

TAMPA BAY NATIONAL ESTUARY PROGRAM
INTERLOCAL AGREEMENT

THIS TAMPA BAY NATIONAL ESTUARY PROGRAM INTERLOCAL AGREEMENT (the "Agreement") is executed and made effective the 27th day of February, 1998, by and between 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 DEPARTMENT OF ENVIRONMENTAL PROTECTION'S FLORIDA MARINE RESEARCH INSTITUTE, an institute; 6. FLORIDA GAME AND FRESH WATER FISH COMMISSION, a Florida state agency; 7. HILLSBOROUGH COUNTY, a Florida political subdivision; 8. HILLSBOROUGH COUNTY ENVIRONMENTAL PROTECTION COMMISSION, a Hillsborough County agency; 9. MANATEE COUNTY, a Florida political subdivision; 10. PINELLAS COUNTY, a Florida political subdivision; 11. SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT, a Florida water management district; 12. the TAMPA PORT AUTHORITY, a Florida port authority; and 13. the TAMPA BAY REGIONAL PLANNING COUNCIL, a Florida regional planning council, (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 was established in 1991 to assist the Tampa Bay area in developing a comprehensive plan to restore and protect Tampa Bay. The Tampa Bay National Estuary Program is governed by a Policy Committee and advised by a Management Committee. The Tampa Bay National Estuary Program is a part of a national network of twenty-eight (28) 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 National 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, (the "CCMP"), and are committed to its successful implementation. *Charting the Course* 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 the improvement of Water & Sediment Quality, Bay Habitats, Fish & Wildlife, Spill Prevention and Response and Dredging and Dredged Material Management, which will be reexamined 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 this Agreement endeavor to be the first National Estuary Program to adopt a binding agreement to ensure that the CCMP is 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, and will not constitute separate agreements unless otherwise stated below:

(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, *Fla. Stat.*

(d) The term "Action Plan(s)" shall mean the comprehensive action plans developed by each of the Parties which set forth their individual initiatives and strategies they will undertake to attain the CCMP Goals, which Action Plans are subject to approval of the Parties as set forth below.

(e) The term "Action Plan Supplement(s)" shall mean the annual supplements to each of the Parties' Action Plans which set forth specific projects they will implement to attain the CCMP Goals.

(f) The term "Agreement" shall mean this Interlocal Agreement between the Parties as it is presently constituted or as it may be amended from time to time.

(g) The term "Army Corps" shall mean the United States Army Corps of Engineers, a federal agency.

(h) The term "CCMP" shall mean the Comprehensive Conservation and Management Plan, dated December, 1996, unanimously approved by the Parties, as amended from time to time.

(I) The term "CCMP Goals" or "Goals" shall mean those goals of the CCMP set forth in Section 4.1 below, as amended from time to time.

- (j) The term “Clearwater” shall mean the City of Clearwater, a Florida municipal corporation.
- (k) The term “Cities” shall mean collectively Clearwater, St. Petersburg, and Tampa.
- (l) The term “Counties” shall mean collectively Hillsborough, Manatee 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 occurred under Section 13.14 below.
- (o) The term “EPA” shall mean the United States Environmental Protection Agency, a federal agency.
- (p) The term “EPC” shall mean the Hillsborough County Environmental Protection Commission, a Hillsborough County agency.
- (q) The term “Game and Fish Commission” shall mean the Florida Game and Fresh Water Fish Commission, a Florida state agency.
- (r) The term “Hillsborough” shall mean Hillsborough County , a Florida political subdivision.
- (s) The term “Institute” shall mean the Florida Department of Environmental Protection's Florida Marine Research Institute, an institute of DEP .
- (t) The term “Local Governments” shall mean collectively the Cities and the Counties.
- (u) The term “Management Board” shall mean the new board for the NEP Entity that will replace the Management Committee, all as set forth in Article Five below.
- (v) The term “Management Committee” shall mean the existing Management Committee of the NEP, which will be replaced under this Agreement by the Management Board for the NEP Entity under Article Five below.
- (w) The term “Manatee” shall mean Manatee County, a Florida political subdivision.
- (x) The term “NEP” shall mean the Tampa Bay National Estuary Program, an intergovernmental task force.

