



[www.gulfconsortium.org](http://www.gulfconsortium.org)

**Board Meeting Agenda  
November 15, 2017, 2:00 p.m. Eastern  
Hyatt Regency Sarasota Room: Salon GH  
1000 Boulevard of the Arts, Sarasota, FL 34236  
Call in: Dial-in Number: +1 (571) 317-3116  
Participant Passcode: 793-214-165#**

1. Call to Order
2. Roll Call
3. Public Comment
4. Approval of minutes from September 27, 2017 Board Meeting

**OLD BUSINESS**

5. Consortium Authority to Implement the State Expenditure Plan
  - a. Consortium Direction per Council Affirmation
  - b. Consortium Roles and Responsibilities during Implementation  
Lynn Hoshihara  
General Counsel
6. Direction for the Stand-Up SEP and SEP Implementation Strategy  
Craig Diamond  
The Balmoral Group
7. Amended FY 18 Budget  
Craig Diamond  
The Balmoral Group

**NEW BUSINESS**

8. Approval and Adoption of the Consortium 2018 Meeting Calendar  
Craig Diamond  
The Balmoral Group
9. Manager's Report
  - a. Financial Statement
  - b. Status of Audit Procurement  
Craig Diamond  
The Balmoral Group



[www.gulfconsortium.org](http://www.gulfconsortium.org)

10. General Counsel's Report

- a. Election of Officers for 2018-19
- b. ESA Contract Amendment Request  
Lynn Hoshihara  
General Counsel

11. Planning Grant Update

- a. Grant Management and Administration Report  
Lisa King  
Langton Consulting
- b. Analysis of Work Orders Approved and Planning Grant Amount  
Craig Diamond  
The Balmoral Group

12. SEP Project Management Report

- a. Status Report of Work Order #9 (Task 11: Prepare Draft FSEP; Request for conditional approval to release Draft Florida SEP for public comment and agency review)
- b. Status Report of Work Order #10 (Tasks 12 & 13: Draft FSEP Review and Revisions; Stakeholder Outreach and Public Involvement)  
Doug Robison  
Environmental Science Associates

13. New Business

14. Public Comment

15. Next Board Meeting

Thursday, February 8, 2018

1:00pm, EST

Conference Rooms A & B, 1<sup>st</sup> floor, Douglas Building (*not* the Carr Bldg)

3900 Commonwealth Blvd

Tallahassee, Florida

16. Adjourn

## Notice of Meeting/Workshop Hearing

### OTHER AGENCIES AND ORGANIZATIONS

#### Gulf Consortium

The Gulf Consortium Board of Directors announces a public meeting, to which all persons are invited.

DATE AND TIME: Wednesday, November 15, 2017, 2:00 pm, Eastern Time.

PLACE: Hyatt Regency Sarasota 1000 Boulevard of the Arts, Sarasota, FL 34236

Room: Sarasota GH, or Dial-In +1 (571) 317-3116, Access Code: 793-214-165

GENERAL SUBJECT MATTER TO BE CONSIDERED: The Board of Directors of the Gulf Consortium will meet to discuss the progress and implementation of the state expenditure plan; planning grant management and administration; and to conduct related business.

A copy of the agenda may be obtained by contacting: Craig Diamond at 407-629-2185 or

[Gulf.Consortium@balmoralgroup.us](mailto:Gulf.Consortium@balmoralgroup.us); or, see [www.gulfconsortium.org](http://www.gulfconsortium.org)

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 3 days before the workshop/meeting by contacting: Craig Diamond at 407-629-2185 or

[Gulf.Consortium@balmoralgroup.us](mailto:Gulf.Consortium@balmoralgroup.us). If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

If any person decides to appeal any decision made by the Board with respect to any matter considered at this meeting or hearing, he/she will need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence from which the appeal is to be issued.

For more information, you may contact Craig Diamond at 407-629-2185 or

[Gulf.Consortium@balmoralgroup.us](mailto:Gulf.Consortium@balmoralgroup.us); or, see [www.gulfconsortium.org](http://www.gulfconsortium.org)

## Gulf Consortium Directors, Alternates and Governor's Appointees 2017

County	Director and Alternate
Bay	Commissioner Guy Tunnell, Director; Commissioner Philip Griffiths, Alternate
Charlotte	Commissioner Christopher Constance, Director; Commissioners Ken Doherty, Bill Truex, Stephen R. Deutsch and Joe Tiseo, Alternates
Citrus	Commissioner Scott Carnahan, Director
Collier	Commissioner Burt Saunders, Director; Commissioner Penny Taylor, Alternate; Director Gary McAlpin, 2nd Alternate
Dixie	Tim Alexander, County Administrator/Director of Emergency Management
Escambia	Commissioner Grover Robinson, Director; Commissioner Doug Underhill, Alternate
Franklin	Commissioner Cheryl Sanders, Director; Michael Moron, County Coordinator, Alternate
Gulf	Warren Yeager, Director; Donald Butler, County Administrator, Alternate
Hernando	Commissioner Wayne Dukes, Director; County Administrator Len Sossamon, Alternate
Hillsborough	Commissioner Les Miller, Director; Commissioner Ken Hagan, Alternate; Jim Taylor, Alternate
Jefferson	Commissioner Betsy Barfield, Director; County Coordinator Parrish Barwick, Alternate
Lee	Commissioner John Manning, Director; Commissioner Larry Kiker, Alternate; Kurt Harclerode, 2nd Alternate
Levy	Commissioner John Meeks, Director; County Coordinator Tisha Whitehurst, Restore/Grants Coordinator, Alternate
Manatee	Commissioner Carol Whitmore, Director; Charlie Hunsicker, Natural Resources Dept., Alternate
Monroe	Commissioner George Neugent, Director; Commissioner David Rice, Alternate
Okaloosa	Commissioner Kelly Windes, Director; Commissioner Carolyn Ketchel, Alternate
Pasco	Commissioner Jack Mariano, Director; Commissioner Kathryn Starkey, Alternate
Pinellas	Commissioner Charlie Justice, Director; Coastal Manager Andy Squires, Alternate
Santa Rosa	Commissioner Rob Williamson, Director; Commissioner Lane Lynchard, Alternate
Sarasota	Commissioner Charles Hines, Director; Laird Wreford, Natural Resources Manager, Alternate
Taylor	Commissioner Jim Moody, Director

**Gulf Consortium Directors, Alternates and Governor's Appointees  
2017**

Wakulla	David Edwards, County Administrator, Director; Commissioner Ralph Thomas, Alternate
Walton	Commissioner Sara Comander, Director; Larry Jones, County Manager, Alternate
Governor's Appointees	Pam Anderson, Panama City; Peter Bos, Destin; Lino Maldonado, Niceville; Collier Merrill, Pensacola; Mike Sole, Tallahassee; Neal Wade, Panama City

## **AGENDA ITEM 4**

**Gulf Consortium Board of Directors Meeting  
November 15, 2017**

**Agenda Item 4  
Approval of September 27, 2017 Board of Directors Meeting Minutes**

**Statement of Issue:**

This agenda item proposes approval of the September 27, 2017 Board of Directors meeting minutes.

**Options:**

- (1) Approve the September 27, 2017 Board of Directors minutes, as presented;  
or
- (2) Amend and then approve the September 27, 2017 Board of Directors minutes.

**Recommendation:**

Motion to approve the September 27, 2017 Board of Directors meeting minutes, as presented.

**Prepared by:**

Craig Diamond  
The Balmoral Group  
Manager  
On: November 4, 2017

**Attachment:**

Draft September 27, 2017 Minutes

**Action Taken:**

Motion to: \_\_\_\_\_, Made by: \_\_\_\_\_;

Seconded by: \_\_\_\_\_.

Approved\_\_\_\_; Approved as amended\_\_\_\_; Defeated\_\_\_\_\_.

**Gulf Consortium Meeting  
September 27, 2:00 p.m. (ET)  
Embassy Suites Orlando Lake Buena Vista South  
4955 Kyns Heath Rd  
Kissimmee, Florida**

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**Board Members in Attendance:** Commissioner Guy Tunnell (Bay), Commissioner Ken Doherty (Charlotte), Commissioner Scott Carnahan (Citrus), Gary McAlpin (Collier), Commissioner Grover Robinson, (Escambia), Cheryl Sanders (Franklin), Warren Yeager (Gulf), Commissioner Wayne Dukes (Hernando), Jim Taylor (Hillsborough), Commissioner Betsy Barfield, (Jefferson), Commissioner John Meeks (Levy), Brian Hamman (Lee), Carol Whitmore (Manatee), Commissioner Kelly Windes (Okaloosa), Commissioner Jack Mariano (Pasco), Charlie Justice (Pinellas), Commissioner Jack Mariano (Pinellas), Commissioner Rob Williamson (Santa Rosa), Commissioner Charles Hines (Sarasota), David Edwards (Wakulla) and Commissioner Sara Comander (Walton)

**Phone:** Lisa Tennyson, for Commissioner George Neugent (Monroe)

**Governor Appointees:** Mike Sole, Pam Anderson (via phone)

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**Agenda Item #1 – Call to Order**

Chairman Robinson called the meeting to order at 2:02 pm (ET).

Prior to Roll Call, Comm. Comander requested documentation regarding the Gulf Consortium's authority to proceed with implementation. Comm. Whitmore requested that Items 9 and 10 be moved up in the Agenda. Comm. Mariano asked for clarification regarding whether RESTORE funds could be used as a match for water management district project. Curtis Franklin (Pasco) described the process employed by SWFWMD.

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**Agenda Item #2 – Public Comment**

Jessica Bizba (National Wildlife Federation) appreciated the effort in preparing the State Expenditure Plan and expanded on comments about the Stand-Up SEP plan that had been bought up at the Executive Committee meeting.

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**Agenda Item #3 – Approval of June 28, 2017 Minutes**

Chairman Robinson presented the minutes from the June 28th meeting of the Gulf Consortium. Commissioner Justice requested the minutes be amended to reflect his attendance instead of Andy Squires. He moved to approve the minutes as amended; second by Commissioner Mariano. The motion passed unanimously.

**ACTION: APPROVED AS AMENDED**

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**Agenda Item #4 – Manager's Report**

Valerie Seidel provided the progress of items since the last Consortium meeting. She noted that financial statements, as required by RESTORE, had been included in the packet for the first time. Ms. Seidel reported that there were 5 qualified responses to the RFP for the audit. Ms. Seidel noted the participation of Katy Nail (Bay), Heather Larson (Sarasota), Yana Matiyuk (Pinellas) and Janet Parramore (DEP). The selection committee met on August 22<sup>nd</sup> and ranked three firms (1. Moore, Stephens & Lovelace; 2. Clifton Larson Allen; and 3. Warren Averett). Upon approval, the website would be updated the next day to include the Notice of Intent to Award. Comm. Whitmore moved to approve, second by Gary McAlpin. A tentative



schedule for Board meetings in 2018 was announced for February, June, September and November. Comm. Mariano recognized that under the circumstances of the storm documentation regarding the audit not included in the packet, but requested that such paperwork be distributed at the meeting for reference.

**ACTION: APPROVED**

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**Agenda Item #5 - General Counsel's Report**

Lynn Hoshihara described three contract amendments for each of consultants (NGN, TBG and ESA). The amendments were drafted to include RESTORE Council standard terms and conditions. Warren Yeager moved to approve; second by Comm. Justice. The motion carried with Comm. Sanders opposed. Ms Hoshihara provided clarification regarding a statement made by Langton Consulting on the Executive Committee Call as to billing practices. She clarified that all contracts have a not-to-exceed hourly rate amount. Gary McAlpin sought information regarding restrictions on debt, bonding and borrowing. Ms. Hoshihara agreed to research the matter.

**ACTION: APPROVED**

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**Agenda Item #9a – Status Report on Work Order #7 – Complete Draft Project List and Conduct Detailed Project Evaluation and Refinement**

Per requests from Lisa Tennyson and Comm. Whitmore, it was agreed to move Items 9 and 10 up in the Agenda. Doug Robison provided a status report on Work Order #7, which included Tasks 6, 7, 8. ESA evaluated fatal flaws on projects and worked with the counties to estimate years and dollar amounts required for each. He noted that water quality projects accounted for over half of the budget. Work Order 7 was now complete. No action was required on this item.

**Agenda Item #9b – Status Report on Work Order #9 – Prepare Draft State Expenditure Plan and Conduct Legal Review**

Doug Robison provided a status report for Work Order #9. He noted that the Pre-Draft SEP it was not distributed for public comment at this time and was about 90% complete. He requested that Board ensure that each county review the Pre-Draft SEP to confirm that all projects were accurately described and presented in the preferred order. He indicated that the ESA team would meet with the counties individually to review these items. No action was required on this item.

**Agenda Item #9c – Approval of Work Order #10 – Draft SEP review and Revisions and Stakeholder Outreach and Public Involvement**

Doug Robison noted that Work Order #10 had been previewed at the last Board meeting during which the level of public engagement had been discussed. ESA provided a reduced cost proposal including two public meetings, potentially in Panama City and Tampa, and two webinars. Mr. Robison added that the Task includes documenting all comments, responding as necessary, and that there would be coordinated agency review via the State Clearinghouse. Comm. Mariano supported the approach as a compromise but asked for a breakdown of costs for the webinars. Langton Consulting distributed a handout relating to the webinar and meeting costs. Brian Hamman questioned the approximate cost of \$25,000 per meeting. Mr. Robison replied the costs reflected labor (hours) for travel, running the meetings themselves, and the need to document the comments and responses. In response to a question from Comm. Mariano, Mr. Robison indicated the Task would not exceed 160 hours. Comm. Comander agreed with Comm. Mariano and requested documentation of effort done by the counties to reach out to the public. Mr. Robison stated that the RESTORE Act requires an open public process and the counties have not done reviews of the SEP in its entirety, which is the focus of this work order. Comm. Doherty asked if the Work Order was a fixed fee or not-to-exceed and whether unused funds would go back in the pot. Mr. Robison affirmed that unspent

monies remain in the pot. Comm. Doherty asked whether the work was time sensitive and Mr. Robison indicated it was. Comm. Dukes asked whether the SEP would be complete by the November meeting and Mr. Robison replied that hard copies were budgeted for and would be provided. Comm. Whitmore commented that the Board needed all items in the agenda packet for review. Comm. Mariano suggested that the billing issue was unresolved and Comm. Dukes indicated it was a flawed process. Chairman Robinson requested that all counties be notified and that the counties' public information offices should be used. David Edwards moved to approve, second by Comm. Williamson. The motion carried with opposition from Comm. Comander and Comm. Sanders.

**ACTION: APPROVED**

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**Agenda Item #9d – Status Report of Work Order #8 – Conduct Project Leveraging Analysis and Develop Project Sequencing and Implementation Strategy**

Doug Robison provided an overview of both Tasks 9 and 10. Langton Consulting placed the Other Grants Inventory on flash drives and distributed them to the Board. Mr. Robison noted that the funds were matched with keywords so they were searchable. Lisa King mentioned the possibility of additional funds being available through Hazard Mitigation and Post-Disaster funding due to Hurricane Irma. Comm. Mariano mentioned the opportunity of purchasing flood-prone properties; Chairman Robinson added that the RESTORE Act provides flexibility to accommodate that outcome. Mike Sole urged the Board to obtain clarity from DEP and the SWFWMD regarding the issue. Melissa Beaudry provided an overview of Task 10 and the factors applied in sequencing and suggested that the SEP work plan would need to be updated every 4 years. Comm. Whitmore requested that the nomenclature be modified to clarify that a work plan was not being proposed but a review cycle instead. There were no questions and no action was required on this item.

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**Agenda Item #10 – Presentation on Draft Sequencing Models for Board Discussion**

Melissa Beaudry summarized the design, pros and cons and funding flows associated with the three models proposed for project sequencing, which included (1) Individual county Allocations, (2) Collaborative Phased Allocations and (3) Collaborative Full Payout Allocations. Langton Consulting distributed individualized county worksheets and Comm. Whitmore requested that such materials be included in the packet for review. Chairman Robinson opened the discussion regarding model choice and all Board members were heard from regarding model preference and justification. Warren Yeager emphasized the principle that the sequencing reflect the notion of a State-level plan that will benefit the Gulf. Comm. Williamson noted that data were not readily available to determine the numbers of projects active in any particular year. Comm. Hines added that the goal should be to repair the damage to the Gulf. Comm. Comander proposed a vote to eliminate at least one model from further consideration. The tabulation was Option A (1), Option B (13), and Option C (5). Comm. Carnahan moved to approve, second by Comm. Meeks, 2nd. All in favor, none oppose.

**ACTION: APPROVED**

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**Agenda Item #6a– Update on Planning Grant**

Lisa King noted that seven payment requests had been made and that the most recent payment request had been approved by Council that day. No action was required on this item.

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**Agenda Item #6b– Analysis of Work Orders Approved and Planning Grant Award**

Valerie Seidel reported that since the last meeting the analysis reflects the inclusion of one new item, Work Order #9, and audio-visual expenses. No action was required on this item.

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**Agenda Item #7– Approval of the Draft Stand-Up SEP**

Prior to presentation of the Draft Stand-Up SEP, Board members questioned the authority of the Consortium to implement projects. Lynn Hoshihara stated there were two entities eligible to receive implementation grants, the State and the Gulf Consortium. Ms. Hoshihara added that the MOU to develop and submit the SEP remains in place until the last RESTORE dollar is spent, indicating that the Consortium would be doing the implementing. Craig Diamond affirmed that the Governor’s Office has consistently stated that the State would not implement the SEP and that its direction was to proceed with the SEP and Stand-Up SEP. Comms. Comander and Windes asked for documentation of these positions. Chairman Robinson requested that the Board forward any other questions in this regard to Ms. Hoshihara within two weeks. Comm. Comander moved a motion to postpone action on the Standup SEP until formal documents were received, second by David Edwards. Warren Yeager proposed a review committee that would have one member from the committee of the eight, one from the committee of the 15, Mike Sole as Governor appointee and a member of the Executive Committee. Comm. Williamson commented that review is already addressed by the General Counsel and the Executive Committee. Comm. Mariano suggested that the General Counsel could handle any questions. Mr. Yeager withdrew his motion until after review by counsel. No further action was needed at this time.

**ACTION – TABLED**

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**Agenda Item #8 – Proposed Budget**

Valerie Seidel presented the proposed FY 17-18 budget, noting that it needed to be adopted before October 1. The proposed budget used the prior year’s budget format and categories and proposed operational costs based on the costs previously incurred by the FAC. The proposed budget included the costs for the Stand-Up SEP. Chairman Robinson asked to remove the Stand-Up SEP until the November meeting and approve the rest of the budget without the Stand-Up SEP. Motion to approve by Mr. Taylor, second by Comm. Mariano. All in favor.

