

2022-291

MISSISSIPPI DEVELOPMENT AUTHORITY
GULF COAST RESTORATION FUND PROGRAM
GRANT AGREEMENT

City of Diamondhead
Hancock County, Mississippi
GCRF-21-05

This Grant Agreement ("Agreement"), dated as of July 1, 2022, by and between the Mississippi Development Authority (acting for and on behalf of the State of Mississippi ("MDA") and the City of Diamondhead as set forth in Item 1 of Annex A (the "Entity")

W I T N E S S E T H:

WHEREAS, the Gulf Coast Restoration Fund, Section 57-119-1, Mississippi Code of 1972, as amended, was created for the purpose of funding programs or projects that are located in the Gulf Coast region as defined in the federal RESTORE Act, or twenty-five (25) miles from the northern boundaries of the three (3) coastal counties of Harrison, Hancock and Jackson, but not limited to expand beyond the boundaries of Hancock, Harrison, Jackson, Pearl River, Stone and George Counties; and

WHEREAS, these funds are provided for assistance to local units of government, nongovernmental organizations, institutions of higher learning, community colleges, ports, airports, public-private partnerships, private for-profit entities, private nonprofit entities and local economic development entities; and

WHEREAS, MDA is authorized to administer the Gulf Coast Restoration Fund monies upon appropriation by the Legislature; and

WHEREAS, pursuant to Section 20 of Senate Bill 2951 2021 Regular Session of the Mississippi Legislature, the Legislature appropriated Two Million Dollars (\$2,000,000) to assist the City of Diamondhead with its Town Center District – Commercial District Project; and

WHEREAS, pursuant to Section 2 of Senate Bill 3049 2022 Regular Session of the Mississippi Legislature, the Legislature reappropriated Two Million Dollars (\$2,000,000) to assist the City of Diamondhead with its Town Center District – Commercial District Project; and

WHEREAS, pursuant to the Gulf Coast Restoration Fund Act, Section 57-119, Mississippi Code of 1972, as amended, and the Gulf Coast Restoration Fund Regulations (the "Regulations") adopted by MDA, the Entity has filed an application (the "Application") with MDA for a grant to be used for the development of the Project, more particularly described in Item 2A of Annex A (the "Project"); and

WHEREAS, based upon the Application and other relevant factors, MDA has agreed to provide the Entity with a grant under the Gulf Coast Restoration Fund in the amount set forth in Item 3 of Annex A (the "Grant") under the terms and conditions set forth in Item 4 of Annex A, in order to fund, in part, and develop the Project; and

WHEREAS, in order to receive any funds, the Entity shall comply with the requirements of the Line-Item Appropriation Transparency Act, Section 27-104-351, Mississippi Code of 1972, as amended; and

WHEREAS, the Entity has committed to use the Grant funds for the Project; and

WHEREAS, the Project satisfies the provisions of the Gulf Coast Restoration Fund and the Regulations; and

WHEREAS, the parties hereto agree that it is necessary to provide for and demonstrate compliance with the provisions of the Act;

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, that the parties hereto intend to be legally bound hereby and in consideration of the mutual covenants hereinafter contained do hereby agree as follows:

Section 1. Grant. MDA hereby agrees to make to the Entity and the Entity hereby agrees to accept from MDA a Grant pursuant and subject to the terms of this Agreement and the Gulf Coast Restoration Fund as set forth in Annex A. The Entity hereby agrees that it will apply the proceeds of the Grant only to the costs of the Project as more fully described in the Application. The Grant shall be disbursed by MDA to the Entity in installments as provided in this Agreement pursuant to Item 4 of Annex A. MDA's obligation to make the Grant and to disburse the Grant in installments shall be subject to all of the terms and conditions of this Agreement and the Entity satisfying all of its obligations under this Agreement and the Gulf Coast Restoration Fund.

Section 2. Disbursements. The obligation of MDA to make any disbursement of the Grant shall be subject to the following conditions, as well as any others herein set forth:

- a. the Entity shall not be in default under this Agreement or the Gulf Coast Restoration Fund; and
- b. funds appropriated by the Mississippi Legislature; and
- c. the development of the Project shall have progressed at a rate and in a manner reasonably satisfactory to MDA; and
- d. the receipt by MDA of a certificate of a representative of the Entity in the form set forth in Section 3 hereof and the notice required of the Entity set forth in Section 4 hereof for such disbursement in a form satisfactory to MDA. If the Entity fails at any time to meet the conditions precedent to any disbursement of the Grant as specified in the preceding sentence, the obligation of MDA to make further disbursements in connection with the grant shall cease until such time as such condition precedent is met and satisfied. The parties hereto agree that disbursements by MDA to the Entity of the Grant shall be made by June 30, 2023. Any portion of the grant funds not disbursed before June 30, 2023 will be subject to reappropriation by the Legislature in subsequent years until the project is complete.

