



Board of Directors Meeting

September 27, 2023, at 1:30 p.m. CT

Milton Council Chambers

6738 Dixon Street, Milton, FL 32570

Meeting ID: 812 7918 3507

Password: 79223

Call In: +13092053325

[Zoom Link](#)

1. Call to Order

2. Roll Call

3. Approval of Board Agenda

Recommend the Board approve the September 27, 2023, meeting agenda.

4. Approval of August 30, 2023, Board Minutes

Recommend the Board approve the August 30, 2023, meeting minutes.

5. Staff Updates

- a. Director's Update
- b. Technical Update
- c. Outreach Update

6. Action Items

- a. **Approval of a Contract with Carr, Riggs, and Ingram, LLC for Accounting Services**
Recommend the Board approve, and authorize the Executive Director to sign, a contract with Carr, Riggs, and Ingram, LLC to provide accounting services through September 30, 2024.
- b. **Approval of a Contract with Beggs & Lane, RLLP for Legal Services**
Recommend the Board approve, and authorize the Executive Director to sign, a contract with Beggs & Lane, RLLP to provide legal services through September 30, 2026.
- c. **Approval of the Pensacola & Perdido Bays Estuary Program Employee Handbook**
Recommend the Board approve, subject to legal signoff, the Pensacola & Perdido Bays Estuary Program Employee Handbook.
- d. **Approval of an Executive Employment Agreement with Matthew J. Posner to serve as Executive Director of Pensacola and Perdido Bays Estuary Program, Inc.**
Recommend the Board approve, and authorize the Chairman to sign, an employment agreement with Matthew J. Posner to serve as Executive Director of Pensacola and Perdido Bays Estuary Program, Inc.



- e. **Approval of a Resolution Authorizing Carry Forward of Employee Leave Balances**
Recommend the Board approve, and authorize the Chairman to sign, a Resolution authorizing the carry forward of employee leave balances.
- f. **Approval of NOAA Cooperative Agreement No. NA23NMF4630079, in the amount of \$10,993,732, for the Pensacola Bay System Oyster Restoration Initiative**
Recommend the Board approve, and authorize the Executive Director to accept, NOAA Cooperative Agreement No. NA23NMF4630079, in the amount of \$10,993,732, for the Pensacola Bay System Oyster Restoration Initiative.
- g. **Approval of Restore America's Estuaries Subaward No. NOAA-Gulf23-PPBEP, in the amount of \$351,759, for the Gulf of Mexico Community Based Oyster Recycling and Reef Restoration Network Program**
Recommend the Board approve, and authorize the Chairman to sign, Restore America's Estuaries Subaward No. NOAA-Gulf23-PPBEP, in the amount of \$351,759, for the Gulf of Mexico Community Based Oyster Recycling and Reef Restoration Network Program.
- h. **Approval of The Nature Conservancy Subaward No. AL-2024-PPBEP-09.07.23-A108984, in the amount of \$1,628,962, for the Perdido Watershed Habitat and Community Resilience Initiative**
Recommend the Board approve, and authorize the Chairman to sign, The Nature Conservancy Subaward No. AL-2024-PPBEP-09.07.23-A108984, in the amount of \$1,628,962, for the Perdido Watershed Habitat and Community Resilience Initiative.
- i. **Approval of a Contract with Dauphin Island Sea Lab, in the amount of \$14,881, to complete a Seagrass Fish Trawling Survey**
Recommend the Board approve, and authorize the Executive Director to sign, a Contract with Dauphin Island Sea Lab, in the amount of \$14,881, to complete a Seagrass Fish Trawling Survey.
- j. **Approval of a Contract with the University of Southern Mississippi, in the amount of \$36,903, to complete Tier II Seagrass Monitoring**
Recommend the Board approve, and authorize the Executive Director to sign, a Contract with University of Southern Mississippi, in the amount of \$36,903, to complete Tier II Seagrass Monitoring.
- k. **Approval of an Agreement for Liability Insurance Coverage for Pensacola and Perdido Bays Estuary Program, Inc. (if received)**



7. Committee Updates

- a. Technical Committee
- b. Education and Outreach Committee
- c. Environmental Justice Committee

8. Board/Agency Updates

9. Public Comment

10. Adjourn



Board of Directors Meeting

August 30, 2023, at 1:30 p.m. CT

Escambia County Board Chambers

221 Palafox Place, Pensacola, FL 32502

[Meeting Recording](#)

Members Present

Woody Speed, Chair	City of Orange Beach
Colten Wright, Vice Chair	Santa Rosa County
Robert Bender	Escambia County
Vernon Compton	City of Milton
Cherry Fitch	City of Gulf Breeze
Mike Kohler	Escambia County
Mike Norberg	Okaloosa County
Kerry Smith	Santa Rosa County

Members Absent

Jared Moore	City of Pensacola
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Interested Parties Present

Matt Posner	PPBEP
Whitney Scheffel	PPBEP
Logan McDonald	PPBEP
Haley Gancel	PPBEP
Madi Ross	PPBEP
Molly McDaniel	PPBEP
Mary Jane Bass	Beggs & Lane
Ryan Kirby	Escambia County
Chips Kirschenfeld	Escambia County
Paul Looney	WRA
Chris Verlinde	Santa Rosa County
Christian Wagley	Healthy Gulf
Phillip West	City of Orange Beach
Shelley Alexander	Santa Rosa County
Amanda Mattair	Community Member
Tanya Linzy	Santa Rosa County

1. Call to Order

2. Roll Call

Matt Posner (Director, PPBEP) called the roll. A quorum was present.

3. Approval of Board Agenda

Mayor Cherry Fitch (City of Gulf Breeze) made a motion to approve the agenda. Commissioner Robert



Bender (Escambia County) seconded the motion. The motion passed unanimously.

4. Approval of August 16, 2023, Board Minutes

Mike Norberg (Okaloosa County) made a motion to approve the August 16, 2023, Board of Directors minutes. Vernon Compton (City of Milton) seconded the motion. The motion passed unanimously.

5. Action Items

a. Approval of 2023-2024 PPBEP Community Grant Program Project Proposals

Discussion was held on the proposed slate for the 2023-2024 Community Grant recipients. A total of 21 total applications were submitted. The selection committee, comprised of representatives of the Technical, Education and Outreach, and Environmental Justice Committees, reviewed proposals and recommended a slate of proposals that included six fully funded proposals and three partially funded proposals. Discussion was held on the Protecting Water Quality and Improving Communities Through Better Land Use Patterns Project by 1000 Friends. The Board showed their appreciation for the work the Selection Committee put into reviewing the proposals and creation of the slate.

Commissioner Robert Bender (Escambia County) made a motion to approve the 2023-2024 PPBEP Community Grant Program Application slate. Mayor Cherry Fitch (City of Gulf Breeze) seconded the motion. The motion passed unanimously.

b. Approval of Entering into a Contract with Carr, Riggs, and Ingram, LLC for Accounting Services

Discussion was held on the Board's action to approve a contract without having the documents presented for review.

Commissioner Robert Bender (Escambia County) made a motion to approve the scope and fee as presented for entering into a contract with Carr, Riggs, and Ingram LLC for accounting services contingent upon legal counsel review of the standard contract and delivery to chairmen for any objections. Mayor Cherry Fitch (City of Gulf Breeze) seconded the motion. The motion passed unanimously.

c. Approval of Entering into a Contract with Hancock Whitney Bank for Banking Services

Commissioner Colten Wright (Santa Rosa County) made a motion to approve entering into a contract with Hancock Whitney Bank for banking services. Mayor Cherry Fitch (City of Gulf Breeze) seconded the motion. The motion passed unanimously.

6. Policy Board/Agency Updates

- a. The Board showed their appreciation for services provided by Escambia County that will allow for a smooth transition to an independent organization.
- b. PPBEP staff shared a save the date for the Evening for the Estuaries gala with the Board.
- c. Matt Posner (Director, PPBEP) recognized Madi Ross' (PPBEP) time as the Community Outreach Assistant over the past two years.

7. Public Comment



**PENSACOLA
& PERDIDO BAYS
ESTUARY PROGRAM**

**Woody Speed, Chair
Colten Wright, Vice Chair**

8. Adjourned



Agenda Item 6.A.

Approval of a Contract with Carr, Riggs, and Ingram, LLC for Accounting Services

Background: At the August 30, 2023 Board meeting, the Board approved the scope and fee schedule with Carr, Riggs, and Ingram LLC (CRI) to provide accounting services to the Estuary Program, contingent upon legal review and signoff, and distribution to the Board for review prior to execution.

As presented at the August Board Meeting, a three-phase approach has been proposed. Phase I includes onboarding and transitioning services from Escambia County to Pensacola and Perdido Bays Estuary Program, Inc. Phase II includes full-service accounting and payroll services. Phase III includes accounting support services following the onboarding of the PPBEP Operations Manager.

Based on the August Board action, the Escambia County Office of Purchasing, as current fiscal agent for PPBEP, authorized opening a Purchase Order for CRI in the amount \$17,750 for Phase I of the scope. CRI, PPBEP, and the County are in process of executing Phase I tasks.

The action before the Board today is approval of a contract with CRI for accounting services following the completion of the onboarding phase, to run through September 30, 2024.

As presented at the August Board Meeting, staff is recommending establishing a time and materials contract, subject to renegotiation in future years. \$30,000 was budgeted for accounting services in the FY23-24 budget. It should be noted expenditures may exceed this budget in the first year as additional time is necessary to establish this new system. Should expenditure projections exceed the accounting services budget, staff will prepare a budget amendment for Board approval to enhance the Purchase Order total.

Recommendation: Recommend the Board approve, and authorize the Executive Director to sign, a contract with Carr, Riggs, and Ingram, LLC to provide accounting services through September 30, 2024.

Financial Impact: \$30,000 has been budgeted in the FY23-24 budget and would be encumbered with this Board action.

Legal Review: Mary Jane Bass has reviewed and provided legal signoff. However, Ms. Bass has requested the Board make note of the "Statute of Limitations" clause. CRI initially proposed a one-year statute of limitation, Ms. Bass advised the clause be stricken entirely, and CRI counter-proposed a three year statute of limitation.



Carr, Riggs & Ingram, LLC
 4502 Highway 20 East
 Suite A
 Niceville, FL 32578

 (850) 897-4333
 (850) 897-4068 (fax)
 www.cricpa.com

September 19, 2023

Pensacola and Perdido Bays Estuary Program, Inc.
 226 South Palafox Place
 Pensacola, FL 32502

We are pleased to confirm our acceptance and understanding of the terms and objectives of our engagement and the nature and limitations of the services we will provide.

We will perform the following services for the year ending September 30, 2024:

	Weekly	Semi-Monthly	Monthly	Quarterly	Annually	As Needed
Bookkeeping Services						
Accounts Payable Processing						
Record Deposits	X					
Record Cash Receipts						
Bank Account Reconciliations			X			
Credit Card Reconciliations			X			
Fixed Asset Maintenance			X			
Purchase order processing						X
A/P Processing	X					
Other Balance Sheet Reconciliations			X			
Payroll Processing		X	**This service will be handled by Paywerx, a division of Carr, Riggs, & Ingram Capital, LLC. A quote for this service will be provided separately.			
Payroll Tax Deposit						
Review and Reconcile Payroll Records			X			
Preparation of Payroll Tax Returns						
Posting of Journal Entries			X			
Closing of Books			X			
Preparation of W-2's						
Preparation of Form 1096 and 1099s					X	
Preparation of Sales Tax Returns						
Annual budget preparation and Presentation					X	
Assist with External Audit Consulting or other support services, as requested					X	
						X

Our Responsibilities

We are not required to, and will not, verify the accuracy or completeness of the information you provide to us for any services provided herein or otherwise gather evidence for the purpose of expressing an opinion or a conclusion. Accordingly, we will not express an opinion or a conclusion or provide any assurance on the financial information.

Our engagement cannot be relied upon to identify or disclose any financial misstatements including those caused by fraud or error, or to identify or disclose any wrongdoing within the entity or noncompliance with laws or regulations. We have no responsibility to identify and communicate deficiencies or material weaknesses in your internal control as part of this engagement.

We are available to provide you with business advice, but we are not obligated to do so unless you specifically request us to perform a specific service. It is our policy to put all advice on which a client intends to rely in writing. We believe that is necessary to avoid confusion and to make clear the specific nature and limitations of our advice. You should not rely on any advice that has not been put in writing by our firm after a full supervisory review.

We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities. If, for any reason, we are unable to complete the engagement or are unable to perform the bookkeeping or payroll-related services, we may withdraw from this engagement.

This engagement does **not** include the preparation of financial statements. No representative of Pensacola and Perdido Bays Estuary Program, Inc., in any way, may state or imply that Carr, Riggs, & Ingram, LLC has been associated with any financial statements.

Management Responsibilities

You are responsible for:

- All management decisions and responsibilities.
- Designating an individual with suitable skills, knowledge, and experience to oversee any services we provide.
- Evaluating the adequacy and results of the services performed and accepting responsibility for such services.

Other Relevant Information

D. Timothy Herndon is responsible for supervising the engagement.

Our fees for the above listed services will be based in part upon the amount of time required as well as the level and value of services rendered, plus out-of-pocket expenses. The fee estimate is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the work performed. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation.

CLASSIFICATION	HOURLY RATE
Partner	\$345
Manager	\$210-295
Staff	\$165-205

AREA	Anticipated Hours
WEEKLY	
A/P Processing	5-10 hours (depending on volume)
Banking Deposits/Recording of Revenue	3-5 hours
BI-WEEKLY	
Payroll Processing	Outsourced to Paywerx; Fees dependent upon number of employees
MONTHLY	
Various Accounting Services: journal entries, balance reconciliations and verifications, production of financial statements, etc.	8-15 hours (depending on volume)
ANNUALLY	
Assist in preparation for external financial audit	10-20 hours

Dispute Resolution

In the event of a dispute between the parties which arises out of or relates to this contract or engagement letter, the breach thereof or the services provided or to be provided hereunder, if the dispute cannot be settled through negotiation, the parties agree that before initiating arbitration, litigation or other dispute resolution procedure, they will first try, in good faith, to resolve the dispute through non-binding mediation. All parties agree that an alternative form of dispute resolution shall not be undertaken by either party until the expiration of fifteen (15) calendar days following notice being provided to the other party indicating that the dispute cannot be settled through mediation. The mediation will be administered by the American Arbitration Association under its *Dispute Resolution Rules for Professional Accounting and Related Services Disputes*. The costs of any mediation proceedings shall be shared equally by all parties.

Governing Law; Venue

This agreement and performance hereunder shall be governed by the laws of the State of Florida, without reference to any conflict of laws rules or principles. Any action or proceeding arising out of or in any way relating to this agreement must be brought in a state court having jurisdiction in Escambia County, Florida, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding and agrees to waive any defenses or objections to venue and jurisdiction within Escambia County, Florida, including *forum non conveniens*.

Statute of Limitations

The parties agree that there shall be a three-year statute of limitation (from the delivery of the service or termination of the contract) for the filing of any requests for arbitration, lawsuit, or proceeding related to this agreement. If such a claim is filed more than three years, or the minimum durational period having been determined as permissible by applicable statutory law or by a court of competent jurisdiction, subsequent to the delivery of the service or termination of the contract, whichever occurs first in time, then it shall be precluded by this provision, regardless of whether or not the claim has accrued at that time.

Disclosure

We may, from time to time and depending on the circumstances, use third-party service providers in serving your account including service providers located outside of the United States. We may share confidential information about you with these service providers, but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. Furthermore, we will remain responsible for the work provided by any such third-party service providers. Prior to disclosing your financial information, if applicable, or other information to our service providers located abroad, we will notify you of the proposed disclosure and obtain your permission to disclose the amount of information that may be disclosed to any third-party service provider, please notify us in writing as an attachment to this letter.

Electronic Data Communication and Storage and Use of Third Party Service Provider

In the interest of facilitating our services to your company, we may send data over the Internet, securely store electronic data via computer software applications hosted remotely on the Internet, or allow access to data through third-party vendors' secured portals or clouds. Electronic data that is confidential to your company may be transmitted or stored using these methods. We may use third-party service providers to store or transmit this data, such as, but not limited to, providers of tax return preparation software. In using these data communication and storage methods, our firm employs measures designed to maintain data security. We use reasonable efforts to keep such communications and data access secure in accordance with our obligations under applicable laws and professional standards. We also require our third-party vendors to do the same.

You recognize and accept that we have no control over, and shall not be responsible for, the unauthorized interception or breach of any communications or data once it has been sent or has been subject to unauthorized access, notwithstanding all reasonable security measures employed by us or our third-party vendors. You consent to our use of these electronic devices and applications and submission of confidential client information to third-party service providers during this engagement.

To enhance our services to you, we will use a combination of remote access, secure file transfer, virtual private network or other collaborative, virtual workspace or other online tools or environments. Access through any combination of these tools allows for on-demand and/or real-time collaboration across geographic boundaries and time zones and allows CRI and you to share data, engagement information, knowledge, and deliverables in a protected environment. In order to use certain of these tools and in addition to execution of this acknowledgement and engagement letter, you may be required to execute a separate client acknowledgement or agreement and agree to be bound by the terms, conditions and limitations of such agreement. You agree that CRI has no responsibility for the activities of its third-party vendors supplying these tools and agree to indemnify and hold CRI harmless, to the extent allowed by law and expressly without any waiver of sovereign immunity by Pensacola and Perdido Bays Estuary Program, Inc. as set forth in Florida Statutes or the Constitution of the State of Florida with respect to any and all claims arising from or related to the operation of these tools. While we may back up your files to facilitate our services, you are solely responsible for the backup of your files and records; therefore, we recommend that you also maintain your own backup files of these records. In the event you suffer a loss of any files or records due to accident, inadvertent mistake, or Act of God, copies of which you have provided to us pursuant to this agreement, we shall not be responsible or obligated to provide you a copy of any such file or record which we may retain in our possession.

If you do not provide us with information we request in a timely manner, refuse to cooperate with our reasonable requests, or misrepresent any facts, then we have the right to withdraw from this engagement. Our withdrawal will release us from any obligation to complete these above stated services and will constitute completion of our engagement. You agree to compensate us for our time and out-of-pocket expenses through the date of our withdrawal.

To the extent allowed by law and expressly without any waiver of sovereign immunity by Pensacola and Perdido Bays Estuary Program, Inc. as set forth in Florida Statutes or the Constitution of the State of Florida, you agree to hold us harmless and to release, indemnify, and defend us from any liability or costs, including attorney's fees, resulting from management's knowing misrepresentations to us.

Public Records

We agree to abide by and comply with the requirements of the Florida Public Records Act as set forth in Exhibit A attached hereto.

Termination

This agreement shall continue and remain in full force and effect as to all of its terms, conditions, and provisions for the year ending September 30, 2024, until and unless you terminate this agreement prior to that date by providing us thirty (30) days' written notice of termination and specifying a date thereafter for the termination. You may terminate this agreement in your sole discretion, with or without cause. In the event of termination, you agree to proportionately pay us for all work completed as of the effective date of the termination.

You may request that we perform additional services not contemplated by this engagement letter. If this occurs, we will communicate with you regarding the scope of the additional services and the estimated fee. We will issue a separate engagement letter covering the additional services. In the absence of any other written communication from us documenting such additional services, our services will continue to be governed by the terms of this engagement letter.

We appreciate the opportunity to be of service to you and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Sincerely,

Carr, Riggs & Ingram, L.L.C.

Carr, Riggs, & Ingram, LLC

Acknowledged: Pensacola and Perdido Bay Estuary Program, Inc.

Signature

Title

BOARD OF COUNTY COMMISSIONERS

ESCAMBIA COUNTY FLORIDA
 213 PALAFOX PLACE SECOND FLOOR SUITE 11.101
 PO BOX 1591
 PENSACOLA, FL 32591-1591
 (850) 595-4980

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PLEASE EMAIL INVOICES TO:
 escambia.invoices@escambiaclerk.com
 CLERK OF THE COURT & COMPTROLLER
 HON. PAM CHILDERS
 221 PALAFOX PLACE, SUITE 140
 PENSACOLA, FL 32502-5843

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031252 FAX: 407-628-5277
 CARR RIGGS & INGRAM LLC
 PO BOX 312044
 ENTERPRISE AL 36331

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COMMUNITY & ENVIRONMENT DEPT.
 SEE BELOW:

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ATTN: SUSAN HOLT 850.595.4579

ORDER DATE: 09/11/23	BUYER: ANGELA JONES	REQ. NO.: 23001921	REQ. DATE: 09/11/23
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TERMS: NET 30 DAYS	F.O.B.:	DESC.: PD 22-23.101
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ITEM#	QUANTITY	UOM	DESCRIPTION	UNIT PRICE	EXTENSION
			Please provide invoices to: Matt Posner Executive Director Pensacola & Perdido Bay Estuary Program 226 Palafox Place Pensacola, FL 32502 mposner@ppbep.org		
01	1.00	LOT	PD 22-23.101 PHASE I ONBOARDING AND TRANSITION FOR FINANCIAL AND ACCOUNTING SERVICES FOR THE PENSACOLA & PERDIDO BAY ESTUARY PROGRAM.	17750.0000	17,750.00

ITEM#	ACCOUNT	AMOUNT	PROJECT CODE	PAGE TOTAL \$	17,750.00
01	222009 53101	17,750.00		TOTAL \$	17,750.00

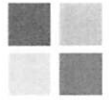
APPROVED BY _____



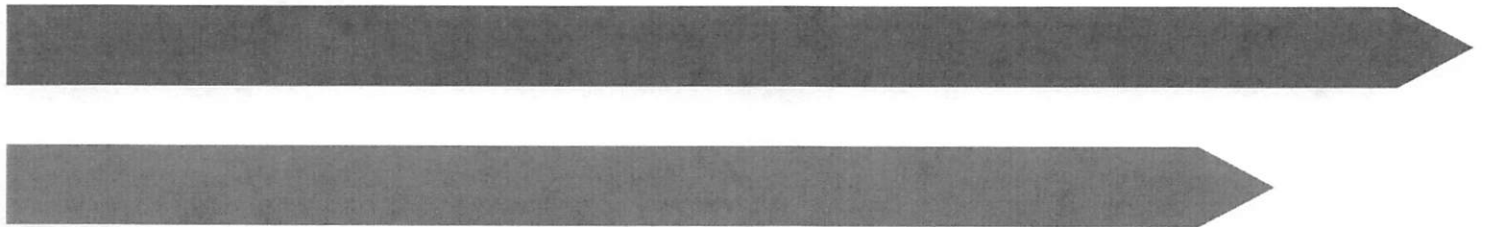
Original Purchase Order

GENERAL TERMS AND CONDITIONS

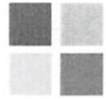
1. **Acceptance, Entire Agreement**—By providing goods or services under the subject Purchase Order (PO), Contractor accepts the terms and conditions set forth herein. This PO, including all terms, specifications and drawings attached hereto or referenced herein, constitutes the entire agreement between the parties unless otherwise stated on the face of the PO. If additional terms are necessary, a formal written contract will be required, and to the extent of any conflict with the terms of this PO, the terms of the contract shall prevail. No modification or waiver of terms of this PO shall be binding, unless in writing, signed by a duly authorized representative of the buyer and confirmed by such a representative of the Contractor.
 2. **Inspection**- All goods/services delivered hereunder shall be accepted subject to County's inspection and approval, and payment shall not constitute acceptance. All payment shall be subject to adjustment for shortage or rejection of goods. To the extent that a PO requires a series of performances by the Contractor, the County reserves the right to cancel the remainder of the PO if goods/services provided during the term of the PO are non-conforming or otherwise rejected.
 3. **Delivery, Risk of Loss**- All goods are FOB destination, and risk of loss shall remain with the Contractor until delivery and acceptance by the County. Goods delivered that are damaged, defective, or otherwise fail to conform to the PO upon arrival may be rejected by County or held by County at the Contractor's risk and expense. County may charge Contractor for the cost of inspecting, unpacking, repacking, storing and reshipping any rejected goods. County shall receive a credit at the invoice price, or at the County's option, replacement of such goods, but in no event will such goods be replaced by the Contractor without County's written consent.
 4. **Delivery of Excess Quantities**- If the Contractor delivers quantities of any item in excess of the quantity ordered then such excess will be treated as being delivered for the convenience of the Contractor. The County may retain such excess up to \$100 in value without compensating the interests herein. Excess quantities exceeding \$100 in value will either be returned at the Contractor's expense or retained and paid for by the County at the contract unit price.
 5. **Time is of the Essence**- Time for delivery of goods and services under this PO is of the essence. Failure to meet delivery schedules or deliver within a reasonable time, as determined by County, shall entitle County to seek all remedies available at law or in equity. The County reserves the right to cancel any order and purchase elsewhere if delivery is not timely. Contractor further agrees to reimburse County for all costs incurred in enforcing its rights. Failure of County to exercise this option with respect to any delivery shall not be deemed a waiver with respect to future installments; if any.
 6. **Delivery Tickets**- All deliveries under this PO shall be accompanied with delivery tickets, or sales slips, in triplicate, which shall contain the following: 1) Name of supplier; 2) Purchase order; 3) Date of call; 4) Call number; 5) Itemized list of supplies or services furnished; 6) Quantity, unit price and extension of each item less applicable discounts (unit price and extensions need not be shown when compatible with the use of automated systems provided that the invoice is itemized to show this information); and 7) Date of delivery or shipment. Upon delivery, the receiving office will retain one copy of the related delivery ticket and will sign the other two copies and return them to the supplier or his agent. One of these copies may subsequently be required to support the invoice.
 7. **Material Safety Data Sheet**- At the time of delivery, Contractor agrees to provide County with a current MSD sheet of any hazardous chemical or toxic substance as required by law.
 8. **Changes**- The Purchasing Manager may at any time, by a written order, and without notice to the surety, make changes, within the general scope of this PO, in (i) drawing, designs, or specifications where the supplies to be furnished are to be specially manufactured for the County in accordance therewith; (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this contract, whether changed or not changed by any such order, equitable adjustment shall be made by written modification of this PO. Any claim by Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change.
 9. **Invoicing and Payment**- After delivery and acceptance of goods and submission of properly certified invoices, Contractor shall be paid at the prices stipulated on the PO at the time the order is placed, less deductions if any. Invoices shall contain the contract number, PO number and the contractor's Federal Employer Identification Number. An original and one (1) copy of the invoice shall be submitted. Failure to follow these instructions may result in a delay processing invoices for payment. All payments and interest on any late payments shall be made in compliance with the Local Government Prompt Payment Act, §218.70, et seq., Fla. Stat.
 10. **Taxes**— The County is exempt from Florida sales tax, federal taxes on transportation changes and any federal excise tax. Under no circumstances will the County reimburse Contractor for taxes paid.
 11. **Government Regulations**- Contractor certifies that it has complied with all applicable laws and regulations of governmental authority relating to the production, sale and delivery of the goods and/or services specified herein, and Contractor shall indemnify and save County harmless from and against any liability or loss resulting from Contractor's failure to do so.
 12. **Compliance with Laws**- In fulfilling the terms of the PO, Contractor agrees to comply with all federal, state and local laws, rules, policies, or guidelines related to the conduct of its business, including, but not limited to, all Occupational Safety and Health Administration (OSHA) requirements and the provisions of Chapter 442, Fla. Stat., the provisions of the Immigration Reform and Control Act of 1986 (8 U.S.C. §1324, et seq.) and regulations related thereto, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran status.
 13. **Warranties**- In addition to all warranties, established by statute or common law, or set forth elsewhere in this PO, Contractor expressly warrants that all goods or services covered herein shall conform to all specifications, drawings, samples and descriptions furnished or adopted by the County, and shall be of best quality and fit and sufficient for the purpose for which purchased, if specified hereon, merchantable, of good material and workmanship and free from all patent and latent defects. The County's failure to give notice to Contractor of any breach of warranty shall not discharge the Contractor's liability. Without limiting the generality of the foregoing, the Contractor agrees to be responsible for all defects in design, workmanship and materials, which may become apparent within 12 months of receipt by County, unless otherwise specified.
 14. **Warranty of Non-Infringement**- Contractor represents and warrants that all goods or services sold hereunder are in compliance with applicable laws, do not constitute unfair competition, and do not infringe any patent, copyright, trademark, or trade secret. Contractor shall indemnify and hold harmless County from and against any and all claims, judgments and expenses, including, but not limited to, attorneys' fees, arising from any claim, suit or proceeding alleging that County's use of the goods/services provided hereunder is inconsistent with Contractor's representations and warranties provided in this section. Contractor shall defend or settle at its own expense any proceeding brought against County for such infringement provided Contractor is notified promptly of the commencement of such proceeding and is given authority, information and assistance by the County for the defense or settlement thereof.
 15. **Work on County Premises**- If this PO requires work of the Contractor's agents or employees on the County's premises, Contractor shall carry out said work at its own risk until fully completed and such agents or employees shall not thereby be deemed to be the agents or employees of the County. Such parties shall be subject to the County's safety rules and fire regulations. Contractor assumes full responsibility for their acts and omissions and agrees to hold harmless and indemnify the County from any claims arising therefrom and accept exclusive liability for payroll and other taxes imposed upon the employer by law.
 16. **Liens**- All work performed by Contractor shall be accomplished in a manner that will not under any circumstances result in the imposition of any lien, claim or encumbrance against the County or County property. If any materialman or subcontractor of Contractor should file a lien on the property of the County or otherwise file a claim against the County, Contractor shall obtain a release and satisfaction of the lien/claim within ten days of its filing. Contractor shall be solely liable for any consequential damages to County resulting from the filing of any claim/lien.
 17. **Indemnification**- Contractor hereby assumes all liability, to the maximum extent provided by law, for all damages, loss or injury of any kind or nature whatever to persons or property caused by or resulting from the goods or services provided hereunder. Contractor shall indemnify and hold harmless the County from all claims, suits, liabilities, expenses, losses or damages, including attorneys' fees and costs, which County may incur as a result of claims, demands, suits, or causes of action of any kind or nature arising from, caused by, or related to the provision of the goods or services furnished by Contractor, its officers, employees, agents, partners, principals, or subcontractors. If any suit or other proceeding is brought against the County at any time on account of or by reason of any act, action, neglect, omission or default of Contractor or any of its subcontractors, Contractor agrees to assume the defense thereof and defend the County at Contractor's sole expense and to pay any and all costs, attorneys' fees or other expenses, and all judgments that may be incurred or obtained against the County, and any judgment or lien that may be placed against the County's property as a result of such suit or proceeding. The Contractor's obligations hereunder shall not be limited by or to any insurance coverage or by any provision in or exclusion or omission from any policy of insurance.
 18. **Insurance**- Throughout the term of this PO, the Contractor, at its sole expense, shall maintain insurance coverage that is acceptable to the County.
 19. **Contingent Fees**- The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon any 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 Contractor for the purpose of securing business. For breach or violation of this warranty, the County shall have the right to amend this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
 20. **Gratuities**- (a) The County may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found after notice and hearing by the County's duly authorized representative, that gratuities (e.g. entertainment, gifts or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing a contract or favorable treatment with respect to the awarding, amending, or making of a contract or any determinations with respect to the performance of such contract; (b) If this contract is terminated as provided in paragraph (a), the County shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Board of County Commissioners or their duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee; (c) The rights and remedies of the County provided in this clause shall not be conclusive and are in addition to any other rights and remedies provided by law or under the contract.
 21. **Termination for Default**- The Purchasing Manager by written notice may terminate this PO, in whole or in part, for failure of the Contractor to perform any of the provisions hereof. In such event, the Contractor shall be liable for damages including the excess cost of re-procuring similar supplies or services; provided that if it is determined for any reason that the Contractor was not in default, the termination shall be deemed to be a termination for convenience as provided below.
 22. **Termination for Convenience**- The Purchasing Manager by written notice, may terminate this PO, in whole or in part, when it is in the best interest of the County. If this PO is for supplies and is so terminated, the Contractor shall be compensated for goods delivered up to the date of termination at the discretion of the County. To the extent that this contract is for services and is so terminated, the County shall be liable only for payment in accordance with the payment provisions of this PO for services rendered prior to the effective date of termination.
 23. **Force Majeure**- Neither party shall be liable for delays or defaults due to acts of God, government authority or public enemy, war, fires, floods, epidemics, strikes, labor troubles, freight embargoes or contingencies reasonably beyond its control. The party so affected upon prompt written notice to the other party shall be excused from making or taking deliveries hereunder to the extent of such prevention or restriction. At County's option, deliveries so omitted shall be made on notice thereof to the vendor, upon cessation of such contingency even though such might have been operative at the date of this order.
 24. **Assignment**- Contractor may not assign this PO or any money due or to become due without the prior written consent of the County. Any assignment made without such consent shall be deemed void.
 25. **Extent of Obligation** - The County is obligated hereunder only to the extent of authorized orders placed against this PO.
 26. **Governing Law**- This agreement shall be interpreted in accordance with the laws of the State of Florida, and the parties stipulate that venue shall be in Escambia County.
 27. **Annual Appropriations**- The County's performance and obligation to pay under this PO shall be contingent upon an annual appropriation of funds.
 28. **Advertising**- Without the prior written consent of the County in each instance, Contractor shall not advertise the fact that it has contracted with the County for goods and/or services, or appropriate or make use of the County's name or identifying marks.
 29. **Public Records**- The Contractor 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, Fla. Stat. Contractor 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. Contractor shall also ensure that any public records that are exempt or confidential from disclosure are not disclosed except as authorized by law. Upon the expiration or termination of the Agreement, Contractor 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 Contractor fails to abide by the provisions of Chapter 119, Fla. Stat., the County may, without prejudice to any other right or remedy and after giving the Contractor seven days written notice, during which period the Contractor still fails to allow access to such documents, terminate the contract.
- IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**
- Escambia County
Office of the County Administrator
221 Palafox Place, Suite 420
Pensacola, Florida 32502
(850) 595-4947.**



ONBOARDING AND TRANSITION - PHASE 1 - ESTIMATE OF TIME TO COMPLETE



YOUR SERVICES & FEES



We value creating mutually rewarding, long-term relationships with our clients. Our goal is to provide high quality, responsive service that yields returns far greater than your investment in our professional fees. Please find below a table listing the various onboarding steps we would anticipate taking as we prepare to assume responsibilities for the internal accounting and reporting functions of PPBEP. These take into special consideration the unique circumstances of the Program's transition from being managed by its member Counties' financial management team to being managed as an independent Not-for-profit entity. All projected hours are estimates and subject to change depending on facts and circumstances present at commencement of work. This is our most accurate "good faith" estimate available based on the information heretofore known by CRI.

SERVICE	ESTIMATED HOURS	ESTIMATED FEE
Obtain access to and initial analysis of existing financial data: Allows us to develop surface level understanding of the breadth and depth of accounting responsibilities currently required, use of this information will enable us to drill down into more granular areas of focus and analysis required.	4	\$1,000
In person meeting(s) with current financial managers: Allows us to hone in on what daily, weekly, and monthly tasks are required for work to be performed currently; provides us an opportunity to clarify not only scope of tasks but processes in place currently - suggested one to two meetings over the next 40 days. (estimated hours include follow-up discussions/questions/etc.)	15	\$3,750
Strategy meeting with director and staff (virtual or in person): This meeting will allow us to better understand the vision the Management Team has for the organization, the role it sees CRI playing in the bigger picture and the types of uses of financial information the Team would like to access for decision making purposes; this will help us develop or adjust existing processes to meet the needs of PPBEP and its Board.	2	\$500
Recommendation of Initial Process Changes: CRI will synthesize the information gained in the aforementioned steps to propose an initial accounting process solution with any suggested process changes, adjustments, etc.; feedback from interested parties will be requested and highly valued so as to allow for refinement of the proposed solutions before work commencement date.	20	\$5,000
Formal pre-transition steps to complete: Once we have structured necessary process solutions, we commence implementation of the strategy allowing for tweaking and adjustment as we proceed depending on necessity or circumstances; this is the detailed transition step and will include tasks like determining and taking steps needed for bank signatory changes, implementation and setup of new accounting software solution, implementing processes to accounting tasks, etc.	30	\$7,500
Total Fee:	71	\$17,750



Agenda Item 6.b.

Approval of a Contract with Beggs & Lane, RLLP for Legal Services

Background: Beggs & Lane's contract for legal services is set to expire September 30, 2023. Staff is recommending renewal of the contract for a three-year term to continue providing legal services to PPBEP.

Recommendation: Recommend the Board approve, and authorize the Executive Director to sign, a contract with Beggs & Lane, RLLP to provide legal services through September 30, 2026.

Financial Impact: The Beggs & Lane contract stipulates an hourly rate of \$275, subject to increase by up to 5% upon the anniversary date of the contract. \$10,000 has been budgeted for legal services in the FY 2023-2024 budget.

Legal Review: The contract was drafted by Mary Jane Bass and reviewed and recommended for approval by the Executive Director.

**Agreement for Legal Services Between
the Pensacola & Perdido Bays Estuary Program and Beggs & Lane, RLLP**

This Agreement, effective on the 1st day of October, 2023 (“Effective Date”), is made and entered into by and between the **Pensacola and Perdido Bays Estuary Program, Inc.** (“PPBEPP”), and **Beggs & Lane, RLLP** (“Beggs & Lane” or the “Firm”).

WHEREAS, Beggs & Lane has provided legal services to PPBEP pursuant to an initial agreement dated February 8, 2023; and

WHEREAS, the term of the initial agreement expires on September 30, 2023; and

WHEREAS, the PPBEP Board voted on September 27, 2023, to continue to retain Beggs & Lane to provide legal services, including but not limited to, legal research, the preparation of documents, contracts, and to advise and assist on other matters as requested by PPBEP.

THEREFORE, in consideration of the mutual agreements, terms and conditions herein contained, PPBEP and Beggs & Lane agree as follows:

1. **Services to be Provided and Compensation.** Beggs & Lane will provide legal services, including but not limited to, legal research, the preparation of documents, contracts, and advice and assistance on other matters as requested by PPBEP. PPBEP shall pay Beggs & Lane an hourly rate of two hundred, seventy-five dollars (\$275.00) for these legal services.

2. **Separately Negotiated Matters.** Compensation for matters related to bond issuance and financing or securities are not included within the scope of the preceding paragraph 1., above, and will be separately negotiated in accordance with accepted and prevailing practices at the time such legal representation is requested.

3. **Costs.** Beggs & Lane will charge, and PPBEP agrees to pay, all costs and expenses reasonably incurred in connection with Beggs & Lane’s representation of PPBEP, including reasonable costs charged for copies at no more than \$.10 per page, and the rate for mileage as set by the IRS annually, or at such other amounts as established and required by Florida law. Mileage will not be charged for trips to and from PPBEP meetings or within PPBEP watersheds. Other travel and costs will be charged in the amount incurred by the Firm and as allowed by law.

4. **Invoices.** Beggs & Lane will provide detailed monthly invoices for all work performed under this Agreement, whether such work is performed under the retainer or at the hourly rates. The invoices will include a description of the work performed, the time spent, and costs incurred for the month.

5. **Primary Contact.** Mary Jane Bass will serve as the lead Attorney for PPBEP and the main point of contact for the Firm, but the Firm has the right to change the designated lead Attorney with notification to PPBEP and to assign work performed for PPBEPP to other Firm attorneys.

6. **Malpractice Insurance.** At all times during the term of this Agreement, Beggs & Lane will maintain professional liability insurance in excess of two million (\$2,000,000.00) per occurrence.

7. **Public Records.**

(a) The Firm shall comply with Florida's public records laws, Chapter 119, Florida Statutes, and satisfy The Firm's duties thereunder as follows:

i. Keep and maintain public records required by PPBEP and/or related to performance of the services.

ii. Upon request from PPBEP's custodian of public records, provide PPBEP with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

iii. Upon completion of the Work, transfer, at no cost, to PPBEP all public records in possession of The Firm or keep and maintain public records required by PPBEP and/or related to performance of the service. If the Firm keeps and maintains public records upon completion of the Work, the Firm shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to PPBEP, upon request from PPBEP's custodian of public records, in a format that is compatible with the information technology systems of PPBEP.

iv. IF THE FIRM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FIRM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, IT SHALL CONTACT PPBEP'S CUSTODIAN OF PUBLIC RECORDS, AT (850) 932-2257, mjposner@ppbep.org.

(b) Failure of the Firm to comply with requests for public records in accordance with the following procedures shall be deemed noncompliance:

1. A request to inspect or copy public records relating to this Agreement for services must be made directly to PPBEP. If PPBEP does not possess the requested records, PPBEP shall immediately notify the Firm of the request, and the Firm must provide the records to PPBEP or allow the records to be inspected or copied within a reasonable time.

2. If the Firm does not comply with PPBEP's request for records, PPBEP shall enforce these provisions in accordance with the default and enforcement provisions of this Agreement.

3. Should the Firm fail to provide requested public records to PPBEP within a reasonable time, the Firm may be subject to penalties under s. 119.10, Florida Statutes.

8. **Conflicts.** In the event any conflicts develop during the course of the firm's representation of PPBEP, the firm will resolve the conflicts in accordance with the Florida Bar's Rules of Professional Responsibility.

9. **Term of the Agreement and Annual Adjustment of Rates.** The term of this Agreement is for period of three (3) years from the Effective Date. PPBEP and the Firm agree that commencing with the first anniversary date of this Agreement and on each anniversary date thereafter, provided that this Agreement remains in effect, the hourly rate of compensation set forth in section 1. above shall increase by five percent (5%), unless the parties agree otherwise. PPBEP shall have the right to extend this Agreement for an additional period, at which time PPBEP and the Firm may agree to negotiate new terms. An extension of the Agreement will require reauthorization by the PPBEP Board. If both parties cannot agree on conditions and terms for an extension, the existing Agreement will be allowed to expire.

10. **Termination for Convenience.** PPBEP or Beggs & Lane may terminate this Agreement for convenience upon thirty (30) days written notice, provided to:

For the PPBEP: Matt Posner
Executive Director
Pensacola & Perdido Bays Estuary Program
226 S. Palafox Place
Pensacola, FL 32502

For Beggs & Lane: Mary Jane Bass
Beggs & Lane, RLLP
501 Commendencia Street
Pensacola, FL 32502

No new matter will be assigned to the Firm following notice of termination; however, PPBEP and Beggs & Lane may agree that particular matters assigned prior to the termination date will be continued by the Firm up to completion of the particular matters.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Agreement Effective Date.

**PENSACOLA AND PERDIDO BAYS
ESTUARY PROGRAM, INC.**

BEGGS & LANE, RLLP

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____



Agenda Item 6.c.

Approval of the Pensacola & Perdido Bays Estuary Program Employee Handbook

Background: As PPBEP transitions into an independent entity, PPBEP is required to establish policies and procedures to ensure appropriate checks and balances are in place. The Pensacola & Perdido Bays Estuary Program Employee Handbook establishes hiring, disciplinary, termination, travel, paid time off, and other standard employment operating policies for the Program. This Operating Manual is based on Tampa Bay Estuary Program Employee Handbook.

Recommendation: Recommend the Board approve, subject to legal signoff, the Pensacola & Perdido Bays Estuary Program Employee Handbook.

Financial Impact: N/A

Legal Review: The Employee Handbook is currently under legal review. If any substantive changes are necessary, a revised Handbook will be brought before the Board at the November Board meeting for approval.

EMPLOYEE MANUAL

Approved **Date**, 2023

Pensacola and Perdido Bays Estuary Program, Inc.

Board of Directors

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I. EMPLOYMENT

1.1 EQUAL EMPLOYMENT OPPORTUNITY

- I. **STANDARD:** To provide a work environment free from discrimination. To prohibit discriminatory behavior based on race, color, religion, age, sex, pregnancy, national origin, marital status, or disability.
- II. **SCOPE:** This standard applies to all employees of the PPBEP and any external person(s) in contact with PPBEP employees.
- III. **GUIDELINES:** Reference Federal and State laws to include, but not limited to Title VII of the Civil Rights Act of 1964, Equal Pay Act of 1963, Age Discrimination in Employment Act, Executive Order 11246, The Uniform Guidelines on Employee Selection Procedures, Americans with Disabilities Act, and State fair employment laws.
 - A. This guideline cannot resolve what unwelcome or offensive behavior may or may not be considered unlawful discrimination. In order to achieve a harmonious work environment, each employee should be considerate and sensitive to the diversity of other employee's national origin, color, race, sexual orientation, religion, handicap, age, political opinions or affiliations, marital status, gender or pregnancy.
 1. For the purposes of this guideline, behavior includes one's conduct, speech or any other intentional act.
 - B. It is clearly unlawful for any PPBEP supervisor/director to make a hiring, promotion, demotion decision; job assignment decision; or any other work-related employment decision based all or in any part upon an employee's race, color, religion, age, sex, pregnancy, national origin, marital status, or disability.
 - C. Directors/supervisors have the responsibility to immediately notify the Executive Director of any discriminatory or perceived discriminatory behavior by other PPBEP employees or outsiders.
 - D. An employee may advise another employee whose behavior is perceived to be discriminatory to stop the offensive behavior. If the employee is uncomfortable discussing the matter with the one(s) engaging in the perceived discrimination, they may report the matter directly to their supervisor, or Executive Director.
 - E. An employee who observes what they believe to be discriminatory behavior should report their observation to their supervisor, or the Executive Director.
 - F. Employees accusing discriminatory behavior have a responsibility to report the nature of the complaint.
 - G. An employee who is advised that their behavior is perceived as discriminatory to another must immediately take steps to ensure this behavior is stopped and does not occur again.
 - H. PPBEP will investigate all complaints of discrimination and will conduct the investigation as discretely as possible.
 - I. All documents created as a result of a complaint are exempt from public records disclosure, as provided for in Section 119.071(2)(g), Florida Statutes.

- J. The registering of a valid complaint will in no way be used against the complaining employee, nor will it have an adverse impact on his or her employment.
- K. Anyone who retaliates against an individual making such a complaint or anyone assisting in the investigation of a complaint will receive disciplinary action.
- L. It is important for all staff to understand that management cannot stop harassment unless it is reported to someone who can do something about it.
- M. For more specific information on Americans with Disabilities Act discrimination, please refer to Standard 4.2, Americans with Disabilities Act.

