

THE STATE OF TEXAS
COUNTY OF NUECES

REIMBURSEMENT CONTRACT FOR GOVERNMENTAL ENTITIES

Corpus Christi Bay Marine Debris Protection
(Name of Project)

THIS AGREEMENT is entered into by and between:

Coastal Bend Bays & Estuaries Program, Inc., a non-profit organization ("CBBEP"), and

The City of Corpus Christi, a governmental entity (hereinafter "PERFORMING PARTY").

CBBEP and PERFORMING PARTY, in consideration of the mutual covenants in this contract, agree as follows:

ARTICLE 1. WORK

See attached Scope of Work.

ARTICLE 2. PRICING AND PAYMENTS

See attached Contract Costs Budget (for payment based on reimbursement of actual costs) and General Conditions Article 5.

ARTICLE 3. MAXIMUM AMOUNT OF CONTRACT

The total amount of this Contract shall not exceed:

<u>Twenty thousand dollars</u>	<u>\$20,000</u>
(Written amount)	(\$ Numerical amount)

unless this Contract is amended in writing. It is expressly understood and agreed by the parties to this contract that the performance on the part of the CBBEP of its obligations under this contract is contingent upon and subject to actual receipt by the CBBEP of sufficient and adequate funds from the funding sources identified in the CBBEP's comprehensive annual workplan. CBBEP funding will not exceed \$20,000.

ARTICLE 4. TERM OF CONTRACT

This Contract shall begin upon final execution of this Contract and shall terminate on March 31, 2018, unless terminated early or extended in accordance with the terms of the Contract.

ARTICLE 5. CERTIFICATIONS

1. The CBBEP certifies that it has the authority to contract for the above services by authority as a non-profit corporation under the laws of the State of Texas.

2. PERFORMING PARTY certifies that it has authority to perform the services contracted for herein.

ARTICLE 6. CONTRACT DOCUMENTS

The Contract Documents, which comprise the entire agreements between CBBEP and PERFORMING PARTY concerning the Work, consist of the following:

1. This Agreement
2. Scope of Work
3. Authorized Representatives / Records Location


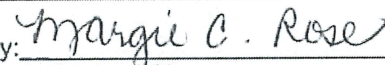
4. Contracts Costs Budget

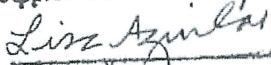
5. General Conditions

6. Additional Exhibits titled: _____

There are no Contract Documents other than those listed above in this Article. The Contract Documents may be amended, modified or supplemented only as provided in the General Conditions.

The undersigned bind themselves to the faithful performance of this Contract:

CBBEP:	PERFORMING PARTY:
<u>Coastal Bend Bays & Estuaries Program, Inc.</u>	<u>The City of Corpus Christi</u>
By: <u></u>	By: <u></u>
Authorized Signature	Authorized Signature
<u>Ray Allen</u>	<u>Margie C. Rose</u>
Printed Name	Printed Name
<u>Executive Director</u>	<u>City Manager</u>
Title	Title
Date: <u>9/6/17</u>	Date: <u>8.29.17</u>

Approved as to form: 8/18/2017

Lisa Aguilar
Assistant City Attorney
For City Attorney

REIMBURSEMENT CONTRACT SCOPE OF WORK

This contract is for the purpose of purchasing and installing catch basin inserts into the stormwater system to prevent trash from reaching Corpus Christi Bay. Marine debris can be harmful to the marine environment and also to the local economy, which relies heavily on nature tourism and fishing. The work to be provided by the PERFORMING PARTY shall correspond to the tasks found in Article IV and will be delivered in accordance with Article V.

ARTICLE I. PERFORMING PARTY AUTHORIZED REPRESENTATIVE

The Authorized Representative for the PERFORMING PARTY is as described in the attached "Authorized Representatives and Designated Location" form.

ARTICLE II. CBBEP PROJECT COORDINATOR

The Project Coordinator for the CBBEP is as described in the attached "Project Representatives and Designated Location" form.

ARTICLE III. BACKGROUND / OBJECTIVE

The purpose of this project is to purchase and install approximately 14 catch basin inserts at the highest priority areas where trash accumulates in the Cole Park drainage basin and assess effectiveness through observations during cleaning of the catch basins.

