

**FIRST AMENDED AND RESTATED
PENSACOLA AND PERDIDO BAYS ESTUARY PROGRAM
INTERLOCAL AGREEMENT**

This Interlocal Agreement (hereinafter referred to as the “Agreement”) is executed and made effective by and among: Escambia County, Santa Rosa County, and Okaloosa County, political subdivisions of the State of Florida; Baldwin County, a political subdivision of the State of Alabama (hereinafter referred to as the “Counties”); City of Gulf Breeze, City of Milton, City of Pensacola, and Town of Century, municipal corporations of the State of Florida; and City of Orange Beach, a municipal corporation of the State of Alabama (hereinafter referred to as the “Cities”) (each being at times referred to as “Party” or “Parties”).

WITNESSETH:

WHEREAS, the Florida Parties are authorized by Section 163.01, Florida Statutes, et seq., to enter into interlocal agreements and thereby cooperatively utilize their powers and resources in the most efficient and economical manner possible; and

WHEREAS, the City of Orange Beach is an Alabama Class 8 municipality vested with a portion of the state’s sovereign power to protect the public health, safety, and welfare pursuant to *Alabama Code* §11-45-1 et seq. (1975), and has specific authority to enter into contracts with counties and municipal corporations for the joint exercise of their powers and resources pursuant to *Alabama Code* §11-102-1 et seq. (1975); and

WHEREAS, Baldwin County is a political subdivision of the State of Alabama which is vested with certain authority as provided by state law, which includes the authority to provide for and protect the public health, safety, and welfare in the exercise of enumerated powers, and pursuant to *Alabama Code* § 11-102-1, et seq., (1975), Baldwin County has the authority to enter into contracts with counties and municipal corporations for the joint exercise of any power or service that state or local law authorizes each contracting entity to execute individually, subject to the limitations set forth in applicable laws, rules and regulations, including, but not limited to, *Alabama Code* § 11-102-5 (1975); and

WHEREAS, the Florida political subdivisions of Escambia and Santa Rosa Counties and the Florida municipal corporations of the Cities of Gulf Breeze, Milton, and Pensacola entered into an interlocal agreement, *Restated Interlocal Agreement Establishing Local Funding Requirements for the Bay Area Resource Council*, on May 18, 1987, revised on July 22, 1997, and last revised on August 9, 2005, establishing the Bay Area Resource Council (hereinafter the “BARC”) to ensure effective water resource planning, preservation, and coordination; and

WHEREAS, on August 31, 2017, the Parties were notified of intent to award funds to establish the Pensacola and Perdido Bays Estuary Program (hereinafter referred to as the “Estuary Program” or “Program”) through a Cooperative Agreement between the Gulf Coast Ecosystem Restoration Council (hereinafter referred to as the “RESTORE Council”) and the US Environmental Protection Agency’s (USEPA) Gulf of Mexico Program (GMP); and

WHEREAS, the Estuary Program succeeds and absorbs the BARC's mission; and

WHEREAS, the Estuary Program is established to develop and implement a Comprehensive Conservation & Management Plan (CCMP) to restore and protect the Pensacola Bay System and Perdido Bay System, and their associated watersheds as defined in Article I; and

WHEREAS, this Agreement establishes the Estuary Program to develop and implement the CCMP through close cooperation with the Parties, local, state, and federal agencies, and the public for effective planning, restoration, and protection of the Pensacola Bay System and Perdido Bay System.

NOW, THEREFORE, in consideration of the mutual terms and conditions contained in this Agreement, the receipt and adequacy acknowledged by them, the Parties agree as follows:

ARTICLE 1 – PURPOSE OF AGREEMENT

- 1.1 **Recitals**: The recitals contained in the preamble of this Agreement are declared to be true and correct and are hereby incorporated into this Agreement.
- 1.2 **Geographic Territory**: The geographic territory of the Estuary Program shall include the Pensacola Bay System (Figure 1) and the Perdido Bay System (Figure 2) and their associated watersheds, including all bayous, bays, creeks, rivers, and streams contained within. The Pensacola Bay System includes: Blackwater Bay, East Bay, Escambia Bay, Pensacola Bay, and Santa Rosa Sound, as well as the Blackwater River, East River, Escambia River, and Yellow River. The Perdido Bay System includes: Bay La Launch, Big Lagoon, Perdido Bay, and Wolf Bay, as well as the Blackwater River, Perdido River, and Styx River. Collectively, the waterbodies in the geographic territory shall be referred to as the "Bay Systems".

