

CONTRACTOR AGREEMENT
BETWEEN
THE TAMPA BAY ESTUARY PROGRAM
AND
PINELLAS COUNTY
FOR
PHILIPPE PARK LIVING SHORELINE

THIS AGREEMENT is entered into this 30 day of July, 2019 by and between the Tampa Bay Estuary Program (TBEP) and Pinellas County hereinafter referred to as COUNTY.

WITNESSETH:

WHEREAS, TBEP desires assistance for Technical Support for the "Philippe Park Living Shoreline" project; and

WHEREAS, TBEP and the COUNTY have reached an understanding on the type, extent and quality of services to be rendered and the amount and method of compensation to be paid to the COUNTY and the law requires said agreement to be reduced to writing;

NOW, THEREFORE, in consideration of the mutual terms, covenants, representations, and conditions herein contained, the parties agree as follows:

1. Covenant for Services.

The TBEP does hereby retain the COUNTY to perform the services identified in the Scope of Work, Exhibit "A", attached hereto, and COUNTY does hereby agree to perform such services herein after referred to as the "PROJECT", for the TBEP upon the terms and conditions set forth in this agreement.

2. Definition, Scope, and Quality of Services.

COUNTY shall perform the services and comply with the terms and conditions described in the Scope of Work with respect to the PROJECT as attached hereto and incorporated herein as Exhibit "A". COUNTY is responsible for the professional quality, technical accuracy, timely completion and coordination of all designs, drawings, specifications, reports, and other services furnished by COUNTY under this agreement. COUNTY shall consult with the TBEP during development of the PROJECT and TBEP shall be entitled to review any and all work progress of the COUNTY. The COUNTY shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its designs, drawings, specifications, reports, and other services. Once the TBEP accepts the products specified in the scope of work, the obligation of the COUNTY is considered complete. The COUNTY shall perform the professional services necessary to accomplish the work specified in the Scope of Work in accordance with this agreement. TBEP will be provided thirty (30) working days to review and approve all draft work products; and the COUNTY shall provide to the TBEP, upon completion, one (1) electronic copy of Project Reports in a format approved by the TBEP.

3. Project Managers.

In order to assure proper coordination and review throughout the term of this agreement, TBEP shall designate a project manager who shall be the person with whom the COUNTY shall communicate. The manager shall be responsible for transmitting and receiving information and will interpret and communicate all TBEP and TBEP decisions which are pertinent to this agreement to the COUNTY. The manager will meet with the COUNTY as necessary to provide guidance, as well as to review and comment on interim reports and draft submittals. Except as required by law, the COUNTY will initiate no actions outside the Scope of Work, including issuance of statements and press releases, without prior written authorization from the project manager. The Project Manager for TBEP shall be Maya Burke, 263 13th Avenue South, Suite 350, St. Petersburg, Florida 33701. The COUNTY shall designate Stacey Day, 22211 US Hwy 19 N, Clearwater, FL 33765, with whom the TBEP project manager can coordinate.

4. Consideration.

a) The TBEP will make available to the COUNTY a sum not to exceed one hundred eighty thousand dollars (\$180,000.00).

b) The COUNTY shall submit completed invoices at the completion of each Phase of the project as defined in Exhibit A, along with a progress report to TBEP with certification that the invoices are accurate and in accordance with the terms of this agreement and the approved budget, and documentation of match (in-kind or cash) equal to the invoiced amount. Invoices shall be submitted for each project Phase for completed work only. The TBEP shall remit to the COUNTY within 30 working days the entire invoice amount, up to the total amount allocated for each task and upon certification by the TBEP Project Manager that it is consistent with the project budget and measurable benefits for the Phase, and otherwise in accordance with the terms of this agreement.

c) The COUNTY shall submit the final invoice for payment to TBEP no more than sixty (60) calendar days after the agreement ends or is so terminated. The TBEP Project Manager and the TBEP may withhold any payment due under the terms of this agreement until all work products due from the COUNTY, and necessary adjustments thereto, have been approved. The TBEP may not unreasonably withhold final payment once products have been approved.

d) Invoices requesting payment must be sent to the contract administrator at the following address:

Ron Hosler
Program Administrator
Tampa Bay Estuary Program
263 13th Avenue South, Suite 350
St. Petersburg, Florida 33701

It is understood by the parties that the COUNTY is responsible for the appropriate expenditure of the funds provided to it by the TBEP and shall only expend such funds pursuant to the terms and conditions of this agreement and shall not utilize such funds for any other purpose.