The City of Corpus Christi (City) recently completed an assessment in late 2015 of debris/trash in the Cole Park drainage basin to try and assess the areas with the highest accumulation rates of trash getting into the stormwater system and eventually making it to Corpus Christi Bay. Although the City continues street sweeping on a regular basis, trash continues to accumulate in these areas. A map of the Cole Park areas with high amounts of trash was produced based on data gathered during the 2015 study. Other maps were produced to show specific strategies for implementation, including that show locations for placing catch basin inserts at high priority areas. The City will be observing the amount of trash accumulated in the catch basin inserts for showing effectiveness of devices and for prevention of bay debris reaching the bay. The City installed 28 catch basin inserts in January 2015 and has been maintaining them. This project will increase the amount of catch basin inserts in place to help acquire additional information to help in reducing the amount of trash from reaching Corpus Christi Bay.

The primary project objective will be to purchase and install approximately 14 catch basin inserts to help prevent bay debris from reaching Corpus Christi Bay.

ARTICLE IV. TASKS

The PERFORMING PARTY shall perform the following tasks:

- (a) **Quarterly Reports.** The PERFORMING PARTY shall submit written quarterly progress reports by the end of each calendar quarter, with the reports due on December 10, March 10, June 10, and September 10, or upon the termination date of the contract. Quarterly reports shall detail progress on all major tasks, in chronological order. The Quarterly Reports shall be submitted to the CBBEP Authorized Representative. Instructions for preparing the quarterly report will be provided by the CBBEP Authorized Representative.
- (b) **Equipment Installation.** The PERFORMING PARTY shall purchase approximately 14 catch basins for storm drains in the Cole and Ropes parks drainage basins. The PERFORMING PARTY shall install the catch basins in the stormwater drains. Each station shall be maintained periodically and observations will be made on approximate amount of trash collected for comparison across sites and areas.
- (c) **Final Summary Report.** The PERFORMING PARTY shall submit a written final summary report,

including pictures of the catch basins and of work completed by no later than the date specified in the Schedule of Deliverables. The final report shall include at a minimum the information requested in this Scope of Work, including revisions requested by the CBBEP Authorized Representative. PERFORMING PARTY shall submit the final report in an electronic format compatible with CBBEP software.

ARTICLE V. WORK PRODUCT DELIVERABLES FOR THIS CONTRACT

- (a) **Quarterly Reports.** The PERFORMING PARTY shall submit written quarterly progress reports by the end of each calendar quarter, with the reports due on December 10, March 10, June 10, and September 10, or upon the termination date of the contract. Quarterly reports shall detail progress on all major tasks, in chronological order. The Quarterly Reports shall be submitted to the CBBEP Authorized Representative. Instructions for preparing the quarterly report will be provided by the CBBEP Authorized Representative.
- (b) **Final Summary Report.** The PERFORMING PARTY shall submit a written final summary report of work completed by no later than the date specified in the Schedule of Deliverables. The final report shall include at a minimum the information requested in this Scope of Work, including revisions requested by the CBBEP Authorized Representative. PERFORMING PARTY shall submit the final report in an electronic format compatible with CBBEP software.

ARTICLE VI. SCHEDULE OF DELIVERABLES FOR THIS CONTRACT

WORK PRODUCT	SCHEDULE OF DELIVERABLES
Quarterly Progress Reports	End of each quarter
Installation	November 30, 2017
Final Summary Report	December 31, 2017

ARTICLE VII. OTHER REQUIREMENTS FOR THIS CONTRACT

- (a) At the invitation of the CBBEP, the PERFORMING PARTY is required to make two verbal presentations of this project, at or near its conclusion, to committees of the CBBEP. The presentation is intended to disseminate project results and coordinate findings with other ongoing work.
- (b) If required as a part of this project, the PERFORMING PARTY will strictly adhere to the CBBEP publication guidelines when submitting publications. Each written deliverable shall be submitted as four (4) hard copies and as an electronic text file (format requirements to be provided by CBBEP). At least one hard copy shall be unbound and of camera ready quality for use as a CBBEP publication. The CBBEP publication guidelines can be obtained from the CBBEP Project Coordinator.
- (c) The PERFORMING PARTY shall submit to the CBBEP, within three weeks following a written request by CBBEP, a brief summary of project accomplishments and ongoing project work. The summary shall be written in everyday (non-technical) English for use in CBBEP newsletters, press releases, or other promotional publications. No more than one summary per quarter shall be required.

**PROJECT REPRESENTATIVES AND DESIGNATED LOCATION
FOR RECORD ACCESS AND REVIEW**

- (a) The EXECUTIVE DIRECTOR of the CBBEP designates the individual named below as the person authorized to give direction to the PERFORMING PARTY as an Authorized Representative of the CBBEP. All communications including all payment requests must be addressed to the CBBEP Authorized Representative.

