



**COASTAL EROSION PLANNING AND RESPONSE ACT  
PROJECT COOPERATION AGREEMENT  
GLO CONTRACT NO. 16-361-000-9950  
CEPRA PROJECT NO. 1623**

This project cooperation agreement (the “Contract”) is entered into by and between the **GENERAL LAND OFFICE** (the “GLO”) and **COASTAL BEND BAYS & ESTUARIES PROGRAM**, Vendor Identification Number 1742924909, the Qualified Project Partner (“QPP”), each a “Party” and collectively “the Parties,” under the Coastal Erosion Planning and Response Act, Texas Natural Resources Code Sections 33.601-.613 (“CEPRA” or the “Act”) for CEPRA Project No. 1623, entitled, “Causeway Rookery Island Habitat Protection, Nueces Bay Texas, Design And Engineering.”

**ARTICLE 1 – GENERAL PROVISIONS**

**1.01 PURPOSE**

The purpose of this Contract is to set forth the terms and conditions of the cooperation of QPP in a CEPRA project managed and funded by the GLO and QPP.

**1.02 CONTRACT DOCUMENTS**

The GLO and QPP hereby agree that this Contract, the following documents, and listed documents, which are incorporated herein for all purposes in their entirety, shall govern the Contract:

- ATTACHMENT A: PROJECT WORK PLAN AND BUDGET**
- ATTACHMENT B: PROJECT LOCATION MAP(S)**
- ATTACHMENT C: GENERAL AFFIRMATIONS**

**1.03 DEFINITIONS**

“Account” means the coastal erosion response account as defined in Section 33.604 of the Texas Natural Resources Code.

“Administrative and Audit Regulations” means the statutes and regulations included in Chapter 321 of the Government Code, Subchapter F of Chapter 2155 of the Government Code, and the requirements of Article VII herein. State agencies and/or designees with the authority to audit and inspect include the GLO, the GLO’s contracted examiners, the State Auditor’s Office, the Texas Attorney General’s Office, and the Texas Comptroller of Public Accounts.

“Attachment” means documents, terms, conditions, or additional information physically added to this Contract following the execution page or incorporated by reference, as if physically attached.

“Budget” means the budget for the Project, as detailed in the Project Work Plan and Budget in **Attachment A**, attached hereto and incorporated herein for all purposes.

“CEPRA” or the “Act” means the Coastal Erosion Planning and Response Act, Texas Natural Resources Code Sections 33.601-.613.

“Contract” means this entire document, along with any Attachments, both physical and incorporated by reference.

“Fiscal Year” means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

“GAAP” means “generally accepted accounting principles.”

“GASB” means the Governmental Accounting Standards Board.

“General Affirmations” means the statements in **Attachment C**, attached hereto and incorporated herein for all purposes, which Provider affirms by executing this Contract.

“GLO” means the Texas General Land Office, its officers, employees, and designees.

“Intellectual Property” means patents, rights to apply for patents, trademarks, trade names, service marks, domain names, copyrights, schematics, industrial models, inventions, know-how, trade secrets, computer software programs, other intangible proprietary information, and all federal, state, or international registrations or applications for any of the foregoing.

“Project” means the activities described in **SECTION 2.01** and detailed in the Work Plan in **Attachment A** of this Contract.

“Partner Match” means the amount contributed by QPP and all funding sources other than the CEPRA Account to pay the shared Project costs set forth in the Budget.

“Public Information Act” means Chapter 552 of the Texas Government Code.

“Qualified Project Partner” or “QPP” means the Coastal Bend Bays & Estuaries Program.

“Work Plan” means the methodology, means, and manner in which the Project shall be accomplished, as detailed in **Attachment A**.

