



SUBRECIPIENT GRANT AGREEMENT COASTAL MANAGEMENT PROGRAM, CYCLE 9

THIS SUBRECIPIENT GRANT AGREEMENT (Contract) is entered into by and between the General Land Office (GLO), a State agency, and the **City of Shoreacres, Texas (Subrecipient)**.

I. FINANCIAL ASSISTANCE.

1.01. **GRANT APPLICATION.** Subrecipient has made application for "Coastal Management Program, Cycle 9" grant funds, to be made available to the State of Texas by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, pursuant to the Federal Coastal Zone Management Act of 1972, 16 U.S.C. §1451, *et seq.*, National Oceanic and Atmospheric Administration (NOAA) Award No. NA04NOS4190058 (NOAA Grant). The grant funds are limited to use for implementation of a coastal zone management project (Project) under the Texas Coastal Management Program (CMP), administered by the GLO (as Coastal Zone Management Awards, CFDA #11.419) pursuant to TEX. NAT. RES. CODE ANN. §§ 33.052 and 33.204, in coordination with the Coastal Coordination Council (CCC).

1.02. **WORK PLAN.** The Project shall strictly conform with the work plan and special conditions contained in Attachment A, which is attached and incorporated herein for all purposes (Work Plan). Deliverables and due dates included in the Work Plan may be amended upon written request and justification by Subrecipient to the GLO CMP Grant Administrator.

1.03. **LAND ACQUISITIONS.** (a) In the event that grant funds are used to acquire private land from willing sellers, Subrecipient shall have the parcel of land surveyed by a Licensed State Land Surveyor or by the County Surveyor of the jurisdiction within which the land to be acquired is situated and shall record the survey in the records of the County Surveyor (or the records of the County Clerk if there is no County Surveyor) of the county in which the land is located. In the event that a coastal boundary survey is required for the Project, Subrecipient must conduct the coastal boundary survey for the Project site in accordance with Section 33.136 of the Texas Natural Resources Code. For surveys of tracts on or adjacent to Gulf beaches, maps, surveys, and/or profiles shall not delineate or map vegetation, the line of vegetation, or the landward boundary of the public beach. Such maps, surveys, and/or profiles shall also not include any mention of the location of the line of vegetation or the boundary of the public beach. For any work funded in whole or part by CMP funds, vegetation, the line of vegetation, and/or the landward boundary of the public beach can only be mapped, delineated, or described with

specific written authorization from the GLO. The coastal boundary survey must contain the following statement: "This survey does not nor is it intended to be used to identify, delineate, or fix the line of vegetation or the landward boundary of the public beach."

(b) In addition, Subrecipient shall encumber the land with a conservation easement or a deed restriction, in a form acceptable to the GLO, which will protect the land and its natural resources and preserve the public use and benefit of the land. If Subrecipient chooses to encumber the land with a deed restriction, it must read as follows:

This property must be used in perpetuity for the purposes for which it was acquired under the Coastal Management Program. If the property is ever sold or used for purposes contrary to those for which it was acquired, the federal awarding agency must be compensated in accordance with the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (15 C.F.R. Part 24).

(c) All appraisals performed in connection with the acquisition of land under this section shall be completed in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the provisions of the CMP Work Plan, incorporated herein as Attachment A, concerning land acquisitions. **The survey, appraisal, conservation easement, if any, and deed must be approved by the GLO. The GLO will not "hold" an easement or accept a third-party right of enforcement.**

1.04 CONSTRUCTION. Prior to any construction undertaken under this Contract, Subrecipient shall deliver to the GLO one (1) copy of all final engineering specifications, construction plans, and/or architectural plans (Plans). Any construction that will be undertaken with funding from this Contract shall be completed in compliance with final Plans approved by the GLO. **Upon completion of construction, Subrecipient shall submit a final "as built" design, if required by the local building code or local building official, and photographs of the construction in the Final Report.** Subrecipient may not remove any structure constructed with funds provided under this Contract unless the federal awarding agency is compensated in accordance with the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (15 C.F.R. Part 24).