Rae Mooney, Project Manager
Coastal Bend Bays & Estuaries Program, Inc.
615 N. Upper Broadway, Suite 1200
Corpus Christi, Texas 78401
Phone: 361-336-0310
Fax: 361-400-5326
E-mail: rmooney@cbbep.org

- (b) The PERFORMING PARTY designates the individual named below as the person authorized to receive direction from the CBBEP, to manage the work being performed, and to act on behalf of the PERFORMING PARTY as an Authorized Representative:

Preeti Shrestha
Engineer IV
City of Corpus Christi
Utilities Department
2726 Holly Road
Corpus Christi, Texas 78415
T: 361-826-1805 F: 361-826-4317
Email: PreetiS@cctexas.com

- (c) The PERFORMING PARTY designates the following location for record access and review pursuant to Article 12 of the Contract or any other applicable provision:

City of Corpus Christi
2726 Holly Road
Corpus Christi, Texas 78415

CONTRACT COSTS BUDGET

A. Budget

Authorized budgeted expenditures under this Contract are as follows:

Personnel/Salary	\$0
Fringe Benefits	\$0
Travel	\$0
Supplies	\$0
Equipment	\$20,000
Contractual	\$0
Construction	\$0
Other	\$0
 Total Direct Costs	 \$20,000
 Authorized Indirect Costs	 \$0
 Total CBBEP Funding	 \$20,000

B. Budget Control and Transfers

Cumulative transfers among the budgeted direct cost categories must not exceed ten percent (10%) of the current Total CBBEP Funding amount.

C. Submittal of Payment Requests

Payment requests must be submitted at the interval specified below (whichever is checked; if none is checked, payment requests must be submitted monthly; if more than one is checked, invoices must be submitted when both requirements are met):

- ☒ quarterly.
- ☐ other (specify) _____.

GENERAL CONDITIONS

REIMBURSEMENT CONTRACT

ARTICLE 1. WORK

PERFORMING PARTY agrees to provide the work described in and required by this Contract. In this Contract the term "Work" means the entire completed undertaking, or the various separately identifiable parts thereof. Work includes all goods, labor, services, materials and equipment provided in fulfillment of this Contract by any person or entity including PERFORMING PARTY'S employees, agents, assigns, suppliers, and subcontractors.

ARTICLE 2. AMENDMENT

Except as specifically allowed below, this Contract may be amended only by written amendment signed by both parties.

2.1 CBBEP authority for making interpretations and agreeing to minor changes:

2.1.1 The CBBEP Project Coordinator has the authority, without a formal Amendment, to make written Contract interpretations and agree in writing to minor, non-material changes to requirements in the Scope of Work or the Contract Budget including:

- Changes to the schedule in the Scope of Work including an extension of a deliverable due date, not to exceed the expiration date of the Contract;
- Changes to the individual tasks in the Scope of Work that do not substantially change the obligations of the Parties relative to those Tasks; and
- Transfers between the authorized amounts of expenditures in the Budget Categories.

2.1.2 To be effective, the Contract changes agreed to by CBBEP must be in writing and must also be agreed to by an Authorized Representative of the PERFORMING PARTY and CBBEP.

2.1.3 It is the responsibility of the PERFORMING PARTY to request extensions to the deliverable schedule and other changes that are within the authority of CBBEP.

2.2 A formal Amendment to the Contract signed by authorizing officials of both Parties is required for changes to the substantive obligations of the PERFORMING PARTY and/or CBBEP, including the following:

2.2.1 Changes in the total amount of funds in the Budget or the Contract;

2.2.2 Changes to the Contract's Expiration Date;

2.2.3 Changes to the Scope of Work that affect CBBEP obligations in this Contract;

2.2.4 Changes that affect the material obligations of the PERFORMING PARTY in this Contract.

ARTICLE 3. INSURANCE

This item has been deleted from the contract.

ARTICLE 4. DATA, CORRECTIONS, WAIVER, AND QUALITY

4.1. Quality and Acceptance. All Work must be complete and satisfactory in the reasonable judgment of the CBBEP, and will be indicated in writing by the CBBEP. All materials and equipment will be handled in accordance with instructions of the applicable supplier, except as otherwise provided in the Contract.

4.2. **Corrections.** PERFORMING PARTY will correct errors, omissions, and deficiencies at no charge to the CBBEP.

4.3. **Waiver.** No waiver, whether expressed or implied, shall be construed as a continuing waiver unless it is specifically described in writing as a continuing waiver.

