

GRANT AGREEMENT
BETWEEN
RESTORE AMERICA'S ESTUARIES
AND
MANATEE COUNTY
FOR
LAKE MANATEE WATERSHED IMPROVEMENT PROJECT

THIS AGREEMENT is entered into this ___ day of _____, 2020 by and between Restore America's Estuaries (RAE), a 501(c)(3) organization, and Manatee County, a political subdivision of the State of Florida, hereinafter referred to as the CONTRACTOR.

WITNESSETH:

WHEREAS, RAE desires assistance for the Lake Manatee Watershed Improvement Project;
and

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

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

1. Covenant for Services.

RAE does hereby retain CONTRACTOR to perform the services identified in the Scope of Work, Exhibit A hereto, and the CONTRACTOR does hereby agree to perform such services hereinafter referred to as the "PROJECT", for RAE upon the terms and conditions set forth in this agreement.

2. Definition, Scope, and Quality of Services.

Upon receiving a written Notice to Proceed from RAE, CONTRACTOR shall perform the services and comply with the terms and conditions described in the Scope of Work with respect to the PROJECT as attached hereto and incorporated herein as Exhibit "A". The CONTRACTOR is responsible for the professional quality, technical accuracy, timely completion and coordination of all designs, drawings, specifications, reports, and other services furnished by the CONTRACTOR under this agreement. The CONTRACTOR shall consult with RAE during development of the

PROJECT and RAE shall be entitled to review any and all work progress of the CONTRACTOR. The CONTRACTOR shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its designs, drawings, specifications, reports, and other services. Once RAE accepts the products specified in the Scope of Work, the obligation of the CONTRACTOR is considered complete. The CONTRACTOR shall perform the professional services necessary to accomplish the work specified in the Scope of Work in accordance with this agreement. RAE will be provided thirty (30) working days to review and approve all draft work products; and CONTRACTOR shall provide to RAE, upon completion, one (1) electronic copy of Project Reports in a format approved by RAE.

In the event of hurricanes, tornados, floods, acts of God, acts of war, or other such catastrophes, or other emergencies which are beyond the CONTRACTOR's control, CONTRACTOR's obligations to meet the time frames provided in the Agreement shall be suspended for the period of time the condition continues to exist. During such suspension, this Agreement shall remain in effect.

3. Project Managers.

In order to assure proper coordination and review throughout the term of this agreement, RAE shall designate a project manager who shall be the person with whom the CONTRACTOR shall communicate, the project manager shall be responsible for transmitting and receiving information and will interpret and communicate all RAE decisions which are pertinent to this agreement to the CONTRACTOR. The manager will meet with the CONTRACTOR as necessary to provide guidance, as well as to review and comment on interim reports and draft submittals. The CONTRACTOR will initiate no actions outside the Scope of Work, including issuance of statements and press releases, without prior written authorization from the project manager. The Project Manager for RAE shall be Elsa Schwartz, 2300 Clarendon Blvd., Suite 603, Arlington, VA 22201. The CONTRACTOR shall designate Robert Brown, 1112 Manatee Avenue West, Suite 203, Bradenton, Florida 34205, with whom RAE project manager can coordinate and who shall have authority to act on behalf of the CONTRACTOR; provided, however that CONTRACTOR's Project Manager shall not have authority to alter the Scope of Work or terms of this Agreement. Any changes to the designation of a Project Manager or his/her address shall be provided to the other party in writing.

4. Consideration.

a) RAE will make available to CONTRACTOR a sum not to exceed One Hundred and Seventy-Five Thousand Dollars (\$175,000).

b) The CONTRACTOR shall submit its invoices to RAE at specific PROJECT Milestone Dates as provided in Exhibit "A". RAE shall review each invoice submitted by CONTRACTOR and shall

make payment to the CONTRACTOR when RAE determines that the resource benefits expected to be achieved by the PROJECT Milestone Date for which the invoice was submitted have in fact been achieved, as required by the Scope of Work, Ex. A, which is attached hereto and incorporated herein. CONTRACTOR acknowledges and agrees that it has no right to payment until RAE determines that the resource benefits expected to be achieved by the PROJECT Milestone Date for which the invoice was submitted have in fact been achieved, as set forth in the Scope of Work. Within forty-five (45) days of receiving a proper invoice from CONTRACTOR, RAE will either make payment to CONTRACTOR, or provide CONTRACTOR written notice that the expected resource benefits have not been achieved.

