

AGREEMENT FOR PENSACOLA AND PERDIDO BAYS ESTUARY PROGRAM

INSERT PROJECT NAME (INSERT SOLICITATION NUMBER)

THIS AGREEMENT is made and entered into by and between Pensacola and Perdido Bays Estuary Program, Inc., a Florida not-for-profit corporation serving as an instrumentality of government, with administrative offices located at 226 Palafox Place, 5th floor, Pensacola, Florida 32502, (hereinafter referred to as "PPBEP" or "Estuary Program,") and **INSERT FIRM NAME**, a **INSERT TYPE OF BUSINESS** authorized to transact business in the State of Florida, FEI/EIN **NUMBER**, whose principal address is **INSERT ADDRESS** (hereinafter referred to as "Consultant").

WITNESSETH:

WHEREAS, on **DATE**, PPBEP issued a Request for Qualifications seeking a qualified firm to perform design and permitting services for the **PROJECT NAME** pursuant to Section 380.093, Florida Statutes, Specification Number **NUMBER** (hereinafter referred to as "the Project"); and

WHEREAS, the Consultant is a firm with the requisite expertise to perform the Project; and

WHEREAS, PPBEP desires to enter into an Agreement with the Consultant for the performance of the Project as further set forth herein.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, PPBEP and the Consultant agree as follows:

ARTICLE 1
PREAMBLE

1.1 The recitals contained in the preamble of this Agreement are declared to be true and correct and are hereby incorporated into this Agreement.

1.2 In order to establish the background, context, and frame of reference for this Agreement and to generally express the objectives and intentions of the respective parties herein, the following statements, representations, and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and that may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

1.3 The Estuary Program has complied with the requirements of the Consultants' Competitive Negotiation Act, as provided in Section 287.055, Florida Statutes, as amended, and has selected the Consultant to perform the services hereunder.

1.4 Negotiations pertaining to the services to be performed by the Consultant were undertaken between the Consultant and a committee selected by the Estuary Program, and this Agreement incorporates the results of such negotiations.

ARTICLE 2

SCOPE OF SERVICES

2.1 The Consultant will perform the tasks outlined in the Estuary Program's Request for Qualifications **PROJECT NAME**, Specification No.: **NUMBER**, attached hereto and incorporated herein as **Exhibit A**, and as represented in the Consultant's Scope of Work, attached hereto and incorporated herein as **Exhibit B**. Such services shall include those services performed by the Consultant, its employees, and subcontractors, as further described in the Scope of Work and any other services specifically included therein.

2.2 This Project shall be funded in whole or in part by grant funding provided through **INSERT GRANT PROGRAM(S)**. The Consultant shall complete the Project in accordance with the terms and conditions of **INSERT GRANT AGREEMENT NAMES AND NUMBERS**. By executing this Agreement, the Consultant acknowledges that it has received a copy of the Grant Agreements and shall comply with all applicable provisions of the Agreements.

ARTICLE 3 TIME FOR PERFORMANCE

3.1 The schedule for completion of the Consultant's services shall be in accordance with **Exhibit C**, which is attached hereto and made a part hereof. Consultant shall complete the Project on or before **ENTER DATE**. Such schedule may be modified from time to time upon the mutual consent of PPBEP and the Consultant.

3.2 These services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Consultant's schedule for the performance of its services shall include allowances for periods of time required for PPBEP's review and for its approval of submissions by the Consultant. Time limits established by this schedule, which are hereby approved by PPBEP, shall not be exceeded by the Consultant, except for reasonable cause.

3.3 Prior to beginning the performance of any basic services under this Agreement, the Consultant must receive in writing a Notice to Proceed from the Executive Director.

ARTICLE 4 COMPENSATION AND METHOD OF BILLING AND PAYMENT

4.1 PPBEP agrees to pay the Consultant, as compensation for its services under Section 3.1 of this Agreement, an aggregate fee for certain project tasks pursuant to the fee schedule set forth in **Exhibit D**, attached hereto and made a part hereof. At the completion of each task, the Consultant will be compensated by a lump sum amount, which has been negotiated for that task, unless otherwise mutually agreed to by the parties hereto. The total fee for all such services, to be performed by the Consultant, including costs, direct expenses, and any other charges be paid as follows: A lump sum amount of **\$XXX,XXX**. Final payment may be subject to approval by the Board of Directors.