**ACTION – APPROVED AS AMENDED**

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**Agenda Item #11 – New Items**

None

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**Agenda Item #12 – Public Comment**

None

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**Agenda Item #13 – Upcoming Meetings**

The next meeting of the Consortium Board of Directors will be held on November 15, 2017 at the Hyatt Regency Sarasota.

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**Agenda Item #14 – Adjournment**

There being no further business, the Committee adjourned at 4:53 pm (EST).

Respectfully submitted,

Grover Robinson  
Chairman

DRAFT

## **AGENDA ITEM 5a**

**Gulf Consortium Board of Directors Meeting  
November 15, 2017**

**Agenda Item 5a  
Consortium Authority to Implement the State Expenditure Plan**

**Executive Summary:**

Discussion and consideration of the Consortium's authority to implement the SEP.

**Background:**

At the September 27, 2017 meeting, questions were raised as to the Consortium's authority to implement projects and programs included in the State Expenditure Plan (SEP). The Board requested written confirmation from the Restoration Council (Council) and the Governor's office regarding the Consortium's authority to implement the SEP.

- COUNCIL. The Council has affirmed that the Consortium is an eligible recipient of funds to implement the SEP. [See *attached letter from Mark Bisgeier, General Counsel to the Council*.] The Council further affirmed that, "After review, we have concluded that funds to both develop and implement projects in the SEP may be disbursed from the Council to the Consortium."
- GOVERNOR'S OFFICE. The Governor's office suggested that the Consortium be identified in the SEP as the implementing entity and seek the Governor's approval. This will not only memorialize the current administration's position, but if approved will establish the Consortium's role and authority in future administrations.

Pursuant to the RESTORE Act, Treasury's regulations, Council's Guidelines, the Interlocal Agreement establishing the Consortium, and the MOU with the Governor, the Consortium is clearly authorized to implement the SEP.

The question for the Board to consider is: does the Consortium want to be responsible for implementing the SEP?

- If the answer is NO, then the Board should continue pursuing final approval of the SEP and begin working on a transition plan to transfer its responsibilities to the State.
- If the answer is YES, then the Board will be asked to determine how it wants to implement the SEP. [See *agenda item 6 on Stand-Up SEP*.]

**Options:**

Option #1, Accept authority to implement the SEP.

Option #2, Reject authority to implement the SEP and seek to transfer such duties to the State.

Option #3, Board Direction.

**Attachment:**

Letter from Mark Bisgeier, General Counsel of the Restore Council

**Prepared by:**

Lynn M. Hoshihara

Nabors, Giblin & Nickerson, P.A.

General Counsel

November 6, 2017

**Action Taken:**

Motion to: \_\_\_\_\_, Made by: \_\_\_\_\_;

Seconded by: \_\_\_\_\_.

Approved\_\_\_\_; Approved as amended\_\_\_\_; Defeated\_\_\_\_\_.



## Gulf Coast Ecosystem Restoration Council

October 6, 2017

The Honorable Grover C. Robinson, IV  
Chair, Gulf Consortium  
100 South Monroe St.  
Tallahassee, FL 32301

Dear Commissioner Robinson:

You have requested a determination by the Gulf Coast Ecosystem Restoration Council (Council) as to whether the Gulf Consortium of Florida counties affected by the *Deepwater Horizon* oil spill (Consortium) is eligible to receive funding to implement projects and programs included in the current State Expenditure Plan for the State of Florida (SEP) approved under the Spill Impact Component of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (Act) (33 U.S.C. § 1321(t)(3)).

After review, we have concluded that funds to both develop and implement projects in the SEP may be disbursed from the Council to the Consortium.

The Act identifies the entity responsible for developing the SEP, specifying that “in the State of Florida, a consortia of local political subdivisions that includes at a minimum 1 representative of each affected county” shall develop the SEP.<sup>1</sup> While there is some tension between the Act’s requirement that Spill Impact Component funds be disbursed to “Gulf Coast States” and the requirement that the SEP be developed by the Consortium, the State of Florida has resolved this tension by establishing the Consortium as the entity that will both develop and implement the SEP, while allowing for effective input by the Florida Governor’s office and relevant State agencies.

Florida established the Consortium as a separate legal entity to develop and implement the SEP and has set up a collaborative process to allow the State to provide effective input into the SEP and to submit the SEP to the Council. The Interlocal Agreement Relating to the Establishment of the Consortium dated as of September 19, 2012 (Interlocal Agreement)

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<sup>1</sup>33 U.S.C. § 1321(t)(3)(B)(iii)(II). Treasury’s regulations implementing the Act also require that the SEP be developed by the Gulf Consortium (31 CFR 34.503(a)(2)) and that the Council publish policies and procedures for the administration of Spill Impact Component grants (31 CFR 34.504). The Council’s State Expenditure Plan Guidelines finalized on March 17, 2016 (Guidelines) provide that for purposes of the Guidelines the term “State” includes the Gulf Consortium (Guidelines § 2). Under the Guidelines the Council intends for each “State,” including the Gulf Consortium, to apply for grants to implement its State Expenditure Plan (*see* Guidelines §§ 4.5 and 5.2.5).

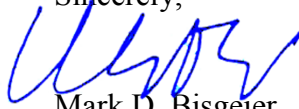


established the Consortium as a legal entity under Part 1 of Chapter 163, *Florida Statutes* (the “Interlocal Act”), and, among other things, sets out the Consortium’s powers and duties including: (1) applying for and accepting financial assistance, including grants, from any governmental entity for the funding of projects; (2) engaging the appropriate personnel to prepare, develop and submit the SEP to the Council; (3) preparing, developing and submitting applications for funding under the Spill Impact Component to the Council on behalf of the Consortium and the State of Florida; and (4) advising, assisting and aiding Consortium members in the planning, administration and expenditure of Spill Impact Component funds (*see* section 4.01(A) of the Interlocal Agreement). Additionally, the Consortium and the Governor of the State of Florida entered into a Memorandum of Understanding effective June 12, 2013 (MOU) that establishes procedures for effective coordination between the Consortium and the Governor’s office in the development of the SEP. The MOU specifies that the Florida Department of Environmental Protection and other appropriate State agencies will review and provide input on the development of the SEP, and effectively gives the Governor final approval authority over the SEP before the Governor submits the SEP to the Council. The MOU also requires the Governor to appoint six individuals to provide input and guidance in the development of the SEP. We conclude from the Interlocal Agreement and the MOU that the State of Florida intends for the Consortium to take the lead in both developing and implementing the SEP.

In summary, in light of the Act, the Guidelines, the establishment of the Consortium as the responsible entity for developing and implementing the SEP, and the collaborative process set up to ensure State input into the SEP and control over its submission to the Council, we have concluded that the Consortium is an eligible recipient of funds to implement the SEP. In our view this implementation structure comports with the intent of the Act.

The Council looks forward to working with the State of Florida and the Consortium in implementing the SEP. Please feel free to contact me if you have any further questions.

Sincerely,



Mark D. Bisgeier  
General Counsel

mdb/lw

cc: Herschel T. Vinyard, Jr.  
Ben Scaggs  
Buck Sutter  
Mary Pleffner

## **AGENDA ITEM 5b**

**Gulf Consortium Board of Directors Meeting  
November 15, 2017**

**Agenda Item 5b  
Consortium Roles and Responsibilities during Implementation**

**Executive Summary:**

Discussion concerning each contractor's roles and responsibilities during the implementation phase (i.e., post-approval of the State Expenditure Plan).

**Background:**

The Consortium currently has contracts with three firms: 1) Environmental Science Associates (ESA); 2) Nabors, Giblin & Nickerson (NGN); and 3) The Balmoral Group (TBG). Each will be addressed separately.

**ESA:**

- Following a two-phase competitive procurement process, the Board selected ESA to serve as its consultant in the development of the Florida State Expenditure Plan (FSEP).
- Under its contract, ESA is strictly prohibited from participating in any projects, programs and activities that are ultimately included in the FSEP. In other words, ESA is conflicted out of all work related to FSEP implementation.

**NGN:**

- Following a competitive procurement process, the Board selected NGN to serve as its General Counsel to provide general legal services to aid in conducting the business of the Consortium.

**TBG:**

- Following a competitive procurement process, the Board selected TBG to serve as its Manager to provide professional management services.
- Specifically, as to implementation, TBG has been tasked with establishing an administrative structure for the Gulf Consortium to implement the SEP, including but not limited to, a more permanent establishment of managing and administering the operations of the Consortium plus a federal grant administration, management, and writing capability designed for the unique nature of the Consortium at the implementation stage of the SEP. *See page 11 of the RFP for Management Services, which is incorporated into TBG's contract.*

**Prepared by:**

Lynn M. Hoshihara  
Nabors, Giblin & Nickerson, P.A.  
General Counsel  
November 6, 2017

## **AGENDA ITEM 6**

**Gulf Consortium Board of Directors Meeting  
November 15, 2017**

**Agenda Item 6  
Direction for the Stand-up State Expenditure Plan for the Gulf Consortium**

**Summary:**

Request for Board direction regarding the Draft Stand-up State Expenditure Plan.

Council has determined that the existing administrative and fiscal capacities of the Consortium are insufficient to manage grants for the implementation of projects to be included in the Florida State Expenditure Plan (FSEP). In a manner similar to that of the counties receiving Pot 1 monies from Treasury via their Multi-Year Implementation Plans and providing sub-awards to municipalities, the Consortium must institute and verify that its administrative and financial processes can support the management of FSEP project implementation grants and sub-awards to the counties in the context of applicable Treasury and Council requirements.

The proposed Stand-Up State Expenditure Plan (Stand-Up SEP) is intended to describe a general administrative framework for the Consortium that would meet Council procedures and Treasury requirements. The Stand-Up SEP would then be implemented in earnest through a Planning Grant from Council. Once operational, the SSEP would allow for implementation grants to support FSEP projects to be transmitted to Council and appropriately managed by the Consortium.

The Stand-Up SEP does not duplicate activities undertaken by the Counties under Pot 1 or those being provided by the SEP consultant. The administrative scope of the Stand-Up SEP does, however, emulate what counties with Pot 1 projects have been required by Treasury to do. In this case, because the Consortium is the eligible, implementing entity it must institute its own procedures for project grant management, consistent with Council requirements. To the extent feasible, the Stand-up SEP when implemented will build upon existing Treasury-compliant county-level processes.

The Stand-Up SEP is a one-time initiative, intended to carry through for the life of RESTORE payout, regardless of manager for the Consortium. The costs for developing the Stand-Up SEP are expected to be addressed through Council-approved pre-award costs associated with the Implementation Grant to be submitted; the costs for implementing the Stand-Up SEP will be addressed through the general allocation of Pot 3 monies to the Consortium, i.e., a cost to be shared evenly among all 23 counties.

However, FSEP project administration costs after the Stand-Up SEP is in place would be determined for each project and grant sub-award and be charged against each individual county's remaining Pot 3 funding. Basic administrative costs for the use of a fiscal agent, grant package assembly (for transmittal to Council), routine reporting (e.g., quarterly), and grant closeout would attach to all sub-awards. Project specific needs, such as reviews of Construction Engineering Inspection reports or Permitting,

would be handled on an as-required basis and will be unique for each project. Such oversight services will be competitively bid through the Consortium to reduce costs. Similarly, services for project development, such as conceptual design and feasibility or the application of Best Available Science, will also be competitively procured and made available to counties that choose to use such services, and these costs would be charged to that county's remaining Pot 3 funding.

**Background:**

On 28 June 2017, the Gulf Consortium Board of Directors approved action to proceed with the development of a Draft Stand-up State Expenditure Plan that would propose the administrative and financial infrastructure deemed necessary by the RESTORE Council for the eventual implementation of the Florida State Expenditure Plan (FSEP), i.e., the Consortium's Pot 3 Project List. The Board's action relating to the separate Stand-Up SEP was intended to achieve two outcomes:

1. Ensure that the Consortium would institute the appropriate financial and administrative controls to accept and manage federal grant funds from Council; and
2. Accelerate the overall schedule of the FSEP by several months by not needing to wait on Council final approval of the FSEP before submitting an implementation grant request for stand-up activities.

The Board recognized that such stand-up activities needed to be implemented regardless, and that sooner was preferred to later. Further, the Board recognized that the costs for developing the Stand-Up SEP could potentially be addressed through the approval of Pre-Award Costs by Council. Pre-Award costs were applied for through RESTORE Council, and approval was obtained on September 7, 2017. As a result, the cost of preparing the draft and final Stand-Up SEP will be reimbursable either under a grant to be submitted upon Council approval of the Stand-Up SEP or as the first FSEP implementation project grant.

In response to Board direction, a Draft Stand-Up State Expenditure Plan was prepared and presented at the 27 September 2017 meeting. Questions regarding the authority of the Consortium to proceed with implementation beyond preparing the FSEP resulted in tabling further action on the Draft Stand-Up SEP.

Council has since determined that the Consortium is eligible to submit projects and receive implementation grants. The Governor's office has proposed a path of action in which by specifying the Consortium as implementer in the Stand-Up SEP (and the FSEP), signing and transmitting the plans and obtaining Council approval, the Consortium would be fully authorized to proceed with implementation.

**Analysis:**

RESTORE Council staff have stated that the administrative and financial controls that have been in place to date for the management of the Consortium's existing Planning Grant are insufficient to conform to applicable Federal requirements, and that the Council cannot release any funds to the Consortium for implementation grants until such time that adequate controls are adopted and operating. For example, the

segregation of duties and Risk Management/COSO framework that have been in place for development of the FSEP are not robust enough for the implementation phase.

There are two layers of grant oversight required of the Consortium – down to the counties and up to the Council. A COSO (Committee of Sponsoring Organizations of the Treadway Commission) risk framework is a requirement of accepting RESTORE funds and entails extensive levels and elements of compliance, which the counties have become familiar with under Pot 1. However, the counties are not the direct recipients of Pot 3 funds; per Council clarification, only the State of Florida or the Gulf Consortium may be designated implementer and recipient of RESTORE funds.

The Stand-Up SEP is intended to expedite disbursement of funds for projects in the FSEP by addressing the required compliance issues. The proposed structure addresses this by ensuring one person does not have approval and disbursement/execution authority for any process. The required functions have been designed to achieve this requirement at minimal cost. For example, Council has suggested the Consortium Manager approve all consultant invoices while the Executive Committee approves all Consortium Manager invoices; this suggestion has been implemented and the Draft SSEP looks to achieve similar efficiencies for other compliance needs.

The Draft Stand-Up SEP (attached) includes a single project, “Expanding the financial and administrative capabilities of the Gulf Consortium.” Modeled in part on the Council-approved Mississippi SEP (which included a project similar to the scope of the Stand-Up SEP) and the Consortium’s Pre-Draft FSEP document, the Manager prepared the Draft Stand-Up SEP. Format and content within the Draft Stand-Up SEP relating to conformity with RESTORE Act and Council specifications will be completed during the window of public comment and agency review and included in the Final Stand-Up SEP, proposed to be presented at the February 2018 Board meeting. The Draft Stand-Up SEP reflects partial input from DEP and responds to concerns raised at the September 27<sup>th</sup> Board meeting and subsequent meetings with several county RESTORE coordinators.

Timeline: Three timelines have been prepared to explain the impacts of approving the Draft Stand-Up SEP or exercising other options.

Attachment 6a describes the expected activities and months if the Draft Stand-Up SEP is approved in November 2017. Public comment and formal agency review would be concluded in time for necessary edits and presentation to the Board at its February 2018 meeting. The Governor’s signing may be expedited via prior agency input (primarily FDEP); the final Stand-Up SEP would be transmitted and Council approval may be anticipated by end of April 2018. A grant to implement the Stand-Up SEP would be requested from Council and implementation initiated. The first of the County FSEP projects may be accepted by August 2018, sub-award contracts executed, and first receipt of Council funds may be available by January 2019.

Attachment 6b describes the likely extension of the above timeline to February 2019 should the content of the Stand-Up SEP be included in the Draft FSEP as a general outline of administration, implementation, financial control, and avoidance of conflicts of interest, but where the implementation of the Stand-Up SEP becomes the first project to be carried out within the FSEP. Inclusion of the basic elements of the Stand-Up SEP in the Draft FSEP may delay the start of the public comment period by a week or two. It should be added that ESA supports the notion of independent development of Stand-up activities, and not including it in the FSEP.

Attachment 6c reflects Board concerns expressed at the September 2017 meeting about implementation and includes additional time to coordinate additional input from the Board, RESTORE coordinators and other stakeholders before defining what implementation may look like under the authority of the Consortium. In this case, the expanded details of the Stand-Up SEP would not be available for inclusion in the Draft FSEP until the February 2018 Board meeting. A longer period of review by Council may be associated with the larger document and the timeline for first receipt of grant funds may be extended to April 2018.

All timelines described are optimistic and assume no significant issues, delays, or disapprovals by Council.

**Budget:** The budget for the Stand-Up SEP anticipates initialization of required software licenses and Council required finance and contract administration standards. Cost estimates were prepared based on obtaining quotes from various service and software providers, and scaling operational costs to date to anticipated activity levels during the Consortium stand-up period. Table 1 summarizes the categories of expense.

*Table 1. Proposed Budget for the Stand-Up SEP*

Cost Category	Estimated NTE* amount:	Components:
Pre-Award costs	\$45,100	Development of Stand-Up SEP, through transmittal to Council
Initialization of software and licensing	\$17,500	\$10,000 for software license; \$2,500 for annual software maintenance fee; approximately \$5,000 for implementation & vendor training package
Grant/procurement software labor costs	\$47,175	90 hours of training and installation; 27.5 hours of monthly input & upkeep for procurement record processing & accounting activities (255 hours total)
Services Procurement & Related Contract Activities	\$76,313	Up to an average of 34 hours (\$6,360) per procurement/contracting activity, based on historical hours for Consortium mgmt; estimated 12 procurement activities
Grant Bundling and Administration	\$34,950	Up to 25 hours (\$5,825) per grant bundling/administration/BAS review activity, based on historical hours for Consortium mgmt; 6 grants expected
<b>Total</b>	<b>\$221,038</b>	

**\*Not-to-Exceed; all expenditures require Board approval of Work Order prior to incurring costs**

Total costs are shown; not all costs may be incurred during the anticipated 8 month time period but have been included in an abundance of caution

In comparison, currently a flat fee of \$5,000 per month covers the data entry and administrative components for one grant; during SSEP phase, anticipate approx. six grants



The indicated costs translate into a maximum of about \$9,610 per county, one-time, to be able to receive their allocation of Pot 3 funds through the Consortium.

