidentiary hearing was scheduled to take place on April 28, 2021. However, on January 20, 2021, Appellees SJW and EPC filed a Joint Motion to Dismiss and Motion for Summary Order (Motion). The Appellants filed an objection to the Motion on February 3, 2021 and a hearing on the Motion was held on February 18, 2021. The Hearing Officer ruled in favor of Appellees SJW and EPC and filed a Recommended Order (RO) upholding the Permit for the construction of the access pier.

In accordance with Section 2.35, Rules of the EPC, the parties may file exceptions to findings of fact and conclusions of law contained in the Hearing Officer’s RO. If exceptions are timely filed, the Commission may hear argument from all parties on issues reasonably raised by the exceptions. In this particular case, no exceptions were filed. Therefore, the parties will not present oral argument at this EPC meeting.

Pursuant to Section 9 of the EPC Act and Section 1-2.35, Rules of the EPC, the Commission must now sit in a quasi-judicial capacity to affirm, reverse, or modify the Hearing Officer’s RO through issuance of a Final Order. During this EPC meeting, the Commission may seek legal advice from the Commission Counsel, who was not a party to the proceedings before the Hearing Officer. The Commission must only consider documents in the record. No new evidence may be introduced or considered by the Commission. It is established by rule and case law that a Hearing Officer’s finding of fact may only be rejected or modified if the Commission “finds that the fact is not supported by substantial competent evidence in the record” (Section 1-2.35, Rules of the EPC). Furthermore, the Commission should not make any ruling that conflicts with the applicable laws.

The Commission Counsel has provided a proposed Final Order for consideration and review by the Commission. The proposed Final Order adopts the Hearing Officer’s Findings of Fact and Conclusions of Law except for two corrections due to scrivener’s errors in paragraph two and three of the Findings of Fact. Paragraph two made correction to the EPC’s authority to cooperate with appropriate public agencies from Section 9 to Section 8 of the EPC Act. Paragraph three made correction to the Permit number from 694410 to 69410.

Subsequent to the Hearing Officer’s issuance of the Recommended Order and prior to this EPC meeting, SJW filed a Motion for Substitution of Parties pursuant to Rule 1.260(c), Florida Rules of Civil Procedure requesting the Commission substitute Peder Johnsen in place of SJW. The Commission Counsel, on behalf

of the Commission, issued an Order granting SJW's Motion for Substitution of Parties. Peder Johnsen is reflected as Appellee in the proposed Final Order.

This agenda item includes the Hearing Officer's Recommended Order and the proposed Final Order. Additionally, the Commission Counsel sent the Commissioners other documents in the record (e.g. pleadings, the hearing transcript, and the appeal) for their consideration.

**BEFORE THE ASSIGNED HEARING OFFICER OF THE ENVIRONMENTAL  
PROTECTION COMMISSION OF HILLSBOROUGH COUNTY**

**MANUEL CRIOLLO and TAMMY CRIOLLO,**

**Appellants,**

**vs.**

**EPC Case No. 20-EPC-015**

**SJW GROUP, LLC and  
ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY**

**Appellees.**

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**RECOMMENDED ORDER**

Upon due notice, on February 18, 2021, a hearing was held via the electronic platform Microsoft Teams, consistent with COVID-19 protocol, before Shannon Martin LaFrance, assigned Hearing Officer for the Environmental Protection Commission of Hillsborough County (hereinafter "EPC"), on the Joint Motion to Dismiss and Motion for Summary Order brought by Appellees SJW Group, LLC (hereinafter "SJW") and the EPC.

**APPEARANCES**

**FOR APPELLANTS:** Manuel and Tammy Criollo (hereinafter "Appellants"), Pro Se  
4805 W. San Miguel St.  
Tampa, FL 33629

**FOR APPELLEES:** Kevin Reali, Esq. for SJW Group, LLC  
Truist Place  
Stearns Weaver Wheeler  
401 East Jackson St.  
Suite 2100  
Tampa, FL 33609

Ricardo Muratti, Esq.  
Andrew Zodrow, Esq. for EPC  
3629 Queen Palm Drive  
Tampa, FL 33619

## STATEMENT OF THE ISSUE

The primary issue in this case is whether the proposed access pier complies with the Tampa Port Authority (TPA) Submerged Lands Management (SLM) Rules. Specifically, did the Executive Director of the EPC err in issuing the Intent to Issue Minor Work Permit for Construction of an Access Pier No. 69410 to SJW pursuant to the SLM Rules Section V(A)(3)(f) because of the length of the pier and the possibility that existing mangroves, within which the pier will be built, may die sometime in the future.

## PRELIMINARY STATEMENT

SJW applied to EPC on or about November 3, 2020 for a permit to construct an access pier on jurisdictional surface waters (hereinafter “Jurisdictional Lands”) adjacent to SJW’s property located in Hillsborough County, Florida at 2216 S. Occident St., Tampa, FL 33629, folio No. 120997-0000 (hereinafter “SJW Property”). The November 3, 2020 application was a revised application. The original application requested a larger dock with a lift. Appellants are adjacent property owners with property located at 4805 W. San Miguel St., Tampa, FL 33629, and share a riparian line with SJW. The action under review is the EPC Executive Director’s Notice of Intent to Issue a Minor Work Permit for Construction of an Access Pier, No. 69410, dated November 30, 2020, to SJW (hereinafter “Permit”). The Permit authorizes the construction of a 4’x19’ access pier on Jurisdictional Lands located in Hillsborough County, Florida.

