ST. PETERSBURG CITY COUNCIL
Consent Agenda
Meeting of January 9, 2020

TO:       City Council Chair and Members of City Council

SUBJECT: Authorizing the Mayor or his designee to accept an Agreement ("the Agreement") from the Tampa Bay Estuary Program ("TBEP") for the Maximo Park Living Shoreline & Coastal Upland Restoration Project at a maximum reimbursement amount of $145,474; and to execute all other documents necessary to effectuate the Agreement; approving a supplemental appropriation in the amount of $145,474 from the increase in the unappropriated balance of the General Fund (0001), resulting from these additional revenues, to the Parks & Recreation Department, Recreation Administration Division (190-1573), Maximo Park Living Shoreline & Coastal Upland Restoration Project (17601); and providing an effective date.

EXPLANATION: TBEP has awarded the city an Agreement in the amount of $145,474 for the Maximo Park Living Shoreline & Coastal Upland Restoration Project at Maximo Park ("Maximo"). The Agreement requires an in-kind match of $152,000. Maximo is experiencing erosion along its shoreline which is encroaching on the archaeological site immediately adjacent to the shoreline. The park also contains several species of non-native invasive plants and trees. The project will result in the design, permitting, and construction of 6.30 linear feet of living shoreline to combat erosion at Maximo. Additionally, the project will restore 24 acres of coastal upland habitat through the removal of non-native invasive plants and trees. Based on the above information, administration recommends adoption of the attached resolution authorizing the Mayor or his designee to accept an agreement ("Agreement") from the Tampa Bay Estuary Program ("TBEP") for the Maximo Park Living Shoreline & Coastal Upland Restoration Project at a maximum reimbursement amount of $145,474; and to execute all other documents necessary to effectuate the Order.

COST/FUNDING/ASSESSMENT INFORMATION: Revenues of up to $145,474 will be received from the TBEP Agreement. A supplemental appropriation in the amount of $145,474 from the increase in the unappropriated balance of the General Fund (0001), resulting from these additional revenues, to the Parks & Recreation Department, Recreation Administration Division (190-1573), Maximo Park Living Shoreline & Coastal Upland Restoration Project (17601) is required.

ATTACHMENT: Resolution

APPROVALS:

Administrative: .......................................................... 

Budget: ..........................................................
Resolution No. 2020-________

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE THE AGREEMENT BETWEEN THE CITY OF ST. PETERSBURG, FLORIDA, AND TAMPA BAY ESTUARY PROGRAM ("TBEP") FOR TBEP TO PROVIDE FUNDING IN AN AMOUNT NOT TO EXCEED $145,474 ON A REIMBURSEMENT BASIS FOR THE MAXIMO PARK LIVING SHORELINE & COASTAL UPLAND RESTORATION PROJECT; APPROVING A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF $145,474 FROM THE INCREASE IN THE UNAPPROPRIATED BALANCE OF THE GENERAL FUND (0001), RESULTING FROM THESE ADDITIONAL REVENUES, TO THE PARKS & RECREATION DEPARTMENT, RECREATION ADMINISTRATION DIVISION (190-1573), MAXIMO PARK LIVING SHORELINE & COASTAL UPLAND RESTORATION PROJECT (17601); AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Maximo Park ("Park") is experiencing erosion along its shoreline which is encroaching on the archaeological site immediately adjacent to the shoreline; and

WHEREAS, the Park also contains several species of non-native invasive plants and trees; and

WHEREAS, Tampa Bay Estuary Program (TBEP) has awarded the City funding in the amount of $145,474 for the Maximo Park Living Shoreline & Coastal Upland Restoration Project; and

WHEREAS, in order to receive such funding, the City must enter into an agreement with TBEP, which agreement requires an in-kind match of $152,000 from the City; and

WHEREAS, the Project will result in the design, permitting, and construction of 630 linear feet of living shoreline to combat erosion at the Park; and

WHEREAS, the Project will also restore 24 acres of coastal upland habitat through the removal of non-native invasive plants and trees.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of St. Petersburg, Florida, that the Mayor or his designee is authorized to execute the agreement between the City of St. Petersburg, Florida, and Tampa Bay Estuary Program ("TBEP") for TBEP to provide funding in an amount not to exceed $145,474 on a reimbursement basis for the Maximo Park Living Shoreline & Coastal Upland Restoration Project.
BE IT FURTHER RESOLVED that there is hereby approved from the increase in the unappropriated balance of the General Fund (0001) resulting from these additional revenues, the following supplemental appropriation for FY20:

General Fund (0001)
Parks & Recreation Department, Recreation Administration Division (190-1573)
Maximo Park Living Shoreline & Coastal Upland Restoration Project (17601)
$145,474

This resolution shall become effective immediately upon its adoption.