1.05. LICENSES. Subrecipient shall be solely and entirely responsible for procuring all appropriate licenses and permits which may be required by any competent authority for the performance of the work or services to be performed by Subrecipient under this Contract. Subrecipient shall not commence construction of the Project until it has obtained the requisite licenses and/or permits. **Copies of such licenses and permits shall be included as a part of the Progress Report, defined herein, for the period during which they are obtained.**

1.06. SIGNAGE. For those projects that include construction of facilities or other permanent structures, Subrecipient shall erect temporary signs, to be provided by Subrecipient, which will contain the following language:

CONSTRUCTION OF THIS FACILITY WAS MADE POSSIBLE BY A GRANT UNDER THE COASTAL ZONE MANAGEMENT ACT OF 1972, AS AMENDED, AND AWARDED BY THE OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE, AND ADMINISTERED THROUGH THE COASTAL COORDINATION COUNCIL AND THE TEXAS COASTAL MANAGEMENT PROGRAM.

In addition, for those projects which include land acquisition, construction of facilities or other permanent structures, Subrecipient shall erect permanent signs, to be provided by GLO, which will identify the existence of the Project.

1.07. **PROGRESS REPORTS.** Subrecipient shall submit progress reports monthly, which must be received by the GLO on or before the 10th day of each month during the term of this Contract, commencing January 2005 (Progress Reports). Progress Reports shall be submitted on the "Progress Report" form attached hereto as Attachment B, and shall include a brief statement of the overall progress of each task identified on the Work Plan since the last progress report; a brief description of any problems that have been encountered during the previous reporting period that will affect the Work Plan, delay the completion of any portion of this Contract or inhibit the completion of or cause a change in any of the Work Plan objectives; a description of any action Subrecipient plans to undertake to correct any problems that have been encountered; and a status report on the "Budget," as hereinafter defined. **Any request for change of work and scope from the originally awarded project must be approved by both the CCC and NOAA and may cause delays in project progress. All changes must be submitted in writing and include justification of actions. Any costs incurred while waiting for approval of requested changes are the responsibility of Subrecipient. The GLO will inform Subrecipient upon final approval of the changes.**

1.08. **DELIVERABLES.** Subrecipient shall deliver to the GLO two (2) complete copies of each of the deliverables set forth in the Work Plan, in the time and manner prescribed therein. Subrecipient shall deliver to the GLO one (1) copy of any and all appropriate licenses and permits required under Section 1.05 of this Contract. The GLO may require Subrecipient to conform any data presentation or products funded under this Contract to reflect GLO comments.

II. GRANT FUNDS.

2.01. **GRANT.** Subject to the NOAA Grant and the terms and conditions of this Contract, the GLO agrees to grant to Subrecipient an amount not to exceed **Seventeen Thousand Eight Hundred Eighty Dollars (\$17,880.00)**, payable in installments as reimbursement of allowable expenses incurred by Subrecipient in connection with Subrecipient's performance of the Project. The allowable expenses will be reimbursed to Subrecipient in accordance with the budget included herein as a part of Attachment A and incorporated herein for all purposes (Budget). The GLO will not provide reimbursement for any expenses not contained in the Budget. **THE GLO IS NOT LIABLE TO SUBRECIPIENT FOR ANY COSTS INCURRED BY SUBRECIPIENT**

BEFORE THE EFFECTIVE DATE OF THIS CONTRACT OR AFTER TERMINATION OF THIS CONTRACT.

2.02. **RECAPTURE.** It is expressly understood and agreed by Subrecipient that the GLO shall have the right to recapture and have reimbursed to the GLO any payments made by the GLO under this Contract that Subrecipient has not used in strict accordance with this Contract.

2.03. **VARIANCE.** Upon written request, submission of the GLO Budget Amendment Form attached hereto as Attachment C, and justification by Subrecipient to the GLO CMP Grant Administrator, budget flexibility among the Budget categories, for both the CMP and local budgets, may be allowed. To the extent that the resulting transfer between categories does not exceed 10% of the total Budget, an informal budget revision may be allowed by the GLO CMP Grant Administrator. Any request for variance in excess of this 10% threshold may be allowed through the formal contract amendment process. A revised Budget, whether informal or formal, shall substitute the existing Budget in Attachment A to this Contract.