4.4. **Quality Assurance.** All work performed under this Contract that involves the acquisition of environmental data will be performed in accordance with a CBBEP/TCEQ-approved Quality Assurance Project Plan (QAPP) meeting all applicable TCEQ and EPA requirements. Environmental data includes any measurements or information that describes environmental processes, location, conditions, ecological or health effects and consequences. Environmental data includes information collected directly from measurements, produced from models, and compiled from other sources such as databases or literature. No data collection or other work covered by this requirement will be implemented prior to the PERFORMING PARTY's receipt of the QAPP signed by CBBEP, TCEQ and, if necessary, the EPA. Without prejudice to any other remedies available to CBBEP, CBBEP may refuse reimbursement for any environmental data operation performed prior to approval of a QAPP by CBBEP, TCEQ, and if necessary, the EPA. Also, without prejudice to any other remedies available to CBBEP, the PERFORMING PARTY's failure to meet the terms of the QAPP may result in CBBEP's suspension of associated activities and non-reimbursement of expenses related to the associated activities.

4.5. **Laboratory Accreditation.** Any laboratory data or analyses provided under this Contract must be prepared by a laboratory that is accredited by TCEQ according to 30 Texas Administrative Code Chapter 25, subchapters A and B, unless TCEQ agrees in writing to allow one of the regulatory exceptions specified in 30 Texas Administrative Code Section 25.6.

ARTICLE 5. PAYMENT

5.1. CBBEP will reimburse PERFORMING PARTY'S actual incurred costs of performance which are both: 1) allowable and 2) eligible for reimbursement.

5.2. **Allowable Costs.** A cost is allowable if it is within a category authorized by the Contract Documents and other rules, regulations, policies, guidelines, and statutes applicable to this Contract including without limitation:

- 5.2.1. *Contract Cost Budget* of the Contract Documents (pertaining to authorized cost expenditures for this Agreement);
- 5.2.2. Uniform Grant Management Standards (UGMS) promulgated by the Office of the Governor of Texas;
- 5.2.3. TCEQ Allowable Expenditure Guidelines (pertaining to allowable costs for cost reimbursement contracts and grants);
- 5.2.4. CBBEP rules and policies (pertaining to CBBEP contracts and grants);
- 5.2.5. Other applicable State rules and statutes;
- 5.2.6. Federal regulations of EPA and other agencies and federal statutes (pertaining to allowable costs where funding is from a federal source).

5.3. **Eligible Costs.** Costs are *eligible* for reimbursement when the PERFORMING PARTY has complied with the conditions/requirements stated in the Contract Documents. The requirements generally relate to the following:

- 5.3.1. performing the Work as specified;
- 5.3.2. conducting subcontract activities as specified;

5.3.3. conducting administrative activities as specified;

5.3.4. maintaining financial and administrative records and documentation;

5.3.5. submitting documents as specified and also upon request of CBBEP.

5.4. **Payment Methods.** CBBEP will pay approved requests for reimbursement upon receipt of funds for that purpose from TCEQ or other funding entity. CBBEP is not liable to make payment to the PERFORMING PARTY if funding is not available from TCEQ or other funding entity. CBBEP will reimburse PERFORMING PARTY'S allowable costs of providing Work which is timely and satisfactory, accepted by CBBEP, and in conformity with all requirements of this Contract and applicable law. Payment will be on a reimbursement basis of actual costs as expended. Payment will be made not more than 90 days after receipt of PERFORMING PARTY'S reimbursement request.

5.5. **Reimbursement of Actual Cost as Expended.** PERFORMING PARTY will be paid on the basis of reimbursement of actual costs. At the intervals specified in the *Contract Costs Budget*, PERFORMING PARTY may submit a request for reimbursement of the actual costs it has incurred. All such requests must be accompanied by supporting documentation as required by this Contract. PERFORMING PARTY agrees that the CBBEP's obligation to reimburse the PERFORMING PARTY'S costs will remain within the *Contract Costs Budget* and that cumulative transfers among the budgeted direct cost categories must not exceed ten percent (10%) of the Total CBBEP Funding amount.

5.5.1. All reimbursement requests must be submitted to the CBBEP Project Representative on a completed CBBEP *Financial Status Report* (CBBEP Form 269a) or State of Texas *Financial Status Report* (Form 269a) and (as applicable) *Supplemental Financial Status Report* Forms 269a-1, 269a-2, 269a-3, and 269a-4. All requests must show the budgeted cost categories for the reported expenditures, indicating the amount remaining in each category. A final *Financial Status Report* must be submitted no later than (sixty) 60 days following the termination date of this Contract. CBBEP may refuse to reimburse expenditures for which the PERFORMING PARTY submits a voucher and/or *Financial Status Report* more than sixty (60) days after the termination date of this Contract.