Within forty-five (45) days of receiving a proper invoice from CONTRACTOR, RAE will either make payment to CONTRACTOR, or provide CONTRACTOR written notice that the expected resource benefits have not been achieved.

c) In accordance with the Scope of Work, CONTRACTOR shall provide RAE with quarterly reports describing the progress of each project phase, adherence to the performance schedules, and any developments affecting the PROJECT. The Contractor shall promptly advise RAE of issues that arise that may impact the successful and timely completion of the PROJECT.

d) Upon request by RAE, the Contractor shall provide RAE with copies of reports, models, studies, maps or other documents resulting from the PROJECT.

e) CONTRACTOR shall submit the final invoice for payment to RAE no more than sixty (60) days after the agreement ends or is so terminated. The RAE Project Manager and RAE may withhold any payment due under the terms of this agreement until RAE determine that the resource benefits expected to be achieved by the PROJECT Milestone Date for which the invoice was submitted have in fact been achieved, as well as all work products due from CONTRACTOR, and necessary adjustments thereto, have been approved. RAE may not unreasonably withhold final payment once products have been approved.

f) Invoices requesting payment must be sent to the Project Manager at eschwartz@estuaries.org.

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

5. Payment Limitations.

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

6. Independent Contractor Status.

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

7. Billing Requirements.

The CONTRACTOR agrees:

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

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

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

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

8. Contract Data, Documents.

All documents and data including draft, interim, and final reports developed, created or written by the CONTRACTOR shall be made available to RAE and CONTRACTOR upon RAE's request. Unrelated use by RAE of the data, reports or other work product generated by the CONTRACTOR pursuant to this agreement shall be at the risk of RAE, and CONTRACTOR makes no representations or warranties as to the correctness of the material when used for unrelated purposes.

9. Audits and Records.

The CONTRACTOR agrees:

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

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

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

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

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

10. Retention of Records.

The CONTRACTOR agrees:

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

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

11. Public Access to Records.

The CONTRACTOR acknowledges that all said documents regarding the PROJECT, as well as all of the documents, papers, letters or other material prepared and completed, made or received in conjunction with this agreement, are subject to the provisions of Chapter 119, Florida Statutes and shall be maintained and made available to the public at the CONTRACTOR's custodial address, to-wit: 5502 33rd Avenue Dr W, Bradenton, FL 34209.

12. Funding Recognition.

The CONTRACTOR shall ensure that RAE funding is recognized in any reports, models, studies, maps or other documents resulting from this agreement, and the form of said recognition shall be subject to RAE approval. If construction is involved, the Contractor shall ensure that signage is placed at the PROJECT site, which recognizes that funding for this PROJECT has been provided by the Tampa Bay Environmental Restoration Fund, with matching funds from the Manatee

County Board of County Commissioners.

13. Permits and Real Property Rights.

The Contractor shall ensure that all required permits, local government approvals and all real property rights necessary to complete the PROJECT are obtained prior to commencing any construction involved in the PROJECT.

14. Period of Agreement.

This agreement shall take effect on the date first written above and end on November 30, 2021, inclusive, or upon satisfactory completion of the PROJECT and subsequent reimbursement to CONTRACTOR, whichever occurs first, unless amended in writing by the parties.

15. Indemnification.

Subject to the provisions and dollar limitations set forth in Section 768.28, Florida Statutes, the CONTRACTOR shall be liable for and shall indemnify, defend, and hold harmless the RAE and all of its officers, agents, and employees from all claims, suits, judgments, or damages, consequential or otherwise and including attorneys' fees and costs, arising from the negligent acts or omissions by the CONTRACTOR, its agents, or employees during the performance or operation of this agreement or any subsequent modifications thereof, whether direct or indirect, and whether to any person or tangible or intangible property; provided, however that CONTRACTOR shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of RAE's officers, employees, contractors and agents. The acceptance of RAE's funding by the CONTRACTOR does not in any way constitute an agency relationship between RAE and CONTRACTOR. This paragraph shall not be construed as a waiver of either party's sovereign immunity or an extension of liability beyond the limits established in Section 768.28, F.S. Additionally, this paragraph will not be construed as consent by either party to be sued by third parties in any manner arising out of this Agreement.

16. Members Liability.

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

17. Termination and Non-Availability of Funds.

a) Immediate Notice

If either party terminates this Agreement as set forth in Section 17 herein, the terminating party shall provide immediate notice to the other party by email or telephone, and shall also send a written notice via certified mail or hand delivery, with proof of delivery.

b) Notice of Termination at will

This agreement may be terminated by either party upon no less than fifteen (15) calendar days' notice, with or without cause.

c) Notice of Termination because of Lack of Funds

In the event funds to finance this agreement become unavailable, RAE may terminate the agreement upon twenty-four (24) hours' notice in writing to the CONTRACTOR. RAE shall be the final authority as to the availability of funds.

18. Availability of Funds.

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

19. Modification of Agreement.

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

20. Assignment.

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

21. Subcontractors.

The CONTRACTOR shall not subcontract any portion of the work required by this agreement without the written consent of RAE, which shall not be unreasonably withheld.

