

CONTRACTOR AGREEMENT  
BETWEEN  
THE TAMPA BAY ESTUARY PROGRAM  
AND  
MANATEE COUNTY  
FOR  
PERICO – ROBINSON CONNECTOR PROJECT

THIS AGREEMENT is entered into this 12<sup>th</sup> day of September, 2017 by and between the Tampa Bay Estuary Program (TBEP) and Manatee County, a political subdivision of the State of Florida, hereinafter referred to as the CONTRACTOR.

WITNESSETH:

WHEREAS, the CONTRACTOR desires funding assistance from TBEP for the Perico-Robinson Connector Project; and

WHEREAS, TBEP 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.

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

1. Covenant for Services.

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

2. Definition, Scope, and Quality of Services.

The 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 CONTRACTOR under this agreement. The CONTRACTOR shall consult with the TBEP during development of the PROJECT, and TBEP 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 the TBEP accepts the products specified in the scope of work, the obligation of the CONTRACTOR shall be complete. The CONTRACTOR shall perform the professional services necessary to accomplish the work specified in the Scope of Work in accordance with this agreement. TBEP will be provided thirty (30) working days to review and approve all draft work products; and the CONTRACTOR shall provide to the TBEP, upon completion, one (1) electronic copy of Project Reports in a format approved by the TBEP.

3. Project Managers.

In order to assure proper coordination and review throughout the term of this agreement, TBEP shall designate a Project Manager who shall be the person with whom the CONTRACTOR shall communicate. The Project Manager shall be responsible for transmitting and receiving information and will interpret and communicate all TBEP decisions which are pertinent to this agreement to the CONTRACTOR. The Project 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 TBEP shall be Maya Burke, 263 13th Avenue South, Suite 350, St. Petersburg, Florida 33701. The CONTRACTOR hereby designates Damon Moore, 5502 33<sup>rd</sup> Avenue Dr W, Bradenton, FL 34209, with whom the TBEP Project Manager can coordinate and who shall represent the CONTRACTOR in performance of this agreement.

4. Consideration.

a) The TBEP will make available to the CONTRACTOR a sum not to exceed Thirty Nine Thousand Three Hundred Thirty Three (\$39,333) Dollars.

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

c) The CONTRACTOR shall provide TBEP with a quarterly report describing the progress of the PROJECT, adherence to the performance schedules and any developments affecting the PROJECT. The CONTRACTOR shall promptly advise the TBEP of issues that arise that may impact the successful and timely completion of the PROJECT.

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

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

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

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

5. Payment Limitations.

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

6. Independent Contractor Status.

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

7. Requirements of Section 287.058, Florida Statutes.

The 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, as specified in this agreement and the Scope of Work, to be received and accepted by the Project Manager prior to payment.

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

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

All documents and data including draft, interim, and final reports developed, created or written by the CONTRACTOR shall be the joint property of TBEP and the CONTRACTOR. The CONTRACTOR shall not use any of the data or reports developed pursuant to this agreement without the express written consent of TBEP. Further unrelated use by TBEP of the data, reports or other work product generated by the CONTRACTOR pursuant to this agreement shall be at the risk of TBEP, and the 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 the TBEP under this agreement.

b) To assure that these records shall be subject at all reasonable times to inspection, review, audit, or copy

by TBEP personnel and other personnel duly authorized by the TBEP.

c) To include these aforementioned audit and record keeping requirements in all 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) TBEP shall have full access to and the right to examine any of said records and documents during said retention period.

11. Public Access to Records.

The 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 made available to the public at the CONTRACTOR's address, to-wit: 5502 33rd Avenue Dr W, Bradenton, FL 34209.

12. Funding Recognition.

The CONTRACTOR shall ensure that TBERF 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 TBEP approval.

13. Period of Agreement.

This agreement shall begin upon execution of this agreement by both parties and end on December 31, 2019, inclusive, or upon satisfactory completion of the PROJECT, whichever occurs first. In the event of hurricanes, tornados, floods, acts of God, acts of war, or other such catastrophes, or other man-made emergencies such as labor strikes or riots, which are beyond the control of the CONTRACTOR, the CONTRACTOR'S obligations to meet the time frames provided in this agreement shall be suspended for the period of time the condition continues to exist.

14. 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 TBEP 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.

15. Members Liability.

No covenant, stipulation, obligation, or agreement contained herein shall be deemed to be a covenant,

stipulation, obligation, or agreement of any present or future member of the governing body or agent or employee of TBEP or the Board, nor any official executing this agreement shall be liable personally or be subject to any accountability for reasons of execution by the TBEP of this agreement or any act pertaining thereto.

16. Termination.

a) Termination at will

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

b) Termination because of Lack of Funds

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

17. Availability of Funds.

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

18. 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.

19. 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.