#### **1.04 INTERPRETIVE PROVISIONS**

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms;
- (b) The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, Section, Attachment, work order, or schedule of this Contract unless otherwise specified;
- (c) The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto,

but only to the extent that such amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation;

- (d) The captions and headings of this Contract are for convenience of reference only and shall not affect the interpretation of this Contract;
- (e) All Attachments within this Contract, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract;
- (f) This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each shall be performed in accordance with its terms;
- (g) Unless otherwise expressly provided, reference to any action of the GLO or by the GLO by way of consent, approval, or waiver shall be deemed modified by the phrase “in its/their sole discretion.” Notwithstanding the preceding sentence, any approval, consent, or waiver required by, or requested of, the GLO shall not be unreasonably withheld or delayed;
- (h) Time is of the essence in this Contract; and
- (i) In the event of conflicts or inconsistencies between this contract and its attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: Signed Contract; Attachments to the Contract in this order: **Attachment A, Attachment B, and Attachment C.**

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## ARTICLE 2 – SCOPE OF PROJECT

### 2.01 PROJECT REQUIREMENTS

The Parties agree to cooperate to address preliminary construction design, alternative analysis, and procuring permitting necessary for habitat protection at Causeway Rookery Island (the “Project”). The Project area is depicted on the Project Location Map(s), attached hereto and incorporated herein in their entirety for all purposes as **Attachment B**. The Parties shall complete the Project in accordance with the Project Work Plan and Budget in **Attachment A** and the General Affirmations in **Attachment C**.

The Work Plan or Budget may be amended by written agreement of the Parties if initiated by the GLO or by QPP’s submission of a written request and detailed justification to the GLO Project Manager listed in **SECTION 2.02**. Amendments to the Work Plan or Budget may delay performance of the Project. **Any costs incurred while awaiting approval of Amendments requested by QPP are the responsibility of QPP.**

### 2.02 PROJECT MANAGERS

The designated Project Managers for this Project are:

#### **GLO**

Kelly Brooks, Project Manager  
Texas General Land Office  
Coastal Resources Division  
P. O. Box 12873  
Austin, TX 78711-2873  
TEL: (512) 463-2198  
FAX: (512) 475-0680  
E-mail: [kelly.brooks@glo.texas.gov](mailto:kelly.brooks@glo.texas.gov)

#### **QPP**

Rosario Martinez  
Coastal Bend Bay & Estuaries Program  
615 North Upper Broadway, Suite 1200  
Corpus Christi, TX 78401  
TEL: (361) 336-0304  
E-mail: [rmartinez@cbbep.org](mailto:rmartinez@cbbep.org)

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### ARTICLE 3 - TERM

#### 3.01 DURATION

This Contract shall be effective as of October 1, 2016 and shall terminate upon completion of the Project in the sole determination of the GLO, or on August 31, 2017, whichever occurs first. The GLO, at its own discretion, may extend this Contract, upon terms mutually agreeable to the Parties. Extensions shall be from September 1 to August 31, always coinciding with the state's fiscal year. QPP acknowledges that this Contract is effective for the period of time specified in the Contract. **Any work performed by QPP before this Contract is effective or after it ceases to be effective are performed at the sole risk of QPP.**

#### 3.02 EARLY TERMINATION

The GLO may terminate this Contract by giving written notice specifying a termination date at least thirty (30) days subsequent to the date of the notice. Upon receipt of any such notice, QPP shall cease any work, undertake to terminate any relevant subcontracts, and incur no further expense related to this Contract. Such early termination shall be subject to the equitable settlement of the respective interests of the Parties, accrued up to the date of termination.

#### 3.03 ABANDONMENT OR DEFAULT

If QPP defaults on the Contract, the GLO reserves the right to cancel the Contract without notice.

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## ARTICLE 4 – FUNDING

### 4.01 TOTAL PROJECT BUDGET

The Parties agree that all expenses associated with the performance of this Contract will be paid by the Parties in accordance with the Budget in **Attachment A**, in an amount not to exceed **ONE HUNDRED FORTY THOUSAND DOLLARS (\$140,000.00)**.

### 4.02 CEPRA ACCOUNT

The Parties further agree that the total amount to be expended by the GLO from the CEPRA Account will not exceed **EIGHTY-FOUR THOUSAND DOLLARS (\$84,000.00)**.

### 4.03 QPP CONTRIBUTION

QPP agrees to provide a total of **FIFTY-SIX THOUSAND DOLLARS (\$56,000.00)** as Partner Match towards the Project Budget. All Partner Match requirements must be accounted for before the expiration of this Contract. QPP acknowledges that costs incurred before entering into this Contract or not in accordance with the Budget in **Attachment A** may not be used to offset QPP's portion of the Partner Match.

### 4.04 PARTNER MATCH

The Act requires QPP to provide matching funds for not less than forty percent (40%) of shared Project costs. The Act's requirement is satisfied by the Partner Match, which includes the sum to be contributed by QPP under **SECTION 4.03**.