The Appellants assert in their appeal dated January 3, 2021 (hereinafter “Notice of Appeal”) that EPC erred in issuing the Minor Work Permit because Appellants contend that the length of the pier exceeds the length permitted by “Section V.A.3. Resource Management Standards (a)” of the Tampa Port Authority Submerged Lands Management Rules. Appellants



further assert that should the mangroves that will surround the pier die in the future, then their navigation will be impeded. SJW and EPC assert that the applicable criteria are set forth in TPA SLMR Section V(A)(3)(f) Limited Shoreline Projects; all applicable dimensional and locational criteria for the access pier have been met; and SJW is entitled to the Permit as the upland riparian property owner.

SJW and EPC filed a Joint Motion to Dismiss and Motion for Summary Order on January 20, 2021, (hereinafter “Motion”) which was duly noticed for hearing and heard on February 18, 2021.

### **UNDISPUTED FACTS FOR PURPOSES OF THE REQUEST FOR SUMMARY ORDER**

1. The EPC is a local environmental regulatory agency. The EPC is authorized to enforce the Hillsborough Environmental Protection Act, Chapter 84-446, Laws of Florida, as amended by Chapter 87-495, Laws of Florida (the “EPC Act”), and the rules promulgated by the EPC.

2. TPA has regulatory authority over the waters proposed for the access pier and is the permitting agency for the work proposed. TPA has delegated Minor Work Permit authority and administration of Minor Work Permitting to the EPC pursuant to an Interlocal Agreement under Section 9 of the EPC Act.

3. The pleadings and evidence include the original and revised permit applications; the Notice of Intent to Issue Minor Work Permit, No. 694410, dated November 5, 2020; the Notice of Appeal dated January 3, 2021; the SJW and EPC Motion; and the Appellants response dated January 29, 2021 (hereinafter “Response”). The aforesaid documents constitute Record provided with this Recommended Order.

4. No supporting affidavits were provided by Appellants, SJW or EPC.



5. The sole issues raised by Appellants in their Notice of Appeal are whether the EPC erred in issuing the Minor Work Permit because the length of the proposed access pier exceeds the length permitted by the TPA SLM Rules, and whether navigation will be impeded if the mangroves that will surround the access pier die in the future.

6. No amendments were made or sought to the Notice of Appeal.

7. The only fact issues that appear in the Notice of Appeal concern the navigable width of the affected waterbody and the impact on navigation if the existing mangroves die in the future.

8. After an examination of the pleadings and the evidence presented and by questioning the Appellants and counsel for SJW and EPC, it is determined that the following material facts exist without substantial controversy.

9. SJW applied for a permit to construct an access pier adjacent to SJW Property and in Jurisdictional Lands owned by TPA on or about November 3, 2020.

10. The length of the shoreline at SJW's Property is 33.5 feet.

11. The SJW Property is upland riparian property, adjacent to tidal waters in a canal.

12. Appellants own the property located at 4805 W. San Miguel St., Tampa, FL 33629 and share a riparian line with the SJW Property.

13. EPC issued a Minor Work Permit to SJW for Construction of an Access Pier, Permit Number 69410 (hereinafter "Permit").

14. The Permit authorizes the construction of a 76 square foot pier with the following dimensions: four (4) feet in width and nineteen (19) feet in length.

15. The EPC estimated the riparian lines for the SJW permit pursuant to the SLM Rules for purposes of ensuring the proposed pier is coming off the SJW Property at the appropriate angle and location only.

16. The SJW pier is to be built 90 degrees off a fixed seawall at the SJW Property, directly across from another fixed seawall on the other side of the canal.

17. The EPC and SJW agree that the width of the canal waters at the location of the SJW project is 92 feet as Appellants acknowledge in their Notice of Appeal.

18. The approved pier does not extend past the estimated riparian lines.

19. The tip of the approved access pier lies within existing mangroves.

20. The mangroves that will surround the approved pier are not dead or dying.

21. The Permit does not allow mooring of boats associated with the pier.

22. Appellants indicate in their Notice of Appeal that navigation of the Jurisdictional Lands will not be impeded by simply constructing the approved access pier.

23. There are no sworn affidavits of no objection filed in this matter as referenced in TPA SMLR V(A)(3)(f).

24. The parties agree that combining individual facilities into a single multi-slip dock or other access facility is not a practical alternative in this case.

### **CONCLUSIONS OF LAW**

25. The Hearing Officer has jurisdiction over the parties to and subject matter of this proceeding pursuant to EPC's Enabling Act, 84-446, Laws of Florida, (Act) Section 9 and Rules of the Commission, § 1-2.32.

26. A permit applicant has the burden of proof to show entitlement to the requested permit or to show an exception allowed by the rules. Rules of the Commission, § 1-2.33(d).

27. Fact issues not raised by the Notice of Appeal shall be accepted as undisputed. Id.

28. Any party to an EPC appeal may move for summary final order whenever there is no genuine issue as to any material fact. Rules of the Commission, 1-2.32(i).

29. The Florida Rules of Civil Procedure are instructive. The Florida Rules of Civil Procedure provide that, after a review of the pleading and the summary judgment evidence, “ if there is no genuine issue as to any material fact...[then] the moving party is entitled to a judgment as a matter of law.” Fla.R.Civ.P. 1.510(c ).