2.04. **PURCHASES.** Subrecipient shall not purchase any equipment and/or computer software not included as a Budget item in Attachment A. Equipment is defined as tangible personal property having a useful life of more than one year and an acquisition cost of Five Thousand Dollars (\$5,000.00) or more per unit. Title and possession of any equipment will remain the property of Subrecipient unless and until transferred to the GLO, upon written request by the GLO, upon termination or completion of the Contract.

2.05. **DISPOSITION OF EQUIPMENT.** The disposition of any equipment purchased with an acquisition cost of Five Thousand Dollars (\$5,000.00) or more per unit shall follow the Uniform Grants Management Standard Guidelines.

III. PAYMENT PROCEDURES.

3.01. **SUBMISSION.** Each request for reimbursement shall (i) be on the approved GLO forms attached hereto as Attachment D; (ii) be supported by an invoice detailing each expense by Budget category in accordance with Attachment A; (iii) provide such other information as the GLO may request. Each invoice shall be supported by copies of receipts, cancelled checks or such other documentation which, in the judgment of the GLO, allows for full substantiation of the costs incurred. Requests for payment may be submitted monthly on or before the 10th day of each calendar month and shall be mailed Attn: GLO Accounts Payable Division, P.O. Box 12873, Austin, Texas 78711-2873. **Requests for reimbursement under this Contract must be received by the GLO not later than sixty (60) days from the date Subrecipient incurs the expense. Failure by Subrecipient to comply in a timely manner with this requirement may, at the GLO's sole discretion, result in denial of the request for reimbursement.**

3.02. **MATCH.** Evidence of match documentation shall (i) be on the approved GLO forms attached hereto as Attachment D-1; (ii) be supported by an invoice detailing each expense by Budget category, in accordance with Attachment A; (iii) provide such other information as the GLO may request. Match fund documentation must be clearly identified and may be submitted with or separate from a payment request. Each invoice shall be supported by copies of receipts, cancelled

checks or such other documentation which, in the judgment of the GLO, allows for full substantiation of the costs incurred. Payment requests may be denied if proper match has not been submitted.

3.03. RETAINAGE. To ensure full performance, the GLO may withhold an amount equal to ten percent (10%) of the Budget until Subrecipient's delivery and GLO's approval of all deliverables required herein. The GLO shall make a final disbursement only upon receipt of documentation sufficient to determine that Subrecipient has completed the project in accordance with the Work Plan and that all requirements of this Contract and the relevant provisions of the NOAA Grant have been fulfilled by Subrecipient, including but not limited to match documentation requirements.

3.04. BOOKS AND RECORDS. Subrecipient shall maintain and cause any subcontractors to maintain satisfactory financial accounting documents and records and shall make them available for examination and audit by the GLO or other agencies of the state or federal government with relevant jurisdiction. The GLO reserves the right to audit any of Subrecipient's accounts related to this Contract and to verify any expense item submitted for reimbursement by Subrecipient. Subrecipient will permit the GLO (and its agents) or other agencies of the state or federal government with relevant jurisdiction to inspect any and all pertinent records, files, information, and other written materials pertaining to the expenditure of funds under this Contract. Subrecipient further agrees to maintain and cause any subcontractors to maintain, keep, and preserve all such records for a period of three (3) years from the date of notification that funding for the NOAA Grant has ended, and to make the records available to the GLO (and its agents) or other agencies of the state or federal government with relevant jurisdiction for purposes of audit. Subrecipient shall refund to the GLO within ten (10) days of receipt of a written request by the GLO any sum of money which has been paid by the GLO to Subrecipient which the GLO determines: (i) has resulted in overpayment to Subrecipient; or (ii) has not been spent strictly in accordance with the terms of this Contract.