Partner match shall prominently display "GLO Contract No. **16-361-000-9950**" and shall be submitted to the GLO with supporting documentation in the same manner as requests for reimbursement, in accordance with the instructions set forth in **SECTION 4.06**.

### 4.05 ALTERNATIVE SOURCE FUNDING

The Parties agree to continue to work cooperatively to investigate and secure funding from sources other than the Account for the project and its maintenance. Alternative sources of funding acquired by QPP after the execution of this Contract may be used to meet the Partner Match.

### 4.06 PROOF OF MATCH AND REQUESTS FOR REIMBURSEMENT

QPP shall submit proof of Partner Match and reimbursement requests to the GLO on a monthly basis documenting and fully substantiating the Project costs and expenses that QPP has incurred. All QPP expenditures must be supported by actual receipts, cancelled checks, or such other documentation that, in the judgment of the GLO, substantiates the value of the expenditures. Expenditures are subject to the review and approval of the GLO and approval of expenditures is in the sole discretion of the GLO.

Travel included in the Scope of Services must adhere to the rates established by the Comptroller of the State of Texas, as outlined in the State of Texas travel guidelines, *TexTravel*.

Subject to the maximum Contract amount authorized herein, upon specific, prior, written approval by the GLO, lodging, travel, and other incidental direct<sup>1</sup> expenses may be

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<sup>1</sup> Certain other incidental direct expenses, including, but not limited to, copying, telephone, data, and express mail services may be reimbursed upon specific, written approval by the GLO, at rates determined by the GLO.

reimbursed under this Contract for professional or technical personnel who are (a) away from the cities in which they are permanently assigned; (b) conducting business specifically authorized by the GLO; and (c) performing services not originally contemplated in the Scope of Services.

The limit for such reimbursements shall be the rates established by the Comptroller of the State of Texas, as outlined in the State of Texas travel guidelines, *TexTravel*. If a rate within the limits set forth in *TexTravel* is not available, QPP shall use its best efforts to obtain the lowest available room rate. QPP shall obtain prior approval from the Project Manager using the GLO Travel Office approved form.

Proof of match and requests for reimbursement must:

- (a) be submitted to [vendorinvoices@glo.texas.gov](mailto:vendorinvoices@glo.texas.gov);
- (b) be supported by documentation that, in the judgment of the GLO, allows for full substantiation of the costs incurred; and
- (c) **prominently display “GLO Contract No. 16-361-000-9950”**

If QPP does not submit proof of match and reimbursement requests in strict accordance with the instructions in this section, payment may be significantly delayed.

#### **4.07 PROGRESS REPORTS**

Monthly progress reports must be submitted in portable document format (pdf.) to [kelly.brooks@glo.texas.gov](mailto:kelly.brooks@glo.texas.gov). Upon the GLO’s written request, one (1) hard copy of each should be sent to the attention of Kelly Brooks / GLO Coastal Resources Division / PO BOX 12873 / Austin, TX / 78711-2873. The final report is due within sixty (60) days after the completion of the Project.

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## ARTICLE 5 - STATE FUNDING

### 5.01 STATE FUNDING

- (a) This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or the GLO in violation of Article III, Section 49, of the Texas Constitution. In compliance with Article VII, Section 6 of the Texas Constitution, it is understood that all obligations of the GLO hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the Parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests, accrued up to the date of termination.
- (b) Furthermore, any claim by QPP for damages under this Contract may not exceed the amount of funds appropriated for payment, but not yet paid to QPP, under the annual budget in effect at the time of the breach. Nothing in this provision shall be construed as a waiver of sovereign immunity.

### 5.02 RECAPTURE OF FUNDS

QPP shall perform, in a satisfactory manner as determined by the GLO, its obligations as set forth in the Contract and all Attachments, whether incorporated physically or by reference. The discretionary right of the GLO to terminate for convenience under **SECTION 3.02** notwithstanding, it is expressly understood and agreed by QPP that the GLO shall have the right to terminate the Contract and to recapture and be reimbursed for any payments (i) made by the GLO that exceed the maximum allowable rates; (ii) that are not allowed under applicable laws, rules, or regulations; or (iii) that are otherwise inconsistent with this Contract, including any unapproved expenditures.