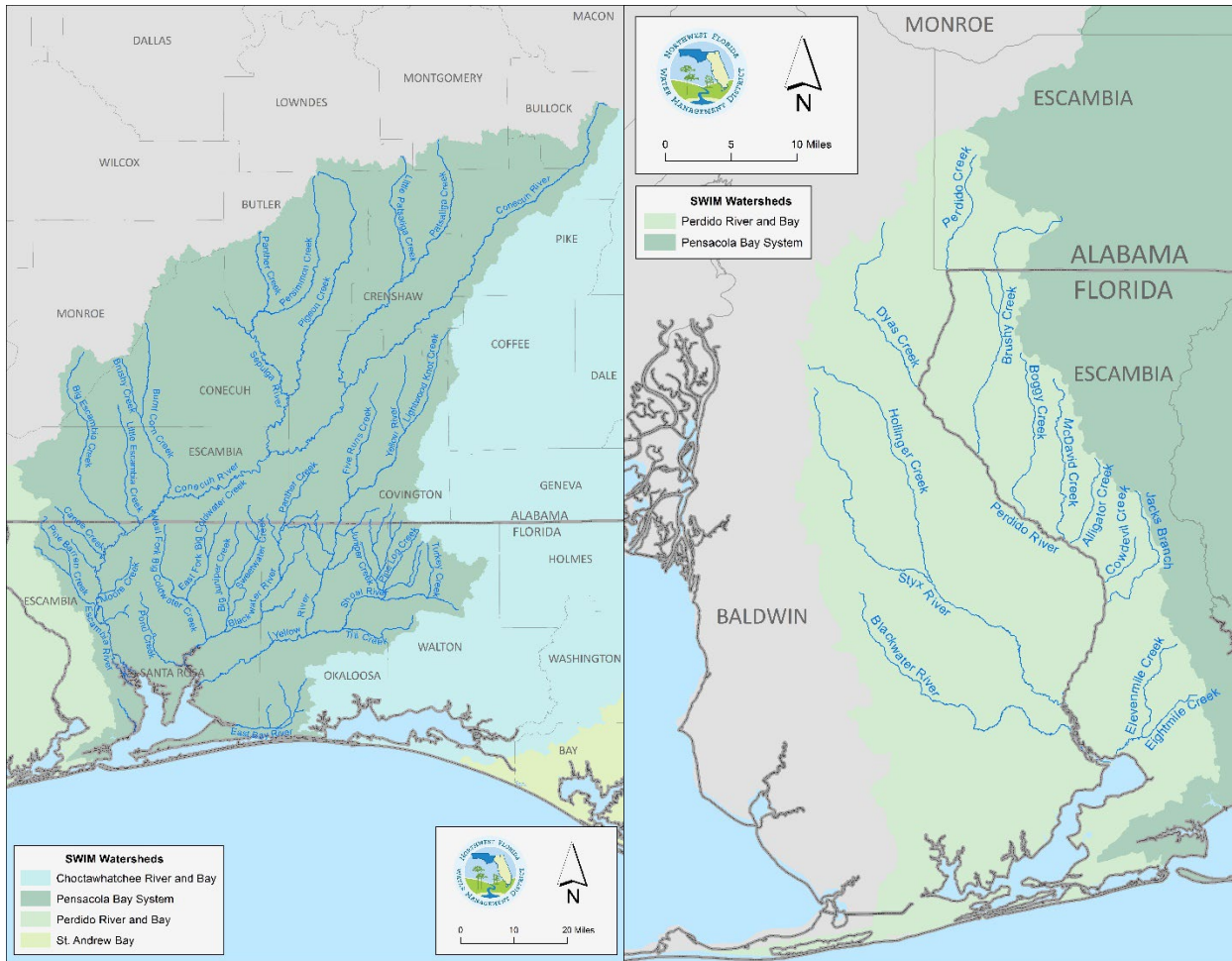


Figure 1: Pensacola Bay System

Figure 2: Perdido Bay System

1.3 **Purpose:** The Estuary Program will guide the development and implementation of a Comprehensive Conservation and Management Plan (CCMP) to improve water quality and living resources for the Bay Systems, as defined in section 1.2, through publicly identified outcomes and goals developed by the Parties, local, state, and federal agencies, and the public.