Project Administration: The budget outlines the effort required to stand-up the Consortium and reflects approximately eight months of support. Project-specific direct costs following the implementation of the Stand-Up SEP would attach to individual counties' grant submittals. The costs for future FSEP project implementation are not fully known but may be estimated.

Base costs for administrative services include those of the fiscal agent, grant bundling and monitoring and grant closeout. These costs are estimated to be between 0.8% and 2.3% of the estimated project costs, and will be affected by the length of the project (shorter projects require will have fewer reports to Council). Ongoing costs, such as annual licensing fees for grant management software, renewals and re-procurements of services to support FSEP implementation, and the likely amending of the FSEP to reflect changing priorities or costs over 15 years, may be expected to add as little \$9,000 per year (total, Consortium-wide) or as much as \$47,000 in select years requiring stepped up effort. In either case, the impact would be a fraction of a percent, which would be allocated evenly to all counties. Treasury guidelines cap administrative costs at 3%. Effective Consortium administration, in the cases where counties are responsible for project grant development and oversight of their own contractors, may be expected to be cost less than 3% of project costs. However, costs for grant development and administration (and elements of project implementation as directed) for counties with limited resources for implementation may be significantly higher.

In contrast to the above estimates, administration of the current FSEP Planning Grant has been approximately 5% (excluding costs for Consortium Manager oversight of the SEP consultant), and the DEP has (to date) charged 7% for its administration of pass-thru monies for Pot 2 projects.

Assumptions:

The budget and Draft Stand-Up SEP were prepared with the following assumptions about funding sources for Gulf Consortium FSEP-related activities.

- As discussed in May 2017 and June 2017 Board meetings and per RESTORE Council, the FSEP planning grant expires with FSEP approval. Existing contracts under the PSEP (i.e., ESA and its subcontractors) will expire and no resources other than the county contributions to the Consortium are available to advance implementation.
- No work on implementation grants can be funded under the current FSEP planning grant funds.
- By submitting the Stand-Up SEP content as a separate state expenditure plan or as a project in the FSEP, the Consortium can obtain funding for oversight, financial infrastructure, and grant management needed to prepare for implementation and cover the gap between FSEP approval and the first project grants to be submitted.

**Options:**

Option #1, Approve the Draft Stand-up SEP and direct the Manager to initiate the Public Comment windows, secure state agency input, coordinate with RESTORE Coordinators, and present Final SSEP at the February meeting.  
Option #2, Board Direction

**Recommendation:**

The Executive Committee has recommended Option 1.

**Attachments:**

Timelines (3) for Implementation  
Draft Stand-up SEP

**Prepared by:**

Craig Diamond  
The Balmoral Group, Manager  
On: November 2, 2017

**Action Taken:**

Motion to: \_\_\_\_\_, Made by: \_\_\_\_\_;


Seconded by: \_\_\_\_\_.

Approved\_\_\_\_; Approved as amended\_\_\_\_; Defeated\_\_\_\_\_.


ATTACHMENT 6a  
SSEP AS SEPARATE SUBMITTAL  
Draft Approved as of November 2017

Timeline / Funding Source																			
Product	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19
PSEP (Planning Grant)	Draft Approval	Public Comment, Agency Review	Public Comment, Agency Review	Final / Transmit	Council Review	Council Review	Council Approval												
SSEP (Stand-Up SEP)	Draft Approval	Public Comment, Agency Review	Public Comment, Agency Review	Final / Transmit	Council Review	Council Approval													
IMP (Stand-Up Planning Grant)							IMP*	IMP*	IMP*	IMP* Co submits project implementation grant to GC, GC submit to RC	IMP* RC approves; Co executes contract, GC does subaward	IMP* Work commences	IMP* Submit pmt request	IMP* Turn to RC for Pmt	IMP \$\$\$ 1st Pmt Rec'd				
* IMP Grant in place, but no funding until January																			
PG (Project Grant SubAwards)										PG	PG	PG	PG	PG	PG				



Timeline / Funding Source																				
Product	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	
PSEP (Planning Grant)	Draft Approval	Public Review; Agency Comment	Public Review; Agency Comment	Final / Transmit	Council Review	Council Review	Council Approval													
SUP (Stand-Up Project)	Approval of Draft Stand- Up Project Content; Include Project in FSEP																			
IMP (Stand-Up Planning Grant)								IMP*	IMP*	IMP*	IMP* Co submits project implementation grant to GC, GC submit to RC	IMP* RC approves; Co executes contract, GC does subaward	IMP* Work commences	IMP* Submit pmt request	IMP* Turn to RC for Pmt	IMP \$\$\$ 1st Pmt Rec'd				
								* IMP Grant in place, but no funding until February												
PG (Project implemenation Grant SubAwards)											PG	PG	PG	PG	PG	PG				

ATTACHMENT 6c  
STANDUP SCOPE AS FSEP PROJECT  
Content Finalized February 2018

Timeline / Funding Source																				
Product	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	
PSEP (Planning Grant)				Draft Approval	Public Review; Agency Comment	Public Review; Agency Comment; Final / Transmit	Council Review	Council Review	Council Approval											
SUP (Stand-Up Project)	Approval of Draft Stand- Up Project Content	Revise Project Content as Needed	Revise Project Content as Needed																	
IMP (Stand-Up Planning Grant)										IMP*	IMP*	IMP*	IMP* Co submits project implementation grant to GC, GC submit to RC	IMP* RC approves; Co executes contract, GC does subaward	IMP* Work commences	IMP* Submit pmt request	IMP* Turn to RC for Pmt	IMP \$\$\$ 1st Pmt Rec'd		
* IMP Grant in place, but no funding until April																				
PG (Project implemenation Grant SubAwards)													PG	PG	PG	PG	PG	PG		





# Gulf Consortium: Stand-up State Expenditure Plan for Florida

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## Points of contact for Gulf Consortium

The Gulf Consortium (Consortium) is the designated entity responsible for the development of the Florida State Expenditure Plan (FSEP), as recognized in the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) and subsequent rulemaking. The Consortium is a public entity created in October 2012 through an Interlocal Agreement between Florida's 23 Gulf Coast counties - from Escambia County in the western panhandle of Florida to Monroe County on the southern tip of Florida - to meet the requirements of the RESTORE Act. The Consortium's Board of Directors consists of one representative from each county government. Since its inception, the Consortium has met approximately every other month and has held numerous committee meetings to develop Florida's State Expenditure Plan. The points of contact for the Consortium are as follows:

### Executive

Grover Robinson, IV, Chairman  
Gulf Consortium  
113 S Monroe Street  
Tallahassee, FL, 32301  
Phone: 850-922-4300  
Fax: 850-201-7101  
E-mail: [gcrobins@co.escambia.fl.us](mailto:gcrobins@co.escambia.fl.us)

### Administrative

Craig Diamond  
Gulf Consortium Manager  
113 S Monroe St  
Tallahassee, FL 32301  
Phone: 850-201-7165  
Fax: 850-201-7101  
E-mail: [cdiamond@balmoralgroup.us](mailto:cdiamond@balmoralgroup.us)

## Introduction and Statement of Purpose

The purpose of this Standup State Expenditure Plan (SSEP) is to describe the activities required to enable the Consortium to provide the necessary financial controls and administrative duties needed to manage implementation, including grant management, of all the projects contained in the Florida State Expenditure Plan (FSEP). The goal of the SSEP is to expedite implementation of projects in the FSEP by ensuring that the Consortium is prepared to receive and effectively manage implementation grants once the FSEP is approved and grants have been applied for and awarded. The SSEP will support establishment of additional administrative and fiscal management processing structures to ensure sufficient separation of duties, internal controls, and financial integrity of the Gulf Consortium.



The Gulf Consortium is the designated public entity created to develop and manage the implementation of the State Expenditure Plan for Florida's portion of the Spill Impact Component ("Pot 3") funds designated by the RESTORE Act (33 U.S.C. § 1321(t)(3)).<sup>1</sup> The Gulf Consortium has an approved Planning State Expenditure Plan and associated implementation grant from the RESTORE Council that has been utilized to develop the FSEP for Florida. The development of the FSEP has involved extensive coordination with county stakeholders to develop projects, explore funding leveraging opportunities, and formulate the final FSEP, which is scheduled to be submitted to the Gulf Coast Ecosystem Restoration Council (RESTORE Council) in February, 2018.

## State Certification of RESTORE Act Compliance

### State Certifications of RESTORE Act Compliance

On behalf of the State of Florida, the Gulf Consortium hereby certifies to the following:

- Pursuant to the RESTORE Act, 33 U.S.C. § 1321(t)(3)(B)(i)(I), the Stand-up State Expenditure Plan (SSEP) includes projects, programs, and activities that will be implemented with the Gulf Coast Region and are eligible for funding under the RESTORE Act.
- Pursuant to the RESTORE Act, 33 U.S.C. § 1321(t)(3)(B)(i)(II), the projects, programs, and activities in the SSEP contribute to the overall economic and ecological recovery of the Gulf Coast.
- Pursuant to the RESTORE Act, 33 U.S.C. § 1321(t)(3)(B)(i)(III), the SSEP conforms to and is consistent with the goals and objectives of the Initial Comprehensive Plan adopted by the RESTORE Council.
- Pursuant to the RESTORE Act, 33 U.S.C. § 1321(t)(2)(B)(i), the projects and programs that would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast included in the SSEP will be based on the best available science as defined by the RESTORE Act.<sup>2</sup>
- Pursuant to the RESTORE Act, 33 U.S.C. § 1321(t)(3)(B)(ii), not more than 25% of the funds will be used for infrastructure projects for the eligible activities described in 33 U.S.C. § 1321(t)(1)(B)(i)(VI-VII).

Cross-border issues are not pertinent to the scope of this Stand-Up State Expenditure Plan, which addresses Gulf Consortium internal administrative matters only.

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<sup>1</sup> Affirmed by letter from RESTORE Council to the Chair of the Gulf Consortium, dated October 6, 2017.

<sup>2</sup> The single project of the Stand-Up SEP is intended to advance and manage the implementation of projects in the FSEP that will achieve the indicated environmental and economic objectives of the RESTORE Act.



### **Development of the SSEP**

The development of the SSEP involved an open and transparent process requiring its need, its intent, and its scope. The process resulted in a single project consistent with RESTORE Act requirements and which will further the success of the subsequent FSEP. The process included four phases:

Phase 1: Identifying Need

Phase 2: Concept Formulation

Phase 3: SSEP Development

Phase 4: Agency and Public Input; SSEP Refinement

Supporting tasks occurred in each phase. The activities of each phase were informed by the following objectives:

- Ensure the most efficient path to creating the requisite administrative and financial structure and capabilities of the Gulf Consortium;
- Establish the Consortium's administrative and financial architecture in advance of submitting and receiving implementation grants for projects within the FSEP;
- Via the Consortium's internal procedures, ensure that eligible projects, programs and activities included in its FSEP contribute to overall ecological and economic recovery of the Gulf Coast; and
- Promote funded projects to be as successful, cost-effective, and sustainable as possible.

The four-phase process was implemented in part under a Planning grant approved by the Gulf Coast Ecosystem Restoration Council in May 2015, in part with Consortium funds and in part with Pre-Award costs for a SEP Planning grant, approved by Council in September 2017.

#### Phase I: Identifying Need

Through review of the Gulf Consortium's first Organizational Self-Assessment (OSA), Council, the Consortium Interim Manager (the Florida Association of Counties), and the Consortium Manager (The Balmoral Group) determined that the general administrative and financial controls that have been in place to date for the management of the current Planning Grant are insufficient to conform to applicable Federal requirements, and that the Council could not release any funds to the Consortium for implementation grants until such time that adequate controls have been adopted and operating. In sum, the Consortium would be required to institute appropriate controls prior to advancing the implementation of the projects anticipated as part of the FSEP.

#### Phase II: Concept Formulation

The concept of a "Stand-Up SEP" to establish the necessary administrative and financial architecture within the Consortium as an initial project within the development of the FSEP was considered. Subsequent discussion with Council staff and the Consortium Executive Committee identified the possibility that such a Stand-Up SEP could be submitted separately from and in advance of the FSEP. The RESTORE Act provides that multiple SEPs may be submitted by an individual state.





Between May 17 and June 28, 2017 the Consortium deliberated whether to amend the existing Planning Grant and include the Stand-Up project in the FSEP or to submit an independent SSEP. In selecting the latter option at a duly advertised and open public meeting, the Board directed staff to prepare a Draft SSEP for review at the Board's September 27, 2017 meeting. The Board's stated objective was to advance the general calendar of implementation of the FSEP and to ensure the Consortium's capacity to manage future projects, provide transparency to all Consortium operations and withstand audits. The Board further recognized that the success of the FSEP with respect to consistency with the goals and objectives of the Initial Comprehensive Plan developed by the RESTORE Council and the Consortium's efforts to contribute to the overall ecological and economic recovery of the Gulf Coast depended on successful implementation of the SSEP. The Board tabled its approval of the Draft SSEP on September 27, 2017.

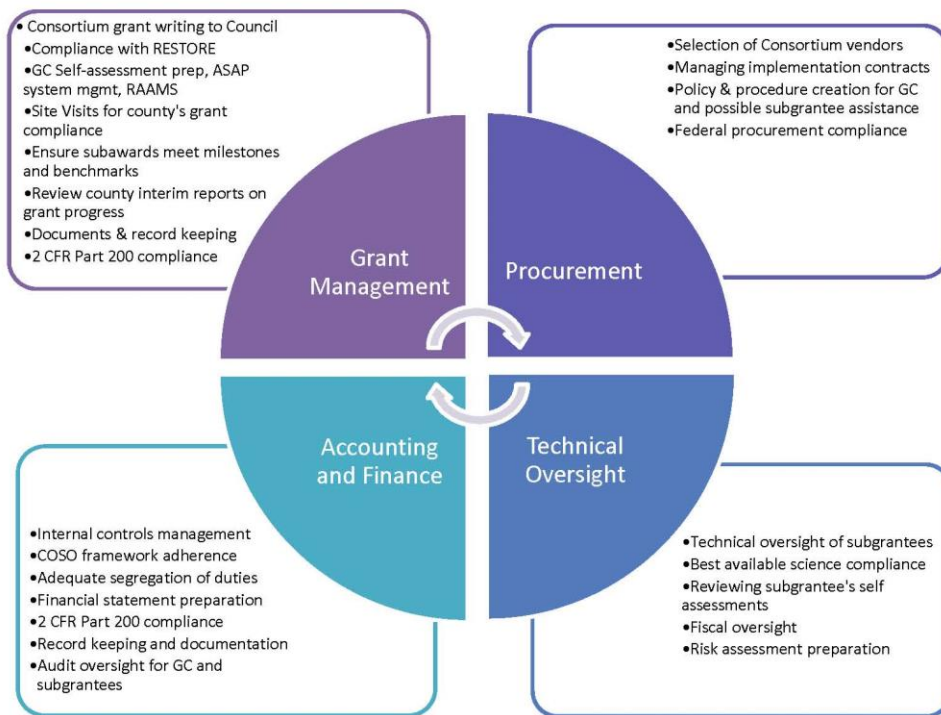
#### Phase III: SSEP Development

Pursuant to Board direction, the four generalized categories of the Consortium's administrative and fiscal responsibilities to be addressed by the SSEP include procurement, grant management, accounting and finance, and technical oversight (**Figure 1**). The scope (reviewed by Council staff, DEP, FWC, and with input from Florida's SEP consultant) identifies specific tasks under each category. Ultimately, each task will be supported by policies, procedures, and assignments of roles to ensure full compliance with Federal requirements for all implementation grants and sub-awards.



Figure 1. Conceptual Overview of Stand-Up-SEP Content

### Consortium Responsibilities during Implementation\*



\*Some tasks may overlap process categories. These tasks are not intended to be exhaustive or all inclusive as more will be identified as Stand-Up SEP is prepared.

### Phase IV: Agency Input, Public Comment and SSEP Refinement

As part of developing the Draft SSEP, staff to the Consortium reached out to various parties for background information, programmatic support and input regarding SSEP format and content. Prior to finalization of the SSEP, the Consortium will have obtained input from each of the following:

- Florida Department of Environmental Protection
- Florida Fish and Wildlife Conservation Commission
- Office of the Governor
- Leon County, which has served as Fiscal Agent for the Consortium
- Gulf of Mexico University Research Collaborative (GOMURC)
- Florida Institute of Oceanography, Florida RESTORE Act Centers of Excellence Program (FLRACEP)
- Gulf Coast Ecosystem Restoration Council, Science Program
- RESTORE Act coordinators in the 23 Florida counties



- Environmental Science Associates, the Consortium's SEP Consultant
- Langton Consulting, the Consortium's SEP Planning Grant manager
- Nabors, Giblin & Nickerson, the Consortium's General Counsel
- Reedy Creek Improvement District

The development of the Draft SSEP includes review of potential management and oversight structures, staffing/contracting for services, software, and costs for procurement, grant management, accounting and finance, and technical oversight (including review of grant requests, project interim and closeout reports, and the application of Best Available Science, where applicable). The Draft reflects input from the Florida Department of Environmental Protection and responds to issues raised by the Board and the public.

Compliance with RESTORE Act requirements for SEPs was specifically addressed as part of the agenda items and Board discussions relating to the SSEP at its May, June, September and November, 2017 meetings, all duly advertised and open to the public. Compliance also was an element of the discussions about the SSEP at (teleconference) meetings of the Gulf Consortium Executive Committee, which are publicly noticed and within which public comment is also accepted.

#### **Process Used to Verify Compliance**

The compliance of the SSEP with the RESTORE Act was accomplished via both legal and technical review. The intent, general outline, and specific content of the SSEP were evaluated relative to the applicable RESTORE Act provisions, and content was amended as needed in response to any concerns or issues raised. **Appendix A** summarizes the roles of the several parties contributing to this compliance review. The respective Responding Parties were asked to verify that the content of the Draft SSEP met the indicated subject. All comments on the Draft are addressed in this Final SSEP; comments are summarized in the Appendix.

#### **Results of the Process Used to Verify Compliance**

The process used to verify compliance resulted in a determination that the single project in the Draft SSEP is an eligible project, will contribute to the economic and ecological recovery of the Gulf (via ensuring the success of the FSEP and its own compliance with the RESTORE Act), conforms with the Council's Comprehensive Plan, will make use of the application of best available science (where applicable) and does not violate the limitation on infrastructure projects.

### **Public Participation Statement**

Public outreach will be completed in accordance with pertinent requirements and the Consortium's intent for transparency. The following language previews proposed content following the public comment period.