(y) The term “NEP Entity” shall mean the interlocal entity formed pursuant to this Agreement and Section 163.01, *Fla. Stat.*, and which shall be known as the Tampa Bay Estuary Program.

(z) The term “Nitrogen Management Consortium” or “Consortium” means a task force of representatives from the currently existing Management Committee, electric utility industry, fertilizer industry, and agriculture, as described in Exhibit " A, " which was formed to develop an action plan to meet the portion of the nitrogen management goal not previously allocated to local governments.

(aa) The term "Pinellas" shall mean Pinellas County, a Florida political subdivision.

(bb) The term "Policy Board" shall mean the new board of the NEP Entity that will replace the Policy Committee, all as set forth in Article Five below.

(cc) The term "Policy Committee" shall mean the existing Policy Committee of the NEP which will be replaced under this Agreement by the Policy Board for the NEP Entity under Article Five below.

(dd) The term "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 over certain of the other Parties, including DEP, EPC, Game and Fish Commission, Port Authority, and SWFWMD.

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

(gg) The term "Streamlined Permitting" shall mean the expedited permitting process described in Section 8.3 below.

(hh) The term “SWFWMD” shall mean the Southwest Florida Water Management District, a Florida water management district.

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

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

ARTICLE TWO – INTERLOCAL AGREEMENT

2.1 **Interlocal Agreement.** 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.

ARTICLE THREE – TERM

3.1 **Term.** The term of this Agreement is perpetual, commencing on the Effective Date (the "Term"). 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 NEP Entity. The Policy Board shall vote by majority vote on whether to terminate this Agreement, amend this Agreement or to let the status quo prevail. Should no action occur, this Agreement shall continue for another five year period.

ARTICLE FOUR – CCMP

4.1 **Adoption or CCMP Goals and Priorities.** The Parties hereby agree that the goals and priorities (collectively the "Goals") for Tampa Bay described in the CCMP and amplified in Exhibit "B" are approved and adopted by each of them. The Goals for Tampa Bay are to maintain important water quality and seagrass gains achieved over the last decade to allow the eventual recovery of seagrass to acreage observed in 1950. The Goals focus on issues that must be addressed to sustain a healthier bay that will support both recreation and commerce. These issues include seagrass and nitrogen load management, coastal habitats, toxic contaminants, atmospheric deposition, bacterial contamination, fish and wildlife, spill prevention and response, and dredging and dredged material management. The Goals shall be achieved in the manner described in Section 4.3 below, including through Action Plans and Action Plan Supplements described in Article Seven to be submitted by each of the Parties. The Parties shall use their best efforts to achieve the Goals within the time periods prescribed, and shall work cooperatively 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 not reflected in Exhibit "B."

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 reexamined by the NEP 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 reexamine 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 Goal will be restructured to provide ongoing maintenance of the resource.

4.3 **Goals: Achievement.** The only CCMP Goal that is specifically allocated in this Agreement to be achieved individually by any of the Parties is the nitrogen loading reduction/management to be accomplished by Local Governments as described in Section 1 of Exhibit "B" and in Exhibit "B-1." It is contemplated that all other Goals will be achieved collectively by the Parties with each contributing through specific Action Plans and Action Plan Supplements described below. It is contemplated this will foster joint cooperation among the Parties and joint restoration and pollution reduction projects where reasonable and cost effective. Thus, the Goals will be collectively determined by the NEP Entity as described in Exhibit "B" and thereafter achieved by the individual Action Plans and Action Plan Supplements of the Parties. If a cumulative goal is not met within its stated goal period, then the NEP Entity 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 Nitrogen Management Consortium is expected to adopt the Consortium Action Plan by resolution concurrent with the adoption of this Agreement to address the Year 1999 goals for cumulative reductions in annual loads of fifty-five (55) tons allocated to the Consortium in Section 1 of Exhibit "B" and in Exhibit "B-1." Those Consortium members who are also Parties to this Agreement will incorporate appropriate elements of the Consortium Action Plan into their own Action Plans within the later of sixty (60) days of the Effective Date of this Agreement or the adoption of the Consortium Action Plan. Such Action Plan is subject to the approval by majority vote of both the Policy Board and the Management Board. In the event of any inconsistency between the provisions of this Agreement and any agreement that may be adopted by the Consortium, including, without limitation, nitrogen management goals, then the provisions of this Agreement shall control and prevail.