### 5.03 GENERAL AFFIRMATIONS

To the extent they apply, QPP certifies it has reviewed the General Affirmations in **Attachment C** and that QPP is in compliance with all the requirements contained therein.

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**ARTICLE 6 – RECORDS, INSPECTION AND AUDIT, RETENTION, PUBLIC INFORMATION AND  
CONFIDENTIALITY**

**6.01 BOOKS AND RECORDS**

QPP shall keep and maintain full, true, and complete records in accordance with GAAP or GASB, whichever is applicable, as necessary to fully disclose to the GLO, the Texas State Auditor’s Office, the United States Government, and/or their authorized representatives sufficient information to determine compliance with the terms and conditions of this Contract, other applicable agreements, and all state and federal rules, regulations, and statutes.

**6.02 INSPECTION AND AUDIT**

All relevant records related to this Contract, including the records of QPP and its subcontractors, are subject to the Administrative and Audit Regulations. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. Acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. QPP shall cooperate fully with any state investigation, inspection, examination, audit, or copying, including providing all relevant records and information requested. **QPP SHALL ENSURE THAT ALL SUBCONTRACTS AWARDED IN ASSOCIATION WITH THIS CONTRACT REFLECT THE REQUIREMENTS OF THIS SECTION AND THE REQUIREMENT TO COOPERATE.**

**6.03 PERIOD OF RETENTION**

QPP shall retain all records relevant to this Contract for a minimum of seven (7) years. The period of retention begins at the date of termination of the Contract. The period of retention shall be extended for a period reasonably necessary to complete an audit and/or to complete any administrative proceeding or litigation that may ensue.

**6.04 CONFIDENTIALITY**

To the extent permitted by law, QPP and the GLO shall keep all information confidential, in whatever form produced, prepared, observed, or received by QPP or the GLO to the extent that such information is: (a) confidential by law; (b) marked or designated “confidential” (or words to that effect) by QPP or the GLO; or (c) information that QPP or the GLO are otherwise required to keep confidential by this Contract. Furthermore, QPP will not advertise that it is doing business with the GLO, use this Contract as a marketing or sales tool, or make any press releases concerning this Contract without the prior written consent of the GLO.

**6.04 PUBLIC RECORDS**

Pursuant to Texas Gov’t Code Chapter 2261, QPP agrees this Contract may be posted to the GLO’s website. Additional information related to the performance of this Contract may be subject to the Public Information Act (“PIA”) and will be withheld from public

disclosure or released only in accordance therewith. QPP shall make any information required under the PIA available to the GLO in portable document file (“.pdf”) format or any other format agreed between the Parties. Failure of QPP to mark as “confidential” or a “trade secret” any information that it believes to be excepted from disclosure waives any and all claims QPP may make against the GLO for releasing such information without prior notice to QPP. QPP shall notify GLO’s General Counsel within twenty-four hours of receipt of any third party written requests for information, and forward a copy of said written requests to [PIALegal@glo.texas.gov](mailto:PIALegal@glo.texas.gov). If request was not written, QPP shall forward the third party's contact information to the above-designated e-mail address.

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## **ARTICLE 7 - INTELLECTUAL PROPERTY**

### **7.01. OWNERSHIP AND INTELLECTUAL PROPERTY**

- (a) The GLO shall own, and QPP hereby irrevocably assigns to the GLO, all ownership right, title, and interest in and to all Intellectual Property acquired or developed by QPP pursuant to this Contract, including without limitation all Intellectual Property in and to reports, drafts of reports, data, drawings, computer programs and codes, and/or any other information or materials acquired or developed by QPP under this Contract. The GLO shall have the right to obtain and to hold in its name any and all patents, copyrights, trademarks, service marks, registrations, or such other protection as may be appropriate to the subject matter, including extensions and renewals thereof.
- (b) QPP must give the GLO and the State of Texas, as well as any person designated by the GLO or the State of Texas, all assistance and execute such documents, as required to perfect the rights granted to the GLO herein without any charge or expense beyond the stated amount payable to QPP for the services authorized under this Contract.