Approvals:

City Attorney (Designee)

Department

Budget
CONTRACTOR AGREEMENT
BETWEEN
THE TAMPA BAY ESTUARY PROGRAM
AND
THE CITY OF ST. PETERSBURG
FOR
MAXIMO PARK LIVING SHORELINE & COASTAL UPLAND RESTORATION PROJECT

THIS AGREEMENT is entered into this ___ day of December, 2019 by and between the Tampa Bay Estuary Program (TBEP) and the City of St. Petersburg, hereinafter referred to as the CONTRACTOR.

W I T N E S S E T H:

WHEREAS, TBEP desires assistance for the Maximo Park Living Shoreline and Coastal Upland Restoration 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 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 the TBEP upon the terms and conditions set forth in this agreement.

2. **Definition, Scope, and Quality of Services.**

   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 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 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. TBEP will be provided thirty (30) working days to review and approve all draft work products; and 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 manager shall be responsible for transmitting and receiving information and will interpret and communicate all TBEP and TBEP decisions which are pertinent to this agreement to the 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 TBEP shall be Maya Burke, 263 13th Avenue South, Suite 350, St. Petersburg, Florida 33701. The CONTRACTOR shall designate Barbara Stalbird, 1400 19th St N, St. Petersburg, FL 33713, with whom the TBEP project manager can coordinate.

4. **Consideration.**

   a) The TBEP will make available to CONTRACTOR a sum not to exceed One Hundred Forty-Five Thousand Four Hundred Seventy-Four ($145,474) 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 project manager at the following address:
   Maya Burke
   Science Policy Coordinator
   Tampa Bay Estuary Program
   263 13th Avenue South, Suite 350
   St. Petersburg, Florida 33701
   mburke@tbep.org

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.


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 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, including reports, findings, and drafts as specified in this agreement and the Scope of Work, to be received and accepted by the project manager prior to payment.

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

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

a) All documents and data, including interim and final reports developed, created or written by the CONTRACTOR shall be the joint property of TBEP and the CONTRACTOR. CONTRACTOR shall provide TBEP copies of any proposed publication or presentation at least thirty (30) days in advance of submission to a journal, editor, or other third party to allow TBEP to determine whether patentable subject matter or TBEP's Confidential Information (defined in 8(b)) would be disclosed. If TBEP does not respond within the thirty (30) days, the researcher(s) may proceed with the presentation or publication. 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.

b) "Confidential Information" means any confidential or proprietary information furnished by one Party ("Disclosing Party) to the other ("Receiving Party) in connection with the Project that is specifically marked as confidential or followed up in writing to document its confidentiality as soon as possible but no more than fifteen (15) days after disclosure.

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, copy, or removal from premises by TBEP personnel and other personnel duly authorized by the TBEP, as well as by federal personnel.

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

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

10. **Retention of Records.**

The 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 maintained and made available to the public at the CONTRACTOR's custodial address, to-wit: 1400 19th St N, St. Petersburg, FL 33713.

12. **Funding Recognition.**

The CONTRACTOR shall ensure that TBEP 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. **Permits and Real Property Rights.**

The Contractor shall ensure that all 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 December 31, 2021, inclusive.

15. **Indemnification.**

Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party, its officers, employees and agents. Nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available under the laws of the state of Florida, nor as a waiver of sovereign immunity of the state of Florida beyond the waiver provided for in section 768.28, Fla. Stat., as amended.

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 TBEP, 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.

17. **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 twenty-four (24) 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.

18. Availability of Funds.

This agreement is subject to and contingent upon the availability of funds from the settlement of the case styled the City of St. Petersburg v. Suncoast Waterkeepers that are applicable and available to TBEP 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.


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

22. 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.

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)  Barbara Stalbird  
    Natural and Cultural Areas Manager  
    City of St. Petersburg Parks and Recreation Department  
    1400 19th St N  
    St. Petersburg, FL 33713  
    barbara.stalbird@stpete.org

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

24.  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 Pinellas County, Florida.


    Nothing in this agreement shall be effective if contrary to Federal or Florida law.

    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 brought hereunder shall be in Pinellas County, Florida.
IN WITNESS WHEREOF, the parties have caused these presents to be duly executed, as of the day and year first written above.