4.2 The Fee Schedule, as used herein, shall mean the charges shown in **Exhibit D** for certain tasks to be performed by the Consultant. Such fees shall include, all inclusively, the Consultant's salaries of professional and administrative staff, sick leave, vacation,

unemployment, excise and payroll taxes, contributions for social security, unemployment compensation insurance, retirement benefits, medical and insurance benefits, travel, lodging, per diem, telephone, facsimile, reproduction costs, other routine overhead expenses, profit, and all other expenses of every type.

4.3 The Consultant may submit an invoice to PPBEP upon the completion and approval of Project tasks in accordance with the Fee Schedule. Invoices shall reflect the amount due and owing for services rendered with appropriate supporting documentation as required by PPBEP. Requests for payment shall not be made more frequently than once a month.

4.4 Invoices shall be submitted via email to info@ppbep.org and addressed to the following:

Attn: Finance Manager
Pensacola and Perdido Bays Estuary Program
226 Palafox Place, 5th floor
Pensacola, FL 32502

4.5 Payments under this Agreement and interest on any late payments shall be governed by the Local Government Prompt Payment Act, §§ 218.70, et seq., Florida Statutes, as amended.

ARTICLE 5 **CONSULTANT'S RESPONSIBILITIES**

5.1 The Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all reports, drawings, specifications, and other services furnished pursuant to this Agreement. The Consultant shall correct or revise, without additional compensation, any errors or omissions in its reports, drawings, specifications, and other services furnished pursuant to the Agreement.

5.2 PPBEP's review/approval/acceptance of or payment for the services required by this Agreement shall NOT be construed to operate as a waiver of any rights or of any cause of action arising out of the performance of this Agreement. Additionally, the Consultant shall be and remain liable to PPBEP in accordance with applicable law for all damages to PPBEP caused by the Consultant's negligent performance of any of the services furnished under this Agreement.

5.3 The rights and remedies of PPBEP provided for under this Agreement are in addition to any other rights and remedies otherwise provided by law.

ARTICLE 6 **GENERAL PROVISIONS**

6.1 Ownership of Documents.

Drawings, specifications, models, photographs, reports, surveys, and other data, including intellectual property of any type or description, produced by the Consultant in connection with this Agreement are and shall remain the property of PPBEP whether the Project for which they were made is completed or not. Such ownership also shall include any electronic files developed or created of such documents. When such documents are provided to other parties, the Consultant shall ensure return of PPBEP's property by collecting, if appropriate, a deposit

equal to the cost of reproduction. Such deposit shall be returned if the documents are timely returned in a useable condition. Otherwise, such deposit shall be retained by the Consultant.

6.2 Termination.

(a) This Agreement may be terminated by either party for cause, or by PPBEP for convenience, upon fourteen (14) days written notice by the terminating party to the other party of such termination in which event the Consultant shall be paid for services performed through the termination date, including all reimbursable expenses then due or incurred to the date of termination. Termination for cause shall include, but not be limited to, misuse of funds, fraud, lack of compliance with applicable rules, laws, regulations, and ordinances, and failure to perform in a timely manner any provision of this Agreement.

(b) In no event shall a termination for convenience by PPBEP be deemed a default, and any such termination shall not subject PPBEP to any penalty or other claim for damages. If the Consultant abandons this Agreement or causes it to be terminated, the Consultant shall indemnify PPBEP against any loss pertaining to this termination up to a maximum of 1.3 times the full contracted fee amount of the Project. All finished or unfinished documents, data, studies surveys, drawings, maps, models, photographs, and reports prepared by the Consultant shall become the property of PPBEP and shall be immediately delivered by the Consultant to the PPBEP.

(c) Vendor suspension or debarment proceedings brought by PPBEP shall be grounds for immediate termination of this Agreement.