IV. TERM OF CONTRACT.

4.01. TERM. This Contract shall be effective as of the date the last party executes this Contract, and shall terminate upon completion of the Project or on March 31, 2006, whichever occurs first. Upon receipt of a written request and acceptable justification from Subrecipient, the GLO, upon approval from NOAA, may allow one extension of this term for a period not to exceed three (3) months. **This extension request must be received by the GLO Grant Administrator at least 45 days before contract termination.**

4.02. DISPUTE RESOLUTION. If a contract dispute arises that cannot be resolved to the satisfaction of the parties, either party may notify the other party in writing of the dispute. If the parties are unable to satisfactorily resolve the dispute within fourteen (14) days of the written notification, the GLO may require the issue(s) be mediated. In such event, the GLO shall so notify Subrecipient and furnish Subrecipient with the names of three mediators acceptable to the GLO. Within ten (10) days of such notice, Subrecipient shall select a mediator from the list provided by the GLO and notify the GLO. The mediation shall occur within thirty (30) days of such notification. Prior to the mediation, each party will provide the mediator with a statement of issues to be mediated, along with any other information/releases required by the mediator. Cost of the

mediator shall be borne equally by the parties. Any dispute resolution shall be conducted in accordance with TEX. GOV'T CODE ANN. ch. 2260.

4.03. **EARLY TERMINATION.** The GLO may terminate this Contract upon thirty (30) days' prior written notice to Subrecipient. Upon receipt of notice of early termination, Subrecipient shall cancel, withdraw, or otherwise terminate outstanding orders or sub-contracts, which relate to the performance of this Contract and shall otherwise cease to incur costs under this Contract. Early termination will be subject to an equitable settlement of the respective interests of the parties accrued up to the date of termination.

V. FUNDING.

5.01. **APPROPRIATIONS.** This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or the GLO in violation of TEX. CONST. art. III, §49. In compliance with TEX. CONST. art. VIII, §6, it is understood that all obligations of the GLO are subject to the availability of funds. The GLO has disclosed to Subrecipient that funding for this Contract is being provided by the NOAA Grant, and if such funding is not obtained, this Contract shall be void or if such funding becomes unavailable, this Contract may be terminated, subject to the equitable settlement of the parties' respective interests accrued up to the date of termination.

VI. ASSURANCES AND CERTIFICATIONS.

6.01. **INCORPORATION BY REFERENCE.** Incorporated by reference the same as if specifically written herein are the rules, regulations, and all other requirements imposed by law, including but not limited to compliance with those applicable rules and regulations of the State of Texas and the United States of America, including those contained in the NOAA Grant, all of which shall apply to the performance of the work under this Contract.

6.02. **COMPLIANCE WITH LAWS.** Subrecipient shall complete and return the Assurances-Construction/Non-Construction Programs form attached hereto as Attachment E, assuring that it will comply with all Federal Statutes listed thereon and, when applicable, shall obtain and return completed assurance of compliance forms from its subcontractors.

6.03. **DEBARMENT.** Subrecipient shall complete and return the Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion attached hereto as Attachment F, certifying that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the NOAA Grant by any federal department or agency and shall obtain and return certifications from all its subcontractors.

6.04. **CONSISTENCY.** Subrecipient shall complete the requirements of this Contract in compliance with the CMP goals and policies and shall assure that the performance of all subcontractors is in compliance with the CMP.

VII. DATA COLLECTION AND DELIVERY.

7.01. **GEOGRAPHIC INFORMATION SYSTEMS.** Data, databases, and products associated with electronic Geographic Information Systems (GIS) that have been collected, manipulated, or purchased with CMP grant funds and/or local match funds will be subject to all applicable terms of the *Texas Geographic Information Standards* of the Texas Geographic Information Council (TGIC) and Texas Administrative Code (TAC) §201.6, Planning and Management of Information Resources Technologies, Geographic Information Standards. The Geographic Information Standards Rule is available on the World Wide Web at www.dir.state.tx.us/tgic/pubs/pubs.htm, or by writing to Department of Information Resources (DIR), P.O. Box 13564, Austin, Texas, 78711, email TGICHELP@dir.state.tx.us.