30. The SLM Rules provisions relied on by Appellants provide as follows:

“All structure(s) must be set back from riparian lines as follows: (a) Structures located on properties with a shoreline frontage of less than 65 feet must maintain a minimal structural setback distance of 10 feet from the riparian lines.” TPA SLM Rules Section V(A)(3)(a)(2).

“Docks or other structures must not extend more than twenty-five percent of the navigable width of the affected waterbody. Maximum structure extensions can be further restricted based upon site specific circumstances regarding navigational safety and existing structures.” TPA SLM Rules Section V(A)(3)(a)(3).

31. The TPA SLM Rules contains the following rule for “Limited Shoreline Projects” where an upland riparian parcel has less than 40 feet of shoreline as is the case here: An upland riparian parcel is permitted to construct a pier within ten (10) feet of a riparian line, without the consent of the adjacent property owners, if i) the pier is four (4) foot in width, ii) combining

individual facilities into a single multi-slip dock or other access facility is not a practical alternative; and iii) the proposal is consistent with all other standards and criteria found in the rule. TPA SLM Rules Section V(A)(3)(f).

32. The aforesaid TPA SLM Rules “Limited Shoreline Projects” provision permits a pier within ten (10) feet of a riparian line if the criteria set forth in the rule are satisfied. Id.

33. SJW’s proposed access pier satisfies the criteria set forth in the “Limited Shoreline Projects Rule” because i) SJW’s pier is only a single access pier of 4 feet in width, ii) the issue concerning combining individual facilities into a single multi-slip dock or another access facility is not applicable in this case as agreed by the parties, and iii) there is no genuine issue of material fact concerning the proposed access pier’s consistency with all other standards and criteria found in the rule, especially considering the limited fact issues raised by Appellant’s in their Notice of Appeal.

34. Appellant’s argument that the access pier exceeds the length permitted by the TPA SLM Rules is incorrect as a matter of law.

35. The ten (10) foot setback from riparian lines required by TPA SLMR Section V(A)(3)(a)(2)(a) must be harmonized with TPA SLMR Section V(A)(3)(f) because they are separate and distinct standards.

36. The “Limited Shoreline Projects” rule would be nullified if, as argued by Appellants, the EPC had to impose a ten-foot setback as set forth in their Notice of Appeal.

37. As a matter of law, TPA SLMR Section V(A)(3)(f) permits the upland riparian owner to encroach into the ten-foot setback required by TPA SLMR Section V(A)(3)(a)(2)(a) if the criteria set forth in the “Limited Shoreline Projects” rule are met.



38. Appellant's argument that the access pier is longer than permitted under the SLM Rules because of the navigable width of the canal in this case is also incorrect as a matter of law based on Ogden v. Truex and EPC, (EPC Final Order June 22, 2015).

39. The navigable width of the jurisdictional waters at the SJW Property is calculated by measuring seawall to seawall through the proposed access pier to the other side of the canal at 90 degrees off the shoreline. See id. The width is 92 feet as agreed by all parties.

40. Appellant's calculation that the permitted maximum length of the pier under TPA SLM Rules Section V(A)(3)(a)(3) is about 23 feet is correct if the agreed-upon width of 92 feet is used, and, therefore, the 19-foot length of the SJW access pier is permitted.

41. The Appellants' opinion that navigation will be impeded in the future by SJW's access pier if the mangroves that surround it die does not raise a genuine issue of material fact. See Romano v. City of Tampa and EPC, (EPC Final Order, Feb. 3, 2011). The death of the mangroves is speculative as is any alleged impact resulting from the death of the mangroves.

42. SJW's burden is one of reasonable assurances that its project will comply with the applicable rules. See Ogden v. Truex and EPC, (EPC Final Order June 22, 2015).

43. With respect to the argument that the mangroves may die in the future and present navigational issues under SLM Rules, the reasonable assurance burden concerns "reasonably foreseeable contingencies" and does not require "absolute guarantees." Id.

44. The Record provides reasonable assurance of compliance with applicable SLM Rules.

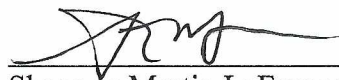
45. The pleadings and summary judgment evidence show there is no genuine issue as to any material fact and SJW and EPC are entitled to a judgment in their favor as a matter of law.

**RECOMMENDATION**

Based on the foregoing undisputed facts and conclusions of law it is **RECOMMENDED** that the EPC enter a Final Order upholding the Permit for the construction of an access pier on Jurisdictional Lands adjacent to SJW's Property, reflected in the Notice of Intent to Issue a Minor Work Permit for Construction of an Access Pier, No. 69410, dated November 30, 2020.

Dated: March 15, 2021

Respectfully submitted,



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Environmental Protection Commission  
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**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY**

**MANUEL CRIOLLO and TAMMY CRIOLLO,**

**Appellants,**

vs.

**EPC Case No. 20-EPC-015**

**PEDER JOHNSEN and  
ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY**

**Appellees.**

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**FINAL ORDER**

In accordance with Chapter 84-446, as amended, Laws of Florida (EPC Act) and Chapter 1-2, Rules of the EPC, a hearing was held on February 18, 2021 for the Joint Motion to Dismiss and Motion for Summary Order and the assigned Hearing Officer submitted her Recommended Order (RO) to the Environmental Protection Commission of Hillsborough County (EPC) on March 15, 2021. The Recommended Order is attached as Exhibit 1. No exceptions were filed by either party. On April 15, 2021, this matter came before the Commissioners of the EPC for review and issuance of a final order.