6.3 Public Records. The Consultant acknowledges that this Agreement and any related financial records, audits, reports, plans, correspondence, and other documents may be subject to disclosure to members of the public pursuant to Chapter 119, Florida Statutes, as amended. Consultant shall maintain all such public records and, upon request, provide a copy of the requested records or allow the records to be inspected within a reasonable time. Consultant shall also ensure that any public records that are exempt or exempt and confidential from disclosure are not disclosed except as authorized by law. Upon the expiration or termination of the Agreement, Consultant agrees to maintain all public records for a minimum period of five (5) fiscal years in accordance with the applicable records retention schedules established by the Florida Department of State. In the event the Consultant fails to abide by the provisions of Chapter 119, Florida Statutes, PPBEP may, without prejudice to any right or remedy and after giving the Consultant seven (7) days written notice, during which period the Consultant still fails to allow access to such documents, terminate the employment of the Consultant. In such case, the Consultant shall not be entitled to receive any further payment. Reasonable terminal expenses incurred by PPBEP may be deducted from any payments left owing the Consultant.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**Executive Director
Pensacola and Perdido Bays Estuary Program
226 Palafox Place, 5th floor
Pensacola, Florida 32502
(850) 595-0820**

mjposner@ppbep.org

6.4 Conflict of Interest. Consultant agrees it shall not contract for or accept employment for the performance of any work or service with any individual, business corporation, or government unit that would create a conflict of interest in the performance of its obligations under this Agreement. Consultant further agrees it will neither take any action nor engage in any conduct that would cause any PPBEP employee or official to violate the provisions of Chapter 112, Florida Statutes, relating to ethics in government. Consultant also agrees to comply with PPBEP's Ethics Policy prohibiting conflicts of interest among retained consultants.

6.5 No Contingent Fees. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, PPBEP shall have the right to terminate the Agreement without liability and at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

6.6 Truth-in-Negotiation. The signing of this Agreement by the Consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which PPBEP determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

6.7 Gratuities. Neither the Consultant nor any of its employees, agents, and representatives shall offer or give to an officer, official, or employee of PPBEP gifts, entertainment, payments, loans, or other gratuities. The Consultant acknowledges knowledge of the State of Florida's ethics statutes, and to the extent applicable to the Consultant, the Consultant agrees to abide with such statutes.

6.8 Independent Contractor Status. In the performance of this Agreement hereunder, Consultant is an independent contractor. Consultant shall not hold itself out as an employee, agent or servant of PPBEP; and Consultant shall not have the power or authority to bind PPBEP in any promise, agreement or representation, other than as specifically provided in this Agreement or as may be expressly provided hereafter in writing by an authorized official of PPBEP.

6.9 Assignment. This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the Consultant, without the prior written consent of the Estuary Program. The Agreement shall, however, run with the Estuary Program and its successors.

6.10 Indemnification. The Consultant agrees to hold harmless, indemnify, and defend PPBEP and its agents, officers and employees from any and all claims, suits, actions, damages, liabilities, expenditures or causes of action of any kind, losses, penalties, interest, demands, judgments, and cost of suit, including attorneys' fees and paralegals' fees, for any expense, damage or liability incurred by any of them, whether for personal injury, death, property

damage, direct or consequential damages or economic loss, arising directly or indirectly, on account of or in connection with the Consultant's negligent, reckless, or wrongful misconduct in the performance of this Agreement or by any person, firm, or corporation to whom any portion of the performance of this Agreement is subcontracted to or used by the Consultant or by anyone for whom the Consultant is legally liable. The parties understand and agree that such indemnification by the Consultant relating to any matter, which is the subject of this Agreement, shall extend throughout the term of this Agreement and any statutes of limitation thereafter. The Consultant's obligation shall not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance. The Consultant agrees to pay on behalf of the Estuary Program, as well as provide a legal defense for the Estuary Program, both of which will be done only if and when requested by the Estuary Program, for all claims relating to this Agreement. Such payment on the behalf of the Estuary Program shall be in addition to any and all other legal remedies available to the Estuary Program and shall not be considered to be PPBEP's exclusive remedy.