7.02. **TRANSFER OF DATA.** Any GIS data to be transferred or exchanged that is collected, manipulated, or purchased with funds from this contract MUST be documented as specified in the Federal Geographic Data Committee (FGDC) document *Content Standard for Digital Geospatial Metadata*, version 2 (FGDC-STD-001-1998) or later. The federal metadata standard is available on the World Wide Web at www.fgdc.gov/metadata/csdgm. Metadata must be submitted in HTML, XML or ASCII text formats.

7.03. **FORMAT.** Although many Texas state agencies, including the GLO, have adopted Environmental Systems Research Institute, Inc. (ESRI) software products as in-house GIS software, this is NOT an endorsement of these, or any other, products. However, any electronic spatial data collected, manipulated, or purchased with CMP grant funds and/or local match funds shall be transferred in a mutually-acceptable GIS format, along with corresponding metadata (see above). Nonspatial data deliverables (reports, tables, databases, spreadsheets, images) must be delivered in Acrobat PDF, MS Office, WordPerfect, dBase (.dbf), ASCII, or standard image formats (JPEG, TIFF, GIF, etc.). Acceptable media for delivery include CD-ROMs, DVDs, Zip disks, floppy disks, and external hard drives.

VIII. COPYRIGHT AND PUBLICATION.

8.01. **COPYRIGHT.** Subrecipient shall not assert any rights at common law, in equity or otherwise seek to establish any claim to statutory copyright in any material or information developed under this Contract. The parties expressly agree that the GLO shall own all right, title, and interest in and to any copyright or other intellectual property rights and any material or information developed under this Contract, including but not limited to the right to use, reproduce or publish any or all of such information and other materials without the necessity of obtaining permission from Subrecipient and without expense or charge.

8.02. **PUBLICATION.** If Subrecipient or its employee(s) use NOAA financial assistance to publish reports and other materials completed as a result of this Contract, the author shall assure that the paper bears the following statement as well as the NOAA and CMP logos on the front cover or title page of such document and other materials:

**A PUBLICATION (OR REPORT) OF THE COASTAL COORDINATION
COUNCIL PURSUANT TO NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION AWARD NO. NA04NOS4190058.**

If Subrecipient or its employee(s) use NOAA financial assistance to publish a paper based in whole or in part on the work funded by this Contract, the author shall assure that the paper bears the following statement on the front cover or title page of the paper:

**THIS PAPER IS FUNDED ("IN PART" IF APPROPRIATE) BY A
GRANT/COOPERATIVE AGREEMENT FROM THE NATIONAL
OCEANIC AND ATMOSPHERIC ADMINISTRATION. THE VIEWS
EXPRESSED HEREIN ARE THOSE OF THE AUTHOR(S) AND DO NOT
NECESSARILY REFLECT THE VIEWS OF NOAA OR ANY OF ITS SUB-
AGENCIES.**

IX. EVENTS OF DEFAULT AND REMEDIES.

9.01. **EVENTS.** Each of the following shall constitute events of default (Events of Default) under this Contract:

(a) Subrecipient's failure to comply with any term, covenant or provision contained in this Contract.

(b) Subrecipient makes an assignment for the benefit of creditors or takes any similar action for the protection or benefit of creditors.

(c) If at any time, Subrecipient makes any representation or warranty which is incorrect in any material respect in: (i) the Work Plan; (ii) any request for payment submitted to the GLO; or, (iii) any report submitted to the GLO related to the Contract.

9.02. **REMEDIES.** Upon the occurrence of any such Event of Default, the GLO shall be entitled to avail itself of any equitable or legal remedy.

9.03. **NO WAIVER.** No waiver of any Event of Default shall be considered a waiver of any other or subsequent Event of Default, and no delay or omission in the exercise or enforcement of the rights and powers of the GLO shall be construed as a waiver of any such rights or powers.