5.5.2. All requests for reimbursement under this Contract shall contain sufficient identification of, and information concerning, the costs incurred so as to enable CBBEP to ascertain the eligibility of a particular expenditure and to enable subsequent audit thereof.

5.5.3. CBBEP will review the submittal and approve or reject the request for payment.

5.5.4. No funds may be expended under this Contract for the implementation of environmental data operations, nor any activities subsequent thereto, prior to the receipt of written approval from the CBBEP of the Quality Assurance Project Plan for the project.

5.5.5. The PERFORMING PARTY is responsible, throughout the term of this Contract, for tracking and insuring that expenditure amounts under this Contract remain within the various budgeted cost categories.

5.5.6. If the requests for payment do not satisfactorily demonstrate the accomplishment of the required tasks, or that costs are allowable, eligible, actual and incurred costs, the CBBEP will reject the request until such time as the deficiencies have been corrected.

5.5.7. CBBEP is not obligated to make payment until the request for payment is approved by TCEQ or other funding agency. Further, the CBBEP reserves the right to suspend or withhold all or part of a payment or all payments as authorized by the Contract Documents.

5.6. **Contract Costs Budget.** In addition to other requirements for allowable costs, PERFORMING PARTY'S costs must be incurred for those categories of costs and in the amounts described in the *Contract Costs Budget* contained in the Contract Documents. The *Contract Costs budget*

may be amended only by written agreement of the CBBEP and in accordance with these Contract Documents, as described in ARTICLE 2. AMENDMENT. The provisions of UGMS will be utilized to determine when costs are considered to be incurred.

- 5.7. Cost Documentation. To be eligible for reimbursement under this Contract, a cost must have been incurred within the time period indicated on a CBBEP *Financial Status Report* (CBBEP Form 269a) or State of Texas *Financial Status Report* (Form 269a) and either paid by the PERFORMING PARTY prior to claiming reimbursement from CBBEP or incurred by the last day of the time period indicated and liquidated no later than forty-five (45) days after the end of the time period indicated in Box 9 of the *Financial Status Report*.
- 5.7.1. The PERFORMING PARTY shall attach, for each reimbursable cost listed on Supplemental Form 269a, legible documentation that (1) serves to further identify the specific items, equipment or services provided, (2) clearly identifies the vendor who provided the items, equipment or services, and (3) that confirms the reimbursable amount listed on the form.
- 5.7.2. All requests for reimbursement shall be identified with respect to the major tasks or objectives set forth in Attachment A of this Contract that such expenditures support or satisfy. When a single expenditure supports or satisfies more than one task or objective, the PERFORMING PARTY need not break down that particular expenditure by specific contract task or objective but may simply identify, in relative cost order, the various tasks or objectives supported.
- 5.7.3. All requests for reimbursement of expenditures that fall within the "Equipment" category of the budget shall be itemized by the PERFORMING PARTY on Supplemental Form 269a-1 and identified with respect to the major tasks or objectives, set forth in Attachment A of this Contract, that such expenditures support or satisfy. The attached documentation shall be either a purchase order marked "received/paid" or a vendor-submitted invoice similarly marked. "Equipment" is defined as tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$1,000 or more per unit.
- 5.7.4. All requests for reimbursement of expenditures that fall within the "Contractual" category of the budget shall be itemized by the PERFORMING PARTY on Supplemental Form 269a-1 and identified with respect to the major tasks or objectives, set forth in Attachment A of this Contract, that such expenditures support or satisfy. The attached documentation shall consist of a dated invoice that shows the amount billed to the PERFORMING PARTY and any "past due" amount from previous invoices. "Subcontractor" is defined as an individual, firm, or corporation having a direct contract with PERFORMING PARTY or with any other Subcontractor for the performance of a part of the Work.
- 5.7.5. All requests for the reimbursement of expenditures that fall within the "Supply" category of the budget shall be itemized by the PERFORMING PARTY on Supplemental Form 269a-2 and identified with respect to the major tasks or objectives, set forth in Attachment A of this Contract, that such expenditures support or satisfy. Although issued purchase orders and/or invoices marked "received/paid" represent the preferred types of documentation for purposes of this section, the PERFORMING PARTY may substitute/attach other records or documents that provide the same type of information. "Supplies" is defined as costs for materials or items having a purchase price (including freight) of less than \$1,000. The PERFORMING PARTY shall not intentionally break up single orders of identical or similar items, materials or supplies simply for the purpose of avoiding the above requirement to provide confirming documentation when submitting reimbursement requests to CBBEP.
- 5.7.6. All requests for the reimbursement of expenditures that fall within the "Other" category of the budget shall be itemized by the PERFORMING PARTY on Supplemental Form 269a-