Consistent with Treasury regulations, this Standup State Expenditure Plan was made available for public review and comment in accordance with 31 CFR § 34.503(g). The SSEP was extensively advertised and made publicly available at the Consortium website (<https://www.gulfconsortium.org/>) between November 16, 2017 and January 19, 2018 (i.e., 64 days). Links to this site were provided on the DEP Portal (<http://www.dep.state.fl.us/deepwaterhorizon/>) and several Consortium County member homepages (see **Appendix B**). All submitted comments were reviewed and incorporated as appropriate.

## **Financial Integrity and Program Management**

The Consortium understands its fiduciary responsibilities under the RESTORE Act and is committed to maintaining the highest level of transparency and internal controls to ensure financial accountability. It is the Consortium's mission to maintain transparency in such a way that assures the public's faith and trust in the ability of the Consortium to appropriately manage and disburse funds for the FSEP projects. The SSEP will allow the Consortium to build accounting and financial systems based on principles of strong and reliable financial management.

The SSEP is designed to include the following financial principles which are best practices recognized around the world by leading government and private sector organizations. The basic principles of sound financial management include, but not limited to, tight internal controls, financial transparency, segregation of duties, and independent external auditing. By integrating these processes into the administrative functions and fiduciary functions of the organization the Consortium can ensure timely, accurate, and complete reporting throughout the FSEPs lifecycle.

**Segregation of Duties** – To maintain effective internal controls, the Consortium will properly create internal checks and balances among the entities performing contract administration and financial duties for FSEP related projects, programs, and activities. The SSEP anticipates carefully assigning the authorities and roles of staff with the guidance of the Board, to create a robust duty segregation hierarchy. Furthermore, the Consortium has sought to retain a fiscal agent to manage any grant funds received from Council, instituting firewalls between approval of disbursements and access to funding.

**Transparency** – The Consortium is committed to sustaining transparency with the public, RESTORE Council, and other constituents for reporting on FSEP related projects, programs, and activities. The SSEP seeks to put in place administrative positions that will allow frequent, detailed, and complete grant reports and financial statements for the Consortium's stakeholders.

**Independent Financial Auditing** – The Consortium is subject to annual audits conducted by independent auditors which evaluate not only the presentation of financial statements but also the effectiveness of internal controls based upon widely held government standards including, but not limited to, 2 CFR Part 200 and the Single Audit Act of 1996.



### **Financial Controls**

The financial controls put in place through the SSEP will allow the Consortium to reduce the risk of asset loss or misappropriation of funds, maintain compliance with the RESTORE Council's financial documentation requirements, create a uniform financial standards for member counties, and ensure that financial reports and disclosures are complete reliable, and ensure compliance with all state and federal laws and regulations. The Consortium's financial control system will contain both preemptive controls (created to prevent errors or fraud) and detective controls (designed to identify an error or fraud after it has occurred).

Project management, grant managers, and other Consortium member county staff responsible for governance will be required to apply internal control processes created by the SSEP. The processes created by the SSEP are designed to provide reasonable assurance in the reliability of project financial reporting.

The proposed financial control system includes multiple protections of public funds including:

- Procedures that provide for appropriate segregation of duties to reduce the risk of asset loss or fraud;
- Personnel training materials that ensure employees are qualified to perform their assigned duties and responsibilities;
- Defined roles for the proper employees to authorize and records financial transactions,
- Both the RESTORE Act and the FSEP grants will require sub-recipients to operate and use resources with minimal potential for waste, fraud, and mismanagement.

The Consortium's internal control system has been, and continues to be modeled in accordance with the Committee of Sponsoring Organizations of the Treadway Commission (COSO) internal control framework and the five inter-related components. Further the Consortium will evaluate each of these categories on a regular basis to adjust or change policies and procedures to enhance the internal control policy.

1. **Control Environment** – The internal control environment
2. **Risk Assessment** – The types of risks both perceived and real must be identified, analyzed, and categorized in relevant way to manage the goals of the SEP and requirements of the Consortiums regulatory bodies.
3. **Control Activities** – The Consortium's internal control activities include written policies, procedures, techniques, and mechanisms that help ensure management's directives are carried out in compliance with the RESTORE Act criteria.
4. **Communication and Information** – Communication is vital to effective project management, and the Consortium's financial information system has mechanisms in place to properly capture and



communicate RESTORE Act project financial data at the level appropriate for sound financial management.

5. **Monitoring** – Monitoring of the internal control system will be performed to assess whether controls are effective and operating as intended.

## Conflicts of Interest

Consistent with Chapter 112, Florida Statutes, conflicts of interest are situations “in which regard for a private interest tends to lead to disregard of a public duty or interest.” The Consortium requires a conflict of interest affidavit to be completed by all contractors and sub-recipients to ensure that no conflicts of interest for any proposed or contracted work would affect the impartiality or quality of the work. Strict conflict of interest policies ensure that no sub-recipients or contractors are given an unfair competitive advantage. Accordingly, contracts for the General Counsel, Manager, and FSEP Consultant were amended on September 27, 2017, to include provisions required by 2 CFR Part 200 for all non-Federal recipients of Federal funds.

## Proposed Project

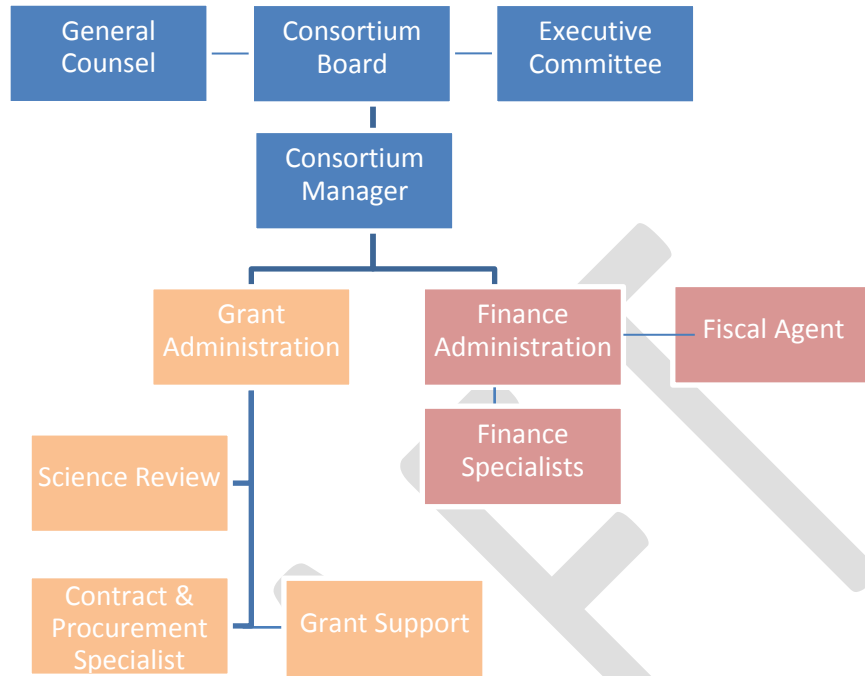
### Expanding the financial and administrative capabilities of the Gulf Consortium

The single project included in this SSEP involves the development of sufficient financial and managerial structure in order to ensure the Consortium will provide the financial integrity, controls, and management duties that will be required for individual project implementation. The four primary elements of the Consortium administrative structure to be developed include: 1) grant management, 2) procurement and contract management, 3) accounting and finance, and 4) technical oversight of deliverables under contracts and grant sub-awards.

The organizational structure of the Consortium envisioned by the SSEP is outlined in **Figure 2** and **Table 1**. This structure illustrates functional roles within the Consortium rather than individual personnel.



**Figure 2. Proposed organizational chart of administrative functions of the Gulf Consortium**



**Figure 2** is organized into three primary cluster of functions: overall management as guided by the Board, financial administration, and grant management.

**Table 1** recognizes that the only continuous staffing services of the Gulf Consortium are that of the Manager and the General Counsel. Consequently, select responsibilities described by **Table 1** may be contracted for, but with all contract approvals by the Board and oversight provided by the Manager.



**Table 1. Summary of responsibilities for administrative functional roles within the Gulf Consortium**

<b>Functional Role</b>	<b>Responsibilities/<i>Resource</i></b>
<b>General Manager</b>	Management and general administration of Consortium business <i>Manager*</i>
<b>General Counsel</b>	Legal counsel, contract development and review <i>General Counsel*</i>
<b>Financial Administration</b>	Prepare financial statements, payment requests, audit functions <i>Manager*</i>
<b>Finance Specialist</b>	Data entry for payment requests, bookkeeping functions <i>Permanent Manager*</i>
<b>Fiscal Agent</b>	Manages disbursements, check registers, bank statement <i>Pending final approval, Leon County Clerk of Courts</i>
<b>Grant Administration</b>	Packages prepared grants for submission to Council; assists County personnel in grant preparation as requested; coordinates with Council and the Gulf Consortium <i>Manager*</i>
<b>Grant Support</b>	Database maintenance, grant submittal support To be determined, as contract volume requirements dictate; <i>Manager* or Contractual Grant managers during periods of high volume</i>
<b>Contract Procurement</b>	Manages contract procurement processes; <i>New position, Contract Specialist</i>
<b>Science Review</b>	Oversight of desktop reviews of prepared grant applications for BAS requirements prior to submittal to Council; determines appropriate specialists for review <i>Manager*</i>

\* Under existing Consortium contracts for services

As an example, Science Review – such as for the application of Best Available Science for a particular project – may be expected to be contracted for; however, the oversight of the reviews and coordination of findings as part of required reporting to Council would be handled by through the Manager.

### **Procurement**

The SSEP will implement procurement methods consistent with those outlined in 2 C.F.R. § 200.320. Procurement will be carried out by the manager of the Consortium and the respective accounting and finance individuals on their team with assistance from the general counsel. The SSEP will institute the following procurement scenarios depending on cost threshold and product or service.

1. Procurement by micro-purchases: Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). Micro-purchases may be awarded without soliciting competitive quotations if the recipient considers the price to be reasonable.





2. Procurement by small purchase procedures: Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold (currently \$150,000). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. The Consortium will consider three qualified bids as sufficient.
3. Procurement by sealed bids (formal advertising): Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.
4. Procurement by competitive proposals: The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. A new requirement under this method is that the recipient must have a written method for conducting technical evaluations of the proposals received and for selecting recipients.
5. Procurement by noncompetitive proposals: Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source. 2 C.F.R. Part 200 clarified that this may be used only when one or more of the following circumstances apply:
  - a. The item is available only from a single source;
  - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - c. The Council or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the recipient; or
  - d. After solicitation of a number of sources, competition is determined inadequate.

The counties may rely on the Consortium to provide resources such as Best Available Science or other skilled professionals to assist their grant efforts. Those professionals will need to be procured at the Consortium level. The Stand-Up phase will prepare the Consortium for the following procurement scenarios depending on the level of projects that are developed enough to begin once implementation begins. **Table 2** provides expected levels of activity that have been assessed; the FY 2018 budget has been derived based on the “Likely” Scenario. It is important to note that while first year FSEP activities show more than 30 grants, more than 20 are related to feasibility studies and conceptual design that based on discussion with Council may be bundled into fewer grant applications.



**Table 2. Grant management and procurement activity level scenarios**

Estimated Volume	Fiscal Year 2018	Fiscal Year 2019	Fiscal Year 2020	Task
High Volume	12	12	12	Grant Applications
	24	24	12	Procurements/Contracts
Low Volume	2	4	4	Grant Applications
	4	4	4	Procurements/Contracts
Likely Scenario	6	6	6	Grant Applications
	12	12	12	Procurements/Contracts

### Accounting and Finance

The initial Organizational Assessment submitted to the RESTORE Council highlighted areas that the Consortium can improve upon to carry out its mission related to the ultimate oversight of the FSEP. The Consortium needs to have administrative infrastructure suited for the accounting and finance-related work that will need to be done in order to run all the grants for the projects contained in the FSEP. The SSEP will be used to establish that hierarchy of positions so that the Consortium has finance and accounting structure in the background capable of handling the fiduciary responsibilities of carrying out the grant administration for the FSEP.

The SSEP will give the Consortium manager and supporting vendors the opportunity to create a cohesive administrative arm that fulfill the segregation of duties requirements for robust internal controls and also allows for effective grant management and administration. Further the Consortium has engaged Leon County to act as fiscal agent for the Consortium so that the necessary segregation of duties objective is enhanced.

### Software Requirements

Council has indicated their recommendation for the Consortium to implement a standalone grant management system dedicated to Consortium business. Existing accounting software in place has been identified as Defense Contract Audit Agency (DCAA) compliant, but may require upgraded licensing depending on the volume of grant activity in the early years of the implementation of the FSEP. The Consortium has performed due diligence sufficient to establish a conservative budget for both possibilities (grant management software and potential license upgrading) and has estimated an appropriate scale and capacity for software to provide the functionality needed to carry out the FSEP at reasonable costs.

Depending on the procurement selection, software costs for applications compatible with Council systems will cost approximately \$17,500 \$10,000 for software license, \$2,500 for software maintenance, and \$5,000 for vendor provided setup and training costs. Actual costs may vary depending on availability.



### **Grant Management**

The goals of grant management activities are to develop and submit the project-specific grants for implementation, to ensure sub-recipients (the 23 Florida Gulf Coast counties) are achieving the stated project objectives, and to comply with the RESTORE Council's policies and requirements. Additional capacity within the Consortium will be developed as part of this SSEP project. There are two main pieces to this capacity building: 1) a dedicated individual will be hired to provide grant management services and to create sufficient segregation of duties, and 2) the Consortium will acquire grants management software to facilitate efficient grant preparation and project monitoring.

### **Sub-recipient Monitoring**

The tasks involved in this project to establish sufficient capacity for sub-recipient monitoring by the Gulf Consortium include the following:

- Adapting an Organizational Self-Assessment (OSA) to be completed by the 23 Gulf Coast counties (sub-recipients) in order to assess the risk level of sub-recipients;
- Develop the procedures for assistance of high-risk sub-recipients; and
- Develop the procedures for financial and progress review of sub-recipient implementation projects

### **RESTORE Act Compliance**

- Organizational Self-Assessments;
- 2 CFR Part 200 compliance;
- Automated Standard Application for Payments (ASAP); and
- Restoration Assistance and Awards Management System (RAAMS)

### **Technical Oversight**

The goal of technical oversight is to ensure that 1) the projects serve the objectives of the RESTORE Act Spill Impact Component (Pot 3), 2) projects include Best Available Science (BAS) where relevant, and 3) project design and implementation are consistent and of sufficient quality. BAS describes science that:

- Maximizes the quality, objectivity, and integrity of information, including statistical information;
- Uses peer-reviewed and publicly available data; and
- Clearly documents and communicates risks and uncertainties in the scientific basis for such projects.

In addition to BAS, permitting (federal, state, and local), construction feasibility, and construction engineering inspection are among the tasks requiring technical oversight.

The unique project types among the current list of 70 projects that may be in the FSEP were reviewed in order to establish the types of technical professionals needed. The following project types describe one or more of the projects that may be included in the FSEP:

- Aquaculture



- Beach Access, Coastal Access, Boat ramps, and Facilities
- Dredging
- Beach Nourishment
- Living Shorelines, Coastal Uplands, Habitat Restoration
- Reef Systems
- Wetland Hydrology
- Septic to Sewer Conversion, Sewer Expansion or Rehabilitation
- Sewer/Stormwater, Stormwater
- Education

The general groups of technical professionals needed for review at grant submittal and for evaluation after implementation have been identified on a preliminary basis for each of the above project types; the resultant classes of professionals include, at a minimum: 1) Engineering/Design, 2) Ecologists/Biologists, 3) Education Specialists, and 4) Construction Engineering Inspection. The Consortium has preliminarily identified experts for select technical oversight capacities. Technical professionals with experience and credentials in specialized fields that can be contracted for desktop review and implementation evaluation and monitoring, where appropriate, have either been identified or will be secured through a procurement process.

**The activities to be completed in this Stand-Up project related to technical oversight are described as follows:**

1. Develop best practices protocol for reviewing project eligibility for Spill Impact Component funding, and for meeting the technical oversight requirements of the RESTORE Council. This protocol will detail how to determine the type of technical oversight and how it is decided if technical oversight needs to be procured or if it can be achieved utilizing capacity within The Balmoral Group, the manager of the Consortium.

Establish contracts with specialized Ecologists/Biologists experts for review of projects at application stage and during implementation to ensure projects are based on BAS, subject to approval. Where possible, the Consortium plans to develop a contract for scientific review services from Federal and local environmental agencies in order to streamline the procurement of technical oversight services from the Ecologists/Biologists class of professionals referenced above. The contract would specify the scopes of services for different project types, the fees for services, and the timelines for desktop review and implementation assessment and/or monitoring. Existing NRDA contracts have been obtained and will be used as a template for Consortium contracting.

2. Establish contracts with groups of qualified technical professionals (Engineering/Design, Ecologists/Biologists, Education Specialists, and Construction Engineering Inspection



professionals) for grant review and implementation assessment and monitoring. This effort will include the development of regionalized Requests for Proposals (RFPs) in three Gulf Coast regions to ensure local experience and to reduce travel costs for each of the four technical professional services. Within each technical professional class, scopes of work will be developed for sub-types of professionals. For example, the expected work and qualifications required from a production fisheries aquaculture expert will be different than the work and qualifications of specialist in living shorelines, but both types would be within the Ecologists/Biologists class of professionals. RFPs will be developed for each services group and will be tailored to each of the three geographic regions that will be established. Detailed review of project descriptions from the FSEP will be used to identify all the sub-types of technical professionals. Existing state agency contracts for similar services have been obtained and will be used as a template for Consortium contracting.

3. Develop a data management plan to ensure consistency of monitoring for biological, water quality, and other environmental data for projects requiring monitoring. This effort will establish the observational protocols and will establish the data storage and analysis system to ensure that monitoring data is preserved and is publicly accessible. Coordination with Treasury staff overseeing Pot 1 funding will occur to attempt compatibility and consistency with long-term monitoring requirements for Consortium projects.

The outcome of the process described above will be contracts with pools of available specialists that can efficiently provide technical oversight services for grant and implementation evaluation.

## **CONTRIBUTIONS TO THE OVERALL ECONOMIC AND ECOLOGICAL RECOVERY OF THE GULF**

By developing the administrative capacity of the Gulf Consortium to receive and manage FSEP project implementation grants and all services required to ensure that such grants are carried out efficiently, the SSEP will contribute to the economic and ecological recovery of the Gulf via the successful implementation of the FSEP and its own compliance with and furtherance of the RESTORE Act.