The Parties agree to work collaboratively and effectively on the development and implementation of the CCMP to meet the following outcomes:

- a) Water quality improvement;
- b) Restoration and conservation of habitat;
- c) Healthy ecosystems that support wildlife and fisheries;
- d) Improve surface and ground water quality and quantity, and flood control;
- e) Enhance community resilience; and
- f) Revitalize the coastal economy and quality of life.

ARTICLE 2 – AUTHORITY, COMPOSITION, AND POWERS

2.1 **Authority:** This Agreement is an interlocal agreement, as authorized by Section 163.01, Florida Statutes, et seq., (hereinafter referred to as the Act) and pursuant to the authority of subsection (4) of the Act, all Florida Parties qualify to be a part of this Agreement under such Act. The Alabama Parties have authority to enter into this agreement pursuant to applicable state law, including, but not limited to, *Alabama Code* § 11-102-1, et seq., (1975), subject to the limitations set forth in applicable law, rules and regulations, including, but not limited to, *Alabama Code* § 11-102-5 (1975). Collectively, such laws are hereinafter referred to as the “Enabling Acts.”

2.2 **Immunity:** Pursuant to the Enabling Acts, and other laws, all privileges and immunities from liability, exemptions from laws, ordinances, and rules; and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents or employees of any public agents or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, or employees extraterritorially under the provisions of this Agreement.

2.3 **Composition:**

2.3.1 **Creation of a Florida Not-for-Profit Corporation:** Pursuant to the Act, an independent public body corporate and politic, to be known as the Pensacola and Perdido Bays Estuary Program, Inc., a Florida not-for-profit corporation (the “Corporation”), shall be created for the purpose of administering and carrying out the purpose of the Estuary Program.

2.3.2 **Corporation Board:** The Board of the Corporation shall serve as the Top Level Organizational Unit (TLOU) and be comprised of the Parties. Escambia County and Santa Rosa County will each appoint and be represented by two voting directors, all other Parties will each appoint and be represented by one voting director. Each Party will also appoint an alternate director for the Corporation Board from time to time to serve when their primary director is not available. Each Party may change their director or alternate director from time to time with prior written notice by a duly authorized representative of any change to the Corporation Board before any meeting. The Corporation Board shall have policy-making powers for the Estuary Program in addition to those powers explicitly set forth in this Agreement.

a) Meetings. The Corporation Board should convene not less than quarterly. Meetings should be convened as needed as described in the bylaws;

b) Quorum. Except as otherwise specifically set forth herein or in the bylaws, a quorum for Corporation Board meetings shall be a majority of the Corporation Board directors;

c) Officers. The Corporation Board shall elect (i) a chair and vice chair of the Corporation Board; and (ii) other Corporation Board officers as deemed necessary by the Corporation Board. Election processes and term limits shall be described in the bylaws;

d) Voting. Each director shall have one vote. Voting will be conducted in person to the maximum extent possible, and other voting processes and criteria shall be described in the bylaws;

e) No compensation. All directors of the Corporation Board shall serve without compensation; and

f) Additional Board Members. The Corporation Board may allow other governmental entities, regulatory agencies, or other entities, to the extent allowed by law, to participate as members of the Corporation Board, provided they are approved by a supermajority vote of the Corporation Board. Upon approval, such Party must execute a Joinder Agreement by which it agrees to comply with all the provisions of this Agreement.

2.3.3 Committees: At the direction of the Corporation Board, the Corporation Board or Estuary Program staff may establish or terminate committees as it deems necessary including, without limitation, the Technical Committee, the Community Committee, the Education Committee, the Business Partnership Committee, and the Environmental Justice Committee. Procedures for establishing the nature (fact-finding or advisory) of a committee and its membership shall be described in the bylaws. All committee members shall serve without compensation.

