

**THE STATE OF TEXAS**



**SPECIAL DOCUMENT No. 20130007  
CEPRA PROJECT No. 1569  
UNDER GLO CONTRACT No. 13-480-000-8048**

**STATE OF TEXAS**

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**COUNTY OF NUECES**

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This Special Document memorializes the agreement ("Agreement") between the **TEXAS GENERAL LAND OFFICE** (the "GLO") and the **CITY OF CORPUS CHRISTI** (the "Qualified Project Partner" or "QPP"), made and entered pursuant to **TEX. NAT. RES. CODE ANN. §§ 33.601- 33.613**, the Coastal Erosion Planning and Response Act ("CEPRA"), and **31 TEX. ADMIN. CODE § 15**, and subject to all other applicable statutes, rules, and regulations currently existing and as may be amended or promulgated from time to time during the effective dates hereof.

**ARTICLE I. PARTIES AND PURPOSE**

**1.01.** In consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the **STATE OF TEXAS**, acting by and through the Commissioner of the GLO, on behalf of the Permanent School Fund (the "State"), hereby grants to the **CITY OF CORPUS CHRISTI**, whose address is 1201 Leopard Street, Corpus Christi, TX 78401 ("QPP"), the right to use the surface estate of certain Permanent School Fund land (the "Premises") for the purposes identified in **ARTICLE IV** below.

**1.02.** The GLO and QPP entered into a Project Cooperation Agreement, denominated as GLO Contract No. 13-480-000-8048, ("PCA"), effective \_\_\_\_\_, 2013, for a coastal erosion response project (the "Project"), pursuant to the CEPRA statute and all other applicable statutes, rules, and regulations. A copy of the PCA is attached hereto as **Exhibit A**, and incorporated herein in its entirety for all purposes. The terms and conditions of this Agreement are in addition to and an extension of the PCA, solely for the purpose of authorizing the construction of the Project, and documenting the right of QPP to access the Premises after completion of the coastal erosion response project created pursuant to the PCA, in order to conduct required and necessary maintenance of the Project for the period of time specified in **ARTICLE III**, below.

## ARTICLE II. PREMISES

**2.01.** The Premises consist of 7,000 linear of Gulf shoreline of Corpus Christi Bay at North Beach, in Corpus Christi, Nueces County, Texas, and more fully described or depicted in the PCA, which description is incorporated herein by reference for all purposes.

**2.02.** QPP HAS INSPECTED THE PHYSICAL AND TOPOGRAPHIC CONDITION OF THE PREMISES AND ACCEPTS IT "AS IS" IN ITS EXISTING PHYSICAL AND TOPOGRAPHIC CONDITION. QPP IS NOT RELYING ON ANY REPRESENTATION OR WARRANTY OF THE STATE REGARDING ANY ASPECT OF THE PREMISES, BUT IS RELYING ON QPP'S OWN INSPECTION OF THE PREMISES. THE STATE DISCLAIMS ANY AND ALL WARRANTIES OF HABITABILITY, MERCHANTABILITY, SUITABILITY, FITNESS FOR ANY PURPOSE, AND ANY OTHER WARRANTY WHATSOEVER NOT EXPRESSLY SET FORTH IN THIS AGREEMENT. THE STATE AND QPP HEREBY AGREE AND ACKNOWLEDGE THAT THE USE OF THE TERMS "GRANT" AND/OR "CONVEY" IN NO WAY IMPLIES THAT THIS AGREEMENT OR THE PREMISES ARE FREE OF LIENS, ENCUMBRANCES AND/OR PRIOR RIGHTS. QPP IS HEREBY PUT ON NOTICE THAT ANY PRIOR GRANT AND/OR ENCUMBRANCES MAY BE OF RECORD AND QPP IS ADVISED TO EXAMINE ALL RECORDS OF THE STATE AND COUNTY IN WHICH THE PREMISES IS LOCATED. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

## ARTICLE III. TERM

**3.01.** This Agreement shall continue for a term of ten (10) years, commencing on the effective date of the PCA and ending ten (10) calendar years thereafter, unless renewed or earlier terminated for any reason by the State, in its sole discretion.