2 and identified with respect to the major tasks or objectives, set forth in Attachment A of this Contract, that such expenditures support or satisfy. Although issued purchase orders and/or invoices marked "received/paid" represent the preferred types of documentation for purposes of this section, the PERFORMING PARTY may substitute/attach other records or documents that provide the same type of information. "Other" is defined as all direct cost items or services not previously identified, including, but not limited to: space rental, printing, utilities, registration and postage.

5.7.7. All requests for reimbursement of expenditures that fall within the "Personnel/Salary" or "Fringe" categories of the budget shall be itemized by the PERFORMING PARTY on Supplemental Form 269a-3 and identified by each employee name; title or position; salary for the period; and task number worked. In order to receive reimbursement, the PERFORMING PARTY shall provide copies of signed time sheets for all employees that will verify the total, overall hours of time being directly billed to this Contract, or provide a PERFORMING PARTY-approved ledger sheet documenting employees' names and total amount being directly billed to this Contract. Documentation for fringe benefits must list employee benefits that constitute cost with each employee listed on the Personnel/Salary section of the CBBEP Supplemental Form 269a-3.

5.7.8. All requests for the reimbursement of expenditures that fall within the "Travel" category of the budget shall be itemized by the PERFORMING PARTY on Supplemental Form 269a-4 and identified with respect to the major tasks or objectives, set forth in Attachment A of this Contract, that such expenditures support or satisfy. All costs listed on Form 269a-4 must be supported by attached documentation that identifies the name of the traveler(s), and that substantiates the reported reimbursable costs. Documentation, for the purpose of substantiating travel related costs, includes the following: (1) legible copies of PERFORMING PARTY-approved travel vouchers, signed by the employees who traveled, and (2) for travel-related expenses borne directly by the PERFORMING PARTY (and thus for which reimbursement by the PERFORMING PARTY to the traveler was not required), separate receipts showing, at a minimum, the traveler's name, the travel location, and the travel dates(s). Any reimbursement for travel requested by the PERFORMING PARTY is subject to the limitations contained in General Appropriations Act of the Texas Legislature. Travel by volunteers will not be reimbursed unless pre-approved by CBBEP.

5.8 Release of Claims. As a condition of final payment or settlement, or both, the PERFORMING PARTY will execute and deliver to CBBEP a release of all claims against CBBEP and its funding entities for payment under this Contract.

ARTICLE 6. SUBCONTRACTORS, OTHERS

6.1. Qualified Personnel. All employees and subcontractors employed by PERFORMING PARTY on or for the Work must have sufficient qualifications to perform the Work.

6.2. Objections. All subcontract agreements must be in writing and approved in advance by the CBBEP. The PERFORMING PARTY shall forward any proposed subcontract agreement providing for the performance of work under this Contract's Scope of Work to CBBEP's Project Representative prior to execution of the subcontract agreement. The CBBEP may, as of receipt of the proposed subcontract agreement, provide written notice (fax acceptable) to the PERFORMING PARTY questioning whether the subcontract agreement is for a legitimate purpose relating to the satisfaction of this Contract or has been procured in accordance with the minimum standards of the UGCMA and UGMS. The PERFORMING PARTY shall not enter into a questioned subcontract agreement until the CBBEP has withdrawn all questions raised in the notice. PERFORMING PARTY will not employ any particular subcontractor, supplier or other person or organization on or for the Work if CBBEP makes a reasonable written objection against such subcontractor, supplier, person, or organization. PERFORMING PARTY will not be required to employ any particular subcontractor, supplier or other person or organization if PERFORMING PARTY makes a reasonable objection. Neither the CBBEP's failure to question a subcontract agreement nor its subsequent withdrawal of any questions raised regarding a

subcontractor agreement shall in any way imply the CBBEP's approval of the subcontractor agreement's purpose of method of procurement of the subcontractor agreement.

6.3. Subcontracts. PERFORMING PARTY will include all provisions which may be necessary to accomplish all requirements of this Contract in its employment policies and contracts and its subcontracts, and shall require its subcontractors to do the same. Work performed under this contract will be considered a "public work". Wages prevailing in the area of the work performed will be paid in accordance with federal and state laws, including, as applicable, complying with the provisions of the Davis-Bacon Act (40 U.S.C., § § 276c and 18 U.S.C. § § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. § § 327-333), regarding labor standards for federally assisted construction subagreement.