1.2 RECRUITMENT AND SELECTION

- I. **STANDARD:** To provide for consistency in recruitment practices and ensure compliance with state and federal laws pertaining to employment.
- II. **SCOPE:** This standard applies to PPBEP employees who report to the Executive Director and are vested with the authority to recruit, interview and appoint applicants to PPBEP positions.
- III. **GUIDELINES:**
 - A. Applicants for PPBEP positions will be recruited, interviewed and selected based on job related qualifications without regard to age, race, color, sex, religious creed, national origin, political opinions or affiliations, marital status, pregnancy, or handicap, except when a specific sex, age, or physical requirement constitutes a bona fide occupational qualification (BFOQ) necessary to perform the tasks associated with the position.
 - B. The recruitment and selection process is coordinated through the Executive Director with assistance from the Operations Manager, for all position openings within the PPBEP.
 - 1. A vacant position will be advertised by one or both of the following:
 - a. Appointment from within: Position to be filled only with current PPBEP employees will be advertised internally.
 - b. Open to Public Recruitment: Newspaper, Professional Journals, social media, websites, etc. Positions will be advertised in one or any combination of the preceding, dependent on the position to be filled.
 - 2. All resumes received (electronic or hard-copy) will be forwarded to the Operations Manager for processing. The Executive Director and the direct supervisor reviews each resume to determine whether the applicant meets basic qualifications as advertised in the recruitment notice.
 - 3. The Executive Director or her/his designee is responsible for selection of the applicants to be interviewed from the list of qualified applicants.
 - 4. The Operations Manager or direct supervisor is responsible for scheduling the interview appointments.
 - 5. Following the interview(s), the Operations Manager will check employment references,

and verify academic achievements (if applicable) of the top applicant(s).

6. Only the Executive Director will establish compensation and extend the job offer to the selected applicant.
7. The Executive Director or his/her designee will notify persons interviewed that a selection has been made.

1.3 DISCIPLINE AND ADVERSE ACTION

I. **STANDARD:** To provide guidelines for the Executive Director and management in obtaining all the relevant information which pertains to a disciplinary matter, and to provide employees with a mechanism for response.

II. **SCOPE:** This standard applies to all PPBEP employees who report to the Executive Director.

III. **GUIDELINES:**

A. Introduction

The PPBEP operates on the principle that its personnel guidelines are intended to be firm, fair and flexible.

All PPBEP employees are employed "at will." This means that PPBEP employees have no legal "right" to keep a job enforceable in court or in an administrative proceeding. The PPBEP does have the legal right to implement disciplinary measures, including discharge of employees where necessary, without having to prove to the satisfaction of any arbitrator, judge or other outsider that the disciplinary action was necessary, advisable, or justified. Such decisions remain within the discretion of management.

B. Progressive Discipline

"Progressive Discipline" is the practice of attempting to correct unacceptable behavior before that behavior becomes so severe as to require dismissal. The PPBEP does not guarantee to its employees any progressive discipline preliminary to dismissal. In appropriate cases, at the discretion of management, the discharge of an employee may be affected without any prior verbal or written warning. As a general rule, PPBEP recognizes that "progressive discipline" serves the interests of fairness to employees and stability of the PPBEP's workforce.

C. Verbal Counseling

All supervisors who, as a part of their responsibility, supervise other PPBEP employees, are expected to engage in verbal counseling with their employees with respect to any job-related problems that do not warrant more extreme disciplinary action.

D. Written Reprimands

If informal verbal counseling does not have the desired effect, or if a problem is severe enough to warrant a written reprimand without prior verbal counseling, the supervisor should document the problem in the form of a written reprimand. All written reprimands are given to the employee for review and signature. The supervisor should fully discuss the reprimand with the employee involved. Written reprimands shall become a part of the employee's official personnel

folder.

E. Authority

Only the Executive Director has the authority to hire and to terminate. Decisions with respect to (1) probation, (2) suspensions, (3) involuntary demotions, and (4) dismissal are final and become effective as determined by the Executive Director.

IV. PROCEDURES FOR IMPLEMENTING ADVERSE ACTION(S):

A. Preliminary Consultations

A supervisor who feels that an employee under his/her supervision should receive a suspension without pay, an involuntary demotion, and/or that employment with the PPBEP should be terminated, should first review the individual's performance, prior warnings, work history, and any and all other factors that may fairly affect the disciplinary decision. If after such review, the Executive Director feels that an adverse action is appropriate, he/she will act accordingly.

B. Written Statement of Reasons

If after consultation with the Executive Director, it is determined that an adverse action is warranted, the Executive Director shall complete a Notice of Proposed Agency Action. The Notice should:

1. Specify the proposed effective date of the action in cases of proposed probation, suspension, involuntary demotion, and termination without pay.
2. Set forth the reasons for the proposed action. It should be specific as to dates, names, places, and most importantly, specific examples of the conduct and performance.
3. Place an employee on administrative leave in cases of proposed termination of employment, if the employee's continued presence on the job is undesirable.
4. Include a statement informing the employee that he/she may utilize the PPBEP's complaint review procedure. This procedure gives an employee the opportunity to be heard on the proposed action by requesting an appointment for a meeting with the Executive Director. The statement shall also inform the employee that he/she may respond to the proposed action in writing.
5. Include a statement informing the employee of his/her rights, which includes a right to challenge stigmatizing information placed in the public record. The statement shall inform the employee that he/she has fourteen (14) days from receipt of the Notice in which to file with the PPBEP a request for an appeal. The time frame in which to file an appeal shall run concurrent with the ten-day time frame in which to file a request to utilize the PPBEP's complaint review procedure.
6. Be delivered to the affected employee by courier or hand delivered. If hand-delivered, a signed receipt must be obtained or hand delivery witnessed by at least one other person.

C. Employee Response

The employee will be given the opportunity to be heard with respect to the Notice, by making an appointment to be heard by the Executive Director. Such a meeting is to occur, by appointment, no later than ten (10) days following receipt of the Notice Proposed Agency Action. The employee

must request such a meeting in writing and the written request shall be received at least five (5) days prior to the meeting's occurrence. At the appointed time the Executive Director shall meet with the employee. The following points should be addressed during the meeting.

1. The Executive Director shall explain to the employee the nature of the problem resulting in the discipline, as set forth in the written Notice.
2. The Executive Director shall explain, as appropriate, the nature of the evidence which exists to support any charges which may underlie the Notice.
3. The employee will be given a full and complete opportunity to explain the facts as he/she sees them. If the employee states there are witnesses who will support his/her version of events, the employee shall be asked to state what he/she believes those witnesses would assert. If appropriate, the Executive Director may choose to speak to such witnesses, either during the meeting or afterwards.
4. The employee has the option to submit a written rebuttal. The written rebuttal should contain whatever points he/she feels should be brought to the attention of the Executive Director. The written rebuttal shall be received no later than ten (10) days after receipt of the Notice of Proposed Agency Action. The Executive Director may choose to interview the employee after reviewing the employee's written rebuttal before making a final decision.
5. It is not intended that an employee be represented by an attorney or any other representative at any meeting prior to the effective date of the proposed action. If an employee insists upon such representation, the Executive Director should discuss the subject with Counsel.

D. Notice of Final Agency Action

The Executive Director shall prepare a Notice of final Agency Action, after consultation with Counsel.

E. Notice of Withdrawal of Proposed Agency Action

If the decision is made not to follow the proposed agency action, a Notice of Withdrawal of Proposed Agency Action shall be prepared by the Executive Director.

F. Confidentiality

The Public Records Act requires that the PPBEP make available to the public, upon proper demand, records of the PPBEP. This may include disciplinary records such as reprimands and Notices of Proposed Agency Action. Supervisors are urged to keep any and all records pertaining to employee discipline as confidential as possible. No statements, written or verbal, should be made to anyone regarding the reasons for the discipline of a PPBEP employee, unless such statement is made to a person with a genuine need or entitlement to have access to the information.

In the absence of clearance from Counsel, verbal statements of reasons for discipline should not be made to the employee's co-workers, or any other employee of the PPBEP, the media, an attorney or other person claiming to inquire on behalf of the employee, or members of the public at large, including family members.

1.4 EMPLOYEE PERFORMANCE AND APPRAISALS

- I. **STANDARD:** To provide a performance appraisal system that will give direct feedback from supervisors to employees, and to help the employee monitor his/her own performance level.
- II. **SCOPE:** This standard applies to all employees of the PPBEP.
- III. **GUIDELINES:**
 - A. All performance evaluations are prepared by the employee and the employee's immediate supervisor. Each employee's performance should be evaluated in accordance with the following schedule.
 1. Annual evaluation. Each employee's performance shall be evaluated annually and should be completed at least 15 calendar days prior to the end of the TBEP's fiscal year. Other evaluations will be performed as needed, for example, promotion, reinstatement, demotion or other personnel actions. The Executive Director will be evaluated by the Chairman of the Board of Directors and, if desired by the Board, by the full Board.
 2. Six-month performance evaluation. A new employee will receive a performance appraisal in the seventh month of employment to evaluate job performance during the preceding six months. There will not be a merit pay increase associated with a six-month performance appraisal.
 - B. Employee performance evaluations shall be recorded on the Employee Performance Review.
 - C. Employee performance evaluations are used for, but not limited to, the following purposes:
 1. To inform the employee of strong and weak points and any improvements necessary.
 2. To identify employee's annual goals.
 3. To determine the employee's eligibility for salary increases.
 4. As a basis for taking disciplinary action against the employee.
 5. To assist in determining the order of layoff and reinstatement.
 - D. Employees shall be expected to meet or exceed supervisor's expectations.
 - E. If an employee received an evaluation which indicates the need for improvement, the Executive Director, in cooperation with the immediate supervisor, shall counsel the employee and identify the improvement(s) necessary to meet expectations. If, at the time of receiving such an evaluation, the employee is retained by the PPBEP, the employee's performance shall be evaluated as necessary and appropriate but not more than 90 days thereafter until:
 1. The employee's performance has improved and is evaluated at least meets expectation; or,
 2. Three months have elapsed without meeting expectations. In such cases, management shall make a determination for further action.
 - F. After the rating has been finalized, the results shall be discussed with the employee who shall be

furnished a copy of the completed rating, and shall sign a copy which shall be placed in the employee's personnel file.

1.5 EMPLOYEE PERSONNEL RECORD

- I. **STANDARD:** To provide a central source for applicable employment related personnel data.
- II. **SCOPE:** This standard applies to all PPBEP employees.
- III. **REFERENCE:** Chapter 119, Florida Statutes, Public Records Law
- IV. **GUIDELINES:**
 - A. The Operations Manager is the official Custodian of Records for all personnel records.
 - B. An individual Personnel Record is created following new employee orientation and systematically maintained by the Operations Manager throughout the duration of employment. Further retention is in accordance with the established records retention schedule.
 - C. Chapter 119, Florida Statutes, Public Records Law makes all personnel records open to the public upon request with the exception of those records identified in Sections 119.071(4) and (5), Florida Statutes. All requests should be directed to the Operations Manager. The requests will be granted in a reasonable amount of time. When a personnel record is pulled for review per a request, the Executive Director or Operations Manager will stay with the record being reviewed.
 - D. Only the Executive Director or Operations Manager may add materials to the personnel records. For the purpose of copying, the same staff may temporarily remove materials. No materials may be permanently removed from a personnel record.

1.6 TERMINATION

- I. **STANDARD:** To provide guidelines for timely notification and termination procedures for reduction in force, resignation, retirement or dismissal.
- II. **SCOPE:** This standard applies to all PPBEP employees who report to the Executive Director.
- III. **GUIDELINES:**
 - A. Reduction in Force

An employee may be separated for such reasons as lack of work, lack of funds, and changes in mission. Employees affected by reduction in force shall receive not less than one month's written notice of termination of employment. Termination will be without adverse effect on the employee's eligibility for re-employment. In cases involving part-time employees, two weeks written notice will be provided.
 - B. Resignation
 1. Professional personnel shall be required to submit a written notice of resignation to the

Executive Director at least two weeks prior to the effective date of such resignation, unless otherwise authorized by the Executive Director. Personnel are encouraged, but not required, to notify the Executive Director of their intent to resign prior to the required two-week notice.

2. Non-professional personnel shall be required to submit a written notice of resignation to the Executive Director at least two weeks prior to the effective date of such resignation.
3. Failure to notify shall result in the loss of leave benefits. Failure to comply with items listed in the termination process shall result in withholding of leave benefits until all items are satisfied.
4. All fringe benefits cease on the date of separation except for benefits required by law.

C. Termination Procedures

1. Terminating employee shall:
 - a. Schedule an exit meeting with the Executive Director.
 - b. Complete all items on Employee Check-Out Form and return to the Operations Manager at exit interview.
 - c. Return any credit cards, building access cards and office keys to the Operations Manager.
2. Operations Manager shall:
 - a. Send an Employee Termination Memorandum to terminating employee with appropriate forms attached.
 - b. Complete and route an Employee Pay Change Authorization Form.
 - c. Complete health insurance paperwork.
 - d. If termination is in conjunction with the employee's retirement under the Florida Retirement System, the Operations Manager will work with the employee to complete necessary paperwork.
 - e. Complete COBRA letter and paperwork, if COBRA is being requested.
 - f. Hold an exit meeting with terminating staff and finalize any exit paperwork.

1.7 DESIGNATION OF INTERIM EXECUTIVE DIRECTOR

- I. **STANDARD:** To provide for an interim Executive Director in the event of a planned or unplanned absence of the Executive Director.
- II. **SCOPE:** This standard applies to the Executive Director and his or her designee.
- III. **GUIDELINE:**

The Executive Director shall designate an Interim Executive Director to perform the duties of the Executive Director in the event of a temporary leave of absence, either planned or unplanned, or an unplanned permanent absence.

In the event of an unplanned permanent absence, this designation shall remain in effect until the Estuary Program's Board of Directors confirms appointment of the Interim Executive Director and appointment of a new permanent Executive Director.

II. PAYMENT & COMPENSATION

2.1 PPBEP STAFFING

- I. **STANDARD:** To establish, maintain and administer an equitable staffing and pay plan to ensure that all employees are compensated equitably for the level of work being performed.
- II. **SCOPE:** This standard applies to all PPBEP employees.
- III. **GUIDELINES:**

A. Introduction

The PPBEP Interlocal Agreement prescribes the authority for a staff of paid employees to carry out the will of the membership. The Board of Directors employs and sets the compensation of the Executive Director. The Executive Director is authorized to then employ and discharge professional, technical and administrative staff as may be necessary to carry out the purposes of the PPBEP.

This staffing system is the primary tool by which the Executive Director provides the staff support to carry out the business of the PPBEP, as outlined yearly in the Annual Work Plan. The PPBEP's staffing system functions to: assist in determining what kinds of jobs are needed to perform the work; provide a framework for staff planning; help keep the PPBEP competitive in the current job market; and provide a means for maintaining equity in work and pay relationships.

B. Purpose of the Staffing System

While the system is a functional tool for manpower planning, it has four major purposes. They are:

1. To ensure internal equity among the several positions within the PPBEP. This is to ensure that each job is compensated fairly with relation to the other jobs in the PPBEP.
2. To ensure external equity between the several positions in the PPBEP and like positions in the marketplace. In order to retain and attract the kind of employees the PPBEP

endeavors to maintain, the compensation must be competitive in the labor market.

3. To establish a basis for recognizing and rewarding the contribution to the PPBEP's success that each position makes.
4. To establish a basis for recognizing and rewarding each individual employee's contribution through their own individual effort.

2.2 HOURS OF WORK AND OVERTIME

- I. **STANDARD:** To establish PPBEP hours of work.
- II. **SCOPE:** This standard applies to all PPBEP employees.
- III. **GUIDELINES:**

- A. Hours of Work

Normal business hours of the PPBEP are 8:30 a.m. to 5:00 p.m. Monday through Friday with a one-hour lunch period. All full-time employees (80 hours per pay period) are required to be present on their assigned jobs during the normal business hours, or arrange a flextime schedule if allowable as outlined below. Part-time employees are required to be present on their assigned job during the established work schedule. When necessary, the Executive Director will assign employees to lunch periods in order to maintain sufficient staff to perform all necessary work during the lunch period.

- B. Flextime

Employees interested in working a flextime schedule should discuss the possibility of such an arrangement with the Executive Director. The Executive Director may allow employees to work flexible schedules when appropriate, but will deny flextime requests made by workers in jobs where such schedules would cause significant production or administrative problems. Employees on flextime schedules must maintain a schedule of 40 work hours per week.

- C. Overtime Policy and Compensation

1. Exempt and Non-Exempt Employees

Exempt employees are those PPBEP personnel whose positions are classified as exempt from provisions of the Fair Labor Standards Act (FLSA). All other employees are Non-Exempt.

2. Exempt Personnel

PPBEP does not recognize payment for, or accrual of, compensatory time for Exempt personnel. When the employee is required to work on a designated holiday, evening, or on a weekend day, the employee will be provided with equal time off (ETO) at the earliest practical date.

Employees shall record work on designated holidays, evenings or weekend days, and equal time off in the staff calendar.

3. Non-exempt Personnel

When operating requirements or other needs cannot be met during regular working hours,

employees will be given the opportunity to volunteer for overtime work assignments. All overtime work must receive the Executive Director's prior authorization. Overtime assignments will be distributed as equitably as practical to all employees qualified to perform the required work. Employees who work overtime without prior authorization will be paid for such overtime. However, they may be subject to disciplinary action for failing to obtain such prior authorization.

Overtime means those hours worked by a non-exempt employees which exceed forty (40) hours in a workweek. Overtime pay is based on actual hours worked. Time off on sick leave, vacation leave, emergency closings, or any leave of absence will not be considered hours worked for purposes of performing overtime calculations. Overtime will be compensated at a rate of time and one half to the employee's Paid Time Off leave balance.

2.3 HOLIDAYS

- I. **STANDARD:** To establish a schedule of designated holidays when PPBEP offices will be closed.
- II. **SCOPE:** This standard applies to all employees.
- III. **GUIDELINES:**
 - A. The PPBEP Board of Directors will approve the annual holiday schedule. While dates of observance are subject to change year-to-year, the following holidays will be observed by PPBEP, unless otherwise determined by the Board:
 - New Year's Day
 - Martin Luther King, Jr. Day
 - Presidents' Day
 - Memorial Day
 - Juneteenth
 - Independence Day
 - Labor Day
 - Veteran's Day
 - Thanksgiving Day
 - Day after Thanksgiving
 - Christmas Eve
 - Christmas Day
 - New Year's Eve

- B. Holidays occurring during authorized leave:

Employees who are on approved leave with pay when authorized holidays occur shall not have such days charged against their accrued leave credits.

2.4 LEAVE

- I. **STANDARD:** To outline the various types of leave provided to employees by the PPBEP.
- II. **SCOPE:** This standard applies to all PPBEP employees.
- III. **GUIDELINES:** The rate of accrual of annual leave and sick leave for each employee as set forth in B. and C. below shall be based on the length of service with PPBEP.

A. Leave Authorization

Any leave of absence, with or without pay, shall be approved subject to PPBEP workload prior to the leave being taken, except in the case of emergency where the employee must be absent prior to receiving approval. Prior approval is obtained by requesting approval from the Executive Director via email or telephone call.

1. When prior approval cannot be obtained by the employee due to emergencies, the Executive Director shall take one of the following actions:
 - a. Grant the employee leave with pay provided the employee has sufficient accrued leave credits to cover the absence;
 - b. Grant the employee leave without pay if the employee does not have sufficient accrued leave; or,
 - c. Consider the employee to have abandoned the position and resigned from the PPBEP, if the absence is for 3 consecutive workdays without notice.
2. If an employee's request for leave of absence is denied and the employee takes unauthorized leave, the Executive Director shall place the employee on leave without pay. After unauthorized leave of 3 consecutive workdays, it will be considered that the employee has abandoned the position and has resigned from the PPBEP.

B. Paid Time Off

1. Method of Earning Annual Leave
 - a. Paid Time Off (PTO) is an all purpose time-off policy for eligible employees to use for vacation, illness or injury, and personal business. It combines traditional vacation and sick leave plans into one flexible, paid time-off policy. Regular full-time and introductory employees working a full-time schedule are eligible to earn and use PTO as described in this policy. Upon beginning employment, regular and full-time employees and introductory employees working a full-time schedule will begin to earn PTO according to the schedule below. The amount of PTO employees accrue throughout each year increases with the length of their employment as shown in the following schedule:

Years of Service	PTO Monthly Accrual	PTO Annual Accrual
Upon Hiring	10 Hours	120 Hours
After 1 Year	12 Hours	144 Hours
After 2 Years	16 Hours	192 Hours
After 5 Years	18 Hours	216 Hours
After 10 Years	20 Hours	240 Hours

The "PTO Year" under this policy and accrual schedule will be based on an employee's anniversary date. PTO can be used in minimum increments of one-half hour. Employees who have an unexpected need to be absent from work should notify the Executive Director before the scheduled start of their workday, if possible. The Executive Director must

also be contacted on each additional day of unexpected absence.

To schedule planned PTO, employees should make and advance written request for approval from the Executive Director. Requests will be reviewed based on a number of factors, including business needs and staffing requirements. PTO is paid at the employee's base pay rate at the time of the absence. It does not include overtime or any special forms of compensation such as incentives, commissions, bonuses, or shift differentials.

In the event that available PTO is not used by the end of an employee's PTO Year, employees may carry as many as 175 hours of unused time forward to the next PTO Year. Accumulation of hours may exceed 175 hours in a PTO Year; however, an employee may only carry 175 hours forward from one PTO Year to the next and all remaining PTO will be forfeited.

Employees resigning in good standing will be paid for unused PTO that has been earned through the last day of work. Employees terminated will not be paid for unused PTO. Grant-funded positions will not be paid out for unused PTO.

C. Administrative Leave

1. Court

An employee who is summoned for jury duty shall be granted administrative leave with pay, but will be paid only for the difference between the employee's wages and any jury fees paid by the courts to the employee. The PPBEP shall not reimburse the employee for meals, lodging, and travel expenses incurred while serving as a juror.

2. Military Leave

An employee who is a member of the United States Armed Forces or National Guard who is engaged in training shall be entitled to administrative leave with pay, but will be paid only for the difference between an employee's regular wages and military pay during training exercises. Such leave with pay shall not exceed 240 working hours in any one calendar year. An employee who is called for active military service in the United States Armed Forces or National Guard shall receive leave with pay for 30 days. (reference F.S. 115.09 and 115.14).

3. Death in the immediate family

Death in the immediate family (three days per occurrence). Immediate family is defined as the spouse, parents, children, spouse of children, grandparents, grandchildren, brothers or sisters, of both the employee and the spouse.

4. Natural disasters

Natural disasters and other emergency conditions that necessitate closing the buildings in which PPBEP offices are located.

D. Family Medical Leave

A regular part-time or full-time employee who has satisfactorily completed six-months of employment shall, upon written request, be granted family medical leave without payment of salary for a period of time not to exceed 12 weeks in a one-year period of time for the following reasons:

1. Family medical leave can be taken to care for a spouse, a parent, a son, or daughter who has been certified with a serious health condition. Family medical leave for care of a spouse, parent, son or daughter may be taken intermittently or on a reduced work schedule basis not to exceed equivalent to a 12 week period of time.
2. Family medical leave can be taken because of an employee's own serious health condition that makes the employee unable to work or to perform any of the essential functions of the job. Family medical leave for employee's illness may be taken intermittently or on a reduced work schedule basis not to exceed equivalent to a 12 week period of time.
3. Employee's position, or an equivalent position, will be available upon return from Family Medical Leave.
4. Employee's benefits, i.e. health insurance, will continue through the period of time of the Family Medical Leave. Employee is responsible for payment of employee portion of health insurance premium.
5. Accrued annual leave shall be used in conjunction with Family Medical Leave under the following conditions:
 - a. Accrued leave with pay must be used first and Family Medical Leave without pay used last;
 - b. The combined leave period shall not exceed 12 weeks; and,
 - c. The Executive Director shall notify the employee in writing as to the period of leave to be granted, clearly specifying the date the employee returns to duty, identifying employer funded fringe benefits that continue, and that the employee will return to the same or equivalent position.

E. Leave of Absence Without Pay

An employee will, upon request, be granted leave without pay provided the Executive Director deems such leave to be justified and not detrimental to the operations of the PPBEP. An employee shall not earn annual credit while on this type of leave without pay.

2.5 PROFESSIONAL DEVELOPMENT

- I. **STANDARD:** To encourage employee development through participation in job related education programs, workshops, training programs and professional organizations.
- II. **SCOPE:** This standard applies to all PPBEP employees.
- III. **GUIDELINES:**

- A. Employees are encouraged to attend national or state conferences, conventions, symposia, or other organized activities to advance the employee's professional development and fulfill his/her job responsibilities, dependent upon available funding and staff assignment, with concurrence of the Executive Director.
 - 1. To request approval for attendance at a conference, convention, symposium, workshop or other educational activity, employees must receive approval from the Executive Director via email prior to attendance.
- B. The Executive Director may assign staff to attend conferences, symposia and meetings as a part of the employee's regular duties.
- C. The PPBEP may pay for institutional memberships in technical and professional associations. The PPBEP may pay for individual memberships when the association does not accept institutional membership or when individual membership provides economic advantage.
- D. PPBEP may pay fees required to complete review courses taken in preparation for professional certification and continuing certification. PPBEP may pay fees for professional certification and continuing certification.
- E. The Executive Director may require any employee to provide a summary report or briefing on any activity the employee has attended that was paid for by PPBEP.

The Executive Director has final approval for all employee training and development applications.

III. BENEFITS

3.1 MANDATORY BENEFITS

- I. **STANDARD:** To provide assurance to employees that PPBEP maintains all mandatory benefit coverages.
- II. **SCOPE:** This standard applies to all PPBEP employees.
- III. **GUIDELINES:**
 - A. PPBEP withholds and pays taxes as required under the Federal Insurance Contributions Act (FICA). FICA taxes pay for old-age, survivor, and disability insurance benefits (OASDI), as well as health insurance for the elderly and disabled. PPBEP and employees pay an equal rate as prescribed by law.
 - B. PPBEP maintains unemployment insurance as required by the Federal Unemployment Tax Act and the State of Florida unemployment insurance laws.
 - C. PPBEP maintains Workers Compensation Coverage which protects employees against income losses caused by job-related injuries or occupational disease.
 - 1. In the event of any job-related injury or occupational disease, the employee should immediately notify the Executive Director and Operations Manager.
 - 2. The Operations Manager will generate any accident report or any paperwork necessary.
 - 3. Workers compensation benefits include:

1. medical benefits,
2. temporary or permanent partial disability benefits,
3. total disability benefits,
4. survivor benefits,
5. rehabilitation benefits.

3.2 FLORIDA RETIREMENT SYSTEM

- I. **STANDARD:** The PPBEP participates in the Florida Retirement System (FRS) and contributes the state required percentage for all regular established positions regardless of the number of hours worked per week.
- II. **SCOPE:** All regular full-time PPBEP employees are participants in the Florida Retirement System.
- III. **GUIDELINES:**

The Florida Retirement System (FRS) is a defined benefit plan, administered by the Division of Retirement for the State of Florida. The FRS is contributory for members with participating employers making contributions as established by the FRS. Membership in the FRS is compulsory for all regularly established full-time positions. Refer to the FRS Handbook for options available at time of retirement: https://www.myfrs.com/Resources_Publication.htm. Current FRS benefits, rules and guidelines will always supersede any information that may become obsolete in this chapter. PPBEP Management and the employee will collectively verify: 1) initial enrollment in FRS, 2) the appropriate service classification designation of enrollment, and 3) other relevant information as deemed necessary to complete enrollment in the FRS by the employee. PPBEP Management will further verify with TBEP's accounting contractor that the correct contributions and withholdings are applied to all PPBEP employees enrolled in the FRS according to their designated service class upon hiring or a change in position within the Program.

As a member of the FRS, PPBEP personnel are also covered for disability and survivor benefits.

Refer to the FRS Handbook for more detailed information.

3.3 INSURANCE PROGRAMS

- I. **STANDARD:** To outline the life, health, dental, and vision care benefits provided to eligible employees and their dependents.
- II. **SCOPE:** Insurance eligibility is identified with each type of program.
- III. **GUIDELINES:**

- A. LIFE INSURANCE

PPBEP provides life insurance with accidental death and dismemberment coverage to regular full-time employees. Insurance commences upon hiring. The amount of life insurance is \$10,000 for full-time employees.

Coverage ceases for an employee under this benefit provision on the date the employee terminates employment with the PPBEP. Upon termination of employment, the employee may apply for and pay premiums for, an individual policy on his own life up to the employee's insured

amount. The employee will be issued such individual policy without evidence of insurability.

B. HEALTH, DENTAL, AND VISION INSURANCE

PPBEP makes available health, dental and vision care insurance benefits to eligible employees and their dependents through policies purchased from commercial insurers.

The health insurance benefits available will include coverage of hospitalization and surgical, as well as major medical expenses incurred by workers (up to the limits specified and in accordance with the rules established in the applicable policies). All regular full-time employees and their dependents are eligible for health insurance coverage. Premiums for the health insurance will be paid by the PPBEP and the employee. The employees' contributions will be determined on an annual basis.

All regular full-time employees and their dependents are eligible for dental and vision care insurance following completion of one month of service. The premiums for vision care are paid entirely by the employee. The employees' contribution for dental insurance will be determined on an annual basis.

Employer contributions to health, dental and vision care coverage ceases at the date of termination of an employee.

IV. POLICIES

4.1 ACCESS TO PUBLIC INFORMATION

- I. **STANDARD:** To inform all PPBEP employees of public records law and allow for the appropriate access to all PPBEP public records.
- II. **SCOPE:** This standard applies to all PPBEP employees.
- III. **GUIDELINES:**

PPBEP permits all public records to be inspected and examined in accordance with Chapter 119, Florida Statutes, by any person requesting to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or his/her designee.

In accordance with Florida law, all PPBEP records shall be open for inspection and copying by any person desiring to do so at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records, with the exception of exempted or confidential material identified by Florida law. The Operations Manager is the official custodian of PPBEP public records.

“Public Records” means all documents, papers, letters or other material, regardless of the physical form, characteristics, or means of transmission, made or received, pursuant to law or ordinance or in connection with the transaction of official business which is intended to perpetuate, communicate, or formalize knowledge of some type.

Note that the law only applies to existing documents. The law does not require a custodian of public records to create a record in response to a request (but may do so at their discretion).

A. PUBLIC RECORD REQUEST PROCEDURE

1. The Operations Manager shall serve as the PPBEP Public Records Custodian. Contact information of the PPBEP Public Records Custodian shall be posted on the PPBEP website.
2. A public record request can be submitted by phone, e-mail, regular mail, or in person. The person requesting a public record is not required to show any identification or provide a reason or justification for the request. A written request is not required by law and cannot be required by the agency. A public record request may be submitted to and received by any member of the PPBEP staff.
3. When a public record request is received, the Operations Manager shall be promptly informed and shall keep a record of each request with the following information: contact information of the person making the request (if provided), date received, nature of request, date completed (if applicable), and amount of fee charged (if applicable). Upon being notified of a public record request, the Operations Manager shall promptly notify Counsel of the request so that it can be determined if any exemption applies.
4. Unless the request clearly specifies, the Operations Manager shall determine if the request is for inspection of records or for copying of records.
5. "Readily available documents" are those that are regularly distributed to the public and do not need to be reviewed in order to determine whether the documents contain exempt information. Readily Available Documents should generally be provided within 3 business days of receipt of the request. Such records include, but are not limited to: meeting minutes, meeting agenda and materials, contracts, agreements, approved budget, final reports. There should not be any charge for labor for retrieving the Readily Available Documents for inspection, but for any copies provided to the requestor, a charge will be imposed as set forth below.
6. Requests for "Non-Readily Available Documents" shall be handled as follows:
 - a. If the volume of public records requested to be inspected and/or copied is such that it requires extensive use of information technology resources or involves extensive clerical or supervisory assistance by personnel, agents or representatives of the PPBEP, or both, the PPBEP will charge, in addition to the actual cost of duplication, a "Special Service Charge," which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost actually incurred by the PPBEP for the personnel providing the service. Extensive means that it will take more than thirty (30) minutes to locate, review for confidential information, copy, and refile the requested public records and also includes the time, if any, for clerical personnel to remain with all individual inspections of public records to ensure that no records are altered, destroyed or removed. The Special Service Charge will be computed to the nearest quarter of an hour exceeding fifteen (15) minutes based on the current rate of pay, including wages, overtime, the employer portion of federal and state payroll taxes, unemployment compensation taxes, workers compensation insurance, retirement plan contributions and health insurance costs for the person who performed the service and will be charged regardless of whether any copies are made and regardless of the number of individual copies made. No charges, other than duplication costs, will be assessed if the request takes less than thirty (30) minutes to locate, review for confidential information, copy and also includes the time, if any, for clerical personnel to remain with an individual inspecting public records to ensure that no records are

altered, destroyed or removed.

- b. The Operations Manager shall notify the requestor of the estimated cost and anticipated time frame to complete the request, and confirm with the requestor that the PPBEP must be paid in advance of the requestor's receipt of the records.
 - c. For large requests involving more than one hour of staff time and/or more than \$50.00 for copying charges, the PPBEP may require an advance deposit of 50% prior to beginning retrieval and/or copying.
 - d. Non-Readily Available Documents should generally be provided within 6 business days of receipt of the request.
7. Records should be provided electronically whenever possible, unless the requestor asks for hard copies.
 8. Requests for documents that may contain information that is exempt from disclosure under Florida law may be delayed until the record can be reviewed and redacted as necessary.
 9. All requests for public records from the media or from public officials shall be handled consistently with the procedures outlined herein.

B. CHARGES FOR PUBLIC RECORDS

1. One sided copy of records no more than 8.5 by 14 inches: 15 cents per page.
2. Two-sided copy of records no more than 8.5 by 14 inches: 20 cents per two-sided copy.
3. For all other copies: Actual cost of reproduction.
4. Certified copies of records: \$1.00 per page for the certification plus applicable copying charge.
5. Extensive use of information technology or staff time: Cost of reproduction plus a service charge which shall be reasonable and shall be based on the cost incurred to make copies or actual labor costs incurred for record retrieval, copying and/or supervision during record inspection.

4.2 AMERICANS WITH DISABILITIES ACT (ADA)

- I. **STANDARD:** To inform staff of the provisions of the Americans with Disabilities Act of 1990 (ADA) and to provide a format for requesting reasonable accommodation and filing a grievance if an alleged violation of the act occurs.
- II. **SCOPE:** This standard applies to all PPBEP employees, applicants, and general public requesting public services, public accommodation, or telecommunication.
- III. **GUIDELINES:**
 - A. General
 1. The ADA (Title 42, U.S. Code, Section 12101, et seq.) prohibits discrimination against

individuals with disabilities in employment, public services, public accommodations, and telecommunications.

2. ADA's employment provisions require employers to extend equal opportunities in all aspects of employment including hiring, advancement, compensation, and training, to individuals with disabilities. The law requires employers to provide reasonable accommodations for persons with disabilities who are otherwise qualified for the job. This requirement does not apply if: (1) making the accommodation poses an "undue hardship" on the employer; or (2) the individual poses a direct threat to the health or safety of others in the workplace. Persons who can perform the "essential functions" of a job, with or without reasonable accommodation, are considered qualified and protected from employment discrimination under the law.

B. PPBEP Organization for ADA Compliance

1. PPBEP has designated the Operations Manager as the ADA Coordinator. The ADA Coordinator shall be responsible for ADA compliance. In the absence of the Operations Manager, the Executive Director shall serve as the ADA Coordinator.
2. Equal opportunity notices, including reference to ADA, shall be posted in accessible locations.

C. Request for Reasonable Accommodation

1. An employee, applicant, or member of the general public requesting public services, public accommodation, or telecommunication who due to a disability, requires reasonable accommodation in their employment, to include on-the-job training, advancement and wages, benefits or reasonable accommodation for public meetings or telecommunication, should contact the ADA Coordinator. The ADA Coordinator will assist that person in determining the necessary accommodation.
2. PPBEP will provide reasonable accommodation unless it would become an undue hardship. If the undue hardship does not allow for the requested accommodation, or if the person making the request for accommodation perceives the PPBEP practice to be discriminatory under the ADA, they may file a grievance as outlined below in the ADA Grievance Procedure.

D. ADA Grievance Procedure

1. A grievance is an alleged wrong to a person, either real or imagined, which causes the person to feel discriminated against on the basis of disability with some aspect of employment practices, the programs, activities or services of PPBEP. The following procedure has been established to provide for prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations implementing the ADA.

- a. Report the situation to the ADA Coordinator within ten (10) working days of the incident on which the grievance is based. The ADA Coordinator will reply within (5) days and will simultaneously report the incident and all relevant facts directly to the Executive Director.
- b. If the person feels that the above action has not resolved his/her grievance, the person shall put the grievance in writing and present it to the Executive Director within ten (10) working days. The Executive Director shall respond to the grievance within ten (10) working days.
- c. It is anticipated that most problems will be resolved by one or both of the above procedures. However, if not, the person may resubmit the written grievance to the Executive Director who, upon hearing all parties shall issue the final administrative ruling on the issue. The Executive Director's ruling may be appealed to the Department of Justice.
- d. Also, any person who has a complaint that discrimination on the basis of disability exists in employment, programs, activities, or services of PPBEP may notify the Department of Justice. A complaint may be filed by email at ADA.gov, or by mail at:
US Department of Justice, 950 Pennsylvania Avenue, NW
Civil Rights Division, Disability Rights Section – 1425 NYAV
Washington, D.C. 20530.
- e. Letters of complaint should explain: who was discriminated against; in what way; by whom or what institution; when the discrimination took place; who was harmed by the discriminatory act; who can be contacted for further information; the name, address and telephone number of the complainant; and as much background information as possible. These are suggestions, not requirements. However, the Department of Justice can move more efficiently if it is well-informed. Citizens may ask the above offices for help in writing a complaint.
- f. The ADA Coordinator shall maintain the files and records relating to complaints filed. PPBEP will not retaliate against any person because they made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.

4.3 CODE OF STANDARDS OF CONDUCT

- I. **STANDARD:** To provide a standard of conduct for all PPBEP employees, officers or agents.
- II. **SCOPE:** This standard applies to all PPBEP employees.
- III. **GUIDELINES:**

In accordance with the Code of Federal Regulations (41 CFR 31.36) and Chapter 112, Part III, Florida Statutes, no employee, officer or agent of the PBEP, or any board or committee representing PPBEP shall participate in the selection, or in the award or administration of a contract supported by Federal or state funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when a PPBEP employee, officer or agent; any member of

his/her immediate family; his/her partner; or an organization which employs or is about to employ (any of the aforementioned persons); has an interest in any firm being considered or selected for award.

The PPBEP shall not knowingly issue a request for service where there is evidence of a conflict of interest. In instances where a conflict may exist, the employee shall refer the matter to the Executive Director. In the event the possible conflict involves the Executive Director, the matter shall be referred to the Board of Directors.

Additionally, any proposal reviewer engaged by the PPBEP and its employees will be asked to complete and sign a Code of Standards of Conduct form, certifying that they have no conflict of interest with any of the Request for Proposals respondents.

4.4 DRUG-FREE WORKPLACE

- I. **STANDARD:** The PPBEP, as an organization covered by the Drug-free Workplace Act of 1988 (PL 100-690, Title V, Subtitle D.) and concerned with the effects of controlled substances on employees, is declared to be a drug-free workplace. The following guidelines shall be strictly enforced to protect the PPBEP's status as a responsible source for the award of federal contracts.
- II. **SCOPE:** This standard applies to all PPBEP employees.
- III. **GUIDELINES:**
 - A. Employees are expected and required to report to work on time and in appropriate mental and physical condition for work. It is the PPBEP's intent and obligation to provide a drug-free, healthful, safe, and secure work environment.
 - B. The unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance on PPBEP premises or while conducting PPBEP business off PPBEP premises is absolutely prohibited. Violations of this policy shall result in disciplinary action, up to and including termination for a first offense, and may have legal consequences. A controlled substance is a chemical substance that affects the user's feelings, perceptions and behavior. The chemical substances include narcotics, sedatives, alcohol, stimulants, cannabis, inhalants, hallucinogens and phencyclidine.
 - C. Employees have the right to know the dangers of substance abuse in the workplace, the PPBEP's policy about them and what help is available to combat substance abuse problems. This document spells out the PPBEP's policy. The following help may be available for combating substance abuse problems:
 1. Counseling Programs;
 2. Information on community resources for assessment and treatment; and/or,
 3. Medical benefits for substance abuse treatment.
 - D. Employees must, as a condition of employment, notify the Executive Director of any conviction (including pleas of guilty or nolo contendere) within five days of the conviction occurring. Failure to inform the PPBEP shall result in severe disciplinary action, which may include termination for the first offense.

- E. Probable cause screening shall be implemented in the event of any accident during work hours; the smell of alcohol or other controlled substance; or reporting to work or remaining at work in apparently unfit condition. All screening information shall be treated in a confidential manner.
- F. In cases of confirmed controlled substance use, sale or possession on or off PPBEP premises, appropriate disciplinary measures shall be taken, up to and including immediate discharge.
- G. Law enforcement officials will be notified for procedural consultation whenever illegal controlled substances are found.
- H. All employees must sign and return to the Operations Manager a Drug Free Workplace Program Certificate and Agreement to acknowledge they have been informed of the above policy and agree to abide by it in all respects. By law, such acknowledgment of agreement is required as a condition of continued employment.
- I. Any employee violating the terms of this policy statement is subject to immediate dismissal. Employees found to be abusing substances, but not convicted of any drug statute violation, shall be subject to progressive discipline and required to satisfactorily participate in a rehabilitation program approved for such purpose at the employee's expense.

4.5 WORKPLACE SMOKING

- I. **STANDARD:** It is the intent of the PPBEP to maintain a smoke-free workplace.
- II. **SCOPE:** To protect the health of all employees, avoid conflicts between smoking and nonsmoking workers, and ensure accommodations for nonsmokers' preferences when necessary.
- III. **GUIDELINES:**
 - A. In accordance with state law, smoking is prohibited in all indoor areas at all times.
 - B. Smoking is permitted only in designated outdoor locations.
 - C. Violators of the no-smoking policy are subject to disciplinary action as determined by the Executive Director.

4.6 REMOTE WORK POLICY

- I. **STANDARD:** It is the intent of the PPBEP to maintain a Remote Work Policy consistent with industry best practices.
- II. **SCOPE:** This standard applies to all PPBEP employees.
- III. **GUIDELINES:**

PPBEP employees are generally required to report to the Program office during normal working hours. However, employees may be allowed to work remotely on a case-by-case basis, as determined and approved by the Executive Director. The Executive Director can revoke previously granted permissions to work remotely at any time. The Executive Director may require employees working remotely to provide additional documentation substantiating work completed while working remotely.

V. PROCEDURES

5.1 STAFF TRAINING

- I. **STANDARD:** To inform all PPBEP employees of prerequisite or recommended training opportunities applicable to their job function and duties.
- II. **SCOPE:** This standard applies to all PPBEP employees.
- III. **GUIDELINES:**

Supervisors may identify and request staff to attend a training or workshop that would be beneficial to staff in performing his/her duties.

Additionally, PPBEP may schedule training/workshops for all staff participation. When such sessions are scheduled, the training will be mandatory for all employees.

When applicable, PPBEP will pay for such training.

5.2 TIMESHEETS/PAYROLL

- I. **STANDARD:** To ensure all PPBEP employees understand proper recording of work time on TBEP's standard timesheet.
- II. **SCOPE:** This standard applies to all PPBEP employees.
- III. **GUIDELINES:**

As outlined in Hours of Work and Overtime in the Pay/Compensation Section of this handbook, the work week begins on Sunday at 12:01 a.m. and ends on Saturday 12:00 midnight. Timesheets shall be submitted by all staff to the Operations Manager on Thursday of every other week and signed by the Executive Director. The timesheet will cover a two-week period, ending on the Saturday following the Thursday due date. Time shall be charged to the appropriate activity code as assigned by the Operations Manager by October 1 of each year.

PPBEP has direct deposit of payroll. All staff who participate receive an electronic payroll stub each pay period. Transfers are typically made to individual accounts no later than Thursday morning.

To participate in the direct deposit program you will need to complete a direct deposit selection form and attach to it a check marked VOID from the account to which the direct deposit is to be made.

5.3 TRAVEL & TRAINING ARRANGEMENTS

- I. **STANDARD:** To ensure all PPBEP employees understand the approval process for any travel or training necessary to perform their job assignments, duties and/or functions.
- II. **SCOPE:** This standard applies to all PPBEP employees.
- III. **GUIDELINES:**

All travel or training opportunities over \$100 must be pre-approved by the Executive Director. If attending a workshop/conference/symposium/training the following procedures need to be

followed:

- Email a travel request to the Executive Director for prior approval, including anticipated costs for appropriate line items (airfare, local travel, hotel, registration, etc.). The Executive Director will reply and copy the Operations Manager if approved/not approved.
- Once fully approved, an employee is free to make travel arrangements according to PPBEP's procurement procedures.

5.4 TRAVEL REIMBURSEMENT

- I. **STANDARD:** To ensure all PPBEP employees understand the travel reimbursement process for any travel incurred as part of their job assignments, duties and/or functions.
- II. **SCOPE:** This standard applies to all PPBEP employees.
- III. **GUIDELINES:** The following rules will be observed when per diem and other traveling expenses are incurred by PPBEP employees, or other authorized individuals.
 - A. Rates of Per Diem and Subsistence Allowance

Employees traveling to a convention, conference, or a meeting out of the PPBEP watersheds which serves a direct and lawful public purpose with relation to PPBEP will be allowed per diem and subsistence allowances in accordance with applicable travel policies.

Maximum subsistence for meals per day should be determined in accordance with the U.S. General Services Administration (GSA) per diem rates for the travel destination as detailed below:

1. allowance for meals as follows:
 - a. Breakfast: When travel begins before 6:00 a.m. and extends beyond 8:00 a.m. at 13.34% of GSA Guidelines.
 - b. Lunch: When travel begins before 12:00 noon and extends beyond 2:00 p.m. at 33.33% of GSA Guidelines.
 - c. Dinner: When travel begins before 6:00 p.m. and extends beyond 8:00 p.m., or when travel occurs during nighttime hours due to special assignments at 53.33% of GSA Guidelines.
2. No allowance will be made for meals when travel is confined to the PPBEP watersheds.
3. Requests for reimbursement of all classes of travel are to be made on the Travel Reimbursement Form.

B. Transportation

1. All travel must be made using the most direct route. In case a person travels by an indirect route for their own convenience, any extra costs will be covered by the traveler, and any reimbursement for expenses shall be based only on such charges as should have been incurred using the most direct route.
2. Transportation by common carrier when traveling on official business, and paid for personally by the traveler, shall be substantiated by a receipt therefore.
3. In the event transportation is other than the most economical class, as approved by the Executive Director the charges in excess of the most economical class shall be refunded by the traveler to PPBEP.