## ARTICLE IV. USE OF THE PREMISES

**4.01.** The Premises shall be used solely for the continued maintenance of the coastal erosion response project created by the PCA and for no other purpose. The Premises are to remain in their current topographical and hydrologic condition, unless the modification is pursuant to and in accordance with the terms of the PCA. QPP is specifically prohibited from modifying the Premises in any manner not authorized herein, and from using, or allowing the use by others of the Premises for any other purpose.

**4.02.** The State reserves the exclusive right to grant easements, rights-of way and/or other grants of interest authorizing use of the Premises. QPP shall permit the State's agents, representatives, and employees to enter into and on the Premises at all reasonable times for the purpose of inspection and any other reasonable purpose necessary to protect the State's interest in the Premises.

**4.03.** Any accretion of sediment, as determined by the GLO, resulting from the actions authorized by the PCA or this Agreement, will be considered property of the State of Texas.

**4.04.** The following provisions shall apply to the use of the Premises during the term of this Agreement:

- (A) Upon request, QPP shall submit reports to the appropriate Field Office documenting Project conditions and verifying compliance with the requirements of the PCA. If the Field Office determines at any time that monitoring and maintenance of the Project is no longer necessary, the Field Office may recommend to the School Land Board that this Agreement be terminated.
- (B) QPP shall maintain Department of the Army Permit No. 21203.
- (C) QPP, in cooperation with the GLO, shall maintain the Project for ten (10) years in accordance with the School Land Board's authorization of the placement of the Project on Permanent School Fund land under TEX. NAT. RES. CODE ANN. § 33.609.
- (D) If the GLO determines that the Project requires maintenance or is in a non-compliant condition or there has been any unforeseen significant adverse impacts caused by the Project, QPP will be notified and required to assist with removal, maintenance, or restoration of the site to pre-Project conditions if the non-compliant condition cannot be remedied or repaired.
- (E) If QPP is charged with assisting with the removal of the Project pursuant to the foregoing terms or if the Improvements should fail or cease to fulfill the purposes of the Project, QPP shall assist with the restoration of the Premises to pre-Project conditions and configuration at QPP's percentage of the cost.
- (F) If the Project remains in place at the end of the term of this Agreement, the term and maintenance requirements may be extended for an additional ten-year term, if necessary, at the sole discretion of the GLO.

#### **ARTICLE V. ASSIGNMENTS**

**5.01.** This Agreement and the uses allowed hereunder shall not be assigned by QPP.

#### **ARTICLE VI. PROTECTION OF NATURAL AND HISTORICAL RESOURCES**

**6.01.** QPP shall comply with all applicable rules and regulations of the GLO and other governmental agencies responsible for the protection and preservation of public lands and waters, including those relating to pollution. In the event of pollution or an incident that may result in pollution of the Premises or adjacent property which is the result of QPP's (or QPP's employees, contractors, invitees and agents) acts or omissions, QPP shall immediately notify the State, use all means reasonably available to recapture any pollutants which have escaped or may escape, and mitigate for any and all natural resources damages caused thereby.

**6.02.** QPP IS EXPRESSLY PLACED ON NOTICE OF THE NATIONAL HISTORICAL PRESERVATION ACT OF 1966, (PB-89-66, 80 STATUTE 915; U.S.C.A. § 470) AND THE ANTIQUITIES CODE OF TEXAS, CHAPTER 191, TEX. NAT. RES. CODE ANN.

**IN THE EVENT THAT ANY SITE, OBJECT, LOCATION, ARTIFACT OR OTHER FEATURE OF ARCHEOLOGICAL, SCIENTIFIC, EDUCATIONAL, CULTURAL OR HISTORIC INTEREST IS ENCOUNTERED DURING ANY ACTIVITY ON THE PREMISES, QPP WILL IMMEDIATELY CEASE SUCH ACTIVITIES AND WILL IMMEDIATELY NOTIFY THE GLO AND THE TEXAS HISTORICAL COMMISSION, P.O. BOX 12276, AUSTIN, TEXAS 78711, SO THAT ADEQUATE MEASURES MAY BE UNDERTAKEN TO PROTECT OR RECOVER SUCH DISCOVERIES OR FINDINGS, AS APPROPRIATE.**