4.5 **Prospective Application.** This Agreement is to be of prospective application only. Any actions authorized by DEP permits or permits issued by other permitting agencies issued in response to permit applications filed prior to the effective date of this Agreement, whether or not such applications were deemed complete by DEP or other permitting agencies by that date, shall not be considered inconsistent with any CCMP goals, either allocated or unallocated, or requirements of this Agreement. Further, any progress made toward implementing CCMP goals, either allocated or unallocated or requirements of this Agreement, will be measured based upon an assumption that actions authorized by the permits referred to in this Section were occurring as of the effective date of this Agreement.

4.6 **Existing Projects.** The Parties shall be able to take into account in their Action Plan, projects that accomplish their designated responsibilities to the extent that such projects were completed and became operational on or after January I, 1995.

ARTICLE FIVE – STRUCTURE OF THE NEP

5.1 **NEP Entity.** The Parties agree to the formation of the NEP Entity to be known as the TAMPA BAY ESTUARY PROGRAM pursuant to the authority of Section 7 of the Act.

5.2 **NEP Entity.** The NEP Entity shall be created under authority of subsection (7) of the Act. The NEP Entity shall have those powers specifically described in or contemplated by this Agreement.

- (a) The NEP Entity 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 the NEP Entity employees;
 - (iii) Make purchases and enter into contracts in the manner determined, adopted and implemented by it;
 - (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 NEP Entity, except as otherwise specifically described in this Agreement;
 - (vii) Determine the manner of responding for any liabilities that may be incurred through performance under this Agreement or through the NEP Entity;
 - (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 NEP Entity and all Parties; and
 - (ix) Determine, adopt and implement all other necessary and proper matters not otherwise covered above.
- (b) The NEP Entity 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) All of the tangible personal property and copies of all records of the TBRPC used

specifically by or for the NEP and the NEP Entity employees shall be transferred by the TBRPC to the NEP Entity by the date described in Section 5.8 below (with the consent of EPA first being obtained as applicable). It is the intent that tangible personal property paid by funds of the NEP be transferred and not others of the TBRPC. Federal, state, regional or local government support specifically contributed to the TBRPC for the NEP shall be transferred to the NEP Entity in the manner described in Section 5.8 below.

(d) In the event there are surplus funds held by the NEP Entity, they shall be used in the manner determined by the Policy Board.

(e) 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 is specifically described in or contemplated by this Agreement.

5.3 NEP Entity Functions and Responsibilities. The NEP Entity shall have the following functions and responsibilities, which are not inconsistent with the Act or any provision of applicable law:

- (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 NEP Entity;
- (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 NEP Entity;
- (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

NEP Entity, which action may include, but is not limited to, work 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 incident to effectuating the terms and provisions of this Agreement;

(k) To appear on its own behalf before boards, commissions, departments, or other agencies of municipal, county, state, or federal government;

(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 NEP Entity; 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 NEP Entity shall separately account for the public funds and the private funds deposited into any authorized public depository;

(m) Provided that the Policy Board and the Management Board unanimously agree, to adopt, change, amend, and repeal the terms and provisions of this Agreement for the administration of the provisions and terms of this Agreement;

(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 NEP Entity.

5.4 **Policy Board.** Initially, the Board of Directors of the NEP Entity shall be made up of eight (8) voting directors representing the Cities, Counties, DEP and SWFWMD (collectively the "Policy Group Member(s)"), and one non-voting participant representing the EPA, and shall be known as the "Policy Board". The actual representative of each Policy Group Member and the EPA shall be appointed by such Policy Board Member or the EPA from time to time. Each Policy Group Member and the EPA shall also appoint an alternate representative for the Policy Board from time to time to serve when the actual representative is not available. Each Policy Group Member and the EPA may change either their initial or alternative representative from time to time, but with at least two (2) business days 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 NEP in addition to those powers explicitly set forth in this Agreement. The Policy Board of the NEP Entity shall replace the existing Policy Committee.

Except as otherwise specifically set forth herein, a quorum for meetings and all votes shall be by a majority of the board members, with the exception that the EPA representative will not vote nor be counted for purposes of a quorum. All directors of the Policy Board shall serve without compensation.