## **ELIGIBILITY AND STATUTORY REQUIREMENTS**

Administrative costs are eligible for funding in conjunction with one of the eligible activities listed in the RESTORE Act. The SSEP is an administrative cost supporting other RESTORE Act eligible activities in Florida.

## **COMPREHENSIVE PLAN GOALS AND OBJECTIVES**

To the extent that the SSEP supports all projects in the FSEP, the following Comprehensive Goals are supported:

- Goal 1: Restore and Conserve Habitat (Restore and conserve the health, diversity, and resilience of key coastal, estuarine, and marine habitats);



- Goal 2: Restore Water Quality and Quantity (Restore and protect the water quality and quantity of the Gulf Coast region's fresh, estuarine, and marine waters);
- Goal 3: Replenish and Protect Living Coastal and Marine Resources (Restore and protect healthy, diverse, and sustainable living coastal and marine resources);
- Goal 4: Enhance Community Resilience (Build upon and sustain communities with capacity to adapt to short-and long-term changes); and
- Goal 5: Restore and Revitalize the Gulf Economy (Enhance the sustainability and resiliency of the Gulf economy).

## **IMPLEMENTING ENTITIES**

The Gulf Consortium is the implementing entity for Pot 3 for the State of Florida. Council affirmed the authority of the Consortium to implement the FSEP in a letter dated October 6, 2017; the Consortium affirmed its intent to serve in this capacity on November 15, 2017. By his approval of the SSEP and transmittal to Council, the Gulf Consortium will be responsible for receiving the planning grant from Council and implementing the proposed single project, establishing the administrative and financial architecture of the Consortium. Sub-entities will include the Consortium General Counsel, Leon County Clerk of Courts, and the several technical; services providers to be procured under the scope of the project.

## **BEST AVAILABLE SCIENCE AND FEASIBILITY ASSESSMENT**

As a purely administrative initiative, Best Available Science (BAS) is not directly applicable to this SSEP. However, the implementation of the SSEP contemplates the procurement of professionals with BAS expertise to provide review of grant requests (via sub-awards) for which BAS is required.

Management and implementation of the SSEP are feasible and are fully within the purview of the scope of services of the Consortium's Manager. No permits are required for the SSEP. The budget has been based on hours and costs incurred by the Florida Association of Counties for past Consortium procurements and on recent experience by the Manager. The proposed budget reflects the anticipated workload for standing up the Consortium and processing an initial cycle of FSEP project implementation grants. The SSEP is a one-time initiative that will provide the structure for the Consortium as implementer for Florida for the duration of the payout of Pot 3 funds.

## **RISKS AND UNCERTAINTIES**

There are no risks identified with the SSEP itself as an administrative project. Uncertainties remain as to whether all conditions and requirements of Treasury and Council have been duly identified and for which SSEP tasks, actions, or roles and responsibilities have been defined. Review of the Draft SSEP by Council has flagged no major issues. Uncertainties exist as to the actual costs for implementation (i.e., costs for specific procurements of services) and the time required to put into place all key administrative and



financial functions. While the proposed funding should be adequate, implementation may take longer than estimated.

## SUCCESS CRITERIA AND MONITORING

The primary project benefit will be a fully operable administrative and financial structure for the Consortium, capable of meeting all federal requirements and withstanding Council scrutiny and audits. Applicable metrics for success include the following:

- Approval by Council of the SSEP
- Approval by Council of a planning grant to implement the SSEP
- Concluding the “stand-up” process in the timeframe contemplated (8-10 months)
- Efficiently reviewing and transmitting the first cycle of FSEP implementation grants to the satisfaction of Council
- Streamlining processes between county sub-awardees and the Consortium to expedite invoicing and reimbursements / payments

## MILESTONES AND SCHEDULE

The SSEP is anticipated to require approximately seven months to implement, from transmittal of the grant request to support implementation until work commences under the first sub-award to a county. In addition, a Gantt chart (**Figure 3**) is provided showing high level milestones for the project, and anticipated start and end dates for each in months from SSEP approval

**Figure 3. Milestones Associated with Implementation of the SSEP**

MILESTONE	MONTHS FROM SSEP APPROVAL									
	1	2	3	4	5	6	7	8	9	10
Develop, transmit SSEP Implementation Grant										
Grant approval by Council										
Services RFPs developed, advertised										
Services agreements executed										
1 <sup>st</sup> County Implementation Grant forwarded to Consortium										
1 <sup>st</sup> County Implementation Grant forwarded to Council										
1 <sup>st</sup> Sub-award executed with County										
Work Commences										
1 <sup>st</sup> Project Payment Request										
1 <sup>st</sup> Project Payment Received										





## **Budget/Funding**

### **Project Cost and Expected Request from Oil Spill Component Funds: \$221,038**

These funds will allow the Consortium to pay for the contractor costs which will build the administrative infrastructure as well as the necessary grant management software and installation of those systems.

### **If funding for the project has been requested from other sources, describe any additional resource:**

None is estimated at this time.

### **Partnerships/Collaboration:**

The Consortium anticipates further collaboration with Florida's RESTORE coordinators and with the Gulf of Mexico University Research Collaborative (GOMURC) to refine administrative and FSEP project review procedures.

### **Leveraged Resources:**

None specified at this time; however, county contributions to the Consortium will complement the SSEP implementation grant with respect to Board-meeting costs through the duration of the SSEP.

### **Funds Used as Non-Federal Match:**

No specific matching funds are anticipated. Contributions from the member counties of the Gulf Consortium provide funding for the general administrative expenses in preparing the Board and Executive Committee agenda items for consideration of the SSEP, and for time spent with Board members and RESTORE coordinators to refine SSEP content and processes.

**Other:** None anticipated





## APPENDICES

### Appendix A. Compliance Reviews by Responding Parties

**Table A-1. RESTORE Act Compliance Review**

Subject	Responding Parties	Comments
Project Eligibility	Consortium SEP Consultant; Consortium General Counsel; commenting public	
Contribution to Economic and Ecological Recovery of Gulf	Consortium SEP Consultant; Florida Dept. of Environmental Protection; commenting public	
Conformity with Council Comprehensive Plan	Consortium General Counsel Consortium SEP Consultant; Florida Dept. of Environmental Protection; commenting public	
Application of Best Available Science	Consortium SEP Consultant; Florida Dept. of Environmental Protection; Florida Fish and Wildlife Conservation Commission; commenting public	
Limitation on Infrastructure Projects	Consortium SEP Consultant; Florida Dept. of Environmental Protection; commenting public	
Cross-Border Issues	N/A (Florida Dept. of Environmental Protection; commenting public)	

### Appendix B. List of County Webpages used for requesting public comment on the SSEP

To be added prior to submittal to RESTORE Council

### Appendix C. Summary of Agency and Public Comments

To be added prior to submittal to RESTORE Council

## **AGENDA ITEM 7**

**Gulf Consortium Board of Directors Meeting  
November 15, 2017**

**Agenda Item 7  
Amended FY 18 Budget for the Gulf Consortium**

**Summary:**

Request for Board approval of an amended FY 18 budget.

**Background:**

Following the tabling of an agenda item relating to the proposed Stand-up State Expenditure Plan, the Board approved a budget that included only the anticipated remaining funds for the closure of the State Expenditure Plan Planning Grant (PSEP), funds to conduct meetings and carry out operations and legal obligations of the Consortium not covered by the Planning Grant, and expected Florida State Expenditure Plan (FSEP) project implementation grant proceeds associated with the first year of projects to be initiated.

**Analysis:**

For FY 18, funds are anticipated to be received from four sources: the existing SEP Planning Grant; a Stand-up SEP implementation grant for which pre-award costs have been approved by Council; FSEP project implementation grants; and County funds for items which are not allowable as grant expenses. Pursuant to final Board action, both the Stand-Up SEP implementation grant and FSEP are expected to be approved during the 2017-2018 fiscal year.

Operational costs for the Consortium were estimated based on historical costs for meeting administration and grant management, remaining costs associated with the SEP Planning Grant, and costs identified as likely under the Stand-up SEP and SEP project implementation grants.

Conservative assumptions were used to ensure budgeting was adequate for sufficient levels of operations during implementation. Best available information at time of drafting was used in preparation of the budget. Primary assumptions include Council approval of the Stand-up SEP around April 2018, approval of the grant to implement the Stand-Up SEP by June 2018, approximately 12 service procurement activities and 6 SEP project implementation grant applications submitted and approved by September 2018. Based on discussion with Council, likely turnaround for grant approvals is approximately 60 days under normal volume and potentially twice that during heavy volume. As a practical consideration there may be only 3 months of FY 18 during which grant requests may be expected to be transmitted to and approved by Council. In addition, similar projects, such as feasibility studies, may be combined into one implementation grant request thereby lowering the number of submittals while reducing Consortium administrative time and labor costs.

The expenses remaining to finalize the Florida State Expenditure Plan and gain its approval comprise the majority of non-project-specific budget items, \$1.9 million.

Consortium operating expenses, which have been based on the volume described above, are split one-third to fixed costs at \$140,000 (audit expense, management fees, etc.) and two-thirds to variable costs at \$282,000 (grant BAS reviews, procurement costs, etc.). The variable costs equate to roughly \$6,360 per procurement and \$5,825 per grant activity and have been estimated based on the volume of activity that is considered most likely. FSEP project-funding totals \$11.6 million for budgeting purposes. However, it is unlikely \$11.6 million can be drawn down or encumbered prior to the end of the fiscal year based on the likely approval date for the FSEP and the transmittal of FSEP project implementation grants. Consequently, this is an upper bound. Table 1 provides a summary by cost category.

**Table 1. Budget Summary by Cost Category**

<b>Cost Category</b>	<b>Amended 2017-18 Budget</b>
SEP Planning Grant - Remaining Expense	\$ 1,684,372
SEP Planning Grant - General Operating Expense	225,000
Stand-up SEP - One Time Expense	221,038
SEP Project Implementation Expenses	11,492,846
General Fixed and Variable Operating Expenses	282,057
<b>Total</b>	<b>\$ 13,905,313</b>

Consortium funding sources for expenses as described above are summarized in Table 2.

**Table 2. Budget Summary by Funding Category**

<b>Funding Source</b>	<b>Amended 2017-18 Budget</b>
SEP Planning Grant	\$ 1,909,372
Stand-up SEP	221,038
Florida SEP Project Implementation Grants	11,634,853
County Funding	140,050
<b>Total</b>	<b>\$ 13,905,313</b>

The proposed budget allows for establishment of Council-required financial upgrades to support Stand-up SEP and FSEP implementation and is considered adequate for Consortium operations through the first year of implementation.

**Options:**

Option #1, Approve the Amended FY 18 Budget  
Option #2, Board Direction

**Recommendation:**

The Executive Committee has recommended Option #1.

**Attachment:**

Amended FY 18 Budget

**Prepared by:**

Craig Diamond  
The Balmoral Group, Manager  
On: November 2, 2017

**Action Taken:**

Motion to: \_\_\_\_\_, Made by: \_\_\_\_\_;

Seconded by: \_\_\_\_\_.

Approved\_\_\_\_; Approved as amended\_\_\_\_; Defeated\_\_\_\_\_.

# ATTACHMENT: AMENDED FY 2018 BUDGET

Amended Gulf Consortium Budget Fiscal Year 2017-2018

REVENUES	Grant Funding				Total
	County Funds	PSEP Funds	SSEP Funds	Imp Funds	
County Funding	\$ 140,050				\$ 140,050
Planning Grant		\$ 1,909,372			1,909,372
Stand-Up SEP Grant			\$ 221,038		221,038
Florida SEP Grant				\$ 11,634,853	11,634,853
<b>TOTAL REVENUES</b>	<b>\$ 140,050</b>	<b>\$ 1,909,372</b>	<b>\$ 221,038</b>	<b>\$ 11,634,853</b>	<b>\$ 13,905,313</b>
<b>DISBURSEMENTS</b>					
<b>PSEP Expenses</b>					
ESA Contract Consulting					
Task 6		116,440			116,440
Task 7		98,400			98,400
Task 8		303,400			303,400
Task 9 & 10		276,000			276,000
Task 11		328,000			328,000
Task 12		266,500			266,500
Task 13		164,432			164,432
Task 14		131,200			131,200
Subtotal Planning Grant Expenses	-	1,684,372	-	-	1,684,372
<b>SSEP Expenses</b>					
Pre-Award costs			45,100		45,100
Software and licensing costs			17,500		17,500
Grant/procurement software labor costs			47,175		47,175
Services Procurement & Related Contract Activities			76,313		76,313
Grant Bundling and Administration			34,950		34,950
Subtotal SSEP Expenses	-	-	221,038	-	221,038
<b>FSEP Expenses</b>					
County Projects					
(project costs excluding grant mgmt)				11,492,846	
Subtotal FSEP Expenses	-	-	-	11,492,846	11,492,846
<b>General Operating Expenses</b>					
Management Expense	60,000	50,000			110,000
Legal Expense	60,000	90,000			150,000
Grant-specific Management					-
Work Order 5B (Langton)		60,000			60,000
Implementation-dependent				124,534	124,534
Meeting and Travel Expense	14,050				14,050
Miscellaneous	1,000				1,000
Audit Expense	5,000	25,000	-	-	30,000
Fiscal Agent Expense	-	-	-	17,473	17,473
Subtotal General Operating	140,050	225,000	-	142,007	507,057
<b>TOTAL EXPENSES</b>	<b>140,050</b>	<b>1,909,372</b>	<b>221,038</b>	<b>11,634,853</b>	<b>13,905,313</b>

## **AGENDA ITEM 8**

**Gulf Consortium Board of Directors  
November 15, 2017**

**Agenda Item 8  
Approval and Adoption of the Consortium  
2018 Meeting Calendar**

**Statement of Issue:**

This agenda item seeks approval and adoption of the Consortium 2018 meeting calendar.

**Background:**

Under the Interlocal Agreement creating the Gulf Consortium, the Chairman has the power to set the times and locations of the Consortium. However, at the Executive Committee meeting of September 9, 2016, the Chairman recommended that the calendar be discussed by the Board. The Board had provided direction as to align Gulf Consortium meetings with Florida Association of Counties events, between Wednesday and Friday, and to hold additional stand-alone meetings as needed in facilities that could accommodate video and telephonic access. Based on the meeting history since 2016, staff proposes the following dates and locations for the 2018 meeting calendar:

<u>Date</u>	<u>Day of Week</u>	<u>Location</u>
February 8, 2018	Thursday ( <i>FAC Legislative Day</i> )	Leon County
April 18, 2018	Wednesday ( <i>Not affiliated with an FAC event</i> )	<u>TBD</u>
June 28, 2018	Thursday ( <i>FAC Annual Conference</i> )	Orange County
September 27, 2018	Thursday ( <i>FAC Policy Conference</i> )	Charlotte County
November 29, 2018	Wednesday ( <i>FAC Legislative Conference</i> )	Hillsborough County

Five dates are proposed for 2018, including a date in April that is expected to be around the time that the Consortium will have received response from Council regarding the State Expenditure Plans. This additional date is intended to provide the Board timely opportunity to take any actions relating to anticipated contracting for services under the Stand-Up SEP (if approved) and other implementation measures following FSEP approval.



**Fiscal Impact:**

The planning grant award includes reimbursement monies for the Consortium to fund some, but not all of the costs of its meeting expenses during 2018. The planning grant includes \$32,000 available for reimbursement through the grant. However, planning grant funds will become unavailable after RESTORE Council approval of the State Expenditure Plan, anticipated by late spring. The Consortium budget includes \$16,050 to fund those meeting expenses not covered by the grant. Any of these funds not drawn down through the grant to the Consortium will remain in the Trust Fund for distribution later, in the form of projects, programs, and activities. The options presented in this agenda item have varying costs associated with them and varying advantages and disadvantages for the Board.

**Options:**

- (1) Approval of the 2018 meeting calendar and meeting locations; or
- (2) Board direction.

**Recommendation:**

Motion to approve and adopt the 2018 meeting calendar and locations.

**Attachments:**

None.

**Prepared by:**

Craig Diamond  
The Balmoral Group  
Manager  
November 4, 2017

**Action Taken:**

Motion to: \_\_\_\_\_, Made by: \_\_\_\_\_;

Seconded by: \_\_\_\_\_.

Approved\_\_\_\_; Approved as amended\_\_\_\_; Defeated\_\_\_\_\_.

## **AGENDA ITEM 9**

## **AGENDA ITEM 9a**

**Gulf Consortium Board of Directors  
November 15, 2017**

**Agenda Item 9a  
Financial Statement**

**Executive Summary:**

Presentation, Consortium Financial Statement as of September 30, 2017

**Report:**

The Manager's report will be given verbally at the Board meeting on November 15, 2017.

**Attachment:**

September 30, 2017 Financial Statement

**Prepared by:**

Craig Diamond  
The Balmoral Group  
Manager  
On: October 14, 2017

**Gulf Consortium**  
**Balance Sheet**  
 As of September 30, 2017

	<u>Sep 30, 17</u>
<b>ASSETS</b>	
Current Assets	
Checking/Savings	
Seaside Bank (Operating)	100,776.34
Wells Fargo Account (Grant)	312.20
Total Checking/Savings	<u>101,088.54</u>
Accounts Receivable	
Planning Grant Receivable	68,929.88
Total Accounts Receivable	<u>68,929.88</u>
Total Current Assets	<u>170,018.42</u>
<b>TOTAL ASSETS</b>	<b><u>170,018.42</u></b>
<b>LIABILITIES &amp; EQUITY</b>	
Liabilities	
Current Liabilities	
Other Current Liabilities	
Accrued Liabilities - General	11,374.37
Accrued Liabilities - Grant	66,585.51
Total Other Current Liabilities	<u>77,959.88</u>
Total Current Liabilities	<u>77,959.88</u>
Total Liabilities	<u>77,959.88</u>
Equity	
Unrestricted Net Assets	33,939.90
Net Income	58,118.64
Total Equity	<u>92,058.54</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b><u>170,018.42</u></b>

# Gulf Consortium Profit & Loss

October 2016 through September 2017

	General Fund	Grants Fund	TOTAL
<b>Income</b>			
<b>Planning Grant</b>			
SEP - Work Order 4B	0.00	209,046.00	209,046.00
SEP - Work Order 6	0.00	339,480.00	339,480.00
SEP - Management Fees	0.00	29,571.25	29,571.25
SEP - Grant Management	0.00	60,000.00	60,000.00
SEP - Legal Fees	0.00	55,778.42	55,778.42
SEP - AV/Meeting Fees	0.00	12,459.60	12,459.60
<b>Total Planning Grant</b>	0.00	706,335.27	706,335.27
<b>County Funding</b>	140,050.00	0.00	140,050.00
<b>Interest and Other income</b>	13.67	0.00	13.67
<b>Total Income</b>	140,063.67	706,335.27	846,398.94
<b>Expense</b>			
<b>Development of SEP</b>			
Grant Management	0.00	60,000.00	60,000.00
Work Order 4B	0.00	209,046.00	209,046.00
Work Order 6	0.00	339,480.00	339,480.00
<b>Total Development of SEP</b>	0.00	608,526.00	608,526.00
<b>Legal</b>	17,146.23	55,778.42	72,924.65
<b>Management Fees</b>	52,556.25	29,571.25	82,127.50
<b>Accounting</b>	3,000.00	0.00	3,000.00
<b>Meeting Expense</b>	6,829.89	12,459.60	19,289.49
<b>Bank Service Charges</b>	2,237.66	0.00	2,237.66
<b>District Fees</b>	175.00	0.00	175.00
<b>Total Expense</b>	81,945.03	706,335.27	788,280.30
<b>Net Income</b>	<b>58,118.64</b>	<b>0.00</b>	<b>58,118.64</b>

## **AGENDA ITEM 9b**

**Gulf Consortium Board of Directors  
November 15, 2017**

**Agenda Item 9b  
Request for Approval to Procure Consortium Audit**

**Executive Summary:**

Request for Board approval to contract with the firm of Moore, Stephens, & Lovelace to provide audit services of the Consortium and the planning grant.