22. Covenant Against Contingent Fees.

The CONTRACTOR assures that no person or selling agency has been employed or retained to solicit or secure this agreement for a commission, percentage, brokerage or contingent fee except bon 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 assurance, the RAE shall have the right to annul this agreement without liability or, at its discretion, to deduct from the -agreement price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

23. Communication between parties.

Written Communication between the parties, other than notices required by Section 17 herein, may be sent by email, U.S. Mail, or other mail delivery service.

Notices and other communications shall be addressed to the appropriate party at the following address, or such other address as may be provided by a party:

- a) Robert Brown
Manager, Environmental Protection Division
Manatee County Parks and Natural Resources
1112 Manatee Avenue West, Suite 203
Bradenton, Florida 34205
rob.brown@mymanatee.org

- b) Elsa Schwartz
Restore America's Estuaries
2300 Clarendon Blvd., Suite 603
Arlington, VA 22201
eschwartz@estuaries.org

24. Remedies.

Unless otherwise provided in this agreement, all claims, counter-claims, disputes and other matters in question between RAE and the CONTRACTOR arising out of, or relating to, this agreement or the breach of it may be decided by arbitration if the parties mutually agree, or in a

court of competent jurisdiction within Florida.

25. Governing Laws.

This agreement and the rights and obligations of the parties hereto shall be governed and construed according to the laws of the State of Florida. Venue for any legal action hereunder shall be in Manatee County, Florida.

26. Severability.

Should any provision of this Agreement be determined to be unconstitutional, in conflict with any applicable statute, or otherwise unenforceable, said provision shall be severed from the Agreement and declared null and void, but shall not cause any other provision of the Agreement to be invalidated.

27. Binding Authority.

The Parties acknowledge and agree that this Agreement shall be signed by persons who have legal authority to execute and bind the Parties to this Agreement.

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

Restore America's Estuaries

BY: _____
Elsa Schwartz, Senior Director of Restoration

ATTEST: _____

Federal Employer I.D. Number: _____

**Manatee County, a political subdivision of the State of Florida
By: its Board of County Commissioners**

BY: _____
Chairperson

(SEAL)

ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT COURT AND COMPTROLLER

BY: _____
Deputy Clerk

EXHIBIT A
Scope of Work
Lake Manatee Watershed Improvements Project – Phase 2B
2020 Tampa Bay Environmental Restoration Fund

Project Summary

Manatee County Parks and Natural Resources Department (PNRD) is responsible for the active management of Duette Preserve (f/k/a Duette Park) and Duette Headwaters Preserve, established on approximately 24,000 acres of open land in eastern Manatee County, Florida which contain a major portion of the North Fork and the East Fork of the Manatee River. The Duette Park Land Management Plan prioritizes the protection of the hydrological, biological and cultural resources while allowing appropriate recreation opportunities. Since 2004, staff has undertaken several hydrologic restoration projects focused on improving water quality and wetland hydroperiods. Projects focused on back-filling agricultural ditches and installing ditch blocks, or other water diversion techniques, to rehydrate wetlands and to attenuate stormwater.

The Lake Manatee Watershed Improvements Project – Phase 2B will focus on runoff from specific agricultural sources and formulate a restoration design that will provide for water quality treatment and water quantity attenuation while improving wildlife habitat values and ecosystem functions. The projects' objectives are to formulate a comprehensive restoration design that will result in measurable ecological benefits within the project area and ultimately to the receiving waterbody, the North Fork of the Manatee River. Through a science-based watershed study, the nutrient loading thresholds and hydrologic and hydraulic characteristics will be quantified. The baseline environmental monitoring program will provide detailed vegetation and wildlife data to identify ecologically important target species and to finalize native habitat restoration goals. The result of these two studies will provide valuable information for the completion of construction plans and permitting applications.

During the proposed grant duration of 18 months, the following activities will be completed: site-specific surveying; watershed study and drainage model; collecting baseline vegetation and wildlife data; 30% - 60% design plans; environmental permitting; 100% construction plans set and bid documents. In addition, through the planned community wagon tour (or virtual wagon tour), the community will be educated on the value of headwater streams and wetlands and informed of upcoming volunteer planting and exotic species removal events. Options for volunteer participation in the environmental monitoring program are also being evaluated.

Project Phases

Projects may have from 1 to 6 Phases. *Invoices can only be submitted upon completion of a Phase, and the invoiced amount should match the budgeted amount for that Phase.* Invoices will be paid once the

Project Manager has confirmed that the measurable benefit and deliverables as defined in the contract scope of work have been received.

Project Phase/Measurable Benefit #1- to be completed within nine (9) months of Notice to Proceed.