2.4 Powers, Functions, and Responsibilities:

2.4.1 Powers: Pursuant to the Enabling Acts, the Estuary Program has the power to engage in agreements or contracts with other public or private entities for provisions of assistance in planning, financing, and coordinating the physical, chemical, biological, economic, and aesthetic aspects of the Bay Systems. The Estuary Program may establish rules, regulations, bylaws, and organization necessary to perform the Estuary Program's intended functions; provided, however, no such rules or regulations will operate in a manner that obligates a Party to act without the approval of the Party's governing body.

2.4.2 Exercise of Powers: All powers, privileges, and duties vested in or imposed upon the Estuary Program shall be exercised and performed upon a majority vote of a quorum of members; provided, however, subject to Corporation Board oversight, the exercise of such executive, administrative, and ministerial powers may be delegated by the Corporation Board to any of its officers, staff, or agents, to the extent provided under Florida Law. Any such delegation of powers may be withdrawn at any time for any reason.

2.4.3 Limitations of Powers: The Estuary Program shall have no power of taxation, regulation, eminent domain, law enforcement, nor obligate or bind a Party to act without approval by the Party's governing body.

2.5 Responsibilities:

2.5.1 Personnel: The Corporation Board shall be responsible for hiring, supervising, evaluating, and/or terminating the Executive Director. The Executive Director shall be responsible for hiring, supervising, evaluating, and/or terminating subordinate staff. The Executive Director must receive approval from the Corporation Board prior to the establishment of any new positions.

2.5.2 Budget: The Corporation Board shall approve an annual budget. Processes for establishing the budget shall be described in the bylaws.

2.5.3 Adoption of the CCMP Goals and Priorities: The Parties hereby agree that once approved by the Corporation Board, the Goals for the geographic territory of the Pensacola and Perdido Bays Estuary Program as described in the CCMP will be submitted for approval and

adoption by each of the Parties. The Parties shall endeavor to undertake reasonable efforts to achieve the Goals within the time periods described and shall work cooperatively to achieve all of the Goals applicable to them in a cost-effective manner. Additionally, the Parties agree to work together in good faith and undertake reasonable effort to address other actions and recommendations in the CCMP.

2.5.4 Bylaws: The Corporation Board by super-majority vote shall create, adopt, amend and update Bylaws or appropriate rules of procedure for the Pensacola and Perdido Bays Estuary Program for its governance and which shall remain in effect until modified by the Corporation Board.

2.5.5 Modification: The CCMP and its incorporated Goals shall not be amended, changed, extended, modified, or supplemented without unanimous consent of all the Parties. The process for modification shall be defined in the Corporation Board bylaws.

ARTICLE 3 – FUNDING

3.1 Funding: Recurring funding contributions will be necessary to fund Estuary Program operations and implementation of the CCMP. Program operations will be financed by local, state, and federal government contributions, donations, grants, assistance funds and bequests. Contributions recommended for each Party shall be determined by a super-majority vote of the Corporation Board; however, nothing contained herein shall obligate any Party to appropriate or expend any monies for the Estuary Program or make any contributions thereto without the prior approval of the Party's governing body.

ARTICLE 4 – TERM

4.1 Term: The term of this Agreement shall commence upon its execution by all Parties and shall continue indefinitely unless terminated as provided for herein.

4.2 Termination: Estuary Program membership may be terminated by any Party for convenience, upon sixty (60) days written notice by the terminating Party to the other Parties of such termination. This Agreement may be terminated by the then Parties upon sixty (60) days written notice to one other.

4.3 Sunset Review: This Agreement shall be subject to a review by the Corporation Board five (5) years from the Effective Date of this Agreement and on the same day of each five (5) year period thereafter at which time the Corporation Board shall evaluate the appropriateness and effectiveness of this Agreement and the Estuary Program. The Corporation Board shall vote by majority vote on whether to recommend terminating this Agreement, amending this Agreement or to let the status quo prevail.

ARTICLE 5 – GENERAL PROVISIONS

5.1 **Fiscal Year**: The Estuary Program shall observe a fiscal year beginning on October 1 and ending September 30 of each year.

5.2 **Records**: The Parties acknowledge 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 Florida and/or Alabama open records laws. In the event a Party fails to abide by the provisions of such laws, the other Parties may, without prejudice to any right or remedy and after giving that Party seven (7) days written notice, during which period the Party fails to allow access to such documents, terminate this Agreement.