6.11 Insurance. The Consultant is required to carry the following insurance:

- (a) Commercial General Liability, Form CG1, with \$1,000,000 minimum per occurrence/\$2,000,000 annual aggregate limit;
- (b) Business Automobile Liability with \$1,000,000 per occurrence minimum combined single limits for all hired, owned, and non-owned vehicles;
- (c) Florida statutory workers' compensation and employer's liability with employer's liability limits of at least \$1,000,000 each accident and \$1,000,000 each employee/\$1,000,000 policy limit for disease;
- (d) Professional Liability with \$1,000,000 per claim/\$2,000,000 annual aggregate. Said coverage shall be continuously maintained and in effect for a period of not less than five (5) years from the effective date of this Agreement. The policy limit of liability shall not include legal fees and other defense costs. If a claims made form of coverage is provided, the retroactive date of coverage shall be no later than the effective date of this Agreement and shall not be advanced. If at any time during the aforementioned policy period there should be a cancellation, non-renewal, or lapse in coverage, professional liability coverage shall be extended for the remainder of the five-year period with a supplemental extended reporting period (SERP) endorsement to take effect upon expiration of the policy period referenced above. The limits of liability applicable to the SERP coverage shall be equal to the limits of liability applicable to the policy referenced above and to which the endorsement attaches.

It is understood and agreed by the parties that in the event the Consultant consists of a joint venture, partnership, or other association of professional or business firms, each such firm shall be required to individually carry the above cited coverages.

Contractor agrees all liability coverage shall be through carriers admitted to do business in the State of Florida. Carriers shall be "A" or other Secure Best Rating with a minimum financial size of "VII", according to the A.M. Best Key Rating Guide Latest Edition. The insurance policies shall

be endorsed to provide at least 30 days advance notice of cancellation, nonrenewal or adverse change. Such notices shall be emailed to info@ppbep.org.

The Pensacola and Perdido Bays Estuary Program shall be endorsed as "additional

insureds” on all liability policies (except Workers’ Compensation and Professional Liability). Certificates of Insurance shall be provided to PPBEP prior to commencement of work hereunder. Certificates shall reflect the additional insured status of the Estuary Program. The Estuary Program shall also be the certificate holders.

6.12 Compliance with Laws. Consultant agrees to comply with all federal, state and local laws, rules, policies, or guidelines related to the performance of this Agreement, including, but not limited to, those dealing with taxation, worker's compensation, equal employment and safety, including but not limited to those laws listed in Exhibit E attached hereto, as applicable. Consultant shall not discriminate against any employee or applicant due to sex, race, color, creed, national origin or ancestry. Consultant further certifies they are eligible to perform this contract under local and federal law, is not now and has never been debarred from performing federal or state government contracts and that all subcontractors used in the performance of this contract have the same qualifications. In connection with the furnishing of supplies or performance of work under the contract, Consultant further agrees to comply with the Fair Labor Standards Act, Equal Opportunity Employment Act, and all other applicable federal and state laws, regulations, and executive orders, including but not limited to those listed in Exhibit E, to the extent that the same may be applicable and provider further agrees to insert the preceding provision in all subcontracts awarded hereunder.

6.13 Employment Eligibility Verification. In accordance with §448.095, Florida Statutes, Consultant shall register with and utilize the E-Verify System operated by the United States Department of Homeland Security to verify the employment eligibility of all new employees hired during the term of the Agreement and shall expressly require any subcontractors performing work or providing services pursuant to this Agreement to likewise utilize the E-Verify System to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Agreement. If Consultant enters into a contract with a subcontractor performing work or providing services on its behalf, Consultant shall also require the subcontractor to provide an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Failure to comply with these requirements shall be cause for immediate termination of the Agreement. Information on registration for and use of the E-Verify Program can be obtained via the internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

6.14 Prohibition against Contracting with Scrutinized Companies. In accordance with §287.135, Florida Statutes, by executing this Agreement, Contractor hereby certifies that the Contractor is not on the Scrutinized Companies that Boycott Israel List created pursuant to §215.4725, Florida Statutes, and is not engaged in a boycott of Israel as defined in §215.4725, Florida Statutes. Further, Contractor acknowledges that if the Contractor is found to have submitted a false certification, has been placed on the Scrutinized Companies that Boycott Israel List; or has been engaged in a boycott of Israel then PPBEP reserves the right to immediately terminate this Agreement.

6.15 Foreign Gifts/Contracts. In accordance with §286.101, Florida Statutes, by executing this Agreement, Contractor certifies it has timely disclosed any current or prior interest of, contract with, or grant or gift received from a “foreign country of concern” as defined in §286.101(1)(b), Florida Statutes, if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in effect during the previous five (5) years. Reporting information can be obtained via the internet at the Department of Financial Services website: <http://www.myfloridacfo.com/Transparency>.