5. Payment Limitations.

Project costs incurred prior to the effective date of this agreement are not fundable under this agreement.

6. Independent Contractor Status.

The COUNTY acknowledges that it is an independent contractor providing services contemplated pursuant to this agreement, and that it is neither an agent, employee, partner nor joint venture of or with the TBEP. No work area, supplies, telephone lines, equipment or other resources shall be supplied to the COUNTY by TBEP. In addition, thereto, both parties acknowledge that this agreement is for their mutual benefit and is not intended to create any third-party beneficiary rights or obligations. Notwithstanding any other provisions of this contract, neither EPA nor the United States is a party to this contract.

7. Requirements of Section 287.058, Florida Statutes.

The COUNTY agrees:

a) To submit bills for fees or other compensation for services or expenses in sufficient detail for a proper pre-audit and post-audit thereof.

b) Where applicable, to submit bills for any travel expenses in accordance with Section 112.061, Florida Statutes.

c) To provide units of deliverables, including reports, findings, and drafts as specified in this agreement and the scope of work, to be received and accepted by the project manager prior to payment.

d) To allow public access to all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by Pinellas County in conjunction with this agreement.

8. Contract Data, Documents, Patent, and Copyrights.

All documents and data including draft, interim, and final reports developed, created or written by the COUNTY shall be the joint property of TBEP and the COUNTY. Except as required by law, the COUNTY shall not use any of the data or reports developed pursuant to this agreement without the express written consent of TBEP. Further unrelated use by TBEP of the data, reports or other work product generated by the COUNTY pursuant to this agreement shall be at the risk of TBEP, and the COUNTY makes no representations or warranties as to the correctness of the material when used for unrelated purposes.

9. Audits and Records.

The COUNTY agrees:

a) To maintain books, records, and documents (including electronic storage media) in

accordance with generally accepted accounting procedures and practices that sufficiently and properly reflect all revenues and expenditures of funds provided by the TBEP under this agreement.

b) To assure that these records shall be subject at all reasonable times to inspection, review, audit, or copy by TBEP personnel and other personnel duly authorized by the TBEP, as well as by federal personnel.

c) To maintain and file with the TBEP such progress, fiscal and other reports as the TBEP may require within the period of this agreement. Such reporting requirements must be reasonable given the scope and purpose of this agreement.

d) To include these aforementioned audit and record keeping requirements in all approved subcontracts.

10. Retention of Records.

The COUNTY agrees:

a) To retain all records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this agreement for a period of three (3) years after termination of this agreement, or if an audit has been initiated and audit findings have not been resolved at the end of three (3) years, the records shall be retained until resolution of the audit findings.

b) TBEP shall have full access to and the right to examine any of said records and documents during said retention period.

11. Public Access to Records.

The COUNTY acknowledges that all said documents regarding the PROJECT, as well as all of the documents, papers, letters or other material prepared and completed, made or received in conjunction with this agreement, are subject to the provisions of Chapter 119, Florida Statutes and shall be maintained and made available to the public at the COUNTY's custodial address, to-wit: 22211 US Hwy 19 N, Clearwater, FL 33765.

12. Period of Agreement.

This agreement shall begin upon execution and end on December 31, 2022, inclusive, or upon satisfactory completion of the PROJECT, whichever occurs first.

13. Indemnification.

Each party agrees to be responsible for its own negligence under this Agreement. Nothing herein shall be construed either (a) as a waiver of sovereign immunity by the COUNTY or (b) to extend the liability of the COUNTY beyond the limits set forth in Section 768.28, Florida Statutes. Nothing herein shall be construed as consent by either party to be sued by third parties for any claim arising from this Agreement or related contracts.

14. Members Liability.

No covenant, stipulation, obligation, or agreement contained herein shall be deemed to be a covenant, stipulation, obligation, or agreement of any present or future member of the governing body or agent or employee of TBEP or the Board, nor any official executing this agreement shall be liable personally or be subject to any accountability for reasons of execution by the TBEP of this agreement or any act pertaining thereto.