5.5 Management Board. Initially, the Management Board of the NEP Entity 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 defined in Section 5.7 below) (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, but with at least two (2) days prior written notice by a duly authorized representative, of any change 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 NEP to the extent delegated by the Policy Board, in addition to those powers explicitly set forth in this Agreement. The Management Board shall replace the existing Management Committee. Except as otherwise specifically set forth herein, a quorum for meetings and all votes shall be by a majority of the board members, with the exception that the Army Corps and EPA representatives will not vote nor be counted for purposes of a quorum. The Management Board may unanimously agree to add the then existing Chair of the Consortium as a non-voting member of the Management Board, and if such occurs, such Chair shall not be counted for purposes of establishing a quorum. All directors of the Management Board shall serve without compensation.

5.6 Officers. The Policy Board shall elect (I) a chair or chairs of the Policy Board; (ii) other Policy Board officers; and (iii) and officers of the NEP Entity they deem appropriate. The Management Board shall elect (I) a chair or chairs of the Management Board; and (ii) other Management Board officers. Until the EPA ceases funding under Article Nine below, the DEP Representative on both the Policy Board and the Management Board shall serve as Chair .

5.7 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.

5.8 Transition and Administrative Support. The staff of the current NEP will become the staff of the NEP Entity. Within the period of three (3) to six (6) months of the full execution of this Agreement, the Policy Board shall approve an Operating Procedures Manual establishing procedures the NEP Entity will follow in its operations, including hiring/termination, pay/compensation, benefits, procurement of services and general policies. Within the period of three (3) to nine (9) months of the full execution of this Agreement, the NEP Entity shall enter into an administrative support agreement with a third party to provide administrative support for the NEP Entity, the Policy Board and the Management Board in accordance with the Operation Procedures Manual. It is contemplated that the TBRPC will

continue to perform such support services so long as the quantity, quality and cost of services are reasonable. Transfer from the TBRPC to the NEP Entity of NEP staff, office equipment and furniture, NEP funds, and other assets of the NEP along with the responsibilities for grants, contracts, and other legal documents in the name of TBRPC on behalf of the NEP shall be effective on the date the administrative support agreement becomes effective.

5.9 **Limitations of Powers.** The NEP Entity shall have no powers of taxation, regulation or eminent domain.

5.10 **Additional Board Members.** Should other governmental entities or regulatory agencies or private industry entities desire to become a party to this Agreement and of the Policy Board they must be unanimously approved by the Policy Board in their respective sole and absolute discretion. Such Party must comply with all of the provisions of this Agreement and be willing and able to contribute its pro-rata share of the funding. The funding ratios in Article Nine below will be amended accordingly to reflect such new Policy Board Members' obligations, all as of the first day of the next fiscal year of the NEP Entity. Once an entity is approved they will become a member of the NEP Entity, of the Policy Board and of the Management Board with the same voting rights as the existing members of such entities or boards. Should other governmental entities or regulatory agencies or private industry entities desire to become a party of this Agreement and the Management Committee (and not contribute funding) they must be unanimously approved by the Policy Board and the Management Board in their respective sole and absolute discretion. Once an entity has approval, they 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 NEP Entity. Within six (6) months of the Effective Date of the Agreement, the Policy Board will take action on the pending request of the Tampa Bay Regional Council to become a member of the Policy Board.

5.11 **Fiscal Year.** The NEP Entity shall have a fiscal year ending September 30 of each year.

5.12 **Budgets.**

(a) During the month of June and following preparation of a tentative budget, the Policy Board shall publish a notice of its intention to adopt a tentative budget. Following an appropriate hearing, the Policy Board shall adopt a tentative budget each year during the month of June of each year for the NEP Entity covering its proposed operation and requirements for the next ensuing fiscal year .

(b) The Policy Board shall give consideration to objections filed against the budget and in its discretion, may amend, modify or change the tentative budget. The Policy Board, by September 30th following appropriate notice and hearing, shall adopt a final budget for the NEP Entity, which shall thereupon be the operating and fiscal budget for the NEP Entity for the ensuing fiscal year.

(c) The Policy Board shall provide copies of the tentative budget to the Parties, as well as the Army Corps and EPA, and such tentative budget shall be accompanied by the estimated annual contribution of each of the Policy Board Members. The notice shall set forth the tentative budget in full, and shall be notice to the general public within the Counties and the Cities and Pasco and Sarasota County areas that on a date and at a place appearing on the notice, opportunity will be afforded to them to

appear before the Policy Board and show their objections to the budget. The notice shall be published once a week for two consecutive weeks in any newspaper of general circulation in each jurisdiction mentioned above, the last publication of which shall appear not less than one week prior to the date set by the Policy Board for the hearing on the budget.