**BACKGROUND**

1. Pursuant to the *Amended and Restated Interlocal agreement between the Tampa Port Authority (TPA) and the EPC* dated June 23, 2009 (TPA Delegation Agreement) the EPC was delegated the TPA's authority to process dock permit applications in accordance with the Chapter 95-488 (TPA Enabling Act) and the TPA's Submerged Lands Management (SLM) Rules.

2. On November 5, 2020, the EPC Executive Director granted the Appellee SJW Group, LLC's application for a Minor Work Permit 69410 (Permit) for the construction of pier on jurisdictional lands (submerged lands) at 2216 S. Occident Street, Tampa, Florida (Property), which is adjacent to Appellants' property

3. The Appellants filed an appeal challenging the issuance of the permit. Shannon LaFrance was assigned as the Hearing Office to the case. An evidentiary hearing was scheduled for April 28, 2021.

4. Appellees SJW and EPC filed a Joint Motion to Dismiss and Motion for Summary Order on January 20, 2021. A motion hearing was held on February 18, 2021, via electronic video platform, to formulate final agency action on the Appellee SJW's application for marine construction activities in jurisdictional waters.

5. The Hearing Officer subsequently issued a Recommended Order (RO) on March 15, 2021 and transferred the case to the Commission to render a Final Order.

6. The Hearing Officer recommended the Commission to authorize issuance of the Permit.

7. On March 26, 2021, Appellee SJW filed a Motion for Substitution of Parties pursuant to Rule 1.260(c), Florida Rules of Civil Procedure requesting the Commission substitute Peder Johnsen in place of SJW. The Commission Counsel, on behalf of the Commission, issued an Order granting SJW's Motion for Substitution of Parties. Peder Johnsen is reflected as Appellee in this Final Order.

### **STANDARDS OF REVIEW FOR RECOMMENDED ORDERS**

8. Pursuant to sections 1-2.35(c), (e) and (f), Rules of the EPC:

(c) If no exceptions are timely filed, the Commission shall adopt the Hearing Officer's findings of fact, and shall make appropriate conclusions of law, and render a Final Order.

(e) The Commission may reject, reverse or modify a finding of fact only if it finds that the fact is not supported by substantial competent evidence in the record.

(f) The Commission shall affirm, reverse, or modify the Hearing Officer's findings of fact, make appropriate conclusions of law, and promptly render a written Final Order thereon, provided that the Commission shall not take any action which conflicts with or nullifies any provision of the EPC Act or the rules enacted pursuant to said act.

9. The EPC local regulatory programs are not subject to Chapter 120, Florida Statutes



(Administrative Procedures Act), but for purposes of EPC administrative hearings Chapter 120 jurisprudence is persuasive at a minimum.

10. The agency reviewing the RO may not reject or modify the findings of fact of a hearing officer unless they are not supported by substantial competent evidence in the record. Section 1-2.35, Rules of the EPC and Charlotte County v. IMC Phosphates Co., 18 So. 3d 1089 (Fla. 2d DCA 2009). The term “competent substantial evidence” does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, competent substantial evidence refers to the existence of some evidence (quantity) as to each essential element and as to its admissibility under legal rules of evidence. *See e.g.*, Scholastic Book Fairs, Inc. v. Unemployment Appeals Comm’n, 671 So. 2d 287, 289 n.3 (Fla. 5th DCA 1996).

A reviewing agency may not reweigh the evidence presented at a final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See e.g.*, Rogers v. Dep’t of Health, 920 So. 2d 27, 30 (Fla. 1st DCA 2005); Belleau v. Dep’t of Env’tl. Prot., 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); Dunham v. Highlands County Sch. Bd., 652 So. 2d 894 (Fla. 2d. DCA 1995). These evidentiary-related matters are within the province of the hearing officer, as the “fact-finder” in these administrative proceedings. *See e.g.*, Tedder v. Fla. Parole Comm’n, 842 So. 2d 1022, 1025 (Fla. 1st DCA 2003); Heifetz v. Dep’t of Bus. Regulation, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985). Also, the hearing officer’s decision to accept the testimony of one expert witness over that of another expert is an evidentiary ruling that cannot be altered by a reviewing agency, absent a complete lack of any competent substantial evidence of record supporting this decision. *See e.g.*, Peace River/Manasota Regional Water Supply Authority v. IMC Phosphates Co., 18 So. 3d 1079, 1088 (Fla. 2d DCA 2009); Collier Med. Ctr. v. State Dep’t of Health and Rehabilitative Services, 462 So. 2d 83, 85 (Fla. 1st DCA 1985); Fla. Chapter of Sierra Club v. Orlando Utils. Comm’n, 436 So. 2d 383, 389 (Fla. 5th DCA 1983).

A reviewing agency thus has no authority to evaluate the quantity and quality of the evidence presented at an administrative hearing, beyond making a determination that the evidence is competent and substantial. *See, e.g.*, Brogan v. Carter, 671 So. 2d 822, 823 (Fla. 1st DCA 1996). However, scrivener’s errors may be amended when the record reflects accurately. Britt v. Department of Professional Regulation, 492 So. 2d 697, 699 (Fla. 1st DCA 1986).