Section 3. Conditions. A condition precedent to all disbursements of the Grant shall be the delivery of a certificate of a representative of the Entity to the effect that:

- a. to the best of its knowledge, the representations and warranties of the Entity contained in this Agreement are true and correct as of the date of the disbursements with the same effect as if made on the date of such disbursements; and

- b. this Agreement has been duly authorized, executed and delivered by the Entity and constitutes a legal, valid and binding obligation of the Entity enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally and except to the extent that the enforceability of the rights set forth herein may be limited by the availability of any particular remedies; and
- c. this Agreement has not been amended or supplemented or modified since the date of its execution and remains in full force and effect as of the date of the disbursement; and
- d. the authorization, execution and delivery of this Agreement by the Entity, and compliance by the Entity with the provisions hereof, will not conflict with or constitute a breach or default of the Entity's duties hereunder or under any law, administrative regulation, court decree, resolution, charter, bylaw or other agreement to which the Entity is subject or by which it is bound; and
- e. there is no action, suit, proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or, to the best of its knowledge, after reasonable investigation and due inquiry, threatened against the Entity in any way contesting or affecting the validity of this Agreement or contesting the powers of the Entity to enter into or perform its obligations under this Agreement.

Section 4. Requisitions. A condition precedent to all disbursements of the Grant shall be the presentation to the State Treasurer of a warrant issued by the Department of Finance and Administration of the State or its successor to such duties, which warrant shall be issued under proper requisition signed by the Executive Director of MDA, all pursuant to Section 57-119-1(1). Warrants may only be issued for costs and expenses that are authorized by the Gulf Coast Restoration Fund and the Regulations. No requisition shall be executed by the Executive Director of MDA until the following shall have been satisfied:

- a. The Entity shall have provided MDA with reasonable written notice of the amount of the Grant disbursement requested by the Entity. Such notice shall contain all information necessary to enable MDA to prepare the requisition for a warrant described in this Section 4 including, without limitation, the name and title of the requesting representative of the Entity, the name of the party to be reimbursed and a description of the work product or service. In addition, such notice shall certify that the amount requested is the just amount due at the current time, is for a work product or service which has heretofore been delivered or performed and that all statutory requirements in

connection with the acquisition of such work product or service have been complied with by the Entity; and

- b. The Entity must provide quarterly reports on the approved reporting form provided by MDA, due January 15, April 15, July 15 and October 15 on the status of the project. The report must include a written description and an itemized report detailing the expenditure of funds or the intended expenditure of any funds that have not been spent; and
- c. The Entity must provide proof of all non-grant funds expended on the project to ensure that GCRF funds are proportionately spent in relation to the total project cost share outlined in the Application; and
- d. MDA shall have indicated in writing its approval of the request for the Grant disbursement; and
- e. Disbursement of any funds shall be contingent upon the Entity complying with the quarterly reporting requirements; and
- f. A final written itemized report on the approved form provided by MDA must be timely submitted when all state funds have been spent.

Section 5. Representations of MDA. MDA makes the following representations as the basis for the undertakings on the part of the Local Sponsor herein contained:

- a. MDA is an agency of the State and is authorized pursuant to the provisions of the Gulf Coast Restoration Fund and the Regulations to enter into the transactions contemplated by this Agreement.
- b. MDA has full power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.
- c. MDA has been duly authorized to execute and deliver this Agreement and by proper action has duly authorized the execution and delivery hereof and as to MDA, this Agreement is valid and legally binding and enforceable in accordance with its terms except to the extent that the enforceability thereof may be limited:
 - (1) by bankruptcy, reorganization, or other similar laws limiting the enforceability of creditors' rights generally; or
 - (2) by the availability of any discretionary equitable remedies.

Section 6. Representations of the Entity. The Entity makes the following representations as a basis for the Grant and the undertakings on the part of MDA, herein contained:

- a. The Entity has all necessary power and authority to enter into and perform its duties under this Agreement and, when executed and delivered by the respective parties hereto, this Agreement will constitute a legal, valid and binding obligation of the Entity enforceable in accordance with its terms except to the extent that the enforceability of the rights set forth herein may be limited:
 - (1) by bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally
 - (2) by the validity of any particular remedy.
- b. The execution and delivery of this Agreement and compliance with the provisions hereof will not conflict with, or constitute a breach of or default under, the Entity's duties under any law, administrative regulation, court decree, resolution, charter, bylaws or other agreement to which the Entity is subject or by which it is bound.
- c. There is no consent, approval, authorization or other order of, filing with, or certification by, any regulatory authority having jurisdiction over the Entity required for the execution, delivery or the consummation by the Entity of any of the transactions contemplated by this Agreement and not already obtained.
- d. There is no action, suit proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or, to the best knowledge of the Entity, after reasonable investigation and due inquiry, threatened against the Entity in any way contesting or affecting the validity of this Agreement or contesting the powers of the Entity to adopt, enter into or perform its obligations under this Agreement or materially and adversely affecting the properties or condition (financial or otherwise) or existence or powers of the Entity.
- e. The Entity will not discriminate against any employee or any applicant for employment because of race, religion, color, national origin, sex or age.
- f. The Entity shall comply with the terms and provisions of this Agreement and the Act and specifically with the terms set out in Item 4 of Annex A.
- g. The Entity certifies that all of the material information contained in the Application is true and correct as of the date of the Application and the date of this Agreement. The Entity acknowledges that MDA, in making the Grant, is relying upon the truthfulness and correctness of the material information contained in the Application. The Entity