6.4. Contractual Expenditures. PERFORMING PARTY agrees that all contractual expenditures using funds provided under this Contract shall meet all procurement laws and regulations. PERFORMING PARTY must provide documentation to support the selection and award of the subcontractor. Reimbursement of subcontractors' expenditures for supplies, equipment and services shall be based on actual cost and may not be marked-up.

6.5. Management and Fiscal Monitoring. The PERFORMING PARTY shall be responsible for the management and fiscal monitoring of all subcontractors. The PERFORMING PARTY shall monitor its subcontractors to ensure that the subcontractors are operating consistently with applicable laws and regulations, applicable contracting policies, and these Contract Documents. The PERFORMING PARTY shall ensure that all subcontractors comply with all record keeping and access requirements set forth in these Contract Documents. Subcontractors performing services that are billed on the basis of time must provide copies of signed time sheets for all subcontractor employees billed to the project. Subcontractors billing for mileage may only charge the approved state mileage rate and must provide supporting documentation. Markup by subcontractors is not allowed. PERFORMING PARTY and subcontractors shall maintain detailed records. The CBBEP reserves the right to perform an independent audit of subcontractors.

6.6. Competition. All subcontracts awarded by the PERFORMING PARTY under this Contract will be awarded on the basis of competitive applications and proposals. All subcontracts for certain professional services (except contracts with other government entities authorized by relevant state laws), including engineering services, will be awarded in accordance with Texas Government Code Chapter 2254. All other subcontracts (except contracts with other government entities authorized by relevant state laws) awarded by the PERFORMING PARTY under this contract will be awarded on a competitive basis in accordance with relevant procurement laws and regulations, including, but not limited to, UGMS, Texas Local Government Code Chapters 252, 262 and 271, and Texas Government Code 2156. The applications and proposals will be evaluated utilizing criteria including cost comparison, probable quality of goods or services, past performance and conformity with the requirements of the Contract Documents. The use of the "cost plus a percentage of cost" method of contracting is precluded by the Common Rule of OMB Circular A-102, as adopted by UGMS.

ARTICLE 7. INTELLECTUAL PROPERTY

7.1. License of Future Rights. With respect to any intellectual property which is conceived, developed, written, invented, first actually reduced to practice or otherwise produced by PERFORMING PARTY, its employees, subcontractors, or subcontractor's employees during the performance of the Work, PERFORMING PARTY hereby assigns to CBBEP a nonexclusive, perpetual, irrevocable, enterprise-wide license to use, copy, publish and modify such intellectual property and authorize others to do so for CBBEP purposes. Upon termination of this Contract, all data and information by PERFORMING PARTY will be furnished to CBBEP. To the extent consistent with the rights of third parties, the State of Texas and/or the Federal Government shall also have the right to sell any intellectual property right it reserves or acquires through this Contract.

7.2. License of Existing Rights. PERFORMING PARTY grants to CBBEP, TCEQ and EPA, a nonexclusive, perpetual, irrevocable, enterprise-wide license to use, copy, publish, and modify any intellectual property in the Work and to authorize others to do so for CBBEP purposes. PERFORMING

PARTY shall secure all necessary intellectual property licenses from third parties and warrants that the Work and the intended use of the Work will not infringe any property rights of any third-party. PERFORMING PARTY agrees to require its contractors to indemnify and hold harmless CBBEP from damages arising from or related to any infringement of rights in intellectual property. To the extent permitted by law, PERFORMING PARTY agrees to indemnify and hold harmless CBBEP from damages arising from or related to any infringement of rights in intellectual property.

ARTICLE 8. SEVERABILITY

The fact that a particular provision is held under any applicable law to be void or unenforceable in no way affects the validity of other provisions and the contract will continue to be binding on both parties. Any provision that is held to be void or unenforceable will be replaced with language that is as close as possible to the intent of the original provision.

ARTICLE 9. SUSPENSION; TERMINATION

9.1. **For Cause.** In the event of PERFORMING PARTY'S failure to perform the Work as required by the Contract, violation of applicable law, substantial or material default, or other cause, CBBEP may suspend the Work or terminate this Contract for cause.

9.2. **Force Majeure.** In the event of delay or failure of performance caused by *force majeure*, CBBEP may terminate this Agreement in whole or part upon seven (7) days written notice.