C. Mileage

1. Whenever travel is by privately owned vehicle, the traveler shall be entitled to a mileage allowance at the rate allowed by PPBEP travel policies. PPBEP has adopted the State of Florida Travel Policy.
2. All mileage will be shown from PPBEP office or remote work location to point of destination, and when possible shall be computed on the basis of a current map or using an electronic navigation tool.
3. Mileage will only be reimbursed for travel that is exclusively for official business. If official business is conducted during an employee's commute, mileage will only be reimbursed for distance in excess of normal commute mileage.
4. Vicinity mileage necessary for the conduct of official business is allowed but must be shown as a separate item on the expense voucher.
5. No traveler shall be allowed either mileage or transportation expense when the employee is gratuitously transported by another person, or when the employee is transported by a person entitled to mileage or transportation expense.

D. Other Expenses

The following incidental expenses of the traveler may be reimbursed:

- Taxi and other for-hire vehicle transportation, or public transportation fare;
- Ferry-fare and bridge, road and tunnel tolls;
- Convention registration fee while attending a convention or conference which will serve a direct public purpose with relation to PPBEP. However, any meals or lodging included in the registration fee will be deducted from the per diem allowance; and/or;
- Parking.

E. Travel Authorization and Reimbursement

1. Authorization Documentation: A Travel Request (email) is to be approved by the Executive Director prior to travel.

2. Travel Voucher/Reimbursement Form: When submitting traveling expense statements for approval and payment, a travel voucher will be completed. No travel expense statement will be approved for payment by the Executive Director unless it is made on a travel voucher form signed by the payee and immediate supervisor. Receipts for travel charges made to the PPBEP credit card will be submitted to the Operations Manager.
 3. The travel voucher form will state travel expenses actually incurred by the traveler while in the performance of official duties of PPBEP.
- F. Travel Advances

The Executive Director may authorize travel expense advances to lower anticipated costs of travel to employees. Such advances may include subsistence and travel-related costs.



Agenda Item 6.d.

Approval of an Executive Employment Agreement with Matthew J. Posner to serve as Executive Director of Pensacola and Perdido Bays Estuary Program, Inc.

Background: As PPBEP transitions into an independent entity, PPBEP will need to establish an Employment Agreement with its current Executive Director.

Recommendation: Recommend the Board 1) approve, and authorize the Chairman to sign, an employment agreement with Matthew J. Posner to serve as Executive Director of Pensacola and Perdido Bays Estuary Program, Inc. and 2) establish Mr. Posner's base salary at either the adopted rate of \$97,715 **OR** \$100,000 as requested by Mr. Posner.

Financial Impact: The FY23-24 Operating Budget has budgeted \$97,715 for the Executive Director position, plus benefits.

Legal Review: PPBEP Legal Counsel, Mary Jane Bass, has prepared the enclosed Employment Agreement, which has been reviewed, revised, and accepted by Mr. Posner.

EXECUTIVE DIRECTOR EMPLOYMENT AGREEMENT

This Executive Director Employment Agreement (the “Agreement”) is made and entered into as of October 1, 2023, by and between **MATTHEW J. POSNER** (the “Executive”) and **PENSACOLA AND PERDIDO BAYS ESTUARY PROGRAM, INC.**, a Florida not for profit corporation (“PPBEP”). This Agreement supersedes and replaces any and all previous agreements between the parties on this subject matter.

WHEREAS, PPBEP desires to employ the Executive on the terms and conditions set forth herein; and

WHEREAS, the Executive desires to be employed by PPBEP on such terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and obligations set forth herein, the parties agree as follows:

1. EFFECTIVE DATE

The Effective Date of this Agreement is October 1, 2023.

2. EMPLOYMENT

PPBEP agrees to employ Executive, and Executive agrees to be employed by PPBEP.

3. TERM

The term of this Agreement (“Employment Term”) will be for a period of three (3) years, commencing on the Effective Date, unless terminated earlier under the terms of this Agreement. This Agreement will automatically renew for additional one (1) year periods if not terminated earlier by the parties as provided for in this Agreement.

4. POSITION AND DUTIES

During the Employment Term, the Executive shall serve as the Executive Director of PPBEP, reporting to the PPBEP Board of Directors, and will perform the duties set forth in the Position Description attached hereto as Exhibit “A” and such other leadership duties as PPBEP assigns Executive from time to time commensurate with Executive’s title, position, and the needs of PPBEP.

The PPBEP Board shall be responsible for hiring, supervising, evaluating, and/or terminating the Executive. The Executive shall be responsible for hiring, supervising, evaluating, and/or terminating subordinate staff.

The Executive shall devote substantially all of Executive’s business time and attention to the performance of the Executive’s duties hereunder and will not engage in any other business, profession, or occupation for compensation or otherwise which would conflict or interfere with the performance of such services either directly or indirectly without the prior written consent of the PPBEP Board.

The principal place of Executive’s employment shall be PPBEP’s principal offices, which are currently located in Pensacola, Florida; provided that the Executive may be required to travel on PPBEP business during the Employment Term.

5. COMPENSATION

5.1 Base Salary. PPBEP shall pay the Executive an annual rate of base salary of \$ _____ in periodic installments in accordance with PPBEP's customary payroll practices and applicable wage payment laws. The Executive's base salary shall be reviewed at least annually by the PPBEP Board, and the Board may, but shall not be required to, increase the base salary during the Employment Term. However, the Executive's base salary may not be decreased during the Employment Term other than as part of an across-the-board salary reduction that applies in the same manner to all staff.

5.2 Employee Benefits. During the Employment Term, the Executive shall be entitled to participate in all employee benefit plans, practices, and programs maintained by PPBEP, as in effect from time to time (collectively, "Employee Benefit Plans"), on a basis which is no less favorable than is provided to other similarly situated executives of PPBEP, to the extent consistent with applicable law and the terms of the applicable Employee Benefit Plans. PPBEP reserves the right to amend or terminate any Employee Benefit Plans at any time in its sole discretion, subject to the terms of such Employee Benefit Plan and applicable law.

5.3 Vacation and Paid Time-Off. During the Employment Term, the Executive will be entitled to paid time off in accordance with the Paid Time Off provisions of the PPBEP Employee Manual taking into account the two years of service as Executive Director prior to incorporation of PPBEP. If Executive is terminated for cause, PPBEP will not owe Executive for accrued unused leave. Executive shall notify the Chairman of the Board when taking time off.

5.4 Business Expenses. The Executive shall be entitled to reimbursement for all reasonable and necessary out-of-pocket business, entertainment, and travel expenses incurred by the Executive in connection with the performance of the Executive's duties hereunder in accordance with PPBEP's expense reimbursement policies and procedures and Florida law.

5.5 Indemnification. In the event that the Executive is made a party or threatened to be made a party to any action, suit, or proceeding, whether civil, criminal, administrative, or investigative (a "Proceeding"), by reason of the fact that the Executive is serving as the Executive Director of PPBEP, the Executive shall be indemnified and held harmless by PPBEP to the fullest extent applicable to any other officer or director of PPBEP and to the maximum extent permitted under applicable law and the PPBEP's bylaws from and against any liabilities, costs, claims, and expenses, including all costs and expenses incurred in defense of any Proceeding (including attorneys' fees). Notwithstanding the above, indemnification and hold harmless will not apply to any Proceeding initiated by the Executive or PPBEP related to any contest or dispute between the Executive and PPBEP or any of its affiliates with respect to this Agreement or the Executive's employment hereunder.

6. PERFORMANCE EVALUATION.

The PPBEP Board of Directors shall review and evaluate, or authorize the Board Chairman to review and evaluate on the Board's behalf, the performance of the Executive at least once annually prior to October 1 of each year.

7. TERMINATION OF EMPLOYMENT.

7.1 By mutual agreement. The parties may mutually agree to terminate this Agreement at any time by a writing signed by both parties.

7.2 Due to Death. This Agreement shall terminate on the date of Executive's death, in which event compensation and benefits owing to Executive through the date of Executive's death shall be paid to Executive's estate. Upon making those payments, PPBEP shall have no further obligation or liability to Executive or Executive's estate.

7.3 Due to Disability. If, during the term of this Agreement and in the opinion of PPBEP, Executive, because of physical or mental illness or incapacity, shall become unable to perform substantially all of the duties and services required of his under this Agreement with or without reasonable accommodation for a period of at least sixty (60) days in the aggregate during any 12-month period, PPBEP may, upon at least ten (10) days prior written notice to Executive, notify Executive of its intention to terminate this Agreement as of the date set forth in the notice. In case of such termination, Executive shall be entitled to receive compensation and benefits owing to Executive through the date of termination, and upon PPBEP's payment of such owing compensation and benefits, PPBEP shall have no further obligation or liability to Executive for payment.

7.4 By PPBEP or Executive Without Cause or Without Good Reason. PPBEP or Executive may terminate within the term of this Agreement, or may elect not to renew this Agreement, with at least ninety (90) days' advance written notice to the other party. PPBEP may elect to relieve Executive of Executive's duties prior to the conclusion of the 90-day notice period if PPBEP continues to pay Executive through the 90-day period.

7.5 By PPBEP For Cause. PPBEP may terminate this Agreement immediately For Cause. "For Cause" means (a) any conduct, regardless of whether it occurs inside or outside of work, that in PPBEP's sole discretion has the reasonable potential to injure PPBEP's reputation, including, but not limited to, being arrested, indicted, convicted, or entering a plea of guilty or no contest for a criminal felony or for any other crime involving dishonesty or moral turpitude; (b) misconduct or gross negligence at work; (c) an act of aiding or abetting a competitor of PPBEP; (c) repeated failure to perform duties consistent with this Agreement as reasonably directed by the Board or its designee; and (d) any other breach of this Agreement or other written agreement with PPBEP.

7.6 By Executive for Good Reason. Executive may terminate this Agreement for Good Reason after identifying to PPBEP in writing (a) the specific facts constituting the Good Reason and the Good Reason at issue, (b) that Executive intends to terminate this Agreement for Good Cause, and (c) providing PPBEP at least twenty-one (21) days to cure. For purposes of this Agreement, "Good Reason" means (a) a material reduction in the Executive's Base Salary other than a general reduction in Base Salary that affects all similarly situated Executives in substantially the same proportions; (b) a relocation of the Executive's principal place of employment by more than twenty-five (25) miles; (c) any material breach by PPBEP of any material provision of this Agreement; or (d) a material, adverse change in the Executive's title, authority, duties, or responsibilities (other than temporarily while the Executive is physically or mentally incapacitated or as required by applicable law).

7.7 Notice of Termination. Any termination of the Executive's employment hereunder by PPBEP or by the Executive during the Employment Term (other than termination due to Employee's death) shall be communicated by written notice of termination ("Notice of Termination") that shall specify the termination provision of this Agreement relied upon; the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated; and the applicable Termination Date.

8. LEGAL MATTERS

8.1 Governing Law, Venue, and Jurisdiction. This Agreement shall be governed in accordance with the laws of the State of Florida without application of any conflict of law provisions, and all applicable federal laws, rules, and regulations. Any disputes or litigation arising out of this Agreement shall be brought and resolved in the state or federal courts in Pensacola, Escambia County, Florida, to which jurisdiction each of the parties agrees to submit for purposes of any dispute or litigation involving this Agreement.

8.2 Waiver of Trial By Jury. EXECUTIVE AND PPBEP KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT TO A JURY TRIAL IN ANY LAWSUIT BETWEEN THEM THAT ARISES AT ANY TIME OUT OF THIS AGREEMENT OR EXECUTIVE'S EMPLOYMENT WITH THE PPBEP, WHETHER AT LAW OR IN EQUITY, WHETHER BASED ON A CLAIM OR COUNTERCLAIM ARISING BEFORE OR AFTER THE EFFECTIVE DATE OF THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM OR COUNTERCLAIM, AND INCLUDING CLAIMS UNDER TORT, CONTRACT, CORPORATE, AND EMPLOYMENT LAWS.

8.3 Costs. In any mediation, arbitration, or legal proceeding between Executive and PPBEP arising out of this Agreement, the losing party shall reimburse the prevailing party, on demand, for all costs incurred by the prevailing party in enforcing, defending, or prosecuting this Agreement, including reasonable attorneys' fees and attorneys' fees incurred to secure an award of attorneys' fees.

8.4 Waiver. The waiver by a party of a breach or violation of any provision of this Agreement shall not be construed as a waiver of any subsequent breach or violation. The failure or delay of PPBEP at any time or times to require performance of, or to exercise any of its powers, rights or remedies with respect to any term or provision of this Agreement or any other aspect of Executive's conduct or employment in no manner (except as otherwise expressly provided herein) shall affect PPBEP's right at a later time to enforce any such term or provision.

8.5 Severability. If, and to the extent that, any court of competent jurisdiction holds any provision of this Agreement to be invalid or unenforceable, such holding shall in no way affect the validity of the remainder of this Agreement, and the remaining portion or portions of this Agreement nevertheless shall be valid, enforceable and carried into effect, unless to do so would clearly violate the present legal and valid intention of the parties hereto. In the event that a court determines that a restrictive covenant is unreasonable in scope, the court may modify the restricted covenant such that the restriction is reasonable.

8.6 Survival. Upon the expiration or other termination of this Agreement, the respective rights and obligations of the parties hereto shall survive such expiration or other termination to the extent necessary to carry out the intentions of the parties under this Agreement, including, but not limited to, the survival of restricted agreements, intellectual property provisions, and costs.

8.7 Execution; Complete Agreement. The parties may execute this Agreement in counterparts (including by means of facsimile and electronic transmission in portable document format (PDF)). Each executed counterpart of this Agreement will constitute an original document, and all of them, together, will constitute the same agreement. This Agreement, together with any attached appendices or exhibits, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous oral or written agreements, commitments, understandings, warranties, statements, or promises.

8.8 Executive's Cooperation. While Executive is employed by the PPBEP and thereafter, Executive shall cooperate with the PPBEP in any internal investigation or administrative, regulatory or judicial proceeding as reasonably requested by the PPBEP (including, without limitation, Executive being available to the PPBEP upon reasonable notice for interviews and factual investigations, appearing at the PPBEP's request to give testimony without requiring service of subpoena or other legal process, volunteering to the PPBEP all pertinent information and turning over to the PPBEP all relevant documents which are or may come into Executive's possession, all at times and on schedules that are reasonably consistent with Executive's other permitted activities and commitments). In the event the PPBEP requires Executive's cooperation in accordance with this Section, the PPBEP will reimburse Executive for reasonable expenses incurred in connection therewith (including lodging and meals, upon submission of receipts consistent with the PPBEP's policies then in effect).

8.9 Successors and Assigns. This Agreement is personal to the Executive and shall not be assigned by the Executive. The PPBEP may assign this Agreement to any successor or assign (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business or assets of the PPBEP. This Agreement shall inure to the benefit of the PPBEP and permitted successors and assigns.

8.10 Notice. Notices and all other communications provided for in this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, or by overnight carrier to the parties at the addresses set forth below (or such other addresses as specified by the parties by like notice):

If to the PPBEB:

Chairman
Pensacola and Perdido Bays Estuary Program, Inc.
226 Palafox Place, 5th Floor
Pensacola, FL 32502

If to the Executive:

Matthew J. Posner
800 East Belmont Street
Pensacola, FL 32501

8.11 Representations of the Executive. The Executive represents and warrants to the PPBEP that the Executive's acceptance of employment with the PPBEP and the performance of Executive's duties hereunder will not conflict with or result in a violation of, a breach of, or a default under any contract, agreement, or understanding to which Executive is a party or is otherwise bound.

8.12 Withholding. The PPBEP shall have the right to withhold from any amount payable hereunder any Federal, state, and local taxes in order for the PPBEP to satisfy any withholding tax obligation it may have under any applicable law or regulation.

8.13 Acknowledgement. THE EXECUTIVE ACKNOWLEDGES AND AGREES THAT EXECUTIVE HAS FULLY READ, UNDERSTANDS AND VOLUNTARILY ENTERS INTO THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

PENSACOLA AND PERDIDO BAYS ESTUARY PROGRAM, INC.

By: _____

Its: _____

Date: _____

MATTHEW J. POSNER,

Executive

Signature: _____

Date: _____



Agenda Item 6.e.

Approval of a Resolution Authorizing Carry Forward of Employee Leave Balances

Background: The Executive Director is requesting the Board adopt a resolution recognizing existing Estuary Program personnel's leave bank balances following separation from the County on October 1st, and carrying forward leave balances to the Estuary Program Corporation.

Recommendation: Recommend the Board approve, and authorize the Chairman to sign, a Resolution authorizing the carry forward of employee leave balances.

Financial Impact: N/A

Legal Review: N/A

Resolution R2023-02

**A RESOLUTION OF THE PENSACOLA AND PERDIDO BAYS ESTUARY PROGRAM BOARD OF DIRECTORS
AUTHORIZING THE CARY FORWARD OF EMPLOYEE LEAVE BALANCES FROM ESCAMBIA COUNTY TO
THE ESTUARY PROGRAM CORPORATION.**

WHEREAS, the Escambia County Board of County Commissioners has served as the host and fiscal agent for the Pensacola and Perdido Bays Estuary Program since establishment of the Program in 2018; and

WHEREAS, on October 1, 2023 the Pensacola and Perdido Bays Estuary Program, Inc. will assume the positions and incumbents currently employed through Escambia County to carry out the mission of the Estuary Program; and

WHEREAS, the Board desires to carry forward the leave balance of each Estuary Program employee that will transition employment from Escambia County to Pensacola and Perdido Bays Estuary Program, Inc.

NOW, THEREFORE, BE IT RESOLVED by the Pensacola and Perdido Bays Estuary Program Board of Directors:

Section 1. The recitals to this Resolution are true and correct.

Section 2. The Board authorizes the carry forward of leave balances (Paid Time Off and/or Annual Leave) from Escambia County to Pensacola and Perdido Bays Estuary Program, Inc. based on unencumbered balances available as of September 30, 2023 for Matthew J. Posner, Whitney A. Scheffel, Logan A. McDonald, and Haley N. Gancel.

Section 3. The Board authorizes effective October 1, 2023 the individuals listed above to accrue Paid Time Off at the third tier of the Paid Time Off schedule listed in the Employee Handbook, equivalent to 192 hours per year.

Adopted this 27th day of September, 2023.

PENSACOLA AND PERDIDO BAYS ESTUARY PROGRAM, Inc.

Woody Speed, Chairman



Agenda Item 6.f.

Approval of NOAA Cooperative Agreement No. NA23NMF4630079, in the amount of \$10,993,732, for the Pensacola Bay System Oyster Restoration Initiative

Background: The Pensacola Bay Oyster Restoration Initiative, to be administered by PPBEP, establishes a transformational vision to restore 600-hectares (1,482 acres, the size of approximately 1,482 football fields) of oyster habitat in the Pensacola Bay System over the next ten years to enhance ecosystem resilience, rebuild a sustainable fishery, and improve economic vitality. Specifically, the project will:

- Design and permit 600-hectares (1,482 acres) of oyster habitat restoration
- Construct Phase I of the Initiative, targeting up to 100 ha. of oyster habitat restoration (the size of about 247 football fields)
- Complete a sediment load assessment to aid in prioritizing oyster restoration locations
- Design and permit the Sandy Hollow Gully Restoration Project in Santa Rosa County that will reduce direct sediment inputs into the Escambia River
- Implement a Living Shoreline Cost Share Program
- The Nature Conservancy (TNC) in Florida, Santa Rosa County, Florida Fish and Wildlife Conservation Commission (FWC), and the Florida Department of Environmental Protection have partnered with PPBEP to implement the Initiative.

Recommendation: Recommend the Board approve, and authorize the Executive Director to accept, NOAA Cooperative Agreement No. NA23NMF4630079, in the amount of \$10,993,732, for the Pensacola Bay System Oyster Restoration Initiative.

Financial Impact: This action will increase the Grant Fund revenue account by \$10,993,732.

Legal Review: Legal Counsel has reviewed the NOAA Cooperative Agreement.

FINANCIAL ASSISTANCE AWARD

GRANT COOPERATIVE AGREEMENT

FEDERAL AWARD ID NUMBER

NA23NMF4630079

PERIOD OF PERFORMANCE

09/01/2023-08/31/2027

STREET ADDRESS

226 PALAFOX PL

FEDERAL SHARE OF COST

\$10,993,732.00

CITY, STATE, ZIP CODE

PENSACOLA FL 32502-5846

RECIPIENT SHARE OF COST

\$0.00

AUTHORITY

P.L. 117-58; 16 U.S.C. 1891a; 16 U.S.C. 661, as amended by the Reorg. Plan No. 4 of 1970

TOTAL ESTIMATED COST

\$10,993,732.00

CFDA NO. AND NAME

11.463 Habitat Conservation

PROJECT TITLE

Pensacola Bay System Oyster Restoration Initiative

This Award Document (Form CD-450) signed by the Grants Officer constitutes an obligation of Federal funding. By signing this Form CD-450, the Recipient agrees to comply with the Award provisions checked below and attached. Upon acceptance by the Recipient, the Form CD-450 must be signed by an authorized representative of the Recipient and returned to the Grants Officer. If not signed and returned without modification by the Recipient within 30 days of receipt, the Grants Officer may unilaterally withdraw this Award offer and de-obligate the funds.

- DEPARTMENT OF COMMERCE FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS
- R & D AWARD
- FEDERAL-WIDE RESEARCH TERMS AND CONDITIONS, AS ADOPTED BY THE DEPT. OF COMMERCE
- BUREAU SPECIFIC ADMINISTRATIVE STANDARD AWARD CONDITIONS
- SPECIFIC AWARD CONDITIONS
- LINE ITEM BUDGET
- 2 CFR PART 200, UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS, AS ADOPTED PURSUANT TO 2 CFR § 1327.101
- 48 CFR PART 31, CONTRACT COST PRINCIPLES AND PROCEDURES
- DEPARTMENT OF COMMERCE PRE-AWARD NOTIFICATION REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS (REF: 79 FR78390)
- MULTI-YEAR AWARD. PLEASE SEE THE MULTI-YEAR SPECIFIC AWARD CONDITION.
- OTHER(S):
This award is being made under competitive Funding Opportunity Number NOAA-NMFS-HCPO-2022-2007195 posted at Grants.gov on 06/28/2022.

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER

Alan Conway

DATE

09/05/2023

PRINTED NAME, PRINTED TITLE AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL

DATE

Specific Award Conditions

Award Number: NA23NMF4630079
Amendment Number: 0

1) New Award SAC

This award number NA23NMF4630079, to PENSACOLA AND PERDIDO BAYS ESTUARY PROGRAM, INC., supports the work described in the Recipient's proposal entitled "Pensacola Bay System Oyster Restoration Initiative" dated 09/02/2022, with revisions dated 06/20/2023, 08/18/2023, and 08/21/2023, which are incorporated into the award by reference. Where the terms of the award and proposal differ, the terms of the award shall prevail.

2) Part 1 - Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Pursuant to the Infrastructure Investment and Jobs Act ("IIJA"), Pub.L. No. 117-58, which includes the Build American, Buy American (BABA) Act, Pub. L. No. 117-58, §§ 70901-52 and OMB M-22-11, recipients of an award of Federal financial assistance from the Department of Commerce (DOC) are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

To help federal agencies and recipients meet BABA requirements, the U.S. Department of Commerce, National Institute for Standards and Technology (NIST), Hollings Manufacturing Extension Partnership (MEP) National Network™ provides a service to connect stakeholders, including recipients, to U.S. manufacturers that have relevant production capabilities and capacities to help fulfill current market and supply chain needs. Recipients considering a BABA nonavailability waiver are strongly encouraged to contact the NIST/MEP for assistance with supplier scouting services prior to seeking a BABA nonavailability waiver. Further information on the NIST/MEP supplier scouting services is

available at: <https://www.nist.gov/mep/supplier-scouting>.

3) Part 2 - Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

WAIVERS

When necessary, recipients may apply for, and DOC may grant, a waiver from these requirements. DOC will notify the recipient for information on the process for requesting a waiver from these requirements.

1) When DOC has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which DOC determines that:

- a. applying the domestic content procurement preference would be inconsistent with the public interest;
- b. the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- c. the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. DOC will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at [whitehouse.gov/omb/management/made-in-america](https://www.whitehouse.gov/omb/management/made-in-america).

DEFINITIONS

“Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives²—that is or consists primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

"Infrastructure" includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater

systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

"Project" means the construction, alteration, maintenance, or repair of infrastructure in the United States

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1 Excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

2 IIJA, § 70917(c)(1).

4) Implementation of Domestic Sourcing Requirements

Prior to initiation of any construction that may arise in this award, the Recipient is required to inform the NOAA Grants Officer and the Federal Program Officer whether it is using iron, steel, manufactured products, or construction materials as described in the Specific Award Condition in this award on Required Use of American Iron, Steel, Manufactured Products, and Construction Materials. In addition, the Recipient is required to inform the NOAA Grants Officer and the Federal Program Officer whether those materials are produced or manufactured in the United States, or alternatively, it is requesting one or more waivers, as described in the award condition. The Recipient is required to coordinate with NOAA regarding its compliance with this term.

5) Pre-Award Costs – 90 Days

Pre-award costs incurred within 90 days prior to the award start day are allowable only to the extent of their reasonableness and relationship to the proposed activities of this award. The approved pre-award costs are a portion of, not in addition to, the approved total budget.

6) Tangible Property Reporting and Disposition

Equipment costs and/or supplies have been identified and budgeted in the grant application. The Recipient must report such costs to NOAA. The SF-428, SF-428-B (final report), and as needed, the SF-428-S (inventory list) must be submitted no later than 90 days after the project end date. The SF-428-C (the disposition report) must be submitted when the property is no longer required for the purpose of the project, and in accordance with 200.311-314. These forms can be accessed at <https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html>. Please note that DOC does not permit option 2b(i) on the SF-428B.

7) Post Award NEPA Review Process

By accepting this award, the Recipient agrees to assist and cooperate with NOAA Fisheries in the preparation of any outstanding National Environmental Policy Act (NEPA) compliance documentation. For purposes of NEPA compliance,

Phase 1 of the project includes planning, design, engineering, permitting, monitoring, and capacity funding. The activities for which work can proceed (as described above) will have no significant individual or cumulative adverse effects on the environment. The Recipient will not expend any funds for Phase 2 project implementation until impacts have been assessed and NEPA compliance documentation has been completed by NOAA. At this time, \$4,926,572 of the total award funds are available to the Recipient to complete Phase 1 tasks outlined above that have no adverse impacts on the environment. The remaining award funds will be available after the NOAA Program Officer provides NEPA clearance by confirming in Grants Online that this award condition has been satisfied.

8) Cooperative Agreement

This award is a cooperative agreement as described in 2 C.F.R. Sec. 200.1, meaning that NOAA is “substantially involved” in the project. NOAA Fisheries’ participation will be crucial to ensuring the timely implementation of the most beneficial habitat restoration project. NOAA may participate in one or more of the following ways:

collaboration on the scope of work through participation in meetings and review of documents;

providing assistance with technical aspects of the habitat restoration project such as assistance with permitting or development of detailed work plans and monitoring plans;

review and comment on design plans at the beginning of the award, at various stages throughout any portion of the design process that occurs during the award (e.g. conceptual, 30%, 60%, and 90% completion), and at the final completion stage;

review of procurement materials to the extent authorized by 2 C.F.R. Sec. 200.325;

tracking the progression of the restoration from planning through implementation and post-construction monitoring, with particular emphasis on tracking Recipient achievement of targets for major milestones and performance metrics and sharing results;

other involvement consistent with Office of Management and Budget Guidance on Substantial Involvement. See 43 Federal Register 36860 (Aug. 18, 1978).

9) Post Award NEPA Review Process

By accepting this award, the Recipient agrees to assist and cooperate with NOAA Fisheries in the preparation of any outstanding National Environmental Policy Act (NEPA) compliance documentation. For purposes of NEPA compliance, Phase 1 of the project includes planning, design, engineering, permitting, monitoring, and capacity funding. The activities for which work can proceed (as described above) will have no significant individual or cumulative adverse effects on the environment. The Recipient will not expend any funds for Phase 2 project implementation until impacts have been assessed and NEPA compliance documentation has been completed by NOAA. At this time, \$4,926,572 of the total award funds are available to the Recipient to complete Phase 1 tasks outlined above that have no adverse impacts on the environment. The remaining award funds will be available after the NOAA Program Officer provides NEPA clearance by confirming in Grants Online that this award condition has been satisfied.

10) Performance Progress Reports

Reporting requirements are described in 2 C.F.R. Sec. 200.328-.330, and 200.300(b); Department of Commerce Financial Assistance Standard Terms and Conditions Sec. A.01, C.03, and G.05; and Bureau-Specific NOAA Administrative Standard Award Conditions, with the following supplement.

Progress reports must be submitted using the NOAA Community-based Restoration Program's Performance Progress Report (PPR) reporting form approved by OMB under control number 0648-0718, or a successor form. The NOAA Federal Program Officer will provide this form to the Recipient. Interim semi-annual progress reports are due no later than 30 days after the semiannual reporting periods ending March 31 and September 30 for the entire duration of the award. These follow the same frequency and have the same due dates (April 30 and October 30, respectively) as the SF-425 Federal Financial Reports, which also must be submitted as a condition of this award.

A comprehensive final report covering all activities during the award period is required and must be received by the NOAA Program Officer within 120 days after the end date of this award, but a final semi-annual report is not required.

11) Outreach and Communications

Department of Commerce Financial Assistance Standard Term and Condition G.05.k.3. is supplemented as follows consistent with NOAA's collaboration on this project. The Recipient will coordinate with NOAA on outreach plans, events, products, and media coverage associated with the project. Please coordinate with the Federal Program Officer listed under the Contact Information award condition. Grantees will provide copies of final outreach products, website mentions, press materials, photos, videos, etc. via the standard progress reports to NOAA, or when available throughout the award period. Grantees will provide NOAA with high-resolution before, during, and post-implementation photos of the project. Photos of the site prior to construction and during project implementation should be submitted with progress reports or as requested by NOAA.

12) Acknowledgement of Project Contributors

The Recipient must display, where appropriate and practical, publicly visible signs indicating that the project has received funding from the NOAA Restoration Center. These signs should also identify other contributing partners. These contributions should also be acknowledged in all communications with the media and the public and in all outreach related to the projects, consistent with Department of Commerce Financial Assistance Standard Term and Condition G.05.k.3.

13) Project Safety

The Recipient must have a written safety plan for management of the project, which should specifically address safety of project personnel, associates, visitors, and volunteers. The Recipient must conduct a safety briefing for volunteers immediately prior to their participation in hands-on restoration activities under this award.

In addition, for any Self-Contained Underwater Breathing Apparatus (SCUBA) diving activities in a project, it is the responsibility of the Recipient to ensure that SCUBA divers are certified to a level commensurate with the type and conditions of the diving activity being undertaken. Furthermore, it is the responsibility of the Recipient to ensure that any SCUBA diving activities under this award meet, at a minimum, all applicable Federal, State, and local laws and regulations pertaining to the type of SCUBA diving being undertaken.

14) Compliance with Applicable Laws, Obtaining Permits, and Consultation Requirements

The Recipient is required to comply with national policy requirements consistent with 2 C.F.R. Sec. 200.300 and Department of Commerce Financial Assistance Standard Terms and Conditions, Section G. The Recipient will ensure that implementation of the project will meet all Federal laws and regulations by obtaining all Federal, state, and local permits and consultations applicable to the project prior to expenditure of award funds for those activities requiring permits and consultations. This includes, but is not restricted to, consultations required under the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act (Essential Fish Habitat), National Historic Preservation Act, and Coastal Zone Management Act. The Recipient will be cognizant of all conditions and restrictions required by their permits and consultations, and will immediately halt activities and contact their NOAA Technical Monitor if events occur that threaten to violate the conditions or restrictions required by their permits and consultations.

15) Verification of Permits and Consultations

Verification of permits and regulatory compliance related to this project must be presented to the NOAA Technical Monitor prior to project implementation. The Recipient should provide a list of Federal, tribal, state, and local permits acquired for this project by email or letter to the NOAA Technical Monitor.

16) Project Files

The Recipient must maintain project files for all restoration activities taking place under this agreement consistent with 2 C.F.R. Sec. 200.334. These files must contain, at a minimum, project work plans and copies of all federal and state permits/consultations associated with project implementation.

Administrative Standard Award Conditions for National Oceanic and Atmospheric Administration (NOAA) Financial Assistance Awards U.S. Department of Commerce

This Federal assistance award will be implemented using “[Grants Online](#),” a Federal information technology system for grants management and processing. Grants Online allows the recipient to accept awards electronically, manage user roles for individuals within their organization, and submit post-award action requests, financial reports, performance progress reports, and tangible personal property and real property reports. You can contact the Grants Online Help Desk for assistance in obtaining your login credentials.

Contact the Grants Online Help Desk at GrantsOnline.HelpDesk@noaa.gov, (240) 533-9533, between the hours of 8:00 a.m. and 6:00 p.m. Eastern Time Monday through Friday excluding Federal holidays. Please refer to the NOAA website at <https://www.noaa.gov/organization/information-technology/grant-recipient-user-resources> for additional information.

I. Award Payments – ASAP Enrollment

Consistent with 2 C.F.R. §200.305 and Department of Commerce Financial Assistance Standard Terms and Conditions (Commerce Terms), recipient award payments will be made through electronic funds transfers using the U.S. Department of the Treasury’s Automated Standard Application for Payments (ASAP) system. Recipients must enroll in ASAP system by first submitting an Organization Profile Change Request via Grants Online, which will include the following requirements:

- EIN#
- DUNS#
- Name of Organization
- Type of Organization (i.e. Non-profit, For Profit, State etc.)
- Address
- Point of Contact
- Title
- Point of Contact's Email Address
- Phone Number

If your organization is not currently enrolled in ASAP, please submit an Organization Profile Change Request in Grants Online as soon as possible to begin the enrollment process. New ASAP enrollments can take up to a month to be completed.

II. Reporting

A. Financial Reports

The recipient will use NOAA’s Grants Online system to complete Federal Financial Reports (SF-425), required by 2 CFR §200.328 and Commerce Terms. Grants Online will notify the recipient organization

via email when SF-425s are available for reporting and submission through the Grants Online system. The status of all reports can be seen under “Financial Reports” under the Grants File.

To complete a report, login to NOAA Grants Online at <https://grantsonline.rdc.noaa.gov>, search for the award and navigate to the Grants File overview page. Find the report near the bottom of the page and click on the link to the report to complete the report. For multiple awards that require Federal Financial Reports (SF-425) covering the same period, the recipient may create and submit a multi-award SF-425 from the —Awards tab. For additional assistance with Grants Online, please review the Recipient Quick Reference Guide available at https://www.noaa.gov/sites/default/files/atoms/files/GrantRecipients_Quick_Ref_Guide.pdf. This site also has additional detailed recipient assistance material. If you are having problems with accessing Grants Online, please contact the Grants Online Help Desk at (240) 533-9533 or GrantsOnline.HelpDesk@noaa.gov.

1. Request for Advance or Reimbursement (SF-270)
 - a. The SF-270 shall NOT be submitted by the recipient using the Department of Treasury ASAP system unless specifically directed by a specific award condition.
 - b. Semi-annual Federal Financial Reports (SF-425) are not required if the SF-270 is used; however, a Final SF-425 will be required.
 - c. If your organization is registered in ASAP, reimbursements will be made through ASAP.
2. Federal Financial Report (SF-425) - Due semi-annually; reported under the —“Federal Cash” line of the report.
 - a. The SF-425 shall be submitted on a semi-annual basis. If the recipient is reporting on more than one NOAA grant and/or agreement, then the SF-425 attachment must be used.
 - b. Interim semi-annual Federal Financial Reports (SF-425) are due no later than 30 days after the semi-annual reporting periods ending March 31 and September 30 for the cumulative project period of the award.
 - c. The SF-425 is required for any recipient using ASAP for payment. If converting to ASAP during the course of the Award, the SF-425 forms will be due as described above starting with the ASAP conversion date.
3. Federal Financial Report (SF-425) - (final report only)
 - a. A final comprehensive Federal Financial Report must be submitted within 120 days after the period of performance end date. Subrecipients must submit final reports to the pass-through entity, no later than 90 days after the period of performance end date. The recipient’s report shall cover the entire period of performance from the start date through the end date of the original award, or approved extended end date (e.g., no-cost extension or extension to the closeout period) of the award, and must include the cumulative total of indirect costs charged to the award. This final report must not be submitted until cash on hand is \$0. If necessary, reach out to your grants specialist for information on how to return funds if your organization has cash on hand at the end of closeout.

B. Performance Reports

The recipient will use NOAA's Grants Online system to submit Performance Progress Reports, required by 2 CFR §200.329 and Commerce Terms. The Grants Online System will notify your organization through email when performance progress reports are available for reporting and submission through NOAA Grants Online. Recipients are responsible for ensuring all personnel listed on an award have a current email address. The status of reports can be seen under "Progress Reports" under the Grant File.

To complete your report, login to NOAA Grants Online at <https://grantsonline.rdc.noaa.gov/>, search for the award and navigate to the Grants File overview page. Then find the report near the bottom of the page and click on the link to the report to complete it. Your organization must attach the report document for submission. The Federal Program Officer is the authority on the acceptable form and content of Project Progress Reports. For additional assistance with Grants Online, please review the Recipient Quick Reference Guide available at https://www.noaa.gov/sites/default/files/atoms/files/GrantRecipients_Quick_Ref_Guide.pdf. This site also has additional detailed recipient assistance material. If you are having problems with your access to Grants Online, please contact the Grants Online Help Desk at (240) 533-9533 or GrantsOnline.HelpDesk@noaa.gov.

1. Frequency: Performance reports are due on a semi-annual basis unless otherwise specified in a specific award condition, no later than 30 days following the end of each six (6) month period from the start date of the original award. The last semi-annual performance report is required. The final report, which summarizes activities conducted during the entire award, must be submitted within 120 days following the period of performance end date. Subrecipients must submit final reports to the pass-through entity, no later than 90 days after the period of performance end date.
2. For awards governed by the Federal-wide Research Terms and Conditions, recipients must complete the Research Performance Progress Report (RPPR). The Department of Commerce implemented a RPPR for research awards in accordance with the requirement for recipient submission of performance reports using OMB-approved government-wide standard information collections per 2 C.F.R. §200.329. The recipient must complete the RPPR directly in Grants Online. Also, the RPPR format and instructions are available at <https://www.commerce.gov/oam/policy/financial-assistance-policy>.

C. Property Reports and Disposition

Property records, including any documentation relating to disposition of property, required by 2 CFR §200.310-316, are to be submitted in NOAA's Grants Online System. The Tangible Personal Property Report (SF-428) and the Real Property Status Report (SF-429) should be included in documentation, as applicable. At the end of the period of performance, but no later than the closeout period, the recipient must report on property using the property forms (SF-428/SF-429 forms) located at <https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html#sortBy=1>. Such property shall include real property (§200.311), Federally-owned and exempt property (§200.312), equipment acquired with grant funds (§200.313), and residual inventory of unused supplies exceeding \$5,000 in total aggregate value (§200.314). The recipient must request property disposition instructions from NOAA. In addition, recipients may be required to submit annual reports on real property, per §200.330.

Research awards should also refer to the Federal-wide Research Terms and Conditions at <http://www.nsf.gov/awards/managing/rtc.jsp>.

D. Reporting Subawards and Executive Compensation

The recipient is reminded that the Commerce Terms require specified reporting regarding subawards and executive compensation, per the Federal Funding Accountability and Transparency Act (FFATA). This information is not reported through Grants Online. Follow reporting instructions in the Commerce Terms.

III. Scientific Integrity

A. General Guidelines

1. *Maintaining Integrity.* The non-Federal entity shall maintain the scientific integrity of research performed pursuant to this grant or financial assistance award including the prevention, detection, and remediation of any allegations regarding the violation of scientific integrity or scientific and research misconduct, and the conduct of inquiries, investigations, and adjudications of allegations of violations of scientific integrity or scientific and research misconduct. All the requirements of this provision flow down to subrecipients.
2. *Peer Review.* The peer review of the results of scientific activities under a NOAA grant, financial assistance award, or cooperative agreement shall be accomplished to ensure consistency with NOAA standards on quality, relevance, scientific integrity, reproducibility, transparency, and performance. NOAA will ensure that peer review of "influential scientific information" or "highly influential scientific assessments" is conducted in accordance with the Office of Management and Budget (OMB) Final Information Quality Bulletin for Peer Review and NOAA policies on peer review, such as the Information Quality Guidelines.
3. In performing or presenting the results of scientific activities under the NOAA grant, financial assistance award, or cooperative agreement and in responding to allegations regarding the violation of scientific integrity or scientific and research misconduct, the non-Federal entity and all subrecipients shall comply with the provisions herein and NOAA Administrative Order (NAO) 202-735D, Scientific Integrity, and its Procedural Handbook, including any amendments thereto. That Order can be found at <http://nrc.noaa.gov/ScientificIntegrityCommons.aspx>.
4. *Primary Responsibility.* The non-Federal entity shall have the primary responsibility to prevent, detect, and investigate allegations of a violation of scientific integrity or scientific and research misconduct. Unless otherwise instructed by the grants officer, the non-Federal entity shall promptly conduct an initial inquiry into any allegation of such misconduct and may rely on its internal policies and procedures, as appropriate, to do so.
5. By executing this grant, financial assistance award, or cooperative agreement the non-Federal entity provides its assurance that it has established an administrative process for performing an inquiry, investigating, and reporting allegations of a violation of scientific

integrity or scientific and research misconduct; and that it will comply with its own administrative process for performing an inquiry, investigation, and reporting of such misconduct.

6. The non-Federal entity shall insert this provision in all subawards at all tiers under this grant, financial assistance award, or cooperative agreement.

B. Investigating Scientific Integrity or Scientific and Research Misconduct

1. *Initiating Investigation.* If the non-Federal entity or subrecipient determines that there is sufficient evidence to proceed to an investigation, it shall notify the grants officer and, unless otherwise instructed, the non-Federal entity or subrecipient shall:
 - a. Promptly conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding regarding the violation of scientific integrity or scientific and research misconduct and an identification of appropriate remedies or a determination that no further action is warranted.
 - b. If the investigation leads to a finding regarding the violation of scientific integrity or scientific and research misconduct, obtain adjudication by a neutral third party adjudicator. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.
2. *Finalizing Investigation.* When the investigation is complete, the non-Federal entity shall forward to the grants officer a copy of the evidentiary record, the investigative report, any recommendations made to the non-Federal entity adjudicating official, the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response (if any).

C. Findings and Corrective Actions

If the non-Federal entity finds that scientific integrity has been violated or scientific and research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process and shall:

- a. Take all necessary corrective actions, which includes, but are not limited to, correcting the research record, and, as appropriate, imposing restrictions, controls, or other parameters on research in process or to be conducted in the future, and
- b. Coordinate remedial action with the grants officer.

IV. Data Sharing Directive

The Data and Publication Sharing Directive for NOAA Grants, Cooperative Agreements, and Contracts ensures that environmental data funded extramurally by NOAA are made publicly accessible in a timely fashion (typically within two years of collection), and that final manuscripts of peer-reviewed research papers are deposited with the NOAA Central Library (upon acceptance by the journal, or no later than at

time of publication). Therefore, non-Federal entities, or recipients, must make data produced under financial assistance publicly accessible in accordance with the Data Management Plan included with the Proposal, unless the grant program grants a modification or an exemption. The text of the Directive is available at <https://nosc.noaa.gov/EDMC/PD.DSP.php>.

1. **Data Sharing:** Environmental data collected or created under this Grant, Cooperative Agreement, or Contract must be made publicly visible and accessible in a timely manner, free of charge or at minimal cost that is no more than the cost of distribution to the user, except where limited by law, regulation, policy, or national security requirements. Data are to be made available in a form that would permit further analysis or reuse: data must be encoded in a machine-readable format, preferably using existing open format standards; data must be sufficiently documented, preferably using open metadata standards, to enable users to independently read and understand the data. The location (internet address) of the data should be included in the final report. Pursuant to NOAA Information Quality Guidelines,¹ data should undergo quality control (QC) and a description of the QC process and results should be referenced in the metadata.^{2,3}
2. **Timeliness:** Data accessibility must occur no later than publication of a peer-reviewed article based on the data, or two years after the data are collected and verified, or two years after the original end date of the grant (not including any extensions or follow-on funding), whichever is soonest, unless a delay has been authorized by the NOAA funding program.
3. **Disclaimer:** Data produced under this award and made available to the public must be accompanied by the following statement: "These data and related items of information have not been formally disseminated by NOAA, and do not represent any agency determination, view, or policy."
4. **Failure to Share Data:** Failing or delaying to make environmental data accessible in accordance with the submitted Data Management Plan, unless authorized by the NOAA Program, may lead to enforcement actions, and will be considered by NOAA when making future award decisions. Funding recipients are responsible for ensuring these conditions are also met by sub-recipients and subcontractors.
5. **Funding acknowledgement:** Federal funding sources shall be identified in all scholarly publications. An Acknowledgements section shall be included in the body of the publication stating the relevant Grant Programs and Award Numbers. In addition, funding sources shall be reported during the publication submission process using the FundRef mechanism (<http://www.crossref.org/fundref/>) if supported by the Publisher.
6. **Manuscript submission:** The final pre-publication manuscripts of scholarly publications produced with NOAA funding shall be submitted to the NOAA Institutional Repository at <https://repository.library.noaa.gov> after acceptance, and no later than upon publication, of the paper by a journal. NOAA will produce a publicly-visible catalog entry directing users to the published version of the article. After an embargo period of one year after publication, NOAA shall make the manuscript itself publicly visible, free of charge, while continuing to direct users to the published version of record.

7. **Data Citation:** Publications based on data, and new products derived from source data, must cite the data used according to the conventions of the Publisher, using unambiguous labels such as Digital Object Identifiers (DOIs). All data and derived products that are used to support the conclusions of a peer-reviewed publication must be made available in a form that permits verification and reproducibility of the results.

1 http://www.cio.noaa.gov/services_programs/IQ_Guidelines_103014.html

2 Failure to perform quality control does not constitute an excuse not to share data.

3 Data without QC are considered "experimental products" and their dissemination must be accompanied by explicit limitations on their quality or by an indicated degree of uncertainty.

V. Post Award Actions Requests

Grants Online provides the ability for recipients to submit post award action requests. The Department of Commerce requires that post award action requests be approved by an Authorized Representative. Grants Online enforces this business rule by routing all post award action requests through the recipient organizations Authorized Representative(s). Recipients must follow the guidance provided in Grants Online at https://www.noaa.gov/sites/default/files/atoms/files/Recipient_AAR_Help_0.pdf.

Per 2 CFR §200.332, recipients/pass through entities (PTEs) are given the authority to impose additional restrictions on subrecipients in order for the recipient/PTE to meet its own responsibility to the Federal awarding agency. Recipients/PTEs may, at their discretion, opt to restrict the waived prior approvals identified in the Research Terms, if applicable, to their subrecipients. Recipients/PTEs should identify the applicable prior approval terms in their own subaward agreements.