**Background:**

At its June 28 2017 meeting, the Board delegated to the Executive Committee the responsibility to review and approve the scope of a Request for Proposals for audit services. The Executive Committee approved the scope of the RFP at its meeting of August 16, 2017. Following receipt of four qualifying responses, Consortium staff convened the evaluation committee (with representation from Bay, Pinellas, and Sarasota Counties and the DEP) on September 22, 2017. At its September 27, 2017 meeting the Board accepted the evaluation committee's ranking and directed staff to proceed with negotiations with the highest ranked firm (Moore, Stephens, & Lovelace). Staff received a signed engagement letter on November 6<sup>th</sup> to provide auditing and Federal single audit services for a total amount of \$6,000 annually for fiscal years 2017-2019. A contract has been prepared and is attached for reference.

**Attachment:**

Contract for Audit Services

**Prepared by:**

Craig Diamond  
The Balmoral Group  
Manager  
November 7, 2017



**AGREEMENT FOR AUDITING SERVICES BETWEEN  
THE GULF CONSORTIUM AND MOORE STEPHENS LOVELACE, P.A.**

This AGREEMENT is entered into by and between the Gulf Consortium, a legal entity and public body organized and created pursuant to an interlocal agreement among the 23 county governments along Florida's Gulf Coast (the "Consortium"), and Moore Stephens Lovelace, P.A., whose business address is 255 S. Orange Ave., Suite 600, Orlando, Florida 32801 (the "Contractor").

**WHEREAS**, the Consortium desires to obtain professional auditing services; and

**WHEREAS**, the Contractor represents that it has the experience and expertise in the type of professional auditing services that will be required by the Consortium; and

**WHEREAS**, the Consortium, through a competitive selection process, has selected Contractor as the entity to provide professional auditing services to the Consortium;

**WHEREAS**, the Consortium seeks to engage the Contractor for the purpose of providing professional auditing services.

**NOW THEREFORE**, in consideration of the mutual covenants herein and other good and valuable consideration, the parties hereby agree to amend the Agreement as follows:

1. **SERVICES TO BE PROVIDED.** The Contractor hereby agrees auditing services in accordance with:
  - A. The Request for Proposal for Audit Services ("RFP") issued by the Consortium, as well Contractor's response to same, which are attached hereto and incorporated as Exhibit A; and
  - B. The Contractor's Engagement Letter, dated October 25, 2017, which is attached hereto and incorporated as Exhibit B.
2. **FUND AVAILABILITY.** The performance of the Consortium of any of its obligations under this Agreement shall be subject to and contingent upon the availability of funds lawfully expendable for the purposes of this Agreement for the current and any future periods provided for within this Agreement.

The following statement is included in this Agreement in accordance with section 218.77, Florida Statutes, regarding requirements for disclosure of contingencies associated with federal requirements: The payment of costs to the Contractor for the auditing services is contingent upon the receipt of federal funds and federal approval.
3. **TERM OF CONTRACT.** The term of the Agreement will be for three (3) years with the options of two (2) additional one-year renewal periods, unless earlier terminated by either party upon thirty (30) days' written notice.
4. **COMPENSATION.** The Contractor shall be compensated the following fees for auditing services, plus travel expenses in accordance with section 112.061, Florida Statutes:

<b>Fiscal Year Ending</b>	<b>Audit Fee</b>	<b>Federal Single Audit Fee</b>
9/30/2017	\$3,000	\$3,000
9/30/2018	\$3,000	\$3,000
9/30/2019	\$3,000	\$3,000

5. **INSURANCE.** Contractor shall provide Certificates of Insurance showing that it has insurance policies in coverages and limits required below from companies authorized to do business in the State of Florida, with a rating of "A" or better. Each policy required below must require that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverages or limits, written notice thereof must be given to Consortium. Each Certificate of Insurance will be on a standard ACORD form, listing coverages and limits, expiration dates, terms of policies and all endorsements, and will include the RFP/project name on the Certificate. Each Certificate of Insurance, which is allowed by law to carry an additional named insured, will show "Gulf Consortium, a public entity created in October 2012 by Interlocal Agreement among Florida's 23 Gulf Coast counties, and its officers, agents, employees, and volunteers," as additional named insured. Any and all deductibles to any insurance policy will be the responsibility of the Contractor. Coverages and limits for the insurance required herein are as follows:

- A. Workers' Compensation: Coverage to apply for all employees for Statutory Limits in compliance with the applicable state and federal laws. The policy must include Employers' Liability with a limit of \$300,000 each accident.
- B. Professional Liability Insurance: Coverage of a minimum one million dollars (\$1,000,000) in coverage for this project.
- C. Public Liability Insurance: Policy must include bodily injury and property damage, Combined Single Limits (CSL) of \$300,000 minimum.
- D. Comprehensive General Liability Insurance: Policies shall include, but not be limited to, Independent Contractor, Contractual, Premises/Operations, Products/Completed Operations and Personal Injury covering liability assumed under indemnification provisions, with limits of liability for personal injury and/or bodily injury, including death, of not less than \$500,000, each occurrence; and property damage of not less than \$100,000, each occurrence. (Combined single limits of not less than \$500,000, each occurrence, will be acceptable unless otherwise stated). Coverage shall be on an "occurrence" basis, and the policy shall include Broad Form Property Damage coverage.
- E. Comprehensive Automobile and Truck Liability: Policies shall cover owned, hired and non-owned vehicles with minimum limits of \$300,000 each occurrence and property damage of not less than \$100,000 each occurrence. (Combined single limits of not less than \$500,000 each occurrence will be acceptable unless otherwise stated). Coverage shall be on an "occurrence basis" such insurance to include coverage for loading and unloading hazards.

6. **MONITORING.** The progress and performance of the Contractor will be monitored during and on close of the period of performance by the Consortium Manager.
7. **INDEMNIFICATION.** The Contractor agrees to indemnify and hold harmless the Consortium, its officials, officers, representatives, employees and agents, from and against any and all claims, damages, liabilities, losses, costs, or suits of any nature whatsoever arising out of, because of, or due to any negligent acts or omissions of the Contractor, its delegates, employees and agents, arising out of or under this Agreement, including reasonable attorney's fees. The Contractor acknowledges that ten dollars (\$10.00) of the amount paid to the Contractor is sufficient consideration for the Contractor's indemnification of the Consortium.
8. **PUBLIC ENTITY CRIMES.** In accordance with Section 287.133, Florida Statutes, Contractor hereby certifies that to the best of his knowledge and belief neither Contractor nor his affiliates has been convicted of a public entity crime. Contractor and his affiliates shall provide the Consortium with a completed public entity crime statement form no later than February 15 of each year this Agreement is in effect. Violation of this section by the Contractor shall be grounds for cancellation of this Agreement by the Consortium.
9. **UNAUTHORIZED ALIENS.** The Contractor agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this solicitation. The Consortium shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the Consortium.
10. **NON-WAIVER.** Failure by the Consortium to enforce or insist upon compliance with any of the terms or conditions of this Agreement or failure to give notice or declare this Agreement terminated shall not constitute a general waiver or relinquishment of the same, or of any other terms, conditions or acts; but the same shall be and remain at all times in full force and effect.
11. **ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding between the parties with respect to the transaction contemplated herein and supersedes all prior written or oral negotiations, commitments or writings. All future modifications to this Agreement shall be in writing signed by both parties.
12. **VENUE.** Venue for all actions arising under this Agreement shall lie in Leon County, Florida.
13. **CONSTRUCTION.** The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida.
14. **CONFLICTING TERMS.** In the instance that any other agreement exists concerning the matters herein, then the terms and conditions in this Agreement shall prevail over all other terms and conditions.
15. **FEDERAL PROVISIONS.** Contractor shall comply with the federal provisions, attached hereto and incorporated herein as Exhibit C.

**WHERE TO**, the parties have set their hands and seals effective the date whereon the last party executes this Agreement.

**GULF CONSORTIUM**

By: \_\_\_\_\_  
Grover Robinson, Chairman

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

**MOORE STEPHENS LOVELACE, P.A.**

By: William Blend  
William Blend, Shareholder

Date: 11.6.17

**SECRETARY/TREASURER:**

By: \_\_\_\_\_  
George Neugent

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

**EXHIBIT A**  
**RFP FOR AUDIT SERVICES**

**EXHIBIT B**  
**ENGAGEMENT LETTER**

## EXHIBIT C

### SPECIAL CONDITIONS

This Agreement is fully or partially funded by Federal grants and therefore, the Contractor will be required to comply with the following provisions:

1. **Drug Free Workplace Requirements:** All Contractors entering into Federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements as Drug Free Workplace Act of 1988 (Pub l 100-690, Title V, Subtitle D).

2. **Contractor Compliance:** The Contractor shall comply with all uniform administrative requirements, cost principles, and audit requirements for federal awards.

3. **Conflict of Interest:** The Contractor must disclose in writing any potential conflict of interest to the Consortium or pass-through entity in accordance with applicable Federal policy.

4. **Mandatory Disclosures:** The Contractor must disclose in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

5. **Utilization of Small and Minority Businesses, Women's Business Enterprises and Labor Surplus Area Firms:** The Contractor must take all necessary affirmative steps to assure that small, minority, and women-owned businesses are utilized when possible, in accordance with 2CFR 200.321. If subcontracts are to be let, prime contractor will require compliance of this provision by all sub-contractors. Prior to contract award, the Contractor shall document efforts to assure that such businesses are solicited when there are potential sources; that the contractor made an effort to divide total requirement, when economically feasible, into smaller tasks or quantities to permit maximum participation by such businesses; and, that the Contractor has established delivery schedules, where permitted, to encourage such businesses respond. Contractor and sub-contractor shall utilize service and assistance from such organizations as SBA, Minority Business Development Agency of the Department of Commerce, the Florida Department of Management Services (Office of Supplier Diversity), the Florida Department of Transportation, Minority Business Development Center, and Local Government M/DBE programs, available in many large counties and cities. Documentation, including what firms were solicited as suppliers and/or sub-contractors, as applicable, shall be included with the bid proposal.

6. **Equal Employment Opportunity:** (As per Executive Order 11246) The Contractor may not discriminate against any employee or applicant for employment because of age, race, color, creed, sex, disability or national origin. The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their age, race, color, creed, sex, disability or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship.

7. **Davis-Bacon Act:** If applicable, the Contractor agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141-3148). Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractors are required to pay wages not less than once a week. If the grant award contains Davis Bacon provisions, the Consortium will place a copy of the current prevailing wage determination issued by the Department of Labor in the solicitation document. The decision to award a contract shall be conditioned upon the acceptance of the wage determination.

8. **Copeland Anti Kick Back Act:** If applicable, Contractors shall comply with all the requirements of 18 U.S.C. § 874, 40 U.S.C. § 3145, 29 CFR Part 3 which are incorporated by reference to this Agreement. Contractors are prohibited from inducing by any means any person employed in the construction, completion or repair of public work to give up any part of the compensation to which he or she is otherwise entitled.

9. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708):** Where applicable, all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers must be in compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

10. **Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387):** as amended—The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

11. **Debarment and Suspension (Executive Orders 12549 and 12689):** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), Debarment and Suspension. SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The contractor shall certify compliance. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions and subcontracts.

12. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352):** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress,



officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. The contractor shall certify compliance.

**13. Rights to Inventions Made under a Contract or Agreement:** The Consortium, and the Federal Funding Agency, where applicable, shall hold sole rights to all inventions for any experimental, developmental, or research work performed by the Contractor and funded with Government funds through this contract.

**14. Procurement of Recovered Materials:** Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

**15. Record Retention and Access to Records and Reports:** In accordance with Federal regulatory requirements described in 2 C.F.R. § 200.333 and § 200.336, and Section N(0.2)(b) and Section N(0.4)(c) of the RESTORE Council Standard Terms and Conditions, the Contractor must retain all financial records, supporting documents, statistical records, and all other records pertinent to the RESTORE Act Spill-Impact Component (Pot 3) award agreement between the Gulf Consortium and the RESTORE Council for a period of three (3) years from the date of the submission of the final expenditure report. Furthermore, the Contractor must make available to the Council, the Treasury OIG, and the GAO any documents, papers or other records pertinent to this award, in order to make audits, investigations, examinations, excerpts, transcripts, and copies of such documents. The Contractor is also responsible for the timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to such documents. The access to records requirements described above shall continue as long as the records are required to be retained.

**16. Federal Changes:** Contractor shall comply with all applicable Federal agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of the contract.

**17. Termination for Default (Breach or Cause):** Contracts in excess of \$10,000 – If Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Consortium may terminate the contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

**18. Safeguarding Personal Identifiable Information:** Contractor will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable Federal, state and/or local laws regarding privacy and obligations of confidentiality.

**19. Prohibition on utilization of cost plus a percentage of cost contracts:** The Consortium will not award contracts containing Federal funding on a cost plus percentage of cost basis.

**20. Prohibition on utilization of time and material type contracts:** The Consortium will not award contracts based on a time and material basis if the contract contains Federal funding.

**21. Disputes:** Any dispute arising under this Agreement which is not settled by Agreement of the parties may be settled by mediation or other appropriate legal proceedings. Pending any decision, appeal or judgment in such proceedings or the settlement of any dispute arising under this Agreement, Contractor shall proceed diligently with the performance of this Agreement in accordance with the decision of the Consortium. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County.

**22. Energy Policy and Conservation Act (43 U.S.C. §6201):** Contracts shall comply with mandatory standards and policies relating to energy efficiency, stating in the state energy conservation plan issued in compliance with the Energy Policy and Conservation act. (Pub. L. 94-163, 89 Stat. 871) [53 FR 8078, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19645, Apr. 19, 1995].

**23. Pilot Program for Enhancement of Employee Whistleblower Protections.** The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. No. 112-239, enacted January 2, 2013 and codified at 41 U.S.C. 4712) includes a pilot program of whistleblower protection. It applies to all Council awards, subawards, or contracts under awards issued beginning July 1, 2013 through January 1, 2017. Non-Federal entities and contractors under Federal awards and subawards shall inform their employees in writing of the rights and remedies provided under 41 U.S.C. 4712, in the predominant native language of the workforce.

**24. Hatch Act.** The recipient and any subrecipients, contractors and subcontractors must comply with provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328), as applicable, which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

## **AGENDA ITEM 10a**

**Gulf Consortium Executive Committee  
November 15, 2017**

**Agenda Item 10a  
2018 Officer Elections Briefing**

**Executive Summary:**

This agenda item provides information about the process for electing the Chairman, Vice-Chairman and Secretary/Treasurer for the 2018 calendar year. This item does not require Board action; rather it serves as a reminder about the process the Consortium has used in the past and will use for the election of officers for 2018.

The election will be held at the first meeting in 2018, scheduled for February 8, 2018. The following is a summary of the election process adopted by the Board for the election:

- A Director may nominate him or herself for one or more of the offices sought.
- **The Director must notify the Manager by January 12, 2018 of the intent to run for office.**
- The Director must secure written approval of the Director's candidacy by the respective Board of County Commissioners. The Board's approval must be provided to the Manager prior to the election.
- The re-election of an incumbent officer is allowed.
- Election is by written ballot, with a majority vote required of the Directors present and voting to determine the election outcome.
- Newly elected officers shall take office immediately and serve until the election of new officers in 2019.

After the election of the officers, the three elected officers select two additional Directors to serve as "at large," voting members of the Executive Committee. The Chairman typically calls a special conference call meeting of the three elected officers to select the two at-large members of the Executive Committee.

**Background:**

The Interlocal Agreement establishes the following elected officers: Chairman, Vice-Chairman and Secretary/Treasurer. These officers must be Directors and shall each serve a one year term, unless re-elected. The duties of the Chairman include signing documents, calling meetings of the Board and taking such other actions and having such other powers as provided by the Board. See, Sec. 3.04, 3.05, 3.07. The Vice-Chairman is authorized to act in the absence or otherwise inability of the Chairman to act. Sec. 3.05. The Secretary/Treasurer is responsible for the minutes of the meetings and shall have other powers as approved by the Board. Sec. 3.05.

The Interlocal Agreement also provides that the Chairman, Vice-Chairman and Secretary/Treasurer shall select two other Directors who, together with the elected officers, shall constitute an Executive Committee.

Pursuant to the procedure adopted by the Board in November 2012 (copy attached), the Board is required to annually elect three officers from among the Directors at the first meeting of the year.

**Analysis:**

This agenda item does not require Board action. It provides information to the Directors and the public of the election process and that qualification for election to the three elected positions remains open until **January 12, 2018**, the closing date as established by the Manager pursuant to the election procedure.

**Options:**

This agenda item is informational only. No action by the Board is required.

**Fiscal Impact:**

None.

**Recommendation:**

No Board action is required.

**Attachments:**

Policy adopted by Board of Directors, November 2012

**Prepared by:**

Lynn M. Hoshihara  
Nabors, Giblin & Nickerson, P.A.  
General Counsel  
November 6, 2017

# **Gulf Consortium Process for Election of the Chairman, Vice Chairman and Secretary-Treasurer**

Adopted by the Board of Directors in November 2012.