#### **ARTICLE VII. INDEMNITY**

**7.01. QPP SHALL BE FULLY LIABLE AND RESPONSIBLE FOR ANY DAMAGE, OF ANY NATURE, ARISING OR RESULTING FROM ITS OWN ACTS OR OMISSIONS RELATED TO ITS EXERCISE OF THE RIGHTS GRANTED HEREIN. QPP AGREES TO AND SHALL INDEMNIFY AND HOLD THE STATE, THE STATE'S OFFICERS, AGENTS, AND EMPLOYEES, HARMLESS FROM AND AGAINST CLAIMS, SUIT, COSTS, LIABILITY OR DAMAGES OF ANY KIND, INCLUDING STRICT LIABILITY CLAIMS, WITHOUT LIMIT AND WITHOUT REGARD TO CAUSE OF THE DAMAGES OR THE NEGLIGENCE OF ANY PARTY, EXCEPT FOR THE CONSEQUENCES OF THE NEGLIGENT ACTS OR WILLFUL MISCONDUCT OF THE STATE, THE STATE'S OFFICERS, AGENTS, EMPLOYEES, OR INVITEES, ARISING DIRECTLY OR INDIRECTLY FROM QPP'S USE OF THE PREMISES (OR ANY ADJACENT OR CONTIGUOUS PSF LAND) OR FROM ANY BREACH BY QPP OF THE TERMS CONTAINED HEREIN. THE PROVISIONS OF THIS SECTION SHALL SURVIVE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.**

#### **ARTICLE VIII. PROPERTY REMOVAL AND TAXES**

**8.01. Upon termination of this Agreement, QPP shall remove its personal property from the Premises within 30 days thereafter. THE TERMS OF THIS SECTION SHALL SURVIVE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.**

**8.02. QPP AGREES TO AND SHALL PROTECT AND HOLD THE STATE HARMLESS FROM LIABILITY FOR ANY AND ALL TAXES, CHARGES, AND ASSESSMENTS, TOGETHER WITH ANY PENALTIES AND INTEREST THEREON, AND FROM ANY SALE OR OTHER PROCEEDING TO ENFORCE PAYMENT THEREOF.**

#### **ARTICLE IX. MISCELLANEOUS PROVISIONS**

**9.01. No provision of this Agreement shall be construed in such a way as to constitute the State and QPP joint venturers or co-partners, other than to the extent provided for in the PCA, or to make QPP the agent of the State or make the State liable for the debts of QPP.**

**9.02. In the event any provision of this Agreement is more restrictive than any administrative rule promulgated by the GLO and/or the School Land Board, this Agreement shall control.**

**9.03.** Notices under this Special Document shall be delivered in the same manner and to the addresses as provided in the PCA.

**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE FOR SPECIAL DOCUMENT NO. 20130007  
CEPRA PROJECT NO. 1569  
UNDER GLO CONTRACT NO. 13-480-000-8048**

IN TESTIMONY WHEREOF witness our hand and Seal of Office as authorized signatories of the respective parties:

**STATE:**  
**TEXAS GENERAL LAND OFFICE**

**QPP:**  
**CITY OF CORPUS CHRISTI**

\_\_\_\_\_  
**JERRY E. PATTERSON**  
Commissioner, General Land Office

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED:**

Legal: Alt. DL

NAW GR Deputy: HSY

Ass't. Gen. Counsel: (P)

General Counsel: WPN

Chief Clerk: M

**ACKNOWLEDGMENT BY QPP**

STATE OF \_\_\_\_\_

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COUNTY OF \_\_\_\_\_

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This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

by \_\_\_\_\_  
(Individual Acknowledging This Document)

\_\_\_\_\_  
(Notary Signature)

Notary Stamp

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

*Information collected by electronic mail and by web form is subject to the Public Information Act, Chapter 552, Government Code.*

**EXHIBIT A**

**THE PROJECT COOPERATION AGREEMENT**

**GLO CONTRACT NO. 13-480-000-8048**