VI. Negotiated Indirect Cost Rate Agreements

This term supplements the Commerce Terms. Recipients must submit new or updated Negotiated Indirect Cost Rate Agreements (NICRA) to the NOAA Grants Office, when applicable. NICRAs can be submitted to the NOAA Grants Office through an email to the assigned Grants Specialist and Grants Officer for recordkeeping.

If NOAA is your organization's cognizant agency the applicant may contact the NOAA Grants Office if they wish to establish an agreement, if an applicant has not previously established an indirect cost rate agreement with a Federal agency. The negotiation and approval of a rate is subject to the procedures required by NOAA and the Commerce Terms. Per the 2 CFR 200 revisions effective as of November 12, 2020, any recipient that does not have a current negotiated (including provisional) rate, except for those recipients described in 2 CFR 200, Appendix VII, paragraph D.1.b., may opt to use the de minimis indirect cost rate of 10% of Modified Total Direct Cost (as allowable under 2 CFR §200.414). Also, NOAA may permit the recipient to use its last expired approved rate along with acknowledgment from their cognizant agency that their new indirect cost proposal has been received.

VII. Research Terms and Conditions

For awards designated on the CD-450 as Research, the Commerce Terms, and the Federal-wide Research Terms and Conditions (Research Terms) as implemented by the Department of Commerce, currently at <https://www.nsf.gov/awards/managing/rtc.jsp>, both apply to the award. The Commerce Terms and the Research Terms are generally intended to harmonize with each other; however, where the Commerce Terms and the Research Terms differ in a Research award, the Research Terms prevail, unless otherwise indicated in a specific award condition.

VIII. Audit Findings Follow-up and Corrective Action

In accordance with 2 C.F.R. §200.511 and the Commerce Terms, an auditee is responsible for follow-up and corrective action on all audit findings. For information on the summary of prior year audit findings and the corrective action plan, please also refer to §200.511(b) (1) (2), and (3) (i) (ii) (iii), and refer to §200.516 Audit findings, paragraph (c).

Paragraph (c) Corrective action plan of 2 C.F.R. §200.511 Audit Findings Follow-up, further states that at the completion of the audit, the auditee must prepare a corrective action plan to address each audit finding included in the current year auditor's reports. As defined in 2 CFR Part 200, a corrective action means action taken by the auditee that: (a) Corrects identified deficiencies; (b) Produces recommended improvements; or (c) Demonstrates that audit findings are either invalid or do not warrant auditee action. The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.

NOAA as the cognizant, oversight, or Federal awarding agency of the auditee is responsible for follow-up on audit findings to ensure that the auditee takes appropriate and timely corrective action. As part of audit follow-up, NOAA must: (i) issue a management decision as prescribed in §200.521 Management decision; and (ii) monitor the recipient taking appropriate and timely corrective action. For additional information on applicable Federal agency responsibilities of NOAA for follow-up with corrective actions, see §200.513 Responsibilities.

IX. Audit Resolution

Recipients that expend \$750,000 or more in Federal funds during the recipient's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with §200.501. As provided in §200.513, a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to recipients.

As further prescribed in DOC's Departmental Administrative Order (DAO) 213-5 and 2 C.F.R. Part 200 Subpart F, Department and operating unit personnel shall act promptly to resolve both the financial and nonfinancial issues identified in an audit report. Comments, arguments, and evidence (if any) submitted by the auditee and the operating unit shall be considered in resolving the findings. A DOC decision on the resolution of audit findings and recommendations will be made in accordance with the procedures and within the specified time frames identified in DAO 213-5.

The audit action official shall issue the Management Decision and Audit Resolution Determination. The Management Decision and Audit Resolution Determination will be maintained in the official grant file and a copy will be forwarded to the Program Officer.

Recipients are afforded the opportunity to appeal the Audit Resolution Determination. The appeal process is the last opportunity for auditees to provide evidence to support their disputes. NOAA will not accept any submission from a recipient regarding an appeal after the established deadline, unless requested by the Grants Officer, the Office of Inspector General, or the Office of the General Counsel. After the Department renders a decision on an appeal, there are no other administrative appeals available.

An audit of the award may result in the disallowance of costs incurred by the recipient and the establishment of a debt (account receivable) due to DOC.

Recipients are responsible for the repayment of audit-related debts and for the collection of audit-related debts from their sub recipients where an audit has determined funds are owed. This does not relieve the recipient of liability for the debt.

X. NOAA Sexual Assault and Sexual Harassment Prevention and Response Policy

1. NOAA requires organizations receiving federal assistance to report findings of sexual harassment, or any other kind of harassment, regarding a Principal Investigator (PI), co-PI, or any other key personnel in the award. The recipient must report to the NOAA Grants Officer and Program Officer if the PI, co-PI, or other key personnel are placed on administrative leave relating to a harassment finding or investigation. NOAA may take unilateral action as necessary to protect the safety of all personnel on a project supported by financial assistance, to include suspending or terminating an award or requiring a recipient to replace or remove personnel.

If the award involves the use of NOAA-operated facilities and/or vessels, the recipient must adhere to the following specific requirements:

- Financial assistance awards involving the use of NOAA operated-facilities: [NOAA Sexual Assault and Sexual Harassment Prevention and Response Policy Applicable to Financial Assistance Awards Involving NOAA-Operated Facilities \(May 2018\)](#)
- Financial assistance awards involving the use of vessels: [NOAA Sexual Assault and Sexual Harassment Prevention and Response Policy Applicable to Financial Assistance Awards Involving the Use of a Vessel\(s\) under NOAA Contract, Order, Grant, or Cooperative Agreement \(May 2018\)](#)

Direct links to the requirements for awards involving the use of NOAA operated-facilities and/or vessels may be found at <https://www.noaa.gov/organization/acquisition-grants/noaa-workplace-harassment-training-for-contractors-and-financial>. Note that these policies include required training.

2. NOAA expects all financial assistance recipients to establish and maintain clear and unambiguous standards of behavior to ensure harassment free workplaces wherever NOAA grant or cooperative agreement work is conducted, including notification pathways for all personnel, including students, on the awards. This expectation includes activities at all on- and offsite facilities and during conferences and workshops. All such settings should have accessible and evident means for reporting violations and recipients should exercise due diligence with timely investigations of allegations and corrective actions.

3. The NOAA Workplace Violence Prevention and Response Program (WVPR) works to establish a culture of professionalism and respect through violence prevention and response; education and training; victim support; reporting procedures and appropriate accountability that enhances the safety and well-being of all NOAA employees, affiliates, and visitors. Please visit <https://www.noaa.gov/workplace-violence-prevention-response-program> for more information.

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE
STANDARD TERMS AND CONDITIONS



12 November 2020

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS

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PREFACE

This document sets out the standard terms and conditions (ST&Cs) applicable to this U.S. Department of Commerce (DOC or Commerce) financial assistance award (hereinafter referred to as the DOC ST&Cs or Standard Terms). A non-Federal entity¹ receiving a DOC financial assistance award must, in addition to the assurances made as part of the application, comply and require each of its subrecipients, contractors, and subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders (E.O.s), Office of Management and Budget (OMB) circulars, provisions of the OMB *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (codified at 2 C.F.R. Part 200) (OMB Uniform Guidance), provisions of these Standard Terms, and any other terms and conditions incorporated into this DOC financial assistance award. In addition, unless otherwise provided by the terms and conditions of this DOC financial assistance award, Subparts A through E of 2 C.F.R. Part 200 and the Standard Terms are applicable to for-profit entities, foreign public entities and to foreign organizations that carry out a DOC financial assistance award.²

This award is subject to the laws and regulations of the United States. Any inconsistency or conflict in terms and conditions specified in the award will be resolved according to the following order of precedence: federal laws and regulations, applicable notices published in the *Federal Register*, E.O.s, OMB circulars, DOC ST&Cs, agency standard award conditions (if any), and specific award conditions. A specific award condition may amend or take precedence over a Standard Term on a case-by-case basis, when indicated by the specific award condition.

Some of the Standard Terms herein contain, by reference or substance, a summary of the pertinent statutes, regulations published in the *Federal Register* or Code of Federal Regulations (C.F.R.), E.O.s, OMB circulars, or the certifications and assurances provided by applicants through Standard Forms (*e.g.*, SF-424s) or through DOC forms (*e.g.* Form CD-511). To the extent that it is a summary, such Standard Term provision is not in derogation of, or an amendment to, any such statute, regulation, E.O., OMB circular, certification, or assurance.

¹ Note that the OMB Uniform Guidance uses the term “non-Federal entity” to generally refer to an entity that carries out a Federal award as a recipient or subrecipient. Because some of the provisions of these DOC ST&Cs apply to recipients rather than subrecipients, or vice versa, for clarity, these DOC ST&Cs use the terms “non-Federal entity,” “recipient,” and “subrecipient” consistent with their meanings in the OMB Uniform Guidance. In addition, the OMB Uniform Guidance uses the term “pass-through entity” to refer to a non-Federal entity that makes a subaward. As defined at 2 C.F.R. § 200.1:

“Non-Federal entity” is “a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.”

“Recipient” is “an entity, usually but not limited to non-Federal entities, that receives a Federal award directly from a Federal awarding agency. The term recipient does not include subrecipients or individuals that are beneficiaries of the award.”

“Subrecipient” is “an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.”

“Pass-through entity” is “a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.”

² See 2 C.F.R. § 200.1 for the definitions of “foreign public entity” and “foreign organization.”

DOC commenced implementation of the Research Terms and Conditions (RT&Cs) for Federal awards effective October 1, 2017; the RT&Cs address and implement the Uniform Guidance issued by OMB. For awards designated on the Form CD-450 (Financial Assistance Award) as Research, both the DOC ST&Cs and the RT&Cs as implemented by DOC apply to the award. The RT&Cs as well as the DOC implementation statement, agency specific requirements, prior approval matrix, subaward requirements, and national policy requirements are posted on the National Science Foundation's website – <https://www.nsf.gov/awards/managing/rtc.jsp>. The DOC ST&Cs and the RT&Cs are generally intended to harmonize with each other; however, where the DOC ST&Cs and the RT&Cs differ in a Research award, the RT&Cs prevail, unless otherwise indicated in a specific award condition.

A. PROGRAMMATIC REQUIREMENTS

.01 Reporting Requirements

a. Recipients must submit all reports as required by DOC, electronically or, if unable to submit electronically, in hard copy, as outlined below and as may be supplemented by the terms and conditions of a specific DOC award.

b. Performance (Technical) Reports. Recipients must submit performance (technical) reports to the Program Officer. Performance (technical) reports should be submitted in the same frequency as the Form SF-425 (Federal Financial Report), unless otherwise directed by the Grants Officer.

1. Performance (technical) reports must contain the information prescribed in 2 C.F.R. § 200.329 (Monitoring and reporting program performance), unless otherwise specified in the award conditions.

2. As appropriate and in accordance with the format provided by the Program Officer (or other OMB-approved information collections, including the Research Program Performance Report [RPPR] as adopted by DOC for use in research awards), recipients are required to relate financial data to the performance accomplishments of this Federal award. When applicable, recipients must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). The recipient's performance will be measured in a way that will help DOC to improve program outcomes, share lessons learned, and spread the adoption of best or promising practices. As described in 2 C.F.R. § 200.211 (Information contained in a Federal award), DOC will identify the timing and scope of expected performance by the recipient as related to the outcomes intended to be achieved by the Federal program.

3. Recipients (or pass-through entities as applicable) must submit a final performance report within 120 calendar days after the expiration of the period of performance. The subrecipient is required to submit its final performance report to the pass-through entity within 90 calendar days unless an extension has been granted.

c. Financial Reports. In accordance with 2 C.F.R. § 200.328 (Financial reporting), the recipient must submit a Form SF-425 (Federal Financial Report) or any successor form on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a specific award condition. Reports must be submitted to DOC as directed by the Grants Officer, in accordance with the award conditions and are due no later than 30 calendar days following the end of each reporting period. Recipients (or pass-through entities as applicable) must submit a final Form SF-425 within 120 calendar days after the expiration of the period of performance. The subrecipient is required to submit its financial report to the pass-through entity within 90 calendar days unless an extension has been granted. A recipient may submit a final financial report in lieu of an interim financial report due at the end of the period of performance (e.g., in lieu of submitting a financial report for the last semi-annual or other reporting under an award, a recipient may submit a final (cumulative) financial report covering the entire award period).

d. Real Property, Tangible Personal Property and Intangible Property Reports and Requests for Dispositions. Unless otherwise required by the terms and conditions of a DOC financial assistance award, where real property, tangible personal property or intangible property is acquired or improved (in the case of real property or tangible personal property), or produced or acquired (in the case of intangible property), pursuant to a DOC award, non-Federal entities are required to submit the following real property, tangible personal property and intangible property reports (as appropriate):

1. Real Property Status Reports and Requests for Dispositions: Non-Federal entities must submit reports using Form SF-429 (Real Property Status Report) or any successor form, including appropriate attachments thereto, at least annually disclosing the status of real property that is Federally-owned property or real property in which the Federal Government retains a Federal Interest, unless the Federal Interest in the real property extends 15 years or longer. In cases where the Federal Interest attached is for a period of 15 years or more, the DOC or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or, the DOC or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years). In addition, DOC or a pass-through entity may require a non-Federal entity to submit Form SF-429, with appropriate attachments, relating to a non-Federal entity's request to acquire, improve or contribute real property under a DOC financial assistance award. Non-Federal entities wishing to dispose of real property acquired or improved, in whole or in part, pursuant to a DOC award must request disposition instructions, including the submission of Form SF-429, with appropriate attachments, from the Grants Officer in accordance with the requirements set forth in 2 C.F.R. § 200.311(c). *See also* the real property standards set forth in Section C. of these Standard Terms (Property Standards).
2. Tangible Personal Property Status Reports and Requests for Dispositions: DOC or a pass-through entity may also require a non-Federal entity to submit periodic reports using Form SF-428 (Tangible Personal Property Report) or any successor form, including appropriate attachments thereto, concerning tangible personal property that is Federally-owned or tangible personal property in which the Federal Government retains an interest. In

addition, DOC or a pass-through entity may require a non-Federal entity to submit Form SF-428 in connection with a non-Federal entity's request to dispose of tangible personal property acquired under a DOC financial assistance award. Non-Federal entities wishing to dispose of tangible personal property acquired or improved, in whole or in part, pursuant to a DOC award must request disposition instructions, including the submission of Form SF-428, with appropriate attachments, from the Grants Officer in accordance with the requirements set forth in 2 C.F.R. § 200.313(e). *See also* the tangible property standards set forth in Section C. of these Standard Terms (Property Standards).

3. Intangible Property Status Reports and Requests for Dispositions: The specific requirements governing the development, reporting, and disposition of rights to intangible property, including inventions and patents resulting from DOC awards, are set forth in 37 C.F.R. Part 401, which is hereby incorporated by reference into this award. Non-Federal entities are required to submit their disclosures, elections, and requests for waiver from any requirement for substantial U.S. manufacture, electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. Non-Federal entities may obtain a waiver of this electronic submission requirement by providing to the Grants Officer compelling reasons for allowing the submission of paper reports. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in 2 C.F.R. § 200.313(e). *See also* the intangible property standards set forth in Section C. of these Standard Terms (Property Standards).

e. Subawards and Executive Compensation Reports. For reporting requirements on subawards and Executive Compensation, see paragraph G.05.o of these Standard Terms (The Federal Funding Accountability and Transparency Act (FFATA) (31 U.S.C. § 6101 note)).

f. Recipient Integrity and Performance Matters. For reporting requirements pertaining to integrity and performance matters, see paragraph G.05.p of these Standard Terms (Recipient Integrity and Performance Matters (Appendix XII to 2 C.F.R. Part 200)).

g. Research Performance Progress Reports. All research awards shall submit the Research Performance Progress Report (RPPR) in accordance with instructions set forth in the following link: [RPPR Instructions](#).

.02 Revisions of Program Plans

In accordance with 2 C.F.R. § 200.308 (Revision of budget and program plans) and 2 C.F.R. § 200.407 (Prior written approval (prior approval)), the recipient must obtain prior written approval from the DOC Grants Officer for certain proposed programmatic change requests, unless otherwise provided by the terms and conditions of a DOC award. Requests for prior approval for changes to program plans must be submitted to the Federal Program Officer (or electronically for awards administered through Grants Online). Requests requiring prior DOC approval are not effective unless and until approved in writing by the DOC Grants Officer.

.03 Other Federal Awards with Similar Programmatic Activities

The recipient must immediately provide written notification to the DOC Program Officer and the DOC Grants Officer if, subsequent to receipt of the DOC award, other financial assistance is received to support or fund any portion of the scope of work incorporated into the DOC award. DOC will not pay for costs that are funded by other sources.

.04 Prohibition against Assignment by a Non-Federal Entity

A non-Federal entity must not transfer, pledge, mortgage, assign, encumber or hypothecate a DOC financial assistance award or subaward, or any rights to, interests therein or claims arising thereunder, to any party or parties, including but not limited to banks, trust companies, other financing or financial institutions, or any other public or private organizations or individuals without the express prior written approval of the DOC Grants Officer or the pass-through entity (which, in turn, may need to obtain prior approval from the DOC Grants Officer).

.05 Disclaimer Provisions

a. The United States expressly disclaims all responsibility or liability to the non-Federal entity or third persons (including but not limited to contractors) for the actions of the non-Federal entity or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any subaward, contract, or subcontract under this award.

b. The acceptance of this award or any subaward by the non-Federal entity does not in any way constitute an agency relationship between the United States and the non-Federal entity or the non-Federal entity's contractors or subcontractors.

.06 Unsatisfactory Performance or Non-Compliance with Award Provisions

a. Failure to perform the work in accordance with the terms of the award and maintain satisfactory performance as determined by DOC may result in the imposition of additional award conditions pursuant to 2 C.F.R. § 200.208 (Specific conditions) or other appropriate enforcement action as specified in 2 C.F.R. § 200.339 (Remedies for noncompliance).

b. Failure to comply with the provisions of an award will be considered grounds for appropriate enforcement action pursuant to 2 C.F.R. § 200.339 (Remedies for noncompliance), including but not limited to: the imposition of additional award conditions in accordance with 2 C.F.R. § 200.208 (Specific conditions); temporarily withholding award payments pending the correction of the deficiency; changing the payment method to reimbursement only; the disallowance of award costs and the establishment of an accounts receivable; wholly or partially suspending or terminating an award; initiating suspension or debarment proceedings in accordance with 2 C.F.R. Parts 180 and 1326; and such other remedies as may be legally available.

c. 2 C.F.R. §§ 200.340 (Termination) through 200.343 (Effects of suspension and termination) apply to an award that is terminated prior to the end of the period of performance

due to the non-federal entity's material failure to comply with the award terms and conditions. In addition, the failure to comply with the provisions of a DOC award may adversely impact the availability of funding under other active DOC or Federal awards and may also have a negative impact on a non-Federal entity's eligibility for future DOC or Federal awards.

B. FINANCIAL REQUIREMENTS

.01 Financial Management

a. In accordance with 2 C.F.R. § 200.302(a) (Financial Management), each State must expend and account for the Federal award in accordance with State laws and procedures for expending and accounting for the State's own funds. In addition, the State's and any other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used in accordance with Federal statutes, regulations, and the terms and conditions applicable to the Federal award. *See also* 2 C.F.R. § 200.450 (Lobbying) for additional management requirements to verify that Federal funds are not used for unallowable lobbying costs.

b. The financial management system of each non-Federal entity must provide all information required by 2 C.F.R. § 200.302(b). *See also* 2 C.F.R. §§ 200.334 (Retention requirements for records); 200.335 (Requests for transfer of records); 200.336 (Methods for collection, transmission and storage of information); 200.337 (Access to records); and 200.338 (Restrictions on public access to records).

.02 Award Payments

a. Consistent with 2 C.F.R. § 200.305(a) (Federal payment), for States, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 C.F.R. Part 205 (Rules and Procedures for Efficient Federal-State Funds Transfers) and Treasury Financial Manual Volume I, 4A-2000 (Overall Disbursing Rules for All Federal Agencies).

b. Consistent with 2 C.F.R. § 200.305(b), for non-Federal entities other than States, payment methods must minimize the amount of time elapsing between the transfer of funds from the U.S. Treasury or the pass-through entity and the disbursement by the non-Federal entity.

1. The Grants Officer determines the appropriate method of payment and, unless otherwise stated in a specific award condition, the advance method of payment must be authorized. Advances must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. Unless otherwise provided by the terms and conditions of a DOC award, non-Federal entities must time advance payment requests so that Federal funds are on hand for a maximum of 30 calendar days before being disbursed by the

non-Federal entity for allowable award costs.

2. If a non-Federal entity demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity or if a non-Federal entity otherwise fails to continue to qualify for the advance method of payment, the Grants Officer or the pass-through entity may change the method of payment to reimbursement only.

c. Unless otherwise provided for in the award terms, payments from DOC to recipients under this award will be made using the Department of Treasury's Automated Standard Application for Payment (ASAP) system. Under the ASAP system, payments are made through preauthorized electronic funds transfers directly to the recipient's bank account, in accordance with the requirements of the Debt Collection Improvement Act of 1996. To receive payments under ASAP, recipients are required to enroll with the Department of Treasury, Financial Management Service, Regional Financial Centers, which allows them to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. The following information will be required to make withdrawals under ASAP:

1. ASAP account number – the Federal award identification number found on the cover sheet of the award;
2. Agency Location Code (ALC); and
3. Region Code.

d. Recipients enrolled in the ASAP system do not need to submit a Form SF-270 (Request for Advance or Reimbursement) for payments relating to their award. Awards paid under the ASAP system will contain a specific award condition, clause, or provision describing enrollment requirements and any controls or withdrawal limits set in the ASAP system.

e. When the Form SF-270 or successor form is used to request payment, the recipient must submit the request no more than monthly, and advances must be approved for periods to cover only expenses reasonably anticipated over the next 30 calendar days. Prior to receiving payments via the Form SF-270, the recipient must complete and submit to the Grants Officer the Form SF-3881 (ACH Vendor Miscellaneous Payment Enrollment Form) or successor form along with the initial Form SF-270. Form SF-3881 enrollment must be completed before the first award payment can be made via a Form SF-270 request.

f. The Federal award identification number must be included on all payment-related correspondence, information, and forms.

g. Non-Federal entities receiving advance award payments must adhere to the depository requirements set forth in 2 C.F.R. §§ 200.305(b)(7) through (b)(11). Interest amounts up to \$500 per non-Federal entity's fiscal year may be retained by the non-Federal entity for administrative expenses.

.03 Federal and Non-Federal Sharing

a. Awards that include Federal and non-Federal sharing incorporate a budget consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares must be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs exceed the total approved budget, the Federal share must not exceed the total Federal dollar amount authorized by the award.

b. The non-Federal share, whether in cash or third-party in-kind contributions, is to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or third-party in-kind contributions. In any case, the recipient must meet its cost share commitment as set forth in the terms and conditions of the award; failure to do so may result in the assignment of specific award conditions or other further action as specified in Standard Term A.06 (Unsatisfactory Performance or Non-Compliance with Award Provisions). The non-Federal entity must create and maintain sufficient records justifying all non-Federal sharing requirements to facilitate questions and audits; see Section D of these Standard Terms (Audits), for audit requirements. *See* 2 C.F.R. § 200.306 for additional requirements regarding cost sharing.

.04 Budget Changes and Transfer of Funds among Categories

a. Recipients are required to report deviations from the approved award budget and request prior written approval from DOC in accordance with 2 C.F.R. § 200.308 (Revision of budget and program plans) and 2 C.F.R. § 200.407 (Prior written approval (prior approval)). Requests for such budget changes must be submitted to the Grants Officer (or electronically for awards serviced through Grants Online) who will notify the recipient of the final determination in writing. Requests requiring prior DOC approval do not become effective unless and until approved in writing by the DOC Grants Officer.

b. In accordance with 2 C.F.R. § 200.308(f), transfers of funds by the recipient among direct cost categories are permitted for awards in which the Federal share of the project is equal to or less than the simplified acquisition threshold. For awards in which the Federal share of the project exceeds the simplified acquisition threshold, transfers of funds among direct cost categories must be approved in writing by the Grants Officer when the cumulative amount of such direct costs transfers exceeds 10 percent of the total budget as last approved by the Grants Officer. The 10 percent threshold applies to the total Federal and non-Federal funds authorized by the Grants Officer at the time of the transfer request. This is the accumulated amount of Federal funding obligated to date by the Grants Officer along with any non-Federal share. The same requirements apply to the cumulative amount of transfer of funds among programs, functions, and activities. This transfer authority does not authorize the recipient to create new budget categories within an approved budget without Grants Officer approval. Any transfer that causes any Federal appropriation, or part thereof, to be used for an unauthorized purpose is not and will not be permitted. In addition, this provision does not prohibit the recipient from requesting Grants Officer approval for revisions to the budget. *See* 2 C.F.R. § 200.308 (Revision

of budget and program plans) (as applicable) for specific requirements concerning budget revisions and transfer of funds between budget categories.

.05 Program Income

Unless otherwise indicated in the award terms, program income may be used for any required cost sharing or added to the project budget, consistent with 2 C.F.R. § 200.307 (Program income).

.06 Indirect or Facilities and Administrative Costs

a. Indirect costs (or facilities and administration costs (F&A)) for major institutions of higher education and major nonprofit organizations can generally be defined as costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. Indirect costs will not be allowable charges against an award unless permitted under the award and specifically included as a line item in the award's approved budget.

b. Unrecovered indirect costs, including unrecovered indirect costs on cost sharing or matching, may be included as part of cost sharing or matching as allowed under 2 C.F.R. § 200.306(c) (Cost sharing or matching) or the terms and conditions of a DOC award.

c. Cognizant Agency for Indirect (F&A) Costs. OMB established the cognizant agency concept, under which a single agency represents all others in dealing with non-Federal entities in common areas. The cognizant agency for indirect costs reviews and approves non-Federal entities' indirect cost rates. In accordance with Appendices III – VII to 2 C.F.R. Part 200 the cognizant agency for indirect costs reviews and approves non-Federal entities' indirect cost rates. With respect to for-profit organizations, the term cognizant Federal agency generally is defined as the agency that provides the largest dollar amount of negotiated contracts, including options. *See* 48 C.F.R. § 42.003. If the only Federal funds received by a commercial organization are DOC award funds, then DOC becomes the cognizant Federal agency for indirect cost negotiations.

1. General Review Procedures Where DOC is the Cognizant Agency.

i. Within 90 calendar days of the award start date, the recipient must submit to the Grants Officer any documentation (indirect cost proposal, cost allocation plan, etc.) necessary to allow DOC to perform the indirect cost rate proposal review. Below are two sources available for guidance on how to put an indirect cost plan together:

- (A) Department of Labor: <https://www.dol.gov/oasam/boc/dcd/np-comm-guide.htm>
or
- (B) Department of the Interior: <https://www.doi.gov/ibc/services/finance/indirect-Cost-Services/>.

ii. The recipient may use the rate proposed in the indirect cost plan as a provisional rate until the DOC provides a response to the submitted plan.

iii. The recipient is required to annually submit indirect cost proposals no later than six months after the recipient's fiscal year end, except as otherwise provided by 2 C.F.R. § 200.414(g).

2. When DOC is not the oversight or cognizant Federal agency, the recipient must provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement within 30 calendar days of receipt of a negotiated rate agreement or submission of a negotiated rate proposal.

3. If the recipient is proposing indirect costs as part of a project budget, but is not required to have a negotiated rate agreement pursuant to 2 C.F.R. Part 200, Appendix VII, Paragraph D.1.b (*i.e.*, a governmental department or agency that receives \$35 million or less in direct Federal funding), the recipient may be required to provide the Grants Officer with a copy of its Certificate of Indirect Costs as referenced in 2 C.F.R. Part 200, Appendix VII, Paragraph D.3. or such other documentation, acceptable in form and substance to the Grants Officer, sufficient to confirm that proposed indirect costs are calculated and supported by documentation in accordance with 2 C.F.R. Part 200, Appendix VII. In cases where the DOC is the recipient's cognizant Federal agency, the DOC reserves the right, pursuant to 2 C.F.R. Part 200, Appendix VII, Paragraph D.1.b, to require the recipient to submit its indirect cost rate proposal for review by DOC.

d. If the recipient fails to submit required documentation to DOC within 90 calendar days of the award start date, the Grants Officer may amend the award to preclude the recovery of any indirect costs under the award. If the DOC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the recipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.

e. The maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient is the lesser of:

1. The line item amount for the Federal share of indirect costs contained in the approved award budget, including all budget revisions approved in writing by the Grants Officer; or

2. The Federal share of the total indirect costs allocable to the award based on the indirect cost rate approved by the cognizant agency for indirect costs and applicable to the period in which the cost was incurred, in accordance with 2 C.F.R. 200 Appendix III, C.7, provided that the rate is approved on or before the award end date.

f. In accordance with 2 CFR § 200.414(c)(3), DOC set forth policies, procedures, and general decision-making criteria for deviations from negotiated indirect cost rates. These policies and procedures are applicable to all Federal financial assistance programs awarded and administered by DOC bureaus as Federal awarding agencies and may be found at http://www.osec.doc.gov/oam/grants_management/policy/documents/FAM%202015-02.pdf.

g. In accordance with 2 CFR § 200.414(g), any non-Federal entity that has a negotiated indirect cost rate may apply to the entity's cognizant agency for indirect costs for a one-time extension of a currently negotiated indirect cost rate for a period of up to four years, reducing the frequency of rate calculations and negotiations between an institution and its cognizant agency.

h. In accordance with 2 CFR § 200.414(f), any non-Federal entity that does not have a current negotiated (including provisional) rate, except for those non-Federal entities described in paragraph D.1.b of Appendix VII to 2 CFR Part 200, may elect to charge a de minimis rate of 10 percent of modified total direct costs. No documentation is required to justify the 10 percent de minimis indirect cost rate.

.07 Incurring Costs or Obligating Federal Funds Before and After the Period of Performance

a. In accordance with 2 C.F.R. § 200.309 (Modifications to Period of Performance) and the terms and conditions of a DOC award, a non-Federal entity may charge to the Federal award only allowable costs incurred during the period of performance, which is established in the award document. As defined at 2 C.F.R. § 200.1, the "period of performance" means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. Identification of the Period of Performance in the Federal award per § 200.211(b)(5) does not commit the awarding agency to fund the award beyond the currently approved budget period." The period of performance may sometimes be referred to as the project period or award period. This Standard Term is subject to exceptions for allowable costs pertaining to: (i) pre-award costs (*see* 2 C.F.R. § 200.458); (ii) publication and printing costs (*see* 2 C.F.R. § 200.461); and administrative costs incurred relating to the close-out of an award (*see* 2 C.F.R. § 200.344).

b. Reasonable, necessary, allowable and allocable administrative award closeout costs are authorized for a period of up to 120 calendar days following the end of the period of performance. For this purpose, award closeout costs are those strictly associated with close-out activities and are typically limited to the preparation of final progress, financial, and required project audit reports, unless otherwise approved in writing by the Grants Officer. A non-Federal entity may request an extension of the 120-day closeout period, as provided in 2 C.F.R. § 200.344 (Closeout).

c. Unless authorized by a specific award condition, any extension of the period of performance may only be authorized by the Grants Officer in writing. This is not a delegable authority. Verbal or written assurances of funding from anyone other than the Grants Officer does not constitute authority to obligate funds for programmatic activities beyond the end of the period of performance.

d. The DOC has no obligation to provide any additional prospective funding. Any amendment of the award to increase funding and to extend the period of performance is at the sole discretion of DOC.

.08 Tax Refunds

The non-Federal entity shall contact the Grants Officer immediately upon receipt of the refund of any taxes, including but not limited to Federal Insurance Contributions Act (FICA) taxes, Federal Unemployment Tax Act (FUTA) taxes, or Value Added Taxes (VAT) that were allowed as charges to a DOC award, regardless of whether such refunds are received by the non-Federal entity during or after the period of performance. The Grants Officer will provide written disposition instructions to the non-Federal entity, which may include the refunded taxes being credited to the award as either a cost reduction or a cash refund, or may allow the non-Federal entity to use such refunds for approved activities and costs under a DOC award. *See* 2 C.F.R. § 200.470 (Taxes (including Value Added Tax)).

.09 Internal Controls

Each recipient must comply with standards for internal controls described at 2 C.F.R. § 200.303 (Internal controls). The “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States referenced in § 200.303 are available online at <http://www.gao.gov/assets/80/76455.pdf> and the “Internal Control Integrated Framework” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) is available online at [Internal Control Guidance](#).

C. PROPERTY STANDARDS

.01 Standards

Each non-Federal entity must comply with the Property Standards set forth in 2 C.F.R. §§ 200.310 (Insurance coverage) through 200.316 (Property trust relationship).

.02 Real and Personal Property

a. In accordance with 2 C.F.R. § 200.316 (Property trust relationship), real property, equipment, and other personal property acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. This trust relationship exists throughout the duration of the property’s estimated useful life, as determined by the Grants Officer in consultation with the Program Office, during which time the Federal Government retains an undivided, equitable reversionary interest in the property (Federal Interest). During the duration of the Federal Interest, the non-Federal entity must comply with all use and disposition requirements and restrictions as set forth in 2 C.F.R. §§ 200.310 (Insurance coverage) through 200.316 (Property trust relationship), as applicable, and in the terms and conditions of the Federal award.

b. The Grants Officer may require a non-Federal entity to execute and to record (as applicable) a statement of interest, financing statement (form UCC-1), lien, mortgage or other public notice of record to indicate that real or personal property acquired or improved in whole or in part with Federal funds is subject to the Federal Interest, and that certain use and disposition

requirements apply to the property. The statement of interest, financing statement (Form UCC 1), lien, mortgage or other public notice must be acceptable in form and substance to the DOC and must be placed on record in accordance with applicable State and local law, with continuances re-filed as appropriate. In such cases, the Grants Officer may further require the non-Federal entity to provide the DOC with a written statement from a licensed attorney in the jurisdiction where the property is located, certifying that the Federal Interest has been protected, as required under the award and in accordance with applicable State and local law. The attorney's statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, must be returned to the Grants Officer. Without releasing or excusing the non-Federal entity from these obligations, the non-Federal entity, by execution of the financial assistance award or by expending Federal financial assistance funds (in the case of a subrecipient), authorizes the Grants Officer and/or program office to file such notices and continuations as it determines to be necessary or convenient to disclose and protect the Federal Interest in the property. The Grants Officer may elect not to release any or a portion of the Federal award funds until the non-Federal entity has complied with this provision and any other applicable award terms or conditions, unless other arrangements satisfactory to the Grants Officer are made.

.03 Intellectual Property Rights

a. General. The rights to any work or other intangible property produced or acquired under a Federal award are determined by 2 C.F.R. § 200.315 (Intangible property). The non-Federal entity owns any work produced or purchased under a Federal award subject to the DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use the work or authorize others to receive, reproduce, publish, or otherwise use the work for Government purposes.

b. Inventions. Unless otherwise provided by law, the rights to any invention made by a non-Federal entity under a DOC financial assistance award are determined by the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and as codified in 35 U.S.C. § 200 *et seq.*, and modified by E.O. 12591 (52 FR 13414), as amended by E.O. 12618 (52 FR 48661). 35 U.S.C. § 201(h) defines "small business firm" as "a small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration." Section 1(b)(4) of E.O. 12591 extended the Bayh-Dole Act to non-Federal entities "regardless of size" to the extent permitted by law. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from Federal awards are described in more detail in 37 C.F.R. Part 401, which implements 35 U.S.C. 202 through 204 and includes standard patent rights clauses in 37 C.F.R. § 401.14, which is hereby incorporated by reference into this award.

The Bayh-Dole regulations set forth in 37 C.F.R. parts 401 and 404 were amended by 83 FR 15954, with an effective date of May 14, 2018 (Amended Bayh-Dole Regulations). The Amended Bayh-Dole Regulations apply to all new financial assistance awards issued on or after May 14, 2018. The Amended Bayh-Dole Regulations do not apply to financial assistance awards issued prior to May 14, 2018, including amendments made to such awards, unless an award amendment includes a specific condition incorporating the Amended Bayh-Dole Regulations into the terms and conditions of the subject award.

1. Ownership. A non-Federal entity may have rights to inventions in accordance with 37 C.F.R. Part 401. These requirements are technical in nature and non-Federal entities are encouraged to consult with their Intellectual Property counsel to ensure the proper interpretation of and adherence to the ownership rules. Unresolved questions pertaining to a non-Federal entities' ownership rights may further be addressed to the Grants Officer.

2. Responsibilities - iEdison. The non-Federal entity must comply with all the requirements of the standard patent rights clause and 37 C.F.R. Part 401, including the standard patent rights clause in 37 C.F.R. § 401.14. Non-Federal entities are required to submit their disclosures, elections, and requests for waiver from any requirement for substantial U.S. manufacture, electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. Non-Federal entities may obtain a waiver of this electronic submission requirement by providing the Grants Officer with compelling reasons for allowing the submission of paper reports.

c. Patent Notification Procedures. Pursuant to E.O. 12889 (58 FR 69681), the DOC is required to notify the owner of any valid patent covering technology whenever the DOC or a non-Federal entity, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the non-Federal entity uses or has used patented technology under this award without a license or permission from the owner, the non-Federal entity must notify the Grants Officer.

This notice does not constitute authorization or consent by the Government to any copyright or patent infringement occurring under the award.

d. A non-Federal entity may copyright any work produced under a Federal award, subject to the DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use the work, or authorize others to do so for Government purposes. Works jointly authored by DOC and non-Federal entity employees may be copyrighted, but only the part of such works authored by the non-Federal entity is protectable in the United States because, under 17 U.S.C. § 105, copyright protection is not available within the United States for any work of the United States Government. On occasion and as permitted under 17 U.S.C. § 105, DOC may require the non-Federal entity to transfer to DOC a copyright in a particular work for Government purposes or when DOC is undertaking primary dissemination of the work.

e. Freedom of Information Act (FOIA). In response to a FOIA request for research data relating to published research findings (as defined by 2 C.F.R. § 200.315(e)(2)) produced under a Federal award that were used by the Federal government in developing an agency action that has the force and effect of law, the DOC will request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA.

D. AUDITS

Under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, §§ 1 *et seq.*, an audit of the award may be conducted at any time. The Inspector General of the DOC, or any of his or her duly authorized representatives, must have the right to access any pertinent books, documents, papers, and records of the non-Federal entity, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. This right also includes timely and reasonable access to the non-Federal entity's personnel for interview and discussion related to such documents. *See* 2 C.F.R. § 200.337 (Access to records). When the DOC Office of Inspector General (OIG) requires a program audit on a DOC award, the OIG will usually make the arrangements to audit the award, whether the audit is performed by OIG personnel, an independent accountant under contract with DOC, or any other Federal, State, or local audit entity.

.01 Organization-Wide, Program-Specific, and Project Audits

- a. A recipient must, within 90 days of the end of its fiscal year, notify the Grants Officer of the amount of Federal awards, including all DOC and non-DOC awards, that the recipient expended during its fiscal year.
- b. Recipients that are subject to the provisions of Subpart F of 2 C.F.R. Part 200 and that expend \$750,000 or more in a year in Federal awards during their fiscal year must have an audit conducted for that year in accordance with the requirements contained in Subpart F of 2 C.F.R. Part 200. Within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted electronically to the Federal Audit Clearinghouse (FAC) through the FAC's Internet Data Entry System (IDES) (<https://harvester.census.gov/facides/>). In accordance with 2 C.F.R. § 200.425 (Audit services), the recipient may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Grants Officer.
- c. Unless otherwise specified in the terms and conditions of the award, entities that are not subject to Subpart F of 2 C.F.R. Part 200 (e.g., for-profit entities, foreign public entities and foreign organizations) and that expend \$750,000 or more in DOC funds during their fiscal year (including both as a recipient and a subrecipient) must submit to the Grants Officer either: (i) a financial related audit of each DOC award or subaward in accordance with Generally Accepted Government Auditing Standards (GAGAS); or (ii) a project specific audit for each award or subaward in accordance with the requirements contained in 2 C.F.R. § 200.507. Within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted to the Grants Officer. In accordance with 2 C.F.R. § 200.425, the recipient may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Grants Officer. Entities that are not subject to Subpart F of 2 C.F.R. Part 200 and that expend less than \$750,000 in DOC funds in a given fiscal year are

not required to submit an audit(s) for that year, but must make their award-related records available to DOC or other designated officials for review and audit.

d. Recipients are responsible for compliance with the above audit requirements and for informing the Grants Officer of the status of their audit, including when the relevant audit has been completed and submitted in accordance with the requirements of this section. Failure to provide audit reports within the timeframes specified above may result in appropriate enforcement action, up to and including termination of the award, and may jeopardize eligibility for receiving future DOC awards.

e. In accordance with 2 C.F.R. § 200.332(d)(3), pass-through entities are responsible for issuing a management decision for applicable audit findings pertaining only to the Federal award provided by the pass-through entity to a subrecipient.

.02 Audit Resolution Process

a. An audit of the award may result in the disallowance of costs incurred by the recipient and the establishment of a debt (account receivable) due to DOC. For this reason, the recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.

b. A recipient whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:

1. The recipient has 30 calendar days from the date of the transmittal of the draft audit report to submit written comments and documentary evidence.
2. The recipient has 30 calendar days from the date of the transmittal of the final audit report to submit written comments and documentary evidence.
3. The DOC will review the documentary evidence submitted by the recipient and will notify the recipient of the results in an *Audit Resolution Determination Letter*. The recipient has 30 calendar days from the date of receipt of the *Audit Resolution Determination Letter* to submit a written appeal, unless this deadline is extended in writing by the DOC. The appeal is the last opportunity for the recipient to submit written comments and documentary evidence to the DOC to dispute the validity of the audit resolution determination.
4. An appeal of the Audit Resolution Determination does not prevent the establishment of the audit-related debt nor does it prevent the accrual of applicable interest, penalties and administrative fees on the debt in accordance with 15 C.F.R. Part 19. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively.
5. The DOC will review the recipient's appeal and notify the recipient of the results in an *Appeal Determination Letter*. After the opportunity to appeal has expired or after the appeal determination has been rendered, DOC will not accept any further documentary evidence from the recipient. No other administrative appeals are available in DOC.

E. DEBTS

.01 Payment of Debts Owed to the Federal Government

a. The non-Federal entity must promptly pay any debts determined to be owed to the Federal Government. Any funds paid to a non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal government. In accordance with 2 C.F.R. § 200.346 (Collection of amounts due), if not paid within 90 calendar days after demand, DOC may reduce a debt owed to the Federal Government by:

1. Making an administrative offset against other requests for reimbursement;
2. Withholding advance payments otherwise due to the non-Federal entity; or
3. Taking any other action permitted by Federal statute.

The foregoing does not waive any claim on a debt that DOC may have against another entity, and all rights and remedies to pursue other parties are preserved.

b. DOC debt collection procedures are set out in 15 C.F.R. Part 19. In accordance with 2 C.F.R. § 200.346 (Collection of amounts due) and 31 U.S.C. § 3717, failure to pay a debt owed to the Federal Government must result in the assessment of interest, penalties and administrative costs in accordance with the provisions of 31 U.S.C. § 3717 and 31 C.F.R. § 901.9. Commerce entities will transfer any Commerce debt that is delinquent for more than 120 calendar days to the U.S. Department of the Treasury's Financial Management Service for debt collection services, a process known as cross-servicing, pursuant to 31 U.S.C. § 3711(g), 31 C.F.R. § 285.12, and 15 C.F.R. § 19.9. DOC may also take further action as specified in DOC ST&C A.06 (Unsatisfactory Performance or Non-Compliance with Award Provisions). Funds for payment of a debt must not come from other Federally-sponsored programs, and the DOC may conduct on-site visits, audits, and other reviews to verify that other Federal funds have not been used to pay a debt.

.02 Late Payment Charges

a. Interest will be assessed on the delinquent debt in accordance with section 11 of the Debt Collection Act of 1982, as amended (31 U.S.C. § 3717(a)). The minimum annual interest rate to be assessed is the U.S. Department of the Treasury's Current Value of Funds Rate (CVFR). The CVFR is available online at https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr_home.htm and also published by the Department of the Treasury in the *Federal Register* (<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>) and in the *Treasury Financial Manual Bulletin*. The assessed rate must remain fixed for the duration of the indebtedness.

b. Penalties will accrue at a rate of not more than six percent per year or such other higher rate as authorized by law.

c. Administrative charges, i.e., the costs of processing and handling a delinquent debt, will be determined by the Commerce entity collecting the debt, as directed by the Office of the Chief Financial Officer and Assistant Secretary for Administration.

.03 Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees

Pursuant to 31 U.S.C. § 3720B and 31 C.F.R. § 901.6, unless waived by DOC, the DOC is not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency. This prohibition does not apply to disaster loans.

.04 Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs

Pursuant to 28 U.S.C. § 3201(e), unless waived by the DOC, a debtor who has a judgment lien against the debtor's property for a debt to the United States is not eligible to receive any grant or loan that is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

F. CONFLICT OF INTEREST, CODE OF CONDUCT AND OTHER REQUIREMENTS PERTAINING TO DOC FINANCIAL ASSISTANCE AWARDS, INCLUDING SUBAWARD AND PROCUREMENT ACTIONS

.01 Conflict of Interest and Code of Conduct

a. DOC Conflict of Interest Policy. In accordance with 2 C.F.R. § 200.112 (Conflict of interest), the non-Federal entity must disclose in writing any potential conflict of interest to the DOC or pass-through entity. In addition, a non-Federal entity will establish and maintain written standards of conduct that include 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 an award. It is the DOC's policy to maintain the highest standards of conduct and to prevent real or apparent conflicts of interest in connection with DOC financial assistance awards.

b. A conflict of interest generally exists when an interested party participates in a matter that has a direct and predictable effect on the interested party's personal or financial interests. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. A conflict also may exist where there is an appearance that an interested party's objectivity in performing his or her responsibilities under the project is impaired. For example, an appearance of impairment of objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an interested party is unable to render

impartial assistance, services or advice to the recipient, a participant in the project or to the Federal Government. Additionally, a conflict of interest may result from non-financial gain to an interested party, such as benefit to reputation or prestige in a professional field. For purposes of the DOC Conflict of Interest Policy, an interested party includes, but is not necessarily limited to, any officer, employee or member of the board of directors or other governing board of a non-Federal entity, including any other parties that advise, approve, recommend, or otherwise participate in the business decisions of the recipient, such as agents, advisors, consultants, attorneys, accountants or shareholders. This also includes immediate family and other persons directly connected to the interested party by law or through a business arrangement.

c. Procurement-related conflict of interest. In accordance with 2 C.F.R. § 200.318 (General procurement standards), non-Federal entities must maintain written standards of conduct covering conflicts of interest and governing the performance of their employees engaged in the selection, award and administration of contracts. *See* paragraph F.04 of these Standard Terms (Requirements for Procurements).