Phase 1 Summary, including Measurable Benefit: This part of the project design includes gathering survey data of existing hydrologic characteristics of the area, updating the Lake Manatee Water Quality and Water Quantity Improvements Project – Phase 2 stormwater drainage model and producing a Watershed Report that will outline design options for water attenuation and water quality treatment. The deliverable will be a Watershed Report and 30% Design Plans with sufficient detail to submit for an Environmental Resources Permit (ERP) and a Nationwide Permit 27 (aquatic habitat restoration). The Watershed Report will quantify the current hydrologic and hydraulic conditions of the ditched conveyance systems and the Keen wetland hydroperiod that are being targeted for ecosystem restoration.

Phase 1 Deliverables:

- Quarterly Progress Reports
- Watershed Report
- 30% Design Plans

Phase 1 Budget: \$75,000

Phase 1 Description: The watershed report will use site-specific survey data and stormwater modeling to quantify the nitrogen loading from upstream sources, document the agricultural tailwater condition, provide pre- and post-wetland water level stages for various storm events. The watershed report will include design recommendations for “polishing” and stormwater retrofit opportunities (Sump Area Nos. 1 and 2) based on calculated stage and discharge rates and provide a conceptual stream design. It will be in a format that is consistent with that typically submitted to the Southwest Florida Water Management District (SWFWMD) in support of an ERP application and will include items such as a floodplain map, NRCS Soils map, existing conditions contour map, summary of water quantity calculations, and evaluation of options to adjust onsite hydraulics to reduce erosion and sedimentation and extend opportunities for nutrient sequestrating. The 30% Design Plans will include the design concept that fits within the existing landscape and continues to provide management/maintenance access to Keentown gate.

Project Phase/Measurable Benefit #2- to be completed within eighteen (18) months of Notice to Proceed.

Phase 2 Summary, including Measurable Benefit: A comprehensive environmental monitoring will begin during the 2020 wet season. It will include nested vegetation quadrats, staff gauges and frog listening stations. The vegetation and wildlife data will be compiled in the Baseline Monitoring Report. The data will serve to represent the altered and degraded habitat values of the Keen wetland which is targeted for restoration, as well as the adjacent upland communities and ditched water conveyances. The Baseline Monitoring Report will highlight which design

features, while accomplishing water quality treatment and water attenuation objectives, will also support ecologically important species found on site. The Baseline Monitoring Report will also be used to develop the planting plans for the wetland enhancement area, water quality treatment areas and the mixed hardwoods restoration area.

The 100% Construction Plans will be finalized with the stream restoration design, including design features important to targeted wildlife species, and the water retention and polishing areas. Along with the 100% Construction Plans, the bid documents will be developed with the Engineer's Probable Construction Cost Estimate.

This part of the project also includes a community outreach and awareness component. The community will be informed of past and upcoming restoration projects during a wagon tour of the property. A virtual wagon tour may be conducted, if social distancing protocols don't allow for an actual wagon tour. Also, given the uncertainty in the foreseeable future, this part of the project will attempt to accommodate volunteers (either virtual, normal or socially distanced) in gathering/compiling vegetation data. The community will be encouraged to volunteer at future volunteer planting and exotic species removal events, when they become available.

Phase 2 Deliverables:

- Quarterly Progress Reports
- Baseline Environmental Monitoring Report
- 100% Construction Plan Set
- Bid Documents
- Final Report

Phase 2 Budget: \$100,000

Phase 2 Description:

The Baseline Environmental Monitoring Report will consist of a comprehensive species list of vegetation, avian, amphibian and mammalian species, including any nuisance & exotic species, within the targeted habitat communities. This document will serve to direct management activities and highlight desirable habitat design elements, such as pools, log piles and channel meanders, which would support ecologically important species, specifically the rare barking tree frog (*Hyla gratiosa*), and the commercially exploited royal fern (*Osmunda regalis*) and cinnamon fern (*Osmunda cinnamomea*). The Baseline Environmental Monitoring Report will also include a recommended planting plan for the Keen wetland enhancement area, stormwater polishing areas,

Sump Nos. 1 and 2 and the mixed hardwoods restoration area. These planting plans will be included in the Bid Documents.

All of the data gathered in the Baseline Environmental Monitoring Report, the Watershed Report, 30% design plans and permitting agency comments will be incorporated into the final 100% Construction Plan Set and the Bid Documents in a format that meets the Manatee County Procurement specifications for an Invitation to Quote (ITQ) bidding process.

Required Match

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

Source, amount and type (cash or in-kind) of match: Project matching cash contribution of \$222,475.28 provided by the State Water Fund for the environmental construction activities and CEI oversight of the Lake Manatee Water Quality and Water Quantity Improvement Phase 2 project.