### **7.02 COPYRIGHT**

- (a) QPP agrees and acknowledges that all expressive content subject to copyright protection, including without limitation all reports, drafts of reports, drawings, artwork, photographs, video, computer programs and codes, and/or any other expressive content acquired or developed by QPP pursuant to this Contract (individually, a “Work,” and collectively the “Works”), will be made the exclusive property of the GLO. QPP acknowledges that each Work is a “work made for hire” under the United States Copyright Act of 1976. All rights in and to each Work, including the copyright to the Work, shall be and remain the sole and exclusive property of the GLO.
- (b) If, for any reason, any Work or any portion of a Work is not a work made for hire, QPP hereby irrevocably assigns to the GLO ownership of all right, title and interest in and to the Works or such portion of any Work, including without limitation the entire and exclusive copyright in the Works and all rights associated with the copyright, including but not limited to reproduction rights, distribution rights, the right to prepare translations and other derivative works, and the right to display the Works in all formats and media now known or developed in the future.
- (c) QPP must give the GLO and the State of Texas, as well as any person designated by the GLO or the State of Texas, all assistance required to perfect the rights granted to the GLO defined herein without any charge or expense beyond the stated amount payable to QPP for the services authorized under this Contract.

### **7.03 PUBLICATION**

Reports, publications, presentations, and all other materials produced by QPP with funding provided in whole or in part under this Contract shall carry on the front cover or title page of such items, appropriate acknowledgement of financial or other support by the GLO and, if applicable, all federal entities providing funds or other support for the Project.

## ARTICLE 8 - MISCELLANEOUS PROVISIONS

### 8.01 INSURANCE

QPP shall acquire, for the duration of this Contract, insurance and with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount customarily carried within the industry. QPP may be requested to submit evidence of insurance as required under this Contract, including (if requested) a schedule of coverage (or “underwriter’s schedules”) establishing to the satisfaction of the GLO the nature and extent of coverage granted by each such policy. In the event that any policy is determined to be deficient to comply with the terms of this Contract, QPP shall secure such additional policies or coverage as the GLO may reasonably request or that are required by law or regulation. If coverage expires during the term of this Contract, QPP must produce renewal certificates for each type of coverage.

### 8.02 LEGAL OBLIGATIONS

QPP shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by QPP to perform under this Contract. QPP will be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. QPP agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. QPP will not infringe upon the intellectual property rights of third parties.

### 8.03 TAXES, WORKERS COMPENSATION, UNEMPLOYMENT INSURANCE

(a) QPP shall be solely liable and responsible for payment of QPP’s and QPP’s employees’ taxes of whatever kind, arising out of the execution or performance of the Contract. QPP shall comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers’ compensation. The GLO and the State of Texas shall not be liable to QPP or its officers, agents, employees, representatives, contractors, assignees, designees, or others for the payment of taxes, or the provision of unemployment insurance, workers’ compensation, or any benefit available to a state employee or employee of another governmental entity.

(b) QPP shall indemnify, defend, and hold harmless the State of Texas, the GLO, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from and against any and all liability, actions, claims, demands, damages, proceedings, or suits, and all related costs, attorney fees, and expenses arising out of, connected with, or resulting from tax liability, unemployment insurance, or workers’ compensation in the execution or performance of the Contract and any Purchase Orders issued under the Contract. QPP and the GLO shall furnish timely written notice to each other of any such claim. QPP shall be liable to pay all costs of defense including attorneys’ fees. QPP shall coordinate its defense with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit and QPP may not agree to any settlement without first obtaining the written consent of the Office of the Attorney General.

#### **8.04 INDEMNITY**

QPP shall indemnify, defend, and hold harmless the State of Texas, the GLO, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from and against any and all liability, actions, claims, demands, damages, proceedings, or suits, and all related costs, attorney fees, and expenses arising out of, connected with, or resulting from any acts or omissions of QPP or its officers, agents, employees, representatives, suppliers, contractors, subcontractors, assignees, designees, order fulfillers, or suppliers of contractors or subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. QPP and the GLO shall furnish timely written notice to each other of any such claim. QPP shall be liable to pay all costs of defense including attorneys' fees. QPP shall coordinate its defense with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit and QPP may not agree to any settlement without first obtaining the written consent of the Office of the Attorney General.