.02 Nonprocurement Debarment and Suspension

Non-Federal entities must comply with the provisions of 2 C.F.R. Part 1326 (Nonprocurement Debarment and Suspension), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions, and which set forth the responsibilities of recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

.03 Requirements for Subawards

a. The recipient or pass-through entity must require all subrecipients, including lower tier subrecipients, to comply with the terms and conditions of a DOC financial assistance award, including applicable provisions of the OMB Uniform Guidance (2 C.F.R. Part 200), and all associated Terms and Conditions set forth herein. *See* 2 C.F.R. § 200.101(b)(2) (Applicability to different types of Federal awards), which describes the applicability of 2 C.F.R. Part 200 to various types of Federal awards and §§ 200.331-333 (Subrecipient monitoring and management).

b. The recipient or pass through entity may have more restrictive policies for the RTC *waived* prior approvals (no-cost extensions, re-budgeting, etc.) for their subaward recipients. Such restrictive policies must be addressed in their subaward agreements and in accordance with §200.331.

.04 Requirements for Procurements

a. States. Pursuant to 2 C.F.R. § 200.317 (Procurements by states), when procuring property and services under this Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State must comply with 2 C.F.R. §§ 200.321 (Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms), 200.322 (Domestic preferences for procurements), and

200.323 (Procurement of recovered materials), and ensure that every purchase order or other contract includes any clauses required by 2 C.F.R. § 200.327 (Contract provisions).

b. Other Non-Federal Entities. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in 2 C.F.R. §§ 200.318 (General procurement standards) through 200.327 (Contract provisions) which include the requirement that non-Federal entities maintain written standards of conduct covering conflicts of interest and governing the performance of their employees engaged in the selection, award, and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.

.05 Whistleblower Protections

This award is subject to the whistleblower protections afforded by 41 U.S.C. § 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information), which generally provide that an employee or contractor (including subcontractors and personal services contractors) of a non-Federal entity may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award, subaward, or a contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal award or subaward or contract under a Federal award or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award, subaward, or contract under a Federal award or subaward. These persons or bodies include:

- a. A Member of Congress or a representative of a committee of Congress.
- b. An Inspector General.
- c. The Government Accountability Office.
- d. A Federal employee responsible for contract or grant oversight or management at the relevant agency.
- e. An authorized official of the Department of Justice or other law enforcement agency.
- f. A court or grand jury.
- g. A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

Non-Federal entities and contractors under Federal awards and subawards must 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.

.06 Small Businesses, Minority Business Enterprises and Women's Business Enterprises

In accordance with 2 C.F.R. § 200.321 (Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms), the recipient must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. DOC encourages non-Federal entities to use small

businesses, minority business enterprises and women’s business enterprises in contracts under financial assistance awards. The Minority Business Development Agency within the DOC will assist non-Federal entities in matching qualified minority business enterprises with contract opportunities. For further information visit MBDA’s website at <http://www.mbda.gov>. If you do not have access to the Internet, you may contact MBDA via telephone or mail:

U.S. Department of Commerce
Minority Business Development Agency
Herbert C. Hoover Building
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230
(202) 482-0101

G. NATIONAL POLICY REQUIREMENTS

.01 United States Laws and Regulations

This award is subject to the laws and regulations of the United States. The recipient must comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

.02 Non-Discrimination Requirements

No person in the United States may, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity receiving Federal financial assistance. The recipient agrees to comply with the non-discrimination requirements below:

a. Statutory Provisions

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and DOC implementing regulations published at 15 C.F.R. Part 8 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;
2. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq.*) prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;
3. The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and DOC implementing regulations published at 15 C.F.R. Part 8b prohibiting discrimination on the

basis of handicap under any program or activity receiving or benefiting from Federal assistance.

For purposes of complying with the accessibility standards set forth in 15 C.F.R. § 8b.18(c), non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) (28 C.F.R. part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 C.F.R. part 36; 75 FR 56164, as amended by 76 FR 13286). The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design” (2010 Standards), which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects;

5. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and DOC implementing regulations published at 15 C.F.R. Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance; and
6. Any other applicable non-discrimination law(s).

b. Other Provisions

1. Parts II and III of E.O. 11246 (Equal Employment Opportunity, 30 FR 12319),³ which requires Federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of E.O. 11246 and Department of Labor regulations implementing E.O. 11246 (41 C.F.R. § 60-1.4(b)).
2. E.O. 13166 (65 FR 50121, Improving Access to Services for Persons with Limited English Proficiency), requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. The DOC issued policy guidance on March 24, 2003 (68 FR 14180) to articulate the Title VI prohibition against national origin discrimination affecting LEP persons and to help ensure that non-Federal entities provide meaningful access to their LEP applicants and beneficiaries.
3. In accordance with E.O. 13798 and Office of Management and Budget, M-20-09 – Guidance Regarding Federal Grants, states or other public grantees may not condition sub-awards of Federal grant money in a manner that would disadvantage grant applicants based on their religious character.

³ As amended by E.O. 11375(32 FR 14303), E.O. 11478 (34 FR 12985), E.O. 12086 (43 FR 46501), E.O. 12107 (44 FR 1055), E.O. 13279 (F67 FR 77141), E.O. 13665 (79 FR 20749), and E.O. 13672 (79 FR 42971).

c. Title VII Exemption for Religious Organizations

Generally, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, provides that it is an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination based on religion, "a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities."

.03 LOBBYING RESTRICTIONS

a. Statutory Provisions

Non-Federal entities must comply with 2 C.F.R. § 200.450 (Lobbying), which incorporates the provisions of 31 U.S.C. § 1352; and OMB guidance and notices on lobbying restrictions. In addition, non-Federal entities must comply with the DOC regulations published at 15 C.F.R. Part 28, which implement the New Restrictions on Lobbying. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal Government in connection with the award and require the disclosure of the use of non-Federal funds for lobbying. Lobbying includes attempting to improperly influence, meaning any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter, either directly or indirectly. Costs incurred to improperly influence are unallowable. *See* 2 C.F.R. § 200.450(b) and (c).

b. Disclosure of Lobbying Activities

Any recipient that receives more than \$100,000 in Federal funding and conducts lobbying with non-federal funds relating to a covered Federal action must submit a completed Form SF-LLL (Disclosure of Lobbying Activities). The Form SF-LLL must be submitted within 30 calendar days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The recipient must submit any required SF-LLL forms, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.

.04 Environmental Requirements

Environmental impacts must be considered by Federal decision makers in their decisions whether or not to approve: (1) a proposal for Federal assistance; (2) the proposal with mitigation; or (3) a different proposal having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate an early planning process that considers potential impacts that projects funded with Federal assistance may have on the environment. Each non-Federal entity must comply with all environmental standards, to include those prescribed under

the following statutes and E.O.s and must identify to the awarding agency any impact the award may have on the environment. In some cases, award funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to submit additional environmental compliance information sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.

a. The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*)

The National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) implementing regulations (40 C.F.R. Parts 1500 through 1508) require that an environmental analysis be completed for all major Federal actions to determine whether they have significant impacts on the environment. NEPA applies to the actions of Federal agencies and may include a Federal agency's decision to fund non-Federal projects under grants and cooperative agreements when the award activities remain subject to Federal authority and control. Non-Federal entities are required to identify to the awarding agency any direct, indirect or cumulative impact an award will have on the quality of the human environment and assist the agency in complying with NEPA. Non-Federal entities may also be requested to assist DOC in drafting an environmental assessment or environmental impact statement if DOC determines such documentation is required, but DOC remains responsible for the sufficiency and approval of the final documentation. Until the appropriate NEPA documentation is complete and in the event that any additional information is required during the period of performance to assess project environmental impacts, funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to submit the appropriate environmental information and NEPA documentation sufficient to enable DOC to make an assessment on any impacts that a project may have on the environment.

b. The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*)

Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f) and the Advisory Council on Historic Preservation (ACHP) implementing regulations (36 C.F.R. Part 800) require that Federal agencies take into account the effects of their undertakings on historic properties and, when appropriate, provide the ACHP with a reasonable opportunity to comment. Historic properties include but are not necessarily limited to districts, buildings, structures, sites and objects. In this connection, archeological resources and sites that may be of traditional religious and cultural importance to Federally-recognized Indian Tribes, Alaskan Native Villages and Native Hawaiian Organizations may be considered historic properties. Non-Federal entities are required to identify to the awarding agency any effects the award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Non-Federal entities may also be requested to assist DOC in consulting with State or Tribal Historic Preservation Officers, ACHPs or other applicable interested parties necessary to identify, assess, and resolve adverse effects to historic properties. Until such time as the appropriate NHPA consultations and documentation are complete and in the event that any additional information is required during the period of performance in order to assess project impacts on historic properties, funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to

submit any information sufficient to enable DOC to make the requisite assessment under the NHPA.

Additionally, non-Federal entities are required to assist the DOC in assuring compliance with the Archeological and Historic Preservation Act of 1974 (54 U.S.C. § 312502 *et seq.*, formerly 16 U.S.C. § 469a-1 *et seq.*); Executive Order 11593 (Protection and Enhancement of the Cultural Environment, May 13, 1971); Executive Order 13006 (Locating Federal Facilities on Historic Properties in Our Nation’s Central Cities, May 21, 1996); and Executive Order 13007 (Indian Sacred Sites, May 24, 1996).

c. Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands)

Non-Federal entities must identify proposed actions in Federally defined floodplains and wetlands to enable DOC to decide whether there is an alternative to minimize any potential harm.

d. Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), Federal Water Pollution Control Act (33 U.S.C. §§ 1251 *et seq.*) (Clean Water Act), and Executive Order 11738 (“Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans”)

Non-Federal entities must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), Clean Water Act (33 U.S.C. §§ 1251 *et seq.*), and E.O. 11738 (38 FR 25161), and must not use a facility on the Excluded Parties List (EPL) (located on the System for Award Management (SAM) website, SAM.gov) in performing any award that is nonexempt under 2 C.F.R. § 1532, and must notify the Program Officer in writing if it intends to use a facility that is on the EPL or knows that the facility has been recommended to be placed on the EPL.

e. The Flood Disaster Protection Act (42 U.S.C. §§ 4002 *et seq.*)

Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas. Per 2 C.F.R. § 200.447(a), the cost of required flood insurance is an allowable expense, if it is reflected in the approved project budget.

f. The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*)

Non-Federal entities must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to a protected species or habitat occur from actions under Federal assistance awards and conduct the reviews required under the Endangered Species Act, as applicable.

g. The Coastal Zone Management Act (16 U.S.C. §§ 1451 *et seq.*)

Funded projects must be consistent with a coastal State’s approved management program for the coastal zone.

h. The Coastal Barriers Resources Act (16 U.S.C. §§ 3501 *et seq.*)

Only in certain circumstances can Federal funding be provided for actions within a Coastal Barrier System.

i. The Wild and Scenic Rivers Act (16 U.S.C. §§ 1271 *et seq.*)

This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

j. The Safe Drinking Water Act of 1974, as amended, (42 U.S.C. §§ 300f *et seq.*)

This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole source aquifer which threatens public health.

k. The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*)

This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and provides that non-Federal entities give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

l. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund) (42 U.S.C. §§ 9601 *et seq.*) and the Community Environmental Response Facilitation Act (42 U.S.C. § 9601 note *et seq.*)

These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

m. Executive Order 12898 (“Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations”)

Federal agencies are required to identify and address the disproportionately high and adverse human health or environmental effects of Federal programs, policies, and activities on low income and minority populations.

n. The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 *et seq.*)

Non-Federal entities must identify to DOC any effects the award may have on essential fish habitat (EFH). Federal agencies which fund, permit, or carry out activities that may adversely impact EFH are required to consult with the National Marine Fisheries Service (NMFS) regarding the potential effects of their actions and respond in writing to NMFS recommendations. These recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. In addition, NMFS is required to comment on any state agency activities that would impact EFH. Provided the specifications outlined in the regulations are met, EFH consultations will be incorporated into interagency

procedures previously established under NEPA, the ESA, Clean Water Act, Fish and Wildlife Coordination Act, or other applicable statutes.

o. Clean Water Act (CWA) Section 404 (33 U.S.C. § 1344)

CWA Section 404 regulates the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as levees and some coastal restoration activities), and infrastructure development (such as highways and airports). CWA Section 404 requires a permit from the U.S. Army Corps of Engineers before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g., certain farming and forestry activities).

p. Rivers and Harbors Act (33 U.S.C. § 407)

A permit may be required from the U.S. Army Corps of Engineers if the proposed activity involves any work in, over or under navigable waters of the United States. Recipients must identify any work (including structures) that will occur in, over or under navigable waters of the United States and obtain the appropriate permit, if applicable.

q. The Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), Bald and Golden Eagle Protection Act (16 U.S.C. § 668 *et seq.*), and Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds, January 10, 2001)

Many prohibitions and limitations apply to projects that adversely impact migratory birds and bald and golden eagles. Executive Order 13186 directs Federal agencies to enter a Memorandum of Understanding with the U.S. Fish and Wildlife Service to promote conservation of migratory bird populations when a Federal action will have a measurable negative impact on migratory birds.

r. Executive Order 13112 (Invasive Species, February 3, 1999)

Federal agencies must identify actions that may affect the status of invasive species and use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them. In addition, an agency may not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere.

s. Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*)

During the planning of water resource development projects, agencies are required to give fish and wildlife resources equal consideration with other values. Additionally, the U.S.

Fish and Wildlife Service and fish and wildlife agencies of states must be consulted whenever waters of any stream or other body of water are “proposed or authorized, permitted or licensed to be impounded, diverted... or otherwise controlled or modified” by any agency under a Federal permit or license.

.05 OTHER NATIONAL POLICY REQUIREMENTS

a. Buy-American Preferences

Strengthening Buy-American Preferences for Infrastructure Projects. Recipients of covered programs (as defined in Executive Order 13858, 31 January 2019, and 2 C.F.R. §200.322 (Domestic preferences for procurements)) are hereby notified that they are encouraged to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or subaward that is chargeable under this Award.

b. Criminal and Prohibited Activities

1. The Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*), provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money (including money representing grants, loans, or other benefits).
2. The False Claims Amendments Act of 1986 and the False Statements Accountability Act of 1996 (18 U.S.C. §§ 287 and 1001, respectively), provide that whoever makes or presents any false, fictitious, or fraudulent statement, representation, or claim against the United States must be subject to imprisonment of not more than five years and must be subject to a fine in the amount provided by 18 U.S.C. § 287.
3. The Civil False Claims Act (31 U.S.C. §§ 3729 - 3733), provides that suits can be brought by the government, or a person on behalf of the government, for false claims made under Federal assistance programs.
4. The Copeland Anti-Kickback Act (18 U.S.C. § 874), prohibits a person or organization engaged in a Federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract. The Copeland Anti-Kickback Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.
5. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and implementing regulations issued at 15 C.F.R. Part 11, which provides for fair and equitable treatment of displaced persons or persons whose property is acquired as a result of Federal or Federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

6. The Hatch Act (5 U.S.C. §§ 1501-1508 and 7321-7326), which limits the political activities of employees or officers of state or local governments whose principal employment activities are funded in whole or in part with Federal funds.

7. To ensure compliance with Federal law pertaining to financial assistance awards, an authorized representative of a non-Federal entity may be required to periodically provide certain certifications to the DOC regarding Federal felony and Federal criminal tax convictions, unpaid federal tax assessments, delinquent Federal tax returns and such other certifications that may be required by Federal law.

c. Drug-Free Workplace

The non-Federal entity must comply with the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8102) and DOC implementing regulations published at 2 C.F.R. Part 1329 (Requirements for Drug-Free Workplace (Financial Assistance)), which require that the non-Federal entity take certain actions to provide a drug-free workplace.

d. Foreign Travel

1. Each non-Federal entity must comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131 through 301-10.143.

2. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable or use of U.S. flag air carrier service will not accomplish the agency's mission.

3. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral/multilateral "Open Skies Agreements" (U.S. Government Procured Transportation) that allow federal funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple "Open Skies Agreements" currently in effect. For more information about the current bilateral and multilateral agreements, visit the GSA [website](#). Information on the Open Skies agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the Department of State's [website](#).

4. If a foreign air carrier is anticipated to be used for any portion of travel under a DOC financial assistance award, the non-Federal entity must receive prior approval from the Grants Officer. When requesting such approval, the non-Federal entity must provide a justification in accordance with guidance provided by 41 C.F.R. § 301-10.142, which requires the non-Federal entity to provide the Grants Officer with the following: name; dates

of travel; origin and destination of travel; detailed itinerary of travel; name of the air carrier and flight number for each leg of the trip; and a statement explaining why the non-Federal entity meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the non-Federal entity must provide the Grants Officer with a copy of the agreement or a citation to the official agreement available on the GSA website. The Grants Officer must make the final determination and notify the non-Federal entity in writing (which may be done through the recipient in the case of subrecipient travel). Failure to adhere to the provisions of the Fly America Act will result in the non-Federal entity not being reimbursed for any transportation costs for which any non-Federal entity improperly used a foreign air carrier.

Note: When using code-sharing flights (two or more airlines having flight numbers assigned to the same flight) involving U.S. flag carriers and non-U.S. flag carriers, the airline symbol and flight number of the U.S. flag carrier must be used on the ticket to qualify as a U.S. flag carrier (e.g. "*Delta Airlines Flight XXXX, operated by KLM*"). Conversely, if the ticket shows "[*Foreign Air Carrier*] XXX, operated by Delta," that travel is using a foreign air carrier and is subject to the Fly America Act and must receive prior approval from the Grants Officer as outlined in paragraph G.05.d.4.

e. Increasing Seat Belt Use in the United States

Pursuant to E.O. 13043 (62 FR 19217), non-Federal entities should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally owned vehicles.

f. Federal Employee Expenses and Subawards or Contracts Issued to Federal Employees or Agencies

1. Use of award funds (Federal or non-Federal) or the non-Federal entity's provision of in-kind goods or services for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy may prohibit the acceptance of gifts, including travel payments for federal employees, from non-Federal entities regardless of the source. Therefore, before award funds may be used by Federal employees, non-Federal entities must submit requests for approval of such action to the Federal Program Officer who must review and make a recommendation to the Grants Officer. The Grants Officer will notify the non-Federal entity in writing (generally through the recipient) of the final determination.
2. A non-Federal entity or its contractor may not issue a subaward, contract or subcontract of any part of a DOC award to any agency or employee of DOC or to other Federal employee, department, agency, or instrumentality, without the advance prior written approval of the DOC Grants Officer.

g. Minority Serving Institutions Initiative

Pursuant to E.O.s 13555 (White House Initiative on Educational Excellence for Hispanics) (75 FR 65417), 13592 (Improving American Indian and Alaska Native

Educational Opportunities and Strengthening Tribal Colleges and Universities) (76 FR 76603), and 13779 (White House Initiative to Promote Excellence and Innovation at Historically Black Colleges and Universities) (82 FR 12499), DOC is strongly committed to broadening the participation of minority serving institutions (MSIs) in its financial assistance programs. DOC's goals include achieving full participation of MSIs to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DOC encourages all applicants and non-Federal entities to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

h. Research Misconduct

The DOC adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 FR 76260). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Non-Federal entities that conduct extramural research funded by DOC must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Non-Federal entities also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Non-Federal entities must notify the Grants Officer of any allegation that meets the definition of research misconduct and detail the entity's inquiry to determine whether there is sufficient evidence to proceed with an investigation, as well as the results of any investigation. The DOC may take appropriate administrative or enforcement action at any time under the award, up to and including award termination and possible suspension or debarment, and referral to the Commerce OIG, the U.S. Department of Justice, or other appropriate investigative body.

i. Research Involving Human Subjects

1. All proposed research involving human subjects must be conducted in accordance with 15 C.F.R. Part 27 (Protection of Human Subjects). No research involving human subjects is permitted under this award unless expressly authorized by specific award condition, or otherwise in writing by the Grants Officer.
2. Federal policy defines a human subject as a living individual about whom an investigator (whether professional or student) conducting research (1) Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or (2) Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

3. DOC regulations at 15 C.F.R. Part 27 require that non-Federal entities maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this project, the non-Federal entity (generally through the recipient) must submit appropriate documentation to the Federal Program Officer for approval by the appropriate DOC officials. As applicable, this documentation must include:

- i. Documentation establishing approval of an activity in the project by an Institutional Review Board (IRB) under a Federal wide Assurance issued by Department of Health and Human Services or other Federal agency guidelines (*see also* 15 C.F.R. § 27.103);
- ii. Documentation to support an exemption for an activity in the project under 15 C.F.R. § 27.104(d);
- iii. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form;
- iv. Documentation of an IRB approval of continuing review approved prior to the expiration date of the previous IRB determination; and
- v. Documentation of any reportable events, such as serious adverse events, unanticipated problems resulting in risk to subjects or others, and instances of noncompliance.

4. No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. In accordance with 15 C.F.R. § 27.118, if research involving human subjects is proposed after an award is made, the non-Federal entity must contact the Federal Program Officer and provide required documentation. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the project for protocol or instrument development related to human subjects research.

j. Care and Use of Live Vertebrate Animals

Non-Federal entities must comply with the Laboratory Animal Welfare Act of 1966, as amended, (Pub. L. No. 89-544, 7 U.S.C. §§ 2131 *et seq.*) (animal acquisition, transport, care, handling, and use in projects), and implementing regulations (9 C.F.R. Parts 1, 2, and 3); the Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*); Marine Mammal Protection Act (16 U.S.C. §§ 1361 *et seq.*) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. §§ 4701 *et seq.*) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DOC financial assistance award unless authorized by the Grants Officer.

k. Management and Access to Data and Publications

1. In General. The recipient acknowledges and understands that information and data contained in applications for financial assistance, as well as information and data contained in financial, performance and other reports submitted by recipients, may be used by the DOC in conducting reviews and evaluations of its financial assistance programs. For this purpose, recipient information and data may be accessed, reviewed and evaluated by DOC employees, other Federal employees, Federal agents and contractors, and/or by non-Federal personnel, all of who enter into appropriate or are otherwise subject to confidentiality and nondisclosure agreements covering the use of such information. Recipients are expected to support program reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner, and by cooperating with DOC and external program evaluators. In accordance with 2 C.F.R. § 200.303(e), recipients are reminded that they must take reasonable measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained relating to a DOC financial assistance award.
2. Scientific Data. Non-Federal entities must comply with the data management and access to data requirements established by the DOC funding agency as set forth in the applicable Notice of Funding Opportunity and/or in Specific Award Conditions.
3. Publications, Videos, and Acknowledgment of Sponsorship.
 - i. Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording, reporting and otherwise disseminating information and expanding public access to federally-funded projects (*e.g.*, scientific research). Non-Federal entities must comply with the data management and access to data requirements established by the DOC funding agency as set forth in the applicable Notice of Funding Opportunity and/or in Specific Award Conditions.
 - ii. Non-Federal entities may be required to submit a copy of any publication materials, including but not limited to print, recorded, or Internet materials, to the funding agency.
 - iii. When releasing information related to a funded project, non-Federal entities must include a statement that the project or effort undertaken was or is sponsored by DOC and must also include the applicable financial assistance award number.
 - iv. Non-Federal entities are responsible for assuring that every publication of material based on, developed under, or otherwise produced pursuant to a DOC financial assistance award contains the following disclaimer or other disclaimer approved by the Grants Officer:

This [report/video/etc.] was prepared by [recipient name] using Federal funds under award [number] from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do

not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce.

I. Homeland Security Presidential Directive

If the performance of this DOC financial assistance award requires non-Federal entity personnel to have routine access to Federally-controlled facilities and/or Federally-controlled information systems (for purpose of this term “routine access” is defined as more than 180 calendar days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with U.S. Citizenship and Immigration Services’ (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual is in a lawful immigration status and that he or she is eligible for employment within the United States. Any items or services delivered under a financial assistance award must comply with DOC personal identity verification procedures that implement Homeland Security Presidential Directive 12 (Policy for a Common Identification Standard for Federal Employees and Contractors), Federal Information Processing Standard (FIPS) PUB 201, and OMB Memorandum M-05-24. The recipient must ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term below. The recipient must insert the following term in all subawards and contracts when the subaward recipient or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system:

The subrecipient or contractor must comply with DOC personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.

The subrecipient or contractor must account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor must return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by DOC: (1) When no longer needed for subaward or contract performance; (2) Upon completion of the subrecipient or contractor employee’s employment; (3) Upon subaward or contract completion or termination.

m. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations

1. This clause applies to the extent that this financial assistance award encompasses activities that involve export-controlled items.

2. In performing this financial assistance award, a non-Federal entity may participate in activities involving items subject to export control (export-controlled items) under the Export Administration Regulations (EAR). The non-Federal entity is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR's deemed exports and re-exports provisions. The non-Federal entity must establish and maintain effective export compliance procedures at DOC and non-DOC facilities, including facilities located abroad, throughout performance of the financial assistance award. At a minimum, these export compliance procedures must include adequate restrictions on export-controlled items, to guard against any unauthorized exports, including in the form of releases or transfers to foreign nationals. Such releases or transfers may occur through visual inspection, including technology transmitted electronically, and oral or written communications.

3. Definitions

- i. Export-controlled items. Items (commodities, software, or technology), that are subject to the EAR (15 C.F.R. §§ 730-774), implemented by the DOC's Bureau of Industry and Security. These are generally known as "dual-use" items, items with a military and commercial application. The export (shipment, transmission, or release/transfer) of export-controlled items may require a license from DOC.
- ii. Deemed Export/Re-export. The EAR defines a deemed export as a release or transfer of export-controlled items (specifically, technology or source code) to a foreign person (foreign national) in the U.S. Such release is "deemed" to be an export to the foreign person's most recent country of citizenship or permanent residency (*see* 15 C.F.R. § 734.13(a)(2) & (b)). A release may take the form of visual inspection or oral or written exchange of information. *See* 15 C.F.R. § 734.15(a). If such a release or transfer is made abroad to a foreign person of a country other than the country where the release occurs, it is considered a deemed re-export to the foreign person's most recent country of citizenship or permanent residency. *See* 15 C.F.R. § 734.14(a)(2). Licenses from DOC may be required for deemed exports or re-exports. An act causing the release of export-controlled items to a foreign person (e.g., providing or using an access key or code) may require authorization from DOC to the same extent that an export or re-export of such items to the foreign person would. *See* 15 C.F.R. § 734.15(b).

4. The non-Federal entity must secure all export-controlled items that it possesses or that comes into its possession in performance of this financial assistance award, to ensure that the export of such items, including in the form of release or transfer to foreign persons, is prevented, or licensed, as required by applicable Federal laws, E.O.s, and/or regulations, including the EAR.

5. As applicable, non-Federal entity personnel and associates at DOC sites will be informed of any procedures to identify and protect export-controlled items from unauthorized export.

6. To the extent the non-Federal entity wishes to release or transfer export-controlled items to foreign persons, the non-Federal entity will be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed re-exports. Failure to obtain any export licenses required under the EAR may subject the non-Federal entity to administrative or criminal enforcement. See 15 C.F.R. part 764.
7. Nothing in the terms of this financial assistance award is intended to change, supersede, or waive the requirements of applicable Federal laws, E.O.s or regulations.
8. Compliance with this term will not satisfy any legal obligations the non-Federal entity may have regarding items that may be subject to export controls administered by other agencies such as the Department of State, which has jurisdiction over exports and re-exports of defense articles and services subject to the International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120-130), including the release of defense articles to foreign persons in the United States and abroad.
9. The non-Federal entity must include the provisions contained in this term in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve research or other activities that implicate export-controlled items.

n. The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as amended, and the implementing regulations at 2 C.F.R. Part 175

The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if any non-Federal entity engages in certain activities related to trafficking in persons. The DOC hereby incorporates the following award term required by 2 C.F.R. § 175.15(b):

Trafficking in persons.

a. Provisions applicable to a recipient that is a private entity.

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;*
- ii. Procure a commercial sex act during the period of time that the award is in effect; or*
- iii. Use forced labor in the performance of the award or subawards under the award.*

2. *We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —*

i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or

ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either— (A) Associated with performance under this award; or (B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension – Nonprocurement), as implemented by DOC at 2 C.F.R. Part 1326 (Nonprocurement Debarment and Suspension).

b. Provision applicable to a recipient other than a private entity. *We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—*

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—

i. Associated with performance under this award; or

ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension – Nonprocurement), as implemented by DOC at 2 C.F.R. Part 1326, (Nonprocurement Debarment and Suspension).

c. Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. “Employee” means either:

i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. “Private entity”:

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25;

ii. Includes: (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b); and (B) A for-profit organization.

4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).

o. The Federal Funding Accountability and Transparency Act (FFATA) (31 U.S.C. § 6101 note)

1. **Reporting Subawards and Executive Compensation.** Under FFATA, recipients of financial assistance awards of \$30,000 or more are required to report periodically on executive compensation and subawards, as described in the following term from 2 C.F.R. Part 170, Appendix A, which is incorporated into this award:

Reporting Subawards and Executive Compensation

a. Reporting of first-tier subawards.

1. *Applicability.* Unless you are exempt as provided in paragraph d. of this award term, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward

to a non-Federal entity or Federal agency (see definitions in paragraph e. of this award term).

2. *Where and when to report.*

i. *You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.*

ii. *For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)*

3. *What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.*

b. *Reporting Total Compensation of Recipient Executives for non-Federal entities.*

1. *Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—*

i. *the total Federal funding authorized to date under this Federal award equals or exceeds \$30,000 as defined in 2 C.F.R § 170.320;*

ii. *in the preceding fiscal year, you received—*

(A) *80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards), and*

(B) *\$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and,*

iii. *The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)*

2. *Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:*

i. *As part of your registration profile found at the System for Award Management (SAM) website located at <https://www.sam.gov>.*

ii. *By the end of the month following the month in which this award is made, and annually thereafter.*

c. Reporting of Total Compensation of Subrecipient Executives.

1. *Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier non-Federal entity subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—*

i. *in the subrecipient's preceding fiscal year, the subrecipient received—*

(A) *80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards) and,*

(B) *\$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and*

ii. *The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).*

See also 2 C.F.R. § 200.300(b).

2. *Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:*

i. *To the recipient.*

ii. *By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.*

d. Exemptions. *If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report: i. Subawards, and ii. The total compensation of the five most highly compensated executives of any subrecipient.*

e. Definitions. For purposes of this award term:

- 1. Federal Agency means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).*
- 2. Non-Federal entity means all of the following, as defined in 2 C.F.R. Part 25:
 - i. A Governmental organization, which is a State, local government, or Indian tribe;*
 - ii. A foreign public entity;*
 - iii. A domestic or foreign nonprofit organization; and,*
 - iv. A domestic or foreign for-profit organization.**
- 3. Executive means officers, managing partners, or any other employees in management positions.*
- 4. Subaward:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.*
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 C.F.R § 200.331).*
 - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.**
- 5. Subrecipient means a non-Federal entity or Federal agency that:
 - i. Receives a subaward from you (the recipient) under this award; and*
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.**
- 6. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
 - i. Salary and bonus.*
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.**

- iii. *Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.*
- iv. *Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.*
- v. *Above-market earnings on deferred compensation which is not tax-qualified.*
- vi. *Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.*

2. **System for Award Management (SAM) and Universal Identifier Requirements** -- as described in 2 C.F.R. Part 25, Appendix A, which is incorporated into this award:

System for Award Management (SAM) and Universal Identifier Requirements

a. ***Requirement for System for Award Management.*** *Unless you are exempted from this requirement under 2 C.F.R. § 25.110, you as the recipient must maintain current information in the SAM. This includes information on your immediate and highest level owner and subsidiaries, as well as on all of your predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until you submit the final financial report required under this Federal award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another Federal award term.*

b. ***Requirement for Unique Entity Identifier.*** *If you are authorized to make subawards under this Federal award, you:*

- 1. *Must notify potential subrecipients that no entity (see definition in paragraph c of this award term) may receive a subaward from you until the entity has provided its Unique Entity Identifier to you.*
- 2. *May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier to you. Subrecipients are not required to obtain an active SAM registration, but must obtain a Unique Entity Identifier.*

c. ***Definitions for purposes of this term:***

- 1. *SAM means the Federal repository into which a recipient must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <https://www.SAM.gov>).*

2. *Unique Entity Identifier means the identifier assigned by SAM to uniquely identify business entities.*
3. *Entity includes non-Federal entities as defined at 2 C.F.R. § 200.1 and also includes all of the following, for purposes of this part:*
 - i. *A foreign organization;*
 - ii. *A foreign public entity;*
 - iii. *A domestic for-profit organization; and*
 - iv. *A Federal agency.*
4. *Subaward has the meaning given in 2 C.F.R § 200.1.*
5. *Subrecipient has the meaning given in 2 C.F.R § 200.1.*

See also 2 C.F.R. § 200.300(b).

p. Recipient Integrity and Performance Matters (Appendix XII to 2 C.F.R. Part 200)

Reporting of Matters Related to Recipient Integrity and Performance

1. **General Reporting Requirement.** If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.
2. **Proceedings About Which You Must Report.** Submit the information required about each proceeding that:
 - i. Is relating to the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
 - ii. Reached its final disposition during the most recent five-year period; and

iii. Is one of the following:

- (A) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
- (B) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
- (C) An administrative proceeding, as defined in paragraph 5 of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
- (D) Any other criminal, civil, or administrative proceeding if:
 - I. It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
 - II. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - III. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures. Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency. During any period when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions. For purposes of this award term and condition:

- i. Administrative proceeding means a non-judicial process that is adjudicatory in nature to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

ii. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

iii. Total value of currently active grants, cooperative agreements, and procurement contracts includes:

(A) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

(B) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

q. Never Contract with the Enemy (2 C.F.R Part 183; 2 C.F.R. § 200.215)

Under 2 C.F.R. § 200.215 (Never contract with the enemy) Federal awarding agencies and recipients are subject to the regulations implementing Never Contract with the Enemy in 2 C.F.R. Part 183. These regulations affect covered contracts, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

1. **Applicability.** This term applies only to recipients of covered grants or cooperative agreements, as defined in 2 C.F.R. § 183.35 Definitions.

2. **Requirements.** As applicable, recipients must fulfill the requirements as described in the following terms from 2 C.F.R. Part 183, Appendix A, which is incorporated into this award:

a. Term 1. Prohibition on Providing Funds to the Enemy.

1. *The recipient must—*

i. *Exercise due diligence to ensure that none of the funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, which must be completed through 2 CFR Part 180.300 prior to issuing a subaward or contract and;*

ii. *Terminate or void in whole or in part any subaward or contract with a person or entity listed in SAM as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subaward or contract.*

2. *The recipient may include the substance of this clause, including this paragraph (1), in subawards under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.*

3. *The Federal awarding agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal awarding agency becomes aware that the recipient failed to exercise due diligence as required by paragraph (1) of this clause or if the Federal awarding agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities*

b. Term 2. Additional Access to Recipient Records.

1. *In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017 that will be performed in the United States Central Command (USCENTCOM) theater of operations*

2. *The substance of this clause, including this paragraph (2), is required to be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.*

r. Prohibition on certain telecommunications and video surveillance services or equipment (Public Law 115-232, section 889; 2 C.F.R. § 200.216)

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain,
- (2) Extend or renew a contract to procure or obtain, or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- (i). For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (ii). Telecommunications or video surveillance services provided by such entities or using such equipment.
- (iii). Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115-232, section 889 for additional information.

(d) See also §200.471.

s. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown

This term sets forth initial guidance that will be implemented for Federal assistance awards in the event of a lapse in appropriations, or a government shutdown. The Grants Officer may issue further guidance prior to an anticipated shutdown.

1. Unless there is an actual rescission of funds for specific grant or cooperative agreement obligations, non-Federal entities under Federal financial assistance awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the award during a funding hiatus. Non-Federal entities are advised that ongoing activities by Federal employees involved in grant or cooperative agreement administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse. Therefore, there may be delays, including payment processing delays, in the event of a shutdown.

2. All award actions will be delayed during a government shutdown; if it appears that a non-Federal entity's performance under a grant or cooperative agreement will require agency involvement, direction, or clearance during the period of a possible government shutdown, the Program Officer or Grants Officer, as appropriate, may attempt to provide such involvement, direction, or clearance prior to the shutdown or advise non-Federal entities that such involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, non-Federal entities whose ability to withdraw funds is subject to prior agency approval, which in general are non-Federal entities that have been designated high risk, non-Federal entities under construction awards, or are otherwise limited to reimbursements or subject to agency review, will be able to draw funds down from the relevant Automatic Standard Application for Payment (ASAP) account only if agency approval is given and coded into ASAP prior to any government shutdown or closure. This limitation may not be lifted during a government shutdown. Non-Federal entities should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Non-Federal entities whose authority to draw down award funds is restricted may decide to suspend work until the government reopens.

3. The ASAP system should remain operational during a government shutdown. Non-Federal entities that do not require any Grants Officer or agency approval to draw down advance funds from their ASAP accounts should be able to do so during a shutdown. The 30-day limitation on the drawdown of advance funds will still apply notwithstanding a government shutdown (see section B.02.b.1 of these terms).



Agenda Item 6.g.

Approval of Restore America's Estuaries Subaward No. NOAA-Gulf23-PPBEP, in the amount of \$351,759, for the Gulf of Mexico Community Based Oyster Recycling and Reef Restoration Network Program

Background: The Gulf of Mexico Community-based Oyster Shell Recycling and Reef Restoration Network, to be administered by Restore America's Estuaries, includes a partnership of six organizations located across the Gulf Coast to advance oyster shell recycling and restoration. PPBEP will serve as a subawardee to continue funding the EscaRosa Oyster Shell Recycling Program for the next three years. Funded in part by Santa Rosa County's RESTORE Act Direct Component funds and PPBEP's Community Grant Program, the EscaRosa Oyster Corps, part of Franklin's Promise Coalition, has provided oyster shell recycling services and workforce development opportunities for young adults in the community for the last three years. Funding from NOAA will ensure program sustainability and support the collection of recycled oyster shells from participating restaurants for use in coastal restoration in Pensacola and Perdido Bays.

Recommendation: Recommend the Board approve, and authorize the Chairman to sign, Restore America's Estuaries Subaward No. NOAA-Gulf23-PPBEP, in the amount of \$351,759, for the Gulf of Mexico Community Based Oyster Recycling and Reef Restoration Network Program.

Financial Impact: This action will increase the Grant Fund revenue account by \$351,759.

Legal Review: Legal Counsel has reviewed the RAE Subaward Agreement.



RESTORE
AMERICA'S
ESTUARIES

**2023 Gulf of Mexico Community Based Oyster
Recycling and Reef Restoration Network Program
Subrecipient Agreement between
Restore America's Estuaries and
Pensacola and Perdido Bays Estuary Program, Inc.**

Project Dates: October 1, 2023-December 31, 2025
Subaward #: NOAA-Gulf23-PPBEP
Award Amount: \$351,759.00

Points of Contact

For Restore America's Estuaries:

Hilary Stevens
Coastal Resilience Senior Manager
hstevens@estuaries.org
703-524-0248

Subrecipient Organization

Point of Contact Name: Matt Posner
Point of Contact Phone Number: 850-595-0820
Point of Contact Email: mjposner@ppbep.org
Organization Name: Pensacola and Perdido Bays Estuary Program, Inc.
Organization Address: 226 Palafox Place, Pensacola, FL 32502
Principal Place of Performance Address: 226 Palafox Place, Pensacola, FL 32502
EIN: 93-1499384
UEI Number: W4XTAT4CFNP4

Indirect Cost Rate: 10% de minimus

This constitutes an agreement between Restore America's Estuaries (RAE) and **Pensacola and Perdido Bays Estuary Program, Inc.** (Subrecipient), regarding the responsibilities of each in their roles as Recipient and Subrecipient under the *2023 Gulf of Mexico Community Based Oyster Recycling and Reef Restoration Network* program, as awarded to RAE under Cooperative Agreement # NA23NMF4630087, and its amendments and supplements. RAE's indirect cost rate for this award is the 10% de minimis rate.

1. Subrecipient Agreement Documents: Subrecipient Agreement documents shall consist of this agreement and the following attachments, all of which are incorporated by reference into this agreement.

Attachment 1: Project workplan and budget

Attachment 2: Progress & Final Report Requirements (will be provided after NOAA approval)

2. Services: Subrecipient agrees to perform services as described in the scope and budget provided in **Attachment 1** of this agreement (hereinafter the "Project.")

3. Subaward Amount: Restore America's Estuaries agrees to make available **\$351,759.00** for use by **Pensacola and Perdido Bays Estuary Program, Inc.** for the work to be performed under this reimbursable subaward. Subrecipient agrees to expend this money in conformity with the scope and budget in **Attachment 1** (the Project.)

4. Period of Performance: The period of performance for this cost-reimbursable subaward is from **October 1, 2023 through December 31, 2025 unless amended by written mutual agreement.** All work under this agreement must be performed during this period. Expenditures after the period of performance are unallowable.

5. Alterations: Any alterations in the scope of the work performed shall be submitted by the Subrecipient in writing to RAE and must be approved in advance in writing by RAE. The Subrecipient must obtain prior approval in writing from RAE if the cumulative amount of funding transfers among direct budget categories exceeds 10% of the total budget. The Subrecipient must notify RAE of cumulative funding transfers among direct budget categories that do not exceed 10% of the total budget for the agreement. Subrecipients must also notify RAE when transferring funds from direct budget categories to the indirect cost category or from the indirect cost category to the direct cost category. Prior approval by RAE is required if the transfer involves any of the items listed in 2 CFR 200.407 that RAE did not previously approve at time of award or in response to a previous post-award request by the Subrecipient.

6. Required Reports: The Subrecipient agrees to submit reports on the following schedule:

Report	Period Covered	Due Date
Progress #1	Date of Signature-February 29, 2024	March 31, 2024
Progress #2	March 1, 2024-August 31, 2024	September 30, 2024
Progress #3	September 1, 2024-February 28, 2025	March 31, 2025
Progress #4	March 1, 2025-August 30, 2025	September 30, 2025
Final Report	September 1, 2025-December 31, 2025. If the project date is extended additional progress reports will be required.	60 days following the Project Completion Date

Progress and final reports will reference the goals and objectives included in **Attachment 2** and indicate the progress that has been made toward each during the reporting period. Subrecipient agrees to prepare and submit progress and final reports as described in **Attachment 2**. RAE reserves the right to withhold payments if the Subrecipient has not submitted the reports on schedule or if reports are unsatisfactory in meeting the requirements of this agreement.

7. Outreach and Communications

Department of Commerce Financial Assistance Standard Term and Condition G.05.k.3. is supplemented as follows consistent with NOAA’s collaboration on this project. The Subrecipient will coordinate with RAE on outreach plans, events, products, and media coverage associated with the project. Please coordinate with the Grants Program Manager. Subrecipients will provide copies of final outreach products, website mentions, press materials, photos, etc. via the standard progress reports to RAE, or when available throughout the award period. Subrecipients will provide RAE with high-resolution before, during, and post-implementation photos of the project. Photos of the site prior to construction and during project implementation should be submitted with progress reports or as requested by RAE.

RAE expects all completed work products funded by NOAA be in the public domain, free of copyright or other intellectual property protections, unless covered by another applicable agreement or requirement (e.g., university intellectual property policies). In the event that Project work products are subject to other intellectual property requirements, the Subrecipient shall inform RAE of such requirements **prior to signature** of this subaward.

7a. Acknowledgement of Project Contributors

The Recipient must display, where appropriate and practical, publicly visible signs indicating that the project has received funding from the NOAA Restoration Center. These signs should also identify other contributing partners. These contributions should also be acknowledged in all communications with the media and the public and in all outreach related to the projects, consistent with Department of Commerce Financial Assistance Standard Term and Condition G.05.k.3.

8. Permits, Compliance & Safety

Subrecipient will ensure that implementation of the Project meets all federal, state and local environmental laws and consistency requirements, including National Environmental Policy Act (NEPA) requirements.

8a. The Subrecipient must have a written safety plan for management of the project, which should specifically address safety of project personnel, associates, visitors, and volunteers. The Subrecipient must conduct a safety briefing for volunteers immediately prior to their participation in hands-on restoration activities under this award.

In addition, for any Self-Contained Underwater Breathing Apparatus (SCUBA) diving activities in a project, it is the responsibility of the Subrecipient to ensure that SCUBA divers are certified to a level commensurate with the type and conditions of the diving activity being undertaken. Furthermore, it is the responsibility of the Subrecipient to ensure that any SCUBA diving activities under this award meet, at a minimum, all applicable Federal, State, and local laws and regulations pertaining to the type of SCUBA diving being undertaken.

9. Invoicing and Payment: Gulf of Mexico Community Based Oyster Recycling and Reef Restoration Network program funds are payable on a reimbursable basis only. **Subrecipient shall invoice RAE at least semi-annually with a progress report and at most monthly.** Invoices must include all reimbursable expenses incurred during the invoice period. If no reimbursable expenses were incurred during the invoice period, explain why no other reimbursable expenses were incurred. **Invoices for expenses incurred in any calendar year MUST be received by January 31 of the following year in order to be reimbursed.**

In order to be reimbursed, invoices must be complete, containing all required information and adhering to the required format described below. Invoices that do not include required information may be returned to Subrecipient and payment delayed.

Invoices must include the following:

- The invoice must be on organization letterhead
- Reference the subaward number
- Provide an invoice number
- Provide mailing address for payment, and any cost codes or other notations that should be included on the check or information on signing up for direct deposit will be provided when available
- Include date of invoice and period covered
- Include a general description of the work performed and brief description of any significant accomplishments during the invoice period.
- Per CFR 200.415 - Invoices must be **signed by an authorized representative of the organization and must include a certification**, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or

administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729– 3730 and 3801–3812).”

Include a summary cost table, consistent with the approved project budget in **Attachment 1**. Cost table format is provided below.

The cost table should describe:

- Reimbursable expenses incurred during the invoice period by federal cost category;
- Reimbursable expenses incurred to date during the project period by federal cost category;
- Break down personnel costs by individual, including a brief description of the work performed by each. This may be done with a separate table or with notations. RAE will not reimburse “lump sum” or combined personnel costs.
- Attach copies of all invoices over \$500.00 for which you are requesting reimbursement.
- Provide brief description of any travel costs.
- Use the cost table format provided below.