Commencing with the elections in 2013 and applicable annually thereafter, the following election process is approved:

- **Date of Election.** Election of officers shall be held annually at the Board's first meeting of the calendar year (the "Election Meeting").
- **Term of Office.** An officer shall take office immediately upon election. The term of office shall end upon the election of the officer at the following year's Election Meeting of the Board.
- **Self Nomination and Notification; Timelines.** -- Any Director wishing to run for an elected office shall formally declare his/her candidacy by the Qualifying Date which is either December 15 of the year before the term begins, or such other date, as set by the Manager, that is not less than 20 days prior to the Election Meeting. The Manager shall provide notice to each Director of the Qualifying Date at least 45 days before the Election Meeting. The Director's declaration of candidacy must be in writing, stating the office or offices sought, and be received by the Manager on or before the Qualifying Date. The Director shall send the declaration of candidacy to the Manager by either (a) express delivery, return receipt requested, or (b) via electronic mail (email). The Manager shall acknowledge receipt of emails declaring candidacy within 24 hours of receipt. However, it shall be the responsibility of the Director declaring his or her candidacy to assure that the email has been received by the Manager on or before the qualifying date.
- **Board of County Commissioners Approval.** -- On or before the Election Meeting, a Director who is a candidate for office shall cause to be delivered a letter or resolution to the Manager from that Director's board of county commissioners stating its support for that Director's candidacy for an officer of the Gulf Consortium.
- **Order of Election and Written Ballot.** -- At the Election Meeting of the Board of Directors, the Manager shall conduct the election of the offices for the Chairman, Vice-Chairman and Secretary-Treasurer in that order. Qualified candidates shall be given an opportunity to address the Directors for three minutes each. After the candidates' presentation for the respective office, the Interim Manager shall issue a written ballot for each Director to vote his or her preference for that office.

- **Majority Vote Requirements.** -- A majority vote of the Directors present shall be required for the election of the officer. Voting shall continue until a majority vote of the Directors present is achieved for a candidate for the office. In case of a tie, the Interim Manager shall call for another vote for those tied until the office is filled by a majority vote of the Directors present.

## **AGENDA ITEM 10b**



**Gulf Consortium Executive Committee**  
**October 31, 2017**

**Agenda Item 10b**  
**ESA Contract Amendment Request – Conflict Of Interest**

**Executive Summary:**

ESA is requesting an amendment to the existing Conflict of Interest (COI) clause in their agreement with the Consortium, which states:

The Consultant agrees to recuse itself from all participation in any projects, programs, and activities ultimately included in the State Expenditure Plan. Attached as composite Exhibit E is a copy of each Consultant's agreements with its named team partner firms and individuals regarding such firms refusal from all participation in any projects, programs, and activities ultimately included in the State Expenditure Plan.

To prevent conflicts of interests in the development and implementation of the plan, as required by Treasury, ESA agreed to recuse themselves from "all participation in any projects, programs, and activities ultimately included in the SEP." As a result, ESA and its subcontractors are currently prohibited from working on implementation of the SEP. ESA is now requesting a revision to the COI clause that would allow them to participate in SEP implementation.

**Background/History:**

**April 2014:** Consortium issued an Invitation to Negotiate (ITN) for Consultant Services for the Development of the SEP. The following four firms were short-listed: 1) ESA, 2) MWH, 3) Ecology & Environment, and 4) Arcadis.

**Sept. 2014:** A Request for Best and Final Offer (RBAFO) was issued to the four firms, which among other things required them to address "how the Consortium's use of the Firm in implementing the SEP would comply with the Treasury Interim Final Rule section 34.503(b)(3) to prevent conflicts of interest in the development and implementation of the SEP."

**Oct. 2014:** In its response to the RBAFO, ESA agreed to avoid any actual or perceived conflicts of interest by expressing the following:

*We have reviewed and carefully considered the Conflict of Interest clause contained in the RBAFO, as well as later clarification of that clause provided by the Leon County Purchasing Department. As we interpret it, the clear intention of this clause is to preclude any actual or perceived bias on the part of the SEP planning consultant such that they could later profit from*

*participating in the implementation of projects, programs, and activities included in the SEP.*

*The ESA team fully accepts the limitations expressed in this clause, and ESA and its named team partner firms and individuals will formally recuse themselves from all later participation in any projects, programs, and activities ultimately included in the SEP. If selected by the Consortium, the ESA team will be beholden solely and exclusively to the interests of the Consortium, and will not seek to profit from the subsequent implementation of the SEP prepared by the ESA team.*

*In addition, it should be noted that ESA and its team members are not currently providing RESTORE Act services to any member counties of the Gulf Consortium, and we have expressly rejected opportunities to do so pending the selection of the SEP planning consultant by the Consortium. We consider existing agreements to provide RESTORE Act services to Florida Gulf Coast counties, such as the preparation of County Multi-Year Implementation Plans (MYIP's), to be a clear conflict of interest with respect to also serving as the SEP planning consultant to the Consortium. Such existing contractual relationships with member counties could potentially result in bias in the development of the SEP that favors one county over the others. Accordingly, we advise the Consortium to consider this factor in the selection of the SEP planning consultant.*

ESA also proposed using the FDEP project portal to serve as the universe of potential projects to be included in the SEP.

**March 2015:** Consortium and ESA entered into an Agreement for Consultant Services, which contained the current COI clause:

*The Consultant agrees to recuse itself from all participation in any projects, programs, and activities ultimately included in the State Expenditure Plan. Attached as composite Exhibit E is a copy of each of the Consultant's agreements with its named team partner firms and individuals regarding such firms recusal from all participation in any projects, programs, and activities ultimately included in the State Expenditure Plan.*

**Nov. 2015:** Consortium rejected ESA's proposal to use the FDEP project portal and adopted the Even-Steven, county-driven approach.

**April 2016:** ESA's agreement with the Consortium was amended to address the change in scope, increase the contract amount, and update certain required provisions. ESA proposed revising or deleting the COI clause, but was rejected by Sarah Bleakley (former General Counsel of the Consortium) and the existing COI clause was carried forward into the Amended Agreement (as well as the Administrative Grant Application and PSEP).

**June 2017:** ESA revisited their request with the current General Counsel.

### **Analysis:**

It is the responsibility of all public officers, employees and consultants to ensure the integrity and impartiality of the Consortium's procurement process. Fair and open competition is a basic tenet of public procurement. Such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically and helps to establish public confidence in the process by which services are procured.

To that end, the existing COI clause was put in place to provide sufficient control to prevent conflicts in the development and implementation of the SEP as required by Treasury. ESA agreed to this restriction when entering into the agreement and spent the last 2.5 years working closely with the 23 counties on the development of the projects ultimately included in the SEP.

Under federal law, the Consortium is required to safeguard against conflicts of interests in administering federal funds. In reviewing ESA's request, the Consortium should consider the following guiding principles related to competitive procurements and COI:

#### **Federal Law**

- The U.S. Department of Treasury Regulation requires the SEP to "describe the processes used to prevent conflicts of interests in the development and implementation of the plan." §34.503(b)(3), *31 CFR Part 34*.
- "In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements." §200.319(a), *2 CFR Part 200*.

#### **RESTORE Council**

- The Council has adopted a Code of Conduct which requires the Consortium to maintain written standards of conduct regarding conflicts of interest. The provision includes a conflict certification form that requires the Consortium to "establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain in the administration of this award." *Form SF-424B, Section N, Restore Council Financial Assistance Standard Terms and Conditions*.

#### **Florida Law**

- "A person who receives a contract that has not been procured pursuant to subsections (1) - (3) to perform a feasibility study of the potential implementation of a subsequent contract, who participates in the drafting of a

solicitation or who develops a program for future implementation, is not eligible to contract with the agency for any other contracts dealing with that specific subject matter.” §287.057(17)(c), *F.S.*

ESA claims the existing COI clause is “a punitive and damaging restraint of trade” that will likely result in the loss of substantial business income by ESA. As stated above, the COI clause was offered by ESA in response to the RBAFO and Treasury requirements, ESA voluntarily entered into the agreement with the Consortium and has reaped the benefits thereof. Contrary to ESA’s assertions, the COI clause is reasonable, serves a legitimate public interest and is limited solely to the projects included in the SEP. ESA is free to work on Pot 1 projects, Triumph projects or any other individual counties’ projects.

### **Concerns in Amending the COI Clause:**

- Even under the Even-Steven, county-driven approach, ESA has had a significant role in the characterization and refinement of projects in the SEP. Over the last 2.5 years, ESA and its subcontractors have met with individual counties and may be deemed as having an “unfair advantage” over other future bidders as they are in a position to have more information about timing, costs, leveraging and inner-project needs.
  - A state agency may not enter into a contract if a conflict of interest is based upon the vendor gaining an unfair competitive advantage. §287.057(16), *F.S.*
  - An “unfair competitive advantage” exists when the vendor has obtained:
    - a) Access to information that is not available to the public and would assist the vendor in obtaining the contract; or
    - b) Source selection information that is relevant to the contract but is not available to all competitors and that would assist the vendor in obtaining the contract.
- A concern may be raised as to the integrity of the original selection process as other consulting firms may have decided not to bid on the development of the SEP to remain eligible to compete on implementation.
- Future bidders may be discouraged from competing on implementation based on a perception of favoritism towards ESA and its subcontractors.
- The ultimate determination as to whether a conflict of interest exists could be raised in an audit, which may result in financial repercussions.

### **Conclusion:**

Having reviewed ESA’s request and correspondence from their attorney, it is my opinion that both options are legally permissible. However, one results in increased risks to the Consortium and therefore I recommend the Board deny ESA’s request and leave the COI clause as written.

Should the Consortium wish to approve ESA's request, such amendment will be subject to approval by the RESTORE Council in accordance with federal grant law and Council rules.

**Options:**

Option #1, Accept General Counsel's recommendation to deny request.

Option #2, Approve contract amendment request.

**Attachments:**

ESA Contract Amendment Request

Letter to Chairman Robinson from Frederick Aschauer (Lewis Longman & Walker)

**Prepared by:**

Lynn M. Hoshihara

Nabors, Giblin & Nickerson, P.A.

General Counsel

November 6, 2017

**Action Taken:**

Motion to: \_\_\_\_\_, Made by: \_\_\_\_\_;

Seconded by: \_\_\_\_\_.

Approved\_\_\_\_; Approved as amended\_\_\_\_; Defeated\_\_\_\_\_.

**Agenda Item \_\_\_\_\_**  
**ESA Contract Amendment Request**

**Requested Contract Amendment**

ESA is respectfully requesting an amendment to contract provision 7 - Conflict of Interest - of the executed *Gulf Consortium and Environmental Science Associates Agreement for Consultant Services for State Expenditure Plan*, dated April 22, 2016. The requested amendment is to replace the existing conflict of interest clause with a proposed conflict of interest clause that is:

- Appropriate for the revised ESA scope of work; and
- Compliant with the requirements U.S. Department of Treasury's RESTORE Act regulations.

**Definition of Conflict of Interest**

Chapter 112.312 (8), Florida Statutes, states: "*Conflict*" or "*conflict of interest*" means a situation in which regard for a private interest tends to lead to disregard of a public duty or interest.

**Existing Conflict of Interest Clause**

*The Consultant (ESA) agrees to recuse itself from all participation in any projects, programs, and activities ultimately included in the State Expenditure Plan. Attached as composite Exhibit E is a copy of each of the Consultant's agreements with its named team partner firms and individuals regarding such firm's recusal from all participation in any projects, programs, and activities ultimately included in the State Expenditure Plan.*

**Proposed Conflict of Interest Clause**

*The Consultant (ESA) and its named team partner firms and individuals certify that there are no present or planned interests relating to work to be performed under this Agreement that would compromise their ability to render impartial, technically sound, and objective assistance or advice to the Consortium. Furthermore, the Consultant and its named team partner firms and individuals agree to comply with all applicable Florida statutes and federal regulations related to the proper disclosure of any actual or potential conflicts of interest that may arise during the execution of work under this Agreement, including the U.S. Department of Treasury's RESTORE Act regulations as they relate to conflicts of interest that may arise in the development and implementation of the State Expenditure Plan.*

### **Basis for the Requested Contract Amendment**

1. Under the original scope of work described in the first ESA master agreement with the Consortium dated March 13, 2015, the Consultant (ESA) was to independently select, rank, and prioritize projects for funding. As such, there was a potential for conflict whereby the Consultant could be biased to select and rank projects in a manner that benefitted the Consultant, or favored certain counties and/or other sub-recipients.
2. The existing conflict of interest clause was considered to be reasonable and valid by both the Consortium and ESA because it was intended to prevent bias on the part of the Consultant in the selection and ranking of projects. Accordingly, it served a legitimate interest on the part of the Consortium and the individual member counties, and ESA and its partner firms agreed to abide by this clause.
3. Following the “even-steven” vote by the Consortium, however, ESA’s scope of work was substantially revised to undertake a “county-driven” process whereby each county would have one or more projects included in the SEP, and each county would self-determine their projects. Under the revised scope of work, ESA would not select, rank or prioritize projects. Therefore, the potential for bias was eliminated.
4. The ESA master agreement with the Consortium was subsequently amended on April 22, 2016 to reflect the revised scope of work. ESA requested at that time to have the existing conflict of interest clause removed or amended, however, that request was denied by then Counsel Sarah Bleakley for unspecified reasons with no rebuttal. To prevent delays in the work effort ESA signed the amended agreement with objections, and with the understanding that this issue would be revisited at a later time.
5. Under the revised scope of work ESA and its partner firms have not selected, ranked, nor prioritized projects, but rather have been assisting each county equally in the definition, feasibility assessment, and refinement of projects that the counties have independently selected for inclusion in the SEP.
6. The existing conflict of interest clause does not address the disclosure of actual or potential conflicts, but rather is a “restraint of trade” because it prevents ESA and its partner firms from conducting business as they normally would without the restraint.
7. Contractual restraints of trade are typically not upheld by the courts unless they: are reasonable; serve a legitimate interest; are limited to that particular interest; and are not contrary to the public interest.
8. The existing conflict of interest clause should be amended because it:
  - No longer serves a legitimate interest on the part of the Consortium or the individual member counties;

- Prohibits the Consortium, individual member counties, or any other entities involved in the implementation of the SEP from contracting with ESA and/or its partner firms should they desire to do so;
  - Prohibits ESA and its partner firms from fairly and openly competing for any and all future work associated with the implementation of the projects, programs, and activities described in the State Expenditure Plan; and
  - Is inconsistent with Florida statutes and federal regulations requiring fair and open competition in the procurement of professional services - and is thus contrary to the public interest.
9. Environmental planning, science, engineering, and grant writing are the primary businesses of ESA and its partner firms. Therefore, contractually requiring perpetual recusal from “all participation in any projects, programs, and activities ultimately included in the State Expenditure Plan” is a punitive and damaging restraint of trade that, if strictly enforced, will potentially result in the loss of substantial business income by ESA and its partner firms.
10. ESA and its partner firms are respectfully requesting the proposed contract amendment so that they may fairly and openly compete for any and all future procurements by the Consortium, the individual member counties, the Florida Department of Environmental Protection, Florida Water Management Districts, or any other entities for work associated with the implementation of the projects, programs, and activities included in the State Expenditure Plan.



**LLW****LEWIS  
LONGMAN  
WALKER**Attorneys at Law  
llw-law.com*Reply To: Tallahassee*

November 6, 2017

Grover Robinson, Chairman  
Gulf Consortium Board of Directors  
c/o Craig Diamond, Regional Manager, Economics  
The Balmoral Group  
113 S. Monroe St.  
Tallahassee, FL 32301  
Via email: [cdiamond@balmoralgroup.us](mailto:cdiamond@balmoralgroup.us)

Dear Chair Robinson:

We have been engaged by and have the pleasure of representing Environmental Sciences Associates (“ESA”) in negotiations regarding ESA’s ability and desire to fairly bid on projects included within the State Expenditure Plan (SEP) under the RESTORE Act. As you know, ESA is currently recused from participating in projects, programs and activities ultimately included in the SEP. The purpose of this letter is to outline why the interests of the Gulf Consortium and the people of the State of Florida would be best-served by the Board of Directors voting to renegotiate the conflict provisions currently burdening ESA.

**I. BACKGROUND**

An understanding of the evolving role of ESA in the development of the Gulf Consortium’s SEP is critical to understand why the current conflict of interest provision is not only unnecessary, but is in fact against basic public procurement policy.

ESA was awarded the contract (the “Initial Contract”) for consultant services for the Gulf Consortium’s development of the SEP required under the RESTORE Act after a competitive bidding process that fully complied with the applicable provisions of section 287.057(1)-(3), Florida Statutes. The Initial Contract was formally executed on February 1, 2015. In the Initial Contract, ESA voluntarily agreed to recuse itself from “all participation in any projects, programs, and activities ultimately included in the SEP.” This was an appropriate conflict of interest provision under the Initial Contract because the scope of work under the Initial Contract placed responsibility for project selection and ranking upon ESA. However, the Gulf Consortium

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**TAMPA BAY**101 Riverfront Blvd., Suite 620  
Bradenton, Florida 34205

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**WEST PALM BEACH**515 North Flagler Dr., Suite 1500  
West Palm Beach, Florida 33401

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ultimately decided to implement the Even-Steven, county driven plan, and as a result of that decision, amended its contract with ESA. The resulting Amended Contract shifted responsibility for project selection and ranking to the various member counties of the Gulf Consortium. To be clear, ESA never ranked or scheduled any projects under the Initial Contract.

At the time the Gulf Consortium decided to amend its contract with ESA, ESA requested that the conflict provision be renegotiated because such a restrictive conflict clause was no longer necessary in light of the fact that ESA was no longer charged with project selection and ranking. The then General Counsel for the Gulf Consortium, Ms. Bleakley, denied this request without explanation, and ESA executed the Amended Contract under protest with the understanding that this issue would be revisited.

## II. APPLICABLE LAWS AND REGULATIONS

### a. FEDERAL LAW

Federal law imposes no requirement that ESA recuse itself from competing for projects ultimately awarded under the SEP. Such a requirement only applies when a contractor has developed or drafted specifications, requirements, statements of work, or invitations for bids or requests for proposals. 2 C.F.R. §200.319(a). ESA has performed no such work under either the Initial Contract or Amended Contract, and so this regulation is not applicable.

While it is true that Treasury regulations require that the SEP “describe the processes used to prevent conflicts of interests in the development and implementation of the plan,” this regulation does not require the recusal of ESA from projects ultimately performed under the SEP. *31 CFR §34.503(b)(3)*. Even if the Board agrees to a renegotiated conflict of interest provision with ESA, the SEP will still comply with this regulation.