further acknowledges that MDA must account for the proper use of funds based on the information in the Application.

- h. The Entity acknowledges that MDA will recover any expended grant funds if the assistance provided was based upon fraudulent information or if the recipient of the assistance fails to meet the performance requirements established by the Entity and MDA and referenced in the Annex A.
- i. The Entity represents and warrants that it will further the purposes of the Act.
- j. Upon request of the MDA or the Office of the State Auditor, the Entity will provide reasonable verification of its compliance with the performance metrics as set out in Annex A. Additionally, the Entity will cooperate fully with MDA and/or the Office of the State Auditor in performing audits from time to time to determine the Entity's compliance with the provision of this Agreement. The Entity further agrees that MDA and/or the Office of the State Auditor shall have the right to inspect books, records, plans and other data related to the Project.
- k. The Entity shall follow General Auditing Standards for financial and other record retention requirements.
- l. The Entity shall comply with the following requirements and responsibilities: enroll in the E-Verify program; display the E-Verify participation posters (English & Spanish) in prominent places that are visible to prospective employees and all employees who are to be verified through the system; comply with the most recent version of the E-Verify Manual; comply with current Form I-9 procedures; initiate E-verify verification procedures for new employees within three (3) business days after each employee has been hired, and record the case verification numbers on the employee's Form I-9 or print the screen containing the verification number and attach it to the employee's Form I-9.
- m. The Entity shall notify the members of the House of Representatives and Mississippi Senate at least five (5) days prior to a public ceremony announcing the award of the grant in their district or any public announcement or ceremony regarding the groundbreaking or opening of a facility, roadway or bridge using grant funds.
- n. The Entity will include the following language on signage regarding any public event or any new facility, roadway or bridge: "Funds were made available for this project by the Mississippi State Legislature."

Section 8. Termination.

- a. MDA may terminate its obligation to honor any disbursement of the Grant at any time prior to any disbursement of the Grant if any event occurs, which would constitute a default under this Agreement.
- b. It is expressly understood and agreed that the obligation of MDA to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi Legislature and the receipt of state funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, or if funds are not otherwise available to MDA, then MDA shall have the right upon ten (10) working days written notice to the Entity to terminate this Agreement without damage, penalty, cost or expense to MDA of any kind whatsoever. The effective date of termination shall be specified in the notice of termination.

Section 9. Notice Addresses. All notices given pursuant to this Agreement shall be in writing signed by the party giving the notice and shall be given by:

- a) certified mail, postage prepaid;
- b) prepaid overnight delivery; or
- c) hand delivery.

For the purposes of this Agreement, notices shall be sent to the parties at the addresses set forth on Item 5 of Annex A hereto or to such other addresses that the parties may designate in writing.

Section 10. Miscellaneous.

- a) No party may assign or delegate its rights or obligations pursuant to this Agreement without the prior written consent of the other parties. Such consent shall not be unreasonably withheld.
- b) This Agreement has been made by MDA (acting for and on behalf of the State) and the Entity, and no person other than the foregoing and their successors or assigns shall acquire or have any right under or by virtue of this Agreement.
- c) This Agreement shall become effective upon the execution and the acceptance hereof by the parties hereto and shall be valid and enforceable from and after the time of such execution and acceptance.
- d) If any section or part of a section of this Agreement shall be declared null and void or unenforceable against any of the parties hereto by any court of competent jurisdiction, such declaration shall not affect the validity or enforceability of any other section or part of a section of this Agreement.

- e) In the event any agreement contained in this Agreement shall be breached and such breach shall thereafter be waived, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.
- f) This Agreement shall inure to the benefit of MDA and the Entity and shall be binding upon MDA and the Entity and their respective successors and assigns.
- g) This Agreement, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by, and enforced in accordance with, the internal laws of the State of Mississippi, including its statutes of limitation and without regard to conflict of law principles.

All disputes regarding this Agreement, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), must be brought or filed in state court in the First Judicial District of Hinds County, Mississippi, which shall be the exclusive forum and jurisdiction for such disputes.