Submit invoices and supporting information through email to your RAE grant administrator. Invoiced expenditures must agree with the approved project budget. Variances among approved direct cost categories that cumulatively exceed 10% of the total award must be approved by RAE in writing, in advance of the expenditure.

Invoice Cost Table Format

Budget Category	Total Budgeted NOAA Funds	Grant Funds Expended This Period	Grant Funds Expended Cumulative	Grant Funds Remaining
Personnel				
Fringe				
Travel				
Equipment				
Supplies				
Contractual				
Other				
Total Direct				
Indirect				
Total				

The final billing, clearly marked Final, shall be submitted no later than sixty (60) days after the end of the period of performance. The final invoice will be paid upon approval of the final report.

10. Financial Records: Subrecipient agrees to maintain accurate records of all costs incurred in the performance of this work, and agrees to allow Restore America’s Estuaries, or their duly authorized representatives reasonable access to their records to verify the validity of expenses reimbursed under this agreement. Subrecipient agrees to maintain financial records, supporting documents and other records pertaining to this agreement for a period of three (3) years from the termination date of this agreement.

To comply with federal regulations, Subrecipient agrees to maintain a financial management

system that provides accurate, current and complete disclosure of the financial status of the subaward. This means the financial system must be capable of generating regular financial status reports which indicate the dollar amount allocated for the award (including any budget revisions), the amount obligated, and the amount expended for each activity. The system must permit the comparison of actual expenditures and revenues against budgeted amounts.

Accounting records must be supported by source documentation. Invoices, bills of lading, purchase vouchers, payrolls and the like must be secured and retained for three (3) years following the termination date of this agreement in order to show for what purpose funds were spent. Payments should not be made without invoices and vouchers physically in hand. All vouchers and invoices should be on vendors' letterheads.

11. Audits: RAE reserves the right to audit some or all of the Project costs, expenses, payments, etc., either formally or informally, as the Project proceeds and/or upon completion. Every year RAE is required to conduct random invoice audits of its Subrecipients. If Subrecipient is chosen for a random invoice audit, they must furnish all requested materials within thirty (30) days of the request. Any subsequent requests for corrective actions or additional documentation must be fulfilled within fifteen (15) days of the request.

Subrecipient agrees to comply with the requirements of 2 CFR Part 200 Subpart F. After completion of each yearly audit report the Subrecipient will promptly furnish (within 30 days) to RAE a copy of said audit report (or written notification) for each and every year during which this subaward is in effect. Subrecipient further agrees to notify RAE in writing if at any time during the period of this subaward it is no longer in compliance or if there are audit findings. In cases of such non-compliance or audit findings, the Subrecipient will promptly provide RAE with its written plan for corrective action.

All records and reports prepared in response to the audit requirements, or that relate to this subaward, shall be retained by the Subrecipient for three (3) years from the date of final payment on the subaward and will be made available during that period for inspection by representatives of RAE, its independent auditors, or the Federal government during normal business hours.

12. Allowable and Unallowable Costs: The Gulf of Mexico Community Based Oyster Recycling and Reef Restoration Network program uses federal funds. Subrecipient agrees to follow federal regulations as put forth in 2 CFR 200 in determining allowable costs under this agreement. Subrecipient agrees not to use funds provided under this agreement for any cost that is unallowable under these regulations. **Reimbursement by RAE for any cost that is later determined to be unallowable does not constitute sanction by RAE for the unallowable use of these funds.**

13. Procurement: The Subrecipient agrees to conduct all procurement actions, including reporting, under this award in accordance with the procurement standards set forth in 2 CFR 200.317 through 200.326. These measures include multiple bids for procurements above \$10,000 (2 CFR 200.320 and Davis-Bacon prevailing wage requirements for construction activities (2 CFR 200)).

13a. Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Pursuant to the Infrastructure Investment and Jobs Act (“IIJA”), Pub.L. No. 117-58, which includes the Build American, Buy American (BABA) Act, Pub. L. No. 117-58, §§ 70901-52 and OMB M-22-11, recipients of an award of Federal financial assistance from the Department of Commerce (DOC) are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- 1) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- 2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- 3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

To help federal agencies and recipients meet BABA requirements, the U.S. Department of Commerce, National Institute for Standards and Technology (NIST), Hollings Manufacturing Extension Partnership (MEP) National Network™ provides a service to connect stakeholders, including recipients, to U.S. manufacturers that have relevant production capabilities and capacities to help fulfill current market and supply chain needs. Recipients considering a BABA nonavailability waiver are strongly encouraged to contact the NIST/MEP for assistance with supplier scouting services prior to seeking a BABA nonavailability waiver. Further information on the NIST/MEP supplier scouting services is [available at: https://www.nist.gov/mep/supplier-scouting](https://www.nist.gov/mep/supplier-scouting).

DEFINITIONS

“Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives² —that is or consists

primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall.

"Domestic content procurement preference" means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

"Infrastructure" includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

"Project" means the construction, alteration, maintenance, or repair of infrastructure in the United States¹

Excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

2 IIA, § 70917(c)(1).

13b. Federal Employee Costs: No funds for this project (including funds contributed by the Subrecipient as cost sharing) may be used to pay for the travel of Federal employees or for other costs associated with Federal participation in this project unless a Federal agency will be providing services to the Subrecipient as authorized by a Federal statute.

13c. Management Fees: Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses; unforeseen liabilities; or for other similar costs which are not allowable under this grant. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

13d. Prohibition on certain telecommunication and video surveillance services or equipment: Effective August 13, 2020, Subrecipients and contractors must comply with regulations at 2 CFR 200.216, Prohibition on certain telecommunication and video surveillance services or equipment, implementing section 889 of Public Law 115-232. The regulation prohibits the use of funds on federally funded projects to procure (enter into, extend, or renew contracts) or obtain equipment, systems, or services that use "covered telecommunications equipment or services" from Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, and Dahua Technology Company, or any other company,

including affiliates and subsidiaries, owned or controlled by the People's Republic of China, which are a substantial or essential component of any system, or as critical technology as part of any system. The prohibition extends to the use of all funds under federally funded projects by recipients and subrecipients, including those subject to contract.

14. Indemnification: The Subrecipient agrees to indemnify RAE against all losses for expenses incurred by the Subrecipient that are, or are later held to be, unallowable. Reimbursement by RAE to the Subrecipient for such costs does not negate nor in anyway nullify the Subrecipient's responsibility under this provision.

As the direct Recipient of funds under this Award, RAE is responsible for the management of the award and is ultimately responsible for ensuring compliance with all federal requirements. The Subrecipient will cooperate with RAE in achieving compliance with the specific terms and conditions of the award, as well as the other terms and conditions specified in this agreement.

15. Cyber Security: The Subrecipient agrees that when collecting and managing environmental or other data under this agreement, it will protect the data by following all applicable Federal, State, or Tribal law cybersecurity requirements. Subrecipients must comply with regulations at 2 CFR 200.216, *Prohibition on certain telecommunication and video surveillance services or equipment*, implementing section 889 of Public Law 115-232. The regulation prohibits the use of Federal funds to procure (enter into, extend, or renew contracts) or obtain equipment, systems, or services that use "covered telecommunications equipment or services" identified in the regulation as a substantial or essential component of any system, or as critical technology as part of any system. Prohibitions extend to the use of Federal funds by Recipients and Subrecipients to enter into a contract with an entity that "uses any equipment, system, or service that uses covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology as part of any system. Certain equipment, systems, or services, including equipment, systems, or services produced or provided by entities subject to the prohibition are recorded in the System for Award Management exclusion list, which is available via <https://sam.gov/SAM/>.

16. Tangible Personal Property: Pursuant to 2 CFR 200.312 and 200.314, property reports, if applicable, are required for Federally-owned property in the custody of a non- Federal entity upon completion of the Federal award or when the property is no longer needed. Additionally, upon termination or completion of the project, residual unused supplies with a total aggregate fair market value exceeding \$5,000 not needed for any other Federally-sponsored programs or projects must be reported. Subrecipients should utilize the Tangible Personal Property Report form series (SF-428) to report tangible personal property.

16a. Disposition

Most Recipients: Consistent with 2 CFR 200.313, unless instructed otherwise on the official award document, this award term, or at closeout, the Subrecipient may keep the equipment and continue to use it on the project originally funded through this assistance agreement or on other federally funded projects whether or not the project or program continues to be supported by Federal funds.

17. Assurances: By signing this subaward, Subrecipient certifies that:

- It is not delinquent on repayment of any Federal debt including direct and guaranteed loans and other debt as defined in OMB Circular A-129, "Managing Federal Credit Programs."
- It is presently not debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from covered transactions by any Federal department or agency in accordance with Executive Order 12549 (34 CFR Part 85, Section 85.510).
- It has not, within three (3) years preceding this offer, been convicted of or had a civil judgment rendered against them for commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- No personnel working on this project are presently indicted for, or otherwise criminally or civilly charged by a government entity.
- It is in compliance with the Drug-Free Workplace Act of 1988 (34 CFR Part 85, Subpart F).
- It is in compliance with Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.
- It is in compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) regarding restrictions on lobbying.
- Funds expended under this award will comply with the applicable Federal cost principles.
- It does not have any known conflicts of interest pertaining to work on this project.

18. SUSPENSION OR CANCELLATION OF AWARDS: With 30 days' notice, Restore America's Estuaries may, in its sole discretion, discontinue or suspend funding, rescind payments made or demand return of any unspent funds based on any of the following: (a) the written reports required herein are not submitted to RAE on a timely basis, (b) the reports do not comply with the terms of this agreement or fail to contain adequate information to allow RAE to determine if the funds have been used for their intended purposes, (c) subaward funds have not been used for their intended purposes or have been used inconsistently with the terms of this agreement, (d) RAE is not satisfied with the progress of the activities funded by this subaward, (e) the purposes for which the subaward was made cannot be accomplished, or (f) making any payment might, in the judgment of RAE, violate the terms of RAE's cooperative agreement with NOAA, or expose RAE to liability. RAE will provide notice of any determinations made under this paragraph. In the event RAE takes action permitted by this paragraph solely based on (d) and (e), and Subrecipient provides documentation that it has incurred obligations consistent with the terms of the grant in good faith reliance on the Subrecipient Agreement and the approved budget, RAE will consider in good faith permitting subaward funds to be used to pay such obligations.

19. Signatures

For Restore America's Estuaries

By: _____ Date _____
Daniel Hayden, President & CEO

For Pensacola and Perdido Bays Estuary Program, Inc.

By: _____ Date _____
Woody Speed, Chairman

Attachments

- Attachment 1: Project workplan and budget
- Attachment 2: Progress & Final Report Requirements (will be provided after NOAA approval)

Draft

Attachment 1: Work Plan

The work plan timeline will shift to follow the project start date.

Draft

Organization Name: Pensacola & Perdido Bays Estuary Program

Other Partners Engaged in this Project:

<i>Organization Name</i>	<i>Role</i>
Franklin’s Promise – EscaRosa Oyster Corps	Oyster Shell Recycling Program Implementer
8 restaurants	Shell Recycling Partner
Santa Rosa County	Shell Recycling Partner – Shell Curing/Outreach
Pensacola State College	Shell Recycling Partner – Shell Curing
Choctawhatchee Basin Alliance	Oyster Shell Recycling Program Implementer

Both Santa Rosa County and Pensacola State College provide in-kind support to the EscaRosa Oyster Shell Recycling Program through use of their respective properties for oyster shell recycling operations, including curing, bagging, and transporting. Santa Rosa County’s in-kind support for use of their property is estimated at \$1,000 per month or \$36,000 over the three-year grant period. Pensacola State College’s in-kind support for use of their property is estimated at \$1,500 per month or \$54,000 over the three-year grant period.

History of Program

The first oyster shell recycling program in the Pensacola Bay Area began in 2011 when a local environmental nonprofit, Keep Pensacola Beautiful, partnered with the Florida Department of Environmental Protection Northwest Florida Aquatic Preserve’s Office to establish Project OYSTER (Offer Your Shell To Enhance Restoration) after receiving a 5-Star Urban Waters Restoration Fund grant from the National Fish and Wildlife Foundation. Modeled after the Alabama Coastal Foundation and Choctawhatchee Basin Alliance oyster shell recycling programs, Keep Pensacola Beautiful partnered with local restaurants to recycle shell for use in coastal restoration projects identified and permitted by Florida DEP. Project OYSTER resulted in the collection of over 100 tons of recycled shell used in the construction of 45 reefs/breakwaters in living shorelines throughout the Pensacola Bay System. While Project OYSTER was deemed a success, the program ended after nearly eight years due to funding limitations and a shift in priorities for Keep Pensacola Beautiful.

In 2020, following the Project OYSTER model implemented by Keep Pensacola Beautiful, Alabama Coastal Foundation, and Choctawhatchee Basin Alliance, Santa Rosa County committed RESTORE Act funds to implement a pilot oyster shell recycling program. Santa Rosa County and UF/IFAS SeaGrant Extension partnered with Conservation Corps of the Emerald Coast, part of the Franklin’s Promise Coalition, to implement the shell recycling program on behalf of the County, providing a workforce development opportunity for young adults in natural resource management and coastal restoration. To date, the Santa Rosa County Oyster Shell Recycling Program has collected over 14 tons of shell.

In 2021, the Pensacola & Perdido Bays Estuary Program (PPBEP) funded the EscaRosa Oyster Corps, an offshoot of Conservation Corps of the Emerald Coast, through their Community Grant Program to expand oyster shell recycling in the two-county area (Escambia and Santa Rosa), harvest aquatic vegetation, and implement living shoreline projects across the Pensacola Bay System. As of June 2022, over 57 tons of shell were recycled, over 5,000 spartina alterniflora plants were harvested, and 58 oyster prisms were constructed for use in living shoreline projects.

Impacts to Date

To date, the EscaRosa Oyster Corps has collected over 70 tons of shell over the last two years for use in coastal restoration projects in the Pensacola Bay System.

What This Funding Will Enable PPBEP to Do

Funding will enhance two programmatic elements of oyster shell recycling in Northwest Florida.

First, funding will be used to enhance the capacity of the EscaRosa Oyster Shell Recycling Program by purchasing an oyster shell recycling truck, similar to the Galveston Bay Foundation model, to create efficiencies in the oyster shell recycling process and expand the shell recycling program to new restaurants. PPBEP will engage the EscaRosa Oyster Corps, an affiliate of Franklin's Promise Coalition (a 501(c)3 nonprofit organization), to implement the EscaRosa Oyster Shell Recycling Program on behalf of PPBEP and its partners. The EscaRosa Oyster Shell Recycling Program will serve as a critical source of shell material for use in PPBEP's Living Shoreline Cost Share Program and Oyster Restoration Initiative, which are included for funding in a separate NOAA proposal.

Secondly, funding will support the Choctawhatchee Basin Alliance's (CBA) Oyster Shell Recycling Program. Since 2010, CBA has operated an oyster shell recycling program that serves restaurants along Hwy. 98 in Okaloosa and Walton Counties, along the south edge of the Choctawhatchee Bay. Currently, the program picks up oyster shell 2-3 times a week at 9 restaurants. In 2021, CBA staff and AmeriCorps members collected over 240 tons of shell to be used in restoration projects. While this may seem adequate, CBA has a waiting list of restaurants that would like to join the program and contribute shell. The CBA oyster recycling program is limited by staff time and equipment availability. To remedy this, CBA would use funds from this grant to purchase a vehicle and bins similar to the one used by Galveston Bay Foundation, and use that upgrade to amplify oyster restoration efforts in Choctawhatchee Bay. CBA's current shell pick-up model requires 2-3 staff members. The dump truck model can be staffed by one person, increasing staff capacity to reach additional restaurants. Many of the additional restaurants would be in the Fort Walton Beach and Niceville area, allowing for geographic diversity and opening up the community of stewardship to more people. In addition to more buy-in, the additional oyster shell acquired will be a helpful materials source for more living shorelines, as well as Choctawhatchee Bay Oyster Revitalization, a project that includes oyster gardening and subtidal oyster reef construction.

The EscaRosa Oyster Shell Recycling Program will strengthen ecosystem resilience of the oyster fishery through the recycling and distribution of critical substrate necessary for oyster larval colonization. The project is consistent with PPBEP's Comprehensive Conservation and Management Plan (CCMP), Goal 2: Enhance Community Resilience and Goal 5: Conserve and Restore Critical Habitat, released in 2022. Additionally, the project is consistent with the Pensacola Bay System Oyster Fisheries and Habitat Management Plan produced by The Nature Conservancy and released in 2021.

The project will enhance community resilience by using the shell collected through the Oyster Shell Recycling Program in the eventual construction of living shoreline projects throughout the Pensacola Bay System, which will reduce shoreline erosion and protect public and private infrastructure. This partnership with the EscaRosa Oyster Corps will enhance Diversity, Equity, Inclusion, and Justice opportunities and reach underserved communities as Oyster Corps seeks to employ underserved young adults through this workforce development program. Oyster Corps provides a suite of job skills to Oyster Corps crew members to ensure members obtain employment following completion of the program.

Measures of High-level Impacts

<i>Impact Area</i>	<i>Impacts</i>
1) Sustaining productive fisheries and strengthening ecosystem resilience	Collect 100 tons of oyster shell over a three-year period for use in the PPBEP Living Shoreline Initiative and Oyster Restoration Initiative to enhance shellfish and finfish habitat in the Pensacola Bay System and Choctawhatchee Bay.
2) Fostering regionally important habitat restoration	Collect 100 tons of oyster shell over a three-year period for use in the PPBEP Living Shoreline Initiative and Oyster Restoration Initiative to enhance shellfish and finfish habitat in the Pensacola Bay System and Choctawhatchee Bay.
3) Enhancing community resilience to climate hazards and providing other co-benefits	Utilize recycled oyster shell in the protection of public and private property through the construction of living shorelines through the PPBEP Living Shoreline Project. The targets are a minimum of 2,000 linear feet of shoreline protection in the Pensacola Bay System and 1,000 linear feet in the Choctawhatchee Bay System.
4) Providing benefit to underserved communities, including through partnerships with tribes	The EscaRosa Oyster Corps will employ at-risk young adults through this workforce development training program, targeting natural resource management/coastal restoration skills. The target is 10 Corps members.

Likely Sites of the Restoration Work

The portion of this program funded by this grant would be the collection of shell, which would occur throughout the Pensacola region. The specific project sites where this shell would be deployed have yet to be determined, but will occur within Pensacola Bay System.

<i>Location</i>	<i>Nearest Town or Watershed</i>	<i>Project within tribal or underserved communities?</i>	<i>Benefits to tribal or underserved communities?</i>	<i>Status of permits</i>
TBD	Pensacola Bay System	TBD	A primary benefit to underserved communities would come through the use of the EscaRosa Oyster Corps in this project. This group delivers economic benefit to local underserved communities by employing young adults between the ages of 18 and 25 from these communities that currently don't have a career plan. Oyster Corps serves as a workforce development program, providing members the job skills needed to obtain long-term, sustainable employment. This is accomplished through both training in natural resource and coastal	TBD

			restoration skillsets, but also financial literacy and communication skillsets that can be transferred to any industry. Oyster Corps also offers environmental benefit to underserved communities by engaging members of these communities in the protection of their local natural resources, thereby inspiring some members to continue seeking to protect and restore their local environment beyond their employment with the Corps.	
TBD	Choctawhatchee Bay	TBD	CBA partners with AmeriCorps to focus on environmental stewardship with an educational component of an environmental STEM curriculum. The focus is twofold: First, the implementation of the Grasses in Classes STEM curriculum; and, Second, restoration, including the oyster shell recycling program and living shoreline construction.	TBD

Project Methodology

This funding will be used for the EscaRosa Oyster Shell Recycling Program, to support continued collection of shell from existing restaurant partners and also to expand the number of restaurant partners from whom we are collecting shell from new restaurants. The EscaRosa Oyster Shell Recycling Program will serve as a critical source of shell material for use in PPBEP’s Living Shoreline Cost Share Program and Oyster Restoration Initiative, which have been included for funding in a separate NOAA proposal. There is therefore no direct restoration that will be done through this project.

Currently, Oyster Corps collects shells from participating restaurants twice a week, utilizing a bucket brigade to transfer the shells from the participating restaurant to a rented truck. The shells are then taken to the shell recycling lots, either in Santa Rosa County or Escambia County, offloaded utilizing the same bucket brigade, and allowed to cure for a period of weeks to months before being transferred offsite for use in living shoreline projects. This current process is labor intensive, costly, and time consuming. Funding provided by this opportunity will allow PPBEP and CBA to purchase shell recycling trucks, similar to the Galveston Bay Foundation model, to ease collection of shell from existing and future participating restaurants. PPBEP will then subaward funding to Franklin’s Promise (a 501(c)3 nonprofit organization), the host agency for the EscaRosa Oyster Corps, to implement the EscaRosa Oyster Shelling Recycling Program utilizing the shell recycling truck on behalf of PPBEP and its partners. Purchase of the shell recycling truck will increase capacity of recycling operations, allowing the program to be expanded to new restaurants interested in participating.

The success of this program to date indicates that the techniques we have used in shell collection over the two years we have been leading it are feasible, efficient, and effective.

The methodology for recruiting new restaurant partners and engaging the community in this work includes leveraging existing PPBEP outreach assets and partners. PPBEP will utilize its Business Partnership Program to reach new restaurants interested in participating, and will build on PPBEP’s initiative to restore 600 hectares of oyster habitat in the Pensacola Bay System over the next ten years. PPBEP will also roll out an Oyster Awareness Campaign in 2023 to build community support and excitement towards achieving this goal, and provide opportunities for community members to get engaged directly in restoration, both through the Oyster Shell Recycling Program and through project construction funded outside of this proposal.

We believe that by developing sufficient community support for this work, and by continuing to meet with success, we will be able to secure additional funding to sustain the shell recycling program beyond the end of this award period. As indicated by this project budget, annual costs of sustaining the program are not significant.

Implementation Monitoring and Evaluation

Again, as this project will not entail restoration work, monitoring and evaluation of its success will be done differently than other projects included in this overall proposal. We will primarily evaluate the project’s success by the number of tons of shell recycled, with a goal of 100 tons recycled over the three-year grant program. Other measures of success will include a minimum of ten restaurant partners participating in the program and engagement with the community as measured by number of community events, volunteer days, and social media posts included as part of PPBEP’s Oyster Awareness Campaign.

Also of note is that PPBEP will engage the EscaRosa Oyster Corps to implement the EscaRosa Oyster Shell Recycling Program. PPBEP will subaward funds to Franklin’s Promise (a 501(c)3 nonprofit organization), the host agency for the EscaRosa Oyster Corps. The Corps serves as a workforce development program targeting at-risk young adults in Northwest Florida and provides them an opportunity to develop skills in natural resource management, coastal restoration, and other universally important job skills. The Corps helps participants with job placement at the completion of the program. The success of this project, therefore, will also be measured by the number of participants in the EscaRosa Oyster Corps, targeting ten Corps members.

Project Timeline (Milestones & Deliverables)

<i>Major Activity</i>	<i>Start</i>	<i>Finish</i>
Execute Subaward with RAE	January 1, 2023	February 28, 2023
Purchase Oyster Shell Recycling Truck	March 1, 2023	May 31, 2023
Execute Contracts with Franklin’s Promise – EscaRosa Oyster Corps and CBA	June 1, 2023	June 30, 2023
Oyster Shell Recycling Program Collection	July 1, 2023	December 31, 2025
Oyster Restoration Awareness Campaign	July 1, 2023	December 31, 2025

Community Engagement

Item	Description	Timing
Opportunities for meaningful involvement	PPBEP will promote the EscaRosa Oyster Shell Recycling Program as part of its Oyster Restoration Awareness	Ongoing

of local communities and how barriers to accessing the project benefits will be addressed.	Campaign to reach and engage the community at-large in coastal restoration and to reach new restaurants interested in participating in the Shell Recycling Program. PPBEP will also engage its Environmental Justice Committee to reach underserved communities to participate in and benefit from the program, particularly targeting underserved citizens to work with the EscaRosa Oyster Corps.	
Meeting the holistic needs of the community	PPBEP will engage the EscaRosa Oyster Corps to implement the EscaRosa Oyster Shell Recycling Program and to reach and employ young adults in underserved communities in the Pensacola Bay Area. The Corps has a proven track record of employing underserved individuals over the last two years of operation.	Ongoing
Strategy to engage a diverse range of community groups in restoration actions	PPBEP will engage the EscaRosa Oyster Corps to implement the EscaRosa Oyster Shell Recycling Program. The Corps serves as a workforce development program targeting at-risk young adults in Northwest Florida and provides them an opportunity to develop skills in natural resource management, coastal restoration, and other universally important job skills. The Corps helps participants with job placement at the completion of the program.	Ongoing
Strategy to share information and educate the public about restoration actions	PPBEP, EscaRosa Oyster Corps, Santa Rosa County, Escambia County, and Florida DEP have an extensive network that will be engaged to inform and educate the public regarding the restoration outcomes expected from the Oyster Shell Recycling Program. PPBEP will incorporate the Oyster Shell Recycling Program into its Oyster Restoration Awareness Campaign, which will be featured in a variety of print and digital media formats to communicate to the public the importance of oysters to the Pensacola Bay Area heritage and environment.	Ongoing

Initial Budget

Category	Year 1 Costs	Year 2 Costs	Year 3 Costs	Comments
Salary	\$10,000	\$10,000	\$10,000	
Fringe	\$3,500	\$3,500	\$3,500	Fringe rate 35%
Travel	\$8,130	\$8,130	\$8,130	Regional travel to restoration sites and travel to annual learning meeting and RAE Summit
Equipment	\$63,000			Oyster shell recycling truck and equipment
Supplies	\$0	\$0	\$0	
Contractual	\$3,600	3,600	3,600	Contract with Franklin's Promise - EscaRosa Oyster Corps to implement the EscaRosa Oyster Corps Shell Recycling Program. EscaRosa Oyster Corps

				is an affiliate of Franklin's Promise Coalition, a 501(c)(3) nonprofit organization, and employs young adults from underserved communities as part of a workforce development program.
Other	\$65,500			Subaward to Choctawhatchee Basin Alliance for shell recovery
	\$25,000	\$55,000	\$55,000	Subaward to Fraklin's Promise
Total Direct Costs	\$178,730	\$80,230	\$80,230	
Indirect Costs	\$7,523	\$2,523	\$2,523	De Minimis 10%
Total	\$186,253	\$82,753	\$82,753	

Draft



Agenda Item 6.h.

Approval of The Nature Conservancy Subaward No. AL-2024-PPBEP-09.07.23-A108984, in the amount of \$1,628,962, for the Perdido Watershed Habitat and Community Resilience Initiative

Background: The Perdido Watershed Initiative, to be administered by TNC in Alabama, aims to enhance ecosystem and community resilience in the Perdido watershed in both Alabama and Florida through the integrated planning, implementation, and monitoring of multiple innovative restoration approaches and techniques. Specifically, the project will:

- Complete a shoreline habitat vulnerability assessment
- Update and synchronize a Living Shoreline Suitability Model
- Enhance community capacity to integrate Nature-based Solutions projects
- Complete restoration designs for the City of Orange Beach's Waterfront Park Living Shoreline, Gilchrist Island, Robinson Island, Walker Island, Lillian Swamp, and Bronson Field Living Shoreline and Hydrologic Restoration
- Implement a Living Shoreline Cost Share Program, the City's Waterfront Park Living Shoreline, Robinson Island Restoration, and the Rainwater Preserve Stewardship and Hydrologic Restoration

PPBEP will work with TNC in Alabama to implement the project, serving as a subawardee and lead implementer of the Living Shoreline Cost Share Program and design of the Bronson Field Living Shoreline and Hydrologic Restoration Project. Partners include the City of Orange Beach, Dauphin Island Sea Lab, Mississippi State University, Troy University, University of South Alabama, and Moffat and Nichol.

Recommendation: Recommend the Board approve, and authorize the Chairman to sign, The Nature Conservancy Subaward No. AL-2024-PPBEP-09.07.23-A108984, in the amount of \$1,628,962, for the Perdido Watershed Habitat and Community Resilience Initiative.

Financial Impact: This action will increase the Grant Fund revenue account by \$1,628,962.

Legal Review: The Nature Conservancy Subaward Agreement is currently under legal review at the time of agenda publishing. Should there be any legal concern, Legal Counsel will advise before or during the Board meeting.



SUBAWARD
 between
 THE NATURE CONSERVANCY (“TNC”)
 and
 PENSACOLA AND PERDIDO BAYS ESTUARY PROGRAM, INC. (“Awardee”)
 (a U.S. Subrecipient)

Subaward Number: AL-2024-PPBEP-09.07.23-A108984
TNC Project ID: P115596
TNC Award ID: A108984
Subaward Start Date: October 1, 2023
Subaward Expiration Date: March 31, 2027
Subaward Amount: \$1,628,962
Awardee Indirect Rate Allowed: 10%
Awardee Match: NA
Awardee Unique Entity Identifier: W4XTAT4CFNP4
Federal Award Identification Number: NA23NMF4630056
Federal Award Date (signature date of authorized official): 08/01/23
Federal Award Amount: \$12,574,655
Federal Awarding Agency: Department of Commerce NOAA
Contact Information of Federal Award Official: Melanie Gange, melanie.gange@noaa.gov, 301-427-8664
Federal Award Indirect Cost Rate: 22.4%
CFDA Number and Name: 11.463, Habitat Conservation
FFATA Reportable: Yes
Research and Development (R&D): No

The TNC representatives for this project are:
 for Project Manager/Technical Direction:
 Judy Haner
 Marine Programs Director
 118 N Royal St, Suite 500
 Mobile, AL 36602
jhaner@tnc.org
 251-281-4022

TNC’s Grants Specialist for financial/administrative matters:
 Susan Greehan
 Lead Grant Specialist
 20 Ashburton Place, Suite 400
 Boston, MA 02108
sgreehan@tnc.org
 617-532-8331

The Awardee's representatives for this project are:
 for Project Manager/Technical Direction:
 Matt Posner
 Executive Director, Pensacola & Perdido Bays Estuary Program
 226 South Palafox Place
 Pensacola, FL 32502
 850-595-0820

for financial/administrative matters:
 Matt Posner
 Executive Director, Pensacola & Perdido Bays Estuary Program
 226 South Palafox Place
 Pensacola, FL 32502
mjposner@ppbep.org

This Subaward (the “Agreement”) is being entered into by and between TNC and the Awardee, each of which is sometimes referred to in this Agreement as a “Party”, in order for Awardee to assist with the development and implementation of the living shoreline cost-share program and shoreline assessment data collection for the NOAA IJA Perdido Watershed Initiative (the “Project”) and agree as follows:

1. **Background and Prime Award.** TNC and NOAA (“Prime Funder”) entered into Cooperative Agreement number NA23NMF4630056 under which Prime Funder has made an award to TNC (the “Prime Award”). Under the terms of this Agreement, TNC subawards funds to Awardee for use in carrying out the Project. Although the funds to be provided to Awardee under this Agreement (the “Subaward Funds”) will come ultimately from Prime Funder, Awardee acknowledges that Prime Funder is not a Party to this Agreement, and shall have no obligations directly to Awardee under this Agreement. Notwithstanding the above, Awardee shall be subject to and shall comply with the terms and conditions contained in the Prime Award which are applicable to the Awardee, which are attached hereto as **Attachment E** and incorporated herein by reference.

2. **Subaward Term.** The term of this Agreement (the “Subaward Term”) shall begin on **October 1, 2023** (the “Start Date”) and shall expire on **March 31, 2027** (the “Expiration Date”), unless the Subaward Term is extended or earlier terminated in accordance with this Agreement.

Unless otherwise stated, expenditures for costs incurred prior to the start date or after the expiration date will be disallowed.

3. **Subaward Amount and Budget.** TNC hereby subawards funds to Awardee, as follows:
- (a) Awardee shall receive an amount not to exceed \$1,628,962, to be paid out of the funds provided to TNC under the Prime Award, and to be disbursed in accordance with the budget which is attached hereto as **Attachment A** (the “Budget”), which is incorporated herein by this reference. TNC shall not be obligated to pay Awardee for any amounts not shown in the Budget.
 - (b) Notwithstanding the above, the Awardee is authorized to reallocate funds between direct cost categories up to 10% of the total approved budget. Revisions in excess of this limit require prior written approval from TNC. TNC’s Project Manager and Grants Specialist for the Subaward must be informed in writing of all reallocations.
 - (c) TNC shall have no obligation to disburse funds to Awardee under this Agreement, except to the extent that funds are actually disbursed to TNC under the Prime Award.
 - (d) None of the Subaward Funds may be used as match to other U.S. Federal awards.
 - (e) Any Subaward Funds not used during the Subaward Term shall be returned to TNC no later than **30** calendar days after the final financial report is submitted.

4. **Scope of Work.** Awardee shall work on the Project as described in the scope of work which is attached hereto as **Attachment B**.

5. **Reports.** Awardee shall immediately notify TNC of any financial or programmatic deviations from the scope of work set out in Attachment B. Awardee shall submit financial report(s) and performance report(s) as follows according to the Reporting Due Dates chart below:

REPORTING DUE DATES	
Interim Performance Reports	<p>Due quarterly on September 30, covering the period of June 16 through September 15.</p> <p>Due quarterly on December 31, covering the period of September 16 through December 15</p> <p>Due quarterly on March 31, covering the period of December 16 through March 15.</p> <p>Due quarterly on June 30, covering the period of March 16 through June 15</p>
Final Performance Report	Due not later than April 30, 2027 , covering the entire Subaward Term
Interim Financial Reports/Invoices	Summary Report due quarterly on September 30 , covering the period of June 1 through August 30.

	<p><u>Summary Report</u> due quarterly on December 31, covering the period of September 1 through November 30.</p> <p><u>Detailed Report</u> due quarterly on March 31, covering the period of December 1 through February 28.</p> <p><u>Detailed Report</u> due quarterly on June 30, covering the period of March 1 through May 31.</p>
Final Financial Report/Final Invoice	Due not later than April 30, 2027 , covering the entire Subaward Term
Copy of Annual Single Audit under Uniform Guidance	Due annually not later than 6 months after each fiscal year end

Reports shall include:

- (a) Interim Performance Reports to describe activities conducted for the reporting period using the Performance Report Form provided electronically as **Attachment C**. The Interim Performance Reports shall include, at a minimum:
- Narrative description of work completed during the reporting period.
 - Problems, delays, or adverse conditions that could materially impair meeting the objectives or timelines of the scope of work.
 - Favorable developments or alternatives that could result in meeting the objectives sooner or at less cost than anticipated.
- (b) Final Performance Report to describe the final outcome of the accomplishments using the Performance Report Form provided electronically as **Attachment C**.
- (c) Interim Financial Reports/Invoices on Funds Expended: Awardee shall use the report format provided electronically as **Attachment D**. Financial report requirements are as follows:
- i. Detailed Financial Report:
 - Requires submission of the approved report format (**Attachment D**) with signature of the Project Manager and a Financial Representative, plus
 - A financial report from the Awardee’s accounting system showing revenue and expenditures for the Project, including:
 - time reports;
 - expenses of US \$500 or more (typically invoices/receipts, contracts); and
 - bank statements and bank reconciliations (if applicable).
 - ii. Summary Financial Report:
 - Requires submission of the approved report format (**Attachment D**) with signature of the Project Manager and the Financial Representative
- (d) Final Financial Report using report provided as **Attachment D**.
- iii. Final Financial Report requirements:
 - The final financial report must be so designated and submitted to TNC no later than 30 calendar days after expiration of the Subaward.
 - Requires submission of the Approved report format (**Attachment D**) with signature of the project manager and a finance representative, plus
 - A financial report from the Awardee’s accounting system showing revenue and expenditures for the project
 - Final invoice/request for remaining expenses not yet paid to date.

All Performance Reports and supporting materials shall be submitted to TNC’s Project Manager and Grants Specialist at the email addresses specified above.

All Financial Reports shall be signed by the Awardee’s Project Manager and a Financial Representative and submitted to TNC’s Project Manager and Grants Specialist at the email addresses above.

6. **Disbursements and Accounting.** The Awardee shall separately account for payments received under this Subaward in its accounting records. Disbursements shall be made to Awardee no more frequently than quarterly, based upon receipt of a complete and accurate Financial Report for the applicable period, **Attachment D** Awardee Financial Report and/or Awardee's standard invoice format. Payments will be sent to Awardee in the form of a check payable to Awardee. A completed W-9 must be submitted with the first request for payment to Awardee. Failure to provide information required by this Agreement may delay payment. Approval of any advance payment shall be made at the sole discretion of TNC.

7. **Award Administration.**

The Awardee agrees to comply with the following provisions:

- Both 2 CFR 200 ("Uniform Guidance") and the Prime Funder's implementation thereof found at 2 CFR 1327.01 are hereby incorporated by reference
- **Attachment E** Prime Award Provisions.

8. **Procurement Procedures.** Awardee shall use its own documented procurement procedures for the purchase of goods and services which must reflect applicable Country, State and/or local laws and regulations unless such procurement procedures conflict with the Uniform Guidance or the Prime Funder's implementation thereof, in which case Awardee shall follow the applicable Uniform Guidance or Prime Funder implementation requirements.

9. **Title to and Use of Equipment and Supplies** Except as otherwise provided in the Prime Award, title to any equipment and/or supplies purchased with Subaward Funds shall be held in the name of Awardee subject to the following: (a) TNC shall have a free, irrevocable license to use such equipment and/or supplies during the Subaward Term; and (b) the Prime Funder shall have a free, irrevocable license to use such equipment and/or supplies in accordance with the Prime Award or applicable law. The ultimate disposition of all such equipment and supplies shall be governed by the terms of the Prime Award and other applicable laws. Awardee shall work with TNC's Grant Specialist to determine appropriate disposition.

10. **Title to and Use of Work Products and Data.** Except to the extent otherwise provided in the Prime Award, title to any and all work product, including but not limited to reports, samples of any kind, studies, photographs, drawings, calculations, designs, diagrams, maps, surveys, data, database records, computer programs, and any other items created, produced, or developed by Awardee using Subaward Funds, whether or not such work product constitutes intellectual property (collectively, along with all supporting data and material, the "Work Product") shall vest in Awardee. Awardee hereby grants to TNC and to Prime Funder an irrevocable, non-exclusive, royalty-free, perpetual license to use, reuse, print, reprint, publish, republish, reproduce, or otherwise disseminate, sublicense or distribute all or any portion of the Work Product as TNC or the Prime Funder may deem appropriate from time to time in furthering their missions. Neither TNC nor Prime Funder shall be required to notify Awardee or obtain any form of permission or consent from Awardee to use the Work Product in accordance with this section. Awardee shall provide TNC with complete copies of the Work Product. Upon request by TNC, Awardee shall provide each Prime Funder with complete copies of the Work Product.

11. **Accounts, Audits and Records.** Awardee agrees to maintain books, records, documents and other evidence pertaining to all costs and expenses incurred and revenues acquired using Subaward Funds (collectively "**Records**") to the extent and in such detail as will properly reflect all costs and expenses for which reimbursement is claimed. Unless such period is extended by TNC, the Records shall be maintained for a period of three years after the Final Financial Report is submitted by TNC to the Prime Funder, except that if applicable, Awardee shall maintain all Records for equipment purchased with Subaward Funds for three years after the final disposition of such equipment. Awardee shall provide timely and unrestricted access to its books and accounts, files and other Records with respect to the Project for inspection, review and audit by TNC and each Prime Funder, and their authorized representatives. Upon inspection, review or audit, if TNC disallows any costs claimed by Awardee related to this Agreement, Awardee shall be responsible for reimbursing TNC for any of those costs related to the work Awardee has performed.

If Awardee has a single audit performed in accordance with Uniform Guidance, the Awardee must electronically submit (within the earlier of 30 calendar days after receipt of the auditor's report, or nine months after the end of the audit period) to the Federal Audit Clearinghouse (FAC) the data collection form and the reporting package. The collection form must be obtained from the FAC webpage. The reporting package must include the Financial Statements and Schedule of Expenditures of Federal awards, the summary schedule of prior audit findings, the auditors reports and a corrective action plan. If Awardee does not submit the form and package within the required timeframe, TNC will perform additional monitoring of the award.

12. **Safety Provisions.** Awardee agrees to comply with any and all safety provisions contained in the Prime Award.

13. **Announcements and Acknowledgments.** All public announcements or news stories, concerning the Project which Awardee may wish to release shall be subject to the prior approval of TNC, and shall (if TNC so requires) indicate the participation of TNC and the Prime Funder(s) in the funding of the Project.

In the event Awardee mentions the Project in any publications, scholarly articles, symposia, trade association events or other similar communications, Awardee agrees to acknowledge the support of TNC and each Prime Funder for the Project, as follows:

“This [report/video, etc.] was prepared by [Awardee name] using federal funds provided by the NOAA Restoration Center, U.S. Department of Commerce and The Nature Conservancy, under the terms of NOAA Agreement # NA23NMF4630056. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the position or the policy of NOAA, U.S. Department of Commerce or The Nature Conservancy, and no official endorsement should be inferred.”

14. **Conflict of Interest Determination.** Awardee certifies that the information which it has provided in the disclosure form concerning conflicts of interest which it provided to TNC (the “**Disclosure Form**”) is true and correct to the best of Awardee’s knowledge. In the event that any material misrepresentation in the Disclosure Form is discovered during the Subaward Term, TNC may immediately terminate this Agreement and recover damages from Awardee resulting from the termination TNC shall be entitled to offset any amounts payable to Awardee against such damages. After determining and offsetting such damages, TNC shall pay Awardee for activities satisfactorily completed.

15. **Liability and Indemnification.** The work done by or for Awardee using the Subaward Funds shall be performed entirely at the risk of Awardee. Awardee shall be solely responsible for, and for the payment of any and all claims with respect to, any loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of its employees or agents in connection with the performance of its work, and Awardee shall indemnify and defend TNC and each Prime Funder, and each of the officers, directors, employees, and agents of TNC and Prime Funder (in each case, an “**Indemnified Party**”) against, and shall hold each Indemnified Party harmless of and from, any and all claims, liabilities, losses, costs, damages, and other expenses of any kind or nature whatsoever (including, but not limited to, attorneys’ fees and expenses, as well as costs of suit, which any Indemnified Party may incur as a result of or in connection with the Project, or which may cause TNC to be in default under the Prime Award.

16. **Insurance.** Throughout the Agreement Term, Awardee shall maintain the following insurance policies:

(a) **Liability Insurance.** Comprehensive commercial general liability insurance for all of its activities and those of its agents and employees, applying to personal injury, bodily injury, and property damage, and including broad form contractual liability coverage, with a combined single limit of liability of not less than \$2,000,000, which shall include coverage for contractual liability coverage specifically covering this Agreement.

(b) **Worker’s Compensation Insurance.** Worker’s compensation insurance for all of Awardee’s employees, in compliance with all applicable laws.

(c) **Vehicle Liability Insurance.** Comprehensive vehicle liability insurance for owned, non-owned, and hired vehicles, applying to personal injury, bodily injury and property damage, with a combined single limit of liability of not less than One Million Dollars (\$1,000,000) per occurrence.

Upon request, Awardee shall name TNC and Prime Funder as an additional insured. Awardee shall also provide TNC and each Prime Funder with thirty (30) days written notice prior to cancellation, termination, alteration, or material change to such policy and shall provide TNC and Prime Funder assurances as to the timely acquisition of replacement insurance.

17. **Non-Discrimination**

No U.S. citizen or legal resident shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination on the basis of race, color, national origin, age, disability, or sex under any program or activity funded by this Award when work under the grant is performed in the U.S. or when employees are recruited from the U.S.

Awardee is encouraged to develop and enforce comprehensive nondiscrimination policies for their workplaces that include protection for all their employees, subject to applicable law.

Awardee shall not discriminate against any beneficiaries in implementation of this award, such as, but not limited to, by withholding, adversely impacting, or denying equitable access to the benefits provided through this award on the basis of any factor not expressly stated in the Award. This includes, for example, race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, disability, age, genetic information, marital status, parental status, political affiliation, or veteran's status. Nothing in this provision is intended to limit the ability of the Awardee to target activities toward the assistance needs of certain populations as defined in the award.

The Awardee must insert this provision, including this paragraph, in all subawards and contracts under this Subaward.

18. **Compliance with Applicable Laws, Jurisdiction and Venue** Awardee agrees that it will use the Subaward Funds in compliance with all applicable antiterrorist financing and asset control laws, regulations, rules and executive orders, including but not limited to the USA Patriot Act of 2001 and Executive Order 13224. Additionally, the Awardee represents, warrants, and agrees that, in connection with the transactions contemplated by this Agreement: (a) the Awardee can lawfully work in the United States; (b) the Awardee shall obtain, at its own expense (except to the extent otherwise explicitly stated in this Award) any permits or licenses required for the Awardee's services under this Agreement; and (c) the Awardee shall comply with all statutes, laws, ordinances, rules, regulations, court orders, and other governmental requirements of the United States, the State of Alabama, and any other jurisdiction(s) in which the Awardee is organized or authorized to do business, including but not limited to any applicable anti-bribery statutes, which are applicable to the work to be done by the Awardee under this Award (in each case, an "**Applicable Law**"). The Awardee shall not take any actions that might cause TNC to be in violation of any of such Applicable Laws. In the event of any litigation over the interpretation or application of any of the terms or provisions of this Agreement, the Parties agree that litigation shall be conducted in a court in the State of Alabama with subject matter jurisdiction and that they are subject or will make themselves subject to personal jurisdiction in that court.

19. **Lobbying with Federal Funds Certification.**

Awardee certifies, to the best of Awardee's knowledge and belief that:

(a) no U.S. Federal appropriated funds have been paid or will be paid by Awardee or on behalf of Awardee to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any U.S. Federal contract, the making of any U.S. Federal grant, the making of any U.S. Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any U.S. Federal contract, grant, loan, or cooperative agreement; and

(b) if any funds other than U.S. Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection the underlying U.S. Federal award, Awardee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Awardee shall require that the language of this certification be included in the award documents for all subawards/subcontracts under this Agreement and that all Awardees shall certify and disclose accordingly.

Awardee shall not use any portion of the Subaward Funds to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to cause any private inurement or improper private benefit to occur, or to take any other action inconsistent with Section 501(c)(3) of the US Internal Revenue Code and related regulations.

20. **Trafficking in Persons**

(a) The Awardee and its sub-recipients under this Subaward (including the employees of each entity) may not—
(i) Engage in severe forms of trafficking in persons during the Subaward Term;
(ii) Procure a commercial sex act during the Subaward Term; or
(iii) Use forced labor in the performance of the Subaward, or in any of Awardee's subawards.