#### **8.05 INFRINGEMENT**

(a) QPP shall indemnify, defend, and hold harmless the State of Texas, the GLO, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from and against any and all liability, actions, claims, demands, damages, proceedings, or suits, and all related costs, attorney fees, and expenses arising out of, connected with, or resulting from infringement of any United States patent, copyright, trade or service mark, or any other intellectual or intangible property right that occurs in the execution or performance of the Contract and any Purchase Orders issued under the Contract. QPP and the GLO shall furnish timely written notice to each other of any such claim. QPP shall be liable to pay all costs of defense including attorneys' fees. QPP shall coordinate its defense with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit and QPP may not agree to any settlement without first obtaining the written consent of the Office of the Attorney General.

(b) QPP shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without QPP's written approval, (iii) any modifications made to the product by QPP pursuant to Customer's specific instructions, or (iv) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

(c) If QPP becomes aware of an actual or potential claim, or the GLO provides QPP with notice of an actual or potential claim, QPP may (or in the case of an injunction against the GLO, shall), at QPP's sole option and expense; (i) procure for the GLO the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with a functionally equivalent or superior product or service so that the GLO's use is non-infringing.

#### **8.06 RELATIONSHIP OF THE PARTIES**

QPP is associated with the GLO only for the purposes and to the extent specified in this Contract, and, in respect to QPP's performance pursuant to this Contract and the Act, QPP is and shall be an independent contractor and, subject only to the terms of this Contract and

Applicable Law, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create for the GLO any liability whatsoever with respect to the indebtedness, liabilities, and obligations of QPP or any other party. QPP shall be solely responsible for, and the GLO shall have no obligation with respect to:

- (a) withholding of income taxes, FICA, or any other taxes or fees;
- (b) industrial or workers' compensation insurance coverage;
- (c) participation in any group insurance plans available to employees of the State of Texas;
- (d) participation or contributions by the state to the State Employees Retirement System;
- (e) accumulation of vacation leave or sick leave; or
- (f) unemployment compensation coverage provided by the state.

#### **8.07 COMPLIANCE WITH OTHER LAWS**

In the performance of this Contract, QPP shall comply with all applicable federal, state, and local laws, ordinances, and regulations. QPP shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations that in any manner affect performance under this Contract. QPP will be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them.

#### **8.08 NOTICES**

Any notices required under this Contract shall be deemed delivered when deposited either in the United States mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required, to the appropriate address below:

**If to the GLO:**

Texas General Land Office  
1700 Congress Avenue  
Austin, TX 78701  
Attention: Legal Services Division – Mail Code 158

**If to QPP:**

Coastal Bend Bay & Estuaries Program  
615 North Upper Broadway, Suite 1200  
Corpus Christi, TX 78401  
Attention: Ray Allen, Executive Director

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.

## **8.09 GOVERNING LAW AND VENUE**

This Contract and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. QPP irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **Nothing in this Contract shall be construed as a waiver of sovereign immunity by the GLO.**

## **8.10 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 Parties must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code or an alternative dispute resolution procedure authorized by Chapter 2009 of the Texas Government Code, as applicable, to attempt to resolve the dispute. This provision shall not apply to any matter with respect to which either Party may make a decision within its respective sole discretion.

## **8.11 ENTIRE CONTRACT AND MODIFICATIONS**

This Contract, its integrated attachment(s), and any purchase order issued in conjunction with this Contract constitute the entire agreement of the Parties and are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in such attachment(s) and/or purchase order shall be harmonized with this Contract to the extent possible. Unless such integrated attachment or purchase order specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language shall be construed consistently with the terms of this Contract.

## **8.12 PROPER AUTHORITY**

Each party hereto represents and warrants that the person executing this Contract on its behalf has full power and authority to enter into this Contract.

## **8.13 COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which shall be an original, and all such counterparts shall together constitute but one and the same Contract. If the Contract is not executed by QPP within thirty (30) days of receipt, this Contract may be declared null and void, in the sole discretion of the GLO.

## **8.14 SEVERABILITY**

If any provision contained in this Contract is held to be unenforceable by a court of competent jurisdiction, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not render any other provision or provisions of this Contract unenforceable.

### **8.15 FORCE MAJEURE**

Except with respect to the obligation of payments under this Contract, if either of the Parties, after a good faith effort, is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively referred to as a "Force Majeure"), then, while so prevented, the affected Party's obligation to comply with such covenant shall be suspended, and the affected Party shall not be liable for damages for failure to comply with such covenant. In any such event, the Party claiming Force Majeure shall promptly notify the other Party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The Party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and shall resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, the GLO may, at its sole discretion, terminate this Contract immediately upon written notification to QPP.