### b. STATE LAW

As noted above, ESA’s Initial Contract for consulting services was awarded after a competitive process that fully complied with the applicable provisions of sections 287.057 (1)-(3), Florida Statutes. When a contract is awarded in such a manner, section 287.057(17)(c), Florida Statutes, cited by the General Counsel for the Gulf Consortium as a guiding principle for competitive procurement, is not applicable. Section 287.057(17)(c), Florida Statutes, simply does not require ESA to recuse itself from projects implemented under the SEP.

ESA would only be required to recuse itself from participation in projects awarded under the SEP if, due to ESA's participation in development of the SEP, it had gained an unfair competitive advantage in bidding such projects. Section 287.057(17)(b)1., Florida Statutes. An unfair competitive advantage exists when the vendor has obtained (a) access to information that is not available to the public and would assist the vendor in obtaining the contract; or (b) source selection information that is relevant to the contract but is not available to all competitors and that would assist the vendor in obtaining the contract. Neither of these circumstances is applicable to ESA's participation in the development of the SEP. First, all information obtained by ESA in its participation in developing the SEP is a matter of public record and is thus available to all firms that will ultimately bid on projects implemented under the SEP. Second, to the extent there is a concern over source selection information, such concern should be addressed by clearly drafting the bid documents associated with projects to be implemented under the SEP. By clearly defining the selection criteria in the bid documents and adhering to those requirements when evaluating the proposals, all bidding firms will be on equal footing and no competitive advantage could be said to exist. This is a principle that should be followed whether or not ESA is allowed to bid on such projects.

c. RESTORE Council

The RESTORE Council has adopted a Code of Conduct for recipients of funds that imposes certain conflict of interest controls on recipients and sub-recipients of RESTORE Act funds, none of which preclude ESA from competing for projects awarded under the SEP. *Form SF-424B, Section N, Restore Council Financial Assistance Standard Terms and Conditions*. These provisions have been cited by the General Counsel as guiding principles for consideration of conflicts of interest. However, none of these provisions require recusal of ESA from competing for contracts to be awarded under the SEP. The applicable provisions of the Code of Conduct would only bar ESA from competing for projects awarded under the SEP had they either participated in the selection, award or administration of such a contract, or had ESA developed or drafted specifications, requirements, statements of work, or invitations for bids or requests for proposals. Due to the change in scope of work that occurred with the execution of the Amended Contract, neither of these situations is applicable and thus, absent the current conflict of interest clause, ESA would be able to compete for projects awarded under the SEP.

III. PUBLIC POLICY CONSIDERATIONS

The Gulf Consortium would further stated public policy goals by renegotiating the conflict of interest clause to account for the change in scope of services rendered by ESA. ESA agrees with the General Counsel that "fair and open competition is a basic tenant of public

procurement.” This Principle is embodied in the Code of Conduct adopted by the RESTORE Council, which states in part “[u]nless otherwise approved in writing in advance by the Grants Officer, all subawards will be made in a manner to provide, to the maximum extent practicable, open and free competition...” *Section N.003 a., Restore Council Financial Assistance Standard Terms and Conditions*. Such competition is important in public contracting because it increases public confidence that contracts are awarded fairly and economically, ensures that the public receives the maximum benefit for the tax dollars expended, and ensures that the goods or services received in exchange for those tax dollars are of the highest quality.

By failing to renegotiate the current conflict of interest clause contained in the Amended Contract, the Gulf Consortium will eliminate from consideration from all future projects awarded under SEP a firm that is highly qualified and respected. This will result in less competition for contracts awarded under the SEP. Because there is no longer a justification for such a stringent conflict of interest policy, continued adherence to it is antithetical to the stated policy of fair and open competition.

Renegotiation of the conflict of interest provision would further public policy because it would show potential contractors that the Gulf Consortium is willing to revisit such provisions when a change in circumstance renders such a provision unnecessary or unduly burdensome. Conversely, requiring continued adherence to such a stringent conflict of interest provision will cause future contractors to be more hesitant to sign conflict of interest provisions because of a fear that the Gulf Consortium will subsequently change the scope of work under a contract without addressing the fact that such a change in scope of work may alter the need for a conflict of interest provision.

#### IV. CONCLUSION

The conflict of interest provision contained within the Amended Contract is no longer necessary to ensure open and fair competition for projects awarded under the SEP due to the change in scope of services under ESA’s Amended Contract. That change in scope, which shifted responsibility for the selection and ranking of projects from ESA to the various counties, removed any legal requirement for such a stringent provision. Neither Florida law, Federal law, or RESTORE Council policy requires ESA’s recusal from competing for projects implemented under the SEP. Rather, the RESTORE Council’s stated policy, and public policy in general, demands that competition should be open to the fullest extent possible absent the existence of conflicts of interest.

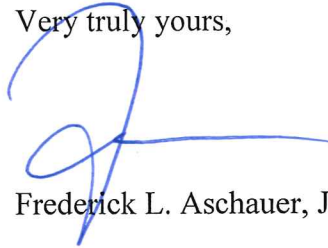
Grover Robinson, Chairman

November 6, 2017

Page 5

For the reasons stated herein, the Gulf Consortium should vote to renegotiate the conflict of interest provision, and engage in such renegotiation in light of the changed circumstances. We look forward to discussing this further with you at the Gulf Consortium Board of Directors meeting on November 15, 2017. ESA respectfully requests no more than fifteen minutes, but no less than ten minutes, to address the Board on this issue.

Very truly yours,



Frederick L. Aschauer, Jr.

Cc: Lynn Hiroshihara ([Lhoshihara@ngnlaw.com](mailto:Lhoshihara@ngnlaw.com))  
Doug Robinson ([DRobison@esassoc.com](mailto:DRobison@esassoc.com))

## **AGENDA ITEM 11**

## **AGENDA ITEM 11a**

**Gulf Consortium Board of Directors  
November 15, 2017**

**Agenda Item 11a  
Update on Planning Grant**

**Executive Summary:**

Update on the status of the Planning Grant Application. No action required.

**Most Recent Activity:**

A Planning Grant in the amount of \$4,640,675 was awarded to the Gulf Consortium on June 23, 2016. The Gulf Consortium executed the grant agreement on June 28, 2016. Langton Consulting and Consortium staff have developed the financial control systems and enrolled the Consortium in invoicing and payment systems and commenced the drawdown and disbursement of federal grant funds. Eight payment requests totaling \$956,753.32 have been submitted and paid to date.

**Full Background on Post Award Process/Procedure:**

The Consortium submitted its ninth payment request through RAAMS on November 3, 2017 in the amount of \$398,110; it is currently being reviewed by Council.

The Consortium submitted its last Financial Progress report on October 30, 2017. The next Progress report is due April 30, 2018.

**Fiscal Impact:**

Under Work Order #5, the Consortium agreed to pay ESA a \$5,000 flat fee monthly for grant management services (Task 15), provided by Langton Consulting.

**Attachments:**

None

**Recommendation:**

For information only.

**Prepared by:**

Lisa King  
Langton Consulting  
On: November 6, 2017



## **AGENDA ITEM 11b**

**Gulf Consortium Board of Directors  
November 15, 2017**

**Agenda Item 11b  
Planning Grant Update: Analysis of Work Orders Approved and  
Planning Grant Award**

**Executive Summary:**

Presentation of ESA Work Orders approved to date and a comparison of that encumbered amount with respect to the Planning Grant Award.

**Background:**

On April 22, 2016, the Gulf Consortium Board of Directors approved a contract amendment for the ESA Consulting Team to assist the Consortium in developing Florida's State Expenditure Plan for the Governor's submission to the Restoration Council for the Spill Impact Component of the RESTORE Act. The ESA Team was selected and hired after a comprehensive, competitively procured process. The Contract between the Consortium and ESA is a not to exceed amount of \$2,722,780. The contract is performed on a work order basis.

The Consortium also hired Nabors, Giblin & Nickerson as its General Counsel, also after a comprehensive, competitively procured process. The contract between the Consortium and NGN is a not to exceed amount of \$150,000 per year.

The Consortium also hired The Balmoral Group, LLC, as manager for the Consortium, also after a comprehensive, competitively procured process. The contract between the Consortium and TBG is a not to exceed amount of \$103,056 per year.

The Consortium's Planning Grant Application was approved by the Restoration Council on June 23, 2016 and the award contract was executed on June 28, 2016. The grant award is in the amount of \$4,640,675.

**Analysis:**

As of November 2, 2017, the Consortium has approved ten work orders, totaling \$2,585,208, broken down as follows:

<u>Task 1</u> (PSEP, Planning Grant App) (approved 1/21/15) (\$35,980 of which is funded by the grant)	\$50,980
<u>Task 2</u> (Goal Setting Workshop) (approved 3/25/15)	\$21,560
<u>Task 3</u> (Public Involvement – Phase I) (approved 6/19/15)	\$82,388

<u>Work Order 4(A)</u> (Prelim Project List – Phase I) (approved 6/28/16)	\$92,660
<u>Work Order 4(B)</u> (Preliminary Project List-Phase II) (approved 9/13/16)	\$209,100
<u>Work Order 5</u> (Grant Admin) (approved 4/21/16) (\$5,000 per month for 24 months)	\$120,000
<u>Work Order 6</u> (Map Preliminary Project List & Perform Gaps Analysis) (approved 12/2/16)	\$455,290
<u>Work Order 7</u> (Complete Draft Project List and Conduct Detailed Project Evaluation & Refinement) (approved 4/6/17)	\$518,320
<u>Work Order 8</u> (Conduct Project Leveraging Analysis & Sequencing & Implementation Strategy) (approved 5/17/17)	\$398,110
<u>Work Order 9</u> (Prepare Draft State Expenditure Plan Document and Conduct Legal Review) (approved 6/28/17)	\$276,000
<u>Work Order 10</u> (Draft State Expenditure Plan Review and Revisions; Stakeholder Outreach and Public Involvement) (approved 9/27/17)	\$360,800
<b>Total</b>	<b>\$2,585,208</b>

As of September 13, 2016, the Consortium approved one other contract to be funded partially from the planning grant: Nabors, Giblin & Nickerson (NGN)

NGN General Counsel Services (\$90,000 of which can be funded by the grant, annually)	\$180,000
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As of May 17, 2017, the Consortium approved another contract to be funded partially from the planning grant: The Balmoral Group, LLC (TBG)

TBG Management Services (\$60,000 of which can be funded by the grant, annually)	\$206,112
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Also, out of the grant award, the Consortium can pay for some of the actual costs it incurs for its meetings: Audio-Visual, Information Technology, meeting space, etc. These costs are incurred on a meeting-by-meeting basis.

AV/IT Reimbursement \$18,856.77  
(Incurred between 8/22/14 – 9/30/17)

Accordingly, the following summarizes the grant budget as compared to Consortium-approved and grant-fundable contracts:

Grant Award	ESA Contract Amount	ESA Work Orders Approved to Date	NGN Contract from Grant	TBG Contract from Grant	AV Reimbursement
\$4,640,675	\$2,722,780	\$2,585,208	\$180,000	\$120,000	\$18,856.77

**Options:**

No action required.

**Recommendation:**

For information only.

**Prepared by:**

Craig Diamond  
The Balmoral Group, Manager  
On: November 2, 2017

## **AGENDA ITEM 12**

## **AGENDA ITEM 12a**

**Gulf Consortium Board of Directors  
November 15, 2017**

**Agenda Item 12a**

**Status Report of Work Order #9 (Task 11: Prepare Draft FSEP;  
Request for conditional approval of to release Draft Florida SEP for public  
comment and agency review)**

**Background:**

At its June 28, 2017 meeting the Gulf Consortium authorized ESA Work Order #9, which encompasses Task 11 of the amended SEP development scope of work. This work effort involves the development of Pre-Draft and Draft State Expenditure Plan documents. This work will continue through November 2017.

**Update:**

At the September 27, 2017 Gulf Consortium ESA delivered the Pre-Draft State Expenditure Plan for review and discussion. Since this meeting, the ESA consultant team has continued to work with individual counties with regard to revisions to their respective project descriptions.

In addition, the ESA consultant team has continued to work with The Balmoral Group and NGN with regard to resolving questions about the Consortium's authority to implement the SEP, and how the Draft SEP should describe implementation financial and conflict of interest controls. When this issue is resolved per Board direction, the Draft SEP will be completed and released for State agency and public review.

Assuming the Consortium approves an implementation strategy at its November 15, 2017 meeting, the Draft SEP can be completed and released for State multi-agency and public review and comment. The public comment period must cover at least 45 days. Based on this schedule it is anticipated that the Draft SEP will be completed for public review and agency comment on or before December 1, 2017.

**Recommendation:**

Information only

**Attachment:**

Revised SEP Schedule

Draft SEP and Appendices (electronic .pdf documents on website):

<https://www.gulfconsortium.org/meeting-resources-1>

[FL-SEP\\_DRAFT\\_2017-11-07.pdf](#)

[FL-SEP\\_DRAFT\\_Appendices\\_ABC\\_2017-11-07.pdf](#)

**Prepared by:**

Doug Robison – SEP Project Manager  
Environmental Science Associates  
On: October 24, 2017



Agenda Item 12.a.  
Update on Work Order #9  
Prepare the Draft SEP

Agenda Item 12.b.  
Update on Work Order #10  
Stakeholder and Public Review  
& SEP Revisions

Doug Robison  
SEP Project Manager

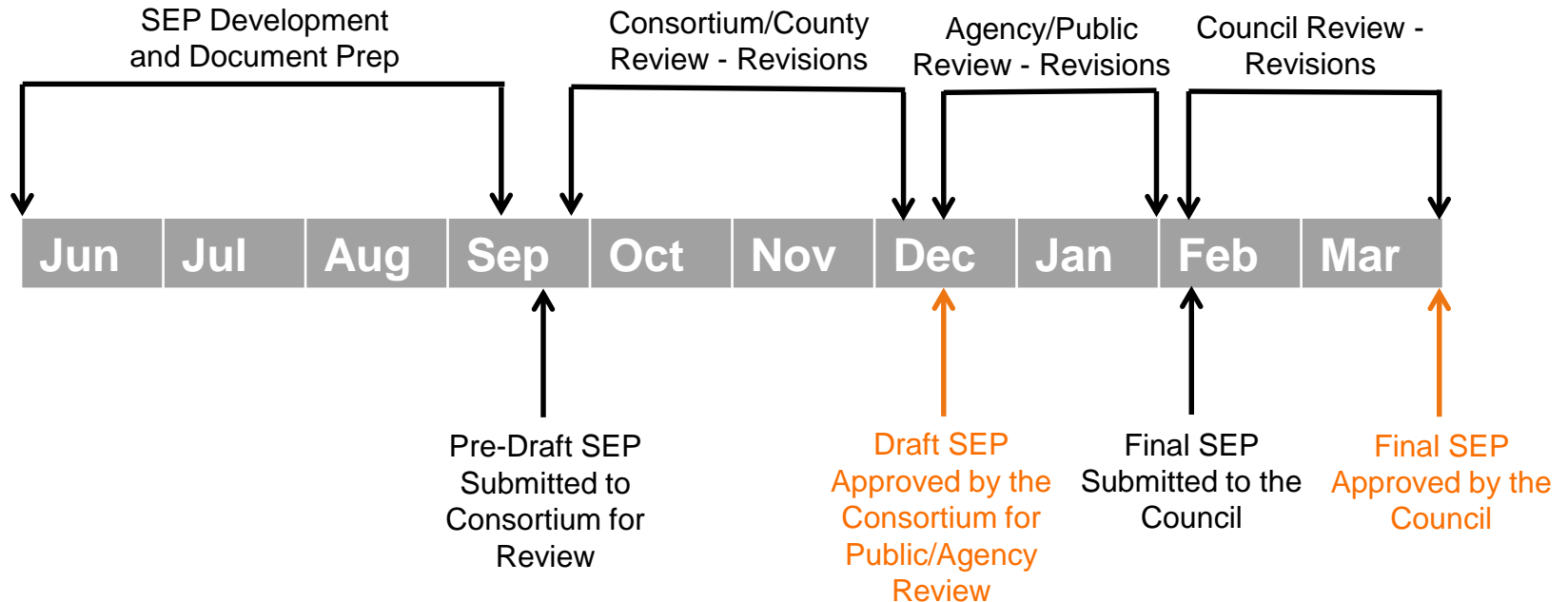


Gulf Consortium Meeting  
November 15, 2017  
Sarasota

## Activities Since September 27 Meeting

- ESA has continued to work with numerous counties in the update of their project description to include
  - Updated project location graphics
  - More detailed or modified project descriptions
  - Modifications to phasing & sequencing
- Langton and ESA have loaded updated project information into approved sequencing Model B
- NGN has conducted a legal review
- Sections related to implementation are pending Consortium Board decisions and direction

# Revised SEP Development Schedule



## **AGENDA ITEM 12b**

**Gulf Consortium Board of Directors  
November 15, 2017**

**Agenda Item 12b  
Status Report of Work Order #10 (Tasks 12 & 13: Draft FSEP Review and  
Revisions; Stakeholder Outreach and Public Involvement)**

**Background:**

At its September 27, 2017 meeting the Gulf Consortium authorized ESA Work Order #10 which encompasses Task 12 - Draft FSEP Review and Revisions; and Task 13 - Stakeholder Outreach and Public Involvement.

**Update:**

With regard to Task 12, the ESA consultant team has continued to work with individual counties to make revisions and updates to their respective project descriptions. In addition, General Counsel Lynn Hoshihara is conducting a legal review of the Draft SEP to ensure compliance with all applicable federal and state laws and regulations. Task 12 will also involve the State multi-agency review, once the Draft SEP is approved and released for public review.

With regard to Task 13, the ESA consultant team has explored various locations and venues for the two advertised public meetings. Currently, the preferred options include a meeting in Bay County and a meeting in Hillsborough County. Both meetings would be held in the county facilities to minimize costs. In addition, the ESA consultant team has been working to refine the logistics and costs associated with the two public webinars.

Potential dates for the public meetings and webinars will be determined upon approval of the Draft SEP by the Gulf Consortium.

**Recommendation:**

Information only

**Attachment:**

See Agenda Item 12a (Revised SEP Schedule)  
Draft State Expenditure Plan and Appendices (electronic .pdf documents on Gulf Consortium website):

<https://www.gulfconsortium.org/meeting-resources-1>

[FL-SEP DRAFT 2017-11-07.pdf](#)

[FL-SEP DRAFT Appendices ABC 2017-11-07.pdf](#)

**Prepared by:**

Doug Robison – SEP Project Manager  
Environmental Science Associates  
November 6, 2017