5.13 **Bylaws.** The Policy Board by unanimous vote shall create and adopt Bylaws or appropriate rules of procedure for the NEP Entity for its governance and which shall remain in effect until modified by the Policy Board. The Bylaws or appropriate rules of procedure shall be initially created and adopted at the same time or before execution of the administrative support agreement described in Section 5.8 above.

5.14 **Policies.** The NEP Entity shall adopt its operating rules and internal procedures in the manner described in Section 5.2(b) above. Until such rules and procedures are fully adopted, the Policy Board may use the rules and procedures presently used by the TBRPC.

ARTICLE SIX – RESPONSIBILITIES OF THE PARTIES

6.1 **Interpretation of Agreement and CCMP.** The parties agree that this Agreement is intended to make the CCMP a standard by which regulatory actions are taken within the framework of existing rules and regulations. Thus, if a CCMP Goal is being furthered by an Action Plan or proposed permit, the Regulatory Agencies will attempt to allow such suggested actions to occur so long as they are within the parameters of existing rules and regulations. This will be known as "Regulatory Flexibility," as contemplated by Section 6.3 below. In the event that a rule or waiver or rule change is required, then the provisions of Section 6.4 below shall control and prevail. By participation in this Agreement, the Regulatory Agencies do not subordinate or relinquish their regulatory authority over the estuary or the power to act independent and apart from this Agreement.

6.2 **Responsibilities of all Parties.** By entering into this Agreement, the intent of the Parties is to assure effective and timely implementation of recommended actions and to adjust strategies as needed in the future to keep Tampa Bay's recovery on track. To that end, each of the Parties hereby agrees to:

contribute toward the attainment of the Goals including (a) Determine how they will their individual goals and time frames for achieving those goals;

(b) No later than two (2) months following the effective date of this Agreement, each Party shall submit their conceptual Action Plan outlining the projects, initiatives, and strategies that it will undertake over a certain period of time to achieve the Goals for Tampa Bay;

(c) Upon execution of this Agreement, each Party shall appoint an individual or individuals to serve as its liaison with the NEP on tracking and coordinating CCMP implementation and submit their name(s) in writing to the NEP; and

(d) Annually review and, where new projects are required to accomplish the Goals, resubmit its Action Plan to the Management Board and thereafter the Policy Board in the form of an Action Plan Supplement, and supplement the plan with such detailed projects it will undertake.

6.3 **Additional Responsibilities or the Regulatory Agencies.**

(a) 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.

(b) The flexibility contemplated by this section is intended to facilitate achievement of the CCMP goals, produce a net environmental benefit, and allow an efficiency that will reduce the overall costs of implementing the CCMP. For projects reviewed under Section 27 of 97-164, Laws of Florida (to be Codified as Section 403.0752 of the Florida Statutes), the Regulatory Agencies agree to extend, as appropriate, the following forms of flexibility for projects that are part of an approved Action Plan: (1) permitting process flexibility, (2) expedited permit processing, (3) alternative monitoring and reporting requirements, (4) coordinated permitting and inspections, and (5) cooperative inspections that provide an opportunity for informal resolution of compliance issues before enforcement action is initiated.

(c) The executive director or agency head of each permitting agency shall appoint a highly placed staff member as an Action Plan and Action Plan Supplement coordinator . The coordinator will maintain awareness of the status, and will oversee the progress of, any project which is a part of an approved Action Plan and Action Plan Supplement through the permitting process. Responsibilities of the coordinator will include on the Local Government applicant's request: (1) review of the informational requirements required in permit review; (2) review of any proposed conditions or other requirements contemplated for permit issuance; (3) review of any monitoring and reporting requirements in permit issuance, that are in addition to those being accomplished by Local Governments incident to the CCMP; and (4) such other matters as may be reasonably necessary .The representatives of the Parties involved with implementation of this Agreement shall be well-versed in the principles of ecosystem management and the CCMP, and will strive to implement those principles in the design of projects and processing of permit applications. The provisions of this subsection (c) are the good faith efforts of the Regulatory Agencies to facilitate actions by them in permitting projects contemplated by Action Plans and Action Plan Supplements approved hereunder, and in no manner shall it provide any right of action by any of the Parties claiming that the provisions of this subsection (c) have been breached.