### **8.16 SURVIVAL OF TERMS AND PROVISIONS**

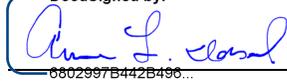
The terms and conditions of this Contract related to the following subjects shall survive the termination of this Contract: definitions; interpretation; warranties; affirmations; prohibition on debts created on behalf of the State of Texas and/or the GLO; limitation of any QPP claim for damages to the amount of funds appropriated for payment but not yet paid to QPP; recapture of funds; ownership; intellectual property; books and records; inspection and audit; records retention period; confidentiality; public records; insurance; taxes; workers' compensation; unemployment insurance; QPP's obligation to procure and maintain, at its sole expense, all government licenses, authorizations, insurance, waivers, permits, and/or qualifications necessary for QPP or any of its subcontractors for the performance of this Contract; indemnity; infringement; subcontracting; relationship of the Parties; compliance with laws; notices; governing law and venue; severability; dispute resolution; merger and integration; invoice and fee verification; property rights; default; and amendment.

**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE FOR GLO CONTRACT NO. 16-361-000-9950  
CEPRA PROJECT NO. 1623**

**GENERAL LAND OFFICE**

**COASTAL BEND BAYS & ESTUARIES  
PROGRAM**

DocuSigned by:  
  
6802997B442B496...  
Anne L. Idsal, Chief Clerk/  
Deputy Land Commissioner

DocuSigned by:  
  
B2A45EF8668749E...  
By: Ray Allen  
Title: Executive Director

Date of execution: 9/14/2016

Date of execution: 9/14/2016

CC OGC AH  
CKB Div KZ  
DIR MP  
DEPDIR JZ  
SRDEPDIR KWW  
DGC MJ  
GC MJ

**ATTACHMENTS TO THIS CONTRACT:**

- ATTACHMENT A: PROJECT WORK PLAN AND BUDGET**
- ATTACHMENT B: PROJECT LOCATION MAP(S)**
- ATTACHMENT C: GENERAL AFFIRMATIONS**

**ATTACHMENTS FOLLOW**

**CAUSEWAY ROOKERY ISLAND HABITAT PROTECTION,  
NUECES BAY TEXAS, DESIGN AND ENGINEERING  
CEPRA PROJECT #1623  
DESIGN/ANALYSIS/PERMITTING**

1. To address the preliminary construction plan design for habitat protection at Causeway Rookery Island, the GLO shall support the Coastal Bend Bays and Estuaries Program (CBBEP) and fulfill the following tasks:

- a. Expend from the CEPRA account an amount not to exceed \$84,000.00 to the project budget.
- b. Confer with CBBEP (the Qualified Project Partner or "QPP") on the location and extent of the project area.
- c. Confer with CBBEP on the scope of work.
- d. Provide oversight review and approval of professional services solicited by CBBEP as necessary or required.
- e. Assist in identifying legal requirements for the use of state-owned submerged land and facilitate CBBEP's efforts to obtain any necessary state-owned land use authorizations.
- f. Provide financial point of contact.

2. To address the preliminary construction plan design for habitat protection at Causeway Rookery Island, CBBEP shall act as lead project partner and fulfill the following tasks:

- a. Contribute \$56,000.00 of match funding to the project budget.
- b. Provide documentation of match expenditures to the GLO on a monthly basis.
- c. Obtain authorization for the use of state-owned submerged lands and any other authorizations required by state, federal or local law to implement the project.
- d. Manage the project and contract with a professional services provider to:
  - Solicit design bids and select a contractor;
  - Provide design and analysis oversight;
  - Obtain necessary permit(s).
- e. Serve as the point of contact for communication with the professional services provider and any other contracted entities under the terms of CBBEP's respective contracts with those vendors. However, this does not restrict or preclude communications of a general nature between the GLO and CBBEP's contracted parties during the course of the project.
- f. Provide the GLO with information regarding the location, scope of work, and any necessary review of professional services for construction design.
- g. Serve as the source for all media advisories, inquiries and press releases regarding the project.
- h. Provide financial point of contact.
- i. Create and maintain all required signage for the project site.
- j. Deliverable(s)/Milestone(s): Monthly progress reports and requests for reimbursement, due as specified in contract and; final progress report, due on or before August 31, 2017.