9.3. **For Convenience.** CBBEP may terminate this Contract for convenience and without cause upon seven (7) days notice.

9.4. **Payment Adjustment.** If the CBBEP terminates for convenience or because of *force majeure*, PERFORMING PARTY shall be paid only for goods and services provided and necessary expenses incurred prior to termination.

ARTICLE 10. SURVIVAL OF OBLIGATIONS

All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with this Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion and acceptance of the Work and termination or completion of the Contract.

ARTICLE 11. LAWS AND REGULATIONS

PERFORMING PARTY shall give all notices and comply with all applicable law regarding the Work. Except where otherwise expressly required by applicable law, CBBEP shall not be responsible for monitoring PERFORMING PARTY compliance with any applicable law. PERFORMING PARTY shall, except as otherwise provided in this Agreement, be responsible for obtaining any necessary licenses and permits.

ARTICLE 12. AUDIT, ACCESS TO RECORDS

The PERFORMING PARTY shall maintain books and records concerning all Work under this Contract (including that performed by subcontractors), and shall retain them for at least three (3) years from the date of termination of this Contract. The CBBEP, the TCEQ, the Texas State Auditor's Office, and EPA or any of their duly authorized representatives may review, audit, copy, or disclose the contents of such books or records at any time.

ARTICLE 13. ACKNOWLEDGMENT OF FINANCIAL SUPPORT

The PERFORMING PARTY shall acknowledge the financial support of the CBBEP, the TCEQ and EPA whenever work funded, in whole or part, by this Contract is publicized or reported in news media or publications. All reports and other documents completed as a part of this Contract, other than documents prepared exclusively for internal use within the CBBEP, shall carry the following notation on the front

cover or title page:

*PREPARED IN COOPERATION WITH THE
COASTAL BEND BAYS & ESTUARIES PROGRAM, INC.,
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY*

If the funding source is a U.S. agency other than EPA or TCEQ, the name of the appropriate funding agency should be substituted or included.

ARTICLE 14. COST AND PRICE OF THIS CONTRACT

If this Contract was not competitively procured or if payment is based on reimbursement of actual costs, then PERFORMING PARTY shall submit cost information sufficient for a cost analysis as required by Uniform Grant Management Standards (UGMS) and 40 CFR 31.36. This information must be submitted on forms provided by the CBBEP.

ARTICLE 15. ACCOUNTING SYSTEMS AND PROPERTY MANAGEMENT SYSTEMS

15.1. PERFORMING PARTY shall have an accounting system which accounts for costs in accordance with generally accepted accounting standards or principles and complies with UGMS and 40 CFR 31.20. This system shall provide for the identification, accumulation, and segregation of allowable and unallowable project costs among projects.

15.2. PERFORMING PARTY shall have a property management system that complies with the standard of and requirements in UGMS and 40 CFR 31.32 through 31.33.

ARTICLE 16. CLOSEOUT

When CBBEP determines that all applicable administrative activities and all required work of this Agreement have been completed, or this Agreement is terminated, the CBBEP shall give Notice of Closeout of the Award. Within 30 days after the issuance of the NOTICE of Closeout of the Award, the PERFORMING PARTY must submit all financial, performance, and other reports as required as a condition of the grant. These reports may include, but are not limited to:

1. All performance or progress reports required by this Agreement.
2. Financial Status Report.
3. Final request for payment.
4. CBBEP Release of Claims form.

ARTICLE 17. MISCELLANEOUS

17.1. Except as otherwise provided in this Contract, PERFORMING PARTY will direct all communications with the CBBEP to the Project Representative designated by the CBBEP. The PERFORMING PARTY will designate a Project Representative to receive all communications from the CBBEP. Both Project Representatives will be designated in writing (see *Project Representatives / Records Location*).

17.2. "Time is of the Essence" will apply to all time limits stated in the Contract.

17.3. The PERFORMING PARTY will adhere to all applicable standards, principles and guidelines detailed in UGMS, including those related to financial monitoring, auditing and record keeping.

ARTICLE 18. HISTORICALLY UNDERUTILIZED BUSINESSES (HUBs)

In accordance with state and federal laws, CBBEP is required to assist HUBs, whether minority or women-owned, to participate whenever possible in providing goods and services. CBBEP encourages those parties with whom it contracts to adhere to this same requirement. PERFORMING PARTY shall complete and return the *CBBEP Contractor Participation Reporting Form* with each payment request submittal as determined in this Contract (see *Contract Cost Budget, Item C*). CBBEP guidelines are

available upon request.