15. Termination.

a) Termination at will

This agreement may be terminated by either party upon no less than fifteen (15) calendar days' notice, without cause. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery.

b) Termination because of Lack of Funds

In the event funds to finance this agreement become unavailable, the TBEP may terminate the agreement upon no less than seventy-two (72) hours' notice in writing to the COUNTY. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. The TBEP shall be the final authority as to the availability of funds.

16. Availability of Funds.

The performance by TBEP under this agreement shall be subject to and contingent upon the availability of moneys lawfully appropriated and applicable for the purposes of this agreement.

17. Modification of Agreement.

This agreement represents the entire agreement of the parties. Any alterations, variations, changes, modifications or waivers of provisions of this agreement shall only be valid when they have been reduced to writing, duly signed by each of the parties hereto, and attached to the original of this agreement.

18. Assignment.

This agreement may not be assigned by either party without the expressed written consent of the other. The parties each bind itself, its successors, assigns, and legal representatives to the other party hereto and to the successors, assigns, and legal representatives of such other party in respect to all covenants, agreements, and obligations contained herein.

19. Subcontractors.

The COUNTY shall not subcontract any portion of the work required by this agreement without the written consent of TBEP.

20. Covenant Against Contingent Fees.

The COUNTY assures that no person or selling agency has been employed or retained to solicit or secure this sub agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the COUNTY for the purpose of securing business. For breach or violation of this assurance, the TBEP shall have the right to annul this agreement without liability or, at its discretion, to deduct from the sub agreement price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

21. Notices.

All notices and other communications received or permitted to be given under the agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand or mailed certified mail, return receipt requested, postage prepaid on the date posted and addressed to the appropriate party at the following address or such other address as may be given to the parties:

a). Stacey Day, PhD
Monitoring and Assessment Program Coordinator
Pinellas County Environmental Management
22211 US Hwy 19 N
Clearwater, FL 33765
sday@co.pinellas.fl.us

b). Maya Burke
Science Policy Coordinator
Tampa Bay Estuary Program
263 13th Avenue South, Suite 350
St. Petersburg, Florida 33701
mburke@tbep.org

22. Remedies.

Unless otherwise provided in this agreement, all claims, counter-claims, disputes and other matters in question between the TBEP and the COUNTY arising out of, or relating to, this agreement or the breach of it will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the TBEP is located.


23. Governing Laws.

Nothing in this agreement shall be effective if contrary to Federal or Statutory authority.

This agreement and the rights and obligations of the parties hereto shall be governed and construed according to the laws of the State of Florida.

IN WITNESS WHEREOF, the parties have caused these presents to be duly executed, as of the day and year first above-mentioned.

Tampa Bay Estuary Program

BY: 

Ed Sherwood, Executive Director

ATTEST: N/A

Federal Employer I.D. Number: 59-3501959

BY: 

Barry A. Burton, Pinellas County Administrator

ATTEST: N/A
(Secretary)

Federal Employer I.D. Number: 59-6000800

APPROVED AS TO FORM

By: 
Office of the County Attorney

Exhibit A
Scope of Work

PHILIPPE PARK LIVING SHORELINE

2019 Tampa Bay Environmental Restoration Fund

Project Summary

The Philippe Park Living Shoreline Project will be a collaboration between Pinellas County Parks and Conservation Resources and Pinellas County Environmental Management and will be the first living shoreline implementation for any Pinellas County Department. The proposed project will enhance up to 2,600 linear feet of Old Tampa Bay Shoreline at the southern end of Philippe Park. The northern border of the park is protected by a traditional hardened seawall, but the southeast portion of the park remains in a more natural state with mangroves and sandy shores. Significant movement of sediment is occurring in the southeast portion of the park into Old Tampa Bay. Installing elements of a living shoreline at the southern end of Philippe Park will reduce and feasibly prevent further erosion of the shores and protect park property from sea level rise and storm surge.

Philippe Park is a Pinellas County park located in Safety Harbor on Old Tampa Bay. This park is of great importance to the area as a unique archaeological and historical site, recreation venue, and green space helping to filter runoff into Old Tampa Bay. Old Tampa Bay is currently an impaired waterbody of concern. The Philippe Park Living Shoreline Project will improve water quality by reducing sediment entering Old Tampa Bay. As oysters establish within the project location and beyond, water quality will continue to improve through their natural filtering process. The popularity of this park will afford valuable visibility and public education about living shorelines through installed signage. The project will encompass three phases, including design and permitting, construction, and monitoring and educational signage.