**BUDGET****Causeway Rookery Island Habitat Protection-Design and Engineering****CEPRA PROJECT NO. 1623****PROJECT COSTS**

<b>CONTRACTUAL</b>	<b>AMOUNT</b>
design, analysis, permitting	\$140,000.00
<b>TOTAL PROJECT COST NOT TO EXCEED</b>	<b>\$140,000.00</b>

**COST SHARING SUMMARY**

<b>QUALIFIED PROJECT PARTNER (QPP): 40% of Total Project Costs</b>	
QPP Cash Commitment (CBBEP)	\$56,000.00
QPP In-Kind Commitment	
<b>QPP's TOTAL CONTRIBUTION</b>	<b>\$56,000.00</b>
<b>CEPRA: 60% of total project costs</b>	
<b>CEPRA's TOTAL CONTRIBUTION</b>	<b>\$84,000.00</b>
<b>TOTAL PROJECT CONTRIBUTIONS</b>	<b>\$140,000.00</b>



### GENERAL AFFIRMATIONS

Provider agrees without exception to the following affirmations:

1. Provider certifies that he/she/it has not given, offered to give, nor intends to give at anytime hereafter, any economic opportunity, future employment, gift, loan gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.
2. Provider certifies that neither Provider nor any firm, corporation, partnership, or institution represented by Provider or anyone acting for such firm, corporation, partnership, or institution has (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or federal antitrust laws; or (2) communicated the contents of the Contract or proposal either directly or indirectly to any competitor or any other person engaged in the same line of business during the procurement process for the Contract or proposal.
3. Provider certifies that if its business address shown on the Contract is a Texas address, that address is the legal business address of Provider and Provider qualifies as a Texas Resident Bidder under Texas Administrative Code, Title 34, Part 1, Chapter 20.
4. Section 2155.004 of the Texas Government Code prohibits the GLO from awarding a contract that includes proposed financial participation by a person who received compensation from the GLO to participate in preparing the specifications or request for proposals on which the Contract is based. Under Section 2155.004, Government Code, the vendor [Provider] certifies that the individual or business entity named in this bid or Contract is not ineligible to receive the specified Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.
5. Under Texas Family Code section 231.006, a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials, or services. Under Section 231.006, Texas Family Code, the vendor or applicant [Provider] certifies that the individual or business entity named in this Contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
6. In accordance with Texas Government Code Section 669.003 (relating to contracting with executive head of a state agency), by entering into the Contract, Provider either certifies that either: (1) it is not the executive head of the GLO, was not at any time during the past four years the executive head of the GLO, and does not employ a current or former executive head of a state agency; or (2) Provider and the GLO have complied with the requirements of the above referenced statute concerning board approval and notice to the Legislative Budget Board. Provider acknowledges that this Contract may be terminated at any time, and payments withheld, if this certification is false.
7. Provider agrees that any payments due under the Contract will be applied towards any debt, including but not limited to delinquent taxes and child support, Provider owes to the State of Texas.
8. The GLO is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, blocking property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism and any subsequent changes made to it. The GLO will

cross-reference Providers/vendors with the federal System for Award Management (<https://www.sam.gov/>), which includes the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

9. Provider certifies: 1) that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity; 2) that Provider is in compliance with the State of Texas statutes and rules relating to procurement; and 3) that Provider is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov/>.
10. Under Section 2155.006(b) of the Texas Government Code, the GLO may not enter into a contract that includes proposed financial participation by a person who, during the five year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, Provider certifies that the individual or business entity named in the Contract is not ineligible to receive the specified Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.
11. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. Acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Provider shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Provider and the requirement to cooperate is included in any subcontract it awards.
12. Provider understands that the GLO does not tolerate any type of fraud. The GLO's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Providers are expected to report any possible fraudulent or dishonest acts, waste, or abuse affecting any transaction with the GLO to the GLO's Internal Audit Director at 512.463.5338 or to [tracey.hall@glo.texas.gov](mailto:tracey.hall@glo.texas.gov).

**NOTE: Information, documentation, and other material in connection with this Contract may be subject to public disclosure pursuant to the "Public Information Act," Chapter 552 of the Texas Government Code.**

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