5.3 **Survival**: All other provisions, which by their inherent character, sense, and context are intended to survive termination of this Agreement, shall survive the termination of this Agreement.

5.4 **Governing Law**: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and the Parties stipulate that venue for any matter, which is a subject of this Agreement, shall be in Escambia County, Florida.

5.5 **Severability**: The invalidity or non-enforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement, and the balance hereof shall be construed to be enforced as if this Agreement did not contain such invalid or unenforceable portion or provision.

5.6 **Modification**: This Agreement may be modified, altered or amended only by a written instrument recommended by the Corporation Board and subsequently approved and executed by the Parties hereto.

5.7 **Execution**: This Agreement shall not be effective, nor shall it have any force and effect whatsoever, until all the Parties have duly executed this Agreement and filed the Agreement pursuant to section 5.8.

5.8 **Filing**: The Estuary Program shall, pursuant to Section 163.01(11), Florida Statutes, file a copy of this Agreement and any other amendments thereto with the Clerk of the Circuit Court of each County where the Parties are located.

5.9 **Debt**: Neither the Estuary Program nor any Party shall have the power to incur any debt or obligation which shall become the responsibility of any other Party.

5.10 **Benefit**: This Agreement is for the benefit of the Parties only and is not intended to confer any rights or benefits, either direct, indirect, intended or implied, to any third party.

5.11 **Liability**: Each Party to this Agreement, its officers, employees and agents do not assume and specifically disclaim any liability for the acts, omissions, or negligence of the other Parties, their officers, employees and agents, arising from or related to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the respective dates under each signature: the Counties, through their respective Boards of County Commissioners, signing by and through their Chairmen, and the Cities through their respective City Managers and/or Mayors.

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SIGNATURE PAGES ATTACHED

ESCAMBIA COUNTY, FLORIDA, a political subdivision of the State of Florida acting by and through its duly authorized Board of County Commissioners.

By: _____
Lumon J. May, Chairman

ATTEST:

Date: _____

By: _____
Pam Childers
Clerk of the Circuit Court

(SEAL)

SANTA ROSA COUNTY, FLORIDA, a political subdivision of the State of Florida acting by and through its duly authorized Board of County Commissioners.

By: _____
Colten Wright, Chairman

ATTEST:

Date: _____

By: _____
Donald C. Spencer
Clerk of the Circuit Court

(SEAL)

OKALOOSA COUNTY, FLORIDA, a political subdivision of the State of Florida acting by and through its duly authorized Board of County Commissioners.

By: _____
Robert A. "Trey" Goodwin, Chairman

ATTEST:

Date: _____

By: _____
J.D. Peacock, II
Clerk of the Circuit Court

(SEAL)

BALDWIN COUNTY, ALABAMA, a political subdivision of the State of Alabama acting by and through its duly authorized Board of County Commissioners.

By: _____
Charles F. Gruber, Chairman

ATTEST:

Date: _____

By: _____
Ronald J. Cink
Interim County Administrator

(SEAL)

CITY OF GULF BREEZE, a Florida
Municipal Corporation acting by and through
its duly authorized City Council.

By: _____
Cherry Fitch, Mayor

Date: _____

ATTEST:

By: _____
Leslie H. Guyer, CMC, City Clerk

(SEAL)

CITY OF MILTON, a Florida Municipal Corporation acting by and through its duly authorized City Council.

By: _____
Heather Lindsey, Mayor

ATTEST:

Date: _____

By: _____
Dawn Molinero
City Clerk

(SEAL)

CITY OF PENSACOLA, a Florida Municipal Corporation acting by and through its duly authorized City Council.

By: _____
D.C. Reeves, Mayor

ATTEST:

Date: _____

By: _____
Ericka Burnett
City Clerk

(SEAL)

TOWN OF CENTURY, a Florida Municipal Corporation acting by and through its duly authorized Town Council.

By: _____
Benjamin Boutwell, Mayor

ATTEST:

Date: _____

By: _____
Leslie Howington
Town Clerk

(SEAL)

CITY OF ORANGE BEACH, a Alabama
Municipal Corporation acting by and through
its duly authorized City Council.

By: _____
Tony Kennon, Mayor

ATTEST:

Date: _____

By: _____
Renee Eberly
City Clerk

(SEAL)