X. MISCELLANEOUS PROVISIONS.

10.01. **SUBCONTRACTS.** Subrecipient may subcontract with other agencies and/or private entities for some or all of the services or work to be performed in connection with the Project. Subrecipient shall legally bind any such subcontractors to perform and make such subcontractors subject to all the certifications, duties, requirements, and obligations of Subrecipient specified herein. Nothing herein shall be construed to relieve Subrecipient of the responsibility for ensuring that the services and work rendered comply with all the terms and provisions of this Contract.

Subrecipient will provide the GLO with copies of all subcontracts and all amendments, cancellations, or terminations to such subcontracts.

10.02. INDEMNITY. SUBRECIPIENT AGREES TO INDEMNIFY AND HOLD THE GLO HARMLESS, TO THE FULL EXTENT PERMITTED UNDER THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING FROM THE NEGLIGENT ACTS OR OMISSIONS OF SUBRECIPIENT, ITS EMPLOYEES OR AGENTS IN CONNECTION WITH THE PERFORMANCE OF SERVICES OR WORK BY SUBRECIPIENT OR ITS SUBCONTRACTORS UNDER THIS CONTRACT. THE PROVISIONS OF THIS SECTION 10.02 SHALL SURVIVE TERMINATION OF THIS CONTRACT. THIS SECTION 10.02 SHALL NOT BE CONSTRUED AS VIOLATING THE PROVISIONS OF TEX. CONST. ART. III §52.

10.03. HISTORICALLY UNDERUTILIZED BUSINESSES (HUBs). In accordance with state law, it is the GLO's policy to assist HUBs, whether minority or women-owned, to participate whenever possible in providing goods and services to the GLO. The GLO encourages those parties with whom it contracts for the provision of goods and services to adhere to this same policy in selecting sub-Subrecipients or sub-Subcontractors to assist in fulfilling Subrecipient's obligations with the GLO.

10.04. GOVERNING LAW AND VENUE. This Contract shall be governed and construed in accordance with the laws of Texas. Venue of any suit for breach of this Contract shall be fixed in any court of competent jurisdiction in Austin, Travis County, Texas.

10.05. SEVERABILITY. Should any one or more provisions of this Contract be held to be void, voidable, or for any reason whatsoever of no force and effect, such provision(s) shall be construed as severable from the remainder of this Contract and shall not affect the validity of all other provisions of this Contract, which shall remain in full force and effect.

10.06. HEADINGS. The headings contained in this Contract are for reference purposes only and shall not in any way affect the meaning or interpretation of this Contract.

10.07. NOTICES. Any notice required or permitted to be delivered under this Contract shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the GLO or Subrecipient, as the case may be, at the address set forth below:

GLO: General Land Office
Coastal Resources Division
1700 N. Congress Ave.
Austin, Texas 78701-1495
Attention: Ms. Melissa Porter, GLO CMP Grant Administrator

Subrecipient: City of Shoreacres
601 Shoreacres Blvd.
Shoreacres, Texas 77571
Attention: The Honorable Nancy Edmonson

Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as herein provided.

10.08. **SURVIVAL.** Sections 2.02, 3.04, 6.01, 6.02, 6.03, 8.01, 8.02, 10.01, 10.02 and 10.04 shall survive termination of this Contract as continuing agreements and obligations of Subrecipient.


10.09. **ENTIRE AGREEMENT.** This Contract constitutes the entire agreement of the parties. No other agreement, statement, or promise that is not contained in this Contract shall be binding except a subsequent written modification signed by both parties.

GENERAL LAND OFFICE



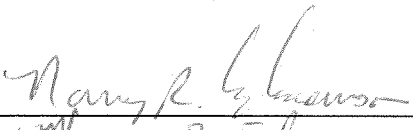
Larry L. Laine, Chief Clerk/
Deputy Land Commissioner

Date of execution: 1/15/05


S.A.
Div.
G.C.


S.A.
Div.
G.C.

CITY OF SHOREACRES



By: Nancy R. Edmonson
Title: Mayor

Date of execution: 1/11/05