11. An agency has the primary responsibility of interpreting statutes and rules within its regulatory jurisdiction and expertise. Public Employees Relations Commission v. Dade County

Police Benevolent Association, 467 So. 2d 987 (Fla. 1985). However, a hearing officer reviewing an administrative action must interpret such statute or rule de novo and may not afford deference to agency interpretations. FLA. CONST. Art. 5 § 21. Additionally, a “District Court of Appeal reviews an agency's conclusions of law de novo and reviews the record to determine whether competent substantial evidence supports the agency's decision[.]” G.R. v. Agency for Persons with Disabilities, 45 Fla. L Weekly D 2684 (Fla. 3d DCA 2020) *unpublished*. Furthermore, agency interpretations of statutes and rules within their regulatory jurisdiction do not have to be the only reasonable interpretations. It is enough if such agency interpretations are “permissible” ones. Suddath Van Lines, Inc. v. Department of Environmental Protection, 668 So. 2d 209 (Fla. 1<sup>st</sup> DCA 1996).

### **FINDINGS OF FACT**

12. No exceptions were filed challenging the validity of the Hearing Officer’s findings or fact in the Recommended Order. In accordance with section 1-2.35(c), Rules of the EPC, the Commission shall adopt the hearing Officer’s findings of fact, because the findings of fact are supported by competent substantial evidence and no exceptions were timely filed.

13. **Scrivener’s error.** A scrivener’s error is contained in Paragraph 2 of the RO and is revised as follows: “TPA has regulatory authority over the waters proposed for the access pier and is the permitting agency for the work proposed. TPA has delegated Minor Work Permit authority and administration of Minor Work Permitting to the EPC pursuant to an Interlocal Agreement under **Section 8** of the EPC Act.”

14. **Scrivener’s error.** A scrivener’s error is contained in Paragraph 3 of the RO and is revised as follows: “The pleadings and evidence include the original and revised permit applications; the Notice of Intent to Issue Minor Work Permit, No. **69410**, dated November 5, 2020; the Notice of Appeal dated January 3, 2021; the SJW and EPC Motion; and the Appellants response dated January 29, 2021 (hereinafter "Response"). The aforesaid documents constitute Record provided with this Recommended Order.”

**CONCLUSIONS OF LAW**

15. No exceptions were filed challenging the validity of the Hearing Officer’s conclusions of law in the Recommended Order. The conclusions of law do not conflict with or nullify applicable provisions of law.

16. The Permit meets the standards of the EPC Act, Chapter 1-11 (Rules of the EPC), Tampa Port Authority’s Enabling Act, and Submerged Lands Management Rules.

In accordance with the vote of the Environmental Protection Commission of Hillsborough County on April 15, 2021, it is

**ORDERED** that:

A. The Findings of Fact and Conclusions of Law in the Recommended Order (Exhibit 1) are adopted in their entirety but for the scrivener’s errors in Paragraph 2 and 3 of the Findings of Fact.

B. The Recommended Order’s “Recommendation” section is AFFIRMED and the Notice of Intent to Issue Minor Work Permit 69410 is APPROVED.

**NOTICE OF RIGHTS**

Any party to this order has the right to seek judicial review of this Final Order in accordance with Section 9 of the EPC Act and the Administrative Procedure Act, Chapter 120, part III, Florida Statutes, 1961 by filing a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Environmental Protection Commission, EPC Legal Department, 3629 Queen Palm Dr., Tampa, FL 33619, and by filing a notice of appeal accompanied by the applicable filing fee with the Second District Court of Appeal. The notice of appeal must be filed within 30 days from the date this order is filed with the Agency Clerk.

DONE and ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2021, in Hillsborough County, Florida.

ENVIRONMENTAL PROTECTION  
COMMISSION OF HILLSBOROUGH COUNTY

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Mariella Smith, Chair

cc: Shannon LaFrance, Esq., Hearing Officer

**CERTIFICATE OF SERVICE**

I CERTIFY that a true copy of the foregoing was sent via electronic mail to **Manuel and Tammy Criollo** (Appellants) at [tcriollo@yahoo.com](mailto:tcriollo@yahoo.com), **Kevin Reali, Esq.**, (Counsel for Appellee Peder Johnsen) at [kreali@stearnsweaver.com](mailto:kreali@stearnsweaver.com), and Ricardo Muratti (Counsel for Appellee EPC) at [murattir@epchc.org](mailto:murattir@epchc.org) on this \_\_\_\_\_ day of April 2021.

ENVIRONMENTAL PROTECTION  
COMMISSION OF HILLSBOROUGH COUNTY

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# ENVIRONMENTAL PROTECTION COMMISSION

## AGENDA ITEM COVER SHEET

Agenda Item # 9.b.

**Date of EPC Meeting:** April 15, 2021

**Subject:** Update on Piney Point Gypsum Stack located in Manatee County

**Agenda Section:** Regular Agenda

**Division:** Water Division

**Recommendation:** Informational Report

**Brief Summary:** EPC staff will provide a brief summary of the Piney Point gypsum stack leak, the potential impacts to Hillsborough County, and EPC's involvement to date.

**Financial Impact:** No Financial Impact

**List of Attachments:** None

**Background:** Staff will provide an update regarding the unfolding emergency discharge from the former Piney Point facility located in Manatee County. While we are following this event very closely, citizen concerns and questions are best directed to the FDEP as EPC is not directly involved and has no jurisdiction over this incident. We are already enhancing our routine monitoring of Tampa Bay at existing sites and will continue to communicate with stakeholders and coordinate our efforts with the appropriate regulatory officials.