The Parties agree that their choice of laws and exclusive forum set forth above are mandatory and shall not be deemed permissive.

- h) This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same agreement.
- i) It is expressly understood and agreed by and between the Parties that this Agreement sets out the understandings between the Parties and that there are no promises, agreements, conditions, understandings, inducements, warranties or representations, either oral or written, express or implied, between them other than as set forth in this Agreement. No amendment, change, modification, or alteration of this Agreement shall be made other than pursuant to a written instrument signed by the parties to this Agreement.

- j) This Agreement has been prepared by the efforts of all the parties. In any construction to be made to this Agreement, it shall not be construed against any party on the basis of authorship.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**MISSISSIPPI DEVELOPMENT AUTHORITY
(ACTING FOR AND ON BEHALF OF THE STATE
OF MISSISSIPPI)**

By: _____
Laura Hipp, Deputy Executive Director

ATTEST:

Sarah Wright, Bureau Manager

CITY OF DIAMONDHEAD

By: _____
Mayor Nancy Depreo

ATTEST:

Title: _____

**Annex A
to
Grant Agreement**

Item 1- Name of Entity: City of Diamondhead

Item 2A- Description of Project: Gulf Coast Restoration Funds to be used to assist the City of Diamondhead with road construction costs and other eligible expenditures as approved by MDA at the approved project site located in Diamondhead, Hancock County, Mississippi ("Project Site"). The Project Site is located at the intersection of Gex Road and Park Ten Drive and Gex Road to the Town Center area. Internal labor will not be reimbursable.

Item 2B- Soft Cost Expenses: Engineering, Architectural, Project Management and other soft costs shall not exceed 10% of this MDA grant amount. Any amount above 10% will be allowed to count toward the local match for the project as a whole.

Item 3- Grant Amount: \$2,000,000

Item 4- Grant Terms and Conditions

MDA will approve and make available for reimbursement purposes grant funds in an amount not to exceed Two Million Dollars (\$2,000,000) which amount has been previously approved and allocated with respect to the Project from the Gulf Coast Restoration Fund for the reimbursement of a portion of costs and expenses related to the Project. All documentation for disbursement must be received by June 30, 2023. Any grant funds not disbursed before June 30, 2023 will be subject to reappropriation by the Legislature in subsequent years until the project is complete.

The disbursement of grant funds shall be contingent upon the entity complying with the quarterly reporting requirements. No funds will be disbursed by MDA until the Entity has submitted all delinquent quarterly reports.

The Entity commits and warrants that an investment of at least a total of Four Hundred Thousand Dollars (\$400,000) will be made to incentivize the development of the project.

Item 5- Grant Performance Metrics

The Entity commits to meet the following performance metrics as determined by the Entity and MDA: (1) The City will complete the acquisition of the required property(s) and easements by June 30, 2023; and (2) The City will complete the road improvements by June 30, 2024 ("Performance Metric Commitments"). In the event that the Entity fails to satisfy the Performance Metric Commitment, then the Entity shall repay the State any expended grant funds.

MDA shall provide the Entity with written notice of default and the Entity will be given thirty (30) days following receipt of such notice to cure such default prior to the default payment becoming due and owing.

Item 6- Address Notice:

Mississippi Development Authority
Post Office Box 849
Jackson, Mississippi 39205
Attention: Financial Resources

City of Diamondhead
5000 Diamondhead Circle
Diamondhead, Mississippi 39525
Attention: Mayor Nancy Depreo

ACKNOWLEDGMENT OF MISSISSIPPI DEVELOPMENT AUTHORITY

STATE OF MISSISSIPPI)
) ss:
COUNTY OF HINDS)

Personally appeared before me, the undersigned authority in and for the said county and state, on this the _____ day of _____, 2022, within my jurisdiction, the within named Laura Hipp who acknowledged she is the Deputy Executive Director, of the Mississippi Development Authority and that for and on behalf of said Department and as its act and deed, she executed the above and foregoing instrument, after first having been duly authorized by said Department so to do.

GIVEN UNDER MY HAND AND OFFICIAL SEAL OF OFFICE, this the _____ day of _____, 2022.

Notary Public

My Commission Expires:

[S E A L]

ACKNOWLEDGMENT OF ENTITY

STATE OF MISSISSIPPI)
) **ss:**
COUNTY OF _____)

Personally appeared before me, the undersigned authority in and for the said county and state, on this the _____ day of _____, 2022, within my jurisdiction, the within named _____, who acknowledged he/she is the _____, of _____, and that for and on behalf of said _____, and as its act and deed, they executed the above and foregoing instrument, after first having been duly authorized by said _____ so to do.

GIVEN UNDER MY HAND AND OFFICIAL SEAL OF OFFICE, this the _____ day of _____, 2022.

Notary Public

My Commission Expires:

[S E A L]