Tampa Bay Estuary Program

BY: ________________________________

___________________________________

Ed Sherwood, Executive Director

ATTEST: ________________________________

Federal Employer I.D. Number: 59-3501959

City of St. Petersburg

BY: ________________________________ (SEAL)

___________________________________

ATTEST: ________________________________

Federal Employer I.D. Number: 59-6000424
EXHIBIT A

Scope of Work
Maximo Park Living Shoreline and Coastal Upland Restoration Project
2019 Tampa Bay Environmental Restoration Fund

Project Summary
The project will result in the design, permitting, and construction of 630 linear feet of living shoreline at Maximo Park. Additionally, the project will restore 24 acres of coastal upland habitat.

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, to be completed within 6 months of Notice to Proceed.
   Phase Summary, including Measurable Benefit:
   Phase 1 will consist of project design, including the completion of a shoreline condition assessment; conceptual and/or 30% design plans; and regulatory pre-application meeting(s). The measurable benefit for this phase will be design specifications for approximately 630 linear feet of living shoreline.

   Deliverables for Phase 1:
   • Quarterly Reports
   • Phase Report, documenting shoreline condition assessment; conceptual and/or 30% design plans; and a copy of pre-application meeting minutes.

   Phase 1 Budget: $42,600 (TBERF)

   Phase 1 Description:
   During Phase 1, the contractor will review available imagery (historical and recent), topographic and bathymetric surveys, and GIS data layers (e.g. seagrass, oyster bars, protected species, and critical habitat), as well as research the potential need for geotechnical investigations or other information to support anticipated permitting requirements. The contractor will also perform field reconnaissance and data collection utilizing aerial photography and decimeter precision GPS equipment to accurately collect and graphically represent existing site conditions within the focal areas of the proposed restoration and gather site-specific information needed to develop a concept design for this site. A coastal engineer will conduct a coastal conditions analysis to define key design parameters at the project site, including an analysis of tidal datum, storm surge elevations, historic wind records, critical fetch lengths, and existing bathymetric data. Wave98 or similar empirical models will be used to evaluate shore protection alternatives. A report summarizing the methods, results, and findings of this analysis will be provided.

   A conceptual design describing anticipated acreage; locations of proposed protective options; a draft planting plan; and relevant biological/environmental information will be provided. Feedback on the permitting feasibility of the proposed alternatives and technical
requirements will be solicited from state and federal regulatory agencies. The contractor will develop 30% design plans showing extents of construction onto an aerial based image and cross sections to depict the proposed work.

2. **Project Phase/Measurable Benefit #2** to be completed within **9 months** of Notice to Proceed.
   Phase Summary, including Measurable Benefit:
   Phase 2 will consist of project permitting. *The measurable benefit for this phase will be approved permitted drawings for approximately 630 linear feet of living shoreline.*

   Deliverables for Phase 2:
   - Quarterly Reports
   - Phase Report, including copy of approved permit(s), design specifications, and drawings.

   Phase 2 Budget: $25,400 (TBERF)

   Phase 2 Description:
   The contractor will develop 100% plans and submit permit applications for regulatory approval for construction of the project (Statewide Environmental Resource Permit and USACE Nationwide Permit No. 54). Additionally, the contractor will provide technical specifications for the work, bid documents, and estimate of associated costs. Issued Approved Permits and copy of construction grant application will be provided.

3. **Project Phase/Measurable Benefit #3**, to be completed within **18 months** of Notice to Proceed.
   Phase Summary, including Measurable Benefit:
   Phase 3 will consist of project construction. *The measurable benefits for this phase include the installation of approximately 630 linear feet of living shoreline and the restoration of 24 acres of coastal upland habitat.*

   Deliverables for Phase 3:
   - Quarterly Reports
   - Final Report, including:
     - Pre-and Post- images of the treated areas, planted areas, and installed oyster bags
     - List of species targeted for removal
     - Quantity and species of native plants installed
     - Documentation of volunteer participation for native plant installation
     - Documentation of matching contribution
     - As-built drawings

   Phase 3 Budget: $77,437 (TBERF); $152,000 (Match)

   Phase 3 Description:
   City staff will remove FLEPPC Category I and II plants and install appropriate native vegetation on approximately 24 acres in Maximo Park. Oyster bags will be installed to protect natural and archaeological resources immediately above the high tide line. The area behind the living shoreline will also be planted with native marsh grass species to further stabilize the area.
Required Match

Source, amount and type (cash or in-kind) of match: $152,00 in Parks & Recreation staff, equipment, and services will provide the required in-kind match. Match will be documented and submitted during Phase 3.