6.4 **Variations and Waivers or Rule Changes.** The Regulatory Agencies agree to consider granting variances or waivers or changes to their rules pursuant to or in accordance with Chapter 28-104, *Florida Administrative Code*, if requested, to those projects that demonstrate consistency with the goals of the CCMP, including but not limited to the implementation of the Parties' approved Action Plans, to the extent their existing laws, rules and regulations permit such relief. An agency's decision concerning when and whether to grant a variance or waiver or rule change, is a matter totally within the discretion of each agency and any decision not to extend a variance or waiver or rule change shall not be considered a breach of this Agreement.

6.5 **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 incorporate changes in statutes, 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.

6.6 **Additional Responsibilities of the Local Governments.**

(a) Identify the regulatory flexibility desired for its projects from time to time, and provide such list of desired flexibility to the Regulatory Agencies.

(b) Include the goals contained in its applicable Action Plan (as they may be amended from time to time) into its comprehensive plan and needed actions in its capital improvement plans as such plans are further amended from time to time.

(c) Identify regulatory and land-planning flexibility to be exercised by Local Governments in attaining CCMP Goals.

6.7 **Responsibilities of the NEP Entity.** The NEP Entity shall:

(a) Serve as the coordinating body for the Action Plans and assist the Parties in gathering information necessary for the development of Action Plans and the subsequent implementation thereof;

(b) Report annually to the Policy Board on each Party's compliance with this Agreement and each Party's status of the implementation of their Action Plans;

(c) Prepare, every two (2) years, a baywide environmental monitoring report on conditions and trends in Tampa Bay;

(d) Assist the Parties in locating grants and other funds to aid in implementation of the projects set forth in their individual Action Plans and Action Plan Supplements;

(e) Coordinate outreach programs to promote public participation and facilitate restoration activities that support the CCMP Goals;

(f) Coordinate the re-examination and updating of the CCMP every five (5) years;

(g) Facilitate resolution of conflicts among the Parties;

(h) Establish a process that determines when a member has achieved its share of the CCMP Goals and ensures continued maintenance of those goals afterwards;

(I) Oversee atmospheric deposition, toxic contamination and other research projects;

(j) Develop action plans to address goals not being addressed through other Party's Action Plans; and

(k) Participate through the TBRPC in the Florida Coastal Zone Management (CZM) Program federal consistency review process to ensure that relevant federally funded or permitted projects are consistent with the goals of the CCMP .

Specific action to accomplish such goals must be approved by both the Policy Board and the Management Board.

6.8 **Port Authority.** The 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 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 Port Authority is entering into this Agreement only to the extent of its Port Authority Regulatory Capacity.

ARTICLE SEVEN – ACTION PLANS

7.1 **Action Plans.** Each Party shall submit, within two (2) months following the Effective Date of this Agreement, a conceptual Action Plan to the Management Board for approval outlining the manner in which it intends to achieve the Goals of the CCMP. The Action Plan is a long-term strategy outlining each Party's contribution to the attainment of the CCMP Goals and specifically how each Party shall attain the CCMP Goals, if any. The Action Plan may be revised at any time throughout the Term by submitting such revisions to the Management Board for approval.

7.2 **Action Plan Supplements.** Before each annual anniversary date of this Agreement, each Party shall review its Action Plan. Where new projects are required to accomplish the Action Plan, each Party shall submit an Action Plan Supplement to the Management Board for approval. The Action Plan Supplement shall describe specific projects outlined in its Action Plan, including anticipated costs, financing and impact. Where no supplement is required, a notice to that effect shall be submitted to the Management Board. The Action Plan Supplement should also include provisions for maintenance throughout the Term of this Agreement of any particular CCMP Goal once it has been attained. The Action Plan Supplement may be revised at any time throughout the Term by submitting such revisions to the Management Board for approval.