6.16 Notice. Any notice or payment under this Agreement required hereunder or desired by the party giving such notice shall be given in writing and delivered by hand or through the instrumentality of certified mail of the United States Postal Service or private courier service, such as Federal Express. A courtesy copy should also be emailed to info@ppbep.org. Unless otherwise notified in writing of a new address, notice or payment shall be made as follows:

To: **NAME**
Attention: **AUTHORIZED OFFICIAL**
ADDRESS
ADDRESS

To: Pensacola and Perdido Bays Estuary Program
Attention: Executive Director
226 Palafox Place, 5th floor
Pensacola, Florida 32502

Rejection, or other refusal by the addressee to accept, or the inability of the courier service or the United States Postal Service to deliver because of a changed address of which no notice was given, shall be deemed to be receipt of the notice sent. Either party shall have the right, from time to time, to change the address to which notices shall be sent by giving the other party at least ten (10) days prior notice of the address change.

6.17 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and the parties stipulate that venue shall be in the County of Escambia.

6.18 Entire Agreement. This Agreement contains the entire agreement between the parties and supersedes all prior oral or written agreements. Consultant acknowledges that it has not relied upon any statement, representation, prior or contemporaneous written or oral promises, agreements, or warranties, except such as are expressed herein. The terms and conditions of this Agreement can only be amended in writing upon mutual agreement of the parties.

6.19 Headings. Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

6.20 Interpretation. For the purpose of this Agreement, the singular includes the plural and the plural shall include the singular. References to statutes or regulations shall include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to. Words not otherwise defined that have well-known technical or industry meanings, are used in accordance with such recognized meanings. References to persons include their respective permitted successors and assigns and, in the case of governmental persons, persons succeeding to their respective functions and capacities.

(a) If the Consultant discovers any material discrepancy, deficiency, ambiguity, error, or omission in this Agreement, or is otherwise in doubt as to the meaning of any provision of the Agreement, the Consultant shall immediately notify PPBEP and request clarification of PPBEP's interpretation of this Agreement.

(b) This Agreement shall not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all of the terms and provisions hereof.

6.21 Severability. The invalidity or non-enforceability of any portion or provision of this

Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance hereof shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision.

6.22 Survival. All provisions that, by their inherent character, sense, and context, are intended to survive the termination or expiration of this Agreement will survive the termination or expiration of this Agreement.

6.23 Further Documents. The parties shall execute and deliver all documents and perform further actions that may be reasonably necessary to effectuate the provisions of this Agreement.

6.24 No Waiver. The failure of the Consultant or PPBEP to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of any other provision or of either party's right to thereafter enforce the same in accordance with this Agreement.

6.25 Third Party Beneficiaries. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties hereto.

6.26 Authority. Any individual executing this Agreement on behalf of a corporate or governmental party represents and warrants that he is duly authorized to execute and deliver this Agreement on behalf of said party, in accordance with any duly adopted action of the governing board of said party, as may be applicable and in accordance with applicable law, and that this Agreement is binding upon said party in accordance with its terms.

6.27. Annual Appropriation. Pursuant to the requirements of Florida law, the Estuary Program's performance and obligation to fund this Agreement shall be contingent upon an annual appropriation by the Board of Directors.

6.28 Contract Documents. The Contract Documents include this Agreement and any Amendments and Exhibits A-E as referenced herein. In the event of a conflict between the terms of the Exhibits referenced herein and this Agreement, the terms of this Agreement shall prevail.

[The remainder of this page intentionally left blank; signature page to follow]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature:

Pensacola and Perdido Bays Estuary Program **FIRM NAME**

By: _____
Matthew J. Posner, Executive Director

By: _____
NAME, TITLE

Date: _____

Date: _____

NOTARY

STATE OF FLORIDA

COUNTY OF _____

Before me, the undersigned notary, duly authorized to administer oaths, this day personally appeared, _____, who ___ is personally known to me or ___ produced _____ as identification, and who upon being duly sworn, acknowledges that the foregoing is true and correct.

Sworn to and subscribed, before me, this ___ day of _____, 2024.

[NOTARY SEAL]

NOTARY PUBLIC

Type or print name: _____

Commission Expires: _____

Commission No.: _____