(b) TNC may unilaterally terminate this Subaward, without penalty, if Awardee or Awardee's subrecipient (or an employee of either entity) is determined by TNC to have violated this provision through:

- (i) Conduct that is either associated with performance under this Subaward or
- (ii) Conduct imputed to Awardee or Awardee's subrecipient.

(c) Other Requirements.

- (i) Awardee shall inform TNC immediately of any information received from any source alleging a violation of a prohibition in paragraph a.1 of this provision.
- (ii) Awardee shall include the requirements of this provision in any subaward made under this Subaward.

(d) Definitions. For purposes of this provision:

(i) "Employee" means either:

- A. An individual employed by Awardee or a subrecipient who is engaged in the performance of the project or program under this Subaward; or
- B. Another person engaged in the performance of the project or program under this Subaward and not compensated by Awardee, including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

(ii) "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(iii) "Severe forms of trafficking in persons" means (a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(iv) "Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.

(v) "Coercion" means (a) threats of serious harm to or physical restraint against any person; (b) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (c) the abuse or threatened abuse of the legal process.

21. Debarment and Suspension Ineligibility, and Voluntary Exclusion

a. Awardee must not transact or conduct business under this Subaward with any individual or entity that has an active exclusion on the System for Award Management (SAM) (www.sam.gov) unless prior approval is received from TNC. The list contains those individuals and entities that the

U.S. Government has suspended or debarred based on misconduct or a determination by the U.S. Government that the person or entity cannot be trusted to safeguard U.S. Government funds. Suspended or debarred entities or individuals are excluded from receiving any new work or any additional U.S. Government funding for the duration of the exclusion period. If the Awardee has any questions about listings in the system, these must be directed to TNC.

b. The Awardee must comply with Subpart C of 2 CFR Section 180, as supplemented by 2 CFR 780. TNC may disallow costs, annul or terminate the transaction, debar or suspend the Awardee, or take other remedies as appropriate, if the Awardee violates this provision. Although doing so is not automatic, TNC may terminate this Subaward if a Awardee or any of its principals meet any of the conditions listed in paragraph c. below.

c. The Awardee must notify TNC immediately upon learning that it or any of its principals, at any time prior to or during the duration of this Subaward:

- (1) Are presently excluded or disqualified from doing business with any U.S. Government entity;
- (2) Have been convicted or found liable within the preceding three years for committing any offense indicating a lack of business integrity or business honesty such as fraud, embezzlement, theft, forgery, bribery or lying;
- (3) Are presently indicted for or otherwise criminally or civilly charged by any governmental entity for any of the offenses enumerated in paragraph c.(2); or
- (4) Have had one or more U.S.-funded agreements terminated for cause or default within the preceding three years.

d. Principal means—

- (1) An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or
- (2) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who—
 - (i) Is in a position to handle Federal funds;
 - (ii) Is in a position to influence or control the use of those funds; or,
 - (iii) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

e. The Awardee must include this provision in its entirety except for paragraphs c.(2)-(4) in any subawards or contracts entered into under this Subaward. Awardee certifies that neither it nor its principals is presently excluded or disqualified from participation in this transaction by any Federal department or agency.

The policies and procedures applicable to debarment, suspension, and ineligibility under USAID-financed transactions are set forth in Subpart C of 2 CFR Section 180, as supplemented by 2 CFR 780.

22. Mandatory Disclosures

Awardee must disclose in a timely manner in writing to TNC all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this Agreement.

Disclosures must be sent to:

The Nature Conservancy's Ethics and Compliance Office by e-mailing compliance@tnc.org or by contacting the Conservancy's Chief Ethics & Compliance Officer:

The Nature Conservancy

Attention: Chief Ethics & Compliance Officer

4245 N. Fairfax Drive

Arlington, VA 22203

23. Human Rights

Awardee shall comply with all applicable human rights laws, statutes, regulations, and codes as well as any human rights policy, standard operating procedure, guideline, or procedure adopted by TNC and shared with Contractor. Furthermore, in performing the Services, the Contractor shall respect human rights by: (a) identifying, preventing, and mitigating any potential or actual adverse human rights impacts resulting from its activities or the activities of its subcontractors, suppliers, or similar third parties; and (b) remediating any actual adverse human rights impacts which it causes or to which it contributes as soon as is practicable. Finally, the Contractor represents and warrants that neither Contractor nor any of its employees has been found at fault or penalized for any human rights violations or creating an adverse impact on human rights.

24. Code of Conduct; Helpline

TNC expects itself and everyone with whom it does business to conduct themselves in ways that are consistent with its TNC's Code of Conduct found at www.nature.org/codeofconduct. Anyone (whether an employee of TNC or not) may contact the TNC Helpline (anonymously, if desired) with questions, concerns, or suspected violations at www.nature.org/tnc helpline.

25. Miscellaneous Provisions.

(a) Use of Names/Logos. Neither Party shall use the name or logo of the other Party or of any Prime Funder in any way without prior written consent from the owner of that name or logo.

(b) Assignment. None of the rights or obligations of Awardee under this Agreement may be assigned or delegated by Awardee in whole or in part without the prior written consent of TNC. Except to the extent set forth in the approved scope of work and the Budget, Awardee may not subcontract or subaward any portion of the Project without the prior written consent of TNC. If subcontracting/subawarding is permitted, Awardee shall consult with the TNC Grants Specialist listed above in this Agreement to determine which provisions of this Agreement and/or the Prime Award, must be included in the subcontract/subaward, and the proper method of their inclusion.

(c) Termination.

This Agreement may be terminated prior to the expiration of the Subaward Term under the following conditions:

- (i) If the Prime Funder terminates the Prime Award, this Agreement shall be terminated automatically as of the termination date of the Prime Award. TNC shall notify Awardee of such termination as soon as is reasonably practicable.
- (ii) TNC shall have the right to terminate this Agreement without cause by giving Awardee 30 days' written notice.
- (iii) If, in the judgment of TNC, Awardee defaults in performance of any of its obligations under this Agreement, whether for circumstances within or beyond the control of Awardee, TNC may immediately terminate this Agreement by written notice to Awardee.

In the event of any early termination of this Agreement, Awardee shall take all necessary action to cancel outstanding commitments relating to the work which was to be paid from Subaward Funds. If TNC terminates this Agreement as the

result of Awardee's breach of this Agreement, TNC may recover damages resulting from such breach and/or the termination of this Agreement. Subject to receiving payment from Prime Funder, TNC shall pay any obligations which were reasonably incurred by Awardee in accordance with this Agreement prior to the effective date of termination; however, TNC may offset any damages incurred against such payment.

(d) No Agency. No legal partnership or agency is established by this Agreement. Neither Party is authorized or empowered to act as an agent, employee or representative of the other, nor transact business or incur obligations in the name of the other Party or for the account of the other Party, and neither Party shall be bound by any acts, representations, or conduct of the other Party.

(e) Notices. All notices and demands of any kind which may be required in connection with this Agreement shall be in writing, and shall be served personally, by registered or certified mail, return receipt requested or by electronic mail with "read receipt" to the representatives of each Party noted on Page 1 of this Subaward (except for notices required under Section 20. If the names, titles, or addresses of such representatives change for any reason, each Party shall notify the other immediately of such change and provide updated contact information.

(f) Due Diligence TNC may request copies of documents to ensure that Awardee meets TNC's criteria for this Agreement and that Awardee meets appropriate standards of capacity and financial accountability.

(g) Agreement. The terms of this Agreement, including any attachments hereto, are intended by the Parties as a final expression of their agreement and constitute the complete and exclusive statement of its terms. This Agreement may not be modified, amended or otherwise changed in any manner, except by a written amendment executed by all of the parties hereto, or their successors in interest. This Agreement may be executed in multiple counterparts, and each executed counterpart of this Agreement shall be deemed an original for all purposes. Electronic signatures, digital signatures, fax signatures, and scanned signatures are acceptable for this Agreement in compliance with the Uniform Electronic Transactions Act (UETA).

(h) Precedence. In the event of any contradiction between or among the terms of this Agreement, the Prime Award, or any applicable law, the contradiction shall be resolved by giving precedence to the terms of the following, in the following order:

- (i) The applicable law, including Uniform Guidance
- (ii) The Prime Funder's implementation of the Uniform Guidance at 2 CFR 1327.01;
- (iii) The Prime Award;
- (iv) This Agreement.

25. Closeout: Awardee will be notified and instructed by TNC if they must complete any additional forms for closeout of this Subaward.

In witness whereof, the undersigned have executed this Agreement as of the date first above written.

The Nature Conservancy,
a District of Columbia non-profit corporation

**Pensacola and Perdido Bays Estuary Program, Inc., a
Florida not for profit corporation**

By: _____
(signature)

By: _____
(signature)

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

List of Attachments

- Attachment A: Budget
- Attachment B: Scope of Work

- Attachment C: Performance Report Format
- Attachment D: Approved Financial Reporting Form
- Attachment E: Prime Award Provisions
- Attachment F: Disclosure Form – The Nature Conservancy
- Attachment G: FFATA reporting

Attachment A
Budget

BUDGET CATEGORY	COST
Personnel and Benefits	<i>\$415,125</i>
Supplies	<i>\$445,600</i>
Other	<i>\$620,150</i>
Total Direct Charges	<i>\$1,480,875</i>
Indirect (Federal de minimus – 10%)	<i>\$148,087</i>
TOTAL BUDGET	<i>\$1,628,962</i>

Personnel & Benefits

	Year 1	Year 2	Year 3	Total
Personnel	\$ 102,500.00	\$ 102,500.00	\$ 102,500.00	\$ 307,500.00
Senior Scientist (0.25 FTE)	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 60,000.00
Outreach Coordinator (0.25 FTE)	\$ 13,750.00	\$ 13,750.00	\$ 13,750.00	\$ 41,250.00
Environmental Scientist (0.25 FTE)	\$ 13,750.00	\$ 13,750.00	\$ 13,750.00	\$ 41,250.00
Project Coordinator (1.0 FTE)	\$ 55,000.00	\$ 55,000.00	\$ 55,000.00	\$ 165,000.00
Fringe Benefits	\$ 35,875.00	\$ 35,875.00	\$ 35,875.00	\$ 107,625.00
Senior Scientist (0.25 FTE)	\$ 7,000.00	\$ 7,000.00	\$ 7,000.00	\$ 21,000.00
Outreach Coordinator (0.25 FTE)	\$ 4,812.50	\$ 4,812.50	\$ 4,812.50	\$ 14,437.50
Environmental Scientist (0.25 FTE)	\$ 4,812.50	\$ 4,812.50	\$ 4,812.50	\$ 14,437.50
Project Coordinator (1.0 FTE)	\$ 19,250.00	\$ 19,250.00	\$ 19,250.00	\$ 57,750.00

Four positions are budgeted.

The Senior Scientist (Whitney Scheffel) will provide approximately 520 hours per year for the duration of the project to assist with design review, field work, data collection, and analysis.

The Community Outreach Coordinator (Logan McDonald) will provide approximately 520 hours per year for the duration of the project to assist with community engagement.

The Environmental Scientist (Haley Gancel) will provide approximately 520 hours per year for the duration of the project to assist with design review, field work, data collection, and analysis.

The Project Coordinator (to be determined) will provide approximately 1,040 hours per year for the duration of the project to coordinate the living shoreline cost share program, assist with contract review, and assist with field work.

The Pensacola and Perdido Bays Estuary Program uses a 35% fringe rate for full-time personnel, which includes FICA, Medicare tax, unemployment insurance, health insurance, life insurance, short and long-term disability insurance, and retirement contributions.

Total Personnel and Benefits costs: \$415,125

Supplies

	Year 1	Year 2	Year 3	Total
Supplies	\$ 15,200.00	\$ 215,200.00	\$ 215,200.00	\$ 445,600.00
Field Supplies	\$ 3,200.00	\$ 3,200.00	\$ 3,200.00	\$ 9,600.00
Outreach Materials	\$ 12,000.00	\$ 12,000.00	\$ 12,000.00	\$ 36,000.00
Living Shoreline Cost Share – Plants (plants/year)	\$ -	\$ 60,000.00	\$ 60,000.00	\$ 120,000.00
Living Shoreline Cost Share – Breakwater Materials (oyster shell and rock) (tons/year)	\$ -	\$ 140,000.00	\$ 140,000.00	\$ 280,000.00

Supplies associated with the Scope of Work as described in Attachment B are as follows: field supplies include fuel for the work/research vessel and truck; office supplies include the purchase of a laptop and monitor for the new Project Coordinator position, communication, and printing costs; and outreach materials for promotion of the Living Shoreline Cost Share Program includes production costs of printed materials, website development, and digital media outreach.

Living Shoreline Cost Share Program supplies include: Plant costs are estimated at \$1/plant for 120,000 plants for a total of \$120,000. PPBEP will pay the City of Orange Beach for plant propagation. Living shoreline material costs are estimated at \$90/ton for approximately 3,110 tons for a total of \$280,000. Supplies cost estimates are based on recently completed costs for projects located within the Perdido Bay area. Rates are subject to change based on market price.

Total Supplies costs: \$445,600

Other

Other	\$ 180,546.00	\$ 280,218.00	\$ 159,386.00	\$ 620,150.00
City of Orange Beach Subaward	\$ 100,000.00	\$ -	\$ -	\$ 100,000.00
OysterCorps Subaward (Living Shoreline Cost Share)	\$ -	\$ 220,000.00	\$ 100,000.00	\$ 320,000.00
Troy University Subaward	\$ 80,546.00	\$ 60,218.00	\$ 59,386.00	\$ 200,150.00

Three subawards are budgeted.

City of Orange Beach: PPBEP will subaward \$100,000 to the City of Orange Beach to construct and operate a greenhouse facility on City property to grow saltmarsh plants to be used in the Living Shoreline Cost Share Program.

OysterCorps: PPBEP will subaward \$320,000 to OysterCorps (hosted by Franklin's Promise Coalition) to provide labor for construction of living shoreline projects identified through the Living Shoreline Cost Share Program. Franklin's Promise is a registered 501(c)3 non-profit and administers the OysterCorps program. OysterCorps serves as a workforce development program, training, and employing young adults to work on restoration projects.

Troy University: PPBEP will subaward \$200,150 to Troy University (Troy). Troy will provide ecological and geospatial assistance for Living Shoreline Suitability Modeling (LSSM), shoreline protection recommendations, design and development of an online Geospatial viewer and mobile GIS App, assist with workshops and outreach events, and coastal monitoring and erosion-rate calculation needed for the Living Shoreline Cost Share Program.

Total Other costs: 620,150

Indirect Costs

The Pensacola and Perdido Bays Estuary Program, Inc. elects to use the federal indirect de minimus rate of 10%.

Total Indirect Cost: \$148,087

Total Budget

The total budget for the performance of the work described in Attachment B Scope of Work is \$1,628,962. Allocation of all activities for Year 1 being \$367,533, Year 2 being \$697,172, and Year 3 being \$564,257, respectively.

Attachment B Scope of Work

For the Perdido Watershed Habitat and Community Resilience Initiative, the Pensacola and Perdido Bays Estuary Program (PPBEP) will implement the following tasks within the project area in Figure 1 below (watershed coverage area).

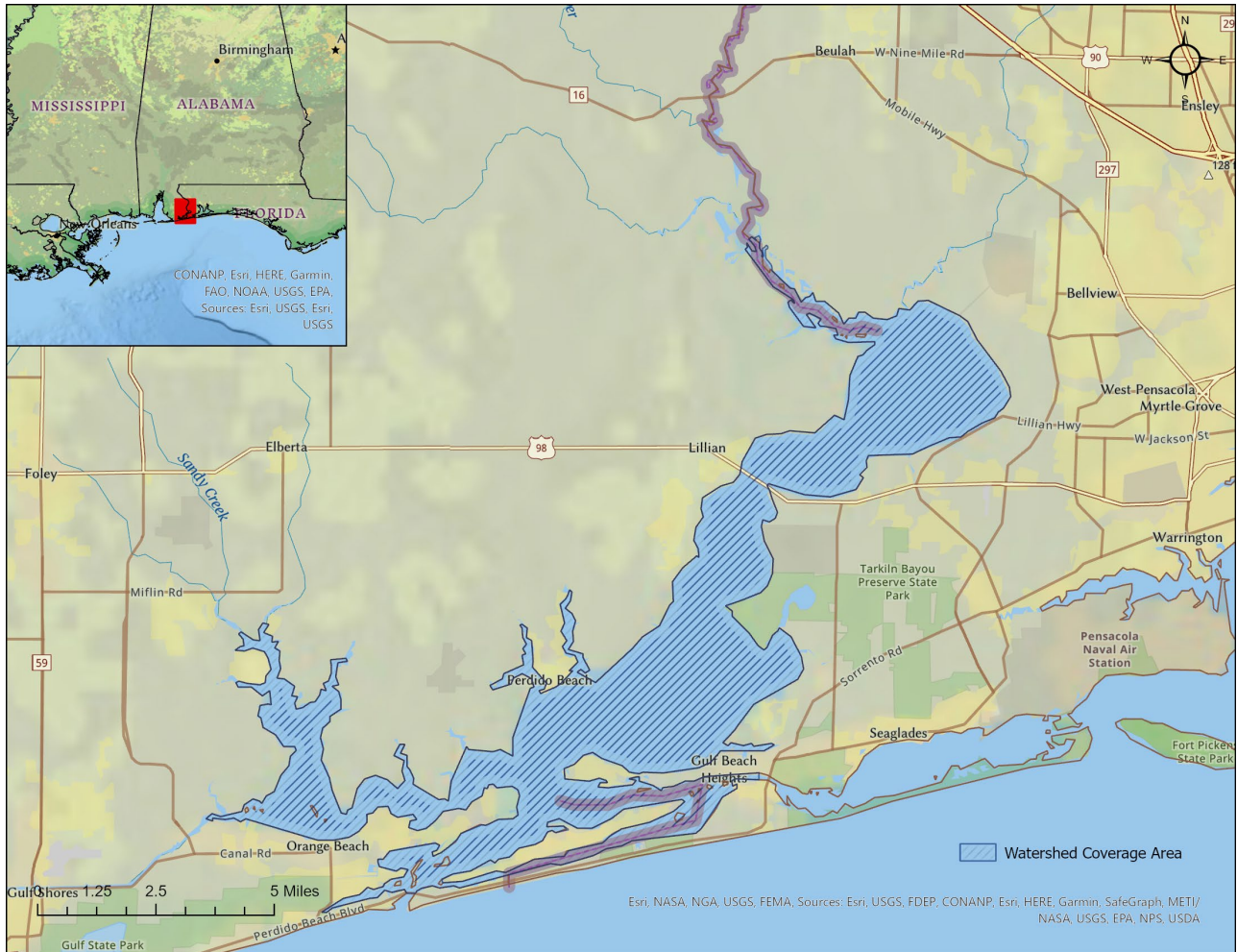


Figure 1. Project location and watershed coverage area for all project activities.

Task 1: Living Shoreline Cost Share Program

The Living Shoreline Cost Share Program will be administered by PPBEP with the support of Mississippi State University (MSU), Troy, and University of South Alabama. Specific activities include developing and disseminating an application form for private property owners interested in living shorelines and the Program, evaluating the feasibility of each potential project through site visits and collection of site assessment data. Each site that is determined to be feasible for a living shoreline project will receive a site assessment and design recommendation. If the property owner wishes to proceed with the Program, an agreement between PPBEP and the property owner will be executed prior to proceeding with design and permitting. After agreement execution, staff will assist with design and permitting coordination, project materials (i.e., plants, rocks, shell, etc.), and up to fifty percent of the cost of construction labor. Considerations or adaptation of the Program for financially constrained and underserved participants will be included. PPBEP will work with the property owners to monitor the performance of the project for a minimum of one-year post-construction. While restoration targets are highly variable and dependent on individual property owners needs and site conditions, PPBEP is targeting a minimum enrollment of ten property owners protecting 2,000 linear feet of shoreline (using an average of 200-ft wide lots). A condition of the agreement between PPBEP and the property owner will be that their shoreline can be used as a demonstration site. Presence of demonstration sites throughout the watershed will likely lead to more property owners being interested in these shoreline protection options.

The Living Shoreline Cost Share Program will cover the cost of design, construction materials (including plants, rock, and/or oyster shell), and up to fifty percent of construction labor. Three subawards are included within Task 1. PPBEP will engage partner organization, Oyster Corps, to construct living shorelines on participating properties. Landowners will be responsible for permitting fees and a minimum of fifty percent of the cost of construction labor. The City of Orange Beach will build a greenhouse facility to grow vegetation for use in the Living Shoreline Cost Share Program. Troy University will be engaged to update the LSSM.

Project milestones are included in the table below.

Project Timeline and milestones/deliverables by component—Living Shoreline Cost Share Program																			
Goal: To incentivize NBS and implement recommendations identified in the LSSM and shoreline assessments for waterfront landowners																			
Project Milestone	Task Lead	2023			2024				2025				2026				2027		Deliverables/Performance Metrics
		Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	
Public Meetings & Outreach	PPBEP/MSU/TNC		X		X		X		X		X		X		X		X		# Meetings, # underrepresented groups, # attendees
Develop & Disseminating Application Form	PPBEP/MSU/TNC	X	X	X	X	X													Approved application form, # reached, # completed applications
Develop Cost-Share Incentives & Launch Program	PPBEP	X	X	X	X	X	X	X											10 enrollments and/or 2,000 linear feet of shoreline included
Greenhouse Construction	COB/PPBEP		X	X															Constructed greenhouse
Site Assessments (Pre-monitoring)	PPBEP/MSU		X	X	X	X	X	X	X	X	X								# Site assessments performed
Integrate LSSM Data	TROY/PPBEP				X	X	X	X	X	X	X					X		X	Areas identified in SUNS and cost-share, data uploaded annually after LSSM updates
Complete Design Recommendations**	PPBEP		X	X	X	X	X	X	X	X	X								# Complete design recommendations
Permitting Coordination-AL & FL**	PPBEP/TNC			X	X	X	X	X	X	X	X								General LS permits in each state for each landowner
Landowner Agreements, Construction	PPBEP				X	X	X	X	X	X	X	X	X	X	X				# Agreements, # constructed projects
Post-construction Monitoring	PPBEP												X	X	X	X	X	X	Ongoing monitoring

*Quarters are based on calendar year: Q1=Jan-Mar; Q2=Apr-Jun; Q3=Jul-Sep; Q4=Oct-Dec

**Coordinate with NOAA

Task 2: Bronson Field Living Shoreline Design

PPBEP will help oversee design, permitting, and community engagement for the Bronson Field Living Shoreline Project. The Bronson Field site includes completing designs for: 1) ~1-mile hydrologic reconnection of Bronson Field to Tarkiln Bayou; 2) ~1.5 miles of shoreline protection efforts and 10 acres of estuarine habitat creation; and 3) enhanced managed access to natural resources onsite. Bronson Field, now known as Blue Angel Recreation Park, is owned by the US Navy and maintained by Naval Air Station Pensacola's Morale, Welfare, and Recreation team. Historically, Bronson Field was constructed as a Navy outlying landing field for pilot training beginning in the 1940s during the height of WWII. While training operations ended decades ago, the old seaplane ramps and tarmac resulted in a completely hardened shoreline for approximately a half-mile on Perdido Bay. Additionally, onsite wetlands were drained in the 1940s through the construction of a drainage ditch to Perdido Bay, disrupting the natural hydrologic regime that historically flowed south to Tarkiln Bayou. Now, the site is used recreationally by active-duty service members, retirees, authorized civilians, and their families and guests.

This project will produce a shovel-ready design to help restore the natural hydrologic regime and sheetflow from Bronson Field to Tarkiln Bayou, a critical need identified in Tarkiln Bayou Preserve State Park's 2016 Unit Management Plan. Project designs will also result in the removal of an approximately half-mile hardened shoreline and replaced with a living shoreline, comprised of offshore breakwaters and marsh platforms, serving a dual purpose of shoreline protection and stabilization and aquatic habitat creation.

Project Timeline and milestones/deliverables by component--Lillian Swamp and Bronson Field																				
Goal: To design shoreline restoration and habitat improvements to improve resilience of Lillian Swamp and Bronson Field																				
Project Milestone	Task Lead	2023			2024				2025				2026				2027		Deliverables/Performance Metrics	
		Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2		
Secure Firm, Complete Modelling and Sediment Studies	TNC		X	X	X	X	X													Hydrodynamic model, sediment transport studies
Secure Engineering Firm(s) for Lillian & Bronson Designs	TNC/PPBEP						X	X												Contract(s) executed
Develop Restoration Alternatives**	TNC/PPBEP/Contractor					X	X													Description of potential restoration alternatives
Develop 30% Designs**	Contractor							X	X											30% Designs released to stakeholders
Permitting/Compliance (Cultural Resources, etc)**	TNC/PPBEP/Contractor								X	X										Permit; cultural resource survey if necessary; landowner agreements
Final Designs**	Contractor										X	X	X	X	X					100% designs approved
Baseline Monitoring	DISL													X	X	X	X			Monitoring report: structural, biological
Outreach	PPBEP						X		X					X				X		# Community/Committee meetings, # attendees

*Quarters are based on calendar year: Q1=Jan-Mar; Q2=Apr-Jun; Q3=Jul-Sep; Q4=Oct-Dec

**Coordinate with NOAA

Task 3: Project Coordination, Technical, and Outreach Support

Beyond the primary tasks of overseeing implementation of the Living Shoreline Cost Share Program and design of the Bronson Field Living Shoreline Project, PPBEP will also provide the following support to the project:

- Participation in project team meetings
- Review of engineering and design drawings, and permit applications
- Consultation on habitat restoration targets and restoration placement
- Education, outreach, and volunteer support
- Project monitoring and data review

Attachment C
Performance Report Format

Subaward Number:

Reporting Period Covered:

Project Manager:

This report can be as brief as one page as long as you can provide the requested information. Please include the following information:

- Compare actual accomplishments to the objectives;
- Set out the reasons why goals were not met, if appropriate;
- Analyze and explain cost overruns or high unit costs; and
- Provide information of significant developments

The items listed below should be addressed as appropriate:

1. What work was accomplished for this reporting period? Report should quantify results as measurable products, i.e. numbers, acres, contacts, improvements in water quality, habitat, etc.
2. If a problem was encountered, what action was taken to correct it?
3. What work is projected for the new reporting period?
4. Is the project work on schedule?
5. Does the project funding rate support the work progress? Report as percent spent of budgeted amounts.
6. Is there a change in principal investigator?
7. Will the project take longer than the approved project period? If so, have you formally requested an amendment in writing?
8. Please list hours worked on this project for the reporting term.

Please reference the Subaward project number on your report and on all correspondence.

Attachment D
Approved Financial Reporting Form

FORM A - CONSOLIDATED FINANCIAL REPORT						
NAME OF ORGANIZATION :					COUNTRY:	
PROJECT NAME:					SITE:	
REPORT PERIOD:					SUBAWARD #:	
Prior period adjustments require a detailed explanation in the notes section provided below.						
Fill in the yellow shaded areas only.						
TNC-FUNDED EXPENSES						
CATEGORIES	Budget (A)	Prior Period Expenses (B)	Prior Period Adjustments (C)	Current Period Expenses (D)	TOTAL LOP Expenses to Date (E=B+C+D)	Balance (F= A-E)
A. PERSONNEL					-	-
B. FRINGE BENEFITS					-	-
C. TRAVEL					-	-
D. EQUIPMENT					-	-
E. SUPPLIES					-	-
F. CONTRACTUAL					-	-
G. CONSTRUCTION					-	-
H. OTHER					-	-
I. TOTAL DIRECT COSTS	-	-	-	-	-	-
J. INDIRECT COSTS					-	-
K. TOTALS	-	-	-	-	-	-
PERCENTAGE OF BUDGET SPENT					#DIV/0!	
Explanation of Prior Period Adjustments:						
NAME AND TITLE - PROJECT COORDINATOR			NAME AND TITLE - FINANCE DIRECTOR			
SIGNATURE - PROJECT COORDINATOR			SIGNATURE - FINANCE DIRECTOR			
DATE OF SIGNATURE			DATE OF SIGNATURE			

Attachment E
Prime Award Provisions for TNC Subawards

Awardee must comply with the following laws, regulations, orders and standard terms and conditions:

1. Administrative Standard Award Conditions for NOAA Financial Assistance Awards U.S. Department of Commerce, Article III Scientific Integrity:

A. General Guidelines

1. **Maintaining Integrity.** The non-Federal entity shall maintain the scientific integrity of research performed pursuant to this grant or financial assistance award including the prevention, detection, and remediation of any allegations regarding the violation of scientific integrity or scientific and research misconduct, and the conduct of inquiries, investigations, and adjudications of allegations of violations of scientific integrity or scientific and research misconduct. All the requirements of this provision flow down to subrecipients.
2. **Peer Review.** The peer review of the results of scientific activities under a NOAA grant, financial assistance award, or cooperative agreement shall be accomplished to ensure consistency with NOAA standards on quality, relevance, scientific integrity, reproducibility, transparency, and performance. NOAA will ensure that peer review of "influential scientific information" or "highly influential scientific assessments" is conducted in accordance with the Office of Management and Budget (OMB) Final Information Quality Bulletin for Peer Review and NOAA policies on peer review, such as the Information Quality Guidelines.
3. In performing or presenting the results of scientific activities under the NOAA grant, financial assistance award, or cooperative agreement and in responding to allegations regarding the violation of scientific integrity or scientific and research misconduct, the non-Federal entity and all subrecipients shall comply with the provisions herein and NOAA Administrative Order (NAO) 202-735D, Scientific Integrity, and its Procedural Handbook, including any amendments thereto. That Order can be found at <http://nrc.noaa.gov/ScientificIntegrityCommons.aspx>.
4. **Primary Responsibility.** The non-Federal entity shall have the primary responsibility to prevent, detect, and investigate allegations of a violation of scientific integrity or scientific and research misconduct. Unless otherwise instructed by the grants officer, the non-Federal entity shall promptly conduct an initial inquiry into any allegation of such misconduct and may rely on its internal policies and procedures, as appropriate, to do so.
5. By executing this grant, financial assistance award, or cooperative agreement the non-Federal entity provides its assurance that it has established an administrative process for performing an inquiry, investigating, and reporting allegations of a violation of scientific integrity or scientific and research misconduct; and that it will comply with its own administrative process for performing an inquiry, investigation, and reporting of such misconduct.
6. The non-Federal entity shall insert this provision in all subawards at all tiers under this grant, financial assistance award, or cooperative agreement.

B. Investigating Scientific Integrity or Scientific and Research Misconduct

1. **Initiating Investigation.** If the non-Federal entity or subrecipient determines that there is sufficient evidence to proceed to an investigation, it shall notify the grants officer and, unless otherwise instructed, the non-Federal entity or subrecipient shall:
 - a. Promptly conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding regarding the violation of scientific integrity or scientific and research misconduct and an identification of appropriate remedies or a determination that no further action is warranted.
 - b. If the investigation leads to a finding regarding the violation of scientific integrity or scientific and research misconduct, obtain adjudication by a neutral third party adjudicator. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.
2. **Finalizing Investigation.** When the investigation is complete, the non-Federal entity shall forward to the grants officer a copy of the evidentiary record, the investigative report, any recommendations made to the non-Federal entity adjudicating official, the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response (if any).

C. Findings and Corrective Actions

If the non-Federal entity finds that scientific integrity has been violated or scientific and research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process and shall:

- a. Take all necessary corrective actions, which includes, but are not limited to, correcting the research record, and, as appropriate, imposing restrictions, controls, or other parameters on research in process or to be conducted in the future, and
- b. Coordinate remedial action with the grants officer.

2. Administrative Standard Award Conditions for NOAA Financial Assistance Awards U.S. Department of Commerce, Article IV Data Sharing Directive:

The Data and Publication Sharing Directive for NOAA Grants, Cooperative Agreements, and Contracts ensures that environmental data funded extramurally by NOAA are made publicly accessible in a timely fashion (typically within two years of collection), and that final manuscripts of peer-reviewed research papers are deposited with the NOAA Central Library (upon acceptance by the journal, or no later

than at time of publication). Therefore, non-Federal entities, or recipients, must make data produced under financial assistance publicly accessible in accordance with the Data Management Plan included with the Proposal, unless the grant program grants a modification or an exemption. The text of the Directive is available at <https://nosc.noaa.gov/EDMC/PD.DSP.php>

3. Department of Commerce Financial Assistance Standard Terms and Conditions – November 12 2020

This document (available at [DOC Standard Terms and Conditions - 12 November 2020 PDF_0.pdf \(commerce.gov\)](#)) sets out the standard terms and conditions applicable to this U.S. Department of Commerce financial assistance award. A non-Federal entity receiving a Department of Commerce financial assistance award must comply and require each of its subrecipients, contractors, and subcontractors employed in the completion of the project to comply with all applicable provisions of these Standard Terms.

4. Special Award Conditions, NA23NMF4630056, Item 2) Part 1 - Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Pursuant to the Infrastructure Investment and Jobs Act (“IIJA”), Pub.L. No. 117-58, which includes the Build American, Buy American (BABA) Act, Pub. L. No. 117-58, §§ 70901-52 and OMB M-22-11, recipients of an award of Federal financial assistance from the Department of Commerce (DOC) are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- 1) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- 2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- 3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

To help federal agencies and recipients meet BABA requirements, the U.S. Department of Commerce, National Institute for Standards and Technology (NIST), Hollings Manufacturing Extension Partnership (MEP) National Network™ provides a service to connect stakeholders, including recipients, to U.S. manufacturers that have relevant production capabilities and capacities to help fulfill current market and supply chain needs. Recipients considering a BABA nonavailability waiver are strongly encouraged to contact the NIST/MEP for assistance with supplier scouting services prior to seeking a BABA nonavailability waiver. Further information on the NIST/MEP supplier scouting services is available at: <https://www.nist.gov/mep/supplier-scouting>.

5. Special Award Conditions, NA23NMF4630056, Item 3) Part 2 - Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

WAIVERS

When necessary, recipients may apply for, and DOC may grant, a waiver from these requirements. DOC will notify the recipient for information on the process for requesting a waiver from these requirements.

- 1) When DOC has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which DOC determines that:
 - a. applying the domestic content procurement preference would be inconsistent with the public interest;
 - b. the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
 - c. the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. DOC will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at whitehouse.gov/omb/management/made-in-america.

DEFINITIONS

“Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives²—that is or consists primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States

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1 Excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

2 IIJA, § 70917(c)(1).

6. Special Award Conditions, NA23NMF4630056, Item 5) Implementation of Domestic Sourcing Requirements

Prior to initiation of any construction that may arise in this award, the Recipient is required to inform the NOAA Grants Officer and the Federal Program Officer whether it is using iron, steel, manufactured products, or construction materials as described in the Specific Award Condition in this award on Required Use of American Iron, Steel, Manufactured Products, and Construction Materials. In addition, the Recipient is required to inform the NOAA Grants Officer and the Federal Program Officer whether those materials are produced or manufactured in the United States, or alternatively, it is requesting one or more waivers, as described in the award condition. The Recipient is required to coordinate with NOAA regarding its compliance with this term.

7. Special Award Conditions, NA23NMF4630056, Item 6) Signs

The recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction period a sign(s) satisfactory to NOAA that identifies the project and indicates that the project is Federally funded by the Bi-Partisan Infrastructure Law, and/or the Inflation Reduction Act (IRA). NOAA may require that the recipient maintain a permanent plaque or sign at the project site with the same or similar information. The temporary and permanent proposed signage implementation plans must be submitted to and approved by NOAA prior to installation.

8. Special Award Conditions, NA23NMF4630056, Item 7) Post Award NEPA Review Process

By accepting this award, the Recipient agrees to assist and cooperate with NOAA Fisheries in the preparation of any outstanding National Environmental Policy Act (NEPA) compliance documentation. For purposes of NEPA compliance, Phase 1 of the project includes planning, design, engineering and permitting, including minimally intrusive field activities, archaeological studies, plant and animal surveys, geotechnical evaluations, water level and elevation surveys, habitat assessments and characterization, and other minor field data collection required to complete construction designs and obtain permits. The activities for which work can proceed (as described above) will have no significant individual or cumulative adverse effects on the environment. The Recipient will not expend any funds for Phase 2 project implementation which includes project implementation until impacts have been assessed, and NEPA compliance documentation has been completed by NOAA. At this time, \$7,800,000 of the total award funds are available to the Recipient to complete Phase 1 tasks outlined above that have no adverse impacts on the environment. The remaining award funds will be available after the NOAA Program Officer provides NEPA clearance by confirming in Grants Online that this award condition has been satisfied.

9. Special Award Conditions, NA23NMF4630056, Item 8) Cooperative Agreement

This award is a cooperative agreement as described in 2 C.F.R. Sec. 200.1, meaning that NOAA is “substantially involved” in the project. NOAA Fisheries’ participation will be crucial to ensuring the timely implementation of the most beneficial habitat restoration project. NOAA may participate in one or more of the following ways:

--collaboration on the scope of work through participation in meetings and review of documents;

- providing assistance with technical aspects of the habitat restoration project such as assistance with permitting or development of detailed work plans and monitoring plans;
- review and comment on design plans at the beginning of the award, at various stages throughout any portion of the design process that occurs during the award (e.g. conceptual, 30%, 60%, and 90% completion), and at the final completion stage;
- review of procurement materials to the extent authorized by 2 C.F.R. Sec. 200.325;
- tracking the progression of the restoration from planning through implementation and post-construction monitoring, with particular emphasis on tracking Recipient achievement of targets for major milestones and performance metrics and sharing results;
- other involvement consistent with Office of Management and Budget Guidance on Substantial Involvement. See 43 Federal Register 36860 (Aug. 18, 1978).

10. Special Award Conditions, NA23NMF4630056, Item 11) Project Milestones

To ensure adequate and timely progress towards project completion, NOAA and the Recipient have cooperatively identified several milestones as outlined in the proposal narrative for each component project. Project progress will be evaluated throughout the award with particular emphasis on meeting these milestones. NOAA reserves the right to pursue enforcement action for the award under 2 C.F.R. 200.339-.343 at any time throughout the award period should NOAA determine that a Recipient is not meeting project milestones as outlined in the application submitted to the NOAA Grants Management Division for funding.

11. Special Award Conditions, NA23NMF4630056, Item 12) Changes to Scope of Work

By accepting this award, the Recipient agrees to assist and cooperate with NOAA Fisheries in the preparation of any outstanding National Environmental Policy Act (NEPA) compliance documentation. Recipients who plan any changes to the activities described in the award documentation approved by NOAA should contact their Federal Program Officer at least 90 days in advance of any changes, so that NOAA can confirm that all environmental compliance review is complete, and all documentation is in place. Other requirements related to changes in the Scope of Work are contained in the NOAA Standard Terms and Conditions.

12. Special Award Conditions, NA23NMF4630056, Item 13) Monitoring

To evaluate project implementation quality and effectiveness, and learn from your restoration project(s), recipients will execute appropriate project monitoring with guidance from NOAA. As your project proceeds, NOAA's substantial involvement will include further coordination to execute implementation and basic effectiveness monitoring, and potentially more detailed effectiveness monitoring, if applicable. The grantee will collaborate with NOAA to identify monitoring elements such as parameters, methods, sampling duration and frequency, and post-implementation targets. NOAA's involvement will also include ongoing coordination on data management, analyses, and dissemination of results (see below). The grantee will develop a data/information sharing plan, and submit appropriate monitoring information with progress reports, as well as at other appropriate times. Templates for the data/information sharing plan and other monitoring related guidance are provided at <https://www.fisheries.noaa.gov/national/habitat-conservation/monitoring-and-evaluation-restoration-projects>.

13. Special Award Conditions, NA23NMF4630056, Item 14) Outreach and Communications

Department of Commerce Financial Assistance Standard Term and Condition k.03.i. is supplemented as follows consistent with NOAA's collaboration on this project. The Recipient will coordinate with NOAA on outreach plans, events, products, and media coverage associated with the project. Please coordinate with the Federal Program Officer listed under the Contact Information award condition. Grantees will provide copies of final outreach products, website mentions, press materials, photos, etc. via the standard progress reports to NOAA, or when available throughout the award period. Grantees will provide NOAA with high-resolution before, during, and post-implementation photos of the project. Photos of the site prior to construction and during project implementation should be submitted with progress reports or as requested by NOAA. Further outreach and communications guidance can be found at: <http://www.habitat.noaa.gov/funding/applicantresources.html> under 'Outreach Resources.'

14. Special Award Conditions, NA23NMF4630056, Item 15) Acknowledgement of Project Contributors

The Recipient must display, where appropriate and practical, publicly visible signs indicating that the project has received funding from the NOAA Restoration Center. These signs should also identify other contributing partners. These contributions should also be acknowledged in all communications with the media and the public and in all outreach related to the projects, consistent with Department of Commerce Financial Assistance Standard Term and Condition k.03.i.

15. Special Award Conditions, NA23NMF4630056, Item 16) Project Safety

The Recipient must have a written safety plan for management of the project, which should specifically address safety of project personnel, associates, visitors, and volunteers. The Recipient must conduct a safety briefing for volunteers immediately prior to their participation in hands-on restoration activities under this award.

In addition, for any Self-Contained Underwater Breathing Apparatus (SCUBA) diving activities in a project, it is the responsibility of the Recipient to ensure that SCUBA divers are certified to a level commensurate with the type and conditions of the diving activity being undertaken. Furthermore, it is the responsibility of the Recipient to ensure that any SCUBA diving activities under this award meet, at a minimum, all applicable Federal, State, and local laws and regulations pertaining to the type of SCUBA diving being undertaken.

16. Special Award Conditions, NA23NMF4630056, Item 17) Compliance with Applicable Laws, Obtaining Permits, and Consultation Requirements

The Recipient is required to comply with national policy requirements consistent with 2 C.F.R. Sec. 200.300 and Department of Commerce Financial Assistance Standard Terms and Conditions, Section K. The Recipient will ensure that implementation of the project will meet all Federal laws and regulations by obtaining all Federal, state, and local permits and consultations applicable to the project prior to expenditure of award funds for those activities requiring permits and consultations. This includes, but is not restricted to, consultations required under the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act (Essential Fish Habitat), National Historic Preservation Act, and Coastal Zone Management Act. The Recipient will be cognizant of all conditions and restrictions required by their permits and consultations, and will immediately halt activities and contact their NOAA Technical Monitor if events occur that threaten to violate the conditions or restrictions required by their permits and consultations.

17. Special Award Conditions, NA23NMF4630056, Item 18) Verification of Permits and Consultations

Verification of permits and regulatory compliance related to this project must be presented to the NOAA Technical Monitor prior to project implementation. The Recipient should provide a list of Federal, tribal, state, and local permits acquired for this project by email or letter to the NOAA Technical Monitor.

18. Special Award Conditions, NA23NMF4630056, Item 19) Project Files

The Recipient must maintain project files for all restoration activities taking place under this agreement consistent with 2 C.F.R. Sec. 200.333. These files must contain, at a minimum, project work plans and copies of all federal and state permits/consultations associated with project implementation.

Attachment F

Disclosure Form – The Nature Conservancy

CONFLICT INQUIRY FORM

STEP 1: DESCRIPTION OF PARTIES & TRANSACTION	
Name of individual or organization entering into transaction with TNC:	
Legal identity of individual or organization* entering into transaction with TNC (select one):	<input type="checkbox"/> Individual <input type="checkbox"/> For-Profit Organization <input type="checkbox"/> Non-Profit Organization
<small>**Organization* includes a for profit corporation, partnership, trust, estate, joint venture, limited liability corporation, professional corporation, an unincorporated entity, a foundation, public board, commission, 501(c)(3) or other charitable organization.</small>	
Type of Transaction (select one):	<input type="checkbox"/> Contract for Services <input type="checkbox"/> Grant Agreement <input type="checkbox"/> Purchase Order <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Real Estate Transaction <input type="checkbox"/> Other
If you selected "Other" or "Real Estate," include description here (for real estate, describe property, size, and type of deal (sale, gift, lease, etc.)):	

STEP 2: DEFINITIONS & QUESTIONS (Complete <u>*only*</u> the section relevant to your organization)
<p>(1) TNC Key Employees and Board of Directors: Please refer to the <u>attached list</u> of Key Employees and members of Board of Directors (includes individuals who have left relevant TNC positions within the past five (5) years).</p> <p>(2) TNC Trustee: Individuals serving as a Trustee or Advisor to TNC.</p> <p>(3) Substantial Contributors: Individuals or organizations who have made total aggregate contributions to TNC of (i) ≥ US \$5 million during the current fiscal year or (ii) ≥ US \$25 million within the last five (5) fiscal years. Fiscal years run from July 1st through June 30th.</p> <p>(4) Family Members and Close Relatives: Family members of any individual listed above, such as spouse, domestic partner, parent, sibling, child, dependent, other progeny and ancestors.</p>

SECTION 1. INDIVIDUALS (explain any "yes" answers in Step 3):		
a. Are you now, or have you been in the last five (5) fiscal years, (i) a TNC "Key Employee" or (ii) a member of the TNC Board of Directors?		
b. Are you now, or have you been in the last twelve (12) months, (i) a TNC Employee, (ii) a Chapter Trustee, or (iii) a member of a Country Program Advisory Council or a similar advisory group?		
c. Are you a Substantial Contributor to TNC?		
d. To your knowledge, are you a family member or close relative of any individual identified in paragraphs a, b, or c above?		

SECTION 2. FOR-PROFIT ORGANIZATIONS (explain any “yes” answers in Step 3):	Yes	No
a. <i>Is your organization a Substantial Contributor to TNC?</i>		
b. <i>Now, or at the time of the proposed transaction, to the best of your knowledge, do any of the following (individually or collectively with other such persons) (i) own more than 35% of the stock or value of your organization (directly or indirectly) and/or (ii) have a controlling influence over the organization’s management or policies (ex. key management or board member):</i> <ul style="list-style-type: none"> • <i>TNC employee (or former employee who left within the last twelve (12) months);</i> • <i>TNC Key Employee;</i> • <i>TNC Board Member;</i> • <i>Substantial Contributor to TNC;</i> • <i>TNC Chapter Trustee or Advisory Council Member for TNC or TNC’s related entities (or former trustees/members who left within the last twelve (12) months); and/or</i> • <i>Family members or close relatives of the above individuals.</i> 		
c. <i>Now, or at the time of the proposed transaction, have or will any TNC Key Employees or members of the Board of Directors serve in the following positions of your organization?</i> <ul style="list-style-type: none"> • <i>Officer, director, trustee, key employee, or partner;</i> • <i>Member (if your organization is a limited liability corporation); and/or</i> • <i>Shareholder (if your organization is a professional corporation).</i> 		
SECTION 3. NON-PROFIT ORGANIZATIONS (explain any “yes” answers in Step 3):	Yes	No
a. <i>Now, or at the time of the proposed transaction, do any of the following (individually or collectively with other such persons) have the ability to influence management of the entity:</i> <ul style="list-style-type: none"> • <i>TNC employee (or former employee who left within the last twelve (12) months);</i> • <i>TNC Key Employee;</i> • <i>TNC Board Member;</i> • <i>Substantial Contributor to TNC;</i> • <i>TNC Chapter Trustee or Advisory Council Member for TNC or TNC’s related entities (or former trustees/members who left within the last twelve (12) months); and/or</i> • <i>Family members or close relatives of the above individuals.</i> 		

STEP 3: COMMENTS (Explain any “yes” answers checked above. Attach additional pages as necessary.)