7.3 **Review of Action Plans.**

(a) **Management Board.** The Management Board shall review the Action Plans and revisions thereof submitted by the Parties and vote on recommending individual Action Plans to the Policy Board. An affirmative majority vote of the Management Board is required in order for any individual Action Plan to be recommended to the Policy Board, except that a negative vote from any

Regulatory Agency with jurisdiction over the Action Plan will result in a negative recommendation. Revisions to the Action Plans must only be approved by the Management Board unless the Policy Board shall otherwise direct.

(b) **Policy Board.** The Policy Board shall review the Action Plans recommended by the Management Board for consistency with the CCMP Goals and for feasibility and shall vote on each Action Plan's acceptability. An affirmative majority vote of the Policy Board is required to approve any individual Action Plan. In addition, in order for any individual Action Plan to be approved and implemented, all applicable Regulatory Agencies on both the Management Board and the Policy Board that have jurisdiction over the Party's Action Plan, must have cast an affirmative vote for the plan.

7.4 **Review of Action Plan Supplements.**

(a) **Management Board.** The Management Board shall review the Action Plan Supplements and revisions thereof submitted by the Parties and vote on recommending individual Action Plan Supplements to the Policy Board. An affirmative majority vote of the Management Board is required in order for any individual Action Plan Supplement to be recommended to the Policy Board, except that a negative vote from any Regulatory Agency with jurisdiction over the Action Plan Supplement will result in a negative recommendation.

(b) **Policy Board.** The Policy Board shall review the Action Plan Supplements recommended by the Management Board for consistency with the CCMP Goals and for feasibility and shall vote on each Action Plan Supplements acceptability. An affirmative majority vote of the Policy Board is required to approve any individual Action Plan Supplement. In addition, in order for any individual Action Plan Supplements to be approved and implemented, all applicable Regulatory Agencies on both the Management Board and the Policy Board that have jurisdiction over the Party's Action Plan Supplements, must have cast an affirmative vote for the plan.

7.5 **Action Plan Permitting.** For each specific project of any individual Action Plan that requires a permit, an applicant may request its application be reviewed under the Streamlined Permitting process or may apply to each applicable Regulatory Agency individually.

ARTICLE EIGHT – STREAMLINED PERMITTING AND ECOSYSTEM MANAGEMENT

8.1 **Ecosystem Management.** Section 27 of Chapter 97-164, Laws of Florida (to be codified at Section 403.0752 of the Florida Statutes) (the "Ecosystem Management Law") provides a new means for regulatory agencies and local governments to enter into comprehensive multiparty permitting agreements. The CCMP shall be conclusively deemed an ecosystem management conceptual design upon which more detailed ecosystem management agreements will be entered into based upon individual Action Plans.

8.2 **Ecosystem Management Agreements.** At the time of approval of a Party's Action Plan

by the Management Board and the Policy Board, the applicable parties may, in their respective sole discretion, enter into an ecosystem management agreement as contemplated by the Ecosystem Management Law. Such agreement may coordinate the legal requirements and timelines of the Parties, and may include all necessary permit processing, project construction, operating, monitoring and enforcement actions, proprietary approvals, and compliance with development orders and regional and local comprehensive plans.

8.3 **Streamlined Review Process.** In order to streamline the necessary authorizations from the Regulatory Agencies, the Parties agree that the review process for projects contained in an approved Action Plan may be as follows, unless the applicable affected Local Government otherwise elects:

(a) **Regulatory Agencies:** The Regulatory Agencies shall review the applicable permit application as part of a Team Permitting process, and as such, shall work together to coordinate their requests for information from local governments; and

(b) **Pre-application:** Before any Party submits a permit application, the Regulatory Agencies shall encourage the applicant to attend an informal meeting to address the questions and concerns of the Regulatory Agencies up front and in an expedited manner.

ARTICLE NINE – BUDGETING AND FUNDING

9.1 **NEP Budget.** The Policy Board is responsible for establishing the budget for the NEP Entity and shall annually review and approve the budget. The budget will require approval by two-thirds (2/3rds) of all members of the Policy Board.

9.2 **Current Funding.** The NEP is currently funded primarily by the EPA in addition to appropriations by Clearwater, St. Petersburg, Tampa, Manatee, Pinellas, Hillsborough, the Alafia River Basin Board, the Manasota Basin Board, the Hillsborough River Basin Board, the Northwest Hillsborough Basin Board and the Pinellas-Anclote Basin Board. The funding of the NEP shall remain unchanged through October 1, 1998 at which time the Parties to this Agreement will be responsible for the funding as set forth below.