Project Phases

Invoices can only be submitted upon completion of a phase, and the invoiced amount should match the budgeted amount for that phase. Invoices will be paid once the project manager has confirmed that the measurable benefit and deliverables as defined in the contract scope of work have been received.

1. Phase/Measurable Benefit #1, to be completed within **9 months** of Notice to Proceed.

Phase 1 Summary, including Measurable Benefit:

Phase 1 of the project will be the design and permitting of living shoreline elements necessary to reduce erosion, protect the shoreline, provide resiliency, and enhance aquatic and shoreline habitats for the entire unhardened shoreline of Philippe Park, south of the existing seawall. Measurable benefits will include permitted design plans and bid specifications for approximately 2,600 linear feet of living shoreline enhancement.

Deliverables for Phase 1:

- Copies of permits from USACE, FDEP, and FWC, as required
- Design plans and bid specifications

Phase 1 Budget:

Design and permitting of the project will cost \$100,000.00 and will be expended through hiring a consulting firm to complete all necessary design elements and obtain all necessary permits. Phase 1 will be funded entirely by matching cash from Pinellas County.

Expense Category	TBERF	Match	Match Source
Engineering and Consulting Services, Design and Permitting	\$0.00	\$100,000.00	Pinellas County Cash

Phase 1 Description:

The design phase starts with a complete assessment of the entire project area (topographic, bathymetric, geotechnical, and archaeological investigations). With this data, an assessment of the wave energy dissipation will be undertaken to drive the various design alternatives; since each area has different conditions and wave energy climates, a specific design will be employed for each area. With input from the various stake holders, the formal design process will result in a set of engineering plans along with the associated specifications and formal bid package to implement the proposed design features. Once the plans are completed, pre-application meetings will be held with each of the regulatory agencies (USACE & FDEP).

Permits from the following agencies will be required for this project:

- United States Army Corps of Engineers (USACE)
- Florida Department of Environmental Protection (FDEP)
- Florida Fish & Wildlife Conservation Commission (FWC) for breakwater signage, if necessary

Permits for the project will be submitted once the design is completed; however, the USACE has stated that this project will qualify under the new NW 54 permit, which will streamline the federal permitting process. Processing of permits is anticipated to take six months upon submittal.

2. Phase/Measurable Benefit #2, to be completed within 24 months of Notice to Proceed.

Phase 2 Summary, including Measurable Benefit:

Phase 2 will entail installation of the Living Shoreline (LS) designed elements for three distinct areas as part of the overall permitted design. Installation of oyster bags and vegetative plantings will be accomplished with the assistance of volunteers. Measurable benefits will be installation of living shoreline elements, including approximately 1,308 linear feet of oysters and 0.23 acres of native vegetation as described below, and participation of volunteers in the project.

Area 1, at the southern-most area, includes approximately 860 linear feet of shoreline: Native shoreline and marsh vegetation (0.02 acres) will be planted. Approximately 253 linear feet of oyster bags will be placed at strategic locations to help mitigate wave action, filter the water, and

allow the proposed planted native marsh vegetation to become established. Entry points for kayakers from the shore will be delineated.

Area 2A consists of 685 linear feet: Oyster bags will be placed to encircle and create a future oyster bar area while protecting the adjacent shoreline. Area 2B will be addressed at a later date unless sufficient funds are available after installation of Areas 1, 2A, and 3.

Area 3, located to the north of Areas 1 and 2, will cover 370 linear feet: Oyster bags will be installed, coupled with the planting of 0.21 acres of native wetland plants (marsh grass).

Deliverables for Phase 2:

- Report summarizing installed elements, with before, during, after photos
- Report of number of volunteers/staff and hours worked

Phase 2 Budget:

Installation of all elements of the living shoreline including placement of oyster bags and mounds, rip rap/precast concrete, and native vegetation will cost \$256,000.00. Area 1 totals ~\$49,124 which includes oyster bags/wave dissipation devices and the associated estuarine plants. Area 2A is estimated to cost ~\$16,725 for the open water shoreline protection feature consisting of the installation of a 0.64-acre oyster reef perimeter structure. Area 3 totals ~\$74,625 for the oyster habitat/wave dissipation features plus the installation of a 0.21-acre estuarine wetland. This totals \$250,474 which leaves a \$5,526 contingency amount for potential cost variations and escalation of material costs.