# ENVIRONMENTAL PROTECTION COMMISSION

## AGENDA ITEM COVER SHEET

Agenda Item # 9.c.

**Date of EPC Meeting:** April 15, 2021

**Subject:** Update on Environmental Concerns Raised By Tampa Bay Times Articles at Gopher Resource Tampa Plant

**Agenda Section:** Regular Agenda

**Division:** Air Division

**Recommendation:** Informational Report

**Brief Summary:** At the request of Commissioner Mariella Smith, EPC Staff will provide an overview of the environmental issues surrounding the Gopher Resource Secondary Lead Smelting Tampa Plant in light of the recent articles regarding lead and other pollutant levels and employee exposures inside the plant. The presentation will highlight the air permitting, compliance, and enforcement history since Gopher Resource purchased the plant in 2006.

**Financial Impact:** None

**List of Attachments:** Map of EPC's Lead Air Monitoring Sites Near Gopher Resources Tampa Plant

**Background:** Two recent articles (*Poisoned – Part 1: The Factory and Part 2: The Failings*) published in the Tampa Bay Times (Times) on March 28, 2021 and April 4, 2021 alleges that from 2007 to 2019, workers at the Gopher Resource (a/k/a EnviroFocus) Secondary Lead Smelting Plant in Tampa have been exposed to air lead levels that were hundreds of times higher than the federal Occupational Safety and Health Administration (OSHA) limit of 50 micrograms of lead per cubic meter of air over an 8 hour period. The Times alleges that these levels were the result of poor operation and maintenance causing elevated blood levels in employees that may have exceeded OSHA's 25 micrograms of lead per deciliter of blood threshold for triggering an agency inspection.

During this same time period, Gopher Resource purchased the plant and expanded its operations by totally enclosing their operations and raising lead production from 26,500 ton per year to 200,000 tons per year. According to Gopher, they spent more than \$230 Million on the plant since its purchase in 2006 with over \$130 Million towards environmental health and safety technology to comply with the federal ambient air quality lead standard, which was lowered by the US-EPA in 2008 from 1.5 micrograms of lead per cubic meter of air to 0.15 micrograms of lead per cubic meter of air. The expansion and total enclosure were completed in 2012. The building was enclosed and required Gopher maintain a slight negative pressure to keep emissions from escaping to the outside atmosphere, with particulate matter and lead emissions controlled by baghouses. Emissions from the furnace, dryers, and refining areas are captured and vented to an afterburner to control carbon monoxide, volatile organic compounds, and nitrogen oxides, then to a wet scrubber to remove sulfur dioxide before being ducted to baghouses where particulate matter and lead is removed.

The FDEP is the delegated agency for water and waste regulation of the facility, while EPC has been delegated most air pollution permitting, compliance, and enforcement authority from the FDEP and US-EPA. Since 2006, EPC and FDEP have revised and renewed various air pollution permits with oversight from the US-EPA and inspected the facility almost 100 times. During this time period, there have been seven (7) enforcement actions resulting from poor operation and maintenance of the equipment and air pollution controls, equipment fires, as well failures to meet emission standards. This has resulted in assessed penalties of over \$0.5 Million, which includes approximately \$213,550 in cash penalties and approximately \$319,625 in supplemental environmental projects designed to improve their operations and air pollution control equipment. In addition, as part of the enforcement actions, Gopher was required to conduct at least two (2) 3rd Party Environmental Audits of their operations and air pollution controls to ensure proper design and ability to comply with their permits and the regulations. The audits were completed in 2013 and 2015 with recommendations for improvements to their operations and air pollution controls, including an additional afterburner, baghouses, and the use of corrosion-resistant steel and fire-resistant Teflon bags in the baghouses.