9.3 **Initial Funding.** Subject to the provisions of Section 9.6 below, for the period commencing on October 1, 1998 through September 30, 2000, each member of the Policy Board and EPA shall fund the annual cost of administering the NEP Entity office in the same amount as its fiscal year 1997-1998 contribution as set forth in Exhibit "C." As changes are made to the Policy Board composition, then the funding allocation will be reestablished by the Policy Board.

9.4 **Term Funding.** Subject to the provisions of Section 9.6 below, from October 1, 2000 through the end of the Term, all NEP Entity budgeted costs shall be funded one-third (1/3rd) by SWFWMD through the Governing Board or designated Basin Boards, and two-thirds (2/3rds) by Clearwater, St. Petersburg, Tampa, Hillsborough, Manatee and Pinellas allocated on a pro-rata share based on population size, except that the population of any Policy Board Member county shall not include the population of any Policy Board Member city within its borders.

9.5 **SWIM Funding.** Throughout the Term of this Agreement, SWFWMD promises to use its best efforts to support Surface Water Improvement Management ("SWIM") projects on Tampa Bay on a match basis with Clearwater, St. Petersburg, Tampa, Hillsborough, Manatee and Pinellas, as well as other municipalities affecting Tampa Bay. Such promises are premised on state governmental funding of the SWIM projects at least to the extent of twenty-five percent (25%) of the applicable capital and operating costs, so that the Local Governments will pay fifty percent (50%) of such project costs, and the State of Florida and SWFWMD will each pay twenty-five percent (25%) of such costs. The costs of Local Governments in acquiring the land necessary for such SWIM project will be credited to their match obligations under this Section 9.5.

9.6 **Annual Approval.** Each Policy Board member shall attempt to cause approval by its applicable legislative or governing body each fiscal year of the funding levels described in Sections 9.3, 9.4, and 9.5 above, 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 Entity each year under Sections 9.3, 9.4 and 9.5 above.

ARTICLE TEN – DEFAULT

In the event any Party is determined to be in willful and significant noncompliance with its Action Plan or 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, remove 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 Ten, (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 NEP Entity in accordance with the approved budget for which such contribution was made.

ARTICLE ELEVEN – 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 "D," 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 TWELVE – 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 Eleven 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. In the event all other Parties receive written notice of such withdrawal from the withdrawing Party, then 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 obligations and responsibilities of a Party with respect to compliance with all applicable laws and regulations, without the benefit of being a Party hereto to this Agreement. If a Party withdraws under this Article Twelve, (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 for the longer of the period of such one hundred eighty (180) days or until the next fiscal year shall be required, and (iii) this Agreement shall continue as to the remaining Parties.

ARTICLE THIRTEEN – CONCLUSION

13.1 **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.

13.2 **Modification.** This Agreement may be modified, altered or amended only by a written instrument subsequently executed by the Parties hereto.

13.3 **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, understandings, representations, and statements among the Parties with respect to the matters addressed herein, either written or oral.

13.4 **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.

13.5 **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.

13.6 **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.

13.7 **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, except as specifically provided herein.

13.8 **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 the Agreement and the termination of this Agreement, and shall not be deemed to be merged in the Agreement or any other instrument which may be executed and delivered pursuant to this Agreement.

13.9 **Authority.** None of the Parties has any authority to bind or make any oral or written representations on behalf of the other Parties with differing interests hereunder, and nothing contained in this Agreement shall constitute anyone or more of the Parties as partners with or agents for anyone or more of the other Parties.

13.10 **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.

13.11 **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.

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

13.13 **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 13.14 below.

13.14 **Filing.** Each party to this Agreement shall, pursuant to Section 163.01(11), *Fla. Stat.*, file a copy of this Agreement and any amendments thereto with the Clerk of the Circuit Court of each County where that party is located.

13.15 **Conditions Precedent.** This Agreement shall not be effective or have any force and

effect whatsoever unless and until the Army Corps duly signs the instrument attached to this Agreement. The EPA has separately executed the Memorandum of Understanding attached to this Agreement.

IN WITNESS WHEREOF, the Parties hereto caused this Agreement to be executed, under seal, and shall be deemed to have executed such, on the day and year first above written.

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