Phase 2 will be funded by \$178,000.00 of grant requested cash and \$78,000.00 of matching cash from Pinellas County. Additionally, volunteers will be enlisted to help with vegetative plantings, and hours will be tracked. Approximately \$2,000.00 in volunteer labor is expected in this phase.

	TBERF	Match	Match Source
Habitat restoration construction services	\$178,000.00	\$78,000.00	Pinellas County Cash
Labor		\$2,000.00	Pinellas County In-kind

Phase 2 Description:

Installation of living shoreline elements will be done in phases, starting at the most southern area and progressing northward. Oyster bags will be installed according to design plans, followed by planting marsh and shoreline vegetation. Pinellas County staff and volunteers will be used to install these elements as practical. Installation of heavier elements may require the assistance of a contractor. Construction will be broken out into three distinct areas starting from the southern shoreline and working along the coast towards the northern shoreline. The estimated amount of plants or oyster habitat is summarized, by area, in the table below.

	Plants	LS Oyster Bags	<i>Oyster Bar</i>	Protection Areas
Area 1	0.02 acres	253 linear feet	----	860 feet
Area 2	----	685 linear feet	<i>0.64 acres*</i>	----
Area 3	0.21 acres	370 linear feet	----	370 feet
Total	0.23 acres	1,308 linear feet	<i>(Future phase)</i>	1,230 feet

* Future Component, not counted towards this grant, but covered under the permits

3. Phase/Measurable Benefit #3, to be completed within **36 months** of Notice to Proceed.

Phase 3 Summary, including Measurable Benefit:

Phase 3 will be the installation of educational signs and monitoring of the living shoreline elements. Monitoring will be performed by Pinellas County Environmental Management staff and volunteers on a quarterly basis from the time construction commences to up to a year after the installation is complete. The monitoring will consist of photo-documentation, vegetative transect measurements, and optional water clarity measurements. Measurable benefits will include the installation of at least one educational sign per installation area, qualitative assessment of plants and recruitment of oysters, and tracking of volunteer and staff hours.

Deliverables for Phase 3:

- Photos of educational signage after installation
- Report summarizing quarterly vegetation transect monitoring, including photo-documentation of installed elements each quarter
- Report of number of volunteers/staff and hours worked

Phase 3 Budget:

Educational signage will cost \$4,000.00 total and will be divided between grant funding and County cash match of \$2,000.00 each. An in-kind match from Pinellas County Environmental Management for monitoring services is estimated to be \$3,000.00.

Expense Category	TBERF Request	Match	Match Source
Educational signage	\$2,000.00	\$2,000.00	Pinellas County Cash
Monitoring		\$3,000.00	Pinellas County In-kind

Phase 3 Description:

One educational sign per installation area will be erected that describes the benefits of living shorelines and specifies the elements used in that area. The signs will be erected as each section is completed to provide information about the importance of the living shoreline. Finally, these signs will also note the TBERF funding contribution towards this project. At least one full year of post-implementation monitoring will be performed by Pinellas County staff and volunteers. Photo-documentation of installed elements, assessment of plant survival including repair or replacement activities, and optional water clarity measurements will be done on a quarterly basis.

Required Match

Documentation of required 1:1 total TBERF funding match can be provided at any point of the project (i.e., with each invoice or with the final Phase invoice), but must be received prior to final payment.

Source, amount and type (cash or in-kind) of match:

Expense Category	TBERF	Match	Match Source	Total Project Cost
Salaries and Benefits	\$0.00	\$5,000.00	In-kind from Pinellas Co	\$5,000.00
Project Manager/PI - 10 hours	\$0.00	\$500.00		
Staff scientist - 45 hours	\$0.00	\$1,500.00		
Volunteers - 120 hours	\$0.00	\$3,000.00		
Supplies and Materials	\$2,000.00	\$2,000.00	Cash from Pinellas Co	\$4,000.00
Educational signage	\$2,000.00	\$2,000.00		
Contracts	\$178,000.00	\$178,000.00	Cash from Pinellas Co	\$356,000.00
Engineering and Consulting services, Design and Permitting	\$0.00	\$100,000.00		
Habitat restoration construction services	\$178,000.00	\$78,000.00		
Totals	\$180,000.00	\$185,000.00		\$365,000.00