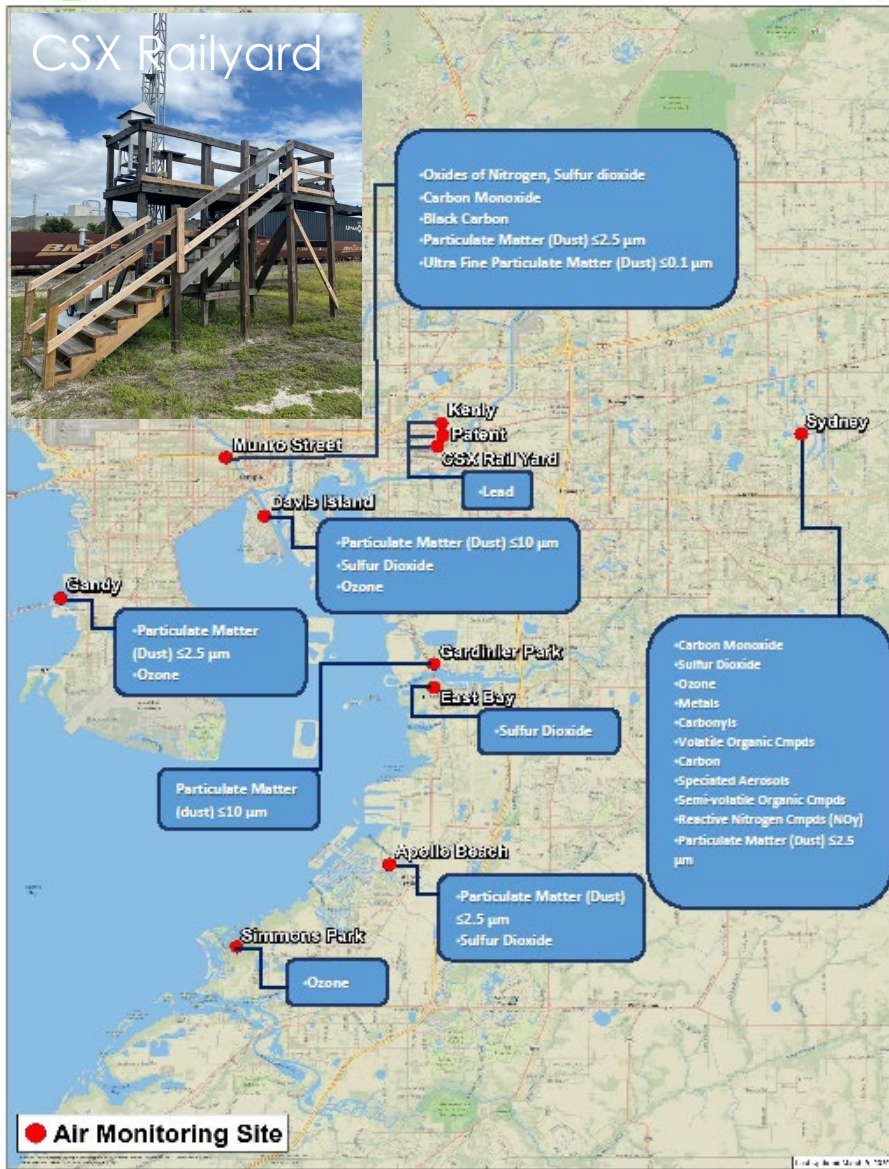
OSHA is responsible for worker protection inside the Gopher Plant, while the EPC enabling Act, Chapter 84-446, Laws of Florida, only authorizes the regulation of outside ambient air, which has seen a significant decrease in emissions over the years. EPC operates several ambient air quality lead monitors near the plant, as well as the nearby Kenley Elementary School. Since US-EPA's promulgation of the new ambient air lead standard in 2008, Hillsborough County is now in compliance and has been re-designated by US-EPA as attainment for all pollutants, including lead.

And while EPC does not regulate air inside the building, the entire facility operations are enclosed with emissions from the various operations vented to air pollution control equipment. The air pollution permits regulates the equipment inside the building, as well as the air pollution controls, and requires immediate or prompt notification and reporting by Gopher to the EPC of any abnormal events, malfunctions, equipment breakdowns, or failure to comply with any conditions of the permit. So, any failures to do so could be considered violations. EPC is continuing to evaluate the allegations in the articles and will schedule expedited follow-up inspections of the facility with FDEP and EPA, as appropriate, to determine their validity.





# EPC AIR MONITORING NETWORK



# AIR MONITORING FOR PUBLIC HEALTH PROTECTION AND RESEARCH

- ❑ 11 Air Monitoring Stations
- ❑ Continuous monitors for Ozone, NO<sub>2</sub>, CO, SO<sub>2</sub> and Particulate Matter
- ❑ Pb Monitoring Around EnviroFocus/Gopher Resource Plant
  - ✓ CSX Railyard
  - ✓ Patent
  - ✓ Kenley Elementary







# ENVIRONMENTAL PROTECTION COMMISSION

## AGENDA ITEM COVER SHEET

Agenda Item # 9.d.

**Date of EPC Meeting:** April 15, 2021

**Subject:** Legislative Update on Environmental Bills

**Agenda Section:** Regular Agenda

**Division:** Legal Department

**Recommendation:** Informational Report

**Brief Summary:** The regular session of the Florida Legislature convened on March 2, 2021 and is scheduled to adjourn on April 30, 2021. EPC staff will provide updates on various environmental and administrative bills that may impact the EPC or may be of interest to the community.

**Financial Impact:** No Financial Impact

**List of Attachments:** None

**Background:** The regular session of the Florida Legislature convened on March 2, 2021. April 20 (50th day) is the last day for regularly scheduled committee meetings in the Senate. The 60-day regular session should adjourn on Friday, April 30, 2021. EPC staff reviews environmental and administrative bills to determine if they may impact the EPC's functions and budget. The Commission approved a legislative strategy (EPC Policy No. 2007-02) on March 15, 2007, that gives staff and the Chair continuing direction to monitor, comment on, and lobby, among other things, bills that impact the functions of the EPC.

Although EPC is tracking numerous bills, included below is a summary of just a few notable bills regarding environmental regulation or administrative matters that may impact EPC functions or may be of interest:

### **Petroleum Tanks Cleanup Budget**

The House and Senate appropriations committees passed their respective budgets the week of April 2, 2021. The full chambers must now consider and vote on the budget. Of particular interest to the EPC is the Petroleum Tanks Cleanup funding levels. As proposed in the committees, they have allocated \$70M in the House of Representatives and \$60M in the Senate. This is well below annual funding (e.g. - \$115M in FY20), but the House has an additional non-recurring \$100M for Petroleum Tanks Cleanup to offset the impact of the pandemic.