20. Subcontractors.

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

21. Covenant Against Contingent Fees.

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

consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

22. Notices.

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

- a) Damon Moore  
Ecological Resources Program Manager  
Manatee County Parks and Natural Resources  
5502 33<sup>rd</sup> Avenue Dr W  
Bradenton, FL 34209
  
- b) Maya Burke  
Technical Projects Coordinator  
Tampa Bay Estuary Program  
263 13th Avenue South, Suite 350  
St. Petersburg, Florida 33701

23. Remedies.

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

24. Governing Laws.

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

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

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

Tampa Bay Estuary Program

BY: \_\_\_\_\_  
Holly Greening, Executive Director

ATTEST: \_\_\_\_\_

Federal Employer I.D. Number: 59-3501959

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

BY: \_\_\_\_\_  
County Administrator

Federal Employer I.D. Number: \_\_\_\_\_

## EXHIBIT A

### SCOPE OF WORK

#### **Perico – Robinson Connector**

2017 Tampa Bay Environmental Restoration Fund

#### Project Summary

Manatee County recently acquired a parcel between Perico and Robinson Preserves that is expected to act as a habitat corridor between these two properties. The approximately 4.5 acres project area to be restored is composed primarily of upland habitats but also include adjacent wetland habitats that have been severely degraded due to heavy incursion of nuisance and invasive vegetation. Prior to degradation, this area consisted of an ecotone between pine flatwoods and mangrove swamp, based on remnant native plants and review of soils maps and historical aerial imagery. Through decades of unchecked growth of nuisance and exotic species, the non-mangrove portions of the property have become dominated by Brazilian pepper trees (*Schinus terebinthifolia*) and Australian pine trees (*Casuarina equisetifolia*). Other invasive species have also been observed on the site.

This project will remove the exotic species by cutting, stump-treating, piling, and removing or burning the biomass. In the wet season, after the initial exotic plants removal, the site will be replanted with a diverse assemblage of location appropriate native plants.

After the initial exotic species removal, a series of Habitat Establishment Period Adaptive Management (HEPAM) events will occur over the following 2 years. HEPAM events consist of vegetation control by selective herbicide application of hand removal to prevent regrowth of exotic species and exhaust the seed bank that has built up over decades of exotic species dominance. HEPAM events may also include opportunistic plantings to further establish desirable species based on changing site parameters.

#### Project Phases

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

#### **1. Project Phase/Measurable Benefit #1 – INITIAL EXOTIC SPECIES REMOVAL, to be completed within 3 months of Notice to Proceed.**

**Phase Summary, including Measurable Benefit:** Initial exotic species removal over entire work area to less than 1% cover.

**Deliverables for Phase 1:** Before and after photographs and treatment sheets.

**Phase 1 budget:** \$17,925

**Project Phase Description (include adequate detail to evaluate the work and benefit to be accomplished):** The approximately 4.5 acre project area to be restored is dominated by invasive exotic vegetation. In this first phase, exotic vegetation will be removed by cutting, herbicide treatment, and a combination of removing, reducing, and burning the resultant biomass as necessary. Some exotic trees will



be killed in place for habitat value as snags. Measurable benefit will be a reduction in exotic species coverage from the nearly 100% aerial cover that currently exists in the work area, to a condition where live exotic vegetation composes less than 1% cover.

**2. Project Phase/Measurable Benefit #2 – REPLANTING WITH NATIVE VEGETATION, to be completed within 12 months of Notice to Proceed.**

**Phase summary, including Measurable Benefit:** Planting of native canopy, sub-canopy and groundcover plants. Measurable benefit will be the successful installation of desirable plants.

**Deliverables for Phase 2:** Before, during, and after photographs and installed planting completion letter detailing specifications of plants installed.

**Phase 2 budget:** \$12,608

**Project Phase Description (include adequate detail to evaluate the work and benefit to be accomplished):** In the wet season, after the initial exotic plants removal, the site will be replanted with a diverse assemblage of location appropriate native plants.

**3. Project Phase/Measurable Benefit #3 – HEPAM EVENTS, to be completed within 24 months of Notice to Proceed.**

**Phase summary, including Measurable Benefit:** Conduct a series of HEPAM events over the course of a 1.5 to 2 year period to foster establishment of the work area towards its restoration goal. Measurable benefit will be a minimum of 16 HEPAM events.

**Deliverables for Phase 3:**

Deliverables for Phase 3 are photographs of work being performed and as well as instruction for each event (as provided by project manager to contractor and or volunteers). Contractor Treatment Sheets and lists of any supplemental plantings will also be provided.

**Phase 3 budget:** \$8,800

**Project Phase Description (include adequate detail to evaluate the work and benefit to be accomplished)**

Conduct a series of HEPAM events over the course of a 1.5 to 2.0 period. After the initial exotic species removal (Phase 1), a series of Habitat Establishment Period Adaptive Management events will occur over the following 1.5 to 2 years. HEPAM events are adaptive management efforts directed by the project manager. Typically this will consist of follow up vegetation control by selective herbicide application or hand removal to prevent regrowth of exotic species and exhaust the seed bank. HEPAM events may also include plantings to further establish desirable species.

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. The Warranty Deed, which includes the purchase price will be provided with the first report or sooner if requested.

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

Matching funds are \$40,000, equal to the purchase price of the property on which this project is occurring. The property was purchased by Manatee County Government in December 2015.