--

STEP 4: NOTICE OF TNC CODE OF CONDUCT & SIGNATURES

TNC expects itself and everyone with whom it does business to conduct themselves in ways that are consistent with TNC's Code of Conduct found at www.nature.org/codeofconduct. Anyone (whether a part of TNC or not) may contact the TNC Helpline (anonymously, if desired) with questions, concerns, or suspected violations at www.nature.org/tnc Helpline.

The undersigned certifies the information in the inquiry form is true and correct to the best of their knowledge.

Signature:	
Printed Name:	
Title (if for an organization):	
Address:	
Date of Signature:	

TNC COVERED PERSONS

The following are individuals who are currently or have been, during the preceding five (5) fiscal years, a TNC “Key Employee” or a member of the Board of Directors of TNC or one of its U.S. Related Entities.

List Current as of June 21, 2023

<u>Current Key Employees/ Officers</u>	<u>Former Key Employees/ Officers</u>	<u>Current Board of Directors</u>	<u>Prior Board Members</u>
Matt Arnold Nathalie Augustin David Banks Matt Brown Jan Glendening Tom Neises Bola Olusanya Michael Sweeney Leonard Williams	James Asp Hans Birle William Ginn Wisla Heneghan Brian McPeek Hugh Possingham Heather Tallis	James Attwood, Jr. Amy Batchelor John Bernstein Michelle DePass William Frist Harry Hagey Margaret Hamburg Fred Hu Shirley Ann Jackson Sally Jewell Nancy Knowlton Edwin Macharia Jennifer Morris Douglas Petno Sergio Rial Vincent Ryan Brenda Shapiro Anna Skoglund Kent J. Thiry Kevin Weil Ying Wu	Shona L. Brown Gretchen C. Daily Laurence Fink Joseph H. Gleberman Andrew Liveris Jane Lubchenco Jack Ma Claudia Madrazo Craig McCaw Thomas J. Meredith Ana M. Parma Stephen Polasky Rajiv Shah Mark Tercek Thomas J. Tierney Moses Tsang Frances A. Ulmer Margaret C. Whitman

U.S. [Related Entity](#) Covered Persons

BIN = Blue Investments in Nature; CF&R – Conservation Farms & Ranches

<u>Current Key Employees/ Officers</u>	<u>Former Key Employees/ Officers</u>	<u>Current Board of Directors</u>	<u>Prior Board Members</u>
Leah Carriere (BIN) Jerred Dixon (CF&R) Ankith Patel (CF&R) Teela Pejsa (CF&R) Angela Ortegon (CF&R)	Stephen Valdes-Robles (BIN) Felicity Fyfe (CF&R)	Svetoslav Gatchev (BIN) Melissa Garvey (BIN) Jeffery Schutes (BIN) Jason Pelletier (CF&R) Ann Marie Nemanich (CF&R) Mark Kramer (CF&R) Rodd Kelsey (CF&R) Scott Morrison (CF&R) Susan North (CF&R) Sandi Matsumoto (CF&R)	Charlotte Kaiser (BIN) Diane Miller (BIN) Michael McFadden (CF&R)

Other TNC [Related Entity](#) Covered Persons (If applicable)

Key Employees (members of Related Entity leadership team):	Current Fiduciary Board Members, if applicable:

Attachment G
FFATA REPORTING FORM

Prime Grant Recipients awarded a new U.S. Federal grant greater than or equal to \$25,000 as of October 1, 2010 are subject to the U.S. Federal Funding Accountability and Transparency Act (FFATA) subaward reporting requirements as outlined in the Office of Management and Budget's guidance issued August 27, 2010.

To assist The Nature Conservancy (TNC) in complying with this regulation, we request that all entities that will be involved in a proposed subaward with TNC complete this form. Submit the completed form to **the Grants Specialist identified on page 1**.

If your organization does not already have a Data Universal Numbering System (DUNS) number (Section II.B.1), you will need to go to the U.S. Central Contractor Registration site: <https://www.bpn.gov/ccr/default.aspx> and click on the quick link to "request DUNS number". The registration is free and available to all businesses required to register with the U.S. Federal government for contracts or grants.

I. PRIME AWARD INFORMATION *(to be completed by TNC staff)*

1. FEDERAL AWARD IDENTIFIER NUMBER (FAIN)	NA23NMF4630056
2. FEDERAL AGENCY NAME	NOAA
3. PRINCIPAL PLACE OF PERFORMANCE	Baldwin County, Alabama
4. CFDA NUMBER	11.463, Habitat Conservation
5. AWARD TITLE	Perdido Watershed Initiative
6. TOTAL FEDERAL FUNDING AMOUNT	\$12,574,655
7. DATE AWARD SIGNED	8/1/23

II.A. SUBAWARD INFORMATION *(to be completed by TNC staff)*

1. SUBAWARD ORGANIZATION NAME	Pensacola and Perdido Bays Estuary Program
2. SUBAWARD NUMBER	AL-2024-PPBEP-09.07.23-A108984
3. AMOUNT OF SUBAWARD – federal portion only	\$1,628,962
4. DATE SUBAWARD SIGNED	
5. SUBAWARD PROJECT DESCRIPTION	

B. SUBAWARDEE INFORMATION *(to be completed by subawardee staff)*

1. DUNS NUMBER	
2. ORGANIZATION NAME	
3. "DOING-BUSINESS-AS" (DBA) NAME (if applicable)	
4. SUBAWARDEE PARENT DUNS # (if applicable)	
5. ADDRESS	
Street Address (1)	
Street Address (2)	
Street Address (3)	
City	
State	
Country	
Zip+4 (n/a for non-U.S. locations)	
6. SUBAWARD PRINCIPAL PLACE OF PERFORMANCE	
City (or County)	

State	
Country	
Zip+4 (n/a for non-U.S. locations)	

C. COMPENSATION DATA - THRESHOLD QUESTIONS (to be completed by subawardee staff):

	Yes	No
1. In your business or organization's previous fiscal year, did your business or organization (including parent organization, all branches, and all affiliates worldwide) receive (1) 80 percent or more of your annual gross revenues in U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?		
2. Does the public have access to information about the compensation of the senior executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports (e.g., Form 990) filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?		

D. COMPENSATION DATA (to be completed by subawardee staff)

If you answered Yes to Question C.1. and No to Question C.2., please provide the names and total compensation of the top five highly compensated officials of your organization. Total compensation is defined at 2 CFR Part 170.330.

Otherwise, proceed to Section E.

EMPLOYEE NAME	DOLLAR AMOUNT
1.	
2.	
3.	
4.	
5.	

E. I certify that the above information is accurate and complete for our organization. I understand that the information provided on this form is required by FFATA, and will be reported on the ffrs.gov website and the USASpending.gov public website.

SIGNATURE:

Name of Entity: _____

Signature: _____

Person signing for entity: _____

Title: _____

Date: _____



Agenda Item 6.i.

Approval of a Contract with Dauphin Island Sea Lab, in the amount of \$14,881, to complete a Seagrass Fish Trawling Survey

Background: The purpose of these studies has been to document the increasing number of tropically associated species that have recently colonized the northern Gulf and the value of these nurseries for juvenile finfish and shellfish. After a brief hiatus in annual sampling because of the COVID-19 pandemic (from 2020 – 2021), the Pensacola and Perdido Bay Estuary Program (PPBEP) funded trawling activities in previously sampled locations within the seagrass areas under their jurisdiction. This work will repeat the 2022 survey effort and contribute to the long-term record of juvenile fish community assemblages across the northern Gulf.

Recommendation: Recommend the Board approve, and authorize the Executive Director to sign, a Contract with Dauphin Island Sea Lab, in the amount of \$14,881, to complete a Seagrass Fish Trawling Survey.

Financial Impact: Funding is available in Florida DEP Agreement OWP02.

Legal Review: This Agreement template has previously been approved by the Escambia County Attorney's office.

RESEARCH AGREEMENT

This Agreement is made by and between the Marine Environmental Sciences Consortium d.b.a. Dauphin Island Sea Lab, hereinafter referred to as “DISL” and Pensacola and Perdido Bays Estuary Program, Inc., hereinafter referred to as “PPBEP”.

WHEREAS, PPBEP desires to engage DISL in certain, specific research activities; and

WHEREAS, DISL is interested in and has expertise in the research area; and

WHEREAS, both parties desire to collaborate on the defined line of research.

I. TERMS

A. Term of Contract. This agreement shall not be effective unless and until both parties have executed this agreement. The effective date of this agreement shall be the date of last signature. The period of performance is from **October 1, 2023 through May 31, 2024**. The project period may be changed by mutual consent of the parties by written amendment to this agreement.

B. Scope of Work. DISL will perform the work as described in Attachment A. Dottie Byron and Ken Heck, Ph.D., as agents of DISL, will supervise all work to be performed under the terms of this Agreement. In the event the DISL faculty member is unable or unwilling to continue with this project, the parties will attempt to find a mutually acceptable substitute.

C. Payment. Both parties agree this is a cost reimbursable agreement, with costs not to exceed **\$14,881.00**, inclusive of any direct or indirect costs or expenses and reimbursable travel expenses. DISL may request payment by the submission of a properly executed invoice reflecting the amount due and owing for services rendered with appropriate supporting documentation. Invoices may not be submitted more frequently than once per month. Payments and interest on any late payments shall be governed by and construed in accordance with the Local Government Prompt Payment Act, §§ 218.70, et seq., Florida Statutes.

Invoices shall be emailed to:

info@ppbep.org
Pensacola and Perdido Bays Estuary Program, Inc.
Attn: Executive Director
226 South Palafox Place
Pensacola, FL 32502

Payment shall be sent to:

Dauphin Island Sea Lab
Attn: David England
101 Bienville Blvd
Dauphin Island, AL 36528

II. GENERAL CONDITIONS

This document contains the sole and entire agreement between the parties and supersedes any and all other documents concerning the purpose of this Agreement. Additional documents to be incorporated in this agreement must be referenced and attached if practical. Should any portion of this Agreement be deemed illegal, the remaining portions of this Agreement shall remain in force.

This Agreement cannot be modified without written consent from both parties. This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by DISL without the prior written consent.

In the performance of this Agreement hereunder, DISL is an independent contractor. DISL shall not hold itself out as an employee, agent or servant of PPBEP; and DISL 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.

Drawings, specifications, design, models, photographs, reports, surveys, and other data, including intellectual property of any type or description, produced by DISL in connection with this Agreement are and shall remain the property of PPBEP whether the Project is completed or not. Such ownership also shall include any electronic files developed or created of such documents.

DISL agrees to comply with all federal, state and local laws, rules, policies, or guidelines related to the performance of this Agreement.

To the extent not prohibited by law, and in any case to be construed in a fashion that does not waive governmental, sovereign, or official immunities where applicable, DISL shall defend, indemnify, and hold PPBEP harmless from any claims, demands, injuries, losses, or damages caused by any negligent or wrongful conduct on the part of DISL, its faculty, students, or employees arising out of the performance of this Agreement.

DISL 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. DISL 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. DISL 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, DISL 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 DISL fails to abide by the provisions of Chapter 119, Florida Statutes, PPBEP may, without prejudice to any other right or remedy and after providing seven days written notice, during which period DISL still fails to allow access to such documents, terminate the contract. In such case, DISL shall not be entitled to receive any further payment.

This agreement may be modified only by a written amendment authorized by and executed by the parties. No oral statements of any person shall modify or otherwise affect the terms, conditions or specifications stated in this agreement.

All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by certified U.S. Mail, postage prepaid, return receipt requested, to the persons at the addresses shown below. The parties agree to notify the other in writing of any change of address.

For PPBEP:
Matt J. Posner
226 South Palafox Place
Pensacola, FL 32502

For DISL:
Dottie Byron
101 Bienville Blvd
Dauphin Island, AL 36528

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

PPBEP

_____ Date
Matthew J. Posner
Executive Director

DISL

_____ Date
John Valentine, Ph.D.
Executive Director

_____ Date
PI, Dottie Byron

Pensacola & Perdido Bays Estuary Program (PPBEP) Seagrass Fish Trawling Survey Project

A Statement of Proposed Work

Submitted to
Pensacola and Perdido Bays Estuary Program
Project Contact: Whitney Scheffel
Phone: 251-861-2141 X 7502
Email: dbyron@disl.edu

By
Kenneth L Heck, kheck@disl.org
Phone: 251-861-2141
Dorothy Byron, dbyron @disl.org
Phone: 251-861-2414 x7502
Marine Environmental Science Consortium/Dauphin Island Sea Lab
101 Bienville Blvd
Dauphin Island, AL 36528

Period of Performance: 1 October 2023 – 31 May 2024

Total Costs: \$14,881

Background:

Many fish spend part of their lives in the shallow, vegetated bottoms of estuaries, contributing to the paradigm that these habitats are the “nurseries of the sea” (Heck et al. 2003). This is in part due to the physics of water motion over these bottoms, where water slows down and particles settle as water contacts the swaying leaves. Here newly settled post-larval fish, shrimp and crabs can avoid predation while foraging for smaller fauna like amphipods and isopods until they are large enough to move to their adult habitat. Along the northern Gulf of Mexico (nGoM) many shallow support vast expanses of submerged aquatic vegetation that serves as a beneficial nursery habitat for many commercially and recreationally important finfish and shellfish.

We have regularly sampled juvenile fishes occupying seagrass meadows across the nGoM since 2005, including locations in Big Lagoon, Pensacola Bay and Santa Rosa Sound (Fodrie et al. 2010, 2011). The purpose of these studies has been to document the increasing number of tropically associated species that have recently colonized the northern Gulf and the value of these nurseries for juvenile finfish and shellfish. After a brief hiatus in annual sampling because of the COVID-19 pandemic (from 2020 – 2021), the Pensacola and Perdido Bay Estuary Program (PPBEP) funded trawling activities in previously sampled locations within the seagrass areas under their jurisdiction. This work will repeat the 2022 survey effort and contribute to the long-term record of juvenile fish community assemblages across the nGoM.

Project Tasks

The tasks for the proposed project are to:

1. Conduct a seagrass-associated juvenile fish survey using the same protocol set forth in Fodrie et al (2010, 2011). Fishes will be collected in late summer/early fall using a 5-m otter trawl (2.0-cm body mesh; 0.6-cm bag mesh). Trawls will be replicated at each location and consist of 2-min tows behind small (~7 m) research vessels traveling at approximately 2.5-3.5 knots. Trawls will cover mosaics of seagrass meadows that include *Thalassia testudinum* (turtlegrass), *Halodule wrightii* (shoal grass), *Ruppia maritima* (widgeon grass), and *Syringodium filiforme* (manatee grass), along with scattered unvegetated patches. These trawls will range in depth from 0.5–2.0-m and will be conducted during daylight hours. Species will be identified and enumerated in the field (unless species-level identifications cannot easily be made and specimens need to be identified in the lab) from the following locations: Lower Perdido Bay (specifically Bayou St John, Innerarity Point, and Old River), Big Lagoon, Pensacola Bay (specifically Gulf Breeze and Shoreline Park) and Santa Rosa Sound (specifically Naval Live Oaks, Tiger Point, Big Sabine Point and Range Point), (Figure 1).

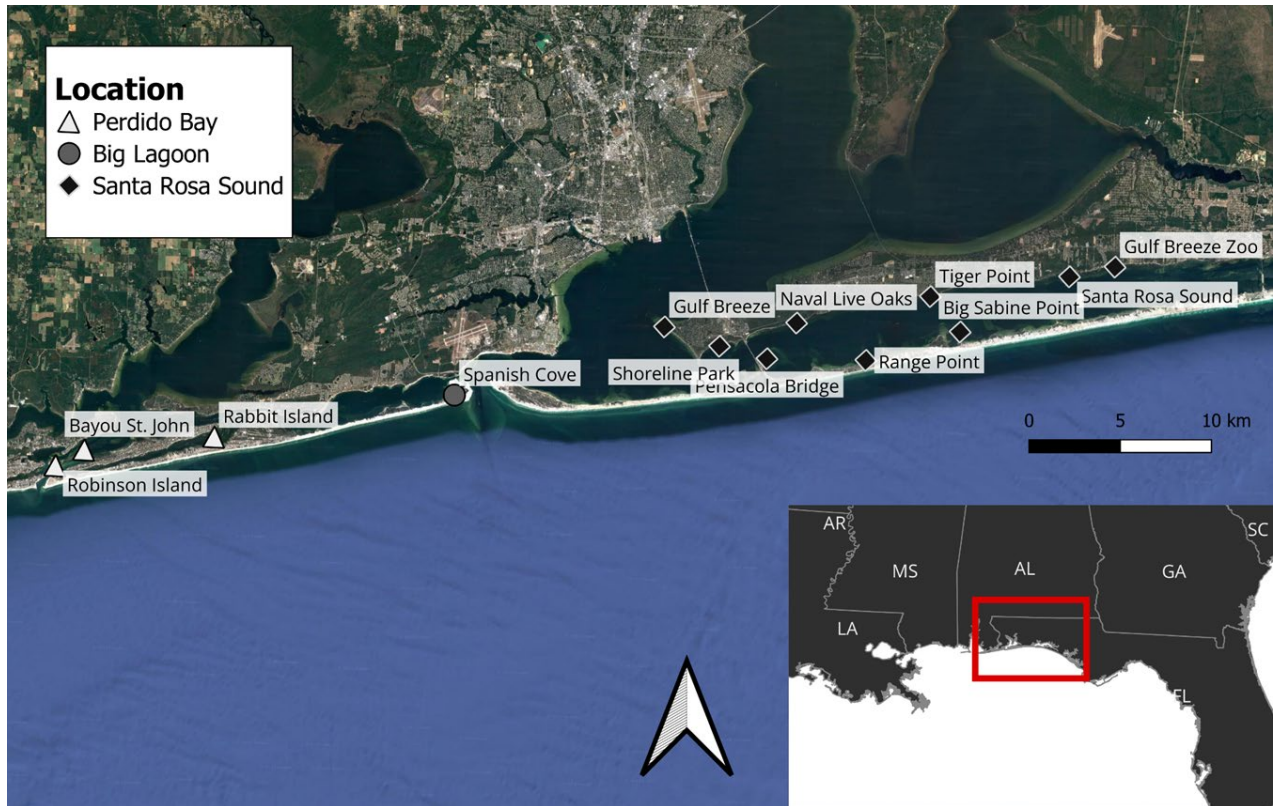


Figure 1: General locations of the juvenile fish trawling survey conducted in 2022 for the PPBEP.

2. Incorporate catch data into the long-term trawling database and convert abundance data into catch-per-unit-effort (CPUE) data based on the linear distance over which each trawl occurred. All statistical analyses will be applied to these CPUE data.
3. Provide scanned copies of field datasheets, raw abundance data and calculated CPUE data to PPBEP, and a final report that will include comparisons of 2023 CPUE data with previous results from the same locations and we will assess the use by commercially important species and comment on any newly identified tropically associated or non-native species collected.

Project Deliverables:

1. Updated QAPP
2. Raw abundance data and calculated CPUE data in a format determined by PPBEP
3. Final report in a format determined by PPBEP

MILESTONE CHART			
Activity	September 1, 2023 - January 31, 2024		
	September '23 – October '23	November 23	December '23 – January '24
Planning/Team meetings	X	X	X
Field Activities	X		
Data Entry & Processing		X	
Reporting		X	X

References:

Fodrie, F. J., Heck Jr, K. L., Powers, S. P., Graham, W. M., & Robinson, K. L. (2010). Climate-related, decadal-scale assemblage changes of seagrass-associated fishes in the northern Gulf of Mexico. *Global Change Biology*, 16(1), 48-59.

Fodrie, F. J., & Heck Jr, K. L. (2011). Response of coastal fishes to the Gulf of Mexico oil disaster. *PloS one*, 6(7), e21609.

Budget:

CATEGORY	TOTAL
Salary & Benefits	\$10,985
Supplies	\$ 800
Travel- Vehicle (56 Miles/RT * \$0.655/mile) & Vessel (\$250/day)	\$ 1,155
Direct	\$12,940
Indirect (15%)	\$ 1,941
TOTAL	\$14,881

Budget Narrative:

Personnel & Benefits

Principal Investigator, *Dr. Kenneth L. Heck, Jr.*, will provide 1 month of effort to oversee the project. He will be responsible for overseeing all aspects of the project, ensuring successful project completion, including submission of data and reports. Dr. Heck is currently Emeritus faculty at DISL and as such, is limited in his annual salary by State regulations.

Co-Principal Investigator, *Dorothy Byron*, will provide approximately 1 week of effort to participate in trawling activities and report preparations and review. Ms. Byron has 15 years working on restoration projects in Coastal Alabama with Dr. Heck and provides extensive field and project management experience.

Funds are requested to support one (1) DISL FTE to serve as the Project Manager for approximately 1 calendar month. The Project Manager will be responsible for organizing and conducting all field work, managing data entry, data analysis and report preparations.

Funds are requested to support one (1) Project Intern for approximately 1 week to participate in trawling activities and data entry. The Intern will be supervised by PIs Heck and Byron.

Total salary requested: \$8,588

Fringe rates for full-time personnel at DISL are determined based on a sliding scale and cover FICA, Medicare tax, unemployment insurance, health insurance, life insurance, short and long-term disability insurance, and RSA retirement. Fringe rates are based on salary amount and decreases with COLA raises. The fringe rate for PI Heck is 10%, CoPI Byron is approximately 36%, the Project Manager is approximately 43%, and the undergraduate intern is 15%

Total fringe requested: \$2,397

Travel

To support the field activities in the proposed work, we estimate a cost of \$405 for DISL vehicle use. We estimate field work will require 3 trips, at approximately 206 miles round trip. The DISL rate for vehicles from DISL Motor Pool is \$0.655/mile following the rates set forth by the State of Alabama Comptroller (<https://comptroller.alabama.gov/mileage-rates/>).

We also request funds in the amount of \$750 for the use of a DISL vessel for the 3 trips estimated to conduct the field work. The DISL rate for the vessel required to conduct trawling activities is set at \$250/day.

Total travel requested: \$1,155

Supplies

We request **\$800** for the purchase of field gear to conduct the proposed work. Funds will cover the cost of a new trawl net, a large cooler, gloves, batteries, and writing utensils.

Total supply cost requested: \$ 800

Indirect Costs

Indirect costs are charged at a reduced rate of 15% *of the* Modified Total Direct Cost as per the Pensacola and Perdido Bay Estuary Program's request. Modified Total Direct Costs consist of all salaries, wages, fringe, travel, contractual services, commodities and supplies, and subcontracts up to the first \$25,000 of each sub grant or subcontract (regardless of the period covered by the sub grant or subcontract).

Total indirect cost requested: \$ 1,941

Total Funds Requested

\$ 14,881



Agenda Item 6.j.

Approval of a Contract with the University of Southern Mississippi, in the amount of \$36,903, to complete Tier II Seagrass Monitoring

Background: Seagrass is an economically and ecologically important coastal resource. Monitoring for seagrass status and condition is necessary for understanding ecological baselines and detecting change and trends across space and time. The hierarchical multi-tiered framework for monitoring first described by Neckles et al. (2012) has been adopted by several states and federal agencies, including Pensacola and Perdido Bays Estuary Program (PPBEP). This proposed project will implement year 2 of the Tier 2 monitoring at approximately 110 stations in Pensacola and Perdido Bays, FL. This project directly addresses Action 5.2.1 in PPBEP's CCMP to "Conduct seagrass surveys (aerial and ground truth surveys) to assess current extent and distribution of seagrass species in the Pensacola and Perdido Bay systems", which was developed in collaboration with stakeholders.

Recommendation: Recommend the Board approve, and authorize the Executive Director to sign, a Contract with University of Southern Mississippi, in the amount of \$36,903, to complete Tier II Seagrass Monitoring.

Financial Impact: Funding is available in Florida DEP Agreement OWP02.

Legal Review: This Agreement template has previously been approved by the Escambia County Attorney's office.

RESEARCH AGREEMENT

This Agreement is between **Pensacola and Perdido Bays Estuary Program, Inc.**, hereinafter referred to as “SPONSOR”, organized and existing under the laws of the State of Florida with its administrative address being 226 Palafox Place, Pensacola, FL 32502, and the **University of Southern Mississippi**, a governmental entity of the State of Mississippi, hereinafter referred to as “USM”, for and on behalf of its Division of Coastal Sciences with its address at 118 College Drive #5157, Hattiesburg, Mississippi 39406. SPONSOR and USM are collectively referred to as the “parties.”

WHEREAS, SPONSOR desires to engage with USM in certain, specific research activities; and

WHEREAS, USM is interested in and has expertise in the research area; and

WHEREAS, both parties desire to collaborate on the defined line of research.

I. TERMS

A. Term of Contract. This agreement shall not be effective unless and until both parties have executed this agreement. The effective date of this agreement shall be the date of last signature. The period of performance is from **October 1, 2023 to June 30, 2024**. The project period may be changed by mutual consent of the parties by written amendment to this agreement.

B. Scope of Work. USM will perform the work as described in Addendum A. Kelly M. Darnell, a USM faculty member, will supervise all work to be performed under the terms of this Agreement. In the event the USM faculty member is unable or unwilling to continue with this project, the parties will attempt to find a mutually acceptable substitute. In the event a mutually acceptable substitute is not found, the Agreement may be terminated in accordance with Article W.

C. Payment. Both parties agree this is a cost reimbursable agreement, with costs not to exceed **\$36,903.00, inclusive of any direct or indirect costs or expenses and reimbursable travel expenses.** Contractor may request payment by the submission of a properly executed invoice reflecting the amount due and owing for services rendered with appropriate supporting documentation. Invoices may not be submitted more frequently than once per month. Payments and interest on any late payments shall be governed by and construed in accordance with the Local Government Prompt Payment Act, §§ 218.70, et seq., Florida Statutes.

Invoices shall be sent via email to:

info@ppbep.org
Pensacola and Perdido Bays Estuary Program
Attn: Executive Director
226 South Palafox Place
Pensacola, FL 32502

Payment shall be sent to:

Office of Research Administration
Financial Reporting and Audit, ATTN: Corrie Stringer
118 College Drive #5157
Hattiesburg, MS 39406-0001

D. Publicity. SPONSOR shall not use the names, logos, trademarks, or any other mark or image considered by USM to be identified with or protected by USM, or those of any of the institution's employees or former employees, or any adaptation thereof, in any advertising, promotional or sales literature without prior written consent being obtained from the USM University Counsel and the

Vice President for Research, in each case, except that SPONSOR may state that SPONSOR has engaged USM to perform research for the SPONSOR under this Agreement.

E. Title to any equipment purchased by USM in the performance of this research project will remain with USM and will be free of all claims, liens, or encumbrances of the SPONSOR.

II. CONDITIONS

A. Availability of Funds. It is expressly understood and agreed that the obligation of USM to proceed under this agreement is conditioned upon the availability and receipt of funds by USM to specifically perform the obligations set forth for USM under this agreement.

B. No USM Funding. It is expressly understood and agreed that the obligation of USM to proceed under this agreement is conditioned upon the receipt by USM of funds or other mutually agreed upon consideration from SPONSOR to specifically perform the obligations set forth for USM under this agreement. No USM funds are obligated for payment or disbursement or envisioned as being encumbered under this agreement to any party at any time.

C. Representation Regarding Contingent Fees and Gratuities. SPONSOR represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. Further, SPONSOR represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in state law.

D. Authority to Contract. Each individual executing this Agreement on behalf of a corporate or governmental party represents and warrants that he/she 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.

E. Disputes. The parties agree that any and all disputes between the parties to this agreement may, if mutually agreeable to both parties, be subjected to voluntary mediation and that such disputes are subject to final resolution if said voluntary mediation efforts result in a written resolution agreement executed by both parties.

F. Failure to Enforce. The failure by either party at any time to enforce the provisions of this agreement shall not be construed as a waiver of any such provision. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of either party to enforce the provision at any time in accordance with its terms.

G. No Warranty. USM makes no representations or warranties, either express or implied, as to any matter including but not limited to the condition or quality of the Deliverables or their merchantability or fitness for a particular purpose. USM will have no liability or responsibility for or regarding any claims, damages or losses arising out of the use by the Sponsor or by any party acting on behalf of or under authorization from the Sponsor of the deliverables, or out of any use, sale or other disposition by the Sponsor or by any party acting on behalf of or under authorization from the Sponsor of any product or technique which is the subject of the research or is created or modified based on the deliverables.

H. USM Responsibility. USM shall be responsible for liability resulting from the actions/inactions of its officers, agents, and employees acting within the course and scope of their official duties with USM to the degree and within the parameters permitted under §§11-46-1, et seq., Mississippi Code Annotated of 1972.

I. Intellectual Property.

a. Definitions. As used herein, “Intellectual Property” means individually and collectively all inventions, improvements, or discoveries and all works of authorship, excluding articles, dissertations, theses, and books, which are generated in the performance of the research during the Period.

b. Invention. Invention, (the “Invention”) means any invention conceived or reduced to practice during the performance of the research agreement during the Contract Period. The parties agree to abide by the applicable United States regulations governing patents and inventions issued by the U.S. Department of Commerce at 37 CFR 401, wherein the rights of the Federal Government are established.

c. Title. Each party shall retain title to Inventions and other Intellectual Property developed by their respective employees. In the event that employees of more than one party make an Invention, the Invention shall be jointly owned by the parties employing the inventors. Any question of Inventorship shall be determined in accordance with U.S. Patent law under Title 35 of the United States Code.

d. Disclosure. The parties agree to disclose to each other, in writing, each and every Invention, which may be patentable or otherwise protectable under the United States patent laws in Title 35, United States Code. The parties acknowledge that they will disclose Invention(s) to each other within 3 months after their respective inventor(s) first disclose the Invention in writing to person(s) responsible for patent matters of the disclosing Party. All written disclosures of such Inventions shall contain sufficient detail of the Invention, identification of any statutory bars and shall be marked confidential.

e. Patent Prosecution - Inventions. Each party, at its cost and expense, may apply for, acquire and maintain in the United States and in other countries as necessary forms of patents or protection registrations, or other intellectual property rights covering Inventions developed solely by their respective employees.

f. Patent Prosecution – Joint Inventions. The parties shall consult regarding preparation and filing of United States and foreign patent applications for jointly owned Inventions. The party designated to file an application will provide the other, on a confidential basis, a copy of any such application filed and any documents received or filed during prosecution thereof with the opportunity to comment thereon. The parties will cooperate in obtaining execution of any necessary documents by their employees.

g. License Rights – University Inventions. In recognition of Sponsor’s contribution to this project, Sponsor shall be entitled to a first-right-to-negotiate a royalty-bearing exclusive license to USM owned Inventions. Sponsor’s right to such license is subject to the negotiation of reasonable terms and conditions with Sponsor within one (1) year following the expiration of the Period of Performance or Termination of this Agreement, whichever comes first

h. License Rights – Joint Inventions. Both Sponsor and USM shall be entitled to license, assign, sub-license and exploit jointly owned Inventions with no accounting to each other or any third party provided, however that Sponsor shall be entitled to negotiate a royalty-bearing exclusive license to USM’s interest in Joint Inventions. Sponsor’s right to such license is subject to the negotiation of reasonable terms and conditions with Sponsor within one (1) year following the expiration of the Period of Performance or Termination of this Agreement, whichever comes first

i. Background Intellectual Property. "Background Intellectual Property" means Intellectual Property and the legal right therein of either or both parties developed before or independent of this Agreement including inventions, patent applications, patents, copyrights, trademarks, mask works, trade secrets and any information embodying proprietary data such as technical data and computer software. This Agreement shall not be construed as implying that either party hereto shall have the right to use Background Intellectual Property of the other in connection with this research except as otherwise provided by mutual agreement.

j. Software. Where the deliverable, scope or purpose of this agreement is to develop computer software, anything in this agreement to the contrary notwithstanding, the deliverable shall be an executable format of the software and does not include source code. License rights for intellectual property relating to computer software are subject to negotiation.

k. Other Scholarly Products. Other than computer software (Subsection J), the Sponsor acknowledges that this contract in no way constitutes a work made for hire as described in the Copyright Act of 1976, 17 USC 101, and as such understands that all written materials, reports, and articles that may result from conduct under this project shall be copyrighted by the USM. Sponsor shall have an unlimited, royalty-free license to use, reproduce, translate or publish such material when submitted to Sponsor as a deliverable under this Agreement, so long as such uses are for its own internal non-commercial, educational and research purposes. USM shall in no way limit the dissemination and/or utilization of such material and data as shall arise from the work performed under the contract.

l. Government Rights. Intellectual Property developed by USM is subject to all applicable laws and regulations, including Public Laws 96-517 and 98-620 and implementing regulations including 35 USC §§200-211. When required by such laws, USM shall include a statement in any patent application fully identifying such government right; and USM acknowledges that the United States Government has the right to a worldwide, non-exclusive, royalty-free license to practice any patent arising from USM owned Intellectual Property, notwithstanding anything in this Agreement to the contrary. In addition, Inventions that are subject to a non-exclusive royalty-free license to the United States government shall be manufactured substantially in the United States.

J. USM - Independent Contractor. USM shall at all times be regarded as and shall be legally considered an independent contractor and neither USM nor its employees shall, under any circumstances, be considered servants, agents or employees of SPONSOR, and SPONSOR shall at no time be legally responsible for any negligence or other wrongdoing by USM, its principals, officers, agents, employees or representatives. SPONSOR shall not be responsible for any federal or state unemployment tax, federal or state income taxes, Social Security taxes, or any other amounts for the benefit of USM or any of its principals, officers, agents, employees or representatives.

SPONSOR shall not provide to USM, its principals, officers, agents, employees or representatives any employee insurance coverage or other benefits, including, but not limited to, Workers' Compensation, which are normally provided by SPONSOR to its employees. USM's personnel shall not be deemed in any way, directly, indirectly, expressly or by implication, to be employees of SPONSOR. Nothing contained in this agreement or otherwise shall be deemed or construed as creating the relationship of principal and agent, partners, joint venturers, or any similar relationship between SPONSOR and USM. At no time shall USM be authorized to do so and at no time shall USM act as an agent for or of SPONSOR.

K. Equal Employment Opportunity. SPONSOR represents and understands that USM is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination. SPONSOR agrees that during the term of this agreement that SPONSOR will strictly adhere to this policy in its employment practices and the provision of its services.

L. Assignment Prohibition. This agreement shall not be assigned by either party and any attempt to do so shall be void.

M. No Third Parties. There are no other parties to this agreement. No obligations to third parties are provided herein, whether by the express or implied terms and conditions. Neither party shall be liable to any third party based upon this agreement, its terms and conditions, or a party's actions taken hereunder.

N. No Other Terms, Conditions, or Understandings. The parties hereto acknowledge that this Agreement sets forth the entire Agreement and understanding of the parties hereto as to the subject matter hereof and constitutes the full and complete Agreement in this matter by and between the parties hereto, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto. Should SPONSOR issue a purchase order to USM for work performed under this agreement, both parties agree that any purchase order terms preprinted or referenced on a website DO NOT APPLY to the work being performed under this agreement.

O. Modifications to Agreement. This agreement may be modified only by a written amendment authorized by and executed by the parties. No oral statements of any person shall modify or otherwise affect the terms, conditions or specifications stated in this agreement.

P. Notices. All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by certified U.S. Mail, postage prepaid, return receipt requested, to the persons at the addresses shown below. The parties agree to notify the other in writing of any change of address.

For SPONSOR:
Matt J. Posner
226 South Palafox Place
Pensacola, FL 32502

For USM jointly at:
Kelly Lucas, VP for Research
118 College Drive #5157
Hattiesburg, MS 39406-0001
AND
Kelly M. Darnell, Asst. Res. Professor
703 E. Beach Drive
Ocean Springs, MS 39564

Q. Ownership of Documents and Work Papers. Drawings, specifications, design, models, photographs, reports, surveys, and other data produced by USM in connection with this Agreement are and shall remain the property of the SPONSOR whether the Project is completed or not. Such ownership also shall include any electronic files developed or created of such documents. This does not include financial or other administrative data.

R. Publications. USM has the right to use data or results from this research for its own publication, presentation, instructional or noncommercial research objectives provided that the publication, presentation, or use does not disclose any confidential information furnished by SPONSOR under Paragraph U and defined therein. USM agrees that any proposed publication or presentation relating to the research project conducted under this agreement will be submitted to SPONSOR for review at least thirty (30) days prior to submission for publication or presentation to remove Confidential Information. As such, the scope of Confidential Information in this publication context does not include the results arising out of the performance of this Agreement. In the event that the proposed publication or presentation contains patentable subject matter which needs protection, USM will, upon written request from SPONSOR within the initial thirty (30) day review period, delay the publication or presentation for a maximum of an additional ninety (90) days to allow SPONSOR or USM to file a patent application. If SPONSOR does not respond to USM in writing within the thirty (30) day review period, USM is free to proceed with the publication or presentation.

S. Confidential Information. "Confidential Information" means information consistent with the purpose stated in Addendum A which is disclosed in any tangible form and is clearly labeled or marked as confidential, proprietary or its equivalent, and is confidential and/or exempt from the disclosure requirements of Chapter 119, Florida Statutes. To the extent allowed by law, the party receiving Confidential Information shall restrict the use of the Confidential Information to the purpose set forth in Addendum A and shall safeguard against disclosure of the Confidential Information to third parties using the same degree of care to prevent disclosure as it uses to protect its own information of like importance, but at least reasonable care. A party may make only the minimum number of copies of any Confidential Information required to carry out the purpose of this Agreement. All proprietary and copyright notices in the original must be affixed to copies or partial copies.

Neither party shall be obligated to maintain any information in confidence or refrain from use if:

- a. The information was in the receiving party's possession or was known to it prior to its receipt from the disclosing party;
- b. The information is independently developed by the receiving party without the utilization of Confidential Information of the disclosing party;
- c. The information is or becomes public knowledge without fault of the receiving party.
- d. The information is or becomes available on an unrestricted basis to the receiving party from a source other than the disclosing party;
- e. The information becomes available on an unrestricted basis to a third party from the disclosing party or from someone acting under its control; or
- f. The information is publicly disclosed (i.e., not under adequate protective order) by the receiving party under an order of a court or government agency, provided that the receiving party provides prior written notification to the disclosing party of such obligation and the opportunity to oppose such order.
- g. Ordered to release by a court of competent jurisdiction or otherwise required to release by law.
- h. The information is subject to disclosure pursuant to Chapter 119, Florida Statutes.

T. Severability. If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement, and to that end the provisions hereof are severable. In such an event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

U. Termination for Convenience. Either party may terminate this agreement, in whole or in part, for convenience. Written notice of the same is required and shall allow no less than 60 days' notice prior to the effective date of the termination. SPONSOR agrees to pay USM for all properly incurred expenses and non-cancellable commitments incurred through the date of termination.

V. Termination for Cause. Either party may terminate this agreement upon issuance of written notice if the other party fails to perform the obligations to the other party under this agreement. The party issuing such a termination notice may allow 30 days within which the other party may attempt to cure the failure to fulfill its obligations, but such 30 day cure time is not required.

W. Applicable Law. The parties shall comply with applicable federal, state, and local laws and regulations.

X. Public Records. Notwithstanding any provision to the contrary contained herein, it is recognized that USM is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act, Mississippi Code Annotated §25-61-1, *et seq.*, as amended. If a public records request is made for any Information provided to USM pursuant to this agreement, USM shall promptly notify the disclosing Party of such request. The disclosing Party shall promptly institute appropriate legal proceedings to protect its Information. No Party to this agreement shall be liable to the other Party for disclosures of Information required by Court order or required by law.

USM 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. Failure to abide by the provisions of Chapter 119, Florida Statutes, shall be grounds for immediate termination of the Agreement by SPONSOR.

For SPONSOR by:

PENSACOLA AND PERDIDO BAYS ESTUARY PROGRAM, Inc.

Matthew J. Posner, Executive Director Date

For UNIVERSITY OF SOUTHERN MISSISSIPPI by:

Kelly Lucas Date
Vice President for Research

Read and Understood:

PI, Kelly M. Darnell Date

ADDENDUM A
To the
RESEARCH AGREEMENT
Between
THE UNIVERSITY OF SOUTHERN MISSISSIPPI
And
PENSACOLA AND PERDIDO BAYS ESTUARY PROGRAM, Inc.

1. Project Title: Monitoring seagrass distribution and condition to inform comprehensive conservation and management in Pensacola and Perdido bays and estuaries, Florida

2. Investigators:

Dr. Kelly M. Darnell Associate
Research Professor

The University of Southern Mississippi

703 E. Beach Drive, Ocean Springs, MS 39564
228-872-4278

Kelly.Darnell@usm.edu

Dr. Zack Darnell
Associate Professor

The University of Southern Mississippi

703 E. Beach Drive, Ocean Springs, MS 39564
228-872-4298

Zachary.Darnell@usm.edu

3. Fiduciary Information:

The University of Southern Mississippi Ms.
Corrie Stringer

Director of Financial Reporting and Auditing

118 College Drive #5157, Hattiesburg, MS 39406

601-266-4119

ora-pam@usm.edu

4. Budget Request: \$36,903

5. Project Duration: October 1, 2023 – June 30, 2024

Scope of Work

Background

Seagrass is an economically and ecologically important coastal resource. Monitoring for seagrass status and condition is necessary for understanding ecological baselines and detecting change and trends across space and time. The hierarchical multi-tiered framework for monitoring first described by Neckles et al. (2012) has been adopted by several states and federal agencies, including Pensacola and Perdido Bays Estuary Program (PPBEP). This proposed project will implement year 2 of the Tier 2 monitoring at approximately 110 stations in Pensacola and Perdido Bays, FL. This project directly addresses Action 5.2.1 in PPBEP's CCMP to "Conduct seagrass surveys (aerial and ground truth surveys) to assess current extent and distribution of seagrass species in the Pensacola and Perdido Bay systems", which was developed in collaboration with stakeholders.

Project Tasks

The tasks for the proposed project are to:

1. Implement year 2 of Tier 2 monitoring at approximately 110 stations within Pensacola and Perdido Bays, FL following Meiman (2019). Stations visited have been selected using a stratified random tessellated hexagonal design where a hexagon layer is placed over a map of the area of interest and one station is randomly assigned to each hexagon. Project investigators will work with PPBEP staff to discuss existing station locations and add/delete stations as needed based on year 1 of Tier 2 monitoring and newly identified needs for PPBEP. Each station will be monitored during the time of peak seagrass biomass for: (1) seagrass condition indicators including seagrass percent cover by species, seagrass canopy height, and reproductive status, and (2) environmental parameters including water depth, salinity, dissolved oxygen, pH, temperature, total suspended solids, turbidity measured as Secchi depth, light availability measured as photosynthetically active radiation and the light attenuation coefficient, and presence/absence of attached and drift macroalgae. Monitoring will be conducted in September–October 2023, which is the time of peak seagrass biomass in the northern Gulf of Mexico.
2. Provide the raw data, data summaries, and final report from Task 1 PPBEP in formats determined by PPBEP.

Budget

The total funds requested for a period of performance of October 1, 2023 – June 30, 2024 are \$36,903.

		Year 1		CUMULATIVE
SALARY				
Kelly M. Darnell, Zack Darnell, Research Technician 1 (TBD)				16,577
	Sub		16,577	16,577
FRINGE				
Kelly M. Darnell, Zack Darnell, Research Technician 1 (TBD)				6,043
	Sub		6,043	6,043
TOTAL PERSONNEL			22,620	22,620
MATERIALS AND SUPPLIES			4,000	4,000
TRAVEL			2,997	2,997
COMMUNICATIONS			125	125
OTHER: BOAT USE			2,700	2,700
SUBCONTRACTS			0	0
TOTAL DIRECT COSTS			32,441	32,441
MODIFIED TOTAL DIRECT			29,741	29,741
F&A	Rate =	15.0%	4,461	4,461
TOTAL PROJECTS COSTS			36,903	36,903

Budget Justification

Personnel

Salary is requested for 0.25 months for PI K. Darnell, 0.75 months for Z. Darnell, and 3 months for a technician to execute Tier 2 sampling, data entry, data analysis, and reporting.

Fringe

Fringe benefits are requested for K. Darnell, Z. Darnell, and the technician.

Materials & Supplies

A total of \$4,000 is requested for field and laboratory supplies such as Rite in the Rain waterproof paper, filters for processing total suspended solids, calibration solutions for the YSI handheld data sonde, and a LI-COR spherical quantum sensor and light meter to measure light availability and attenuation.

Travel

A total of \$2,997 is requested for travel to implement Tier 2 monitoring, as follows:

Roundtrip mileage from Ocean Springs, MS to Navarre, FL: 278 miles @ 0.62/mile x 2 round trips =
\$344.72

Hotel: 2 rooms x 5 nights @ \$150/night = \$1,500

Per diem: 3 people x 6 days @ \$64/day = \$1,152

Communications

A total of \$125 is requested for shipping costs for materials and supplies.

Other: Boat Use

A total of \$2,700 is requested for 6 days of boat use at the rate of \$450/day for Tier 2 monitoring.

Subcontracts

None requested.

Indirect Costs (F&A)

Indirect costs are calculated at 15% of total direct costs.

Total budget request: \$36,903

Schedule

September 2023: Project begins

September 2023: Discussions with PPBEP to review station locations; order supplies, calibrate sensors

October 2023: Conduct Tier 2 monitoring and process samples for total suspended solids with 10 days of collection.

November 2023–June 2024: Data entry and analysis, map production

August 31, 2024: Submission of final report and deliverables

Deliverables

Deliverables for this project will include:

1. Raw data and data summaries for Tier 2 monitoring in a format determined by PPBEP
2. Map products or other visuals requested by PPBEP
3. Final report in a format determined by PPBEP

References

Meiman J (2019) Field Measurements – Version 1.0. Gulf Coast Network Standard Operating Procedures NPS/GULN/SOP – SEA04. Gulf Coast Network, Lafayette, Louisiana.

Neckles HA, BS Kopp, BJ Peterson, PS Pooler (2012) Integrating scales of seagrass monitoring to meet conservation needs. *Estuaries and Coasts* 35: 23-46.