**SB 596 / HB 6023      Preemption of Tree Pruning, Trimming, and Removal**

*Sponsored by Senator Stewart and Sen. Cruz and Representative Eskamani and Rep. Learned.*

This bill proposes to repeal section 163.045, Florida Statutes. This is the 2019 law that preempts local governments from regulating tree pruning, trimming and removal of “dangerous” trees on “residential” properties if a certified arborist or licensed landscape architect determines the tree is dangerous. This has not been voted on in any committee.

**HB 1167 / SB 1396      Tree Pruning, Trimming, or Removal on Residential Property**

*Sponsored by Rep. Snyder and Senator Gruters.*

This bill proposes to revise the definition of residential property to include trailer parks and mobile home parks. The current law applies to removing and trimming dangerous trees on residential properties, but this would expand and clarify that MHPs are residential, not commercial. Only the House version has been approved in one of three assigned committees.

**SB 916                  Residential Home Protection**

*Sponsored by Senator Brodeur.*

This bill proposes to modify the tree trimming pre-emption law in section 163.045, Florida Statutes. This bill modifies the definition of “dangerous” instead to “unacceptable risk.” The bill would create a more standardized method to determine the unacceptable risk by requiring the application of American National Standard Institute (ANSI) standards. Additionally, the bill would clarify that it only applies to single-family detached home on a separate lot. This bill has passed one of three committees. There is no House companion.

**HB 35 / SB 402          Legal Notices**

*Sponsored by Rep. Fine, Rep. Grieco, and Senator Rodrigues.*

This bill allows for local governments to publish legal notices on their public website in lieu of a periodical. Governments would have to advertise once a year in a periodical that persons can ask to register to receive e-mails or mail of that website notice too. This bill has passed the House and has been sent to the Senate for consideration.

**SB 994                  Private Docks**

*Sponsored by Senator Brodeur.*

This bill clarifies an existing wetlands exemption. The bill creates a new definition in section 403.803, F.S. for “private residential multi-family dock or pier” and proposes to exclude this category of docks from the “commercial” definition. This revision would mean that State permits are not needed for the installation or construction of private residential multi-family docks or piers under 1000 sq. feet or associated adjacent pilings. Additionally, the DEP is authorized to create a general permit for the construction, alteration, repair, and maintenance of private residential multi-family docks or piers that do not meet the exemption thresholds. This has not been heard in any committee and does not have a House companion.

**HB 421 / HB 1101 / SB 1380 / SB 1876                  Relief from Burdens on Real Property Rights**

*Sponsored by Rep. Persons-Mulicka, Rep. McClain, Sen. Rodrigues, and Sen. Albritton.*

Florida law currently provides a lesser remedy than a constitutional taking claim. The Bert Harris Act allows a property owner to sue a local government if a law they passed and applied to the property inordinately

burdens the owner's property rights. House Bill 421 revises the Bert Harris Act by expanding what can trigger a lawsuit. Among, other things the bill states that the mere adoption of the rule (not applying it to a specific property) could allow for the initiation of litigation. This can have a chilling effect on local governments passing new laws. Additionally, the bill proposes to revise the definition of "land" to extend property rights protection to mineral rights and other subsurface rights. HB 421 and SB 1876 have both passed 2 of 3 committees.

## **HB 403/ SB 266      Home-based Businesses**

*Sponsored by Rep. Giallombardo and Senators Perry and Baxley.*

This pre-emption bill would authorize home-based businesses to operate in residentially zoned areas, prevent local governments from licensing them, and restrict them in regulating such businesses. While the EPC opposes further attempts at pre-emption of local governments, it is important to note for environmental regulatory purposes that a recent House committee substitute clarified that the home-based business cannot use "equipment or process that creates noise, vibration, heat, smoke, dust, glare, fumes, odors, or electrical or electronic interference detectable by neighbors." The Senate version has passed two of three committees. The House bill passed its two committees and is now in the full House for consideration.

## **SB 1054 / HB 705      Soil and Groundwater Contamination**

*Sponsored by Senator Broxson and Rep. Andrade.*

This brownfields bill is focused on site cleanup for perfluoroalkyl and polyfluoroalkyl substances (PFAS). A Senate staff analysis describes PFAS as follows:

"... a group of thousands of man-made compounds developed to provide oil and water repellency, chemical and thermal stability, and friction reduction. Perfluorooctane sulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) are the most common and the best-studied of these compounds. PFAS were widely used since the 1950's, with applications in many industries, including the aerospace, semiconductor, medical, automotive, construction, electronics, and aviation industries, as well as in consumer products (e.g., carpets, clothing, furniture, outdoor equipment, food packaging) and firefighting applications. While U.S. manufacturers have voluntarily phased out use of the chemicals, they persist in the environment, particularly at fire colleges, airports, and military installations."

PFAS-only contaminated sites are problematic for the Brownfields program and redevelopment of contaminated property. If a property is only contaminated by PFAS, they may not qualify for the Brownfields program because there is no exceedance of a cleanup target level (CTL) as current State rules have no CTL for PFAS, only screening levels. Among other things, the bill includes changes for the following items that would allow them to qualify for the program:

1. Rulemaking to establish cleanup target levels for PFAS compounds;
2. Liability protection to parties working with the FDEP on PFAS sites;
3. Approval of municipal code as institutional controls for site closure; and
4. Requiring FDEP to notify the Water Management Districts of contaminated areas.

The House bill has not been heard in its first committee. The Senate bill has passed 1 of 3 committees.